



ONTARIO COLLEGE OF TRADES

ORDRE DES MÉTIERS DE L'ONTARIO

REVIEW PANEL INTERIM DECISION

Trade Classification Review

Sprinkler and Fire Protection Installer

TCR2013-1 SFPI

Submitted to: Board of Governors, Ontario College of Trades

Submitted by: Bernard Fishbein, Chair; Larry Lineham;
and Robert Bradford

Submitted on: December 2, 2013

[1] This is a review under section 61 of the *Ontario College of Trades and Apprenticeship Act, 2009*, S.O. 2009, c. 22 (“the Act”) of the classification of the trade of Sprinkler and Fire Protection Installer and whether that trade should be reclassified as a compulsory trade within the meaning of the Act. The consequences of designating a trade compulsory (as opposed to voluntary) is that only certain persons may be lawfully entitled to perform the work of that trade.

[2] In fact, this is the first such review under the Act. It has been initiated in accordance with the regulations under the Act by Board of Governors of the College following a request from the Sprinkler and Fire Protection Installer Trade Board. In accordance with the regulations, the Ontario College of Trades (“the College”) gave notice of the review, invited written submissions and scheduled a consultation date for oral submissions on November 28, 2013. As early as September 25, 2013, the College posted on its website the composition of this panel, which would conduct this review.

[3] Pursuant to section 21 of the Act, these reviews are to be conducted by review panels. The College and the Ontario Labour Relations Board (“the OLRB”) have entered into a Memorandum of Agreement by which the OLRB supplies certain agreed-upon Vice-Chairs of the OLRB to chair such review panels when selected and called upon to do so by the College. As a result, Vice-Chairs of the OLRB have chaired all the previous ratio review panels (the other type of adjudication that a review panel may be called on to decide pursuant to section 60 of the Act) which have now been completed.

[4] I am not only the Chair of this review panel but also the Chair of the OLRB. Prior to my appointment as the Chair of the OLRB (which commenced on February 28, 2011), I practiced labour law for over 30 years, representing very many trade unions (including many building trades’ construction trade unions). Shortly before the consultation date on November 28, 2013, I was advised that the College had received a letter suggesting that an application for judicial review would be made of a ratio review panel decision that I had chaired (which had issued over 6 months ago), on the basis of “a reasonable apprehension of bias”.

[5] In these circumstances, at the outset of the consultation I considered it appropriate to disclose to all of those participants in attendance that in my legal practice, prior to my appointment as Chair of the OLRB, I had from time to time represented the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 (“Local 853”), one of the parties who was participating in the consultation and making submissions in support of the trade being reclassified as a compulsory trade. Although I do not recall when I personally last acted for Local 853 (other than it was long

ago), my former law firm continues to do so. As pointed out by Local 853, I would have only represented Local 853 in labour relations matters and not with respect to anything involving trade classification, and certainly not involving the College.

[6] In view of this disclosure, I inquired whether any participant had objection to the review proceeding before this panel, and in particular, with me continuing as Chair.

[7] None of the participants at the consultation were appearing with counsel (which was the usual practice for the prior ratio review panels). In view of the disclosure of this information, at least two participants who were opposed to the trade being reclassified as a compulsory trade, the Ontario Skilled Trades Alliance and the Ontario Home Builders' Association, requested an adjournment of the consultation in order for them to obtain counsel and advice on whether to object to my continuing of the consultation or not. A third participant who was opposed to the trade being reclassified as a compulsory trade, the Christian Labour Association of Canada, wished to reserve any objection that it may or may not have to my continuing in chairing the review panel. That adjournment request was opposed by a number of other parties who were making submissions in support of the trade being reclassified as a compulsory trade, including the Sprinkler and Fire Protection Installer Trade Board, Canadian Automatic Sprinkler Association and UA Local 853, the Ontario Pipe Trades Council and the Provincial Building & Construction Trades Council of Ontario. In their view, the identity and composition of this review panel have long been known and, if these parties had concerns, they ought to have been raised earlier.

[8] In the circumstances, the review panel, unanimously, determined to adjourn this consultation until Monday, January 6, 2014. Any parties who may wish to object to the composition of this panel (including me as Chair) are directed to file their written submissions, together with any legal or other authorities they rely on to this effect, by no later than December 13, 2013. Any participants who wish to reply to those objections should file their position, together with any supporting legal or other authorities, by December 20, 2013. Lastly, any of the original objectors who wish to reply to those objections must file those no later than December 31, 2013 (by 12 p.m.).

[9] In the event that there are objections to the composition of this panel, they will be dealt with at the consultation on January 6, 2014. If there are no objections, then the consultation on January 6, 2014 will simply proceed to oral submissions as to whether the trade should be reclassified as a compulsory trade (as it would have on November 28, 2013). Even if there are objections, and if they can be dealt with quickly, the consultation on January 6, 2014 may well

proceed to oral submissions as to whether the trade should be reclassified as a compulsory trade and all the parties should be prepared to do so.



Signed: Bernard Fishbein, Chair, Trade Classification Review Panel TCR2013-1 SFPI

Date: December 2, 2013

On behalf of Trade Classification Review Panel TCR2013-1 SFPI: Bernard Fishbein, Chair; Larry Lineham, and Robert Bradford