

Before the Electrical Workers Registration Board

CE No. CE22256
Electrical Worker: Craig Duffill (the Respondent)
Registration Number: E 2027
Electrical Worker Number: EW 046763
Registration Class: Electrician

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

Hearing Type: Video Conference
Hearing Date: 21 August 2020
Decision Date: 21 August 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Appearances: Toli Sagaga 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), 143(a)(ii), 143(b)(ii) and 143(f) of the Act.

Contents

| | |
|--|-----------|
| Introduction | 2 |
| Function of Disciplinary Action | 4 |
| Procedure..... | 5 |
| Evidence..... | 5 |
| Board’s Conclusion and Reasoning..... | 7 |
| Serious Harm and Significant Property Damage..... | 8 |
| Negligence and Incompetence | 9 |
| Contrary to an Enactment..... | 12 |
| Certification..... | 12 |
| Penalty, Costs and Publication..... | 12 |
| Penalty | 13 |
| Costs..... | 14 |
| Publication | 15 |
| Penalty, Costs and Publication Orders | 16 |
| Right of Appeal | 16 |

Introduction

[1] 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.

[2] 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. On or around 23 July 2017 at [Omitted] Mr Craig Duffill has carried out or caused to be carried out prescribed electrical work relating to the installation of a generator 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, namely:
 - (a) Plug top installation circuit – No preventative isolation for voltage at plug top when removed for changeover contrary to AS/NZS 3000:2007 clauses 1.8 and 8.1.2 and regulations 5, 13(1) and (3) and 20(1)(a) of the Electricity (Safety) Regulations 2010;
 - (b) Isolation of generator – Isolation did not have any isolation switches at the source of supply contrary to AS/NZS 3000:2007 clause 7.3.3 and 7.3.4.1;

- (c) Isolation – The installation did not have isolation to prevent supplying energy upstream of the point of supply contrary to AS/NZS:3000:2007 clauses and regulations 5, 13(1) and (3) and 20(1)(a) of the Electricity (Safety) Regulations 2010;
- (d) RCD – Two circuits from the electricity generation system did not have protection from residual current devices (RCD's) contrary to AS/NZS:3000:2007 clause 7.3.5.2.1;
- (e) Circuit protection – Two circuits from the electricity generation system did not have current limiting device for earth or short circuit faults contrary to AS/NZS:3000:2007 clause 7.3.5.2.1;
- (f) circuit separation – Separate circuits were not disconnected correctly from other circuits and earth bus bar contrary to AS/NZS:3000:2007 clause 7.4.3(b); and/or
- (g) Testing Verification – Inadequate testing for the application of a generator connection to the installation. Multiple unsafe aspects to the use of the installation were apparent contrary to AS/NZS:3000:2007 clauses 1.8 and 8.1.2 and regulations 13(1) and (3) and 63 (1) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

- 2. On or around 23 July 2017 at [Omitted] Mr Craig Duffill 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, resulting in:
 - (a) Plug top installation circuit – No preventative isolation for voltage at plug top when removed for changeover contrary to AS/NZS 3000:2007 clauses 1.8 and 8.1.2 and regulations 5, 13(1) and (3) and 20(1)(a) of the Electricity (Safety) Regulations 2010;
 - (b) Isolation of generator – Isolation did not have any isolation switches at the source of supply contrary to AS/NZS 3000:2007 clause 7.3.3 and 7.3.4.1;
 - (c) Isolation – The installation did not have isolation to prevent supplying energy upstream of the point of supply contrary to AS/NZS:3000:2007 clauses and regulations 5, 13(1) and (3) and 20(1)(a) of the Electricity (Safety) Regulations 2010;
 - (d) RCD – Two circuits from the electricity generation system did not have protection from residual current devices (RCD's) contrary to AS/NZS:3000:2007 clause 7.3.5.2.1;

- (e) Circuit protection – Two circuits from the electricity generation system did not have current limiting device for earth or short circuit faults contrary to AS/NZS:3000:2007 clause 7.3.5.2.1;
- (f) circuit separation – Separate circuits were not disconnected correctly from other circuits and earth bus bar contrary to AS/NZS:3000:2007 clause 7.4.3(b); and/or
- (g) Testing Verification – Inadequate testing for the application of a generator connection to the installation. Multiple unsafe aspects to the use of the installation were apparent contrary to AS/NZS:3000:2007 clauses 1.8 and 8.1.2 and regulations 13(1) and (3) and 63 (1) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

- 3. On or around 23 July 2017 at [Omitted] Mr Craig Duffill has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, resulting in:
 - (a) Plug top installation circuit – No preventative isolation for voltage at plug top when removed for changeover contrary to AS/NZS 3000:2007 clauses 1.8 and 8.1.2 and regulations 5, 13(1) and (3) and 20(1)(a) of the Electricity (Safety) Regulations 2010; and/or
 - (b) Isolation of generator – Isolation did not have any isolation switches at the source of supply contrary to AS/NZS 3000:2007 clause 7.3.3 and 7.3.4.1;

Second Alleged Disciplinary Offence

- 4. On or around 23 July 2017 at [Omitted] Mr Craig Duffill 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 was unsafe.

[3] 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.

[4] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

[5] 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.

- [6] 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.”

- [7] 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

- [8] The matter proceeded on the basis of an Agreed Statement of Facts.
- [9] The hearing was conducted, by consent, by way of a video conference.

Evidence

- [10] 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.

- [11] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent installed a portable generator supplied by his father at his father’s home as a backup to the network supply. The Respondent rewired three existing sub circuits that were connected via a lead and plug, to socket outlets connected to the main switchboard; these leads could be unplugged and connected to a generator in the event of a power outage.
- [12] In undertaking the PEW, the Respondent decided to alter the existing installation sub circuits to be able to use plugs with leads to isolate circuits from socket outlets and connect to the portable generator. The Respondent decided not to install a mains changeover switch.

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

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

- [13] The Respondent certified the work and provided the Certificate of Compliance/Electrical Safety Certificate ("CoC/ESC") to the owner of the property, his father.
- [14] Following the completion of the installation a network power outage occurred. The Respondent's father connected and ran the generator to supply electricity to the three circuits. Whilst it was generating a linesman working on the network received an electric shock. It was found that the generator had "back-fed" electricity to the grid when the generator was running.
- [15] The cause of the incident was identified as issues regarding incorrect circuit installation, a faulty main switch and inadequate testing. The Investigator obtained a report from Mr David Olsen, an Electrical Inspector. He found:
- a) Plug top installation circuit: There was no preventative isolation for voltage at plug top when removed for changeover and installed contrary to AS/NZS 3000:2007 clauses 1.8, 8.1.2 and regulations 5, 13(1) and (3), 20(1)(a) of Electricity (Safety) Regulations 2010. The live pins to plug top could be shorted out or accidental touch of live parts possible;
 - b) Isolation of generator: The installation did not have isolation switches at the source of supply and therefore the generator was unable to be isolated by one common device at the Main Switchboard. This installation was undertaken contrary to AS/NZS 3000:2007 clause 7.3.3;
 - c) Isolation: The Installation did not have isolation to prevent supplying energy upstream of the point of supply and installed contrary to AS/NZS3000: 2007 clause 7.3.3, and regulations 5, 13(1) and (3), 20(1)(a) of Electricity (Safety) Regulations 2010;
 - d) Residual Current Device (RCD) and Circuit Protection: Two circuits from the Electricity Generation System ("EGS") were installed without protection from residual current devices ("RCDs"). Furthermore, they did not have current limiting device for earth or short circuit faults. The two circuits were installed contrary to AS/NZS3000: 2007 clause 7.3.5.2.1 which requires every circuit out going from an EGS shall be individually protected in accordance with clause 2.5 and shall also include (earth leakage) protection where required by clause 2.6.
 - e) Circuit Separation: The installation of separate light and pump circuits share the installation MEN connections to earth bus bar, therefore separation was not fully achieved. This installation is contrary to AS/NZS3000: 2007 clause 7.4.3 (b) which requires all live parts of a separated circuit to be reliable and effectively electrically separated from all other circuits including other separated circuits and earth.
 - f) Testing Verification: When the installation was initially altered by the Respondent for the EGS, it was apparent the testing performed was not

extensive enough and conclusive with all such scenarios to identify the issues that could occur. The testing was carried out contrary to AS/NZS3000:2007 clauses 1.8 and 8.1.2, and regulations 13(1) and (3), 63(1) Electricity (Safety) Regulations 2010.

- [16] The Statement noted that the Respondent accepted that he had carried out the prescribed electrical work as set out in the notice of proceeding in a negligent or incompetent manner; and/or in a manner which created a risk of serious harm to any person, or a risk of significant property damage. He also accepted that he had provided certification for prescribed electrical work that was false and misleading.
- [17] The Statement also noted that the Respondent stated that at no time was there any intent to negligently or otherwise carry out unsafe work in setting up what he believed was a simple change over system to help his elderly father have power during a power outage without having to move a heavy genset halfway round property to get water. The setup was only intended to be in place for as long as his 89-year-old father was on the property.
- [18] The Respondent did accept his error and made a sincere apology.
- [19] 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.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **has** in respect of each particular in the First Disciplinary Offence:
- (a) Plug top installation circuit – committed an offence under section 143(b)(ii) of the Act in that he negligently created a risk of serious harm to any person, or a risk of significant property damage;
 - (b) Isolation of generator – committed an offence under section 143(a)(ii) of the Act in that he carried out or caused to be carried out prescribed electrical work relating to the installation of a generator in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done;
 - (c) Isolation – committed an offence under section 143(a)(i) of the Act in that he carried out or caused to be carried out prescribed electrical work in a negligent and incompetent manner;

The Board did note that the offending was such that if it had been laid under section 143(b)(ii) of the Act, the Board would have made a finding that the Respondent had negligently created a risk of serious harm as it considered the conduct did reach that threshold.

- (d) RCD – committed an offence under section 143(a)(ii) of the Act in that he carried out or caused to be carried out prescribed electrical work relating to the installation of a generator in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done;
- (e) Circuit protection – committed an offence under section 143(a)(i) of the Act in that he carried out or caused to be carried out prescribed electrical work in a negligent and incompetent manner;
- (f) Circuit separation – committed an offence under section 143(a)(i) of the Act in that he carried out or caused to be carried out prescribed electrical work in a negligent and incompetent manner;

The Board did note that the offending was such that if it had been laid under section 143(b)(ii) of the Act, the Board would have made a finding that the Respondent had negligently created a risk of serious harm as it considered the conduct did reach that threshold.

- (g) Testing Verification – committed an offence under section 143(a)(i) of the Act in that he carried out or caused to be carried out prescribed electrical work in a negligent and incompetent manner;

[21] The Board has also 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 was unsafe.

[22] The reasons for the Board's decisions follows.

Serious Harm and Significant Property Damage

[23] The First Alleged Offence was laid in the alternatives of negligently creating a risk of serious harm or significant property damage, carrying out or causing to be carried out in a negligent or incompetent manner or in a manner contrary to an enactment.

[24] To make a finding on the first alternative, the Board must make a finding that there was a risk of serious harm or significant property damage. In this instance, the risk was of serious harm.

[25] Serious harm is defined in section 2 of the Act. It means:

*death; or
injury that consists of or includes loss of consciousness; or
a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*

[26] Actual serious harm need not occur. There need only be a risk that it might occur. The risk must be real in that there needs to be a material or substantial possibility, chance or likelihood that serious harm will occur. A real risk has also been described

as one that a reasonable person would not brush aside as being far-fetched or fanciful⁵.

- [27] In this instance, a linesman received an electric shock as a result of the manner in which the Respondent had provided the connection to the generator. The test for serious harm was, therefore, satisfied.

Negligence and Incompetence

- [28] The First Alternative also requires that the Respondent is found to have been negligent. The Second Alternative relates to negligence and/or incompetence. There is no statutory definition of the terms negligence or incompetence. Negligence and incompetence are not the same. In *Beattie v Far North Council*⁶ 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.

- [29] Negligence is 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*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.
- [30] 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*⁹ it was stated as “*an inability to do the job*”.
- [31] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. 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.
- [32] 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 Act¹¹. 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 *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2)* [1967] 1 AC 617

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

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

¹¹ *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 practitioner¹².

[33] 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.]*

[34] 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.

[35] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹³ 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.

[36] The Board, which includes persons with expertise in the electrical industry, found that the manner in which the PEW had been completed was not only negligent but was also incompetent.

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

¹³ [2001] NZAR 74

- [37] The Board noted that the installation had not been completed in accordance with AS/NZS 3010:2005 – Electrical installations – Generating sets. The standard is cited in the Safety Regulations. It must be complied with when installing a generating set. It provides clear details on how the installation is to be completed, including detail on the control of socket outlets.

4.4 CONTROL OF SOCKET-OUTLETS

Any single-phase socket-outlet installed on the generating set shall be provided with an isolating switch that operates in all live conductors.

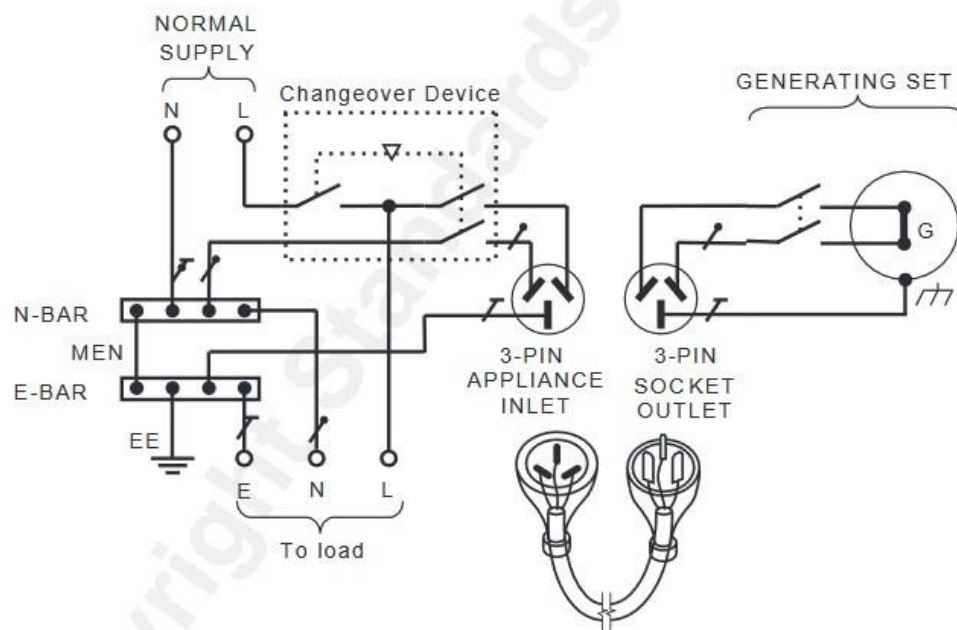


FIGURE 4.1 CONNECTION OF TRANSPORTABLE GENERATING SET TO AN ELECTRICAL INSTALLATION USING A 3-PIN APPLIANCE INLET AND SOCKET-OUTLET ARRANGEMENT

- [38] The Respondent failed to comply with the standard.
- [39] The Board also noted that the Respondent had created what is commonly referred to in the industry as a suicide lead, a lead that has male or live end at both ends. A lead of this type creates a very real risk of a person receiving an electric shock.
- [40] Given the above, the Board found that the Respondent had been both negligent and incompetent in the PEW that he carried out.

Contrary to an Enactment

- [41] Contrary to an enactment is the least serious of the alternatives. Unlike the other alternatives all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010. The charge is a form of strict liability offence in that it is liability without fault. Negligence need not be proved¹⁴.
- [42] There were aspects of the PEW which was not compliant, but which did not reach the thresholds for negligence or incompetence. As such, in respect of those allegations, the charge of carrying out PEW in a manner that is contrary to an enactment is the appropriate finding.

Certification

- [43] The second charge relates to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively and the intention of the issuer is irrelevant¹⁵.
- [44] The returns referred to are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance is 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.
- [45] The work was not compliant, and it was not safe to connect. It follows that the certification issued was false and misleading.

Penalty, Costs and Publication

- [46] 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.
- [47] The Respondent made submissions at the hearing as regards penalty, costs and publication.

¹⁴ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁵ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty

[48] 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*¹⁶ 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.

[49] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*¹⁷. The High Court when discussing penalty stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner’s offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner’s decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

[50] Cancellation of a license is the equivalent of striking off within the electrical worker licensing regime.

[51] The licensing regime exists to ensure the public can have confidence in those who carry out prescribed electrical. It is integral to the purposes of Act¹⁸ which include the protection of the health and safety of members of the public in connection with the supply and use of electricity and the promotion of the prevention of damage to property in connection with the supply and use of electricity.

[52] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁹ 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

¹⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁷ [2012] NZAR 481

¹⁸ Section 1A of the Act.

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

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.

- [53] The Board notes that the offending was serious and that a person received an electric shock. Those are aggravating factors.
- [54] Taking the above into account, the Board considered that cancellation or suspension of the Respondent's licence might have been warranted to punish the Respondent and to deter others from such conduct.
- [55] The Board took into account that the Respondent had accepted responsibility and that the matter was dealt with by way of an Agreed Statement of Facts as mitigating factors.
- [56] On balance, the Board decided that it would provide the Respondent with an opportunity to establish his competence by sitting and passing the Board's regulations exam. His licence will be suspended until such as he passes the exam. The suspension will ensure the public are protected until such time as he has established his competency.

Costs

- [57] 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.
- [58] 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 case²⁰.
- [59] In *Collie v Nursing Council of New Zealand*²¹ 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.*
- [60] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$450 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.

²⁰ *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.

²¹ [2001] NZAR 74

Publication

- [61] 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 Act²². 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.
- [62] 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.
- [63] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. 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*²⁶.
- [64] 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 interest²⁷. 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.
- [65] The Respondent noted the effect publication might have on his elderly father.
- [66] 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.
- [67] 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 the prohibition of publication.

²² Refer sections 128 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(b)(ii) of the Electricity Act 1992, the Respondent's licence is suspended until such time as he passes the Board's regulations exam pursuant to section 147M(2)(a) of the Act.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$450 (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.

[69] 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.

Right of Appeal

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

Signed and dated this 25th day of August 2020



Mel 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:*

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- (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:
 - (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.*