

Before the Electrical Workers Registration Board

	CE No. 22357
Electrical Worker:	Kabe Harding (the Respondent)
Registration Number:	LMD 272710
Electrical Worker Number:	EW 126878
Registration Class:	Line Mechanic – Distribution

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

Hearing Location:	By video conference
Hearing Type:	In Person
Hearing and Decision Date:	16 September 2021

Board Members Present:

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

Appearances:	Oscar Upperton for the Investigator Richard Hargreaves for the Respondent
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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(b)(ii) 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 which created a risk of serious harm, and carried out prescribed electrical work that he was not authorised to carry out. He is fined \$1,500 and ordered to pay costs of \$250.

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. *On or around 28 July 2020 at [Omitted] Mr Kabe Harding has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he failed to adequately test a reconnected submain on an installation and failed to identify a transposition of polarity.*

Or in the Alternative

2. *On or around 28 July 2020 at [Omitted], Mr Kabe Harding 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, IN THAT, he failed to adequately test a reconnected submain on an installation and failed to identify a transposition of polarity.*

Second Alleged Disciplinary Offence

3. *On or around 28 July 2020 at [Omitted], Mr Kabe Harding has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified an installation as being safe to connect when it was not.*

Third Alleged Disciplinary Offence

4. *On or around 28 July 2020 at [Omitted], Mr Kabe Harding has done prescribed electrical work 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 prescribed electrical on an installation when his licence only allows him to carry out work on works only.*

- [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*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,³ Collins J. noted that:

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

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

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

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 Board heard from the Respondent prior to it making a decision. As noted, the matter proceeded on the basis of an Agreed Statement of Facts. It set out that the Respondent, a licensed electrical worker holding registration as a Distribution Line Mechanic, was the supervisor of a line mechanic team employed by Independent Line Services Limited (ILS) to replace a privately owned pole. The pole contained a transformer, three distribution service mains, and a submain supplying an installation.
- [12] The work carried out involved prescribed electrical work on both “works” and on an “installation”, the latter being the disconnection and reconnection of the submain. The Respondent’s class of registration and licence did not authorise him to carry out or supervise the prescribed electrical work on the installation aspect of the prescribed electrical work. He was authorised in respect of the works.
- [13] As part of the prescribed electrical work, the submain was cut and lowered to the ground to facilitate the replacement of the pole. When reconnecting the submain conductor, an error was made by an unidentified member of the crew, and a transposition of the phase and neutral occurred. The Respondent had tested the service mains but accepted that testing of the submain was not carried out. As a result, the transposition on the submain was not identified.

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

- [14] The Respondent certified that the polarity was correct on all conductors through MainPower “Ready for Livening Notice No 8316” certifying a visual inspection and polarity test dated 27 July 2020. The notice contained a declaration “I confirm that subject to the Limitations detailed above, the Scope of the Work Completed and Equipment to be livened detailed on this notice, is considered to be in a safe condition and ready for the final testing and livening”.
- [15] The Respondent stated, in response to the complaint;
- I was aware that the pole had a submain from the dwelling to the pole and we were working on it. I wasn't however, aware that its legal status had changed from works to installation.*
- It was my understanding that once it came back to the pole it was under the category of work rather than installation. Due to it being on a pole with 11kv and the same height as LV mains, which is outside the limits of installation.*
- [16] The Respondent maintained that he did not do the reconnection but was in charge of the linemen that carried out the work and that once he had completed the Mainpower Ready for Livening Notice, he believed he had completed all the necessary documentation required. The Respondent was stood down from his supervision duties as a result of the transposition and suffered a loss of income.
- [17] The Respondent accepted the charges as set out in the Notice of Proceeding.
- [18] 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.
- [19] Prior the Board making a decision, it recalled the parties to inquire, with respect to the allegation under section 143(f) of the Act (the Second Alleged Disciplinary Offence), what the return required under an enactment was that the Respondent was alleged to have provided which was false or misleading. The Mainpower Ready for Livening Notice was noted as the document, but Counsel for the Respondent was not able to assist as regards its legal status under the Electricity Act 1992 or the Electricity (Safety) Regulations 2010.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **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, in that, he failed to adequately test a reconnected submain on an installation and failed to identify a transposition of polarity.
- [21] The Board also decided that the Respondent **had not** provided a false or misleading return being an offence under section 143(f) of the Act.

[22] The Board further decided that the Respondent **has** done prescribed electrical work 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 prescribed electrical on an installation when his licence only allows him to carry out work on works only.

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

First Offence

[24] The charges put before the Board were laid in the alternatives of negligently creating a risk of serious harm to any person, or a risk of significant property damage under section 143(b)(ii) and, as an alternative, negligence or incompetence under section 143(a)(i).

[25] The Board's decision was that the disciplinary offending had created a risk of serious harm. In order to make that finding, the Board must, firstly, establish that the Respondent had been negligent.

[26] 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*⁵ test of negligence which has been adopted by the New Zealand Courts⁶.

[27] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁷. 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.

[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 Act⁸. 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 practitioner⁹.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

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

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

⁹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

[29] 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.]*

[30] 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.

[31] In this matter, there was no evidence that the Respondent was the person who had transposed the submain, but he did accept responsibility as the supervisor and as the person who issued the Mainpower Ready for Livening Notice for the transposition. He was the electrical worker who carried out pre-livening tests. He did fail to test the submain.

[32] The submain was part of an installation. Under regulation 59 of the Regulations, the prescribed electrical work had to comply with AS/NZS 3000. It did not in that the phase and neutral on the submain had been transposed. AS/NZS 3000 also requires that prescribed electrical work be tested prior to livening. Regulation 63 also requires that prescribed electrical work on an installation or part installation is tested. The testing on the installation side of prescribed electrical work did not occur. Testing is fundamental to the safety regime under the Regulations. A reasonable practitioner would have ensured that such testing was carried out prior to the installation being livened.

[33] As a result of the Respondent's failings, the installation was left in an electrically unsafe state. The term electrically safe and electrically unsafe are defined in regulation 5 of the Safety Regulations.

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or

property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

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

[34] It was clear to the Board that the supply was not electrically safe. It was also clear to the Board, which includes persons with expertise in the electrical industry, that the Respondent's conduct had fallen below an acceptable standard and that he had been negligent.

[35] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁰ 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 failings were serious and fundamental. Testing is at the heart of the pre-livening safety and assurance system. Testing is designed to identify errors prior to any associated risks or potential consequences arising or occurring. The failure to test the submain to the installation was a failure that met the threshold for disciplinary action.

[37] Turning to the second element, a risk of serious harm, there was a transposition of the neutral and phase conductors. Transpositions can have serious consequences. It was noted that persons at the property had received a mild electric shock from a tap.

[38] 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.*

¹⁰ [2001] NZAR 74

[39] The relevant parts of Section 23 of the Health and Safety at Work Act 2015 are:

23 Meaning of notifiable injury or illness

- (1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*
- (a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*
 - (i) *the amputation of any part of his or her body:*
 - (ii) *a serious head injury:*
 - (iii) *a serious eye injury:*
 - (iv) *a serious burn:*
 - (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
 - (vi) *a spinal injury:*
 - (vii) *the loss of a bodily function:*
 - (viii) *serious lacerations:*
 - (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
 - (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

[40] 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 might occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful¹¹.

[41] Transpositions can have fatal consequences. Accordingly, there was a risk of serious harm.

Second Offence

[42] The allegation in the second offence was that the Respondent had provided a false or misleading return required under an enactment. The return that was alleged to have been false or misleading was the Mainpower Ready for Livening Notice.

[43] As the work complained about was carried out on an installation, the required certification was a Certificate of Compliance¹². One should have been issued and cited prior to livening¹³. Had the alleged offence under section 143(f) been framed as a failure to provide a return required under an enactment, the Board would have found that the offence had been committed. That was not, however, the allegation

¹¹ Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

¹² A Certificate of Compliance is required under regulation 65 of the Regulations for all general and high risk work on an installation.

¹³ Regulation 73A(c) of the Regulations.

that was put to the Board. Rather, it was that a return under an enactment was false or misleading.

- [44] The return referred to, the Mainpower Ready for Livening Notice, was not, in the Board's opinion, one that was required under an enactment. It was on this basis that the Board did not uphold the charge.
- [45] The certification regime for "works" differs from that relating to "installations". Part 4 of the Regulations sets out the safety requirements for works. They differ from those set out in Part 5, which covers installations. The fundamental difference is that prescribed electrical work on an electricity supply system must be carried out under an audited safety management system¹⁴. Under a safety management system, it is the system that must be documented, audited and certified under the Regulations, not the actual prescribed electrical work carried out under it.
- [46] The Mainpower Ready for Livening Notice was an internal document issued as part of Mainpower's safety management system. It was not mandated by the Act or the Regulations. Accordingly, the element of the charge "required under an enactment" had not been satisfied.

Third Offence

- [47] The final charge related to carrying out or supervising prescribed electrical work that the Respondent was not authorised to carry out or supervise.
- [48] The Respondent is registered and licensed as a Distribution Line Mechanic. That class of licence is restricted to prescribed electrical work on conductors connected directly to electric lines that are part of distribution infrastructure up to and including 110kV. It does not cover work on an installation. The submain was part of an installation. By carrying out or supervising work on the submain, the Respondent worked outside of the limits of his registration and licence.
- [49] Counsel for the Respondent noted a degree of confusion by the Respondent as to the demarcation between "works" and "installations" and submitted that there is a degree of confusion in the industry as to where the demarcation point arises. The Act does provide definitions for "works" and for an "electrical installation". The latter uses a reference to "a point of supply" which is also a defined term. In short, a point of supply is defined as the point or points on the boundary of a property at which exclusive fittings enter that property. The definitions are clear but are not well known. The Board accepted that it might be of benefit to other electrical workers to publicise the definitions, and it will do so as part of its ongoing communications to electrical workers.
- [50] Finally, the Respondent should note that there an endorsement is available to Distribution Line Mechanics to allow them to connect and disconnect an installation. The Board recommends that he investigates obtaining that endorsement.

¹⁴ Regulation 47 of the Regulations.

Penalty, Costs and Publication

- [51] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act¹⁵, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [52] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [53] 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*¹⁵ 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.

- [54] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁶ 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.
- [55] Counsel for the Respondent assisted the Board with written submission as regards penalty. Counsel submitted that there were mitigating factors including that the failure to identify the transposition was an oversight, not a symptom of a systematic lack of testing, that there was some complexity in the low voltage system supplying the property, and that the incident resulted in being stood down and a consequent loss of extra work hours which the Respondent quantified for the Board. Counsel also noted the Respondent’s cooperation with the investigation, his acceptance of the charges and courses of training that he has subsequently undertaken. Counsel also brought previous Board decisions on similar matters to the Board’s attention¹⁷. Counsel submitted that a penalty similar to that imposed in *Lindgard Sharp* was appropriate.
- [56] Two of the three Board decisions referred to in the submissions all adopted a starting point of a fine of \$5,000. The same starting point is adopted. The starting

¹⁵ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

¹⁷ *Walsh* [2020] EWRB 22249, *Darvill* [2020] EWRB 22286, *Lindgard-Sharp* [2020] EWRB 22237.

point gives recognition to the seriousness of the offending. The Board did not consider a training order was appropriate given the training that the Respondent has, since the incident occurred, undertaken as part of this employment.

- [57] The Board did not consider that the approach taken in *Lindgard Sharp* was appropriate. In that case, the Respondent was censured for his actions, and he participated in the development of an educative article focused on the effects distraction could have on an individual when carrying out prescribed electrical work that was published by the Board. Mr Lindgard Sharp was also only found to have committed a single disciplinary offence, whereas in the present matter there has been an additional finding under section 143(d) of the Act.
- [58] The Board considered that the approach taken in *Walsh* was more appropriate. In that matter, a Line Mechanic Distribution a transposition had been caused by another line mechanic and the respondent had failed to test. He was fined \$1,500. Similar mitigating factors were present.
- [59] Based on the above, and taking the mitigating factors present into account, the Board decided that the fine would be reduced from a starting point of \$5,000 to a fine of 1,500.

Costs

- [60] 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.
- [61] 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 case¹⁸.
- [62] In *Collie v Nursing Council of New Zealand*¹⁹ 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.*
- [63] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁰ 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,*

¹⁸ *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.

¹⁹ [2001] NZAR 74

²⁰ CIV-2011-485-000227 8 August 2011

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.

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

Publication

- [65] 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 Act²¹. 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.
- [66] 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.
- [67] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²². The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²³. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁴. 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*²⁵.

²¹ Refer sections 128 of the Act

²² Section 14 of the Act

²³ Refer sections 200 and 202 of the Criminal Procedure Act

²⁴ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁵ *ibid*

- [68] 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 interest²⁶. 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.
- [69] 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.
- [70] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act, which allows for prohibition of publication.

Penalty, Costs and Publication Orders

- [71] 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 \$1,500.

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

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

The Respondent will be named in this decision.

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

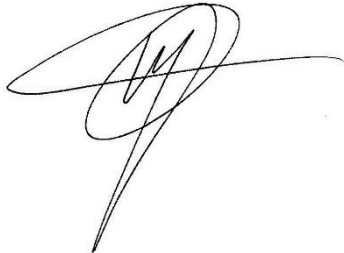
- [72] The Respondent should note that the Board may refuse to relicence an electrical worker who has not paid any fine or costs imposed on them.

²⁶ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Right of Appeal

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

Signed and dated this Wednesday, the 22nd day of September 2021



Mr M Orange
Presiding Member

ⁱ **Section 147M of the Act**

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

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- (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.*