
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

B E T W E E N:

DAVID J. KOWALCHUK
(the "Applicant")

- and -

DIRECTOR, LICENSING AND CERTIFICATION
(the "Director")

DECISION

Review Panel: Warren A. Beacom, Robert Nelson and Frank J. E. Zechner
Date: April 3, 2009
File Number: 6008107
Appeal Number: NOAL 09-001

APPEARANCES

Director, Licensing, and Certification)	Richard Steinecke, Counsel
)	Lucy Impera, Director, Licensing
)	and Certification
)	Patience Cathcart, Project
)	Coordinator, Licensing and
)	Certification
David J. Kowalchuk)	David J. Kowalchuk, on his own
)	behalf
)	
)	

INTRODUCTION

[1] The hearing in this matter was held on Tuesday, March 24, 2009 before the Review Panel comprised of Warren A. Beacom, Robert Nelson and Frank J. E. 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, including the Applicant, agreed that the Applicant would participate in the hearing by conference call at his request.

[2] At the outset of the hearing, on behalf of the Director, a Document Brief was filed and admitted without objection from the Applicant as Exhibit "A". This Document Brief contains documents showing the record of the Applicant's dealing with 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 Document Brief being admitted to evidence and that he at no time disputed any of these documents. The Applicant filed copies of Scotia Bank Business Account Statements covering various periods commencing in January 16, 2004 to June 30, 2004. There were seven such statements which were each marked as Exhibit "B1-B7" in chronological order. The Director confirmed that she had no objection to any of these documents being admitted into evidence and at no time disputed any of these documents.

[3] On December 16, 2008, a Notice of Proposal was issued by the Director to the Applicant (Tab 3) pursuant to which the Director refused to grant to the Applicant a Master Electrician Licence pursuant to Section 113.2(2) of the *Electricity Act, 1998* on the basis that the Applicant has failed to comply or meet a requirement of Part VIII of the *Electricity Act, 1998*, and Ontario Regulation 570/05 and specifically that the documentation submitted by the Applicant with his Master Electrician application does not meet the Master Electrician requirements as set out in Sections 11, 12 and 31 of Ontario Regulation 570/05 for obtaining a Master Electrician Licence. The Notice of Proposal alleges that the Applicant failed to provide documentation proving that he had passed the Master Electrician qualifying examination within the 12-months preceding the date his application for a Master Electrician Licence was submitted as required under Section 11(c) and Section 12(c) of the Ontario Regulation 570/05. It was noted that a prior Master Electrician Licence was provided by the Applicant with his Master Electrician Licence application, however, it is alleged that such prior Master Electrician Licence was not valid and in good standing at the time the Application was submitted.

[4] On January 14, 2009, the Applicant filed a Notice of Appeal (a Request for Review) before the Director of Licensing indicating his disagreement with and his desire to appeal the Notice of Proposal (Tab 4).

[5] On February 3, 2009, the Director issued her decision on the Applicant's appeal of the Notice of Proposal dated December 16, 2008 (Tab 3) pursuant to Section 113.4(1) of the *Electricity Act, 1998* appealing the refusal to grant to the Applicant the Master Electrician Licence. The Director decided that, while the Applicant had outlined his years of experience as an electrician and provided documentation stating that he previously held a Master Electrician Licence in the City of Hamilton, there is no expiration date on the Licence confirming that it was valid until 2006. The Director further found that the Applicant did not apply for his Master Electrician Licence between July 1, 2006 and November 30, 2006 as prescribed in the transition

provisions. The Director found that she has no discretion where the law specifically provides that a licence “shall not be issued”. In the case of the Applicant, she found that there are specific requirements that have not been made or have not been met as set out in Ontario Regulation 570/05. She therefore determined that the Applicant would either have to hire a Master Electrician licensed by the Authority or he would have to write and pass the Master Electrician exam and resubmit his application for a Master Electrician Licence accompanied by the passing results of the exam. Accordingly, the Director confirmed the refusal to grant to the Applicant a Master Electrician Licence.

[6] On or about February 20, 2009, the Applicant filed a Notice of Appeal before the Review Panel appealing the Director’s decision (Tab 7). A hearing was scheduled before this Review Panel which took place on March 24, 2009.

ISSUES

[7] The issue in this case is whether the Applicant is entitled to hold a Master Electrician Licence pursuant to the requirements set out under Section 113.2(1) of the *Electricity Act, 1998* and Sections 11(c) and 12(c) of Ontario Regulation 570/05.

[8] Section 113.2(1) of the *Electricity Act, 1998*, states:

s.113.2(1) – Except as provided in the Regulations, no person shall carry out or propose to carry out, or permit or employ another person to carry out an activity referred to in the Regulations as requiring an authorization without first obtaining an authorization in accordance with this Part in the Regulations.

[9] Section 113.2(2)(a) and (f) of the *Electricity Act, 1998* states:

s.113.2(2)(a) – 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 carrying out 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:

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] It is not disputed by the Applicant that he has not passed the Master Electrician qualifying examination within the 12-month period preceding the date of his application.

EVIDENCE

[13] David J. Kowalchuk, the Applicant, testified on his own behalf and Patience Cathcart and Lucy Impera each testified for the Director.

[14] David Kowalchuk testified that he has been a member in good standing of the International Brotherhood of Electrical Workers, Local Union 105 since 1975. He also testified that he signed an agreement with Local 105 to become a unionized contractor at which time he had to present his valid contractor's licence that he obtained from the City of Hamilton of which his Master's Licence #429 is a part. He further testified that he has been a contractor and has

worked on many jobs throughout the years as a sub-contractor and also as an electrician for many other contractors. He said, however, that he has not worked as an electrician in the Hamilton region for at least 10 years and has been working primarily in Northern Canada or more specifically in the area near where he resides in Dunchurch, Ontario which is about 50km northeast of Parry Sound. He acknowledges that he did not keep his Master Electrician Licence from the City of Hamilton active during the past 15 years and did not renew it when it expired as there was not a requirement to hold a Master Electrician's Licence where he was working. He says that he has not done electrical work as a contractor since 2004 but has been working as a journeyman electrician in various locations around Ontario. He claims that he first learned that he needed a Master Electrician Licence from the Authority through conversations he had on job sites during the last 12 months.

[15] He was asked in cross-examination whether he was up to date on the Electrical Code and responded that he did not feel that he would have very much problem but planned to take a "refresher". Mr. Kowalchuk was further asked why he would not choose to write the Master Electrician exam and he responded that he did not want to be burdened with this because he only does small jobs and that essentially he shouldn't have to do this after 34 years in the trade. He further said that he did not want to travel to write the exam unless he is traveling for work to be paid.

[16] The Director called Patience Cathcart as her first witness. Patience Cathcart is Project Coordinator for Licensing and Certification at the Authority. She testified about the Notice of Proposal (Tab 3) and stated that she spoke to Mr. Kowalchuk on December 30, 2008. Patience Cathcart explained to Mr. Kowalchuk why it was necessary for him to write the Master Electrician exam and also explained to him the appeals process with respect to the Notice of Proposal (Tab 3). Patience Cathcart also testified that she contacted the City of Hamilton about the Master Electrician Licence that Mr. Kowalchuk had held there and that the City of Hamilton was not able to confirm that he held a valid Master Electrician Licence with the City of Hamilton from 1997 to the present. They did confirm that he had a Master Electrician Licence prior to 1997 but did not confirm whether it had been renewed. David Kowalchuk did not dispute the evidence of Patience Cathcart.

[17] The Director, Lucy Impera, then testified. She is Registrar and Director of Licensing and Certification of the Authority and she 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 that the purpose of the amendments to the Electricity Act, 1998 stating that under the old system, there was a patchwork of licensing 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. She also explained the process which was undertaken to inform all stakeholders of the changes in the legislation and regulations commencing in 2001 including information made available through various meetings, publications, postings on websites, on-hold messaging, and posters provided to wholesale distributors.

[18] Lucy Impera also testified that the City of Hamilton had provided to the Authority a list of all licence holders in its records and that Mr. Kowalchuk was not included in that list. She explained that the City of Hamilton ceased issuing licences after June 20, 2006. She referred to

Tab 2 where Mr. Kowalchuk's Application for a Master Electrician Licence appears. She explained her decision not to issue a Master Electrician Licence to Mr. Kowalchuk on the basis that his application and the supporting documentation submitted with it does not meet the requirements set out under Sections 11, 12 and 31 of Ontario Regulation 570/05 including that Mr. Kowalchuk failed to provide documentation that he had passed the Master Electrician examination within the 12-month period preceding the date that application was submitted as required under Section 11(c) and 12(c) of Ontario Regulation 570/05. She pointed out that the prior Master Electrician Licence submitted with Mr. Kowalchuk's application was not valid and in good standing at the time the application was submitted. Ms. Impera was asked whether Mr. Kowalchuk was treated any differently than other applicants, she responded that he was not. Ms. Impera pointed out that there were courses available for Mr. Kowalchuk to take throughout the Province of Ontario including in Barry, North Bay, Bracebridge and Sudbury to help him prepare for the exam should he wish to take advantage of them.

DECISION

[19] There is really only one issue in this appeal. That issue is whether the Applicant is entitled to hold a Master Electrician Licence pursuant to the requirements set out under Section 113.2(1) of the *Electricity Act, 1998* and Sections 11(c) and 12(c) of Ontario Regulation 570/05. These requirements include having passed the Master Electrician qualifying examination within the 12-month period preceding the date of the application. It is not disputed that Mr. Kowalchuk does not meet this specific requirement.

[20] It is further clear that Mr. Kowalchuk is not entitled to take the benefit of the transition provisions found in Section 31 of Ontario Regulation 570/05. These provisions do not apply in the circumstances of this case because Mr. Kowalchuk did not hold a prior Master Electrician Licence immediately before July 1, 2006. A "prior master electrician licence" is defined in the Regulation as follows:

"prior master electrician license" 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 of an electrical contractor within the municipality or other jurisdiction and that was valid and in good standing on June 30, 2006"

[21] We have reviewed each of the subsections of Section 31 of Ontario Regulation 570/05 and it is clear that Mr. Kowalchuk's circumstances do not fall under any of those provisions in this case.

[22] This is not a case where the Director has any discretion to relieve Mr. Kowalchuk of the requirement to pass the Master Electrician examination. There is also no issue of considering any hardship suffered by Mr. Kowalchuk as hardship is not relevant in the case but even if hardship was relevant, there is no evidence that has been submitted by Mr. Kowalchuk that he has or will suffer any hardship. The only unfulfilled obligation is to write and pass the Master Electrician examination. Certainly Mr. Kowalchuk's claim that he was not aware of the changes in the legislation is neither a hardship nor any basis for him to be relieved of the obligations under the legislation.

[23] 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 taken into account all of the relevant considerations and that decision is hereby confirmed.

Dated: April 3, 2009

"Warren A. Beacom"

"Robert Nelson"

"Frank J. E. Zechner"

Warren A. Beacom

Robert Nelson

Frank J. E. Zechner