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**ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING**

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BETWEEN:

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

- and -

**DIRECTOR, LICENSING AND CERTIFICATION**  
(the "Director")

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**ORDER**

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

File Number: 6000180 and 7000089

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

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**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
	)	
	)	

## ORDER

The Licensees seek costs against the Director of Licensing and Certification (the "Director") on a substantial indemnity basis in the amount of \$19,415.90 in relation to the unsuccessful motion brought by the Director for the disqualification of the Review Panel. The motion was heard on July 19, 2011. Both the Licensees and the Director provided submissions on this issue.

The Review Panel has been given the authority to order costs under Regulation 187/09 (the 'Regulation'). Section 14(10) provides that the Review Panel may order costs where an appeal is found to be frivolous or vexatious. Section 14(12) provides for a general authority to order costs payable by the parties to the appeal. Subsection 15 of the Regulation provides that the Electrical Safety Authority (the "ESA") may make rules of procedure for hearings conducted by the Review Panel and those rules may be of general or specific application. The ESA made Rules of Procedure for Appeals of Director's Notices and Decisions on Licences, (the "Rules"), and Rule 17 sets out how the Review Panel is to exercise its authority to order costs.

There are two circumstances identified in the Rules where the Review Panel may award costs. Under Rule 17.1 the Review Panel may award costs if it finds that the appeal is vexatious or frivolous. This rule reflects the authority to order costs set out in Section 14(10) of the Regulation. Obviously costs under this Rule will always be against an Applicant as they are the party bringing the appeal.

The second circumstance is set out in Rule 17.3, which provides that where the Review Panel unanimously finds that a party has acted unreasonably, frivolously or vexatiously the Review Panel may order that party pay the costs of another party or parties to the proceedings as determined under Rule 17.4. Rule 17.3 flows from the authority to order costs set out in Section 14(12) of the Regulation. Rule 17.4 provides that when determining the appropriate award of costs the Review Panel shall consider all the circumstances and that the costs awarded shall not exceed \$400 if the hearing is not commenced and \$800, if the hearing is commenced, times the number of days that the Review Panel conducts a hearing of the matter. The Review Panel notes that these cost limitations are the same as those imposed upon the License Appeal Tribunal which hears similar appeals of regulators' proposals to refuse, revoke, or suspend licences under numerous other provincial statutes.

The language of the Rules, and their apparent purpose, are reflective of, and consistent with, the provisions of Section 17.1 of the Statutory Powers Procedures Act which states, in summary: that a tribunal shall not make an order to pay costs under this section unless the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith and the tribunal has made rules

with respect to the ordering of costs, the circumstances in which costs may be ordered and the amount of costs or the manner in which the amount of costs is to be determined.

In determining whether a party acted unreasonable, frivolously or vexatiously Rule 17.2 provides that the Review Panel shall consider all of the circumstances and gives some examples of what conduct may be considered. These include such things as a party failing to attend, failing to comply with disclosure requirements, and causing unreasonable delay or the prolonging of the duration of a hearing.

The Licensees have argued that Rule 17.5 empowers the Review Panel to make unfettered orders as to costs payable by the parties to the appeal. Rule 17.5 states

Pursuant to Part III, subsection 14(12) of the Regulation, the Review Panel may make orders as to costs payable by the parties to the appeal and orders requiring the parties to the appeal to reimburse the Authority for its expenses incurred in respect of the appeal.

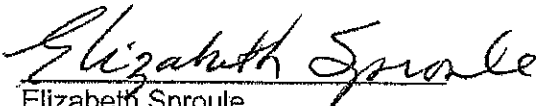
Clearly this is simply a restatement of subsection 14(12) of Regulation 187/09.


If it was the intent that Rule 17.5 was to provide unfettered power to the Review Panel to award costs, there would be no purpose to Rules 17.1 to 17.4. It would also lead one to the conclusion that cost awards could be made against a party simply for being unsuccessful. That would certainly have a chilling effect on any Applicant to ever make an appeal and the Review Panel concludes that this was not the intent as an appeal to the Review Panel is by right. The Review Panel concludes that the discretion of the Review Panel was intended to be fettered and the general rule set out in 17.5 does not override the specific Rules 17.1, 17.2, 17.3 and 17.4. In other words, an appeal has to be either frivolous or vexatious, or a party has to act unreasonably, vexatiously or frivolously before costs will be awarded against them.

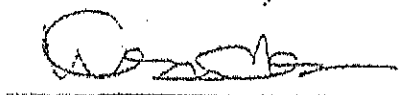
The Review Panel has considered all the circumstances and unanimously finds that the Director has acted unreasonably in this matter. The allegations forming the basis of the motion were not supported by the facts and irrelevant issues were raised: it unnecessarily delayed and prolonged the hearing process. Pursuant to s. 17.4 the maximum in costs that can be awarded is \$800 per day for the hearing of the matter. The costs award is therefore limited to the one day of the hearing of the motion.

The Review Panel hereby orders that the Director pay costs in the amount of \$800 to the Licensees within 30 days of the release of this order.

**REVIEW PANEL**

  
Elizabeth Sproule

  
Robert Browne

  
Wasim Hassan

Date of Release: September 15, 2011