

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *International Brotherhood of Electrical Workers,
Provincial Council v. British Columbia Safety Authority*,
2017 BCCA 313

Date: 20170912
Dockets: CA43582; CA43585

Docket: CA43582

Between:

**International Brotherhood of Electrical Workers,
Provincial Council**

Respondent
(Petitioner)

And

British Columbia Safety Authority

Appellant
(Respondent)

And

**Applied Science Technologists and Technicians
of British Columbia**

Respondent

- and -

Docket: CA43585

Between:

**International Brotherhood of Electrical Workers,
Provincial Council**

Respondent
(Petitioner)

And

British Columbia Safety Authority

Respondent

And

**Applied Science Technologists and Technicians
of British Columbia**

Appellant
(Respondent)

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Garson
The Honourable Mr. Justice Willcock

On appeal from: An order of the Supreme Court of British Columbia,
dated March 18, 2016 (*International Brotherhood of Electrical Workers, Provincial
Council v. Applied Science Technologists and Technicians of British Columbia*,
2016 BCSC 488, Vancouver Registry S147315).

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Place and Date of Hearing:

Vancouver, British Columbia
June 20, 2017

Place and Date of Judgment:

Vancouver, British Columbia
September 12, 2017

Written Reasons by:

The Honourable Mr. Justice Willcock

Concurred in by:

The Honourable Madam Justice Newbury
The Honourable Madam Justice Garson

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Summary:

The appellants appeal a decision of a chambers judge setting aside a decision of a provincial safety manager, an administrative decision-maker authorized to certify, licence or permit individuals to do certain kinds of electrical work. The safety manager had decided that in most cases the British Columbia Safety Authority would recognize certificates issued by the appellant association as part of its evaluation of whether an applicant was qualified to do electrical work under the Safety Standards Act. The respondent union applied for judicial review on the basis that the safety manager lacked jurisdiction to recognize certificates issued by the appellant association, and that doing so fettered his discretion to issue certificates under his enabling statute. The chambers judge set aside the decision after applying the standard of correctness, finding that whether the safety manager could recognize the appellant association's certificate programs was a question of true jurisdiction. The appellants appealed on the basis that the chambers judge erred in law in concluding there was a question of true jurisdiction and by assessing whether the safety manager was authorized to recognize the appellant association's certificate programs without evaluating the association's jurisdiction to grant certificates. Held: appeal allowed. The chambers judge erred in law by applying the wrong standard of review; this was not a question of true jurisdiction. Assessed on a standard of reasonableness, the safety manager was entitled to recognize the appellant association's certificate programs as part of his evaluation of an applicant's qualifications.

Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

[1] These appeals are from an order setting aside a decision of a Provincial Electrical Safety Manager (the "Safety Manager") on judicial review, for reasons indexed at 2016 BCSC 488.

The Parties

[2] The first appellant, Applied Science Technologists and Technicians of British Columbia ("ASTTBC"), an association of technologists and technicians, is established as a corporation by the *Applied Science Technologists and Technicians Act*, R.S.B.C. 1996, c. 15 [the *ASTT Act*]. The objects of the ASTTBC include maintaining, improving and increasing the knowledge, ability and competence of its members; regulating the standards of training and practice of and for its members; and protecting the interests of the public.

[3] The second appellant, the British Columbia Safety Authority (the “Safety Authority”) is established by the *Safety Authority Act*, S.B.C. 2003, c. 38. It is responsible for the administration of certain enactments intended to promote public safety, including enactments aimed at ensuring that the installation, maintenance and repair of electrical equipment is conducted by suitably qualified individuals. The Safety Manager is a statutory decision-maker appointed by the Safety Authority.

[4] The respondent, International Brotherhood of Electrical Workers, Provincial Council (“IBEW”), is a trade union representing unionized electricians.

The Statutory Regime

[5] The Safety Manager’s decision must be understood in the context of the statutory regime established to ensure safe installation and maintenance of electrical equipment.

[6] The *Safety Standards Act*, S.B.C. 2003, c. 39 [the *Act*], creates a regime for establishing codes or standards respecting *regulated work* and *regulated products*. It requires the minister to appoint provincial safety managers to administer the *Act* and its regulations. The *Electrical Safety Regulation*, B.C. Reg. 100/2004 (the *Regulation*), made under the *Act*, establishes a regime for permitting individuals to work on electrical equipment. The *Administrative Delegation Regulation*, B.C. Reg. 136/2004, delegates the administration of the *Act* and the *Regulation* to the Safety Authority.

[7] Sections 63-69 of the *Act* prohibit persons from assembling, installing, maintaining, testing, repairing or using regulated products except in compliance with the *Act* and *Regulation*. Regulated products are defined in the *Regulation* as any “apparatus, conduits, plant, pipes, poles, works ... used, designed or intended for use for or in connection with the generation, transmission, supply, distribution, or use of electrical energy for any purpose.”

[8] Electrical work must only be carried out by authorized electrical workers. The *Regulation* provides:

4 (1) Subject to subsection (2), an individual must not perform regulated work in respect of electrical equipment unless the individual

(a) holds an appropriate industry training credential in respect of electrical work,

(b) has successfully completed training recognized by a provincial safety manager,

(c) is employed by an organization that utilizes training programs that are approved by a provincial safety manager and the individual

(i) has successfully completed the relevant training, and

(ii) does not perform regulated work for any person other than the individual's employer who provided the training,

(d) is a homeowner acting in accordance with section 17,

(e) is a manufacturer's technical representative,

(f) holds another certificate of qualification under the Gas Safety Regulation or the Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation, or

(g) is permitted to do so under section 5 of the Safety Standards General Regulation.

[Emphasis added.]

[9] Section 15 of the *Act* refers to "certificates of qualification" and "licences":

15 A provincial safety manager may exercise any or all of the powers of a safety officer and may do one or more of the following:

(a) issue, suspend or revoke a certificate of qualification;

(b) issue, suspend or revoke a licence;

(c) when issuing a licence, include in the licence a term or condition;

...

(i) require a person who holds a licence, certificate, permit or other permission under this Act to be re-examined as to their qualifications to maintain or renew the licence, certificate, permit or other permission;

(j) if the regulations require further training for persons who hold a certificate, permit or other permission of a particular class, require a person who holds a certificate, permit or other permission to undertake further training or examination in order to maintain their status and for that purpose may devise and administer tests;

(k) recognize programs of training for the purpose of qualifying for a licence, certificate, permit or other permission under this Act;

(l) evaluate the qualifications of a person who applies for a licence, certificate, permit or other permission under this Act.

[Emphasis added.]

[10] Section 23 of the *Act* provides that a safety manager may examine a person's qualifications to do regulated work and for the purpose of doing so may devise and administer examinations.

[11] Section 26 provides that an individual who wishes to be certified as qualified to perform regulated work may, in accordance with the regulations, apply to a safety manager for certificate of qualification. A person who pays the required application fee and meets the requirements of the regulations for certificate of qualification must be issued a certificate. A safety manager must examine the applicant's qualifications and determine their level or category of qualification and, for that purpose, may devise and administer tests.

[12] Section 27 provides the manner in which a person may apply for a permit to work on a regulated product and the manner in which an application must be addressed.

[13] Some workers are qualified to perform electrical work as a result of acquiring Red Seal certification; such individuals meet national training criteria sufficient to qualify as journeyman electricians. This qualification is acquired by completing courses provided by trades schools, including community colleges, and apprenticeship training programs. Such individuals are qualified to perform electrical work pursuant to s. 4(2)(a) of the *Regulation*.

[14] The *Industry Training Authority Act*, S.B.C. 2003, c. 34 [the *ITA Act*], establishes the Industry Training Authority ("ITA") as a corporation for the purpose of managing and supporting industry training and apprenticeship in British Columbia. The ITA is expressly authorized to recognize training programs; to recommend that programs be designated as accredited programs; to develop programs of training

and apprenticeship; to develop examination and assessment standards; and to designate persons as trainers. Red Seal certification is regulated by the ITA, which approves course providers' training programs for Red Seal eligibility pursuant to the *Industry Training Regulation*, B.C. Reg. 324/2003.

[15] Pursuant to the *ASTT Act*, the ASTTBC is governed by a council that manages its business and affairs (the "Council"). The powers of the Council include the power to make regulations:

18 (1) The council may make regulations referred to in section 41 of the *Interpretation Act*, [R.S.B.C. 1996, c. 238].

(2) Without limiting subsection (1), the council may make regulations as follows:

- (a) respecting the establishment of categories of and conditions for the enrolment of members;
 - (b) respecting the qualifications of and experience requirements for applicants for registration;
 - (c) respecting the eligibility of applicants generally for registration;
 - (d) governing the conduct of members of the association in their practice by prescribing a code of ethics, rules of conduct and standards of practice, and by providing for the suspension, expulsion or other penalty for misconduct, incapacity or incompetence;
 - ...
 - (o) respecting the establishment, content and maintenance of registers of members and of records of other classes or categories of membership;
 - (p) establishing rules of general conduct binding on members;
 - ...
 - (t) providing for the continuing education of the members;
 - ...
- [Emphasis added.]

[16] The reference in s. 18(1) to the *Interpretation Act* is to a provision that reads as follows:

41 (1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it,

(b) provide for administrative and procedural matters for which no express, or only partial, provision has been made.

...

[17] The Council is therefore empowered (by s. 18(1)) to make regulations it considers necessary and advisable for the purpose of increasing the knowledge, ability and competence of its members and regulating standards of training and practice.

The Safety Manager's Decision

[18] In June 2011, the Executive Director of the ASTTBC wrote to the Safety Manager asking him to allow for the special certification of members and registrants of the ASTTBC to perform electrical work. Certification was sought for members and registrants who routinely perform a specific and limited type of electrical work. In response to that request, on June 7, 2011, the Safety Manager wrote:

... Pursuant to the Electrical Safety Regulation s. 4(1)(b), a person holding a valid certificate listed in the attached schedule and issued by the Applied Science Technologists and Technicians of British Columbia (ASTTBC) is recognized as a qualified electrical worker who may perform regulated work with respect to electrical equipment within the scope of the certificate with conditions prescribed by ASTTBC.

[19] The attached schedule permitted the ASTTBC to issue certificates to perform specified and limited electrical work, described as EL1, EL2 and FP1 certificates.

[20] That decision caused some concern in the industry.

[21] On August 19, 2013, Ulrich Janisch, Safety Manager, acting in his capacity as the statutory decision-maker for the Safety Authority, wrote to the executive director of ASTTBC to advise him he had decided:

Individuals who complete a recognized training program must apply for and obtain a credential from BC Safety Authority authorizing them to perform electrical work within the scope of their training... Certificates issued by ASTTBC for individuals who have completed the EL1 and EL2 training programs will be recognized by BC Safety Authority as signifying completion

of those training programs. Individuals holding an ASTTBC issued certificate will be eligible to apply for a credential issued by BC Safety Authority authorizing them to perform electrical work within their defined scopes...

[22] Under the heading “Reasons for Decision” the Safety Manager wrote:

In his letter, dated June 7, 2011, the former Provincial Safety Manager indicated his conditional approval of the application from ASTTBC to conduct training programs for registered technologists and technicians. The letter also indicated that persons holding a valid certificate issued by ASTTBC would be recognized as qualified electrical workers who may perform regulated work with respect to electrical equipment, within the scope of the certificate and conditions prescribed by ASTTBC. This decision acknowledged ASTTBC’s professional reliance model for implementation, monitoring, and enforcement but it does not meet the needs of BC Safety Authority in its mandated role as regulator.

In reviewing this aspect of the ASTTBC program, I considered the following key factors:

1. Consistency and clarity for businesses and industry stakeholders,
2. Mandated responsibilities for regulators,
3. Consistency for future training programs,
4. Ability to obtain recognition by non-ASTTBC members.

[23] The decision-maker observed:

Although current legislation may permit recognition of training programs that leaves administration of the program and subsequent issuance of individual certification to other organizations, this model would only allow the provincial safety manager to monitor performance of the program itself; such a model would inhibit regulators’ ability to monitor and enforce the regulatory obligations for individuals under such a program. BC Safety Authority issued credentials will allow terms and conditions to be set for individual circumstances, and allow regulators to monitor and enforce against all terms and conditions on a certificate or permission.

ASTTBC has indicated that they believe the Provincial Safety Manager’s letter of June 2011 authorizes them to issue certificates under this program, and they see no value added by having BC Safety Authority issue credentials. Having reviewed ASTTBC materials, considered stakeholder feedback and considered the issue myself I have found significant arguments in favour of BC Safety Authority issuing its own credentials in addition to whatever proof of course completion is issued by ASTTBC. Evaluation of qualifications for individuals remains the responsibility of BC Safety Authority, although in most cases completion of recognized ASTTBC training program would be acceptable proof of competency for individuals who apply for a credential.

[24] He concluded:

In summary, the decisions expressed in this letter are:

1. That graduates from ASTTBC's program, if the program is approved, will have to apply for and obtain a certificate from BCSA before performing regulated work; and
2. That recognition of equivalent training and experience to that provided under an ASTTBC approved program will be performed by BCSA, not ASTTBC.

To confirm, the program itself remains subject to approval based on amended materials which I understand will be provided shortly by ASTTBC.

[25] On September 26, 2013, the Council approved an *Electrical Work Practitioner* ("EWP") program and passed a resolution that the program be launched as soon as practicable. On September 30, 2013, the Executive Director of ASTTBC wrote to the Safety Manager with a proposal for the EWP program. The proposal contained a description of the limited scope of certified work. ASTTBC certification in the EL1 category would require an applicant to have an accredited post-secondary diploma in electrical technology or equivalent, a minimum of two years' relevant work experience as a technologist, and 1500 hours of documented and supervised electrical experience. Certification in the EL2 category would require an accredited post-secondary electronic or biomedical technology diploma, certificate or equivalent, or an accredited post-secondary electrical technology certificate or equivalent, a minimum of two years' work experience, and 1500 hours of documented and supervised electrical experience. The role of the ASTTBC described in the proposal, appears to be limited to verifying the post-secondary education, work experience and supervision of applicants.

The Decision

[26] On October 28, 2013, the Safety Manager wrote to the ASTTBC advising it as follows:

I am pleased to inform you that I have completed my review of the Applied Science Technologists and Technicians of British Columbia (ASTTBC) *Electrical Work Practitioner (EWP) Certification Program Procedures Manual* (October 16, 2013).

I have determined that the programs for EL1 and EL2 certification meet all conditions imposed by BCSA, and I am satisfied that these training programs will promote enhanced safety for the electrical industry and the public, and allow uniform enforcement and compliance with the *Safety Standards Act*.

The *Electrical Work Practitioner (EWP) Certification Program Procedures Manual* (October 16, 2013), for EL1 and EL2 training certification, has been approved. Permission to operate a recognized training program is hereby granted under the provisions of *Safety Standards Act*, s. 15 (k), effective October 28, 2013, and subject to the terms and conditions described in the attached *ASTTBC Electrical Work Practitioner Certification Program Terms and Conditions*.

Although ASTTBC initially proposed a separate FP1 program, the content of the FP1 program has not been submitted for consideration and is not part of this approval. ASTTBC will be required to submit a new application for consideration of this, or any other training program.

If you do not agree with this decision, you may appeal in writing to the Safety Standards Appeal Board in accordance with Part 9, Division 2 of the *Safety Standards Act* within 30 days from the date of this decision.

...

[Emphasis added.]

[27] The ASTTBC *Electrical Work Practitioner Certification Program Terms and Conditions* attached to that decision included the following provisions:

BC Safety Authority retains authority to conduct its own verification and enforcement of the terms and conditions of this agreement in relation to ASTTBC students and Training Providers...

Individuals who obtain ASTTBC certification for completion of the Class EL1 or EL2 training programs are not certified as electrical workers, and must obtain a permission from BCSA before performing tasks that involve electrical work without supervision...

In most cases, BCSA will accept a certificate issued by the EWPCP as proof of training completion for the purposes of granting permission to perform electrical tasks within a restricted scope of work. However, BCSA may require ASTTBC to administer additional examinations for individuals who apply for a BCSA credential, at the discretion of the Provincial Safety Manager or delegated representative.

[Emphasis added.]

[28] Although the Safety Manager expressly gave the ASTTBC “permission to operate a recognized training program”, the Decision has been characterized by all parties here and below, as a decision to recognize a training program for the

purposes of granting permission to perform electrical tasks within a restricted scope of work. Nothing turns on the granting of “permission to operate”.

[29] The IBEW sought to appeal the Decision on the ground that the Safety Manager did not have jurisdiction to recognize certificates issued by the ASTTBC and on the ground the ASTTBC did not have statutory authority to create or issue new certificates. The Safety Authority Appeal Board (the “Appeal Board”) held, in its Reasons for Decision issued on July 15, 2014:

[39] On a plain reading of the Act, there is no language that supports, either expressly or by necessary implication, a right of appeal from the recognition of a program of training or from recognition of new certificates created from such approved training programs. The power to recognize a program of training, or to recognize a certificate from a program of training, is not a power exercisable by a safety officer and, as such, does not engage the statutory appeal under s. 51 of the Act. Although there is no right of appeal directly from the recognition of a training program, the Board recognizes that there may be instances where an appeal could arise indirectly. For example, if a safety officer refused to issue a license or an individual applied for certification and was turned down, then the individual adversely affected by the decision would have statutory right to appeal pursuant to s. 27 of the Act. However, even in such circumstances, the subject of the appeal would not extend to the decision to recognize the training program as a whole.

Judicial Review

[30] The IBEW applied for judicial review of the Decision. On March 18, 2016, a chambers judge allowed the IBEW’s petition and set aside the Decision. He held, first, that the IBEW had standing to challenge the Decision:

[12] The crux of the matter at bar is whether s. 15(k) of the *Safety Standards Act* provides a provincial safety manager with the authority to recognize the EWP certification program as developed by the ASTTBC. The relevant language of s. 15(k) reads:

15. A provincial safety manager may ... do one or more of the following: ...

(k) recognize programs of training for the purpose of qualifying for a licence, certificate, permit or other permission under this *Act*; ...

[13] The IBEW is a council of five local unions with over 10,000 members throughout our Province. The IBEW is recognized by the Labour Relations Board of our Province. Members of the IBEW’s council locals have economic and safety interests related to the October 28, 2013 decision, giving rise to a direct interest in the October 28, 2013 decision.

[14] The IBEW's council locals provide various electrical training and apprenticeship programs, many of which relate to Red Seal certification.

[15] The IBEW, in its written submission, states (in part):

42. The Decision grants permission to the ASTTBC to operate a "recognized training program" leading to certification as an EWP. This training is unapproved by the ITA [Industry Training Authority], and does not meet the national Red Seal standards. Workers certified as EWPs would have one quarter of the experience required to obtain Red Seal certification. Despite these clear deficiencies, workers certified as EWPs by the ASTTBC would be allowed to work on regulated electrical equipment with the permission of the BCSA, which the Decision indicates will be given "in most cases".

43. The [Petitioner] therefore [has] a reasonable apprehension that the approval of EWP certification will compromise the reputation of electrical training programs, to the detriment of the Petitioner's training institutions, as well as to its members with Red Seal certification. Further, in approving a certification program which provides a fraction of the training and experience as is required by the ITA to achieve Red Seal certification, the Decision undermines the economic viability of the programs offered by the Petitioner. Any reduction in such programs would have a detrimental effect on the safety of electrical workers.

[16] With respect to safety, electrical work may be hazardous to both workers and the public. For workers, there is particular concern where the same job site is shared. Safety is an obvious interest of the members of the IBEW's council locals. The IBEW also has an interest in the reputation of electrical workers in our Province.

[17] In sum, the IBEW has a direct interest in the October 28, 2013 decision.

[18] The IBEW also has public interest standing as set forth by the Supreme Court of Canada in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

[31] The judge concluded that the Decision was subject to review on a standard of correctness, as a decision on a point of true jurisdiction relating not to the jurisdiction of the Safety Manager but, rather, the jurisdiction of the ASTTBC:

[49] At bar, fundamental societal interests, as reflected in the legislation, are engaged. Electrical equipment must be safe and must operate to ensure safety, whether the electrical equipment is a high voltage charger or a low voltage monitor (*Safety Standards Act*). A skilled and trained workforce serves our Province's economic interests (*Industry Training Authority Act* and the *Labour Mobility Act*, including the Agreement on Internal Trade contemplated by that Act).

[50] The weave of the legislation when construed together, in particular the *Safety Standards Act*, the *ASTT Act*, and the *Industry Training Authority Act*, is a question of law. It is of central importance to the legal system as a whole that administrative decision makers do not recognize matters that are not authorized by law. In the case at bar, ASTTBC did not have the authority to develop the EWP certification program.

[51] I note that one aspect of the matter at bar is safety and a provincial safety manager has expertise in this regard. In addition, the recognition of the EWP certification program is a polycentric, policy decision that involves the consideration of multiple factors. Moreover, a provincial safety manager has been given the discretion to recognize programs of training.

[52] The *Safety Standards Act* does not have a privative clause applicable to a provincial safety manager's decision under s. 15(k) (although under s. 51 there is an appeal procedure when a provincial safety manager makes a decision that could otherwise have been made by a safety officer.)

[53] The extricable jurisdictional issue in the present matter is whether the provincial safety manager had jurisdiction to recognize a program of training that is beyond the authority granted to the ASTTBC under the *ASTT Act*. In other words, it is a question of true jurisdiction whether a provincial safety manager under s. 15(k) can recognize a program of training that was not established under existing law.

[54] In sum, this matter engages a question of true jurisdiction; the standard of review is correctness. Further, this matter is also one of central importance to the legal system as a whole.

[Emphasis added.]

[32] On the substantial legal question, whether the Decision was correct, he held:

[109] When the various Acts are “construed together, as one system, and explanatory to each other”, especially the *Industry Training Authority Act* and the *ASTT Act*, it is apparent that the ASTTBC's objects and concomitant powers do not extend to developing new programs of training which may be recognized by others, such as a provincial safety manager.

[110] The IBEW, in its written submissions, argues:

The ASTTBC has no parallel power to “develop programs of training” or “award ... an industry training recognition credential” [referring to s. 8(1)(a) to (c) and (h) of the *Industry Training Authority Act*]. The ASTTBC's most similar power is that it may “regulate standards of training ... for its members”, under s. 3(b) of the *ASTT Act*. This allows the ASTTBC to oversee continuing professional development of technologist and technicians....

[111] Unlike the ITA, the ASTTBC does not have the power to “develop programs of training”. If ASTTBC were to have such a power, the *ASTT Act* would have provisions similar to those found in s. 8 of the *Industry Training Authority Act* and ASTTBC would have broader objects.

[112] Two of the objects (s. 3(a) and (b)) under the *ASTT Act* relate to education and training. These objects allow the ASTTBC to “increase the knowledge, ability and competence” and “to regulate standards of training and practice” of its members. The objects enable the ASTTBC to undertake steps to ensure that all of its members stay current with technology and technological advances.

[113] In addition, the Court notes that the IBEW’s argument is also consistent with s. 18(2)(t) of the *ASTT Act*, which gives the ASTTBC the power to make specific regulations in relation to continuing education.

[114] The Court agrees that s. 3(b) of the *ASTT Act* does not empower the ASTTBC to develop a program of training, such as the ASTTBC EWP certification program.

[115] Further, the Court does not find that s. 3(a) of the *ASTT Act* provides the necessary authority.

[116] There is nothing that suggests that the Legislature intended to empower a provincial safety manager to recognise a program of training not otherwise authorised by law.

...

[121] In sum, read in context of the related legislation, the ASTTBC does not have the authority to develop new programs of training, such as the ASTTBC Electrical Work Practitioner Certification Program.

[122] The BCSA argues that a provincial safety manager does not need to consider ASTTBC’s authority. In its written submission, BCSA states:

42. On its face, this section [s. 3 of the *ASTT Act*] provides ASTTBC with sufficient authority to develop a program of training for its members. BCSA has neither the authority nor expertise to determine another statutory corporation’s jurisdiction and is entitled to rely on that corporation’s representation of jurisdiction.

[123] The Court rejects BCSA’s argument. A provincial safety manager cannot recognize a program of training to be developed or operated by a person without the necessary legal authority.

[Emphasis added.]

[33] The significance of “recognition by others” in the emphasized passage is unclear. If the ASTTBC is empowered to establish training programs, presumably that would be for the purpose of certifying the competence of its members. Whether or not that certification is recognized by others, such as the Safety Authority, is not a matter within the control of the ASTTBC.

[34] Although it was unnecessary for him to do so, the judge went on to find:

[137] Having concluded that a provincial safety manager lacks the jurisdiction to recognize a program of training that has not been developed under existing law, and also that this matter concerns a question of law of central importance to the legal system as a whole, I will not review in detail the October 28, 2013 decision on a reasonableness standard. However, I acknowledge that an administrative decision maker interpreting his or her home statute will usually give rise to judicial review on a reasonableness standard.

[138] In this case, even with the deference afforded by the reasonableness standard of review, it was not reasonable for the provincial safety manager to recognize a program not properly authorized by the statute under which it was developed. In sum, it could never be reasonable to recognize a program of training not authorised by law.

Grounds of Appeal

ASTTBC

[35] The ASTTBC says the chambers judge wrongly substituted his view of the safety issues for the unchallenged factual findings of the Safety Authority and wrongly arrogated to himself decisions reasonably made using the special expertise of the Safety Authority and the ASTTBC.

[36] First, the ASTTBC says the IBEW should not have standing to challenge its authority to create the EWP certification program. It says the IBEW had no serious justiciable interest in that issue and this was not a reasonable and effective means of bringing the question raised by the IBEW, with respect to the authority of the ASTTBC, to Court. Nor should the IBEW have had standing to challenge the Decision. It says that to have private interest standing, the IBEW was required to establish it has a legal interest that had been “exceptionally affected” by the issues. It says concerns with “safety” do not give the IBEW a direct interest, nor does a potential impact on the reputation of electrical workers in British Columbia. It says that the IBEW’s only direct interest in the Decision is purely economic and that here, as in *Dicks v. Nova Scotia (Elevators and Lifts)*, 2015 NSSC 362 (aff’d. as *Canadian Elevator Industry Education Program v. Nova Scotia (Elevators and Lifts)*, 2016

NSCA 80) an economic interest is not sufficient interest to afford standing to the IBEW.

[37] The ASTTBC says the IBEW does not have public interest standing because it does not raise a justiciable issue and it has no real stake or genuine interest in the approval of the program as a suitable means of training certain electrical workers engaged in a limited scope of work.

[38] Second, the ASTTBC says it was an error to suggest that this case involved a question of “true jurisdiction”. Relying on *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, it says that only in “exceptional circumstances” will a decision of a tribunal, reviewing its own statute, raise a question of true jurisdiction. It says the judge erred in finding that “[i]t is of central importance to the legal system as a whole that the administrative decision-makers do not recognize matters that are not authorized by law.”

[39] Referring to *West Fraser Mills Limited v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2016 BCCA 473, the ASTTBC says the court should be careful to circumscribe the category of true questions of jurisdiction:

[74] The mere fact that a tribunal’s interpretation of its statute may affect the scope of its powers will not be sufficient to transform that interpretation into a “true question of jurisdiction”. Thus, in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, the question of whether the Commission had the jurisdiction to award costs against a party in proceedings before it was found not to be a jurisdictional question, and it was reviewed on a deferential standard.

[40] The ASTTBC says the judge’s determination in this case resurrected the preliminary question of jurisdiction identified in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[41] It says the judge erred in reviewing the Decision on a standard of correctness rather than reasonableness because questions of qualification and certification to engage in restricted work fall squarely within the Safety Manager’s authority and expertise. The Safety Manager has a statutory mandate to assess a “program of

training” defined in the *Act*. In doing so, he is not tasked with reviewing the authority of any particular body to develop training programs but, rather, is called upon to determine whether such programs promote enhanced safety in British Columbia, a question that was expressly addressed by the Safety Manager in the Decision:

I have determined that the programs for EL1 and EL2 certification meet all conditions imposed by BCSA, and I am satisfied that these training programs will promote enhanced safety for the electrical industry and the public, and allow uniform enforcement and compliance with the *Safety Standards Act*.

[Emphasis added.]

[42] The ASTTBC argues there is no basis upon which to challenge the Decision in that respect.

[43] Third, the ASTTBC challenges the judge’s decision to exclude from evidence the affidavit of Mr. Janisch. It says the decision-maker is entitled to prepare an affidavit in response to a petition on judicial review under certain conditions, described in *18320 Holdings Inc. v. Thibeau*, 2013 BCSC 1677, and *Caimaw v. Paccar of Canada Ltd.*, [1989] 2 S.C.R. 983, and those conditions were met in this case.

[44] Fourth, insofar as its statutory authority is concerned, the ASTTBC says the EWP certification program was established by a valid resolution of the Council and that such resolutions are passed pursuant to the enabling legislation and should be presumed to be valid. It relies upon the decision of the Supreme Court of Canada in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, in particular paras. 25-26 of that case, where Abella J. held:

[25] Regulations benefit from a presumption of validity... This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them... and it favours an interpretive approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires*...

[26] Both the challenged regulation and enabling statute should be interpreted using a “broad and purposive approach... consistent with this Court’s approach to statutory interpretation generally”...

[Emphasis in original.]

[45] The ASTTBC says its statutory objective is to maintain and increase the knowledge, ability and competence of its members, to regulate standards of training, and to do all things that are incidental or conducive to the accomplishment of those objects. Knowledge cannot be increased without education and the EWP was established to accomplish the objectives of the enabling statute. It says the judge erred in failing to require the IBEW to show that the Council's resolutions were invalid, and in failing to interpret the enabling statute in accordance with the generally accepted rules of statutory interpretation – in such a manner as to permit the ASTTBC to carry out its statutory mandate. Having found, at para. 112, that “[t]he objects enable the ASTTBC to undertake steps to ensure that all of its members stay current with technology and technological advances”, it says the judge erred first, by distinguishing the EWP certification program as something fundamentally different from continuing education and certification of competence, and second, if any such distinction could be drawn, by very narrowly limiting the scope of the ASTTBC's statutory powers.

[46] Last, the ASTTBC says the Safety Manager has statutory discretion to recognize training programs and to grant permission to individuals or groups to conduct training. It says his statutory authority is not limited to approving training programs established pursuant to other statutes. Again, it says the Decision falls squarely within the Safety Manager's authority and expertise and that the judge should have deferred to his conclusions. It argues this error is a result of the judge's failure to recognize the distinction drawn in s. 4(1) of the *Act* between qualification by obtaining industry training credentials and qualification by completing training recognized by a provincial safety manager.

The Safety Authority

[47] The Safety Authority says the judge mischaracterized the Decision. It says the Safety Manager recognized the proposed certification programs pursuant to his express authority under s. 15(k) of the *Act*. In doing so, he exercised his statutory decision-making role when he determined that the ASTTBC's training program

would “promote enhanced safety for the electrical industry and the public, and allow uniform enforcement and compliance with the *Safety Standards Act*”. The legal authority of the ASTTBC to administer the proposed programs is independent of the Decision, which was conditional upon ASTTBC being capable of administering the programs.

[48] The Safety Authority says there is no question the Safety Manager had discretion under the *Act* to recognize training programs and that he was acting within his statutory authority when he did so. The Safety Authority argues that IBEW’s position on appeal is not really that the Safety Manager exceeded his authority, but rather that he should have exercised it in a different manner – a complaint that goes to the reasonableness of the decision, not jurisdiction.

[49] In response to the IBEW’s alternate attack on the Decision: improper sub-delegation of authority (not expressly addressed by the reviewing judge but renewed in the IBEW’s factum), the Safety Authority says there was no sub-delegation to the ASTTBC of the authority to permit individuals to perform regulated work. Ultimate decision-making authority was, in this case, retained by the Safety Manager. That was the reason for the August 2013 decision, which modified the conditional 2011 decision.

[50] Taking an approach similar to that taken by the Appeal Board, the Safety Authority says the decision to recognize a training program, as opposed to issuing a licence or certificate, is not properly the subject of an appeal or judicial review. Recognizing a program is only one step in the process leading to the issuance of a certificate or licence and it is only the decision to issue the certificate, permit or licence that is justiciable.

The IBEW

[51] In relation to standing, the IBEW says it did not seek judicial review of any decision of the ASTTBC. It seeks only review of the decision of the Safety Manager to recognize the EWP certification program.

[52] Relying on *British Columbia (Police Complaint Commissioner) v. Murphy*, 2003 BCSC 279, the IBEW says that any person who is directly affected by a decision or action of a tribunal may apply for judicial review. It says it does not need to have an exceptional or legal interest in the Decision.

[53] The IBEW says the judge correctly found it had a direct interest in the Decision because the EWP certification program could undermine the Red Seal certification program, compromise the economic viability of IBEW training programs, have a detrimental effect on the safety of electrical workers (particularly on shared job sites), and impact upon the reputation of electrical workers.

[54] It notes that the IBEW was offered extensive participatory rights by the Safety Manager in the process leading to the Decision; this, it says, reflects the Safety Authority's recognition that IBEW is an interested party and is sufficient to justify the judge's exercise of his discretion with which we should not lightly interfere: *Ward v. Clark*, 2001 BCCA 264 (para. 5).

[55] In relation to the standard of review, the IBEW says the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, has no application and, therefore, the reviewing judge had to address the test described in *Dunsmuir*. It says this case does give rise to a true question of jurisdiction and that the judge correctly held that the Safety Manager exceeded his jurisdiction in granting permission to the ASTTBC to operate a training program not authorized by the *ASTT Act* and that it is not otherwise authorized to operate. The argument advanced on this point is subtly distinct from the foundation for the judge's decision – that the ASTTBC had no jurisdiction to establish new training programs. The IBEW argues that s. 9 of the *ASTT Act* grants the ASTTBC authority to certify only two professional designations: applied science technologists and certified technicians. It says:

The Chambers judge correctly found that the *ASTT Act* only contemplates two categories of members of the ASTTBC, and does not otherwise authorize it to provide programs of training to certify new categories of members. He therefore had to consider whether a [safety manager] had jurisdiction to

permit the ASTTBC to offer training and certifications which the Legislature had not authorised it to provide in its enabling statute.

[56] It says the Decision created new, unauthorized categories of membership in the ASTTBC:

75. It is apparent from [a] review of the *ASTT Act* that it only contemplates two categories of members of the ASTTBC, applied science technologist and certified technician, with no provision made for any other category of member, or the issuance of any other certificate. The Chambers Judge correctly found that the powers conferred on the ASTTBC did not extend to developing new programs of training for a new category of member not contemplated by the *ASST Act*.

[57] Further, it says that even if the ASTTBC is authorized to provide the EWP certification program to its members, the Safety Manager effectively sub-delegated his authority to certify persons to perform electrical work to the ASTTBC and such sub-delegation is not permitted by the *Act*.

Discussion and Analysis

Standing

[58] The IBEW clearly has standing as a respondent to the appeal. No party to the appeal seeks a re-hearing of the petition for judicial review. The appeal has been argued on the merits. The question of standing before the chambers judge is therefore moot.

[59] The decision to grant standing is discretionary and attracts a deferential standard of review.

[60] The IBEW correctly points out that the Safety Manager recognized its stake in the Decision. The Safety Manager expressly considered “stakeholder feedback” (including the submissions of the IBEW) before making his Decision. Given the extensive involvement of the IBEW in the Safety Manager’s consideration of the manner in which persons should be qualified to do restricted work, I cannot say that the judge erred in concluding that it had a private interest sufficient to grant it standing. The judge could reasonably have concluded as a result of a contextual

analysis that the Decision would affect an interest peculiar to the IBEW, so as to meet the test for private interest standing discussed in *Dicks*. Here, unlike the appellant in *Dicks*, the IBEW speaks for unionized employees, and its private interest could reasonably have been considered sufficient to grant it standing. Accordingly, this is not as a case where it is necessary or appropriate to address whether the IBEW was properly considered to have public interest standing.

Admissibility of the Safety Manager’s Affidavit

[61] The ASTTBC challenges the judge’s decision to exclude the affidavit of Mr. Janisch from evidence, but is not joined in that effort by the Safety Authority, which introduced the affidavit in the first instance. To the extent that this ground engages the judge’s exercise of discretion to admit evidence, this Court cannot interfere only because it might have exercised the discretion in a different manner: *Law Society of British Columbia v. Canada (Attorney General)*, 2002 BCCA 49 at para. 7; *Dhillon v. Pannu*, 2008 BCCA 514. I agree with the Safety Authority that the evidence in the affidavit is unnecessary to deal with the appeal on the merits, so I do not find it necessary to deal with this ground of appeal.

Standard of Review of the Substantive Decision

[62] In *Alberta Teachers*, Rothstein J., for the majority, described the limited range of cases in which a correctness standard may apply after *Dunsmuir*. He wrote:

[30] ...There is authority that “[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity” (*Dunsmuir*, at para. 54; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160 at para. 28 per Fish J.). This principle applies unless the interpretation of the home statute falls into one of the categories of questions to which the correctness standard continues to apply, i.e., “constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator’s expertise, ... ‘[q]uestions regarding the jurisdictional lines between two or more competing specialized tribunals’ [and] true questions of jurisdiction or vires [citations omitted].”

[63] With respect, I see nothing in the Decision that should have resulted in the application of a correctness standard. As Dickson J. noted in *C.U.P.E. v. New*

Brunswick Liquor Corporation, [1979] 2 S.C.R. 227 at p. 233, courts “should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so.”

[64] In *Alberta Teachers*, Rothstein J. noted at para. 33 that since *Dunsmuir*, the Supreme Court of Canada had not identified a single true question of jurisdiction. Whether the Safety Manager, exercising clear statutory authority to recognize training programs, erred in giving limited recognition to certificates issued by the ASTTBC is, in my view, far from a true question of jurisdiction. The Decision was unexceptional and did not require the decision-maker to address his jurisdiction or *vires*. The question before the Safety Manager could only be characterized as such by taking a very wide view of what constitutes a jurisdictional question. As the ASTTBC has noted, in *West Fraser Mills*, Groberman J.A. for this Court wrote, at para. 74: “[t]he mere fact that a tribunal’s interpretation of its statute may affect the scope of its powers will not be sufficient to transform that interpretation into a ‘true question of jurisdiction.’”

[65] And, as Rothstein J. observed, in *Alberta Teachers*:

[34] ...In one sense, anything a tribunal does that involves the interpretation of its home statute involves the determination of whether it has the authority or jurisdiction to do what is being challenged on judicial review.... However ... unless the situation is exceptional... the interpretation by the tribunal of “its own statute or statutes closely connected to its function, with which it will have particular familiarity” should be presumed to be a question of statutory interpretation subject to deference on judicial review.

[66] A chambers judge’s determination of the applicable standard of review must be correct: *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paras. 43-44. In my view, the Decision should have been reviewed on a standard of reasonableness and I will assess the Safety Manager’s decision on that standard.

The Issue before the Safety Manager

[67] In my view, the Decision is poorly formulated insofar as it gave the ASTTBC “permission to operate a recognized training program”. The granting of “permission to operate” is problematic because the Safety Manager’s statutory function, in this context, is to issue licences, permits and certificates, to evaluate the qualifications of applicants, and to recognize training programs for that purpose. It is not his role to grant permission to operate training programs generally. However, as I have noted, the Decision was not set aside on judicial review for that reason. The substance of the Decision, which was to recognize certificates issued by the EWP program for limited purposes, was at issue on judicial review. The reasonableness of the Safety Manager’s decision to recognize the EWP program for that purpose is the real issue in this case.

[68] The effect of the Decision was to revoke the conditional 2011 decision, which permitted holders of certificates issued by the ASTTBC to perform regulated work within the scope of the certificate, with conditions prescribed by the ASTTBC. In 2013, the Safety Manager reasserted his responsibility for certifying applicants’ qualifications to engage in restricted work. Certificates issued by the ASTTBC no longer qualified holders to engage in restricted work. Rather, the certificates would be considered evidence that applicants had satisfied the ASTTBC’s specific criteria for certification by the ASTTBC. The Safety Manager determined that satisfaction of those criteria would, in most cases, be sufficient to permit him to issue a licence or permit. Recognition of the EWP certificate would merely be a preliminary step toward issuance of a licence or permit; the Decision did not confer any power or authority on the ASTTBC.

[69] Indeed, the Appeal Board concluded, at para. 39 of its decision, that the Safety Manager is not responsible for recognizing training programs except in the context of evaluating the qualifications of an applicant for a permit or licence:

The power to recognize a program of training, or to recognize a certificate from a program of training, is not a power exercisable by a safety officer and, as such, does not engage the statutory appeal under s. 51 of the *Act*.

[70] The ASTTBC and the Safety Authority did not argue before the chambers judge, nor have they argued on his appeal, that a decision by a safety manager, acting pursuant to s. 15(k), to recognize a training program for the purpose of qualifying for a licence, certificate or permit cannot be subject to judicial review, outside the context of a specific application.

[71] Nor, surprisingly in my view, do they question whether the Decision, which was ultimately a decision to recognize EWP certificates as part of the process of evaluating qualifications (as opposed to outright recognition of certification by the ASTTBC as certification under the *Act*) is a decision that is subject to review. That may be because, in making the Decision, the Safety Manager appeared to be exercising his statutory authority under s. 15 of the *Act*. It is arguable that aside from revoking the ASTTBC's prior conditional authorization, the Decision merely provides notice of an updated policy of the Safety Manager. Given that argument has not been advanced, I address the Decision on the basis that all parties, including the Safety Authority, concede that it may properly be the subject of judicial review.

[72] As I have said, the Decision reversed the previous 2011 decision granting the ASTTBC authority to issue certificates that would be recognized as sufficient proof of qualification to perform restricted electrical work. The updated Decision stated the Safety Authority's position that it alone would be the arbiter of the qualification of applicants for permits under the *Act*. For that reason, there is no basis to find the Safety Manager fettered his discretion.

[73] The Safety Manager expressed two opinions in relation to the sufficiency of the EWP criteria as preliminary evidence of qualification.

[74] First, he decided that ASTTBC certification that a member had an accredited post-secondary diploma in electrical technology or equivalent, and had completed a minimum of two years' relevant work experience as a technologist, and 1500 hours of documented and supervised electrical experience would, in most cases, be

recognized as proof of sufficient training to allow an applicant to do the limited work described in the EL1 category.

[75] Second, he decided that the ASTTBC's certification that a member had an accredited post-secondary electronic or biomedical technology diploma, certificate or equivalent or an accredited post-secondary electrical technology certificate or equivalent, and had completed a minimum of two years' work experience and 1500 hours of documented and supervised electrical experience would, in most cases, be recognized as evidence of sufficient training to allow an applicant to do the limited work described in the EL2 category.

[76] In my view, these decisions cannot be impugned. Neither question required an assessment of the statutory authority of the ASTTBC to offer or operate a training program. They are clearly decisions involving the special expertise of the Safety Manager. There is no basis upon which to challenge the reasonableness of those decisions.

[77] The judge did not question the Safety Manager's assessment of the sufficiency of the training described in the Decision. Nor did he find that the Safety Manager erred in advising the ASTTBC that he would give some weight to ASTTBC's verification of members' training.

[78] The order quashing the Decision was not based on any concern related to the adequacy of the proposed training, or any public safety concern. Rather, it was based on the conclusion that the Safety Manager was not authorized to recognize a training program offered by the ASTTBC. That conclusion was based a series of doubtful propositions:

- a) That ASTTBC would itself be operating a new training program or "developing new programs of training";
- b) That it was authorized to offer continuing education but was not "authorised by law" to "develop a program of training, such as the ASTTBC EWP certification program";

- c) That the Safety Manager could not recognize a training program without satisfying himself that the individual or organization providing the training had some other statutory authority to do so; and
- d) That the decision to give the ASTTBC permission to operate a recognized training program therefore involved a question of true jurisdiction.

The EWP Certification Program

[79] The ASTTBC says it was not, in fact, proposing to offer training but was, rather, doing what it was mandated by statute to do: exercising a supervisory role with a view toward maintaining, improving and increasing the knowledge, ability and competence of its members. The EWP program approved by the Council on September 26, 2013, submitted to the Safety Manager and approved in October, did not describe any training offered by the ASTTBC. Instead, the ASTTBC proposed to certify formal education by “accredited post-secondary” institutions followed by relevant, supervised work experience.

[80] The judge concluded that the Safety Manager was required to determine whether the ASTTBC had statutory authority to develop “new programs of training which may be recognized by others”. In my view, the Safety Manager properly considered whether recognition of the ASTTBC certification would promote enhanced safety and be in the public interest. I agree with the Safety Authority’s submission that the Safety Manager was not required to address the legal authority of the ASTTBC to administer the proposed program.

[81] Further, the question that ought to have been posed, if any, with respect to the ASTTBC’s role, was whether it was authorized by statute to examine the qualifications of and experience requirements for applicants for enrolment in each class of membership. It clearly is so authorized by s. 18 of its enabling legislation, which permits it to establish a certification program and to describe the qualifications for EL1 and EL2 certification as a combination of accredited post-secondary education and relevant, supervised work experience.

Authority to Establish a Training Program

[82] As noted above, the chambers judge did not expressly consider the specific role of the ASTTBC in the program (other than to verify the credentials described in the proposal). The judge appears to have concluded the ASTTBC would itself be operating a new program and that the EWP certification program could not be considered continuing education. In my view, neither conclusion is supported by the evidence.

[83] However, as the ASTTBC may be seriously restricted in its activities by the judgment in this case, I should clarify that I would not read the enabling legislation so narrowly as to preclude the ASTTBC from operating training programs. The ASTTBC is authorized to make regulations for the purpose of carrying out its objects, which specifically include increasing the knowledge, ability and competence of its members and regulating standards of training and practice and it may make regulations providing for continuing education of members. Reading the enabling legislation with a view toward effecting the evident intentions of the Legislature, I am of the view that it empowers the ASTTBC to create, support and operate educational programs for its members.

The Safety Manager's Statutory Authority

[84] The Legislature expressly authorized the Safety Manager to recognize programs of training for the purpose of qualifying for a licence, certificate, permit or other permission under the *Act*. That authority must also be read using a broad and purposive approach. Only an unduly restrained view of the Safety Manager's authority could lead to the conclusion that a safety manager cannot recognize a program that is not expressly authorized by another enactment.

[85] It is not helpful to consider the role of the ITA in this case. The ITA is authorized by s. 8(1) of the *ITA Act* to designate a training program as a recognized program for the purpose of awarding industry credentials. Under s. 4(1)(a) of the *Act*, persons holding appropriate industry training credentials, including those recognized

by the ITA, are permitted to perform regulated work in respect of electrical equipment. Persons holding industry training credentials do not need to seek the qualification referred to in s. 4(1)(b) of the *Act*, which results from successful completion of training recognized by a safety manager.

[86] In my view, the judge erred when he held:

[116] There is nothing that suggests that the Legislature intended to empower a provincial safety manager to recognise a program of training not otherwise authorised by law.

No True Jurisdictional Issue

[87] As noted above, the effect of the Decision, aside from revoking the conditional approval given to the ASTTBC in 2011, was to describe the limited recognition that would be afforded to certificate holders seeking to qualify for a licence, certificate, permit, or other permission under the *Act*. In the Decision, the Safety Manager essentially described how he intended to exercise his statutory obligation to evaluate the qualifications of applicants for licences, certificates, permits or other permission under the *Act*.

[88] Whether the ASTTBC was “authorized by law” to establish a training program was not a question that was properly before the Safety Manager and was not open for consideration on judicial review. The Safety Manager was entitled to presume the ASTTBC was acting within its statutory authority, just as he might presume any post-secondary training institution was validly incorporated, in good standing and authorized by statute to engage in educational activities.

Conclusion

[89] For these reasons, I would allow the appeal and set aside the order quashing the Decision.

“The Honourable Mr. Justice Willcock”

I agree:

“The Honourable Madam Justice Newbury”

I agree:

“The Honourable Madam Justice Garson”