

[2] The Appellants seek to quash the Decision, or, direct the matter back to the Review Panel for review. In addition, the Appellants seek costs on a partial indemnity basis.

BACKGROUND

[3] The Appellant Mr. Valovic has been a Master Electrician for many years. He owns and operates the Appellant business, IEL. Mr. Valovic held a Master Electrician licence, and IEL held an Electrical Contractor licence.

[4] In November 2009, the Electrical Safety Authority (“ESA”) issued two Notices of Proposal to suspend Mr. Valovic’s Master Electrician Licence for six months or until he completed the Master Electrician examination, and to suspend the Electrical Contractor licence of IEL for 90 days. The reasons for the proposed suspensions were that the Appellants’ conduct provided reasonable grounds to believe that the licence holders would not carry their activities safely and in accordance with the law and would not conduct themselves with honesty and integrity.

[5] The Appellants requested a hearing before the Director. After holding the hearing in March and May 2010, the Director confirmed the actions set out in the proposals.

[6] The Appellants appealed the Director’s decision to the Review Panel. After hearing 24 witnesses over 7 days, the Review Panel found that the Appellants failed to comply or to meet the requirement of the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A, Part VIII (the “Act”), Ontario Regulation 570/05, and its associated regulations, including the Electrical Safety Code.

[7] Pursuant to s. 14(11) of the Ontario Regulation 187/09 under the *Safety and Consumer Statutes Administration Act, 1996*, S.O. 1996, c.19 (“SCSAA”), the Panel ordered a 90 day suspension of the Electrical Contractor Licence of IEL and a suspension of Mr. Valovic’s Master Electrician License for 90 days or until he completes a master electrician training course and passes the Master Electrician examination, whichever period is longer.

[8] The Appellants advance six grounds of appeal each of which is dealt with below.

COURT’S JURISDICTION

[9] It is agreed that this Court has jurisdiction to hear this appeal pursuant to s.16 of Ontario Regulation 187/09 to the *Safety and Consumer Statutes Administration Act, 1996* which provides that any party to a hearing before the Review Panel may appeal the decision of the Review Panel to the Divisional Court on any question that is not a question of fact alone.

STANDARD OF REVIEW

[10] For the reasons that follow, we find that two of the questions raised by the Appellant are questions of fact alone and, therefore, we have no jurisdiction to hear them.

[11] Two of the issues raised involve allegations of lack of procedural fairness for which no standard of review analysis is necessary.

[12] The Appellant concedes that the remaining questions should be reviewed on a standard of reasonableness in accordance with this Court's decision in *Mayburry v. Ontario Electrical Safety Code (Statutory Director)* 2014 ONSC 6074.

ANALYSIS OF THE ISSUES

Alteration v. Replacement- Code Rule 2-004

[13] This Rule requires an electrical contractor to obtain an inspection permit for work performed on an electrical installation. "Electrical Installation" is defined in the Code to include maintenance, alteration, extension, and repair of wiring.

[14] The Appellants argue that the word "alteration" in the Rule does not include "replacement", and the Rule does not apply when a part is replaced with an identical part. The Appellants rely on Rule 2-005 of the OSC that specifically excludes "replacements" done in owner-occupied single unit properties from the application of Rule 2-004, to argue that the use of the word "replacements" in Rule 2-005, indicates that the legislature was alive to the difference between alterations and replacements. Had it intended for the Rule 2-004 to apply when a part is being replaced, it would have specifically stated that. As a result, they argue that the Review Panel's interpretation of Rule 2-004 was unreasonable.

[15] The Review Panel found that the wording of Rule 2-004 was intentionally broad given the public safety concerns of the drafters of the Rule. On a broad reading of the Rule the word "alteration" would include "replacement".

[16] The Review Panel's interpretation is reasonable given the context of the Rule, particularly the fact that it is immediately followed by Rule 2-005 which is clearly intended to provide specific exemptions to Rule 2-004. In Rule 2-005, one of the exemptions is for "the installation of replacement equipment". If the installation of replacement equipment was not covered by Rule 2-004, there would be no need for the exemption provided for in Rule 2-005.

[17] The Appellants also argue that the part Mr. Valovic installed was identical to the part he replaced. The Review Panel disagreed, finding that the parts were different parts from different manufacturers that differed in function, rating, size and weight. This is a purely factual question that is not within our jurisdiction to review.

Disconnection- Code Rule 2-012

[18] This Rule requires authorization to reconnect the supply of power once the power is disconnected. The Appellants were found to have failed to obtain such authorization in three instances.

[19] The Appellants submit that the Rule applies only when a contractor arrives at a location where the power has already been disconnected. They argue that the Rule does not apply where the contractor is the one who disconnects the power. The Appellants also allege that the ESA used to interpret the Rule this way, but then changed its interpretation from “has been disconnected” to “has been disconnected or is disconnected by the contractor” “sometime between 2005 and 2007”, making the enforcement of the Rule capricious.

[20] The Review Panel found that the wording of the Rule captures all instances of disconnection from a power supply. The Appellants concede that in *Mayburry* this broad reading of the Rule was found to be reasonable.

[21] With respect to the Appellants’ submissions regarding the capricious enforcement of the Rule, the Review Panel found as follows at para 127:

[127] This can also be said of Mr. Valovic’s interpretation of Rule 02-012. It was originally argued that the Licensees held a reasonable misunderstanding of Rule 02-012 and were diligent in attempting to inform themselves of how the Rule should be applied and therefore should not be found liable for any violation of the Rule. The Review Panel finds however, that the evidence before it suggests that the Licensees were informed of the ESA interpretation of Rule 02-012 in March of 2007. Notwithstanding this they were found to be in breach of this Rule again in January 2009, August 2009, and October 2009. The Licensees suggest that the fact that the ESA declined to pursue the charges against the Licensees, after the March 2007 meeting where the ESA interpretation of Rule 02-012 was clarified for the Licensees, was confirmation they were right. This assumption was not reasonable and does not explain why there were three subsequent instances, over a nine month period, in which they were not in compliance.

[22] In our view the Review Panel’s analysis of this issue was cogent and reasonable.

Wrong equipment Installed- Code Rule 2-034

[23] This Rule prohibits the use of electrical equipment for any purpose or in any manner other than the one intended. The Appellants were found to have breached the Rule by installing the wrong type of breaker in a customer’s electric panel.

[24] The Appellants submit that this charge was not included in the Notices of Proposal, and therefore the Review Panel erred in fact and law in finding a breach of this Rule. In addition, it is submitted that the electrical panel was installed for the purpose and manner intended, and that the replacement part was of a better quality than the one being replaced.

[25] The second part of the Appellants’ submission is purely a factual question and it is therefore not in our jurisdiction to review. With respect to the first part of the Appellants’ argument, while the Notice of Proposal does not specifically mention Rule 2-034, it does set out

the factual basis for the violation found. In particular, at page 6 of the Notice of Proposal the following statements appear:

Mr. Valovic said he didn't know it was an old part and he showed it to the owner, Mr. Tibble. Mr. Tibble looked at it and went upstairs and talked it over with his wife and they told him to install it. They knew it was old.

When questioned about putting in the wrong part, Mr. Valovic said that they agreed for him to put it in.

[26] The notice required in an administrative proceeding where professional licences are in issue must be sufficient to allow a party to participate adequately in the proceeding. The notice must set out with sufficient particularity the precise allegations made. In this case, that standard was met.

Defective Equipment- Code Rule 2-300

[27] This Rule requires, among other things, that contractors either repair or permanently disconnect defective equipment. The Appellants were found to have breached the rule by failing to replace a defective buss bar.

[28] The Appellants submit that this charge was also not specified in the Notice of Proposal, and the Review Panel erred in fact and law when it upheld the conviction on the charge. The Appellants claim they did not know the case they had to meet. In addition, it is submitted that the buss bar was not shown to be defective and the Appellants did not think it necessary to replace it.

[29] Once again, the second part of the Appellants' submission is a pure question of fact and therefore not within our jurisdiction. With respect to the argument that they did not know the case they had to meet, page 6 of the Notice of Proposal provides the factual basis for this case as follows:

Upon inspection by ESA, it was determined that the main buss was heat damaged and carbonized. It was also determined that Ivan's Electric Limited installed an incorrect breaker thus leaving the installation in an unsafe condition with further chance of again overheating.

[30] Thus, there is no merit to the Appellants' argument that they did not know the case they had to meet.

Lack of Honesty and Integrity- Section 113.2(2)(d) of the *Electricity Act, 1998*

[31] The Appellants were found to have breached this section because they were found to have grossly exaggerated fees on a number of occasions.

[32] The Appellants dispute the findings of the Review Panel with respect to one client. It is argued that the consumer was only quoted the amount at issue, but was not charged the quoted amount.

[33] The Review Panel did not accept the Appellants' testimony on this issue and found that Mr. Valovic did misrepresent the cost of the inspection permit. This is a question of fact alone and as such, we have no jurisdiction.

Failure to Carry out Activities According to Law- Section 113.2(2)(a) of the *Electricity Act, 1998*

[34] The Review Panel found that the Appellants would not carry out activities in accordance with the law.

[35] The Appellants submit that this charge is based on the Review Panel's finding that the Appellants charged a grossly excessive rate for a permit and inspection with respect to one client. The Appellants argue that on the contrary, the fee in dispute was justifiable; it was quoted to and approved by the customer.

[36] The Review Panel rejected the Appellants' explanation for what they found to be a grossly excessive rate for a permit and inspection. This question and the findings of the Review Panel in relation to same are questions of fact alone over which we have no jurisdiction.

CONCLUSION

[37] For these reasons, the Appeal is dismissed.

COSTS

[38] I have endorsed the Appeal Book and Compendium as follows: "For reasons given orally, this appeal is dismissed. On the agreement of the parties, there shall be no order as to costs."

SACHS J.

I agree

THORBURN J.

I agree

RICCHETTI J.

Date of Reasons for Judgment: December 13, 2016

Date of Release: December 16, 2016

CITATION: Valovic v. Electrical Safety Authority Review Panel ONSC 7876
DIVISIONAL COURT FILE NO.: 11-89
DATE: 20161213

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

SACHS, THORBURN and RICCHETTI JJ.

BETWEEN:

IVAN VALOVIC and IVAN'S ELECTRIC
LIMITED

Appellants

– and –

ELECTRICAL SAFETY AUTHORITY,
DIRECTOR

Respondent

ELECTRICAL SAFETY AUTHORITY REVIEW
PANEL FOR LICENSING

Intervener

ORAL REASONS FOR JUDGMENT

SACHS J.

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