

## Before the Electrical Workers Registration Board

CE No. 22632

### In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

### Between:

The Ministry of Business Innovation and Employment

### And

Raymond Parker a registered electrical worker (I 641, EW 017469, Inspector) (the Respondent)

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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:

Palmerston North

Hearing Type:

In Person

Hearing and Decision Date:

15 November 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr M Orange, Barrister

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

Ms E Mogford, Lawyer

**Appearances:**

P Siania 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(c) and 143(f) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent issued warrants of electrical fitness (WoEF) when he was not licensed. A WoEF can only be issued by an authorised person. An authorised person is a person who is authorised to inspect high-risk prescribed electrical work. As the Respondent was not licenced, he was not authorised. On that basis, the Board decided that he had committed disciplinary offences under sections 143(c) and (f) of the Act.
- [2] The Respondent has been disciplined on three occasions by the Board, and the Board has previously sanctioned him for issuing WoEFs when not licenced. Regardless of that sanction and it being made to the Respondent that he could not issue WoEFs when not licensed, he continued to do so. Given that the Respondent has ignored past decisions and continues to operate outside of the law, the Board decided that it would cancel his registration to remove any doubt as regards his ability to issue WoEFs. It further ordered that the Respondent may not apply to register for a period of five years.

## The Board

[3] The Board is a statutory body established under the Electricity Act.<sup>1</sup> Its functions include hearing complaints about and disciplining persons to whom Part 11 of the Act.

## Introduction

[4] 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<sup>2</sup> that the complaint should be considered by the Board. Under section 147T of the Act, the Investigator must prosecute the matter at a Board hearing who may be represented by counsel.

[5] 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 11 March 2022 Mr Raymond Parker has failed to have complied with a term or condition of his registration or licence, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(c) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Caravan registration number Y859R when he was not the holder of a current practising licence.

### Second Alleged Disciplinary Offence

2. On or around 11 March 2022 Mr Raymond Parker has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Caravan registration number Y859R when he was not the holder of a current practising licence.

[6] 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.

## Function of Disciplinary Action

[7] 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>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*.<sup>4</sup>

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<sup>1</sup> Section 148 of the Act.

<sup>2</sup> Under section 145 of the Act, an Investigator is appointed by the Chief Executive of the Ministry

<sup>3</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>4</sup> [1992] 1 NZLR 720 at p 724

## Evidence

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</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.*

- [9] The Board received witness statements from the Complainant, the Investigator's expert and the Investigator. The statements set out that the Respondent completed a warrant of electrical fitness (WoEF) for a connectable installation (a caravan) at a time when he did not hold a current practising licence. The Respondent did not challenge the facts and accepted that he had completed the WoEF when he was not licensed. His defence was based on two submissions. The first was that he had not carried out prescribed electrical work. The second was that he had been wrongly denied a licence by the Registrar.

## The Respondent's Defences

### Prescribed Electrical Work

- [10] The first charge referred to prescribed electrical work. It was laid under section 143(c) of the Act. It states:

#### **143 Disciplinary offence**

*For the purposes of this Part, a person to whom this Part applies is guilty of a disciplinary offence if that person is found, in any proceedings under this Part, or in any appeal under Part 12,—*

- (c) *to have failed to have complied with a term or condition of the person's registration or licence;*

- [11] The section does not refer to prescribed electrical work. As such, to make a finding under it, the Board does not have to establish that the Respondent had carried out prescribed electrical work. Put simply, regardless of how the Investigator framed the charge, prescribed electrical work is not an element of the offence. Notwithstanding, the Board will deal with the Respondent's submission.

- [12] The Board made a decision in 2020 that issuing a WoEF was prescribed electrical work.<sup>6</sup> Full reasons why were set out in that decision. Publication was undertaken so that other electrical workers were made aware that issuing a WoEF was prescribed electrical work.

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<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>6</sup> *Graham* [2020] EWRB 22184

- [13] In 2021, the Respondent appeared before the Board on charges that he had completed 13 WoEF when not licensed.<sup>7</sup> He unsuccessfully argued that he had not carried out any prescribed electrical work. The Board outlined its decision to the Respondent at the hearing, and it issued a written decision. In that decision, the Board noted:
- [53] *The Board was concerned that the Respondent, notwithstanding his previous status as an Electrical Inspector, seemed to lack regulatory knowledge and was confused as regards basic regulatory matters such as the exemptions that can apply and the differences between an appliance and a connectable installation.*
- [54] *The Respondent continuing to carry out prescribed electrical when he knew he was not authorised to do so as a result of a disciplinary suspension is an aggravating factor. The failure by MBIE to deal appropriately with his application to be relicensed is a mitigating factor.*
- [55] *Based on the above, and taking into account that the Respondent's license is currently suspended, the Board decided that a censure would be an appropriate penalty. A censure is a public expression of disapproval of conduct.*
- [56] *The Respondent is reminded that he must not carry out any prescribed electrical work until such time as he is relicensed and that it is open to the Board to pursue any future transgressions in the courts.*
- [14] The Respondent was, therefore, fully aware that issuing a WoEF was prescribed electrical work and that he had to be licensed to do a WoEF. Notwithstanding, he continued to issue them, and he stated at the hearing that he does a small number of them for old clients for a bit of extra money.
- [15] At the hearing for this matter, the Respondent stated that he disagreed with the Board's decision. He maintained the position that issuing a WoEF was not prescribed electrical work and that he could, notwithstanding the Board's decision in 2021, continue to do them. He stated he had not appealed the Board's decision as he could not afford to. As he did not appeal, the Board's decision stands.
- [16] The Respondent also submitted an article from a magazine that he contended supported his submission. The article was not authoritative and was not relevant to the issue before the Board. He also referred to various provisions from standards that were not relevant and which, even if they were, could not override the provisions in the Act and Safety Regulations on which the Board's decisions were based.

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<sup>7</sup> Raymond Parker [2021] EWRB 22389

[17] The Respondent's defence that the issue of a WoEF is not prescribed electrical work is rejected.

### Licensing

[18] Regulation 78 of Safety Regulations stipulates who can issue a WoEF. It states:

**78 Issue of warrants of electrical fitness for connectable installations**

(1) *The following people may issue warrants of electrical fitness for connectable installations:*

(a) *a person who is authorised to inspect mains work:*

[19] Mains work is, in accordance with regulation 6A of the Safety Regulations, high-risk prescribed electrical work. Pursuant to a Gazette Notice issued by the Board under section 84 of the Act, high-risk prescribed electrical work can only be inspected by a registered and licensed Inspector. The Act also stipulates that a person must be licensed to carry out prescribed electrical work.<sup>8</sup> The Respondent is not a licensed person because his licence was suspended as a result of disciplinary action in 2018.

[20] In 2018, the Respondent appeared before the Board on two disciplinary charges, the first of which contained 13 allegations relating to the manner in which he had carried out prescribed electrical work.<sup>9</sup> The Board made the following findings:

[23] *The Board has decided that the Respondent has committed the following disciplinary offences:*

1. *On or around November 2016 – March 2017 at [OMITTED] the Respondent negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he:*
  - (a) *failed to ensure the legally required RCD protection of socket outlets installed within damp zones; and*
  - (b) *left electrical terminations within the switchboard and at electrical fittings with excessive amounts of live exposed copper.*
2. *On or around November 2016 – March 2017 at [OMITTED] the Respondent carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he:*

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<sup>8</sup> Sections 74 and 98 of the Act.

<sup>9</sup> CAS 1901 Parker, a decision of 18 April 2018

- (a) *connected the main neutral to the neutral bus bar in an unreliable manner leading to potential failure of this connection;*
  - (b) *failed to comply with the Electrical Wiring Rules by utilising a green earth conductor sleeved red to serve as a phase conductor; and*
  - (c) *failed to lodge details of high risk work inspected by him on the High Risk Database.*
3. *On or around November 2016 – March 2017 at [OMITTED] the Respondent 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) *has failed to comply with the Electrical Wiring Rules through exceeding the maximum three sub circuits allowable per RCD; and*
  - (b) *has failed to install a permanent and legible sign adjacent to the ceiling access panel warning of the installed recessed luminaires; and*
  - (c) *has failed to provide support and mechanical protection for cabling within two metres of any space to which a person may gain entry and has not supported general cabling within the ceiling cavity when required to do so.*

*In breach of regulations 69(a), 63(1) and 74D of the Electrical (Safety) Regulations 2010.*

4. *On or around at [OMITTED] the Respondent provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified PEW as being safe to use when significant portions of the work undertaken were non-compliant and unsafe.*

[24] *The Board has also decided that the Respondent has not committed a disciplinary offence in respect of the allegations that the Respondent:*

- (a) *failed to prevent contact with exposed copper conductors in the ceiling cavity that could at some point become energized;*  
*or*

(b) *installed auxiliary lighting underneath fibre glass ceiling insulation, thus inhibiting the ventilation and cooling of these items.*

[25] *The Board made its findings as regards the two allegations that have not been upheld on the basis that the investigator had not provided sufficient evidence to prove the charges.*

[21] Again, at the hearing for this matter, the Respondent stated that he disagreed with the Board's decision but could not afford to appeal it.

[22] As a result of the 2018 decision, the Board suspended the Respondent's licence and ordered that he undertake training. It noted:

[51] *The findings disciplinary findings were numerous and some were at the most serious level. The Respondent, throughout the hearing, displayed a lack of currency in his understanding of electrical practice and requirements and failed to comprehend the seriousness of his actions and failings. The Board considers the poses a risk to the public and the penalty should reflect this.*

[52] *On the basis of the above the Board considers that the Respondent's licence should be suspended until such time as he successfully completes an appropriate course of remedial instruction. Accordingly the Board will, subject to any submissions received, order under section 147M(1)(b)(ii) of the Act that the Respondent's licence be suspended until he completes, to the Board's satisfaction, a specified course of instruction under section 147M(2)(c) of the Act.*

[53] *The specified course of instruction will focus on the safety, testing and certification requirements of carrying out and inspecting high risk prescribed electrical work.*

[23] The Respondent did undertake the training. Due to an administrative error, the trainer's report was not sent to the Registrar. That report was obtained after the hearing. It did not support the Respondent being reissued with his licence. The Respondent stated that he disagreed with the report, and he called the trainer's competence into question.

[24] The Respondent accepted that he did not have a current licence and that he knew that he was not licensed. His submission, however, was that he should have been reissued with a licence and that the Registrar was stopping his licence from being reissued for no good reason. He did not produce any evidence that substantiated his claim.

[25] The simple matter is that only persons authorised to inspect mains work can issue a WoEF. An authorised person is a person who is licensed as an Inspector. The Respondent was not licensed. His defence is rejected.



### **First Offence**

- [26] The allegation was that the Respondent had failed to comply with a term or condition of his registration or licence by issuing a WoEF when he was not the holder of a current practising licence.
- [27] The Respondent accepted that he had issued a WoEF at a time when he was not licensed. Only an authorised person can issue one. An authorised person is a person who is licensed to inspect high-risk prescribed electrical work, which is a licensed Inspector. As the Respondent was not an authorised person, it follows that he has committed the disciplinary offence.

### **Second Offence**

- [28] The second allegation was that the Respondent had provided a false or misleading return in that he issued a WoEF when he was not the holder of a current practising licence.

### **False or Misleading Certification**

- [29] The charge under section 143(f) of the Act 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>10</sup>.
- [30] The return, a WoEF, can only be issued by an authorised person. As noted above, the Respondent was not an authorised person. Accordingly, he issued a false or misleading return in that, by issuing the WoEF, the Respondent represented that he was authorised when he was not and that the WoEF was valid when it was not.

### **Board's Conclusion and Reasoning**

- [31] On the basis of the foregoing, the Board has decided that the Respondent **has** committed disciplinary offences under sections 143(c) and 143(f) of the Act.

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

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

### **Penalty**

- [34] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of

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<sup>10</sup> *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

the conduct and any mitigating or aggravating factors present.<sup>11</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>12</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>13</sup>
- (b) deterring other Licensed Building Practitioners from similar offending;<sup>14</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>15</sup>
- (d) penalising wrongdoing;<sup>16</sup> and
- (e) rehabilitation (where appropriate).<sup>17</sup>

[35] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>18</sup> and applying the least restrictive penalty available for the particular offending.<sup>19</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>20</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>21</sup>

[36] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>22</sup>

[37] This is the third time that the Respondent has been disciplined by the Board and the second time in relation to the issuing of warrants of electrical fitness. Those are aggravating factors.

[38] More significantly, the Board made it quite clear to the Respondent in 2021 that he could not continue to issue WoEFs. He has ignored the Board's decision and has continued to issue them. His stated reason is that he disagrees with the Board's previous decisions. He has, in essence, acted in contempt of those decisions, the Board's penalty directions, and the legislative framework under which electrical work is carried out and which electrical workers must operate.

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<sup>11</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>12</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>13</sup> Section 3 Building Act

<sup>14</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>15</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>16</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>20</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>21</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>22</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

[39] It is clear that the Board's previous orders have not had an effect on the Respondent or his conduct. He has continued to operate as he sees fit. Given the past disciplinary findings, which included that he negligently created a risk of serious harm to persons, the Board holds serious concerns as to whether he is a fit person to hold registration as an electrical worker. As such, it has considered cancelling the Respondent's registration. In doing so, it notes that cancellation would make it clear to the Respondent and the public in general that he is not authorised to carry out prescribed electrical work or issue WoEFs.

[40] In *New Zealand Law Society v Stanley*,<sup>23</sup> a decision of the Supreme Court, it noted:

*[35] The first point to note is the obvious one. That is, the fit and proper person standard has to be interpreted in light of the purposes of the Act.*

[41] The purposes of the Electricity Act are set out in section 1A. They 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.*

[42] Of note are the protection of the public and the prevention of damage. Further, the licensing regime exists to ensure the public can have confidence in those who carry out prescribed electrical work. The Respondent's contempt for disciplinary orders and the licensing regime have put those purposes at risk.

[43] The Supreme Court also noted that the fit and proper person evaluation is a forward-looking exercise and that it is a matter of undertaking an "evaluation as to the risks to the public or of damage to the reputation of the profession" if, in the Respondent's case, he was to retain his licence.<sup>24</sup> The evaluation is an objective exercise in that the Board should not be influenced by sympathy for the Respondent<sup>25</sup>, and it is a protective exercise, not a punitive one.<sup>26</sup>

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<sup>23</sup> [2020] NZSC 83

<sup>24</sup> *New Zealand Law Society v Stanley* [2020] NZSC 83 at [38]

<sup>25</sup> *New Zealand Law Society v Stanley* [2020] NZSC 83 at [39]

<sup>26</sup> *Ibid* [40]

[44] The Supreme Court summarised the relevant principles as follows:

- [54] *From this discussion, the relevant principles can be summarised in this way:*
- (a) *The purpose of the fit and proper person standard is to ensure that those admitted to the profession are persons who can be entrusted to meet the duties and obligations imposed on those who practise as lawyers.*
  - (b) *Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to maintain public confidence in the profession.*
  - (c) *The evaluation of whether an applicant meets the standard is a forward looking exercise. The Court must assess at the time of the application the risk of future misconduct or of harm to the profession. The evaluation is accordingly a protective one. Punishment for past conduct has no place.*
  - (d) *The concept of a fit and proper person ... involves consideration of whether the applicant is honest, trustworthy and a person of integrity.*
  - (e) *When assessing past convictions, the Court must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Court must look at all of the evidence in the round and make a judgement as to the present ability of the applicant to meet his or her duties and obligations as a lawyer.*
  - (f) *The fit and proper person standard is necessarily a high one, although the Court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law.*

[45] The Supreme Court case related to a licensing application. The same principles apply to the Board's consideration of the cancellation of his licence.

[46] Looking at the Respondent's conduct and applying the tests, the Board has decided that the Respondent is not a fit person and that his registration should be cancelled. His registration will be cancelled, and the Board will order that he may not apply to be re-registered for a period of five years. The Board decided that five years was appropriate given the aggravating factors present.

#### Costs

[47] 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.

- [48] 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>27</sup>.
- [49] In *Collie v Nursing Council of New Zealand*,<sup>28</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.*
- [50] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>29</sup> 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.*
- [51] 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 moderately complex. Adjustments based on the High Court decisions above are then made. The Board's scale of costs for a half-day defended hearing is \$1,575.
- [52] The Board noted the significance of the penalty imposed and took into account the Respondent's age and his financial position. Taking those factors into account, the Board has decided that it would not make a costs order.

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<sup>27</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>28</sup> [2001] NZAR 74

<sup>29</sup> CIV-2011-485-000227 8 August 2011

## Publication

- [53] 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>30</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.
- [54] 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.
- [55] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>31</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>32</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>33</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>34</sup>.
- [56] 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>35</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.
- [57] Based on the above, the Board will order further publication. In this matter, it is important that the public is aware of the Board's decision to cancel the Respondent's registration and, in particular, the camping and caravanning community. As such, in addition to the Respondent being named in this decision and the matter being reported in the Electron, the Board orders that a press release is to be drafted and that the release is to be sent to such publications as are appropriate to ensure caravan owners are aware that the Respondent cannot issue WoEFs.

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<sup>30</sup> Refer sections 128 of the Act

<sup>31</sup> Section 14 of the Act

<sup>32</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>33</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>34</sup> *ibid*

<sup>35</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Penalty, Costs and Publication Orders

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

**Penalty:** Pursuant to section 147M(1)(a) of the Electricity Act 1992, the Respondent's registration is cancelled and the Board orders that he may not reapply to be registered for a period of five years.

**Publication:** The Respondent will be named in this decision.

A summary of the matter will be published by way of an article in the Electron. The Respondent will be named in the publication.

In terms of section 147Z of the Act, there will be action taken to publicly notify the Board's action.

## Right of Appeal

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

Signed and dated this Tuesday, 5 December 2023.



**R Keys**  
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—
- (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:

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- (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.*