

Before the Electrical Workers Registration Board

CE No. 22194
Electrical Worker: Sidney Wildbore (the Respondent)
Registration Number: E 13941
Electrical Worker Number: EW 024677
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: Wellington
Hearing Type: In Person
Hearing Date: 16 July 2020
Decision Date: 3 August 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Appearances: Toli Sagaga for the Investigator
Richard Flynn for the Respondent

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.

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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. They were:

First Alleged Disciplinary Offence

1. On or around 19 June 2019 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:
 - (a) A flushbox was installed for a socket outlet in a manner that permitted access to live parts; and/or
 - (b) A sub-circuit for a socket outlet was installed without the required mechanical protection; and/or
 - (c) An RCBO (residual current circuit breaker with overcurrent) was installed on the switchboard with inadequate identification labelling.

In breach of regulations 66 and 67 and 68 and 69 and 74A and 74C and 59 and 13 and 20 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 19 June 2019 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:
 - (a) A flushbox was installed for a socket outlet in a manner that permitted access to live parts; and/or
 - (b) A sub-circuit for a socket outlet was installed without the required mechanical protection; and/or
 - (c) An RCBO was installed on the switchboard with inadequate identification labelling.

Or in the Alternative

3. On or around 19 June 2019 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:
 - (a) A flushbox was installed for a socket outlet in a manner that permitted access to live parts; and/or
 - (b) A sub-circuit for a socket outlet was installed without the required mechanical protection; and/or
 - (c) An RCBO was installed on the switchboard with inadequate labelling identification.

Second Alleged Disciplinary Offence

4. On or around 30 November 2016 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:
 - (a) Left a cable accessible passing through a hot water cupboard with no mechanical protection or support; and/or
 - (b) Left unprotected cables and unsupported cables within 2 metres of the access to the ceiling; and/or

- (c) Provided inadequate identification and labelling for RCBO on switchboard; and/or
- (d) Left a heat fan light unit covered by building/bulk insulation (Batts) contrary to manufacturer's instructions and AS/NZS wiring rules.

In breach of regulations 66 and 67 and 68 and 69 and 74A and 74C and 59 and 13 and 20 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

5. On or around 30 November 2016 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:

- (a) Left a cable accessible passing through a hot water cupboard with no mechanical protection or support; and/or
- (b) Left unprotected cables and unsupported cables within 2 metres of the access to the ceiling; and/or
- (c) Provided inadequate identification and labelling for RCBO on switchboard; and/or
- (d) Left a heat fan light unit covered by building/bulk insulation (Batts) contrary to manufacturer's instructions and AS/NZS wiring rules.

Or in the Alternative

6. On or around 30 November 2016 at [REDACTED] Mr Sidney Wildbore 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:

- (d) Left a cable accessible passing through a hot water cupboard with no mechanical protection or support; and/or
- (e) Left unprotected cables and unsupported cables within 2 metres of the access to the ceiling; and/or
- (f) Provided inadequate identification and labelling for RCBO on switchboard; and/or
- (g) Left a heat fan light unit covered by building/bulk insulation (Batts) contrary to manufacturer's instructions and AS/NZS wiring rules.

Third Alleged Disciplinary Offence

7. On or around 30 November 2016 at [REDACTED] Mr Sidney Mr Sidney Wildbore has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has issued a false and misleading Certificate of Compliance and Electrical Safety Certificate for prescribed electrical work that he did not carry out or supervise.

Fourth Alleged Disciplinary Offence

8. On or around 30 November 2016 at [REDACTED] Mr Sidney has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Fifth Alleged Disciplinary Offence

9. On or around 24 July 2019 at [REDACTED] Mr Sidney Wildbore has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Sixth Alleged Disciplinary Offence

10. On or around 24 July 2019 at [REDACTED] Mr Sidney Wildbore has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Seventh Alleged Disciplinary Offence

11. On or around 20 August 2018 at [REDACTED] Mr Sidney Wildbore has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has certified prescribed electrical without holding a practising licence.

Eighth Alleged Disciplinary Offence

12. On or around 20 August 2018 at [REDACTED] Mr Sidney Wildbore has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Ninth Alleged Disciplinary Offence

13. On or around 12 July 2018 at [REDACTED], Mr Sidney Wildbore has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has certified prescribed electrical without holding a practising licence.

Tenth Alleged Disciplinary Offence

14. On or around 12 July 2018 at [REDACTED] Mr Sidney Wildbore has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Eleventh Alleged Disciplinary Offence

15. On or around 19 June 2019 on a [REDACTED] Mr Sidney Wildbore has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

- [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.

Function of Disciplinary Action

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

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

- [7] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

- [8] The matter proceeded on the basis of an Agreed Statement of Facts.
- [9] The Respondent did not appear. Counsel for the Respondent did. He explained that the Respondent did not attend due to age and mental health reasons.

Evidence

- [10] 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.

- [11] The matter proceeded on the basis of an Agreed Statement of Facts. The charges related to seven properties. The Statement of Facts set out that, at the time, the Respondent was the Manager and Director of Dewe Electrical Co. Limited. [REDACTED] was employed by Dewes Electrical. [REDACTED] was issued with a Limited Certificate that expired in November 2014. [REDACTED] was employed by Dewe Electrical Co. Ltd as a junior electrical assistant. He held no electrical worker status.
- [12] Between 30 November 2016 and 19 July 2019, Dewe Electrical Co. Ltd was engaged by [REDACTED], to carry out various items of prescribed electrical work (PEW) at [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].
- [13] The work was carried out between 30 November 2016 and 19 June 2019 by the two unlicensed employees, [REDACTED] and [REDACTED]. The work carried out was PEW, and it was caused to be carried out by the Respondent as the person instructing [REDACTED] and [REDACTED]. The Certificates of Compliance (CoC) issued by the Respondent were also PEW.
- [14] Electrical Inspector (1245614), Mr David Olsen, Key Electrical Inspection Services was engaged to carry out an inspection and to provide a report on his findings for the following properties. For the properties at [REDACTED] (offence 1), Mr Olsen determined that:

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

- (a) the switched socket circuit passing through kitchen cupboard had no mechanical protection, contrary to AS/NZS wiring rules and regulation 59(1) of the Electricity (Safety) Regulations 2010;
- (b) Flush Box in the kitchen cupboard for the new socket was installed not fully recessed contrary to AS/NZS wiring rules and regulation 59(1) of the Electricity (Safety) Regulations 2010; and
- (c) The installer failed to provide adequate identification and labelling for RCBO on the switchboard contrary to AS/NZS wiring rules and regulation 59(1) of the Electricity (Safety) Regulations 2010.

[15] For the property at [REDACTED] (offence 2), Mr Olsen determined that:

- (a) The cable installation had a socket outlet adjacent to Water Heater location having a sub-circuit passing through a cupboard was found without mechanical protection nor fixing/ fastening to prevent the cable being disturbed or damaged contrary to AS/NZS wiring rules and regulations 20(2) and 59(1) of the Electricity (Safety) Regulations 2010;
- (b) There were unprotected cables and unsupported cables left within two metres of the access to the ceiling contrary to AS/NZS wiring rules and regulations 20(2) and 59(1) of the Electricity (Safety) Regulations 2010; and
- (c) Provided inadequate identification and labelling for RCBO on the switchboard contrary to the AS/NZS wiring rules.

[16] With regard to the false or misleading CoC/ESC (electrical safety certificate) charges (offences 3, 7, and 9) the Respondent accepted that he issued a false and misleading CoC and ESC for the PEW contrary to regulation 69 of the Electricity (Safety) Regulations 2010 and section 143(f) of the Electricity Act 1992 in that:

- (a) the issued Compliance and Electrical Safety Certificates were incomplete; and
- (b) the Respondent did not have a current Practising Licence at the time he issued the Compliance and Electrical Safety Certificates.

[17] With regard to the charges that the Respondent employed, directed and permitted unauthorised persons to undertake PEW (offences 4, 5, 6, 8, 10, and 11) the Respondent accepted that he employed, directed or permitted [REDACTED] and [REDACTED] to undertake unsupervised PEW contrary to section 143(g) of the Electricity Act 1992. With respect to the PEW at [REDACTED] and [REDACTED], the Respondent explained that [REDACTED] had instructed that it wished the work to be undertaken because the asset owner would not do it.

[18] 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.

- [19] Counsel for the respective parties submitted that, as regards the first and second charges that the appropriate finding was one of carrying out PEW in a negligent manner under section 143(a)(i) of the Act.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **has** :

First Alleged Disciplinary Offence

On or around 19 June 2019 at [REDACTED], the Respondent 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:

- (a) A flushbox was installed for a socket outlet in a manner that permitted access to live parts;
- (b) A sub-circuit for a socket outlet was installed without the required mechanical protection; and
- (c) An RCBO was installed on the switchboard with inadequate identification labelling.

Second Alleged Disciplinary Offence

On or around 30 November 2016 at [REDACTED], the Respondent 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 has certified prescribed electrical work that was carried out by an unauthorised person and as a result:

- (a) Left a cable accessible passing through a hot water cupboard with no mechanical protection or support;
- (b) Left unprotected cables and unsupported cables within 2 metres of the access to the ceiling;
- (c) Provided inadequate identification and labelling for RCBO on switchboard; and
- (d) Left a heat fan light unit covered by building/bulk insulation (Batts) contrary to manufacturer's instructions and AS/NZS wiring rules.

Third Alleged Disciplinary Offence

On or around 30 November 2016 at [REDACTED] the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has issued a false and misleading Certificate of Compliance and Electrical Safety Certificate for prescribed electrical work that he did not carry out or supervise.

Fourth Alleged Disciplinary Offence

On or around 30 November 2016 at [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Fifth Alleged Disciplinary Offence

On or around 24 July 2019 at [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Sixth Alleged Disciplinary Offence

On or around 24 July 2019 at [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Seventh Alleged Disciplinary Offence

On or around 20 August 2018 at [REDACTED] the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has certified prescribed electrical without holding a practising licence.

Eighth Alleged Disciplinary Offence

On or around 20 August 2018 at [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Ninth Alleged Disciplinary Offence

On or around 12 July 2018 at [REDACTED], the Respondent has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has certified prescribed electrical without holding a practising licence.

Tenth Alleged Disciplinary Offence

On or around 12 July 2018 at [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

Eleventh Alleged Disciplinary Offence

On or around 19 June 2019 on a [REDACTED] the Respondent has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has employed an unauthorised person to carry out unsupervised prescribed electrical work.

- [21] The Board made its findings on the basis of the Agreed Statement of Facts and the Respondent's acceptance of that he had committed the disciplinary offences.

Negligence

- [22] With respect to the First and Second offences the Board notes that 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.
- [23] The New Zealand Courts have stated that the 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)

[24] 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.

[25] 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.]*

[26] 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.

[27] 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.

[28] The Respondent's actual falling, and his negligent conduct, related to his failure to provide adequate supervision. Section 74 of the Act restricts the carrying out of PEW to certain authorised persons.

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

¹⁰ [2001] NZAR 74

[29] 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:*

[30] The definition was considered in *Electrical Workers Registration Board v Gallagher*¹¹. 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.

[31] The Board maintains Supervision Procedures. These provide guidance as to the responsibilities of the supervisor and supervisee.

[32] 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.

[33] On the basis of the above the Board, which includes persons with extensive electrical industry knowledge and experience, found that the Respondent had departed from acceptable standards of conduct and that the conduct was sufficiently serious to warrant a disciplinary outcome.

Certification

[34] 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.

¹¹ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

- [35] The returns referred to are issued under the Regulations. There is a requirement that an ESC 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 CoC is issued for high and general risk PEW. A CoC must state that the PEW has been done lawfully and safely and that the information in the certificate is correct.
- [36] The certification issued was incomplete. The Respondent was not authorised to complete it as he was not, at the time it was issued, licensed. As such, the certification was false and misleading.

Permitting Un-Authorised Persons to Carry out PEW

- [37] Section 74 of the Act places restrictions on who can carry out PEW. Sections 75 to 80 of the Act provide for various exemptions. The persons who carried out the PEW did not fall within the exemptions.
- [38] It should be noted that allowing an unauthorised person to carry out PEW is a serious matter. The restrictions created in the Act are put in place so as to ensure that PEW is only carried out or supervised by competent persons. This ensures that the purposes of the Act are promoted. Those purposes include¹³:
- (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*
- [39] The Respondent should also note that his conduct came within the provisions of section 162 of the Act, which states:

162 Offence to engage in prescribed electrical work in breach of section 74

Every person who does, or assists in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$50,000 in the case of an individual, or \$250,000 in the case of a body corporate.

Penalty, Costs and Publication

- [40] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act¹², consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [41] Counsel for the Respondent made submissions at the hearing as regards penalty, costs and publication.

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

¹³ Refer section 1A of the Act.

- [42] He noted that the Respondent is no longer licensed, no longer carries out any PEW, has no intention of returning to the industry, and is no longer a shareholder or director of the electrical business.
- [43] The Respondent's daughter provided a letter outlining personal events that occurred at the time of the disciplinary offending, which impacted on his conduct at the time. Counsel asked that it be taken into consideration in determining the penalty.
- [44] Counsel noted that the Respondent would offer an undertaking that he would no longer partake in PEW so as to provide the Board with reassurance that he would not return to the industry.

Penalty

- [45] 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*¹⁴ 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.

- [46] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁵ 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.
- [47] The offending has been aggravated by a long period when the Respondent was not licensed but was quite obviously engaged in PEW.
- [48] The Board noted the offer of an undertaking. It decided that if such an undertaking was provided in an acceptable form that the Respondent would be censure and fined the sum of \$2,000 reduced from a starting point of \$4,000.
- [49] On 29 July 2020 an undertaking was provided. It was in an acceptable form. On that basis a fine of \$2,000 is imposed.

¹⁴ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

Costs

- [50] 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.
- [51] 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 case¹⁶.
- [52] In *Collie v Nursing Council of New Zealand*¹⁷ 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.*
- [53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$450 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [54] 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 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.
- [55] 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.
- [56] 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

¹⁶ *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.

¹⁷ [2001] NZAR 74

¹⁸ Refer sections 128 of the Act

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

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.

- [57] 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.
- [58] 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*.
- [59] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$2,000.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$450 (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.

- [61] 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.

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

Right of Appeal

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

Signed and dated this 3rd day of August 2020



Mel 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.

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- (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.*