
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL

B E T W E E N:

JEFF BIRKLE

(the "Applicant")

- and -

DIRECTOR OF ONTARIO ELECTRICAL SAFETY CODE

(the "Director")

Decision

Review Panel: Tim Pope, Bob Brownie, Emanuel DaRosa

Hearing Date: May 21, 2014

File Number: 70097735

Appeal Number: NOAC 14-02

APPEARANCES

None – Hearing done by written submissions

I. BACKGROUND

1. This matter was determined by way of written submissions. The Review Panel comprised of Tim Pope, Bob Brownie and Emanuel DaRosa considered the written submissions on May 21, 2014. There were no objections to the jurisdiction of the Review Panel to hear this matter.
2. Both parties provided written submissions.
3. The issue before the Review Panel was the Director's decision to confirm the Notice for Working Without Electrical Inspection (the "Notice") issued to the Applicant for failing to make an Application for Inspection for work performed at 948 Thimbleberry Circle in Oshawa, Ontario.

II. FACTS

4. The Applicant, Jeff Birkle, operates an electrical contracting business. An EV outlet was installed at 948 Thimbleberry Circle in Oshawa, Ontario. The homeowner, Neil Gillespie ("Gillespie"), called the Electrical Safety Authority (the "ESA") on or about January 28, 2014 to request an inspection of the EV outlet. Gillespie advised the ESA that the Applicant had performed the work. Upon inspection by the ESA, Gillespie was unable to explain the installation and eventually told the Inspector that the Applicant had performed the work. Accordingly, the Inspector issued the Notice with an order to correct deficiencies.

The Appeal

5. The Applicant appealed the Notice to the Director. The Applicant stated that Gillespie, as the homeowner, had performed the work himself. The Applicant stated that he was not contracted to perform the work. The Applicant stated that Gillespie was mistaken when he advised the ESA and the Inspector that the Applicant had performed the work. The Applicant acknowledged that he was at Gillespie's residence when the work was performed. The Applicant acknowledged that he and Gillespie are friends.
6. The Director issued her decision on March 13, 2014. In her decision, the Director confirmed the Notice.
7. The Applicant appealed the Director's decision to this Review Panel. The Applicant filed his appeal dated March 26, 2014 and requested that a written hearing be held. In accordance with the Rules of Procedure, the parties executed the Consent to Hearing Date for May 21, 2014.

III. PRELIMINARY ISSUES

8. On May 14, 2014, the Applicant wrote to this Review Panel to request that the appeal be held as an oral hearing as well as an adjournment of the May 21, 2014 hearing date. The Director objected to both requests.

9. The Review Panel considered the parties' submissions and advised that the requests were denied.
10. The Applicant had full control over the choice of hearing when he filed the appeal and specifically chose a written hearing. If the Applicant had second thoughts about his choice of hearing he should have given notice immediately, or at least well prior to one week before the hearing date, absent some compelling reason for doing so. The Applicant's reason for the request was not so compelling as to justify the added time, delay and expense that would result from changing the manner of hearing. The Review Panel had been set and the individual members had already ensured that they were available for the scheduled date.
11. With respect to the adjournment request, The Rules of Procedure specifically provide that the Consent to a Hearing Date must be returned within five days. This Rule exists to ensure that the appeal process is expeditious and efficient. Through the Consent to a Hearing Date process, the Applicant had control over the date selected. In addition, the Applicant made the request for adjournment only one week before the hearing date. The Applicant's reason for the request and the timing of it was not sufficiently compelling to justify the added time delay and expense in granting the adjournment.

IV. LAW

12. Section 113.2(1) of the *Electricity Act* reads:

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 and the regulations.

13. Rule 2-004 of the Ontario Electrical Safety Code (the "Code") reads:

A contractor shall file with the inspection department a completed application for inspection of any work on an electrical installation.

(a) before or within 48 hours after the commencement of the work whether or not electrical power or energy has been previously supplied to the land, building, premises on which the work was performed;

(b) shall pay the fees prescribed by the inspection department; and

(c) be in compliance with Ontario Regulation 570/05 made under Part VIII.

14. A matter before a Review Panel is a hearing *de novo*. Accordingly, as articulated in *Orangeville Hydro Limited and Director, Licensing and Certification*, dated February 11, 2011 ("*Orangeville Hydro*"), 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.

15. 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*.

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

V. ISSUE

18. The issue is the whether the Applicant performed the work at 948 Thimbleberry Circle.

VI. DECISION

19. The parties are in agreement on a number of facts in this case. Neither party questioned whether the work was performed or that if performed by the Applicant, that he was required to get an inspection. The only point in dispute was whether the Applicant performed the work.
20. The Applicant submits that Gillespie, as the homeowner, performed the work. The Applicant submits that he simply provided code compliant material and advised Gillespie on how to perform the installation. However, this is in contradiction to the fact that Gillespie himself informed an ESA customer service representative that the Applicant had performed the work. Further, on a separate occasion, Gillespie was unable to explain the installation to an Inspector and eventually stated again that the Applicant had performed the work. All of this suggests that it is more probable than not that the Applicant performed the work.
21. The Applicant acknowledged that he was at Gillespie's residence when the work was performed. The Applicant acknowledged that he and Gillespie are friends. However,

the Applicant did not provide a credible explanation as to why Gillespie would say that the Applicant performed the work.

22. Accordingly, the Review Panel finds, on a balance of probabilities, that the Applicant installed the EV outlet at 948 Thimbleberry Circle, and subject to Rule 2-004. Therefore, the Notice issued is valid and the Director's decision is confirmed.

Dated: June 6, 2014