

Towards A Provincial System of Licensing Electrical Contractors
Jan. 2003

Introduction

This is the report of the Industry Steering Committee on Provincial Licensing of Electrical Contractors.

The Steering Committee is comprised of representatives of the ECAO, OEL and ESA. The Committee was charged by its constituent organizations to develop a recommended course of action and operational model to achieve effective province-wide registration and licensing of electrical contractors in Ontario.

What follows is the report outlining:

- Key players, their mandates and biases
- The Steering Committee's decision process
- Evaluation of considered models
- The Steering Committee recommendation for provincial licensing, and

This report is written for timely consideration by the Boards of Directors of ESA, OEL and ECAO. The objective is to get agreement, in principle, on the recommendation for provincial licensing from each Board so that the industry can go forward to government with an implementation plan in step with the Building Regulatory Reform (BRRAG) process.

Throughout its deliberations, the Industry Steering Committee was reminded that the greatest challenge in the shift towards provincial licensing will be managing the fundamental change in the relationship between the contractor community and the ESA.

In order for its recommendation to be successfully implemented, it is essential that each constituent Board be prepared to meet that clear challenge.

Background & Key Players

Municipalities

Presently, there is no provincial system to license electrical contractors. Under the *Municipal Act*, municipalities are permitted to license electrical contractors. Twelve larger municipalities exercise their authority and license electrical contractors on the basis of the contractor being, or employing, a master electrician who has passed the provincially recognized exam. Approximately 70 per cent of electrical contractors in Ontario are licensed by these municipalities.

Electrical Contractor Registration Agency

The Electrical Contractors Association of Ontario has the authority through its supplementary letters of patent to examine and register different grades of electricians (e.g. master electricians) and electrical contractors. ECAO has promoted, coordinated and been secretary to the reciprocal recognition program for the examination of master electricians. In 1991, ECAO created the Electrical Contractor Registration Agency (ECRA) with the support and participation of the

Ontario Electrical League and the Electrical Inspection Department of Ontario Hydro (now the Electrical Safety Authority). ECRA creates the master electrician exams, is Secretary to the reciprocal recognition program, authors and promotes a pre-master preparatory course, and conducts examinations. Seven of the 12 reciprocal cities have officially amended their bylaws to include ECRA as a reciprocal party, and one (London) has dropped its municipal examining board and relies exclusively on ECRA to examine and qualify master electricians.

Electrical Safety Authority

The Electrical Safety Authority (ESA) was created in January 1999, to succeed Ontario Hydro as the governing body for electrical inspection and code development. In April 1999, electrical inspection was officially transferred. ESA is a not-for-profit corporation governed by a Board of 12 Directors, including three electrical contractors. Under Section 113 of the *Electricity Act*, ESA has general authority to make regulations as to the design, installation, repair, maintenance and protection on all matters related to the use of electricity in Ontario, and collect fees, issue orders and fines in exercising its authority. Through regulation, the Ministry of Energy, Science & Technology has delegated ministerial oversight of ESA to the Ministry of Consumer and Business Services (MCBS). ESA is party to an administrative agreement with MCCR, which outlines the criteria under which ESA must operate in order to carry out its statutory authority. Except through its participation in ECRA, the ESA has no responsibility or authority over contractor licensing.

Prior to leaving Ontario Hydro, the Electrical Inspection Department began developing programs aimed at distinguishing between qualified contractors and those unqualified or do-it-yourselfers. The 1998 *Ontario Electrical Safety Code* allows for the creation of 'selective' inspection, or authorized contractor programs. ESA has implemented an authorized contractor program for the low-rise residential market, and air conditioning contractors, and has just introduced a similar program for the commercial and industrial service market.

Provincial Government

Under Section 160 of the *Municipal Act 2001*, the Province permits municipalities to license, regulate and govern any business carried on within the municipality, but retains through the Minister the right to impose regulations limiting municipal powers including the exemption of any class of business from the licensing bylaw.

In March 2000, the Ministry of Municipal Affairs and Housing created the Building Regulatory Reform Advisory Group (BRRAG) to review all building regulations in the province, including codes, inspection and licensing. In its final report to the Minister delivered in August 2000, BRRAG recommends that municipalities be prohibited from licensing trade contractors in the event a provincially mandated system is created.

More generally, the current Provincial government has demonstrated support for provincial industry self-management with the creation of 5 new administrative authorities and plans to establish two more in the near future.

Industry Support for Province-Wide Licensing of Electrical Contractors

In January 2001, the key constituents of the electrical contracting industry began developing a framework for achieving a province-wide system of licensing electrical contractors.

- The Electrical Contractors Association of Ontario (ECAO) representing the electrical contractor community and the Electrical Contractor Registration Agency.
- The Ontario Electrical League (OEL) representing the broader electrical industry including manufacturers, suppliers, utilities and independent contractors.
- The Electrical Safety Authority, the governing body for electrical inspection and code development and electrical safety regulations.

Together these three bodies make up the industry component of the Electrical Contractor Registration Agency Board of Directors. In that capacity, these organizations have been dedicated to the promotion of the master licensing system and the expansion of the municipal reciprocal recognition program. The primary objective, however, has always been to realize a true province-wide standard and system of licensing electrical contractors.

The first challenge was to determine how the three organizations could work together to create a province-wide contractor licensing system to meet their own expectations as well as fulfil the interests of the public and government.

Principles for a Provincial System of Licensing Electrical Contractors

The formula for meeting this challenge was to develop a set of guiding principles to govern the process and measure the efficacy of the various models to be considered. The principles were developed at the executive level of each organization and validated through a broader Industry Steering Committee/Focus Group on Provincial Licensing.

Principles

1. A provincial system of licensing electrical contractors should be self-regulated, in the sense that those in the industry are in the best position to determine the qualifications necessary to enter the business.
2. The system should be built on the existing standards already in place, which is master electrician examination and licensing.
3. The purpose of the system should be to improve and streamline public safety.
4. There should be no duplication or conflict with other standards, such as ESA's authorized contractor programs, or municipal licensing.

5. The system should be independent from any apparent conflicts of interest and visibly seen as representing the public interest.
6. The system should be self-funding.

Strategic Challenges

In addition, the Steering Committee identified four strategic challenges related to the implementation of any proposed model:

1. Does the model maximize use of existing, proven standards and prior industry efforts in contractor licensing in order to realize implementation within one year?
2. Does the model for province-wide licensing have the representative structure and governance processes necessary to gain the support of the key industry constituents (ECAO, OEL, ESA)?
3. Does the model have the processes and infrastructure to deliver an effective licensing program on a province-wide basis?
4. How might we get all electrical contractors supporting and participating in the provincial licensing system?

Five Models

Five models for realizing provincial licensing were identified by the Steering Committee.

1. Continue to use ECRA and municipal reciprocal recognition as a vehicle to achieve province-wide licensing.
2. Constitute a new provincially sanctioned licensing agency as a partnership of ECAO, OEL and ESA.
3. Defer all authority to license electrical contractors to ESA.
4. Continue to use ECRA in its present form but as an agency of ESA and an integral part of ESA's regulatory affairs function (combination of 1 & 3).
5. Constitute a new provincially sanctioned licensing agency using ECRA as the platform (combination of 1 & 2).

Each of these was tested against the ten principles and strategic challenges.

1. **ECRA within Municipal System**

The option to continue with ECRA received high marks in such areas as being self-regulated, benefiting from the use of existing accepted standards and acceptability to contractors and industry organizations. On the hard infrastructure and funding issues, however, ECRA would be severely challenged to deliver effective province-wide licensing.

ECRA would remain dependent on the existing municipalities as well as be required to “stand in the municipalities’ shoes” for the balance of the province.

Harmonizing with ESA’s processes and public safety mandate would also be problematic.

2. **New Agency – ECAO/OEL/ESA Partnership**

The second option, to create a new government empowered licensing agency as a not-for-profit partnership between ESA, OEL and ECAO, had similar problems related to infrastructure and cost. In addition, the need to “start from scratch” regarding standards, processes and marketing to contractors would most likely result in a lukewarm reception from the agency’s primary customers. There is also the question of the province’s willingness to create another mandated agency.

3. **ESA to License Contractors**

The third option contemplates turning the entire licensing system over to ESA. Even though it achieved very high marks on infrastructure and delivery criteria, the model is viewed as being disconnected from the interests of the broader industry and a tough sell to contractors and industry organizations like ECAO and OEL.

The complete integration of licensing into ESA’s operations could lead to a conflict of interest between contractors and ESA at the job site level. The distinction between the lawmakers and the police would be lost and along with it the partnership required for successful industry self-management.

4. **ECRA as an Agency of ESA**

The fourth option examined by the Steering Committee benefits from combining the best attributes of options 1 and 3. The high level of acceptance of ECRA’s governance structure, licensing standards and processes partnered with ESA’s provincial infrastructure, commitment to public electrical safety and ability to enforce industry standards results in this option being recommended by the Steering Committee. It is seen as the most likely to meet the industry’s agreed principles and strategic challenges in the shortest period of time.

6. New Agency based on ECRA

This model was generated as an alternative to the committee recommendation to address contractor concern over loss of licensing control to ESA. As with other ECRA based models, this alternative scores high on industry acceptance, but has difficulty meeting the infrastructure and delivery criteria.

There is also the issue of a new agency acquiring the “public safety /consumer protection” mandate from the provincial government. Without this, the model continues to be a registration system rather than a licensing system relying on other organizations with different mandates such as ESA, municipalities, etc. to carry out enforcement. This runs counter to the province’s aim to eliminate duplication in its building regulatory system.

The Recommendation

Establish ECRA as an Agency of ESA

Currently, ECRA is constituted as an agency of ECAO. Though legally part of the ECAO and ultimately reporting to the ECAO Board of Directors, ECRA has autonomy over all matters related to the registration of master electricians and electrical contractors. ECRA’s Board of Directors is representative of the ECAO contractors, OEL contractors, ESA representatives, municipalities and the public.

It is recommended that ECRA be re-constituted as an agency of the Electrical Safety Authority. It is also recommended that, in all other respects, the ECRA constitution and by-law remain intact to the extent legally possible. This is necessary for the ongoing functioning of ECRA, continuing acceptance by the contractor community, and to accommodate significant transition issues.

In the transition period from municipal to province-wide licensing, it is recommended that the municipal representatives remain as directors of ECRA and that following the transition period, the municipal representatives be replaced by provincial government appointees.

It is also necessary to maintain the function of the ECRA Examining Board. This is the vehicle to allow for objective application of the “grandfathering” process during the transition period. It is estimated that 1000 contractors are not licensed at present simply because they operate outside of the existing licensing municipalities.

Separation of ESA Operations and Licensing Function

In order to maximize the level of industry input and policy independence related to the ongoing administration of ECRA within the ESA structure, there needs to be a clear separation within ESA between operations and regulatory activities.

There exists a level of contractor suspicion regarding the motives of ESA with respect to licensing which needs to be addressed to get full contractor support for this proposal. It is essential that this licensing proposal be distinguished and insulated from these perceived conflicts of interest and concerns about the loss of contractor input.

It is recommended that ESA create a Regulatory Affairs Committee (RAC) of ESA directors to provide oversight of ESA's regulatory functions generally, and ECRA in particular. In addition the RAC should act as liaison between ECRA and other regulatory activities within ESA to ensure maximum benefit of the partnership to all parties.

It is further recommended that the RAC be comprised of directors, at least 50% of whom are ESA contractor directors, in order to maintain a strong connection between ECRA and the contracting industry and between ECRA and the ESA Board.

Legislative Action

To give effect to this proposal it is recommended that the industry request that the Ministry of Energy and the Ministry of Consumer and Business Services approve regulations that would include the registration and licensing of master electricians and electrical contractors by ESA. This requirement may be accomplished within the framework of the Electrical Safety Code.

As a consequence of moving to a provincial system of registration and licensing in partnership with ESA, the licensing powers of the municipalities become redundant for the electrical contracting industry. Therefore it is recommended that the Minister of Municipal Affairs and Housing be asked to exercise his power to exempt master electricians and electrical contractors from the provisions of Section 160 of the *Municipal Act*.

Benefits

A system of provincial licensing for electrical contractors represents a fundamental shift in industry policy and in the roles of the organizations and individuals involved.

The Steering Committee envisions considerable benefit to all participants in the electrical contracting industry with the successful implementation of the ECRA/ESA provincial licensing system. The proposal successfully marries the two objectives of representing the public safety interest within a single industry driven self-management system.

By utilizing proven existing standards and processes, it provides a measure of comfort to contractors that the system is fair and equitable while promoting mobility by eliminating perceived "non-tariff barriers" within the industry.

The use of existing standards and processes also enhances the value of ECRA to ESA. It makes the streamlining and integration of licensing with other regulatory processes (codes, inspections, ACP) more efficient and more closely ties licensing into the overall public safety/consumer protection mandate.

For ECRA, the proposal provides the ability to leverage ESA resources for province-wide delivery of electrical contractor licensing. It also provides ECRA's contractor constituents with unprecedented access to the ESA corporate structure, in essence inoculating ESA with a contractor perspective on issues related to the regulation of electrical contracting.