

**Before the Electrical Workers Registration Board**

CE No. 22563

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Steven Mitchell a registered and licensed electrical worker (E 269881, EW 130237, 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:

by Audio Visual Conference

Hearing Type:

In Person

Hearing and Decision Date:

19 April 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)  
Ms M Kershaw, Registered Electrician  
Mr M Macklin, Registered Inspector  
Ms A Yan, Registered Electrical Engineer  
Mr M Perry, Registered Electrician

**Appearances:**

G La Hood 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(b)(ii), 143(a)(i) and 143(f) of the Act.

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### Summary of the Board’s Decision

[1] The Respondent negligently created a risk of serious harm or significant property damage contrary to section 143(b)(ii) of the Act. The Respondent also carried out prescribed electrical work in a negligent manner contrary to section 143(a)(i) of the Act and provided a false or misleading return contrary to section 143(f) of the Act. He is fined \$2,500 and ordered to pay costs of \$250. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

### 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.

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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

- [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. On or around 7 September 2018 at [OMITTED], Mr Steven Mitchell 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. Altered the electrical design of the switchboard by removing conductors, adding conductors, and removing of the main isolator switch so that the installation had no means of isolation; and/or
  - b. Altered the design of the automatic mains changeover system by installing conductors and removing conductors disabling the manufacturer designed safety function; and/or
  - c. Failed to correctly carry out a cable extension.

In breach of regulations 13(1)(a) and (b), 13(3), 14(2)(a), 20(c),(d), and (g), 20(2)(a) 59(2), 63(a),(b), and (c), 74A(1), 74 C, 74G of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 7 September 2018 at [OMITTED], Mr Steven Mitchell 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. Altered the electrical design of the switchboard by removing conductors, adding conductors, and removing of the main isolator switch so that the installation had no means of isolation; and/or
  - b. Altered the design of the automatic mains changeover system by installing conductors and removing conductors disabling the manufacturer designed safety function; and/or
  - c. Failed to correctly carry out a cable extension.

Or in the Alternative

3. On or around 7 September 2018 at [OMITTED], Mr Steven Mitchell 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 altered the design of the automatic mains changeover system by installing conductors and removing conductors disabling the manufacturer designed safety function.

### **Second Alleged Disciplinary Offence**

4. On or around 7 September 2018 at [OMITTED], Mr Steven Mitchell has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he provided a Certificate of Compliance for work that was not carried out lawfully or safely.

### **Third Alleged Disciplinary Offence**

5. On or around 7 September 2018 at [OMITTED], Mr Steven Mitchell has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide an Electrical Safety Certificate within 20 working days of the installation being connected to the electricity supply.

- [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 engaged to carry out prescribed electrical work (PEW) associated with the installation of a Wavecom cabinet for a Spark New Zealand Limited installation. On completion, the Respondent issued a Certificate of Compliance (CoC) but not an Electrical Safety Certificate (ESC) on the basis that he believed the CoC was sufficient.

[14] Following completion, a complaint was made alleging the PEW had been carried out in a non-compliant and dangerous manner.

[15] The Investigator appointed an expert, Mr David Olsen, an Electrical Inspector, to carry out a technical review of the PEW and to provide an opinion on it. He identified the following issues, which formed the basis of the disciplinary offences:

- (a) the Respondent altered the electrical design of the switchboard by removing conductors, the addition of conductors and the removal of the main isolator. This led to the installation not being able to be switched off in breach of AS/NZS 3000:2007 2.3.1 and 7.3.4.1;
- (b) the Respondent altered the design of the automatic mains changeover system. Installing conductors and removing conductors disabled the safety function designed by Wavecom Limited to prevent a generator system and mains system providing power to the cabinet simultaneously. This created an electrically unsafe installation in breach of AS/NZS 3000:2007 7.3.3;
- (c) the Respondent carried out a cable extension but used the wrong cable identification, incorrectly applied a compression crimp and wrong insulation for the application, in breach of AS/NZS 3000:2007 3.7.1, 3.7.2.2, 3.7.2.4(f), 3.7.3, 3.7.3.2; and
- (d) the Respondent falsely certified the work as having been done lawfully and safely and had failed to issue an ESC for the work.

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

- [16] The Respondent provided a written response to the complaint. He set out that it was the first job of its kind that he had undertaken and that there was confusion about several aspects of the installation. He also noted that the work was completed outside of business hours and within tight time constraints and that during the time of the shutdown and moving the supply cable into the Wavecom Cabinet, the telecommunications infrastructure was running on a battery backup.
- [17] In the Agreed Statement of Facts, the Respondent accepted that he had created a risk of serious harm to any person or significant property damage when he altered the electrical design of the switchboard by removing conductors, adding conductors and removing the main isolator switch so that the installation had no means of isolation.
- [18] The Respondent also accepted that he had carried out prescribed electrical work in a negligent or incompetent way when he altered the design of the automatic mains changeover system by installing conductors and removing conductors disabling the manufacturer-designed safety function and in relation to a failure to correctly carry out a cable extension.
- [19] Finally, the Respondent accepted that he provided a CoC for work that was not carried out lawfully or safely and that he had failed to provide an ESC within 20 working days of the installation being connected to the electricity supply.
- [20] The Agreed Statement of Facts noted that the Respondent had cooperated with the Investigator, accepted responsibility for the non-compliant PEW and was remorseful for his mistakes.
- [21] 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**

- [22] In respect of the First Alleged Disciplinary Offence, the Board has decided that the Respondent **has**:
- (a) 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 altered the design of the automatic mains changeover system by installing conductors and removing conductors disabling the manufacturer designed safety function; and
  - (b) carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act in that he failed to correctly carry out a cable extension.

- [23] In respect of the Second Alleged Disciplinary Offence, the Board has decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act in that he provided a Certificate of Compliance for work that was not carried out lawfully or safely.
- [24] In respect of the Third First Alleged Disciplinary Offence, the Board has decided that the Respondent failed to provide a return being an offence under section 143(f) of the Act in that he failed to provide an Electrical Safety Certificate within 20 working days of the installation being connected to the electricity supply.
- [25] The reasons for the Board's decisions follow.

### **First Offence**

- [26] 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). The Board has found that the allegations met the tests for 143(b)(ii) and 143(a)(i).
- [27] Section 143(b)(ii) relates negligently creating a risk of serious harm or significant property damage, 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.*
- [28] Significant property damage is not defined in the Act. Section 16(1)(b)(ii) of the Act, which relates to notification of accidents, also refers to serious harm and to property damage. In respect of damage, it requires notification where there is:
- damage to any place or part of a place that renders that place or that part of that place unusable for any purpose for which it was used or designed to be used before that accident.*
- [29] As section 16 refers to both serious harm and to damage, the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).
- [30] Actual serious harm or significant property damage 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 fanciful<sup>7</sup>.

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<sup>7</sup> Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

[31] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*<sup>8</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.*

[32] 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>9</sup> test of negligence which has been adopted by the New Zealand Courts<sup>10</sup>.

[33] 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*,<sup>11</sup> it was stated as “an inability to do the job”.

[34] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>12</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.

[35] 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>13</sup> which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. 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>14</sup>.

[36] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when

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<sup>8</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>9</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>11</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>12</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>13</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>14</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71



considering what is and is not an acceptable standard, they must be taken into account.

- [37] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>15</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.*

- [38] The prescribed electrical work was carried out on a low-voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000 because regulation 59 stipulates:

**59 Low and extra-low voltage installations to comply with AS/NZS 3000**

(1) *Every low or extra-low voltage domestic installation, or part of a domestic installation, must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000 if it has a maximum demand at or below—*

(a) *80 amperes per phase if single-phase; or*

(b) *50 amperes per phase if multi-phase.*

- [39] The Board received evidence that the prescribed electrical work had not been completed in accordance with AS/NZS 3000, and the Respondent accepted that evidence and agreed that the work was not in accordance with it.

- [40] The manner in which the PEW was carried out also meant that regulation 13 of the Safety Regulations had been breached. It states

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

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

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

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

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<sup>15</sup> [2001] NZAR 74

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

**5 Meanings of electrically safe and electrically unsafe**

*In these regulations, unless the context otherwise requires—*

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

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

[42] Further, regulation 20 deems certain installations to be unsafe. The following provisions apply to the Respondent's PEW :

**20 Electrically unsafe works and installations**

(1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*

(b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*

(2) *Works and installations are also deemed to be electrically unsafe if—*

(a) *the characteristics of any fittings used in the works or installations are impaired; or*

(b) *conductors are inadequately identified; or*

(c) *where colour is used to identify conductors in a standard low voltage domestic installation that is being installed (other than in light fittings, connections to appliances, and wiring within a fitting),—*

(i) *the neutral conductor is identified by any colour except black; and*

(ii) *black is used to identify a conductor other than the neutral conductor; or*

[43] Given the above factors and the accepted facts, the Board has decided that with respect to the alteration to the design of a switchboard and to the automatic

changeover system, the Respondent had carried out the PEW in a negligent manner and had created a risk of serious harm or significant property damage. In terms of the cable extension, the PEW was carried out in a substandard manner, but it did not create the risk of serious harm or significant property damage. As such, the finding in relation to that breach was that the Respondent had carried out PEW in a negligent manner.

### **Second and Third Offences**

- [44] The second charge was that the Respondent 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 irrelevant<sup>16</sup>.
- [45] The returns referred to, a CoC, is issued under the Regulations. There is a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct. The work had not been completed lawfully or safely. As such, the offence has been committed.
- [46] The remaining allegation was that the Respondent had failed to provide a return required under an enactment, in this instance, an 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. The Respondent did not issue an ESC. It follows that he has committed the disciplinary offence.

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

### **Penalty**

- [49] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>17</sup> It is not a formulaic

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<sup>16</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

<sup>17</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>18</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>19</sup>
- (b) deterring other Licensed Building Practitioners from similar offending;<sup>20</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>21</sup>
- (d) penalising wrongdoing;<sup>22</sup> and
- (e) rehabilitation (where appropriate).<sup>23</sup>

- [50] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>24</sup> and applying the least restrictive penalty available for the particular offending.<sup>25</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>26</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>27</sup>
- [51] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>28</sup>
- [52] The Board noted that the conduct occurred some 5 years ago. Given that, a restrictive penalty such as a suspension or training was not warranted. A starting point of a fine was adopted. The Board decided that a fine of \$5,000 would reflect the seriousness of the offending and provide a deterrent. The Board noted the Respondent's cooperation and his acceptance that he had committed the disciplinary offences. On that basis, and taking the delay in the matter being dealt with into consideration, the Board decided to reduce the fine to \$2,500.
- [53] The Board also takes this opportunity to remind the Respondent that he must only work within his personal competence and that if he is tasked with work that is outside of it, he needs to take steps to become competent or else seek the assistance of someone who is.

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<sup>18</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>19</sup> Section 3 Building Act

<sup>20</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>21</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>22</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>26</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>27</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>28</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

## 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 case<sup>29</sup>.

[56] In *Collie v Nursing Council of New Zealand*,<sup>30</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.*

[57] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>31</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.*

[58] 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 simple. Adjustments based on the High Court decisions above are then made.

[59] 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.

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<sup>29</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>30</sup> [2001] NZAR 74

<sup>31</sup> CIV-2011-485-000227 8 August 2011

## Publication

- [60] 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>32</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.
- [61] 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.
- [62] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>33</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>34</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>35</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>36</sup>.
- [63] 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>37</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.
- [64] 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.
- [65] 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.

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<sup>32</sup> Refer sections 128 of the Act

<sup>33</sup> Section 14 of the Act

<sup>34</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>35</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>36</sup> *ibid*

<sup>37</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

[66] 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 \$2,500.

**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.**

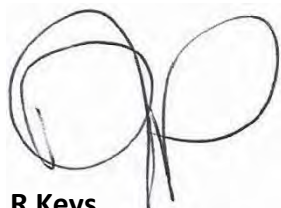
**A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.**

[67] 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

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

Signed and dated this 8<sup>th</sup> day of June 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;
    - (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.



