

INTRODUCTION

[1] A hearing in this matter was held on Monday, February 23, 2009 before the Review Panel comprised of Roy Hicks, Wassim Hassan and Reg MacDonald. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections.

[2] At the outset of this hearing, on behalf of the Director, a Document Brief was filed and admitted without objection from the Applicant as Exhibit "A". This Document Brief contained documents showing the record of the Applicant's dealings with the Director in connection with this matter. Those documents will be referred to in this Decision by reference to the Tab numbers of the Document Brief. The Applicant confirmed that he had no objection to any of the documents in the Documents Brief being admitted into evidence and he at no time disputed any of these documents.

[3] One June 26, 2008, the Director issued a Notice of Proposal to the Applicant (Tab 3) refusing to grant a master electrician license to the Applicant pursuant to Section 113.2(2) of the *Electricity Act, 1998* on the basis that the Applicant has failed to demonstrate at least 3 years experience as a construction and maintenance electrician, a domestic and rural electrician or an industrial electrician caring out electrical work under a valid certificate of qualification as required under Section 11(b)(i) of Ontario Regulation 570/05.

[4] On July 14, 2008, the Applicant filed a Notice of Appeal ("Request for Review") before the Director indicating his disagreement with and his desire to appeal the Notice of Proposal (Tab 4).

[5] On July 22, 2008, the Director issued her decision on the Applicant's appeal of the Notice of Proposal of the Director's Decision under Part VIII of the *Electricity Act, 1998* to refuse to grant to the Applicant a Master Electrician License (Tab 5). The Director decided that the requirements as set out in Section 113.2(2)(f) of the *Electricity Act* and Section 11(b)(i) of Ontario Regulation 570/05 have not been met by the Applicant. The Director states in her decision that if the Applicant is able to provide copies of a qualifying valid Certificate of Qualification or a qualifying Provisional Certificate of Qualification that were issued to him in any previous years, the Director may reconsider her decision as to when the Applicant would be eligible to apply for his master electrician license based on the amount of time demonstrated as years of experience under any such valid Certificate of Qualification or Provisional Certificate of Qualification. The Director further states in her decision that given that the Applicant has already written and passed the Master Electrician exam, the Certificate of Examination for such exam will remain valid for a period of 60 days after the date on which the Applicant meets the 3 year experience requirement for obtaining a Master Electrician License. Accordingly, the Director's decision to refuse to grant the Master Electrician License was confirmed by the Director.

[6] On or about August 26, 2008, the Applicant filed the Notice of Appeal before the Review Panel appealing the Director's decision (Tab 6).

[7] This Review Panel issued a Preliminary Decision dated October 8, 2008 in this matter. The hearing of this appeal was originally scheduled to occur on Friday, September 19, 2008. On or about September 16, 2008, the Applicant informed the Director of Appeals that he would not be able to attend that hearing on September 19, 2008 for medical reasons. The Applicant requested an adjournment of the September 19, 2008 appeal hearing date. The Director of Licensing made written submissions on this request for an adjournment. This Review Panel issued the Preliminary Decision which directed the Applicant to advise the Director of Appeals in writing of the earliest date on which he would be medically fit to attend and participate in the hearing of this appeal before the Review Panel, on or before October 31, 2008. The Applicant failed to comply with this direction and after some passage of time, on the initiative of the Director of Appeals, the parties were contacted and this matter was scheduled for a hearing on consent of the parties with such hearing taking place on February 23, 2009. In the Preliminary Decision the Applicant was also directed to make disclosure to the Director of Licensing at least two weeks prior to the next hearing date of all relevant information in his possession (unless it is privileged as a matter of law); copies of all written documentary evidence on which he intends to rely in this Appeal; the identity of any expert or any experts' written report and if there is no experts' report, written summary of the evidence of the expert; and the names of any witnesses, agents, legal counsel or other persons who he intends to have present at the appeal hearing. The Applicant failed to make disclosure to the Director of Licensing in accordance with the foregoing, however, the Director of Licensing did not object to proceeding with the appeal hearing on February 23, 2009 despite this failure on the part of the Applicant. In the Preliminary Decision, the Director was also invited to make submissions on costs with respect to the adjournment of the September 19, 2008 hearing date at the conclusion of the hearing of this Appeal. The Director made no such submissions at the conclusion of the hearing of this Appeal on February 23, 2009. Accordingly, the appeal hearing proceeded on February 23, 2009 without any preliminary objections or any other issues arising from the Preliminary Decision of this Review Panel.

ISSUES

[8] The issue in this case is whether the Applicant is entitled to hold a Master Electrician License pursuant to the requirements as set out under Section 113.2(2) of the *Electricity Act*, 1998 and Section 11 of Ontario Regulation 5705/05 for obtaining such license.

[9] Section 113.2(2)(f) of the *Electricity Act* states:

s.113.2(2) – 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;

[10] The requirements for a Master Electrician License are stipulated in Section 11 of Ontario Regulation 570/05 which states:

In section 11 of Ontario Regulation 570/05 states:

- s.11.** An individual who applies for master electrician license shall not be issued the license unless the applicant,
- (a) is at least eighteen years old;
 - (b) demonstrates at least three years experience;
 - (i) as a construction and maintenance electrician, a domestic and rural electrician or an industrial electrician carrying out electric work under a valid certificate of qualification;
 - (ii) working for an electrical contractor as a licensed professional engineer registered with the Professional Engineers of Ontario; or
 - (iii) working for an electrical contractor in the capacity of a certified engineering technician or a certified engineering technologist registered with the Ontario Association of Certified Engineering Technicians and Technologists;
 - (c) has passed the master electrician qualifying examination within 12– month period preceding the date of the application; and
 - (d) does not owe the Authority any money for which payment arrangements have not been made.

[11] Section 12 of Ontario Regulation 570/05 states in part:

12. An application for a master electrician license shall,
- (a) be in a form established by the Authority under Clause 12(1)(a) of the *Safety and Consumer Statutes Administration Act, 1996* and be completed in full;
 - (b) be accompanied by the fee set by and payable to the Authority;
 - (c) include proof that the Applicant passed a master electrician qualifying examination within the 12-month period preceding the date of the application;
 - (d) if the applicant is a construction and maintenance electrician, a domestic or rural electrician or an industrial electrician include a copy of a valid certificate of qualification and proof of at least 3 years experience in carrying out electrical work;...

[12] Section 1 of Ontario Regulation 570/05 defines a certificate of qualification as follows:

“certificate of qualification” means a certificate of qualification issued under the *Trades Qualification and Apprenticeship Act* or the *Apprenticeship and Certification Act, 1998*, as the case may be”

[13] It is not disputed by the Applicant that he does not have 3 years experience working under a valid “certificate of qualification” as defined in Section 1 of Ontario Regulation 570/05. It is also not disputed that the Applicant is at least 18 years old, has passed the master electrician qualification examination and does not owe the Authority any money.

EVIDENCE

[14] Claude Paquette, the Applicant, testified on his own behalf and Patience Cathcart and Lucy Impera each testified on behalf of the Director.

[15] Claude Paquette testified that he graduated from high school in the early 1970’s and went to college and got a degree in electronics. He stated that his father was a master electrician and that he taught him the trade of both electrical and electronics. He said that he served in an informal apprenticeship under his father but that this apprenticeship was never registered. In the mid-1970’s, he worked for Inco as an electrician. He claims that he obtained a certificate of qualification at some point in the 1970’s but he acknowledges that he has no documents or other evidence confirming the existence of such certificate of qualification or what experience he had working under any such certificate of qualification. He says that he allowed such certificate of qualification to expire and did not renew it. Mr. Paquette says that he left the electric trade for about 10 years for a career in law enforcement when he was employed by the Ontario Provincial Police. Except for when he was working for the Ontario Provincial Police, he says that he has been working in the electrical trade since the mid-1970’s with over 25 years experience in the residential, rural and commercial trade. He claims that he applied for and received permits on each job that he did and that each job was inspected with a deficiency rating of less than 1%. He says that he has been employed on a steady basis as a licensed electrical contractor in his community of Espinola from 2005-2008 during which time he was working with minimum supervision. He claims that his work was always clear, concise and neat and that he has an excellent record with inspectors in his area. He also cited letters commending the quality of his work (Exhibit A, Tab 4).

[16] The Applicant’s appeal was based on a desire for leniency in the interpretation of Regulation 570/05 to allow recognition of electrical work done prior to obtaining the Certificate of Qualification. He argued that the Regulation was ambiguous as to who was required to hold a certificate of qualification.

[17] Under cross-examination, Mr. Paquette acknowledged that he practiced as an electrician for a number of years without a certificate of qualification. He acknowledged awareness of the requirement for a person working as an electrician to hold a subsisting certificate of qualification. He confirms that he wrote his master electrician’s exam in September 2007 and received the certificate for the exam in October 2007. He also states that he wrote the exam for

his certificate of qualification in late April 2008 and that he received a certificate of qualification issued to him in May 2008.

[18] Patience Cathcart testified for the Authority. She has been employed project coordinator for Licensing and Certification of the Authority since January 2008 and her duties include processing Notices of Proposal. She testified that on July 15, 2008 she spoke with Mr. Paquette about the Director's Notice of Proposal to him (Tab 3). Mr. Paquette asked her questions about why he was refused a Master Electrician License and Ms. Cathcart explained to him the requirements of Section 11 of Regulation 570/05. Ms. Cathcart also testified that she made inquiries of the Ministry of Training, Colleges and Universities to see if they had any information about Mr. Paquette's experience or anything to support his assertion that he had a valid certificate of qualification in the past. She said that she was informed that they could not confirm that they had the information she was requesting.

[19] Lucy Impera then testified on behalf of the Authority. She testified that she is Registrar and Director of Licensing and Certification of the Authority and has held that position since April 1, 2005. She stated that she has responsibility with respect to the applicable regulations and was involved in the development of those regulations. She explained the purpose of the amendments to the *Electricity Act, 1998* stating that under the old system there was a patchwork of licensing regulations varying from municipality to municipality which raised public safety concerns and that a decision was made to license all contractors in the province to the same standard. She was asked to explain the certificate of qualification and responded that normally, one is an apprentice for four years and then you write the certificate of qualification exam. She explained that to operate an electrical contracting business, a master electrician is required to supervise the work. She explained that the three years of experience with a certificate of qualification is necessary to demonstrate experience working as an electrician without supervision. She reviewed the documents in Exhibit "A". This included her review of the Applicant's permit history from 2004 to 2007 found at Tab 7 of Exhibit "A", and she noted that four of the jobs referred to under that permit history were done in Sudbury. She explained that the document at Tab 8 summarized the "on-hold messaging" of the Authority which was used to disseminate information to stakeholders with respect to changes in the legislation and regulations relating to provincial licensing. She referred to the consultation process with respect to provincial licensing and the stakeholders who had been consulted from 2001 to 2007 as listed in the document found at Tab 9 of Exhibit "A". She reviewed documents found at Tabs 10, 11, 12, 13, 14 and 15 also with reference to the dissemination of information to stakeholders concerning the move to provincial licensing.

[20] Finally, Ms. Impera was asked about the basis upon which she decided not to issue a Master Electrician License to the Applicant. She explained that he did not meet the three year requirement under Section 11(b) of Ontario Regulation 570/05. She was asked whether the Applicant was treated any differently than any other applicant and responded in the negative. She said that she could not make an exception for the Applicant, as it would be unfair to other applicants in similar circumstances and would be unlawful.

[21] Under cross-examination by the Applicant, Ms. Impera was asked whether under the “three year requirement” it would take him until May 2011 to qualify for a Master Electrician License. She responded that as he has already passed the Master Electrician exam, he could apply for a Master Electrician License within 60 days of meeting the three year requirement. She was also asked in cross-examination by the Applicant whether between now and 2011 he will need to show work experience in order to meet the three year requirement and whether, if he was unable to work in the electrical industry between now and 2011, it would have an affect. She responded that any determination in 2011 would have to be based on the facts as they are when he applies in 2011.

DECISION

[22] There are two issues in this appeal. The first issue is whether the Applicant has satisfied the requirements of Section 11(b)(i) of Ontario Regulation 570/05, being the three year experience requirement under a valid Certificate of Qualification, for obtaining a Master Electrician License as required under the Regulation. The second issue is whether there is any basis which would permit the overriding of such requirement as a condition for obtaining a Master Electrician License.

[23] It is not disputed that the Applicant does not have a Master Electrician License and does not have three years’ experience working under a “Certificate of Qualification” as defined in Section 1 of Ontario Regulation 570/05. It is also not disputed that the Applicant is at least 18 years old, has passed the Master Electrician qualification examination and does not owe the Authority any money.

[24] In essence, the Applicant asks the Review Panel to find that the language of Sections 11 and 12 of Ontario Regulation 570/05 is ambiguous and to interpret those sections giving some “leeway” by looking at the “spirit of the law”. In essence, the Applicant is asking this Review Panel to find that based on the evidence of his experience working as an electrician we should ignore that the requirement that such experience be obtained under a valid Certificate of Qualification, and grant him a Master Electrician License.

[25] This Review Panel has carefully considered all of the evidence, the documents submitted and the arguments submitted on behalf of each of the parties. We do not find that there is any ambiguity in the language of the relevant provision of the *Electricity Act, 1998* and Regulation 570/05. It is clear that the Applicant does not meet the requirements for a Master Electrician License under Ontario Regulation 570/05 in that he cannot demonstrate at least three years’ experience as a construction and maintenance electrician, domestic and rural electrician or an industrial electrician carrying out electrical work under a valid Certificate of Qualification. Based on the evidence and having regard to the clear wording of Ontario Regulation 570/05, this Review Panel is satisfied that there is no basis upon which we can override the requirement of Section 11(b)(i) of Regulation 570/05 as a condition for obtaining a Master Electrician License. It is clear that the Director has been granted no discretion under Section 11 of Ontario Regulation 570/05 concerning the granting of a Master Electrician License.

[26] Taking into account all of the evidence and the submissions of the parties, it is the decision of this Review Panel to deny the appeal of the Applicant. In this regard, we find that the Director's decision was the correct decision taking into account all the relevant considerations.

Dated: March 9, 2009

"Roy Hicks"

"Wasim Hassan"

"Reg MacDonald"

Roy Hicks

Wasim Hassan

Reg MacDonald