

## Before the Electrical Workers Registration Board

CE No. 22406  
Electrical Worker: Andrew Hart (the Respondent)  
Registration Number: E 252871  
Electrical Worker Number: EW 115765  
Registration Class: Electrician

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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: Auckland  
Hearing Type: In Person  
Hearing and Decision Date: 19 June 2022

#### Board Members Present:

Mr M Orange, Barrister (Presiding)  
Mr R Keys, Registered Inspector  
Mr M Macklin, Registered Inspector  
Ms M Kershaw, Registered Electrician  
Ms J Davel, Lay Member  
Ms A Yan, Registered Electrical Engineer  
Mr M Perry, Registered Electrician

Appearances: Ms Watson-Hughes 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(f) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent provided a false or misleading return. As the return related to non-compliant prescribed electrical work completed by another electrical worker, the Board decided, in the circumstances, that it would not impose a disciplinary penalty. The Respondent was ordered to pay \$250 in costs. There will be no publication or record of the matter on the Register.

### 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:
- On 2 June 2020 at [OMITTED], Mr Andrew Hart has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, Mr Hart provided a Certificate of Compliance for Prescribed Electrical Work that he did not carry out or test and was not compliant with AS/NZS 3000:2007.<sup>1</sup>
- [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.

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<sup>1</sup> The alleged disciplinary offence was amended under section 156A of the Act by way of a Board Minute to reflect the correct offence date following Counsel for the Investigator filing a Memorandum with the Board.

- [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>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</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>4</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.

### **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>5</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 Counsel and the Respondent prior to it making a decision.
- [12] The Agreed Statement of Facts set out prescribed electrical work was carried out on a renovation with work progressing in phases. The work was carried out by [OMITTED], a registered Electrician who was in the employ of Hart Electrical. The

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<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Respondent did not carry out any of the work. On or about 2 March 2020, the engagement on the project came to an end. No electrical certification documents were provided at that time. Parts of the installation were connected at the time the contract came to an end. On or about 2 June 2020, a Certificate of Compliance (ID: JOB-3026C1) was provided for the prescribed electrical work completed by [OMITTED].

- [13] On or about 3 December 2020, another licensed electrical worker identified a number of issues with the electrical installation.
- [14] Mr Mark Carter, an Electrical Inspector (EW079066), was engaged by the Investigator to provide a technical review. He identified various issues with the prescribed electrical work, including that the Respondent had falsely certified the prescribed electrical work carried out by Hart Electrical employees as being done lawfully in that it was evident that there were aspects of the electrical installation that breached the mandatory installation requirements of AS/NZ 3000:2007 and the Safety Regulations.
- [15] The Respondent provided a written response to the allegations. He noted that Hart Electrical was removed from the job before they could complete the work and that they were not allowed to return to do so. Further, he noted that due to [OMITTED] ceasing to be employed by Hart Electrical during the job, the Respondent issued the COC (ID: JOB-3026C1) for the work in order to assist the Complainant and to allow the job to keep moving. The Respondent accepted that he had not completed any testing of the work prior to issuing the Certificate of Compliance.
- [16] The Respondent accepted the facts as set out above.
- [17] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

#### **Board's Conclusion and Reasoning**

- [18] The Board has decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act.
- [19] The charge under section 143(f) of the Act related 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 irrelevant<sup>6</sup>.
- [20] The return, a Certificate of Compliance, is issued under the Safety Regulations. There is 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

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<sup>6</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

- [21] In this instance, the prescribed electrical work that had been completed and which was certified by the Respondent had not been completed in accordance with the required standards<sup>7</sup>. As such, it was not safe to connect. Moreover, the Certificate of Compliance stated that the work had been tested when it had not. Testing, including visual testing, should have identified the compliance issues. Prescribed electrical work must be tested before it is connected to a supply. Given those factors, the Board found that the Respondent had committed the disciplinary offence.

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

- [22] 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.
- [23] The Respondent made submissions at the hearing as regards penalty, costs, and publication.

### Penalty

- [24] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>8</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

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

- [25] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>9</sup> the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [26] Certification is important. The Act and Safety Regulations are designed so as to allow self-certification of prescribed electrical work. That certification, in turn, is relied on

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<sup>7</sup> 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, including AS/NZS 300:2017.

<sup>8</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>9</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

by others as regards the compliance and safety of the installation certified. False or misleading certification puts that at risk. Ordinarily, the Board would impose a modest fine in respect of an offence under section 143(f) of the Act of failing to provide.

- [27] Mitigating those factors is the fact that it was not the Respondent's prescribed electrical work that was at issue. It was his willingness to certify it and to do so on faith and to allow other work to continue. In this respect, the Board noted that the person who most likely caused the issue, [OMITTED], has not been complained about or investigated. The Board considered that punishing the Respondent, in those circumstances, might be unfair.
- [28] Within the penalty provisions in section 147M of the Act is a provision that allows the Board to "make no order". In this instance, the Board decided, on the basis of the mitigating circumstances present, that it would not make an order. In essence, this means that there will not be a public record on the Register of the offending. However, should the Respondent commit a future disciplinary offence, the Board may take its finding in this matter into account when determining an appropriate penalty.
- [29] The Respondent should also take care in the future when certifying the work of others. He should only do so when he has had the opportunity to test in accordance with Part 8 of AS/NZS 3000:2007. He should also note that he can, if necessary, issue a certificate of compliance stating that the work is not complete or safe to connect.

### Costs

- [30] 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.
- [31] 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>10</sup>.
- [32] In *Collie v Nursing Council of New Zealand*<sup>11</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

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

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<sup>10</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>11</sup> [2001] NZAR 74

[33] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>12</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.*

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

[35] 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 the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

#### Publication

[36] As the Board has made no order under section 147M of the Act, the Respondent's name and the disciplinary outcomes **will not** be recorded in the Public Register.

[37] The Board can, pursuant to section 147Z of the Act, order the publication of a disciplinary finding. 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.

[38] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>13</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>14</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>15</sup>. The High Court provided

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<sup>12</sup> CIV-2011-485-000227 8 August 2011

<sup>13</sup> Section 14 of the Act

<sup>14</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>15</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>16</sup>.

- [39] 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>17</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.
- [40] Given that the Board has not made an order under section 147M of the Act, the Board has decided that it will not publicise the matter.
- [41] The Respondent should note that the Respondent will be named in this decision and that the Board has not made any form of an order under section 153(3) of the Act, which allows for the prohibition of any publication.

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

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

**Penalty:** Pursuant to section 147M(1)(h) of the Electricity Act 1992, the Board has decided to make no order.

**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 Respondent will be named in this decision.  
The matter will not be recorded on the Register.  
There will be no further publication.

- [43] 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**

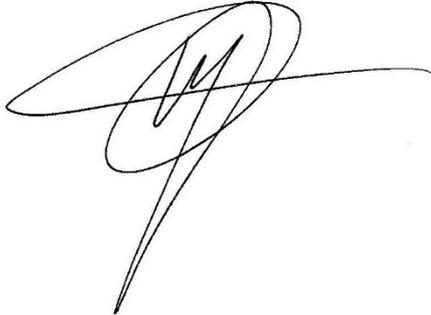
- [44] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act<sup>ii</sup>.

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<sup>16</sup> *ibid*

<sup>17</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Signed and dated this eight day of June 2022.



**Mr M Orange**  
Presiding Member

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**<sup>i</sup> Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
    - (i) *order that the person's registration or practising licence (or both) be cancelled:*
    - (ii) *order that the person's provisional licence be cancelled:*
    - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
  - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
    - (i) *for any period that the Board thinks fit; or*
    - (ii) *until that person does 1 or more of the things specified in subsection (2):*
  - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
    - (i) *by limiting the person to the work that the Board may specify:*
    - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
  - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
    - (i) *permanently, or for any period that the Board thinks fit; or*
    - (ii) *until that person does 1 or more of the things specified in subsection (2):*
  - (e) *order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:*
  - (f) *order the person to pay a fine not exceeding \$10,000:*
  - (g) *order that the person be censured:*
  - (h) *make no order under this subsection.*

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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.*