

## Before the Electrical Workers Registration Board

CE No. 22867

### In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

### Between:

The Ministry of Business Innovation and Employment

### And

[Omitted] a registered and licensed electrical worker (E[Omitted], EW[Omitted], 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:

Wellington

Hearing Type:

Audio Visual Link

Hearing Date:

20 February 2025

Decision Date:

20 February 2025

### Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

Ms S Cameron, Registered Electrician

Ms L Wright, Barrister

Mr T Tran, Barrister

Appearances: A Millar, Counsel for the Investigator and T Wilkinson, Investigator

J Ross, Counsel for the Respondent and [Omitted]

### 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) and 143(f) of the Act.

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## Summary of the Board's Decision

- [1] The Board determined the Respondent committed a disciplinary offence under sections 143(a)(i) and 143(f) of the Act.
- [2] The Board ordered:
- A fine of \$1,000 (reduced from \$2,000 starting point due to cooperation, the matter proceeded on an agreed statement of facts and this being the Respondent's first offence);
  - Costs of \$250;
  - The name of the Respondent, his company, the location of work and the Board's reasons for the non-publication are to be suppressed.

## 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 that the complaint should be considered by the Board.
- [4] The Respondent was engaged to carry out prescribed electrical work (PEW) associated with the disconnection and removal of various luminaires from the plenum (ceiling) to provide access to fire sprinkler services at [Omitted] in March 2024.
- [5] The Respondent was served with a Notice of Proceeding dated 15 October 2024 setting out the alleged disciplinary offences the Investigator reported should be considered by the Board.
- [6] The following disciplinary charges were alleged in the Notice of Proceeding:

**First Alleged Disciplinary Offence:**

*On or around 15 March 2024 at [Omitted], Mr [Omitted] 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 ensure that live parts were covered with the appropriate insulation and/or,*
- b. Failed to ensure that live parts, cable joints and unsheathed insulation conductors had been placed within an appropriate enclosure and/or,*
- c. Failed to minimise the risk of injury to persons or damage to property from contact with live exposed parts*

*In breach of regulations 16 and 59 of the Electricity (Safety) Regulations 2010.*

Or in the Alternative

*On or around 15 March 2024 at [Omitted], Mr [Omitted] 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 ensure that live parts were covered with the appropriate insulation, and/or,*
- b. Failed to ensure that live parts, cable joints and unsheathed insulation conductors had been placed within an appropriate enclosure, and/or,*
- c. Failed to minimise the risk of injury to persons or damage to property from contact with live exposed parts.*

**Second Alleged Disciplinary Offence:**

*On or around 15 March 2024 at [Omitted], Mr [Omitted] has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified (Electrical Safety Certificate) that completed prescribed electrical work complied with the Electricity Safety Regulations.*

- [7] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his power or possession.

**Function of Disciplinary Action**

- [8] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the

Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

- [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. Those grounds relate to carrying out or supervising prescribed electrical work (PEW).

### Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.<sup>3</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.*

### Procedure

- [11] The matter proceeded on the basis of an Agreed Statement of Facts dated 3/5 February 2025 (ASOF), with the Respondent accepting responsibility for the disciplinary offences

- [12] In summary, the ASOF provided that:

- a. The Respondent disconnected five luminaires from existing electrical wiring at [Omitted];
- b. Four of the five fittings were made safe by securely covering the conductors and primary insulation;
- c. The Respondent overlooked safely covering one of the cables’ primary insulations;
- d. The plenums were approximately 3 metres off the ground and the cables were placed into the plenum;
- e. The Respondent subsequently issued an Electrical Safety Certificate certifying compliance when aspects of the work were non-compliant.

### Board’s Decision

- [13] Based on the ASOF and having considered all the evidence, the Board finds that the Respondent has committed disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

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

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

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

- [14] While the charge was laid in the alternative, with section 143(a)(ii) being the primary charge, the Board finds that the conduct is most appropriately dealt with under section 143(a)(i).
- [15] In order to make a finding under section 143(a)(i), the Board has to be satisfied that the Respondent had conducted himself in a negligent manner.

### Negligence

- [16] Negligence, in a disciplinary context, is 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>4</sup> test of negligence which has been adopted by the New Zealand Courts.<sup>5</sup>
- [17] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test<sup>6</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [18] 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>7</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>8</sup>
- [19] In this case, the Respondent's failure to properly secure one of the five disconnected cables constitutes a significant departure from the standard expected of a licensed electrical worker, particularly in a sensitive environment like [Omitted].
- [20] Similarly, by issuing an Electrical Safety Certificate stating the installation was compliant when one of the cables had not been properly insulated and enclosed, the Respondent provided a false or misleading return under section 143(f).
- [21] Based on the above, the Board finds the charges under sections 143(a)(i) and 143(f) have been proven.

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<sup>4</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>5</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>6</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>7</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>8</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

## Penalty, Costs and Publication

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

### Penalty

- [24] 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>9</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>10</sup>
- (a) protection of the public and consideration of the purposes of the Act;
  - (b) deterring Respondent and other Electrical Workers from similar offending;<sup>11</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>12</sup>
  - (d) penalising wrongdoing;<sup>13</sup> and
  - (e) rehabilitation (where appropriate).<sup>14</sup>
- [25] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases<sup>15</sup> and applying the least restrictive penalty available for the particular offending.<sup>16</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>17</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>18</sup>
- [26] 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>19</sup>

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<sup>9</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]

<sup>10</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>11</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>12</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

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

<sup>14</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>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>16</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>17</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</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.

- [27] In terms of penalty, the Board considered a fine is warranted in the circumstances.
- [28] The Board adopted a starting point of \$2000 for a fine. This is reduced by 50% to \$1,000 taking into account:
- a. The Respondent's co-operation with the investigation;
  - b. His acceptance of responsibility and expression of remorse;
  - c. This was his first appearance before the board.
- [29] Accordingly, a fine of \$1,000 is imposed.

### Costs

- [30] 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, the prosecution and the hearing.
- [31] 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>20</sup>
- [32] In *Collie v Nursing Council of New Zealand*,<sup>21</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.*
- [33] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>22</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.*
- [34] 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

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<sup>20</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>21</sup> [2001] NZAR 74

<sup>22</sup> CIV-2011-485-000227 8 August 2011

current matter was simple. Adjustments based on the High Court decisions above are then made.

- [35] Based on the above, the Respondent is to pay costs of \$250, which is significantly less than actual costs in recognition of his co-operation through the ASOF process.

Publication / Suppression

- [36] The Respondent has applied for suppression of his name and the location where the work was carried out. The grounds advanced for suppression were:

- a. [Omitted];
- b. [Omitted];
- c. [Omitted];
- d. [Omitted];
- e. [Omitted];
- f. [Omitted].

- [37] The Board has carefully considered these grounds against the principle of open justice and the public interest in transparent disciplinary proceedings. The Board accepts that in this case there are genuine and credible safety concerns that outweigh the public interest in full publication.

- [38] [Omitted].

- [39] The Board notes that suppression in this case does not significantly undermine the broader purposes of publication, as the substantive details of the offending and the Board's findings will still be published to provide guidance to the profession, merely with identifying details redacted. The Board has also considered the position of the investigator, who did not oppose the application.

- [40] Accordingly, while the Board's findings will be recorded in the public register as required by the Act, and a redacted version of this decision will be published on the Board's website, the Board directs that:

- a. The name of the Respondent and his company be suppressed;
- b. The location where the prescribed electrical work was carried out be suppressed;
- c. Any other details that could identify the Respondent or the location be redacted from published versions of this decision including the Board's reasons for suppression.

**Penalty, Costs and Publication Orders**

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

**Penalty:** Pursuant to section 147M(1)(f) of the Act, the Respondent is ordered to pay a fine of \$1,000.



- 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 name of the Respondent, his company and the location of the prescribed electrical work shall be suppressed (including the Board's reasons for suppression).
- 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 publication will be subject to the Board's suppression orders.

### Right of Appeal

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

Signed and dated this 25<sup>th</sup> day of March 2025



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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- (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.*