IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. R.D. Longard Services Ltd.,

2015 NSPC 20

Date: April 17, 2015

Docket: 2690136 and 2690137

Registry: Halifax

Between:

Her Majesty the Queen

v.

R.D. Longard Services Limited

Trial Decision

Judge: The Honourable Judge Anne S. Derrick

Heard: February 2, 3, 4, 5, and 6; March 9 and 10, 2015

Written Submissions: March 20 (R.D. Longard Services); March 26 (Crown)

Decision: April 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] R.D. Longard Services Limited ("Longard"), a commercial and residential electrical services company, is on trial for offences charged under the provincial *Occupational Health and Safety Act*. The charges were laid following the tragic electrocution death on May 21, 2013 of a Longard employee, Christopher Boyle. Mr. Boyle was working at a job site at 201 Chain Lake Drive when he was electrocuted.

[2] R. D. Longard is charged that as Mr. Boyle's employer it failed, pursuant to section 13(1)(c) of the *Occupational Health and Safety Act*, to take "every precaution reasonable in the circumstances to provide such information, instruction, or supervision" as necessary to the health and safety of Mr. Boyle thereby committing an offence contrary to section 74(1) of the *Act*.

[3] R.D. Longard is also charged that as Mr. Boyle's employer it failed, pursuant to subsection 120 of the *Occupational Health and Safety General Regulations*, "to ensure that an electrical installation was serviced, repaired or dismantled in accordance with the latest version of CSA standard CSA C22.1, 'Canadian Electrical Code Part 1', Safety Standard for Electrical Installations" thereby committing an offence contrary to section 74(1) of the *Occupational Health and Safety Act*.

[4] Longard vigorously contests the charges and submits that it bears no responsibility for Mr. Boyle's electrocution, noting that he was a very experienced journeyman electrician who was trusted to work independently. Longard says it was not reasonably foreseeable that such an experienced, responsible electrician would work on a live electrical system.

[5] The essential issue in this case is whether the fact that Chris Boyle was an experienced and careful electrician is enough to absolve Longard of responsibility under the *Occupational Health and Safety Act*. Did Longard have any obligation in law to have done more than it did to protect Mr. Boyle's health and safety in the workplace?

Facts

[6] The job Mr. Boyle was working on when he was killed was a subcontract for Suncoast Construction. It involved installing the electrical service for a retail space that was being created for a new tenant in a small strip mall at 201 Chain Lake Drive in the Bayers Lake Industrial Park. Mr. Boyle was at the job site on May 21 with Jonathan Matthews, another Longard electrician, and Joshua Francis, a Nova Scotia Community College student who was on an unpaid work term with Longard.

[7] The electrical meters for all the tenants were located in a dedicated electrical room at the mall site. The power came from an outside pole to a large pad-mounted transformer situated outside the building which housed the electric room. The operating voltage of the meter cabinet, also known as a "board", was 600 volts.

[8] On May 21 Mr. Boyle went to 201 Chain Lake Drive with Mr. Matthews and Mr. Francis to finish tying down an electrical feeder cable for the new electrical service being installed. The three men went into the electrical room to do the work. There is no dispute that Mr. Boyle on this occasion worked on the electrical cabinet while it was live. This explains how he was electrocuted.

[9] When they got to the job site on May 21 in the early afternoon, Mr. Boyle and Mr. Matthews took the face plate off the compartment - "cell" - that needed to be accessed. (*Exhibit 3, Photographs 1508 and 1509*) Because the "cell" was at the bottom of the electrical cabinet, in order to work on it Mr. Boyle lay on the floor mostly on his back with his arms extended into the opening, reaching toward the back of the cabinet where the cable was located. In the back of the board were the "bus bars" which were energized when the system was on. (*Exhibit 3, Photographs from the scene taken on May 22, 2013, Photograph 1541*) The bus bars were "in very close proximity to one another at the bottom of the Switchboard." (*Exhibit 2, Expert Report of Wentzell Engineering Limited, - the "Wentzell Report", page 6*)

[10] Mr. Boyle was talking to Mr. Matthews and Mr. Francis when they saw his body suddenly shoot out straight. They shouted his name but he was unresponsive. They pulled him away from the cabinet, and Mr. Matthews put Mr. Boyle in the recovery position and began CPR. He and Mr. Francis did everything they could to save Mr. Boyle as did the paramedics with EHS when they arrived, but it was all to no avail.

[11] Mr. Boyle's knuckles on one hand were bloody indicating his hand had come into contact with the bus bars causing his electrocution. (*Wentzell Report, page 7*) As confirmed by Mr. Matthews and Mr. Francis, Mr. Boyle was working without protective equipment or clothing.

[12] A wiring inspector for Nova Scotia Power (NSP), Peter Coxworthy, was at the site the day after the tragedy and observed that the switches for the 600 volt electrical board were in an "on" position. (*Exhibit 3, Photographs 1508, 1509, 1510*) The system was de-energized from outside by a Nova Scotia Power utility crew.

[13] The electrical work Mr. Boyle had been doing at 201 Chain Lake Drive was finished by Harbourview Electric. Eugene LeBlanc, the owner of Harbourview, testified that the work was done on a Sunday so the electrical system could be shut off with no inconvenience to the mall tenants.

[14] Mr. LeBlanc testified that the cell Mr. Boyle had been working on was "difficult" because it is deep, requiring an electrician to reach in quite far to the back. Mr. LeBlanc said this could be "a good foot" or even as much as fifteen inches. As I have noted, the cell was also at the bottom of the electrical cabinet. The job involved moving wires around, terminating the neutral wire and putting three "hot" wires into the meter socket. At 600 volts, it was a high amperage cabinet.

[15] Mr. LeBlanc testified that it took a couple of hours to complete the "hands-on work" on the electrical installation. The "cell" Mr. Boyle had been working on was very congested with a lot of wires that had to be moved out of the way. Terminating the neutral involved stripping insulation away and tightening it down. In Mr. LeBlanc's opinion it would have been necessary to wear protective equipment to work on the system while it was live.

[16] There was nothing about the design of the electrical board that made it necessary to work on it live. It was Mr. LeBlanc's evidence that the first choice is to work on a system that has been de-energized. With notice to the tenants, a system can be de-energized.

[17] Scott Clarke, the president and owner of Suncoast Construction, testified that it was his expectation the electrical work would be done after-hours or on a weekend when the electrical service to the businesses in the mall could be shut down without disrupting the tenants. This was contemplated by the scope of work details provided by Suncoast to Longard. The scope of work provided that some after-hours work was required. (*Exhibit 5*) The scope of work also stipulated: "The work of adjacent tenants shall not be interrupted at any time."

[18] Mr. Clarke had spoken to Randy Longard on the morning of May 21 about cleaning up some construction debris on the floor at the site but he made no request for the electrical work being done that day. The contract provided Longard until May 31, 2013, another 10 days, to complete the electrical work.

[19] Mr. Clarke was familiar with Chris Boyle. He knew him to be an experienced electrician. Eugene LeBlanc also knew Mr. Boyle to be an experienced and responsible electrician. This is also how Mr. Boyle was described by his co-workers and Randy Longard – experienced, competent, and safety-conscious.

[20] Randy Longard testified that he trusted Mr. Boyle's skill and experience 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 knew Mr. Boyle had done "big jobs before" and could be relied on to know what to do. "I just left things with him" was how Mr. Longard described his confidence in Mr. Boyle.

The Issue of Longard's Liability under the Occupational Health and Safety Act and Regulations

[21] Longard says it met its obligations under the *Occupational Health and Safety Act* and its *Regulations* by taking all reasonable precautions to ensure Mr. Boyle's safety in the workplace. In the company's submission it took all reasonable precautions by instituting a safety program and safe work practices. What Longard did in relation to workplace safety was described by Longard employees Jonathan Matthews and Greg Gower, its owner, Randy Longard, and the NSCC student, Joshua Francis.

[22] Longard further submits that it cannot be held responsible for the fact that the servicing of the electrical installation at 201 Chain Lake Drive was not in accordance with the latest version of CSA standard CSA C22.1, 'Canadian Electrical Code Part 1', Safety Standard for Electrical Installations". Longard says it is not culpable for the choice made by Mr. Boyle, a very experienced electrician, to work on the electrical installation while it was energized. Longard submits it cannot be fixed with liability for Mr. Boyle's tragic lapse of judgment. It is Longard's position that Mr. Boyle would have been well aware of the Canadian Electrical Code safety standard for electrical installations and could reasonably have been expected by Longard to act in accordance with it.

Longard's Safety Practices and Programs

[23] At the time of Chris Boyle's death Longard had no formal safety program. Joshua Francis and Jonathan Matthews both confirmed this. Joshua Francis testified that he did not see any safe work practice manuals during the four weeks while he worked at the company. He was not shown anything in writing and received no official safety orientation. 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.

[24] 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.

[25] In a previous decision I ruled that statements by Mr. Boyle overheard by co-workers were admissible as proof that he was working on a safety manual. (*R. v. R.D. Longard, [2015] N.S.J. No. 112, paragraph 46*)

[26] I further determined that a white binder found during the trial by Mr. Boyle's co-worker, Greg Gower, was the safety manual Mr. Boyle had been working on at Randy Longard's request. (*R. v. R.D. Longard, [2015] N.S.J. No. 112, paragraph 52*)

[27] 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. In the fall of 2012 he and Mr. Boyle took a COR safety course together through the Nova

Scotia Construction Safety Association (NSCSA). 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*)

[28] 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. It was the first time a contractor had made having a safety program a requirement for Longard getting the job.

[29] 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. Approval by the NSCSA of the company's safety program would result in the company being "safety certified."

[30] No one at Longard ever saw the manual Mr. Boyle was working on. From time to time Mr. Longard asked Mr. Boyle about it but he did not push Mr. Boyle or insist on seeing a draft. Mr. Boyle told him he was working on it and Mr. Longard trusted he would get the job done.

[31] In addition to assigning him the task of preparing a safety manual, Mr. Longard designated Mr. Boyle the safety officer for Longard giving him responsibility for taking care of safety for the company. 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.

[32] The NSCSA had recommended a time frame of six to ten months to complete the safety program. By April 2013, Mr. Boyle told Mr. Longard he was close to being finished and in early May said he just had a couple of things left to do. Mr. Longard assumed the manual would be ready before the end of the month, within the NSCSA expectations.

[33] When Mr. Longard was asked at trial 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. I determined that a Hazard Assessment logbook found with the white safety manual binder in the Longard van by Mr. Gower relates to an "asbestos" job Mr. Boyle, Mr. Matthews, Mr. Longard, and Mr. Gower worked on together in late 2012. (*R. v. R.D. Longard Services Limited, [2015] N.S.J. No. 112*, *paragraph 55*)

[34] 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 appears from the discovery of the Hazard Assessment Logbook that it was kept with, but not in, the safety manual Mr. Boyle had been working on. As the only entries are for the "asbestos" job, it is apparent the Logbook had a very limited application.

[35] The evidence establishes that at the time of Chris Boyle's death Longard had no safety program in place and provided no formal safety training for its employees. Any safety instruction was provided on the job by Mr. Boyle, who was conscientious about safety and about providing on-the-job safety instruction.

[36] I find the safety manual - Exhibit 12 - adds nothing to the picture of Longard's safety practices. Mr. Longard set its preparation in motion through the NSCSA courses he and Mr. Boyle took that Longard paid for, and by assigning Mr. Boyle the task of preparing it, but it did not materialize before Mr. Boyle was killed. The most that can be said is that Mr. Boyle must have been familiar with the contents of the template NSCSA materials he was using for the Longard safety manual but there is no evidence that either the NSCSA courses or his work on the safety manual made Mr. Boyle more safety-conscious and knowledgeable than he had been.

[37] The evidence does not suggest to me that Longard was indifferent to workplace safety. The evidence indicates that Longard relied exclusively on Chris Boyle to promote and safeguard workplace safety. And Mr. Boyle took workplace safety seriously, making it a point to have on-the-job discussions about it with Mr. Matthews and Mr. Francis.

[38] Mr. Boyle was a very experienced, highly regarded, fully-qualified electrician who was known to be safety conscious and attentive to safety issues. His electrocution is inexplicable. There is nothing in the evidence that sheds light on why Mr. Boyle would work on a live 600 volt system especially where conditions - as described by Eugene LeBlanc - precluded wearing protective equipment.

Workplace Safety and "Every Precaution Reasonable in the Circumstances"-An Employer's Obligations under section 13(1)(a) of the Occupational Health and Safety Act

[39] Longard has been charged with failing to discharge its obligations as an employer under the *Act*, specifically, for not taking "every precaution reasonable in the circumstances to provide such information, instruction, or supervision as necessary to the health or safety" of Mr. Boyle.

[40] The foundational principle of the *Occupational Health and Safety Act* is the "Internal Responsibility System" which mandates shared responsibility by employees and employers for the health and safety of "persons at the workplace." (*section 2(a), Occupational Health and Safety Act, S.N.S. 1996, c. 7*) The Internal Responsibility System places "the primary responsibility for creating and maintaining a safe and healthy workplace" on employees and employers, "to the extent of each party's authority and ability to do so." (*section 2(b), OHSA*)

[41] Under the *OHSA*, as Mr. Boyle's employer, Longard had a responsibility to "create and maintain" a safe workplace separate and apart from the obligations borne by Mr. Boyle to work safely.

[42] Where a workplace accident or fatality occurs, an employer may advance, as Longard has done, a defence of due diligence, in this case, mounting a defence that it took every reasonable precaution to avoid Mr. Boyle's electrocution by providing "such information, instruction, or supervision as necessary" for Mr. Boyle's safety in the workplace. The defence of due diligence is available if the defendant "…took all reasonable steps to avoid the particular event." (*R. v. Sault Ste. Marie, [1978] 2 S.C.R. 1299*)

[43] In its final written submissions, Longard has argued that it took every reasonable precaution in the circumstances by:

- Employing qualified electricians, including Mr. Boyle, who could be "presumed to possess all the information, instructions and training as are necessary to work as an electrician";
- Employing in the case of Mr. Boyle, a highly experienced and safety conscious electrician who engaged in "ongoing information and instruction to employees on a daily basis" ;
- Paying Mr. Boyle to attend the NSCSA courses and paying for the courses;
- Designating Mr. Boyle the safety officer for the company, a supervisory position;
- Tasking Mr. Boyle to prepare a safety manual for the company;
- Obtaining the Hazard Assessment Forms from the NSCSA.

[44] What Longard has submitted is all true. It did each of these enumerated things. The question is was that sufficient to meet the internal responsibility obligations Longard had as an employer under the *OHSA*? Does everything that Longard has pointed to as its commitment to employee safety amount to having taken "every precaution reasonable…to provide information, instruction, or supervision…"? Has the Crown proven beyond a reasonable doubt that there was "information, instruction or supervision" that Longard should have provided to protect Mr. Boyle's safety in the workplace, "…which a reasonably prudent [employer] would have done"? (*R. v. Della Valle, [2011] N.S.J. No. 531 (P.C.), paragraph 47*)

[45] In my examination of this issue, I note that liability can be fixed against an employer for committing an offence under the *OHSA* where no causal connection has been established between the contravening of the legislation and the death. For example, in *R. v. O'Regan Chevrolet Cadillac Ltd.*, [2010] N.S.J. No. 633 (P.C.), the defendant automobile dealership admitted to having breached section 13(1)(a) of the *OHSA* by failing to provide site-specific employee hazard awareness training, failing to store chemicals as directed by applicable safety standards, and failing to make information about the chemicals in use available as required. (*O'Regan, paragraph 9*) However no causal connection was established between the offences and the employee's death that resulted from the explosion of flammable chemicals. (*paragraph 12*)

[46] Just because the evidence does not establish that what an employer failed to do was the cause of the employee's injuries or death does not mean the employer has been compliant with its occupational health and safety obligations. My task does not involve a determination of whether Longard's workplace safety practices were so deficient that Chris Boyle died as a result. What I must decide is whether the Crown has proven beyond a reasonable doubt that Longard took every reasonable precaution to ensure its employees worked safely, that it did what a "reasonably prudent" employer would have done.

[47] Under the *OHSA*, Longard shared the responsibility for workplace safety with its employees. Longard's most experienced employee, Chris Boyle, was diligent about his own safety and that of less experienced colleagues. As Joshua Francis testified, Mr. Boyle ensured Mr. Francis did not do any dangerous jobs. He was conscientious about on-the-job safety instruction. And although it is inexplicable that Mr. Boyle did not de-energize the 201 Chain Lake Drive electrical system before working on it, which could have been accomplished by doing the job outside of mall business hours, on May 21 he didn't involve Mr. Matthews or Mr. Francis in the work on the cable at the back of the electrical cabinet and took the risk himself. He cannot have been unaware of the danger and must have thought he could do the work without coming into contact with the energized bus bars. It was a tragic, fatal miscalculation.

[48] But the fact that Mr. Boyle made a tragic miscalculation does not absolve Longard of any responsibility for its obligations under the internal responsibility system of the *OHSA*. Although Longard says it took every reasonable precaution to ensure its employees worked safely, and that specifically it met its obligations with respect to providing "information, instruction, or supervision" in accordance with section 13(1)(a) of the *Act*, the evidence establishes that Longard actually did nothing at all or did nothing that remotely satisfied the requirements of section 13(1)(a). The company took a completely hands-off approach to Mr. Boyle's work. It had no safety program, no manual, no policies, nothing. It provided no training to its junior employees and in Mr. Boyle's case, no safety training until the fall of 2012 when he and Mr. Longard took the NSCSA courses. The impetus for taking the courses was the need to have a safety program in order to qualify for a contract that required it. Longard cannot claim credit for a safety manual it never saw. Longard relied exclusively on Mr. Boyle's experience and commitment to safety. It

provided no supervision. In effect, Longard's defence is that its compliance with its statutorily-mandated occupational health and safety obligations was satisfied by Chris Boyle's safety-conscious practices and years of experience. That is simply not taking "every reasonable precaution."

[49] I agree with the conclusion of the Alberta Provincial Court in *R. v. Budd Brothers (1990), 7 C.O.H.S.C. 70* (as reported in Norm Keith's *Canada Health and Safety Law*, at page 10-36.3.) In *Budd Brothers* (reversed on appeal on unrelated grounds), the "question of the unanticipated and dangerous manner in which the worker conducted himself was not, in and of itself, a complete answer to the charges that the supervisor and the employer had failed to comply with their legislative obligation."

[50] An employer will not be found to have failed its statutory obligations for workplace safety in all cases where an "experienced, conscientious and careful employee" has acted in an imprudent, dangerous fashion. The employer may avoid liability where it can be shown that it has "taken all reasonable precautions to protect the employee's health and safety and that the incident had resulted solely from the inexplicable decision of the worker to act contrary to the prior safety instructions he had received from his employer." (*R. v. Western Lakota Energy Services Inc., unreported, July 21, 2011, Alta. P.C.,* as reported in Norm Keith's, *Canada Health and Safety Law* at page 10.36-3) Those are not the facts here. There were no "prior safety instructions" because there was no safety program. The indication by the contractor, Suncoast, in the scope of work that some after-hours work was required (with its implication that a power-interruption could be effected by the sub-contractor) does not constitute a "reasonable precaution" taken by Longard.

[51] An example of what constitutes due diligence with respect to workplace safety systems is found in *R. v. Ledcor Alberta Ltd*., [2005] A.J. No. 766 (P.C.) where the company had a safety policy that was exhaustive and kept up-to-date, a safety manual that was designed specifically for the workers of the pipe line crew and provided to them to review and sign, "tailgate" safety meetings that were held and recorded, and in the particular case, a pre-project hazard assessment that involved a safety orientation. (*Ledcor, paragraphs 86, 173 – 177*) *Ledcor* did not

rely solely on the competence and experience of its workers to ensure workplace safety.

[52] Longard is unable to show that it instituted any policies or practices that addressed workplace safety other than its reliance on Chris Boyle. The NSCSA courses and the phantom safety manual fell far short of what the legislation requires. It was not enough to simply have a good, safety-conscious employee and nothing else. (*R. v. Gulf of Georgia Towing Co. Ltd., [1979] B.C.J. No. 2064 (C.A.), paragraph 13*) I am satisfied that the Crown has proven beyond a reasonable doubt that Longard failed to take "every precaution reasonable" in terms of "information, instruction, or supervision" to protect Mr. Boyle's safety in the workplace. The defence of due diligence has not been made out and I find Longard guilty as charged on Count 1.

The Canadian Electrical Code, Part 1

[53] Longard is also charged that it failed to ensure the electrical work being done at 201 Chain Lake Drive was in accordance with the Canadian Electrical Code Part 1, Safety Standard for Electrical Installations. Compliance with the CEC required that any "repairs or alterations" only be carried out on any live equipment "where complete disconnection of the equipment is not feasible." (*Exhibit 8, CEC, Part 1, 2-304(1)*)

[54] The conclusion of Wentzell Engineering Limited, in an expert report (*Exhibit 2*) tendered by the Crown and admitted by consent, was that the electrical work being done by Chris Boyle on May 21, 2013 "was not being performed in a safe manner as described by the CEC and its reference document CAN/CSA Z462-12." (*page 14*) As the Wentzell Report notes, CAN/CSA Z462-12 "specifies requirements and performance objectives for procedures, techniques, designs, and methods" to protect against workers being electrocuted. (*Exhibit 2, page 10*) For example, it provides that, "Energized work may be performed when the employer can demonstrate that the task to be performed is infeasible in a de-energized state because of equipment design or operational limitations." (*Exhibit 2, page 10*) The evidence in this case is that there was nothing "infeasible" about de-energizing the electrical cabinet at 201 Chain Lake Drive prior to finishing the installation of the feeder cable.

[55] Longard argues that it bears no responsibility for Chris Boyle working on the live system at 201 Chain Lake Drive when it was feasible to have disconnected it and points to the following facts:

- The contract for the job contemplated after-hours work;
- Longard often did work outside regular business hours;
- There was no rush to complete the contract. Mr. Longard did not direct that the 201 Chain Lake Drive job be completed any sooner than its due date of May 31;
- Longard had the necessary "lock out tags" for use with a disconnection of the electrical system;
- Mr. Boyle was a very experienced, safety-conscious and fully qualified electrician.

[56] I will note here that there was a fair amount of evidence about "lock out tags" which are used to prevent a system being re-energized while it is being worked on. "Lock out tags" are necessary for compliance with CEC Part 1, 2-304(3) which provides that: "Adequate precautions, such as locks on circuit breakers or switches, warning notices, sentries, or other equally effective means, shall be taken to prevent electrical equipment from being electrically charged when work is being done." Longard had "lock out tags" including in the van Mr. Boyle used for work. However I find their existence to be irrelevant to the issue of Longard's liability. Mr. Boyle was not killed because a de-energized system that was not locked-out got turned back on. It is positive that Longard had this equipment available for its employees to use when required but this has no bearing on whether Longard was duly diligent under the *OHSA*.

[57] There is no question that the Canadian Electrical Code was not complied with on May 21 when Mr. Boyle was working on the electrical cabinet at 201 Chain Lake Drive. The system was energized in circumstances where it was feasible for the work to have been done outside of mall hours with the electricity turned off. In keeping with relying on Mr. Boyle to do the Longard jobs without supervision or direction, on May 21 Mr. Longard had a routine meeting with Mr. Boyle to discuss the work for the day. There was a service call for Tim Horton's and a job at the Canadian Imperial Bank of Commerce. Mr. Longard expected that after the Tim Horton's service call, Mr. Boyle would either go to CIBC or 201

Chain Lake Drive. His only expectation was that Mr. Boyle would proceed with completing the Chain Lake Drive job.

[58] Mr. Longard testified that he had expected the 201 Chain Lake Drive job to be done after-hours. He did not anticipate that Mr. Boyle would work on an energized 600 volt electrical system. There is no evidence that Mr. Longard inquired with Mr. Boyle about when he was planning to de-energize the system and complete the installation of the feeder cable.

[59] As with Count 1, Longard cannot be said to have done anything that constitutes due diligence. Longard did nothing to ensure compliance with the CEC other than rely on Chris Boyle to work safely and in accordance with the relevant legislative requirements for electrical jobs. There were no protective measures in place and their absence - with Longard simply relying on Mr. Boyle's experience and safety-consciousness without more and not anticipating that he would work on a 600-volt system- is not due diligence.

[60] I am satisfied the Crown has proven beyond a reasonable doubt that the Canadian Electrical Code was not complied with by Longard. The evidence does not establish a defence of due diligence and I find the company guilty as charged on Count 2.