

## Before the Electrical Workers Registration Board

CE No. 22274

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Graham Cloake a registered and licensed electrical worker (E 266871, EW 128743, Electrician) (the Respondent)

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### Decision of the Board in Respect of the Conduct of an Electrical Worker

#### Under section 147G and 147M of the Electricity Act 1992

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Hearing Location:

Queenstown

Hearing Type:

In Person

Hearing Date:

3 November 2022

Decision Date:

6 December 2022

Board Members Present:

Mr M Orange, Barrister (Presiding)

Mr R Keys, Registered Inspector

Mr M Macklin, Registered Inspector

Ms J Davel, Lay Member

Ms A Yan, Registered Electrical Engineer

Appearances:

R Hill for the Investigator

**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 disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

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**Summary of the Board’s Decision**

[1] The Respondent carried out prescribed electrical work in a negligent manner and provided a false or misleading return. He is fined \$3,000 and ordered to pay costs of \$2,250. 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 offences the Investigator reported should be considered by the Board. They were:

**First Alleged Disciplinary Offence**

1. Between 13 August 2018 and 7 July 2019 at [OMITTED], Queenstown, Mr Graham Cloake 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 connected and certified high risk

prescribed electrical work to a supply without it being inspected in breach of regulations 59, 70, and 73A of the Electricity (Safety) Regulations 2010.

Or in the alternative:

2. Between 13 August 2018 and 7 July 2019 at [OMITTED], Queenstown, Mr Graham Cloake 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 connected and certified high risk prescribed electrical work to a supply without it being inspected.

### **Second Alleged Disciplinary Offence**

3. On or around 23 August 2019 at [OMITTED] Queenstown, Mr Graham Cloake has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Certificate of Compliance for prescribed electrical work that contained false information.
- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her 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*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.
- [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*,<sup>3</sup> 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.

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

<sup>2</sup> [1992] 1 NZLR 720 at p 724

<sup>3</sup> [2016] HZHC 2276 at para 164

### Procedure and Background to the Hearing

[9] The matter proceeded as a defended hearing. The Respondent had agreed to the hearing date. A Notice of Hearing was issued on 25 August 2022, which provided the hearing details.

[10] In the lead-up to the hearing, the Board Officer made various attempts to contact the Respondent to ascertain whether he would be attending the hearing. The following is a timeline of those attempts:

- Phoned at 2.35 PM on 27 October 2022, and a voicemail was left;
- Emailed on 27 October 2022 to request confirmation of hearing attendance. The email included a copy of the hearing book.
- Phoned at 1.05 PM on 28 October 2022, and a voicemail was left. Emailed Briefs of Evidence that had been filed;
- Phoned at 2.15 PM on 1 November 2022, and a voicemail was left. Emailed with the Opening for the Investigator.
- Phoned at 4 PM on 2 November 2022, and a voicemail was left.

[11] The first response from the Respondent was by email at 4.09 PM on 2 November 2022. He stated:

*My apologies for not getting back to you sooner.*

*I have been away with a family emergency for the past couple of weeks and I'm still away so unfortunately I will not be able to attend the hearing tomorrow.*

[12] The Board Officer, at the direction of the Presiding Member, emailed back at 4.32pm on 2 November 2022, asking the Respondent if he wanted to seek an adjournment and advising him that, if he did, he would have to provide reasons and supporting evidence.

[13] The Respondent replied at 8.56 on 3 November 2022, the day of the hearing, seeking an adjournment. His request was as follows:

*Yes I would.*

*And it is personal and family reasons*

[14] Board Members, Counsel for the Investigator and an expert witness, had travelled to Queenstown on 2 November 2022 for the hearing on 3 November 2022. Three witnesses had been summonsed to appear and give evidence.

[15] Counsel for the Investigator was appraised of the situation and asked if the request for an adjournment was opposed. Counsel noted that the Investigator was ready to proceed but did not formally oppose the application.

- [16] The Board was mindful of the length of time that it had taken to get the matter to a hearing and of the difficulty in getting a hearing date when the parties and witnesses were all available. The Board also noted the expense that had been incurred in convening the hearing, the very late response from the Respondent, the lack of detailed reasons for the application and the absence of supporting evidence to substantiate the need for an adjournment.
- [17] The Board was left in a position where it was not able to ascertain the veracity of the application. It was concerned that if it was to refuse the application, natural justice principles, and in particular the Respondent's right to appear, be heard and challenge the evidence of the Investigator's witnesses, may be put at risk.
- [18] The Board decided that it would proceed with the hearing but that it would adopt a procedure that would still afford the Respondent his natural justice rights. The procedure adopted was as follows:
- (a) that the Board would receive the evidence of the witnesses that were present and would then adjourn the hearing;
  - (b) a transcript of the evidence received would be produced and provided to the Respondent; and
  - (c) a direction would be issued that the Respondent is to advise, no later than 10 working days after the transcript and any further evidence adduced at the hearing is issued to him, whether he requires that the hearing resume to him to cross examine any of the witnesses and/or to call or give evidence in his defence.
- [19] During the hearing, a direction was also issued for Mr [OMITTED] to produce further documentary evidence that he referred to in his oral evidence by 10 November 2022 and for copies to be provided to the Respondent. That evidence was included in the above directions.
- [20] The Respondent was directed that he was to advise the Board Officer no later than 10 working days after a transcript and further evidence are issued to him if he requires a resumption of the hearing.
- [21] The Board directed that if the Respondent did give notice, then:
- (a) the Board will consider whether it should be conducted by audio-visual link. If the Respondent objects to an audio-visual hearing, he is to provide reasons why; and
  - (b) a hearing date will be set down for further evidence to be received.
- [22] The Board also directed that if the Respondent did not give notice, then the Board would meet and make a decision on the basis of the evidence before it.
- [23] A Board Minute was issued noting the above was issued and emailed to the Respondent on 10 November 2022 together with a summary of the directions. The

Respondent was emailed again on 24 November 2022, the day prior to the timetabling noted above expiring. No response was received.

- [24] On 6 December 2022, the Board convened and considered the evidence before it and made a decision.

### **Evidence**

- [25] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. 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.*

- [26] The Board received witness statements from the Investigator's witnesses. Those witnesses appeared and confirmed their evidence having been sworn in.
- [27] A summary of the evidence was that the Respondent was engaged to carry out the installation of a Builders Temp Supply (BTS) for a new build at [OMITTED], Queenstown. It was installed and certified by the Respondent on 13 August 2018 and inspected by Mr [OMITTED] on 5 November 2018. At some point between 2 May 2019 and 28 June 2019, the BTS was removed and the cable was reinstalled in the main switchboard together with the BTS meter. A MEN earth system was also installed at the same time. There was no record of a high risk inspection having been carried out for the mains work as required by the Electrical (Safety) Regulations 2010.
- [28] The connection of the mains to the installation and the movement of the electricity revenue meter from the BTS installation to the installation came to light as a result of an investigation into a missing revenue meter initiated by the power supplier. Those investigations also ascertained that the mains supply and the meter had been moved and livened without a high-risk inspection having taken place as is required by the Safety Regulations.
- [29] Whilst the Respondent did not appear at the hearing, he did provide a response to the complaint. His position was that he did not carry out this work and that when he returned to Queenstown, he found that the meter had been moved and the supply was connected to the house. He stated he did not know who converted the power supply from the BTS to the house or who moved the meter.
- [30] The Investigator submitted that the prescribed electrical work complained about had been carried out by the Respondent and that this was evidenced by the Respondent completing and signing a Certificate of Compliance on 23 August 2019, which stated:

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

“fit off house only as per quote” and it ticked the type of work as “General, new work, High Risk (mains work) and Part 2 of AS/NZS3000”. Counsel noted that the Certificate of Compliance was, at least in part, for works that the Respondent subsequently denied carrying out and that it stated the date of connection was 23 August 2019 when the installation had been connected at some time prior to 2 July 2019.

- [31] Counsel noted that the description in the Certificate of Compliance did not meet the requirement of Safety Regulation 67(2) as it failed to accurately describe the work carried out, and it did not provide dates on which the work was carried out. Those matters formed the basis for the Investigator’s position that the Respondent had provided a false or misleading return.
- [32] The witnesses gave evidence which supported the above summary. Mr [OMITTED], the developer who contacted the Respondent, noted that he had difficulties getting the certification from Respondent. He noted that two versions of the Certificate of Compliance had been provided by the Respondent. The first made no reference to “mains work”. The second was an updated version of the first with “mains work” annotated on it. Mr [OMITTED] provided the Board with copies of the two versions.
- [33] Mr [OMITTED] gave evidence that he only used the Respondent’s company to do the electrical work on the site at the time the connection was moved from the TBS to the installation. Access to the dwelling was by way of a site key.

#### **Board’s Conclusion and Reasoning**

- [34] The Board has decided that the Respondent **has** 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 connected and certified high risk prescribed electrical work to a supply without it being inspected.
- [35] The Board has decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Certificate of Compliance for prescribed electrical work that contained false information.
- [36] The reasons for the Board’s decisions follow.

#### **First Offence**

- [37] The charges put before the Board were laid in the alternatives of contrary to an enactment under section 143(a)(ii) of the Act and negligence or incompetence under section 143(a)(i) of the Act.
- [38] 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.

- [39] Contrary to an enactment 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 negligence<sup>5</sup>.
- [40] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*,<sup>6</sup> Judge McElrea noted:
- [43] Section 317 of the Act uses the phrase “in a negligent or incompetent manner”, so it is clear that those adjectives cannot be treated as synonymous.*
- [41] 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*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.
- [42] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as “*a demonstrated lack of the reasonably expected ability or skill level*”. In *Ali v Kumar and Others*,<sup>9</sup> it was stated as “*an inability to do the job*”.
- [43] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. 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.
- [44] 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 Act<sup>11</sup>. 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 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 practitioner<sup>12</sup>.

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<sup>5</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>6</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>9</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>10</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>11</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>12</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71



[45] 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.]*

[46] 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.

[47] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>13</sup> 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

[48] 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 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*

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<sup>13</sup> [2001] NZAR 74

(b) *50 amperes per phase if multi-phase.*

- [49] The charge was that the Respondent failed to high risk work inspected. Regulation 6A defines what is low-risk, high-risk and general prescribed electrical work. Regulation 6A(2)(b) stipulates that any mains work on an installation is high risk. That implies that there is a greater risk of serious harm and/or significant property damage if the work is not done competently and compliantly.
- [50] Regulation 70 stipulates that all high-risk prescribed electrical work done on a low or extra-low voltage installation or part installation must be inspected as required by regulation 59 or 60, as the case requires. Under Regulation 71 an inspection can only be carried out by an authorised person which, under a Gazette Notice issued, is an Electrical Inspector who has not carried out or supervised the work.
- [51] The Board received evidence that, on the balance of probabilities, the Respondent connected or caused to be connected to an installation to a mains power supply and that he did not have the high-risk prescribed electrical work inspected as per the requirements in the Safety Regulations prior to doing so. In particular, the Board noted that a mains connection had been made, that a Certificate of Compliance had been issued by the Respondent certifying the connection, and that there was no evidence that any other person had carried out or caused the connection. On that basis, the Board finds that the Respondent has carried out or caused to be carried out prescribed electrical work in a manner that was contrary to an enactment.

#### Negligence

- [52] Turing to negligence, the requirement to inspect high-risk prescribed electrical work is so as to ensure that persons and properties are safeguarded against the potential outcomes of non-compliant work. The risk based system established in the Safety Regulations recognises that certain types of prescribed electrical work carry with them greater risks to persons and property and, as such, it imposes the extra obligation of an independent inspection. That did not occur.
- [53] The requirement to have high-risk prescribed electrical work inspected is commonplace and well-known. The Respondent ought to have known of the requirement. The fact that he ignored those requirements, 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.

#### False or Misleading Certification

- [54] The charge under section 143(f) of the Act related to the provision of a false or misleading return. Determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant<sup>14</sup>.

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<sup>14</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [55] The return, a Code Compliance Certificate, has to be issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct. The required information is specified in regulations 66, 67 and 111B of the Safety Regulations.
- [56] The specific allegation was that the Respondent falsely certified the prescribed electrical work. The allegation was based on a failure to correctly identify all the prescribed electrical work or the dates on which it was undertaken. Regulation 67(2) of the Safety Regulations stipulates:
- (2) *Every certificate of compliance must also—*
- (b) *describe the work done;*
- And
- (e) *give the date or dates on which the work was done, or the period within which it was done; and*
- [57] The Certificate of Compliance provided by the Respondent and admitted into evidence did not meet those requirements. Accordingly, the offence has been committed.

#### **Penalty, Costs and Publication**

- [58] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [59] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

#### Penalty

- [60] 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*<sup>15</sup> 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.*

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<sup>15</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [61] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>16</sup> 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.
- [62] The Board adopted a starting point of a fine of \$3,000, an amount which is consistent with penalties imposed by the Board for similar offending.
- [63] The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*,<sup>17</sup> the High Court held that it was permissible to take into account as an adverse factor when determining the penalty that the practitioner had responded to the complaints and discipline process in a belligerent way. Whilst not belligerent, the Respondent has not been cooperative and has not engaged. Notwithstanding, the Board has decided that it will not increase the fine.
- [64] The Board is not aware of any mitigating factors. The Respondent will be given an opportunity to put forward any that he considers the Board should take into consideration.

#### Costs

- [65] 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.
- [66] 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 case.<sup>18</sup>
- [67] In *Collie v Nursing Council of New Zealand*,<sup>19</sup> 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.*

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<sup>16</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>17</sup> [2011] 3 NZLR 850.

<sup>18</sup> *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.

<sup>19</sup> [2001] NZAR 74

[68] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>20</sup> 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.*

[69] 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 moderately complex. Adjustments based on the High Court decisions above are then made.

[70] The Board's scale of costs for a half-day defended hearing is \$2,250. The Board sees no reason to depart from that amount, especially as the Respondent caused additional costs to be incurred. As such, the Board's costs order is that the Respondent is to pay the sum of \$2,250 toward the costs of and incidental to the matter.

#### Publication

[71] 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 Act<sup>21</sup>. 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.

[72] 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.

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<sup>20</sup> CIV-2011-485-000227 8 August 2011

<sup>21</sup> Refer sections 128 of the Act

- [73] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>22</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>23</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>24</sup>. 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*<sup>25</sup>.
- [74] 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 interest<sup>26</sup>. 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.
- [75] 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 be identified in the Electron.

#### **Penalty, Costs and Publication Orders**

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

**Penalty:** Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$3,000.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$2,250 (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 be named in the publication.**

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

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<sup>22</sup> Section 14 of the Act

<sup>23</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>24</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>25</sup> *ibid*

<sup>26</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Right of Appeal

[78] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act<sup>i</sup>.

Signed and dated this 16<sup>th</sup> day of December 2022



**M Orange**  
Presiding Member

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### <sup>i</sup> 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—
    - (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:

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- (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.