

**Before the Electrical Workers Registration Board**

CE No. 22581

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Roneel Kumaran a registered and licensed electrical worker (E 278134, EW 116242, Electrician) (the Respondent)

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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:

16 March 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms J Davel, Lay Member

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Ms A Yan, Registered Electrical Engineer

**Appearances:**

M Hall 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 four disciplinary offences under section 143(f) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent has committed four separate offences under section 143(f) of the Act. There were extenuating circumstances, and the Board decided that, as a result, it would not take any disciplinary action or make an order for costs.

### The Board

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

### Introduction

- [3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator<sup>2</sup> that the complaint should be considered by the Board. Under section 147T of the Act, the Investigator must prosecute the matter at a Board hearing who may be represented by counsel.
- [4] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

#### First Alleged Disciplinary Offence

1. Between 10 December 2021 – 22 January 2022 at [OMITTED] Mr Roneel Kumaran has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to issue an Electrical Safety Certificate.

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<sup>1</sup> Section 148 of the Act.

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

### **Second Alleged Disciplinary Offence**

2. Between 10 December 2021 – 22 January 2022 at [OMITTED] Mr Roneel Kumaran has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to issue a Certificate of Compliance.

### **Third Alleged Disciplinary Offence**

3. Between 10 December 2021 – 22 January 2022 at [OMITTED] Mr Roneel Kumaran has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to issue a Certificate of Compliance.

### **Fourth Alleged Disciplinary Offence**

4. Between 10 December 2021 – 22 January 2022 at [OMITTED] Mr Roneel Kumaran has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided two Certificates of Compliance for two portable homes identified as [OMITTED] and [OMITTED] which were incorrectly certified.
- [5] 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.
- [6] No Board Members declared any conflicts of interest in relation to the matters under consideration.

### **Function of Disciplinary Action**

- [7] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>4</sup>.
- [8] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,<sup>5</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.”*
- [9] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

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

<sup>4</sup> [1992] 1 NZLR 720 at p 724

<sup>5</sup> [2016] HZHC 2276 at para 164

## Procedure

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

## Evidence

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</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.*

[12] The Board heard from the Respondent prior to it making a decision.

[13] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was employed by the Heat Pump Doctors and Electrical Specialists (Heat Pump Doctors) and that on or about 25 January 2022, he resigned from his employment at the Heat Pump Doctors. Following his resignation, his previous employers asked him to amend several certificates of compliance (COC) that he had issued due to claimed errors and inaccuracies with the certification. He refused, and a complaint was made. The Respondent stated that the jobs had been completed by another electrician who issues the COCs and that he did not feel it necessary to amend the certification.

[14] A review of the certification by an independent expert resulted in the allegations noted in the Notice of Proceeding. The Respondent accepted the issues raised.

[15] At the hearing, the Respondent set out that he had been pressured to sign certification for work that others had carried out, had not been paid and was generally harassed by his former employers.

[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.

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

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

- [17] The Board has decided that the Respondent **has** committed the disciplinary offences as stated in the Notice of Proceeding and recorded in paragraph [4] above.
- [18] The Board made its decision on the basis of the Respondent's acceptance of the facts presented to the Board. Further, as the alleged offences are a form of strict liability offence the Board does not need to find that there was intention, fault or negligence<sup>7</sup>. It is enough that the noted contraventions have occurred.

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

- [19] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [20] The Respondent made submissions at the hearing as regards penalty, costs and publication.

### Penalty

- [21] 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>8</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.*

- [22] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>9</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.
- [23] There were extenuating circumstances and the Board noted that the Respondent felt he was doing the right thing in not agreeing to alter certification or certifying the work of others. The Board agreed with the latter but noted that the certification he did issue should have been accurate. Notwithstanding, the offending is minor in nature, and, given the surrounding circumstances, the Board has decided that it will

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<sup>7</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>8</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>9</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

not take any further action and no orders will be made under section 147M of the Act.

### Costs

[24] 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.

[25] 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>10</sup>.

[26] In *Collie v Nursing Council of New Zealand*,<sup>11</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.*

[27] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>12</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.*

[28] As with the penalty decision, and on the same reasoning, the Board has decided that it will not make any order for costs.

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<sup>10</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>11</sup> [2001] NZAR 74

<sup>12</sup> CIV-2011-485-000227 8 August 2011

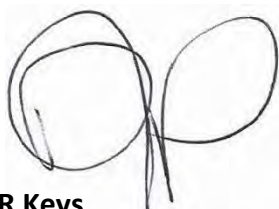
## Publication

- [29] Ordinarily, as a consequence of its decision, the Respondent's name and the disciplinary outcomes would be recorded in the public Register as required by the Act<sup>13</sup>. In this instance, however, because the Board has made no order under section 147M of the Act it follows that there will be no record of the matter on the Register.
- [30] Further, the Board will not carry out any further publication under section 147Z of the Act.
- [31] 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.

## **Right of Appeal**

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

Signed and dated this 14<sup>th</sup> day of April 2023



**R Keys**  
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:*

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<sup>13</sup> Refer sections 128 of the Act

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- (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.*