

## Before the Electrical Workers Registration Board

CE No. 22291

Electrical Worker: Alvin Kumar (the Respondent)

Registration Number: E 267368

Electrical Worker Number: EW 119227

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: Auckland

Hearing Type: In Person

Hearing and Decision Date: 14 December 2020

Board Members Present:

Mr M Orange (Presiding)  
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  
Mr M Perry, Registered Electrician

Appearances: Martin Denyer 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 days of completion of prescribed electrical work. The Respondent is censured and ordered to pay costs of \$225.

**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 offence the Investigator reported should be considered by the Board. It was that on or around 12 August 2018<sup>1</sup> at [Omitted], Mr Alvin Kumar has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a CoC within 20 days as required.

[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.

**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

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<sup>1</sup> The offence date was inserted with the consent on the application of Counsel for the Investigator pursuant to section 156A of the Act.

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>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

- [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*<sup>4</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 maintained in order to protect clients, the profession and the broader community.”*

- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

#### **Procedure**

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

#### **Evidence**

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. 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 matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to carry out prescribed electrical work (PEW) that came with the “general” risk category. The Respondent was required to issue a Certificate of Compliance (CoC) when the work was completed. On 12 August 2018, an Electrical Inspector inspected the PEW and issued a Record of Inspection (ROI) to the Respondent who, on the same date, removed it from the property and did not return it to the homeowner.

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<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [12] On 17 August 2018, the homeowner emailed the Respondent and requested that the ROI be returned. It was not provided. The homeowner made requests for the CoC and ROI by text messages on 12 February 2020, 3 March 2020, and 13 March 2020. The Respondent did not provide the documentation. A complaint was made.
- [13] On 19 June 2020, after the complaint had been made the Respondent provided a copy of the CoC dated 12 August 2018 to the Complainant in person at his home, and sent him a copy of the ROI by email.
- [14] The Respondent stated he had not fully completed the work, there was a misunderstanding, and he thought he would be returning to the property to carry out further PEW. This was notwithstanding that the Complainant had sent an email to the Respondent on 18 August 2018, which stated that if the Respondent was not unable to complete the PEW over the next week his contract would be terminated. The Respondent stated, however, that he did not receive the email as it was sent to an incorrect email address. The contract was brought to an end in late August 2018 by mutual agreement as the Respondent was not able to complete the PEW in normal working hours because of other full-time work.
- [15] The Respondent acknowledged and accepted that he had permanently left the site and terminated his contract with the Complainant and that he should have provided a CoC on request for the work he had done. He accepted he had failed to provide a CoC within 20 working days for the PEW he had carried out between 12 May 2018 and 17 August 2018.
- [16] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

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

- [17] The Board has decided that the Respondent **has** failed to provide a return being an offence under section 143(f) of the Act, in that, he failed to provide a CoC within 20 days as required.
- [18] Under regulation 65 of the Safety Regulations, a CoC must 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. Regulation 74E(4) requires that a copy be provided on demand from listed persons within 10 working days.
- [19] The Respondent accepted that he had failed to provide the return but also claimed that he had intended to return and carry out further work implying that the CoC was not yet due. The Board noted, however, that the power had been connected and the work had been inspected. As such, a CoC had to of been issued. This is because regulation 65(3) of the Safety Regulations states that general prescribed electrical work may be treated as complete until a CoC is issued for it. At the same time under

regulation 73A(1)(c) a CoC must have been issued or sighted before a power supply is connected to an installation or part installation on which prescribed electrical work has been carried out. It is also a requirement that a CoC be issued and sighted before a Record of Inspection (RoI) can be issued.

[20] Given those factors, a CoC was required on 12 August 2018 and should have been issued within 20 days of that date. It was not. Further demands for a CoC were made. Notwithstanding those demands, copies were not provided as per the requirements in regulation 74E.

[21] Given the above factors, and the Respondent's acceptance of responsibility, the Board has decided that the Respondent has committed the disciplinary offence as charged.

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

[22] 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.

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

### **Penalty**

[24] 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>6</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.*

[25] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>7</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.

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<sup>6</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>7</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

- [26] The Respondent is reminded that the electrical worker regime under the Act and Safety Regulations is one that allows for and relies on self-certification. The certification is important as owners, occupiers and others rely on it to give them assurance that the prescribed electrical work is safe and compliant. A failure to provide accurate and timely certification puts the regime at risk. The obligations are not to be taken lightly.
- [27] On the basis of the above the Board would normally impose a fine for offending of this nature. However, in this instance, and on the basis that the Respondent has accepted responsibility the Board has decided that it will reduce the penalty to a censure. A censure is a public expression of disapproval.

### 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 case<sup>8</sup>.
- [30] In *Collie v Nursing Council of New Zealand*<sup>9</sup> 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] 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 of costs, the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

### Publication

- [32] 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>10</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

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<sup>8</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>9</sup> [2001] NZAR 74

<sup>10</sup> Refer sections 128 of the Act

decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.

- [33] 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.
- [34] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>11</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>12</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>13</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>14</sup>.
- [35] 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>15</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.
- [36] In this instance, the offending dated back to 2018 and the offending was at the lower end of the scale. 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.
- [37] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

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

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

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

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

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<sup>11</sup> Section 14 of the Act

<sup>12</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>13</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>14</sup> *ibid*

<sup>15</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

**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.**

- [39] 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**

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

Signed and dated this 15<sup>th</sup> day of January 2021



**Mr M Orange**  
Presiding Member

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### <sup>i</sup> **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):*



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- (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.]

#### **<sup>ii</sup> 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.