COUNCIL DECISION No. 0015481

BEFORE THE PLUMBING SUB-COUNCIL

On December 20, 2017

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order Pursuant to Section 49 of the *Safety Codes Act*, issued September 21, 2017 by the Accredited Municipality (Respondent) against the Production & Distribution Company (Appellant).

UPON REVIEWING THIS MATTER AND UPON HEARING THE APPELLANT AND THE RESPONDENT, THE DECISION OF THE COUNCIL is that:

1. **The Respondent did not have authority to issue the Safety Codes Act Order on September 21, 2017 (the Order); and**
2. **Since the Respondent did not have authority to issue the Order on September 21, 2017, the Appeal Panel has no jurisdiction to hear an appeal.**

Issue:

1. This appeal raises an issue concerning the jurisdiction of a Safety Codes Officer to issue an order on the Respondent's behalf under the *Safety Codes Act* (the Act) regarding a facility being developed by the Appellant. The facility is located on lands owned by the Government of Canada and leased to a Corporation. The Corporation leased to the Appellant a portion of the lands that the Corporation leased from the Government of Canada (the Leased Lands).

2. There are three issues before the Appeal Panel (the Panel):

    a. On September 21, 2017, did the Respondent have the authority to enforce the Act on the Leased Lands by issuing an Order under the Act?

b. Does the Panel have jurisdiction to hear an appeal from the Order issued by the Respondent on September 21, 2017?

c. Has the Respondent been properly accredited to administer the Act on the Leased Lands?

Appearances, Preliminary, Evidentiary, or Procedural Matters:

3. Appearing for the Appellant, the Panel heard from the legal counsel representing the Appellant.

4. Appearing for the Respondent, the Panel heard from the legal counsel representing the Respondent. The Panel also heard from the Manager of Safety Codes employed by the Respondent.

5. A Partner from a Law Firm attended as counsel for the Safety Codes Council.

6. Also in attendance were the Hearing Facilitator, and the Appeals and Policy Associate with the Safety Codes Council.

7. Attending as observers were the Safety Codes Officer employed by the Respondent; a representative from the Appellant's side; and individuals from the law firms representing the parties.

8. At the commencement of the hearing the Appellant and Respondent confirmed there were no objections to any members of the Panel.

9. The Appellant and Respondent agreed that a preliminary determination should be made on the authority of the Respondent to issue the Order in relation to the Leased Lands; and the Panel to hear an appeal from that Order. A hearing on the merits of the appeal of the September 21, 2017 Order would be heard at a later date, if the Panel determines that the Respondent had the authority to issue the Order and that the Panel has authority to hear an appeal from that Order.

10. The Appeal Panel Chair then explained the process to be followed in hearing this matter, and read out a list of the written materials before the Panel, consisting of the documents listed below in The Record, paragraph 12 as items 1 to 6. The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.

11. The parties were able to reach agreement on a number of facts. This agreement was set out in the letter from the Respondent's legal counsel dated December 18, 2017 (marked as Exhibit 3 in paragraph 12).

The Record:

12. The Panel considered, or had available for reference, the following documentation:

1. Appellant's submission received by the Safety Codes Council December 8, 2017

2. Respondent's submission received by the Safety Codes Council December 15, 2017

3. Letter from the Respondent's legal counsel dated December 18, 2017 indicating that the parties have reached an agreement with respect to certain facts

4. Letter from the Appellant's legal counsel dated December 19, 2017 with four (4) attachments:

a. Applicable legislation

b. Extracts from Ground Lease, dated July 31, 1992

c. *Alberta Giftwares Ltd. V Calgary (City)*, 1979 ABCA 255

d. *Western Irrigation District v Craddock*, 2000 Canlii 28175 (ABQB)

5. Extract from Statutory Interpretation Third Edition (by Ruth Sullivan)

6. Interpretation Act, RSA 2000, c 1-8

13. The Respondent submitted an extract from Ruth Sullivan *On the Construction of Statutes*, Sixth Edition during the hearing. There was no objection to the information being submitted for the Panel's consideration.

Provisions of the *Safety Codes Act*

14. The relevant *Safety Codes Act* (S-1, RSA 2000), sections are found in Appendix A to this decision.

Position of the Parties

Appellant

From the Appellant's submissions, and in response to questions posed by the Panel, the Appellant's position is summarized as follows:

15. The Appellant is developing a light industrial building for the manufacturing and processing of a product on the Leased Lands (the Facility).

16. The Appellant has obtained a development permit, building permits, and some plumbing permits for the Facility.

17. The work that is the subject of the Order relates to construction of an irrigation system. Rainwater is collected in a holding pond to which the irrigation system, which consists largely of underground pipes, is connected. The irrigation system is then used to supply rainwater to Facility. The Appellant takes the position that a plumbing permit is not required for this work as it is irrigation, and not a plumbing system.

18. The first issue is the authority of the Respondent to issue an Order under the Act in relation to the Leased Lands. There is no question that the Leased Lands are owned by the Government of Canada (federal land). Provincial laws, like the Act, do not apply to federal land unless there is an agreement that the Act applies to those lands. In the absence of an agreement, the Respondent does not have the authority to enforce the Act on the Leased Lands, and without agreement, the Panel has no jurisdiction to hear an appeal. The question is what federal authority has been delegated to the Corporation, and what authority has the Corporation delegated to the Respondent. In order to make this determination, it is necessary to interpret the various agreements.

19. The starting point for this discussion is the lease between the federal government and the Corporation, which was created under Provincial Statute (the Ground Lease). The Government of Canada leased lands to the Corporation, who in turn leased a portion of those lands (the Leased Lands) to a Numbered Company.

20. The Ground Lease granted the Corporation certain authority over the Leased Lands.

21. The Ground Lease, beginning on page 214, sets out conditions surrounding any agreement that the Corporation can reach with the

Respondent. Article 14.02.03 of the Ground Lease sets out what the agreement must deal with, including tenant and municipal obligations, specifically with regard to "codes, regulations and by-laws of general application designed to secure the health, safety, convenience and welfare of the inhabitants or occupiers of buildings and structures as if the Demised Premises were a property other than a federal public property."

22. At article 14.03.04, the Ground Lease provides that if no agreement is entered into between the Corporation and a municipality, "no New Facility shall be constructed or erected...that is not in full compliance with the National Building Code and the National Fire Code of Canada..."

23. The Appellant submitted that to the extent that the Memorandum of Agreement between the Corporation and the Respondent entered into on October 18, 1992 (the MOA) did not address plumbing permits, article 14.03.10 of the Ground Lease requires the Appellant, at its expense to "obtain the services of an independent professional Architect or Engineer, who shall be able to and who shall certify that any new Facility...meets or exceeds the standards contained in the National Building Code and the National Fire Code of Canada."

24. The Ground Lease is the overarching agreement between the federal government and the Corporation and all other agreements, specifically the MOA, are subservient to the Ground Lease.

25. The MOA identifies three important facts. First, the Appellant referred to the MOA (Tab 3 of the Appellant's written submission), and noted the reference (pages 10 and 11 of the MOA) to the requirements of the Uniform Building Standards Act, RSA 1980 c U-4, now repealed, (the UBSA) and regulations thereunder. The Appellant submitted that the UBSA (Tab 6 of the Appellant's written submission) contained no reference to "plumbing", only to building standards.

26. When the MOA was signed by the parties, they were aware that the Act had been enacted by the provincial legislature but not yet proclaimed in force (as referenced in the Introduction to the Respondent's submission (page 5, paragraph 38). The Act was passed when the MOA was signed. The parties likely understood that the MOA would remain in force when the Act was proclaimed in force and the Safety Codes Council was established, but they did not include references to the Act in the MOA. Further, when the Act was declared in force, the Corporation and the Respondent could have amended the MOA to reference the Act, but

they did not do so until 2017. The Appellant submitted that the omission of references to the Act in the MOA was an indication that the parties did not intend the Act to apply to the Leased Lands.

27. There is no evidence in the MOA about what the Corporation knew or were prepared to accept going forward, other than the reference to the UBSA and regulations thereunder.

28. Second, when the MOA was entered into, the plumbing discipline was regulated under separate legislation, the Plumbing and Drainage Act, RSA 1980, c P-10, now repealed (the Plumbing and Drainage Act). Tab 20, page 000336 of the Respondent's submission is an excerpt from the Alberta Building Code, 1990, Part 7 of which addressed the plumbing discipline. Article 7.2.1.1. confirms that plumbing systems must conform to the Plumbing and Drainage Act and regulations made pursuant to that Act. This confirms the plumbing discipline was regulated elsewhere, not under the UBSA. Appeals of Orders under the UBSA went to the Alberta Building Standards Council and appeals of Orders under the Plumbing and Drainage Act went to the chief inspector and then to an appeal board established by the Minister. Neither statute contained any reference to the Safety Codes Council. It cannot therefore be said, as the Respondent has suggested, that nothing has changed.

29. Third, when the MOA was entered into, the Respondent was accredited to administer only the building and fire disciplines. It was not accredited in the plumbing discipline at the time the MOA was entered into. In fact, the Respondent was not accredited for plumbing until 2000, eight years later. It makes no sense to believe, and the parties could not therefore have understood, that plumbing was part of the MOA. Had the parties intended to grant the Respondent any authority with respect to plumbing on the Leased Lands, the MOA would have contained reference to the Plumbing and Drainage Act.

30. Since the MOA reflects what the Respondent was accredited to administer at the time, all else defaults to the provision in the Ground Lease allowing certification of among other things, a plumbing or irrigation system, by an Architect or Engineer (referenced at paragraph 23 above).

31. The MOA between the Corporation and the Respondent was entered into on October 18, 1992 and contained no reference to the Act or the Safety Codes Council. In 1992, the Respondent issued permits and conducted inspections in the building and fire disciplines. In 2000, it

became accredited pursuant to the Act in the electrical, gas and plumbing disciplines, at which time it began administering those disciplines.

32. The Respondent and the Corporation amended the MOA eight times (the 3rd amendment was not finalized) between October 1992 and October 2017, including amendments after the Respondent became accredited in the plumbing discipline, and yet the amendments made no reference to plumbing or the Act until after the September 21, 2017 Order was issued. If the Corporation had intended to delegate authority to the Respondent to administer the plumbing discipline on the Leased Lands in the MOA, it could have and would have included this in one or another amendment to the MOA. It did not.

33. Until the 9th amendment, the MOA referred only to the UBSA, which is defined at paragraph I.1(q) as follows: "Uniform Building Standards Act" means R. S. A. 1980, as amended or re-enacted from time to time." (See Tab 3 of the Appellant's submission, page 00033.)

34. The Respondent has stated that the Act is a re-enactment of the UBSA. The Appellant does not agree, being of the opinion that while the Act did replace the repealed UBSA, the Act is much broader in scope than was the UBSA, containing "substantive change", contrary to the definition of "re-enactment" cited (see Ruth Sullivan, Sixth Edition) and cannot therefore be considered a re-enactment.

35. While it might be argued that the Act is a re-enactment of the UBSA with regard to the building discipline, this same argument cannot be applied to the plumbing discipline as that discipline was regulated by an entirely different Act. When one looks at the *UBSA* (Tab 6 of the Appellant's submission, Exhibit 1) it is noted that the Act does not define "plumbing or a "plumbing system". The *Plumbing and Drainage Act* (Tab 7 of the Appellant's submission, Exhibit 1) does not define "building" but does define "plumbing equipment" and "plumbing system". The *Act* on the other hand defines "building" and "plumbing systems" so there was a substantive change to the legislation.

36. Just because the Respondent, by their own evidence, has issued hundreds of permits on land covered by the Ground Lease over many years does not establish their jurisdiction to do so.

37. The Appellant disagreed with the Respondent's suggestion (page 9 of the Respondent's written submission, paragraphs 64 - 66) that the three documents identified therein are proof that the Respondent's

jurisdiction has been acknowledged by the Appellant, the Corporation, Alberta Municipal Affairs and the Safety Codes Council.

38. The Appellant submitted that if there is no jurisdiction, it cannot be acknowledged. Therefore, the Appellant discounted the Respondent's submission at Tab 5 (the highlighted portion of page 00016, page 2 of a 2-page document identified as the Corporation Facility Alteration Permit, Exhibit 2) which the Respondent submitted is acknowledgement by all parties that the Respondent is the authority having jurisdiction for the Corporation.

39. In response to the Respondent's Tab 27 (the highlighted portion of a letter from Alberta Municipal Affairs at page 000353), which the Respondent submitted is acknowledgement of the jurisdiction of the Respondent on Leased Lands, including in the plumbing discipline, the Appellant submitted that Alberta Municipal Affairs has no authority on federal land, so the statement is not relevant to the question.

40. In response to the e-mail exchange between the Administrator of Accreditation and the Manager of the Safety Codes employed by the Respondent (Tab 26 of the Respondent's submission, pages 000354-000355), cited as further acknowledgement of the Respondent's jurisdiction on the Leased Lands, simply reflects what Alberta Municipal Affairs told the Administrator of Accreditation and again is irrelevant for the same reason as argued in paragraph 39, above.

41. In response to the Respondent's references to an earlier decision of the Safety Codes Council (Tab 16 – Respondent's submission) as evidence that at least as far back as 2012 the Safety Codes Council acknowledged the authority of the Respondent to enforce provisions under authority of the same MOA that is referenced in this hearing, albeit of the Gas Code, the Appellant argued that the question of jurisdiction was not at issue in that case as it is today. Additionally, the evidence in that earlier decision was a verbal submission, made by the Respondent during the hearing and not contested. The Appellant submitted that there can be no way this decision is binding on the current appeal.

42. The Appellant referenced two Court decisions for the principle that a tribunal which does not have jurisdiction cannot assume jurisdiction through waiver, or because no-one has objected.

43. Quite simply, at the time the Order was issued and the appeal launched, the Respondent did not have authority or jurisdiction to enforce the Act

on the Leased Lands, as the 9th Amendment had not yet been agreed to and it was not until the 9th Amendment that the Act was mentioned.

44. The second issue in the hearing relates to the jurisdiction of the Safety Codes Council. The above argument applies to jurisdiction of the Safety Codes Council.

45. Further, when the Respondent and the Corporation signed the MOA, the *Plumbing and Drainage Act* was the legislation that regulated plumbing, the Safety Codes Council did not exist, and appeals at the time (see Tab 7 of the Appellant's submission) were to the Chief Inspector, and possibly "to the Minister to establish an appeal board." Because the Safety Codes Council was not mentioned, it has no jurisdiction to hear an appeal.

46. The third issue in the hearing relates to the Respondent's accreditation. The Appellant does not dispute that a municipality can be accredited under the Act, but the Panel was asked to note page 000077 of the Respondent's submission, which is an excerpt from the Alberta Gazette, reporting the Respondent's Accreditation for Plumbing effective May 16, 2000. In both that document and the Order of Accreditation (Plumbing) found on page 000082, the wording is the same in declaring any authorization to administer the Act, must be "**within their jurisdiction**", which the Appellant has argued (see paragraph 45 above) did not exist when the Order was issued.

47. Any transfer of authority has to begin with the federal government, who by way of the Ground Lease granted authority to the Corporation to negotiate an agreement (the MOA) with the Respondent. In 2000, when the Respondent became accredited in the plumbing discipline, jurisdiction had not been granted to it by way of the MOA between the Respondent and the Corporation. While it may be argued, and it has been argued, that the Respondent has jurisdiction to "ensure compliance with" the plumbing code, it did not have jurisdiction to issue an Order under authority of the Act.

48. Page 214 of the Ground Lease, article 14.02 provides that the agreement shall be negotiated with the "municipality". There is no agreement with the Safety Codes Council, or with the Province of Alberta, or with any other provincial body. The agreement is with the municipality, here the Respondent.

49. The federal government has not granted authority to the Safety Codes Council to grant accreditation to the Respondent on Leased Lands. In

this regard, the Panel was again referred to the e-mail from the Administrator of Accreditation (Tab 26 of the Respondent's submission) confirming that the Act, as a provincial statute, "does not apply on land/property owned by the federal government."

50. The Administrator of Accreditation takes the same position in their October 27, 2017 letter to the Appellant where they write, "I do not have jurisdiction to accredit a facility on federal land."

51. In conclusion, the Safety Codes Council cannot grant accreditation to the Respondent to enforce the Act on federal land, and the Safety Codes Council has not been granted authority to hear an appeal of the Order issued on the Leased Land.

52. The Appellant further argues that the Order incorrectly names the Appellant in the Order and while it directs them to immediately cease work, it does not give a time limit for them to take steps to comply with requirements, including obtaining a plumbing permit.

53. There is a matter of some urgency as the roof is designed to melt all snow into the irrigation system and if work is stopped, the roof could collapse.

54. Notwithstanding that the Respondent does not have authority to enforce the Act on the Leased Lands, and that the work relates to an irrigation system and not a plumbing system, efforts have been ongoing to satisfy the requirements of the Respondent. When a mechanical contracting building company attempted to apply for a plumbing permit with schematic drawings of the irrigation system, the application was rejected on the basis of insufficient information. An engineering firm has since been engaged to prepare engineered drawings of the irrigation system, which the Respondent has been advised, will be provided imminently even though they are not required.

Respondent

From the Respondent's submissions and testimony, and in response to questions posed by the Panel, the Respondent's position is summarized as follows:

55. Before beginning its submissions, the Respondent asked for and received a short adjournment in order to consider and prepare its

response to the third argument raised by the Appellant (the status of the Respondent's accreditation), which was not in its written submissions. Following the adjournment, the Respondent was prepared to present its submissions.

56. Before beginning its submissions, the Respondent called the Manager of the Safety Codes of the Municipality to give evidence. The latter has been a Plumbing and Gas Safety Codes Officer since 1995 and became the Manager of Safety Codes with the Respondent in 2008.

57. The witness advised that since 1992, the Respondent has issued 832 permits for the lands covered by the MOA. The Respondent issued 557 permits between 2000 and 2013, and 189 permits from 2013 to present. (page 2, item 15) Although the Respondent was not accredited in the plumbing discipline before 2000, the Alberta Building Code still required compliance with the National Plumbing Code, both before and after 2000, and if a building Safety Codes Officer was on site and observed a plumbing issue, they would bring it to the attention of the authority having jurisdiction. In response to questions from the Appellant, the witness acknowledged that the Respondent could not issue plumbing permits before 2000 and that plumbing permits were not issued under the UBSA at any time.

58. In its submissions, the Respondent noted that the MOA was signed October 18, 1992 and authorized them to enforce the UBSA "as amended or re-enacted from time to time".

59. When the MOA was signed, the parties knew the Act had been passed and would come into force, and the MOA provides for re-enactments of the UBSA to apply. In addition, the Corporation and the Respondent have recently signed a new amendment (the 9th Amendment) updating the MOA to the operative legislation (the Act). The Act was passed in 1991, and while the Act would not come into force until 1994, it was not the parties' intent for the Respondent only to regulate the health and safety of the Leased Lands until 1994.

60. While there is no evidence confirming that the parties intended that the MOA should grant the Respondent authority to administer the plumbing discipline on Leased Lands, this can be inferred from the evidence the Respondent has presented. Regarding the question of why the MOA did not include reference to the Act, if it was intended for the Act to apply, the Respondent submitted that the parties did not need to as the Act had been passed by the legislature. The Act "was waiting in the wings", and the MOA did specify the "UBSA, as amended or re-enacted from

time to time", meaning the Act. It is ludicrous to conclude the parties would enter into an agreement that would result in the Respondent having "zero authority" when the UBSA was repealed.

61. The UBSA required compliance with the plumbing provisions of the Plumbing and Drainage Act. The Respondent maintains that the Act is a re-enactment of the UBSA because it imposes the same obligations on parties as was previously imposed by the UBSA. If the Panel agrees with this, then under the MOA, the Respondent has jurisdiction to do what it did.

62. In response to the Appellant's argument that the plumbing provisions were not within the scope of the UBSA, only building, the Respondent submitted that the UBSA had a regulation in the Alberta Building Code which itself covered plumbing. Before 1991, the Alberta Building Code was declared in force by the *UBSA*. While the Appellant argues that at the time the MOA was entered into in October 1992, plumbing was administered under the Plumbing and Drainage Act and not the *UBSA*; regulations under the UBSA included the 1990 Alberta Building Code, which required (section 7.2.1.1.) compliance with the *Plumbing and Drainage Act*.

63. From 1992 to the present, the Respondent has ensured compliance with either the *Plumbing and Drainage Act* or the National Plumbing Code. Even when it was not accredited and not issuing permits in the plumbing discipline, the Respondent still had an obligation to ensure compliance.

64. The Respondent issued the September 21, 2017 Order pursuant to the Act. The Respondent had the jurisdiction to issue the Order in accordance with the MOA.

65. The Respondent acknowledges it was not accredited to administer plumbing prior to 2000. It was, however, responsible to administer the UBSA and that included the *Plumbing and Drainage Act*. The only difference between now and then is that the Respondent now has the right to issue plumbing permits.

66. The Ground Lease provided the Corporation the authority to enter into an agreement with the Respondent to, among other things, "to ensure…the health, safety, convenience and welfare of the occupants of buildings and structures." The Corporation and the Respondent did in fact enter such an agreement in 1992 with the MOA.

67. The original MOA can be found at Tab 4 of the Respondent's written

submission and the Respondent referred to the highlighted portion of that agreement on page 000085, setting out some of the matters expected to be part of any agreement.

68. The Respondent referred to the highlighted portion on page 000093 of the same agreement, article 26 under the heading "**Building Code**". It requires that a building, shall be undertaken in accordance with the UBSA and regulations thereunder, and that the UBSA "shall apply as if the Leased Lands were other than Crown property and were subject to the said Act."

69. Since, the Respondent believes the Act is a re-enactment of the UBSA, that article in the MOA can be read to include the Act as well. In support of its position, the Respondent referred to *a Case* (Tab 14 of its submission), specifically the highlighted portion on page 000232 which states that the UBSA was "repealed and replaced" by the Act.

70. Sullivan *On the Construction of Statutes*, Sixth Edition, (Sullivan) states that re-enactment occurs when "existing text is repealed and new text is enacted, but the substantive law expressed by the two texts remains the same." Sullivan further clarifies this by saying:

> *The key to these provisions is the absence of substantive change. When a provision is repealed and another provision is enacted as a substitute or replacement, the court must determine the extent to which the new provision substantially differs from the old. If the new provision is different, the law has been amended and the rules governing the temporal operation of amendments apply. If the new provision is the same (despite any formal changes that may have been made), the law (as opposed to the text in which the law is expressed) has not been amended and its operation is not interrupted.*

71. The Respondent submits that the Act did not "substantially differ" from the *UBSA*. In the absence of substantive change, the Act must be considered a re-enactment of the *UBSA*.

72. Included in the **Transitional Provisions** found in the current Act is the following:

> 71(3) In accordance with section 36(1)(e) of the *Interpretation Act*, all or any part of a code, standard or body of rules and the revisions, variations and modifications to it that have been adopted or declared in force by a regulation under an Act referred to subsection (1) or (2) is deemed to be a regulation that has been made under this Act.

73. The transition from the UBSA to the Act was a seamless process that made any code, standard or body of rules still in force under the new legislation.

74. The Alteration Permit (Tab 5 of the Respondent's submission) informs permit applicants that the Respondent is the primary authority having jurisdiction for the Leased Lands relating to the Act.

75. On May 1, 2017, the Respondent, the Corporation, and the Appellant (Tab 6 of the Respondent's submission), agreed that the Appellant would not use or develop or occupy any part of the Leased Lands except in strict conformity with the MOA.

76. The Respondent clarified the relationship between three companies on page 8 of their written submission (paragraph 58), noting that "the Appellant is the party in control." The Appellant had suggested, (in a letter to the Safety Codes Council dated October 23, 2017 letter from its legal counsel), that the Order was incorrectly issued to the Appellant "and on this basis alone it should be revoked." The Respondent asked the Panel to note that the Appellant has taken out numerous permits under its name, but had not raised the question of who was named on the permit before this challenge to jurisdiction being raised.

77. The Respondent also noted that in the Facility Alteration Report the Appellant is the applicant, and someone acting on behalf of the Appellant acknowledged the Respondent as "the *authority having jurisdiction*...for items related to the Alberta Safety Code..."

78. In response to the Appellant's argument that the information set out in the Respondent's Tabs 26 and 27 was irrelevant (see paragraphs 39 and 40), the Respondent submits the contrary, that these documents confirm acknowledgement of authority and to say otherwise would be wrong.

79. The Respondent submitted that the Safety Codes Council has jurisdiction to hear an appeal of the September 17, 2017 Order, since it was issued under Section 49 of the Act and section 50 of the Act states any appeal is to be heard by the Safety Codes Council.

Reasons for Decision

80. Three issues were raised at the preliminary hearing:

    a. On September 21, 2017, did the Respondent have the authority to enforce the Act on the Leased Lands by issuing an Order under the Act?

b. Does the Panel have jurisdiction to hear an appeal from the Order issued by the Respondent on September 21, 2017?

c. Has the Respondent been properly accredited to administer the Act on the Leased Lands?

Issue 1: On September 21, 2017, did the Respondent have the authority to enforce the Act on the Leased Lands by issuing an Order under the Act?

81. The following dates are relevant to the Panel's reasoning:

a. 1983 - the Respondent is accredited to enforce the provisions of the UBSA;

b. 1991 - the Act is passed, but is not in force;

c. July 31, 1992 - the federal government and the Corporation enter the Ground Lease;

d. October 13, 1992 - The Corporation and the Respondent enter the MOA;

e. 1994 - the Act comes into force in Alberta;

f. May 16, 2000 - the Respondent is authorized to administer the Act within their jurisdiction for Plumbing; and

g. October 1, 2017 - the 9th Amendment to the MOA becomes effective.

82. The Panel notes that the parties were able to reach an agreement in relation to certain other facts. The Panel accepts those facts as agreed by the parties. For ease of reference those agreed facts are set out in Appendix B.

83. There is no dispute between the parties that:

a. the Act is legislation passed by the provincial Legislature;

b. the lands covered by the Ground Lease, and the Leased Lands are lands owned by the federal government; and

c. without agreement, provincial legislation does not apply to federal lands.

84. The position of the Appellant is that there was no agreement as of September 21, 2017 (the date of the Order) which would permit the Respondent to issue an order under the Act in relation to the Leased

Lands, and as a result, the Order was issued without jurisdiction. In contrast, the position of the Respondent is that there was, in fact, such an agreement authorizing the Respondent to enforce the Act on the Leased Lands. The Respondent submits that the Order was validly issued.

85. There is no question that the Respondent believed that it had the authority to act under the Act and to issue Orders. The *bona fides* of the Respondent is not in question. The question is whether the agreements gave the Respondent the authority under the Act.

86. In order for the Panel to determine this issue, it needs to interpret the two agreements which govern this matter: the Ground Lease, entered between Her Majesty the Queen in Right of Canada and the Corporation in July 1992 and the MOA entered between the Corporation and the Respondent on October 13, 1992 and amended 8 times, with the last amendment effective October 1, 2017.

Ground Lease

87. The Panel was referred to various sections of the Ground Lease, in particular section 14.02, 14.02.03, and 14.03.10. Having reviewed the sections, the Panel notes that the Ground Lease empowered the Corporation to enter an agreement with the Appellant to ensure the compliance of all occupants and transferees as those terms were defined under the Ground Lease (Note that the definitions were not provided to the Panel) with provincial and municipal construction and other codes, regulations, and by-laws of general application designed to secure the health, safety, convenience and welfare of the inhabitants or occupiers of buildings and structures as if the demised properties were a property other than a federal public property and to have the municipality administer and apply those codes (see sections 14.02.03(f) and (g) of the Ground Lease, Exhibit 4).

88. The Ground Lease also provided that if there was no agreement between the Corporation and the Respondent, the Corporation was to obtain the services of a professional architect or engineer who was to certify that any facility meets or exceeds the standards in the National Building Code and the National Fire Code (see section 14.03.10).

89. The Panel notes that the Ground Lease empowered the Corporation to enter an agreement with the Respondent, but it did not set out the terms of the agreement.

MOA

90. To ascertain the scope of the agreement between the Corporation and the Respondent, the Panel must review the provisions of the MOA. In this regard, the following provisions of the MOA are notable:

    a. Section I.1(q) - "'Uniform Building Standards Act' means R. S. A. 1980, as amended or re-enacted from time to time." (see Tab 3, page 00033)

    b. Section 26 - "The placement or construction of a new building on the Leased Lands, or the enlargement, renovation or alteration of any existing building, shall be undertaken only in accordance with the requirements of the Uniform Building Standards Act and regulations thereunder, and that Act shall apply as if the Leased Lands were other than Crown property and were subject to the said Act." (see Tab 3, page 00039-00040)

    c. Section 51 - "This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it unless they are incorporated by reference in this Agreement. There are no terms, obligations, covenants, representations, statements or conditions other than those contained herein. (see Tab 3, page 00046)

    d. Section 53 - "No amendment or waiver of this Agreement, or any of its terms and provisions, shall be deemed valid unless effected by a written amendment to this Agreement executed by both parties to this Agreement."

91. The 9th Amendment makes the following changes to the MOA:

    a. paragraph 4 of the preamble is deleted and replaced with:

        And whereas since the Leased Lands continue to be property of the Government of Canada, the Respondent does not have legislative or regulatory jurisdiction over the development of the Leased Lands.

    b. references in the MOA to the "Uniform Building Standards Act " are replaced with the "Safety Codes Act";

c. Section 26 is replaced with:

> The placement or construction of a new building on the Leased Lands, or the enlargement, renovation or alteration of any existing building, shall be undertaken only in accordance with the requirements of the *Safety Codes Act* and regulations thereunder, and that Act shall apply as if the Leased Lands were other than Crown property and were subject to the said Act. For the foregoing purposes and unless the Corporation shall decide otherwise, the Corporation will engage the services of the Respondent to provide all requisite inspection and permitting services under the *Safety Codes Act*. The Respondent shall be entitled to be reimbursed by the Corporation for such services.

92. The Appellant argues that at the time of the issuance of the Order the MOA did not authorize the Respondent to issue an Order under the Act, while the Respondent argues it did have the authority on the basis that the Act is a re-enactment of the UBSA. A number of arguments were raised by the parties, which the Panel addresses below.

93. The Appellant argued that the MOA does not reference the Act, even though when the MOA was signed, the Act was passed (although not in force). Had the parties intended the Act to apply, they would have said so. The fact that the Act is not referenced is an indication it was not meant to apply. In response, the Respondent argued that it was not necessary to refer to the Act, as it would be a reasonable inference that the parties knew at the time of drafting that the Act was waiting to be proclaimed into force and their intention was that the Act would be under the jurisdiction of the Respondent. It would be ludicrous to infer that the parties had agreed that once the UBSA was repealed the Respondent had no further authority on leased lands.

94. The Panel had no evidence about the intention of the parties in 1992 when it entered the agreement. Even if it did have such evidence, the Panel has noted section 51 of the MOA which provides that the only terms of the agreement are those that are in writing. The Panel must interpret the words of the agreement themselves, as directed by section 51.

95. The essence of the question before the Panel is whether the Act is the "re-enactment" of the UBSA, as argued by the Respondent. In its argument, the Respondent has urged the Panel to find that the Act is

the "re-enactment" of the UBSA, dealing with essentially the same matters as the UBSA and has relied upon the *Holstag* case in support. In response, the Appellant argued that the Act is broader in scope (dealing with all disciplines - See section 2 of the Act, Page 00140, Tab 8, Exhibit 1 Appellant's Materials) rather than the limited scope of the UBSA (building discipline only - see Tab 6, Exhibit 1 Appellant's Materials).

96. In considering this portion of the argument, the Panel has considered the following:

a. Both excerpts from Sullivan provide that legislation is re-enacted when it is repealed, and enacted again without undergoing substantive change. The question is whether the Act is substantially different from the UBSA. In that regard, the Panel notes that the UBSA does not define "plumbing system", while the Plumbing and Drainage Act does. The Plumbing and Drainage Act does not define "building", while the UBSA does.

b. The UBSA provides that the Minister may authorize a local authority to enforce its terms. The Plumbing and Drainage Act provides that chief provincial plumbing inspector may be authorized to perform functions under that act and to delegate functions to provincial or municipal inspectors.

c. Under the UBSA appeals go to the Alberta Buildings Standards Council, while under the Plumbing and Drainage Act, appeals go to the chief inspector.

d. The evidence of the Manager of Safety Codes was that the Respondent did not issue any plumbing permits under the UBSA.

The above items speak to the different matters addressed by each of the acts.

97. The Panel has concluded that the *Act* is not a re-enactment of the *USBA* given the Act's broader scope and substantive changes, as outlined above. The change that occurred to safety codes legislation in 1994 when the Act was declared in force cannot be said to be solely a re-enactment of the UBSA. Changes included *enactment* of the part of the law that was new, *repeal* of the part of the law that was discarded, and re-enactment of the part of the law that was not changed (see article

24.69 of Ruth Sullivan *On the Construction of Statutes*, Sixth Edition).

98. The Panel has examined *Holstag.* The Respondent has relied upon the case for its statement that the Act repealed and replaced the UBSA. The Panel agrees that the case does include that statement. However, the case dealt with a question concerning pine shakes, which was governed under the Building Code. The case did not address the question of whether the Act was a re-enactment of the UBSA for the purposes of the plumbing discipline, which is the question which is before this Panel.

99. The Panel has considered the Respondent's argument that the provisions of the Plumbing and Drainage Act were incorporated by reference through article 7.2.1.1 of the Building Code, which requires plumbing systems and private sewage disposal systems to conform to the Plumbing and Drainage Act and its regulations. The Panel is not persuaded by this argument. It is clear that article 7.2.1.1 requires the "construction, extension, alternation, renewal or repair" of those systems to conform to the Plumbing and Drainage Act and its regulations. However, the article does not state that the Plumbing and Drainage Act is part of the UBSA, nor does the article indicate who is responsible for the enforcement of those provisions. The evidence of the Manager of Safety Codes was that prior to the Respondent being accredited in the plumbing discipline, if it noted a plumbing deficiency, it would have advised the appropriate authority. This evidence counters the argument that the provisions of the Plumbing and Drainage Act were somehow incorporated by reference in the UBSA.

100. The Panel has also considered the wording of the MOA and the timing of three key events: the first being the Respondent's accreditation to deal with plumbing; the second being the effective date of the Act; and the third being the effective date of the 9th amendment. There was no evidence before the Panel concerning what the parties knew at the time of signing the MOA about the Respondent becoming accredited, or if the Respondent would ever become accredited. As of the date the MOA was signed, the Respondent was not accredited to deal with plumbing. In light of this fact, the Panel does not accept the argument that the Corporation and the Respondent had contemplated that the Respondent would have authority for plumbing, when the Respondent was not accredited until 6 years later. In regard to the effective date of the Act, as of 1994, when the Act came into force, the parties could have

amended the MOA, but did not. There was no evidence was to why, but the MOA speaks for itself. Finally, as of October 1, 2017, the parties did amend the MOA (the 9th Amendment) to specifically refer to the Act. It is notable that the parties did not make this change retro-active, instead fixing the date of the change to be as of October 1, 2017. However, this date was 9 days after the Order was issued.

101. The Respondent argued that the Appellant had obtained other plumbing permits from them, and had not contested its jurisdiction. The Panel understood this argument to mean that the Appellant had, in essence, agreed to the Respondent having jurisdiction in relation to plumbing. The Panel notes this inconsistency in the Appellant's actions. However, as stated in the *Western Irrigation* and *Alberta Giftwares* cases, despite their previous conduct, the Appellant cannot agree to give the Respondent jurisdiction if the latter did not have it.

102. The Panel has also examined the tri-party agreement between the Corporation, the Respondent, and the Numbered Company (Tab 6, Respondent's Submissions, Exhibit 2). This agreement provides in section 1 that the Numbered Company will not use, develop or occupy the Leased Lands except in strict conformity with the MOA. This agreement, in and of itself, does not assist the Panel in the interpretation of the MOA. Further, while it is evidence that the Appellant had its intention to obtain permits, the Panel acknowledges that the parties cannot, by consent, bestow jurisdiction, if none exists.

103. The Panel has carefully considered the Facility Alteration Permit at page 000163 of Tab 5, Respondent's Submission, Exhibit 2. While the Appellant has acknowledged that the Respondent is the authority having jurisdiction, the permit itself is for structural work, (description of work on page 000165 states "Green House Grade Beam") and is therefore equivocal, as there appears to be no dispute that the Respondent has jurisdiction to issue building permits under the Act.

104. For the reasons set out above, the Panel has determined that the Respondent did not have jurisdiction to issue the Order on September 21, 2017.

Issue 2: Does the Panel have jurisdiction to hear an appeal from the Order issued by the Respondent on September 21, 2017?

105. Since the Panel has concluded that the Respondent did not have

jurisdiction to issue the Order on September 21, 2017, there was, in effect, no order. As a result, there is no order to be heard by the Safety Codes Council.

Issue 3: Has the Respondent been properly accredited to administer the Act on the Leased Lands?

106. The Appellant argued that the Respondent had not been properly accredited to administer the Act on the Leased Lands. In light of the Panel's decision in regard to issue 1, it is not necessary for the Panel to address this question.

Other matters

107. The Appellant argued that the Order had been improperly issued against the Appellant which was also fatal. Although it is not necessary to determine this issue given the Panel's finding on issue 1, if it had been necessary to determine this issue, the Panel would have found the Order to be issued against a proper party. The Panel accepted the evidence regarding the relationship between the Numbered Company and agrees that the Appellant is the party in control.

Conclusion

108. Given the Panel's conclusion that the Respondent did not have authority to issue the Order on September 21, 2017, the Safety Codes Council cannot consider the merits of the Order and will not do so.

Dated at Edmonton, Alberta this 11th Day of January 2018

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Chair
Plumbing Sub-Council

Appendix A
Excerpts from the *Safety Codes Act* (S-1, RSA 2000)

Order

49(1) A safety codes officer may issue an order if the safety codes officer believes, on reasonable and probable grounds, that

(a) this Act is contravened, or

(b) the design, construction, manufacture, operation, maintenance, use or relocation of a thing or the condition of a thing, process or activity to which this Act applies is such that there is danger of serious injury or damage to a person or property.

(2) An order may be issued to a person who provides services that are the subject-matter of the order or to the owner, occupier, vendor, contractor, manufacturer or designer of the thing or to the person who authorizes, undertakes or supervises the process or activity that is the subject-matter of the order, or may be issued to any 2 or more of them.

(3) An order

(a) shall set out what a person is required to do or to stop doing in respect of the thing, process or activity and a reasonable time within which it must be done or stopped;

(b) may direct a method of work, construction, manufacturing, operation, maintenance, use or relocation that must be followed;

(c) may direct that the use of the thing, process or activity be stopped in whole or in part in accordance with the order;

(d) may direct that a design be altered;

(e) may direct that an altered design be submitted to an Administrator for review or for registration;

(f) may direct compliance with this Act, a permit, a certificate or a variance;

(g) shall meet the requirements of the regulations on format and contents.

(4) On issuing an order, the safety codes officer shall serve a copy on the person to whom it is issued in accordance with the regulations and send a copy of it to an Administrator in a form and within the time satisfactory to the Administrator.

(5) A person who is served with an order under subsection (4) may, within 14 days after being served, submit a written request to the Administrator for a review of the order.

(6) If an Administrator receives a request, in accordance with subsection (5), from a person on whom an order is served and if the Administrator considers that the order

(a) is improper, impractical or unreasonable,

(b) contains incorrect references or typographical errors, or

(c) does not correct or satisfy concerns about safety,

the Administrator may, by order, revoke or vary the original order within 21 days from when the original order was served.

(7) If an Administrator issues an order under subsection (6), the Administrator shall serve it, in accordance with the regulations, on all the persons on whom the original order was served and on the safety codes officer who issued the original order.

1991 cS-0.5 s45;1999 c26 s23

Appeal of orders

50(1) A person to whom an order is issued may, if the person objects to the contents of the order, appeal the order to the Council in accordance with the Council's bylaws within 35 days after the date the order was served on the person.

(2) The Council, on receipt of a notice of appeal, shall send a copy to an Administrator and also to an accredited municipality or accredited regional services commission if the subject-matter of the order is administered by the accredited municipality or accredited regional services commission, and the Council shall notify the Administrator and the appellant and the accredited municipality or accredited regional services commission of the time and place of the appeal.

(3) An appeal may proceed under this section regardless of whether a request was made in accordance with section 49(5).

Appendix B
Facts Agreed by the Parties

	Content	**Origin of Information**
1.	The Appellant is developing a facility on lands owned by the Government of Canada and leased ("Leased Lands") to the Corporation.	Appellant Para 1
2.	On September 21, 2017, the Respondent issued a safety codes order directing the Appellant to "cease all plumbing work for which a permit has not been issued" (the "Order") **[Tab 1]**.	Appellant Para 2
3.	On October 23, 2017, the Appellant appealed the Order to the Safety Codes Council (the "SCC") on the basis that, inter alia, the Respondent did not have jurisdiction to enforce the National Plumbing Code of Canada (the "Plumbing Code") on the Leased Lands. The Appellant submitted the appeal without prejudice to any rights that the Appellant may have to take legal action to challenge the authority of the Respondent and the SCC in relation to the Order and the enforcement of the Plumbing Code on the Leased Lands **[Tab 2]**.	Appellant Para 3
4.	The SCC directed that a preliminary hearing be held to address the issue of the authority of the Respondent and the SCC to enforce the Plumbing Code on the Leased Lands.	Appellant Para 4
5.	The Government of Canada leased the lands to the Corporation. In turn, the Corporation leased a portion of the lands to the Numbered Company.	Appellant Para 6
6.	The Appellant is developing a light industrial building for the manufacturing and processing of a product on the Leased Lands (the "Facility").	Appellant Para 7
7.	The *Safety Codes Act* was enacted in June 1991.	Appellant Para 8
8.	The Safety Codes Council was established in 1993 under the Safety Codes Act as a statutory corporation to formulate and oversee the development and	Appellant Para 9

	Content	Origin of Information
	administration of safety codes and standards in Alberta.	
9.	The building and fire disciplines were the first disciplines to be included under the SCC's mandate in March 1994. Additional disciplines (including plumbing) were included in October 1994.	Appellant Para 10
10.	Previously, the administration of permitting and inspections for these disciplines was under separate legislation. In particular, the *Uniform Building Standards Act*, RSA 1980, c. U-4 (now repealed) [Tab 6] addressed the administration of the building discipline and the *Plumbing and Drainage Act*, RSA 1980, c. P-10 (now repealed) [Tab 7] addressed the administration of the plumbing discipline. Appeals of orders under the *Uniform Building Standards Act* went to the Alberta Building Standards Council and appeals of orders under the *Plumbing and Drainage Act* were to the chief inspector and then to an appeal board established by the Minister. Neither statute contained any reference to the SCC.	Appellant Para 11
11.	Under the *Safety Codes Act*, RSA 2000, c. S-1 [Tab 8], a municipality may be designated as an accredited municipality with authority to administer the *Safety Codes Act* within the boundaries of the municipality [section 26]. A local authority authorized to enforce the *Uniform Building Standards Act* is deemed to be an accredited municipality under the *Safety Codes Act* with all the powers and duties it had under the *Uniform Building Standards Act* [section 73(1)]. Similarly, a municipality with any powers or duties under legislation related to other disciplines, such as the Plumbing and Drainage Act, is deemed to be an accredited municipality with those powers or duties [section 73(3)].	Appellant Para 12
12.	On October 18, 1992, the Corporation entered into a Memorandum of Agreement with the Respondent in respect of development on the Leased Lands (the "MOA").	Appellant Para 13

	Content	**Origin of Information**
13.	At that time the parties entered in the MOA and up to September 30, 2017, the MOA stated: (a) paragraph 4 of the preamble: [S]ince the Leased Lands continue to be public property of the Government of Canada, the [Respondent] may not have the legislative or regulatory jurisdiction over the development of the Leased Lands surplus to the Corporation's operations; (b) section 26: The placement or construction of a new building on the Leased Lands, whether such building is for different purposes … shall be undertaken only in accordance with the requirements of the *Uniform Building Standards Act* and regulations thereunder, and that Act shall apply as if the Leased Lands were other than Crown property and were subject to the said Act. The MOA did not contain any reference to the Safety Codes Act or the SCC.	Appellant Para 14
14.	As of 1992, the Respondent issued permits and conducted inspections in the building and fire disciplines. In 2000, the Respondent became accredited pursuant to the *Safety Codes Act*, at which time it began administering the electrical, plumbing and gas disciplines.	Appellant Para 15
15.	The 9th Amendment makes the following changes to the MOA: (a) paragraph 4 of the preamble is deleted and replaced with: And whereas since the Leased Lands continue to be property of the Government of Canada, the [Respondent] does not have legislative or regulatory jurisdiction over the development of the Leased Lands. (b) references in the MOA to the "Uniform Building Standards Act " are replaced with the "Safety Codes Act";	Appellant Para 17

	Content	Origin of Information
	(c) Section 26 is replaced with: The placement or construction of a new building on the Leased Lands, or the enlargement, renovation or alteration of any existing building, shall be undertaken only in accordance with the requirements of the *Safety Codes Act* and regulations thereunder, and that Act shall apply as if the Leased Lands were other than Crown property and were subject to the said Act. For the foregoing purposes and unless the Corporation shall decide otherwise, the Corporation will engage the services of the [Respondent] to provide all requisite inspection and permitting services under the *Safety Codes Act*. The [Respondent] shall be entitled to be reimbursed by the Corporation for such services.	
16.	On September 21, 2017, the Respondent issued the Order pursuant to section 49 of the *Safety Codes Act* requiring the Appellant "to immediately cease all plumbing work for which a permit had not been issued."	Appellant Para 18
17.	On October 23, 2017, the Appellant appealed the Order to the SCC.	Appellant Para 19
18.	The Respondent has been authorized to enforce the *Uniform Building Standards Act* (the "UBSA") within the municipality since at least 1984.	Respondent Para 12
19.	Pursuant to s. 73(1) of the *Safety Codes Act* (the "SCA"), the Respondent was deemed to be accredited under the *SCA* with all the powers and duties it had under the UBSA and has administered the *SCA* since 1995 with respect to the building discipline with some exceptions. The Respondent was not accredited to administer the SCA with respect to the plumbing discipline until 2000.	Respondent Para 13
20.	Certain Lands owned by the Government of Canada are leased to the Corporation. The Corporation	Respondent Para 14

	Content	Origin of Information
	leases a portion of the lands to the Numbered Company (the "Leased Lands"). The Appellant is a Product & Distribution company developing a facility on the Leased Lands.	
21.	The Respondent and the Corporation entered into the Memorandum of Agreement on October 18, 1992 (the "MOA"). The preamble to the MOA states "the contracts between the Corporation and the Government of Canada obligate the Corporation to negotiate in good faith with the [Respondent] to conclude an agreement intended to ensure that the development of the Leased Lands will be in harmony with the overall planning of the [Respondent] and, more particularly, to ensure that the Corporation and other developers of the Leased Lands comply with the restrictions, requirements and procedures agreed upon between the [Respondent] and the Corporation in respect of developments of the Leased Lands and the health, safety, convenience and welfare of the occupants of buildings and structures."	Respondent Para 16
22.	The MOA states that: a. The Corporation's purpose for entering the MOA was to comply with its contractual obligation to the Government of Canada and in furtherance of its intent to only allow development on the Leased Lands in a manner acceptable to the [Respondent]. b. The [Respondent]'s purpose for entering the MOA was to ensure that the development of the Leased Lands was in harmony with the overall planning of the County and consistent with the amenities of the area in which the Leased Lands were located.	Respondent Para 17
23.	The MOA requires the placement or construction of new buildings on the Leased Lands to be undertaken only in accordance with the requirements of the *UBSA* and its regulations, and applies the *UBSA* as if the Leased Lands were lands other than Crown property and were subject to the *UBSA*.	Respondent Para 18

	Content	Origin of Information
24.	The Corporation's Facility Alteration Permit informs permit applicants that the Respondent is the primary Authority Having Jurisdiction for the Leased Lands relating to the *Safety Codes Act*. *Facility Alteration Permit* at p. 2, TAB 5.	Respondent Para 19
25.	On May 1, 2017, the Respondent, the Corporation, and the Numbered Company agreed that the latter would not use or develop or occupy any part of the Leased Lands except in strict conformity with the MOA.	Respondent Para 20
26.	Five Plumbing Permits were issued from the Respondent to the Appellant. The Plumbing Permits are as follows: a. Plumbing Permit P-17-0096, issued August 3, 2017, for installation of a portion of the deep sanitary mains and running traps in greenhouse area of the building; b. Plumbing Permit P-17-0130, issued September 20, 2017, for installation of two floor drains and a compartment sump in the accessory building; c. Plumbing Permit P-17-0139, issued October 11, 2017, for installation of two single compartment sumps with two floor drains; d. Plumbing Permit P-17-0140, issued October 11, 2017, for plumbing related to washroom and trench drains; and e. Plumbing Permit P-17-0161, issued November 1, 2017, for plumbing related to stacks, vents, and domestic water.	Respondent Para 21
27.	A plumbing permit was not issued by the Respondent to the Appellant for the storm water collection and no-potable treatment and distribution piping system (the "Storm Water Re-use System").	Respondent Para 22
28.	On September 21, 2017, a Safety Codes Officer with the Respondent, issued the Appellant an Order to Comply to cease all plumbing work for which a permit has not been issued ("the Order").	Respondent Para 23

	Content	Origin of Information
29.	The Respondent issued the Order pursuant to s. 49 of the *SCA*, which allows an order to be issued on reasonable and probable grounds that the Act is contravened.	Respondent Para 24
30.	The Safety Codes Officer issued the Order because in their opinion as a Safety Codes Officer the *SCA* required a plumbing permit to be obtained to install a plumbing system, such as the Storm Water Re-use System, and the Appellant did not have such a permit.	Respondent Para 25
31.	On October 11, 2017, the Order was varied by Alberta Municipal Affairs by changing the reference to the Canadian Plumbing Code to the National Plumbing Code of Canada 2015.	Respondent Para 26
32.	The installation of the piping system at the Leased Lands that is the subject matter of the Order has continued following September 21, 2017, up to the present time.	Respondent Para 27
33.	With respect to paragraph 16 of the Written Submissions of the Appellant, the parties agree that the following constitutes an Agreed Fact as it relates to the "9th Amendment" as defined therein: a. The Respondent signed the 9th Amendment on September 27, 2017, b. The Corporation signed the 9th Amendment after September 27, 2017 and before October 31, 2017. c. The Respondent did not have a signed copy of the 9th Amendment until after October 31, 2017. d. The effective date of the 9th Amendment is October 1, 2017.	Respondent's Legal Counsel's letter 12/18/2017