

Before the Electrical Workers Registration Board

CE No. 22436

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Allison Hooton a registered and licensed electrical worker (E 278786, EW 137703, Electrician) (the Respondent)

**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 audio-visual link

Hearing Type: in person

Hearing and Decision Date: 16 February 2023

Board Members Present:

Mr R Keys, Registered Inspector(Presiding)

Ms J Davel, Lay Member

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Mr M Perry, Registered Electrician

Appearances: J Barlow 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)(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 manner that was contrary to an enactment, and she provided a false or misleading return. She is censured and ordered to pay costs of \$300. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Board

- [2] The Board is a statutory body established under the Electricity Act.¹ Its functions include hearing complaints about and disciplining persons to whom Part 11 of the Act.

Introduction

- [3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator² that the complaint should be considered by the Board. Under section 147T of the Act, the Investigator must prosecute the matter at a Board hearing who may be represented by counsel.
- [4] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board.

¹ Section 148 of the Act.

² Under section 145 of the Act, an Investigator is appointed by the Chief Executive of the Ministry

[5] The Board commenced the hearing on 20 October 2022, but adjourned it as a result of the Respondent presenting evidence that contradicted the Agreed Statement of Facts. The Board expressed a concern that the Agreed Statement of Facts process may not have been the appropriate procedure to be used. Directions were issued for the Investigator and the Respondent to liaise and further discuss the facts on which the Board should make its decision. The Board noted that if evidential issues could not be resolved, the complaint should proceed as a defended hearing with witnesses present to give evidence.

[6] On 29 November 2022, Counsel for the Investigator filed a Memorandum seeking leave to amend the charges and noting that the parties had reached an agreement on the facts that the Board should consider. Counsel noted that the Investigator had formed the opinion that the second allegation made in the original Notice of Proceeding that the Respondent failed to correctly connect the earth conductor to the switchboard could not, on the evidence available, be proven.

[7] The revised charges were:

First Alleged Disciplinary Offence

1. Between February and May 2020 at [OMITTED], Ms Allison Hooton 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, she failed to provide mechanical protection to conductors and cable joints that are connected to power in breach of regulations 16(1)(a) and (b), 20(1)(a), (d), and (g), and 59(1)(a) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. Between February and May 2020 at [OMITTED], Ms Allison Hooton 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, she failed to provide mechanical protection to conductors and cable joints that are connected to power.

Second Alleged Disciplinary Offence

3. On or around 20 August 2020 at [OMITTED], Ms Allison Hooton has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, she certified non-compliant prescribed electrical work as done lawfully and safely.

[8] 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.

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

Function of Disciplinary Action

- [10] 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*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.
- [11] 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*,⁵ 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.”*
- [12] 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

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

Evidence

- [14] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.

- [15] The Board heard from the Respondent prior to it making a decision.
- [16] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged by another company to carry out prescribed electrical work on a renovation. Following her completion of the work, another electrical worker visited the site and raised issues with the compliance of the switchboard. A complaint was made, and the appointed Investigator engaged Mr David Olsen, Electrical Inspector (I 234614), to provide a technical review of the Respondent’s prescribed electrical work. He identified the issue that was pursued at

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

the hearing. They were that conductors connected to power were not installed in a manner to prevent accidental direct or indirect to persons; electrical fittings connected to power were not installed in a manner to prevent accidental or indirect to persons; and the prescribed electrical work was not properly certified.

[17] In response to the allegations being pursued, the Respondent stated:

I have always practised putting terminals on unused cable in switchboards, but I did it because of the risk of touching live parts, not in case of induced voltages. I have come across induced voltages in the past, but never anything maximum touch voltage. I also did not realise that earth joints had to be in an enclosure, so I really appreciate those new lessons.

[18] In the Amended Agreed Statement of Facts, the Respondent accepted the disciplinary allegations and noted her remorse for her actions.

[19] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board's Conclusion and Reasoning

[20] The Board has decided that the Respondent **has** 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, she failed to provide mechanical protection to conductors and cable joints that are connected to power in breach of regulations 16(1)(a) and (b), 20(1)(a), (d), and (g), and 59(1)(a) of the Electricity (Safety) Regulations 2010.

[21] The Board has also decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, she certified non-compliant prescribed electrical work as done lawfully and safely.

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

Contrary to an Enactment

[23] The prescribed electrical work was carried out on a low-voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000 because regulation 59 stipulates:

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.

[24] The prescribed electrical work was completed on a low voltage installation. The Board received evidence that the prescribed electrical work had not been completed in accordance with AS/NZS 3000, and the Respondent accepted that evidence and agreed that the work was not in accordance with it.

[25] Whilst the charges had been laid in the alternative of negligence or incompetence. To make a finding of negligence or incompetence, the Board needs to determine whether the conduct reaches the threshold for disciplinary action. In this respect, the Board must take into consideration judicial directions, such as those set out in *Collie v Nursing Council of New Zealand*,⁷ where the court, as regards the threshold for disciplinary matters, stated:

[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.

[26] The Board decided that the conduct in question had not reached the above threshold. As such, the appropriate finding was that the Respondent had carried out prescribed electrical work in a manner contrary to an enactment. Unlike negligence or incompetence, 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 negligence⁸.

False or Misleading Certification

[27] 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 irrelevant⁹.

[28] The returns referred to are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

⁷ [2001] NZAR 74

⁸ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁹ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [29] The specific allegations were that the Respondent . The Respondent accepted that the allegations. Accordingly, the offence has been committed.

Penalty, Costs and Publication

- [30] 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.

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

Penalty

- [32] 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*¹⁰ 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.

- [33] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹¹ 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.

- [34] The Board noted that the matter had been ongoing for a long period of time, the Respondent was relatively new to the trade when the offending occurred, and had taken over her previous employer’s customer base with the expectation of support from her employer, which did not happen. The Respondent accepted that she had made a bad decision at the time but had learnt from it, with the benefit of further experience, would not do it that way again. The Respondent had, in the intervening period, completed an Inspectors course to gain more knowledge. Further, she had suffered a financial loss from the job and loss of customers due to her being located in a small community and the rumour associated with the matter.

¹⁰ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

- [35] Taking those factors into account, and noting the findings made, the Board decided that whilst a modest fine would ordinarily be imposed, a censure would be imposed. A censure is a public expression of disapproval.

Costs

- [36] 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.
- [37] 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 case¹².
- [38] In *Collie v Nursing Council of New Zealand*,¹³ 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.*
- [39] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁴ 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.*
- [40] 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.
- [41] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$300 toward the costs of and incidental to the matter. In setting the amount of

¹² *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.

¹³ [2001] NZAR 74

¹⁴ CIV-2011-485-000227 8 August 2011

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

Publication

- [42] 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 Act¹⁵. 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.
- [43] 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.
- [44] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁷. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁸. 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*¹⁹.
- [45] 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 interest²⁰. 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.
- [46] 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.
- [47] The Board noted the impact the matter had already had on the Respondent, as outlined in the penalty discussion above, and decided that it would not order further publication.
- [48] 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.

¹⁵ Refer sections 128 of the Act

¹⁶ Section 14 of the Act

¹⁷ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁹ *ibid*

²⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(g) 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 \$300 (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.

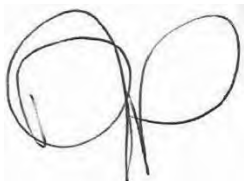
A summary of the matter will not be published by way of an article in the Electron.

[50] 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

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

Signed and dated this 21st day of March 2023



R Keys
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—*

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- (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.

