

Before the Electrical Workers Registration Board

CE No. 22460
Electrical Worker: Fadeel Khan (the Respondent)
Registration Number: E 282495
Electrical Worker Number: EW 119278
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 Location: Auckland
Hearing Type: In Person
Hearing and Decision Date: 22 September 2022

Board Members Present:

Mr R Keys, Registered Inspector, Deputy Presiding Member (Presiding)
Ms M Kershaw, Registered Electrician
Mr M Macklin, Registered Inspector (by Audio Visual Link)
Ms A Yan, Registered Electrical Engineer
Mr M Perry, Registered Electrician

Appearances: Shelley 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 disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

Contents

Summary of the Board’s Decision	2
Introduction	2
Function of Disciplinary Action	3
Procedure	4
Evidence	4
Board’s Conclusion and Reasoning	6
Negligence.....	6
Unauthorised Person	10
Certification.....	12
Penalty, Costs and Publication	13
Penalty	13
Costs.....	13
Publication	15
Penalty, Costs and Publication Orders	16
Right of Appeal	16

Summary of the Board’s Decision

- [1] The Respondent carried out prescribed electrical work in a negligent manner contrary to section 143(a)(i) of the Act and provided a false or misleading return contrary to section 143(f) of the Act. He is fined \$1,000 and ordered to pay costs of \$225. A record of the disciplinary offending will be maintained on the public Register for a period of three years.

Introduction

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

First Alleged Disciplinary Offence

- On or around 5 July 2021 at [OMITTED], Mr Fadeel Khan 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:
 - Installed cables that are inadequately protected against the risk of damage by the nature of their covering or their method of installation; and/or

- (b) Is responsible for the failure to fit a transportable structure with an appliance inlet as required by AS/NZS:3000.

In breach of regulations 20(2)(g), 52, and 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 5 July 2021 at [OMITTED], Mr Fadeel Khan 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

(a) Installed cables that are inadequately protected against the risk of damage by the nature of their covering or their method of installation; and/or

(b) Is responsible for the failure to fit a transportable structure with an appliance inlet as required by AS/NZS:3000.

Second Alleged Disciplinary Offence

3. On or around 5 July 2021 at [OMITTED], Mr Fadeel Khan has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he permitted an unauthorised person to carry out Prescribed Electrical Work without supervision.

Third Alleged Disciplinary Offence

4. On or around 5 July 2021 at [OMITTED], Mr Fadeel Khan has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified non-compliant prescribed electrical work as done lawfully and safely.

[4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in their power or possession.

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

Function of Disciplinary Action

[6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence, and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².

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

- [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. Counsel for the Investigator and the Respondent appeared in person.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

- [11] The Board heard from the Respondent prior to it making a decision.
- [12] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that on or around 5 July 2021, Mr Khan was engaged to carry out prescribed electrical work (PEW) involving the installation of a Portacom building at a property. The work carried out was PEW for the purposes of Schedule 1, Clause 1(1)(a), (b), and (f) of the Electricity (Safety) Regulations 2010. In relation to the supervision of [OMITTED], he carried out PEW under Schedule 1, Clause 1(1)(h).
- [13] The Respondent, in response to the complaint, stated that when the initial testing of the Portacom was conducted, the power fitting on the outside of the building was found to be faulty. He instructed [OMITTED] to carry out a replacement. He did not return to test and certify the replacement item.
- [14] When the Portacom arrived at its destination, the Complainant raised concerns over the incorrect fitting on the exterior of the building.

³ [2016] HZHC 2276 at para 164

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

- [15] The Investigator engaged Mr David Olsen, an Electrical Inspector, to carry out a review of the complaint documentation. He provided a technical report of his findings. He noted the following:
- (a) Mr Khan installed TPS cables within polystyrene insulation. Due to reactions between this type of cable and polystyrene, the cables were likely to deteriorate much quicker than usual. This process of degradation has the potential to allow live conductors becoming exposed and could lead to fires. Non-migration TPS cables should have been used. In breach of AS/NZS 3000:2007 1.7.1, 3.1.2(e) & (f), 3.3.1, and 3.4.2.
 - (b) AS/NZ:3001 requires the Portacom to be fitted with an appliance inlet at the point of power supply. However, a socket outlet (female) was installed. The consequence of this is that a male-to-male lead would have had to been made to supply the Portacom with power, creating an electrically unsafe installation. In breach of AS/NZS 3000:2007 7.8.2.3 and 3.2.2.
 - (c) Mr Khan provided a false and misleading COC in that he has certified PEW that he did not adequately test and was not done safely and lawfully. In breach of Electrical Safety Regulations 2010 65(1),(3), 66(1),(2), 67(1),(2)(ca), and 78.
- [16] In summary, Mr Olsen provided his opinion that the Respondent failed to meet fundamental requirements of the AS/NZS 3000 and the Safety Regulations for the installation of wiring and connection methods of the Portacom and failed to adequately supervise and test [OMITTED]'s work.
- [17] The Respondent acknowledged that he had carried out prescribed electrical work and accepted Mr Olsen's findings. The Respondent and the Investigator agreed and submitted that the Respondent had carried out prescribed electrical work in a negligent manner.
- [18] At the hearing, the Respondent accepted he should have known [OMITTED]'s Trainee Limited Certificate had expired, and he should have attended the site to verify and test the work. He accepted that he had installed TPS cables inside refrigeration panels that were inadequately protected.
- [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 negligent manner being an offence under section 143(a)(i) of the Act in that he:
- (a) failed to provide protection against cable that were inadequately protected against the risk of damage by the nature of their covering or their method of installation; and
 - (b) failed to adequately supervise a trainee and ensure their trainee limited certificate was valid.
- [21] The Board has also decided that the Respondent has employed, directed, or permitted an unauthorised person to do prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he permitted an unauthorised person to carry out prescribed electrical work (PEW) without supervision.
- [22] Further, the Board has decided that the Respondent provided a false or misleading return when he certified non-compliant PEW that he did not adequately test and was not done safely and lawfully.
- [23] The reasons for the Board's decisions follow.

Negligence

- [24] The charges put before the Board were laid in the alternatives of negligently creating a risk of serious harm to any person or a risk of significant property damage under section 143(b)(ii) and, as alternatives, negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii) of the Act.
- [25] The Investigator and the Respondent jointly submitted that the appropriate finding was one under section 143(a)(i) of the Act. The Board accepted that submission on the basis of the surrounding circumstances, including that the Respondent was not able to return to complete the work.
- [26] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative, it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence.
- [27] 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 negligence⁵.

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

[28] In this instance, Mr Olsen identified multiple breaches of AS/NZS 3000:2007 and the Safety Regulations.

[29] Under regulation 59 of the Safety Regulations, all prescribed electrical work on an installation must be carried out in accordance with AS/NZS 3000:2007:

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.*

(2) *Every other low or extra-low voltage installation or part installation must be installed, tested, inspected, or connected so as to comply with either—*

(a) *Part 2 of AS/NZS 3000; or*

(b) *a certified design prepared in accordance with Part 1 of AS/NZS 3000.*

[30] Mr Olsen noted, amongst other failures, a failure to provide protection against the dangers that may arise from contact with parts of the electrical installation that are live in normal service. Mr Olsen referenced breaches of regulations 13(1), 20(1), 59(1) of the Electricity (Safety) Regulations 2010. Regulation 59, noted above, references the requirement to comply with AS/NZS 3000. Regulations 13 and 20 relate to electrical safety:

13 Doing work on works, installations, fittings, and appliances

(1) *A person who does work on any works or installation, or on any part of any works or installation, must ensure—*

(a) *that the resulting works or installation, or part of the works or installation, is electrically safe; and*

(b) *if the work is on only part of any works or installation, that the work has not adversely affected the electrical safety of the rest of the works or installation.*

20 Electrically unsafe works and installations

- (1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*
- (a) *prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations:*
 - (b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*
 - (c) *prevent an electric current passing through the body of a person on contact with any part of the works or installations, or limit that current so that the magnitude and duration of the shock current cannot exceed the IEC shock current standards.*

[31] The terms “electrically safe” and “unsafe” are defined in regulation 5 of the Safety Regulations:

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

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

[32] Turning to negligence, it is the departure by an electrical worker whilst carrying out or supervising prescribed electrical work from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

- [33] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [34] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. The test is an objective one, and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰.
- [35] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.*

- [36] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.
- [37] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹¹ the Court has noted, as regards the threshold for disciplinary matters, that:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹¹ [2001] NZAR 74

which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[38] The Respondent accepted, and the Board agreed, that he had carried out prescribed electrical work in a negligent manner. The Respondent left the building in a dangerous state with the incorrect external fitting having been installed. Given those factors, the Board, which includes persons with expertise in the electrical industry, found that the Respondent had carried out prescribed electrical work in a negligent manner and that the conduct was serious enough to warrant a disciplinary finding.

Unauthorised Person

[39] Section 74 of the Act places restrictions on who can carry out PEW. It states:

74 Restrictions on doing or assisting with prescribed electrical work

- (1) *A person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised to do so under this section.*
- (2) *The following persons may do prescribed electrical work, or assist in doing prescribed electrical work, within the limits prescribed in regulations (if any):*
 - (a) *a registered person who is authorised to do, or assist in doing, the work under a current practising licence:*
 - (b) *a person who is authorised to do, or assist in doing, the work under a provisional licence:*
 - (c) *a person who is authorised to do, or assist in doing, the work under an employer licence.*
- (3) *A person does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if that work is done in accordance with any of sections 75 to 80.*
- (4) *A body corporate that is responsible for any prescribed electrical work does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if the natural person or natural persons who actually do, or assist in doing, that work are authorised to do so under this Act.*
- (5) *Subsection (1) is subject to subsections (3) and (4) and sections 75 to 81.*
- (6) *For the purposes of this Part and Part 10, regulations means regulations made under section 169.*

[40] Sections 75 to 80 of the Act provide for various exemptions. Section 77 provides an exemption for trainees who carry out PEW under supervision. A trainee is a person who holds a trainee limited certificate issued by the Board¹². Section 76 creates a more general exemption for any person to carry out PEW under supervision. There

¹² Refer section 77(2) of the Act.

are differences, however, in what can be carried out by a trainee as compared to non-trainees. In essence, there are limitations placed on non-trainees.

76 Exemption for work done under supervision

A person (the supervised person) may do any prescribed electrical work, or assist in doing any prescribed electrical work, if—

- (a) that work is within the limits prescribed in regulations made for the purposes of this section; and*
- (b) the work done by the supervised person is carried out under the supervision of a registered person who holds a current practising licence issued under this Act that authorises the person to supervise electrical work; and*
- (c) except as provided in any regulations, while that work is being carried out by the supervised person, no part of the work is connected to a power supply; and*
- (d) the work is—*
 - (i) tested and certified in accordance with regulations; and*
 - (ii) connected to a power supply by a registered person who holds a current practising licence issued under this Act that authorises the person to supervise electrical work.*

[41] The person who carried out the PEW had been a trainee. His Trainee Limited Certificate had lapsed. When it lapsed he ceased to be a trainee. This is because of the requirement in the exemption in section 77(2) of the Act that:

the work done by that person is carried out in accordance with a limited certificate issued by the Board to the trainee under section 78.

[42] The lapse of the limited certificate meant that the person who carried out the PEW fell within the provisions of section 78. The facts before the Board, however, showed that the requirements in section 76(2) had not been complied with, in that, the work was not connected to a power supply by the Respondent, who was the registered person who held a current practising licence issued under the Act. As such, the Respondent could not rely on the provisions of section 76. That being the case, the Respondent did allow an unauthorised person to carry out PEW which was contrary to the provisions of section 74 of the Act.

[43] It should be noted that allowing an unauthorised person to carry out PEW is a serious matter. The restrictions created in the Act are put in place so as to ensure that PEW is only carried out or supervised by competent persons. This ensures that the purposes of the Act are promoted. Those purposes include¹³:

- (c) to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*

¹³ Refer section 1A of the Act.

(d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand*

[44] The Respondent should also note that his conduct came within the provisions of section 162 of the Act which states:

162 Offence to engage in prescribed electrical work in breach of section 74

Every person who does, or assists in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$50,000 in the case of an individual, or \$250,000 in the case of a body corporate.

[45] The Board does note that the offending came about as a result of an oversight and a failure in business systems. That is a matter to be taken into consideration when the Board deals with what the appropriate penalty should be. It does, however, raise a salient lesson for other electrical workers. There is a risk in electrical workers assuming others are licensed. Due diligence should always be undertaken, checks made, and systems put in place to ensure PEW is carried out in accordance with the provisions of the Act.

[46] It is also to be noted that the disciplinary offence is a strict liability one. The Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed. The Board does not need to find that there was intention, fault, or negligence¹⁴ to make a decision. Given those factors and the above matters, the Board found that the offence had been committed.

Certification

[47] 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 irrelevant¹⁵.

[48] 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.

[49] The Respondent accepted that he had provided false certification, and the Board agreed that he had committed an offence under section 143(f) of the Act.

¹⁴ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁵ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty, Costs, and Publication

[50] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[51] The Respondent made submissions at the hearing as regards publication.

Penalty

[52] 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*¹⁶ 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.

[53] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁷ 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.

[54] The Board adopted a starting point of a fine of \$2,500, an amount that was consistent with past penalties imposed by the Board for similar offending. The Board found that there were no aggravating factors but that there were mitigating factors. Principally, the Respondent cooperated and accepted his wrongdoing and showed remorse for his actions. Taking this into consideration, the Board has applied a 50% reduction in the fine, taking it to \$1,250. Further, his company has instigated new procedures to ensure this type of offending will not occur again. On the basis of the additional mitigating factor, the Board felt a further discount of \$250 was warranted. The fine is, accordingly, set at \$1,000.

Costs

[55] 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.

¹⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

[56] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁸.

[57] In *Collie v Nursing Council of New Zealand*¹⁹ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

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

[58] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁰ the High Court noted:

[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, 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.

[59] 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 moderately complex. Adjustments based on the High Court decisions above are then made.

[60] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$225 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. The amount ordered is significantly less than 50% of actual costs.

¹⁸ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

¹⁹ [2001] NZAR 74

²⁰ CIV-2011-485-000227 8 August 2011

Publication

- [61] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act²¹. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [62] 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.
- [63] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²². The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²³. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁴. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁵.
- [64] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁶. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [65] 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.
- [66] 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.

²¹ Refer sections 128 of the Act

²² Section 14 of the Act

²³ Refer sections 200 and 202 of the Criminal Procedure Act

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

²⁵ *ibid*

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

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$1,000.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (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.

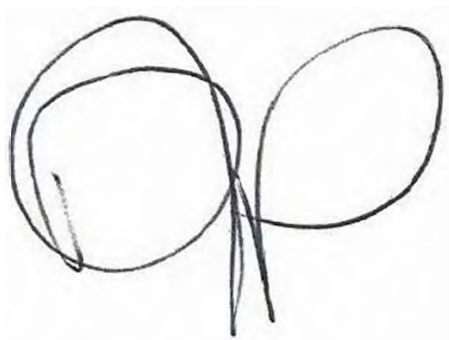
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

[68] 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

[69] 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 2022

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke at the end, appearing to read 'R Keys'.

Mr R Keys
Presiding

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

- (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.*