

Information about Safety Codes Act Orders

A recent decision by the Court of Queen's Bench (Tirion Properties Ltd. v. Safety Codes Council, 2008 ABQB 549) has raised questions among safety codes officers and owners about the scope and application of orders under the *Safety Codes Act*. To better understand the precedent set by this court decision, Alberta Municipal Affairs and the Safety Codes Council have provided the following key messages of the court's decision.

Safety codes officers may be designated various powers by the Safety Codes Council including the power to issue orders. A safety codes officer may issue an order if he or she believes, on reasonable and probable grounds, that the *Safety Codes Act* is contravened or any thing, process or activity regulated by the *Act* presents a danger of serious injury or damage to a person or property.

The *Act* assigns responsibilities to persons such as owners, designers, manufacturers, contractors, vendors and lessors to comply with the *Act* and its regulations. Safety codes officers are to issue the order to the person who has care and control of the thing, process or activity regulated by the *Act*. By issuing the order to the person having care and control, the safety codes officer is assigning responsibility to the person in the best position to take the necessary steps to achieve compliance. There is no authority for safety codes officers to issue orders to assign fault and liability as a result of a breach of the *Act*.

DECISION OF THE COURT IN TIRION PROPERTIES LTD VS SAFETY CODES COUNCIL

In the Tirion case, the homeowner was in possession of the home for many years by the time an order was issued to the homeowner, the developer and the contractor. The developer and contractor appealed the order to the Safety Codes Council, which upheld the order, resulting in an appeal by the developer and contractor to the Court. The Court found in favour of the developer and contractor because these two parties no longer had care and control or ongoing involvement in the construction and maintenance of the home. The only person who had care and control and who was best positioned to bring the home into compliance with the building code was the homeowner. The Government of Alberta and the Safety Codes Council have accepted this result.

The decision in Tirion acknowledges that an order may be applicable to more than one person, such as the owner and contractor. Let us say that a homeowner has taken possession of their home, but the contractor is still carrying out construction work on the home. In this situation, an order to the owner and the contractor may be appropriate because the owner and contractor have care and control and they are in a position to take the necessary steps for compliance.

What if the homeowner was not at fault for the non-compliance? The decision in Tirion tells us it is not the purpose of the *Safety Codes Act* to assign fault or liability. The *Act* does not provide and cannot be used as an alternative remedy to homeowners who may wish to pursue an action for code violations against other persons such as contractors and developers.

What options does the owner have to pursue a remedy for a breach of the *Safety Codes Act* that the owner did not commit? The Court decision in Tirion tells us that the owner must access private law remedies. In the case of a homeowner whose home is in breach of the building code or other safety codes, the owner may have recourse to private law suits against the person(s) the owner believes is at fault or liable for damages. The homeowner may also access consumer protection programs, such as home warranty programs.

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