

Before the Electrical Workers Registration Board

CE No. 22474
Electrical Worker: Gerhardus Wessels (the Respondent)
Registration Number: E 253906
Electrical Worker Number: EW 111642
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: Christchurch
Hearing Type: In Person
Hearing and Decision Date: 17 August 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
Mr M Perry, Registered Electrician

Appearances: Mr Upperton 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) 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 persons or significant property damage when he carried out prescribed electrical work. Further, the Respondent provided a false or misleading return. His practising licence is suspended until such time as he completes Board ordered remedial training. He is ordered to pay \$250 in costs. A record of the disciplinary offending will be recorded on the Public 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. On or around 16 March 2021 at [OMITTED], Mr Gerhardus Wessels 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. Installed and connected a revenue meter to an electrical supply with the mains phase and neutral transposed on the load side of the revenue meter; and/or
- b. Failed to carry out adequate polarity testing prior to the installation and connection of a revenue meter to an electrical supply.

In breach of regulations 13(1), 20(1), 59(1), 73A(1) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 16 March 2021 at [OMITTED], Mr Gerhardus Wessels 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. Installed and connected a revenue meter to an electrical supply with the mains phase and neutral transposed on the load side of the revenue meter; and/or
 - b. Failed to carry out adequate polarity testing prior to the installation and connection of a revenue meter to an electrical supply.

Or in the Alternative

3. On or around 16 March 2021 at [OMITTED], Mr Gerhardus Wessels 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. Installed and connected a revenue meter to an electrical supply with the mains phase and neutral transposed on the load side of the revenue meter; and/or
 - b. Failed to carry out adequate polarity testing prior to the installation and connection of a revenue meter to an electrical supply.

Second Alleged Disciplinary Offence

4. On or around 16 March 2021 at [OMITTED], Mr Gerhardus Wessels has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified non-compliant Prescribed Electrical Work as being 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.

Interim Suspension

- [6] On 17 March 2022, the Board reviewed the complaint to determine whether, under section 147I of the Act, it should impose an interim suspension of the Respondent's licence. The Board noted that the Respondent was not, at the time, licensed because he had allowed his practising licence to expire on 31 August 2021. The Board noted that whilst he was not authorised to carry out or supervise prescribed electrical work, he could, at any time, seek to renew his licence.
- [7] The Board decided that, in the event, the Respondent sought a licence, the Board would, with immediate effect, order that his licence be suspended.
- [8] The Respondent did not seek to be relicensed prior to the hearing.

Function of Disciplinary Action

- [9] 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.
- [10] 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."*
- [11] 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

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

Evidence

- [14] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.⁴ The Board notes, as regards evidence in

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

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

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.

- [15] The Board heard from the Respondent before it made its decision.
- [16] The matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that on 16 March 2021, the Respondent was engaged to perform an upgrade of the revenue metering. While performing the meter replacement, he transposed the polarity of mains phase and neutral conductors at the load side of the new revenue meter. On completion, he provided an Electrical Safety Certificate certifying the work as having been done lawfully and safely. On or around 19 March 2021, a fault technician discovered the transposition at the property.
- [17] The Investigator engaged Mr Mark Carter, an Electrical Inspector, to provide a technical review of the prescribed electrical work undertaken by the Respondent. He identified the following matters which formed the basis of the disciplinary offence being pursued by the Investigator. He noted that the electrical installation was left in an electrically unsafe manner and that there was a failure to carry out mandatory electrical testing, specifically polarity testing.
- [18] The Respondent provided a response to the allegations during an internal investigation into the incident. In that response, he accepted responsibility for the transposition.
- [19] The Agreed Statement of Facts noted that the Respondent had cooperated with the Investigator, had not previously appeared before the Board, was remorseful and that he had been significantly impacted by events, having been unable to carry out any electrical work for over a year.
- [20] The Investigator and the Respondent agreed that the Respondent had created a risk of serious harm to any person or a risk of significant property damage and that he had provided a false and misleading Electrical Safety Certificate in that he certified non-compliant work.
- [21] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.
- [22] At the hearing, the Respondent gave evidence about various medical conditions he had suffered since the incident and the personal toll the matters had taken on him. He also outlined various concerns he had with the installation. He considered that

the pole fuse at the installation should have tripped and that further investigations were required.

Board's Conclusion and Reasoning

- [23] The Board has decided that the Respondent **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 installed and connected a revenue meter to an electrical supply with the mains phase and neutral transposed on the load side of the revenue meter and failed to carry out adequate polarity testing prior to the installation and connection of a revenue meter to an electrical supply.
- [24] The Board has further decided that the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act in that he falsely certified non-compliant prescribed electrical work as being carried out lawfully.
- [25] The Board made its decision on the basis of the Agreed Statement of Facts and the Respondent's acceptance that he had committed the above disciplinary offences.
- [26] The reasons for the Board's decisions follow.

Serious Harm or Significant Property Damage

- [27] 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. As noted, the Board decided that the Respondent had negligently created a risk of serious harm or significant property damage.
- [28] To make this finding, the Board must make a finding that the Respondent had been negligent and that there was a risk of serious harm or significant property damage.
- [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 an assessment of negligence 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.

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)

[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 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.

[34] There was clear evidence that the Respondent had carried out prescribed electrical work in a manner that was contrary to the legislative provisions noted above. Firstly, there was a breach of regulation 13(1) of the Safety Regulations as the installation was not electrically safe. The regulation provides:

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

- (1) A person who does work on any works or installation, or on any part of any works or installation, must ensure—*
 - (a) that the resulting works or installation, or part of the works or installation, is electrically safe; and*

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

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

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

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

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

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

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

[36] The Respondent caused a transposition. A transposition results in the earthing system of an installation becoming live. That creates a risk of electric shocks. As such, the installation was electrically unsafe. Moreover, regulation 20(1) deems a transposition as electrically unsafe:

20 Electrically unsafe works and installations

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

- (a) *prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations:*
- (b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*
- (c) *prevent an electric current passing through the body of a person on contact with any part of the works or installations, or limit that current so that the magnitude and duration of the shock current cannot exceed the IEC shock current standards.*

[37] Further, under regulation 59 of the Safety Regulations, all prescribed electrical work must be carried out in accordance with AS/NZS 3000:

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

- (1) *Every low or extra-low voltage domestic installation, or part of a domestic installation, must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000 if it has a maximum demand at or below—*
- (a) *80 amperes per phase if single-phase; or*
- (b) *50 amperes per phase if multi-phase.*

[38] AS/NZS 3000 ensures that installations are completed in a safe manner. Causing a phase and neutral transposition is a clear breach of the standard. Included in the AS/NZS 3000 provisions, within Part 8, is a requirement to inspect and test prior to living to ensure safety. Under clauses 8.3.7.1, 8.3.7.2 and 8.3.8.2 of AS/NZS 3000, there is a requirement to check for transpositions. The Respondent accepted that he had not tested as per those requirements. If he had done so, the transposition would have been identified and rectified.

[39] Finally, it is noted that the Respondent also breached regulation 73A of the Safety Regulations. The specific provisions breached were:

73A Before connecting installations to power supply

- (1) *Before connecting to a power supply a low or extra-low voltage installation or part installation on which prescribed electrical work has been done, the person doing the connection must—*
- (a) *be satisfied that the installation or part installation is safe to connect; and*
- (b) *be satisfied that the testing required by these regulations has been done; and*
- (e) *in the case of a low voltage installation or part installation, do all of the following:*
- (i) *ensure that the polarity and phase rotation of the supply are correct:*

[40] Testing had not been done, the phase rotation was not correct, and the installation was not safe. Those requirements are fundamental, and the Board would expect any competent electrical worker to know, understand and apply them. The Respondent acted in a negligent manner when he failed to test.

[41] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁰ the Court's noted, as regards the threshold for disciplinary matters, that:

¹⁰ [2001] NZAR 74

[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.

[42] There was no doubt that the conduct was serious.

[43] The second element of the offence that the Board must consider is whether there was 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.

[44] 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:*

[45] 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.

- [46] 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).
- [47] 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.
- [48] As there was a risk of serious harm to persons from the transposition, the elements of the offence have been satisfied and the disciplinary offence has been committed.

Certification

- [49] The second charge relates 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 irrelevant¹².
- [50] 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. Given the transposition, that was not the case. As such, the offence has been committed.

Penalty, Costs and Publication

- [51] 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.
- [52] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [53] 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

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

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

punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [54] 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.
- [55] The Respondent raised various personal factors for the Board to take into consideration. Further, he raised concerns about the safety and compliance of the installation on the basis that he believed the pole fuse should have tripped but did not. However, distribution networks are generally high impedance in that there is low current and high voltage. As a result, even if there was a fault at the installation, it is unlikely that the network fuse would operate. Moreover, the Respondent should not be relying on downstream electrical safety features.
- [56] The Board questioned the Respondent as to the steps that he had taken since the transposition to ensure it did not occur again. He was not able to identify any steps or anything he would do differently in the future.
- [57] Given the above factors, the Board has decided that the Respondent is to undertake further training. The training, which will be a remedial training course, is to focus on the inspection and testing requirements in AS/NZS 3000 and AS/NZS 3017, and AS/NZS 3019. The training is to be undertaken at the Respondent's cost. Successful completion will be established by the training provider supplying the Board by way of the Registrar with a report stating that the Respondent has proven himself to be competent in inspecting and testing knowledge and procedures.
- [58] The Respondent is not presently licensed. Should he seek to obtain one, it will be suspended until such time as the above training has been completed as per the Board's requirements.
- [59] In coming to its decision, the Board took into consideration the period of time that the Respondent has not been licensed and the impact on him of that period. It also took into account the Respondent's acceptance of responsibility and that the matter was dealt with by way of an Agreed Statement of Facts.

Costs

- [60] 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.
- [61] 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

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

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁵.

- [62] 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.

- [63] 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.

- [64] 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.

- [65] 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, the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [66] 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.

- [67] 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.
- [68] 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.
- [69] 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.
- [70] 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.
- [71] The Respondent should also note that the Board has not made any form of an order under section 153(3) of the Act, which allows for prohibition of publication.

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

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

Penalty: Pursuant to section 147M(1)(b)(ii) of the Electricity Act 1992, the Respondent's licence is suspended until such time as he has completed the course of remedial training under section 147M(2) of the Act the Board has stipulated at paragraph [57].

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision.

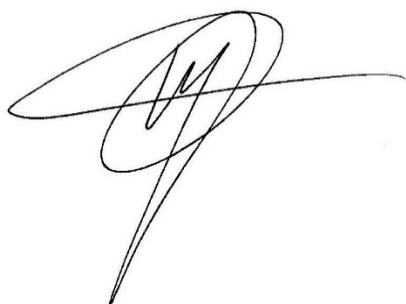
A summary of the matter will be published by way of an article in the Electron, which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

[73] The Respondent should note that the Board may refuse to relicence an electrical worker who has not paid any fine or costs imposed on them.

Right of Appeal

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

Signed and dated this sixth day of September 2022

A handwritten signature in black ink, appearing to be 'M Orange', with a large, stylized initial 'M' and a long horizontal stroke extending to the right.

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.*