

Before the Electrical Workers Registration Board

CE No. 22379

Electrical Worker: Steven Lawson (the Respondent)

Registration Number: E263650

Electrical Worker Number: EW 119078

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: By video conference

Hearing Type: In-Person or On the Papers

Hearing and Decision Date: 16 September 2021

Board Members Present:

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

Appearances: Matthew 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 disciplinary offences under sections 143(a)(i), 143(a)(ii) and 143(b)(ii) of the Act.

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Summary of the Board’s Decision

[1] The Respondent has carried out work in a manner contrary to an enactment, in a negligent manner and has negligently created a risk of serious harm to persons. He is fined \$1,100 and ordered to pay costs of \$250.

Introduction

[2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.

[3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 4 May 2015 at [Omitted], Mr Steven Lawson 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

- a. Failed to provide adequate support and mechanical protection to cables against mechanical damage leaving cables passing over sharp metal edges on the switchboard; and/or
 - b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
 - c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or
 - d. Failed to provide adequate RCD protection for more than three final subcircuits on the switchboard; and/or
 - e. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the garage area; and/or
 - f. Failed to provide adequate equipotential bonding to copper water and waste pipes; and/or
 - g. Failed to earth exposed conductive surfaces/parts of electrical equipment operating in an earthed situation on the hot water cylinder; and/or
 - h. Exposed live parts on terminals of hotwater cylinder; and/or
 - i. Failed to earth metal luminaires (Class 1 equipment); and/or
 - j. Failed to correctly identify conductors by way of insulation colours.
- In breach of regulations 13(1)(a), 20(1)(a), 20(2)(g) and 59(1) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 4 May 2015 at 517 [Omitted], Mr Steven Lawson 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. Failed to provide adequate support and mechanical protection to cables against mechanical damage leaving cables passing over sharp metal edges on the switchboard; and/or
 - b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
 - c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or
 - d. Failed to provide adequate RCD protection for more than three final subcircuits on the switchboard; and/or
 - e. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the garage area; and/or
 - f. Failed to provide adequate equipotential bonding to copper water and waste pipes; and/or
 - g. Failed to earth exposed conductive surfaces/parts of electrical equipment operating in an earthed situation on the hot water cylinder; and/or
 - h. Exposed live parts on terminals of hotwater cylinder; and/or
 - i. Failed to earth metal luminaires (Class 1 equipment);and/or
 - j. Failed to correctly identify conductors by way of insulation colours.

Or in the Alternative

3. On or around 4 May 2015 at 517 [Omitted], Mr Steven Lawson has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he
 - a. Failed to provide adequate support and mechanical protection to cables against mechanical damage leaving cables passing over sharp metal edges on the switchboard; and/or
 - b. Failed to label devices used for the control and protection of installed wiring on the switchboard; and/or
 - c. Failed to provide labelling to indicate location for the main earth electrode on the switchboard; and/or
 - d. Failed to provide adequate RCD protection for more than three final subcircuits on the switchboard; and/or
 - e. Failed to provide adequate support and mechanical protection to cables against damage and/or impact in the garage area; and/or
 - f. Failed to provide adequate equipotential bonding to copper water and waste pipes; and/or
 - g. Failed to earth exposed conductive surfaces/parts of electrical equipment operating in an earthed situation on the hot water cylinder; and/or
 - h. Exposed live parts on terminals of hotwater cylinder; and/or
 - i. Failed to earth metal luminaires (Class 1 equipment); and/or
 - j. Failed to correctly identify conductors by way of insulation colours.

Second Alleged Disciplinary Offence

4. On or around 4 May 2015 at 517 [Omitted], Mr Steven Lawson has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he
 - a. provided a certificate of compliance for prescribed electrical work that was carried out in a non-compliant manner; and/or
 - b. failed to provide the details of a trainee who assisted to carry out the prescribed electrical work; and/or
 - c. indicated on the certificate of compliance that the work was high risk when it was general.

[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 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.

- [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.

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 Agreed Statement of Facts set out that the Respondent was engaged by his employer to carry out a rewire of a property in 2015. The work was undertaken in conjunction with a trainee who held a limited certificate. A certificate of compliance was issued by the Respondent following completion of the prescribed electrical work.
- [13] In November 2020, a different electrician who was carrying out unrelated electrical work found issues with the Respondent’s prescribed electrical work. A complaint was subsequently made, and the Investigator engaged Mr Mark Carter, an Electrical Inspector, to carry out an inspection of the work and provide his opinion on its compliance. Mr Carter provided a technical report which resulted in the charges before the Board. Mr Carter’s report noted the provisions of the Electricity (Safety)

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

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

Regulations 2010 that had allegedly been breached as well as the clauses of AS/NZS 3000:2007 that had not been complied with.

- [14] Mr Carter's expressed an opinion that the exposed terminations to the heating element of the hot water cylinder posed a significant safety risk. He noted that the hot water cylinder was not RCD (residual current device) protected. Given its proximity to the ground, any electric shock received through accidental contact could have been fatal.
- [15] The Respondent accepted that the work he carried out at the property breached the Regulations and did not meet the requirements of AS/NZS 3000:2007 and that he had provided a false or misleading return being an offence under s 143(f) of the Act as set out in the Notice of Proceeding.
- [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 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).
- [18] The Board's findings, in respect of each of the allegations under the First Alleged Disciplinary Offence, was as follows:
- (a) failed to provide adequate support and mechanical protection to cables against mechanical damage leaving cables passing over sharp metal edges on the switchboard – the Respondent **has** committed a disciplinary offence under section 143(a)(i) of the Act;
 - (b) failed to label devices used for the control and protection of installed wiring on the switchboard – the Respondent **has** committed a disciplinary offence under section 143(a)(ii) of the Act;
 - (c) failed to provide labelling to indicate location for the main earth electrode on the switchboard – the Respondent **has** committed a disciplinary offence under section 143(a)(ii) of the Act;
 - (d) failed to provide adequate RCD protection for more than three final subcircuits on the switchboard – the Respondent **has not** committed a disciplinary offence;
 - (e) failed to provide adequate support and mechanical protection to cables against damage and/or impact in the garage area – the Respondent **has** committed a disciplinary offence under section 143(a)(i) of the Act;

- (f) failed to provide adequate equipotential bonding to copper water and waste pipes – the Respondent **has** committed a disciplinary offence under section 143(b)(ii) of the Act;
- (g) failed to earth exposed conductive surfaces/parts of electrical equipment operating in an earthed situation on the hot water cylinder – the Respondent **has** committed a disciplinary offence under section 143(b)(ii) of the Act;
- (h) exposed live parts on terminals of hotwater cylinder – the Respondent **has** committed a disciplinary offence under section 143(b)(ii) of the Act;
- (i) failed to earth metal luminaires (Class 1 equipment) – the Respondent **has** committed a disciplinary offence under section 143(b)(ii) of the Act; and
- (j) Failed to correctly identify conductors by way of insulation colours – the Respondent **has** committed a disciplinary offence under section 143(a)(i) of the Act.

[19] With regard to the Second Alleged Disciplinary Offence, the Board has found that the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act.

Findings under section 143(a)(i) of the Act

[20] Section 143(a)(i) of the Act relates to carrying out or supervising prescribed electrical work in a manner that is contrary to an enactment. The charge is a form of strict liability in that all that needs to 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. In this respect, the provisions of Regulation 11 are noted:

11 Strict liability offences

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
- (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*

[21] With respect to the allegations in particulars (a), (e) and (j), the Board noted that there had been contraventions of enactments as follows:

- (a) switchboard – cabling passing over sharp metal edges: breaches of regulations 20(2)(g) and 59 (1) of the Electricity (Safety) Regulations 2010 and non-compliance with AS/NZS 3000:2007 clauses 3.1.2(f) and 3.10.3.5;

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

- (e) wiring – inadequate mechanical protection: breaches of regulations 20(2)(g) and 59 (1) of the Electricity (Safety) Regulations 2010 and non-compliance with AS/NZS 3000:2007 clauses 3.1.2(f), 3.3.2.6, 3.9.1, and 3.9.3.3; and
- (j) failed to correctly identify conductors by way of insulation colours: breach of regulation 59 (1) of the Electricity (Safety) Regulations 2010 and non-compliance with AS/NZS 3000:2007 clauses 5.2.1(a) and (b), 5.3.1(a), 5.4.1.1(a), 5.4.1.3(a), 5.4.4, and 3.8.1 and Table 3.4 in respect of the identification of conductors.

[22] Given the breaches, the Board finds that the disciplinary offence has been committed.

Findings under section 143(a)(ii) of the Act

[23] Section 143(a)(ii) of the Act relates to carrying out or supervising prescribed electrical work in a negligent or incompetent manner. The Board's findings were that the work was carried out in a negligent manner.

[24] There are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*⁶ 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.

[25] 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*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

[26] 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 demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*,⁹ it was stated as "*an inability to do the job*".

[27] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. 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.

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

[28] 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 Act¹¹. 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 practitioner¹².

[29] 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.*

[30] 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.

[31] With respect to the allegations in particulars (b) and (c), the Board noted that there had been contraventions of enactments as follows:

- (b) switchboard – labelling of circuit protective devices: breach of regulation 59(1) of the Electricity (Safety) Regulations 2010 and non-compliance with AS/NZS 3000:2007 clauses 2.3.2.2.2 and 2.3.3.4; and
- (c) switchboard - identification of main earth location: breach of regulation 59(1) of the Electricity (Safety) Regulations 2010 and non-compliance with AS/NZS 3000:2007 clause 5.6.3.4.

[32] Labelling forms part of the overall operational safety arrangements for an installation. Labelling ensures that those that use the installation or carry out prescribed electrical work on it are able to locate key electrical fittings. Labelling can assist when there is an emergency or a loss of power by ensuring fittings can be

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

quickly identified. The Board considers that an electrical worker should be aware of the requirement to label and would comply with it. The Respondent, in failing to do so has, fallen below the expected standard required of an electrical worker.

- [33] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹³ 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.

- [34] The Board did not consider that the failure was mere inadvertence, error or oversight. It was a fundamental failing, and, as such, it does reach the threshold for disciplinary action.

Findings under section 143(b)(ii) of the Act

- [35] The Board's finding was that the Respondent had negligently created a risk of serious harm. To make a finding, the Board must, in addition to finding the Respondent to have been negligent as per the legal tests above, find that there was a risk of serious harm to persons.

- [36] Serious harm is defined in section 2 of the Act. It means:

*death; or
injury that consists of or includes loss of consciousness; or
a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*

- [37] The relevant parts of Section 23 of the Health and Safety at Work Act 2015 are:

23 Meaning of notifiable injury or illness

- (1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*
- (a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*
- (i) *the amputation of any part of his or her body:*
 - (ii) *a serious head injury:*
 - (iii) *a serious eye injury:*
 - (iv) *a serious burn:*
 - (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
 - (vi) *a spinal injury:*
 - (vii) *the loss of a bodily function:*
 - (viii) *serious lacerations:*

¹³ [2001] NZAR 74

- (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
- (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

[38] Actual serious need not occur. There need only be a risk that either might occur. The risk must be real in that there needs to be a material or substantial possibility, chance or likelihood that serious harm or significant property damage will occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful¹⁴.

[39] Turning to the prescribed electrical work in relation to the allegations in particulars (f), (g), (h) and (i), the Board noted that the allegations related to equipotential bonding pipes, earthing of a hot water cylinder, exposed live parts on a hot water cylinder and the earthing of luminaires. In respect of each, there had been contraventions of the Regulations and of AS/NZS 3000:2007:

- (f) Equipotential bonding: regulation 59(1) of the Electricity (Safety) Regulations 2010 and clause 8.3.5.2 of AS/NZS 3000:2007;
- (g) Hot water cylinder earthing: regulation 59(1) of the Electricity (Safety) Regulations 2010 and clause 5.4.1.1 of AS/NZS 3000:2007;
- (h) Exposed live parts (hot water cylinder): regulations 13(1)(a), 20(1)(a) and 59(1) of the Electricity (Safety) Regulations 2010 and clauses 1.5.4.1, 1.5.4.4 of AS/NZS 3000:2007; and
- (i) Failure to earth metal luminaires: regulation 59(1) of the Electricity (Safety) Regulations 2010 and clauses 5.2.1(a) and (b), 5.3.1(a), 5.4.1.1(a), 5.4.1.3(a) and 5.4.4 of AS/NZS 3000:2007.

[40] Given those factors, the Board found that there had been a failure by the Respondent to carry out or supervise prescribed electrical work to an acceptable standard and that there was a risk of serious harm to persons: the failure to earth and to bond pipes to earth, compromised the electrical safety systems in the event of a fault, and the exposed electrical conductors created a direct risk of electric shock.

Findings that an offence was not committed

[41] With respect to the allegation in particular (d) that the arrangement of residual current devices (RCDs) was not as per the requirements in AS/NZS3000:2007 the Board found that there were not more than three final subcircuits from an RCD. It made that decision on the basis of the provisions in clause 1.4.88 and the definition of final subcircuit, which is:

¹⁴ Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

1.4.88 Subcircuit, final

A circuit originating at a switchboard and to which only consuming devices or points will be connected. *The origin of a final subcircuit is deemed to be at the connecting devices of the neutral bar or link or at the load terminals of the circuit protective devices provided within or on a switchboard specifically for the connection of the circuit. The termination of a final subcircuit is deemed to be at the supply terminals of consuming devices or points.*

- [42] The photographs of the switchboard showed three subcircuits from the RCDs to three miniature circuit breakers (MCBs) and then more than three circuits from the MCBs. On the basis of the definition above, the number of final subcircuits from the RCDs was three as there were only three subcircuits connected to the RCD load terminals.

Findings under section 143(f) of the Act

- [43] The final charge was that the Respondent had provided 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.
- [44] The return that was alleged to have been false or misleading was a Certificate of Compliance (CoC). A CoC must be 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.
- [45] The CoC issued by the Respondent was noted as having asserted that the prescribed electrical work was compliant when it was not. It also failed to provide the details of a trainee who assisted in carrying out the prescribed electrical work, and it indicated that the work was high risk when it was general.
- [46] Given the above factors, the Board found that the offence under section 143(f) had been committed.

Penalty, Costs and Publication

- [47] 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.
- [48] The Respondent made submissions at the hearing as regards penalty, costs and publication.

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

Penalty

[49] 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.

[50] 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.

[51] The Board adopted a starting point of a fine of \$3,000. The amount reflected the seriousness of the matters and was consistent with other fines imposed for similar levels of offending. There were no aggravating factors.

[52] The Respondent noted that the work was carried out soon after he had been registered and licensed. He noted that he was somewhat out of his depth with the type of work (a rewire of a dwelling with a skillion roof and his second rewire) and that he felt pressured to get the work done within the allocated time frames, which resulted in the work being rushed. On reflection, he accepted he should have taken more time, checked the trainee’s work more thoroughly, and asked for assistance. He stated that he had learnt since then to be vigilant in checking any work carried out under supervision stating that he now double and triple checks it and that the work did not reflect how he currently completes his work. It was noted that the work that was complained about had been remediated at no cost to the homeowner. The Board also took the Respondent’s cooperation with the investigation and his acceptance of responsibility into account as mitigating factors.

[53] The Board decided, on the basis of the mitigating factors present, that it would reduce the fine to \$1,100.

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

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

Costs

- [54] 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.
- [55] 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.
- [56] 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.

- [57] 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.*

- [58] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$250 toward the costs of and incidental to the matter. In setting the amount 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

- [59] 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

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

²¹ Refer sections 128 of the Act

public register notation. Under section 147Z of the Act, 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.

- [60] 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.
- [61] 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.
- [62] 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.
- [63] 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. The Board decided that, as the matter occurred some six years ago that naming the Respondent in the Electron would not be appropriate.
- [64] 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.

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

[65] 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 \$1,100.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision.

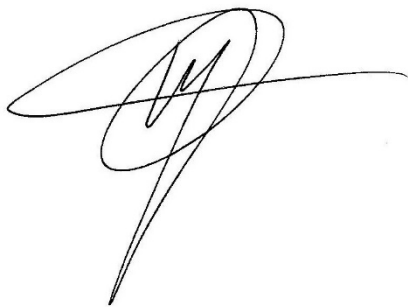
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

[66] 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.

Right of Appeal

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

Signed and dated this 28th day of September, 2021.

A handwritten signature in black ink, consisting of a large, stylized 'M' with a long horizontal stroke extending to the right and a vertical stroke extending downwards from the center of the 'M'.

Mr M Orange
Presiding Member

ⁱ Section 147M of the Act

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
 - (i) *permanently, or for any period that the Board thinks fit; or*
 - (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

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- (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.*