Plumbers, Gasfitters and Drainlayers Board

CANNELL v KOVACS

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/15)

Summary

David Joseph Kovacs, Tradesman Plumber, Certifying Gasfitter, Tradesman Drainlayer, was charged with failing to comply with a term or condition of his registration or licence and engaging in improper conduct in performing gasfitting work. The charges related to gasfitting work carried out at 89 properties over a two-year period by people under Mr Kovacs' supervision.

Mr Kovacs pleaded guilty to the charge.

The Board considered Mr Kovacs' conduct was high in terms of seriousness and reflected a serious lack of understanding of his supervision and certification responsibilities. The Board accepted there were no aggravating factors in the case and that Mr Kovacs was entitled to credit for pleading guilty, being cooperative throughout the process, having no previous disciplinary history, making changes to his practices, and being remorseful.

The Board ordered the suspension of Mr Kovacs' certifying gasfitter registration and licence for nine months and ordered that he pay $5,800 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 **DAVID JOSEPH KOVACS**
Tradesman Plumber, Certifying Gasfitter, Tradesman Drainlayer, of Upper Hutt

Registered Person

DECISION OF THE BOARD
1 November 2023

Hearing:	Held in Wellington on the papers on 6 September 2023
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Selwyn Hikuroa, Sue Simons
Counsel:	Justine Sutton for the investigator Mr Kovacs 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 on the papers to consider a complaint by [redacted] against David Joseph Kovacs, Tradesman Plumber, Certifying Gasfitter, Tradesman Drainlayer. The complaint related to Mr Kovacs supervision and certification of gasfitting work.

Guilty plea

2. On 10 July 2023, Mr Kovacs pleaded guilty to charges of failing to comply with a term or condition of his registration or licence and engaging in improper conduct in performing gasfitting. Mr Kovacs agreed summary of facts the main points of which were:

    a. Mr Kovacs is a Tradesman Plumber, Certifying Gasfitter, and Tradesman Drainlayer.

    b. Mr Kovacs supervises three tradesmen gasfitters who work for a different company.

    c. Around March 2020 when New Zealand went into a nationwide lockdown for the COVID-19 virus, Mr Kovacs provided one of the tradesman gasfitters with a template gas certificate with his signature and details pre-entered. It was provided so that the gasfitters had access to a gas certificate signed by Mr Kovacs for any gasfitting work undertaken. This was because Mr Kovacs wanted to avoid contact with people because of the pandemic.

    d. On 10 March 2022, one of the tradesman gasfitters carried out gasfitting work at a property. The work involved installing, testing, and commissioning a gas heater and associated pipework and fittings. On the same day, a gas certificate was issued for the work. The certificate recorded that Mr Kovacs was the certifying gasfitter and the work had been carried out by the tradesman gasfitter under his supervision. The certificate had a photocopy of Mr Kovacs' signature on it and was undated.

    e. On 14 May 2022, the property owners submitted the gas certificate to the Council as part of an application for a certificate of code compliance for the property. The Council rejected the application stating that the gas certificate was not acceptable.

    f. One of the tradesman gasfitters contacted the Council asking why the certificate had been rejected. He admitted to the Council that the certificate was a blank certificate pre-signed by Mr Kovacs so they didn't have to go and see him after every single job.

g. The Council subsequently contacted the Board advising them of what the tradesman gasfitter had told them.

h. As the supervisor, under the Plumbers, Gasfitters, and Drainlayer (Gasfitting Registration and Licensing) Notice 2016, it was a term of Mr Kovacs' licence that he must ensure all persons under his supervision were adequately supervised when carrying out gasfitting work.

i. Mr Kovacs did not take any steps to ensure that the tradesman gasfitter who carried out the work was adequately supervised while working at the property. He did not personally visit the property to view the work or carry out any testing of the gasfitting work. Mr Kovacs relied on limited photographs that did not show the gasfitting work in detail and were not of a nature to allow Mr Kovacs to ensure the work was safe and compliant.

j. Between March 2020 and March 2022, Mr Kovacs engaged in improper conduct in performing gasfitting work by providing the tradesmen gasfitters with a pre-signed template gasfitting certificate for his use. This allowed them to complete the gasfitting certificate for work without Mr Kovacs first having taken steps to ensure the matters in the certificate were correct.

k. 91 gasfitting certificates were issued by the tradesmen gasfitters while they had the pre-signed template gasfitting certificate for gasfitting work done at 89 properties.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Kovacs had committed disciplinary offences under section 89(c) and 89(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Ms Sutton 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 were met.

5. Referring to the improper conduct charge against Mr Kovacs, Ms Sutton referred the Board to the decision of the High Court in *Walsh v Keenan* (DC Wellington CIV-2003-485-2770, 2 July 2004). In that case, the High Court considered an appeal against a conviction for improper or incompetent conduct under the equivalent provision in the Plumbers, Gasfitters, and Drainlayers Act 1976. Ronald Young J (as he was then) noted that the degree of impropriety required must be a serious level of impropriety.

Ms Sutton submitted that a starting point for any penalty for a conviction under section 89(i) would typically be suspension or cancellation.

6. Ms Sutton referred the Board to its previous decisions in cases where practitioners had been convicted of improper conduct, including *Wynard v Tahere* (10 December 2010)), *Thomas v Swaney* (2016/4), *Radovich v Li* (2020/14), and *Radovich v Tucker* (2022/13). In *Tahere*, Mr Tahere used unauthorised people and failed to supervise them on three separate occasions. Mr Tahere's registration and licence were restricted preventing him from supervising and he was censured and fined. In *Swaney*, Mr Swaney issued gas certificates when he was not a certifier and carried out negligent gasfitting, some of which had posed safety risks. Mr Swaney was fined $8,500 and ordered to complete a number of training courses. In *Li*, Mr Li assaulted a council employee in the course of an inspection of Mr Li's work. All three of Mr Li's licences were suspended for three months. Finally, in *Tucker*, Mr Tucker used unauthorised people to do plumbing and gasfitting and issued a producer statement in his supervisor's name without their knowledge. The Board adopted a starting point fine of $9,000 in the case.

7. In terms of the charge that Mr Kovacs failed to adequately supervise the tradesman gasfitter carrying out the work, Ms Sutton referred the Board to the cases of *Radovich v J* (2020/20) and *Radovich v Andersen* (2020/8). In *J*, the practitioner was fined $2,200 (from a starting point of $2,500) for failing to supervise trainees carrying out gasfitting work and relying on their test results for certification purposes. In *Andersen*, Mr Andersen was found guilty in a formal proof hearing of a sustained breach of his supervision responsibilities and allowing defective work to be carried out. Mr Andersen's licences were suspended for 12 months given this was not his first conviction for supervision failings.

8. Ms Sutton submitted that Mr Kovacs' conduct was on the serious end of the spectrum given he had failed in his obligations as both a certifier and a supervisor. She submitted that Mr Kovacs should have appreciated that he needed to take further steps to properly satisfy himself that the gasfitting work undertaken by the gasfitter was safe and compliant rather than simply relying on limited photographs they had taken of his work. Mr Kovacs should also have appreciated the importance of certifying gasfitting work. Ms Sutton submitted that certification was an important check and safeguard for property owners and other gasfitters and was not simply a tick-box exercise.

9. Ms Sutton submitted that other factors that contributed to making Mr Kovacs' offending serious were the number of properties where the pre-populated gas certificate had been used over a two-year period. She submitted there was a high level of risk in allowing others to fill in and use pre-signed gas certificates when they had not proven that they had the skills and experience to certify gasfitting work. Ms Sutton submitted that Mr Kovacs' conduct was also misleading in practice as he was not the person issuing the certificates despite his details being recorded on them.

10. Ms Sutton submitted that the investigator was not aware of any aggravating factors personal to Mr Kovacs and accepted that discounts were available to recognise his cooperation, guilty plea, and lack of previous disciplinary offending.

11. Having regard to the serious nature and gravity of Mr Kovacs' offending, Ms Sutton submitted that suspension of Mr Kovacs' gasfitting licence for a period in the vicinity of three months was the appropriate starting point for a penalty in this case. She submitted that there was a need to ensure the maintenance of industry standards in this case and to deter others from this kind of conduct. She submitted that the misleading aspect of Mr Kovacs' conduct in misrepresenting his involvement as a supervisor and pre-signing gas certificates also needed to be denounced. Finally, she submitted that Mr Kovacs had shown a high degree of unprofessionalism in his behaviour when he should have appreciated the importance of supervising and properly certifying gasfitting work.

12. Ms Sutton accepted that the mitigating factors in this case might result in a lesser penalty than suspension. She submitted that a fine together with restrictions on his ability to supervise and further training may be appropriate. Ms Sutton submitted that if the Board was to impose a fine, an appropriate starting point would be $8,000. She submitted a fine at this level would reflect the seriousness of Mr Kovacs' actions as well as ensuring the maintenance of proper industry standards through both general and specific deterrence.

13. Ms Sutton submitted that under section 107 of the Act, the Board could require Mr Kovacs to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Ms Sutton 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 Sutton submitted that the Board could consider a reduction from the starting point in recognition of Mr Kovacs' guilty plea and cooperation.

14. Mr Kovacs submitted that he wished to apologise for his actions and express how much he regretted them. He submitted that he also wished to explain the actions he had taken over the course of the investigation to ensure his behaviour would never be repeated. He accepted full responsibility for what he had done and understood that his actions could have caused health and safety issues for the public.

15. Mr Kovacs submitted that he realised that his attempts to help others in the industry gain qualifications and maintain their licences had put himself and others at risk. In order to comply with the regulatory requirements, Mr Kovacs submitted he had reduced the number of people he was supervising to a manageable level consisting of two tradesman and two apprentices. He submitted he had also implemented tighter supervision and auditing procedures based on the Board's supervision requirements. Finally, he had implemented a mentoring programme with businesses he works with to ensure he was carrying out his supervision responsibilities compliantly.

16. Mr Kovacs submitted that he realised the importance of his licence and was concerned at the impact on the people he supervised if his licence was suspended. He submitted a suspension would have consequences beyond punishing him.

17. Mr Kovacs referred to the cases relied on by the investigator in relation to the severity of his offending and submitted that most of the cases involved faulty workmanship or non-qualified people. Mr Kovacs submitted that were no reports of faulty workmanship in his case and this in some way vindicated his confidence in the abilities of the people he was supervising. However, Mr Kovacs accepted that this did not excuse his actions.

18. Mr Kovacs submitted that when he first provided the pre-signed template gas certificate to the gasfitters, he had done so as a protective measure to limit contact with others during the pandemic. He submitted that he had done so believing that was one of the aims of the Government at the time to help prevent the spread of Covid. However, he accepted that in doing so, he had become complacent by allowing the use of the form to continue. He submitted that by using the form to try and meet one aim, he had failed in other areas.

19. Mr Kovacs submitted that while the pre-signed certificate had been used for 91 installations, he had not turned a blind eye to his responsibilities. He stated that every job was discussed and he viewed every certificate and its contents before entering them on to the Electricity and Gas High-Risk Database. He submitted that the way the certificates were issued was not intended to deceive.

20. Mr Kovacs submitted that his guilty plea was reflective of his remorse and stated that he was willing to attend any appropriate training on supervision and meeting his administrative responsibilities relating to gasfitting that may be available. He submitted that he had not been able to find any such training up until that point in time.

21. Mr Kovacs stated that he operated a small business with his wife which employed a single apprentice. He stated he had recently lost the services of his apprentice for a period of nine months because he was required to undergo medical treatment. He submitted that this would affect his business financially but in fairness to his apprentice, he wished to keep the job open for him in the hope that his illness would go into remission.

22. Finally, Mr Kovacs asked the Board to show leniency in light of his apology and remorse at his actions, and taking into account his intentions and past history.

Decision on penalty

23. 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.

24. The Board considered Mr Kovacs' conduct was high in terms of seriousness and reflected a lack of understanding of his supervision and certification responsibilities which the Board found concerning. Mr Kovacs had issued the pre-signed gas certificate knowingly and with the intention that it would be used without his direct involvement. That certificate was used at a significant number of properties over an extended period of time and while there was no evidence that any of the work was defective, a sample of the gas certificates showed some were completed incorrectly.

25. The Board accepted that there were no aggravating factors in the case and Mr Kovacs' early guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. The Board also accepted that Mr Kovacs was remorseful and had made changes to his practices to ensure the offending would not be repeated.

26. The Board considered that a period of suspension of Mr Kovacs' certifying gasfitter registration and licence was appropriate given the seriousness of his conduct. The Board considered that the appropriate starting point was a 12-month suspension. Recognising that there were a number of mitigating factors in this case, the Board reduced the period to nine months.

27. Recognising that supervision was being covered in the Board's 2023 continuing professional development programme which Mr Kovacs would be required to complete in order to re-licence in 2024, the Board declined to order that Mr Kovacs undertake any additional training.

Costs

28. 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 $14,478.46.

29. The Board accepted that Mr Kovacs' guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $5,800 towards costs which was around 40% of the total costs.

Publication

30. In accordance with section 74(1)(c)(viii) of the Act, the Board orders that details of the action taken against Mr Kovacs 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

31. Being satisfied that Mr Kovacs was guilty of disciplinary offences under section 89(c) and 89(i) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(b) of the Act, Mr Kovacs' certifying gasfitter registration and licence be suspended for a period of nine months commencing on 15 November 2023.

    b. Pursuant to section 107 of the Act, Mr Kovacs pays $5,800 towards the costs of the investigation, prosecution, and hearing.

Appeal

32. If Mr Kovacs 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