

PUBLIC HEALTH APPEAL BOARD

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE ORDER OF
AN EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH
SERVICES, ZONE 4, DATED MARCH 14, 2024**

PANEL: Kevin Kelly, Chair
Paul M. Bourassa, Chair
David Rolfe, Member
Dr. Theresa A. Chika-James, Member

BETWEEN:)	
)	
Westgate Motor Inn)	Mr. Jagtar Deol (Owner)
)	
(Appellant))	
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	Conor Fleming,
)	Alberta Health Services,
(Respondent))	for the Respondent
)	
)	
)	
)	Heard: May 29, & June 17 and 21, 2024
)	
)	
)	

DECISION AND REASONS FOR DECISION

Introduction

On March 22, 2024, a notice of appeal was served on the Public Health Appeal Board (the “Board”) by Jagtar Deol, with respect to the decision by an Alberta Health Services Executive Officer (the “EO”), for 18 orders dated March 14, 2024. The 18 orders concerned the business premises identified as Westgate Motor Inn, 21621 Stony Plain Road NW, Edmonton, Alberta (the “Premises”).

The Appeal

[1] Jagtar Deol (the “Owner”), for the Appellant, is appealing the 18 orders for the Premises, which condition was found to be unsuitable for habitation and dangerous to the public health. The condition of the Premises that led to the 18 orders, included the drinking water supply containing arsenic above the maximum acceptable concentration level, pest infestation, and reported asbestos. The Appellant is seeking to stay the 18 orders, based upon the work that he has undertaken on the Premises to comply with them.

Board Decision

[2] The hearing for this appeal began on May 29, 2024, continued on June 17, 2024, and concluded on June 21, 2024. The Appellant and the Respondent made submissions and presented evidence to the Board.

[3] The panel for the Board on May 29, 2024, consisted of the four members listed above, with Mr. Kevin Kelly as Chair on this day.

[4] The panel for the Board on June 17 and 21, 2024, did not include Mr. Kelly, and thus consisted of the other three members listed above, with Mr. Paul M. Bourassa as the Chair on those days.

[5] As stated in the *Public Health Act*, RSA 2000, c. P-37 (the “Act”), the quorum required for a hearing before the Board is three members, thus quorum was met.

[6] At the conclusion of the hearing, the Board informed the parties that it would provide its written decision within 60 days.

[7] For the reasons that follow, the Board is confirming the 18 orders.

Background

[8] The 18 orders were issued pursuant to the Act, the *Housing Regulation, the Nuisance and General Sanitation Regulation* (the “Regulations”), and the *Minimum Housing and Health Standards* (the “MHHS”). The 18 orders set out the contraventions of the Act and Regulations as they pertained to the condition of the Premises.

[9] The 18 orders addressed different areas of concern at the Premises overall. As detailed in the Exhibits, and briefly stated below, the 18 orders were:

- a. An Order of an Executive Officer – Do Not Consume Water Order dated March 14, 2024, with respect to the Premises;
- b. An Order of an Executive Officer dated March 14, 2024, with respect to the Premises;
- c. Three Orders of an Executive Officer – Closed for Tenant Accommodation Purposes dated March 14, 2024, in relation to Suites 102-112 and 114, Suites 116-127, and Suites 217-221 respectively; and
- d. Thirteen Orders of an Executive Officer – Closed for Tenant Accommodation Purposes – Order to Vacate dated March 14, 2024, in relation to Suite 202, Suite 203, Suite 204, Suite 205, Suite 206, Suite 207, Suite 209, Suite 210, Suite 212, Suite 213 (2 Orders), Suite 215, and Suite 223 respectively.

(Collectively, the “Orders”)

[10] Concerning the Orders, verbal orders were issued to the Owner on March 14, 2024. On the same day, written copies of the verbal orders were issued, which the Owner received on March 15, 2024, according to the Notice of Appeal. On March 22, 2024, the Board received the Notice of Appeal via email.

[11] The areas of concern at the Premises generally included:

- a. Water: There were ongoing problems with the lack of potable water, due to high level of arsenic, and the lack of signage in several suites indicating that the water was not potable.
- b. Renovations: There were concerns with asbestos being present, fire damage, and significant ongoing unfinished renovations.
- c. Pest infestation: There were concerns with cockroach, mice, and bedbug infestation.
- d. Fire Damage: Fire damage occurred, and a number of suites were affected, resulting in the renovations being ordered to stop due to asbestos being present.

[12] The EO determined that the Premises was unsuitable for habitation and dangerous to the public health. The EO ordered and directed that the Premises be closed for tenant accommodation, and remain so, until work was done to the Premises to the satisfaction of the EO. The EO ordered specific remedial actions, based on the specific breaches in each of the Orders to ensure compliance with the legislation and standards.

[13] The EO ordered and directed the following:

- a. Water orders: The Owner immediately issue a Do Not Consume Advisory to all users of the above noted Drinking Water Supply. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above-noted water supply, including:
- i. Have a professional assess and install an appropriate water treatment system to continuously remove arsenic from the water supply.
 - ii. Submit a copy of the post treatment water sample analyzed at CALA accredited laboratory that indicates that arsenic levels are below maximum acceptable concentration (“MAC”) guidelines.
 - iii. Submit proposed treatment plan to Environmental Public Health for review and approval.
 - iv. The public must be informed not to consume the water, through signage posted at all sinks.
 - v. Bottled water or alternative potable water supply must be provided in the interim until further notice from Environmental Public Health.
 - vi. Weekly bacteriological water samples must be submitted to ProvLab until April 2024. In April, operator may switch to monthly water sampling until further instructed by EPH. A total of 30 water samples must be submitted to ProvLab to complete the VRAW on the groundwater well.

That the work order regarding the water treatment shall be completed in this order: Water orders item i and ii completed before May 15, 2024, item iii completed before March 20, 2024, and iv-vi completed immediately.

- b. Renovation Suite orders: That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, including:
- i. Work under OH&S’s guidance to remediate all asbestos containing materials. Submit a professional report following the remediation.
 - ii. Renovate all suites to meet the requirements of the *Minimum Housing and Health Standards*.
 - iii. Work with a certified pest control operator to eliminate all pest infestations onsite. Submit copies of the pest control operator’s report(s) following their visits.

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- c. Signage orders: That occupants vacate the above noted premises on or before March 14, 2024. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, including:
- i. Work with a certified pest control operator to eliminate all pest infestations onsite. Submit copies of the pest control operator's report(s) following their visits.
 - ii. Provide housekeeping services for cleaning and changing of linens, once work is approved at the worksite by OH&S.
 - iii. The public must be informed not to consume the water, through signage posted at all sinks.
 - iv. Bottled water or alternative potable water supply must be provided in the interim until further notice from Environmental Public Health.
- d. Fire Damage orders: That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, including:
- i. Work under OH&S's guidance to remediate all asbestos containing materials. Submit a professional report following the remediation.
 - ii. Remediate and renovate all suites to meet the requirements of the *Minimum Housing and Health Standards*.
 - iii. Work with a certified pest control operator to eliminate all pest infestations onsite. Submit copies of the pest control operator's report(s) following their visits.

That until such time as the work referred to above Order (Renovation Suite, Signage, and Fire Damage orders) is completed to the satisfaction of an Executive Officer of Alberta Health Services; the above noted premises shall remain closed for tenant accommodation purposes.

Timing of Appeal

[14] Section 5(3) of Act requires the Appellant to serve the notice of appeal on the Board and the regional health authority within 10 days after receiving notice of the decision being complained of

[15] The Secretariat for the Board received a notice of the appeal (the "Notice of Appeal"), dated March 22, 2024. The Notice of Appeal was served on the Board within 10 days, as the Order was verbally communicated to the Appellant on March 14, 2024, and in writing on March 15, 2024. The Notice of Appeal was therefore served on time.

Grounds of the Appeal

[16] In the Notice of Appeal, the Appellant states the grounds of appeal as follows:

I have already made arrangements to install a new water filtration system, supply guests with freshwater bottles, and have completed the pest control treatment program. Due to the order, my housekeepers cannot clean the units for guests to use. I cannot afford to pay wages of the housekeepers or cover my expenses if my business is shut down.

[17] It appears that the Appellant does not dispute the deficiencies or breaches identified in the Orders. Instead, he appears to rely on the following grounds to appeal the Orders:

- a. The Appellant has taken steps to remediate the breaches related to the water treatment system and pest control as identified in the Orders; and
- b. The Orders have caused financial difficulties for the Appellant, rendering him unable to hire housekeepers to clean the suites or cover his own expenses.

[18] These grounds of appeal raise the following issues for the Board to consider:

- a. Whether the Appellant's efforts to rectify the breaches and deficiencies specified in the Orders are relevant to the validity of the Orders; and
- b. Whether the impact, particularly the financial impact, of the Orders are relevant to their validity.

[19] At the outset of the hearing on May 29, 2024, the Owner was not present, and the Appellant was represented by a lawyer, Mr. Attia, who requested an adjournment so he could get further instructions regarding compliance with the Orders. The hearing was adjourned to June 17, 2024, to permit the lawyer the opportunity to communicate with the Owner and review the Appellant's submissions, and be in a position to respond adequately.

[20] When the hearing continued on June 17, 2024, the Owner was present, stating that the lawyer who had appeared previously would no longer be representing the Appellant. Instead, the Owner would be representing the Appellant and seeking the Orders to be stayed. The Appellant then further added to the grounds of appeal in support of staying the Orders, which the Board understood as:

- a. EO Wong issued the Orders based upon contraventions of the Act and Regulations as they pertained to the condition of the Premises: and
- b. The Owner, while making attempts to address the issues raised in the Orders, noted that he was previously informed that he could rent the second-floor rooms once laundry was available, sufficient potable water was supplied, and do not consume tap water signs were in place.

- c. The Owner also noted that the conduct of EO Wong's supervisor, AHS' Rebecca Johnson, was disrespectful, rude and biased towards him for the past 12 years, intentionally distorting the progress of his business by conducting a routine check without prior 24-hour notification, which caused him to go into depression.

Legal Issues

[21] The legal issues in this Appeal for consideration by the Board are:

- a. Should the Board confirm, reverse or vary the Orders dated March 14, 2024?

Jurisdiction

[22] There are no objections to the Board's jurisdiction to hear the Appeal or its.

Documents/Exhibits

[23] Prior to the commencement of the hearing, the following documents were entered as exhibits by agreement of the parties:

Exhibit A – Appellant Written Submissions, dated May 6, 2024.

Exhibit A1 – Email from Rebecca Johnson

Exhibit A2 -- June 14, 2024, Inspection Report.

Appellant's Notice of Appeal and Disclosure

Exhibit B –Letter from Appellant, dated June 15, 2024

Exhibit C - AHS Disclosure

Exhibit C1 – Westgate Checklist

Exhibit C2 – String of Emails titled Renee Westgate Inn

Exhibit C3 – Series of Emails

Exhibit C4 – Westgate Motor

Exhibit D – AHS Witten Submissions

Exhibit E – Appellant Disclosure - two typed written statements, a number of photos, an email stream, clearance documentation from Academy Pest Control & Health Management

Ltd (“APC”) and an OHS report on the Premises stating compliance dates for reinspection and work on asbestos¹

Submissions of the Appellant

[24] The submissions of the Appellant can be summarized as follows:

- a. The pest Infestation issue has been resolved as a letter of clearance was provided on April 28, 2024.
- b. The Occupational Health and Safety (“OHS”) stop-work order does not apply to the second floor, so work can continue.
- c. The water issues have been addressed as Water Safety Measures with Signage has been placed in rooms and bottled water is available.
- d. The Owner believes that the Orders to shut down the Premises were issued by or at the direction of AHS’ Rebecca Johnson who had personal issues with the Owner, particularly because he is a minority.
- e. That on March 5, 2024, Rebecca Johnson abused her position of authority by seeking entry into rooms without the required 24-hour notice and then on March 7, 2024, again abused her position of authority by issuing a demand notice for entry.
- f. On March 14, 2024, EO Wong indicated that once OHS opened access to rooms on the second floor and the rooms were equipped with bottled water, they could be rented.
- g. On June 7, 2024, EO Wong advised via email that all conditions would need to be met before the Orders could be lifted, which differed from previous discussions.
- h. The Orders should be stayed because they were made based upon the Owner being a visible minority, and notwithstanding this, the Owner believes that he has taken the necessary steps to resolve all issues identified in the Orders.

Submissions of the Respondent

[25] The submissions of the Respondent are summarized as follows:

- a. AHS had received complaints in August 2023 regarding significant pest issues at the Premises. Shortly thereafter, EO Wong visited the Premises and observed pest activity in several suites, notably cockroaches.

¹ On day 2 of the hearing, (June 17, 2024), at 9:09 minutes in the transcript, the Panel entered photos Mr. Deol provided as Exhibit “3”. The Panel ought to have entered them as Exhibit E.

- b. Additional complaints were made in September and October 2023 about the Premises concerning pest activity, the general dilapidated state, issues with water leaks, and brown water coming out of the faucets.
- c. On November 1, 2023, EO Wong attended at the Premises to collect bacteriological and chemical water samples from suite 116. EO Wong informed the Owner on November 10, 2023 that the water sample contained the presence of arsenic above the acceptable level. The Owner was asked to collect water samples on a weekly and monthly schedule which he was required to send to a lab for further testing and assessment.
- d. On November 24, 2023, EO Wong was informed by APC that the Owner was not following treatment recommendations for baiting and dusting suites to address the pest infestation. After several failed attempts for APC to complete a pest removal program due to scheduling conflicts, and failure of the Appellant to send water samples to be tested in accordance with the environmental health standards, a joint inspection by OH&S, EPH and EPS was conducted resulting in an issue of a stop work order for the Premises.
- e. Arsenic was detected above the MAC at 0.013mg/L from a water sample in the Premises. The treated groundwater supply did not meet the Guidelines for Canadian Drinking Water Quality. The groundwater well was not being monitored for bacteria and the Owner had not submitted regular bacteriological water samples to ProvLab to complete the vulnerability risk assessment tool for wells (VRAW).
- f. EO Wong inspected the Premises and issued the Orders pursuant to the provisions of the Act and the Regulations, both of which exist to protect the health of Albertans.
- g. EO Wong discovered violations of the Act and the Regulations, most notably the presence of pests and a general lack of cleanliness in several suites; water supply at the Premises was not potable, fire damage, asbestos, and significant uncompleted renovations.
- h. EO Wong noted during a visit to the Premises on June 13, 2024, that despite the closed for accommodation order issued, there were occupants in the Premises in suites 209 and 215.
- i. On subsequent inspections, EO Wong remarked that some of the issues identified in the Orders were remedied, including providing bottled waters in the Premises, substantial improvement in the treatment of pests with one suite still outstanding, ongoing work on asbestos and moulds. However, EO Wong noted that the Owner had not fully complied with the Orders, such as placing of signage in all the suites, conducting an environmental test of the water supply and presenting evidence of the results, including full treatment of the asbestos.
- j. Regarding the Owner's complaints that the process leading to the Orders was the product of an intentional act of Rebecca Johnson to distort the progress of his business, this was not indicated as an observed issue by EO Wong.

- k. The inspection process by EO Wong who inspected the Premises and issued the Orders were in accordance to stated procedures and submits that the Orders are reasonable and necessary.
- l. AHS submits that the Orders should be confirmed, without variation.

Witness Evidence

[26] The Board heard evidence from two witnesses, the Owner and EO Wong, which the Board has briefly summarized below.

The Owner

[27] For the past 12 years, AHS' Rebecca Johnson has been trying to ruin him, by searching the Premises for health violations, and that perhaps this is punishment for him having the wrong colour skin.

[28] The Owner asked to work together with AHS to address the various health concerns identified at the Premises and was doing everything AHS asked of him, but it still was never good enough and AHS would ask for more.

[29] EO Wong was in continual contact with the Owner about all the ongoing health issues at the Premises. The Owner said she was great and had no problem with her.

[30] Concerning the pest issues, the Owner stated that APC had addressed the pest issue and EO Wong was aware of this.

[31] Concerning the water issues at the Premises, in December 2023, the Owner was aware that water samples collected in November 2023, indicated the presence of arsenic above the permitted amounts in the potable drinking water. He was working with EO Wong to try and explore some issues for addressing this issue. The Owner acknowledged the need to begin submitting water samples on a weekly and monthly schedule until April 2024.

[32] As recently as June 17, 2024, the Owner requested an inspection of the Premises to confirm it was pest free and that the water treatment filter had been installed.

EO Wong

[33] In 2023, beginning in August, AHS received numerous complaints regarding the Premises about cockroaches, cleanliness, and brown water coming from the faucets. In September, she started going to the Premises for inspections. The Owner asked EO Wong to work with the pest company and obtain the various reports.

[34] Whenever EO Wong communicated with the Owner, she provided him with the information he needed to get the orders lifted. EO Wong often contacted the pest control company and water

control company, despite this not normally being her responsibility, because she was having difficulty obtaining the reports from the Owner.

[35] She attended and inspected the Premises over the subsequent months, and this eventually led to the Orders being issued on March 14, 2024. The Orders were issued because the Owner had not properly remedied the issues identified previously.

[36] EO Wong continued to have multiple interactions with the Owner, such as in May, when the Owner wanted to meet to discuss how he could have the rooms reopened. The Owner told EO Wong that he had a clearance letter for the cockroaches and was working to follow up on the water issue.

[37] EO Wong asked him for the clearance letter and any other documents with the details about addressing these and any other issues at the Premises. After reviewing the documents, EO Wong asked for a meeting because she did not believe she had all the documents and information needed to lift the Orders.

[38] EO Wong was always guided by the appropriate legislation and AHS policies, and not the direction of anybody or any one person.

[39] In June, while some progress had been made in terms of complying with the Orders, there were still outstanding issues that needed to be completed. EO Wong told the Owner that AHS would not be rescinding or amending the order, because the Owner still needed to complete certain things such as:

- a. further periodic water sample testing and maintenance plans;
- b. bottled water in the rooms and signs stating the tap water is not potable;
- c. obtaining the pest clearance letter;
- d. remedying mould and asbestos;
- e. among others.

[40] EO Wong determined that the Owner had neither fulfilled the requirements found in the Orders, nor provided all of the information, such as pest or water reports, to demonstrate that he had met those requirements.

Analysis and Reasons

Analysis – Standard of Review

[41] The applicable sections of the Act regarding appeals that the Board must consider are the following:

5(3) A person who

(a) is directly affected by a decision of a regional health authority, and

(b) feels himself or herself aggrieved by the decision

may appeal the decision to the Board.

5(1) In this section, “decision of a regional health authority” means

(a) an order issued under section 62, and

(b) a decision to issue or to cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations, and any other decision in respect of which an appeal to the Board is permitted under the regulations, whether any of those decisions is made by the regional health authority itself or one of its employees or agents.

9 A regional health authority shall appoint one or more persons as medical officers of health and one or more persons as executive officers for the regional health authority for the purpose of carrying out this Act and the regulations.

62(1) An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on

(a) an inspection of a public place under section 59 or a private place under section 60, or

(b) a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60,

that a nuisance exists in or on the public place or private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.

5(11) The Board may confirm, reverse or vary the decision of the regional health authority and shall give written notice of its decision to the appellant and the regional health authority.

[42] In this regard, the Board is guided by the public health context in which it renders its decisions, and by the Alberta Court of Appeal’s jurisprudence regarding determination of the applicable standard of review in these circumstances. In particular, after a thorough consideration of the factors outlined by that Court in its *Newton*² decision and its additional guidance in the

² *Newton v Criminal Trial Lawyers’ Association*, 2010 ABCA 399 [Newton].

decisions in *Moffat*³ and *Yee*⁴, and reading the relevant sections of the Act harmoniously with the intention of the legislature, the Board is satisfied that the appropriate standard of review to be applied in this Appeal has been articulated in section 62(1) of the Act.

[43] This standard is:

Whether there are reasonable and probable grounds to believe that a nuisance exists on the property, or that there is a contravention of the Act or the regulations based on an inspection or a report or test such that the order under appeal is warranted.

[44] In *Canada (Minister of Citizenship and Immigration) v Vavilov*⁵, the Supreme Court of Canada provided instruction on the application of the reasonableness standard of review in the judicial review of a tribunal's decision. The focus of such a reasonableness review is on the reasons. A decision will be reasonable if it is both internally consistent and justified in light of the legal and factual constraints that bear on the decision.

[45] Unlike the judicial review approach established in *Vavilov*, the standard of review adopted by the Board represents a hybrid procedure that takes into account not only AHS' reasons but also other evidence deemed relevant by the Board. This approach involves reviewing all the relevant records supplemented with viva voce evidence, while also allowing portions of the hearing to be conducted on the record.

[46] As the Board is not a court, it is not bound by the strict rules of evidence applicable to courts. The Board's authority is limited to confirming, reversing, or varying an AHS order, without extending beyond these options as provided in the Act.

[47] By adopting this hybrid standard of review, the Board can effectively balance the need for procedural flexibility and thoroughness with respect for the specialized expertise and initial findings of the AHS executive officers. This approach ensures that the appeal process remains efficient and cost-effective, while preserving the integrity of the original proceedings and allowing the Board to make well-informed decisions that uphold public health standards consistently with the objectives of the Act.

Reasons

[48] AHS received complaints regarding the Premises in August 2023, indicating significant cockroaches or bedbug issues. Additional complaints were made about the Premises in September and October 2023 of pest activity, the general dilapidated state, and issues with brown water coming out of the faucets, among others.

[49] The Owner confirmed that EO Wong attended the Premises about a series of complaints and he acknowledged the issues.

³ *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 [Moffat].

⁴ *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98.

⁵ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[50] The Owner's failure to rectify the breaches and deficiencies specified in the Orders was not done wilfully. Rather, he did not understand fully what was required to be done.

[51] EO Wong diligently provided in an ongoing basis the Owner with clear information what was required to be done to remedy the various issues at the Premises. However, on many occasions the Owner was not following the EO Wong's recommendations and not diligently taking steps to remediate the deficiencies as identified in the Orders.

[52] The Owner alleged discrimination as the basis for the AHS inspections at his Premises that led to the order. However, he stated clearly that he had an excellent relationship with EO Wong, indicating that: she was a "wonderful person"; he had "no problem with her"; and that she was working with him.

[53] While the Board is sympathetic to the financial impact on the Owner and the Premises as a result of the Orders, the fact remains that they are not relevant to their validity.

[54] AHS representatives, and EO Wong in particular, always conducted themselves and inspected the Premises and issued the Orders pursuant to the provisions of the Act and the Regulations, both of which exist to protect the health of Albertans.

Findings and Conclusion

[50] The Board listened attentively to all the evidence and placed the appropriate weight.

After reviewing the evidence and submissions made by the Parties, the Board finds the following:

1. AHS representatives conducted themselves and inspected the Premises and issued the Orders and did so pursuant to the provisions of the Act and the Regulations, both of which exist to protect the health of Albertans.
2. While the Owner was not at many times complying with the AHS recommendations to remedy the issues at the Premises, was not doing so wilfully, but rather he did not understand fully what was required to be done.
3. EO Wong went above and beyond her duties to assist the Appellant with what was required to be done.
4. The Orders were issued in good faith, pursuant to the Act and the Regulations, and there is no evidence to suggest any actions by AHS representatives was motivated by discrimination.

[51] Based on the aforementioned findings, the Board confirms the Orders, which shall remain in force until such time as AHS rescinds or varies them in accordance with the Act.

--Original Signed--

Paul M. Bourassa, Chair

On behalf of the Hearing Panel of the
Public Health Appeal Board

Date: August 21, 2024

Appeal 04-2024