

IN THE MATTER OF AN APPEAL UNDER PART IV OF ONTARIO REGULATION 187/09
MADE UNDER THE *SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT, 1996*

BETWEEN:

SOHEIL SOBAT

Appellant

- and -

DIRECTOR OF LICENSING, ELECTRICAL SAFETY AUTHORITY

Respondent

Decision of the Review Panel

Review Panel: Daniel Pugen

Hearing Dates: In writing

Appeal Number: NOAA 23-05

For the Appellant

Self-represented

For the Respondent/Director

Jonathan Hurter

Independent Legal Counsel

Justin Safayeni

I. BACKGROUND

1. This appeal hearing was conducted by the Review Panel (“**Panel**”) in writing, pursuant to rule 19.3 of the Electrical Safety Authority’s (“**ESA**”) *Rules of Procedure for Reviews and Appeals* (“**Rules**”).
2. On September 18, 2023, the ESA Director of Licensing (“**Director**”) issued a Notice of Intent to Issue an Administrative Penalty Order, providing the Appellant with notice of the Director’s intention to impose a \$4,000 penalty and giving the Appellant an opportunity to provide responding information.
3. On September 25, 2023, the Director issued an Administrative Penalty Order (“**APO**”) to the Appellant, pursuant to subsection 113.18.1(1) of the *Electricity Act, 1998* (“**Act**”). The APO describes the Appellant’s contravention (“**Contravention**”) as follows:

Between March 1, 2023 and March 20, 2023, you proposed to carry out an activity referred to in the regulations under the Act as requiring an authorization, by placing an advertisement for electrical work on Kijiji.ca.

4. The APO states that the Contravention reflects a breach of s. 113.2(1) of the *Electricity Act*, (the “**Act**”), which states:

Except as provided for in the regulations, no person shall carry out or propose to carry out, to permit or employ another person to carry out, an activity referred to in the regulations as requiring an authorization without first obtaining an authorization in accordance with this Part and the regulations.

5. The APO seeks an administrative penalty in the amount of \$4,000.
6. On October 3, 2023, the Appellant filed his Notice of Appeal. The Appellant does not deny posting an advertisement for electrical work on Kijiji.ca, as alleged in the APO. Instead, the Appellant argues that he “didn’t know that [he] was not allowed to post ads on Kijiji”; that he “cannot afford \$4,000” given his yearly income and family obligations; and that he “posted the ad on Kijiji to make a little money to provide for my family”.
7. On October 24, 2023, the ESA issued a Notice of Review Panel Hearing in this matter, which provided for a written process whereby the Appellant could submit further material in support of the appeal; the Respondent could then file responding material; and the Appellant would have an opportunity to file material in reply. Both the Appellant and the Respondent filed material in accordance with this process.

II. LEGISLATIVE SCHEME

8. With respect to liability, the key provision is s. 113.2(1) of the *Act*, which states:

Except as provided for in the regulations, no person shall carry out or propose to carry out, to permit or employ another person to carry out, an activity referred to in the regulations as requiring an authorization without first obtaining an authorization in accordance with this Part and the regulations.

9. With respect to the APO imposed by the Respondent, the key provision is s. 113.18.1 of the *Act*, which states:

113.18.1 (1) A Director may, by order, impose an administrative penalty against a person in accordance with this section and the regulations made by the Minister if the Director is satisfied that the person has contravened or is contravening,

- (a) a prescribed provision of this Part or the regulations;
- (b) a restriction, limitation or condition imposed by a Director in respect of a prescribed authorization; or
- (c) a prescribed order of the Authority.

...

(3) An administrative penalty may be imposed under this section for one or more of the following purposes:

- 1. To ensure compliance with this Part or the regulations.
- 2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of a contravention described in subsection (1).

...

(4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000.

10. Further detail on the administrative penalty regime is set out in O. Reg 12/23 under the *Act* (the “**Regulation**”), which provides as follows:

6. For the purposes of subsection 113.18.1 (4) of the Act, a Director shall determine the amount of an administrative penalty for a contravention prescribed in section 1 of this Regulation in accordance with the following rules:

- 1. The Director shall determine whether, in the Director’s opinion, the contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on electrical safety.

2. The range for the administrative penalty is set out in Column 2 of the Table to this section opposite the determination set out in Column 1 as described in paragraph 1.
3. The amount of the administrative penalty for the contravention is an amount selected by the Director from within the range described in paragraph 2 after considering the following criteria:
 - i. Whether the person who committed the contravention has previously been subject to enforcement actions under Part VIII of the Act or its regulations for contraventions of a similar nature.
 - ii. The extent of the harm, or of the degree of risk of harm, to others as a result of the contravention.
 - iii. Whether the contravention was deliberate.
 - iv. Whether the contravention was repeated or continuous.
 - v. The length of time during which the contravention continued.
 - vi. Whether the person who committed the contravention derived any economic benefit from the contravention.

TABLE
RANGE OF ADMINISTRATIVE PENALTIES

Column 1 Severity of adverse effect or potential adverse effect	Column 2 Range
Major	From \$5,001 to \$10,000
Moderate	From \$1,001 to \$5,000
Minor	From \$100 to \$1,000

III. ISSUES TO BE DECIDED

11. The issues to be decided are:
 - (i) the applicable standard of review to be applied to the APO;
 - (ii) whether the Appellant committed the Contravention on a balance of probabilities;
and
 - (iii) if so, whether the \$4,000 in the APO should be confirmed, rescinded or varied.

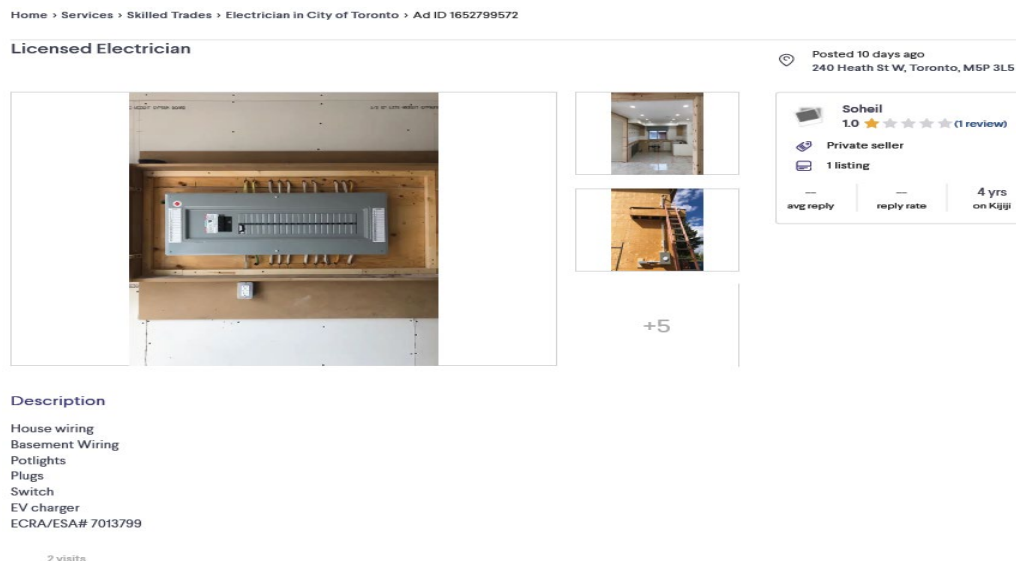
IV. STANDARD OF REVIEW

12. The parties did not address the standard of review in their original materials. As this was the first appeal to be heard under the administrative penalty order regime, on December 8, 2023, the Review Panel asked the parties to provide submissions on the applicable standard of review and to specifically reference a previous Review Panel decision, *Edison Electrical Inc*¹. In *Edison*, the Review Panel found that a “correctness” standard of review should be applied to appeals to the Review Panel and that such appeals are hearings “de novo”.
13. Only the Respondent filed submissions on the standard of review. The Respondent submits that a correctness standard of review ought to be applied.
14. The Review Panel finds that the correctness standard should be applied. Previous decisions of Review Panels have applied a correctness standard when reviewing decisions of the Director, albeit outside of the APO context.² The same approach should be taken when on an appeal of an APO, particularly given the fact that it is only at the Review Panel stage where the appellant has a full opportunity to review all of the ESA’s supporting documents, present evidence and make submissions in support of their position. The hearing before the Review Panel is, in effect, a *de novo* process. That means that Review Panel must assess for itself the correct interpretation and application of the relevant statutory provisions, rather than deferring to the Director’s views or analysis, both with respect to liability and with respect to penalty.

V. LIABILITY

A. The Appellant’s Position

15. The Appellant does not deny that he posted the following advertisement on Kijiji in March 2023 (the “Advertisement”):



¹ NOAL-15-01 (*Edison Electric Inc. v Director, Contractor Licensing and Powerline*)

² NOAL-15-01 (*Edison Electric Inc. v Director, Contractor Licensing and Powerline*); NOA 21-01L (*Re Moradali A. Bandzar v Director of Licensing, Electrical Safety Authority*)

16. The Appellant also does not argue that he had the necessary authorization to “propose to carry out... an activity referred to in the regulations” within the meaning of s. 113.2(1) of the *Act*.
17. Instead, the Appellant states that he posted the Advertisement on behalf of his employer as evidenced by the inclusion of his employer’s Electrical Contractor Registration Agency (“**ECRA**”)³ number near the bottom of the Advertisement. It is common ground that the Appellant worked, at least on a part-time basis, for Cell Electrical Inc (“**Cell**”), which is owned and operated by Hossein Tavakoli (“**Tavakoli**”). The Appellant emphasizes that he was not aware that he was not allowed to post the Advertisement. As stated by the Appellant,

...I request an appeal first since I didn’t know I was not allowed to post ads. I had never received any emails regarding ad regulations. If I had known about it I would have never posted the ad. I removed the ad immediately when your detective informed me that I wasn’t allowed to post the ad. [...] If I were aware of the regulations and the hefty amount of the penalty I wouldn’t have posted the ad...

18. The Appellant also denies ever having received emails or notifications from the ESA or Kijiji regarding the Appellant’s previous Kijiji advertisements for electrical services.

B. The Respondent’s Position

19. The Respondent submits that the posting of the Advertisement amounts to a violation of s. 113.2(1) of the *Act* and, specifically, that the Appellant has proposed to carry out electrical work even though he does not have an authorization (i.e. a licence) to do so under Regulation 570/05 of the *Act* (the “**Licensing Regulation**”). The Respondent notes that the Appellant does not deny: (a) not having an authorization; and (b) posting the Advertisement
20. In response to the Appellant’s arguments, the Respondent notes that ignorance of the law is not an excuse, and that individuals are still held accountable for violations of the law, even if they were unaware of the law’s existence or did not have knowledge of its specific provisions.
21. The Respondent further argues that the evidence shows the Appellant received a Notice of Violation (“**NOV**”) in respect of a previous advertisement, and that he modified his conduct when it came to the Advertisement in terms of adding his employer’s ECRA, and that this evidences the Appellant’s knowledge of the illegality of his conduct.

C. Decision

22. After reviewing the submissions of the parties and the record on this appeal, the Review Panel hereby confirms the APO, but varies the amount of the penalty to \$3,000.

³ An ECRA number is assigned to electrical contractors who have successfully registered with the ESA.

23. There is no dispute regarding the material facts that led to the APO. The Appellant is not a licensed electrical contractor and this is not disputed by the Appellant. The Appellant has admitted to posting the Advertisement.
24. Accordingly, there is a clear violation of the Act, and particularly section 113.2(1) which prohibits the Appellant from “proposing to carry out electrical work”.
25. The Appellant claims ignorance of the law, or, put another way, ignorance of the legislative/regulatory framework prohibiting him from posting of advertisements for electrical services. As noted above, the Appellant states that had he known that he was prohibited from posting the Advertisement, he would not have done so.
26. It is well-established law that ignorance of the law is not a valid defence. The Respondent has cited legal authority for this well-known proposition, which the Review Panel adopts.
27. Previous Review Panel decisions have considered whether an appellant could claim ignorance of, in those cases, the licensing regime as a defence to actions taken by the Respondent to suspend or terminate a license. As stated in the *Kenneth Breau*⁴ case, at paragraph 31:

We would note that prior Review Panels have issued decisions confirming that an applicant’s ignorance of the legislative requirements is not an excuse for the applicant’s failure to comply with the same (Paul McGee c.o.b McGee Electrical Repair Services and Director of Licensing and Certification dated November 9, 2007 at paragraph 18; and Matera Properties Incorporated and Director of Licensing and Certification dated September 17, 2007 at paragraph 13). Further there is no basis upon which this Review Panel can exempt Mr. Breau from the application of the legislation...

28. Similarly, there is no basis upon which to conclude that the Appellant’s lack of knowledge of the law exempts him from the application of such law. While it may be relevant to the ultimate penalty, it does not act as a defence in this case.
29. As this is a written hearing, the Review Panel is not able to assess credibility or to have the benefit of *viva voce* evidence to determine whether the Appellant, in fact, is unaware of the restrictions in the Act. However, the Review Panel acknowledges that the Appellant ought to have known about those restrictions, especially considering he holds a 309A certification.
30. Finally, in respect of the Appellant’s argument that he posted the Advertisement on behalf of his employer, there is evidence before the Review Panel⁵ that Tavakoli did not authorize the use of his ECRA number for any advertisements and that he was not aware of the Advertisement. The Appellant provided no evidence to refute this. In any event, the Advertisement does not reference Cell at all, only the Appellant.

⁴ *Kenneth Breau and Director, Licensing and Certification* (NOAL 09-006) (March 29, 2009)

⁵ Affidavits of Cythnia Magill (Para 25) and Indy Esken (Para 7)

VI. PENALTY

A. The Appellant's Position

31. The Appellant repeats the arguments he made with respect to liability. The Appellant also argues that he cannot afford a \$4,000 penalty. He has provided his 2022 Notice of Assessment, which shows a total income of \$36,922, and various income statements from Cell where he works part-time.

B. The Respondent's Position

32. The Respondent submits that \$4,000 is justified, both by reference to the purposes of the APO regime and the specific criteria set out in the Regulation.
33. With respect to the APO's statutory purposes, the Respondent argues that the purpose of ensuring compliance with the *Act* (as set out in s. 113.18.1(3)) is achieved through general and specific deterrence. The Respondent also argues that it is appropriate to compare the APO amount with other similar cases, including those which were addressed before Provincial Offences courts, and points to one such case where the offender was fined \$5,000. The Respondent notes in that case the offender did not advertise with an ECRA number, which the Respondent considers to be an aggravating factor as it misleads consumers.
34. With respect to the various APO criteria set out in the Regulation, the Respondent argues as follows:
 - a. *Previous enforcement action.* The Appellant has previously received NOVs, both in the present case and on two previous occasions in respect of a different advertisement on Kijiji.
 - b. *Extent of harm and degree of risk of harm to others.* The Appellant was not authorized to perform the work being advertised. The services being proposed by the Appellant not only included pot lights and switches, but also arguably more dangerous services such as panel changes. Had he performed the work, he could have caused major harm.
 - c. *Deliberate.* This criteria does not refer to whether there was a deliberate intention to contravene the *Act*, but rather whether the Appellant deliberately posted the Advertisement, and it is not disputed that he did. In another case, the Ontario Court of Justice found that similar acts were "deliberate" and "premeditated", and imposed a fine of \$6,000 for a single count of advertising.
 - d. *Repeated or continuous, and length of time.* The Advertisement was posted for at least 10 continuous days.
35. The Respondent's submissions do not address the statutory purpose of "prevent[ing] a person from deriving, directly or indirectly, any economic benefit as a result of a contravention", or the criterion of "whether the person who committed the contravention derived any economic benefit from the contravention". That is perhaps because there is no allegation in this case that the Appellant obtained an economic benefit from posting the Advertisement.

36. The Respondent suggests that the Appellant's financial circumstances should not be considered and that the APO ought to be determined on the basis of the criteria in the Regulation.

C. Decision

37. The maximum administrative penalty is \$10,000 as set out in section 113.18.1(4) of the *Act*. Section 6 of the Regulation provides for a range of \$5,001 - \$10,000 when the "severity of adverse effect" or "potential adverse effect" is "major". When such risk is "moderate" the range is \$1,001 - \$5,000.
38. Pursuant to section 6(1) of the Regulation, the first step in the analysis is to determine whether the "contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on electrical safety."
39. By imposing an administrative penalty of \$4,000 the Respondent is stating that the risk is "moderate".
40. However, the Review Panel does not have any detailed evidence on why the Contravention constitutes a "moderate" risk or, more specifically, a high "moderate" risk given that the fine of \$4,000 is close to the maximum "moderate" risk figure of \$5,000. The Appellant provides no submissions on the level of risk. The Respondent submits that the pot lights and switches that were part of the advertisements could cause a fire like what occurred in the decision of *ESA v. Tabunot*, where the unlicensed contractor worked on switches and pot lights which eventually caused a fire. The Respondent submits that the panel work could be more dangerous. Implied in the Respondent's submissions is the risk of faulty or dangerous work given that the Appellant is an unlicensed contractor.
41. The Review Panel is prepared to accept some degree of a "moderate" level of risk in this matter given that pot lights, switches and panel work could have been performed by an unlicensed contractor given the author of the Advertisement.
42. The Appellant has not been subject to enforcement action before by the Respondent (though previous NOV's were sent to the Appellant). The Appellant deliberately posted the Advertisement, and the Review Panel agrees with the Respondent that the inclusion of the ECRA number could mislead consumers into believing that the work would be performed by a licensed contractor. The Contravention was continuous, though the record states that the Advertisement was only posted for ten (10) days, which is not a significant amount of time. There is no evidence of consumers enquiring for electrical services based on the Advertisement. This implies a low risk of public harm. There is also no evidence to suggest the Appellant derived an economic benefit from the Contravention, though the Appellant does mention that business was slow and, thus, posting the Advertisement was for the purposes of increasing his income.
43. The Review Panel does find it troubling that multiple NOV's were sent to the Appellant and that the last Advertisement sets out the ECRA number, which leads to an inference that the Appellant deliberately posted the Advertisement with knowledge that only licensed contractors can perform such an activity. Not only that, but, as noted above, Tavakoli

confirms that he did not authorize, and was unaware of, the Appellant using the ECRA number associated with Cell. These are aggravating factors.

44. While the Review Panel does consider it relevant that Provincial Court cases have imposed fines of a similar nature, the Review Panel does not consider the 2023 case of *Marc Dion*⁶ (in which a \$6,000 fine was imposed) persuasive, especially considering the Court found in that case that Mr. Dion had been "...flouting the law since 2014" and Mr. Dion did not participate in those proceedings. Also, cases before Provincial Court will usually have the benefit of *viva voce* evidence and, arguably, a more complete evidentiary record. As such, while useful, the Review Panel does not believe that such decisions should have precedential value.
45. The Review Panel has considered the Appellant's submission that he lacks the means to pay the administrative penalty. The Appellant has submitted a 2022 Notice of Assessment, 2022 T4 and 2023 pay statements from Cell. The Appellant has not submitted income information reflecting other sources of income⁷. Accordingly, the Review Panel is giving this limited weight and would note that ability to pay is not set out in the Regulation as a relevant factor to consider. However, it is relevant in determining whether the specific penalty acts as a specific deterrent to the Appellant. The Review Panel believes that the varied penalty will act as a deterrent and otherwise be consistent with the statutory purposes of the APO.
46. Given the above, the Review Panel is varying the administrative penalty to \$3,000.

VII. ORDER

47. The Review Panel confirms the APO in this matter in respect of the Contravention, but varies the administrative penalty amount to \$3,000.

Dated this 3rd day of January 2024.



Daniel Pugen
Review Panel Member

⁶ ESA Book of Documents (page 70, Line 7)

⁷ For example, the Appellant states he has a side business selling "saffron" (a type of spice)