
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

BETWEEN:

NEUFELD ELECTRIC
(the "Applicant")

- and -

DIRECTOR, LICENSING AND CERTIFICATION
(the "Director")

DECISION

Review Panel: Roy Hicks
Date: October 31, 2007
File Number: 7005820
Appeal Number: NOAL07-050

APPEARANCES

Director, Licensing, and Certification)	Bernie Leblanc, Counsel
)	Lucy Impera, Director, Licensing
)	and Certification
)	Wendy Reid, Project Coordinator
Neufeld Electric)	John Neufeld, Proprietor
)	
)	

INTRODUCTION

[1] A hearing in this matter was held on Thursday, October 18, 2007 before the Review Panel comprised of Roy Hicks sitting alone. The hearing was held by teleconference at the request of the Applicant. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections. Mr. Neufeld also confirmed that he was not suffering from any medical conditions that would affect his ability to proceed with the hearing of this matter notwithstanding his having filed a medical note from a doctor which is referred to below.

[2] On behalf of the Director, a Brief of Documents was filed and entered as the only Exhibit. The documents contained in the Brief of Documents are referred to in this Decision with reference to the Tab number in the Brief of Documents. The Applicant stated he had not seen the Brief prior to this hearing. The Director provided evidence that she had mailed the Brief of Documents to the Applicant at his address of record on October 12, 2007. Testimony was given by the Director that a receipt of delivery to Mr. Neufeld's address of record had been received from Canada Post. An item by item review was made of documents in the Brief with the Applicant. He stated he had in his possession all of the items except a permit history for various jobs and various dates for which he had received electrical inspection, a copy of the Electrical contractor and master electrician requirements for the City of Kitchener and a document containing business license fees for the City of Kitchener. The Applicant was given the choice of proceeding or adjourning pending his receipt and review of such documents. He elected to proceed with the hearing.

[3] On June 29, 2007, the Applicant applied for a provisional electrical contractor (EC-P) license.

[4] On July 6, Ms. Wendy Reid, Project Coordinator of the ESA, advised the Applicant that the ESA was willing to issue the Applicant a provisional electrical contractor license provided that the Applicant agreed to give to the ESA an undertaking (the "Undertaking") stating :

- (1) that John Neufeld, owner, Neufeld Electric, write and pass the Master Electrician exam and obtain a Master Electrician License by December 31, 2007 or a new Master Electrician is designated; and
- (2) a copy of the Certificate of Examination is sent to the Registrar within fifteen (15) days of receiving the Certificate.

The Applicant delivered a signed copy of the Undertaking on July 26, 2007 (Tab 5). On July 31 the Applicant was issued a Provisional Electrical contractor license by the Director, subject to the two conditions of the Undertaking (Tab 7).

[5] On August 13, 2007, the Applicant filed a notice of appeal before the Director (verbally on August 13 and in writing on August 20 (Tab 8)) claiming that he was being penalized, that he phoned the ESA between June and December [2006] and never got the forms sent, that the fee charged did not say what it was for and that he would like a five-year provisional license granted. It is also relevant to note that the Applicant has claimed that he does not have access to fax or Internet and that he can only be communicated with by regular mail or telephone.

[6] On August 27, 2007 the Director issued a decision stating that the requirements as set out in s 10 of Ontario Regulation 570/05 for obtaining a provisional electrical contractor license had not been met by the Applicant. The Director's Decision states that the decision to issue a provisional electrical contractor license based on the signed Undertaking to obtain a Master Electrician License by December 31, 2007 is confirmed. Finally, the Director's Decision states that if the Applicant withdraws from the agreement in the signed Undertaking, the license would be revoked (Tab 10).

[7] On September 12, 2007, the Applicant filed a Notice of Appeal (Tab 11) before the Review Panel in which the Applicant states his position as follows:

- (i) The license should be granted for a four-year period as the Applicant has been in business for forty years with no outstanding infractions or deficiencies and at no time in forty years has there ever been a request to obtain a contractor's license;
- (ii) the application period is too short with a lack of communication with those effected and the exam deadline of December 31, 2007 is too short for preparation as he is self-employed;
- (iii) he requested the forms in time but the staff of the ESA did not comply and (he points out that he relies on Canada Post for information);
- (iv) the license fee cost of a full year for only a six-month period is unfair and should be pro-rated;
- (v) the licensing program is penalizing legitimate electrical workers and is not reaching those unqualified persons working outside of the profession.

[8] The Applicant subsequently filed a letter on September 28, 2007 from Doctor Peter Whitby of the Centre for Family Medicine stating that "John [Neufeld] is unable to attend classes at this time, due to medical reasons" (Tab 13).

ISSUE

[9] The issue in this Appeal concerns the exercise of the Director's discretion pursuant to Section 10(3) of Ontario Regulation 570/05 under the Act concerning the licensing of electrical contractors and master electricians (the "Regulation"). Section 3 of the Regulation states that "No person shall operate an electrical contracting business without an electrical contractor license issued under this Regulation." Section 4(2) of the Regulation states that "An electrical contractor shall designate one or more master electricians to assume the responsibilities set out in section 6 of the carrying out of the electrical work on the contractor's behalf." Section 5 of the Regulations states that "No person shall assume the responsibilities set out in section 6 for the carrying out of electrical work on behalf of an electrical contractor without a master electrician license issued under this Regulation."

[10] Section 8 of the Regulation deals with electrical contractor licensing requirements and, inter alia, restricts licenses to those who are master electricians or who are not and employ a

master electrician whom the applicant has designated as having the responsibilities set out in section 6 for carrying out of electrical work. Section 10 deals with provisional electrical contractor license requirements and applicant procedure and provides for separate criteria for a person operating in areas of the province where licencing was not required prior to June 30, 2006 and parts of the province where licencing was required prior to June 30, 2006.

[11] In this case, the key provision of the Regulation is Section 10(3). It states as follows:

(3) A person described in subsection (1) may apply for a provisional electrical contractor license 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."

[12] It is not disputed that the Applicant does not have an electrical contractor license issued under the Regulation and has not designated one or more master electricians to assume the responsibilities for carrying out electrical work on the Applicant's behalf. It is also not in dispute that the Applicant did not apply for a provisional electrical contractor license between July 1, 2006 and November 30, 2006.

[13] The issue in this case concerns the exercise of the Director's discretion under Section 10(3) of the Regulation to give her approval to the Applicant to apply for a provisional electrical contractor license after November 30, 2006. The Director may give such approval if, in her opinion, it would be a hardship not to allow the Applicant to apply. The Director has issued a provisional electrical contractor license to the Applicant expiring on December 31, 2007 subject to the restrictions:

- (1) That John Neufeld, owner, Neufeld Electric, write and pass the Master Electrician exam and obtain a Master Electrician License by December 31, 2007 or a new Mater Electrician is designated; and
- (2) a copy of the Certificate of Examination is sent to the Registrar within fifteen (15) days of receiving the Certificate.

EVIDENCE

[14] John Neufeld testified on behalf of the Applicant. The Director, Lucy Impera and Wendy Reid each testified on behalf of the Director. There was no dispute in this case as to the issue before the Review Panel and that the Applicant had the burden of proof.

[15] In his evidence and submissions, the Applicant framed his case as follows:

- (1) Why had the application forms not been mailed as he had requested? He claimed that had he received them in time, he would have applied during the period July 1, 2006 to December 31, 2006.
- (2) Why were the license fees not *pro-rated* for the part of the year for which he possessed the provisional license?

- (3) Why were courses not available in his area?
- (4) He had worked outside the municipalities requiring licenses, and when working inside them, had worked under the licenses of others
- (5) Why were companies doing electrical work using unqualified persons without licenses?
- (6) Does the legislation cause a deterioration in his business?

[16] John Neufeld testified that he became aware of the electrical contractor licencing requirement in June of 2006. He stated he had contacted the ESA on three occasions prior to December 31, 2006, requesting application forms by mail and had not received them. He stated he had contacted Wendy Reed and had received the January 11, 2007 mailing, containing forms, location of exams and courses and four copies of the fee schedule. He stated he had experienced problems with mail delivery to his address in the past, did not have a fax machine and did not have personal access to the internet. He stated for fax communications he used the machines at UPS. He would not confirm the machine used for his undertaking of July 26, 2007 was that of the person witnessing his signature on the undertaking as shown by the fax origin line on the signed undertaking entered into evidence. He also would not confirm that he was aware that the person witnessing his signature was a member of the electrical contractor registration agency board.

[17] Under cross examination, Mr. Neufeld stated that despite possessing the application since January 11 2007, other priorities prevented him applying for registration until June 29. He also agreed that he had signed the June 29 letter to ESA stating that he had been refused inspection on June 11 on the basis of not being licensed.

[18] On behalf of the Director, Lucy Impera and Wendy Reid testified about the efforts that were undertaken by the ESA to make the public and electrical contractors specifically aware of the requirements of the Regulation. Their evidence essentially was that the requirements of the Regulation were communicated to the stakeholders in the electrical contractor industry by a variety of means including contractor and association meetings; industry association publications including the Ontario Electrical League (Mr Neufeld stated in his evidence that he was a member although the local chapter was inactive). They also stated that the requirements were communicated widely in ESA publications; postings of materials at the offices of wholesalers and distributors and the MPP offices; information set out from Municipalities; mailings to contractors on the ESA mailing lists and it was confirmed that the Applicant having applied for inspections, would be on this list; on hold messages at the ESA customer service centre; and through inspectors. Accordingly, it was the position of the Director that the Applicant through its managers or employees knew or ought reasonable to have known about the requirements of the Regulation in the timely fashion and would have access to application forms that would have permitted the Applicant to apply for a provisional electrical contractor license between July 1, 2006 and November 30, 2006.

[19] Lucy Impera testified that even if the application received on June 29, had been received prior to November 30, 2006, it was incomplete in that it included no certificate of qualification,

no insurance certificate and insufficient payment and would on such basis have been rejected. She testified that having subsequently become aware that Mr. Neufeld did work in Kitchener, which had municipal licencing, it also would have been rejected as the applicant would be ineligible under the Section 10 of Regulation 570/05 .

[20] With respect to communications, Ms Reid testified that during the course of dealing with Mr. Neufeld's application, she had frequently experienced difficulty reaching Mr. Neufeld by telephone, had left messages and received no reply. She testified that had Mr. Neufeld inquired about course and exam dates in his business area, she would have supplied the information.

[21] With respect to the Undertaking, they also testified that there were courses available to permit Mr. Neufeld to write the exam for his master electrician license prior to December 31, 2007 and there were services available from then Electrical Safety Authority to assist him if he had difficulty with the exam, including verbal exams one on one exams given by ESA staff . It was also their testimony that the licencing requirements were developed in consultation with the electrical contracting industry, that the ECRA Board passed a recommendation endorsing the conditions of the Undertaking in recognition of the many late applicants, and that to make an exception would be unfair to the those who had met the licencing criteria Ms. Impera stated that 90% of those writing the exam were passing the first time, that writing a second time was permitted and many of those failing the first time were passing the second attempt. Mr. Neufeld stated he had started a course preparing for the exam shortly after Labour day in September of 2007.

[22] No other evidence was submitted by the Applicant to establish any particular hardship.

DECISION

[23] The Applicant was aware of the requirement to file an application for a provisional license in June of 2006, and he failed to file a completed application pursuant to Section 10(3) of the Regulation by November 30, 2006.

[24] The Applicant filed his first application for a provisional electrical contractor's license on June 29, 2007 (Tab 2). The Director decided on July 31, 2007 to grant a provisional license expiring on December 31, 2007 subject to an Undertaking which the Applicant signed and submitted on July 26, 2007.

[25] Application forms were at all material times reasonably available to the Applicant and he has had a reasonable opportunity to seek out and take available courses and exams at reasonable locations.

[26] The Applicant was permitted to apply for a provisional electrical contractor license after November 30, 2006 and was by the Director's decision dated July 13, 2006 granted the opportunity to obtain a provisional contractor license subject to compliance with the Undertaking.

[27] Taking into account all of the testimony and documentary evidence, it is the decision of the this Review Panel to deny the appeal of the Applicant. It is clear that the Director has

properly exercised her discretion under 10(3) of the Regulation. In this regard, I find that the Director's decision was the correct decision taking into account all relevant considerations.

[28] The appeal is therefore dismissed.

Dated November 1, 2007

Roy Hicks