REVIEW DECISION

Re: **Review Reference #: R0328611**
Board Decision under Review: August 29, 2024

Date: **April 22, 2025**

Review Officer: **Seeley Munro**

Introduction

The employer was the prime contractor at a multi-residential construction worksite. On December 14, 2022, two workers were climbing a set of permanent wooden stairs between the second and third floors, when the bottom of the flight of stairs they were walking on suddenly broke and swung away from under them. Both workers fell onto the flight of ascending stairs below and then down to the concrete main floor and were injured, one of them seriously.

The Workers' Compensation Board ("Board"), which operates as WorkSafeBC, issued a stop work order following the incident. The Board then investigated the incident and issued a May 22, 2024 Incident Investigation Report ("IIR"). As a result of its investigation, the Board also issued a May 22, 2024 inspection report ("IR"), with orders to the employer based on violations of sections 3.5 of the *Occupational Health and Safety Regulation* ("*Regulation*") and 24(1) of the *Workers Compensation Act* ("*Act*").

In an August 29, 2024 order, the Board imposed an administrative penalty of $65,498.55 for the violations of sections 3.5 of the *Regulation* and 24(1) of the *Act*. The employer requests a review of the August 29, 2024 penalty and has provided written submissions and materials in support of this request. The employer contends that it was not its role to question or inspect stairs designed by a professional engineer. The employer submits that the penalty should be rescinded or, at the very least, reduced.

There are no other parties to this review. At the Review Division's request, an Occupational Safety Officer ("OSO") who conducted the December 14, 2022 inspection provided written comments, dated March 17, 2025. These comments were disclosed to the employer, who did not provide further submissions in response.

Section 20(3) of the *Act* gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Issue

The issue under review is the Board's decision to impose an administrative penalty of $65,498.55 on the employer for violations of section 3.5 of the *Regulation* and 24(1) of the *Act*.

Background

The Board's May 22, 2024 IIR provides helpful background information. The employer was the prime contractor for a four-storey, multi-residential building under construction. On August 12, 2022, the structural engineering firm of record ("X firm") provided an engineering drawing ("Drawing") that illustrated the design of the support system to be used for the permanent stairs being constructed. Board investigators concluded that the information provided in the Drawing regarding the area required for bearing support under the toe of the stringer of the stairs was open to interpretation. I understand this to mean that it was somewhat ambiguous.

The project manager forwarded the Drawing to a framer ("Framer 1") and told him to install the stairs as per its instructions. Framer 1 reviewed the Drawing and instructed another framer ("Framer 2") based on Framer 1's interpretation of the Drawing. However, Board investigators concluded that Framer 1 had misinterpreted requirements in the Drawing, which meant that the stairs, as constructed, were not structurally sound.

The stairs involved in the December 14, 2022 incident collapsed and the stringers were broken; however, the IIR explains that the other flights of stairs on the site were largely similar to the collapsed ones. As such, the Board and third-party engineers inspected the installation method used for these other flights of stairs. According to the IIR:

> To ensure the stairs were structurally sound, the toe plate of the stringer should have landed on the landing beam and the heel on the ledgers.

However, the investigation showed that the constructed stairs had:

> …no support for the heel of the stringers…
>
> …
>
> The stiffeners were square cut at the front rather than angle cut as shown in the [Drawing] and had only a minimal amount of support in some instances and none in others…

Board investigators determined that in the weeks and months since these permanent stairs were installed, loads imposed on them by workers (who could be carrying tools and construction materials) likely caused cracks to develop.

Investigators believed the cracks were a direct result of inadequate support under the heel of the stringers. As the cracks lengthened, the stringers' ability to withstand loads was reduced, their strength deteriorated, and the cracks got larger than the stringers' capability. Each of the three stringers in the collapsed stairs had sheared off and the stairs had fallen away at those shear points.

The conclusion from the investigation was that the stairs collapsed because the bearing support underneath the stairs was inadequate. Moreover, that same problem existed in all the similar permanent stairs installed at the site.

Reasons and Decision

The Violations

Under section 95(1) of the *Act*, the Board has the authority to impose a penalty on an employer when the employer has failed to take sufficient precautions to prevent injuries, failed to comply with the *Regulation* or the *Act*, or has made an unsafe workplace. As noted, the Board imposed the administrative penalty under review as a result of the employer's contravention of sections 5.38(2) of the *Regulation* and 24(1) of the *Act*.

The employer did not request a review of the initiating violation orders. Therefore, I do not have jurisdiction to decide whether these orders should be canceled or confirmed, and these violation orders stand. However, to determine if a penalty is warranted, I must first be satisfied there is a sufficient factual basis to support the imposition of a penalty.

1. Section 3.5 of the *Regulation*

Pursuant to section 3.5 of the *Regulation*, an employer must ensure that regular inspections are made of all workplaces, including buildings, structures, grounds, excavations, tools, equipment, machinery and work methods and practices, at intervals that will prevent the development of unsafe working conditions.

The May 22, 2024 IR indicates that the employer failed to ensure regular inspections of the construction and installation of the permanent stairs, so as to ensure the stairs were constructed and installed in accordance with the requirements of the engineered drawings. As a result, two workers were injured (one seriously) when a flight of those stairs collapsed after cracks in the stringers developed due to inadequate support bearing underneath the bottom of the stairs.

The employer disputes that it neglected to conduct site inspections. Moreover, the employer submits that the stair collapse was due to an engineering design error, which was an unforeseen circumstance. The employer has provided copies

of its inspection records from December 2022 and submits that during these inspections what it characterizes as the design flaw was not evident.

I am not persuaded by these submissions. As I noted in the background information above, the Drawing did not contain a design flaw. Rather, the Drawing was somewhat lacking in detail and the framers who built the stairs misinterpreted the Drawing. However, as the IIR indicates, none of the parties responsible for conducting inspections (including the employer) ensured that the stair installation was inspected in accordance with the Drawing.

Specifically, when the installation process started, no one (including the employer) confirmed it was consistent with the engineer's intent when X firm provided the Drawing. The result of the framers' misinterpretation is that the bearing support under the stringers went undetected; therefore, an unsafe working condition developed due to the inadequate support for the stringers for all the stairs.

The OSO indicated in his March 17, 2025 comments that the cracks in the stairs "were readily identifiable." If they had been inspected properly, I conclude that the framer's error would have been detected and could have been corrected.

The employer, as prime contractor, should have ensured the stairs were inspected while they were being built and after they had been installed. However, this did not occur, and an unsafe work condition resulted for all the permanent stairs that were constructed, contrary to section 3.5 of the *Regulation*.

2. Section 24(1) of the *Act*

I now turn to the second violation. Section 24(1) of the *Act* requires a prime contractor to:

> (a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and
>
> (b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with the *Act* and *Regulation*.

Section 24(1) is a general duty provision, and the employer must meet a standard of reasonableness.

I have already addressed the more specific violation regarding the employer's lack of adequate (or any) inspections of the stairs. As noted, the Board observed visible cracks in all the other stairs constructed on the site, due to the framer's misinterpretation of the support bearing requirements in the Drawing.

Accordingly, this created a site-wide safety hazard for all workers using any of these permanent stairs. As noted, many workers regularly used these stairs, sometimes while carrying equipment or materials, thus contributing to the weakening of their supports.

The employer submits that the Board's summary of facts (I take it, in the Report for Administrative Penalty and the IIR) misrepresented the employer's responsibilities regarding the stair design. However, I am not persuaded that this is the case. Rather, it appears from the evidence that the employer was unaware of its responsibilities as prime contractor under section 24(1) of the *Act*.

As the OSO points out in his March 17, 2025 comments, since all workers used those stairs, the employer was obligated as prime contractor to ensure the stairs were installed in accordance with the Drawing. This could only be done by inspecting the work. Indeed, the OSO further indicates that a representative of X firm advised that there were no field reviews done for the framing.

I will elaborate further on due diligence in my discussion below regarding both violations. However, for the purpose of this analysis, I conclude that the employer had inadequate procedures in place for important safety matters, particularly with respect to inspection of the framing contractors' construction of the stairs.

To summarize, I am satisfied that the facts of this case support that the employer failed to comply with sections 3.5 of the *Regulation* and 24(1) of the *Act*, and that there is a sufficient factual basis to support the imposition of a penalty for these violations. Therefore, the next questions before me are whether an administrative penalty was appropriate, and if so, the amount.

Criteria for Imposing Penalties

Under section 95(1) of the *Act*, the Board has the authority to impose a penalty on an employer when, among other things, the employer has failed to comply with the *Act*. In this case, the two violations have been established on the evidence.

As policy item P2-95-1, *Criteria for Imposing OHS Penalties*, explains, the Board must consider a penalty where at least one of the following applies:

- The violation resulted in a high risk of serious injury, serious illness or death;
- The employer previously violated the same, or substantially similar, sections of the *Act* or *Regulation*, or the violation involves failure to comply with a previous order within a reasonable time;
- The employer intentionally committed the violation;
- The employer violated a stop work order or a stop use order; or
- The Board considers that the circumstances warrant a penalty.

It is unnecessary that all of these factors are present before a penalty may be assessed. Only one is required.

In this case, the Board determined that the violations were high risk. Policy item P2-95-2, *High Risk Violations*, sets out how the Board determines whether a violation is high risk. A violation can be designated high risk, or the Board can determine that the circumstances are high risk, on the basis of the available evidence with respect to:

- The likelihood of an incident or exposure occurring; and
- The likely seriousness of any injury or illness that could result if that incident or exposure occurred.

The violations under section 3.5 of the *Regulation* and section 24(1) of the *Act* are not designated high risk. Guideline G-P2-95-2, *High risk violations*, provides guidance in determining whether a non-designated violation is high risk. This guideline states that the following should be considered:

> When considering the *likelihood of an incident or exposure occurring*, some factors to consider are:
>
> - The number of workers exposed;
> - The potential hazards that are present in the particular work or task being performed;
> - Whether the hazard has been effectively controlled (ineffective controls usually result in one or more violation orders under the *Regulation* or *Act*); and
> - The circumstances that increase the likelihood of a worker coming into contact with the hazard.
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> When considering the *likely seriousness of any injury or illness*, some factors to consider are:
>
> - Whether, in circumstances where an incident or exposure occurs, any resulting injury or illness is likely to be serious or even fatal, due to the nature of the violation; and
> - Additional conditions or circumstances at the workplace that would increase the potential outcome of a serious injury, serious illness or death once a worker is exposed to the hazard.

Therefore, I must consider whether the circumstances in this case were high risk, based on the likelihood of an incident occurring and the likely seriousness of any injury that might occur. Also, in determining whether a violation is high risk, the focus is on the facts which reasonably should be known to the employer at the time of the violation.

I note that the Report for Administrative Penalty ("RAP") indicates that at the time of the December 14, 2022 incident, framing was almost complete on the building. All stairs and landings had already been installed in both stairwells.

I agree with the Board's statement in the RAP that, given the lack of structural support for the stairs and their constant use by workers on the site,

> …the likelihood of a stair collapse was not a matter of if it would occur, but most likely when as the wood grain would continue to deteriorate in terms of strength as time progressed and use continued.

Indeed, the RAP indicates that as the stairs collapsed under one of the workers, he was about 14 feet above the main concrete floor below and

> …[i]t was only through good fortune that when falling, [the two workers] fell straight down onto the wooden stairs rather than to the side and directly to the concrete.

I have no difficulty finding that these were high risk violations. As a result of the employer's violations of sections 3.5 of the *Regulation* and section 24(1) of the *Act*, given that many workers used the stairs every day, there was a high likelihood of an incident occurring and a high risk of serious injury to all workers who used the stairs.

Accordingly, I am satisfied that there were high risk violations in this case. Therefore, an administrative penalty must be considered.

Due Diligence

Section 95(3) of the *Act* indicates that the Board must not impose an administrative penalty if the employer exercised due diligence to prevent the failure or non-compliance to which the penalty relates.

Policy P2-95-9, *OHS Penalties – Due Diligence*, explains that an employer acts with due diligence where the employer shows, on a balance of probabilities, that it took all reasonable care to prevent the failure, non-compliance, or conditions to which the penalty relates. This involves considering what a reasonable person would have done in the circumstances. Due diligence will also be found if an employer reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent.

On its request for review form, the employer indicates they did not receive the letter from the Board requesting their due diligence submissions. In their submissions, however, the employer advises that they submitted the necessary due diligence documentation.

In any event, on review, the employer has provided materials including copies of its site inspection reports from December 2022. The employer advises that it also asked a structural engineering firm ("Y firm," which I understand performed structural field reviews on X firm's behalf) to inspect the work several times between October and January (I take it, of 2021 and 2022). However, the employer advises that these inspections "failed to identify any flaws."

The OSO points out in his March 17, 2025 comments that these submissions are contradicted by other information the Board obtained during its investigation. In particular, X firm was asked to provide copies of materials, including:

- any field inspections and/or reports from X firm or any other engineer who represented X firm on site; and
- any other documents/materials X firm deemed relevant to their role and their work activities during the construction and installation of the stairs.

X firm responded by advising the Board that no field reviews had been done for the framing. Furthermore, a representative of X firm was asked by the Board during its investigation about field inspections by Y firm specific to framing activities. The X firm representative said there was one inspection, but it was unrelated to the stairs.

Accordingly, I do not place weight on the employer's submission regarding inspections of the stairs by Y firm, and I do not find its due diligence submissions persuasive.

Indeed, I find it particularly troubling that the framers had expressed puzzlement and confusion over the Drawing. In my view, as prime contractor, a duly diligent employer would have ensured that this critical aspect of the framing portion of the project was inspected to ensure compliance with the Drawing. As noted, the deficient supports for the stairs were readily identifiable (via visible cracks) following the stair collapse.

As the OSO points out in his March 17, 2025 comments, the evidence demonstrates that the employer:

> …did not pursue any…type of verification of the installation having been done correctly. Had they done so, this would have satisfied their obligation as a prime contractor to ensure the necessary inspections had been completed.

I conclude that the employer did not take all reasonable care and was not duly diligent in preventing the section 3.5 and 24(1) violations. I will next consider whether a penalty should be imposed.

Additional Factors in Deciding Whether to Impose a Penalty

Policy item P2-95-1 also sets out three additional factors that must be considered with regard to imposing a penalty:

- The potential for serious injury, illness or death in the circumstances, based on the available information at the time of the violation;

- The likelihood that the penalty will motivate the employer and other employers to comply in the future, taking into account one or more of the following:

    a) The extent to which the employer was or should have been aware of the hazard;
    b) The extent to which the employer was or should have been aware that the *Act* or *Regulation* were being violated;
    c) The compliance history of the employer;
    d) The effectiveness of the employer's overall approach to managing health and safety; and
    e) Whether other enforcement tools would be more appropriate.

- Any other relevant circumstances.

I have already determined that the penalties in this case are for violations with a high risk of serious injury or death, which strongly supports the imposition of a penalty.

Furthermore, as an experienced, multi-family residential builder, the employer knew or ought to have known about the requirements for workplace inspections. However, despite confusion by the framers over how to build the stairs in accordance with the Drawing, they in fact constructed all of the permanent stairs with a misunderstanding as to the proper support to be used.

In other words, as the RAP states, "these deficiencies were allowed to be replicated as the project progressed, thus creating additional and ever growing risks to the health and safety of workers as the cracks developed and spread." I conclude that this demonstrates an ineffective overall approach to managing health and safety.

The employer has made submissions about what it characterizes as a repeat violation cited in the RAP, which it says relates to guardrails and not the failure of permanent stairs (as is the case with the two current violations that led to the penalty under review). However, my understanding of the RAP is that the Board was simply indicating that due to the fact that the employer had previously undergone Board inspections, along with its experience as a multi-family residential builder, it was aware of its responsibilities, particularly as prime contractor.

Therefore, for all these reasons, as well as the findings I have made regarding the employer's lack of due diligence in this case, I am satisfied that enforcement tools short of a penalty are inappropriate. A penalty is necessary to motivate this employer, and other employers, to comply in the future.

The Penalty Amount

Policy P2-95-5, *OHS Penalty Amounts*, sets out how a penalty is calculated, and involves several steps. The first step is to take 0.5% of the employer's "penalty payroll," subject to a minimum of $1,250 and a maximum of half the statutory maximum. The "penalty payroll" is the employer's assessable payroll for the full calendar year immediately preceding the year in which the incident giving rise to the penalty occurred. In this case, the Board determined that initial amount was $32,749.28, based on the employer's payroll.

Item 2(b) of the policy provides for the application of multipliers. The Board determined that the multiplier for a high risk violation applied, and therefore multiplied the initial amount by two, resulting in $64,498.55. As set out above, I agree that the section 3(5) and 24(1) violations were high risk, so this multiplier is in accordance with policy.

Policy P2-95-5 also provides that variation factors should be considered. In exceptional circumstances only, a penalty may be reduced or increased by up to 30%. In this case, the Board did not find any exceptional circumstances to warrant reducing or increasing the amount of the penalty.

The employer submits that it is a small to medium sized firm, and this level of penalty presents a significant financial burden. While a penalty can be varied downwards in cases of significant financial hardship, the decision maker requires evidence, such as financial statements, to establish financial hardship.

The employer did not provide evidence regarding its current or long-term finances, or its other financial obligations, which is required before I can vary the penalty on this basis. As a result, I am not satisfied that there are any exceptional circumstances such that a variation of the penalty is warranted.

I conclude that the penalty of $65,498.55 was appropriately calculated in accordance with the policy. Accordingly, I deny the employer's request.

Conclusion

As a result of this review, I confirm the Board's August 29, 2024 order.

Seeley Munro (She, Her, Hers)
Review Officer
Review Division