
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

B E T W E E N:

IVAN VALOVIC and IVAN'S ELECTRIC LIMITED
(the "Applicant")

- and -

DIRECTOR, LICENSING AND CERTIFICATION
(the "Director")

DECISION AND ORDER

Review Panel: Elizabeth Sproule, (Chair), Robert Brownie, Wasim Hassan

Hearing Date: November 11, 12, 2010, January 17, 18, 19, 20 and March 22, 2011

File Number: 6000180 and 7000089

Appeal Number: NOAL 09-13 and NOAL 09-14

APPEARANCES

Director, Licensing and Certification)	Bernard LeBlanc, Counsel,
)	representing the Director, Licensing and
)	Certification, <i>Electricity Act</i>
)	
)	
Ivan Valovic and Ivan's Electric Limited)	Evan Moore, Counsel, representing the
)	Applicants
)	
)	

DECISION AND ORDER

BACKGROUND

[1] The Director of Licensing and Certification, (the 'Director') of the Electrical Safety Authority (the 'ESA') issued two Notices of Proposal pursuant to section 113.2(2) of the *Electricity Act, 1998* (the 'Act') on November 5, 2009. One was a Notice of Proposal to suspend the Master Electrician's licence of the Applicant Ivan Valovic for a period of 6 months or until Mr. Valovic successfully completes, the Master Electrician examination, whichever period is longer. The suspension was to commence November 30th, 2009. The other Proposal was to suspend the Electrical Contractor licence of Ivan's Electric Limited ('IEL') for a period of ninety days commencing November 30th, 2009.

[2] The reasons for the two Proposals were identical and were stated as follows:

(a) The conduct of the applicant or licence holder affords reasonable grounds for belief that the applicant or licence holder will not carry out the activities of the licence in accordance with the law.

(b) The conduct of the applicant or licence holder affords reasonable grounds for belief that the applicant or licence holder will not safely carry out the activities of the licence.

(c) The conduct of the applicant or licence holder affords reasonable grounds for the belief that the applicant or licence holder will not conduct themselves with honesty and integrity or in accordance with the principle of protecting consumers;

(d) The applicant or licence holder failed to comply with or to meet a requirement of the *Electricity Act, 1998*, Part VIII, Ontario Regulation 570/05, associated regulations, or an Order issued by ESA.

[3] These reasons correspond, more or less, with s.113.2(2) (a), (b), (d) and (f) of the Act respectively. The Proposals also set out particulars of the conduct and events of the Applicants which the Director alleges provides the grounds for the suspensions.

[4] In accordance with s. 113.4 of the Act, Mr. Ivan Valovic and Ivan's Electric Limited (the 'Applicants/Licensees') requested a hearing before the Director. This hearing was held on March 30, 31, April 27, 28, 29 and May 4, 2010. Following the hearing, the Director confirmed the proposed actions set out in the Proposals. The Director issued a 71 page written decision setting out the evidence, and her findings with regard to that evidence, which led her to conclude the proposed actions were appropriate and should be confirmed. The Director also issued an Order on July 28, 2010, in which the details of the proposed suspension were set out again. The Order then states:

On hearing the evidence and the submissions of counsel, the Director finds that the grounds set out in subsection 113.2(2)(a), (b), (d) and (f) exist. The Director therefore, confirms the actions proposed in the two above-noted Notices and orders that:

1. The Electrical contractor Licence of Ivan's Electric Limited be suspended for a period of ninety days commencing on August 9, 2010. Prior to August 9, 2010, all existing Wiring Notifications (permits) in Ivan's Electric Limited's name shall have the work completed and a final inspection scheduled with ESA or transferred to and completed by another Licensed Electrical Contractor. During the period of suspension neither the company nor its employees are permitted to carry out any activities under this Licence.
2. The Master Electrician Licence of Ivan Valovic be suspended commencing on August 9th, 2010 for a period of six months or until Mr. Valovic provides to the Director proof that he has attended a master electrician training course and has successfully completed and passed the Master Electrician examination, whichever period is longer. During the period of suspension Ivan Valovic must cease being the designated master electrician for Ivan's Electric Limited and is not permitted to act as a master electrician or carry out any of the responsibilities of a designated master electrician on behalf of any electrical contractor.

[5] Pursuant to s. 14(1) of Ontario Regulation 187/09, the Applicants filed a Notice of Appeal of the Director of Licensing's decision and order, before the Review Panel. The Notice of Appeal was received on August 3, 2010. An amended Notice of Appeal of the Licensees was subsequently filed.

ISSUES

- [6]
1. What is the standard of review to be applied: is deference owed to the Director's Decision?
 2. Does the conduct of the Applicants afford reasonable grounds for belief that the Applicants:
 - a) will not carry out the activities of their licences in accordance with the law,
 - b) will not safely carry out the activities of their licences, or
 - c) will not conduct themselves with honesty and integrity or in accordance with the principle of protecting consumers?
 3. Did the Applicants fail to comply with or meet a requirement of the *Electricity Act, 1998*, Part VIII, Ontario Regulation 570/05, associated regulations, or an Order issued by ESA?

EVIDENCE

[7] The Evidence of the Director consisted of documentation and the oral testimony of 20 witnesses. These included the Director, Lucy Impera, 10 consumers, ESA Inspectors Joe Peragine, Malcolm Brown, Jeff Melnechenko, Andy Villella, Senior Inspector Dave Busato, Investigator John Vance, Provincial Offence Investigator Garry Corbett, ESA General Manager Ralf Van Haeren, Provincial Code Engineer Ted Olechna and Tracy Durrant, a ESA Program Coordinator. On the consent of the Applicants, the transcripts of the testimony of 5 witnesses who testified in the hearing before the Director, were accepted into evidence. Namely: Douglas Evans, a Senior electrical service inspector for Toronto Hydro, Daljit Cheema, a professional engineer, Nisar Sahi, a Burger King Franchisee, and two consumers.

[8] The Evidence of the Applicants consisted of documentation and the testimony of 4 witnesses. These included the Applicant Ivan Valovic, Peter Valovic an employee of the Applicant Ivan's Electric Limited, Steve Schwab, currently an ESA inspector, and John Moysakos, an electrical contractor.

[9] The following is a brief summary of the relevant evidence. It has been primarily organized in relation to the eight inspected properties identified in the Proposals (as amended at the commencement of these proceedings). The same lettering system has been adopted to avoid confusion and the words 'Customer Complaint' have been used to indicate where the ESA inspection was triggered by a customer complaint.

Property A, Burger King Customer Complaint

[10] IEL was called to attend this commercial business on December 18, 2007. According to Mr. Ivan Valovic's testimony and the IEL invoice relating to the work completed, the IEL employee who carried out this work replaced the coil for some lighting which involved replacing a 600 volt contactor. The Applicant testified that he did not apply for a permit as this work involved replacement of 'like for like' and was therefore not an installation. The Applicant read a version of Ontario Electrical Safety Code (the 'Code') Rule 02-004 for the benefit of the Review Panel which indicated that an electrical contractor shall obtain a permit before "...installations, alteration, extension or repair of any electrical equipment". The Applicant interpreted this to excluded replacements.

Findings regarding issues of safety and compliance

[11] The Licensee's reason for not obtaining a permit is not valid in the opinion of the Review Panel. The language of Rule 02-004 is intentionally broad. A reasonable interpretation of the word 'alteration' would include the work the Applicant has described

as a replacement. The 'like for like' exception that the Applicant made reference to relates to the installation of replacement equipment in owner-occupied single dwellings, as set out in Rule 02-005 of the Code. The Review Panel finds that the IEL failed to comply with Rule 02-004 in carrying out its work with respect to this property.

Property B, Consumer L.C. Customer complaint

[12] Consumer L.C. called IEL from the yellow pages to address a problem with her water heater. Mr. Ivan Valovic attended on September 24, 2008, rewired the heater and restored the hot water. The consumer provided the Applicant with a cheque for \$1,617.25 representing payment for work completed and including a deposit for further work involving the replacement of the electrical panel. This future work was set out in a written proposal; the total cost of the work was indicated as \$3,617.25 and included an inspection fee of \$280. The consumer consulted her spouse by phone before signing the proposal and Mr. Ivan Valovic also spoke on the phone with the consumer's spouse about the proposal. The consumer signed the proposal for the replacement of her electrical panel to be completed at a later time when the balance of \$2000 would be paid.¹

[13] The consumer L.C. testified that she signed the document without her glasses. The following day the consumer decided she did not want to continue with the proposal as the amounts were too high according to the inquiries she had made. She advised the Applicant by telephone and later in writing she wanted to cancel the contract. According to the consumer Mr. Valovic indicated to her that he had obtained the permit and was not able to get his money back. The actual fee paid by IEL was \$59.64 including taxes and was refundable.² The Consumer ultimately stopped payment on the \$1,617.25 cheque and did not proceed with the proposal. She believed, after speaking with individuals at the Better Business Bureau that she had a cooling off period and was entitled to rescind the contract.

[14] On September 25, 2008, the Applicant wrote the consumer a letter indicating a cancellation fee of 30% together with charges: for the service call, trouble shooting, parts and labour for fixing the water heater, a cheque cancellation fee and inspection notification cancellation fee, for a total of \$2,340.00. This letter was four pages in length and set out the Applicants' position that they had a binding contract with the consumer, that the consumer could not cancel the cheque and that they were prepared to take the matter to court. Mr. Valovic at the end of his letter suggested that allowing him to finish

¹ Exhibit 3 tab 4

² Exhibit 3 tab 5

the job would be less 'payfulle' (assumed to be 'painful') process. This letter was dropped off by Mr. Valovic personally to the home of consumer L.C.

[15] Mr. Valovic testified that he initially had made an error in the calculation of the cancellation charges and mailed the consumer a corrected invoice on October 3, 2008, in the amount of \$2,318.40.³ At least two other invoices indicating that there was an amount owing to IEL's were mailed to the consumer over the following few months.

[16] The cancellation fee of 30% was indicated on the proposal form, just above and to the left of the area where the consumer is to sign in acceptance of the proposal. The Consumer indicated she was willing to pay the Applicant Ivan's ELS \$180 service charge and \$90 for the making the connection to restore hot water, but that was all. The consumer testified that she felt very threatened by Mr. Valovic dropping correspondence off at her house and by the comment referred to above that was in his letter. In cross-examination the consumer indicated that she felt that Mr. Valovic's suggestion that she consult a lawyer was threatening. There was no evidence that Mr. Valovic called the consumer at her place of work.

[17] The Consumer had another electrical contractor replace the electrical panel a few weeks later for a fee of \$1,800. The Consumer and the Applicant were unable to resolve their conflict and the matter proceeded to litigation. No evidence as to the ultimate disposition of the matter was provided.

Findings relating to issues of consumer protection

[18] The facts of this transaction have given rise to the allegation that Mr. Ivan Valovic engaged in threatening and harassing behavior towards the consumer. Although clearly there was significant conflict between the parties the conduct described by the consumer does not, in the Panel's opinion, amount to threats and harassment. He dropped off a demand letter once and mailed subsequent invoices in pursuit of what he saw as his contractual right (rightly or wrongly). There was no evidence that he called the consumer at work or elsewhere. The Review Panel accepts that from the consumer's subjective perspective she felt that his reference in his letter that the consumer should seek legal advice and that allowing him to finish the work would be less painful, was a threat, but does not find that was a reasonable conclusion to make.

[19] The cooling off period the consumer referred to in her evidence is that provided under the *Consumer Protection Act 2002*, (the 'CPA') section 43(1) and relates to direct agreements. Whether this type of agreement is a direct agreement will be addressed later in this decision. The CPA also provides that consumers can rescind contracts entered into when the other party has engaged in unfair practices. There are however, limitations to cancellation/ rescission, in either situation: where a consumer has

³ Exhibit 3 tab 11

received services the supplier is entitled to reasonable compensation for the services the consumer received. It is beyond the scope of this proceeding to make a finding as to the respective rights of these parties, however, the Review Panel finds on the evidence that Mr. Ivan Valovic significantly exaggerated the inspection fees and this amounted to a false representation and this speaks to Mr. Valovic's honesty.

Property C - All Peoples Church - Customer Complaint

[20] On October 10, 2008, the Applicant IEL was called to attend, the All Peoples Church (the 'Church'), a commercial property, to address a complaint that outdoor lighting was not functioning properly. A representative of the Church, Mr. D.R., escorted the IEL employee, Mr. Peter Valovic, around and into the property. According to Mr. D.R., the IEL employee left and did not come back. Mr. Peter Valovic testified that he was escorted by Mr. D.R. while they sought out the timers for the lights and that Mr. D.R. witnessed him doing repairs. He also testified that he left because he needed to get parts. It was also his evidence that he initially provided APC with a copy of work order 13558 with reference to "removed defective timer..." , and then more items were added to the work order and this version was then signed on October 10th by Mr. D.R. It was the evidence of Mr. D.R. that at the time he signed the form it was completely blank. He also testified that he had only requested a quote.

[21] Beside the signing line on the work order signed by Mr. D.R. it states "I hereby authorize the above work to be done on company rates structure and plus any costs of this job, related materials rate structure is based on flat rate".

[22] Mr. Peter Valovic returned to the property on October 14th and completed the work indicated in work order 13558. An invoice for this work was received by the Church on October 21, 2008. ⁴ Mr. Peter Valovic testified that a quote was requested for the work involved in lighting a church sign. ⁵ This quote was provided but never signed by the APC.

[23] On October 24th, Mr. Peter Valovic returned to APC as IEL had received a call that some lights were not working. He had an administrator/secretary, of the Church, a Ms. M.P., sign a work order (number 13656). According to Ms. M.P. she understood she was signing to simply acknowledge that someone from IEL was there, as she had no authority to sign work orders. There were no dollar figures on this work order. Further repairs were then carried out. It was Mr. Peter Valovic's testimony that he does not determine the charges for commercial work but rather that is done by Mr. Ivan Valovic after the fact.

⁴ Exhibit 5 Tab 18 m

⁵ Exhibit 5 Tab 18 m

Findings relating to issues of customer complaint.

[24] The events at the APC have given rise to the allegation that IEL carried out work it was not authorized to do. The evidence of the various witnesses as to the actual sequence of events were more or less in agreement, however, there was clearly a misunderstanding as to what the ramifications of those events were.

[25] The Review Panel found the testimony of Mr. Peter Valovic to be credible. The detailed account of what he did, and with who, was not contradicted with one exception: Mr. D.R. acknowledged he signed work order 13558 but that it was blank at the time. The Review Panel does not believe this is what occurred. An unsigned copy of work order 13558, with a partial description of the work, was stamped received by ACP. The work order signed by Mr. D.R. had added notations. This documentation supports the account of events given by Mr. Peter Valovic and therefore his evidence is preferred.

[26] The Review Panel finds that Mr. D.R. accompanied Mr. Peter Valovic around the premises while he located the timers and did in fact see Mr. Peter Valovic attending to repairs. This fact together with the fact that the work order signed by Mr. D.R. refers to repairs done in the past tense, indicates work to be done in a few days, and the fact that IEL was called back when some lights were not working, clearly raises doubt to the validity of the argument that the customer was simply wanting a quote.

[27] The dispute that arose between the parties clearly related to the cost of the repairs and the fact that no particulars were provided at the time the APC were asked to sign the work orders. The APC was not the only customer to complain of this practice. However, the Review Panel does not find that IEL carried out unauthorized work.

[28] There was no evidence before the Review Panel regarding the alleged failure of the Applicants to provide a breakdown of invoices.

Findings relating to safety and compliance.

[29] There was no dispute that a permit was not obtained for the repairs carried out at the APC. Mr. Ivan Valovic testified that a permit was not required as it was a 'replacement' and that IEL never received a complaint from ESA that he should take a permit until the Proposal and he had not received a defect notice to date.

[30] Non-residential lighting repairs and replacement of electromechanical device requires a permit according to Rule 02-004 of the Code. The Review Panel concludes that IEL failed to comply with this Code requirement in carrying out the work at Property C.

[31] It is alleged that IEL did not display the correct Electrical Contractor Licence number on the work orders provided to APC. The correct number was not on the work order but it was on the invoices provided to APC in relation to, and which accompanied the completed work orders provided to APC. The Review Panel finds that the customers were provided with correct information and that the use of outdated forms was through oversight.

Property D, Consumer J.M. Customer Complaint

[32] Consumer J.M. is a senior citizen. He contacted IEL on December 29, 2008, to come and restore power to his home – a tree had fallen and taken out the power to his property. The Applicant Mr. Ivan Valovic came, trouble-shot, determined what needed to be done and provided the consumer with a proposal in the total amount of approximately \$6,200. No break down was provided on the proposal presented to the consumer for signature. Mr. Valovic testified that he provided the consumer with a breakdown on a separate piece of paper.

[33] The consumer testified that he signed the Applicant's proposal and that the Applicant required that the amount be paid by credit card in advance of the work being done, which he did. After providing payment he had second thoughts and asked Mr. Valovic to disregard his earlier agreement and not to do the work. He was told that that was not possible, that he had paid and now Mr. Valovic had to do the work.

[34] The Applicant then dismantled the meter and left to get parts for the job. When he returned, Mr. J.M. again indicated to him that he did not want him to complete the job. The consumer had spoken with a neighbor and was concerned with the amount he was being charged. The Applicant took the position that the proposal had been signed, the money was paid and that he had to finish the job. The consumer ultimately agreed to have him complete the work.

[35] IEL provided the consumer with a version of the proposal, with itemized charges, for him to submit to his insurer for reimbursement. They included a \$720 emergency service call and a charge of \$950 for permits, inspections and arrangements. The cost of the permit was in fact \$59.64 as the Applicant was a member of the Authorized Contractor Program (ACP).⁶

[36] Mr. Valovic testified that the service charge was as high as it was because the weather was terrible. The explanation of the \$950 fee was that he had to do a number of phone calls, and he had some concern that the job would not proceed immediately.

⁶ Exhibit 3 tab 19 A

[37] Ms. Tracy Durant testified as to the fees charged in emergency situations and after hours. The maximum fee was \$537.00.

Findings relating to consumer protection.

[38] The explanation by Mr. Valovic as to the \$720 emergency service call, that the weather was terrible, is dubious given that the photographic evidence provided of the day appears to contradict this. However, the explanation for the \$950 fee for 'permits, inspections and arrangements' is simply not accepted as a reasonable explanation or justification. The inspection fee charged to IEL was less than \$60, indicating that neither emergency or after hours additional fees were applicable. The Review Panel finds that the fee for a permit and to arrange an inspection was grossly exaggerated and was a false, misleading representation to the consumer. In this particular case the Review Panel finds that the conduct of the Mr. Valovic was egregious, and demonstrated a complete lack of honesty and integrity.

Property E, Consumers AT and RB Customer Complaint

[39] The Applicant IEL was called in the evening of January 6, 2009, at approximately 8:30 pm., to come to the consumers' home to investigate electrical arcing and a burning smell. The consumers were advised that someone could be there in an hour. They were not advised that the fee for responding to their call would be \$360. Mr. Ivan Valovic attended the property and concluded that he needed to replace the main 100 amp breaker.

[40] The consumers had concerns at the time regarding the safety of the breaker installed by Mr. Ivan Valovic as it did not appear to be new. The Applicant was not sure himself as to the origins of the breaker. The consumers were charged \$395 for the breaker. Consumer AT testified that she believed that they were substantially overcharged even in an emergency.⁷ Consumer RB testified that the cost for the same part new was between \$80 and 90 dollars.

[41] Mr. Ivan Valovic testified that there was a snow storm the night that he attended this property. When he inspected the panel, which he noted was a Siemens panel, he found an overheated and burning breaker. It had to be replaced so he did up a proposal. While there, the power went out to the house. He had a discussion with consumer RB as to whether he would have to call Hydro and according to Mr. Ivan Valovic, the consumer indicated that if it was not necessary then he should just go

⁷ Exhibit 5 tab 20a

ahead with the repairs. Mr. Ivan Valovic testified that the consumer asked him if he was afraid of working live to which he responded that 'we' are trained to work live in some situations.

[42] Mr. Valovic testified that he found a breaker that looked like a Siemen's, but he couldn't see markings. As far as he was concerned it was a new breaker but it was old stock as it was an all copper breaker. Consumer RB asked to examine it and said it looked used. Mr. Valovic indicated that it was old stock and that he did not have the history of it but it was excellent quality and it was the only thing he had there. Mr. Valovic testified that he indicated to the consumer that they could wait until morning for a new breaker but the consumer told him to put it in. In his evidence Mr. Valovic acknowledged that the Code does not permitted the exchange of one type of breaker for another but indicated he does not know the reason why.

[43] Mr. Valovic testified that he then removed the meter and disconnected the customer's service. According to him he did not touch the supply. He indicated he examined the buss bar to see if it was overheated or not. In this case he did not see signs that the service needed replacing.

[44] Consumer AT testified that, among other things, the local Hydro was not called and the power was not shut off. Consumer RB testified that the day after the work was completed by IEL he was told, by others, that a permit should have been pulled and that Hydro should have been contacted and the power turned off. Consumer RB gave no evidence about having a conversation with Mr. Ivan Valovic regarding working live. In cross-examination Consumer RB stated that he was not aware that Mr. Valovic could disconnect the power by disconnecting the meter

[45] The day after the work was completed RB called Mr. Ivan Valovic and advised that he had found out that he could have had the work done for \$500 and therefore wanted \$800 back. According to Mr. Ivan Valovic he told him he was not going to do that, but did offer to put a new breaker in. Consumer RB testified that in his discussions with Mr. Ivan Valovic regarding how things were not done properly and that he wanted a rebate Mr. Ivan Valovic made, what he considered to be a threat, by the comment "...your ass will be sore". From the evidence of Ms. AT it appeared that Mr. RB had indicated to Mr. Ivan Valovic that they would also be making a complaint and the above comment was part of Mr. Ivan Valovic's response to that suggestion.

[46] It was Mr. Ivan Valovic's evidence that he was thinking of getting a permit for this repair work but didn't because he was doing a replacement and a permit was not needed for a replacement in the past. Mr. Valovic testified he had 48 hours to take a permit. In the end the Applicant did not take a permit for this job which Mr. Valovic described as a 'fluke' and attributed it to the fact he was so undecided because he thought he would be called by the consumer to replace the breaker. About a month

later he got about five defect notices regarding this property, they did not include a defect for working live.

[47] Andy Vilella, is an electrician and has been employed as an inspector for ESA for approximately three years. Mr. Vilella's inspected Property E on January 29, 2009, in response to a consumer complaint. Mr. Vilella confirmed that no notification or permit was issued for the work done at the consumer's property. He testified that this was required as this work involved an alteration (Code Rule 02-004) and the source of supply had been cut off. Once disconnected, Mr. Valovic should have called for a connection authorization (Code Rule 02-012)

[48] Mr. Vilella inspected both the removed breaker and the replacement breaker installed by the Applicant and observed that the replacement breaker was not approved for that panel board as the breaker was not of the same manufacturer. Mr. Vilella also observed that there was heat damage to the point of carbonization of the buss bar and therefore the buss bar should have been replaced.

[49] A Hazardous Investigation Defect Notice dated January 31, 2009, was issued for IEL relating to this property. Five defects were listed related to the following Rules: 02-012, (connection authorization), 02-004, (application for inspection), 02-034 (approved circuit breaker), 02-300 (replacement of the buss bar required), and a defect regarding 'class of workmanship'.⁸ Another defect relating to Rule 12-118, and the failure to use an aluminum conductor compound was subsequently identified.⁹ There was no defect issued for working live.

[50] Following cross-examination, and in re-direct, Mr. Vilella was asked about the defect relating to the requirement for connection authorization. Mr. Vilella indicated that this was required because the contractor had physically removed the power.

[51] Mr. Gary Corbett, a Provincial Offence Officer interviewed Mr. Ivan Valovic on July 7, 2009, with respect to this and other repairs which have given rise to various complaints. Mr. Corbett testified that when he questioned Mr. Valovic about working live he responded that he had been working live for a number of years and that "it is his life". It was not clear from Mr. Corbett's testimony if this question was put to Mr. Valovic with respect to this property in particular. In his email to ESA representatives, dated August 1, 2009, Mr. Corbett indicated that in addition to the response that it was his life, Mr. Valovic had also stated that he sometimes works live and sometimes doesn't: that he has been doing electrical work for 35 years and knows what he is doing and it is up to him.¹⁰

⁸ Exhibit 5 tab 20 F

⁹ Exhibit 5 tab 20 G

¹⁰ Exhibit 5 tab 20 J cc to Lucy Impera

[52] Mr. Corbet also testified that Mr. Valovic stated to him that the homeowners did not want him to call Hydro to save money, that the homeowners agreed to put in the wrong breaker and that they knew it was old.

Findings relating to consumer protection.

[53] The Review Panel finds that the consumers agreed to a specific breaker being installed after being told that it was a quality part and in the absence of being advised that it was not the right type. This representation to the consumers that the part was suited for the purpose was in fact a false representation, whether negligently or knowingly made. Such false representations will give rise to rights of redress. The manner in which Mr. Valovic subsequently dealt with the consumers when they raised their concerns was unprofessional and it was not unreasonable for the comments made by Mr. Valovic to the consumer to be considered threatening.

Findings relating to issues of safety and compliance.

[54] Based on the evidence, the Review Panel concludes that Mr. Valovic failed to obtain the appropriate permit contrary to Rule 02-004, installed the wrong type of breaker contrary to Rule 02-034, and failed to replace a buss bar that should have been replaced contrary to Rule 02-300. This conduct created a risk to the safety of the consumers who hired his services. Mr. Valovic's testimony that the consumers asked him not call Hydro seemed incredible to the Panel. In any event, Mr. Valovic is a master electrician and it is his responsibility to ensure the Code is followed regardless of what a consumer may or may not be willing to agree to: they rely upon a licensee's expertise to do things correctly and safely.

[55] As to the allegation that Mr. Ivan Valovic carried out the repairs 'live', the evidence before the Review Panel is insufficient to find this on a balance of probabilities. Mr. Valovic testified that he disconnected the customer's service and Mr. Villela's findings do not contradict this evidence – he found that Mr. Valovic failed to request a reconnection authorization and issued a defect on that basis. Consumer RB testified that he did not know Mr. Valovic could shut off the power himself. This suggests that the consumers' belief that the power was not shut off may have been based on the assumption that Hydro needed to be called to do so. In finding that Mr. Valovic disconnected the service the Review Panel also finds that he then failed to get a connection authorization contrary to Rule 02-012.

[56] There was no evidence before the Review Panel regarding the defect issued relating to Rule 12-118.

Property F, Consumer C.B.

[57] Consumer C.B. contacted IEL on Sunday, August 23, 2009, to come and repair an issue relating to her intermittent power failure. Mr. Ivan Valovic attended and advised the consumer that the main breaker was 'hot' and needed to be replaced. There was no charge for a permit indicated on the proposal or invoice prepared for the consumer.¹¹ Consumer C.B. testified that the Mr. Ivan Valovic was in the house approximately 15 minutes attending to the repairs.

[58] The Applicant took a permit out for this work on August 24, 2009, for a 100 amp breaker change. The Applicant did not call for a connection authorization in accordance with Rule 02-012 and a defect to this effect was issued. The Applicant explained that his non-compliance with Rule 02-012 was based in part on the fact that he had not had a 'problem' with this section in the past. A full discussion of the Applicants' position with respect to Rule 02-012 is set out on page 19 of this decision.

Finding relating to safety and compliance.

[59] The Review Panel finds that the Applicant IEL failed to obtain a reconnection authorization in accordance with Rule 02-012.

Property G, Consumer D.C. Customer Complaint

[60] IEL was called to the consumer's home on Saturday, October 3, 2009, at 10:30 a.m.. The consumer had called 2 or 3 electricians and IEL was the first one that indicated someone would attend. The consumer was experiencing a problem of having only partial power to his house.

[61] Mr. Peter Valovic attended the home and after trouble-shooting concluded that the main disconnect switch was defective. In his evidence Mr. Peter Valovic went through the precise steps he took to determine whether the disconnect switch was defective. He then prepared a proposal for the removal of the interior of the main disconnect and the installation of a 60 amp main disconnect. The Consumer signed the proposal, for a total cost of \$900.00 for parts and labour, plus taxes. After signing the proposal the consumer was advised by Mr. Peter Valovic that he did not have the appropriate part, and that he would have to change the entire disconnect. He left the site and returned with a part which was \$700 more. The consumer agreed to go ahead but refused to sign an amended work order.

¹¹ Exhibit 4 tab 88

[62] Mr. Peter Valovic then pulled the meter and changed the disconnect switch and reinstalled the meter. This repair did not restore power and the Applicant called Mississauga Hydro which eventually came and corrected the problem.

[63] The consumer complained to the Better Business Bureau on October 15, 2009, as they felt they were taken advantage of and charged for work that did not correct the problem. The consumer was also not convinced that the part installed was new.¹² Consumer D.C. acknowledged in cross-examination that it was possible that there may have been two problems occurring at the same time.

[64] Mr. Joe Peragine has been an inspector with the ESA for twenty-two years. He inspected Property G after a complaint was received by Consumer D.C.. Initially Mr. Peragine was unaware that IEL had made the required application for inspection pursuant to Rule 02-004, however, it was subsequently confirmed that a permit was in fact taken out on October 5, 2009.

[65] As a result of Mr. Peragine's inspection a number of defect notices were sent to IEL. The defects included the failure to file an Application for inspection which as stated, was in error. Another defect was the failure to get connection authorization in accordance with Rule 02-012. This Rule is also cited as the basis for a defect of not obtaining a 'Disconnection Authorization'. IEL was also required to submit fault current calculations for the installation, relating to Rule 02-034. In all there were six notices between October 8, 2009 and November 12, 2009, relating to the defects and at times there was repetition as to the Rules referenced. On the last notice, setting out the defects as of November 12 2009, three of the four defects appear to be the same as they indicate that they relate to the authorization for connection and there was one relating to the failure to wear protective wear when working live. Mr. Peragine testified that this last defect was based on responses to questions asked of the consumer a few weeks after his initial inspection. The allegation that this work was carried out live was in fact withdrawn by the Director with respect to this property.

Findings with respect to consumer protection.

[66] In his testimony Mr. Peter Valovic described the steps he took to determine whether the switch was defective. The Review Panel is of the opinion that these were the correct steps and accepts that the results indicated that the switch was defective and that the witness's conclusions were justified. The Review Panel therefore finds that it is more likely than not that there were two problems occurring at the same time and that the work carried out by Mr. Peter Valovic was legitimately required. There was no evidence before the Review Panel as to whether the part installed not new.

Findings with respect to safety and compliance.

¹² Exhibit 4 Tab 95

[67] The evidence before the Review Panel is that the Applicant IEL did apply for a permit on Monday October 5th, 2009, in relation to this job. The Director withdrew the allegation that this work was carried out live and therefore the Review Panel concludes that the defect relating to failing to use protective wear was unfounded. With respect to the defect relating to the fault calculations, the Applicant was asked to provide Fault Current Calculation indicating 5k fuses are adequate and the applicant obtained the necessary calculations and satisfied that defect. With respect to Rule 02-012, the Review Panel finds that when Mr. Peter Valovic reinstalled the meter in order to restore power he failed to obtain the required connection authorization pursuant to Rule 02-012.

Property H, Consumer K.P. Customer Complaint

[68] IEL was called to a home to investigate why a breaker was tripping when a particular basement stove was being used. Mr. Ivan Valovic attended and he testified that he believed it was Thanksgiving Sunday. According to the Mr. Ivan Valovic, after some trouble-shooting he determined that an element receptacle needed to be replaced in the stove. Mr. Ivan Valovic's evidence was that he replaced the front left burner receptacle, which had two long wires that went through to the thermostat. He stated he did not work on the right side of the stove. The proposal prepared and signed by the consumer dated October 13, 2009, indicates under item 2) 'Found one stove top front left burner plug 240V burning' and under item 3) it states 'Replace stove burner plug'.¹³ The proposal was written and signed after the work was completed.

[69] Mr. Valovic testified that he also determined that one breaker needed replacing and attended to this. The breaker he installed was a black 40 amp old commander breaker, which according to him has not been manufactured for a long time. The proposal states 'Replace 40 amp doble (*sic*) old commander braker (*sic*)'. He testified that he always makes sure that breakers are screwed tightly to the buss bar. The total cost of these repairs was set out in the proposal dated October 13, 2009, and amounted to \$715 plus tax, after a senior's discount of \$30. The repairs to the stove included \$90 for labour and \$45 for parts, and a portion of other charges relating to the service call fee of \$180 and trouble-shooting charge of \$180. There were also charges for labour to replace the breaker in the amount of \$90 and \$160 for the actual breaker.

[70] The consumer K.P.'s evidence was submitted by transcript from the hearing before the Director.¹⁴ She testified that IEL was called to address the breaker tripping, not to fix the stove as the stove was very old and cost only \$185 when she bought it.

¹³ Exhibit 5 tab 23 a

¹⁴ Exhibit 22

The consumer can neither read nor write, and English is a second language. The consumer testified that she asked Mr. Ivan Valovic how much the repairs were going to cost twice, to which he said 'not much'.

[71] The repairs carried out did not correct the problem and, in the consumer's opinion, the prices she was charged were excessive. Following Mr. Ivan Valovic's attendance the consumer had an electrician acquaintance come, he tightened the screws on a breaker to the buss bar and the problem involving the breaker tripping was resolved. The consumer gave no evidence as to which burner on the stove was repaired by Mr. Ivan Valovic.

[72] Mr. Ivan Valovic acknowledged he was contacted by telephone after he did the repairs and advised that the problem had not been resolved by his work. He testified he was going to go back. A few days later he received a letter dated October 19, 2009, sent by the daughter of K.P. on her mother's behalf, setting out a number of concerns. In particular she felt she had been overcharged, that requests for the cost of the repairs were ignored, and that there had been no agreement to do the repairs before they were done.¹⁵ She felt money should be refunded. Mr. Ivan Valovic wrote a letter back indicating all charges were justified and there was no further contact between the parties.

[73] Mr. Jeffrey Melnechenko, an electrical Inspector, carried out an inspection of the work done by IEL. This inspection took place on March 25, 2010, a little over 5 months after the date of repair. Mr. Melnechenko made notes at the time of the inspection¹⁶ and took photographs of the installed breaker and the stove.¹⁷ He testified that the replaced breaker, which was a 40 amp 2 pole, had signs of fatigue and heating on the screw to the buss, and there were signs of melting and heating at the side. He explained that if the terminal screws were not tight it can cause excessive heating on that point. His conclusion was that the buss needed to be replaced. The breaker Mr. Melnechenko was referring to in his photos was white in colour and located on the bottom of the buss.

[74] In cross-examination Mr. Melnechenko confirmed that the breaker installed by IEL was pointed out to him by the consumer. He also acknowledged that an additional party had done work, (an acquaintance of the consumer had tightened the screws), and originally it was concluded that it could not be determined who was responsible for the heating of the buss. When asked to confirm that no defects were issued against IEL, but against the home, Mr. Melnechenko stated he was not sure who the defects go to but that a permit was needed for this type of repair. In his testimony Mr. Ivan Valovic

¹⁵ Exhibit 4, tab 11

¹⁶ Exhibit 11

¹⁷ Exhibits 12 a to f

explained that he had not complied because the rule relating to electro-mechanical devices was a new rule.

[75] With respect to the stove, Mr. Melnechenko observed repairs under the front right burner where wires had been spliced and ordinary plastic marretts had been used which appeared melted due to the heat. He acknowledged that stove repairs were not his field; this was the first time he had looked at a stove repair. On cross examination when it was suggested to the witness that no one did work on the front right burner, he responded that he can only go on what the owner said. He gave no evidence as to whether he had inspected the left front burner. There is no allegation in the Proposals that the stove repairs were done improperly.

Finding with respect to consumer protection.

[76] The manner in which Mr. Ivan Valovic dealt with this consumer raises concern. The Review Panel accepts the evidence of the consumer that she was concerned about the cost of the repairs and asked Mr. Valovic what they would be, twice. He did not provide her with any details, rather he assured her they would not be much. Such requests for details of costs of a repair are an indication that the consumer has not given a blanket consent to the repairs being done at any price. It is totally reasonable and should be expected that someone would want to know the cost of repairs, particularly when the item being repaired may be old and of little value. The Review Panel accepts that this was the situation with Ms. K.P. and her stove. The Review panel finds that Mr. Valovic did not disclose the costs of the repairs as requested and did not obtain consent to perform the repairs at the price he charged, prior to him carrying out the repairs. He was intentionally vague in order to mislead the consumer as to the actual cost of repairs. An honest approach would have been to advise the consumer of the costs and allow her to make a decision.

Findings with respect to safety and compliance.

[77] Although not raised in the Proposal the evidence put forth by Director suggests that repairs to the stove were done improperly. The written proposal for the work IEL did on the stove indicates that the receptacle on the left front burner was replaced. Although many consumers have had issues with respect to various aspects of Mr. Ivan Valovic's business practices and the prices charged, there have been no challenges to the accuracy of the proposals or work orders prepared with respect to what work was actually done. The proposal in this case was done the day of the repairs and indicates the left front burner was repaired. Mr. Melenchenko's information was apparently based upon the consumer's recollection during his inspection over 5 months later. He provided no evidence as to whether he inspected the left front burner. The stove,

according to the consumer's testimony, was very old. Based on the evidence, the Review Panel is not satisfied that, on a balance of probabilities, Mr. Ivan Valovic did the unsafe repair to the right front burner using marretts.

[78] With respect to the replacement of the breaker, Mr. Melenchenko determined that the breaker which was found to have been insufficiently screwed to the buss was a white 40 amp 2 pole breaker. The evidence of Mr. Valovic was that the breaker he replaced was a black, 40 amp double old commander breaker. The evidence of the consumer was that whatever Mr. Valovic did it did not fix the problem, but that it was subsequently fixed by the individual who tightened the white breaker pointed out to Mr. Melenchenko. If the problem was the loose white breaker which was there before and after Mr. Valovic executed repairs, it suggests that it was not the breaker replaced by Mr. Valovic and supports his assertion that he replaced a black breaker. This brings into question the necessity of the repairs Mr. Valovic did carry out but does not support the allegation that he installed a breaker incorrectly as alleged. The Review Panel does, however, find that the replacement of a breaker requires a permit under Rule 02-004, which IEL did not obtain.

Rule 02-012

[79] One of the concerns relating to the way in which the Licensees have operated is the lack of compliance with Rule 02-012. The Review Panel has found that there were three instances, out of eight repairs reviewed above, where there was no connection authorization obtained. These occurred on January 6, 2009, August 23, 2009 and October 3, 2009.

[80] Mr. Ivan Valovic's explanation for his non-compliance with Rule 2-012 was in part based on the fact that he had not had a 'problem' with this section in the past. By this the Review Panel understood him to mean that he had not changed his conduct but that he was found to be non-compliant because of the change in the approach of the ESA to this Rule.

[81] The Licensees take issue with the ESA's interpretation of Rule 02-012. The Rule states

".....where any electrical installation or part thereof **has been disconnected** or cut off from any service or other source of supply under this Code, no supply authority, contractor, or other person shall connect or re-connect the installation or part thereof to any service or other source of supply unless

(a) the installation and all related work have been inspected in accordance with the procedures in Rule 2-004 by an inspector; and

(b) a connection authorization has been issued by the inspection department with respect to the installation.

[82] According to the Licensees the proper interpretation of this rule is that it does not apply where a licensee disconnects the source of supply. It only applies when the source of supply has already been disconnected before a licensee gets involved. The Licensees maintain that if the legislators had intended to require a licensee who does the disconnecting to obtain a connection authorization than the rule would have stated, “has been, **or is**, disconnected...”

[83] The Licensees dispute as to the interpretation of this Rule has a long history. The evidence before the Review Panel indicates that there was a change in the policy of enforcement of Rule 02-012 sometime between 2005 and 2007, although the Licensees submit that it was most likely changed around January of 2007. In any event, in a meeting on March 13, 2007, involving both Ivan and Peter Valovic, a number of ESA inspectors and the ESA General Manager Ralf Van Haeren the interpretation of Rule 02-012 was addressed. Mr. Valovic outlined his interpretation of the Rule. Mr. Van Haeren testified that it was his belief that it was made clear at that meeting that Mr. Valovic’s interpretation was not in line with how the Rule was being interpreted by the ESA and how it would be enforced. This meeting had come sometime after Provincial Offence charges had been laid against IEL for violation of this rule and following this meeting, at some point, the charges against the Licensee were withdrawn. The Licensees apparently took this as affirmation that their interpretation had been correct.

[84] The Licensees submit that besides the odd notice of defect for an infraction of the Rule, the ESA took no further steps to prosecute the Licensees until issuing the Original Proposals in October of 2009.

[85] The Licensees also submit that the ESA has acted improperly where it simply altered its policy for enforcement of Rule 02-012, rather than taking steps to amend the Code to reflect this alternative enforcement. The Licensees submit that if the ESA wants to change the law it should apply to the Legislature to effect this amendment instead of simply altering the way it enforces the Code.

[86] The Licensees have indicated that they are prepared to apply Rule 02-012 as it was explained by Mr. Ted Olechna, a Provincial code Engineer with the ESA, until such time that the Rule is amended or a ruling for a Court of competent jurisdiction makes a ruling as to its proper meaning. The Licensees do not concede that their interpretation is incorrect.

Other Statutory Non-compliance.

[87] It was alleged that the Licensees contravened section 190 of O. Reg 213/91 under the *Occupational Health and Safety Act* by failing to ensure that workers are adequately protected from shock and burn. Other than in relation to Property E, all

allegations that the Licensees worked on live electrical equipment were withdrawn. There was no evidence submitted as to the failure to wear protective wear by Mr. Valovic with respect to the work carried out on Property E. The Review Panel finds that this allegation was not proven.

[88] It was alleged that IEL was not in compliance with the Ministry of Finance requirement under s. 8(f) of Ontario Regulation 570/05 upon the initial licence application and subsequent renewals. The Director provided no details as to what was the nature of the non-compliance. The only evidence provided on this point was a one line, undated document, with no indication as to who produced it or what it related to. The Review Panel finds that this allegation was not proven.

LAW

[89] The following are relevant sections of Part VIII of the *Electricity Act, 1998* which deals with Electrical Safety:

Definitions

112.1 In this Part,

“Authority” means the Electrical Safety Authority;

“authorization” means a licence, certificate or registration issued under this Part, despite the definition of “licence” in subsection 2 (1);

“Director” means a person appointed as a Director under this Part;

113.1 (1) The Authority may appoint one or more Directors for the purposes of this Part.

(2) An appointment is subject to the restrictions, limitations and conditions that the Authority sets out in it.

(4) A Director may delegate in writing any of his or her powers or duties to any person, subject to the restrictions, limitations and conditions that the Director sets out in the delegation.

113.2 (1) 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.

(2) A Director may refuse to grant an applicant an authorization for the carrying out of activities or may refuse to renew, may suspend or may revoke an authorization holder’s authorization for the carrying out of activities, if the Director has reason to believe that,

(a) the applicant or authorization holder will not carry out the activities in accordance with the law;

(b) the applicant or authorization holder will not carry out the activities safely;;

(d) the applicant or authorization holder will not conduct himself or herself with honesty and integrity or in accordance with the principle of protecting consumers;

- (f) the applicant or authorization holder failed to comply with or to meet a requirement of this Part, the regulations or an order of the Authority;

113.3 (1) Subject to subsection (2), a Director who proposes any of the following shall serve notice of the proposal, together with written reasons, on the applicant or authorization holder:

5. To suspend an authorization.

113.4 (1) A notice of proposal shall inform the applicant or authorization holder that the applicant or holder has a right to a hearing before the Director if the applicant or holder applies to the Director for the hearing within 15 days after being served with the notice.

(5) If the applicant or authorization holder applies for a hearing in accordance with this section, the Director shall set a time for and hold the hearing, after issuing a notice of hearing to the applicant or authorization holder.

(6) The findings of fact made by the Director upon the hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*.

(7) After the hearing, the Director may carry out the proposal stated in the notice of proposal if,

- (a) in the case of a proposal mentioned in paragraph 3, 4, 5 or 6 of subsection 113.3 (1), the Director is satisfied that any of the grounds set out in subsection 113.2 (2) exists; or

113.9 If, under the *Safety and Consumer Statutes Administration Act, 1996*, this Part is designated legislation to be administered by a designated administrative authority, and if a regulation made under clause 15 (1) (c) of that Act requires that, before an appeal to the Divisional Court is made under section 113.10 of this Act, a review panel must review the decision made by a Director after a hearing under this Act, that regulation prevails over this Part to the extent of any conflict.

[90] The following are relevant sections of the *Safety and Consumer Statutes Administration Act, 1996*:

Regulations

15. (1) The Lieutenant Governor in Council may make regulations,
- (a) designating an Act named in the Schedule, a regulation made under that Act or provisions of that Act or that regulation as designated legislation for the purpose of this Act;
- (b) designating administrative authorities for the purpose of administering designated legislation and specifying in the designation the part of the administration of the designated legislation that is delegated to them;
- (c) providing for proceedings under designated legislation, including hearings, appeals and the right of designated administrative authorities to whom the administration of designated legislation is delegated to recover from the parties to the proceedings the costs and expenses that they incur in respect of the proceedings; or
- (d) respecting any matter that the Lieutenant Governor in Council considers advisable to carry out effectively the intent and purpose of this Act or designated legislation.

[91] The following are relevant sections of Ontario Regulation 187/09 under the *Safety and Consumer States Administration Act, 1996*:

Electricity Act, 1998

2. For the purposes of subsection 3 (2) of the Act, the Electrical Safety Authority, that is incorporated under the laws of the Province of Ontario by letters patent dated January 12, 1999 and with which the Minister of Consumer and Business Services entered into an administrative agreement dated March 11, 1999 for the purposes of section 4 of the Act, is designated as the sole administrative authority for the purposes of administering the provisions of the *Electricity Act, 1998* and the regulations made under that Act that are designated legislation under section 1.

PART III - APPEAL OF DIRECTOR'S DECISION ON LICENCES UNDER PART VIII OF THE *ELECTRICITY ACT, 1998*

Definitions

13. In this Part,

“Authority” means the Electrical Safety Authority;

“Director” means a person appointed as a Director under Part VIII of the *Electricity Act, 1998*;

“Review Panel” means a panel of not more than three persons appointed by the Authority for the purpose of this Part.

Appeal to Review Panel

14. (1) If, after a hearing on a proposal under section 113.4 of the *Electricity Act, 1998*, a Director concludes the Director is entitled to carry out the proposal under that section, a person named in the proposal may appeal the decision of the Director to the Review Panel by filing a notice of appeal with the Review Panel within 15 days after the decision is made.

(2) In accordance with section 113.9 of the *Electricity Act, 1998*, if a person appeals a decision of a Director under subsection (1), the Review Panel shall review the decision and the person is not entitled to appeal it to the Divisional Court under section 113.10 of that Act except as provided in section 16 of this Regulation.

(8) Subject to subsection (10), if a person appeals under subsection (1), the Review Panel shall appoint a time for a hearing and hold the hearing.

(11) 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.

Appeal to Divisional Court

16. (1) Any party to the hearing before the Review Panel under section 14 may appeal the decision of the Review Panel to the Divisional Court in accordance with the rules of court on any question that is not a question of fact alone.

(2) The Minister is entitled to be heard at a hearing under this section.

(3) The court that hears an appeal under this section may,

(a) refer the matter back to the Review Panel for reconsideration by the Review Panel; or

(b) confirm or rescind the decision of the Review Panel

[92] The following are relevant sections of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A

1. In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes;

“consumer agreement” means an agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment;

14. (1) It is an unfair practice for a person to make a false, misleading or deceptive representation. 2002, c. 30, Sched. A, s. 14 (1).

(2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:

3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not.
4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.
10. A representation that a service, part, replacement or repair is needed or advisable, if it is not.
11. A representation that a specific price advantage exists, if it does not.
13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
16. A representation that misrepresents the purpose of any charge or proposed charge.

15. (1) It is an unfair practice to make an unconscionable representation.

(2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person’s employer or principal knows or ought to know,

- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
- (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;

- (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
- (h) that the consumer is being subjected to undue pressure to enter into a consumer transaction.

18. (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages.

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

- (a) because the return or restitution of the goods or services is no longer possible; or

20. (1) In this Part,

“direct agreement” means a consumer agreement that is negotiated or concluded in person at a place other than,

- (a) at the supplier's place of business, or
- (b) at a market place, an auction, trade fair, agricultural fair or exhibition;

ANALYSIS

[93] 1. What is the standard of review to be applied: is deference owed to the Director's Decision?

The mandate of this Review Panel is to carry out a review of the Decision of the Director of Licensing and Certification to suspend the authorizations of IEL and Mr. Ivan Valovic. The Director submits that the Review Panel ought to give deference to the Director's decision. To properly determine this issue it is necessary to understand the respective roles of the Director and the Review Panel, a review of the regulatory scheme is helpful in this regard.

[94] The Electrical Safety Authority has been designated as the sole administrative authority for the purposes of administering the provisions in Part VIII of the *Electricity Act, 1998*, (the 'Act') and all the regulations made under Part VIII of that Act.¹⁸

[95] Pursuant to s. 113.1(1) of the Act the Authority may appoint one or more Directors for the purposes of Part VIII of the Act. Such an appointment is subject to the restrictions, limitations and conditions that the Authority sets out in the appointment. Section 113(4) provides that a Director may delegate in writing any of his or her powers or duties to any person, subject to the restrictions, limitations and conditions that the Director sets out in the delegation.

¹⁸ *Safety and Consumer Statues Administration Act, 1996*, Ontario Regulation 187/09, Sections 1 and 2

[96] A Director has the authority under s.113.2 (2) to refuse to renew, suspend or revoke an authorization holder's authorization (a licence, certificate or registration issued under Part VIII of the Act) on nine identified grounds. The Director may exercise this authority if he/she has reason to believe that the grounds exist.

[97] Notice of a Director's intention/proposal to refuse to renew, suspend or revoke an authorization is to be given by way of a notice of the proposal which set out the reasons for the proposal. The notice of proposal is also to inform the licensee of the right to a hearing before the Director if the licensee applies for a hearing within 15 days of being served with the notice of proposal (s. 113.4(1)).

[98] Pursuant to s. 113.4(5) if the licensee applies for a hearing in accordance with this section, the Director shall set a time for and hold the hearing, after issuing a notice of hearing to the applicant or licensee.

[99] Under s. 113.4(7), which is subtitled 'Decision', the Act states that after the hearing, the Director may carry out the proposal stated in the notice of proposal if, (a) in the case of a proposal mentioned in paragraphs 3, 4, 5 or 6 of subsection 113.3(1), the Director is satisfied that any of the grounds set out in subsection 113.2(2) exists. The case at hand involves a suspension under paragraph 5 of s. 113.3(1). The grounds appear to correspond to those set out in 113.2(2) a, b, d and f.

[100] This decision of the Director, after a hearing, to carry out the proposal stated in the notice of proposal, can then be appealed. Section 113.9 of the Act provides however, that

If, under the *Safety and Consumer Statutes Administration Act, 1996*, this Part is designated legislation to be administered by a designated administrative authority, and if a regulation made under clause 15 (1) (c) of that Act requires that, before an appeal to the Divisional Court is made under section 113.10 of this Act, a review panel must review the decision made by a Director after a hearing under this Act, that regulation prevails over this Part to the extent of any conflict.

[101] Part VIII of the *Electricity Act, 1998* is designated legislation to be administered by an administrative authority, the ESA, and section 14(2) of Ontario Regulation 187/09 does require the decision to be reviewed by a Review Panel.

[111] Section 14 of Ontario Regulation 187/09 provides

(1) If, after a hearing on a proposal under section 113.4 of the *Electricity Act, 1998*, a Director concludes the Director is entitled to carry out the proposal under that section, a person named in the proposal may appeal the decision of the Director to the Review Panel by filing a notice of appeal with the Review Panel within 15 days after the decision is made.

(2) In accordance with section 113.9 of the *Electricity Act, 1998*, if a person appeals a decision of a Director under subsection (1), the Review Panel shall review the decision and the person is not entitled to appeal it to the Divisional

Court under section 113.10 of that Act except as provided in section 16 of this Regulation.

[112] Section 14(8) provides that subject to subsection (10), the Review Panel shall appoint a time for a hearing and hold the hearing. The authority for what the Review Panel can do with respect to the Director's decision to carry out the proposal is set out in section 14(11) and provides that:

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.

[113] Although the Director holds a hearing, and is a trier of fact, it is clear that it was the law makers' intent to insert into the process a second hearing before a licensee can seek appellate review from the Divisional Court. This second hearing is to be held before a Review Panel composed of three individuals with special qualifications and expertise in the electrical industry and/or licensing. The Language of s. 14(11) suggests that the Review Panel has broad powers to make a decision as to whether the criteria for depriving the Applicant(s) of their license has been met. The composition of the Review Panel and the powers it has been given suggest that the creators of this scheme wanted to ensure that before a licensee is affected by an administrative decision, that the decision would be thoroughly scrutinized by an independent panel with industry expertise.

[114] Although it has been argued that the Director, in this instance, has extensive knowledge and experience with the Electrical Code and with the governing legislation, the Director is not a licensed electrician, nor an electrical engineer, nor a lawyer, and does not have expertise in these areas as does the members of the Review Panel Roster from which the Panel members are chosen. Nor does it appear that there is any requirement that a Director who may conduct a hearing have such expertise.

[115] It must also be noted that the provisions of Part VIII of the Act have been applied such that a Director who issues a proposal will also preside over the subsequent hearing relating to that proposal.¹⁹ If the Review Panel owes deference to the Director, it would result in the situation where one individual makes a decision, reviews their own decision, and then is given deference. Respectfully, this approach would appear to defeat the intent of the law makers to ensure an administrative decision affecting the license of a registrant is thoroughly and independently reviewed: an intent suggested by the requirement of a two hearing process. It was suggested that the approach taken has since been changed and Directors issuing proposals will not review their own decisions in the future, however, there are no provisions in the Act which safeguard this, thus the unfettered review of the Review Panel is critical.

[116] It has been argued by the Director that the case of *Wartman v. Board of Funeral Services*²⁰ is relevant and applicable in this instance. This case involved the review of a decision of the Discipline Committee of the Board of Funeral Services, under the *Funeral Directors and Establishments Act* (the 'FDEA') by the Licence Appeal Tribunal.

¹⁹ Director's Decision, Exhibit 18, para. 25

²⁰ *Wartman v. Board of Funeral Services*, LAT decision released October 7, 2004

The Discipline Committee was comprised of three licensed funeral directors. Its task was to determine questions of alleged professional misconduct of members of the profession. As there was no requirement that the member of the Tribunal hearing the appeal be familiar with the practice of funeral directing, the Tribunal decided to consider the evidence before it with deference to the Discipline Committee's expertise in the profession. It is noted that in more recent cases of the Licence Appeal Tribunal this approach has not been followed with respect to decisions of this Discipline Committee.²¹

[117] In reaching its decision in *Wartman* the Tribunal considered the Divisional Court decision in *College of Physicians and Surgeons of Ontario v. Payne*, where the Court considered the authority of the Health Professional Appeal and Review Board ('the Review Board') over the decision of its Registration Committee to exclude the applicant Payne from registration. The Court states at paragraph 18:

In considering the jurisdiction of tribunals, the Supreme Court of Canada has adopted a functional and structural approach by looking at the function which the legislature has asked the tribunal to perform and the powers and processes it has furnished to it. (see *R. v. 974649 Ontario Inc.* (2001) SCJ No. 79).

[118] In the *College of Physicians* case the Registration Committee's was authorized to deal with applications for registration to practice medicine and the majority of the members were required to be physicians. The Review Board was to be restricted to members of the public, no member could be a member of the health professions and its authority and focus was to review the actions of the self-governing health professions.

[119] The Court went on to state:

In our view the deference to be shown by the Board to the decisions of the Registration Committee is established in the scheme of the legislation itself. Whether and to what extent deference should be shown to the Registration Committee by the Board is resolved by a consideration of the special qualifications and expertise of the Registration Committee in terms of its composition and the focus of its activities, together with the particular issue which is being considered by the Registration Committee....

[120] It would appear to the Review Panel that the review scheme under the *FDEA* as outlined in the *Wartman* case is almost the opposite to that under Part VIII of the Act and therefore it can be distinguished from the present case. The Discipline Committee was comprised of three industry members who made a decision relating to professional conduct to be reviewed by one individual with no particular industry expertise. Here we have a Director, who is knowledgeable but is not a member of the industry, making a decision with respect to compliance with industry standards, and who's decision is subject to review by a panel of three individuals with special qualifications including industry and licensing expertise: this is a significant consideration given the decisions involve compliance with industry standards, often of a highly technical nature.

[121] Finally, it must be noted that under s. 17 of the *FDEA* the Discipline Committee Members are not to have taken part in the pre-hearing investigation, nor are the Discipline Committee Members to communicate with anyone, including any party, about the subject matter of the hearing without notifying the parties and giving them an

²¹ *Johal v. Board of Funeral Services*, LAT decision released January 17, 2011

opportunity to participate.²² There does not appear to be any such provisions under the *Electricity Act, 1998*. In fact there is evidence before the Review Panel that gives the appearance that the Director was involved in some way in the investigations of these matters²³ and that she did meet with Counsel appearing for the Director of Licensing, who was preparing the case against the Licensees, prior to the hearing²⁴. The lack of division between the roles of the Director is simply one more factor which underlines the importance of, and the legislative intent, to provide an unfettered review by the Review Panel.

[122] Having considered the function which the legislature has given the Review Panel to perform and the powers and processes it has furnished it to do so, the Review Panel concludes that its role is to approach this matter uninhibited by the Director's opinion and to review the evidence and come to its own opinion as to whether the conduct of the Licensees afford reasonable grounds for belief that the grounds identified by s. 113.2(2) exist and that the sanction proposed is appropriate.

[123] Although the 71 page written Decision, containing the Director's reasons for confirming her proposal, was marked as an exhibit, given that the hearing before the Review Panel was conducted as a hearing *de novo*, neither the stated evidence nor the findings of fact contained therein were deemed relevant to these proceedings and have not been considered.

[124] 2. Does the conduct of the Applicants afford reasonable grounds for belief that the Licensees;

- a) will not carry out the activities of their licences in accordance with the law,
- b) will not safely carry out the activities of their licences, or
- c) will not conduct themselves with honesty and integrity or in accordance with the principles of protecting consumers?

[125] The Review Panel has found, with respect to the work carried out on the 8 properties inspected, that the Licensee IEL failed to obtain a permit as required under Code Rule 02-004 in four instances, failed to obtain a connection authorization in accordance with Rule 02-012 in three instances, and in the case of Property E, put in an inappropriate breaker contrary to Rule 02-034 and did not replace a required part contrary to Rule 02-300.

[126] The Code Rules must be adhered to in order to ensure safety. Mr. Valovic's explanation for failing to obtain a 02-004 permit in three instances, if it is to be believed, demonstrates a lack of understanding as to when a permit 02-004 is required. Failure to properly interpret and follow the Code puts the public at risk. His

²² FEDA s. 17(3), (4)

²³ Exhibit 5, tab 19 G - Letter of L. Impera to John McNeely

²⁴ Exhibit 18 pg. 5

interpretations of this Rule of the Code has been incorrect in these instances and, in the Review Panel's opinion, was not reasonable.

[127] This can also be said of Mr. Valovic's interpretation of Rule 02-012. It was originally argued that the Licensees held a reasonable misunderstanding of Rule 02-012 and were diligent in attempting to inform themselves of how the Rule should be applied and therefore should not be found liable for any violation of the Rule. The Review Panel finds however, that the evidence before it suggests that the Licensees were informed of the ESA interpretation of Rule 02-012 in March of 2007. Notwithstanding this they were found to be in breach this Rule again in January 2009, August 2009, and October 2009. The Licensees suggest that the fact that the ESA declined to pursue the charges against the Licensees, after the March 2007 meeting where the ESA interpretation of Rule 02-012 was clarified for the Licensees, was confirmation they were right. This assumption was not reasonable and does not explain why there were three subsequent instances, over a nine month period, in which they were not in compliance.

[128] It is clear that the Licensees have, for years, not accepted the Regulator's interpretation of this Rule and in fact still do not. In the Review Panel's opinion this persistent resistance to the Regulator's authority has raised legitimate concern as to whether the Licensees can be governed. It is within the authority of the ESA to enforce the Rules of the Code. The interpretation that the ESA has given Rule 02-012 appears to the Review Panel to be a reasonable interpretation given the wording of the Rule. The Licensees are required to comply.

[129] The manner in which the Licensees have carried out their business activities in connection with consumers also raises serious concerns. The Review Panel heard from a number of consumers and has found that Mr. Ivan Valovic has clearly not acted with honesty and integrity on a number of occasions.

[130] In particular, in the case of Property D and Consumer J.M. the Review Panel found the false representations of Mr. Valovic to the consumer to be particularly egregious, in fact it could be called unconscionable. Mr. Ivan Valovic grossly exaggerate the inspection fees. The consumer was a senior citizen and was in a particularly vulnerable state, having no source of power to his home and Mr. Valovic's conduct, in this situation clearly demonstrated a complete lack of honesty and integrity.

[131] In the case of Ms. KP the Review Panel found that Mr. Valovic did not provide her with the particulars of the cost of the repairs prior to completing them. She was a senior citizen and expressed her concern as to the costs: Mr. Valovic was intentionally vague in order to avoid disclosing the actual cost of the repairs before he had an opportunity to complete them. This was not acting with honesty and integrity.

[132] In the case of consumers AT and RB, Mr. Valovic made a false representation as to the suitability of the breaker that was installed; it was not the right type and created a safety issue. He also conducted himself in a very intimidating and unprofessional manner in dealing with the consumers' complaint. Finally, in the case of consumer LC it was found by the Review Panel that Mr. Valovic misrepresented the cost of the inspection permit.

[133] It has been suggested by the Director that the contracts that the Licensees have entered into with various consumers were 'direct contracts' as defined under the *Consumer Protection Act, 2002* (CPA) and therefore those consumers had a right to cancel the contract without repercussions. No authorities were submitted on this point nor were arguments made as to why these contracts should be considered Direct Contracts.

[134] The Licensees have raised some legitimate arguments as to why these contracts are not direct contracts as defined above. In particular, they point to the fact that the consumers requested IEL to attend their home and the work requested is generally carried out immediately. These factors would suggest that these are not the types of contracts intended to be treated as direct contracts to which the 10 day cooling off period provided to a consumer is applicable. The Review Panel sees the logic in this argument. However, regardless of whether the contracts entered into by IEL qualify as 'direct contracts', they are consumer agreements, and consumers are not to be subjected to dishonest or unfair business practices. There is freedom to contract and consumers are free to make bad deals. However, the CPA sets out principles of consumer protection and it makes it clear that consumers are to be treated with honesty and they will have recourse when they have entered into a contract as a result of unfair business practices. Section 14 of the CPA defines what constitutes unfair business practices and it includes when false, misleading or deceptive representations have been made. The Review Panel has found that Mr. Ivan Valovic made false, misleading or deceptive representations to consumers and therefore finds that Licensees have not acted in compliance with the CPA nor with honesty and integrity..

[135] The Review Panel has concluded, after considering all the evidence, that the conduct of IEL and Mr. Ivan Valovic in its totality provides reasonable ground for the belief that the Licensees will not carry out the activities of their licenses in accordance with the law, safely or with honesty and integrity and in accordance with the principles of protecting consumers.

[136] 3. Did the Applicants fail to comply with or meet a requirement of the Electricity Act, 1998, Part VIII, Ontario Regulation 570/05, associated regulations, or an Order issued by ESA?

[137] Under s. 4(1) of Regulation 570/05 it was IEL's duty to ensure that all electrical work carried out on the electrical contractor's behalf was carried out in accordance with all applicable law, including the Electrical Safety Code and the law relating to consumer protection. Under s. 6 of Regulation 570/05, it was the responsibility of Mr. Ivan Valovic as a designated master electrician to ensure that all electrical work is carried out in accordance with applicable law, including the Electrical Safety Code and laws relating to consumer protection, on behalf of the electrical contractor. Given the findings of Code violations and failure to comply with the CPA, the Review Panel finds that the Licensees failed to fulfill their duties and responsibilities under s. 4(1) and s. 6(b) of Regulation 570/05.

SUMMARY

[138] The Review Panel concludes, for the reasons outlined above, that the grounds for suspending the licences of the Licensees under s. 113.2(2) a), b), d) and f) have been proven to exist. It is the expectation of the public that only honest and compliant persons will be licenced under the Act and it is the responsibility of the ESA to ensure this. There is a need here to protect the public and maintain the reputation of the profession. Although the findings of the Review Panel may have supported the revocation of the Applicants licenses it is hoped that a suspension will act as a specific deterrence to the Licensees, and provide rehabilitation to Mr. Ivan Valovic so that there will be no further instances of dishonest or non-compliant conduct. The Review Panel is giving the Licensees a second chance, however, repetition of the conduct which gave rise to the Director's Proposals will clearly justify further sanction, potentially of a permanent nature.

[139] The suspension of the licence of IEL shall be for 90 days. The suspension for Mr. Ivan Valovic shall also be for 90 days or until he provides proof to the Director of Licensing and Certification that he has attended a master electrician training course and has successfully completed and passed the Master Electrician examination, whichever period is longer. The reduction of the penalty of Mr. Valovic, from that proposed by the Director, reflects the fact that not all the allegations set out in the Proposals were proven. The requirement for retraining is to address the deficiencies in Mr. Valovic's understanding of the Code Rules which became apparent during these proceedings.


ORDER

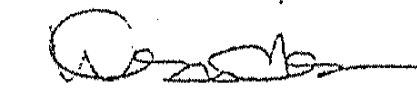
[140] Pursuant to section 14(11) of Ontario Regulation 187/09 under the *Safety and Consumer States Administration Act, 1996*, the Review Panel hereby orders that

1. The Electrical contractor Licence of Ivan's Electric Limited be suspended for a period of 90 days commencing on September 9, 2011. Prior to September 9, 2011, all existing Wiring Notifications (permits) in Ivan's Electric Limited's name shall have the work completed and a final inspection scheduled with ESA or transferred to and completed by another Licensed Electrical Contractor. During the period of suspension neither the company nor its employees are permitted to carry out any activities under this Licence.
2. The Master Electrician Licence of Ivan Valovic be suspended commencing on September 9, 2011 for a period of 90 days or until Mr. Valovic provides to the Director proof that he has attended a master electrician training course and has successfully completed and passed the Master Electrician examination, whichever period is longer. During the period of suspension Ivan Valovic must cease being the designated master electrician for Ivan's Electric Limited and is not permitted to act as a master electrician or carry out any of the responsibilities of a designated master electrician on behalf of any electrical contractor.

REVIEW PANEL


Elizabeth Sproule


Robert Brownie


Wasim Hassan

Date of Release: August 26, 2011