

**Before the Electrical Workers Registration Board**

CE No. 22613

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Vaughan Gooch a registered and licensed electrical worker (E 16492, EW067400, 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:

Visual Audio Link

Hearing Type:

In Person

Hearing and Decision Date:

22 June 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms J Davel, Lay Member

Ms M Kershaw, Registered Electrician

Ms A Yan, Registered Electrical Engineer

Mr M Perry, Registered Electrician

Appearances:

P Siania 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 a disciplinary offence under section 143(a)(i) 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 at a time when he was not licensed to carry out the work. Further, he failed to provide a Certificate of Compliance and an Electrical Safety Certificate. He is ordered to pass the Board’s stage 3 practical assessment and to pay costs of \$225. He may not be relicensed until such time as he has passed the stage 3 practical assessment.

## 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

- Between 1 November 2021 and 12 November 2021 at [OMITTED], Palmerston North, Mr Vaughan Gooch 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:

- A. Removed existing protective devices and failed to connect new RCD's to the switchboard; and/or
- B. Failed to provide circuit protective devices for the oven and the hob; and/or
- C. Left the holes for conductors to enter the switchboard greater than 5mm in diameter and not bushed; and/or
- D. Failed to connect subcircuits to the earthing system; and/or
- E. Failed to connect the main earthing conductor to the correct location or bar; and/or
- F. Failed to adequately terminate conductors.

In breach of regulations 13(1), 20(1), 20(1), 20(2), 20(2)(d), 59(1), 63, 74E(2), 74C of the Electricity (Safety) Regulations 2010.

Or in the Alternative,

- 2. Between 1 November 2021 and 12 November 2021 at [OMITTED], Palmerston North, Mr Vaughan Gooch 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:
  - A. Removed existing protective devices and failed to connect new RCD's to the switchboard; and/or
  - B. Failed to provide circuit protective devices for the oven and the hob; and/or
  - C. Left the holes for conductors to enter the switchboard greater than 5mm in diameter and not bushed; and/or
  - D. Failed to connect subcircuits to the earthing system; and/or
  - E. Failed to connect the main earthing conductor to the correct location or bar; and/or
  - F. Failed to adequately terminate conductors.

### **Second Alleged Disciplinary Offence**

- 3. Between 1 November 2021 and 12 November 2021 at [OMITTED], Palmerston North, Mr Vaughan Gooch has done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143 (d) of the Act, IN THAT, he carried out and certified prescribed electrical work without holding a current practising licence.

### Third Alleged Disciplinary Offence

4. On or around 10 December 2021 at [OMITTED], Palmerston North, Mr Vaughan Gooch has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a Certificate of Compliance for Prescribed Electrical Work within 20 days of the work being connected to the supply.

### Fourth Alleged Disciplinary Offence

5. On or around 10 December 2021 at [OMITTED], Palmerston North, Mr Vaughan Gooch has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide an Electrical Safety Certificate for Prescribed Electrical Work within 20 working days of the work being connected to the supply.

[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

[9] The matter proceeded on the basis of an Agreed Statement of Facts.

## Evidence

[10] 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.*

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

[12] 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 prescribed electrical work (PEW) associated with a switchboard upgrade and kitchen renovation. The work was carried out between 1 and 12 November 2021. At that time, the Respondent did not hold a current practicing license.

[13] On or around 10 December 2021, it was alleged that the Respondent failed to provide a Certificate of Compliance (COC) and an Electrical Safety Certificate (ESC). The Respondent stated that he did not complete certification as he believed the work was unfinished. It was, however, connected to a power supply.

[14] On 22 August 2022, a complaint was made about the PEW. The complaint raised multiple allegations. The Respondent replied to the complaint stating that the work was not complete as the job was an ongoing project, and he had the best intentions of completing it within a timely manner and completing non-compliant work to a satisfactory standard. He also stated, as regards not being licensed, that he was not completing electrical work at the time as he was renewing his license and that he was not, for personal reasons, able to complete his application for license renewal.

[15] The Investigator engaged Mr David Olsen, an Electrical Inspector, to provide a technical review of the PEW undertaken by the Respondent. Mr Olsen the issues which formed the basis of the alleged disciplinary offences.

[16] In the Agreed Statement of Facts, the Respondent accepted that he was responsible for the PEW that was completed at the Property. He stated that some issues in the complaint were either pre-existing or part of remedial works which he had agreed to undertake to make the existing works safe prior to his undertaking of that project, being that a builder had demolished the walls supporting the switchboard on his initial inspection of the Property. He accepted that he had failed to provide a COC and an

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

ESC within 20 days of completing the PEW, and that he carried out PEW without holding a current practicing license.

- [17] The Respondent noted that whilst he accepted that his work was left uncompleted for nine months, he had intended to return and complete the work. He also noted that after reading Mr Olsen's report, he accepted that there were areas of non-compliance and that he would endeavour to address and rectify them in his future work.
- [18] Finally, the Respondent stated that he is not completing any PEW whilst he is unlicensed but that he wishes to become relicensed.
- [19] The Respondent cooperated with the Investigator and was remorseful.
- [20] 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**

- [21] The Board has decided as follows:

#### **First Disciplinary Offence**

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:

- (a) Removed existing protective devices and failed to connect new RCD's to the switchboard; and/or
- (b) Failed to provide circuit protective devices for the oven and the hob; and/or
- (c) Left the holes for conductors to enter the switchboard greater than 5mm in diameter and not bushed; and/or
- (d) Failed to connect subcircuits to the earthing system; and/or
- (e) Failed to connect the main earthing conductor to the correct location or bar; and/or
- (f) Failed to adequately terminate conductors.

#### **Second Disciplinary Offence**

The Respondent has done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143 (d) of the Act, IN THAT, he carried out and certified prescribed electrical work without holding a current practising licence.

### **Third Disciplinary Offence**

The Respondent has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a Certificate of Compliance for Prescribed Electrical Work within 20 days of the work being connected to the supply.

### **Fourth Disciplinary Offence**

The Respondent has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide an Electrical Safety Certificate for Prescribed Electrical Work within 20 working days of the work being connected to the supply.

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

#### First Offence

[23] The charges put before the Board were laid in the alternatives. The finding was that the Respondent had carried out prescribed electrical work (PEW) in a negligent manner.

[24] Mr Olsen's report clearly established that the Respondent's prescribed electrical work had been completed in a manner that was contrary to an enactment as there were multiple contraventions of the Safety Regulations and of AS/NZS 3000, a standard that must be complied with when carrying out prescribed electrical work on low voltage installations.<sup>5</sup> 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>6</sup>.

[25] Turning to negligence, it 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*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.

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<sup>5</sup> Regulation 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*

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

<sup>6</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<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)

[26] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test<sup>9</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.

[27] Inspection of high-risk prescribed electrical is important. It ensures that a more qualified person reviews and assesses the work to ensure that it is safe and compliant. This accords with the purposes of the Act, which include:

**1A Purposes**

*The purposes of this Act are—*

- (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;*

[28] 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 as noted above.<sup>10</sup>

[29] 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>11</sup>.

[30] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>12</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.*

[31] The Board, which includes persons with extensive knowledge and experience as electrical workers, considered that the conduct had fallen below an acceptable standard. The failings were fundamental, and they involved safety breaches. A reasonable practitioner should know and apply the requirements of AS/NZS 3000. The Respondent failed to do so, and he has put persons and property at risk. There was nothing complex or unusual about the work, and no reasons why a compliant

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<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>10</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>11</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

<sup>12</sup> [2001] NZAR 74



installation could not have been completed. The failings are serious, and the Respondent should be disciplined for them.

## Second Offence

[32] Section 74 of the Act places restrictions on who can carry out PEW. It states that a person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised. A registered electrical worker is authorised, but only if they are also licensed. This is because of section 98 of the Act:

### **98 Practising licence required**

(1) *A registered person is not authorised to do, or assist in doing, prescribed electrical work that the person is otherwise authorised to do by virtue of that person's registration unless that person is the holder of a current practising licence issued under this subpart that authorises the person to do, or assist in doing, the work.*

[33] Practising licenses are issued for a period of two years. Electrical workers are responsible for maintaining the currency of their practising licences but are given renewal notices. In order to renew, an electrical worker must meet the requirements in section 106 of the Act. Included is the requirement to complete a competency programme under section 108 of the Act. Competence programmes provide confidence that an electrical worker retains the required competencies for the reissue of a licence.

[34] The Respondent had been given notice that his licence was expiring and that he had to renew it. He did not do so.

[35] Turning to the offence itself, under section 143(d) of the Act, it is an offence to carry out prescribed electrical work when not authorised.

[36] The disciplinary offence is a strict liability one. The Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed. The Board does not need to find that there was intention, fault or negligence<sup>13</sup> to make a decision. Accordingly, on the evidence before it, the Board found that the offence had been committed.

[37] The Respondent should note that unauthorised persons carrying out prescribed electrical work is a serious matter. The restrictions created in the Act are put in place so as to ensure that prescribed electrical work is only carried out or supervised by competent persons. This ensures that the purposes of the Act are promoted. Those purposes include<sup>14</sup>:

(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*

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<sup>13</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>14</sup> Refer section 1A of the Act.

(d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand*

[38] Also, the Respondent should also note that his conduct came within the provisions of section 162 of the Act, which states:

**162 Offence to engage in prescribed electrical work in breach of section 74**

*Every person who does, or assists in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$50,000 in the case of an individual, or \$250,000 in the case of a body corporate.*

[39] As such, it would have been open to the Board to pursue the matter in the courts.

Third and Fourth Offences

[40] The allegation was that the Respondent had failed to provide returns required under an enactment, in this instance, a Certificate of Compliance (CoC), and an Electrical Safety Certificate (ESC).

[41] A CoC must, under regulation 65 of the Safety Regulations, be issued for all general and high-risk prescribed electrical work on installations or part installations. Under regulation 74E(2), a CoC must be issued within 20 days of completion.

[42] An ESC must, under regulation 74A of the Safety Regulations, be issued for all prescribed electrical work on installations, part installations or any fitting that supplies an installation or a part installation with electricity. Under regulation 74C, an ESC must be issued within 20 days after connection.

[43] The Respondent did not provide either a CoC or an ESC within the required time frames. It follows that the disciplinary offences have been committed.

**Penalty, Costs and Publication**

[44] 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.

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

Penalty

[46] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of

the conduct and any mitigating or aggravating factors present.<sup>15</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>16</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>17</sup>
- (b) deterring other Licensed Building Practitioners from similar offending;<sup>18</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>19</sup>
- (d) penalising wrongdoing;<sup>20</sup> and
- (e) rehabilitation (where appropriate).<sup>21</sup>

- [47] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>22</sup> and applying the least restrictive penalty available for the particular offending.<sup>23</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>24</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>25</sup>
- [48] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>26</sup>
- [49] Given the seriousness of the offending, the Board considered a penalty that was at the upper end of the scale. The Board noted, however, that there were several mitigating factors, including that the work had been done for a family member, circumstances and the scope of work changed, and demolition work had been completed before he stated, which meant some work had to be done as a matter of urgency. There was also some financial pressure placed on him to do an affordable job under time pressures.
- [50] Given the mitigating factors present and considering the nature of the failings to which the finding of negligence related, the Board decided that the appropriate penalty order would be that the Respondent undertake training. The Respondent is

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<sup>15</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>16</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>17</sup> Section 3 Building Act

<sup>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>20</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>21</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>26</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

to undertake and pass the Board's stage 3 practical assessment. He may not be relicensed until such time as he has completed the training order. The completion of the assessment is to be at his own cost.

### Costs

[51] 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.

[52] 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>27</sup>.

[53] In *Collie v Nursing Council of New Zealand*,<sup>28</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.*

[54] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>29</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.*

[55] 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 moderate. Adjustments based on the High Court decisions above are then made.

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<sup>27</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>28</sup> [2001] NZAR 74

<sup>29</sup> CIV-2011-485-000227 8 August 2011

[56] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$225 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

[57] 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>30</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.

[58] 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.

[59] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>31</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>32</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>33</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>34</sup>.

[60] 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>35</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.

[61] 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.

[62] 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.

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<sup>30</sup> Refer sections 128 of the Act

<sup>31</sup> Section 14 of the Act

<sup>32</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>33</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>34</sup> *ibid*

<sup>35</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

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

**Penalty:** Pursuant to section 147M(1)(e) of the Electricity Act 1992, the Respondent is ordered to undertake, pursuant to section 147M(2)(a) of the Act pass the Board's stage three practical assessment; and

Pursuant to section 147M(1)(b)(ii), the Respondent's licence is suspended until such time as the stage three assessment has been completed.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (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.

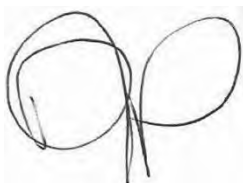
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case lessons. The Respondent will not be named in the publication.

[64] 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

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

Signed and dated this 21<sup>st</sup> day of July 2023



R Keys  
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:
  - (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.