

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

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

AND IN THE MATTER OF a discipline proceeding against
Eric Halling, a member of the Ontario College of Trades.

PANEL: Sandra Driesel, Chair

BETWEEN:)	
)	
)	
)	John Park,
ONTARIO COLLEGE OF TRADES)	Prosecution Counsel,
)	for Ontario College of Trades
)	
-and-)	
)	
)	
ERIC HALLING)	Eric Halling was self-represented
(Member #13213947))	
)	
)	Heard: April 4, 2017

REASONS FOR DECISION

1. A hearing of this matter took place before a panel of the Discipline Committee (the “Panel”) on April 4, 2017 at Victory Verbatim, Court Reporting Services, 222 Bay Street, Toronto, Ontario.
2. A Notice of Hearing (Exhibit 1) issued November 28, 2016 was served on Mr. Eric Halling (the “Member”) on November 30, 2016. A first appearance in this matter took place by teleconference on January 9, 2017; a pre-hearing conference was held on March 6, 2017; and the hearing of this matter on its merits was subsequently scheduled for April 4, 2017.

THE ALLEGATIONS

3. The allegations against the Member in the Notice of Hearing are as follows:

“IT IS ALLEGED that Eric Halling 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 any person for whom he is responsible, when he knew or ought to have known that there was a risk to life, health or property, which is defined as professional misconduct under 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, which is defined as professional misconduct under Ontario Regulation 97/13, subsection 1(2);
- c) undertook work that he knew or ought to have known that his employees were not competent to perform by virtue of their certification, training and experience, which is defined as professional misconduct under Ontario Regulation 97/13, subsection 1(3);
- d) was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification, which is defined as professional misconduct under Ontario Regulation 97/13, subsection 1(9); and
- e) 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, which is defined as professional misconduct under Ontario Regulation 97/13, subsection 1(11).

PARTICULARS OF THE ALLEGATIONS ARE AS FOLLOWS:

1. Eric Halling, Membership No. 13213947 (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, and carried on business as Halling Electrical & Mechanical located on 176 Ellis Avenue, Toronto, Ontario.
3. At all material times, Edgar Clark (the “Complainant”) was working towards obtaining his certificate of qualification as an electrician and was seeking to receive training as a registered apprentice and work pursuant to a registered training agreement.
4. Between October 2013 and May 2015, the Member agreed to sponsor the Complainant as a paid apprentice and engaged him to perform work as an electrician for various projects undertaken by the Member’s business. However, the Member did not enter into a registered training agreement as the Complainant’s sponsor during this timeframe.
5. At all material times, the Member instructed one of his employees, Lorenzo Fucili, to provide onsite training and oversight to the Complainant. However, Lorenzo Fucili also did not hold a certificate of qualification as an electrician.
6. On May 23, 2015, the Complainant sent an email to the Member addressing his concerns regarding workplace safety and highlighted the following points:
 - a. that the Complainant was being asked to perform dangerous work without supervision most of the time and that he is concerned for his own safety on site;
 - b. that the Complainant has concerns for safety of the Member’s co-op student who was also asked to perform dangerous work without supervision;
 - c. that the Complainant’s supervisor on site, Lorenzo Fucili, was not a certified electrician; and
 - d. that the Complainant was working as the Member’s apprentice but was not working pursuant to a registered training agreement.
7. On October 23, 2015, the Member was convicted under the *Act* for engaging Lorenzo Fucili to perform work as an electrician without a certificate of qualification.”

MEMBER'S PLEA

4. At the opening of the hearing on April 4, 2017, I confirmed the parties' consent to proceed before me as a panel of one, in accordance with s. 4.2.1(2) of the *Statutory Powers Procedure Act*.
5. Counsel for the College then advised that the College intended to proceed with allegations (a) to (e) of the Notice of Hearing.
6. In response, the Member admitted to each of the five allegations of professional misconduct, as described above and as set out in an *Agreed Statement of Facts* signed March 6, 2017 which the parties intended to enter as an exhibit in this proceeding.
7. A plea inquiry was conducted and 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; and that he was aware of the range of penalties that the Panel could impose upon him.

THE EVIDENCE

8. In light of the Member's plea of guilty on each of the allegations, and the parties' intention to proceed by way of an *Agreed Statement of Facts* for the liability phase of the hearing, Counsel for the College filed an *Agreed Statement of Facts* as an exhibit (Exhibit 2) and proceeded to make submissions thereon.
9. College Counsel advised that the Member has been a member of the Ontario College of Trades since April 8, 2013.
10. The allegations of misconduct relate to the Member engaging his unauthorized employees, Edgar Clark ("Clark") and Lorenzo Fucili ("Fucili"), to perform the work of the compulsory trade of Electrician – Construction and Maintenance (309A).
11. Between October 2013 and May 2015, the Member agreed to sponsor Clark as a paid apprentice and engaged him to perform work as an electrician for various projects undertaken by the Member's business. However, the Member did not enter into a registered training agreement as

Clark's apprenticeship sponsor during his time frame.

12. Also between October 2013 and May 2015, the Member instructed Fucili to provide onsite training and oversight to Clark. However, Fucili did not hold an electrician Certificate of Qualification from the College during his timeframe.
13. On May 23, 2015, Clark sent an email to the Member addressing his concerns regarding workplace safety and highlighted the following points:
 - a. That he was being asked to perform dangerous work without supervision most of the time and that he was concerned for his own safety on site;
 - b. That he had concerns for safety of the Member's co-op student who was also being asked to perform dangerous work without supervision;
 - c. That his supervisor on site, Fucili, was not a certified electrician; and
 - d. That he was working as the Member's apprentice, but was not working pursuant to a registered training agreement.
14. On or about October 23, 2015, the Member was convicted under the *Ontario College of Trades and Apprenticeship Act, 2009* for engaging Fucili to perform work as an electrician without a Certificate of Qualification.
15. On or about October 5, 2015, Fucili enter into a registered training agreement.
16. On or about October 13, 2015, Fucili became a member of the College as an apprentice.
17. Clark is no longer employed by the Member.
18. The Member admitted the above facts as true and that they constitute the professional misconduct set out in allegations (a), (b), (c), (d) and (e) of the Notice of Hearing.

DECISION

19. The Panel accepted the *Agreed Statement of Facts* and found that the College had proven the allegations set out in the Notice of Hearing, and as set out in the *Agreed Statement of Facts*, on a

balance of probabilities.

20. Therefore, pursuant to section 46(2)(c) of the Act, the Panel found the Member guilty of professional misconduct for having engaged in conduct that is defined as professional misconduct in Ontario Regulation 97/13, section 1, paragraphs 1, 2, 3, 9 and 11, namely:
- a. The Member 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 he is responsible, when he knew or ought to have known that there was a risk to life, health or property (paragraph 1);
 - b. The Member 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 (paragraph 2);
 - c. The Member undertook work that he knew or ought to have known that his employees are were not competent to perform by virtue of their certification, training and experience (paragraph 3);
 - d. The Member was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification (paragraph 9); and
 - e. The Member 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 (paragraph 11).

REASONS FOR DECISION

21. With regard to paragraph 20(a) above, the Panel was satisfied that by asking an unauthorized employee to perform dangerous work without supervision and/or by not ensuring that any supervisor held a Certification of Qualification the Member 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 he is responsible, when he knew or ought to have known that there was a risk to life, health or property. In light of that finding, the Panel concluded that the Member engaged in professional misconduct, as defined in Ontario Regulation 97/13, subsection 1(1).
22. With regard to paragraph 20(b) above, the Panel was satisfied that the Member's failure to respond to or correct concerns brought to his attention on May 23, 2015 (regarding working conditions and that the supervisor was not certified) the Member 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. In light of that finding, the Panel concluded that the Member engaged in professional misconduct, as defined by Ontario Regulation 97/13, subsection 1(2).

23. With regard to paragraph 20(c) above, the Panel was satisfied that by engaging unauthorized employees to perform electrical construction and maintenance work the Member undertook work that he knew or ought to have known that his employees are not competent to perform by virtue of their certification, training and experience. In light of that finding, the Panel concluded that the Member engaged in professional misconduct, as defined by Ontario Regulation 97/13, subsection 1(3).
24. With regard to paragraph 20(d) above, the Panel was satisfied that the Member, having been convicted under the *Ontario College of Trades and Apprenticeship Act, 2009* ("OCTAA") on October 23, 2015 for employing or otherwise engaging an individual to perform work or engage in a practice that constitutes engaging in the practice of a compulsory trade when that individual does not hold a Certificate of Qualification in that trade or is not an apprentice in that trade working pursuant to a registered training agreement, had been found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification, which is defined as professional misconduct under Ontario Regulation 97/13, subsection 1(9).
25. With regard to paragraph 20(e) above, the Panel was satisfied that by:
 - a. failing to correctly support an apprentice by not entering into a registered training agreement and failing to provide that apprentice with certified supervision; and
 - b. failing to ensure that his worker was correctly certified;

the Member 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. In light of that finding, the Panel concluded that the Member engaged in professional misconduct, as defined by under Ontario Regulation 97/13, subsection 1(11).

PENALTY SUBMISSIONS

26. College Counsel then made submissions on the parties' *Joint Submission on Penalty & Costs* and asked the Panel to impose the following penalties: a fine the amount of \$500.00; a reprimand at the conclusion of the hearing, the fact of which shall be recorded on the Public Register of the College for a period of one (1) year; and publication of the Panel's finding and Order, including the Member's name and business address, in the official publication of the College and on the College's website.
27. Counsel submitted that the proposed penalty was appropriate in light of the facts of this case and that a joint submission should not be interfered with unless it would bring the process into disrepute.

PENALTY DECISION

28. After considering the joint written submission on penalty and the oral submissions of College Counsel, the Panel made the following order, with reasons to follow:
 - a. The Member shall pay a fine in the amount of \$500.00 to the Minister of Finance within six (6) months of April 4, 2017, pursuant to section 46(5)2 of the Act;
 - b. The Member, having waived his right to appeal, shall be reprimanded by the Panel at the conclusion of the hearing and the fact of the reprimand shall be recorded on the Public Register of the Ontario College of Trades for a period of one (1) year from April 4, 2017, pursuant to section 46(5)1 of the Act; and
 - c. The finding and the Order of the Panel shall be 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 the website of the Ontario College of Trades, pursuant to section 46(5)3 of the Act.

REASONS FOR PENALTY DECISION

29. In arriving at the above penalties, the Panel considered the need for specific deterrence with respect to the Member, as well the general deterrent effect of the penalties for the membership of the College at large.
30. The Panel also considered the following mitigating factors: (i) the fact that the Member has no

prior disciplinary history with the College; (ii) the fact that the Member cooperated with the College throughout this matter; and (iii) the Member's willingness to enter into an *Agreed Statement of Facts* and a *Joint Submission on Penalty & Costs*, which together greatly reduced the time and resources that otherwise would have been spent on this matter.

31. However, as a result of the Panel's finding of guilt, and after hearing submissions on the appropriate penalty, the Panel must first and foremost take into consideration the safety of the public, ensuring minimum standards are being met by regulated trades professionals and those who work under their supervision.
32. The Panel therefore believes that the penalties above will deter the Member from engaging in the same or similar conduct in 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 other workers and members of the public who retain the services of skilled tradespersons like the Member and his employees.

COSTS SUBMISSIONS

33. The parties also submitted a proposal in their *Joint Submission on Penalty & Costs* that the Member pay costs to the College in the amount of \$2,000.00 within twelve (12) months of the date of the Panel's Order in this matter.

COSTS DECISION

34. The Panel considered the proposal and ordered the Member to pay a portion of the College's investigation and prosecution costs in the amount of \$2,000.00 within twelve (12) months of April 4, 2017, pursuant to section 46(5)4 of the Act. This amount will help to offset some of the costs associated with the investigation and prosecution of this matter, and is not a penalty or sanction.

REASONS FOR COSTS DECISION

35. Although it represents only a portion of the College's costs incurred to date in relation to this matter, the Panel was of the view that \$2,000.00 was reasonable in the circumstances, particularly in light of the fact that the Member admitted all of the allegations and was prepared to make a

joint submission on penalty and costs, which he did.

Date: May 14, 2017

"Sandra Driesel"

Sandra Driesel
Chair, Discipline Panel

End.