

## **Before the Electrical Workers Registration Board**

CE No. 22822

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Phillip Wong licensed electrical worker (EW 150028) (the Respondent)

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### **Decision of the Board in Respect of the Conduct of an Electrical Worker Under s147G and s147M of the Electricity Act 1992**

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Hearing Location:

Wellington

Hearing Type:

In Person (Respondent attended remotely)

Hearing Date:

12 December 2024

Decision Date:

12 December 2024

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr T Wiseman, Registered Inspector

Ms S Cameron, Registered Electrician

Mr J Hutton, Registered Inspector

Ms L Wright, Barrister

Mr T Tran, Barrister

Appearances: Ms Siania for the Investigator, Mr Wong (self-represented).

**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 pursuant to s143(f) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent was charged with;
- a. Two charges of providing a false or misleading return, being an offence under s 143 (f) of the Act.
- [2] The Respondent accepted that he had committed the disciplinary offences as charged. The Board determined that the Respondent be censured for the offending pursuant to s147M(1)(g) of the Act. The Respondent was also ordered to pay costs of \$250. A record of the 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 s147G(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.
- [5] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his 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 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 s143 of the Act. It does not have any jurisdiction over contractual matters.

### **Procedure**

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.
- [10] The Board was assisted by oral submissions from Ms Siania and Mr Wong.

### **Evidence**

- [11] 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 s147W 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.*

- [12] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

### **Board’s Decision**

- [13] The Board has decided that the Respondent failed to comply with s143(f) of the Act in that between 1 October and 20 November 2023, the Respondent failed to provide an electrical safety certificate (ESC) for the installation and connection of the switchboard.

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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

- [14] The Respondent also failed to provide a certificate of compliance (COC) following the completion of the work, being the removal of the switchboard, within the required 20 working days.
- [15] The Notice of Proceeding incorrectly records that the work was undertaken on 18 December 2023. This is a typographical error. The Notice of Proceeding is amended by consent to record that the offences occurred between 1 October 2023 and 20 November 2023.
- [16] The Respondent has explained that the work was not completed due to a commercial dispute but accepts that the electrical safety certificate and certificate of compliance should have been completed and provided.

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

- [17] Having found that one or more of the grounds in section 143 applies the Board must, under s147M of the Act, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [18] The Respondent was invited to make submissions at the hearing as regards penalty, costs and publication.
- [19] The Respondent accepted that he had been at fault and should have provided the returns. The Respondent advised the Board that he had not been paid for this work and had incurred costs of approximately \$11,000.
- [20] Counsel for the investigator submitted that there were mitigating factors present including the financial impact of the offending on the Respondent and his co-operation with the investigation.

#### Penalty

- [21] The Board has the discretion to impose a range of penalties, which are set out in s147M 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>5</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>6</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>7</sup>
  - (b) deterring the Respondent and other Electrical Workers from similar offending;<sup>8</sup>

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<sup>5</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>6</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>7</sup> Section 1 A Electricity Act 1992

<sup>8</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- (c) setting and enforcing a high standard of conduct for the industry;<sup>9</sup>
- (d) penalising wrongdoing;<sup>10</sup> and
- (e) rehabilitation (where appropriate).<sup>11</sup>

- [22] Overall, the Board should assess the conduct against the range of penalty options available in s147M of the Act, reserving the maximum penalty for the worst cases<sup>12</sup> and applying the least restrictive penalty available for the particular offending.<sup>13</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>14</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>15</sup>
- [23] 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>16</sup> But for the mitigating factors present, the starting point for this offending, would have been a fine.
- [24] The Board's penalty decision is that the Respondent will be censured pursuant to s 147M(1)(g) of the Act. In reaching this decision the Board took into account the Respondent's guilty plea, previous good character, remorse and co-operation as well as the financial impact on the Respondent as a result of this incident.

### Costs

- [25] Under s147N 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.
- [26] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case.<sup>17</sup>
- [27] In *Collie v Nursing Council of New Zealand*,<sup>18</sup> where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

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<sup>9</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>10</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>11</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>12</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>13</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

<sup>16</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>17</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

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

*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.*

[28] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>19</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.*

[29] 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.

[30] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250.00 toward the costs of and incidental to the matter. In setting the amount of costs the Board considered that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

### Publication

[31] 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>20</sup>. The Board can, pursuant to s147Z of the Act, also order publication over and above the public register notation. Under s147Z 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.

[32] 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.

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<sup>19</sup> CIV-2011-485-000227 8 August 2011

<sup>20</sup> Refer sections 128 of the Act

- [33] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>21</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>22</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>23</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>24</sup>.
- [34] 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>25</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.
- [35] 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. The Registrar will 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.
- [36] 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**

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

**Penalty:** Pursuant to s147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

**Costs:** Pursuant to s147N of the Act, the Respondent is ordered to pay costs of \$250.00 (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 s128(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 lessons. The Respondent will not be named in the publication.

In terms of s147Z of the Act, there will not be action taken to publicly notify the Board's action.

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<sup>21</sup> Section 14 of the Act

<sup>22</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>23</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>24</sup> *ibid*

<sup>25</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [38] 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**

- [39] The right to appeal Board decisions is provided for in s147ZA and s147ZB of the Act<sup>i</sup>.

Signed and dated this day of the 15<sup>th</sup> January 2025



R Keys  
Presiding Member

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#### **<sup>i</sup> 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.