

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 2, DATED JULY 13, 2023**

**AND IN THE MATTER OF AN APPLICATION TO NARROW
ISSUES ON APPEAL DATED AUGUST 1, 2023**

PANEL: Kevin Kelly, Chair
Paul M. Bourassa, Member
Theresa Chika-James, Member

BETWEEN:)	
)	
)	
GERALD A. SICKEL)	Gerald A. Sickel,
(Appellant))	Self-represented
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	Kyle Fowler,
(Respondent))	Alberta Health Services, for the Respondent

Heard: August 16, 2023

**DECISION AND REASONS FOR DECISION ON
APPLICATION TO NARROW ISSUES ON APPEAL**

Overview

[1] This matter came before a panel of the Public Health Appeal Board (the “Board”) on August 16, 2023. The Respondent, Alberta Health Services (“AHS”) brought an application to narrow the issues of the appeal. The Decision of the Board is that the Board will hear only evidence that

relates to issues relevant to those violations at the Premises as noted in the Order of an Executive Officer dated July 13, 2023.

Background

[2] On July 13, 2023, an AHS Executive Officer (the “EO”) issued a written order (the “Order”) to the Appellant, Mr. Gerald A. Sickel, the owner of the food establishment, Sickel’s Meats, located in Calgary, Alberta, and municipally described as 4093 Ogden Road SE, (the “Premises”). The EO ordered that the Premises be closed until the work outlined in the Order was completed.

[3] The Order detailed the following alleged breaches of the *Public Health Act* and the *Food Regulation*, Alberta Regulation 31/2006, and one allegation of breach of the *Nuisance and General Sanitation Regulation*, Alberta Regulation 243/2003:

- a) Operating without a valid and subsisting food handling permit from AHS; and
- b) There was a strong odour of spoiled meat and an abundance of flies around the Premises.

[4] The Appellant appealed the Order by providing a Notice of Appeal to the Board on July 24, 2023. In the Notice of Appeal, the Appellant raised several allegations regarding the EO’s observations contained in the inspection reports surrounding the source of meat used by the Appellant. Moreover, the Appellant included alleged observations from the EO that pertained to a different premises, specifically a booth operated by the Appellant at the Crossroads Market in Calgary, Alberta (the “Crossroads Booth”).

[5] On August 1, 2023, AHS submitted to the Board an application for a preliminary hearing to narrow the issues of the appeal (the “Preliminary Application”). The essence of the Preliminary Application was that the Appellant only be permitted to make submissions and present evidence at the appeal on the EO’s inspection reports for the Premises and not the Crossroads Booth. The Preliminary Application was scheduled to be heard on August 16, 2023.

[6] On the morning of August 16, 2023, approximately two hours prior to the hearing of the Preliminary Application, the Appellant emailed a seven-page document, which was in essence a cross application (the “Cross Application”) to the Preliminary Application asking that the issues on appeal include the EO’s alleged observations at Crossroads Booth as contained in the Notice of Appeal.

[7] On August 16, 2023, the Board heard the Preliminary Application and the Cross Application via video conference.

Legal Issues

[8] The Panel must consider the following issue(s):

- a) Should the submissions and evidence on the appeal be limited to the alleged observations at the Premises only, or also include the alleged observations at the Crossroads Booth?

Documents/Exhibits

[9] In addition to the written submissions received from the Appellant and AHS, the following documents were entered as exhibits by agreement of the parties:

EXHIBIT A – AHS Preliminary Application-August 1, 2023

Submissions

[10] The Appellant and AHS both provided written submissions to the Board and the Board has summarized their submissions below.

Submissions of the Appellant

[11] On August 16, 2023, the Appellant was assisted by his sister, Ms. Cheryl Sickel. Ms. Sickel was the author of the Cross Application emailed to the Board the morning prior to the Preliminary Application.

[12] Ms. Sickel explained her unfamiliarity with the process and that there was “a lot going on”, which was the reason she was only able to prepare the Cross Application submissions the night before.

[13] In the Cross Application submissions, Ms. Sickel asked that the Appeal include:

- a) all of the inspection reports and closure orders associated with this file so that those citations that are false, exaggerated, taken out of context, and grossly misrepresented are addressed.
- b) financial damages sustained by the Appellant as a result of AHS disposing of safe inspected meat whose sources were supported by lawful receipts that were rejected by AHS; and
- c) revisiting AHS' checklist for reopening as cited in report number 349893. Since that report was papered, the Appellant's business model going forward, along with his production flow has been revised. These proposed changes necessitate some minor changes to AHS' criteria for reopening and obtaining a health permit.

[14] Last, Ms. Sickel agreed that AHS legal counsel should have time to prepare to respond to the Cross Application and the Board to consider such a hearing later in the week.

Submissions of the Respondent

[15] AHS asked for a direction from the Board that the issues on appeal encompass solely the alleged observations at the Premises and those directives contained in the Order and at the appeal, the Board to confirm, reverse, or vary the following:

- a) That the Appellant obtain a valid food handling permit from AHS;

- b) That the Appellant remedy the odour and pest presence at the Premises by ceasing all food operations, removing all foods and waste from the facility, and obtaining the services of a pest management company as needed; and
- c) That the property municipally referred to as 4093 Ogden Road SE remain closed until such time as the above work is completed to the satisfaction of an Executive Officer.

[16] The grounds for the Preliminary Application were that the Appellant raised several allegations in the Notice of Appeal concerning alleged observations by the EO that pertained to issues at the Crossroads Booth, which was not subject to the Order.

[17] AHS counsel asked the Board to either adjourn the Cross Application and to allow AHS to respond, or alternatively, to not accept to hear the Cross Application and proceed only with the Preliminary Application.

Analysis and Reasons

[18] After reading and hearing the submissions of the parties, the Board took a short recess to consider how to proceed. Upon returning, the Board informed the parties that it would first discuss the Cross Application, followed by the Preliminary Application.

[19] Having regard to the *Public Health Act*, one of the mandates imposed upon the Board is to hold appeals within 30 days after receiving a notice of appeal. Within this mandate, the Board would have to find the Cross Application to be compelling to the issues in the appeal and adjourn the August 29, 2023 appeal hearing to a later day. This could have a negative impact, financial or otherwise, on Mr. Sickel's business.

[20] The Board determined that the issues raised in the Cross Application, namely that alleged observations of the EO at the Crossroads Booth, were not relevant to the appeal as the Order only pertained to the Premises.

[21] In addition, in responding to the Appellant's question about providing monetary or other relief to the Appellant due to the financial impact of the Order on his business, the Board determined that the granting of such relief is outside its jurisdiction.

[22] As to whether to grant an adjournment of the Preliminary Hearing to be heard later in the week, this was moot as outlined in the previous two paragraphs.

[23] Concerning the Preliminary Application, the Board agreed to allow it.

Conclusion

[24] At the appeal, the only submissions the parties may make and evidence that the Board will hear, are those that relate to issues relevant to those violations at the Premises as noted in the Order such that the Board will confirm, reverse, or vary the following:

- a) That the Appellant obtain a valid food handling permit from Alberta Health Services;
- b) That the Appellant remedy the odour and pest presence at the premises by ceasing all food operations, removing all foods and waste from the facility, and obtaining the services of a pest management company as needed; and
- c) That the property municipally referred to as 4093 Ogden Road SE remain closed until such time as the above work is completed to the satisfaction of an Executive Officer.

[25] For the reasons given above, the application is allowed.

--Original Signed--
Kevin Kelly, Chair
On behalf of the Hearing Panel of the
Public Health Appeal Board

Date: December 29, 2023