

## Before the Electrical Workers Registration Board

CE No. 22729

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Sanmogram Mudaliar a registered and licensed electrical worker (E 242173, EW 086792, 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 or On the Papers

Hearing and Decision Date:

19 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(a)(ii) and (f) of the Act.

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**Summary of the Board’s Decision**

[1] The Respondent carried out prescribed electrical work on an installation. After he had completed and certified the work, a complaint was made. The Investigator appointed an expert who attended the site and noted that there were gaps in the switchboard, which had a lid, that allowed for direct access to live parts. On that basis, the Board found that the Respondent had carried out prescribed electrical work in a manner that was contrary to an enactment and that he had provided false or misleading certification with respect to it. The Respondent was censured and ordered to pay costs of \$1,125. A record of the disciplinary offending will be recorded on the public record for a period of three years.

**Introduction**

[2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.

- [3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

**First Alleged Disciplinary Offence 1.**

1. On or around between 1 April 2023 and 14 April 2023 at **[Omitted]**, Mr Sanmogam Mudaliar 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 ensure measures had been put in place to prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations. In breach of regulations 13, 20, and 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around between 1 April 2023 and 14 April 2023 at **[Omitted]**, Mr Sanmogam Mudaliar 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 ensure measures had been put in place to prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations.

Or in the Alternative

3. On or around between 1 April 2023 and 14 April 2023 at **[Omitted]**, Mr Sanmogam Mudaliar has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he failed to ensure measures had been put in place to prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations.

**Second Alleged Disciplinary Offence**

1. On or around between 1 April 2023 and 14 April 2023 at **[Omitted]**, Mr Sanmogam Mudaliar has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified non-compliant prescribed electrical work as done lawfully and safely.

- [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.

### **Function of Disciplinary Action**

- [5] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

- [6] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,<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.”*

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

### **Procedure**

- [8] The matter proceeded as a defendant hearing.

### **Evidence**

- [9] 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.*

- [10] The Investigator filed briefs of evidence for his witnesses, including for his expert. The Respondent did not challenge the evidence put forward in those briefs.

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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

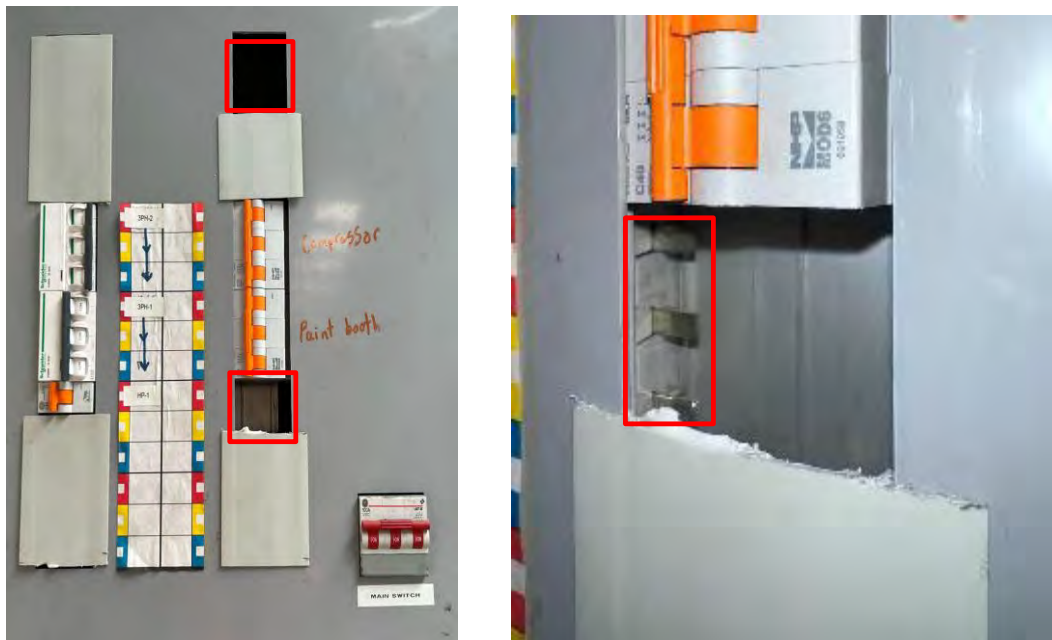
<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

### First Offence

[11] The issue before the Board was whether the Respondent had failed to ensure measures had been put in place to prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the installations.

### The facts

[12] The Respondent was engaged to carry out PEW. After he had completed the work, a complaint was made by WorkSafe. That complaint related to issues that were not pursued by the Investigator in the proceedings before the Board. As part of the investigation, the Investigator appointed an expert, Mr Mark Carter, an electrical inspector, to review the Respondent's PEW. Mr Carter visited the premises and noted that the existing electrical switchboard from which the Respondent would have taken a power supply from exhibited large, uncovered gaps through which clear and unimpeded access to live parts would have been possible. The photos below show the gaps. That observation led to the charge before the Board.



[13] The Respondent's evidence was that the switchboard, as observed by Mr Carter, was in that state when he attended the premises. He stated that he was aware that covers were required and that he was in the process of obtaining them but was admitted to the hospital the day after and was not able to attend to do so. His hospital admission was prolonged, and it affected his cognitive abilities. As such, his evidence was that he was not in a position to be able to instruct another electrical worker to complete the required work.

- [14] The switchboard did have a lid (shown below). The lid was not one that required a tool to open it. The Respondent gave evidence that he had informed the owner, who he stated was the only person who had access, that there was an issue that needed to be rectified. The Respondent did not install any signs, barriers, or locking mechanisms on or in the vicinity of the lid of the switchboard.



#### The law

- [15] The prescribed electrical work was carried out on a low-voltage installation. Under the regulation 59 of the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000.
- [16] AS/NZS 3000:2007 includes provisions that set out fundamental principles for the protection against the risk of electrical shock arising from direct or indirect electrical parts. Included, in clause 1.5.3.1 is the following:
- Protection shall be provided against shock arising from contact with past life than normal service (direct contact) will pass to become live under fault conditions (indirect contact).*
- Therefore, live parts must not be accessible and accessible conductive parts must not be live, neither under normal conditions nor under single fault conditions.*
- [17] In terms of protection against direct contact, clause 1.5.4.1 states:
- Protection shall be provided against dangers that may arise from contact with parts of the electrical installation that are live in normal service.*
- [18] The above provisions make it clear that protection from direct contact was required. The photographs above establish that access to live parts was possible through the open gaps. As such, without other protections in place, the switchboard did not meet the requirements of AS/NZS 3000:2007.
- [19] Clause 1.5.4.2 of AS/NZS 3000:2007 goes on to outline basic protection methods that can be used to prevent direct contact. They are insulation, barriers or enclosures, obstacles, and placing them out of reach. The live conductors shown in the photos above were not insulated, and the switchboard was within reach. The lid on the

switchboard would have met the requirements of a barrier if its removal required the use of a key or tool. As it did not, the switchboard did not have any of the basic protection methods in place, and it did not, therefore, meet the requirements of AS/NZS 3000:2007.

Serious harm, negligence or incompetence or contrary to an enactment or

- [20] The charges put before the Board were laid in the alternatives of negligently creating a risk of serious harm to any person or a risk of significant property damage under section 143(b)(ii) and, as alternatives, negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii).
- [21] There is a hierarchy to the disciplinary charges. 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. If that threshold is met, the Board then needs to consider whether a risk of serious harm or significant property damage was created.
- [22] Contrary to an enactment is a form of strict liability offence in that all that has to 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>. As noted above, it has been established that the installation was left in a state that was not in accordance with AS/NZS 3000, and, as such, the Respondent's PEW had been completed in a manner that was contrary to an enactment.
- [23] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. 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 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

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

<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)

*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 an 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> which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. 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] 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.*

- [29] Finally, with respect to a risk of serious harm or significant property damage, serious harm is defined in section 2 of the Act. It means:
- death; or*
- injury that consists of or includes loss of consciousness; or*
- a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*
- [30] Significant property damage is not defined in the Act. Section 16(1)(b)(ii) of the Act, which relates to notification of accidents, also refers to serious harm and to property damage. In respect of damage, it requires notification where there is:

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<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

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



*damage to any place or part of a place that renders that place or that part of that place unusable for any purpose for which it was used or designed to be used before that accident.*

- [31] As section 16 refers to both serious harm and to damage, the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).
- [32] Actual serious harm or significant property damage need not occur. There need only be a risk that either might occur. The risk must be real in that there needs to be a material or substantial possibility, chance or likelihood that serious harm or significant property damage will occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful<sup>14</sup>.

### Consideration

- [33] The question for the Board is whether a finding beyond contrary to enactment is warranted.
- [34] In terms of a risk of serious harm, the Board does not consider that such a risk existed. The reasons are that the switchboard did have a lid, the Respondent had informed the owner of the premises of the risk, and there was limited or restricted public access to the switchboard.
- [35] Turning to negligence or incompetence, whilst the Respondent's conduct has fallen below what the Board considers to be an acceptable standard in that the Board would expect a competent electrical worker to have ensured that measures beyond those that the Respondent took were in place to prevent the risk of direct contact with live parts, the conduct did not reach the threshold, as outlined by the courts, for a disciplinary finding. In making that finding, the Board has taken into account that some limited measures to protect against direct contact were taken by the Respondent and that he had intended to return and rectify the issue but was prevented from doing so by a medical event.
- [36] For the above reasons, the Board's decision is that the appropriate finding is that the Respondent has carried out PEW in a manner that is contrary to an enactment.

### **Second Offence**

- [37] 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>15</sup>.
- [38] The returns referred to are issued under the Regulations. 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

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<sup>14</sup> Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

<sup>15</sup> Taylor Bros Ltd v Taylor Group Ltd [1988] 2 NZLR 1

connected to a power supply and is safe to use. There is also a requirement that 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.

- [39] The specific allegations were that the Respondent had certified non-compliant PEW as having been done lawfully and safely, when it was not. As the Board has made a finding that the PEW had been carried out in a manner that was contrary to an enactment, it follows that the Respondent's certification that the PEW had been done lawfully and safely was false or misleading.

### **Board's Decision**

- [40] The Board has decided that the Respondent **has** committed to disciplinary offences under sections 143(a)(ii) and 143(f) of the Act and should be disciplined.

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

- [41] 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.
- [42] The Respondent made submissions at the hearing as regards penalty, costs and publication.

### Penalty

- [43] 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>16</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>17</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>18</sup>
  - (b) deterring the Respondent and other Electrical Workers from similar offending;<sup>19</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>20</sup>
  - (d) penalising wrongdoing;<sup>21</sup> and

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<sup>16</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>17</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>18</sup> Section 3 Building Act

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>21</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

(e) rehabilitation (where appropriate).<sup>22</sup>

- [44] 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>23</sup> and applying the least restrictive penalty available for the particular offending.<sup>24</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>25</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>26</sup>
- [45] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>27</sup>
- [46] The conduct was at the lower end of the disciplinary scale, and the Board adopted a starting point of a modest fine. The Respondent has not previously appeared before the Board, and whilst he did defend this matter, the initial allegations and the evidence put forward may well have led the Respondent to believe that he was being pursued on different and more serious charges. As such, it is somewhat understandable that he defended the matter.
- [47] The Board also took into consideration the Respondent's current circumstances. His health is such that he cannot work, he is reliant on his spouse for income, and he and his wife are in constrained financial circumstances. The Respondent noted there is little prospect of him returning to work. In those circumstances, the Board did not consider that the fine would be appropriate and, on the basis of the mitigating factors present, a censure would suffice. A censure is a public expression of disapproval of conduct.

### Costs

- [48] 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.
- [49] 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>28</sup>

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<sup>22</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>23</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>24</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>26</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>27</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>28</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.

[50] In *Collie v Nursing Council of New Zealand*,<sup>29</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.*

[51] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>30</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.*

[52] 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 a simple defended hearing. Adjustments based on the High Court decisions above are then made.

[53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,125 toward the costs of and incidental to the matter. The Respondent should note that the amount is significantly less than 50% of actual costs incurred. Given the Respondent's current financial circumstances, he should note that he may apply to the Registrar for time to pay the costs order.

#### 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>31</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>29</sup> [2001] NZAR 74

<sup>30</sup> CIV-2011-485-000227 8 August 2011

<sup>31</sup> Refer sections 128 of the Act

- [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>32</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>33</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>34</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>35</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>36</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] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

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

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

**Penalty:** Pursuant to section 147M(1)(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 \$1,125 (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>32</sup> Section 14 of the Act

<sup>33</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>34</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>35</sup> *ibid*

<sup>36</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [61] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid costs that have been imposed on them. However, if an arrangement to pay the costs over time has been entered into, then relicensing will be considered.

### Right of Appeal

- [62] 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):*

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- (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.