

## Before the Electrical Workers Registration Board

CE No. 22464  
Electrical Worker: Connie King (the Respondent)  
Registration Number: E 264923  
Electrical Worker Number: EW 126540  
Registration Class: Electrician

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

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Hearing Location: Palmerston North  
Hearing Type: In Person  
Hearing and Decision Date: 9 September 2022

#### Board Members Present:

Mel Orange (Presiding)  
Russell Keys, Registered Inspector  
Michael Macklin, Registered Inspector  
Monica Kershaw, Registered Electrician  
Jane Davel, Lay Member  
Ashley Yan, Registered Electrical Engineer

Appearances: C Milne 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), 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 in a negligent manner. She also failed to provide an Electrical Safety Certificate. She is fined \$2,000 and ordered to pay costs of \$2,075. A record of the disciplinary offending will be published on the Public Register for a period of three years. A summary of the offending will be published in the Electron.

## 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 of Hearing setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

### First Alleged Disciplinary Offence

1. On or around 25 July 2021, at [OMITTED], Mrs Connie King 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:

- (a) Failed to adequately support cables that were connected to power in a ceiling space exceeding 0.6 metres high, where cables were likely to be disturbed; and/or
- (b) Left cable joints in connectors for circuits connected to power without any mechanical protection; and/or
- (c) Failed to provide residual current device (RCD) protection to new power sockets installed in the kitchen.

In breach of regulations 20(2), 22 and 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

- 2. On or around 25 July 2021, at [OMITTED], Mrs Connie King 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:
  - (a) Failed to adequately support cables that were connected to power in a ceiling space exceeding 0.6 metres high, where cables were likely to be disturbed; and/or
  - (b) Left cable joints in connectors for circuits connected to power without any mechanical protection; and/or
  - (c) Failed to provide RCD protection to new power sockets installed in the kitchen.

### **Second Alleged Disciplinary Offence**

- 3. On or around 25 July 2021, at [OMITTED], Mrs Connie King has failed to provide a return, being an offence under section 143(f) of the Act, IN THAT, she failed to provide an Electrical Safety Certificate within 20 working days of the installation being connected to a power supply.

[4] At the hearing, Counsel for the Investigator sought leave to have the charges amended to reflect that the prescribed electrical work was carried out in 2020 and not 2021 as stated.

[5] Under section 156A of the Act, the Board has the power to amend or revoke a notice. It provides:

#### **156A Power to amend or revoke**

- (1) *The Board's power to make, issue, give, or publish any order, notice, exemption, or other instrument includes the power to—*
  - (a) *amend or revoke it:*
  - (b) *revoke it and replace it with another.*

- [6] The Board was satisfied that the Respondent had been given fair notice of the matters the Investigator was alleging, and that she would not be prejudiced by the Board exercising its power to amend the charge. The charge was accordingly amended to read that the prescribed electrical work was carried out in 2020.
- [7] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in their power or possession.
- [8] No Board Members declared any conflicts of interest in relation to the matters under consideration.

### **Background to the Hearing**

- [9] The hearing was the second hearing that had been scheduled. The first was adjourned at the Respondent's request. With respect that hearing, on 11 May 2022, a pre-hearing telephone conference was convened to discuss hearing dates and procedures with the Respondent and Counsel for the Investigator. The Respondent could not be contacted at the pre-arranged time.
- [10] A further pre-hearing conference was convened on 26 May 2022. Again, the Respondent did not attend. The Presiding Member directed that the matter be set down for a hearing on 20 July 2022. A Notice of Hearing was issued to the Respondent.
- [11] On 14 July 2022, the Respondent emailed the Board Officer stating:
- "Is there a way I can possibly zoom for next weeks hearing?... I apologise for the delay and my absence I have been full time carer for my dependant sons and also caring for my Aunty who is terminally ill. It has been a very tough time however I understand it is in everyone's best interest especially my own, to get matters sorted."*
- [12] The Board Officer engaged with the Respondent and encouraged her to attend in person but advised that she could attend by videoconference provided she had a good internet connection. She indicated that she had a good connection but that she would look at options to attend in person.
- [13] In preparation for the hearing, Counsel for the Investigator had arranged the attendance of the Investigator's witnesses, and facilities for the hearing had been arranged.
- [14] Late afternoon on 19 July 2022, the day before the hearing, the Respondent emailed requesting an adjournment. She stated, amongst other things:
- Due to the above I request that my hearing in front of the board be delayed to allow me further gather statement and evidence to defend not only my electrical licence/career but also my character in front of the board.*
- [15] Counsel for the Investigator did not oppose an adjournment. One was granted, and costs were reserved.

- [16] A new hearing date was set, and a Notice of Hearing was issued. In the lead-up to the new hearing date, the Board Officer attempted to contact the Respondent in the following ways:
- 11 August 2022: Emailed with a revised Notice of Hearing. The Respondent had previously engaged with the Board Officer by email.
  - 8 September 2022: Called at 10.01 AM and a voice message was left. Called again at 10.56 AM. Emailed at 10.59 AM with a request for contact and again at 11.11 AM with the hearing book. Called at 11.56 AM and again at 12.39 PM when another voice mail was left.
  - 9 September 2022, the day of the hearing: Called at 10.04 AM (the scheduled start time was 11 AM) and a voice message was left. Sent a text at 10.39 AM.
- [17] The Respondent did not respond to any of the contacts.
- [18] The witnesses in support of the complaint were present, as was Counsel for the Investigator.
- [19] The Board considered that more than reasonable efforts had been made to accommodate the Respondent, to bring the in-person hearing that she requested to her attention and to provide her with an opportunity to appear and be heard. The Board noted that the purposes of the disciplinary provisions in the Act would be defeated if electrical workers were able to avoid complaints by not participating the in process.
- [20] Taking the above into consideration, the Board decided that the matter should proceed as a formal proof hearing.

### **Function of Disciplinary Action**

- [21] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.
- [22] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,<sup>3</sup> Collins J. noted that:

*“... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are*

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

<sup>2</sup> [1992] 1 NZLR 720 at p 724

<sup>3</sup> [2016] HZHC 2276 at para 164

*maintained in order to protect clients, the profession and the broader community.”*

[23] 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.

#### **Evidence**

[24] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.<sup>4</sup> 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.*

[25] The Board heard evidence from the Complainant and from an expert engaged by the Investigator to review the work prior to it making a decision. The Board also received written and signed statements from the Complainant and the expert, both of whom confirmed their statements under an affirmation.

[26] The Respondent was engaged to carry out prescribed electrical work at [OMITTED]. The work was carried out on or about 25 July 2020. The Complainant, the homeowner, described the work as including:

- Installing downlights
- Installed cables to provide power to the kitchen island
- Installation of induction cooktop
- Installation of dishwasher
- Installation of rangehood
- Relocation of new oven

[27] The work was not completed, and the Complainant stated that the Respondent did not provide any certification. The Complainant stated that the Respondent was the only electrical worker involved and that no one else had completed any work until she engaged another electrical worker to check the prescribed electrical work and make it safe. That electrical worker identified the issues that were complained about.

[28] The Investigator engaged Mr Olsen, an Electrical Inspector, to review the prescribed electrical work. He provided a technical report. His findings resulted in the charges that were before the Board. In his report, he noted the electrical standards that he alleged the Respondent had not complied with when the prescribed electrical work

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

was carried out. Photographs of the work were provided in support of the report and allegations.

[29] The Respondent provided an initial response to the complaint. In it she stated:

*I understand I have a complaint made against me, I would like to provide some understanding and advise that I take full responsibility and although my electrical license provides income that allows me to pay my living expenses, I am happy with what the investigator implies upon me as I have always believed that everything needs to be done properly. I have always held myself in achieving a very high standard, no matter what I do. This has been a very stressful time, having a complaint made against and not been able to finish the job in its entirety.*

And

*I did remove and pull in to the ceiling space powerpoints and lower them back down to be re-used in the kitchen. I did not add any additional powerpoints.*

*I did add from memory 4 new lights, these cables have not been supported in the ceiling space. I take full responsibility for this.*

*At the end of every job I always do my 100% checks and complete everything to a high standard. I completed my testing prior to livening, power and lighting, to ensure it was safe to do so.*

*I expected to return to the job when the remaining materials arrived onsite, however i understand from the customer that she engaged with new 'tradies' to complete the job, therefore I was unable to complete my existing task.*

*I haven't written a COC as the job remains open. The existing job I had been engaged to do was incomplete.*

And

*Regardless of the kitchen powerpoints being existing, I had every intention to install an RCD, it's a very simple job that provides a great degree of safety for the homeowner, had I of been allowed to finish the job this would have been completed, along with ensuring the cables I had run in were supported.*

[30] Notwithstanding, on the day prior to the adjourned hearing, the Respondent sent an email with what she termed "clarification". In it, she stated the photographs in the pictures of cables were not hers, that she did provide a Certificate of Compliance and that the work did not require an RCD. With respect to the latter, she stated:

*5. The photo provided of the kitchen island shows a new cable in conduit for the island, this cable is clearly not connected to power. All other electricals in the photo have been fitted off, commissioned and tested.*

*6. The PowerPoint in the island when connected to a power supply is required to have RCD protection. I could not connect this PowerPoint to supply as the back of the bench had either not arrived or was the wrong size, when I left the property the 2C+E TPS was left exactly as it was in the photo with an island built around it with no backing. In my experience and knowledge I am not required to write a COC or safety certificate for running a cable not connected to a power supply.*

- [31] The Respondent also noted that her apprentice could substantiate what she was stating. No evidence from the apprentice was provided.
- [32] The Board put questions to the Complainant and Mr Olsen as regards the defences put forward. The Complainant was adamant that no other electrical workers had carried out work. She also gave evidence that the Respondent had installed new socket outlets in the kitchen for various appliances in addition to the one that was not connected in the kitchen island. Mr Olsen gave evidence that, as those socket outlets were new and additional to what had previously been available in the kitchen, an RCD was required for them.

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

- [33] The Board has decided that the Respondent 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 adequately support cables that were connected to power in a ceiling space exceeding 0.6 metres high, where cables were likely to be disturbed.
- [34] The Board has also decided that the Respondent 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 she left cable joints in connectors for circuits connected to power without any mechanical protection; and failed to provide RCD protection to new power sockets installed in the kitchen.
- [35] Further, the Board has decided that the Respondent failed to provide a return, being an offence under section 143(f) of the Act, in that she failed to provide an Electrical Safety Certificate within 20 working days of the installation being connected to a power supply.
- [36] The Board has made its decision on the basis of the uncontested evidence that was before it.
- [37] The Board also noted that whilst the Respondent was not licensed at the time of the hearing, she was registered and licensed at the time of the conduct that was complained about and, as such, the Board does have jurisdiction.<sup>5</sup>

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<sup>5</sup> Refer section 142 of the Act.



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

#### Legal Provisions

[39] The charges put before the Board were laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii) of the Act.

[40] 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.

[41] 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 negligence<sup>6</sup>.

[42] The Board accepted the evidence of the Complainant and Mr Olsen. On that basis, there was clear and compelling evidence that the Respondent had carried out the prescribed electrical work detailed in the Notice of Proceeding in a manner that was contrary to AS/NZS 3000 and the Safety Regulations, noting that under regulation 59(1) of the Safety Regulations, all prescribed electrical work on installations must comply with AS/NZS 3000. The question for the Board was whether any of the conduct amounted to negligence or incompetence.

[43] There are no statutory definitions of the terms negligence or incompetence. It is noted, however, that they are not the same. In *Beattie v Far North Council*<sup>7</sup> Judge McElrea noted:

*[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.*

[44] Negligence is considered to be 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*<sup>8</sup> test of negligence which has been adopted by the New Zealand Courts<sup>9</sup>.

[45] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as "a

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<sup>6</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>7</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>8</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

*demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*,<sup>10</sup> it was stated as "*an inability to do the job*".

- [46] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>11</sup>. 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.
- [47] 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 Act<sup>12</sup>. 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 practitioner<sup>13</sup>.
- [48] 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.]*

- [49] 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.
- [50] Looking at the conduct, the Board considered that the manner in which connections were made and the failure to install an RCD amounted to negligence. The Board, which includes persons with expertise in the electrical industry, would expect a

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<sup>10</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>11</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>12</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>13</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

registered and licensed Electrician to carry out prescribed electrical work to a higher standard as regards the connections and to know of the requirement to install an RCD for new socket outlets. Further, it is not a defence that the work was not complete. Parts of the installation were connected and live. As such, they had to be safe and compliant. They were not.

- [51] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>14</sup> the Court's 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 which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

- [52] The conduct was serious, and it was noted, in reviewing the responses provided by the Respondent, that the Respondent's focus was on financial issues and not compliance issues. The failings were fundamental and, it would appear, deliberate. The Board finds that the two aspects of the conduct noted met the threshold for a disciplinary finding of negligence.

#### Failure to Provide

- [53] The allegation was that the Respondent had failed to provide a return required under an enactment, in this instance, an Electrical Safety Certificate (ESC). An ESC must, under regulation 74A of the Safety Regulations, be issued for all prescribed electrical work on installations, part installations or any fitting that supplies an installation or a part installation with electricity. Under regulation 74C, an ESC must be issued within 20 days after connection.
- [54] An ESC was not provided. It follows that the disciplinary offence has been committed.

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

- [55] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act<sup>1</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [56] The Board heard evidence during the hearing relevant to penalty, costs, and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

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<sup>14</sup> [2001] NZAR 74

## Penalty

[57] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>15</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

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

[58] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>16</sup> the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they have the advantage of simplicity and transparency. The court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.

[59] The Board adopted a starting point of a fine of \$2,000. The amount was consistent with other fines imposed by the Board for similar levels of offending. It is an amount which reflects the seriousness of the matter, which the Board found to be mid-level negligence. There are no mitigating or aggravating factors that the Board is aware of. The fine will remain at \$2,000.

## Costs

[60] 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.

[61] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>17</sup>.

[62] In *Collie v Nursing Council of New Zealand*,<sup>18</sup> where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

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<sup>15</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>16</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>17</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>18</sup> [2001] NZAR 74

*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.*

[63] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>19</sup> the High Court noted:

*[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*

*[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*

[64] 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.

[65] The Board convened for two hearings. The first was adjourned at the Respondent's request so that she could appear in person. Costs were reserved. Costs for that matter are now set at \$500.

[66] The second hearing proceeded. The Respondent did not participate or engage with the Board in the lead-up. Significant costs were incurred. It is appropriate that some of those are recovered so that the burden is not left for other electrical workers to carry.

[67] The Board's scale costs for a half-day hearing and associated investigation are \$1,575. The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>20</sup> the High Court held that it was permissible to take into account as an adverse factor when determining costs that the practitioner had responded to the complaints and discipline process in a belligerent way. Notwithstanding the approach taken, the Board decided that it would not increase the amount of costs. The costs will for the second hearing are set at \$1,575.

[68] Including the costs for the first hearing, total costs of \$2,075 are ordered.

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<sup>19</sup> CIV-2011-485-000227 8 August 2011

<sup>20</sup> [2011] 3 NZLR 850.

## Publication

- [69] 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 Act<sup>21</sup>. 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.
- [70] 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.
- [71] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>22</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>23</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>24</sup>. 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*<sup>25</sup>.
- [72] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>26</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [73] Based on the above, the Board will order further publication. An article in the Board's Electron magazine summarising the matter will be published. The Respondent will be named in that publication.

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<sup>21</sup> Refer sections 128 of the Act

<sup>22</sup> Section 14 of the Act

<sup>23</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>24</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>25</sup> *ibid*

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

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

[74] 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 \$2,000.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$2,075 (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 be named in the publication.**

[75] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

## **Submissions on Penalty, Costs and Publication**

[76] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on 18 October 2022. The submissions should focus on mitigating matters as they relate to the penalty, costs, and publication orders. If no submissions are received then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

## **Right of Appeal**

[77] The right to appeal Board decisions is provided for in section 147ZA and 147ZB of the Act<sup>i</sup>.

Signed and dated this nineteenth day of September 2022



**M Orange**  
Presiding Member

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

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- (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.*