

**Before the Electrical Workers Registration Board**

CE No. 22470

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Reece McCarthy a registered and licensed electrical worker (E 248047, EW 104687, Electrician) (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:

Auckland

Hearing Type:

In Person

Hearing and Decision Date:

20 September 2024

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 L Wright, Barrister

Appearances: J Hilario 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(d) and (g) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent was charged with carrying out Prescribed Electrical Work (PEW) at a time when he was not authorised and with employing, directing, or permitting an unauthorised person to carry out PEW. The allegations were based on licensing records showing that at the time the PEW was completed, the Respondent did not hold a current practising licence.
- [2] The Respondent accepted that he had committed the disciplinary offences as charged. The Board decided that he would be censured. The penalty was reduced from a fine to take into account mitigating factors present. The Respondent was also ordered to pay costs of \$250. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

### Introduction

- [3] 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.
- [4] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. Those allegations were subsequently amended and a revised notice was issued. The revised charges were:

### **First Alleged Disciplinary Offence**

1. Between 3 February 2021 and 12 February 2021 at **[Omitted]**, Mr Reece McCarthy has carried out or caused to be carried out prescribed electrical work, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, IN THAT, he carried out prescribed electrical work without holding a current practising licence.

### **Second Alleged Disciplinary Offence**

2. On or around 3 February 2021 and 12 February 2021 at **[Omitted]**, Mr Reece McCarthy has employed, directed, or permitted unauthorised persons to carry out prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he employed, directed, or permitted Grant Seaborn to carry out Prescribed Electrical Work in breach of section 74 of the Act.

- [5] 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**

- [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.”*

- [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.

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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

## Procedure

[9] At the hearing, the charges were put to the Respondent, who accepted that he had committed the disciplinary offences as outlined above. The matter proceeded on the basis of a hearing to determine the appropriate actions the Board should take under section 147M of the Act.

## 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 general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As Respondent had accepted that he had committed the disciplinary offences, it was not necessary for the Board to receive any evidence to substantiate the charges.

## First Offence

[12] The allegation related to the Respondent carrying out or causing to be carried out Prescribed Electrical Work (PEW) that he was not authorised to do because he was not, at the time, a licensed electrical worker.

[13] Section 74 of the Act places restrictions on who can carry out PEW. It states:

**74 Restrictions on doing or assisting with prescribed electrical work**

(1) *A person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised to do so under this section.*

(2) *The following persons may do prescribed electrical work, or assist in doing prescribed electrical work, within the limits prescribed in regulations (if any):*

(a) *a registered person who is authorised to do, or assist in doing, the work under a current practising licence:*

(b) *a person who is authorised to do, or assist in doing, the work under a provisional licence:*

(c) *a person who is authorised to do, or assist in doing, the work under an employer licence.*

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

[14] The Respondent was a registered person, however, under section 98 of the Act, a registered person cannot carry out prescribed electrical work without a practising licence:

**98 Practising licence required**

(1) *A registered person is not authorised to do, or assist in doing, prescribed electrical work that the person is otherwise authorised to do by virtue of that person's registration unless that person is the holder of a current practising licence issued under this subpart that authorises the person to do, or assist in doing, the work.*

[15] It follows that to be authorised, an electrical worker must be registered and licensed.

[16] Practising licenses are issued for a period of two years. Electrical workers are responsible for maintaining the currency of their practising licences but are given renewal notices. In order to renew, an electrical worker must meet the requirements in section 106 of the Act. Included is the requirement to complete a competency programme under section 108 of the Act. Competence programmes provide confidence that an electrical worker retains the required competencies for the reissue of a licence.

[17] The Respondent had been given notice that his licence was expiring and that he had to renew it. He did not do so, and, at the time he carried out the prescribed electrical work, he had not completed the relicensing process and was not, therefore, licensed. The Respondent gave evidence that he had completed a competency course but failed to complete the remaining relicensing requirements because of personal circumstances that distracted him.

[18] Given the above, the Board finds that Respondent was not an authorised person for the purposes of section 74 of the Act.

[19] Turning to the offence itself, under section 143(d) of the Act, it is an offence to "have done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do.

[20] The disciplinary offence is a strict liability one. The Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed. The Board does not need to find that there was intention, fault or negligence<sup>5</sup> to make a decision. Accordingly, on the basis of the Respondent's acceptance of the charge and on the principles outlined above, the Board found that the offence had been committed.

[21] The Respondent should note that unauthorised persons carrying out prescribed electrical work is a serious matter. The restrictions created in the Act are put in place so as to ensure that prescribed electrical work is only carried out or supervised by

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

competent persons. This ensures that the purposes of the Act are promoted. Those purposes include<sup>6</sup>:

- (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*

[22] Also 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.*

[23] As such, it would have been open to the Board to pursue the matter in the courts.

**Second Offence**

[24] The second allegation related to employing, directing, or permitting an unauthorised person to carry out PEW. The allegation related to the same PEW. The Board notes that there is a degree of commonality between the two disciplinary allegations, which is a matter it will take into consideration when determining the appropriate penalty to be imposed.

[25] As was the First Offence, the starting point is the restrictions and section 74 of the Act. That section includes the following provision:

- (3) *A person does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if that work is done in accordance with any of sections 75 to 80.*

[26] Sections 75 to 80 of the Act provide for various exemptions, of which sections 76 and 77 would ordinarily be relevant. Section 77 provides an exemption for trainees who carry out PEW under supervision. A trainee is a person who holds a trainee limited certificate issued by the Board<sup>7</sup>. Section 76 creates a more general exemption for any person to carry out PEW under supervision. Both of the exemptions required that the person who is supervising is an authorised person. As the Respondent was not, due to his licence had expired, it follows that he could not supervise, and that the relevant exemptions do not apply.

[27] Section 143(g) of the Act is also a strict liability offence.

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<sup>6</sup> Refer section 1A of the Act.

<sup>7</sup> Refer section 77(2) of the Act.

[28] As the Respondent has accepted that he has committed the disciplinary offending, and on the basis of the above, the Board finds that the charges were made out.

[29] Again, the Respondent should also note that his conduct came within the other provisions of the Act. Section 163 states:

**163 Offence to employ person to engage in prescribed electrical work in breach of section 74**

*Every person who employs any person under a contract of service to do, or assist in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$10,000 in the case of an individual, or \$25,000 in the case of a body corporate.*

**Board Decision**

[30] The Board has decided that the Respondent **has** breached sections 413(d) and (g) of the Act and should be disciplined.

**Penalty, Costs and Publication**

[31] 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.

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

Penalty

[33] 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 the conduct and any mitigating or aggravating factors present.<sup>8</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>9</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>10</sup>
- (b) deterring the Respondent and other Electrical Workers from similar offending;<sup>11</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>12</sup>

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<sup>8</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>9</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>10</sup> Section 3 Building Act

<sup>11</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>12</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

- (d) penalising wrongdoing;<sup>13</sup> and
- (e) rehabilitation (where appropriate).<sup>14</sup>

- [34] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases<sup>15</sup> and applying the least restrictive penalty available for the particular offending.<sup>16</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>17</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>18</sup>
- [35] 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>19</sup>
- [36] The Board adopted a starting point of a fine, a penalty consistent with other penalties imposed for similar disciplinary offending. Regarding mitigating factors, the offending was for a short period of time, some nine days, and it occurred when personal circumstances were impacting the Respondent. In this respect, the Board accepted that the failure to relicence was not deliberate. Other mitigating factors include the Respondent's acceptance of responsibility, the fact that it is the Respondent's first appearance before the Board, and the fact that he is facing financial difficulties. The Board also noted that the prosecution of the matter has been drawn out and that the delays have not been entirely of the Respondent's making. Taking those factors into account, the Board decided to reduce the penalty to a censure. A censure is a public expression of disapproval. Respondent should note that any future contraventions would most likely be treated more seriously by the Board.

### Costs

- [37] 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.
- [38] 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>20</sup>

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

<sup>14</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>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>16</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

<sup>19</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.

<sup>20</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.



[39] In *Collie v Nursing Council of New Zealand*,<sup>21</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.*

[40] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>22</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.*

[41] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.

[42] 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. This is the Board's scale costs for a hearing where a respondent has accepted responsibility for the disciplinary offending.

#### Publication

[43] 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>23</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.

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<sup>21</sup> [2001] NZAR 74

<sup>22</sup> CIV-2011-485-000227 8 August 2011

<sup>23</sup> Refer sections 128 of the Act

- [44] 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.
- [45] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>24</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>25</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>26</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>27</sup>.
- [46] 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>28</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.
- [47] 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.
- [48] 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**

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

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

**Costs:** Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$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, which will be publicly available on the Board's website.**

**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.**

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<sup>24</sup> Section 14 of the Act

<sup>25</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>26</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>27</sup> *ibid*

<sup>28</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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

### Right of Appeal

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

Signed and dated this 10<sup>th</sup> day of October 2024



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:*
    - (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:*

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- (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.