



Safety Codes Council

COUNCIL ORDER NO. 0015496

BEFORE THE ADMINISTRATIVE TRIBUNAL OF THE BUILDING SUB-COUNCIL

(the "Tribunal")

ON OCTOBER 28, 2019

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1 (the "Act");

AND IN THE MATTER OF the Order dated June 11, 2019 (the "Order"), issued pursuant to *Section 49 of the Act* and the *Alberta Building Code 2006 (the "ABC")* by an Accredited Municipality (the "Respondent") against the property owner (the "Appellant") relating to the subject property.

UPON REVIEWING AND CONSIDERING the evidence named in **The Record** and the submissions of the Appellant and Respondent; **UPON HEARING** the testimony of witnesses at the hearing; **AND UPON NOTING** the Stay of Order with conditions granted on July 25, 2019;

IT IS HEREBY ORDERED THAT the Order is **CONFIRMED**.

Without restricting the generality of the foregoing, an excerpt from the Order that has been confirmed is reproduced below:

I therefore believe, on reasonable and probable grounds, that the property is in contravention of Division C, 2.2.9.9. of the Alberta Building Code 2006, the Safety Codes Act, s 49.

Therefore, you are hereby ordered to immediately:

- **Change the bedroom window so that it meets the minimum egress requirements of the Alberta Building Code and complete the required re-inspection by July 23, 2019.**

Appearances, Preliminary, Evidentiary, or Procedural Matters:

1. At the commencement of the hearing, the Coordinator of Appeals confirmed the subject of the appeal as the Order, reminded all attendees that recording devices are not permitted and confirmed the names of those in attendance:
 - a) Appearing for the Appellant, the Tribunal heard from the Appellant.
 - b) Appearing for the Respondent, the Tribunal heard from the Safety Codes Officer (SCO) who issued the Order.
 - c) Facilitating the hearing on behalf of the Safety Codes Council: the Coordinator of Appeals and a Co-Facilitator.
 - d) Attending as Technical Advisor for the hearing: a Technical Advisor with Alberta Municipal Affairs.
 - e) Attending as observers for the hearing: [REDACTED]
[REDACTED]
[REDACTED]
2. The Coordinator of Appeals then introduced the Chair of the Tribunal (the “Chair”), and turned the hearing over to them.
3. The Chair called the hearing to Order and asked the other Tribunal members to introduce themselves.
4. The Appellant and Respondent confirmed there were no objections to any members of the Tribunal, and that the Safety Codes Council in general and the Tribunal in particular had jurisdiction to hear and decide the appeal. The Tribunal themselves also confirmed they had jurisdiction to hear and decide this appeal.
5. The Chair then explained the process of the hearing, and advised of the list of the written material before the Tribunal, consisting of the documents listed below in **The Record** (see paragraph 8). The Appellant and Respondent confirmed that there were no objections to any of the material submitted to the Tribunal.
6. The Appellant submitted two pieces of additional evidence marked as “**Exhibit 2 Appellant**” and “**Exhibit 3 Appellant**” during the proceedings. Upon giving the Respondent an opportunity to review the evidence and confirming the Respondent did not object to them, the Tribunal accepted both pieces of evidence. The exhibits were distributed to the parties, the Tribunal, the Facilitators, the Technical Advisor and one copy was retained for **The Record**.
7. During the hearing, the Chair advised that the Council had determined that the SCO had the necessary designation of powers in place at the time of issuing the Order, pursuant to section 32 of the Act (Item IX in **The Record**).

The Record:

8. The Tribunal considered, or had available for reference, the following documentation:

i.	Notice of Appeal, including the Order	July 17, 2019
ii.	Request for a Stay of Order	July 17, 2019
iii.	Acknowledgment Letter	July 17, 2019
iv.	Statutory Declaration re Confirming Service of Order	June 12, 2019
v.	Stay of Order Letter	July 25, 2019
vi.	Notification of Hearing Letter	August 20, 2019
vii.	EXHIBIT 1 APPELLANT - Appellant's Brief Submission	-
viii.	EXHIBIT 1 RESPONDENT - Respondent's Brief Submission	-
ix.	Designation of Powers Verification	October 8, 2019
x.	Letter to Appellant serving the Respondent's Brief	October 8, 2019
xi.	Letter to Respondent serving the Appellant's Brief	October 8, 2019
xii.	EXHIBIT 2 APPELLANT - Letter from the Respondent dated October 11, 2019	October 28, 2019
xiii.	EXHIBIT 3 APPELLANT - Updated Brief Submission	October 28, 2019

Issue:

9. This Appeal concerns the possible contravention of the *Act*, including provisions within Divisions B and C of the *ABC* referenced in the Order, in relation to minimum egress requirements for bedroom windows and responsibility for compliance.

Positions of the Parties:

Appellant

From the Appellant's submissions and testimony, the Appellant's position is summarized as follows:

10. It is the position of the Appellant that the Order should be revoked and one of the following options is employed to remedy the situation with the windows in the bedroom (the "subject windows"): allow them to be grandfathered in, have the Respondent cover the cost of changing them, or change the use of the room.

Respondent

From the Respondent's submissions and testimony, the Respondent's position is summarized as follows:

11. It is the position of the Respondent that the Order should be confirmed as the subject windows do not comply with the minimum egress requirements set out in the *ABC* for bedrooms and the Appellant is responsible for compliance with the *ABC*.

Summary of the Oral Evidence Provided On Behalf of the Appellant:

Evidence provided on behalf of the Appellant

12. The Appellant purchased the subject property in 2013. He contracted [REDACTED] (the “contractor”) to construct an addition on the subject property in September 2013. The Appellant contends that he performed due diligence before selecting this particular contractor by confirming the contractor was accredited, and checking references.
13. The Appellant worked with the contractor to apply for the necessary permits for the renovation; however, the Appellant never received or held on to copies of the documentation, as he believed the contractor was dealing with all of the paperwork. The Appellant made attempts to contact the contractor to discuss the present situation and obtain documents; however, these attempts were unsuccessful.
14. Referring to pages 13 and 14 of **Exhibit 1 Appellant**, the Appellant stated that the contractor engaged [REDACTED] for the design drawings at the permitting stage. The Appellant’s preference was for a bay window and the information submitted in plans for the development permit might have been different than what was installed. The Appellant said the contractor accommodated him to put in the desired window, but he was under the impression this was okay to change and the necessary paperwork to effect the change was completed by the contractor.
15. The Appellant mentioned that the entire siding on the subject property was also replaced as part of the renovation. There was a push to complete the siding project before winter conditions set in and this caused delays in the installation of the subject windows, along with the windows not being available at the time. Installation of the subject windows occurred on October 28, 2013.
16. The Appellant referred to the four photographs in **Exhibit 3 Appellant** and walked the Tribunal through the timeline and progress of the renovation in each photo. The photos are dated October 7, October 17, October 28 and November 3, 2013 per the Appellant’s captions. The November 3, 2013 photo shows the subject windows installed.
17. As the Appellant did not have copies of the building permits and inspection reports, he recently requested a search for these (**Exhibit 2 Appellant**) and on his review of the building permit acknowledges that three inspections were required: initial framing, insulation and final (occupancy).
18. The initial framing and insulation inspections were completed and deemed acceptable, on October 28, 2013 and November 1, 2013 according to **Exhibit 2 Appellant**; however, neither the Appellant nor the contractor arranged the final inspection following the completion of the renovation. The Appellant stated he did not know what his responsibility was throughout the process and relied on the contractor, who did not say anything about a final inspection.
19. Under the belief that the renovation was concluded with all the necessary steps accomplished by the contractor, the Appellant began using the room as a bedroom.
20. The final building inspection took place on February 27, 2017 and the subject windows were found to be non-compliant with the ABC. This was over three years after the project was completed.

21. The Appellant stated he was not aware that the February 27, 2017 inspection occurred and that the sticker on page 21 of **Exhibit 1 Respondent** was not seen by him or left at the property. The Appellant further contends that he never received the December 18, 2018 letter, referred to in the Order as he was out of the country at the time.
22. The Appellant was not on notice of any issue until the February 28, 2019 inspection and subsequent Order issued and served on him on June 11, 2019.
23. Once he learned of the issue, he discussed the situation with numerous people and tried to see if another window could work in the space; however, there was no easy alternative.
24. The Appellant submitted that reframing and changing the windows would cost an estimated sum of \$6,000 to \$7,000.
25. The Appellant agrees that the subject windows are non-compliant; however, he believes many of the homes in his area do not comply with egress requirements and feels singled out for engaging the permitting and inspections process.
26. He argued that a building permit expires after 90 days and questioned how a final inspection could occur three years after a project's completion.
27. The Appellant feels this issue should and could have been addressed by the Respondent earlier in the first two inspections that were accepted. The Appellant also submitted that he relied on qualified professionals for completion of the process and never received the non-compliant reports or stickers from the Respondent indicating there was a problem until six years after the renovation was completed.
28. The Appellant stated he was appearing today in an effort to try to better understand the Respondent's process and offered the following options to remedy the situation:
 - a) Allow the subject windows to be grandfathered based on the situation that occurred and age of the home;
 - b) Have the Respondent cover the cost of changing the windows; or
 - c) Change the use of the room to an office, instead of a bedroom as he understands that a means of egress is not required if no one is sleeping in the room.
29. The Appellant, referencing the Stay of Order Letter (Item V in **The Record**), was under the impression that as long as no one is sleeping in the room it was okay for the window to be non-compliant. Therefore, he suggested he would stop using the room as a bedroom and convert it into an office instead. He said he would make efforts to ensure it was referenced as an office or study in the selling process, but other than that he is not sure of the proper process for changing the use of a room.

Summary of the Oral Evidence Provided On Behalf of the Respondent:

Evidence provided on behalf of the SCO

30. The SCO submitted that in the application for a building permit (page 16 of **Exhibit 1 Respondent**), the drawings show the center window with an opening and this is different from what was installed at the subject property. The contractor made alterations and

changed the window from what was approved in the permit and that there were no follow-up documents submitted showing this deviation.

31. The SCO also stated that, contrary to the Appellant's evidence, the subject windows were not in when the framing inspection occurred on October 28, 2013.
32. The process in 2013 was to inspect window size and openings only during the final inspection; they were not looked at during the initial inspections. This process has since changed following the introduction of the National Energy Code.
33. The SCO submitted that the Respondent does not have the resources or manpower in-house to track all of the required inspections. Therefore, they rely on the homeowner or contractor to call to schedule the inspections and because this did not occur in this case, it was not until 2017 when the Respondent was doing an internal audit on old, open permits that a SCO was sent out to the subject property.
34. The SCO stated that there was a clerical error on the Order (1st page) and the inspection date was February 27, 2017, not February 28, 2017 and this was confirmed by the 'unacceptable sticker' on page 21 of **Exhibit 1 Respondent** dated February 27, 2017.
35. The SCO submitted they did not have evidence of delivery of the December 18, 2018 letter present at the hearing and all information and records relating to inspections is contained in the Accredited Municipality's internal information system. Access to the information on this would be subject to a FOIP request.
36. All subsequent inspections in 2019 were done from the exterior of the subject property and it was clear there had not been a change in the window.
37. The SCO further advised that the subject property does not have sprinklers and the openable width of the subject windows is 13 inches wide.
38. Commenting on the ability to change the use of the room, the SCO stated that the permit could be reopened if the Appellant submitted a request to change the description in the building permit to an office or study. A follow-up inspection would need to be scheduled by the Appellant and a SCO would need to complete the inspection process.
39. The SCO advised that the Respondent is willing to work with Appellant to change the description of the room on the permit or change the subject windows.

Technical Advisor - Questions & Answers:

40. [REDACTED] was the Technical Advisor with Alberta Municipal Affairs present for the hearing. The role of the Technical Advisor is to clarify questions of the Tribunal regarding the interpretation of the relevant codes and any related code issues.
41. The Tribunal deliberated on the questions for the Technical Advisor in camera. All parties including the Technical Advisor and observers were then invited back to the hearing room and the Chair posed the Tribunal's questions to the Technical Advisor and received the following responses:
42. *Q: Please read 2.2.9.9. of Division C Alberta Building Code 2006, which was referenced in*

the Order.

A: Section 2.2.9.9. is Responsibility for Compliance:

- 1) Neither the issuance of a permit, nor inspections made by the *authority having jurisdiction*, shall in any way relieve the owner of a building from full responsibility for carrying out the construction or having the construction carried out in accordance with the requirements of the Safety Codes Act and regulations made pursuant to that Act, this Code, or the *permit*, including compliance with any special conditions required by the *authority having jurisdiction*.
- 2) The *owner* shall ensure that all activities that take place on the site meet the requirements of the Code.
- 3) The *constructor* shall ensure that
 - a. precautions are taken to safeguard the public and protect adjacent properties,
 - b. the methods used in demolition or erection are safe, and
 - c. the material and equipment used on site meet the requirements of this code.
- 4) Every vendor or supplier of materials and things used in the construction of a building shall ensure that the materials and equipment he advertises, displays, sells, or leases or otherwise disposes of meet the requirements of this Code.

43. Q: *Are there any exceptions to clause 9.7.1.2. that may apply in this case?*

A: There are no exceptions if the subject property is not sprinklered. It has to meet egress unless there is a change of use for the room or change of the windows.

44. Q: *Is there a definition of a bedroom in the ABC?*

A: No, there is no definition of a bedroom in the ABC; however, any place used for sleeping, needs to meet smoke detector and egress requirements.

Findings of Fact:

The Tribunal makes the following findings:

- 45.** The Appellant is the owner of the subject property.
- 46.** A building permit was granted on September 30, 2013 (pages 4 to 7 of **Exhibit 1 Respondent**) for the construction of an addition on the subject property. The application contained drawings, including the proposed window and elevation of the subject property (pages 8 to 17 of **Exhibit 1 Respondent**).
- 47.** Construction was underway at the subject property in October 2013. A framing review was completed on October 28, 2013 and an insulation inspection was completed on November 1, 2013.

48. There was contradictory evidence on the exact date of the window installation; however, the subject windows were installed by November 3, 2013 (page 6 of **Exhibit 3 Respondent**).
49. The subject windows consist of one large centre window that is not openable and two smaller windows on either side that are openable. This deviated from the plans that were submitted and approved by the Respondent.
50. In 2013, it was the process of the Respondent to review window egress at final inspection and therefore, the issue was not discovered during the framing or installation inspections that occurred.
51. Neither the Appellant nor the contractor that was engaged to perform the renovation called for the required final inspection upon completion of the renovation. It was only during the Respondent's review of open permits several years later in 2017, that the final inspection was conducted.
52. Between February 2, 2017 and June 11, 2019 there were several inspections of the subject property done by the Respondent and attempts at communication made to the Appellant.
53. At the time of the inspections, the subject windows were in a room used by the Appellant as a bedroom, where the openable width of the subject windows was less than 15-inches.
54. During the February 27, 2017 inspection, the subject windows were found to be non-compliant with the ABC and a non-compliance sticker was issued by the SCO.
55. The SCO issued an Order on June 11, 2019 to Appellant stating that Division C, 2.2.9.9. of the ABC was contravened, as a bedroom at the subject property had a window that did not meet the minimum egress requirements set out in Division B, 9.7.1.2. of the ABC.
56. The Appellant initiated an appeal to the Safety Codes Council (Item I in **The Record**), along with a request to Stay the Order (Item II in **The Record**), which was granted on the condition that no one may use room in question for sleeping until the Council delivers a written decision on the appeal hearing (Item V in **The Record**).
57. The room featuring the subject windows is not sprinklered and there is no other means of egress.
58. Both parties agree that the subject windows are non-compliant.
59. Both parties further agree that changing the use or description of the room is an option such that the subject windows do not need to meet the egress requirements in the ABC if the room is not a bedroom.
60. The legal description of the subject property is shown on the building permit application (page 4 of **Exhibit 1 Respondent**) and real property report (page 8 of **Exhibit 1 Respondent**), as [REDACTED]. This does not match the legal description noted on the Order as [REDACTED].

Reasons for Decision:

61. The Order was issued pursuant to subsection 49(1) of the Act, which reads as follows:

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.

62. On an appeal such as this, the powers of the Tribunal are set out in subsection 52(2) of the Act:

52(2) The Council may by order

- a) confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

63. The Act itself assigns responsibilities for compliance with the Act, which includes any codes declared to be in force pursuant to it (subsection 1(2) of the Act), on owners, designers, manufacturers, contractors, vendors and professionals (as defined in the Act). Specifically, the Act provides at section 5 that:

- 5 The owner of any thing, process or activity to which this Act applies shall ensure that it meets the requirements of the Act, that the thing is maintained as required by the regulations, and that when the process of activity is undertaken it is done in a safe manner.

Therefore, there is an onus on the owner of a property to ensure all ABC requirements are satisfied.

64. The Tribunal finds, based on the evidence before it, that the SCO had reasonable and probable grounds to believe the Act was being contravened. The Appellant, as the owner of the subject property, has a responsibility to comply with the Act and ABC; however, the subject property has a bedroom that does not meet egress requirements in the ABC.

65. Specifically, the subject windows do not have the minimum openable area to meet egress requirements in Division B, 9.7.1.2. of the ABC and no exceptions apply as the room is used as a bedroom and it is not sprinklered.

66. In coming to its decision to confirm the Order, the Tribunal looked at the purpose and intent of the safety codes system, which is to provide assurance of safety and health to persons and property. This is primarily achieved through a permitting and inspection process.

67. The renovation that occurred to the subject property in 2013 deviated from the drawings submitted in the building permit application and the subject windows do not have the

required openable area, as was the intent of the submitted drawings.

- 68.** It is up to the Appellant to decide how to proceed whether it be by changing the windows to be compliant with Division B, 9.7.1.2. of the *ABC* or by following the Respondent's process to officially change the description of the room to something other than a bedroom and ensure it is not being used as such.
- 69.** The Tribunal understands that the time limits for the actions ordered to be taken under the terms of the Order have expired, and it has chosen not to vary the order to allow these times to be extended. The Tribunal considers that the *Act* provides the Respondent with certain remedies and rights of enforcement in these circumstances, and the Tribunal considers it appropriate not to interfere with these.
- 70.** Lastly, while the Order does contains the clerical error noted in paragraph 34 and an incorrect reference to the legal description of the subject property, it is the intent of the Order that is confirmed.

Signed at the [REDACTED])
in the Province of Alberta)
this 10th day of December A.D. 2019)

Chair, Building Sub-Council
Administrative Tribunal