

## INDUSTRY TRAINING APPEAL BOARD

*Industry Training Authority Act (SBC 2003, c. 34)*

**IN THE MATTER OF** an appeal under section 11 of the *Industry Training Authority Act*, SBC 2003, c. 34

**BETWEEN:** Campbell Yates **APPELLANT**

**AND:** Industry Training Authority **RESPONDENT**

**BEFORE:** A Panel of the Industry Training Appeal Board  
Marcia McNeil, Chair  
Jeevyn Dhaliwal, Member  
Linda Love, Member

### SUMMARY OF APPEAL

The Appellant, Campbell Yates, appeals the February 23, 2006 decision of the Industry Training Authority ("ITA") in which his request to be granted an ITA Certificate of Qualification as a carpenter, and an inter-provincial Red Seal endorsement for carpentry was denied. The Appellant asserts that, despite his not having achieved the threshold pass mark on the inter-provincial Red Seal exam in carpentry (the "Exam"), this Panel ought to consider his extensive and unquestioned work experience in the carpentry trade to exercise its authority to overturn the decision.

### LEGISLATIVE FRAMEWORK

The ITA is established pursuant to, and draws its authority from, the *Industry Training Authority Act*, SBC 2003, c. 34 (the "*Act*"). The powers of the ITA with respect to training programs are set out in section 8 of the *Act* and include:

#### **Powers of authority respecting training programs**

8 (1) The authority may do one or more of the following:

...

(e) develop examinations and assessment standards and procedures for industry training programs and for the recognition of training in another program or jurisdiction;

...

- (i) establish standards, procedures and fees for examinations, assessments and services;

...

The process to initiate reconsiderations and appeals of decisions of the ITA is set out in section 11 of the *Act*, the relevant portions of which are reproduced as follows:

### **Reconsiderations and appeals**

11 (1) An individual who is affected by any of the following decisions under this *Act* may request, within 30 days of receiving written notice of the decision, a reconsideration of the decision by the chief executive officer:

- (a) a refusal by the authority to award an industry training credential or industry training recognition credential;
- (b) the suspension or cancellation of an industry training credential or industry training recognition credential;
- (c) a refusal to register an individual as a trainee;
- (d) the cancellation of the registration of an individual as a trainee;
- (e) the revocation of, or cancellation of the registration of, an industry training agreement.

...

(4) An individual who is dissatisfied with the decision under subsection (3) may commence an appeal to the appeal board by filing a notice of appeal, in the form provided by the minister, within 30 days of receiving written notice of the decision being appealed.

(5) The appeal board, by order, may do one or more of the following in respect of an appeal under this section:

- (a) dismiss the appeal;
- (b) allow the appeal and give directions, if any, that the appeal board considers appropriate in the circumstances;
- (c) vary the decision appealed from;
- (d) set terms and conditions to which the order is subject.

(6) Sections 11 to 20, 22, 24 to 33, 34(3) and (4), 35 to 42, 44, 48 to 57, 58, 60(a) to (c) and 61 of the *Administrative Tribunals Act* apply to an appeal to the appeal board.

(7) The appeal board has exclusive jurisdiction to inquire into, hear and determine all those matters in questions of fact, law and discretion arising or required to be determined in an appeal under subsection (4) and to make any order permitted to be made.

...

## BACKGROUND

In the carpentry trade, as is the case with many of the trades that operate under the mandate of the ITA, one of the roles of the ITA is to establish qualifications and standards that will permit successful applicants to have their credentials recognized across Canada. The Red Seal endorsement ensures that a British Columbia tradesperson's qualifications will be recognized in other provinces and territories.

The Appellant is the principal of Campbell Yates Construction and has 26 years' experience in the carpentry trade.

In November of 2005, the Appellant applied to the ITA for permission to write the Exam.

The ITA has established program standards that permit applicants to challenge the Exam if they have 7,500 documented hours of directly related work experience.

The ITA determined that the Appellant possessed the requisite experience and he was therefore permitted to write the Exam without having to complete a technical training requirement. This fact was confirmed to the Appellant in correspondence from the ITA dated December 6, 2005 which scheduled January 10, 2006 as the date for the Appellant to write the Exam. The correspondence to the Appellant identified the National Building Code of Canada as the standard upon which the Exam would be set and adjudicated.

The Appellant scored an overall grade of 68% on the Exam; representing the average of the marks he scored in each the following components of the Exam:

1.	Occupational Skills	–	65
2.	Form Work	–	67
3.	Framing	–	52
4.	Exterior	–	94
5.	Interior	–	68

The pass mark for the exam was 70%. Accordingly, the Appellant received notice from the ITA that he was not successful in achieving a Red Seal Certification in carpentry.

In accordance with the requirements of the *Act*, the Appellant wrote to the chief executive officer of the ITA on February 14, 2006 requesting a reconsideration of the decision to not grant him the Red Seal Certification.

Mr. Langill, the Director of Red Seal Programs, responded to the Appellant on February 23, 2006 and advised him that:

I am in receipt of your letter dated February 14, 2006 in which you outline your concerns regarding your unsatisfactory results obtained on the Carpentry IP exam. I do not disagree with any of your statements around the quality of workmanship that you continue to provide and your abilities to deliver quality. However, the IP exam is an exam that is based on Canadian Common Core and is not BC specific. The understanding of Red Seal is that a person who is certified would be able to work without restriction anywhere in Canada. These exams are reviewed and updated by instructors, subject matter experts and also by representatives of large industry groups from all provinces and territories and the feelings have all been positive. . . . In preparing to write the exam, one must be familiar with the National Occupational Analysis, as this is what the exam is built to reflect.

The letter also quoted from policies prepared by the Canadian Council of Directors of Apprenticeship ("CCDA") that establish that the pass mark for all Red Seal examinations is 70%.

The Appellant's request for reconsideration was accordingly denied.

The Appellant then wrote to this Board on April 3, 2006 appealing the reconsideration decision communicated to him by the Director of Red Seal Programs.

### **ISSUES RAISED BY THE APPELLANT IN THIS APPEAL**

The Appellant questions the decision of the ITA refusing to grant him the Red Seal Certification, despite his proven technical abilities and asks this Panel to exercise its discretion to grant him the Red Seal Certification. The Appellant also raises concerns over the use of metric measurements in the Exam when, in his experience, imperial measurements are invariably used. Further, he suggests that he was unaware that the Exam would be based on National Occupational Analysis ("NOA") requirements. Finally, the Appellant raises concerns about the appeal process itself.

The parties to this appeal accept that these issues are within the jurisdiction of this Panel to decide.

**INFORMATION AND MATERIALS PROVIDED BY THE APPELLANT**

In pursuing this appeal, the Appellant reconfirmed the information he had provided in his request for reconsideration, which outlined his extensive experience as a carpenter and which invited a representative of the ITA to contact several building inspectors who are familiar with his work or to send a representative of the ITA to one of his jobsites to confirm his stated skill and ability.

The Appellant also noted that, based on his extensive experience in the carpentry trade, he has been recognized by the ITA as being qualified to endorse and oversee the certification process of the apprentice carpenters he employs and supervises.

The Appellant identified the steps he took to prepare for the Exam including:

1. reviewing building codes;
2. maintaining membership in related associations;
3. holding discussions with his peers;
4. reviewing relevant periodicals;
5. reviewing class notes from a course he took through Camosun College in 2001 entitled "Carpentry CQ (IP Exam)"; and
6. purchasing and reviewing the 4<sup>th</sup> year notes and exam questions for a carpentry course offered by Camosun College.

The Panel was also provided with a marketing brochure of Campbell Yates Construction that includes photographs of several of the Appellant's building projects.

**INFORMATION AND MATERIALS PROVIDED BY THE ITA**

In its response, the ITA submitted that, upon request, it will refer candidates to various sources of information that might assist them in preparing for the examinations it offers, including:

1. directing candidates to the relevant NOA information available on the Red Seal website;
2. directing candidates to the program profile on the ITA website; and
3. providing candidates with a booklet entitled "Final Examinations: Preparing for Success".

This information was not provided to the Appellant as he did not make such a request.

With respect to the passing mark for the Exam, the ITA takes the position that it does not have discretion to grant a passing grade to a candidate who achieves less than 70% on the Exam. The ITA has referred us to the CCDA Interprovincial Standards Red Seal Program Policy number Po1480 entitled "Pass Mark for Red Seal Examinations" which sets the pass for all Red Seal examinations at 70% and

to ITA Operations Examinations Policy PA3002 (the "Policy") which adopts that pass mark. The Policy provides in part:

1.1 Exams – General

Where a mark of 70% or greater is attained on an examination, credit for completion of that examination will be granted.

Rewrites, if permitted, are subject to a 30-day waiting period from the previous attempt in payment of the appropriate fee.

Individuals who write an exam for the first time and fail with a mark of between 60% and 70% are permitted to write a second time.

The ITA stresses that the Exam has been approved and certified by each Province and Territory, allowing successful candidates the opportunity to prove their qualifications throughout Canada.

### FINDINGS OF THE PANEL

After having reviewed the material provided to the Panel, which included additional submissions requested by the Panel, we find that section 8(1)(e) of the *Act* permits the ITA to establish standards for writing exams.

Candidates who successfully complete Red Seal examinations obtain a certification that permits them to establish their qualifications across Canada.

The Appellant submits that one of the goals of the ITA is to be flexible in the manner in which it determines abilities. He questions whether the ITA's reliance on the Exam as the sole indicator of ability meets this goal.

The Panel accepts that consistent testing is required to ensure that consistent standards are established across Canada. While written examinations may not be the only method of determining the extent of trade skills, having a standard examination written by all applicants is a useful methodology to ensure fairness and consistency. Further, this Panel accepts that section 8 of the *Act* contemplates that such decisions are properly within the mandate of the ITA. The Appellant's demonstrated practical experience was recognized by the ITA to the extent that it enabled him to write the Exam without having to first complete a training program.

In addition, we note that section 1.6 of the Policy permits applicants to seek accommodations, including such modifications to the administration of the examinations as may be necessary for applicants with disabilities. The Appellant did not seek, and does not now indicate that he required, any special accommodations in writing the Exam.

The Panel is concerned with the ITA's approach to providing reference materials for candidates who wish to write the Exam. We find that the Appellant had the responsibility to ensure that he had adequate information to write the Exam, particularly in light of the fact that it had been several years since he last took a preparatory program. Our observations in this regard are not intended and should not be taken as criticism of the steps the Appellant took in preparing for the Exam;

however, we find that he may have been more proactive in seeking out the relevant preparatory information.

The Panel has had an opportunity to review the information that the ITA provides to applicants upon request. We agree that the information is useful, and ought to be provided to candidates as a matter of course. Had the Appellant reviewed the material, it is likely that he would have been more familiar with NOA requirements and the Exam's reliance on metric measurements. However, we are unable to say whether the Appellant would have been successful in the Exam had he had this opportunity.

It would seem a fairly simple matter for the ITA to be more proactive in notifying all candidates of this information, for example, by referring to the information in the letter sent out to candidates to confirm the date and schedule for taking the Exam. We find that this information would be especially useful to candidates such as the Appellant who are given the opportunity to write the Exam without the requirement of taking a technical training program and who are, therefore, relying on their industry experience rather than classroom based education. These candidates may be disadvantaged in that they do not have had the benefit of recent advice from instructors as to what is required to write a successful Exam. It is our hope that the ITA will consider making these sources of information known and available to all candidates as a matter of course.

The Panel upholds the decision of the ITA to reject the Appellant's request that he be granted the Red Seal Certification in carpentry. The Policy permits the Appellant an opportunity to retake the Exam and we encourage him to do so.

### **ADDITIONAL MATTERS**

The Panel also wishes to take this opportunity to address two additional matters.

First, this is the first appeal heard by the Industry Training Appeal Board and was filed prior to the publication of the Board's rules and guidelines. We acknowledge that not having the benefit of the Board's rules and guidelines for the conduct of appeals put the parties at a disadvantage. In that regard, we would like to thank both parties for the quality of their submissions and appreciate their patience in responding to the Panel's request for additional information after the initial submissions were filed.

Second, one of the requests made of the ITA by the Panel was to provide to the Panel a copy of the Exam written by the Appellant. The ITA declined to provide this information on the basis of policies that strictly govern and safeguard the use and disclosure of such examinations.

Section 33(4) of the *Administrative Tribunals Act* SBC 2004 ch. 45, (incorporated by reference into the *Act*) authorizes this Board to issue an order compelling production of documents. The Panel appreciates the need for careful handling of the examinations to ensure fairness to all candidates. In this case, the Panel ultimately concluded that it did not need to review the Exam, however, we wish to provide the ITA with notice that there may be occasions in the future where the

Board will require a review of ITA examinations in accordance with its mandate under and powers granted pursuant to the *Act*. We therefore suggest that the ITA consider how it will address such requests in the future to ensure that appellants are provided a fair hearing.

**CONCLUSION**

The Panel concludes that, in denying the Appellant's request to be issued Red Seal Certification, the ITA properly relied on the Policy that established a passing grade of 70% on Red Seal examinations. Accordingly, the appeal is dismissed.

October 25, 2006

"Marcia McNeil"

Marcia McNeil, Chair

"Jeevyn Dhaliwal"

Jeevyn Dhaliwal

"Linda Love"

Linda Love