

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Workers' Compensation Board v. E H Z  
Pre-Demolition Ltd.*,  
2023 BCSC 831

Date: 20230516  
Docket: S220247  
Registry: Vancouver

Between:

**Workers' Compensation Board**

Petitioner

And

**E H Z Pre-Demolition Ltd., AMK Environmental (2017) Ltd., Rajesh Joshi, and  
Gagandeep Joshi**

Respondents

Before: The Honourable Justice Iyer

## **Reasons for Judgment**

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Place and Date of Hearing:

Vancouver, B.C.  
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**OVERVIEW**

[1] The Workers' Compensation Board ("Board") applies for a statutory injunction under s. 97 of the *Workers' Compensation Act*, R.S.B.C. 2019, c. 1 ("Act") against the respondent individuals and their companies, all of whom work in the asbestos abatement industry. The individual respondents are brothers, Mr. Rajesh Joshi and Mr. Gagandeep Joshi. The associated corporate respondents are E H Z Pre-Demolition Ltd. ("EHZ") and AMK Environmental (2017) Ltd., ("AMK"). For clarity, I will refer to the Joshi brothers by their first initial and last name.

[2] AMK and EHZ both carry out asbestos abatement work, removing asbestos materials from worksites. G. Joshi is a qualified asbestos abatement worker, contractor and supervisor, and renews his certification annually. He is an officer of AMK and also works as a supervisor for AMK. R. Joshi has the same qualifications as his brother. He has worked as a supervisor for AMK and EHZ on various projects.

[3] The Board's mandate with respect to occupational health and safety ("OHS") in the asbestos abatement industry is to ensure that employers use measures to protect workers from the risks of exposure to asbestos fibres, which are well-known to be hazardous to human health. The Board's detailed regulations and policies governing asbestos abatement are set out in the *Occupational Health and Safety Regulation*, B.C. Reg. 116/2022 ("Regulation").

[4] The Board polices compliance in various ways, including requiring asbestos abatement employers to determine whether asbestos-containing material is on a worksite before commencing work, to put in place and maintain Board-mandated protection measures while asbestos abatement work is going on, and to comply with cleanup procedures upon completion. Importantly, before commencing any asbestos abatement work, employers must give written notice to the Board. Where necessary, the Board enforces compliance through a number of progressive enforcement measures. One of the most significant sanctions is the Board's power to seek a court-ordered statutory injunction under s. 97 of the Act. Failure to comply with a s. 97 injunction can lead to a finding of contempt of court.

[5] The Board's occupational safety officers and/or occupational hygiene officers ("Officers") perform a vital compliance role by inspecting worksites possibly involving asbestos. They may inspect before, during and/or after completion of the work, and may test samples of materials. They are authorized to issue compliance orders and/or administrative penalties against employers, officers and directors, supervisors and others specified in the Act and Regulation. These orders and penalties are subject to review within the Board's internal administrative tribunal structure.

[6] In this proceeding, the Board relies on the compliance orders and administrative penalties its officers have issued against the respondents over several years (collectively, "Orders") in support of its application for a s. 97 injunction.

[7] The respondents take issue with virtually every aspect of the Board's case. They attack the Orders, arguing that the Board has not provided them with the procedural protections to which they are entitled (primarily notice, disclosure of all documents and of the precise legal grounds relating to each Order). They submit that the Board has not proved the contraventions of the Act on which the Orders are based to the requisite civil standard, and that much of the affidavit evidence of the officers is inadmissible as irrelevant, hearsay, opinion, argument and legal conclusions. The respondents say that the Board has wrongly conflated the separate identities of the four respondents. They also say that an injunction is unnecessary because the Board has not proved that other, less severe, enforcement measures are inadequate. Finally, they say that the terms of the injunction sought by the Board are overbroad.

[8] In the following sections, I set out the relevant statutory scheme. Next, I clarify the test for granting an injunction under s. 97 of the Act and state the issues I must consider. I then apply the law to determine whether the injunction sought is warranted in this case.

**The Act and Regulations**

[9] The Act is remedial legislation. It creates a comprehensive and complex regulatory regime governing the protection of workers in British Columbia. Part 2 of the Act addresses occupational health and safety. It authorizes the Board to establish standards for protecting worker health and safety, including making regulations relating to hazardous substances such as asbestos. The Act imposes positive obligations on workplace owners, employers, supervisors and workers who work with asbestos to comply with the Act and Regulation.

[10] The Act authorizes Officers to enter and inspect workplaces to ensure compliance, provides for evidence-gathering, and establishes what measures Officers can impose to ensure compliance. These include compliance reports, compliance orders, and administrative penalties. Officers may enter into compliance agreements with an employer in certain circumstances.

[11] There is no dispute that this system is progressive, in that the general goal is to achieve compliance with the Act and Regulation using the least restrictive measures, and resorting to more severe sanctions only where lesser measures have failed. For example, if successive administrative penalties are imposed, they will be for greater sums. The s. 97 injunction is a severe sanction because it is the penultimate step before the “last resort” of an order for contempt of court.

[12] The Regulation establishes comprehensive requirements for workplaces containing asbestos. Before work commences, a person qualified under the Regulation must complete a hazardous materials survey (“HMS”) to identify asbestos-containing materials that constitute hazards. A qualified asbestos abatement contractor, such as the respondents, must prepare site-specific procedures based on the survey’s findings, and submit them to the Board in a “Notice of Project” 48 hours before any asbestos abatement work begins.

[13] In *Workers' Compensation Board of British Columbia v. Skylite Building Maintenance Ltd.*, 2019 BCSC 231 [*Skylite 2019*], Justice Marzari summarized the Board's requirements for asbestos abatement work as follows:

45 While undertaking abatement work, anyone inside the marked active worksite must don personal protective equipment. This includes disposable protective suits that resist penetration by asbestos fibres covering the entire body, including the head and feet. Workers may also be required to wear air-purifying respirators ("APRs") or powered air-purifying respirators ("PAPRs") to protect them from breathing in asbestos fibres.

46 Abatement work is generally classified as requiring either moderate risk procedures or high risk procedures, depending on the nature of materials being removed. Where both are required in the same building, moderate risk work will often be completed first so as not to disturb the high risk materials. If high risk abatement is conducted first, precautions need to be taken to ensure [that] abatement work does not contaminate moderate risk or otherwise clean areas.

47 When high risk abatement work is underway within a building, abatement contractors are required to establish a "containment area". Air flow in the containment area is reduced by polyethylene sheets, an orange plastic material, typically covering all windows and perhaps walls. Entrances and exits for workers are also covered with overlapping poly sheets. Negative air pressure is maintained in the containment area with a machine that filters the air before allowing it to escape the containment area to reduce the risk of asbestos fibres escaping the containment area. Workers in a high risk containment area generally remain there and only exit by passing through a decontamination facility.

48 In high risk work, asbestos-containing materials are required to be bagged and sealed inside the containment area. Those bags are generally HEPA vacuumed and wiped down before being passed through overlapping orange polyethylene sheets into a waste transfer room. There, they should be washed again before being transferred outside, to be placed in a marked disposal bin.

49 Air clearance testing is required when abatement procedures are completed. This testing must show that airborne fibres are below the exposure limit before the abatement contractor can issue a clearance letter.

50 Once the clearance letter is issued, the abatement contractor's responsibility for the site is generally complete, unless the abatement contractor is the prime contractor, the demolition contractor, or is called back because further material suspected to contain asbestos has been found. The owner or prime contractor has the responsibility of proceeding with demolition only once the building is clear of asbestos.

[14] An Officer who inspects a worksite involving asbestos abatement work and considers that there has been a contravention of the Act or Regulation, will issue an inspection report that is posted at the worksite. The inspection report contains a

summary of the Officer's observations and concerns. Once posted, it serves an educational purpose in itself. An inspection report may also include various orders. These include compliance orders, which require the person named in the order to submit to the Board a report on what has been done to address the compliance issues raised in the inspection report. A compliance order is "closed" once compliance is achieved or a notice of compliance is accepted by the Board. A stop work order is a more severe sanction. An Officer may issue a stop work order if there are reasonable grounds to believe there is a high risk of serious injury, serious illness or death to a worker. The employer must cease all work at the worksite until the stop work order is cancelled. Administrative penalties may be issued in any amount up to \$710,488, per s. 95(2) of the Act.

[15] Workers, employers and owners, among others listed in s. 269(1) of the Act, may request the Workers' Compensation Review Division ("Review Division") to review orders within a specified time. If dissatisfied with the Review Division's decision, they may seek reconsideration under s. 273. In addition, under s. 288, they have a statutory right of appeal to the Workers' Compensation Appeal Tribunal ("WCAT") if the order in issue imposes an administrative penalty or is a final decision made by a review officer. A final decision of the Review Division or WCAT (as the case may be) may be judicially reviewed in this court.

**APPLICABLE LEGAL PRINCIPLES**

[16] Section 97 of the Act provides that the court may grant an injunction in certain circumstances:

97 (1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person

(a) has contravened or is likely to contravene the OHS provisions, the regulations or an order, or

(b) has failed to comply with, or is likely to fail to comply with, the OHS provisions, the regulations or an order,

the Supreme Court may grant an injunction,

(c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,

(d) in the case of paragraph (b), requiring the person to comply, and

(e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of the compensation provisions for an indefinite or limited period or until the occurrence of a specified event.

[17] The most relevant jurisprudence on s. 97 statutory injunctions (and its predecessor, s. 198) arises out of a protracted dispute between the Board and two other brothers working in the asbestos abatement industry, Mike and Shawn Singh, and their associated companies. That dispute led to some ten decisions by this Court and the Court of Appeal between 2013 and 2020 involving two corporate entities: Seattle Environmental Consulting Ltd. and Skylite Building Management Ltd. I will refer to these decisions collectively as the “Singh Cases”.

[18] A two-part test governs whether a s. 97 injunction should be granted. First, the court must interpret the Act or Regulation to determine what constitutes a breach on the balance of probabilities standard: *Skylite 2019* at para. 147. This is a relatively straightforward question of statutory interpretation, and it is not an issue in this case.

[19] The second part of the test requires the court to assess the evidence to determine whether, as a matter of fact, the respondents’ conduct provides “reasonable grounds to believe” that a breach occurred. The “reasonable grounds to believe” standard is more than a mere suspicion, but less than a balance of probabilities standard: *Workers’ Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365 [*Seattle 2020 Appeal*] at para. 58.

[20] The parties diverge completely over what proof of “reasonable grounds to believe” entails. The respondents contend that the Board must prove to the court afresh every breach on which it relies, and cannot rely on the Orders as proof of “reasonable grounds to believe”. They attack the Board’s affidavit evidence relating to these Orders, arguing that most of it is inadmissible and what is left is insufficient. Their evidentiary objections are:

- The Board did not disclose to the respondents all of the documents at each worksite where a breach is alleged to have occurred (such as all inspection



reports and other notes, photographs and follow-up materials relating to anyone working at that worksite);

- There has been no cross-examination of Officers who made Orders;
- Officers' affidavit evidence is inadmissible hearsay;
- Officers' affidavits contain argument or conclusions;
- Officers' affidavits contain material not mentioned in the petition and the petition refers to events not supported by affidavit evidence;
- Some Officer's notes are illegible and/or their meaning is unclear;
- Expert evidence is required to prove that there was any asbestos at any worksite (for example, the HMS's must be admitted as expert evidence in accordance with the Rules governing expert evidence); and
- The respondents have a right to remain silent and to not provide evidence against themselves because these are *quasi-criminal* proceedings.

[21] The respondents also say that the petition provides insufficient particulars of the case they have to meet.

[22] The Board says that the respondents' position is an impermissible collateral attack on the orders it has already made against the respondents, relying on *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 S.C.R. 706 [*Consolidated Maybrun*] as the framework for establishing when collateral attack of an administrative tribunal decision is permissible. That case established five factors to guide when collateral attack of an administrative order is available: 1) the wording of the statute; 2) the purpose of the statute; 3) the availability of an internal appeal; 4) the nature of the collateral attack; and 5) the penalty for failing to comply with the order. The reviewing court must keep in mind the tribunal's expertise, particularly where the administrative scheme is complex and should be wary of undermining the

legislature's chosen internal mechanisms, especially in situations requiring immediate remedial action: *Consolidated Maybrun* at paras. 45-46.

[23] If it finds there are reasonable grounds to believe that a person has contravened or is likely to contravene the Act, the court will grant the s. 97 injunction. The only exceptions are for relatively unusual circumstances, where the infraction(s) are trivial, or where administrative sanctions are proving effective: *Skylite 2019* at para. 156, aff'd *Seattle 2020 Appeal*; *British Columbia (Workers' Compensation Board) v. Ace Environmental Services Ltd.*, 2019 BCSC 849 [*Ace Environmental*] at paras. 21, 23. The injunction will be granted if the Board establishes reasonable grounds to believe that there are repeated and serious breaches of the Act and Regulation: *Skylite 2019* at para. 801.

[24] The terms of a s. 97 injunction may be very broad. In *British Columbia (Workers' Compensation Board) v. Seattle Environmental Consulting Ltd.*, 2017 BCCA 19 [*Seattle 2017 Appeal*], the Court of Appeal held that a s. 97 injunction need not specify a date for the Act or Regulation because the injunction requires compliance with subsequent amendments: paras. 81-83. The injunction need not identify particular provisions of the Act and Regulation, because the Act imposes positive obligations on all asbestos abatement businesses and workers to know and comply with all of their obligations under the Act and Regulations: para. 86.

[25] In light of these legal principles, the following issues arise in this case:

- A. May the respondents collaterally attack the Board's Orders?
- B. Are there reasonable grounds to believe the alleged breaches occurred?
- C. If so, are there reasons to decline to grant the injunction?
- D. If not, what terms are appropriate?

**ANALYSIS**

**May the Respondents Collaterally Attack the Board's Orders?**

[26] Collateral attack refers to a situation where a party attempts to challenge an existing order in a different forum, such as a court. The Board argues that this is what the respondents are doing by challenging the validity of each of the Orders on which the Board relies as showing reasonable grounds to believe that a s. 97 injunction is appropriate here.

[27] Collateral attack is available when an individual is faced with the possibility of imprisonment in the immediate proceedings: *British Columbia (Workers' Compensation Board) v. Skylite Building Maintenance Ltd.*, 2013 BCSC 1666 at para. 36. In another Singh Case, the Singh brothers' civil claim against the Board was struck as an abuse of process: *Seattle Environmental Consulting Ltd. v. British Columbia (Workers' Compensation Board)*, 2016 BCSC 557 [*Seattle 2016*] at paras. 35-36. There, the Court described the notice of civil claim as "essentially an attack" on the Board's orders and procedures it followed in making orders against the Singhs for contravening asbestos-related provisions of the Act and Regulation: para. 34. It concluded:

35 The inspection, enforcement orders and matter incidental to the activities identified in the plaintiffs' pleadings arise from the activities of the personal defendants as Prevention Officers and under the [Act]. The Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising in the Board's supervision of workplace health and safety. Any action or decision of the Board is final and conclusive. The justification and lawfulness of the orders and penalties complained of by the plaintiffs are a matter for determination under the [Act]. I note that similar reasoning can be found in *Willow, Cimaco, and Swift*. In essence, the action is "a claim for judicial review with only a thin pretence to a private wrong": *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62 at para. 79.

36 The appropriate steps for relief are the review and appeal mechanisms in the [Act] and, judicial review under the *JRPA*. In addition to being barred by s. 113, the plaintiffs through this action are challenging the defendants' decisions. This is an impermissible collateral attack — an abuse of process.

[28] While *Seattle 2016* does not expressly state that collateral attack is impermissible in the context of an application for a s. 97 injunction because the issue

before the court was abuse of process, it provides very strong support for that conclusion.

[29] Consideration of the *Consolidated Maybrun* factors satisfies me that the Orders cannot be collaterally attacked.

[30] The wording of the statute empowers the Board to make the Orders. The purpose of the Act is to protect the health and safety of all citizens in British Columbia, including workers and other persons present at workplaces, to prevent injury, and to encourage education of employers and workers. The availability of internal appeals implies that the legislature intended to confine review of Board orders to internal mechanisms.

[31] The Act sets out extensive statutory appeal mechanisms to allow the respondents to assert their rights within the clearly delineated time restrictions, ranging from 30 to 90 days. This short time frame reflects the need to quickly remedy asbestos-related breaches, owing to the hazardous nature of the work. The respondents did not fully exhaust their internal remedies with respect to each Order<sup>1</sup>.

[32] The detailed provisions of the Regulation and associated policies demonstrate the expertise of the Review Division and WCAT in matters of asbestos abatement. By challenging the validity of the Orders in court, the respondents seek more searching judicial scrutiny of the Orders (a balance of probabilities standard) than would be available on judicial review.

[33] For these reasons, I conclude that the respondents may not collaterally challenge the validity of the Orders in a s. 97 application. The avenue for such challenges is the internal appeals process and a court on judicial review. The respondents may also attack the validity of any order relied on by the Board in a contempt proceeding, should that occur.

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<sup>1</sup> They sought review of five Orders before the Review Division, but were unsuccessful. They did not pursue any appeal to WCAT within the time limits and they did not seek judicial review of any Order.

**Are there Reasonable Grounds to Believe the Alleged Breaches Occurred?**

[34] Having determined that the respondents may not collaterally attack the Orders, I generally accept and rely on the Board's affidavit evidence of the respondents' breaches of the Act and Regulation subject to the following exceptions. While petitions are not pleadings, considering the voluminous material relied on by the Board, it is unfair for the Board not to have drawn the respondents' attention to these worksites, either by seeking to amend the petition or in some other way. The evidence relating to the 12721 25 Street, 9924 Semiahmoo Road, 2570 Janzen Street worksites is inadmissible for this reason. For the same reasons, I do not admit the Board's statistical evidence of the respondents' past breaches at worksites not referred to in the petition.

[35] With respect to the 867 Morrison Avenue worksite, there is no affidavit evidence that any Orders were made regarding breaches by EHZ of the Training and Supervision, Containment, Containment Inward Air Flow, and Secured Openings provisions at this worksite, to which the petition refers.

[36] I do not rely on evidence about the 13125 99A Avenue and 12721 25 Street worksites because the breaches occurred after the petition was filed and the Board did not give the respondents notice it was relying on them.

[37] Finally, there is insufficient evidence linking AMK to its predecessor company for me to rely on its breaches as AMK's breaches.

[38] That leaves Orders made in relation to ten worksites. AMK worked at five of them and EHZ worked at the other five. Over a 32-month period (January 31, 2019 to September 21, 2021), the Board issued 27 orders and imposed four administrative penalties against AMK in respect of 21 different breaches of the Act and Regulation. Over a 15-month period (December 14, 2019 to March 18, 2021), the Board issued 31 orders and imposed five administrative sanctions against EHZ in respect of 15 different breaches of the Act and Regulation. The Board also issued one personal order against G. Joshi and two personal orders against R. Joshi.

[39] The Orders were made for breach of the following provisions of the Act and Regulation:

- General Duty (Act, s. 21(1)(a)(ii)): employer's duty to ensure the health and safety of all workers at the workplace;
- General Compliance (Act, s. 21(1)(b)): employer's duty to comply with the Act, Regulations, and orders;
- Training and Supervision (Act, s. 21(2)(e)): employer's duty to provide training and supervision to workers;
- Personal Order (Act, s. 23(1)(a)): supervisor's duty to ensure the health and safety of all workers under their supervision;
- Stop Use Order (Act, s. 89(1)): the Board may issue a stop use order against tools or equipment if it is not in safe operating condition or it does not comply with the Act, Regulation or orders;
- Stop Work Order (Act, s. 90)): the Board may issue a stop work order against a worksite if there is a high risk of serious injuries, serious illness, or death at that workplace;
- Exposure Control (Regulation, s. 6.3(1)): employer's duty to develop and implement an exposure control plan;
- Necessary Precautions (Regulation, 6.7(2)): employer's duty to ensure that necessary precautions have been taken to protect workers;
- Air Clearance (Regulation, s. 6.12(4)(a)): employer's duty to ensure that air clearance sampling is conducted prior to dismantling a containment area and after all asbestos has been abated;
- Extraneous Objects (Regulation, s. 6.13(1)(b)): employer's duty to ensure that the work area is clear of objects that could be contaminated with asbestos;

- Secured Openings (Regulation, s. 6.13(1)(c)): employer's duty to ensure that windows, doorways, and all other openings are adequately secured to prevent the release of asbestos fibres into other areas;
- Containment (Regulation, s. 6.16(1)): employer's duty to provide and maintain a containment and decontamination facility, to prevent the spread of asbestos fibres;
- Decontamination (Regulation, s. 6.16(3)(b)): employer's duty to ensure that the decontamination facility includes a shower;
- Cleanup (Regulation, s. 6.16(5)(a)): employer's duty to ensure that, at a high-risk worksite, effective cleanup has been completed;
- Sealant Treatment (Regulation, s. 6.16(5)(b)): employer's duty to use a sealant at the completion of high-risk work and prior to dismantling containment, to prevent asbestos fibres from becoming airborne;
- Air Flow (Regulation, s. 6.17(a)): employer's duty to ensure that only clean air flows from outside areas into the contaminated area;
- Containment HEPA Filter (Regulation, s. 6.17(b)): employer's duty to ensure that air from the containment system is directed outdoors through a HEPA filter;
- Containment Inward Air Flow (Regulation, s. 6.17(c)): employer's duty to ensure inward air flow through the decontamination facility;
- Exhaust HEPA Filter (Regulation, s. 6.18)): employer's duty to provide exhaust ventilation discharged through a HEPA filter;
- Sheet Covering (Regulation, s. 6.20(3)): employer's duty to ensure that work surfaces are covered with sheets to control the spread of asbestos;

- Spread of Asbestos Dust (Regulation, s. 6.21)): employer's duty to prevent the spread of asbestos dust and debris to other areas during work;
- Wetting (Regulation, s. 6.22)): employer's duty to wet asbestos-containing materials that are to be removed or disturbed, to prevent asbestos fibres from becoming airborne;
- Cleaning Equipment (Regulation, s. 6.26(2)): employer's duty to clean tools and equipment contaminated with asbestos after work is completed;
- Written Procedures (Regulation, s. 6.27(3)(b)): employer's duty to follow written procedures for the safe removal of asbestos;
- Respiratory Protection (Regulation, s. 6.29(1)): employer's duty to supply and ensure that workers wear respirators;
- Records Retention (Regulation, s. 6.32)): employer's duty to maintain records respecting asbestos-containing materials for at least ten years;
- Protective Equipment Program (Regulation, s. 8.5)): employer's duty to implement an effective protective equipment program;
- Clean Shaven (Regulation, s. 8.39(2)): worker's requirement to be clean shaven where respirators make contact with the face;
- Notice of Project Submission (Regulation, s. 20.2.1(1)): employer's duty to provide a Notice of Project at least 48 hours before abatement begins; and
- Safe Removal (Regulation, s. 20.112(5)): employer's duty to safely contain or remove hazardous materials.

[40] With respect to each worksite below, I identify the respondent(s) to whom it relates, briefly describe the breaches found by the inspecting Officer, set out any penalty imposed, and whether the Order was reviewed.



**85 Avenue Worksite**

[41] AMK was contracted to conduct asbestos abatement at this moderate to high risk site and the Notice of Project listed G. Joshi as the supervisor. AMK subcontracted abatement to a company called Safe and Sound Environmentals Ltd. ("Safe and Sound"). At an inspection on January 31, 2019, an Officer found that the Notice of Project had not been filed with the Board, Safe and Sound did not provide reports and test results, including air sample results, and there was no clearance letter. The Officer found AMK had forged an HMS saying there was no asbestos-containing material at the worksite. The company that conducted the HMS informed the Officer that the site had asbestos-containing materials.

[42] The Officer issued orders against AMK for breach of the General Duty and Notice of Project Submission provisions. AMK appealed to the Review Division but was unsuccessful and did not pursue further review.

[43] Before me, the respondents argued that they are not liable for asbestos abatement work that they subcontracted out and did not retain control over. Section 21(1)(a)(ii) of the Act provides that an employer who subcontracted out work retains responsibility for the health and safety of the subcontractor employees:

21 (1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out...

[44] Sections 11 and 258 of the Act also provide for joint liability between the main contractor and subcontractor with respect to other aspects of the workers compensation scheme, such as personal injury. It would be contrary to the purposes of the Act to absolve a main contractor of any responsibility for subcontractor worker health and safety. I find that the respondents were liable for subcontracted work.

**104 Avenue Worksite**

[45] AMK was contracted to conduct asbestos abatement at this moderate to high risk site and the Notice of Project listed G. Joshi as the supervisor. AMK subcontracted this work to 1115984 B.C. Ltd. On inspection on April 30, 2019, the Officer found that a Notice of Project had not been filed, and the subcontractor was unable to produce test and inspection records, air sample results, disposal records, and a clearance letter. The Officer determined that the HMS provided had been forged to say there was no asbestos in the materials when they actually contained high-risk fibres. The three orders made against AMK were for breaches of the General Duty, Notice of Project Submission and Records Retention provisions. AMK received a \$2,500 administrative penalty.

[46] The Review Division dismissed AMK's appeal of the orders and the administrative penalty, and AMK did not pursue the matter further.

**86 Avenue Worksite**

[47] AMK was contracted to conduct asbestos abatement at this high-risk worksite. AMK subcontracted asbestos abatement to Assure Demolition Ltd. ("Assure"), and an Assure representative was listed as the supervisor on the Notice of Project. When an Officer asked whether AMK had ensured that Assure was qualified for this work, G. Joshi said it had not. AMK supplied all work equipment and a work vehicle to Assure. At an inspection on September 5, 2019 after issuance of a clearance letter, the Officer found asbestos-containing drywall debris on the property. No representative from AMK had visited the site, either during or after completion of the work.

[48] The Officer issued an order against AMK for breach of the General Duty provision and imposed an administrative penalty against AMK of \$5,000.

[49] AMK's review of the order to the Review Division respecting breach of the General Duty provision was unsuccessful. Its appeal to the WCAT was dismissed because it was filed late.

**123A Street Worksite**

[50] AMK conducted asbestos abatement at this moderate to high risk worksite. G. Joshi was the listed supervisor; however, R. Joshi supervised the work. The inspection on April 16, 2020 showed that the asbestos abatement work was deficient in numerous respects. The Officer saw a worker carrying out abatement work without wearing protective equipment and failing to follow decontamination procedures. He saw potentially contaminated equipment in an unsealed bag, as well as asbestos-containing materials strewn throughout the work area and in AMK's vehicle. The air units had a slit and kinked exhaust tubing, allowing potentially contaminated air to escape from the containment area. The areas containing asbestos were not separated from those not requiring abatement. Floor vents were not sealed and floors were uncovered, allowing asbestos-containing debris to be crushed into the carpeting and floors. Proper wetting procedures were not followed and sealant was not applied to any surfaces. Finally, a third-party asbestos analysis firm found AMK's air clearance results invalid.

[51] The Officer issued 13 orders against AMK, including a stop work order, and orders for a breach of the following provisions: Training and Supervision, Necessary Precautions, Air Clearance, Cleanup, Sealant Treatment, Containment, Containment HEPA Filter, Sheet Covering, Spread of Asbestos Dust, Wetting, Safe Removal, and Respiratory Protection. The Officer imposed another \$2,500 administrative penalty against AMK and made a personal order against R. Joshi.

[52] Neither AMK nor R. Joshi sought review of these orders.

**119 Avenue Worksite**

[53] AMK performed asbestos abatement at the 119 Avenue worksite. While G. Joshi was listed as the designated supervisor in the Notice of Project, R. Joshi acted as supervisor at the September 21, 2021 inspection. The Officer concluded the work was actually high-risk, although the Notice of Project categorized it as moderate risk. As such, the Officer found the safety procedures inadequate. He observed the workers failing to wear proper protective equipment, and noted that the

decontamination facility did not contain a shower. The Officer saw some workers with significant amounts of facial hair where the respirator seal was required to make contact with the face.

[54] The Board issued seven orders against AMK, including a stop work order, and orders for breaches of the Training and Supervision, Safe Removal, Protective Equipment Program, Clean Shaven, Exposure Control, and Containment Inward Air Flow provisions. AMK received a second \$5,000 administrative penalty. The Board also issued a Personal Order against each of G. Joshi and R. Joshi. Both were required to retake courses on supervision of asbestos abatement procedures.

[55] None of R. Joshi, G. Joshi or AMK sought review of these orders or the administrative penalty.

***127B Street Worksite***

[56] EHZ conducted high-risk asbestos abatement at 127B Street, with R. Joshi as the listed supervisor. An Officer conducted an inspection on December 14, 2019. He found that the decontamination units lacked a shower, the floors were not covered with sheeting, and doors and other openings were not sealed. Air monitoring was not set up and there was no air filtration unit. The Board issued eight orders against EHZ, including a stop work order, and orders for breaches of the Necessary Precautions, Containment, Decontamination, Containment Inward Air Flow, Exhaust HEPA Filter, Sheet Covering, and Training and Supervision provisions. EHZ received a \$5,000 administrative penalty.

[57] EHZ was required to file a compliance report, committing to appoint a new supervisor competent to ensure compliance with the Act and Regulations. It did not do so. At a follow-up inspection on January 30, 2020, an Officer saw numerous large holes and gaps in the containment area, which did not have an inward airflow. The Board issued a second order against EHZ for breach of the Containment provision, and an order for breach of the Air Flow provision.

[58] EHZ did not seek review of these orders or the administrative penalty.

***2050 Majestic Crescent Worksite***

[59] EHZ conducted asbestos abatement at 2050 Majestic Crescent and R. Joshi supervised this moderate to high risk work. At an inspection on December 17, 2019, the Officer saw large amounts of asbestos-containing dust and debris throughout the worksite, no wetting, and asbestos-containing materials that were not double-bagged or sealed. Designated work areas were not separated from floors where abatement was not being carried out. The Officer inspected a vehicle at the site that was registered to G. Joshi, finding used sheeting and tools coated in asbestos-containing drywall dust within it.

[60] The Officer issued orders against EHZ respecting the worksite for breach of the Necessary Precautions and Cleaning Equipment provisions and a stop work order. The Officer also issued a stop work order against EHZ that required AMK to stop using the vehicle.

[61] On January 9, 2020, while the worksite stop work was still in effect, an Officer attended the worksite and saw that certain equipment present during the first inspection was missing. EHZ explained that the equipment was removed so it could be used at another job. The Officer determined that this was a violation of the stop work order, and issued another order against EHZ for breach of the General Compliance Provision. The Officer imposed a \$2,500 administrative penalty against EHZ.

[62] EHZ sought review. The Review Board confirmed the orders and increased the administrative penalty to \$5,000.

***5500 Williams Road Worksite***

[63] R. Joshi supervised moderate to high risk asbestos abatement work carried out by EHZ at 5500 Williams Road. On August 10, 2020, the Officer found asbestos-containing drywall debris piled around the house and open bags of asbestos-containing materials in the yard. Within the worksite, the Officer saw there was no

wetting, no drop sheets covering the floor, and noted the presence of items that should have been cleared to avoid possible asbestos contamination.

[64] The Officer issued five orders against EHZ, including a stop work order and orders for breaches of the Safe Removal, Written Procedures, Extraneous Objects, and the Sheet Covering provisions, and imposed a \$5,000 administrative penalty.

[65] EHZ did not seek review of these orders or the administrative penalty.

***2931 McCallum Road Worksite***

[66] EHZ conducted asbestos abatement at the 2931 McCallum Road worksite and R. Joshi supervised this moderate to high risk work. On October 20, 2020, an Officer observed R. Joshi pushing a worker who had not donned proper protective equipment into the worksite. Within the site, the Officer saw other workers not wearing appropriate protective equipment. The decontamination facility was deconstructed and some of the tape sealing had pulled away from the air unit, resulting in inadequate ventilation. The doorway did not display a warning sign restricting access to the site, nor did it say that the worksite contained asbestos. EHZ failed to issue an air clearance certificate, and the inspection documents did not record deficiencies in a hot water tank. Large piles of asbestos-containing debris were piled on the property.

[67] The Officer issued six orders against EHZ, including a stop work order and orders for breaches of the Training and Supervision, Necessary Precautions, Secured Openings, Containment, and the Containment Inward Air Flow provisions. The Officer imposed an administrative penalty amount to \$20,000, noting that EHZ's conduct created a risk of serious injury, illness, or death.

[68] EHZ did not seek review of these orders or of the administrative penalty.

***867 Morrison Avenue Worksite***

[69] EHZ carried out moderate risk abatement work at 867 Morrison Avenue under the supervision of R. Joshi. The building had been damaged by fire. On March 18,

2021, an Officer found that the safety procedures were inadequate. Although there were asbestos-containing materials throughout the site, there was no fencing or signs to prevent access to it, and no workers were present.

[70] The Officer issued a stop work order and an order for breach of the Necessary Precautions provision against EHZ. The Officer imposed a \$10,000 administrative penalty against EHZ.

[71] EHZ did not seek review of these orders or of the administrative penalty.

### **Summary of Findings Relating to the Corporate Respondents**

[72] The Board has established reasonable grounds to believe that AMK, over a 32-month period, has been subject to 27 Orders and four administrative penalties totalling \$15,000.

[73] The Board has established reasonable grounds to believe that EHZ, over a 15-month period, has been subject to 27 Orders and five administrative penalties totalling \$45,000.

### **Summary of Findings Relating to the Individual Respondents**

[74] G. Joshi is an officer and supervisor of AMK. R. Joshi is a supervisor of both AMK and EHZ. In order for any individual respondent to be personally liable as an officer or supervisor, the Board must expressly plead a personal breach: *Skylite 2019* at paras. 92-93.

[75] With respect to officers, s. 27 of the Act provides:

27 Every director and every officer of a corporation must ensure that the corporation complies with the OHS provisions, the regulations and any applicable orders.

[76] This means that, if expressly pleaded, an officer may be personally liable for each of their corporation's breaches: see, for example, *Skylite 2019* at para. 796.

[77] With respect to supervisors, s. 23(2)(a)(ii) of the Act provides:

23 (2) Without limiting subsection (1), a supervisor must

(a) ensure that the workers under the supervisor's direct supervision

...

(ii) comply with the OHS provisions, the regulations and any applicable orders...

[78] This means that a supervisor is not personally liable for a corporation's breach of the Act but becomes personally liable if they fail to ensure worker compliance with the Act, Regulations or orders at a particular work site.

[79] Pursuant to s. 23, one personal order has been made against G. Joshi as a supervisor with respect to the 119 Avenue worksite. With respect to G. Joshi in his capacity as an officer of AMK, the Board expressly pleaded liability under s. 27. I conclude that G. Joshi is personally liable for 28 breaches of the Act.

[80] With respect to R. Joshi, two personal orders have been made against him relating to the AMK worksites at 123A Street and 119 Avenue. The Board pleads that R. Joshi failed in his capacity as a supervisor at three other worksites: 127B Street, 2050 Majestic Crescent, and 2931 McCallum Road, invoking s. 23(2)(a)(ii). I conclude that R. Joshi is personally liable for five breaches of the Act.

**If Reasonable Grounds to Believe Exist, are there Reasons to Decline Granting the Injunction?**

[81] Since I have found that there are reasonable rounds to believe that the respondents have breached the Act, the injunction should be granted unless the respondents can establish that the remedy is not appropriate.

[82] The respondents say an injunction should not be granted for three reasons: 1) they are in the process of complying with the Orders; 2) the Board has not established that less severe enforcement measures are inadequate; and 3) they have completed retraining.

[83] In *Skylite 2019*, this Court held that the fact that a person has complied with Board orders does not make a s. 97 injunction unnecessary:

802 I also take into consideration that many of the breaches here were the subject of remedial orders by Board inspectors, many of which were complied



with to the Board's satisfaction. However, while these remedies were often adequate to obtain compliance with these individual breaches, they were not sufficient to prevent them from the outset or from reoccurring. The number of breaches, and the repetitive nature of many of them, suggests that individual compliance orders made only when Seattle or Mike Singh are caught breaching the *Act* and *Regulation* has not dissuaded Seattle or Mike Singh from continuing to provide abatement services in a way that repeatedly gives rise to significant safety concerns.

[84] That reasoning applies with equal force in this case.

[85] The evidence amply demonstrates the ineffectiveness of less severe enforcement measures against the respondents. Commencing in January 2019, the Orders reflected the progressive enforcement model, from compliance orders to stop work orders and administrative penalties that increased in amount. The evidence shows that they were not effective.

[86] Against this factual background, I have no confidence that the retraining R. Joshi and G. Joshi were required to take will change the respondents' pattern of conduct. They completed that retraining in June 2020, yet Orders against worksites under their supervision continued. They were required to take further retraining in the fall of 2021 because of further breaches, and the petition was filed in January 2021. This case is not analogous to *Ace Environmental*, where the Court declined to grant an injunction against individual respondents because the evidence demonstrated that the orders and administrative penalties were changing the individual's conduct. Nor is this case analogous to *Skylite 2019*, where Shawn Singh immediately rectified his single breach of the Act: para. 805.

[87] AMK's and EHZ's breaches are akin to the breaches of the corporate respondent in *Skylite 2019*, which Marzari J. characterized as repeated and egregious: para. 801. On the evidence before me, AMK committed 27 breaches over 32 months, five of which were repeat violations. EHZ committed 27 breaches over 15 months, 15 of which were repeated.

[88] I am satisfied that the Board has met the test for a s. 97 injunction against all of the respondents.

**What Terms are Appropriate for the Injunction?**

[89] The Board seeks an injunction under ss. 97(1)(c) and (d), restraining the Respondents from committing or continuing to commit breaches, and requiring compliance with the following provisions:

- (a) The Act, Part 2, Divisions 4, 11, and 12; and
- (b) The Regulations, Parts 2-4, 6, 8, and 20.

[90] The respondents argue that the order sought is overbroad because it includes Divisions 11 and 12, which relate to the Board's investigative and enforcement powers.

[91] The terms of a s. 97 injunction may be very broad. In the *Seattle 2017 Appeal*, the Court of Appeal held that a broad order restraining the respondents from breaching the entire Act and Regulation was appropriate:

106 I would also note that this is somewhat of an extraordinary case. The matter before the court involves a lengthy and continuing history of multiple types of workplace conduct said to be of a very serious nature. It involves for-profit actors with statutory duties in a highly regulated workplace. There have been multiple Board orders, compliance reports and administrative penalties. In such circumstances, an order requiring compliance with the statute and regulations may be viewed somewhat differently than matters involving isolated incidents or infrequent conduct.

[92] Like the respondents in the *Seattle 2017 Appeal*, the respondents in this case are for-profit actors subject to statutory duties in a highly regulated industry. They have been subject to multiple orders and penalties over a relatively short period of time. While the Divisions to which the respondents object confer powers on Officers, they also require employers and workers to comply with Officers' requests and orders. Some sections, such as the requirement for employers to post inspection reports and to prepare compliance reports impose specific responsibilities on employers and others. Inclusion of these divisions does not make the order sought overbroad.

**CONCLUSION**

[93] I grant the petition and make the following order:

Pursuant to s. 97(1)(c) and (d) of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [Act], EHZ Pre-Demolition Ltd., AMK Environmental (2017) Ltd., Rajesh Joshi, and Gagandeep Joshi are restrained from committing or continuing to commit contraventions of the following provisions of the Act and the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 [Regulation]:

- i. Act, Part 2, Divisions 4, 11 and 12; and
- ii. Regulation, Parts 2, 3, 4, 6, 8 and 20.

[94] The Board shall have its costs on Scale B.

“Iyer J.”