

Before the Electrical Workers Registration Board

CE No. 22082
Electrical Worker: Christopher Hepi (the Respondent)
Registration Number: I 2750
Electrical Worker Number: EW 030561
Registration Class: Inspector

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

Hearing Location: Auckland
Hearing Type: In Person
Hearing Date: 19 September 2019
Decision Date: 19 September 2019

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

Appearances: Martin Denyer for the Investigator
Michael Robinson for the Respondent

Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed disciplinary offences under sections 143(a)(ii) and 143(f) of the Act.

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Introduction

- [1] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

- 1. Between December 2017 and July 2018 at [REDACTED] [REDACTED] Mr Christopher Hepi 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 has:
 - a) Installed a switchboard less than 1.2m from the floor; and/or
 - b) Damaged a supporting structure to allow cable access to switchboard; and/or
 - c) Provided insufficient Residual Current Device (RCD) protection; and/or
 - d) Installed an undersized Multiple Earth Neutral (MEN) link.

Or in the Alternative

2. Between December 2017 and July 2018 at [REDACTED]
[REDACTED] Mr Christopher Hepi 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 has:
- a) Installed a switchboard less than 1.2m from the floor; and/or
 - b) Damaged a supporting structure to allow cable access to switchboard; and/or
 - c) Provided insufficient RCD protection; and/or
 - d) Installed an undersized MEN link.

Or in the alternative

3. Between December 2017 and July 2018 at [REDACTED]
[REDACTED] Mr Christopher Hepi 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 has:
- a) Installed a switchboard less than 1.2m from the floor; and/or
 - b) Damaged a supporting structure to allow cable access to switchboard; and/or
 - c) Provided insufficient RCD protection; and/or
 - d) Installed an undersized MEN link; and/or
 - e) Failed to lodge details of high risk work on the high risk data base
- In breach of regulations 59(1) and 74(f) of the Electricity (Safety) Regulations 2010.

Second Alleged Disciplinary Offence

4. On or around 16 March 2018 at [REDACTED]
Mr Christopher Hepi has failed to provide a return or provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has:
- a) Incorrectly indicated on the Electrical Safety Certificate portion of Certificate of Compliance (CoC) unique ID 30 that he carried out the connection of the installation; and/or
 - b) Failed to date CoC, unique ID 31; and/or
 - c) Provided a CoC, unique ID 31, for uncompleted work.

[3] Prior to the hearing the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.

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

- [5] At the hearing Counsel for the Investigator sought leave to withdraw the first alternative of the First Alleged Disciplinary Offence of serious harm or significant property damage under section 143(b)(ii). Counsel also advised that the Investigator would not be pursuing particulars (a) or (b) of the Second Alleged Disciplinary Offence.

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:

“... 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 that 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 further evidence from the Respondent.

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

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

- [12] The Agreed Statement of Facts set out that the Respondent was engaged to prescribed electrical work, including the relocation of an existing meter and switch board, the installation of a new earthing system, and to change the mains cable from overhead to an underground supply. The work was both carried out and supervised by the Respondent who accepted responsibility for the completed work.
- [13] The Investigator sought an opinion on the compliance of the work from Mr Stephen Doust, an Electrical Inspector. Mr Doust carried out a visual inspection at the property and found the following issues with the work, which the Respondent accepted were non-compliant:
- a. *The main switchboard has been installed 750mm from the floor resulting in a risk of access to live parts.*
AS/NZS 3000:2007 2.9.2.5 requires that switchboards shall not be installed within 1.2m from the floor.
 - b. *Supporting structures were damaged to enable cable access to the switchboard, reducing the structural capability of the building.*
AS/NZS 3000:2007 3.9.9.2(b) Wiring systems shall be installed so that the general building structural performance and fire safety are not reduced.
 - c. *Insufficient RCD protection.*
AS/NZS 3000:2007 2.6.2.4 requires that there be no more than three sub- circuits fed from any one residual current device. There were four and in one case five sub-circuits fed from RCDs.
 - d. *Undersized MEN link at main switchboard.*
AS/NZS 3000:2007 5.3.5.2 requires the minimum size to be not less than the current carrying capacity of the main neutral. The MEN link was significantly smaller than the Main Neutral Conductor. There was the potential for failure of the link under fault conditions
- [14] The Respondent also accepted that CoC unique ID 31 referred to work which was incomplete, as if it had been completed.
- [15] The Board was provided with Mr Doust's report and attachments.
- [16] 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 summary. Notwithstanding the Board received further evidence with regard to the matters before it including a witness statement from the Respondent which stated, in part, that:

5. *I left site while work still incomplete: First, I think it is important that the Board understands I never got a chance to complete the work. Before the job was finished [REDACTED] told me he did not want me to finish it. During this time I also had some serious health issues (described below) which meant I could not go back to finish the work. Instead, I arranged for [REDACTED] to finish the job.*
6. *If I had been able to finish the job, I expect I would have been able to remediate some of the work that has been complained about. Some of the remediation work required would have been very minor.*
7. *CoC 31: Secondly, concerning CoC 31, I gave this to the builder on the very clear understanding that the work was still incomplete. That is why I did not date that CoC - because the work had not yet been finished. I understood from the builder that he was having discussions with the owner [REDACTED] about payments and wanted to understand what work would be done. In hindsight I accept that this might have been imprudent, but I certainly had no intention of providing false or misleading information to the builder or anyone else.*

[17] In respect of the allegation that a switchboard was installed too close to the ground the Board also heard evidence in questioning the Respondent that the switchboard was in a cupboard under the stairs and that it had cover.

[18] Counsel for the Respondent, who appeared on a pro bono basis, made submissions on behalf of the Respondent.

Board's Conclusion and Reasoning

[19] The Board has decided that the Respondent **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 damaged a supporting structure to allow cable access to switchboard; provided insufficient RCD protection; installed an undersized MEN link; and failed to lodge details of high risk work on the high risk data base.

[20] It is to be noted that contrary 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 negligence⁵. In this respect the provisions of Regulation 11 are noted:

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

11 Strict liability offences

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
- (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*

- [21] In this respect there was evidence, on the basis of the Agreed Statement of Facts and Mr Doust's report that there had been noncompliance with standards which are cited within the Electricity (Safety) Regulation 2010. As such the requirements of the charge had been met. The Board did not, however, consider that the breaches reached the threshold for a finding of negligence or incompetence.
- [22] With regard to the allegation that the Respondent had installed a switchboard less than 1.2m from the floor the Board found that the Respondent had not committed a disciplinary offence as clause 2.9.3.1 of AS/NZS 3000:2007 allows for an exception to the 1.2m requirement in clause 2.9.2.5 which had been met.
- [23] The Board also decided that the Respondent **has** provided a false or misleading return contrary to section 143(f) of the Act.
- [24] Whilst it was noted that the work was not complete or safe to connect and that the builder had been advised of this there was no notation to that effect on the certification. Certification should be able to be taken at face value. In this instance it could not. The fact that it had not been dated did not alter this fact.
- [25] In this respect it is to be noted that 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 irrelevant⁶.

Penalty, Costs and Publication

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

Penalty

- [28] 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

⁶ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

*Patel v Complaints Assessment Committee*⁷ 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.

- [29] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁸ 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 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.
- [30] Counsel for the Respondent made submissions on behalf of the Respondent and the Statement of Evidence provided to the Board also contained matters pertaining to mitigation including the Respondent's long career in the electrical industry and evidence of ongoing medial issues.
- [31] The Board noted the mitigation presented and the Respondent's approach to the hearing and acceptance of wrongdoing and decided that a censure was appropriate. A censure is formal expression of disapproval.

Costs

- [32] 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.
- [33] 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 case⁹.
- [34] In *Collie v Nursing Council of New Zealand*¹⁰ 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.

⁷ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

⁹ *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.

¹⁰ [2001] NZAR 74

[35] Based on the above the Board's costs order is that the Respondent is 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

- [36] 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 Act¹¹. 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.
- [37] 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 1990¹². The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹³. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁴. 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*¹⁵.
- [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 interest¹⁶. 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] Based on the above the Board will not order further publication.
- [41] 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.

¹¹ Refer sections 128 of the Act

¹² Section 14 of the Act

¹³ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁴ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁵ *ibid*

¹⁶ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(d) of the Electricity Act 1992, the Respondent is censured.

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.

In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.

[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 section 147ZA and 147ZB of the Actⁱⁱ.

Signed and dated this 3rd day of October 2019



Mel Orange
Presiding Member

ⁱ **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (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**

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- (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.*