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**ELECTRICAL SAFETY AUTHORITY REVIEW PANEL**

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**B E T W E E N:**

**IVAN'S ELECTRIC LTD.**

**(the "Applicant")**

**- and -**

**DIRECTOR, LICENSING AND CERTIFICATION**

**(the "Director")**

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**DECISION**

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Review Panel: Shelly Cunningham, Mel Fruitman and Robert Lake

Hearing Dates: July 14, 2014, September 3, 5, 8, 12, 16, 23, 2014, November, 14, 24, 28, 2014, December 4, 5, 11, 19, 2014 and January 30, 2015

Appeal Number: NOAL 13-03

**APPEARANCES**

Director of Licensing

) Daniel Pugen, Counsel  
) Jenifer Robertson, Director  
)  
)

Ivan's Electric Ltd.

) Todd Hein, Counsel  
) Ivan Valovic  
)

## **I. BACKGROUND**

1. 15 Hearing dates in this matter were held between July 2014 and January 2015 before the Review Panel comprised of Shelly Cunningham, Mel Fruitman and Robert Lake. There were no objections to the jurisdiction of the Review Panel to hear this matter.
2. Oral evidence was submitted and both parties provided supporting documents.
3. The issue before the Review Panel was the Director's decision to confirm a Notice of Proposal (the "Notice") denying the Applicant's application for an electrical contractor license.
4. A pre-hearing conference call in this matter was held before this Review Panel to determine the order of proceedings. The parties agreed that the most efficient and practical way to proceed was for the Director to present her evidence first, which would allow the Applicant the ability to properly respond. Despite this change in the presentation of evidence, closing arguments were conducted in the normal order.

### **(a) The Notice**

5. Ivan Valovic is an electrician and has been working as an electrician in Ontario since 1975. Ivan Valovic, is the owner of Ivan's Electric Limited ("Ivan's Electric"). Ivan's Electric was a licensed electrical contractor pursuant to the *Electricity Act, 1998* (the "EA") until March 14, 2013, when a Review Panel revoked the license in appeal NOAL 12-01 (the "Revocation Decision").
6. Ivan's Electric's electrical contractor license was revoked because it no longer had a master electrician due to the expiry of Mr. Valovic's master electrician license. Ivan's Electric, and Mr. Valovic personally, have appealed the Revocation Decision. Ordinarily, that appeal would result in a stay of the Revocation Decision; however, that Review Panel found there was a safety reason to lift the stay. Accordingly, with the stay lifted, the Applicant was not permitted to operate as of March 14, 2013.
7. Ivan's Electric filed an Application for a new electrical contractor's license in May 2013, which had Peter Valovic, Ivan Valovic's son, listed as the master electrician. Peter Valovic, is also the owner of, and master electrician for, Insight Electric Limited ("Insight").
8. The Application was rejected through the Notice.

### **(b) The Appeals**

9. The Applicant appealed the Notice to the Director. The grounds for appeal were:
  - a. Ivan's Electric did not continue to operate and that Ivan Valovic only worked as an employee of Insight following the Revocation Decision.

- b. The yellow pages advertisements could not be removed immediately.
  - c. The Applicant had repainted the business number on the truck.
  - d. Mr. Valovic would wear blue shirts representing Insight's corporate colour.
  - e. Mr. Valovic stopped answering the phone as Ivan's Electric.
10. The Applicant appealed the decision to the Director, Licensing and Certification. The Director confirmed the decision to reject the Notice. The Applicant filed the appeal of the Director's decision to this Review Panel.

## **II. FACTS**

11. Both parties presented considerable amounts of evidence throughout the 15 days of hearing. The Review Panel heard from 18 witnesses, 12 of which were homeowners who had electrical work performed by Ivan Valovic. The Review Panel was presented with multiple volumes of documents by both parties, which also included a video clip from CTV News. While the parties differed in their characterization of the evidence, surprisingly given the volume of evidence, there are actually very few relevant facts that are in dispute.
12. It should be noted that given that this is a Notice of Proposal, and not a Notice of Defect, this Review Panel is more concerned with how the Applicant, and Mr. Ivan Valovic personally, will operate in the future, and not so much with establishing the veracity of any specific and particular incident. Accordingly, the Review Panel has focused on the pattern that the Applicant, and Mr. Valovic personally, has established in dealing with customers in general.
13. In doing so, the Review Panel has relied on the testimony of Mr. Valovic, Peter Valovic, the Director, Patience Cathcart, Shana Hole and the experience of the homeowners. In setting out the Applicant's operational patterns, homeowners will be used as an example, but because a homeowner has been cited as an example does not mean that he or she is the only homeowner to experience that particular situation. Further, if a homeowner's specific experience is relevant to an issue in dispute it will be noted in this decision.
14. On April 2, 2012, the ESA issued the Notice of Proposal revoking the Applicant's electrical contractor's license. The Applicant appealed to the Director and subsequently to a Review Panel, which resulted in the aforementioned Revocation Decision. As a result of the Revocation Decision, the Applicant was not able to perform electrical contracting services. Mr. Valovic could work as an electrician as an employee for another electrical contractor but Ivan's Electric could no longer operate.
15. Ivan's Electric was permitted to operate between April 2, 2012 and the Revocation Decision of March 14, 2013; however, Mr. Valovic testified that he believed that Ivan's Electric, was not permitted to operate as of April 2, 2012. This is important as it helps

to analyze Mr. Valovic's behaviour before and after the Revocation Decision and to reconcile his explanations.

16. Mr. Valovic testified that as of April 2, 2012, he stopped operating Ivan's Electric. As a result, Mr. Valovic began performing work for his son's company, Insight. The nature of the working relationship is in dispute and will be discussed in the analysis section of this decision, but both parties acknowledged that Mr. Valovic performed work for Insight.
17. At this time, Ivan's Electric still had advertisements that were in the annual yellow pages, as well as a website, and previous customers. The Ivan's Electric phone remained active, but any jobs that came in were "passed" to Insight. The effect and impact the passing of jobs has on this decision will be discussed in detail later in this decision, but from a mechanical standpoint, the parties agree to the process.
18. The process was as follows:
  - A customer would call Ivan's Electric.
  - Mr. Valovic would answer the phone and accept the job.
  - Mr. Valovic would not mention anything about Insight unless he was asked (although the Review Panel was never provided with specific instances where Mr. Valovic informed a customer on the phone that Insight would perform the work).
  - Mr. Valovic would not discuss the rates unless he was asked.
  - Depending on the type of call, Mr. Valovic would determine whether the situation was an "emergency" which resulted in the application of emergency rates. Mr. Valovic would consider it an emergency if: the weather was bad such as a snow or rain storm; there were multiple outages such as an during an ice storm; if the customer described it as an "emergency" on the phone; or the call was for service that was to occur outside of the regular business hours of Monday to Friday 9 am to 4 pm.
  - Mr. Valovic would not tell a customer that the emergency rates would apply unless he was asked.
  - The rates were \$180 for a service call plus, \$180 per person-hour. Customers would also be charged \$180 per person to troubleshoot where Mr. Valovic felt the customer did not adequately identify or describe the problem. For an emergency the rates were \$360 for an emergency service call, plus \$360 per person-hour, as well as \$360 per person to troubleshoot. These were the rates for Ivan's Electric as well as Insight.
  - After the call was complete, Ivan's Electric would then "pass" the job to Insight.

- Depending on the type of service call, Mr. Valovic might inform his son, Peter, that he was taking a job, but that was not a requirement. Peter would on occasion accompany Mr. Valovic to a job site depending on the person-power that was required for the service call.
  - Mr. Valovic would drive to the job site in his red Ivan's Electric van. Even on jobs where Peter accompanied him, the Ivan's Electric van was utilized. The Ivan's Electric name was eventually painted over in January 2014.
  - Upon arrival at the service call, Mr. Valovic would to some extent, attempt to explain that the job was being performed by Insight, although the depth and clarity of that explanation are in dispute.
  - If required, Mr. Valovic would troubleshoot the customer's problem and then in his own mind, estimate the amount of work required and subsequent cost. Mr. Valovic would write up a proposal, on an Insight form, outlining the scope of the work to be performed and the price. If troubleshooting was not required, Mr. Valovic would go straight to writing up the proposal. Even on jobs where Peter accompanied him, Mr. Valovic would lead the process and establish the pricing.
  - If, during the course of the work, another issue arose that was "outside" the scope of the work of the first proposal, Mr. Valovic would draft a second (or even third) proposal.
  - Once a job was completed, Mr. Valovic would accept payment, often through Visa. Depending on the job, Mr. Valovic would process the Visa payment directly to Ivan's Electric as a "commission" for the job. Mr. Valovic testified that this stopped after he was advised he could no longer do this.
  - If Mr. Valovic did not process a direct Visa payment, he would tally Ivan's Electric's "commission" and submit it to Peter for payment. Peter did not have any input into the "commissions" Mr. Valovic submitted. Mr. Valovic did not receive a wage, but rather a commission, for the work he performed on behalf of Insight.
  - If a customer had a complaint about a particular job that he worked on, Mr. Valovic, would respond to the complaint on Insight's behalf. Peter would refer customer complaints to Mr. Valovic.
19. The Review Panel recognizes that no two customers' stories were exactly the same, and each had their own specific details, but many of the differences were irrelevant to this decision, and the aforementioned process was consistently used.
20. It is the operation of this process, and the interplay/relationship between Mr. Valovic, Ivan's Electric and Insight, that led to the Notice that rejected the Applicant's application for an electrical contractor license.

### III. ISSUE

21. Was the Director entitled to reject the Applicant's application for an electrical contractor's license?

### IV. THE LAW

22. A matter before a Review Panel is a hearing *de novo*. Accordingly, as articulated in *Orangeville Hydro Limited and Director, Licensing and Certification*, dated February 11, 2011 ("*Orangeville Hydro*"), the appropriate standard of review is correctness. In making its decision, the Review Panel in *Orangeville Hydro* relied on section 14 (11) of Regulation 187/09:

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.

23. In applying section 14(11) of Regulation 187/09, the Review Panel stated the following at paragraphs 19 and 20:

The legislature has seen fit to give to the Review Panel wide authority to insert itself into the decision making process. While it may be that the Review Panel may choose to give deference to the Director in the exercise of certain decision making exercises that are conferred her under the EA in any individual case, the Review Panel clearly has great latitude to impose its perspective and to make the decision that it deems appropriate.

Although not determinative, the Review Panel is also supported in its view on this matter in that a hearing before a Review Panel is a hearing *de novo*.

24. This Review Panel adopts the reasoning in *Orangeville Hydro* whereby the standard of review is one of correctness.
25. Therefore to assess whether the Director was entitled to refuse to grant the electrical contractor license, this Review Panel analyzed the Applicant's actions in relation to section 113.2(2) of the EA. Section 113.2(2) reads:

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;

(c) the applicant or authorization holder lacks the basic resources necessary to carry out the activities;

(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;

(e) the applicant or authorization holder lacks the training, experience, qualifications or skills prescribed by the regulations;

(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;

(g) the authorization holder failed to comply with a restriction, limitation or condition of the authorization;

(h) the authorization holder obtained the authorization through misrepresentation or fraud; or

(i) the authorization holder permitted an unauthorized person to carry out the activities.

26. The use of the word “or” in 113.2(2)(h) indicates that so long as the Applicant is caught by one of the subsections, the Director will be entitled to refuse to grant the license.

## **V. SUBMISSIONS**

27. Both parties made capable and articulate submissions and the following is a brief summary of those submissions.

28. The Director focused her submissions on four specific subsections of 113.2(2). The Director submitted that she had reason to believe that the Applicant:

- a. Will not carry out the activities in accordance with the law (113.2(2)(a));
- b. Will not carry out the activities safely (113.2(2)(b));
- c. Will not conduct himself with honesty and integrity or in accordance with the principle of protecting consumers (113.2(2)(d));
- d. Failed to comply with or to meet a requirement of this Part, the regulations or an order of the Authority (113.2(2)(f));

29. In support of her belief, the Director submitted the following:

- a. Ivan’s Electric continued to operate following the Revocation Decision. Specifically, the Director pointed to the fact that Ivan’s Electric’s phone remained in service and was answered as “Ivan’s Electric”; Ivan’s Electric’s

van remained in use, with its paint job until January 2014; Mr. Valovic was seen on a CTV News clip appearing to be on behalf of Ivan's Electric, after the Revocation Decision; Ivan's Electric continued to advertise;

- b. Mr. Valovic operated as an independent contractor for Insight as opposed to an employee. Under O.Reg 570/05 only those with an electrical contractor license may act as independent contractors. The Applicant was paid commissions, was given a T4A, and the Applicant did not pay the appropriate taxes for an employee.
  - c. The Applicant continually overcharged customers.
  - d. The Applicant created confusion with customers as to who was performing the work. Mr. Valovic was not up front with customers about the relationship between the Applicant and Insight; and more specifically, how and why the Applicant's jobs were passed to Insight. Accordingly customers thought they were contracting with Ivan's Electric and thus they were dealing with a licensed electrical contractor.
  - e. The confusion meant that customers would not know they were getting a licensed contractor and therefore, there were safety implications.
30. The Applicant denied the Director's allegations. Mr. Valovic insisted that he was an employee of Insight as evidenced by the WSIB payments and a T4 for 2013. The Applicant noted that much of the advertising, and specifically that of the yellow pages, was paid in advance and pre-printed, and therefore could not be rescinded after the revocation; and if there was anything outstanding it was a mistake. The Applicant argued that he thought he was going to be successful on his appeal and therefore did not want to assume the expensive cost of re-painting his van. The Applicant argued that it was not operating, but was not completely shuttered because it hoped to win this appeal, so some administrative aspects, such as phone lines, remained active.
  31. The Applicant argued that Mr. Valovic is a very experienced electrical contractor and therefore is entitled to charge whatever rates he felt was congruent with his skills and abilities. He stated that he went through the proposals with the customers and that they were fully aware of the cost of his services before the work began.
  32. The Applicant also insisted that he was very up front about the fact that Insight was performing the work. He submitted at the time the work was performed that none of the customers that were witnesses questioned the relationship or had issue with the fact that Insight was performing the work.
  33. The Applicant submitted that there was no evidence submitted about the quality of his work or issues with the safety of his work.



## VI. ANALYSIS

34. The hearing lasted over several days and many witness and documents were presented, accordingly, there were a number of sub-issues this Review Panel had to determine in arriving at its decision. Accordingly, this decision is broken down into those sub-issues.

(a) The Van

35. There was no factual dispute about the van. The red “Ivan’s Electric” van remained in operation until January 2014, well past the Revocation Decision, when it was finally painted over to read “Insight Electric”. The Applicant did change the business number decals from Ivan’s Electric to Insight in August of 2013, but the visible name was Ivan’s Electric until January 2014. Mr. Valovic acknowledged that he drove the van around to jobs around the GTA., and would take it even when Peter was on the job.

36. There was however disagreement over the effect of the van. The Director stated that the red van added to the confusion for customers, especially when considering the business number was for Insight. Customers may have been told that Insight was doing the work, but the van would indicate that Ivan’s is actually performing the work. The customer would have called Ivan’s, Ivan showed up with the red Ivan’s van, and therefore any mention of Insight did not register.

37. The Applicant stated that it was very expensive to paint over the van and therefore, he did not want to incur the expense if he was going to be successful on appeal. The Applicant also stated that he was not advised by the ESA that he had to change the van, and once he was aware that it was an issue during the start of this appeal process, he had the van changed. The Applicant also stated that the van presented very little in terms of advertising, as he has never received a call from someone who saw his van. Further, the Applicant stated the customers never mentioned an issue with the van and any confusion about who was performing the work.

38. The Review Panel is not persuaded by the Applicant’s reasoning. To begin, the Applicant stated that he was never advised that the van was an issue until the hearing process began in the fall of 2013, which is why he waited until January 2014 to make the change. However, a review of page two of the Notice, as well as paragraph 23 of the Director’s decision shows that both mentioned the van as being an issue. Specifically, paragraph 23 of the Director’s decision states:

It would not have been a hardship for the Applicant to paint over the truck name display logo “Ivan’s Electric” ...The truck is worthy of mention as it is in *constant public view as well as present at a job site.*

[Emphasis in original]

39. The Notice was issued in May 2013 while the Director’s decision came out in August 2013. The Applicant did not fix the van until January 2014. Further, the Applicant

submitted his invoice for the change in name and it was approximately \$250. That is not nearly the expense the Applicant purported it to be. That is less than one hour of work at the Applicant's emergency rate.

40. As for the confusion aspect, the Review Panel is persuaded by the Director's submission. Customers would call Ivan's Electric. Ivan himself would show up in a red Ivan's Electric van. While we appreciate Mr. Valovic may have attempted to explain Insight's role, the number of customers who specifically testified to seeing the van and being confused about who was performing the work, is too persuasive.
41. Further, there is the issue of the CTV News clip. Mr. Valovic was interviewed on CTV News in regards to an ice storm in April 2013, after the Revocation Decision. The banner identifying Mr. Valovic, identified him as being from Ivan's Electric. Mr. Valovic was categorical in his denial that he told CTV that he was there on behalf of Insight. Accepting Mr. Valovic's assertion (and we have no reason not to as no witnesses from CTV were presented to contradict this assertion), CTV must have picked up the name "Ivan's Electric" somewhere. Mr. Valovic acknowledged that he drove the Ivan's Electric van to that site. It is therefore likely that, despite Mr. Valovic's categorical assertion to CTV that he was there for Insight, the van caused confusion to those at CTV as to whom Mr. Valovic represented.

(b) Pricing Practices

42. The Director presented a number of customers to support the fact that the Applicant was overcharging, and accordingly was not acting in the best interest of customers. The Director presented a number of customers who felt that the work performed did not justify the price paid. The Director referred to hours worked/spent on site versus hours charged.
43. The Applicant relied on the fact that he could set his own rates and that the customers agreed to the price before the work was performed. The Applicant also submitted that the Proposals were not estimates but rather fixed prices for the work performed. Since the customers agreed to the price, the number of hours it actually took was immaterial.
44. The Review Panel agrees with the Applicant that he is free to charge whatever rate he sees fit for his services. Several customers, including Mr. Chou and Mr. Christensen, provided what they thought were the rates that other contractors would have charged for the same work. However, the Review Panel was not persuaded by these other quotes. It was clear from the evidence that the quotes did not include the full scope of the work performed by Mr. Valovic and were therefore deemed irrelevant. There is no regulation for rates and therefore electrical contractors can establish the rates that he or she considers commensurate with his or her skills and abilities.
45. The Review Panel is prepared to accept the Applicant's assertion that the Proposals were in fact fixed price contracts. This, despite the fact that the fine print of the Proposal specifically refers to it being an "estimate". A large majority of the customers

acknowledged that they were prepared to pay the amount listed when they signed the Proposal. The only customer who really disputed that issue was Mr. Peter Christensen, who was categorical that he thought it was an estimate. The other outlying customer was Ms. Marjorie Riley. For her, the work was performed before the Proposal was presented.

46. The Review Panel is prepared to accept those as anomalies and has determined that the Applicant's practice appears to be that of a fixed price contract.
47. However, even accepting the fixed price theory, the Review Panel is troubled by the Applicant's acknowledged practices. Mr. Valovic testified that when he comes up with the pricing for a particular job, he estimates the number of hours it would take an average electrician to perform the work. He said he did this because it was not fair that he should earn less for a job because he is experienced and efficient. However, Mr. Valovic stated that the hourly price he charges is so high because he is experienced and efficient. By doing this, Mr. Valovic has acknowledged that he charges a premium hourly rate for being experienced and efficient, but he fixes the hours as though he is an average electrician. Therefore, the fixed price becomes significantly inflated, because Mr. Valovic invariably finishes the work much quicker than an average electrician.
48. Mr. Valovic testified that when working under fixed prices, he would come out ahead on some but lose on others. However, Mr. Valovic did not present any credible evidence of situations where he actually came out behind. The Director did present numerous cases, including (but not limited to) Mr. Tahtadjian, Ms. Patterson, Mr. Chou, Ms. Castador, Mr. Christensen and Mr. Lundie, where Mr. Valovic came out ahead.
49. In the same vein, Mr. Valovic is very ambiguous with his measurements for a fixed price contract. For example, he used the term "more or less" on Mr. Christensen's proposal and used estimates when identifying the number of outlets to be replaced in other proposals. These estimates were continually shown to be over what was actually needed. Mr. Valovic testified that he would win some or lose some; however, the Review Panel was never presented with any credible customer examples where Mr. Valovic "lost" on his estimations. When using fixed prices, all counts and measurements should be exact, and refunds should be granted if there was an over count.
50. The Review Panel is also troubled by Mr. Valovic's use of his emergency rates. While it is acknowledged that service calls outside of regular business hours, as well as holidays and weekends would justify a premium, the Applicant is extremely liberal in his use of that rate. To begin, regular hours end at 4 pm, which is very early.
51. Further, Mr. Valovic stated that even if a call is requested during regular business hours, if the customer calls it an "emergency", Mr. Valovic applies the emergency rate. Mr. Valovic stated that he charges this rate even when he does not have another job scheduled that day. Mr. Valovic does this without inquiring if it is in fact an

“emergency” or whether the customer could wait. This is also done without advising the customer that he will be charging the emergency rate. If the weather is bad, Mr. Valovic applies the emergency rate.

52. As an example, Mr. Lundie called for work on Friday, December 27, 2013 during regular hours. Mr. Valovic charged emergency rates even though Mr. Valovic did not have any work scheduled that day. Mr. Valovic explained that he charged the rate because it was an ice storm and therefore it was an emergency. However, there is no justification for using the emergency rates. No jobs were sacrificed or re-scheduled because Mr. Valovic attended Mr. Lundie’s residence. Any difficulty presented by the weather would be incorporated into the length of time required to perform the work, so there was no need to charge double rates.
53. Further, the customer should be given the opportunity to make an informed decision. Mr. Valovic must be more forthcoming with his rates, especially given the high rate Mr. Valovic charges for an emergency. While the customer shares some responsibility to ask about rates over the phone, Mr. Valovic looks for any possible reason to charge the emergency rate, even in situations where a customer may not expect it. Accordingly, we consider this tactic to be predatory.
54. Another aspect of Mr. Valovic’s practice, which is of concern, is the use of additional proposals. The Review Panel absolutely understands and acknowledges situations where a second or even third fixed price proposal may be necessary; however, based on the evidence presented to us, Mr. Valovic will use these additional proposals only for his own benefit. This results in additional overcharging.
55. Mr. Valovic testified that a second proposal would be necessary where the scope of the work expands beyond the first proposal. He stated that if he miscalculated the work or time required to complete the first proposal, that would be his loss, but if unforeseen circumstances arose, he would need to write up an additional proposal.
56. However, as shown in the case of Mr. Tahtadjian, Mr. Valovic would use a second proposal even where he made a mistake. Mr. Tahtadjian’s service mast was ripped off of the side of his house. He called numerous electricians to come and fix it, but only Mr. Valovic came.
57. Mr. Valovic wrote up a proposal for the work. The proposal included the emergency service call and troubleshooting for \$720 plus tax, and the scope of the work included installing the new service, and arranging an inspection, for a total of \$4,068. Mr. Valovic testified that he estimated it would take about 10 hours to complete the work (which included a trip to Home Depot for parts). Mr. Valovic completed the work in about four hours. When he was about to call for the inspection, he noticed that Mr. Tahtadjian’s service did not have an “insulator” to protect the service from coming out so easily. Mr. Valovic testified that this was outside of the scope of the original proposal and therefore he wrote up a second proposal to cover this work. Mr. Valovic estimated that this second proposal would take 2 hours to complete (which included

another trip to Home Depot).

58. Mr. Valovic charged Mr. Tahtadjian \$360 for an hour of trouble shooting and he admittedly missed the fact that there was no insulator on the service. An insulator should have been an obvious aspect of the service, and not something hidden. Any previous insulator would have been damaged along with the service pipe, and most certainly should have been part of any investigation as to why the piping fell and how to repair it.
59. Taking Mr. Valovic at his word, this was a mistake. And given that it was a mistake, it should have been included in the cost of the original proposal. This is especially so when considering how efficiently Mr. Valovic completed the first proposal (four hours) in comparison to the hours he built into the fixed price (10 hours). In fact Mr. Valovic completed both proposals, including two trips to Home Depot, waiting for inspection and returning home, all in the time he estimated it would take him to complete the first proposal. However, Mr. Valovic did not give Mr. Tahtadjian any credit for the over estimation when doing the second proposal. Rather Mr. Tahtadjian essentially paid Mr. Valovic double for the hours he was there working on the second proposal.
60. In this Review Panel's opinion, this was a case where Mr. Valovic made a mistake and he should have taken whatever loss, if any. However, Mr. Valovic would not have suffered any loss as he would have completed the job in the exact time he priced out in the original proposal anyway. But Mr. Valovic didn't do that, he charged Mr. Tahtadjian another \$960.
61. Mr. Valovic was adamant he did nothing wrong, and that is perhaps the most significant aspect of this particular incident. Despite stating that he would have to take losses on the fixed price contracts where he made a mistake, he did not do so here. Instead he attempted to blame Mr. Tahtadjian for failing to tell him he had no insulator. It was Mr. Valovic's job to determine the way to fix Mr. Tahtadjian's situation. He even charged \$360 to troubleshoot.
62. The use of the additional proposals is also concerning given the lack of specificity that Mr. Valovic uses in the Proposals. Mr. Valovic wrote on Mr. Christensen's Proposal #1 that he would replace the "meter, piping and wiring". However, that is not what he meant. Mr. Valovic replaced the meter base and replaced the external wiring and he wrote up a second proposal to cover the replacement of the underground wiring. The Review Panel acknowledges that there was probably a mistake in listing the meter base as "meter" on the proposal (as there were no cost implications), but there is no credible explanation for the lack of specificity in defining what wiring is to be replaced on a fixed price contract. If Mr. Valovic had erred in properly limiting what he meant, he should have absorbed whatever costs are associated with that mistake, and not charged the customer.
63. One other situation with respect to Mr. Valovic's charging practices was troublesome

and that is the chainsaw Mr. Valovic purchased to perform work at Ms. Eva Patterson's home. Ms. Patterson required service during the ice storm in December of 2013. In estimating the work to be performed, Mr. Valovic acknowledged that he included in the price some of the cost to purchase a new chainsaw. The cost of any tools should be built into whatever overhead is accounted for in the rates charged. It was completely unnecessary for Ms. Patterson to have an additional charge for this chainsaw.

(c) Yellow Pages Ads

64. The Director submitted that the Applicant continued to advertise in the Yellow Pages following the Revocation Decision. However, the Review Panel accepts the Applicant's submission that they were pre-paid and pre-printed before the Revocation Decision and therefore not evidence of any wrongdoing.

(d) Will not carry out the activities in accordance with the law

65. Section 113.2(2)(a) provides that the Director may reject an application if the Director believes that the Applicant will not carry out the activities in accordance with the law. From March 14, 2013, Ivan's Electric did not have an electrical contractor's license and therefore was not permitted to operate, nor could it subcontract. Further, Mr. Valovic could work as employee of a licensed electrical contractor, but he could not be a subcontractor.
66. The Review Panel finds that Ivan's Electric continued to operate following the Revocation Decision.
67. To start, the relationship between Ivan's Electric and Insight is not standard. While we appreciate that Mr. Valovic did not want to wind up his business in the event he were successful on appeal, the evidence shows that Ivan's Electric was doing more than just paying bills. While Mr. Valovic stated that Ivan's Electric passed jobs off to Insight, the relationship was much more as a sub-contracting relationship. Ivan's Electric earned a commission on jobs. Ivan's Electric would, in some cases, be paid directly by the customers. Mr. Valovic would use his own van and tools, would set his own hours and would accept jobs as he saw fit, without supervision from Insight. He would attend jobs without the Insight master electrician and would do all of the pricing.
68. Further, in 2012, Mr. Valovic was issued a T4A by Insight (on information supplied by Mr. Valovic), which indicates that he was an independent contractor, as opposed to a T4, which would be issued for an employee. When Mr. Valovic was issued a T4 for 2013, it drastically underreported his income as compared to the commissions earned and the WSIB premiums paid on his behalf. In explaining the reason for this, Mr. Valovic stated that he had split his income with his wife, who was a co-owner of Ivan's Electric. The splitting of the business income of Ivan's Electric, is further evidence that Ivan's Electric continued to operate and generate income.
69. The Applicant developed these practices after April 2012, when Mr. Valovic thought he was unable to operate Ivan's Electric. The practices continued after the Revocation

Decision, so Mr. Valovic's explanation that they were a mistake is not credible. For example, Mr. Valovic billed Mr. Tahtadjian directly to Ivan's Electric and not Insight. This occurred after the Revocation Decision. Mr. Valovic acknowledged he only really stopped the practice when Peter Valovic told him too, not because of the Revocation Decision. Therefore, it is not credible to suggest this was a mistake.

70. While past breaches of the law are not necessarily indicative of future breaches, Mr. Valovic stated on multiple occasions that he would only alter his behaviour once he was told what he was doing was wrong. Mr. Valovic took no responsibility to figure out what he needed to do to comply, but rather waited to adjust his behaviour once he was told he was not complying. Therefore it is reasonable to believe that Mr. Valovic and the Applicant will not comply with the law in the future.

(e) Safety

71. Section 113.2(2)(b) provides that the Director may reject an application if the Director believes that the Applicant will not carry out the activities safely. The Director's original submission on this point was not particularly compelling. The Director submitted that because of the confusing relationship between Ivan's Electric and Insight, consumers would be put at risk due to the potential risk associated with Ivan's Electric not having an electrical contracting license. While the Review Panel understands the risks associated with unlicensed contractors, the Applicant did not lose the license for safety reasons and therefore, that alone is not persuasive to suggest that granting him a license would put safety at risk.
72. However, Mr. Valovic's testimony with respect to his obligations to keep up with changes to the Electrical Safety Code was concerning from a safety perspective. Mr. Valovic testified that he was not required or obligated to keep up with changes to the Code. He stated that he would learn the changes through any defects that were issued by the ESA. On a later day, Mr. Valovic attempted to explain that he meant he was not required to keep up with aspects of the Code irrelevant to his work, such as Transmission; however, the Review Panel does not find this explanation to be particularly credible.
73. Further, Mr. Valovic acknowledged he missed the insulator at Mr. Tahtadjian's. This is a particularly glaring mistake that does present a very real safety risk.
74. Accordingly, we believe that there are some concerns about the Applicant's ability to carry out the duties of an electrical contractor safely.

(f) Honesty and Integrity

75. Section 113.2(2)(d) provides that the Director may reject an application if the Director believes that the Applicant will not carry out the activities with honesty and integrity.
76. Based on the evidence presented to us, the Review Panel does not think that the Applicant can carry out the activities of an electrical contractor with honesty and

integrity. As previously described, there are significant concerns over the relationship between Insight and Ivan's Electric. Customers testified that they were unsure with who they were actually dealing with and whether they were indeed separate companies. While we can accept that the Applicant made attempts upon arrival at a customer's house to explain the relationship, telling the customer while on site, was too late to provide any meaningful explanation.

77. A customer would call Ivan's Electric. Ivan would accept the job and then show up in an Ivan's Electric van. Customers are entitled to more of an explanation than simply stating upon arrival that the job was passed to Insight. One who was acting with honesty and integrity would advise the customer on the phone that the job would be completed by Insight and explain the relationship between the two companies so that there was no confusion.
78. The Applicant has readily admitted that rates are not provided, including emergency rates, unless the customer asks over the phone. Further, the Applicant does not advise the customer when emergency rates apply or whether the customer could have the work done for regular rates. Rather, the Applicant accepts the job and utilizes the emergency rates at his own discretion. This includes during regular business hours even when no other business was sacrificed to perform the work, as was done with Mr. Lundie. With respect to the Cowan/Svenmann residence, Mr. Valovic stated that he assumed that they knew his rates because they had previously used his services. However, the previous work he performed was at his regular rates, but the work performed which is at issue, was at the emergency rates. It is not credible to expect a customer that had work performed years before, to know rates that he or she was never charged.
79. One who was acting with honesty and integrity would provide rates, especially identifying emergency situations, up front. Further, one with honesty and integrity would help customers identify what truly is an emergency and whether the work could be performed at a later date. Finally, one with honesty and integrity would not charge emergency rates when called out to a job during regular business hours when no other work was sacrificed, simply because the customer used the word "emergency" on the phone. The Applicant did none of these.
80. Finally, one who was acting with honesty and integrity would not utilize the pricing practices described under heading (b). The Applicant charged premium hourly rates but estimated work at the pace of an average contractor. He utilized additional proposals to increase his pay and in the case of Ms. Patterson, charged for equipment that should never have been charged. These practices resulted in customers unknowingly being charged significantly more than they should have been. While Mr. Valovic is free to price jobs as he sees fit, and customers have a responsibility to inform themselves the best they can, Mr. Valovic's practice of pricing jobs is predatory and not done with honesty and integrity.
81. Based on the evidence heard, the Review Panel finds that the Applicant's business



practices are not in the best interest of the customer, but rather to extract the most money possible from the customer.

(g) Failure to comply

82. Section 113.2(2)(f) provides that the Director may reject an application if the Director believes that the Applicant has failed to comply with an order. The Director submitted that the Applicant failed to return his master's electrician license in a timely manner following the Revocation Decision, and therefore, failed to comply with an order. The Applicant did eventually return the license to the ESA as required, so the Review Panel does not place great weight on this particular factor.
83. However, the Review Panel has found that the Applicant continued to operate Ivan's Electric even though it no longer had an electrical contractor license. This is in violation of Section 3 of O.Reg 570/05, the regulation for the Licensing of Electrical Contractors and Master Electricians.
84. Further, the Applicant has created confusion with customers in terms of the whether the work was performed by Insight or Ivan's Electric. Section 18 of O.Reg 570/05 states, "[a]n electrical contractor shall not carry on business in a name other than the name indicated on the licence." The Applicant acknowledged that he changed the business number on the van to indicate that of Insight, even though the business name identified by the van was for Ivan's Electric. In addition, Mr. Valovic continued to answer the phone as Ivan's Electric and let customers believe that Ivan's Electric would perform the work right up until he arrived at the job site. This is in violation of Section 18 of O.Reg 570/05.
85. Therefore, the Review Panel finds that the Applicant has failed to comply with the regulations under the *EA*.

**VII. DECISION**

86. The purpose of the electrical contractor licensing process is to ensure the public that responsible and safe contractors are performing electrical work. The ESA is charged with overseeing that process and the ESA's responsibility is to reject those that they believe will not act responsibly, safely or in the best interests of customers. The *EA*, outlines the criteria where the ESA can reject an application. The standard for rejection is "reasonable belief".
87. Given the foregoing, the Review Panel finds on a balance of probabilities that there is a reasonable belief that the Applicant:
  - a. will not carry out the activities in accordance with the law;
  - b. will not carry out the activities safely;
  - c. will not carry out the activities with honesty and integrity; and

d. has failed to comply with the regulations.

88. Accordingly, the Review Panel confirms the Director's decision to refuse to grant the Applicant an electrical contractor license. While the Review Panel has found that four of the submitted grounds are justification for rejecting the Application, the Review Panel is satisfied that any one of the grounds alone would be justification to reject the Application, and confirm the Director's decision.

89. This Panel is not seized.

Dated: March 31, 2015