

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. R.D. Longard Services Ltd., 2015 NSPC 12

Date: February 17, 2015

Docket: 2690136 and 2690137

Registry: Halifax

Between:

Her Majesty the Queen

v.

R.D. Longard Services Limited

**Decision on Admissibility of the “Safety Manual” Binder, a Hazard
Assessment Logbook, and Two Notebooks**

Judge: The Honourable Judge Anne S. Derrick

Heard: February 5 and 6, 2015

Written Submissions: February 9 and 11, 2015

Decision: February 17, 2015

Charges: section 74(1) of the *Occupational Health and Safety Act*,
R.S.N.S. 1996, C. 7 x 2

Counsel: Peter J. Craig, for the Crown

Robert C. Hagell, for the Defendant

By the Court:

Introduction

[1] This decision deals with whether certain documents located during the trial of the defendant are admissible in evidence. The defendant, R.D. Longard Services Limited, brought the application. The documents were found by Greg Gower, an employee of the company, in circumstances I will be describing. The documents are a white binder with tabs entitled “Safety Manual”, a Hazard Assessment logbook, and two notebooks.

[2] R.D. Longard Services (“Longard”), a commercial and residential electrical services company, was charged under the *Occupational Health and Safety Act* following the tragic electrocution death on May 21, 2013 of Chris Boyle, a journeyman electrician employed by Longard. Longard’s trial commenced on February 2, 2015. On February 5 the Defence advised that a binder had been located which Longard wanted to tender as evidence. The Crown has opposed the admission of the binder submitting that it is inadmissible hearsay. Evidence about the binder and the Hazard Assessment logbook was heard at a *voir dire* and the parties agreed that I can also consider any evidence from the trial proper. The relevant trial evidence is the testimony of Joshua Francis, Jonathan Matthews, and Randy Longard, all of whom were called as witnesses in the Crown’s case.

Procedure for Dealing with This Application

[3] The discovery of the white binder, the Hazard Assessment logbook, and the two notebooks was unanticipated. In order to provide the parties with time to make submissions on the issue of admissibility, evidence was heard in a *voir dire* on February 5 and 6, with written submissions received from the Defence on February 9 and from the Crown on February 11. The Crown had also made some initial submissions in an email on February 6. In an email to counsel on February 9, I raised the issue of the hearsay evidence of Jonathan Matthews and Randy Longard from the trial, and Greg Gower who testified at the *voir dire*. In due course, I will discuss the written submissions and the issues they raise and address.

Facts Relating to the “Safety Manual” Binder

[4] At the time of Mr. Boyle’s death, Longard had two other employees – Greg Gower and Jonathan Matthews. Randy Longard himself worked on certain jobs and, at the time of Mr. Boyle’s death, the company was providing a work placement experience for a Nova Scotia Community College student, Joshua Francis.

[5] Mr. Francis testified that in May 2013 he was working at the company with Mr. Boyle and Mr. Matthews on an unpaid work term. Asked about the company’s safety policies and practices, Mr. Francis said he was not shown anything in writing and received no official safety orientation. He did not see any safe work practice manuals during the four weeks while he worked at Longard. Any safety instruction was provided by Mr. Boyle and Mr. Matthews at the job sites. Mr. Francis described both men as “great” on-the-job teachers.

[6] By May 2013 Jonathan Matthews had been working at Longard for at least six months. He testified there were no written safe work practices at the company although he knew Mr. Boyle had been putting together a safety program. It was his evidence he knew this because he had overheard Mr. Boyle talking about it as it was necessary for a subcontract that Longard was going to do. Mr. Matthews says he knew Mr. Boyle’s designation as the company’s safety officer was “in the works.”

[7] Mr. Matthews testified that in May 2013 he was aware that Mr. Boyle had been working on the safety project for a couple of months. He never saw anything and stated that Mr. Boyle had done the work “generally at home.”

[8] Mr. Matthews worked closely with Mr. Boyle and had little direct contact with Randy Longard on a day-to-day basis. He recalled Mr. Longard being present at a job site in Scotia Square at the end of 2012. It was an asbestos job involving changing out lights. Mr. Matthews and Mr. Boyle were on that job, doing the work on the weekends.

[9] Randy Longard testified that prior to 2012, R.D. Longard Services did not have a safety manual but in 2012, work on a safety program was started. He and

Mr. Boyle took a COR safety course together through the Nova Scotia Construction Safety Association (NSCSA) in the fall of 2012. It was Mr. Longard's evidence that the course "starts you off to get safety practices for your company." The courses were: Principles of Loss Control; Hazard Identification and Control; P.L.C. COR Evaluation; Leadership for Safety Excellence, and Safety Orientation, an online course. Mr. Boyle took all five courses. (*Exhibit 10, Course Certificate Report*)

[10] In December 2012, Mr. Longard asked Mr. Boyle to develop a safety manual for Longard. A catalyst was the requirement for a safety program by a company Longard was contracting with. This had not been raised before in relation to any jobs Longard had done. The contractor told Mr. Longard they would not hire any sub-contractors who did not have a safety program.

[11] In December 2012, Mr. Longard designated Mr. Boyle the safety officer for Longard. He did this because Mr. Boyle was the foreman on the Longard jobs and was supervising employees, had taken safety courses, and was an experienced and highly safety-conscious Red Seal electrician. The designation meant that Mr. Boyle's job responsibilities included taking care of safety for the company. Mr. Longard testified that the role of a company's safety officer was described in the NSCSA course material. Longard did not develop its own description of the role.

[12] It was Mr. Longard's evidence that he and Mr. Boyle took the NSCSA course for the basics, "an idea on how to prepare a manual" which the NSCSA would then review. After the NSCSA approved the company's safety program, the Association would certify the company as "safety certified." Mr. Longard testified that Mr. Boyle was going to create the manual after getting the basics from the NSCSA courses.

[13] Mr. Longard never received a draft of the manual from Mr. Boyle. From time to time he asked Mr. Boyle about it. Mr. Boyle told him he was working on it. Mr. Longard did not push Mr. Boyle on the manual or insist on seeing a draft. He understood from the NSCSA that the timetable being followed for the preparation of the manual was fine as long as the safety program was being worked on. The NSCSA had recommended a time frame for completion of six to ten months.

[14] Mr. Longard testified that on slow days Mr. Boyle would stay at home and work on the manual. He trusted Mr. Boyle and did not ask to see what he had done.

[15] By April 2013, Mr. Boyle told Mr. Longard he was close to being done and in early May said he just had a couple of things left to do. Mr. Longard assumed the manual would be finished before the end of the month. He understood Mr. Boyle had been working on it since they took the NSCSA courses.

[16] When Mr. Longard was asked whether there were any other safety documents he was aware of, he testified that there was “something in the van for the toolbox talks.” It was his evidence that “the forms” were completed a few times by employees in December 2012. These talks appear to have related to hazard identification. Mr. Longard was only present for toolbox talks in relation to a job the company did at the Grant Thornton offices on weekends. I find this to have been the job Mr. Matthews testified about – the “asbestos” job that was being done on weekends. Another Longard employee, Greg Gower, also worked on that job. I will review his evidence shortly.

[17] Mr. Longard testified that the safety courses he and Mr. Boyle took at the NSCSA taught them about tool box talks and maintaining records for them. They learned that records of the tool box talks were to be kept in a binder that was provided with the course. It was Mr. Longard’s evidence that “Chris had one in the van.” On cross-examination by Mr. Hagell (Mr. Longard was subpoenaed as a Crown witness at trial), Mr. Longard said: “When we took the course they gave us a binder to put everything in to.”

[18] It was apparent from Mr. Longard’s evidence that he trusted Mr. Boyle’s skill and integrity and relied on him to get jobs done once he was given the instructions for them. “...I’d give him the plans and he’d get it done...that’s why I hired him.” Mr. Longard testified that Mr. Boyle had been a part-time employee with Longard before being hired full-time. He thought that had happened in the fall of 2011.

[19] On cross-examination, Mr. Longard was shown a Longard business record from 2013 (*Exhibit 9, Timesheet R.D. Longard*), time records submitted by Mr. Boyle for March 11 – 15, March 18 -22, April 1 – 5, April 22 – 26, and April 29 – May 3. For each of these weeks, in addition to entries for specific jobs, work on

“safety program” is indicated – 1.5, 6, 7, 8, and 1 being the hours noted for the respective weeks. It was Mr. Longard’s evidence that Longard paid Mr. Boyle for the hours he claimed for working on the “safety program.” Mr. Longard testified he understood the entries to mean that Mr. Boyle “was at home working on the safety program and I paid him for it.”

[20] Mr. Longard testified that although he never saw the manual he had asked Mr. Boyle to prepare, he knew Mr. Boyle to be honest and would not have indicated hours on his time sheets that he had not put in. In Mr. Longard’s words, he knew Mr. Boyle “wouldn’t bill for something he didn’t do.”

[21] Longard also paid for the NSCSA courses that Mr. Longard and Mr. Boyle took and paid Mr. Boyle for his time while he took the courses.

[22] The foregoing was all evidence from the trial. One witness was called at the voir dire by the defendant – Greg Gower. At the relevant times, Mr. Gower was an employee with Longard, having worked with the company since 2003 doing electrical service work.

[23] Mr. Gower testified that Longard owned a one ton long wheel base van which Mr. Boyle used when doing the electrical work, carrying materials, ladders, and tools for the jobs. After Mr. Boyle’s death, Mr. Gower didn’t use the van right away as he had access to the company’s half-ton truck and then used his own truck. Mr. Gower used the van a bit in the winter of 2013. Since the spring of 2014 the van has been parked in Mr. Gower’s driveway as it had broken down.

[24] When Mr. Boyle died, the van still had materials in the back which Mr. Gower gradually used over time. He never touched the front of the van by the driver’s and passenger’s seats. He made a point of leaving it as Mr. Boyle had kept it. He testified: “I kept the front of the truck (sic) exactly how I found it - because that’s how Chris had it, I left it that way.”

[25] There was a milk carton in the front of the van by the seats. Mr. Gower testified that it contained hats, gloves, and invoices. Very recently, when Mr. Boyle started to clean out the van in order to finally get rid of it because he could no longer accommodate it in his driveway, he took the carton into his basement to sort out its contents. This past February 3, at the bottom of the carton under a number

of items, Mr. Gower found a white binder entitled “Principles of Loss Control Safety Manual.”

[26] Mr. Gower had never seen the binder before and is not familiar with its contents. It was his evidence that he knew Mr. Boyle was working on a safety program. He knew that because Mr. Boyle had mentioned it to him. Mr. Gower had never seen him working on it and never discussed the specifics with him.

[27] Crown and Defence admitted as a fact that after Mr. Boyle’s death, a search was done at his home by his family. No safety program documents or manual were located.

Facts Relating to the Notebooks and the Hazard Assessment Logbook

[28] In addition to the white “Safety Manual” binder, Mr. Gower also found three smaller booklets in the milk carton from the van: a Hazard Assessment logbook from the Cogswell Tower job in 2012, and two other notebooks with writing in them. These have been identified by what presumably are brand names: a “Get” notebook and a 2012 Greybar notebook which appears to be a daily calendar.

[29] The only one of these three booklets that Mr. Gower could shed any light on was the Hazard Assessment logbook. He associated it with the asbestos job that Longard worked on in Cogswell Tower. Mr. Gower worked on that job with Mr. Longard, Mr. Matthews, and Mr. Boyle. He recalls the area was cordoned off and they all had to wear protective suits to do the work. Mr. Boyle supervised the job and gave directions on what needed to be done. Mr. Gower signed the Hazard Assessment logbook on specific dates and identified his signature on November 3, 10, and 24 and December 1, 2012.

[30] The Hazard Assessment logbook has some identifying features. It is an NSCSA booklet with entries on pages numbered 13451 to 13456 and refers to a job on the 11th floor of Cogswell Tower.

[31] None of the evidence explains the origins of the “Get” notebook or the Greybar 2012 calendar notebook. An examination of the “Get” notebook reveals handwritten notes of jobs and supplies. The Greybar calendar notebook contains handwritten notations of jobs. In some places hours are noted. For October 25 and

26, “safety course” is noted. There is no direct evidence about who made the entries in these notebooks.

The Issue of the Admissibility of the “Safety Manual” and Other Booklets

[32] The issue raised by this application is whether the “safety manual” binder and any of the other booklets are admissible in evidence at this trial. Answering that question involves drilling through a layer of prerequisite issues as I will explain.

[33] The Crown and Longard have approached the discovery of the “safety manual” binder and the other booklets as a hearsay issue. It is the Crown’s submission that the binder and the booklets are inadmissible hearsay and can only be received as evidence if they satisfy the necessity and reliability requirements of a *Khelawon* application. (For my discussion of what constitutes a *Khelawon* application see *R. v. R.D. Longard, 2015 NSPC 7.*) The Crown submits that Longard wants the “safety manual” binder admitted into evidence so it can point to it as evidence of the company’s due diligence in relation to safety. This says the Crown, animates the rule against hearsay.

The Admissibility of Statements Made by Mr. Boyle about Working on the Safety Manual

[34] The Crown submits the evidence that can be used to determine the admissibility of the “safety manual” binder and the other booklets is limited.

[35] On February 9, in an email to Mr. Craig and Mr. Hagell, I raised the issue of the admissibility of statements that certain witnesses attributed to Mr. Boyle. I indicated that I viewed the evidence of Mr. Boyle talking about working on a safety manual – evidence (which I described earlier) provided by Mr. Matthews, Mr. Longard, and Mr. Gower – as hearsay, requiring me to determine if it could be admitted under a principled analysis.

[36] Mr. Craig responded to this issue in his submission of February 11. It is his position that the utterances/statements that Mr. Matthews, Mr. Longard, and Mr. Gower attribute to Mr. Boyle “can only be considered...as evidence of the source of Mr. Matthews’ knowledge (which is not hearsay) as opposed to the truth of what he attributes to Mr. Boyle (which is pure hearsay).” In Mr. Craig’s submission I

can “properly consider” and draw inferences from Mr. Longard’s trial testimony about what he said and did in relation to the safety program/manual and what he assigned to Mr. Boyle. But, says Mr. Craig, whatever “utterances/statements Mr. Longard attributes to Mr. Boyle are only evidence of Mr. Longard’s knowledge of the state of affairs at the time...” Mr. Craig notes that this evidence went in at trial as state-of-mind evidence. In his submission, use of these statements as evidence that Mr. Boyle was actually working on a safety manual, that is, as evidence for the truth of what Mr. Boyle said, constitutes inadmissible hearsay. Mr. Craig says such evidence cannot be used to support the admissibility of the documents which are the subject of this Defence application. Mr. Craig says proposing to use Mr. Boyle’s statements to Mr. Longard and Mr. Gower (and made in Mr. Matthews’ presence) as evidence in support of the admissibility of the “safety manual” and other booklets amounts to “hearsay supporting hearsay.”

[37] The issue of what use can be made of the evidence from Mr. Matthews, Mr. Longard, and Mr. Gower about what Mr. Boyle said is an issue I will have to deal with before I can proceed to address whether the “safety manual” binder and other booklets are admissible.

Analysis of the Hearsay Statements Issue

[38] The starting point for my analysis is a recognition that the Boyle statements are hearsay. As hearsay they are presumptively inadmissible for the truth: that is, they cannot be treated as evidence that Mr. Boyle was in fact working on a safety manual unless they qualify under a traditional exception to the hearsay rule or are admissible as a principled exception. The Defence wants the statements admitted as evidence that what Mr. Boyle said was true, that he was preparing a safety program for Longard as Mr. Longard had requested.

[39] None of the traditional exceptions to hearsay apply to the evidence of Mr. Matthews, Mr. Longard, and Mr. Gower about statements they attribute to Mr. Boyle.

[40] I find it is appropriate to consider whether the statements are admissible on the basis of a principled exception to the prohibition against hearsay. This requires a *Khelawon* analysis (*R. v. Khelawon*, [2006] S.C.J. No. 57) involving an assessment of the evidence in relation to the criteria of necessity and reliability.

The Principled Analysis

[41] I disagree with Mr. Craig that the Boyle statements can only be used to show how the witnesses came to understand that Mr. Boyle was working on a safety manual, in other words, as the source of their knowledge. The principled exception to the hearsay rule will permit the admission of Mr. Boyle's statements for their truth if the Defence succeeds in showing, on a balance of probabilities that their admission is (1) necessary and (2) reliable. The admissibility of the statements is an issue of threshold reliability. Threshold reliability focuses on the admissibility of the statements not on whether they will be relied on for deciding the due diligence issue which the Crown says it can be anticipated the Defence will raise. In addressing the matter of threshold reliability and whether the statements should even be allowed into evidence,

... all relevant factors should be considered, including, in appropriate cases, the presence of supporting or contradictory evidence. In each case, the scope of the inquiry must be tailored to the particular dangers presented by the evidence and limited to determining the evidentiary question of admissibility. (*Khelawon*, paragraph 4)

Necessity Criterion

[42] The necessity requirement has been met: Mr. Boyle is deceased and not available to testify about the statements he is purported to have made. I am satisfied that is dispositive of the necessity requirement. There is no other source for the statements Mr. Boyle is said to have made other than through the witnesses who have testified.

The Reliability Criterion

[43] A hearsay statement may be admitted "if, because of the way in which it came about, its contents are trustworthy, or if circumstances permit the ultimate trier of fact to sufficiently assess its worth." (*Khelawon*, paragraph 2)

[44] What is the evidence that supports or undermines the reliability of the statements Mr. Boyle is said to have made to Mr. Matthews, Mr. Longard, and Mr. Gower? In my analysis I have considered the following:

- Mr. Longard testified that he and Mr. Boyle took the NSCSA courses in order to acquire the basics for preparing a safety program for R.D. Longard Services, Limited;
- Mr. Longard testified that the safety program was a requirement of a large construction company Longard was contracting with;
- Exhibit 10 establishes that Mr. Boyle did take safety-related courses through the NSCSA;
- Mr. Longard testified that he and Mr. Boyle took the NSCSA courses for the basics, “an idea on how to prepare a manual” which would then be reviewed and approved by NSCSA;
- After taking the courses, Mr. Longard asked Mr. Boyle to develop a safety manual for the company;
- Mr. Longard testified that he designated Mr. Boyle the safety officer for Longard because of Mr. Boyle’s qualifications: he supervised other employees, had taken safety courses, and was an experienced and highly safety-conscious Red Seal electrician;
- Mr. Longard testified that he trusted Mr. Boyle to do the work he was directed to do;
- Mr. Longard confirmed that Mr. Boyle submitted time sheets to R.D. Longard Services Limited (*Exhibit 9*) that included work in April and May 2013 identified as “safety program”, a total of 23.5 hours over a five week period, and Mr. Longard paid Mr. Boyle for those hours;
- It was Mr. Longard’s evidence that Mr. Boyle was trustworthy and would not have submitted time sheets for payment if he had not done the work claimed;
- Mr. Boyle was known to be safety-conscious by Mr. Matthews, who had worked closely with him for six months prior to his death;
- The evidence of every witness who worked with Mr. Boyle – Mr. Matthews, Mr. Gower, Mr. Longard, and the NSCC student, Joshua Francis – confirms that he was a trusted and highly regarded colleague and employee;

- The undisputed evidence is that there was no formal safety manual or program in place at Longard at the time of Mr. Boyle's death.

[45] I find the evidence I have just described from Mr. Matthews, Mr. Longard, and Mr. Gower to be credible. The evidence establishes that Longard needed a safety program to work with a large construction company. Longard did not have a safety manual/program in place. Mr. Boyle, with Mr. Longard, took courses to acquire the basics for developing a safety manual. Mr. Longard asked Mr. Boyle, a trusted, reliable, and experienced employee, to develop the manual. Mr. Boyle, known to be safety-conscious, was the obvious choice to do this work. Mr. Boyle submitted time records for April and May 2013 that included time spent working on the safety manual (itemized as "safety program"). Mr. Longard accepted these time records as accurate reflections of what Mr. Boyle had been doing and paid him accordingly.

[46] The evidence I have reviewed amply satisfies me that the hearsay statements attributed to Mr. Boyle by Mr. Matthews, Mr. Longard, and Mr. Gower that he was working on a safety manual/program for the company are trustworthy. I find the reliability requirement for these statements is satisfied and the statements qualify for admission into evidence as a principled exception to the prohibition against hearsay. I am admitting the statements for their truth, that is, that Mr. Boyle was in fact working on a safety manual as requested by Mr. Longard.

The Admissibility of the "Safety Manual" Found in the Longard Van

[47] As I noted earlier in these reasons, the Crown opposes the admission of the "safety manual" into evidence. Mr. Craig set the Crown's position out in an email on February 6: (1) there is no evidence that establishes whether the manual is "an original document or, alternatively, an accurate copy"; (2) there is no direct evidence to establish the identity of the author; (3) there is no evidence that anyone saw the manual or is familiar with its specific contents; (4) there is no evidence that will permit the manual to be admitted as a Longard business record, "even taking a modern *Ares v. Venner/Khelawon* approach; and (5) there is no evidence to establish "the requisite reliability" of the manual.

[48] I understand the Defence position is that the binder found in the milk carton from the van is the safety manual Mr. Boyle had been asked by Mr. Longard to

prepare. Mr. Hagell submits the evidence supports a finding that the binder is the safety manual.

[49] I find that the admissibility of the “safety manual” is not a hearsay issue. The issue is one of identification: whether the binder found by Mr. Gower in the bottom of the milk carton is the safety manual that Mr. Longard had asked Mr. Boyle to prepare. In other words, is it that thing? That is what I have to determine on the evidence before me. If it is that thing, that safety manual, then a reasonable inference can be made that Mr. Boyle was familiar with its contents, because he prepared them. Whether the contents are true is not the issue. What I am dealing with is whether the evidence supports the inference that the discovered binder is the safety manual that Mr. Longard had tasked Mr. Boyle to develop. If admitted into evidence, the white binder is the evidence of Chris Boyle’s safety manual/program work product for Longard.

[50] I am satisfied the evidence establishes that the white binder is the safety manual Mr. Longard asked Mr. Boyle to prepare. I have admitted the statements made by Mr. Boyle to Mr. Longard and Mr. Gower and in Mr. Matthews’ presence, which indicate that Mr. Boyle was developing a safety manual for the company. The fact that no one ever saw the safety manual/program Mr. Boyle was working on, that he provided no drafts and did not share its contents with any of his co-workers or Mr. Longard, does not undermine my confidence that the white binder is Mr. Boyle’s safety manual. No one, including Mr. Longard, asked to see what Mr. Boyle was working on. He was only ever asked how the work was going. The evidence indicates Mr. Boyle was trustworthy and reliable: I accept that if he said he was working on a safety manual, he was doing so.

[51] A number of facts satisfy me that the binder found in the Longard van is the safety manual Mr. Boyle had been working on:

- A search by Mr. Boyle’s family of his home after his death did not turn up any safety-related material which begs the question: where was Mr. Boyle’s “safety manual/program” work product?
- The van containing the milk carton in which Mr. Gower found the “safety manual” binder had been primarily used by Mr. Boyle. After his death it was minimally used by Mr. Gower. The milk carton itself had not been disturbed.

Mr. Gower made the conscious decision to leave the front of the van as it had been when Mr. Boyle was alive. Although he did not say so explicitly, Mr. Gower's testimony in the witness box left me with the distinct impression that he did not touch anything in the milk carton – or anything in the front of the van for that matter – out of respect for his dead colleague, until it became necessary to clean the van out. When he did so, he discovered the white binder.

- Mr. Boyle was working on a safety manual. This is confirmed by the evidence of Mr. Longard, Mr. Matthews, and Mr. Gower that he told them (or in Mr. Matthews' case, was overheard to say) that he was working on a safety manual for the company.
- Mr. Boyle submitted time sheets which Mr. Longard paid which included time for working on a "safety program" in April and May 2013. I accept Mr. Longard's evidence that these time sheets would have been a truthful record of Mr. Boyle's time, that Mr. Boyle would not have billed Longard for work he did not do.
- The "safety manual" binder has a front cover that includes the logo of the Nova Scotia Construction Safety Association, the inscription "Industry Funded NSCSA" and the title "Principles of Loss Control SAFETY MANUAL". I know from the evidence that: (1) Mr. Boyle took an NSCSA course entitled: "Principles of Loss Control"; and (2) Mr. Longard testified that when he and Mr. Boyle took the NSCSA courses, the NSCSA gave them "a binder to put everything in to".
- There are several entries in the manual itself that support the reasonable inference the binder is the manual Mr. Boyle was working on. Page 1 of the Manual indicates "Health and Safety Policy R.D. Longard Services Ltd." Behind one of the tabs is a document entitled "Employee Training Records" with one sheet filled out. On this sheet under "employee name", the name Chris Boyle is typed. Under trade/occupation is indicated "Electrician" and under Date of Hire, "Sept. 2008". Names of courses are listed with the dates completed.
- There are no other names of Longard employees indicated in the Manual. That strongly supports the reasonable inference that Chris Boyle prepared the entries on this one page, filling in the information about himself,

including the NSCSA courses he had taken. All the information supplied on the one sheet with Chris Boyle's name is information relating to Mr. Boyle. The five courses he took at the NSCSA are listed. And while I don't have any precise evidence concerning when Mr. Boyle was hired by Longard, I know from Mr. Longard's testimony that Mr. Boyle worked part-time at first and was then hired full-time, he thought around 2011. The "Date of Hire" entry on the "Chris Boyle" page is consistent with this evidence.

- The binder can reasonably be characterized as a safety manual. Its contents accord with what it can reasonably be inferred Mr. Boyle was asked to prepare for Longard.
- It is apparent from looking at the contents of the binder that a considerable amount of work was done. This is consistent with Mr. Boyle's indications to Mr. Longard that he was making progress on its completion.

[52] I am amply satisfied the evidence supports the reasonable inference that the binder from the Longard van is the safety manual that Mr. Boyle had been working on for the company. It is admissible in evidence on that basis.

[53] In concluding my analysis of the admissibility of the white binder, the safety manual, I note the comment at paragraph 64 of the Alberta Queen's Bench decision, *R. v. MacMullin*, [2013] A.J. No. 1454, a case Mr. Craig provided:

It is crucial that a court not lose sight of the fact that the document may be admissible for a purpose other than to prove the truthfulness of its content. Some documents are admitted because it is only the existence of the document or its receipt, not the proof of its content that is the important factual issue before the court.

[54] As noted in *McMullin*, the "crucial fact" may not be what the document says, it is "simply that the document *exists*. The document is admitted – not as an exception to the hearsay rule but as direct evidence." (*paragraph 65*)

The Other Documents Found in the Milk Carton from the Longard Van

[55] I am satisfied there is evidence to support the reasonable inference that the Hazard Assessment logbook relates to the 2012 "asbestos" job Mr. Matthews, Mr.

Longard, and Mr. Gower described working on at Scotia Square (Cogswell Towers.) Mr. Gower's evidence, which I accept, is that Mr. Boyle supervised that job and provided direction on what needed to be done and how it was to be done. Mr. Gower testified that Mr. Boyle provided the Hazard Assessment forms which were read by the other workers at a job meeting before the work in the cordoned-off area was started. Mr. Gower testified to signing the Hazard Assessment Logbook pages on the days he worked. It appears that other workers did so as well although there has been no identification of individual signatures.

[56] I find that the Hazard Assessment logbook is admissible in evidence at this trial. The Crown has conceded that the logbook was authenticated by Mr. Gower to the extent of identifying his own signatures in it.

[57] As for the other two notebooks – the “Get” notebook and the 2012 Greybar calendar notebook – it is reasonable to infer that these notebooks were Mr. Boyle's. There is no evidence that ties these documents to anyone else at Longard, and more significantly, I am satisfied to find, based on Mr. Gower's evidence about locating them with the other undisturbed contents of the milk carton, that they too were prepared by Mr. Boyle. However, unlike the white binder and the Hazard Assessment logbook, I have heard no evidence about the notebooks at all beyond where they were found. Other than the reasonable inference that the entries indicate jobs and materials, there is really nothing I can say about their contents. That goes to the issue of what weight these two notebooks can be given in the event they have any relevance at all to the issues to be determined at this trial.

Summary of My Findings

[58] I find the Safety Manual binder, the Hazard Assessment logbook, and the two other notebooks to be admissible at this trial.