

Before the Electrical Workers Registration Board

CE No. 22386

Electrical Worker: Baoren Wang (the Respondent)

Registration Number: E 260635

Electrical Worker Number: EW 117279

Registration Class: Electrician

Decision of the Board in Respect of the Conduct of an Electrical Worker Under section 147G and 147M of the Electricity Act 1992

Hearing Location: Auckland

Hearing Type: In Person

Hearing Date: 15 February 2022

Decision Date: 15 February 2022

Board Members Present:

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

Appearances: Mr Barlow for the Investigator

Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed disciplinary offences under sections 143(b)(ii), 143(a)(i) and 143(f) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent negligently created a risk of serious harm to any person, or a risk of significant property damage, carried out prescribed electrical work in a negligent manner, and provided a false or misleading Certificate of Compliance. The Respondent’s licence was suspended for a period of nine months prior to the hearing on the basis of section 147I of the Act, and he undertook training and an assessment of his competence. Given those factors, the Respondent was censured. He was ordered to pay costs of \$500. The Board has ordered that the matter be published in the Electron and in the Register for a period of three years.

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. Between 16 November 2018 and 8 June 2019, at [OMITTED], Mr Baoren Wang 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 bury an underground cable at the correct depth; and/or
- b. Failed to use high impact flexible conduit; and/or
- c. Failed to install underground marker (warning) tape; and /or
- d. Used connector strip within underground conduit resulting in an unreliable connection; and/ or
- e. Connected conductors to the load side of residual current devices in an unreliable manner; and/or
- f. Installed RCDs in a manner where up to six final circuits are protected by a single residual current device; and/or
- g. Labelled the garage sub-main incorrectly as “hot water”

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

Or in the Alternative

2. Between 16 November 2018 and 8 June 2019, at [OMITTED], Mr Baoren Wang 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 bury an underground cable at the correct depth; and/or
 - b. Failed to use high impact flexible conduit; and/or
 - c. Failed to install underground marker (warning) tape; and /or
 - d. Used connector strip within underground conduit resulting in an unreliable connection; and/ or
 - e. Connected conductors to the load side of residual current devices in an unreliable manner; and/or
 - f. Installed RCDs in a manner where up to six final circuits are protected by a single residual current devices; and/or
 - g. Labelled the garage sub-main incorrectly as “hot water.”

Second alleged Disciplinary Offence

3. Between 16 November 2018 and 8 June 2019, at [OMITTED], Mr Baoren Wang has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he:
 - a. Failed to bury an underground cable at the correct depth; and/or
 - b. Used medium duty flexible conduit, not provided with any form of additional protection; and/or

- c. Failed to install underground marker (warning) tape; and /or
- d. Used connector strip within underground conduit resulting in an unreliable connection.

Third Alleged Disciplinary Offence

- 4. On or around 26 November 2018 at [OMITTED], Mr Baoren Wang has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Certificate of Compliance for prescribed electrical work that had not been carried out lawfully.

- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in their power or possession.
- [5] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [6] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*³ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”
- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.
- [10] The Board had, on 1 April 2021, ordered that the Respondent's licence be suspended pending the hearing under the provisions in section 147I of the Act. The Board did so on the basis that there was, on the balance of probabilities, an unacceptable risk that the Respondent may have carried out or caused further unsafe electrical work.
- [11] The Respondent sought a hearing to have the interim suspension revoked. A hearing was held on 16 June 2021. The Board decided, at that hearing, to revoke the suspension of the Applicant's licence on the successful completion of an electrical testing refresher course and receipt of evidence attesting to the Applicant's competency to carry out or supervise testing.
- [12] On 31 January 2022, a training provider that the Respondent had engaged sent a written report to the Board following a training and assessment course held on 21 January 2022. The report was referred to the Board to consider whether the Respondent's suspension should be lifted. As the report was not unequivocal in its endorsement of the Respondent, the Board determined that the suspension should remain until such time as the hearing on the disciplinary charge was held. In this respect, it is to be noted that under section 147I(3) of the Act, an interim suspension order continues in force until the Board determines that it should not exercise its disciplinary powers under section 147M of the Act or the Board does any of the things authorised by section 147M of the Act. In essence, this means that when the Board exercises its disciplinary powers at a hearing, the suspension lapses.

Evidence

- [13] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

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

- [14] The Board heard evidence from the Respondent prior to it making a decision.
- [15] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged in November 2018 to undertake an electrical upgrade of a dwelling at [OMITTED], which was undergoing a renovation. The work involved the installation and disconnection of electrical wiring and fittings in the house and the relocation of an aerial supply to the garage with an

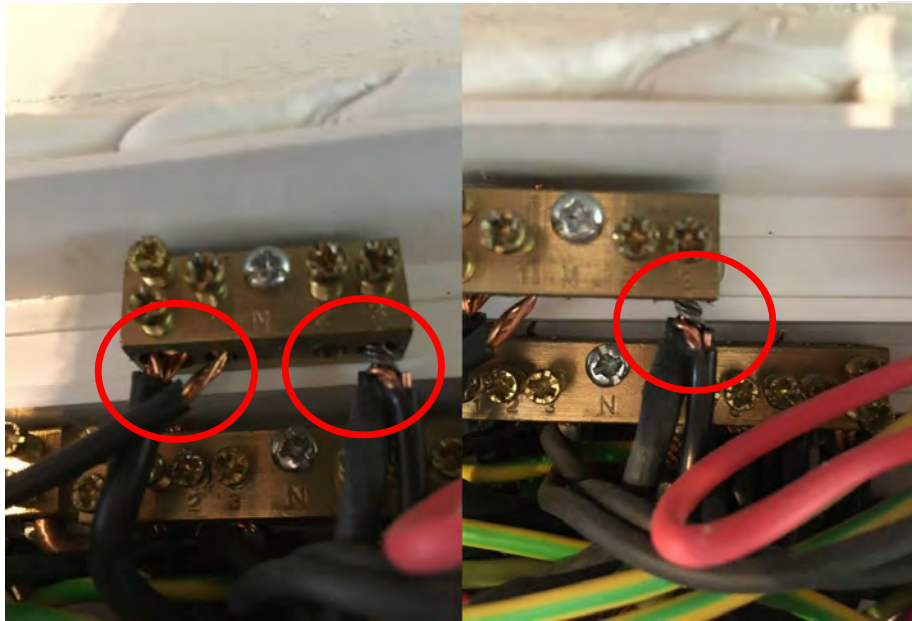
⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

underground supply. It was carried out between 26 and 27 November 2018. The Respondent provided a certificate of compliance dated 26 November 2018.

- [16] In June 2019, the Respondent was called back to the property after a miniature circuit breaker (“MCB”) tripped after a heavy period of rain. The Respondent replaced the MCB for a fee of \$120. Following the replacement, it was established that the fault was with the garage sub-main that the Respondent had installed. The Respondent then advised the Property owner that replacement wiring was required in the garage, which he offered to complete for \$1,600.00. The property owner declined this offer, and the Respondent disconnected the circuit to the garage for a fee of \$120.
- [17] Another electrician then inspected the property and found that the fault was due to the underground sub-main installed by the Respondent. A complaint was lodged on 20 December 2020, and on 8 June 2021, the Respondent replaced the damaged cable.
- [18] The Respondent provided a written response to the complaint in which he stated he was engaged by a handyman. At the hearing, he stated that the handyman had dug the trench where the cable was laid by him.
- [19] The Investigator engaged the services of Mr Mark Carter, an Electrical Inspector, to review the file and provide his opinion. Mr Carter’s report noted that, with regard to the garage sub-main, the cable had not been buried to the correct depth (it was buried to a depth of no greater than 100 mm), that high impact flexible conduit had not been used, there was no marker tape and that the Respondent had used connector strips within an underground conduit which resulted in an unreliable connection. The sub-main eventually failed. The following photographs show the connection and the conductor failure:



- [20] With respect to the switchboard, Mr Carter noted that the termination/connection of neutral conductors had broken strands where they terminated on the load side of residual current device (RCD) busbars as shown in the following photographs:



- [21] Mr Carter also noted that RCDs installed were configured in a manner that up to six final subcircuits are protected by a single RCD and that the circuit breaker protecting the garage submain cable was incorrectly identified as “Hot Water”.
- [22] With respect to the Certificate of Compliance and Electrical Safety Certificate issued by the Respondent, it was noted that it certified the prescribed electrical work was compliant and safe to connect to the power supply when it was not and that it did not detail all of the prescribed electrical work carried out by the Respondent and that the Certificate of Compliance relied on Supplier Declarations of Conformity which do not appear to have been provided.
- [23] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board’s Conclusion and Reasoning

- [24] The Board has decided that 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 prescribed electrical work being an offence under section 143(b)(ii) of the Act, in that, he:
- (a) Failed to bury an underground cable at the correct depth;
 - (b) Used medium duty flexible conduit, not provided with any form of additional protection;

- (c) Failed to install underground marker (warning) tape; and
- (d) Used connector strip within underground conduit resulting in an unreliable connection.

[25] The Board has also decided that the Respondent carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, in that, he:

- (a) Connected conductors to the load side of residual current devices in an unreliable manner;
- (b) Installed RCDs in a manner where up to six final circuits are protected by a single residual current device; and
- (c) Labelled the garage sub-main incorrectly as “hot water.”

[26] The Board has further decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act.

[27] The reasons for the Board’s decisions follow.

Serious Harm and Significant Property Damage

[28] The Board found that the Respondent had negligently created a risk of serious harm to any person, or a risk of significant property damage. There are two elements of the offence that need to be satisfied. The first is that the Respondent was negligent, the second that he created the risks noted.

[29] Negligence 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*⁵ test of negligence which has been adopted by the New Zealand Courts⁶.

[30] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test⁷. 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.

[31] 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 Act⁸. The test is an objective one and, in this respect, it has been noted that the purpose

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

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

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 practitioner⁹.

[32] 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.*

[33] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account. In this matter, each of the particulars listed in the Notice of Proceeding was not completed in accordance with the requirements set out in AS/NZS3000:2007.

[34] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁰ 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.

[35] The matters before the Board were serious. The departures from AS/NZS3000 were flagrant and certainly not minor. The cable depth was only 100 mm, whereas the minimum depth required was 500 mm. No protective high impact conduit was used nor any warning tapes. The provisions for underground cables are designed to ensure the safety of persons who may, inadvertently, dig into or come into contact with the cables. The use of connector strips and the manner of the connection was amateurish, was not waterproofed and was not what is to be expected of a registered and licensed electrical worker. The result of that poor connection was the

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

¹⁰ [2001] NZAR 74

failure of the power supply and of the associated conductor. Given those factors, the Board finds that the Respondent carried out prescribed electrical work in a negligent manner in that his conduct fell well short of that expected of a registered and licensed Electrician.

- [36] The second element of the offence is the creation of a risk of serious harm or significant property damage. Serious harm is defined in section 2 of the Act. It means:

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

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

23 Meaning of notifiable injury or illness

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

- [38] 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.

- [39] As section 16 refers to both serious harm and to damage, the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).

- [40] 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 fanciful¹¹.
- [41] In this instance, there was a very real risk of serious harm or significant property damage from the manner in which the prescribed electrical work was carried out. Persons could have received electric shocks, and, as can be seen from the damage caused to the sub-main installed, property damage could have ensued.
- [42] Given the above factors, the Board finds that the Respondent did negligently create a risk of serious harm and significant property damage.

Negligence

- [43] The second finding was that the Respondent had, in respect of the remaining matters, carried out prescribed electrical work in a negligent manner. The legal tests set out above for negligence apply.
- [44] The matters where the Board found the Respondent had negligently carried out prescribed electrical work were in respect of the Respondent connecting conductors to the load side of residual current devices in an unreliable manner, installing RCDs in a manner where up to six final circuits are protected by a single residual current device and the labelling of the garage sub-main.
- [45] As with the findings under serious harm and significant property damage, the departures from acceptable standards were serious. Again, the work was not completed in accordance with AS/NZS3000, and the departures were not inadvertence or oversight, but poor workmanship and a lack of care driven by financial, not electrical safety, considerations.

Certification - False or Misleading

- [46] The charge under section 143(f) of the Act related to the provision of a false or misleading return being a Certificate of Compliance. The determination as to whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant¹².
- [47] A Certificate of Compliance must be issued under the Safety Regulations when high and general risk prescribed electrical work is carried out. 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. As the prescribed electrical work had not been done lawfully nor safely, it follows that the return was false or misleading.

¹¹ *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2)* [1967] 1 AC 617

¹² *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty, Costs and Publication

- [48] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [49] The Respondent made submissions at the hearing as regards penalty, costs, and publication.

Penalty

- [50] 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*¹³ 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.

- [51] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁴ 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.
- [52] The Respondent apologised for his conduct. He noted that the work was completed in the manner that it was because the owner was not prepared to pay what it would have cost for a compliant job. He also noted that he had compensated the owner following the issues that arose.
- [53] The Respondent’s licence was suspended as a result of the complaint pending the hearing of the matter. He undertook training and assessment to the level required by Unit Standard 15866: *Demonstrate and apply knowledge of and the procedures for the examination of and testing of electrical installations* with Mr Peter Rushworth of Electrical Industry Training Limited, who provided a report to the Board. He summarised his findings as follows:

Summary

After spending several hours with Mr Wang, I am confident that he knows what he should do, and that he has access to the necessary legislation and

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

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

test equipment. As such, he has successfully satisfied the requirements of Unit Standard 15866, as he had done so previously in his training.

In my opinion Mr Wang did not appear to understand that the primary role of the EWRB is to safeguard public safety or appreciate the electrical workers legal responsibility to ensure any work they do is always safe, compliant and to an acceptable industry standard.

It also appears that despite demonstrating already held acceptable knowledge and competency requirements the substandard work was largely a result of client /commercial pressure. I am also of the view that due to the continuing nature of the work carried out by Mr Wang the ongoing risk of this situation reoccurring remains a reasonably strong possibility.

- [54] The Respondent stated that he had learnt his lesson and that he will follow the law in the future and will not proceed with prescribed electrical work if the customer is not willing to pay what is required to complete a compliant job. He also outlined how he would keep up to date with changes in electrical practice and provided details of his membership of a Chinese electrical worker association that he belongs to and of other electrical workers that he can turn to for advice and assistance.
- [55] The Respondent outlined the impact the nine months of suspension has had on him and the cumulative impact of COVID-19 restrictions in Auckland. The Respondent stated he had been without an income over the period.
- [56] The matter was dealt with as an Agreed Statement of Facts.
- [57] All of the above matters are mitigating factors. The reasons why the Respondent completed the work in the way that he did (financial considerations) is an aggravating factor.
- [58] Ordinarily, offending of this type would result in a significant penalty such as cancellation, suspension or a fine in the region of \$5,000. As noted, however, there are significant mitigating factors present. The most significant of which is a period of nine months suspension and the training and assessment undertaken. In essence, the Respondent has already completed the type of penalty that the Board would have imposed for the offending committed. Given that factor, the trainer's assessment of his competency, and the other mitigating factors present, the Board has decided that it will censure the Respondent. A censure is a formal expression of disapproval of the Respondent's conduct. The Respondent is also reminded that electrical safety and compliance must not be compromised for financial reasons.

Costs

- [59] 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.
- [60] 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 case¹⁵.

- [61] In *Collie v Nursing Council of New Zealand*¹⁶ 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.

- [62] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁷ 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.*

- [63] 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 moderate. Adjustments based on the High Court decisions above are then made.
- [64] The Board adopted a starting point of costs of \$1,000. It has reduced that amount on the basis of the Respondent's cooperation to \$500, which the Board considers a reasonable amount for the Respondent to pay toward the costs of and incidental to the matter.

Publication

- [65] 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 Act¹⁸. 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

¹⁵ *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.

¹⁶ [2001] NZAR 74

¹⁷ CIV-2011-485-000227 8 August 2011

¹⁸ Refer sections 128 of the Act

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.

- [66] 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.
- [67] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁰. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²¹. 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*²².
- [68] 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 interest²³. 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.
- [69] 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 be identified in the Electron.

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

²¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²² *ibid*

²³ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$500 (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.

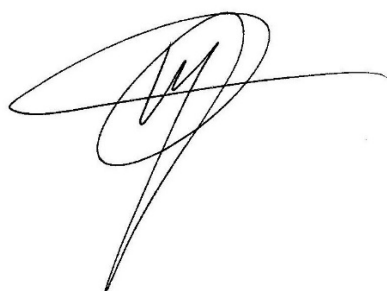
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.

[71] 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

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

Signed and dated this twenty-eighth day of February 2022.



Mr M Orange
Presiding Member

ⁱ Section 147M of the Act

- (1) If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—
- (a) do 1 or more of the following things:

-
- (i) order that the person's registration or practising licence (or both) be cancelled:
 - (ii) order that the person's provisional licence be cancelled:
 - (iii) order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:
 - (b) order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—
 - (i) for any period that the Board thinks fit; or
 - (ii) until that person does 1 or more of the things specified in subsection (2):
 - (c) order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:
 - (i) by limiting the person to the work that the Board may specify:
 - (ii) by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):
 - (d) order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—
 - (i) permanently, or for any period that the Board thinks fit; or
 - (ii) until that person does 1 or more of the things specified in subsection (2):
 - (e) order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:
 - (f) order the person to pay a fine not exceeding \$10,000:
 - (g) order that the person be censured:
 - (h) make no order under this subsection.
 - (2) The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—
 - (a) pass any specified examination:
 - (b) complete any competence programme or specified period of training:
 - (c) attend any specified course of instruction.
 - (3) The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).
 - (4) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—
 - (a) offence for which the person has been convicted by a court; or
 - (b) infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.
 - (5) The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.
 - (6) If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]

ⁱⁱ Section 147ZA Appeals

- (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.*