
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

B E T W E E N:

JEFF PATRICK
(the "Applicant")

- and -

DIRECTOR, LICENSING AND CERTIFICATION
(the "Director")

DECISION

Review Panel: Roy Hicks, Reg MacDonald, Frank Zechner

Date: June 12, 2009

File Number: 6008359

Appeal Number: NOAL 09-007

APPEARANCES

Director, Licensing, and Certification)	Bernard LeBlanc, Counsel
)	Lucy Impera, Director, Licensing
)	and Certification
)	Patience Cathcart, Project
		Coordinator, Licensing and
		Certification

Jeff Patrick)	Jeff Patrick, on his own behalf
)	
)	

INTRODUCTION

[1] A hearing in this matter was held on Tuesday, May 19, 2009 before the Review Panel comprised of Roy Hicks, Reg MacDonald and Frank Zechner. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections. The parties consented to an oral hearing of the Appeal by teleconference. The members of the Review Panel were together in the same location to hear the Appeal. The parties were in separate locations and each called in to the Review Panel on the telephone and the hearing was conducted by teleconference.

[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] In addition, the following documents were filed as Exhibits without objection from either party:

- Exhibit "B" - A typewritten note from the Applicant to the Director of Appeals enclosing the Notice and Consent to the hearing signed by the Applicant and the Notice of Appeal (also found at Tab 8 of Exhibit "A")
- Exhibit "C" – Will-say Statement of the Applicant
- Exhibit "D" – Will-say Statement of Patience Cathcart
- Exhibit "E" – Will-say of Lucy Impera

[4] On February 28, 2009, the Applicant submitted an Application to the Authority for a Master Electrician Licence.

[5] On March 13, 2009, the Director issued a Notice of Proposal to the Applicant (Tab 3) pursuant to which the Director is proposing to refuse to grant a Master Electrician Licence to the Applicant pursuant to Section 113.2(2) of the *Electricity Act, 1998* on the basis that the Applicant failed to provide documentation proving that he had passed the master electrician qualifying examination within the 12 month period preceding the date his application was submitted as required under Sections 11(c) and 12(c) of Ontario Regulation 570/05 and that the Applicant failed to satisfy the transition requirements by not applying for the Master Electrician Licence between July 1, 2006 and November 30, 2006 as required under Section 31(2) of Ontario Regulation 570/05. The Notice of Proposal further alleges that the Applicant failed to satisfy the transition requirements by not providing documentation proving that the Applicant held a prior Master Electrician Licence that was valid and in good standing on June 30, 2006 as required under Section 31(4)(a) of Ontario Regulation 570/05. It states that a prior Master

Electrician Licence was provided with the master electrician licence application, however, such licence was not valid or in good standing at the time the Application was submitted.

[6] On March 30, 2009, the Applicant filed a Notice of Appeal (Request for Review) (Tab 4) before the Director indicating his disagreement with and his desire to appeal the Notice of Proposal (Tab 3) on the basis that he passed a City of London master electrician exam in March 1992, did not receive notification of the transition of the licensing authority from the City of London to the Authority and that he filed a copy of his master electrician licence from the City of London which he claims to be valid until December 31, 2006.

[7] The Director held a written hearing of the Applicant's appeal and issued a notice of the written hearing on March 31, 2009 (Tab 6). On April 9, 2009, the Director issued her decision on the Applicant's appeal of the Notice of Proposal. The Director decided that the requirements set out in Section 113.2(2)(f) of the *Electricity Act, 1998* and Sections 11(c) and 12(c) and 31(2) of Ontario Regulation 570/05 have not been met by the Applicant and therefore the Director's decision to refuse to grant the Master Electrician Licence to the Applicant was confirmed.

[8] On or about April 22, 2009, the Applicant filed a Notice of Appeal before the Review Panel appealing the Decision of the Director (Tab 8) and with the Notice of Appeal the Applicant filed written submissions (Tab 8).

ISSUES

[9] 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 and 12 of Ontario Regulation 570/05 for obtaining such license.

[10] 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;

[11] 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.

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

s.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;...

[13] Section 31 of Ontario Regulation 570/05 states in part:

- (1) If, immediately before July 1, 2006, a person holds a prior electrical contractor licence or prior master electrician licence authorizing the person to engage in activities for which a licence is required under this Regulation, the person may, despite this Regulation, continue to engage in those activities until a final decision is made with respect to the issuing of a licence to the person under this Regulation.
- (2) The holder of a prior electrical contractor licence or a prior master electrician licence may apply to the Director for a licence under this Regulation between July 1, 2006 and November 30, 2006 and, with the Director's approval, after

November 30, 2006, if, in the Director's opinion, it would be a hardship not to allow the person to apply.

- (3) The holder of a prior master electrician licence is not required, despite this Regulation, to pass the master electrician qualifying examination for the purpose of obtaining a master electrician licence under this Regulation.

[14] More specifically, the issues in this case are whether the Applicant has complied with the requirements for a Master Electrician Licence stipulated in Section 11 of Ontario Regulation 570/05 and in particular paragraph (c) thereof which includes a requirement that the Applicant must have passed a master electrician qualifying exam within the 12 months preceding the date of his application for a master electrician licence. In the event that the Applicant does not meet this requirement of Section 11 of Ontario Regulation 570/05, the issue, and according to counsel for the Director, the only issue, is whether the Applicant falls under the transition provisions under Section 31 of Ontario Regulation 570/05 and is, as a holder of a prior master electrician licence, entitled to apply to the Director for a licence under the Regulation after November 30, 2006. To be so entitled to apply, the Section 31(2) stipulates that it must be the Director's opinion that it would be a hardship not to allow the Applicant to apply.

EVIDENCE

[15] The Applicant, Jeff Patrick, testified on his own behalf. He referred to Exhibit "C", his will-say statement. He testified that he was not aware of the changes in the legislation which would require him to apply to the Authority for a master electrician licence and to comply with the requirements of Section 113(2) of the *Electricity Act, 1998* and Sections 11 and 12 of Ontario Regulation 570/05 for obtaining such licence. He also testified that he was not aware of the requirements of the transition provision in Section 31 in Ontario Regulation 570/05. He said that he did not receive any information from the City of London or from IBEW, Local 120 regarding these changes. He also testified that on April 22, 2009, he had several telephone conversations with Patience Cathcart of the Authority. He said that Ms. Cathcart advised him that the Authority had informed all electrical contractors in their database of the pending changes and how to obtain a new licence.

[16] Mr. Patrick testified that he works for Lockerby Hole & Eastern and that since 2007 he has been working for this firm at the Toyota Plant in Woodstock doing industrial electrical work. Prior to 2007, he testified that he also performed industrial electrical work for other ECAO contractors.

[17] On questioning by members of the Review Panel, Mr. Patrick testified that he understood that his licence from the City of London expired on December 31, 2006 but he claimed that he never noticed that he had not renewed that licence until he did his 2007 income tax return in early 2008. He said he then contacted the City of London and they told him at the time about the requirements to apply for a Master Electrician Licence with the Authority. He also said he accessed the Authority's website and read about the requirements but he did not proceed at that time to apply for a master electrician licence with the Authority because it "slipped his mind".

[18] On cross-examination, Mr. Patrick confirmed that he does not hold an electrical contractor licence and that he is only seeking to obtain a master electrician licence. He said that before he worked for Lockerby, Hole & Eastern, he worked for W. S. Nichols at the Toyota Plant in Woodstock and for three years prior to that, he worked for Ferguson Electric. He said that Lockerby, Hole & Eastern is an electrical contractor and that he is one of five electricians working for them at Toyota, although at one point they had as many as two hundred electricians working for them at Toyota. He confirmed that he would not lose his job and that no current work or projects would be affected if he does not get his master electrician licence.

[19] On further cross-examination, with respect to the renewal of his City of London master electrician licence, he confirmed that he first realized that he did not have a current master electrician licence in about February or March 2008. He said that in the past he normally would get a renewal notice for his master electrician licence in the later part of each calendar year and that he likely got his renewal notice for his 2006 master electrician licence in late December 2005 or January 2006, however, he did confirm that he did not receive a renewal notice from the City of London for his master electrician licence in late 2006. He was asked why he did not take any action to obtain a master electrician licence from the Authority until he applied in February 2009 and he responded that he was busy working and he did not require it to continue working.

[20] He was referred to the Director's decision of his Appeal of the Notice of Proposal (Tab 7) and the reference the following passage:

“In addition, the holder of a prior electrical contractor licence or a prior master electrician licence may apply to the Director for a licence under this Regulation between July 31, 2006 and November 30, 2006 and, with the Director's approval, after November 30, 2006, if, in the Director's opinion, it would be a hardship not to allow the person to apply as set out in Section 31(2)”

[21] He acknowledged that in his appeal of the Director's Decision, he has not complained or identified that he has suffered any particular hardship as a consequence of not being allowed to apply for a master electrician licence. He acknowledged that if he was claiming any hardship, it could only be the time and inconvenience of sitting and writing the master electrician exam.

[22] Lucy Impera then testified. She is the 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*. She stated 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 licence all contractors in the province to the same standard. Ms. Impera testified at length about the efforts that the Authority made to inform all stakeholders in the province of Ontario with respect to the changes to the legislation with respect to licensing. She reviewed the documents in Exhibit “A” at Tabs 14 to 22 which disclose the significant efforts made on behalf of the Authority to inform all stakeholders in the Province with respect to the change to the legislation concerning licensing.

[23] Lucy Impera confirmed that the Authority received Mr. Patrick's Application for a master electrician licence in March 2009 (Exhibit "A", Tab 2). She referred to the Notice of Proposal (Exhibit "A", Tab 3) and explained that Mr. Patrick's master electrician licence application does not meet the requirements set out in Sections 11, 12 and 31 of Ontario Regulation 570/05 because he failed to provide documentation proving that he had passed the master electrician exam within the 12-month period preceding the date his application for a master electrician licence was submitted. She also explained that he failed to satisfy the transition requirements of Section 31(2) Ontario Regulation 570/05 because he did not apply for a master electrician licence between July 1, 2006 and November 30, 2006 and there was no hardship based upon which the Director could permit him to apply after November 30, 2006 as provided in Section 31(2) of Ontario Regulation 570/05.

[24] The Director then referred to Mr. Patrick's Notice of Appeal before the Director (Exhibit "A", Tab 4) and confirmed that a written hearing was held on April 9, 2009 and that she decided as outlined in her decision dated March 13, 2009 (Exhibit "A", Tab 7) that the requirements set out in Section 113(2)(f) of the *Electricity Act, 1998* and the Sections 11(c) and 12(c) and 31(2) of Ontario Regulation 570/05 had not been met and therefore her decision to refuse to grant a master electrician licence to Mr. Patrick was confirmed.

[25] The Director then referred to her will-say statement (Exhibit "E") and was asked to explain what her concerns would be about making an exception in Mr. Patrick's case. She explained that there was no basis for granting an exception to Mr. Patrick. She explained that the Authority has over 15,000 licence holders who have met the requirements of the legislation. With respect to Mr. Patrick's position that he did not receive notice of the changes in the legislation, she explained that it was incumbent on Mr. Patrick as it was on all licence holders to ensure that he took the necessary steps to keep his licence current in accordance with the legislation. When questioned by members of the Review Panel, Ms. Impera testified that the Authority has preparation courses available to assist individuals in preparing to write the master electrician licence and that there were currently courses available in late May or early June of 2009. She also explained that there is information on courses available on the Authority's website. She also explained that there is currently an 86% success rate for individuals writing the master electrician examination. On cross-examination, Ms. Impera was largely questioned by Mr. Patrick about his alleged lack of knowledge of the changes to the legislation and she confirmed prior testimony to the effect that the information was made broadly available to all stakeholders.

[26] In cross-examination of Ms. Impera, Mr. Patrick asked her to define the term "hardship" as it is found in Section 31(2) of Ontario Regulation 570/05. Essentially, Ms. Cathcart responded that the term "hardship" had to be assessed based on the circumstances of each case. Giving an example, she said that personal medical or family medical problems supported by medical evidence might constitute a hardship in certain circumstances.

[27] Patience Cathcart testified next. She is the project coordinator of licensing and certification and has held that position since January 1, 2008. Her duties include assisting in drafting and issuing notice of proposals, assisting the Director through the appeals process, preparing disclosure documents for appeals and other work related to appeals as well as

undertaking specific projects related to electrical contractor and master electrician licensing. She reviewed the history of this case which is not in dispute.

[28] Patience Cathcart was referred to Exhibit "A", Tab 5 which she identified as notes of a conversation between her and a former representative of the City of London's licensing department, Brett Stein. She said that Mr. Stein confirmed that no correspondence was sent by the City of London to licence holders regarding the change in legislation and that the City stopped sending renewal applications after 2006. She also testified about a call she received from Mr. Patrick during which he asked why his master electrician licence was not renewed. She referred to Mr. Patrick's written submissions included with his Notice of Appeal of the Director's Decision before the Review Panel (Exhibit "A", Tab 8). In those written submissions, Mr. Patrick states that he had several telephone conversations with Patience Cathcart. Ms. Cathcart confirmed that she had more than one telephone conversation with Mr. Patrick on April 22, 2009 and she was asked by the Review Panel if she had any discussion with Mr. Patrick of the possibility of him writing the master electrician exam or taking courses to prepare for it. She responded that she had informed Mr. Patrick both about preparation courses he could take and about the opportunity he would have to write the exam.

[29] In cross-examination, Mr. Patrick asked Ms. Cathcart what a course to prepare for the master electrician examination would cost and she responded that it would cost about \$517.00 plus GST. He also asked what it would cost him to write the exam and she responded it would cost \$125.00 plus GST. Finally, he asked what the annual fee would be for a master electrician licence and she responded it would be \$75.00 plus GST.

[30] In closing argument, Mr. Patrick said that he is appealing the Director's Decision only on the basis that he was not informed about the changes in legislation and as a consequence he could not apply during the transition period pursuant to Section 31(2) of Ontario Regulation 570/05. He acknowledged that the Authority made its best effort to ensure that the information about the changes in legislation was available to all stakeholders. He said that if the City of London had been made legally required to inform him of the changes in the legislation, he would not be here today. He described this as a "flaw in the legislation". He also said that he was not aware of the hardship issue under Section 31(2) of Ontario Regulation 570/05. Mr. Patrick stated that he had a master electrician licence for 14 years with the City of London and that it would be a hardship to require him to pay to write the master electrician examination when he has previously successfully passed an examination for a master electrician licence with the City of London. He also suggested that it would be a hardship for him to have to pay to take a preparation course for the examination. Mr. Patrick said that if he had a master electrician licence today, he would have the opportunity to become an electrical contractor.

[31] Mr. LeBlanc argued on behalf of the Director that the only issue for the Review Panel was whether the Director acted reasonably in deciding in her discretion that there was no hardship suffered by Mr. Patrick within the meaning of Section 31(2) of Ontario Regulation 570/05. He said that the onus would be on Mr. Patrick to establish that the Director's discretion had not been exercised reasonably. He pointed out that nothing in the legislation requires actual notice to Mr. Patrick of the change in the legislation. Nevertheless, he pointed out that the Authority went to great efforts to notify the stakeholders of the change in the legislation, which is not in dispute. He referred to a prior decision of the Review Panel, *Paul McGee c.o.b. McGee*

Electrical Repair Service and Director of Licensing and Certification, dated November 9, 2007 at paragraph 18 to support the argument that Mr. Patrick's ignorance of the law is no excuse to justify his failure to comply with the law and in this case the legislative requirements associated with obtaining a master electrician licence. He argued that Mr. Patrick has admitted that he suffered no real hardship and that Mr. Patrick failed to demonstrate that he exercised reasonable diligence. In this regard, he pointed out that Mr. Patrick's master electrician licence was issued from the City of London in February 2006 and expired at the end of December 2006 and he failed to notice that he had not renewed the licence until some time in February or March 2008. He pointed out that the Authority had no way of knowing that Mr. Patrick existed as a master electrician. He argued that Mr. Patrick's suggestion in his argument that incurring the cost of writing the exam, taking a preparation course, or paying licence fees would constitute a hardship is not reasonable. Mr. LeBlanc pointed out that these could not constitute hardship because if they did, then everyone would be suffering a hardship who took the preparation course, wrote the exam and paid licence fees. He also pointed that Mr. Patrick is suffering no hardship from an employment perspective as his job is not in jeopardy and there would be no work or projects at risk if he did not obtain a master electrician licence.

DECISION

[32] Essentially, Mr. Patrick's appeal of the Director's decision is based upon his view that as he was not aware of the changes in the legislation requiring him, as a holder of a prior master electrician licence, to apply to the Director for a licence under Ontario Regulation 570/05 between July 1, 2006 and November 30, 2006 and, with the Director's approval, after November 30, 2006, if, in the Director's opinion, it would be a hardship not to allow him to apply. Mr. Patrick's did not apply for a licence under Ontario Regulation 570/05 between July 1, 2006 and November 30, 2006 because, he alleges, he was not aware of this requirement. Mr. Patrick was the holder of a "prior electrician licence within the meaning of Section 1(1) of Ontario Regulation 570/05 which states:

"prior master electrician licence" means a licence that was issued before July 1, 2006 by a municipality or other jurisdiction authorizing the holder of the licence to assume responsibilities similar to those set out in Section 6 for electrical work carried out on behalf on an electrical contractor within the municipality or other jurisdiction and that was valid and in good standing.

[33] Mr. Patrick would have been entitled pursuant to Section 31(2) of Ontario Regulation 570/05, as a holder of a prior master electrician licence to apply to the Director for a licence between July 1, 2006 and November 30, 2006 and with the Director's approval after November 30, 2006 if, in the Director's opinion, it would be a hardship not to allow him to apply. Mr. Patrick did not apply to the Director for a licence between July 1, 2006 and November 30, 2006 because, he alleges, he was not aware of this requirement. However, Mr. Patrick's ignorance of this requirement is not a valid excuse to his failure to apply. Therefore, the only remaining issue is whether the Director should have given her approval to Mr. Patrick to apply after November 30, 2006. As provided in Section 31(2) of the Ontario Regulation 570/05, such approval may be given by the Director if in the Director's opinion; it would be a hardship for Mr. Patrick not to allow him to apply. However, there is no evidence that would establish any such hardship and the Director correctly found that there was no hardship within the meaning of Section 31(2) of

the Ontario Regulation 570/05. Certainly, the writing of the exam itself, preparation for the exam and the payment of the required fees is not a hardship. Accordingly, there exists no basis for the Director to permit Mr. Patrick to apply after November 30, 2006.

[34] Therefore, Mr. Patrick is left with the option of passing the master electrician qualifying examination within the 12-month period preceding the date of his application for a master electrician licence pursuant to Section 11 of Ontario Regulation 570/05.

[35] 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 (*Kenneth Breau and Director of Licensing and Certification* dated May 29, 2009; *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. Patrick from the application of the legislation. If Mr. Patrick wishes to obtain his master electrician licence, he must comply with Ontario Regulation 570/05 including the obligation to pass the master electrician qualifying within the 12-month preceding the date of his application as required in Section 11(c) of that Regulation. Accordingly, having considered 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 of the relevant considerations.

Dated: June 12, 2009

"Roy Hicks"

"Frank Zechner"

"Reg MacDonald"

Roy Hicks

Frank Zechner

Reg MacDonald