

## Before the Electrical Workers Registration Board

CE No. 21248

Electrical Worker: John Ryan (the Respondent)

Registration Number: E 12480

Electrical Worker Number: EW 073522

Registration Class: Electrician

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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: Hamilton

Hearing Type: In Person

Hearing and Decision Date: 10 July 2020

Board Members Present:

Mel Orange, Barrister (Presiding)  
Monica Kershaw, Registered Electrician  
Mac McIntyre, Registered Electrician  
Russell Keys, Registered Inspector

Appearances: Martin Denyer 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 the Act.

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**Introduction**

- [1] 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. The charges are set out in Appendix A.
- [3] 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.
- [4] No Board Members declared any conflicts of interest in relation to the matters under consideration.

**The Charges**

- [5] The Board noted that the Investigator did not pursue charges in relation to work carried out on an extra low voltage photovoltaic (PV) array on the basis of an expert opinion that it was not prescribed electrical work (PEW) under the definitions in Schedule 1 of the Safety Regulations. The specific clause states:

*The following work is not prescribed electrical work:*

*Extra-low voltage supply*

- (b) *work done on installations, fittings, or appliances that—*
  - (i) *are intended solely for connection to, or are associated solely with, electricity supplies not exceeding extra-low voltage; and*
  - (ii) *are not in a hazardous area:*

- [6] The Board noted that the PV array was intended to be connected and was connected to a low voltage supply. As such, the exemption did not apply. The Board further noted that under regulation 6A(2)(a)(iv) of the Safety Regulations, work on a PV array is high risk work. The specific provision refers to a “photovoltaic system”. Given this, the parts of the system cannot be dealt with separately.
- [7] The Board also noted that the allegation relating to a failure to have high risk work inspected was only laid under section 143(a)(i) of the Act. Whilst not making a specific finding it does note that the Board has, in the past, upheld charges under section 143(b)(ii) of the Act in previous cases.

#### **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] 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.”*
- [10] 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>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

**Evidence**

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</sup>. The Board notes that 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 evidence from:

Brendan Erasmuson	The Investigator
Peter MacMillan	Electrical Inspector, Expert Witness for the Investigator
██████████	Electrical Inspector
██████████	Owner of ██████████
██████████	██████████

[13] Counsel for the Investigator produced briefs of evidence for the witnesses that were called to give evidence.

[14] The Respondent also gave evidence at the hearing.

[15] The Investigator put forward that the Respondent, a registered and licensed electrician, carried out prescribed electrical work (PEW) at the two properties listed in the charges. The Investigator’s case was that:

████████████████████

- (a) In respect of the property at ██████████, owned by ██████████, the Respondent was engaged by ██████████ to install a photovoltaic (PV) array in 2014. ██████████ had no electrical qualifications at the time but had previous experience as a trainee. ██████████ was the principal of a company called ██████████ which was engaged in the installation of solar energy systems;
- (b) ██████████ engaged Mr Ryan to carry out the low voltage PEW for ██████████. ██████████ and the Respondent regularly worked together on these installations, with the Respondent providing assistance and supervision to ██████████;
- (c) No COC or ROI were ever provided for the installation;

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

- (d) Following the completion of the installation, [REDACTED] had various issues with it, including the installation failing within one month and a plumber receiving a mild electric shock from the roofing iron. Following ongoing issues with the installation, in 2016, [REDACTED] engaged [REDACTED] to inspect it. [REDACTED] identified a number of issues with the installation and made a complaint. Mr Peter MacMillan subsequently provided an expert report detailing the non-compliant PEW;
- (e) The Investigator's position was that [REDACTED] and the Respondent worked together on the installation, with the Respondent being the only properly licensed and qualified person carrying out or supervising the PEW. Counsel for the Investigator submitted the Respondent either carried out the non-compliant PEW, or was responsible for or caused it to be carried out, as the only electrician on the job and the supervisor of [REDACTED] who was engaged for the purpose of carrying out the PEW.

[REDACTED]

- (f) With regard to the [REDACTED] the Investigator submitted and produced evidence that a similar arrangement existed between [REDACTED] and the Respondent and that, by this point in time (2016), [REDACTED] had been granted a Trainee Licence, and the supervision arrangement had been formalised, with the Respondent as his supervisor;
- (g) No COC or ROI were ever provided for the installation;
- (h) The homeowner experienced issues with the PV array installed by [REDACTED] and the Respondent. She was unable to live in the house as there was no power and no water pump. She contacted [REDACTED] to inspect the installation, and he identified a number of issues with it and made a complaint. Mr MacMillan subsequently provided an expert report detailing the non-compliant PEW, as well as certain issues which are not PEW and which are not being pursued by the Investigator;
- (i) The Investigator's position was that [REDACTED] and the Respondent worked together on the installation, with the Respondent being the only properly licensed and qualified person on the job. The Respondent was also [REDACTED] [REDACTED] nominated supervisor at the time. Counsel for the Investigator submitted the Respondent either carried out the non-compliant PEW, or was responsible for it or caused it to be carried out, as the only electrician on the job and the nominated supervisor of [REDACTED] who was engaged for the purpose of carrying out the PEW.

[16] The briefs of evidence supported the Investigator's case. The Respondent did not question the witnesses or challenge the findings of non-compliance.

[17] At issue was the extent of the Respondent's engagement with [REDACTED] and whether he was his supervisor. [REDACTED] was not called to give evidence. The

Investigator noted he would not engage in the investigation, and the Respondent stated he had not been able to contact ██████████

[18] The Respondent submitted that the Board could not consider disciplinary action against the Respondent as a Disputes Tribunal had ordered that he pay damages to one of the owners of the properties in question. He submitted that section 26 of the New Zealand Bill of Rights Act 1990 applied.

[19] The Presiding Member made a ruling that the Bill of Rights Act did not apply. Section 26 of the Bill of Rights Act only applies to convictions for offences. The Respondent was not convicted by the Disputes Tribunal. He was ordered to pay civil damages.

[20] The Respondent should note that even if the Respondent had been convicted that the Board would still have had jurisdiction. There is no double jeopardy when a person is convicted of an offence and then disciplined under an enactment relating to their licence. In this respect, it is important that licensed persons are held to account within their profession and that the public are protected. The Electricity Act recognises this in section 147M(4) where it states:

(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.*

[21] The provision makes it clear that action can be taken by a disciplinary board or tribunal in addition to criminal action.

[22] The Respondent gave evidence that ██████████ would instruct him to assist with installations and that ██████████ made it appear as if the Respondent was part of ██████████ when he was not. The Respondent stated that he did have an arrangement with ██████████ to assist with PV arrays as a subcontractor but that ██████████ arranged everything. The Respondent had worked with ██████████ for some six to eight years.

[23] The Respondent accepted that he had carried out work on ██████████ but maintained that the work was not connected when he left the property and that he thought ██████████ would get another licensed person to certify the connection. He also accepted that he made some checks of the PV array after it had been installed and livened following the homeowner receiving an electric shock.

[24] The Respondent stated that he spent a couple of hours at ██████████ and that he did carry out limited PEW. He stated that by the time that installation was carried out, ██████████ was working with a number of electricians and that the Respondent was not the supervisor for the PV array installation. He did not know who was.

- [25] The Respondent stated that he wished he had terminated his relationship with [REDACTED] [REDACTED] sooner and that he had brought his training supervisor status to an end when he stopped assisting him.

## Legal Principles

### Serious Harm and Significant Property Damage

- [26] The First Alleged Offence was laid in the alternatives of negligently creating a risk of serious harm or significant property damage, carrying out or causing to be carried out in a negligent or incompetent manner or in a manner contrary to an enactment.

- [27] To make a finding on the First Alternative, the Board must make a finding that there was a risk of serious harm or significant property damage. Serious harm is defined in section 2 of the Act. It means:

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

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

#### **23 Meaning of notifiable injury or illness**

- (1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*
- (a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*
    - (i) *the amputation of any part of his or her body:*
    - (ii) *a serious head injury:*
    - (iii) *a serious eye injury:*
    - (iv) *a serious burn:*
    - (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
    - (vi) *a spinal injury:*
    - (vii) *the loss of a bodily function:*
    - (viii) *serious lacerations:*
  - (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
  - (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

- [29] 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.*

- [30] As section 16 refers to both serious harm and to property 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).
- [31] 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>5</sup>.

### Negligence and/or Incompetence

- [32] The First Alternative also requires that the Respondent be found to have been negligent. The Second Alternative relates to negligence and/or incompetence. There is no statutory definition of the terms negligence or incompetence. Negligence and incompetence are not the same. In *Beattie v Far North Council*<sup>6</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.*

- [33] Negligence 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>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.
- [34] Incompetence is a lack of ability, skill or knowledge to carry out or supervise PEW 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>9</sup> it was stated as “*an inability to do the job*”.
- [35] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of

<sup>5</sup> Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

<sup>6</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>9</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

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



conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[36] 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>11</sup>. 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>12</sup>.

[37] The Board notes that the purposes of the Act are:

**1A Purposes**

*The purposes of this Act are—*

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.]*

[38] The Board also notes, as regards acceptable standards, that all PEW must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.

[39] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>13</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.*

Contrary to an Enactment

[40] Contrary to an enactment is the least serious of the alternatives. Unlike the other alternatives, all that need be proven is that the relevant enactment has been

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

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

<sup>13</sup> [2001] NZAR 74

breached – in the instance the Electricity (Safety) Regulations 2010. The charge is a form of strict liability offence in that it is liability without fault. Negligence need not be proved<sup>14</sup>. In this respect the provisions of Regulation 11 are noted:

**11 Strict liability offences**

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

[41] Regulation 73B, which makes it an offence to connect an installation or part installation to a power supply in breach of Regulation 73A (which requires an inspection to have been completed for high risk work), does not contain any reference to intent.

[42] The Act does not contain any similar provisions. Section 143, under which the charge was laid does, however, have multiple charges that do require an element of intention and others which do not. Specifically, section 143(f) does not contain any form of statement as regards knowledge or intention. This compares to section 143(e) which states

*... to have intentionally deceived or attempted to deceive ...*

[43] The Board considers that Parliament intended that there be a difference between various subsections and that some were to require an element of intention whereas others, such as section 143(f) would not.

Supervision

[44] The matters before the Board involves supervision. Section 74 of the Act restricts the carrying out of PEW to certain authorised persons.

[45] 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>14</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

- [46] The definition was considered in *Electrical Workers Registration Board v Gallagher*<sup>15</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.*

- [47] The Board maintains Supervision Procedures. These provide guidance as to the responsibilities of the supervisor and supervisee.
- [48] Given the requirements of the Act and Regulations and noting the Boards Supervision Procedures the Board considers the level of supervision required will depend on the circumstances under which the PEW is being undertaken and the abilities of the trainee being supervised. A supervisor needs to assess each situation and determine the level of supervision, which is appropriate. When considering the adequacy of supervision, the Board will, ultimately, take into consideration the standard and compliance of the PEW completed under supervision when considering the adequacy of the supervision provided.

#### Certification

- [49] Charges before the Board also related to the failure to provide returns. The returns are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all PEW. 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 is issued for high and general risk PEW. A Certificate of Compliance must state that the PEW has been done lawfully and safely and that the information in the certificate is correct.
- [50] Failure to provide is also a strict liability offence.

#### **Board’s Findings**

- [51] In respect of each of the allegations the evidence received and Board’s findings, on the basis of the legal principles outlined above, are as follows:

#### First Alleged Disciplinary Offence

- [52] On or around February to June 2014 at [REDACTED] the Respondent 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

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<sup>15</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he carried out non-compliant prescribed electrical work as follows:

- a) Failed to install danger warning signage “*solar Supply Main Switch*”; and/or
- b) Failed to install fuse protection on the consumer mains; and /or
- c) Installed direct current cabling with no heavy duty conduit; and/or
- d) Failed to install earth connections to a photo voltaic system on the roof; and/or
- e) Failed to install isolation devices on fixed wired photo voltaic devices; and/or
- f) Failed to install an isolation device for the generator/appliance inlet; and/or
- g) Installed direct current cables that were dangerous and not compliant; and/or
- h) Installed cables with loose terminals and battery terminations.

[53] The Board made its decision on the basis that the evidence showed that the Respondent was on site, did carry out PEW and did supervise [REDACTED]. The installation was complete and ready for connection. A person received an electric shock. There was a very real risk of serious harm.

#### Second Alleged Disciplinary Offence

[54] On or around February to June 2014 at [REDACTED] the Respondent failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to certify prescribed electrical work.

[55] Having found that the Respondent was responsible for the work, it follows that he was also responsible for certification. None was issued. He has committed the offence.

#### Third Alleged Disciplinary offence

[56] On or around February to June 2014 at [REDACTED], the Respondent 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 failed to have high risk work inspected prior to livening.

[57] It also follows, having found that the Respondent was responsible for the work, that he was also responsible for ensuring it was inspected prior to livening. Whilst he may not have authorised [REDACTED] to liven the PV array, he took no action to prevent it being livened and made no enquiries as to its status once the work was complete.

#### Fourth Alleged Disciplinary Offence

[58] The Respondent **has not** committed a disciplinary offence

- [59] The Board made the finding on the basis that there was insufficient evidence to prove, on the balance of probabilities, that the Respondent carried out or supervised the PEW.
- [60] The Board noted that whilst the Respondent was ██████████ nominated training supervisor, it does not necessarily follow that he was the supervisor for the PEW that was carried out on the PV array.

#### Fifth Alleged Disciplinary Offence

- [61] On or around 1 June 2016 at ██████████, the Respondent failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to certify prescribed electrical work.
- [62] The Respondent accepted that he had carried out a limited amount of PEW. He did not certify that which he had carried out.

#### Sixth Alleged Disciplinary Offence

- [63] The Respondent **has not** committed a disciplinary offence.
- [64] The Board made the finding on the basis that there was insufficient evidence to prove, on the balance of probabilities, that the Respondent carried out or supervised the PEW.
- [65] The Board noted that whilst the Respondent was ██████████ nominated training supervisor, it does not necessarily follow that he was the supervisor for the PEW that was carried out on the PV array.
- [66] The Respondent should note that the Board took a dim view of the manner in which the Respondent managed his relationship with ██████████. He was aware that ██████████ was trading as a PV installer and that he was not licensed. The Respondent was remote from ██████████. He did not engage in any training and took no interest in his development as an electrical worker. He should have taken steps to ensure that ██████████ was not carrying out PEW without a supervisor.

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

- [67] 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.
- [68] The Respondent made submissions at the hearing as regards penalty, costs and publication.

#### Penalty

- [69] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in

*Patel v Complaints Assessment Committee*<sup>16</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

- [70] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>17</sup> the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [71] The Respondent stated he had no financial means and that whilst he was not licensed at the time of the hearing had intended to return to the industry. The Board noted the damages payment had made as a result of the Disputes Tribunal order and that [REDACTED] had a central role in the matter.
- [72] The Board considered the penalty options before it. Given that the Respondent is not presently licensed the Board decided that the only realistic penalty option was the imposition of a fine.
- [73] The Board adopted a starting point of a fine of \$5,000. This reflected the seriousness of the offending, including that the Respondent had created a risk of serious harm. It also considered that the Respondent’s negligence was at the higher end of the scale.
- [74] Taking the mitigating factors into consideration, the Board decided that the fine would be reduced to \$4,000.

#### Costs

- [75] 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.
- [76] 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>18</sup>.

<sup>16</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>18</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.

[77] In *Collie v Nursing Council of New Zealand*<sup>19</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.*

[78] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,575 toward the costs of and incidental to the matter. This is consistent with the Board's scale of costs for a matter of this type and is significantly less than 50% of actual costs.

### Publication

[79] 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>20</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.

[80] 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.

[81] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>21</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>22</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>23</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>24</sup>.

[82] 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>25</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.

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<sup>19</sup> [2001] NZAR 74

<sup>20</sup> Refer sections 128 of the Act

<sup>21</sup> Section 14 of the Act

<sup>22</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>23</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>24</sup> *ibid*

<sup>25</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

[83] Based on the above, the Board will order further publication by way of the Electron. The Respondent will be named.

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

[84] 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 \$4,000.

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,575 (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 be named in the publication.**

[85] 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**

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

Signed and dated this 3<sup>rd</sup> day of August 2020



**Mel Orange**  
Presiding Member

## **Appendix A – Alleged Disciplinary Offences**

### **First Alleged Disciplinary Offence**

1. On or around February to June 2014 at [REDACTED] Mr John Ryan 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 carried out non-compliant prescribed electrical work as follows:
  - i) Failed to install danger warning signage “solar Supply Main Switch”; and/or
  - j) Failed to install fuse protection on the consumer mains; and /or



- k) Installed direct current cabling with no heavy duty conduit; and/or
- l) Failed to install earth connections to a photo voltaic system on the roof; and/or
- m) Failed to install isolation devices on fixed wired photo voltaic devices; and/or
- n) Failed to install an isolation device for the generator/appliance inlet; and/or
- o) Installed direct current cables that were dangerous and not compliant; and/or
- p) Installed cables with loose terminals and battery terminations.

Or in the alternative

2. On or around February to June 2014 at [REDACTED] Mr John Ryan 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 carried out non-compliant prescribed electrical work as follows:

- a) Failed to install danger warning signage "*solar Supply Main Switch*"; and/or
- b) Failed to install fuse protection on the consumer mains; and /or
- c) Installed direct current cabling with no heavy duty conduit; and/or
- d) Failed to install earth connections to a photo voltaic system on the roof; and/or
- e) Failed to install isolation devices on fixed wired photo voltaic devices; and/or
- f) Failed to install an isolation device for the generator/appliance inlet; and/or
- g) Installed direct current cables that were dangerous and not compliant; and/or
- h) Installed cables with loose terminals and battery terminations.

Or in the alternative

3. On or around February to June 2014 at [REDACTED] Mr John Ryan 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 has carried out non-compliant electrical work as follows:

- a) Failed to install danger warning signage "*solar Supply Main Switch*"; and/or
- b) Failed to install fuse protection on the consumer mains; and /or
- c) Installed direct current cabling with no heavy duty conduit; and/or
- d) Failed to install earth connections to a photo voltaic system on the roof; and/or
- e) Failed to install isolation devices on fixed wired photo voltaic devices; and/or
- f) Failed to install an isolation device for the generator/appliance inlet; and/or

- g) Installed direct current cables that were dangerous and not compliant; and/or
- h) Installed cables with loose terminals and battery terminations.

In breach of regulations 13, 14A, 20, 59, and 60 of the Electricity (Safety) Regulations 2010.

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

4. On or around February to June 2014 at [REDACTED], Mr John Ryan failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to certify prescribed electrical work.

#### **Third Alleged Disciplinary offence**

5. On or around February to June 2014 at [REDACTED], Mr John Ryan 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 failed to have high risk work inspected prior to livening.

#### **Fourth Alleged Disciplinary Offence**

6. On or around 1 June 2016 at [REDACTED] Mr John Ryan 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 carried out non-compliant prescribed electrical work as follows:

- a) There is no earthing system; and/or
- b) There is no connection between the neutral bar and earth bar on the switchboard; and/or
- c) There are no RCD's connected to the power of lighting circuits; and/or
- d) Some power point circuits have undersized 1.5 mm<sup>2</sup> conductors; and/or
- e) There was no direct current isolator; and/or
- f) The flexible conduit into the conduit box has no gland and is not waterproof; and/or
- g) The cable on the PV array has joints and is wrapped around the array rail.

Or in the alternative

7. On or around 1 June 2016 at [REDACTED], Mr John Ryan 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 carried out non-compliant prescribed electrical work as follows:
- a) There is no earthing system; and/or
  - b) There is no connection between the neutral bar and earth bar on the switchboard; and/or
  - c) There are no RCD's connected to the power of lighting circuits; and/or

- d) Some power point circuits have undersized 1.5 mm<sup>2</sup> conductors; and/or
- e) There was no direct current isolator; and/or
- f) The flexible conduit into the conduit box has no gland and is not waterproof; and/or
- g) The cable on the PV array has joints and is wrapped around the array rail.

Or in the Alternative

8. On or around at 1 June 2016 at [REDACTED], Mr John Ryan 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 has carried out non-compliant electrical work as follows:

- a) There is no earthing system; and/or
- b) There is no connection between the neutral bar and earth bar on the switchboard; and/or
- c) There are no RCD's connected to the power of lighting circuits; and/or
- d) Some power point circuits have undersized 1.5 mm<sup>2</sup> conductors; and/or
- e) There was no direct current isolator; and/or
- f) The flexible conduit into the conduit box has no gland and is not waterproof; and/or
- g) The cable on the PV array has joints and is wrapped around the array rail.

In breach of regulations 13, 20, 59 and 60 of the Electricity (Safety) Regulations 2010.

#### **Fifth Alleged Disciplinary Offence**

9. On or around 1 June 2016 at [REDACTED], Mr John Ryan failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to certify prescribed electrical work.

#### **Sixth Alleged Disciplinary Offence**

10. On or around 1 June 2016 at [REDACTED], Mr John Ryan 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 failed to have high risk work inspected prior to livening.

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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:*

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- (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.]

## **<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**

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*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.*