

## Before the Electrical Workers Registration Board

CE No. CE22765

### In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

### Between:

The Ministry of Business Innovation and Employment

### And

Lance Rolleston a registered and licensed electrical worker (I 005141, EW102206, Electrical Inspector) (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 link

Hearing Type:

In Person

Hearing and Decision Date:

17 May 2024

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms A Yan, Registered Electrical Engineer

Mr M Orange, Barrister

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

### 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 Respondent carried out and supervised prescribed electrical work in a negligent manner. He is fined \$1,000 and ordered to pay costs of \$250. A record of the offending will be recorded on the public Register for a period of three years. The fine and costs were reduced on the basis that the Respondent accepted he had committed the disciplinary offences, and the matter was dealt with by way of an Agreed Statement of Facts.

**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 31 July 2023 – 3 August 2023 at [Omitted], Mr Lance Rolleston 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 adequately seal conduit wiring enclosures to prevent the ingress of moisture leading to a risk of short circuit of DC isolators due to exposure to moisture/water; and/or

- b. Failed to meet mandatory requirements pertaining to labelling and signage of PV solar system components; and/or
- c. Failed to provide all required documentation for the PV solar system installed; and/or
- d. Failed to sight a Record of Inspection prior to system connection to an electricity supply. In breach of regulations 13, 60, 70, 73A of the Electricity (Safety) Regulations 2010.

Or in the Alternative

- 2. On or around 31 July 2023 – 3 August 2023 at [Omitted], Mr Lance Rolleston 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 adequately seal conduit wiring enclosures to prevent the ingress of moisture leading to a risk of short circuit of DC isolators due to exposure to moisture/water; and/or
  - b. Failed to meet mandatory requirements pertaining to labelling and signage of PV solar system components; and/or
  - c. Failed to provide all required documentation for the PV solar system installed; and/or
  - d. Failed to sight a Record of Inspection prior to system connection to an electricity supply.

Or in the Alternative

- 3. On or around 31 July 2023 – 3 August 2023 at [Omitted], Mr Lance Rolleston 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, failed to adequately seal conduit wiring enclosures to prevent the ingress of moisture leading to a risk of short circuit of DC isolators due to exposure to moisture/water.

#### **Second Alleged Disciplinary Offence**

- 4. On or around 31 July 2023 – 3 August 2023 at [Omitted], Mr Lance Rolleston has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he,
  - a. Failed to provide correct and complete information on Certificate of Compliance issued; and/or
  - b. Falsely declared that prescribed electrical work undertaken was lawful.

[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.

### Function of Disciplinary Action

- [5] 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>.
- [6] 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>3</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.”*
- [7] 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

- [8] The matter proceeded on the basis of an Agreed Statement of Facts.
- [9] The appearance of Counsel for the Investigator was excused.

### Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

*In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.*

- [11] The Board heard from the Respondent prior to it making a decision.
- [12] The Respondent’s employers were contracted to install a Solar Photovoltaic Array System (PV System). The Respondent did not carry out the associated prescribed electrical work (PEW). He accepted that he had supervised those who had carried it out. The Respondent checked and tested the PEW and then completed his certification. The PEW, which was high-risk, was then inspected by an independent

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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> [2016] HZHC 2276 at para 164

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Electrical Inspector. Following the inspection, the Electrical Inspector filed a complaint alleging non-compliance.

- [13] The Investigator engaged an independent expert Mark Carter, an Electrical Inspector, to review the complaint. His technical findings formed the basis of the disciplinary offences set out in the Notice of Proceeding. The Respondent accepted that he had, as the supervisor of the PEW and the person who had completed the certification, committed the alleged disciplinary offences and that he had conducted himself in a negligent manner. The Respondent also accepted that, as regards a failure to seal cable conduits, he had negligently created a risk of serious harm to any person, or a risk of significant property damage.
- [14] 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 for any further evidence or to test the evidence as outlined in the Statement.

### **First Offence**

- [15] The charges put before the Board were laid in alternatives. The allegation was, for all of the particulars, that the Respondent had carried out prescribed electrical work in a negligent or incompetent manner under section 143(a)(i) of the Act and contrary to an enactment under section 143(a)(ii). With respect to the allegation that the Respondent had failed to adequately seal conduit wiring enclosures to prevent the ingress of moisture, the Investigator further alleged that the Respondent had negligently created a risk of serious harm to any person or a risk of significant property damage under section 143(b)(ii) of the Act.
- [16] The Board decided that the appropriate finding was that the Respondent had carried out PEW in a negligent manner contrary to section 143(a)(i) of the Act. The Respondent had accepted in the Agreed Statement of Facts that he had conducted himself in a negligent manner.
- [17] The reason it did not make a finding under section 143(b)(ii) of the Act with respect to the allegation that the Respondent had failed to adequately seal conduit wiring enclosures to prevent the ingress of moisture was that the Board did not consider that there was a risk of serious harm or significant property loss associated with the non-compliant work. Looking at the conduit, its location, and the path water could have taken, the Board did not believe that water, if it were to enter the conduit, would travel to a point where it would come into contact with live conductors.
- [18] The Board made the finding that it was not a section 143(b)(ii) offence, notwithstanding that the Respondent had, in the Agreed Statement of Facts, accepted that he had committed that offence. It did so because, firstly, the elements of the offence have to be made, which they were not, and secondly, the Respondent was not prejudiced by the Board making a finding that he had committed a lesser offence.

- [19] Turning to the finding of negligence, it is the departure by an electrical worker, whilst carrying out or supervising PEW, 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>5</sup> test of negligence, which has been adopted by the New Zealand Courts<sup>6</sup>.
- [20] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test<sup>7</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.
- [21] 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>8</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>9</sup>.
- [22] With this particular matter, the Board also needs to look at the conduct in the context of the Respondent's supervision of the persons who carried out the PEW. Supervision is defined in section 2 of the Act as:

*Supervision, in relation to any work, means that the work is undertaken under such control and direction of a person authorised under this Act to do the work [or, in the case of section 76, a person authorised to supervise work under that section] as is sufficient to ensure—*

- (a) That the work is performed competently; and*
- (b) That while the work is being undertaken, appropriate safety measures are adopted; and*
- (c) That the completed work complies with the requirements of any regulations made under section 169 of this Act:*

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<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<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 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>8</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>9</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- [23] The definition was considered in *Electrical Workers Registration Board v Gallagher*<sup>10</sup>. Judge Tompkins stated at paragraph 24:

*As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.*

- [24] The Board maintains Supervision Procedures for Trainees and non-trainees<sup>11</sup>. These provide guidance as to the responsibilities of the supervisor and supervisee.
- [25] Looking at supervision, the Board considers that a supervisor needs to assess and determine the appropriate level of supervision required but that, ultimately, the supervisor needs to ensure that the required testing, including visual inspections, has been completed and that the PEW has passed those checks. In this matter, it was apparent that the Respondent had not provided adequate supervision because of the non-compliance found by another Inspector after the Respondent had certified the work as safe and compliant. In short, the Board would expect a competent electrical worker to have identified and dealt with the non-compliance issues prior to certifying the PEW, and because the Respondent did not, he has departed from an acceptable standard of conduct.
- [26] Further, regarding the failure to sight a Record of Inspection (RoI) before connection, the Respondent, as an Electrical Inspector, should have known that the work was high-risk PEW<sup>12</sup> and that it could not be connected to a power supply without an inspection and an RoI.<sup>13</sup> Again, the failure is a departure from an acceptable standard.
- [27] Having made the decision that the Respondent has conducted himself in a negligent manner, the Board needs to consider whether the conduct was serious enough to warrant a disciplinary finding. In *Collie v Nursing Council of New Zealand*,<sup>14</sup> the Court 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.*

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<sup>10</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

<sup>11</sup> Dated October 2010

<sup>12</sup> Regulation 6A of the Safety Regulations

<sup>13</sup> Regulation 73A of the Safety Regulations

<sup>14</sup> [2001] NZAR 74

[28] The Respondent is an Electrical Inspector. He should be a leader within the industry and be setting standards for others to follow. The Board noted, when it questioned the Respondent, that he accepted he had placed too much reliance on those that he was supervising. Developing the knowledge and skills of others is important, but it cannot come at the expense of compliance checks and electrical safety. The simple point here is that if the Respondent had carried out his checks as he was obliged to do, the non-compliance should have been identified and rectified. Because it was not, the Respondent's conduct has gone beyond oversight or carelessness. It was a serious departure that required a disciplinary finding.

### **Second Offence**

- [29] The charge under section 143(f) of the Act related to the provision of 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>15</sup>.
- [30] The returns referred to are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance (CoC) 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.
- [31] The specific allegations were that the Respondent had to provide correct and complete information on CoC and that he had falsely declared that prescribed electrical work undertaken was lawful. The Respondent accepted the allegations, which were made out on the evidence before the Board. Accordingly, the offence has been committed.

### **Board's Decision**

- [32] The Board has decided that the Respondent **has**:
- (a) Carried out and supervised PEW in a negligent manner contrary to section 143(a)(i) of the Act; and
  - (b) Provided a false or misleading return contrary to section 143(f) of the Act.

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

[33] 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.

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<sup>15</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1



[34] The Respondent made submissions at the hearing regarding penalty, costs, and publication.

### Penalty

[35] 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>16</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>17</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>18</sup>
- (b) deterring other Electrical Workers from similar offending;<sup>19</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>20</sup>
- (d) penalising wrongdoing;<sup>21</sup> and
- (e) rehabilitation (where appropriate).<sup>22</sup>

[36] 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>23</sup> and applying the least restrictive penalty available for the particular offending.<sup>24</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>25</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>26</sup>

[37] 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>27</sup>

[38] The Board adopted a starting point of a fine of \$2,000. The starting point took into account that the Respondent is an Electrical Inspector of whom more is expected and is consistent with other fines imposed by the Board for similar conduct. There are no aggravating factors. The Respondent's cooperation and acceptance of his

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<sup>16</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>17</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>18</sup> Section 3 Building Act

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>21</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>22</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>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>24</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

<sup>27</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.

wrongdoing are mitigating factors. Taking those into account, the Board decided to reduce the fine by 50% to \$1,000.

### Costs

- [39] 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.
- [40] 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>28</sup>
- [41] In *Collie v Nursing Council of New Zealand*,<sup>29</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.*
- [42] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>30</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.*
- [43] 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.
- [44] 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

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<sup>28</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>29</sup> [2001] NZAR 74

<sup>30</sup> CIV-2011-485-000227 8 August 2011

costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

### Publication

- [45] 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>31</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.
- [46] 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.
- [47] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>32</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>33</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>34</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>35</sup>.
- [48] 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>36</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.
- [49] 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.
- [50] 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>31</sup> Refer sections 128 of the Act

<sup>32</sup> Section 14 of the Act

<sup>33</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>34</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>35</sup> *ibid*

<sup>36</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

[51] 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 \$1,000.

**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 Respondent will be named in this decision, which will be publicly available on the Board's website.

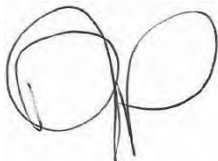
A summary of the matter will be published by way of an article in the Electron, which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

[52] 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

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

Signed and dated this 21<sup>st</sup> day of June 2024



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

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- (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.]

## **<sup>ii</sup> Section 147ZA Appeals**

- (1) A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:
  - (e) any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).

## **Section 147ZB Time for lodging appeal**

An appeal under section 147ZA must be brought within—

- (a) 20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or
- (b) any further time that the District Court may allow on application made before or after the expiration of that period.