

APPEAL NUMBER: NOAC 23-01

IN THE MATTER OF APPEALS UNDER PART II & III OF O. REG 187/09 MADE UNDER
THE *SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT, 1996*

BETWEEN:

1277897 ONTARIO LTD.

Appellant

- and -

GENERAL MANAGER, ELECTRICAL SAFETY AUTHORITY

Respondent

DECISION OF THE REVIEW PANEL

Review Panel: Richard E. Austin (Presiding Member), George Matai, Andrew Bloomfield

Hearing Dates: June 24-26, 2024, April 23, 2025 and May 16, 2025.

Appeal Number: NOAC-23-01

For the Appellant

Bozidar Nikolic (assisted by Boban Nikolic)

For the General Manager

Jonathan Hurter and Maureen Salama

Independent Legal Counsel

Justin Safayeni

I. DECISION

1. This decision addresses the Appellant's appeal of a decision of the Director of Reviews and Appeals ("**Director**") dated December 21, 2022 (the "**Director's Decision**"). The Director's Decision affirmed an Electrical Safety Authority Order dated July 14, 2022 ("**ESA Order**"), which required the Appellant to remedy 12 defects with respect to a building at 634 Lasalle Blvd. in Sudbury, Ontario (the "**Property**").
2. For the reasons set out in this decision, the Review Panel has dismissed the appeal.

II. PROCEDURAL BACKGROUND

3. The Appellant was represented in this appeal by Bozidar Nikolic, assisted by his son Boban Nikolic. We will refer to them in this decision as Mr. Nikolic Sr. and Mr. Nikolic Jr., respectively. Mr. Nikolic Sr. is the sole officer and director of the Appellant.
4. According to the Agreed Statement of Facts filed by the parties¹:
 - a. The Property is a multi-residential property containing approximately 47 residential units, owned and operated by the Appellant;
 - b. On June 22, 2022, the ESA carried out an inspection at the Property;
 - c. One June 23, 2022, the ESA issued a 'Hazardous Investigation Defect Notice' (Notice #70230523) ("**2022 Notice**") with respect to the Property, outlining a total of 12 defects ("**Defects**");
 - d. On July 7, 2022, the ESA issued a 'Hazardous Investigation Defect Notice – Follow-up' with respect to the 2022 Notice and the Defects therein;
 - e. On July 14, 2022, the ESA issued the Appellant the ESA Order, which required the Appellant to remedy the Defects identified in the 2022 Notice.
5. The Appellant requested that the Director to review the ESA Order, which was made pursuant to section 113(11) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched A ("**Act**").
6. On December 21, 2022, the Director issued the Director's Decision, affirming the ESA Order requiring the Appellant to remedy the Defects with respect to the Property.
7. On January 10, 2023, the Appellant filed its Notice of Appeal in respect of the Director's Decision. On the main page of the Notice of Appeal, the reasons for the appeal are described as follows:

Request by Electrical Inspector and Directors Interim and Final Decision to test (megger) the all [sic] wires and equipment in the building due to roof

leak where the roof effected only 3 units and other 45 units and common including service room not effected.

8. In a further document submitted on January 19, 2023, the Appellant outlined its position in some further detail. That document concluded by saying: “In summary to repeat the request by ESA to megger all building wiring except 3 units impacted by water leak was not necessary, unwarranted and unreasonable.”
9. As is apparent from the Notice of Appeal and the further document submitted on January 19, 2023, the focus of this appeal is on a particular defect relating to water leaking into the Property (“**Defect #9**”). As set out in the 2022 Notice, Defect #9 states as follows:

0009 2022/06/23 Life and/or Property TSOS Morrissette, Sebastien
DEFECT:
OESC 2021 Rule 02-032 3) - Electrical equipment has been exposed to ingress of water; it shall be evaluated to ascertain whether or not the equipment may be placed back into service.
Defect Text:
*****There is water coming in the building and water dripping out of some of the electrical fixtures, inspect and test the fixtures and the wiring in every unit on the property following the ESA Guideline-for-electrical-installations-exposed-to-water found on the ESA website. *****

10. Defect #9 itself relates to the ingress of water within the Building, i.e. “electrical equipment has been exposed to ingress of water”.
11. However, the 2022 Notice also sets out what steps must be taken in response to the defect, i.e. “inspect and test the fixtures and the wiring in ever unit on the property” in accordance with the ESA’s “Guidelines for Electrical Installations Exposed to Water” (“**Guidelines**”). The latter component was commonly referred to during the hearing as the “meggering” requirement.
12. Pursuant to section 10(5) of O. Reg. 187/09, the appeal of the Director’s Decision “operates as a stay of the decision pending the outcome of the appeal”. However, section 10(6) provides that “upon application of the Director, which may be made without notice, the Review Panel may order that the stay of the decision be lifted if, in its opinion, the action is necessary in the interest of public safety”. The Panel received such an application and determined the matter in writing, after receiving submissions from the parties. On September 6, 2023, the Panel ordered that the stay be lifted.
13. In the lead-up to the hearing, the Appellant sought summonses in respect of several witnesses, and the Respondent brought a motion to have several of those summons requests refused on the basis of irrelevance. The parties exchanged written arguments and appeared for oral argument on the motion. On May 27, 2024, the Panel released its decision on the summons motion, denying certain summons requests, but granting summonses in respect of Robert Gilbeau (owner/operator at Madden Electric) and Michael C. Broderick (senior project supervisor at Schneider Electric). Mr. Gilbeau and Mr. Broderick conducted meggering at the Building on or about October-November 2022 and September 2023, respectively.

14. The hearing of the appeal took place on June 24, 25 and 26, 2024, April 23, 2025, and May 16, 2025. Both parties confirmed they were prepared to proceed before the Panel and had no concerns regarding the constitution of the Panel.
15. The lengthy break in between hearing dates was a result of the parties jointly requesting an adjournment on June 26, 2024 in order to see if they could work towards a resolution. After it became apparent that this would not occur, there were a number of scheduling difficulties that led to the new dates being booked for April and May 2025. Given what amounted to a lengthy mid-hearing adjournment, the Panel ordered transcripts of the June 2024 hearing dates and provided these to the parties in advance of the April 23, 2025 hearing date.
16. The parties were provided a chance to make oral closing submissions (with the Appellant choosing to forego its opportunity to do so), followed by submissions in writing. The Panel received advice from independent legal counsel orally on May 16, 2025 and then in writing on July 30, 2025. The advice from independent legal counsel was disclosed to both parties, who were provided with a chance to comment on that advice (with the Appellant foregoing its opportunity to do so).
17. Over the course of the hearing, 53 documents were marked as numbered exhibits. Some documents were also marked as lettered exhibits, but these do not form part of the evidence relied upon by the Panel in this proceeding.
18. The Appellant called evidence from Mr. Nikolic Sr., Mr. Nikolic Jr., and Robert Gilbeau (by way of summons). The Respondent called evidence from Serge LaFlamme.

III. RULINGS MADE DURING THE HEARING

19. The Panel made a number of rulings throughout the hearing, with respect to the scope and conduct of the hearing. Some of those rulings are summarized briefly below.
 - i. Scope of appeal hearing limited to issues raised in Notice of Appeal*
20. On the first day of the hearing, during the examination in chief of Mr. Nikolic Jr., an issue arose as to the proper scope of this appeal. The Appellant took the position that this appeal challenged every aspect of the ESA Order — meaning all 12 Defects in the 2022 Notice. The ESA took the position that the appeal, as framed, related only to Defect #9, which dealt with the ingress of water into the Building and the meggering requirement.
21. The Panel ruled that based on grounds set out in the Appellant’s Notice of Appeal, the scope of the appeal hearing was properly limited to a challenge in respect of Defect #9. The Panel further concluded that even beyond the Notice of Appeal, the Appellant’s further appeal submission on January 19, 2023 also focused on complaints in respect of Defect #9. It would be fundamentally prejudicial and unfair to expand the scope of the appeal hearing after it has already commenced, so as to include and encompass all of the Defects, when the clear focus of the Appellant’s complaint has always been on Defect #9.

ii. Michael C. Broderick not allowed to be called as a witness

22. As outlined above, in May 2024, the Panel agreed to sign a summons for Michael C. Broderick. In its ruling, the Panel expressed some reservations about the ultimate relevance of his evidence.
23. Subsequently, however, the Appellant never sought to call Mr. Broderick as part of his case. In fact, on the second hearing day, Mr. Nikolic Sr. repeatedly confirmed that he would not be calling Mr. Broderick.² Thereafter, on August 30, 2024, the Panel sent out a detailed procedural direction for remaining steps to be completed in the hearing — which did not contemplate the Appellant calling Mr. Broderick as a witness — and advised that “[i]f a party intends to raise any concern relating to this direction, they should do so by way of proper motion to be delivered no later than September 18, 2024.” The Appellant raised no concerns or objections.
24. Then, on April 21, 2024 — less than 48 hours before the hearing was slated to resume — the Appellant sought to resuscitate its summons of Mr. Broderick and call him as a witness. The Panel signed the summons but made it clear that “at this late stage of the hearing, no further witnesses beyond those set out in the August 30, 2024 procedural direction will be permitted without leave of the Panel... To be clear, notwithstanding the summons for Mr. Broderick’s attendance, the Panel has not yet determined whether its procedural direction will be modified so as to allow Mr. Broderick’s participation as a witness.” The Panel directed that there be oral argument on the issue at the outset of the next hearing day on April 23, 2024.
25. After hearing argument on April 23, 2024, the Panel ruled that Mr. Broderick would not be permitted to give testimony. The prejudice flowing from the last-minute nature of the Appellant’s request to call Mr. Broderick, without any reasonable explanation for raising the matter in the months since the last hearing date, was a sufficient basis to deny the request. The Panel also considered that Mr. Broderick’s evidence would be of questionable and limited value, particularly since the main document he could speak to — the Schneider Electric report — had already been admitted into evidence, and the Appellant did not previously believe Mr. Broderick was needed to speak to that report.

iii. Appellant’s new documents are not admitted into evidence

26. On April 19, 2024 — some four days before the hearing was scheduled to resume — the Appellant sought to have a 19-page pack of documents admitted into evidence. The Respondent immediately objected, both on the basis of settlement privilege and on the basis of overall prejudice. The Panel directed that the matter be the subject of argument when the hearing resumed on April 23, 2024.
27. After hearing oral argument from both parties, the Panel directed that the new documents would not be admitted as evidence. Pages 1-8 were denied admittance on the basis of settlement privilege. Pages 9-19 (to the extent they were not already part of the record) were denied admittance on the basis that the documents were not relevant and, in any event, were admitted so late that prejudice would flow if they were allowed to form part of the record.

² July 25, 2024 hearing transcript at pp. 199 and 267.

IV. EVIDENCE

28. The Panel has carefully reviewed all of the documentary and testimonial evidence in this matter. What follows is a brief, high-level summary of some of the evidence, and should not be taken as a full recounting of the record reviewed by the Panel.

i. The Nikolics

29. Much of the evidence offered by the Nikolics was not relevant to the issues the Panel had to consider. Evidence of matters that arose after the ESA Order was issued are not relevant to the issues the Panel needed to consider, unless they logically bear upon the state of the Building at the time of the ESA Order. It is also irrelevant that repairs conducted in response to inspections undertaken in the past, as early as 2014, were deemed satisfactory or “cleared”. For example, considerable time was spent reviewing prior deficiency notices relating to prior instances of the roof of the property leaking and how these had been “cleared”.
30. The Nikolics relied on the wording of the applicable Guidelines to suggest that absent flooding or other specifically listed types of ingress of water in the Guidelines that the simple ingress of water did not trigger the requirement to megger the wiring. The fact that Schneider Electric’s meggering results indicated that the insulation on the wiring was not compromised was put forward as evidence that there was no “defect”.
31. Although they admitted there was ingress of water due to a leaking pipe, the Nikolics indicated that any evidence of ingress of water was not sufficient to justify Defect No. 9.
32. Much was made of the Nikolics’ view that the original meggering conducted by Mr. Guilbeau was faulty as the equipment used was faulty and a subsequent test by Scheider Electric established that the circuits in question had no faults. As this information was not known and could not be known by Mr. LaFlamme — and given that it occurred well after the issuance of the ESA Order — it was not relevant. The efforts to repair the roof while of interest did not provide a rebuttal as to the evidence of Mr. Morrisette’s inspection report or the photographs that showed damage from water ingress.

ii. Robert Guilbeau

33. As the evidence of Mr. Guilbeau related to the megger testing he conducted well after the date of the ESA Order, the Panel determined that it did not bear on the state of the Building at the time of the inspection leading to the ESA Order and it was not relevant to the issues to be considered.

iii. Serge LaFlamme

34. The Panel found the testimony of Mr. LaFlamme both reliable and credible in terms of his review of the inspection report of Mr. Morisette and the review of the ESA’s records with respect of the Building. It is evident that he was diligent in reviewing the information available to him at the time he issued the ESA Order to meet his obligations under the Act.

V. ISSUES TO BE DECIDED

35. The overall question to be decided on this appeal is whether the ESA Order should be upheld, or whether it should be set aside or otherwise varied, in whole or in part. In assessing this issue, the Panel has found it helpful to frame the issues as follows:
- a. The approach to be taken to reviewing orders (such as the ESA Order) under section 113(11) of the *Act*;
 - b. Whether there are reasonable grounds to support the ESA Order, as it relates to Defect #9, i.e. that electrical equipment in the Building was exposed to the ingress of water; and
 - c. Whether there are reasonable grounds to support the ESA imposing the meggering requirement as part of the ESA Order.
36. There is no factual dispute that the Appellant had complied with the meggering requirement as of the date of the ESA Order. In other words, if there were reasonable grounds for Defect #9 and the meggering requirement, then there is no dispute that the Appellant had not conducted the meggering by the date of the ESA Order.

VI. ANALYSIS

A. Reviewing orders under section 113(11) of the *Act*

37. The Panel finds that orders under section 113(11) of the *Act* ought to be reviewed by asking whether there were reasonable grounds for making the order at the time it was made. In the case of the ESA Order, that would mean requiring there to be reasonable grounds to support Defect #9 (i.e. that “electrical equipment has been exposed to the ingress of water”) and that there were reasonable grounds to impose the meggering requirement in response to Defect #9.
38. The Panel finds that affording the ESA some degree of deference when making orders under section 113(11) is appropriate, given the ESA’s role and recognized expertise in matters relating to electrical safety. Such an approach is also consistent with the text of section 113(11), which affords the ESA broad discretion to impose any “orders... as the Authority considers necessary or advisable for the safety of persons or the protection of property”.
39. Moreover, there was no dispute between the parties that the “reasonable grounds” standard was appropriate in this case. The Appellant’s closing arguments were based on that standard.³ So too were the closing arguments of the Respondent.⁴ Independent Legal Counsel (“ILC”) also supported the use of this standard in assessing the ESA Order. With only minor nuances, the Respondent agreed with ILC’s advice on this point, and the Appellant provided no further comment on the issue.

³ Appellant Written Closing Submissions at p. 17.

⁴ Respondent Written Closing Submissions at p. 36.

40. In its submissions, the Appellant notes that the reasonable grounds standard “must be supported by objectively verifiable facts” and that “mere suspicion, conjecture, hypothesis or ‘fishing expeditions’ does not meet the standard for reasonable grounds”.⁵ The Panel accepts this description of the standard and will proceed to apply it below.

B. Were there reasonable grounds to support the existence of Defect #9?

41. The Panel concludes that there were reasonable grounds to support Defect #9, i.e. that electrical equipment in the Building had been exposed to the ingress of water as of on or about the date of the ESA Order on July 14, 2022 (and the inspections leading to that order). In reaching this conclusion, the Panel largely accepts and adopts the Respondent’s recitation of the facts and the evidence in the Respondent’s written closing submissions, although as outlined further below the Panel does not rely on the hearsay evidence of tenant complaints.
42. The Panel finds, as a matter of fact, that water had entered into the Building on or about the date of the ESA Order. The Panel reaches this conclusion for several reasons.

i. Photographs, Mr. Morisette’s report and Appellants’ admissions

43. First, the Panel relies on the photos that were submitted as evidence — including those taken by both Mr. Morisette on June 29, 2022 (see, e.g., Exhibits 20 and 22) and the Appellant on June 30, 2022 (see, e.g. Exhibits 16-19 and 21). A number of photos showed clear evidence of water damage on walls, ceilings and electrical wiring and fixtures in the Building. While the Nikolics dismissed the severity of the damage the Panel considered the photographs indicative of significant water entering the Building.
44. Second, the Panel relies on Mr. Morrisette’s report, which details him having observed water and water damage on electrical devices at the Building, as reflected in his notes.
45. The Applicant submitted that the various ESA records regarding the property including notes and photographs should not be admitted as evidence and if admitted should be given little weight as Mr. Morrisette was not called as a witness and not subject to cross-examination. The applicant was aware that Mr. Morrisette was not going to be called by ESA and could have chosen to subpoena him. In any event, the Panel concluded that the documents in question were “business records” and are admissible on that basis under Ontario’s *Evidence Act* (s. 35), and were also admissible under the ESA’s *Rules of Procedure* (rule 17.1). Given the circumstances in which Mr. Morrisette’s notes and photographs were collected (including the notes being permanent and password protected), the Panel concludes that they have the indicia of reliability and credibility and ought to be afforded significant weight.
46. Third, the Panel relies on admissions from the Nikolics themselves. During his testimony, Mr. Nikolic Sr. admitted that a water pipe had leaked and a photo was entered into evidence of the pipe in question. There was also an admission that water had entered the Building as a result of ice building up on the roof of the Building, which necessitated repairs to the roof. Mr. Nikolic Jr. acknowledged photographs depicting water damage in the Building in the weeks before the ESA Order, although he attempted to minimize the damage as minor.

⁵ Appellant Written Closing Submissions at p. 17.

47. We note that the Applicant has submitted that Mr. LaFalamme's notes state that "no water entry on the units he visited that day" on the day of his visit on July 23, 2022 and contends that this is at odds with Mr. Morrisette's notes indicating that water was entering the Building. We do not see these points as contradictory, as some time had passed between the date of Mr. Morrisette's inspection and Mr. LaFalamme's visit and source of the water that entered the Building may have dried up or been repaired. In any event, it was clear from the evidence of Mr. Morrisette that water had entered the Building and had caused physical damage.
48. The Panel has concluded that the foregoing establishes on the balance of probabilities that water had ingress into the Building on more than one occasion, and that water had ingress at the time of the inspections leading up to the ESA Order and the time of the ESA Order itself. We found Mr. LaFalamme's testimony compelling and reliable and his credentials more than satisfactory in finding that his decision to sign and issue the Order was based on evidence of ingress of water.

ii. Complaints from tenants

49. We have not relied on hearsay evidence regarding tenant complaints in coming to our decision and do not consider that evidence necessary to support our conclusions.
50. While Mr. Morrisette noted that there were complaints from tenants regarding water in electrical fixtures, the Panel has not given hearsay evidence any weight. Our conclusion would not have differed if we had not been advised of the complaints.

iii. History of the Water Leaks at the Building

51. While not directly relevant to the question as to whether there was ingress of water evident at the time of Mr. Morrisette's inspection, the Panel views the history of water ingress prior to the issuance of the ESA Order as a reasonable factor for Mr. LaFalamme to consider in making the ESA Order, given that he stated that the insulation of wires can degrade over time when exposed to water if not rated for such exposure. The record included evidence of water leaks in April 2014, March 2016 and Winter 2021/2022 or Spring 2022.
52. Given the need to ensure the safety of property and the tenants, the testing of the wiring by meggering is reasonable, both given the evidence of water ingress in the inspection leading to the ESA Order, and in light of the history of water ingress due to problems with the roof of the Building.

C. Were there reasonable grounds to support the meggering requirement?

53. The Panel concludes that there were reasonable grounds to support the meggering requirement in the circumstances of this case. The Panel notes that the meggering requirement was not particularly onerous in its view.
54. The Nikolics submitted that meggering all the circuits in the Building was not necessary as it would be sufficient to megger only the affected circuits, being those for the apartments and common areas where evidence was presented indicating ingress of water. As noted


above, the Panel's view is that the meggering of all units in the Building was reasonable, prudent and appropriate to ensure the safety of the property and the tenants in the Building. This is particularly so given that much of the ingress of water occurred behind walls in various units, and so determining the exact extent to which circuitry in the Building may have been impacted by water ingress was difficult to determine short of requiring meggering of all units.

55. The Appellant took issue with the application of the Guidelines as the specifics of the ingress of water in the Building is not on the list of types of ingress that are subject to the Guidelines. The Panel is of the view that the listed types are simply examples of types of ingress of water that is subject to the Guideline, given its broad purpose of ensuring the safety of person and property in situation where water enters a structure and its wiring is exposed to water. In other words, the Guidelines are not meant to exhaustively define the types of water ingress that relate to the kinds of concerns set out in the Guidelines. Any other conclusion would not be consistent with the purpose of the Guidelines.

VII. ORDER

56. For the foregoing reasons, the Panel orders that the appeal is dismissed.
57. The Respondent may provide costs submissions of no more than 5 pages (excluding costs outlines) to the ESA Reviews and Appeals Office by November 15, 2025. The Appellant may respond in writing by December 1, 2025, with submissions of no more than 5 pages. Any reply submissions by the Respondent as to costs should be submitted by December 8, 2025 and shall not exceed 3 pages.

October 20, 2025



Richard Austin, Presiding Member
George Matai
Andrew Bloomfield