

## Before the Electrical Workers Registration Board

CE No. 22310  
Electrical Worker: Alex Kon Yew (the Respondent)  
Registration Number: I 2790  
Electrical Worker Number: EW 065498  
Registration Class: Inspector

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

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Hearing Location: Auckland  
Hearing Type: In Person  
Hearing and Decision Date: 18 March 2021

#### Board Members Present:

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

Appearances: Michelle Brown 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(a)(ii) and 143(f) of the Act.

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**Summary of the Board’s Decision**

[1] The Respondent carried out prescribed electrical work in a manner that was contrary to an enactment, provided a false or misleading Certificate of Compliance, and failed to provide an Electrical Safety Certificate. He is restricted from doing the work of an electrical inspector until such time as he passes the Board’s Electrical Inspector examination. He is ordered to pay costs of \$250.

**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 February and October 2016 at [omitted] Mr Alex Kon Yew has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he;
  - a. Failed to adequately label identify a 63A circuit breaker to a sub-main cable for the basement; and/or
  - b. Failed to adequately label a main isolator in the meter board.

In breach of regulation 59 of the Electricity (Safety) Regulations 2010.

Or in the alternative.

2. On or around October 2016 at [omitted] Mr Alex Kon Yew 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 failed to adequately label a main isolator in the meter board.

#### Second Alleged Disciplinary Offence

3. On or around October 2016 at [omitted] Mr Alex Kon Yew 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 contained incorrect information.

#### Third Alleged Disciplinary Offence

4. On or around October 2016 at [omitted] Mr Alex Kon Yew has failed to issue an Electricity Safety Certificate on completion and connection of the prescribed electrical work to a supply.

- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.
- [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*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.
- [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*<sup>3</sup> Collins J. noted that:

*“... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*

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

<sup>2</sup> [1992] 1 NZLR 720 at p 724

<sup>3</sup> [2016] HZHC 2276 at para 164

- [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.

### **Procedure**

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.

### **Evidence**

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

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

- [11] The Board heard from the Respondent prior to it making its decision.
- [12] The Agreed Statement of Facts set out Between February and October 2016, the Respondent installed wiring and fittings to a kitchen renovation. The work included installing wiring, fitting off power points and lights in a new kitchen, installing wiring for cooktop oven points only, upgrading a distribution board and relocating a meter board. Subsequent investigations into the load demand at the property by another electrical worker identified non-compliant prescribed electrical work.
- [13] The Investigator engaged Mr Mark Carter, an Inspector (I 262132), to review the prescribed electrical work and provide his opinion as regards compliance. He noted:
- (a) The 63A circuit breaker supplying the sub-main cable isolation switch remains unlabelled and is therefore non-compliant with the requirements of AS/NZS 3000. This breaches Electricity (Safety) Regulations 2010, Reg. 59(1) and AS/NZS 3000:2007 2.3.2.2.2;
  - (b) The main isolator positioned within the meter box was found to be unlabelled;
  - (c) This breaches Electricity (Safety) Regulations 2010, Reg. 59(1) and AS/NZS 3000:2007 2.3.2.2.2 and 2.3.3.4;
  - (d) The CoC (ID: 1001) issued by the Respondent was issued incorrectly filled out in a number of ways. This breaches Electricity (Safety) Regulations 2010, Reg. 66, 67, 69 (c); and

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

- (e) The combined CoC/ESC issued by Mr Yew did not have the ESC portion filled out. This breaches Electricity (Safety) Regulations 2010, Reg. 74A, 74D(c).

[14] The Respondent accepted that he had committed the disciplinary offences as outlined in the Notice of Proceeding in that he:

- (a) failed to adequately identify a 63A circuit breaker to a sub-main cable for the basement;
- (b) failed to adequately label a main isolator in the meter board;
- (c) issued a false and misleading return (CoC) which contained errors in that it listed:
  - (i) work as “Low Risk” PEW when it is “General and High Risk”;
  - (ii) work was stated to have been done to a certified design but also done in accordance with Part 2 of AS/NZS wiring rules. (A certified design is only required if the work was done in accordance with Part 1 of the AS/NZS wiring rules);
  - (iii) listed Supplier Declarations of Conformity (SDocs) – but there were no attachments or file references;
  - (iv) stated reliance on Manufacturer’s Instructions was stated, but there were no attachments or file references;
  - (v) test results indicated an earth continuity value of 1 Ohm, which was too high;
  - (vi) no date or dates upon which the work was done; and
- (d) he failed to issue an Electricity Safety Certificate (ESC) as required.

[15] 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**

[16] The Board has decided that the Respondent 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 failed to adequately label identify a 63A circuit breaker to a sub-main cable for the basement and failed to adequately label a main isolator in the meter board, in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

- [17] The Board has also decided that the Respondent **has:**
- (a) 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 contained incorrect information; and
  - (b) has failed to issue an Electricity Safety Certificate on completion and connection of the prescribed electrical work to a supply.
- [18] The reasons for the Board's decisions follow.

Contrary to an Enactment

- [19] The charges put before the Board were laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii).
- [20] There is a hierarchy to the alternative disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out, or caused to be carried out, in a manner that was contrary to an enactment. If the Board finds in the affirmative, it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence.
- [21] Contrary to an enactment is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations. The Board does not need to find that there was intention, fault or negligence<sup>5</sup>. In this respect, the provisions of Regulation 11 are noted:

**11 Strict liability offences**

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
  - (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*
- [22] The Respondent's admitted conduct was in breach of provisions of the Electrical (Safety) Regulations. As such, the requirements for a finding under section 143(a)(ii) of the Act have been satisfied. The question for the Board was whether the conduct reached the threshold for a finding of negligence or incompetence.

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<sup>5</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

[23] There are no statutory definitions of the terms negligence and/or incompetence. It is noted, however, that they are not the same. In *Beattie v Far North Council*<sup>6</sup> Judge McElrea noted:

*[43] Section 317 of the Act uses the phrase “in a negligent or incompetent manner”, so it is clear that those adjectives cannot be treated as synonymous.*

[24] Negligence is considered to be 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*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.

[25] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as “*a demonstrated lack of the reasonably expected ability or skill level*”. In *Ali v Kumar and Others*,<sup>9</sup> it was stated as “*an inability to do the job*”.

[26] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[27] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purpose of the Act<sup>11</sup>. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>12</sup>.

[28] 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.*

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

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

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

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

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

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

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

- (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.]*

[29] 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.

[30] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>13</sup> the Court's noted, as regards the threshold for disciplinary matters, that:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[31] The disciplinary conduct that the Respondent accepted he had committed was minor in nature, and it did not meet the threshold noted above or the legal tests for a finding of negligence or incompetence.

#### Certification

[32] There were two charges before the Board under section 143(f) of the Act. The Respondent accepted both charges had been committed.

[33] One charge related to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant<sup>14</sup>.

[34] The return referred to, a Certificate of Compliance, must be issued under the Regulations. A Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

[35] The certificate contained multiple errors and misleading statements. As such, it is appropriate that the charge is upheld.

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

<sup>14</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [36] The other charge was the failure to issue an Electrical Safety Certificate. 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.
- [37] The Respondent accepted that he did not issue an Electrical Safety Certificate. Again, it is appropriate that the charge is upheld.

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

- [38] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act<sup>1</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [39] The Respondent made submissions at the hearing as regards penalty, costs and publication.

### Penalty

- [40] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>15</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

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

- [41] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>16</sup> the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [42] The Board was concerned about the Respondent’s regulatory knowledge as regards certification. It noted that he is an Inspector and, as such, is expected to have a higher level of understanding of the regulatory environment and can, as an Inspector, be responsible for the receipt of Certificates of Compliance as part of the electrical inspection process under the Act and Regulations.

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<sup>15</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>16</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[43] The transcript of the hearing recorded:

*PRESIDING MEMBER: Mr Yew, this is your opportunity to put forward to us any mitigating circumstances that the Board should take into consideration. I think the Board would also like to hear from you why your CoC was filled out the way it was. Why you didn't do an ESC, and what you have done since then to make sure that these sorts of things don't happen again, okay?*

*MR YEW: With regard to the CoC, I am pretty sure that we would (inaudible) for the CoC. And for the ESC part, somehow 2016, I'm thinking there has been a grey area on that one, on the ESC because, I've been told that all the time that CoC is superseding the ESC?*

*PRESIDING MEMBER: So you're an electrical inspector, so you're meant to be a leader within the electrical industry, so you should know what the requirements are.*

*MR YEW: Right.*

*PRESIDING MEMBER: And it has been a requirement that an electrical safety certificate is issued for all prescribed electrical work, regardless of what category of risk it falls into, for quite some time. I think it was 2010 that those changes were first brought in? So, it is concerning that you are unaware of your regulatory obligations.*

*So what have you done since to make sure that you're up to date and you know what is required?*

*MR YEW: Well, my field of work mostly with my tenants, so I don't touch much of the installation work.*

The transcript continued:

*PRESIDING MEMBER: Do you understand some of the other issues that you had with your CoC, in terms of ticking, for example, that it was a certified design when it wasn't? Failure to provide some of the other information that's required, such as the date that the work was carried out. Do you understand the deficiencies that were in your certificate of compliance?*

*MR YEW: Well, most of us will not understand how things happening during the work. When we start the work, like you will be into a job and there's no power, so we have to in agreeance to the power and in this scenario, it's a power reinstate, and then we do the rest of the work after that.*

*PRESIDING MEMBER: So why would you tick then that it was a certified design done under part 2 of AS/NZS: 3000?*

*MR YEW: You mean the ticking on that part?*

*PRESIDING MEMBER: Yeah, why was your CoC wrong? I mean there's a lot of things wrong with it. Why was that?*

*MR YEW: Well, do you mean the ticking on the part 2?*

*PRESIDING MEMBER: Yeah, that's one example. Yeah, why did you tick that? Do you understand what that even means, a certified design?*

*MR YEW: Um, yeah, that was a mistake there, because I sometime when checking am going too fast and just ignoring.*

*PRESIDING MEMBER: Yeah.*

*MR YEW: Yeah.*

*PRESIDING MEMBER: You understand that certification is a serious and important document?*

*MR YEW: Yeah.*

*PRESIDING MEMBER: Not just a tick and flick exercise?*

*MR YEW: Yeah, it's true.*

*PRESIDING MEMBER: Yeah. Okay, so what would you do differently next time?*

*MR YEW: Oh, try to avoid it.*

[44] The Respondent was asked how he keeps himself up to date with regulatory changes. He stated:

*PRESIDING MEMBER: How do you keep yourself up to date and aware of changes in standards, changes in regulations?*

*MR YEW: Most of the time was come to the time when we have refresher course. That's the only time we update in those days, but recently we have internet, so we go round internet and check what's happening, and apart from that, will be some email from the Board.*

*PRESIDING MEMBER: Okay.*

*MR YEW: Yeah. That's the time we are updating.*

*PRESIDING MEMBER: Do you use the Board's standards portal?*

*MR YEW: Occasionally, when we come and, you know, like we need to dig up some information, we'll go for that.*

*PRESIDING MEMBER: Okay.*

*MR YEW: Apart from that, I mean to be honest, we haven't got time for that.*

[45] The Board questioned the Respondent as to his understanding of the risk-based framework under which prescribed electrical work is carried out:

*PRESIDING MEMBER: Are you going to issue a CoC, and ESC or both?*

*MR YEW: Yeah.*

*PRESIDING MEMBER: That was a question. Which one what are you going to do?*

*MR YEW: ESC.*

*PRESIDING MEMBER: For general work?*

*MR YEW: Yeah. It depend on how general is general?*

*PRESIDING MEMBER: You understand what general risk is? You know, low, high and general in terms of*

*MR YEW: Yeah.*

*PRESIDING MEMBER: risk categories?*

*MR YEW: Yeah.*

*PRESIDING MEMBER: So what's high risk work.*

*MR YEW: It's main.*

*PRESIDING MEMBER: Sorry?*

*MR YEW: Main cables*

*PRESIDING MEMBER: Yeah, that's one.*

*MR YEW: and works. Yeah.*

*PRESIDING MEMBER: That's one type. Is there anything else that's high risk?*

*MR YEW: Oh, 400 volts or more. Three phase.*

[46] The Board observed that the Respondent did not appreciate that the Board was referring to the risk-based regime set out in regulation 6A of the Regulation and that he did not demonstrate an understanding of it. Regulation 6A defines what is low-risk, high-risk and general prescribed electrical work. It is key to the compliance regime under the Regulations.

[47] Based on the Respondent's responses the majority of the Board (Member Kershaw dissenting) considered restricting the Respondent licence to that of an electrician. Prior to making that decision, the Board recalled and questioned the Respondent about the impact of a downgrade.

*PRESIDING MEMBER: Okay. All right, because our concern is that your regulatory knowledge is lacking. You don't have a good understanding of things an electrical inspector should have an understanding of, and we're wondering whether you should just be an electrician, and not an electrical inspector, okay?*

*So what impact would it have on you if we decided to restrict you so that you can only do the work of an electrician, and not the work of an electrical inspector? What impact would that have on you?*

MR YEW: *It wouldn't be much.*

PRESIDING MEMBER: *Wouldn't be much?*

MR YEW: *Yeah.*

PRESIDING MEMBER: *Okay. Would you make any submissions to us about that? Would that be something that would concern you if we did that?*

MR YEW: *Not at all.*

- [48] Given the Respondent's answers to the questions, and the noted lack of knowledge as regards aspects of the regulatory framework above, the majority of the Board (Member Kershaw dissenting) decided that they would make an order under section 147M(1)(d)(ii) of the Act disqualifying the Respondent from doing or assisting in doing prescribed electrical work that he would otherwise be authorised to do, being the work of an Electrical Inspector, until such time as he passes the Board's prescribed examination for an Electrical Inspector.
- [49] The Board also recommended that the Respondent undertake his own studies to brush up on his regulatory knowledge.

#### 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 case<sup>17</sup>.
- [52] In *Collie v Nursing Council of New Zealand*<sup>18</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [53] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

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<sup>17</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>18</sup> [2001] NZAR 74

## 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 Act<sup>19</sup>. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [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 1990<sup>20</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>21</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>22</sup>. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>23</sup>.
- [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 interest<sup>24</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [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] Based on the above, the Board will not order further publication.
- [60] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

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<sup>19</sup> Refer sections 128 of the Act

<sup>20</sup> Section 14 of the Act

<sup>21</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>22</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>23</sup> *ibid*

<sup>24</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

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

**Penalty:** Pursuant to section 147M(1)(d)(ii) and section 147M(2)(a) of the Electricity Act 1992, the Respondent is disqualified from doing or assisting in doing prescribed electrical work that he would otherwise be authorised to do, being the work of an Electrical Inspector, until such time as he passes the Board's prescribed examination for an Electrical Inspector.

The Registrar is directed to record the above in the Register for Electrical Workers.

**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.

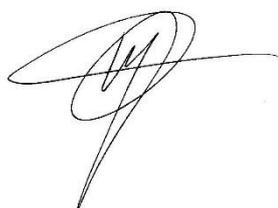
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be not named in the publication.

[62] 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

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

Signed and dated this 30<sup>th</sup> day of March 2021.



**M Orange**  
Presiding Member

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<sup>i</sup> **Section 147M of the Act**

(1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*

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- (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:

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- (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.*