Plumbers, Gasfitters and Drainlayers Board

CANNELL v LEE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/13)

Summary

Marcus Cameron Lee, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, was charged with employing, directing, or permitting unauthorised persons to carry out sanitary plumbing. The charge related to sanitary plumbing work carried out at a residential address in Masterton.

Mr Lee pleaded guilty to the charge.

The Board considered Mr Lee's conduct was low to moderate in terms of seriousness. The Board accepted there were no aggravating factors in the case and that Mr Lee was entitled to credit for pleading guilty, being cooperative throughout the process, making changes to his practices, and being remorseful.

The Board ordered Mr Lee to pay a fine of $2,600 and pay $3,800 towards costs.

IN THE MATTER OF a disciplinary hearing pursuant to section 101 of the Plumbers, Gasfitters, and Drainlayers Act 2006

BETWEEN **MELISSA CANNELL**

Investigator

AND **MARCUS CAMERON LEE**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Masterton

Registered Person

DECISION OF THE BOARD
1 NOVEMBER 2023

Hearing:	Held in Wellington on 6 September 2023
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Selwyn Hikuroa, Sue Simons
Counsel:	Elena Mok for the investigator Mr Lee was self-represented
Legal advisor:	Tim Bain

Disciplinary hearing

1. On 6 September 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by [redacted] against Marcus Cameron Lee, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to sanitary plumbing work carried out 7 Brian Lochore Avenue, Masterton.

Guilty plea

2. On 6 June 2023, Mr Lee pleaded guilty to a charge of employing, directing, or permitting unauthorised persons to carry out sanitary plumbing and signed an agreed summary of facts the main points of which were:

    a. On 7 July 2022, Melissa Cannell and Michael Pidgeon, investigators for the Board, carried out a random site visit at 7 Brian Lochore Avenue, Masterton (**property**).

    b. At the property, the investigators found two people carrying out sanitary plumbing work.

    c. One of the people told Mr Pidgeon that he was welding pipes with the other person. The second person told Ms Cannell he had installed the shower mixer, pipes for the tap, and had set up the toilet in the bathroom at the property.

    d. Both of the people had previously held a limited certificates as a trainee plumbers and the second person had also previously held limited certificates as a trainee gasfitter and drainlayer. Neither man was authorised to do or assist in doing sanitary plumbing work on 7 July 2022. Both men were employed by Pure Plumbing and Gas Limited.

    e. Mr Lee is the sole director of Pure Plumbing and Gas Limited. When spoken to by Mr Pidgeon from the property, Mr Lee stated that the first person was only labouring as he had recently suffered a concussion for which he was receiving ACC payments.

    f. With regard to the second person, Mr Lee said that he thought he was licensed.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Lee had committed a disciplinary offence under section 89(g) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Ms Mok submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and maintain proper industry standards. She submitted that the principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, the importance of treating practitioners consistently where

possible, and the need to impose the least severe penalty appropriate to ensure the principles and purposes of the disciplinary proceeding was met.

5. While accepting that all cases turn on their own facts, Ms Mok referred the Board to its previous decisions in the cases of *Radovich v Foster* (2020/15), *Radovich v Barnett* (2021/26) and *Pidgeon v McDonald* (2022/20). All three cases involved certifying plumbers employing, directing, or permitting unauthorised people to carry out sanitary plumbing work. Starting points for the fines imposed in the cases ranged from $4,000 to $3,000.

6. Ms Mok submitted that the most comparable case with Mr Lee's was the *Barnett* case where the starting point for the fine was $3,500. Ms Mok submitted that both cases involved sanitary plumbing work at a single address undertaken by two employees, both of whom were unauthorised. There was no suggestion of any defects or faults with the work in either case and, as in the *Barnett* case, Mr Lee was aware that his employee with the injury was not authorised to carry out sanitary plumbing work. Ms Mok did accept that Mr Lee mistakenly believed that one of his employee's authorisations was active.

7. Ms Mok submitted that Mr Lee's conduct was low to moderate in terms of seriousness. She submitted that Mr Lee could not rely on an unblemished disciplinary history as he had been found guilty of carrying out gasfitting in breach of an enactment in 2018. However, Ms Mok acknowledged that Mr Lee's current conduct was not similar to his previous offending. Ms Mok also acknowledged that Mr Lee was entitled to credit for his guilty plea and cooperation throughout the proceedings.

8. Having regard to the nature and gravity of Mr Lee's conduct and the principles and purposes of disciplinary proceedings, Ms Mok submitted that a fine was the appropriate penalty. She submitted that the starting point for the fine should be in the $3,000 to $3,500 range.

9. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Lee to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Ms Mok submitted that the starting point for an order of costs was typically half of the actual costs, but this was a matter for the Board to determine in its discretion. Ms Mok submitted that the Board may consider a reduction from the starting point in recognition of Mr Lee's guilty plea and cooperation.

10. Mr Lee submitted that his offending had been the result of an unintentional oversight and that a small fine was the appropriate penalty. Mr Lee submitted that one employee was not authorised due to the technicality of not providing his address and the other employee was coming back from an injury and was still being evaluated in terms of his work capability.

11. Mr Lee stated the employee who had been injured had only been working four hours a day for a few weeks and was still being evaluated following his head injury. Mr Lee stated he was unsure if they would be able to work fulltime and that was why he was not licensed. Mr Lee submitted that the Board required a full year's payment for a licence, and he was not prepared to do that if the employee could not return to full-time work.

12. With regard to any changes he may have made to his practices to avoid the situation occurring again, Mr Lee stated that he had introduced checklists for all employees and apprentices to make sure they were appropriately supervised while working. He had also introduced reminders and alerts into his calendar for annual relicensing for new and existing employees.

13. Mr Lee stated that his business had less work coming in as a result of the downturn in the industry and this had been going on for some months. Mr Lee stated he had had to make his employees redundant as a result and was now operating as a sole practitioner.

14. Mr Lee asked the Board to grant him name suppression in this case. He stated that his offending had been unintentional, and he had not set out to deceive the Board and deliberately have unauthorised employees. Mr Lee provided the Board with financial statements in support of his financial position.

15. Mr Lee stated how stressful he had found the investigation and hearing and how long the process had taken. He described experiencing sleepless nights and debilitating migraines which his doctor had attributed to stress.

16. In reply to Mr Lee's submissions, Ms Mok submitted that while Mr Lee's financial statements showed that his business had experienced a downturn, they were not sufficient to support his claim that he was not in a position to pay a fine of the level sought or costs. She submitted that if the Board had regard to the statements to make a reduction to any fine or costs, that reduction should be modest.

17. With regard to Mr Lee's application for name suppression, Ms Mok referred the Board to the principle of open justice contained in section 113 of the Act. While recognising that the Board did have the power under section 113 to make non-publication orders if it was proper to do so having regard to the interests of any person and to the public interest, Ms Mok submitted that the default position was one of open justice and the threshold for suppression was high.

18. Ms Mok submitted that the grounds put forward by Mr Lee for seeking name suppression were insufficient to displace the principle of open justice and the investigator opposed name suppression in this case.

Decision on penalty

19. When it comes to imposing penalties in disciplinary cases, the Board's primary considerations are the need to protect the health and safety of the public and maintain industry standards. Any disciplinary penalty should aim to ensure the competency of a practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

20. The Board considered Mr Lee's conduct in this case was low to moderate in terms of seriousness. The Board considered that Mr Lee had made a conscious decision not to relicense the employee with an injury and so could not claim that his unauthorised status was unintentional. Mr Lee also had responsibility for ensuring that his other employee, as his apprentice, was authorised before directing him to carry out work.

21. The Board considered there were no aggravating factors personal to Mr Lee and that his early guilty plea and cooperation were mitigating factors in his favour. The Board also accepted that Mr Lee had made changes to his practices to ensure the offending would not recur and was remorseful.

22. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $3,250. Recognising the mitigating factors, the Board reduced the fine to $2,600.

Costs

23. Section 107 of the Act provides that, in addition to any penalty imposed, the Board may order a registered person to pay a reasonable sum towards the costs and expenses incidental to the investigation of the complaint, prosecution, and hearing. The Board was provided with a schedule of estimated costs for the investigations, prosecution and hearing amounting to $9,570.15.

24. The Board accepted that Mr Lee's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $3,800 towards costs which was around 40% of the total costs.

Name suppression

25. The Board did not consider that Mr Lee's personal interests in this case outweighed the public interest in open justice and his application for name suppression was declined.

Publication

26. In accordance with section 74(1)(c)(viii) of the Act, the Board orders that details of the action taken against Mr Lee in this matter be recorded on the register of

plumbers, gasfitters, and drainlayers. Any other publication of the Board's orders will be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

27. Being satisfied that Mr Lee was guilty of a disciplinary offence under section 89(g) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr Lee pays a fine of $2,600.

    b. Pursuant to section 107 of the Act, Mr Lee pays $3,800 towards the costs of the investigation, prosecution, and hearing.

Appeal

28. If Mr Lee is dissatisfied with the whole or any part of this decision or these orders, he may appeal to the District Court under section 162(1)(f) of the Act. Any appeal must be brought within 20 working days from the date on which this formal written decision is received, or within any other timeframe the District Court may allow.

Dated 1 November 2023

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board