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**ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING**

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**B E T W E E N:**

**KENNETH BREAU**  
(the "Applicant")

- and -

**DIRECTOR, LICENSING AND CERTIFICATION**  
(the "Director")

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**DECISION**

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Review Panel: Roy Hicks, Reg MacDonald, Frank Zechner

Date: May 29, 2009

File Number: 60083590

Appeal Number: NOAL 09-006

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**APPEARANCES**

Director, Licensing, and Certification	)	Richard Steinecke, Counsel
	)	Lucy Impera, Director, Licensing
	)	and Certification
	)	Patience Cathcart, Project
	)	Coordinator, Licensing and
	)	Certification
Kenneth Breau	)	Kenneth Breau, on his own behalf
	)	
	)	

## INTRODUCTION

[1] A hearing in this matter was held on Monday, May 4, 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.

[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, on behalf of the Applicant, the following documents were filed as Exhibits without objection from the Director:

- Exhibit "B" - A letter dated April 14, 2009 from GHC Docherty, Executive Vice President, Guild Electric Limited
- Exhibit "C" - A letter dated April 15, 2009 from John Grimshaw, Business Manager/Financial Secretary of The International Brotherhood of Electrical Workers Union, Local 105
- Exhibit "D" - A letter dated April 16, 2009 from Mike Hancock, Mayor, City of Brantford
- Exhibit "E" - A letter dated April 22, 2009 from J. Hendrix of the Central Region Construction Quality Insurance Office of the Ministry of Transportation for the Province of Ontario
- Exhibit "F" - A letter dated April 24, 2009 from J. Grimshaw, Business Manager/Financial Secretary of the International Brotherhood of Electrical Workers Union, Local 105
- Exhibit "G" - A letter dated April 28, 2009 from Dave Lebac, MMP

[4] In addition, both parties filed "will-say" statements in respect of the witnesses they intended to call and those will-say statements were marked as Exhibits as follows:

- Exhibit "H" - Will-Say Statement of the Applicant
- Exhibit "I" - Will-Say Statement of Patience Cathcart
- Exhibit "J" - Will-Say Statement of Lucy Impera

[5] On March 10, 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 proceeding 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 13, 2009, 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) on the basis on an alleged lack of notification by the City of Brantford and the Authority of the requirement that he apply to the Authority for a master electrician licence.

[7] On March 26, 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 April 7, 2009, the Director issued an amended decision confirming her refusal to the grant a Master Electrician Licence to the Applicant. The amendment to the decision is limited to the fact that the original decision referred to an incorrect section of the Ontario Regulation 570/05 under the "Issues" portion of the decision. This was not an issue in this appeal.

[9] On or about March 31, 2009, the Applicant filed a Notice of Appeal before the Review Panel appealing the Decision of the Director (Tab 9) and the Applicant with the Notice of Appeal filed written submissions together with a summary of his professional experience (Tab 9).

## **ISSUES**

[10] 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 5705/05 for obtaining such license.

[11] 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;

[12] 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.

[13] 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;...

[14] 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.

### **EVIDENCE**

[15] The Applicant, Mr. Breau, testified that he is an electrician working primarily in the construction industry. Mr. Breau referred to Exhibit "B" being a letter dated April 14, 2009 from his employer, Mr. Docherty of Guild Electric Limited stating that Mr. Breau has been employed by Guild Electric in the greater Hamilton area with responsibilities as a field area supervisor for all outside electrical construction, including highway and bridge construction, street lighting and traffic control systems. While this letter states that Guild Electric Limited has had a practice of requiring that supervisors obtain their "master licence", it was Mr. Breau's evidence that he was not required to have a master electrician licence for the purposes of his job nor would he lose his job if he did not have a master electrician licence.

[16] Mr. Breau also referred to Exhibit "C" being a letter dated April 15, 2009 from John Grimshaw of the International Brotherhood of Electrical Workers, Local Union 105 ("IBEW") which confirms that Mr. Breau has been a member in good standing of Local 105 since June 23, 1992, that he began his apprenticeship with Local 105 on October 16, 1989 and that he attained his master electrician status. Mr. Breau referred to Exhibit "D" being a letter dated April 16, 2009 from Mike Hancock, Mayor of the City of Brantford in which Mr. Hancock states that Mr. Breau wrote his "Electrical Masters Licence exam" on December 11, 1996 and held a City of Brantford Master Electrician licence continuously for 9 years until the Authority "took over in July 2006".

[17] Referring to Exhibit "E" a letter from J. Hendrix of the Central Region Construction Quality Assurance Office of the Ministry of Transportation, Mr. Breau testified that he had worked on projects for the Ministry of Transportation in Ontario involving work including the installation of highway lighting and traffic signals and traffic management systems.

[18] Mr. Breau also testified that in the late 1990's he worked for an engineering firm as an electrical designer. He emphasized that the work he has performed is not just about knowing the

Electrical Code and pointed out that he interfaced with a great number of people and had good relationships with Authority inspectors.

[19] Mr. Breau stated that he held master electrician licences issued by the City of Brantford from 1996 to 2006, with the last such licence expiring on December 31, 2006. He further testified he failed to inquire about applying to renew his licence with the Authority until he filed an application for a master electrician licence with the Authority on or about February 11, 2009 (Exhibit "A", Tab 2).

[20] Mr. Breau testified that he was not aware of the changes in the legislation and regulations resulting in the Authority taking over responsibility for issuing master electrician licences. He referred to Exhibit "F", another letter from John Grimshaw of the IBEW, Local Union 105 dated April 24, 2009 in which Mr. Grimshaw states that his union was not asked by the Authority to notify its members of the change in legislation. Mr. Breau added that while he received monthly newsletters about what is going on in the electrical industry, he never received any actual notification of the change in the legislation requiring him to register with the Authority. On this issue of whether Mr. Breau had actual notification of the change in the legislation, there was a great deal of evidence from both parties and much of this evidence is disclosed in the Exhibits including Tabs 12 through 20 of Exhibit "A" submitted on behalf of the Director as well as in the testimony of Mr. Breau, Patience Cathcart and Lucy Impera. While this Review Panel has carefully reviewed and considered this evidence, it is not necessary to describe it in detail in this Decision because for the reasons discussed below this evidence is not relevant to the issues in dispute. Any lack of knowledge on the part of Mr. Breau concerning the legislation and what he should have done to maintain his master electrician status with the Authority does not excuse him from the consequences of his failure to do so.

[21] Under cross-examination by Mr. Steinecke, Mr. Breau confirmed that he had first passed his master electrician exam with the City of Brantford in 1996. He stated that he did not apply for a master electrician licence to the Authority until February 2009. Mr. Breau confirmed that his current position as the foreman with Guild Electric is not dependent upon him having or maintaining a master electrician licence. Mr. Breau further confirmed under cross-examination that he was under no hardship as a consequence of not having his master electrician licence and that his only concern was the possibility of future hardship although he provided no specific examples of what such future hardship be apart from having to study for and write the master electrician exam should he choose to do so.

[22] Mr. Breau referred to Exhibit "H" which was his will-say statement. This document also includes what really amounts to a written argument stating Mr. Breau's position in this case, and which has been carefully considered by this Review Panel.

[23] On behalf of the Director, Mr. Steinecke submitted the will-say statement of Patience Cathcart being Exhibit "I" and the will-say statement of Lucy Impera being Exhibit "J". Patience Cathcart 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. She testified that on March 16, 2009, she had a telephone conversation with Julie Jacobsen of the City of Brantford who was an employee in the municipal licensing department before the Authority took over licensing master electricians and electrical contractors on July 1, 2006. She stated that Ms. Jacobsen was able to specifically confirm that Mr. Breau was on their mailing list and that he renewed his master electrician licence with the City of Brantford until December 31, 2006.

[24] Ms. Cathcart testified that on March 25, 2009 she had a telephone conversation with Mr. Breau regarding the appeal information he had submitted in this case and Mr. Breau confirmed that he had renewed his master electrician licence with the City of Brantford up until December 31, 2006. She said that Mr. Breau claimed that he did not receive any information at any time of the licensing changes that were taking place in 2006 and that he ultimately learned of the licensing changes through a January 2009 IBEW newsletter after which he submitted his application to the Authority for his master electrician licence.

[25] 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. In this regard, she referred specifically to the documents in Exhibit "A" at Tabs 10, 11, 12, 13, 14 15, 16, 17, 18, 19 and 20. While this evidence clearly demonstrates a broad dissemination of information to stakeholders with respect to the changes in the legislation and regulations, it is not relevant to the issues in dispute in this case which do not turn on whether Mr. Breau had actual knowledge of the changes in the legislation and regulations.

[26] Ms. Impera was referred to her decision at Exhibit "A" Tab 7 and was asked why she refused Mr. Breau's appeal to her. She explained that the Notice of Proposal to refuse to grant a master electrician licence to Mr. Breau was issued to him on March 10, 2009 because he did not meet the passing of the master electrician examination requirement within the previous 12 months or the prior master electrician licence transition requirements. She further states that she could not find any basis by which her not issuing to Mr. Breau a master electrician licence would cause him hardship as he was not operating an electrical contractor business. She explained that Mr. Breau had not been treated any differently than other individuals in a similar position to him. She explained that there have been many prior master electrician holders that were required to re-write and pass the master electrician exam before a master electrician licence was issued to them by the Authority.

[27] Under cross-examination by Mr. Breau, Ms. Impera was asked to define "hardship" as that term is used Section 31(2) of Ontario Regulation 570/05. On behalf of the Director, Mr. Steinecke objected to requiring Ms. Impera to give a legal definition of the term. It is the view of this Review Panel that any evidence of what might constitute hardship is not relevant in this case as Mr. Breau has expressly testified that he is not claiming that he has or would suffer any

hardship in the circumstances other than speculation of possible future hardship of which he did not provide any particulars.

[28] Also under cross-examination, Ms. Impera stated that the requirement of Ontario Regulation 570/05, Section 31(3) where the holder of a prior electrician licence is not required to pass a master electrician examination is applicable only to a holder of a prior master electrician licence who is permitted to apply for a licence under Ontario Regulation 570/05 pursuant to Section 31(1) and (2) of that Regulation.

## **DECISION**

[29] Essentially, Mr. Breau'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. Breau 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. Breau 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.

[30] Mr. Breau 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. Breau 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. Breau'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. Breau 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. Breau not to allow him to apply. However, Mr. Breau does not claim that it would be a hardship not to allow him to apply. Further, there is no evidence that would establish any hardship and the Director correctly found that there was no hardship. Certainly, the writing of the exam itself, preparation for the exam and the payment of the required fees is not a hardship. Accordingly, there is no basis for the Director to permit Mr. Breau to apply after November 30, 2006.

[31] Therefore, Mr. Breau 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. However, Mr. Breau takes the position that he does not wish to write the master electrician qualifying examination.



However, the fact that Mr. Breau does not wish to write the master electrician qualifying examination is not a legitimate basis for an exemption from that requirement, if he wishes to apply for a master electrician licence.

[32] There was some argument about the meaning of Section 31(3) of Ontario Regulation 570/05. We agree with the Director that Section 31(3) must be read together with Section 31(2) to apply to the circumstances where a holder of prior electrical contractor licence or prior master electrician licence falls within the exception contemplated by Section 31(2).

[33] 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 (*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. Breau from the application of the legislation. If Mr. Breau 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: May 29, 2009

"Roy Hicks"

"Frank Zechner"

"Reg MacDonald"

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Roy Hicks

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Frank Zechner

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Reg MacDonald