

**DISCIPLINE COMMITTEE OF THE  
ONTARIO COLLEGE OF TRADES**

**IN THE MATTER OF** the *Ontario College of Trades and Apprenticeship Act, 2009*,  
and Ontario Regulation 97/13 (Professional Misconduct) thereunder;

**AND IN THE MATTER OF** a discipline proceeding against  
Trevor A. Cleary, a member of the Ontario College of Trades.

Hanno Weinberger, Chair

BETWEEN:	)	
	)	
	)	Karina Pogosyan,
<b>ONTARIO COLLEGE OF TRADES</b>	)	Student-at-Law, and John Park,
	)	College Counsel, for Ontario
-and-	)	College of Trades
	)	
	)	
<b>TREVOR A. CLEARY</b>	)	Trevor A. Cleary, Self-Represented
(Member #13838914)	)	
	)	
	)	Aaron Dantowitz,
	)	Independent Legal Counsel
	)	
	)	Heard: May 24, 2018

**REASONS FOR DECISION**

1. A hearing of this matter took place before a panel of the Discipline Committee (the “Panel”) pursuant to section 46(1) of the *Ontario College of Trades and Apprenticeship Act, 2009* (the “Act”) on May 24, 2018 at Victory Verbatim, Court Reporting Services, 222 Bay Street, Toronto, Ontario.
2. A *Notice of Hearing* (Exhibit 1) issued January 25, 2018 was served on Trevor A. Cleary (the “Member”) and a first appearance in this matter took place by teleconference on March 6, 2018; a Pre-Hearing

Conference was held on April 11, 2018; and the hearing of this matter on its merits was subsequently scheduled for May 24, 2018.

3. At the Pre-Hearing Conference on April 11, 2018, the Panel confirmed the parties' consent that any agreement on the facts in this matter could be filed with the Panel in advance of the hearing. The Panel also obtained the parties' consent that the hearing may proceed before a one-member panel in accordance with section 4.2.1(2) of the *Statutory Powers Procedure Act*.

### **THE ALLEGATIONS**

4. Ms. Pogosyan on behalf of the College advised that the College intended to proceed with allegations (a), (b) and (e) in the *Notice of Hearing*, and requested the Panel's permission to withdraw allegations (c) and (d), indicating that those allegations were not supported by the facts on hand and the College did not feel that there were grounds to support them. Permission to withdraw allegations (c) and (d) was granted by the Panel.

Allegations (a), (b) and (e) in the *Notice of Hearing*, along with particulars, were as follows:

**"IT IS ALLEGED** that Trevor A. Cleary has engaged in professional misconduct as defined in subsection 46(2) of the *Act* and/or Ontario Regulation 97/13 made under the *Act* in that he:

- a) failed to take reasonable steps to safeguard the life, health or property of a person who may be affected by the work of a member or any person for whom the member is responsible, when he knew or ought to have known that there was a risk to life, health or property (Ontario Regulation 97/13, subsection 1(1);
- b) failed to act to correct or report a situation that he knew or ought to have known may endanger the safety or welfare of the public (Ontario Regulation 97/13, subsection 1(2));

\* \* \* \*

- e) acted or failed to act, in respect to the practice of a trade, in manner that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (Ontario Regulation 97/13, subsection 1(11)).

**PARTICULARS OF THE ALLEGATIONS ARE AS FOLLOWS:**

1. Trevor A. Cleary, Membership No. 13838914, (the “Member”) is a member of the Ontario College of Trades (the “College”).
2. At all material times, the Member held a Certificate of Qualification in the trade of Electrician – Construction and Maintenance (309A), Journeyperson class, which was issued by the College on March 7, 2014.
3. At all material times, the Member was employed by Cybertech Controls and Electric Inc. (“Cybertech”).

**March 6, 2014 (Contravention Found and 1<sup>st</sup> Warning given to the Member)**

4. On or about March 6, 2014, Cybertech was involved in a residential construction project at 2131 Mark Avenue, Windsor, Ontario. The Member was also working on site.
5. A compliance inspection was carried out by the College and found one individual, Corey Beaulieu, engaging in the scope of practice of the trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification and without having a valid Registered Training Agreement.
6. The College inspector spoke to the owner/director of Cybertech in the presence of the Member. The owner advised the College inspector that Corey Beaulieu was on a 90-day try-out period with the company.
7. The College inspector advised the Member that all individuals engaging in the scope of practice of the trade of Electrician – Construction and Maintenance (309A) must have a Certificate of Qualification or a valid Registered Training Agreement. It is an offence under the Act to employ or otherwise engage an individual to perform the work of a compulsory trade unless the individual holds a Certificate of Qualification or is working pursuant to a Registered Training Agreement.

8. The College inspector left the inspection site after giving a verbal warning to the owner and the Member not to engage unauthorized individuals to perform the work of a compulsory trade.

**August 5, 2015 (Contravention Found and 2<sup>nd</sup> Warning given to the Member)**

9. On or about August 5, 2015, Cybertech was involved in a residential construction project at 13109 Riverside Drive East in Tecumseh, Ontario. The Member was present on site as the supervisor.

10. A compliance inspection was carried out by the College and the inspector found one individual, Aaron Beaton, engaging in the scope of practice of the trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification and without having a valid Registered Training Agreement.

11. Aaron Beaton advised the College inspector that he was on a 90-day try-out period with the company.

12. The College inspector advised the Member that all individuals engaging in the scope of practice of the trade of Electrician must have a Certificate of Qualification or a valid Registered Training Agreement.

13. The College inspector left the inspection site after giving a verbal warning to the owner and the Member not to engage unauthorized individuals to perform the work of a compulsory trade.

**November 11, 2015 (Contravention Found and Cybertech Charged and Convicted)**

14. On or about November 11, 2015, Cybertech was involved in a residential construction project at 138 Decarlo Drive in Lakeshore, Ontario. The Member was the project supervisor.

15. A compliance inspection was carried out by the College and found one individual, Aaron Beaton, engaging in the scope of trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification or having a valid Registered Training Agreement.

16. Aaron Beaton advised the College inspector that he was directed to work by the Member who is his supervisor.

17. On or about November 11, 2015, as a result of this inspection, Cybertech was charged with an offence of engaging an unauthorized individual to engage in a compulsory trade, contrary to section 4 of the *Act*.

18. Cybertech did not dispute the charge as laid and was convicted pursuant to section 9(2) of the *Provincial Offences Act*.

**February 15, 2017 (Contravention Found and Cybertech Charged and Convicted for the 2<sup>nd</sup> Time)**

19. On or about February 15, 2017, Cybertech was involved in a commercial construction project at 715 Sprucewood Avenue in Windsor, Ontario. The Member was the project supervisor.

20. An employee of Cybertech, Michael Caille, was engaging in the scope of trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification and without having a valid Registered Training Agreement. Specifically, the work involved installing, wiring and connecting lighting fixtures that were located about 12 meters (40 feet) above the floor level (the “Electrical Work”).

21. While performing this Electrical Work, Michael Caille fell to the floor and sustained multiple serious injuries requiring medical treatment and hospitalization.

22. The Member was aware of the fact that Michael Caille was not authorized to perform the Electrical Work, but nonetheless instructed him to perform the work.

23. On or about November 29, 2017, in connection with this incident, Cybertech was convicted of an offence of engaging an unauthorized individual to engage in a compulsory trade, contrary to section 4 of the *Act*. Cybertech was fined \$2,500.00 and placed on probation for 12 months.

## **MEMBER'S PLEA**

5. Both verbally at the hearing and in an *Agreed Statement of Facts* signed in counterparts on April 17, 2018 (later marked as Exhibit 2), the Member admitted the professional misconduct set out in allegations (a), (b) and (e) of the *Notice of Hearing*.
6. The Panel conducted a plea inquiry with the Member, whereby the Member confirmed that he understood the nature of the allegations against him; that he voluntarily admitted to the allegations; that by admitting to the allegations, the hearing would proceed on the basis of the facts agreed upon; that he understood that the Panel was not obligated to accept any resolution achieved by the parties; and finally that the Member was aware of the range of penalties that the Panel could impose upon him.

## **THE EVIDENCE – AGREED STATEMENT OF FACTS**

7. Ms. Pogosyan tendered evidence by way of an *Agreed Statement of Facts* (Exhibit 2). Exhibit 2 stated the following:

### **FACTS**

#### **The Member**

[1] Trevor A. Cleary, Membership No. 13838914 (the “Member”) is a member of the Ontario College of Trades (the “College”).

[2] At all material times, the Member held a Certificate of Qualification in the trade of Electrician – Construction and Maintenance (309A), Journey person class, which was issued by the College on March 7, 2014.

[3] At all material time, the Member was employed by Cybertech Controls and Electric Inc. (“Cybertech”).

#### **February 15, 2017 (Contravention Found and Unauthorized Worker Suffered Injury)**

[4] On February 15, 2017, Cybertech was involved in a commercial construction project at 715 Sprucewood Avenue, Windsor, Ontario.

[5] The Member was the Project Supervisor.

[6] On February 15, 2017, the Member directed an employee, Michael Caille, to perform work of a compulsory trade of Electrician – Construction and Maintenance (309A).

[7] At the time of performing this work, Michael Caille did not have Certificate of Qualification or a valid Registered Training Agreement.

[8] The Member knew Michael Caille was not authorized to perform the work of compulsory trade of Electrician – Construction and Maintenance (309A)

[9] Michael Caille installed, wired, and connected lighting fixtures that were located about 12 meters (40 feet) above the floor level.

[10] While performing this work, Michael Caille fell to the floor and sustained multiple serious injuries requiring medical treatment and hospitalization.

[11] On November 29, 2017, in connection with this incident, Cybertech was convicted of an offence of engaging an unauthorized individual to engage in a compulsory trade, contrary to Section 4 of the Act. Cybertech was fined \$2,500.00 and placed on probation.

### **Three Compliance Inspections Conducted Prior to February 15, 2017**

[12] Prior to the above workplace accident on February 15, 2017, the College Inspector, Steve Lesperance, attended different Cybertech work sites on three prior occasions (March 6, 2014; August 5, 2015; and November 11, 2015), where he observed various non-authorized individuals engaging in the compulsory trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification or a valid Registered Training Agreement.

[13] During the random inspections of March 6, 2014 and August 5, 2015, the Member was informed that individuals must be registered apprentices prior to engaging within a compulsory

trade of Electrician – Construction and Maintenance (309A).

[14] During the third random inspection on November 11, 2015, the employer, Cybertech, was charged under Section 4 of the Act for engaging an individual to perform work in the compulsory trade without a Certificate of Qualification or a Registered Training Agreement in that trade. Cybertech did not dispute the charge and was convicted.

#### **ADMISSIONS**

[15] The Member admits the above facts as true and that they constitute professional misconduct set out in particulars (a), (b) and (e) of the Notice of Hearing (File No.:DC201801).

#### **PRIOR DISCIPLINE**

[16] The Member has no prior discipline history.

#### **INDEPENDENT LEGAL COUNSEL ADVICE**

8. Independent Legal Counsel (“ILC”) advised that the Panel’s task was to determine whether the evidence set out in the *Agreed Statement of Facts* supported the admissions of professional misconduct under allegations (a), (b) and (e) in *the Notice of Hearing*.

#### **DECISION**

9. The Panel accepted the *Agreed Statement of Facts* and found that the College had proven allegations (a), (b) and (e) in *the Notice of Hearing* on a balance of probabilities.
11. Therefore, pursuant to section 46(2)(a) of the Act, the Panel found the Member guilty of professional misconduct.

#### **REASONS FOR DECISION**

12. The Panel accepted that this matter was coming before it by way of an *Agreed Statement of Facts* (“ASF”). Further, the Panel was aware that although it was not bound to accept the ASF, both parties

had reached an agreement and were presenting this agreement for the Panel's consideration.

13. The Panel accepted and found as fact that:

- (i) The Member is a Member of the Ontario College of Trades and at all material times held a Certificate of Qualification in the trade of Electrician – Construction and Maintenance (309A) Journeyperson Class;
- (ii) The Member was at all material times employed by Cybertech;
- (iii) Cybertech was involved in a commercial construction project at 715 Sprucewood Avenue, Windsor, Ontario where the Member was the Project Supervisor;
- (iv) The Member directed an employee of Cybertech, Michael Caille, to perform the work of the compulsory trade of Electrician – Construction and Maintenance (309A);
- (v) The Member knew that Michael Caille was not authorized to perform the work of this compulsory trade;
- (vi) While performing this work, Michael Caille fell to the floor and sustained multiple serious injuries requiring medical treatment and hospitalization;
- (vii) Cybertech was charged in connection with this accident and convicted of an offence of engaging an unauthorized individual to engage in a compulsory trade, fined \$2,500 and placed on probation;
- (viii) Three compliance inspections were conducted at different Cybertech work sites by College Inspector Steve Lesperance on March 6, 2014, August 5, 2015 and November 11, 2015 where non-authorized individuals were observed engaging in the compulsory trade of Electrician – Construction and Maintenance (309A) without a Certificate of Qualification or a valid Registered Training Agreement;
- (ix) During the random inspections of March 6, 2014 and August 5, 2015, the Member was informed that individuals must be registered apprentices prior to engaging in the compulsory

trade of Electrician – Construction and Maintenance (309A);

(x) During the third random inspection on November 11, 2015, Cybertech was charged under Section 4 of the Act for engaging an individual to perform work in the compulsory trade without a Certificate of Qualification or a Registered Training Agreement in that trade. Cybertech did not dispute the charge and was convicted.

14. The Panel was satisfied that by engaging an employee to perform work that he was not authorized to perform, the Member engaged in professional misconduct by contravening Ontario Regulation 97/13, subsection 1(1), (2) and (11) as alleged in Exhibit 1 *Notice of Hearing*, paragraphs (a), (b) and (e).
15. In the matter of Michael Caille, personal injury resulted from the Member directing him to perform work for which Mr. Caille was not certified. The Panel noted that on previous occasions, during random investigations, the Member had been informed that non-authorized individuals could not perform work in a compulsory trade. Specifically, the Member knew or ought to have known, that in order to engage Mr. Caille to work within a compulsory trade, he required a Registered Training Agreement, which in this case he did not have.
16. By engaging an employee to perform work for which he was not authorized, the Member failed to take reasonable steps to safeguard the life and health not only of the employee, but the public who also could be negatively impacted by work done by an unauthorized worker. Further, the Member knew or ought to have known that by doing so, he was not only endangering the safety and welfare of the worker, but potentially the public as well.
17. By engaging in the conduct described above, the Panel found that the Member acted in respect to the practice of a trade, in a manner, that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional.

#### **PENALTY SUBMISSIONS**

18. Ms. Pogosyan proceeded to present a joint submission, signed by the Member, with respect to penalty and costs (*Exhibit 3*), made oral submissions thereon, and asked the Panel to impose the following penalties:

- (i) That the Member be reprimanded by the Panel and the fact of the reprimand be recorded on the public register for 12 months, pursuant to paragraph 46(5)(1) of the Act;
- (ii) That the Member be fined \$1,500.00 payable to the Minister of Finance within 12 months, pursuant to paragraph 46(5)(2) of the Act;
- (iii) That the finding and the order of the Panel be published in summary with the name of the Member in the official publication of the College and on the website of the Ontario College of Trades, pursuant to paragraph 46(5)(3) of the Act; and
- (iv) That the Member pay the College's costs in the amount of \$1,500.00 within 12 months of the date of the order pursuant to paragraph 46(5)(4) of the Act.

19. Ms. Pogosyan submitted that the proposed penalties were appropriate in light of the facts of this case, which included that the Member had received a number of prior warnings, and that Mr. Caille had sustained significant physical injuries, but also, that the Member had admitted responsibility, and that he had no prior discipline history. Ms. Pogosyan also submitted that the courts encourage the acceptance of agreements made between parties unless doing so would bring the administration of justice or the disciplinary process into disrepute.

20. Ms. Pogosyan also submitted for the Panel's consideration a previous decision of the Discipline Committee of the Ontario College of Trades, in the matter of Eric Halling. Decision No. DC201604, dated May 17, 2017, (which although not identical, also involved allegations that the member directed an employee, who was not registered as an apprentice, to perform electrical work), in which the Discipline Panel imposed a fine of \$500.00 to be paid within six months; the member in that case, having waived his right to appeal, was reprimanded at the conclusion of the hearing; the fact of the reprimand was recorded on the College's public register for a period of one year; and the finding and the order of the Panel was published in summary with the name of the member and the name and address of the member's business in the official publication of the College and on its website.

21. Mr. Cleary indicated that he had no additional submissions on penalty and costs.

#### **INDEPENDENT LEGAL COUNSEL ADVICE**

22. ILC advised the Panel that both parties had reached an agreement and submitted a Joint Submission on Penalty (“JSP”). In light of the JSP (Exhibit #3), there was limited discretion for the Panel to depart from it unless, in the opinion of the Panel, not doing so would bring the administration of justice into disrepute or would be contrary to the public interest.
23. ILC advised that in its deliberation, the Panel needed to consider specific deterrence, general deterrence, protection of the public, maintenance of the profession’s high standard and the public’s confidence in the College’s disciplinary process. The Panel also needed to consider any mitigating and aggravating factors.
24. In relation to the Halling case referenced by the College, the Panel also needed to consider whether the specifics of the JSP fell within an acceptable range.

#### **PENALTY DECISION**

25. After considering the JSP, the Panel accepted the submission and made the following orders:
  - (i) the Member shall pay a fine in the amount of \$1,500.00 to the Minister of Finance for payment into the Consolidated Revenue Fund within 12 months of May 24, 2018, pursuant to section 46(5)2 of the Act;
  - (ii) The finding and the Order of the Panel shall be published in detail or in summary with the name of the Member in the official publication of the College, pursuant to section 46(5)3 of the Act; and
  - (iii) The Member, having waived his right to appeal under section 51 of the Act, (*Exhibit 4*), will be reprimanded by the Panel at the conclusion of the hearing, pursuant to section 46(5)1 of the Act.

#### **REASONS FOR PENALTY DECISION**

26. In making its order, the Panel considered the College’s submission regarding the JSP and the advice provided by ILC. In addition, the Panel took into account the basic principles of sanctioning as well as any mitigating and aggravating factors. The Panel finds that the order is fair, considered and

appropriate.

27. As a result of the Panel's finding of guilt, the Panel must first and foremost take into consideration the safety of the public, ensuring minimum standards are met by regulated trades' professionals. Serving and protecting the public's confidence in the both the trades and the College's disciplinary process are paramount. It was the view of the Panel, that all aspects of the JSP did just that.
28. The aggravating factors the Panel considered were the prior warnings given to the Member (about engaging individuals to perform work without a Certificate of Qualification or a Registered Training Agreement) and the nature of the personal injuries sustained by Mr. Caille.
29. As mitigating factors, the Panel acknowledged that the Member had no previous history with the Discipline Committee of the College. Further, the Panel noted that by entering into an ASF and a JSP, the Member helped to expedite the hearing process and resolve this matter in an efficient and timely manner.
30. The fine and the reprimand send a strong message to the Member, the profession and the public that the College will not tolerate conduct of this nature.
31. The publication in summary sends a clear and strong message to the Member, the profession and the public about the necessity of providing service in a safe manner.
32. The fine, the reprimand and the publication of the Member's name are both specific and general deterrents. However, the fact of the fine, reprimand and publication of the Member's name addresses the issue of public confidence. The above information is in the public domain and readily available, thereby assuring the public that the College takes seriously issues of professional misconduct and acts fairly and appropriately when such matters come before it.
33. The publication in summary of the fine and reprimand sends a clear message to the public that the College and its disciplinary process have responded seriously and appropriately to these proven transgressions. The fine, reprimand and publication further reassure the public that the College will respond to allegations of misconduct and that the public can continue to have confidence in the professional trade of Electrician - Construction and Maintenance (309A).

34. The Panel believes that the penalties ordered will deter the Member from engaging in similar conduct in the future; will serve as a deterrent to other members of the College from engaging in the same or similar conduct; and will reduce the risk of harm to members of the public who retain the services of skilled tradespersons like the Member.
35. The Panel is satisfied that the penalty is fair, considered and appropriate. It speaks to the principles of sanctioning and ensures the public's trust in the profession, the College and the College's disciplinary process.

#### **COSTS SUBMISSIONS**

36. As noted above, the joint submission presented by the parties also included a provision with respect to the costs of this proceeding, namely that the Member had agreed to pay costs to the College in the amount of \$1,500.00 within 12 months of the hearing.

#### **INDEPENDENT LEGAL COUNSEL ADVICE**

37. ILC advised the Panel to consider the issue of costs separately from the penalty. ILC stated that awarding costs recognizes that the members of the College, as a whole, pay for disciplinary matters. In light of that, it is regarded as fair and appropriate to ask the Member to cover a portion of the associated costs, when warranted.

#### **COSTS DECISION**

38. After considering the submissions on costs, the Panel ordered the Member to pay the College's costs in the amount of \$1,500.00 within 12 months, pursuant to section 46(5)4 of the Act.

#### **REASONS FOR COSTS DECISION**

39. The Panel found that it was reasonable for the Member to defray some of the College's cost.
40. In ordering the costs noted above, the Panel took into consideration that by cooperating with the investigation and the hearing of this matter and by entering into an ASF and Joint Submission on Penalty and Costs, the hearing of this matter was significantly simplified. Nonetheless, a Pre-Hearing

Conference as well as a one-day hearing was required in order to resolve this matter.

41. The Panel understood that while this amount would help to offset a portion of the costs associated with the investigation and prosecution of this matter, the amount ordered was neither a penalty nor sanction.

## **REPRIMAND**

42. At the conclusion of the hearing, the Member waived his right to appeal and, as such, an oral reprimand was delivered pursuant to section 46(5)(1) of the Act as outlined below:

*“Mr. Cleary, as you know, as part of its penalty order, this Discipline Panel has ordered that you be given an oral reprimand.*

*The fact that you have received this reprimand will be recorded on the public register of the College for 12 months and, as such, will form part of your record.*

*Although you will be given an opportunity to make a statement at the end of the reprimand, this is not an opportunity for you to review the decision made by the Discipline Panel, nor a time for you to debate the merits of its decision.*

*You have been found to have engaged in conduct that constitutes professional misconduct, including:*

- (a) you failed to take reasonable steps to safeguard the life, health or property of a person who may be affected by the work of any person for whom you were responsible, when you knew or ought to have known that there was a risk to life, health or property (Ontario Regulation 97/13, subsection 1 (1));*
- (b) you failed to act to correct or report a situation that you knew or ought to have known may endanger the safety or welfare of the public (Ontario Regulation 97/13, subsection 1(2)); and*

(e) *you acted or failed to act, in respect to the practice of a trade, in a manner that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional (Ontario Regulation 97/13, subsection 1(11)).*

*The Panel takes this type of conduct seriously. The public needs to have confidence that its members are upholding high ethical and technical standards. The College also needs to have confidence in its members. Finally, employers need to be assured that their member employees are conducting themselves in accordance with the law, and employees of members need to know that they will be treated properly and fairly.*

*The Panel acknowledges that this is the first time you have appeared before the Discipline Committee of the Ontario College of Trades and that you co-operated with the investigation, as well as the prosecution of this matter, and the Panel took this into consideration when accepting the Joint Submission on Penalty and Costs today.*

43. The Panel gave the Member an opportunity to make a statement at the conclusion of the reprimand, which the Member declined.

June 18, 2018 \_\_\_\_\_  
Date

“Hanno Weinberger” \_\_\_\_\_  
Hanno Weinberger, Chair

**End.**