

Before the Electrical Workers Registration Board

	CE No. 22482
Electrical Worker:	Arvin Chandra (the Respondent)
Registration Number:	EAS 2338
Electrical Worker Number:	EW 059418
Registration Class:	Electrical Appliance Serviceperson

Decision of the Board in Respect of the Conduct of an Electrical Worker Under section 147G and 147M of the Electricity Act 1992

Hearing Location:	Wellington
Hearing Type:	In Person
Hearing and Decision Date:	18 October 2022

Board Members Present:

- Mr M Orange, Barrister (Presiding)
- Mr R Keys, Registered Inspector
- Ms J Davel, Lay Member
- Mr M Perry, Registered Electrician

Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 143(a)(i) of the Act.

Contents

Summary of the Board’s Decision..... 2

Introduction..... 2

Function of Disciplinary Action 3

Procedure 3

Evidence..... 4

Board’s Conclusion and Reasoning..... 5

 Contrary to an Enactment..... 6

 Negligence..... 7

Penalty, Costs and Publication..... 8

 Penalty 9

 Costs..... 9

 Publication 10

Penalty, Costs and Publication Orders 11

Right of Appeal..... 12

Summary of the Board’s Decision

[1] The Respondent carried out prescribed electrical work in a negligent manner. He is censured and ordered to pay costs of \$250. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Introduction

[2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.

[3] The Respondent was served with a notice setting out the alleged disciplinary offence the Investigator reported should be considered by the Board. It was:

1. On or around 6 July 2021 at [OMITTED], Mr Arvin Chandra has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he failed to ensure that fittings or appliances were left in an electrically safe manner in breach of regulation 13(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 6 July 2021 at [OMITTED], Mr Arvin Chandra has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he failed to ensure that fittings or appliances were left in an electrically safe manner.
- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in their power or possession.
- [5] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,³ Collins J. noted that:
- “... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*
- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.
- [10] The appearance of Counsel for the Investigator was excused.

¹ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

Evidence

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

[12] The Board heard from the Respondent prior to it making a decision.

[13] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to carry out the replacement of an existing electric oven with a new electric oven. In carrying out the replacement, the Respondent used the existing 20A rated “stove isolator”, the existing 20A rated “outlet”, and the existing connecting lead between the stove isolator and the stove “plug”. Those cables and fittings were underrated for the replacement electrical oven that the Respondent connected.

[14] The Investigator sought an opinion on the prescribed electrical work from Mr Mark Carter, an Electrical Inspector. Mr Carter identified that the connection of the new electric range had compromised the electrical safety of the existing electrical installation in breach of regulation 13 of the Electricity (Safety) Regulations 2010.

[15] In response to the complaint, the Respondent set out that he was aware that the cables and fittings were unsuitable for use with the new oven, and advised he had informed his client that a new cable and socket needed to be purchased and installed. However, at his client’s request, the Respondent carried out the replacement using the existing components on the understanding that a new cable and socket would be installed at a later date. The Respondent accepted that he should not have connected the oven and that, by doing so, he compromised the electrical safety of the existing electrical installation.

[16] The Investigator and the Respondent agreed that the level of harm for the disciplinary offence meets the threshold of negligent and/or incompetent.

[17] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Board's Conclusion and Reasoning

- [18] The Board has decided that the Respondent **has** carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, IN THAT, he failed to ensure that fittings or appliances were left in an electrically safe manner.
- [19] The charges put before the Board were laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii). The parties agreed that negligence was the appropriate finding.
- [20] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence.
- [21] Contrary is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations. The Board does not need to find that there was intention, fault or negligence⁵.
- [22] Negligence is considered to be the departure by an electrical worker, whilst carrying out or supervising prescribed electrical work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.
- [23] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [24] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰.

[25] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.]*

[26] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.

[27] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹¹ the Court's noted, as regards the threshold for disciplinary matters, that:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

Contrary to an Enactment

[28] The prescribed electrical work was carried out on a low voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000. This is because regulation 59 stipulates:

59 Low and extra-low voltage installations to comply with AS/NZS 3000

- (1) *Every low or extra-low voltage domestic installation, or part of a domestic installation, must be installed, tested, inspected, and*

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹¹ [2001] NZAR 74

connected so as to comply with Part 2 of AS/NZS 3000 if it has a maximum demand at or below—

- (a) 80 amperes per phase if single-phase; or*
- (b) 50 amperes per phase if multi-phase.*

[29] The Board received evidence that the prescribed electrical work had not been completed in accordance with AS/NZS 3000, and the Respondent accepted that evidence and agreed that the work was not in accordance with it. As such, the prescribed electrical work was carried out in a manner that was contrary to an enactment.

Negligence

[30] The non-compliant prescribed electrical work was, however, more serious and, in that respect, the Board found that the Respondent had been negligent.

[31] The Board made its findings of negligence with respect to the under-rated conductors and fittings that were used and on the basis that the provisions of regulation 13 of the Safety Regulations had been breached. It states:

13 Doing work on works, installations, fittings, and appliances

- (1) A person who does work on any works or installation, or on any part of any works or installation, must ensure—*
 - (a) that the resulting works or installation, or part of the works or installation, is electrically safe; and*
 - (b) if the work is on only part of any works or installation, that the work has not adversely affected the electrical safety of the rest of the works or installation.*

[32] The terms electrically safe and unsafe are defined in regulation 5 of the Safety Regulations:

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a significant risk that a person may suffer serious harm, or that property may suffer significant damage, as a result of dangers arising, directly or indirectly, from the use of,

or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.

[33] Further, regulation 20 deems certain installations to be unsafe. In respect of the correct rating of conductors and fittings:

20 Electrically unsafe works and installations

(2) *Works and installations are also deemed to be electrically unsafe if—*

(a) *the characteristics of any fittings used in the works or installations are impaired;*

[34] Mar Carter noted that under full load, the electric oven could draw 52A, whereas the conductors and fitting used were rated at a maximum of 15A for the conductor and socket outlet and 20A for the isolator. As such, the conductors and fittings could be subjected to loads beyond their current carrying capacity. This could result in heating of those conductors and fittings and, potentially, a fire.

[35] It is acknowledged that, as an Electrical Appliance Serviceperson, the Respondent was not able to install new conductors and fittings. He should, however, have obtained the services of an electrical worker who could and should not have connected the oven until such time as he had.

[36] The Respondent is reminded, as are other electrical workers, that prescribed electrical work has to be safe at the time it is connected. Future intentions or intended actions are irrelevant. Incidents or harm can occur at any time.

[37] It is also acknowledged that the Respondent did not want to leave the client without an oven because the existing one had already been removed. That, however, is a matter that goes to mitigation when the Board deals with penalty.

[38] Given the above, and on the basis of the Agreed Statement of Facts, the Board found that the Respondent had carried out prescribed electrical work in a manner that was not in accordance with the standards to be expected of an electrical worker and that the transgressions were sufficiently serious enough to warrant a disciplinary finding of negligence.

Penalty, Costs, and Publication

[39] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[40] The Respondent made submissions at the hearing as regards penalty, costs, and publication.

Penalty

[41] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹² commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

[42] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹³ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.

[43] The Board adopted a starting point of a fine. It noted the mitigating factors present, including that the matter was dealt with by way of an Agreed Statement of Facts and the circumstances surrounding the offending. The Board also noted that the Respondent was undertaking training in an effort to move to a different class of registration. On the basis of the mitigating factors present, the Board decided to reduce the penalty to one of a censure. A censure is a public expression of disapproval.

Costs

[44] Under section 147N of the Act, the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of, and incidental to the investigation, prosecution and the hearing.

[45] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁴.

¹² HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹³ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

¹⁴ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

[46] In *Collie v Nursing Council of New Zealand*¹⁵ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

[47] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁶ the High Court noted:

[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.

[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.

[48] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.

[49] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

[50] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act¹⁷. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.

¹⁵ [2001] NZAR 74

¹⁶ CIV-2011-485-000227 8 August 2011

¹⁷ Refer sections 128 of the Act

- [51] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [52] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁸. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁰. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²¹.
- [53] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²². It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [54] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.
- [55] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act, which allows for prohibition of publication.

Penalty, Costs and Publication Orders

- [56] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision.

A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

¹⁸ Section 14 of the Act

¹⁹ Refer sections 200 and 202 of the Criminal Procedure Act

²⁰ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²¹ *ibid*

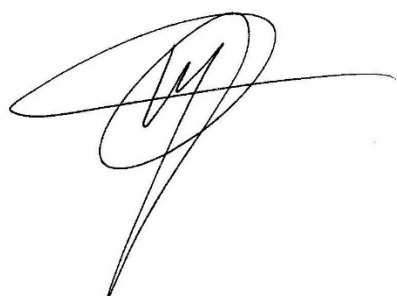
²² *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [57] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

Right of Appeal

- [58] The right to appeal Board decisions is provided for in section 147ZA and 147ZB of the Actⁱⁱ.

Signed and dated this fourth day of November 2022



Mr M Orange
Presiding Member

ⁱ **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*

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- (i) permanently, or for any period that the Board thinks fit; or
 - (ii) until that person does 1 or more of the things specified in subsection (2):
- (e) order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:
 - (f) order the person to pay a fine not exceeding \$10,000:
 - (g) order that the person be censured:
 - (h) make no order under this subsection.
- (2) The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—
 - (a) pass any specified examination:
 - (b) complete any competence programme or specified period of training:
 - (c) attend any specified course of instruction.
 - (3) The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).
 - (4) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—
 - (a) offence for which the person has been convicted by a court; or
 - (b) infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.
 - (5) The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.
 - (6) If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]

ii Section 147ZA Appeals

- (1) A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:
 - (e) any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).

Section 147ZB Time for lodging appeal

An appeal under section 147ZA must be brought within—

- (a) 20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or
- (b) any further time that the District Court may allow on application made before or after the expiration of that period.