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: January 9, 2014

[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 "trade classification review"). 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.

Background

[2] The circumstances that led to this interim decision were briefly outlined in a prior interim decision dated December 2, 2013. For the sake of convenience, they will be briefly reviewed again here.

[3] This is, in fact, the first trade classification review under the Act. It has been initiated in accordance with the regulations under the Act by the Board of Governors of the Ontario College of Trades ("the College") pursuant to a request from the Sprinkler and Fire Protection Installer Trade Board. In accordance with the regulations, 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 obviously included me as Chair) that would conduct this review.

[4] Section 11 of the Act indicates the objects of the College which include the promotion and regulation of the practice of various trades including establishing apprenticeship programs and other training programs for the trades. Included in these objects in section 11 are determining the appropriate journeyperson to apprentice ratios for trades and determining whether a trade should have compulsory certification status. Pursuant to section 21 (of the Act), determinations for the appropriate journeyperson to apprentice ratios and classification of trades as compulsory or voluntary are to be made after consultations (both written and oral) conducted by review panels.

[5] These reviews are conducted by review panels appointed by the College pursuant to section 21 of the Act. Review panels are appointed from a roster of adjudicators (see section 21 of the Act). The roster of adjudicators was created by the Appointments Council, a separate body from the College under the Act (see section 63 of the Act).

[6] Prior to any of the reviews being initiated, the Chair of the Appointments Council approached me in my capacity as Chair of the Ontario Labour Relations Board ("the OLRB") to ascertain whether the OLRB would be willing to provide Vice-Chairs of the OLRB to be named to the roster of adjudicators to serve as chairs of review panels under the Act. OLRB Vice-Chairs (and in particular construction industry Vice-Chairs) were sought, not only because of their experience as adjudicators but, in particular, for their experience with apprentices and, in particular, in the construction industry where apprenticeship programs are the prevalent, if not exclusive, method of training and developing journeypersons. For

example, under the *Labour Relations Act, 1995*, S.O. 1995, c.1 ("the *LRA*"), employers and trade unions in the construction industry can refer their grievances to arbitration before the OLRB for adjudication as opposed to using private arbitrators, the norm outside of the construction industry. The OLRB receives and disposes of approximately 1,000 grievances annually in the construction industry. Many of those grievances, not infrequently, could pertain to issues concerning apprenticeship.

[7] As a result of this initiative from the Appointments Council, I and a number of construction industry Vice-Chairs of the OLRB indicated we would be prepared to so serve. I and these construction industry Vice-Chairs were then appointed to the roster of adjudicators by the Appointments Council in accordance with its procedures and the Act. Also, the College and the OLRB entered into a Memorandum of Agreement by which the OLRB would supply any of these construction industry Vice-Chairs named to the roster of adjudicators (including me) to chair such review panels when selected and called upon to do so by the College. Vice-Chairs of the OLRB (including me) receive no additional compensation for performing or serving as chairs of review panels for the College. There is an internal accounting procedure by which the cost of the Vice-Chairs (including me) doing so is allocated between the College and the OLRB. As a result, the Chair and/or Vice-Chairs of the OLRB have chaired all of 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 all now been completed.

This Particular Review

[8] As indicated previously, I am not only the specific member of the roster of adjudicators appointed by the College to hear this first trade classification review; I am also the Chair of the OLRB and have been so for approximately three years commencing on February 28, 2011. Like very many of the Chairs of the OLRB before me, and like virtually all of the individuals appointed as Vice-Chairs of the OLRB, I practiced labour law for over 30 years with some degree of prominence. In my case, I represented very many trade unions (including many building trades construction trade unions). Because of this and my position as Chair of the OLRB, I was not only appointed by the Appointments Council to the roster of adjudicators but subsequently appointed by the College to deal specifically with four trade ratio reviews. In fact, not surprisingly, all four of those ratio reviews involved trade unions that I or my former law firm had intermittently (and some less frequently than others) represented from time to time in labour relations matters. The last of these four ratio reviews involved the Electrician - Construction and Maintenance / Domestic and Rural (the "Electricians") trade and was the largest ratio review conducted by the College in terms of the greatest number of participants. Prior to all of those ratio reviews, for reasons I will describe below, I did not consider it necessary to specifically advise any of the participants of my previous law practice or the fact that from time to time I had represented some trade union participants in the ratio reviews.

[9] The Electricians ratio review panel heard all submissions on May 23, 2013 and issued its decision on July 2, 2013. Although I believe it was clear throughout the Electricians ratio review that I was the

Chair of the OLRB, a long-time trade union counsel before that (and in particular for some of the Electricians unions), and well-known personally to more than a few of the participants, at that time no one questioned my ability to chair those proceedings.

[10] The consultation for this classification review of the Sprinkler and Fire Protection Installer trade was scheduled for November 28, 2013. Shortly before that date, I was advised that the College had received a letter dated November 15, 2013 suggesting that an application for judicial review would be made by an electrical contractor of the Electricians ratio review decision on the basis of a "reasonable apprehension of bias", because I had chaired the ratio review. I understand that a notice of application for judicial review dated December 19, 2013 has now been served on the College.

[11] Although surprised by these allegations, again for reasons I will explain below, in the circumstances, at the outset of this 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. I indicated that although I did not recall when I personally last acted for Local 853 (other than it was long ago), my former law firm continued to do so. Local 853, at that consultation, pointed out that I would have represented Local 853 only with respect to labour relations matters and not with respect to anything involving trade classification and certainly not involving the College (which did not exist or become operational during my time in practice).

[12] In view of the disclosure of this information, two of the three opponents to the Sprinkler and Fire Protection Installer trade being reclassified as a compulsory trade, the Ontario Skilled Trades Alliance ("the Skilled Trades Alliance") and the Ontario Home Builders' Association ("the Home Builders' Association"), requested an adjournment of the consultation in order for them to obtain counsel and seek advice on whether to object to my continuing to chair this review. The third opponent to the classification, the Christian Labour Association of Canada ("the CLAC"), wished to reserve any objection that it may or may not have to my continuing to chair the review. The adjournment request was opposed by virtually all of the approximately a dozen 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 Local 853, the Ontario Pipe Trades Council, the Provincial Building & Construction Trades Council of Ontario, and others.

[13] Notwithstanding their objections, the review panel unanimously determined to adjourn the consultation until Monday, January 6, 2014 and give parties an opportunity to file whatever written submissions they wished together with any legal or other authorities they relied on.

[14] The only party objecting to my continuing to proceed was the Skilled Trades Alliance. The other parties opposed the delay caused by, in their view, this "non-issue" and wished the matter to continue, with my continuing to chair the panel. At the consultation on January 6, 2014, the parties were given an opportunity to make any further oral submissions they wished on this matter.

[15] At that consultation, having heard the submissions of the parties, the panel unanimously rejected the notion that there was a "reasonable apprehension of bias" in my continuing to hear this matter and proceeded with the balance of the consultation. These are the review panel's reasons for doing so.

The Legal Test

[16] Notwithstanding the adjournment to provide an opportunity to seek the advice of counsel (as the Skilled Trades Alliance had put it), the submissions were all made by the parties themselves and not counsel (as they are clearly entitled to do). The Skilled Trades Alliance cited the test for identifying a reasonable apprehension of bias:

> "The test for identifying a reasonable apprehension of bias has been confirmed by the Supreme Court of Canada (see for example, *R. v. S. (R.D.)* 1997 CanLII 324 (SCC), (1997), 151 D.L.R. (4th) 193 (SCC) at para. 31):
>
> > [T]hat test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

For purposes of this decision, we are prepared to accept that as an accurate and adequate statement of the legal test for the reasonable apprehension of bias.

Discussion

[17] The question of whether there is a reasonable apprehension of bias when expert tribunals, in seeking their required expertise, draw upon former members of the community that may have advocated before that specific tribunal to serve as adjudicators is, not surprisingly, neither unusual nor novel. In fact, as Chair of the OLRB I recently had the opportunity to write at some length about this subject in an OLRB decision in *Islington Nurseries Limited*, [2011] OLRB Rep. Sep./Oct. 582. That case involved an application for certification and an unfair labour practice complaint in which the union sought certification because of the alleged unfair labour practices committed by the employer. Not surprisingly, the proceedings were strongly contested and had consumed some nine days of hearing.

They were scheduled for continuation on a number of additional days of hearing – but neither party expected that the matter would be completed in those additional hearing dates and even more hearing dates would be required. The hearing had been presided over by a Vice-Chair who then unexpectedly resigned from the OLRB shortly before the commencement of the next three scheduled hearing days. Following his resignation from the OLRB, the particular Vice-Chair assumed a position as General Counsel with another altogether different trade union. Section 110(7) of the *LRA* is a particular provision that allows the Chair of the OLRB to authorize a Vice-Chair to continue sitting to conclude a proceeding commenced prior to his/her resignation. As Chair of the OLRB, I authorized the resigned Vice-Chair to continue hearing that application. The exercise of that power was objected to by the employer on the basis of a reasonable apprehension of bias. For convenience sake, we quote extensively from that decision and the discussion of the law in this area:

> "5. The Responding Party Employer ("the Employer") has written to the Board objecting to Mr. Lewis continuing to preside over the hearing:
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> "As Mr. Lewis' tenure as in-house counsel for the Carpenters lengthens, he will more and more be cloaked with the mantle of 'union counsel'. I would therefore suggest that while he may not be closely tied to the specific issues in dispute in this particular case, it is not unexpected that he will be closely tied with the trade union perspective."
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> As a result, the Employer submits that there is a reasonable apprehension of bias on the part of Mr. Lewis.
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> 6. The Applicant ("the Union") opposes this request and the Employer has now responded to those submissions by the Union.
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> **Background of the Ontario Labour Relations Board ("the Board")**
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> 7. This Board administers and adjudicates disputes that arise under labour relations regime in Ontario pursuant to the *Labour Relations Act, 1995,* R.S.O. 1995, c.1, as amended (the "Act"). The Board has jurisdiction under other employment related Acts as well. Hearings are presided over by Vice-Chairs who increasingly, over the years, sit alone. Throughout its history, virtually all of the Vice-Chairs of the Board have been drawn from the private practice of labour and employment law. The nature of this professional practice is that practitioners virtually always represent either trade unions or management/employers and generally do not represent both. This has been so for decades.
>
> 8. Considering the sophistication and complexity of modern labour law as it has evolved, to say nothing of the implications of the decisions the Board makes not only on the parties, but the economy of the province as well, not surprisingly, the labour relations community not only expects but demands that the Vice-Chairs of the Board have considerable knowledge and expertise in labour law. So does the Government of

Ontario (Vice-Chairs are Order-in-Council appointments made by the Lieutenant Governor). As a result of both the need and expectation of such expertise, virtually all Vice-Chairs have practiced labour law prior to their arrival at the Board and because of the nature of such a practice, generally exclusively for one side or the other.

9. Moreover, unlike judicial appointments, appointments as Vice-Chairs are not lifetime appointments nor are they remunerated at the same level as judicial appointments. In fact, the current iteration of the Government of Ontario Appointees Directive specifically provides that the maximum length of appointment is 10 years in total (which includes an initial appointment of 2 years, a possible reappointment for 3 years and a possible final appointment for 5 years). In other words, the process specifically and deliberately envisages those who serve as Vice-Chairs ultimately leaving the Board and returning to gainful employment. It would surprise no one that Vice-Chairs have left the Board after their appointment has concluded and returned to the private practice of labour law, an area in which they obviously hold considerable expertise and experience.

10. The mere interchange of Vice-Chairs between the private practice of law and the Board or ultimately their return to the private practice of law has never been found to form the basis of a reasonable apprehension of bias. (I would note that this is not a case where Mr. Lewis would continue to preside over a case involving his future employer or its affiliates. Mr. Lewis immediately ceased presiding over such cases. Such cases will be handled otherwise than pursuant to section 110(7) of the Act.)

11. Unfortunately, the nature of labour law being what it is, this regular occurrence has still raised occasional challenges on the basis of an apprehension of bias on the part of adjudicators. Those challenges have been regularly rejected by the Board and the Courts. In *Marques v. Dylex Ltd.*, (1977) 81 D.L.R. (3d) 554 (cited with approval by the Board in *Metropolitan Plumbing and Heating Contractors Association*, [1986] OLRB Rep. Aug. 1104 - the very case the Employer referred the Board to), the Divisional Court stated at pages 565-567:

…

> Further, on a more general plane, the nature and function of the Board itself have to be regarded. The fact that a judge in similar circumstances would not, I would think, have heard the case is not determinative. (In saying this, I am not expressing an opinion on minimum legal standings.) **We can take judicial notice, if it is not apparent from the *Labour Relations Act* itself, that members of the Labour Relations Board and in particular the chairmen of panels will have had experience and expertise in the law and labour relations. The Government of Ontario looks to people with such a background in making appointments. Most, if not all those appointed, are bound to have some private association with parties coming before the Board.** In this connection the remarks of Mr. Justice Hyde in *R. v. Picard et al., Ex p. Int'l Longshoremen's Ass'n, Local 375* (1968), 65 D.L.R. (2d) 658 at p. 661, [1968] Que. Q.B. 301, are apposite:

> The only basis for any apprehension of bias submitted by appellant is that Commissioner Picard had been consulted more than a year before his appointment as Commissioner by Aluminium Limited, which is a company which controls one of the parties before the Commission, namely, the respondent Saguenay Shipping Ltd. … I am quite unable to anticipate a biased approach by Commissioner Picard on the ground raised by the appellant. **Professional persons are called upon to serve in judicial, quasi-judicial and administrative posts in many fields and if Governments were to exclude candidates on such a ground, they would find themselves deprived of the services of most professionals with any experience in the matters in respect of which their services are sought.**
> [emphasis added in original]

12. Furthermore, the test for reasonable apprehension of bias as enunciated in the Supreme Court of Canada in *Committee for Justice and Liberty v. National Energy Board*, (1976) 68 D.L.R. (3d) 716; [1979] 1 S.C.R. 369 at p. 394 is that of a reasonably informed person in the circumstances:

> [T]he apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude'.

Although this oft-repeated quote actually comes from the dissent of Mr. Justice de Grandpré, it is frequently cited as reflecting the state of the law. See for example *Baker v. Canada (Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 at para. 46. To therefore paraphrase the words of the Court, I am of the view that no right-minded person having informed him/herself about labour law in Ontario can reasonably apprehend bias solely because the Vice-Chair comes from and practised in the labour law field, either previous to his or her appointment or because they will return or have returned to that practice subsequent to that appointment.

13. The Employer concedes that this is the prevalent jurisprudence with respect to people who have come from private practice to the Labour Board. The Employer suggests that those cases are different because Vice-Chairs are "purged" by a period of time in which they do not preside over cases either involving their former clients or their former law firm. In fact, Vice-Chair Lewis, in his last position before coming to the Board, was the General Counsel of the Union in these cases, and prior to that, a member of the law firm that appeared as counsel to the Union in these cases and this was not the subject of any attack by the Employer on the basis of reasonable apprehension of bias basis. Nor could it have been. In fact, for the sake of the record, before being appointed Chair of the Board, I not only practised as a union labour lawyer but on many occasions represented the Union, although I had not done so for many years.

14. The Employer argues, however, that this is a different situation because the apprehension of bias relates to Vice-Chair Lewis' work after he leaves the Board in a case which will take several months to conclude. In my view, this is a distinction

> without a difference. It is difficult to conceive how Mr. Lewis' prior association with the very applicant and the very law firm involved in this application did not give rise to a reasonable apprehension of bias, but his association with a completely different trade union completely unrelated to this application, would.
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> …
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> 17. To accept the underlying premise of the Employer's argument, namely, that a Vice-Chair who is asked to continue to preside over a hearing would be incapable of fairly adjudicating such a hearing simply because that Vice-Chair works for a trade union is not reasonable and is rejected. Moreover, it is not workable in an area such as the *Labour Relations Act* under the current Act and the current method of appointments to the Board. Lastly, in a community that not only expects but demands a high level of expertise and real life experience that can be gained only from exposure to and practice in the subject matter of the Board's disputes, it is simply not acceptable."

[18] We do not see the position with respect to the College as necessarily or significantly any different from the position of the OLRB or the general practice at the OLRB.

[19] The regulation of apprenticeship programs is not an area of common or everyday knowledge or experience – in fact, the Legislature has deliberately chosen to create a new institution – the College – for that purpose. Moreover, two specific functions are not even assigned to the College – ratio reviews and trade classifications – but rather to panels composed of adjudicators appointed to a roster of adjudicators by yet another body independent of the college – the Appointments Council. The Appointments Council has deliberately sought out construction Vice-Chairs of the OLRB for their expertise. This is not particularly surprising as OLRB Vice-Chairs are also cross-appointed to other quasi-judicial administrative tribunals in the Province – the Human Rights Tribunal, the Pay Equity Hearings Tribunal, the Grievance Settlement Board. The College has deliberately appointed them (including me) for all of the ratio reviews. Equally, I have been specifically appointed by the College to chair the very first trade classification review panel.

[20] As alluded to (and ironically not even challenged) in *Islington Nurseries*, the practice at the OLRB is that recently-appointed Vice-Chairs do not preside over cases involving either their former clients (either personally or their law firm) or their former law firm for twelve months from their appointment. After that, they are free to do so. In fact, it should probably be noted that the time frame found unobjectionable by the court in *Dylex*, referred to in *Islington Nurseries*, *supra*, was only six months.

[21] If this case were scheduled before the OLRB, consistent with that jurisprudence, I would have not only routinely presided over such a hearing, but felt no need to disclose my prior connection (if only due to the passage of time) with Local 853 – and for that matter that is equally true of all of the ratio reviews that I have presided over (including the now-challenged Electricians ratio review). If anything, as lacking as I thought the merits of the allegation of "reasonable apprehension of bias" in *Islington*

Nurseries, it at least involved some sort of continuing or existing relationship that arguably could give rise to the allegation of bias, not a relationship that was long ago severed or ended, which is the basis of the challenge here.

[22] Having said that, let me specifically address the arguments raised by the Skilled Trades Alliance.

[23] The Skilled Trades Alliance repeatedly, in both its written and oral submissions, observed that it represents 32 trade associations who employ in excess of 130,000 workers across the Province. We have reviewed the list of members of the Skilled Trades Alliance, which was attached to their submissions. Many, if virtually not all, of its members are not infrequent litigants before the OLRB. Since the test for reasonable apprehension of bias is that of an "informed person, viewing the matter realistically and practically – and having thought the matter through", in my view, it is difficult to say that the notion that someone who would chair a review panel to determine whether a construction trade should be mandatory or not, has a previous and prior connection to construction trades including the one subject of the review, raises a reasonable apprehension of bias. Quite frankly, if that were an appropriate test, it would have a dramatic negative impact on the operations of the OLRB – and we daresay other administrative tribunals. In our view, an informed person "viewing the matter realistically and practically – and having thought the matter through" not only expects, but desires, adjudicators in a specialized area of some expertise to have that required expertise – which frequently, if not exclusively, is acquired through practice in that area of expertise – and therefore with some previous connection to some of the parties in that area.

[24] The Skilled Trades Alliance argued that:

> "There is no procedural process in place under the Act and as a review panel of first instance there is no historical jurisprudence or precedent on which Mr. Fishbein can rely in order base [sic] his decisions. As a result, the review panel process does not allow for him to be insulated from bias, **unlike** the more rigid process and precedential context under which he normally functions at the OLRB."

[25] If this argument had any merit, and we do not think it does, it would be applicable to anyone chairing the review panel, let alone me. It would certainly also apply to any other Vice-Chair of the OLRB on the roster of adjudicators if appointed by the College. Also, it is not exactly clear how the OLRB context is "more rigid and precedential", other than this is the first trade classification review. In any event the OLRB often hears cases of first impression, particularly following statutory amendments which have not been uncommon in recent years. Moreover, it is equally not at all clear what at the OLRB "insulated [me] from bias" more than in this trade classification review. I have already indicated that, were this a hearing at the OLRB, I would have not only readily chaired such a hearing but felt no need to disclose my long-ago former representation of Local 853 – nor do I expect it would have been raised by anyone.

[26] In its oral submissions, the Skilled Trades Alliance complained that the College should not entertain processes akin to the OLRB. Equally, they argued that they had chosen not to retain counsel, and parties before the College should not be compelled to retain counsel. Leaving aside the irony of a party simultaneously relying on a legal objection such as reasonable apprehension of bias and complaining that it should not be compelled to retain counsel (and of course no one appearing before this review panel is compelled to do so – or before the OLRB for that matter), the Skilled Trades Alliance never suggested exactly what kind of procedure this panel should adopt, or the shortcomings of what this panel has done. Bluntly, the panel identified and disclosed an issue to the parties in this classification review that had arisen in another procedure before the College, granted a requested (and opposed by other parties) adjournment for parties to seek advice of counsel, asked for and received written submissions, allowed parties an opportunity to respond to those written submissions, and afforded parties a further opportunity to make oral submissions. Leaving any process at the OLRB aside, it is difficult to conceive anything else this panel could have done – or any shortcoming in what it has done.

[27] The Skilled Trades Alliance further argued that:

> "...Mr. Fishbein is the Chair of the OLRB, the body which will make any subsequent jurisdictional decisions which arise out of the determination of this Review Panel. This fact further raises questions regarding the likelihood of a reasonable apprehension of bias. Given the distinct possibility that Mr. Fishbein will be involved in substantive decisions regarding the jurisdiction of members of the Sprinkler and Fire Protection Installer Trade going forward, he should not be placed in a position to make a binding determination for this Review Panel."

Again, we see no connection between these points at all. Leaving aside that if this argument had any merit (and it does not), it impugns and disqualifies all Vice-Chairs of the OLRB on the roster of adjudicators (not just me). More importantly, the OLRB, when determining jurisdictional disputes, determines competing claims to the assignment of certain work between two unions. It does not determine whether one union is a mandatory trade or not or the exact parameters of the mandatory trade and certainly has no enforcement responsibilities with respect to mandatory trades. Moreover, even if the OLRB in determining a jurisdictional dispute considered whether the work fell within a trade recently made mandatory or not, as relevant, it is only one of several criteria that the OLRB uses in determining jurisdictional disputes. The OLRB, in its jurisdictional dispute jurisprudence, has frequently said there are several different factors in determining jurisdictional disputes ≠ none of them are necessarily individually determinative and the weight to be accorded to any of them depends on the facts of any particular situation.

[28] Equally, the Skilled Trades Alliance pointed to the ratio review decision for the Sheet Metal Workers trade dated March 11, 2013 when Vice-Chair McKee (also a Vice-Chair of the OLRB) found no

reasonable apprehension of bias in regards to a member of that review panel. The Skilled Trades Alliance quoted Vice-Chair McKee at paragraph 20:

> "A ratio review panel has no role in supervising or directing the activity of the College or the Appointments Council. We are an ad hoc panel drawn from the roster of adjudicators for a specific purpose. Once we have come to a decision as to what the ratio ought to be, we have no other function".

We agree completely with Vice-Chair McKee's observations. The Skilled Trades Alliance argued, however, that those findings are distinguishable from the present review panel:

> "... as Mr. Fishbein *will* have an ongoing role with the jurisdiction of the Sprinkler Fitter's trade. Furthermore, the member in question in that objection was not the Chair of the review panel, as Mr. Fishbein is for the present Review Panel."

[29] Contrary to this assertion, it is by no means clear that I would have any ongoing role with the jurisdiction of the Sprinkler and Fire Protection Installer trade. That assertion by the Skilled Trades Alliance apparently assumes a jurisdictional dispute would arise between Local 853 and another trade union (which is not at all clear), that it would result in a jurisdictional dispute being filed at the OLRB (as opposed to being resolved elsewhere which is also not necessarily clear), if so, that I would be assigned by the Registrar of the OLRB to hear such a jurisdictional dispute if it arose (which is even less clear), or that a party before the OLRB might object to my hearing that jurisdictional dispute, and that I would not recuse myself in the face of that objection (an assumption which is even less clear).

[30] Also, the Skilled Trades Alliance argued that:

> "... there is no forum for an appeal of a review panel's classification of trades decision."

[31] The Skilled Trades Alliance specifically pointed out that section 21(3) of the Act provides:

> "... A decision of a review panel is final and not subject to appeal, and a decision of a review panel shall not be altered or set aside in an application for judicial review or in any other proceeding."

[32] This is to be contrasted with proceedings before the Registration Appeals Committee, the Discipline Committee, and the Fitness to Practise Committee of the College from which appeals to the Divisional Court are explicitly provided for in Part VII of the Act. Regardless of this provision, it is at least

clear it has not so far precluded an application for judicial review being initiated with respect to the Electricians ratio review panel. It is not for us to speculate on the outcome of that judicial review application or the scope the Court may give to section 21(3) of the Act, other than to say that a reasonable apprehension of bias is not enhanced or diminished simply because the decision, about which it is alleged there is that reasonable apprehension, may be a final decision. More importantly, that argument ignores that an application can always be made to have a compulsory or mandatory trade declared to no longer be compulsory or mandatory (see section 61 of the Act).

[33] Equally, the Skilled Trades Alliance argued that the College process:

> "...should be simplistic in approach and does not require the involvement of legal counsel..."

which is

> "completely separate and dissimilar from the Ontario Labour Relations Board objections process, where a much different and more complex approach is in place which is supported by labour law and legal precedent."

As noted before, this argument misconceives the role of the OLRB where many parties appear unrepresented and there is of course no legal requirement to be represented by counsel. Equally, there is nothing in the Act or the Regulations that either requires or prohibits parties before a review panel of the College from appearing with counsel. More importantly, it is difficult to discern any connection (and we do not believe there is any) between whether the process is elaborate or not and a reasonable apprehension of bias.

[34] Lastly, in its reply submissions, the Skilled Trades Alliance argued that, as a minimum, this review process ought to be adjourned or delayed until the outcome of the challenge to the Electricians ratio review decision. That argument is equally devoid of merit. Leaving aside that there is no way of determining how long such a delay would be (i.e. when the Divisional Court hearing of that application would be perfected, scheduled and heard, or whether such application will, in fact, actually be pursued to a hearing), the delay brought about by this issue has been vigorously opposed by virtually all of the other parties. They are entitled to have their application heard – particularly when this review panel rejects the notion that there is any reasonable apprehension of bias – and not have it indefinitely delayed while that ruling is perhaps challenged, and then perhaps challenged even further on appeal.

[35] Before completely leaving this matter, we wish to make it clear that the arguments of the Skilled Trades Alliance that there is a "reasonable apprehension of bias" have been rejected on their merits – not because, as many of the other parties have alleged, they are not *bona fide* and made only to delay

this process by opponents who are not necessarily opposed to the particular question here (whether Sprinkler and Fire Protection Installer should be a mandatory or voluntary trade), but opponents to the College itself, and the Act in general. Although it is perhaps not difficult to see why such allegations have been made by some parties – the Skilled Trades Alliance, in its submissions on the merits, did not particularly address the merits of whether Sprinkler and Fire Protection Installer should be a voluntary or mandatory trade, but rather, the failings of the College and the previous ratio review decisions, and had already sought the adjournment of this trade classification review (even before the issue of any reasonable apprehension of bias was raised by me at the November 28, 2013 consultation) until the College and its processes could be re-examined and re-evaluated. Those submissions were all made before the Skilled Trades Alliance arguably seized the opportunity to further delay this review by challenging whether my continuing on the review panel raised a reasonable apprehension of bias, or so it is argued.

[36] Bluntly and simply put, the allegations that the position of the Skilled Trades Alliance was not *bona fide* and merely strategic played no part in this decision. The argument that there is a reasonable apprehension of bias has been rejected on its merits and not because others have characterized it as never *bona fide* in the first place.

[37] These are the reasons why we orally rejected the argument at the consultation on January 6, 2014. Our decision and reasons with respect to the merits of the review – whether the Sprinkler and Fire Protection Installer should be made mandatory – will follow.

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

Date: January 9, 2014

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