

**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
Lee Demelo, a member of the Ontario College of Trades.

Raymond Ramdayal, Chair

BETWEEN:)	
)	
)	Bogdan Andronesi,
ONTARIO COLLEGE OF TRADES)	College Counsel, for Ontario
)	College of Trades
-and-)	
)	
)	
LEE DEMELO)	Lee Demelo, Self-Represented
(Member #13838914))	
)	
)	Edward Marrocco,
)	Independent Legal Counsel
)	
)	Heard: October 18, 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 October 18, 2018 at Victory Verbatim, Court Reporting Services, 222 Bay Street, Toronto, Ontario.
2. A *Notice of Hearing* (Exhibit 1) issued June 8, 2018 was served on Lee Demelo (the “Member”) and a First Appearance in this matter took place by teleconference on August 8, 2018; and the hearing of this matter on its merits was subsequently scheduled for October 18, 2018.

3. At the First Appearance Conference on August 8, 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. Mr. Andronesi on behalf of the College advised that the College intended to proceed with all the allegations (a), (b), (c) and (d) in the *Notice of Hearing*.

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

"IT IS ALLEGED that Lee Demelo 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));
- c) failed to maintain the standards of a trade (Ontario Regulation 97/13, subsection 1(10);
and
- d) 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:

The Member

1. Lee Demelo, Membership No. 13209296, (the “Member”) is a member of the Ontario College of Trades (the “College”) in the Journeypersons class.
2. At all material times, the Member held a Certificate of Qualification in the trade of Electrician–Construction and Maintenance (309A).
3. At all material times, the Member was the owner and sole proprietor of an electrical contractor business he operated under the name LDI Electric, based at 42 Euclid Avenue in London, Ontario (the “Business”).

The Member is hired to perform electrical work

4. At all material times, Cameron Craig (the “Homeowner”) was the owner of a residential property located at 10 Bellevue Avenue in London, Ontario (the “Property”).
5. In the fall of 2016, the Member was hired by the Homeowner to perform electrical work at the Property (the “Electrical Work”), primarily in relation to a kitchen renovation therein.
6. The Member agreed to be paid in cash for the Electrical Work, in an explicit effort to avoid taxation and to avoid an electrical inspection by the Electrical Safety Authority (ESA).

The Member performs inadequate Electrical Work without a permit

7. In the fall of 2016, the Member began performing the Electrical Work at the Property.
8. The Member did not apply, within 48 hours of commencing the Electrical Work, for an inspection by the ESA in respect of the work he performed at the Property (the “Electrical Permit”). Such an application is colloquially known as applying for an electrical permit. Further, the Member was aware that no Electrical Permit existed at any time when he performed the Electrical Work.
9. In or about January 2017, the Homeowner paid the Member, in cash, \$1,600—an all-inclusive amount

the parties agreed upon as full payment for all the labour and materials associated with the Member's Electrical Work.

10. Some of the Electrical Work performed by the Member was deficient, not in a workmanlike manner, unsafe and/or not in compliance with the requirements prescribed by the then applicable Ontario *Electrical Safety Code*, O. Reg. 164/99.
11. Once the Member had completed the Electrical Work, the Homeowner repeatedly expressed concerns to the Member about the quality of some of the electrical installation, and asked that the Member revisit the Property to verify it. At least one such request was made in May 2017. The Member did not adequately address said concerns by August 2017.
12. At the request of the Homeowner, ESA inspector Michael Taylor attended the Property to inspect the Electrical Work previously done by the Member. The inspector found a number of deficiencies in the Electrical Work, and the ESA informed the Member of those deficiencies.
13. Thereafter, on or about October 3, 2017, based on the inspection by inspector Taylor, the ESA issued an official written notice requiring the correction of the following defects identified in the Member's Electrical Work (the "Defects"):
 - a. failure to install an arc-fault circuit interrupter (the "AFCI Breaker") protecting the branch circuit for the receptacles for the range hood and the gas range;
 - b. failure to ensure that the circuit rating corresponds with the breaker rating, namely by having a 20 Amp T-slot receptacle on a circuit protected by a 15 Amp breaker;
 - c. failure to securely fasten the range hood receptacle, which was taped in place; and
 - d. failure to obtain the required application for inspection from the ESA.

The Member requests additional payment to remedy the defects identified by the ESA inspection

14. In or about September 2017, the Member provided the Homeowner with an invoice, requesting payment of an additional \$964 for the Member to remedy the Defects in the Member's own Electrical Work, including the cost of the AFCI Breaker the Member should have installed at the time of the original installation.

15. Despite the Homeowner insisting that the Member remedy the Defects at no additional charge, the Member refused to do so without payment. The Complainant hired a different electrician to remedy the Defects.

MEMBER'S PLEA

16. Both verbally at the hearing and in an *Agreed Statement of Facts* signed in counterparts on October 3, 2018 and October 9, 2018 (later marked as Exhibit 2), the Member admitted the professional misconduct set out in allegations (a), (b), (c) and (d) of the *Notice of Hearing*.
17. 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

18. Mr. Andronesi tendered evidence by way of an *Agreed Statement of Facts* (Exhibit 2). Exhibit 2 stated the following:

FACTS

The Member

1. Lee Demelo, Membership No. 13209296 (the “Member”), is a member of the Ontario College of Trades (the “College”) in the Journeypersons class.
2. At all material times, the Member held a Certificate of Qualification in the trade of Electrician – Construction and Maintenance (309A), which certificate was issued by the College to the Member in 2013. The Member had been first registered as a Journeyperson in the said trade in 2002.
3. At all material times, the Member was the owner and sole proprietor of an electrical contractor business he operated under the name of LDI Electric, based at 42 Euclid Avenue in London,

Ontario.

Member hired to perform home renovation

4. At all material times, Cameron Craig (the “Homeowner”) was the owner of a residential property located at 10 Bellevue Avenue in London, Ontario (the “Property”).
5. In the fall of 2016, the Member was hired by the Homeowner to perform electrical work at the Property (the “Electrical Work”), primarily in relation to a kitchen renovation therein.
6. The Member agreed to be paid in cash for the Electrical Work, with an implicit expectation of avoiding sales taxes and legally mandated electrical inspection by the Electrical Safety Authority (ESA).

The Member performs inadequate Electrical Work without a permit

7. In the fall of 2016, the Member began performing the Electrical Work at the Property.
8. The Member did not apply, within 48 hours of commencing the Electrical Work, for an inspection by the ESA in respect of the work he performed at the Property (the “Electrical Permit”). Further, the Member was aware that no Electrical Permit existed at any time when he performed the Electrical Work.
9. In or about January 2017, the Homeowner paid the Member, in cash. This represented full payment, as agreed, for all the labour and materials associated with the Member’s Electrical Work.
10. Some of the Electrical Work performed by the Member was deficient, not in a workmanlike manner, unsafe and/or not in compliance with the requirements prescribed by the then applicable Ontario *Electrical Safety Code, O. Reg. 164/99 (the “Code”)*.
11. Once the Member had completed the Electrical Work, the Homeowner repeatedly expressed concerns to the Member about the quality of some of the work; and asked that the Member revisit the Property to verify it. The Member did not adequately address said concerns by August 2017.

12. Thereafter, at the Homeowner's request, ESA inspector Michael Taylor, an expert on the *Code*, inspected the Member's Electrical Work and observed and reported on a number of deficiencies therein (the "Defects"). The ESA informed the Member about the Code inspection results and issued an official written notice requiring the correction of the Defects, summarised as follows:

- a. failure to install a *Code*-required arc-fault circuit interrupter protecting the branch circuit for two kitchen receptacles;
- b. failure to ensure that the circuit rating corresponds with the breaker rating, namely by having a 20 Amp T-slot receptacle on a circuit protected by a 15 Amp breaker;
- c. failure to securely fasten a range hood receptacle, which was taped in place; and
- d. failure to obtain the required application from the ESA.

13. The Homeowner requested that the Member remedy the Defects and make the installation *Code*-compliant at no additional charge. The Member refused to do so without receiving additional monies. Subsequently, the Complainant hired a different electrician to remedy the Defects.

INDEPENDENT LEGAL COUNSEL ADVICE

19. 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), (c) and (d) in *the Notice of Hearing*.

DECISION

20. The Panel accepted the *Agreed Statement of Facts* and found that the College had proven allegations (a), (b), (c) and (d) in *the Notice of Hearing* on a balance of probabilities.

21. Therefore, pursuant to section 46(2)(a) of the Act, the Panel found the Member guilty of professional misconduct.

REASONS FOR DECISION

22. 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.

23. 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 the owner and sole proprietor of an electrical contractor business he operated under the name LDI Electric, based at 42 Euclid Avenue in London, Ontario;
- (iii) In the fall of 2016, the Member was hired by the Homeowner to perform electrical work at the Property;
- (iv) The Member agreed to be paid in cash for the Electrical Work with the implicit expectation of avoiding sales taxes and the legally mandated electrical inspection by the Electrical Safety Authority;
- (v) In the fall of 2016, the Member began performing the Electrical Work at the Property;
- (vi) The Member did not apply within 48 hours of commencing the Electrical Work for an inspection by the ESA in respect of the work he performed at the property. Further, the Member was aware that no Electrical Permit existed at the time her performed the Electrical Work;
- (vii) Some of the Electrical Work performed by the Member was deficient, not in a workmanlike manner, unsafe and/or not in compliance with the requirements prescribed by the then applicable Ontario *Electrical Safety Code, O. Reg. 164/99*;
- (viii) Once the Member completed the Electrical Work, the Homeowner repeatedly expressed concerns to the Member about the quality of some of that work, and asked that the Member revisit the Property to verify it. The Member did not adequately address said concerns by

August 2017.

- (ix) At the Homeowner's request, ESA Inspector Michael Taylor, an expert on the Code and on electrical safety, inspected the Member's Electrical Work and observed and reported on a number of deficiencies (the "Defects"). The ESA informed the Member about the Code Inspection results and issued an official written notice requiring correction of the Defects;
 - (x) The Homeowner requested that the Member remedy the Defects and make the installation *Code*-compliant at no additional charge. The Member refused to do so without receiving significant additional monies. Subsequently, the Complainant hired a different electrician to remedy the Defects.
24. The Panel was satisfied that by performing inadequate Electrical Work without a permit, the Member engaged in professional misconduct by contravening Ontario Regulation 97/13, subsection 1(1), 1(2), 1(10) and 1(11) as alleged in Exhibit 1 *Notice of Hearing*, paragraphs (a), (b) (c) and (d).
25. By engaging in the conduct described above, the Panel found that the Member failed to maintain the standards of a trade and 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 unprofessional.
26. The Member is an experienced electrician who appreciated that his conduct fell below the standards of the trade given his expertise and knowledge of the then Ontario Electrical Safety Code, O. Reg 167/99.
27. 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, dishonourable or unprofessional.

PENALTY SUBMISSIONS

28. Mr. Andronesi 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 fined \$1,300.00 payable to the Minister of Finance within 12 months, pursuant to paragraph 46(5)(2) of the Act;
- (ii) That the Member be reprimanded by the Discipline Panel at the conclusion of the hearing and the fact of the reprimand be recorded on the Public Register for a period of twelve (12) months, pursuant to paragraph 46(5)(1) 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 six (6) months of the date of the order pursuant to paragraph 46(5)(4) of the Act.

29. Mr. Andronesi submitted that the proposed penalties were appropriate in light of the facts of this case, but also, that the Member had admitted responsibility, and that he had no prior discipline history.

30. Mr. Andronesi also submitted for the Panel's consideration a previous decision in the matter of *R. v. Anthony-Cook*, [2016] 2 SCR 204 in support of the proposition that a joint submission made by the parties should not be rejected by this Panel unless accepting it would bring the administration of justice or the disciplinary process into disrepute.

31. The Member indicated that he had no additional submissions on penalty and costs.

INDEPENDENT LEGAL COUNSEL ADVICE

32. ILC advised the Panel that the submissions received supported that both parties had indeed reached full agreement and that the Panel was accordingly dealing with a Joint Submission on Penalty ("JSP").

33. ILC advised that there were no apparent jurisdictional issues and that the components of the order sought in the JSP were all within this Panel's power to order under the Act.

34. The Panel was advised to be mindful of the objects of penalty which include: (i) the need for general and specific deterrence and contemplation of the potential for rehabilitation of the Member. The Panel was also reminded to consider any mitigating or aggravating factors presented by the parties and to be satisfied that any penalty ultimately ordered would not fall outside of the range of penalties ordered in other, similar, cases. Any penalty ordered should not be disproportionate to the severity of the misconduct.
35. ILC noted in concurrence with the *Cook* decision that, in light of the JSP (*Exhibit 3*), there was limited discretion for the Panel to depart from the parties' submissions. The Panel was cautioned to only depart from the JSP if, 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. This was described as a high threshold and a key component of the certainty that is required to enable parties to enter into joint submissions. ILC noted that if the Panel did have concerns, and was considering a departure from the JSP, that the parties should be given an opportunity to make further submissions focusing on the Panel's concerns before a decision is made.
36. The parties were given an opportunity to comment on the advice provided by ILC and no issues were identified.

PENALTY DECISION

37. After considering the JSP, the Panel accepted the submission and made the following orders:
 - (i) The Member shall pay, within twelve (12) months of the order, a fine in the amount of \$1,300 to the Minister of Finance for payment into the Consolidated Revenue Fund, pursuant to paragraph 46(5)(2) of the *Ontario College of Trades and Apprenticeship Act (the "Act")*;
 - (ii) The Member shall be reprimanded by the Discipline Panel at the conclusion of the hearing and the fact of the reprimand shall be recorded on the Public Register for a period of twelve (12) months, pursuant to paragraph 46(5)(1) of the Act;
 - (iii) 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 and on the website of the Ontario

College of Trades, pursuant to section 46(5)3 of the Act; and

- (iv) The Member, shall pay to the College, within six (6) months of the order, costs in the amount of \$1,500, pursuant to paragraph 46(5)(4) of the Act.

REASONS FOR PENALTY DECISION

- 38. 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.
- 39. The Panel first and foremost took into consideration the safety of the public and, specifically, ensuring that minimum standards are met by regulated trades' professionals. Serving the public interest 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.
- 40. The Panel also considered general and specific deterrence. The conduct of the Member in this matter was very unprofessional. It does not provide a positive example to other members who may be observing this case. As a result, there is the need for both general and specific deterrence to send a message to the Member and the broader trades' community that this type of behaviour will not be tolerated.
- 41. The aggravating factors the Panel considered were that the Member ought to have known that permits should be sought as a means of safeguarding the occupants and the general public. As a result of his action, an application with ESA was not sought and compliance could not be achieved.
- 42. 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.
- 43. The Member willingly and actively participated in pre-hearing conferences leading up to today's hearing and JSP. The Member demonstrated that he was willing to take responsibility for his actions

and also saved the Panel the time that it would take to adjudicate an appropriate penalty.

44. The fine and the reprimand also send a strong message to the Member, the profession and the public that the College will not tolerate conduct of this nature. These components of the JSP reinforce the seriousness of these actions and the sanctions that may follow. These components also provide a good learning opportunity for younger professionals who are just entering the trade and becoming aware of the mandate of the College and the standard they will be held to.
45. The publication of the above outcome of this matter in summary form sends a clear and strong message to the Member, the profession and the public about the necessity of providing service in a safe manner.
46. 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.
47. The overall disposition of this case will send 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).
48. The Panel is satisfied 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.
49. 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

50. 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 six (6) months of the hearing.

INDEPENDENT LEGAL COUNSEL ADVICE

51. 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

52. After considering the submissions on costs, the Panel ordered the Member to pay the College's costs in the amount of \$1,300.00 within twelve (12) months, pursuant to section 46(5)4 of the Act.

REASONS FOR COSTS DECISION

53. The Panel found that it was reasonable for the Member to defray some of the College's cost.

54. 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.

55. 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

56. 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. Demelo, 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 twelve (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 the member, 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) you 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));*
- c) you failed to maintain the standards of a trade (Ontario Regulation 97/13, subsection 1(10)); and*
- d) you acted or failed to act, 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, dishonourable 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.

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

February 20, 2019
Date

"Raymond Ramdayal"
Raymond Ramdayal, Chair
On behalf of the Discipline Committee

End.