
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL

B E T W E E N:

MAYBURRY INC.

(the "Applicant")

- and -

DIRECTOR OF ONTARIO ELECTRICAL SAFETY CODE

(the "Director")

Decision

Review Panel: Robert Lake, Michel Bourassa, Joan Pajunen

Hearing Dates: August 29, 2013

File Number: 14149466

Appeal Number: NOAC 13-10

APPEARANCES

Hearing done by written submissions

REASONS FOR MAJORITY DECISION: Robert Lake (Joan Pajunen concurring)

DISSENTING REASONS: Michel Bourassa

I. BACKGROUND

1. This matter was determined by way of written submissions. The Review Panel comprised of Robert Lake, Michel Bourassa and Joan Pajunen considered the written submissions on August 29, 2013. There were no objections to the jurisdiction of the Review Panel to hear this matter.
2. Both parties provided written submissions.
3. The issue before the Review Panel was the Director's decision to confirm the Notice of Defect (the "Notice") issued to the Applicant for failing to acquire authorization before reconnecting a power supply to an electrical panel.

II. FACTS

4. The Applicant, Mayburry Inc., is a licensed electrical contractor who performed electrical work at 132 Renaud Drive in Waterloo. While performing the work, the Applicant disconnected the electrical panel from the power supply source provided by Waterloo North Hydro. The Applicant then reconnected the electrical panel to the power supply source without a connection authorization from the Electrical Safety Authority (the "ESA"). The ESA issued the Notice with an order to correct deficiencies.
5. The Director in her submissions has also provided the Review Panel with an audio recording. The Review Panel was unanimous in their view that the recording was not relevant to their determination of this matter and therefore did not consider the contents.

The Appeal

6. The Applicant appealed the Notice to the Director. The Applicant's appeal is based on the code not requiring a reconnection authorization for the work involved. If such an authorization was required, it is clear that the Applicant did not provide any explanation or justification for his failure to acquire the appropriate authorization.
7. The Director issued her decision on July 5, 2013. In her decision, the Director confirmed the Notice.
8. The Applicant appealed the Director's decision to this Review Panel.

III. THE LAW

9. Rule 2-012 of the Ontario Electrical Safety Code (the "Code") reads:
 - (1) Where any electrical installation or part thereof to which electrical power or energy has not been previously supplied is made in or upon any land, building or premises, or subject to Subrule (2), where any electrical installation or part thereof has been disconnected or cut off from any

service or other source of supply under this Code, no supply authority, contractor or other person shall connect or re-connect the installation or part thereof to any service or other source of supply unless

(a) the installation and all related work have been inspected in accordance with the procedures in Rule 2-004 by an inspector; and

(b) a connection authorization has been issued by the inspection department with respect to the installation

(2) Where a connection authorization in Subrule (1) has been issued to a supply authority, it is valid for the connection of a service for a period of up to six months from the date of issue.

(3) Where any electrical installation or part thereof has been disconnected or cut off from a source of supply by a supply authority for six months or less for non-payment of rates or because of a change of occupancy of premises, the supply authority may reconnect the installation or part thereof without obtaining a connection authorization.

10. Rule 2-013 of the Code reads:

Notwithstanding the provisions of Rule 2-012, a connection authorization for an electrical installation or part thereof is not required if the installation does not require an application for inspection in accordance with the provisions of Rule 2-005.

11. Counsel for the Director has correctly asserted in the Director's submissions that a matter before a Review Panel is a hearing *de novo*. Accordingly, as articulated in *Orangeville Hydro Limited and Director, Licensing and Certification*, dated February 11, 2011 ("*Orangeville Hydro*"), the appropriate standard of review is correctness. In making its decision, the Review Panel in *Orangeville Hydro* relied on section 14 (11) of Regulation 187/09:

The Review Panel may, by order, confirm, amend, rescind or impose terms and conditions to the decision of the Director or make whatever other decision that the Review Panel deems appropriate.

12. In applying section 14(11) of Regulation 187/09, the Review Panel in *Orangeville Hydro* stated the following at paragraphs 19 and 20:

The legislature has seen fit to give to the Review Panel wide authority to insert itself into the decision making process. While it may be that the Review Panel may choose to give deference to the Director in the exercise of certain decision making exercises that are conferred her under the EA in

any individual case, the Review Panel clearly has great latitude to impose its perspective and to make the decision that it deems appropriate.

Although not determinative, the Review Panel is also supported in its view on this matter in that a hearing before a Review Panel is a hearing *de novo*.

13. This Review Panel adopts the reasoning in *Orangeville Hydro* whereby the standard of review is one of correctness.
14. The standard of proof in this review is a balance of probabilities.

IV. ISSUE

15. The issue is the whether the ESA was correct in issuing the Notice due to the Applicant's failure to acquire authorization before reconnecting a power supply to an electrical panel.

V. ANALYSIS

16. There does not appear to be any discrepancy in the facts of this case. The Applicant does not dispute that the electrical panel was disconnected from the power supply, or that the power supply was reconnected without inspection and the appropriate authorization.
17. The matter then turns on the interpretation of Rule 2-012, and whether any of the exceptions apply, including that in Rule 2-013.
18. Subrule 2-012(1) reads:

Where any electrical installation or part thereof to which electrical power or energy has not been previously supplied is made in or upon any land, building or premises, or subject to Subrule (2), where any electrical installation or part thereof has been disconnected or cut off from any service or other source of supply under this Code, no supply authority, contractor or other person shall connect or re-connect the installation or part thereof to any service or other source of supply unless:

(a) The installation and all related work have been inspected in accordance with the procedures in Rule 2-004 by an inspector; and

(b) A connection authorization has been issued by the inspection department with respect to the installation

[Emphasis Added]

19. To properly interpret Rule 2-012, the Rule must be broken down by its construction. There are two scenarios that trigger the application of Subrule 2-012(1). The first is where there is an electrical installation (or part thereof) where electrical power or

energy has not been previously supplied. The second is where there is an electrical installation (or part thereof) that has been “disconnected or cut off from any service or other source of supply under this Code.”

20. The first scenario does not apply to this situation. The location at 132 Renaud Drive had electrical power prior to the Applicant’s work.
21. The question then becomes whether the second scenario captures the work performed by the Applicant. Based on the wording as written, it is not entirely clear whether the Applicant’s actions fall under this Rule. This Review Panel notes that this Rule is problematic in its construction and requires a certain level of statutory interpretation.
22. The exact words as written are “subject to Subrule (2), where any electrical installation or part thereof has been disconnected or cut off from any service or other source of supply under this Code”. The problem arises with the interpretation of the phrase “under this Code”. It is not entirely clear what “under this Code” was intended to modify. There are three possible interpretations of this wording:
 - a. The phrase “under this Code” could modify “source of supply” such that Subrule 2-012(1) only applies where the source of supply has been provided under the Code; or
 - b. The phrase “under this Code” could modify the disconnection such that Subrule 2-012(1) only applies where the disconnection occurred pursuant to a Code violation; or
 - c. The phrase “under this Code” could modify the installation and disconnection such that Subrule 2-012(1) applies more broadly to any disconnection where there is work performed under the Code.
23. On their face, none of these interpretations is blatantly obvious, or without issue. Therefore, it is necessary to examine each one in the context of the Code to determine which, on the balance of probabilities, matches the drafters’ intention.

(a) Modifying Source of Supply

24. If the words “under this Code” modify the term “source of supply”, Subrule 2-012(1) only applies where the source of supply has been provided under the Code. From the perspective of sentence construction, “under this Code” comes immediately after “source of supply”. This could have been done specifically to limit the application of Subrule 2-012(1) to situations where the supplier falls under the Code; however, this interpretation is problematic as not all utilities fall under the Code.
25. This would lead to a situation where the source supplier, and not the work performed, dictates whether the Rule applies. For example, the same electrical contractor would require authorization to reconnect where the source is Waterloo North Hydro, but not if it is Hydro One. This result is incompatible with the Code’s objectives. The Code’s

objective is to “establish safety standards for the installation and maintenance of electrical equipment”. Therefore, it is more likely that the drafters intended that the work performed would dictate whether a particular Rule applies, not the source supplier.

(b) Modifies the Disconnection Only

26. If the words “under this Code” modify the disconnection only, Rule 2-012 applies where the disconnection was required pursuant to the Code. More specifically, a reconnection authorization is only required where the disconnection occurred as a result of an Order or a Code violation.
27. This interpretation is in line with the Code’s objectives. If a location has already been inspected and given authorization, there is likely little safety concern if the supply source is disconnected for electrical work. However, if the disconnection occurred as a result of an order or Code violation, it is logical that an authorization would be required to get a reconnection.
28. However, this interpretation is also problematic. This interpretation requires this Review Panel to read the phrase “under this Code” to apply only to the disconnection despite the lack of proximity to the word. Further, this interpretation requires the Review Panel to infer that “under this Code” means an order or violation pursuant to the Code.

(c) Any Disconnection

29. If the words “under this Code” modify the entire work performed with respect to the disconnection, Subrule 2-012(1) applies more broadly to any disconnection where there is work performed under the Code.
30. This interpretation is in line with the Code’s objectives, as no matter the reason for the disconnection, a reconnection authorization is required. Albeit more stringent than the previous interpretation, this ensures that all reconnections are treated similarly. Further, it does not require the Review Panel to alter the sentence construction, as applying it to the whole phrase is congruent with its location just prior to the comma.
31. However, this interpretation is also problematic. While it does not require the Review Panel to alter the sentence construction, this interpretation does render the words “under this Code” somewhat meaningless. There is no need to include the modifier “under this Code” if the intention is to have the Subrule apply to all disconnections and reconnections. It should be assumed that the drafters of the Code intended the phrase “under this Code” to have meaning, otherwise it would not have been included yet, this interpretation requires this Review Panel to cause this phrase to be almost completely redundant.

VI. DECISION

32. As previously stated, each of the potential interpretations is problematic in their own way; however, the majority of the Review Panel has determined that the phrase “under this Code” applies broadly to the entire work surrounding the disconnection, such that all disconnections require reconnection authorization. While this interpretation essentially removes almost all the significance of the phrase “under this Code”, it is the most congruent with the rest of the Code.
33. Subrule 2-012(3) provides significant guidance with respect to the drafters’ intention with respect to Subrule 2-012(1). Subrule 2-012(3) reads:

Where any electrical installation or part thereof has been disconnected or cut off from a source of supply by a supply authority for six months or less for non-payment of rates or because of a change of occupancy of premises, the supply authority may reconnect the installation or part thereof without obtaining a connection authorization.
34. Neither non-payment nor change of occupancy would be an order or violation pursuant to the Code. Therefore, by specifically exempting those situations, the drafters of the Code must have identified that those situations should and would be captured under Subrule 2-012(1), and thus require reconnection authorization. Therefore, the phrase “under this Code” could not have been included to modify the reasons for disconnection.
35. Further, Subrule 2-012(3) also refers to the “source of supply”, but omits the phrase “under this Code”. By referring to the same entity but omitting the qualifier, Subrule 2-012(3) demonstrates that the phrase, “under this Code” was not meant to modify the source of supply. In addition, from a practical and safety matter, it would be incompatible with the Code’s objectives to have the source of supply dictate whether an inspection and connection authorization is required.
36. Given the foregoing, this Review Panel has determined that Subrule 2-012(1) applies broadly to all disconnections at the point of connection to the supply authority, regardless of the method or reason for that disconnection.
37. Accordingly, since the Applicant does not dispute that the electrical panel was disconnected from the power supply, or that the power supply was reconnected prior to inspection and the appropriate authorization, the Applicant breached Rule 2-012. There is no evidence before this Review Panel to suggest that the work performed by the Applicant is captured under any of the exceptions; therefore, the Notice issued is valid.
38. As the majority of the Review Panel has determined that the Notice is valid, the Applicant’s Appeal is dismissed.
39. Given the ambiguity of the Rule, the Review Panel unanimously is of the view that the

Appeal is neither frivolous nor vexatious. In these circumstances no costs should be awarded.

Michel Bourassa (dissenting):

40. I have had an opportunity to read the reasons of the majority of the Review Panel.
41. I agree with the content of the award as outlined with the exception that I disagree with the conclusion of the majority with respect to their interpretation of the Rule.
42. As stated by the majority, each of the potential interpretations is problematic in their own way; however, my determination is that the phrase "under this Code" applies narrowly to the method of disconnection, such that Subrule 2-012(1) only applies where there was a disconnection pursuant to an order or violation of the Code, or where the disconnection occurs up to the line terminals of the main switch. While this interpretation requires some inferences with respect to the drafters' intentions, it is my view that it best aligns with the Code's objectives and a fair reading of the Rule.
43. The biggest safety concern is presented where there has been a disconnection due to an order or violation pursuant to the Code. There are many standard electrical actions that could result in the disconnection of the power supply, but should not require a reconnection authorization. It should not be necessary to get a reconnection authorization where the connection from the power supply source to line terminals of the main switch has already passed inspection. The interpretation I favour would exclude these unnecessary authorizations. However, in situations where there was a disconnection due to an order or violation, then an authorization is necessary and would be required.
44. The broad interpretation favoured by the majority captures too many actions that do not need further inspection. It would be a waste of time and resources to conduct authorizations in these circumstances, and therefore is not likely what the drafters had intended.
45. Given the foregoing, it would be my determination that Subrule 2-012(1) applies narrowly only to installations in new premises and those disconnections that were the result of an order or violation pursuant to the Code, and those disconnections that occur prior to the line terminals of the main switch.
46. Accordingly, since the location at 132 Renaud Drive was not subject to a disconnect order or violation, it would be my conclusion that the Applicant's work was not captured by Rule 2-012. Therefore, in my opinion, the Notice issued is invalid.
47. My decision is reinforced by my belief that the disconnect means was through a separate main switch (with overcurrent protection) located between the meter base and the panelboard, and that this belief results from the words used to describe the panelboard in both the permit and the Director's decision

48. I would uphold the Applicant's Appeal and rescind the Notice.

Dated: September 13, 2013