

CITATION: *Archer v Queensland Building and Construction Commission* [2016] QCAT 176

PARTIES: David Lance Archer
(Applicant)
v
Queensland Building and Construction
Commission
(Respondent)

APPLICATION NUMBER: OCR173-15

MATTER TYPE: Occupational regulation matters

HEARING DATE: 8 February 2016

HEARD AT: Brisbane

DECISION OF: **Dr Cullen, Member**

DELIVERED ON: 11 February 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The Queensland Building and Construction Commission's 9 October 2015 deemed refusal to issue David Lance Archer with a licence is confirmed.**

CATCHWORDS: Occupational Regulation – Queensland Building and Construction Commission – Practical Training Requirements applicable to licence categories in the *Plumbing and Drainage Act 2002* (Qld) – there is no mechanism in the Act to apply for a provisional licence – the practical experience requirements apply to both provisional licences issued by the QBCC in appropriate circumstances, as well as to open plumbers, drainers and restricted licence categories

Plumbing and Drainage Act 2002 (Qld) s 6, s 34, s 37, s 40

REPRESENTATIVES:

APPLICANT: The Applicant represented himself.

RESPONDENT: Malcolm Robinson, of Robinson Locke
Litigation Lawyers for the Queensland Building
and Construction Commission.

REASONS FOR DECISION

[1] David Lance Archer contends that the Queensland Building and Construction Commission (QBCC) should be directed to issue him with a '*Provisional Drainer's License*'. Mr Archer contends that the only condition precedent to obtaining a '*Provisional Drainer's License*' is completion of a Certificate II in Drainage. He completed a Certificate II in 2010, through SkillsTech Australia, a nationally recognised training provider. Mr Archer incurred significant personal expense to complete this training.

The practical training requirements applicable to licensing

[2] The QBCC does not dispute that Mr Archer has completed the required educational qualifications necessary to obtain a licence, but says that there is also a practical experience requirement that Mr Archer does not fulfil. Mr Archer says that the *Plumbing and Drainage Act 2002* (Qld) does not, by virtue of s 40(2)(b)(i) require applicants for a provisional licence to have any experience. Like a learner's permit to drive a car, Mr Archer says that the point of a provisional licence is to enable the holder to gain the practical experience required, before applying for an '*open*' license.

[3] The QBCC says that there is no provision in the Act enabling one to apply for a '*provisional licence*' – there is no mention of a provisional licence contained within s 37 of the Act. The QBCC says that the entitlement to hold a licence, including a provisional licence, includes a requirement for practical experience. The concept of holding a provisional licence, without completion of the practical experience component prior to issuance, is a mythical creature that does not exist within the confines of the Act.

[4] Mr Archer is clearly distressed by the QBCC's position. He says that he cannot gain the practical experience required to obtain a provisional licence because doing so exposes him to the risk of prosecution. Indeed, it is common ground between the parties that Mr Archer has been prosecuted for doing unlicensed drainage work. The difficulty, says Mr Archer, is that no employer wants to directly supervise his work as that requires the employer to pay two people to do a one-person job. Upon discovering that he cannot operate independently, Mr Archer says that his employment has been terminated on multiple occasions.

[5] Whilst it is obvious that any private enterprise employer will want to maximise profits, Mr Archer does not explain why he cannot obtain the practical experience by completion of an apprenticeship. In any event, Mr

Archer admits that he does not satisfy the practical training requirement; his argument is that he is not required to by virtue of statutory construction.

Licence classifications under the Act

- [6] Part 3 of the Act sets out the framework applicable to licencing by the QBCC. Section 34(1), upon which Mr Archer's argument relies heavily, sets out the classes of licences that the QBCC Commissioner may issue. These include (a) a plumbers licence; (b) a drainers licence; and (c) a restricted license. Section 34(2) says that the QBCC Commissioner may also issue a provisional licence for any of these classifications.
- [7] Section 37(a) of the Act then says that an individual is entitled to a licence if the QBCC Commissioner is satisfied the applicant '*has the qualifications and practical experience required by regulation for the licence*' (emphasis added). Mr Archer says that section 37(a) does not apply, as he is not applying for a plumbers license, drainers licence, or a restricted license. As a matter of statutory construction, Mr Archer reads s 34(2) as if it is a standalone provision that allows one to '*apply*' for a '*provisional*' licence. This is misconceived, although it must be acknowledged that some of the forms used by the QBCC for licencing purposes create an impression that one can apply for a provisional licence. This is unfortunate, but it remains the case that the Act must be given primacy over and above any internal correspondence and forms utilised by the QBCC.

It is not possible to apply for a provisional license under the Act

- [8] The plain language of the Act provides that one applies for a licence in one of the three categories (plumbers, drainers, or restricted). Section 34(2) does not create a separate class of provisional licence; it merely permits the QBCC Commissioner to issue a provisional licence within any of the existing classes. The term '*licence*' as used in the Act, when used in a general sense, can only refer to the classes of licence set out within the Act. Thus, s 37, which refers to '*licence*' in a generic way, is referring to the three classes provided for (plumbers, drainers, or restricted).
- [9] A provisional licence is not a standalone licence class that somehow escapes the requirement to complete practical experience. Rather, a provisional licence is a mechanism by which the QBCC Commissioner can, in circumstances where it believes an applicant needs more practical experience than that provided for in the regulations, require same before the granting of an open licence. The legislation gives effect to the traditional process of acquiring trade skills through apprenticeship work, and allows the QBCC to give intent to section 6 of the Act, which amongst other objectives, requires the QBCC to '*promote acceptable standards of competence for the trade*'.
- [10] Whilst the Tribunal acknowledges the emotional distress, and anger, that Mr Archer very clearly expressed during the hearing of this matter, the Tribunal considers that the QBCC has correctly interpreted the plain language, and intent, of the Act. The Tribunal does not accept that Mr

Archer is required to act unlawfully in performing unlicensed work to obtain the practical experience. Mr Archer could work as an apprentice, or as an employee being directly supervised, for the period required. What he cannot lawfully do is perform unsupervised work, until such time as he has satisfied the practical training requirement applicable to the licence he has made application for. Mr Archer's application can only be taken to be an application for a plumbers, drainers or restricted licence.

Order

- [11] The QBCC's 9 October 2015 deemed refusal to issue Mr Archer with a licence is confirmed.