
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL

B E T W E E N:

AFFORDABLE ENERGY SALES & SERVICES

(the "Applicant")

- and -

DIRECTOR, CODES AND STANDARDS

(the "Director")

Decision

Review Panel: Tim Pope, Terrance Sweeney, Klaas Degroot

Hearing Date: October 18, 2012

File Number: 70079753

Appeal Number: NOAC 12-18

APPEARANCES

Director, Codes and Standards

) Pradeep Chand, Counsel
) Ted Olechna, Director, Codes and Standards
)
)

Affordable Energy Sales & Service

) Robert Richardson
)
)

I. BACKGROUND

1. A hearing in this matter was held on Thursday, October 18, 2012 before the Review Panel comprised of Tim Pope, Terrance Sweeney and Klaas Degroot. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections.
2. In advance of the hearing, both parties provided written submissions and supporting documents.
3. The issue before the Review Panel was the Director's decision to confirm a Notice of Violation (the "Notice"), Notification #70079753, under Part VIII of the *Electricity Act, 1998* (the "EA") against Affordable Energy Sales & Services operated by Robert Richardson.

(a) The Notice

4. In July 2012, the Product Safety division of the Electrical Safety Authority ("Product Safety") investigated the Applicant for a possible breach of the Ontario *Electrical Safety Code 2012* (the "Code"). The Applicant had supplied electrical equipment, specifically LED light model no. MDD-T8-1198R (the "LED"), to a third party, GMCL/CAMI Automotive Inc. The LED had not been approved as required by the EA. The Applicant was also advertising the unapproved LED on the Applicant's website.
5. Product Safety found that supplying the unapproved LED to a third party violated Rule 02-022 of the Code and thus issued the Notice on the Applicant.

(b) The Appeal

6. Pursuant to section 113(11) of the EA, the Applicant appealed the Notice with the Director on August 8, 2012. The basis for the Applicant's appeal was that the unapproved LED had not been sold to the third party.
7. The Director issued his decision on August 27, 2012. In his decision, the Director confirmed that the Applicant violated Rule 02-022 of the Code by providing the unapproved LED to the third party.
8. The Applicant appealed the Director's decision to this Review Panel.

II. THE LAW

9. Rule 02-022 of the Code reads:

(1) No person shall use, advertise, display sell, offer for sale or for other disposal any electrical equipment unless it has been approved in accordance with Ontario Regulation 438/07.

10. This rule is mirrored in section 5(1) of Product Safety Regulation 438/07 of the *EA*.
11. Counsel for the Director has suggested that the appropriate standard of review for this Review Panel is one of reasonableness. However, the Review Panel in *Orangeville Hydro Limited and Director, Licensing and Certification*, dated February 11, 2011 ("*Orangeville Hydro*"), determined that the appropriate standard of review is correctness. In making its decision, the Review Panel in *Orangeville Hydro* relied on section 14 (11) of Regulation 187/09:

The Review Panel may, by order, confirm, amend, rescind or impose terms and conditions to the decision of the Director or make whatever other decision that the Review Panel deems appropriate.

12. In applying section 14(11) of Regulation 187/09, the Review Panel stated the following at paragraphs 19 and 20:

The legislature has seen fit to give to the Review Panel wide authority to insert itself into the decision making process. While it may be that the Review Panel may choose to give deference to the Director in the exercise of certain decision making exercises that are conferred her under the *EA* in any individual case, the Review Panel clearly has great latitude to impose its perspective and to make the decision that it deems appropriate.

Although not determinative, the Review Panel is also supported in its view on this matter in that a hearing before a Review Panel is a hearing *de novo*.

13. This Review Panel adopts the reasoning in *Orangeville Hydro* whereby the standard of review is one of correctness.
14. The standard of proof in this review is a balance of probabilities.

III. ISSUE

15. The issue is the whether the Applicant violated Rule 02-022 of the *Code* ("Rule 02-022"). More specifically, did the Applicant violate Rule 02-022 even though he did not "sell" the LED to the third party?

IV. ANALYSIS

16. The material facts in this case are not in dispute. The Applicant has admitted that he provided an unapproved LED to a third party. The Director has agreed that the Applicant did not sell the unapproved LED. The Applicant did not object to the LED being considered "electrical equipment" under the *Code*.
17. The Applicant submitted that because he did not sell the LED to the third party that his activities did not fall under Rule 02-022 or section 5(1) of Product Safety Regulation 438/07 of the *EA* ("section 5(1)"). However, Rule 02-022 and section 5(1) cover more

than the sale of any unapproved electrical equipment. Rule 02-022 and section 5(1) prohibit a person from the “use, advertise, display, sell, offer for sale or for other disposal” (emphasis added) of unapproved electrical equipment. The question for this Review Panel is whether the Applicant’s activities are captured by “other disposal” as set out in Rule 02-022 and section 5(1).

18. Neither the *Code* nor the *EA* specifically defines “disposal”; however, the *Code* does read in section 0 that “[t]he ordinary or dictionary meaning of terms shall be used for terms not specifically defined.” From a review of Merriman-Webster’s dictionary, “disposal” is defined as the act of:

- a. Placing, distributing, or arranging especially in an orderly way
- b. Transferring to the control of another
- c. Getting rid of waste
- d. Dealing with conclusively

19. The Applicant’s action of providing the unapproved LED to the third party is clearly captured by definition “b”. Therefore, using the ordinary or dictionary meaning of the term “disposal”, the Applicant violated Rule 02-022 of the *Code*.

20. In addition, section 64(1) of the *Legislation Act, 2006* S.O. 2006, c.21, Sched. F reads:

An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

21. Further, in *Rizzo & Rizzo Shoes Ltd.*, [1998] S.C.J. No. 2 the Supreme Court of Canada adopted the following approach to statutory interpretation from Elmer Driedger’s *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

22. The Supreme Court of Canada elaborated on this approach in *Bell ExpressVu Limited Partnership v. Rex*, [2002] S.C.J. No.43 (“*Bell ExpressVu*”) at paragraph 27:

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article “Statute Interpretation in a Nutshell” (1938), 16 Can. Bar Rev. 1, at p. 6, “words, like people, take their colour from their surroundings”. This being the case, where the provision under consideration is found in an Act that is itself a

component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter".

[Emphasis added]

23. The *EA*, and the legislation that falls underneath it, including the *Code* and Regulation 438/07, were enacted to govern not only the supply of electricity, but all aspects of electrical equipment. The "larger statutory scheme" as enunciated in *Bell ExpressVu*, is, in part, to provide safety to the public in all cases where electricity is used, including electrical equipment. Specifically, section 0 of the *Code* reads:

The object of this Code is to establish safety standards for the installation and maintenance of electrical equipment. In its preparation, consideration has been given to the prevention of fire and shock hazards as well as proper maintenance and operation.

24. Following the Supreme Court of Canada's approach, the *EA* and the *Code*, must be interpreted in such a way as to provide the greatest public safety. Therefore, "other disposal" must be interpreted to include the Applicant's actions.

V. DECISION

25. This Review Panel has determined that the term "other disposal" captures the Applicant's actions. The Applicant provided an unapproved LED to the third party. It is immaterial that he did not sell the LED as simply providing it is enough to be considered a disposal under the Rule.
26. The Review Panel has carefully considered the facts, the parties' submissions and the relevant law, and is satisfied on a balance of probabilities that the Applicant violated Rule 02-022 and section 5(1). Further, while the Applicant has advised that the unapproved LED is no longer being advertised on the Applicant's website, this Review Panel confirms that promoting the unapproved LED online is also a violation of Rule 02-022 and section 5(1).
27. As this Review Panel has determined that the Applicant violated Rule 02-022 and section 5(1), the Notice of Violation, Notification #70079753, has been affirmed, and the Applicant's Appeal is dismissed.

Dated: October 25, 2012