

Before the Electrical Workers Registration Board

CE No. 22378
Electrical Worker: Niall Hoult (the Respondent)
Registration Number: E 268248
Electrical Worker Number: EW 124802
Registration Class: Electrician

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

Hearing Type: In Person by videoconference
Hearing and Decision Date: 21 October 2021

Board Members Present:

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

Appearances: Ms E Dowse 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 failed to provide a Certificate of Compliance within 20 working days as required by the Electricity Safety Regulations contrary to section 143(f) of the Act. He is fined \$250 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:
- On or around 8 June 2020 at [OMITTED], Mr Niall Hoult has failed to provide a return made under any enactment relating to prescribed electrical work being an offence under section 143(f) of the Act, IN THAT, he failed to provide:
- a. a Certificate of Compliance to the person who contracted him or to the property owner within 20 working days; and/or
 - b. an Electricity Safety Certificate within 20 working days after the installation was connected.
- [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.

- [6] Counsel for the Investigator, in her opening submissions, advised that the Investigator was not pursuing the allegation that an Electrical Safety Certificate had not been provided within the required time frames. The proceedings proceeded on the basis that the only matter before the Board was a failure to provide a Certificate of Compliance within 20 working days.

Function of Disciplinary Action

- [7] 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.

- [8] 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.”

- [9] 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

- [10] As noted, the matter proceeded on the basis of an Agreed Statement of Facts.
- [11] The Respondent participated in a prehearing conference on 12 August 2021. At the conference, he agreed to a hearing date in October. A Notice of Hearing was issued, setting the matter down for a hearing on 21 October 2021 by way of a video conference. An invite to participate was sent to the Respondent and was accepted.
- [12] On the hearing date, the Respondent did not appear. The Board Officer attempted to contact him but was unable to do so. Counsel for the Investigator was present and was ready to proceed.
- [13] Given the low level of offending being dealt with, the limited engagement by the Respondent in the investigation (no response to the investigation was made) and his acceptance that he had committed a disciplinary offence, the Board decided to proceed and to deal with the matter in the absence of 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

Evidence

[14] 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.

[15] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent installed a heat pump. The installation was prescribed electrical work. The install was completed on or about 3 June 2020. A Certificate of Compliance was issued for the prescribed electrical work on 17 December 2020.

[16] On 24 September 2021, the Respondent signed an Agreed Statement of Facts. In it he accepted:

20.1. *He installed 2 x Mitsubishi heat pumps and 1 Highwall heat pump at the property between 28 January and 3 June 2020.*

20.2. *The installation of the heat pumps is PEW in terms of Electricity (Safety) Regulations 2010, Schedule 1 and the Electricity Act 1992 as described above.*

20.3. *Regulation 74E(2), of the ESR provides the responsible person must, within 20 days after completing the work, provide a copy of the certificate of compliance for prescribed electrical work to the person who contracted for the work.*

20.4. *In this case a CoC was first provided to Redwood Builders Ltd, who contracted for the work, by email on 17 December 2020.*

20.5. *As the responsible person, he did not provide the CoC in this case within the required timeframe, and in doing so committed a disciplinary offence under s 143(f).*

[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 **has** failed to provide a return made under any enactment relating to prescribed electrical work being an offence under

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

section 143(f) of the Act, in that, he failed to provide a Certificate of Compliance to the person who contracted him or to the property owner within 20 working days.

- [19] The allegation was that the Respondent had failed to provide a return required under an enactment, in this instance a Certificate of Compliance (CoC). A CoC must, under regulation 65 of the Safety Regulations, be issued for all general and high risk prescribed electrical work on installations or part installations. Under regulation 74E(2) of the Safety Regulations, a CoC must be issued within 20 days of completion.
- [20] In this instance, the heat pumps had been installed and connected on or about 3 June 2020. A CoC was not issued until 17 December 2020. Given the time-lapse, the Board found that the offence had been committed.
- [21] It should also be noted that a failure to provide under section 143(f) of the Act is a form of strict liability offence in that all that need to be proven is that the return was not provided. The Board does not need to find that there was intention, fault or negligence⁵.
- [22] The Respondent should also note that, under regulation 74H, a person commits an offence and is liable on conviction to a level 2 penalty if he or she fails to comply with any of the requirements of regulations 74E to 74G. A level 2 offence carries, in the case of an individual, carries a fine not exceeding \$10,000. The provision reflects the importance of certification and of ensuring it is issued in a timely manner. As the Respondent is a registered electrical worker, it was more appropriate, however, that the matter be dealt with by way of a disciplinary offence.

Penalty, Costs and Publication

- [23] 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.
- [24] The Respondent did not appear but did accept his wrongdoing in the Agreed Statement of Facts. As the Board had information relevant to penalty, costs and publication before it, and the Respondent had elected not to appear, the Board decided to make the appropriate orders.

Penalty

- [25] 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*⁶ 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:

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

⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

[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.

- [26] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,⁷ 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.
- [27] The Board decided, based on previous matters that had come before it and the level of offending involved, to adopt a starting point of a fine of \$500. It noted the Respondent's acceptance of his wrongdoing. There were no other mitigating factors present. The Board decided, on the basis of the Respondent's acceptance that he had committed a disciplinary offence, to reduce the fine to one of \$250.

Costs

- [28] 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.
- [29] 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 case⁸.
- [30] In *Collie v Nursing Council of New Zealand*,⁹ 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.

- [31] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁰ 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.

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

⁸ *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.

⁹ [2001] NZAR 74

¹⁰ CIV-2011-485-000227 8 August 2011

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.

- [32] 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 in its nature. Adjustments based on the High Court decisions above are then made.
- [33] 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

- [34] 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.
- [35] 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.
- [36] 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

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

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*¹⁵.

- [37] 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.
- [38] 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*.
- [39] 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 the prohibition of publication.

Penalty, Costs and Publication Orders

- [40] 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 \$250.

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.

- [41] 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.

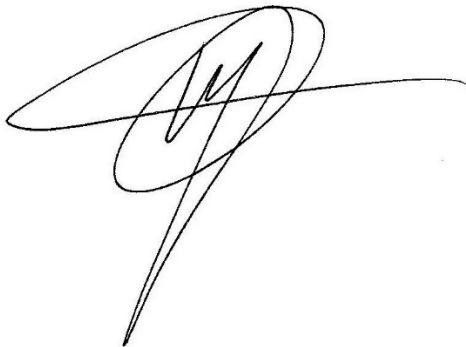
¹⁵ *ibid*

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

Right of Appeal

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

Signed and dated this second day of November 2021

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style with a long horizontal stroke extending to the right.

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*

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- (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.