

I. BACKGROUND

1. Hearing dates in this matter were held on November 28, 2012, January 4, 2013 and February 15, 2013 before the Review Panel, comprised of William Schwarz, Elvin Martin and Ted Whitworth. There were no objections to the jurisdiction of the Review Panel to hear this matter.
2. Oral evidence was submitted and both parties provided written submissions and supporting documents.
3. The issue before the Review Panel was the Director's decision to confirm a Notice of Proposal (the "Notice") revoking the Applicant's electrical contractor licence.

II. FACTS

4. Up until the circumstances surrounding this appeal, the individual Applicant held a master's electrician licence (the "ME Licence") and the corporate Applicant held an electrical contractor licence (the "EC Licence") pursuant to the *Electricity Act, 1998* (the "EA"). Under the EA, the Applicant was required to have a valid ME Licence in order to carry the EC Licence. The matter for this panel concerns the Applicant's failure to renew his ME Licence, which therefore resulted in the revocation of his EC Licence.
5. The Applicant first obtained his ME Licence and EC Licence from the City of Toronto in or about 1975. As with most regulatory licences, the Applicant was required to periodically renew both his ME Licence and the EC Licence. This renewal requirement was maintained when the Electrical Safety Authority (the "ESA") assumed jurisdiction over licensing. In fact, the Applicant renewed both licences with the ESA in 2006 and 2008.
6. While it is not legally required, the ESA typically sends out advance notice to a licence holder, prior to the expiry of a licence, to remind him or her of the renewal requirement. The ESA did not provide advance notice to the Applicant. However, during a telephone conversation on or about June 16, 2010, the ESA advised the Applicant that his ME Licence and EC Licence were set to expire on June 18, 2010.
7. The ESA supplied the Applicant with the renewal forms for his EC Licence, but, at least according to Mr. Valovic, did not provide the renewal forms for the ME Licence. For the purposes of our decision we are prepared to accept Mr. Valovic's evidence on this point. However, the ESA did send the Applicant a Notice of Expired Licence with respect to his ME Licence on or about July 22, 2010. While the Notice of Expired Licence did unfortunately list the "Date of Expiry" as June 18, 2011, the first paragraph does state:

Your licence is now EXPIRED. You have been previously notified that it was time to renew your Licence and to date we have not received your completed renewal form or licence fee.

8. The Applicant submitted his EC Licence renewal forms in August 2010. He did not submit any renewal forms for his ME Licence. The ESA renewed the Applicant's EC Licence even though the Applicant did not submit the renewal of his ME Licence.
9. In January 2012, the Applicant contacted the ESA to inquire about his ME Licence renewal. The ESA informed the Applicant that his ME Licence had expired. As it had been over one year since the expiry, the Applicant was notified that he would have to retake the master electrician qualification exam in order to renew his ME Licence. The Applicant objected to this requirement. In an effort to resolve the issue, the ESA offered to provide the Applicant with a private examination to suit his schedule. The Applicant continued to object to his need to retake the qualification exam.
10. Since the Applicant no longer had a valid ME Licence, the ESA issued the Notice to revoke the Applicant's EC Licence.

The Appeal

11. The Applicant appealed the Notice to the Director. The Applicant argued in the appeal that he should not have to retake the master electrician qualification exam.
12. The Director issued her decision on June 7, 2012. In her decision, the Director allowed the ESA to continue with the Notice to revoke the Applicant's EC Licence.
13. The Applicant appealed the Director's decision to this Review Panel.

III. THE LAW

14. Section 113.2(2) of the *EA* reads:

A Director may refuse to grant an applicant an authorization for the carrying out of activities or may refuse to renew, may suspend or may revoke an authorization holder's authorization for the carrying out of activities, if the Director has reason to believe that,

...

(f) the applicant or authorization holder failed to comply with or to meet a requirement of this Part, the regulations or an order of the Authority;

...

15. The applicable regulation in the matter at hand is O.Reg. 570/05 (the "Regulation"), which addresses licences. Section 14(1) of the Regulation reads:

The holder of an electrical contractor licence or a provisional electrical contractor licence shall **immediately** cease to operate the electrical contracting business in respect of which the electrical contractor licence or provisional electrical contractor licence is issued if any of the

requirements for obtaining the licence, as set out in section 8 or section 10, cease to be met during the currency of the licence. [emphasis added]

16. Section 10 of the Regulation is not applicable to the Applicant's case, however, section 8 is. The relevant portion of section 8 of the Regulation reads as follows:

A person who applies for an electrical contractor licence shall not be issued the licence unless the applicant,

...

(b) is a master electrician or, if the applicant is not a master electrician, the applicant employs at least one master electrician whom the applicant has designated as having the responsibilities set out in section 6 for the carrying out of electrical work on the applicant's behalf;

...

17. Section 15 of the Regulation governs the renewal of licences. Specifically, section 15(10) outlines the requirement to take a master electrician qualification exam if the renewal of a master electrician licence is submitted one year after the expiry of the licence. Section 15(10) states:

An application for a renewal of a master electrician licence submitted one year or more after the expiry date of the expired licence shall be treated as a new application and all requirements relating to new applications apply, including the requirement to pass the master electrician qualifying examination.

18. Counsel for the Director has correctly asserted 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.

19. 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*.

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

IV. ISSUE

22. The issue is the whether the ESA was correct in its decision to require the Applicant to take the master electrician qualification exam and consequently revoke the Applicant's EC Licence.

V. ANALYSIS AND DECISION

23. While there is some discrepancy in the facts of this case, this Review Panel does not believe that those apparent discrepancies are determinative of this case. There may have been some issues with respect to the Applicant obtaining renewal forms, the inadvertent renewal of the EC Licence, the ongoing permitting of the Applicant and the expiry date on the Notice of Expiry being listed as June 18, 2011; however, that does not change the fact that the Applicant's ME Licence was not renewed following what we determine to be its June 18, 2010 expiration.
24. There is no legal obligation for the ESA to provide notice of an impending licence expiry. It is the licence holder's responsibility to ensure that all renewals are performed in a timely manner. The Applicant is an experienced licence holder. He has been through the renewal process several times, including most recently in 2008, which was only two years prior to the expiry at hand. Further, the actual ME Licence that the Applicant had in his possession stated the expiry was in June 2010.
25. While the Review Panel acknowledges that the Notice of Expired Licence sent to the Applicant listed the "Date of Expiry" as June 18, 2011, the body of that letter clearly indicates that the Applicant's ME Licence had expired. The incorrect date on the Notice of Expired Licence does not relieve the Applicant of the responsibility to renew his licence in a timely way. In addition, even if the Review Panel were to accept the Applicant's assertion that he believed his ME Licence expired on June 18, 2011, the Applicant took no efforts to ensure that his licence was properly renewed prior to January 2012. Even if the Applicant believed that his licence expired on the 2011 date, the Applicant did not act in a timely fashion with respect to that renewal and Ivan's Electric Limited appears to have carried on its business during this period of time without a valid ME licence contrary to the Regulation.
26. Therefore, there is no disputing the fact that the Applicant did not (and does not) have

a valid ME Licence. That licence expired on June 18, 2010 and more than a year has elapsed, which, under section 15(10) of the Regulation, means that the Applicant must take the master electrician qualification exam in order to renew his ME Licence. Further, by not having a valid ME Licence, the Applicant has not met the requirements under sections 8(b) and 14(1) of the Regulation to hold an EC Licence. Consequently, under section 113.2(2)(f) of the *EA*, the ESA has the authority to revoke the Applicant's EC Licence.

27. The requirements of the Regulation in this respect are not discretionary. Mr. Valovic has argued the defence of "due diligence". We hold that this defence is not applicable to a regulatory requirement such as the ones outlined herein. The Applicants have not been charged with any offences, rather the corporate Applicant has had its licence revoked in circumstances where it has not met the regulatory requirement to have a valid ME and the individual Applicant has not been issued a licence due to his failure to meet the regulatory requirement of successfully completing the qualifying examination.
28. If the Panel is incorrect with respect to its view as to the lack of discretion with respect to these issues and, even if the defence of due diligence or another legal basis is potentially available to justify a non-renewal of an ME licence and would otherwise provide a basis for not revoking an EC licence in certain circumstances, the Panel, on the facts on the instant case, would still revoke the EC licence. The Panel finds that Mr. Valovic and Ivan's Electric Limited did not take all reasonable and timely steps to ensure the ME licence remained valid. The Panel finds that the actions of the ESA, albeit in certain respects arguably misleading, taken as a whole, would not cause the Panel to exercise its discretion, if it had such discretion, to find that it would be appropriate to apply such law in these circumstances to interfere with the revoking of the EC licence.
29. In submissions, the Director requested, for reasons of public safety and consumer interest, that this Review Panel lift the stay on this decision, should the Applicant seek an appeal of this decision. We agree with the Director's submission.
30. Under section 113.11(2), the revocation will not take effect until the Applicant has exhausted his appeal option with the Divisional Court. However, section 113.11(2) is subject to section 113.11(3) which states:

If, in a Director's opinion, there is or may be a threat to public safety or to the safety of any person, the Director may specify that,

 - (a) the authorization in respect of which the renewal application has been made ceases to be valid earlier than the time specified in clause (1) (d); or
 - (b) the suspension or revocation referred to in subsection (2) takes effect earlier than the time specified in subsection (2). 2004, c. 19, s. 12 (5).
31. Therefore, if there is a threat to public safety, the revocation can begin immediately.

The Regulation is credential based; an EC licence holder must have a Master Electrician. Having the appropriate credentials provides the public with the assurance that only authorized contractors with the required skill set are performing electrical work. This assurance must be upheld to maintain credibility with the public. It would be a threat to public confidence and in turn, public safety, to stay, pending an appeal to the Divisional Court, the revocation of the Applicant's EC Licence where there is no valid ME Licence.

32. As this Review Panel has determined that the Applicant must take the master electrician qualification exam in order to obtain his ME Licence and the ESA had the authority to issue the Notice of Proposal to revoke the EC Licence, the Applicant's Appeal is dismissed.
33. The Panel also notes the undertaking made by Counsel for the Director to reasonably assist Mr. Valovic with respect to taking any examinations that he requires in order to obtain his ME Licence.

Dated: March 14, 2013