Plumbers,
Gasfitters and
Drainlayers Board

RADOVICH v WILLIS

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/7)

Summary

Dane O'Dell Willis, Certifying Drainlayer, was charged with a representative count of employing, directing or permitting an unauthorised person to carry out drainlaying work at 55 properties in Canterbury.

Mr Willis pleaded guilty to the charge.

The Board considered Mr Willis' conduct was moderate in terms of seriousness, but at the lower end of moderate. The Board accepted there were no aggravating factors in the case and that Mr Willis was entitled to credit for pleading guilty, been cooperative throughout the process, having no previous disciplinary offending, taking proactive steps to ensure there would be no repeat of his conduct. Mr Willis was also remorseful.

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

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

BETWEEN **WAYNE RADOVICH**

Investigator

AND **DANE O'DELL WILLIS**
Certifying Drainlayer, of Rolleston

Registered Person

DECISION OF THE BOARD
21 September 2023

Hearing:	Held in Wellington on 14 June 2023
Members sitting:	Diana Kuhtz-Covich (Chair), Beth Healy, Martin de Gouw, Tofa Suafole Gush, Deborah Cranko
Counsel:	Elena Mok for the investigator Mr Willis was self-represented
Legal advisor:	Sally Carter

Disciplinary hearing

1. On 14 June 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing by AVL to consider a complaint by Julie Sharp against Dane Willis, Certifying Drainlayer. The complaint related to drainlaying work carried out by an employee of Mr Willis' at 55 different properties when he did not hold an authorisation to carry out drainlaying.

Guilty plea

2. On 16 May 2023, Mr Willis pleaded guilty to a representative charge of employing, directing or permitting an unauthorised person to do drainlaying and signed an agreed summary of facts. A copy of that summary of facts is attached to this decision.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Willis had committed a disciplinary offence under sections 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 other principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Ms Mok referred the Board to its previous decisions in the cases of *Radovich v Foster* (2020/15) and *Costelloe v Su* (2020/34). In the *Foster* case, Mr Foster pleaded guilty to a charge of employing, directing or permitting unauthorised people to do sanitary plumbing work at 28 properties. Both unauthorised people were registered but Mr Foster was aware they did not have current licences. The Board adopted a starting point for the fine in that case of $4,000. Mr Su pleaded guilty to employing an unauthorised person to do gasfitting. The person was a trainee whose limited certificate had expired. Again, the Board adopted a starting point for the fine in that case of $4,000.

6. Ms Mok submitted that Mr Willis' case was more serious than either the *Foster* or *Su* cases because of the number of properties the unauthorised person worked at and the length of time he was unauthorised. The employee had held a limited certificate as a trainee drainlayer in the past, but was not a registered practitioner as in the Foster case. While there were no known defects with the work, Mr Willis admitted that he knew the employee's paperwork was sitting on his desk to be processed so he knew he was not authorised.

7. Ms Mok submitted that Mr Willis' offending was moderately serious. As the employer, Mr Willis had the responsibility for ensuring all his employees were appropriately authorised before directing them to do drainlaying work. She submitted that a high starting point for a fine was appropriate in this case and proposed a fine in the vicinity of $5,000 - $6,000.

8. Ms Mok submitted the investigator was not aware of any aggravating factors in the case and Mr Willis was entitled to credit for his guilty plea, cooperation and lack of any previous disciplinary history.

9. Ms Mok submitted that Mr Willis should also have to make a contribution towards the costs of the investigation, prosecution and hearing. Recognising that the usual starting point for ordering costs was half of the actual costs, Ms Mok submitted the Board may wish to consider reducing this figure to recognise Mr Willis' guilty plea and cooperation.

10. In his submissions, Mr Willis described his background in drainlaying, stating that he had been doing this work for 18 years. During that time he stated he had overseen more than 25 drainlayers and apprentices and managed more than 5,000 drainlaying jobs. Mr Willis stated he had never had a complaint from the public and considered this was because he carried out top quality drainlaying work. Mr Willis said he was personally involved in every job from quoting, designing, and carrying out the work, to providing compliance documents, and ensuring the finished product was of a high quality. Mr Willis stated that he prided himself on holding both himself and everyone under his supervision to a very high standard.

11. Mr Willis described how he had been managing McKay Moore Drainage and Selwyn Drainage, the residential arm of McKay Moore Drainage, for over 12 years. He stated that he had approached the owners of the company a number of times to advise that his workload was overwhelming, and the job was too big for just one person. Despite asking for support on numerous occasions, Mr Willis stated he was never provided with any additional help.

12. Mr Willis stated that in September 2022 he had bought 25% of Selwyn Drainage and had since introduced multiple new systems and had also engaged a fulltime business partner and fulltime office manager to support him in his role. Mr Willis stated that he had also introduced new contracts for all staff that expressly required them to keep their licences up to date and valid.

13. Mr Willis accepted that he had directed Mr Smales to carry out drainlaying work when he was unauthorised but submitted that he hadn't done so maliciously. He stated that Mr Smales' tradesman registration application had been buried amongst other paperwork on his desk waiting for Mr Smales to pass the tradesman registration exam. He repeatedly told Mr Smales to book the exam but states he forgot to follow up given his heavy workload. Mr Willis submitted that Mr Smales

also failed to remind him at any point that he was unauthorised or take any steps himself to get his authorisation.

14. Mr Willis submitted that Mr Smales was not an inexperienced drainlayer and all the work he had done had been up to a high standard and had all been signed-off by the Council. Mr Smales had been working with multiple drainlaying companies since 2014 and held a National Certificate in Drainlaying at the time he carried out the work. Mr Willis submitted that Mr Smales' lack of a licence had been a mistake on his part, and he had since introduced multiple systems to ensure it would not happen again.

15. In relation to his personal circumstances, Mr Willis stated that two housing companies had gone under owing Selwyn Drainage a lot of money. In addition, several other companies had slowed down due to the difficult financial times. He submitted that this had had an impact of the company's ability to keep staff employed at a fair wage and was adding to the financial stress the new business was under.

16. Mr Willis stated that he had been cooperative with the investigation and had provided any information sought in a timely manner. Mr Willis submitted that the Board should take that into account when considering what fine to impose, along with his lack of previous disciplinary offending and the active steps he had taken introducing new systems, staff, and employment contracts to ensure the mistake with Mr Smales would not be repeated. Mr Willis requested that no fine be imposed in this case.

17. Mr Willis asked the Board to suppress his name in this case. He submitted that Mr Smales' work had been up to standard, as had the 5,000 drainlaying jobs he had been involved in. He submitted there was no risk to public health and safety at any time. Mr Willis submitted that the negative implications of having his name published would have a detrimental impact on his business and his professional reputation. He submitted that the circumstances with Mr Smales had been a one-off error at a time when he was managing many staff and was overwhelmed with work and the difficulties of running a business during a pandemic.

18. In response to Mr Willis' application for name suppression, Ms Mok submitted that the investigator opposed name suppression in this case. She submitted that Mr Willis' offending had been moderately serious as it had involved unauthorised drainlaying work at 55 properties over a nine-month period. She submitted that Mr Willis had not provided any evidence to support his claim that publication of his name would be detrimental to his business and his claim was therefore speculative. Ms Mok submitted that reputational harm was an ordinary consequence of disciplinary offending and did not provide a sufficient basis for departing from the usual position of open justice in the public interest.

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 Willis' conduct in this case was moderately serious. However, given Mr Willis had voluntarily provided the investigator with the information of the work Mr Smales had carried out while unauthorised, the Board considered Mr Willis' conduct was at the lower end of the moderately serious scale.

21. The Board accepted that there were no aggravating factors personal to Mr Willis in this case and that there were a number of mitigating factors in his favour. They included his early guilty plea, cooperation and acceptance of responsibility, and his lack of previous disciplinary offending. In addition, Mr Willis had proactively taken steps to ensure there would be no repeat of the mistake with Mr Smales' authorisation. Finally, the Board accepted that Mr Willis was remorseful.

22. The Board considered a fine was appropriate and determined that a starting point should be $4,000. Recognising the numerous mitigating factors, the Board reduced the fine to $2,800.

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 investigation, prosecution and hearing amounting to $7,118.20.

24. The Board accepted that Mr Willis' guilty plea had avoided the costs of a full hearing and he was entitled to recognition of this in terms of his contribution towards costs. The Board ordered Mr Willis to pay $2,800 which was around 40% of the total costs.

Name suppression

25. The Board accepted the investigator's submission that some reputational damage was a normal consequence of committing a disciplinary offence. While understanding of Mr Willis' concerns about the impact of publication on his reputation and business, the Board concluded that Mr Willis had not met the threshold to depart from the starting point of open justice. Mr Willis' application for name suppression was declined.

Publication

26. Any publication of the Board's decision will be made at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

27. Being satisfied that Mr Willis 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 Willis pays a fine of $2,800.

    b. Pursuant to section 107 of the Act, Mr Willis pays $2,800 towards the costs of the investigation, prosecution, and hearing.

Appeal

28. If Mr Willis 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 21 September 2023

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board

AGREED SUMMARY OF FACTS

In the matter of a disciplinary hearing in respect of DANE O'DELL WILLIS
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1 The registered person, Dane O'Dell Willis, is a registered and licensed certifying drainlayer (registration number [redacted]), based in Christchurch. He is one of two directors of Selwyn Drainage Limited.

2 At all relevant times, Mr Willis' company employed Cameron Smales to carry out drainlaying work. Mr Smales held a limited certificate as a trainee drainlayer between 15 September 2016 and 31 March 2021. Mr Willis was Mr Smales' supervisor for drainlaying work for part of this time. However, between 1 April 2021 and 24 October 2022, Mr Smales was not authorised to do drainlaying work.

3 Brian Ware is employed by Total Risk Management, and carries out compliance visits for the Plumbers, Gasfitters, and Drainlayers Board (**Board**).

4 On 25 October 2022, Julie Sharp, Operations Manager at the Board, made a written complaint to the Board about Mr Willis, specifically regarding Mr Smales carrying out drainlaying work at various sites and residential properties in the Christchurch region.

5 On 7 November 2022, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Wayne Radovich to investigate the complaint about Mr Willis.

FACTS OF THE CASE

6 On 12 October 2022, Mr Ware was completing compliance site visits in Christchurch on behalf of the Board. One of the sites Mr Ware visited was located on the corner of Moraine Street and Candlestick Drive, Lincoln. While Mr Ware was there, Mr Smales arrived at the site. Mr Ware checked Mr Smales' licence and discovered that Mr Smales had not been authorised to do drainlaying work since 1 April 2021. While Mr Smales had previously held limited certificate as a trainee drainlayer, this had expired on 31 March 2021.

7 Mr Radovich subsequently contacted Mr Willis regarding the fact that Mr Smales appeared to be carrying out drainlaying work while not authorised to do so.

8 On 19 October 2022, Mr Willis advised Mr Radovich that Mr Smales had completed drainlaying work at 55 sites and residential properties in the Christchurch region between February 2022 and October 2022. Specifically, Mr Smales had carried out drainlaying work at the following sites and residential properties:

Date	Address	Drainlaying work carried out by Mr Smales
February 2022	13 Owens Terrace, Upper Riccarton[1]	Laying sewer and stormwater drains
February 2022	43 Whitehorn Drive	Laying sewer and stormwater drains
February 2022	11 Silverstone Loop	Laying sewer and stormwater drains
March 2022	21 Dalys Road	Stormwater pipework to a soak hole
March 2022	Lot 67 Silverstone	Installing outfall strip to drain
March 2022	Lot 49 Kennedy's Landing	Laying sewer and stormwater drains
March 2022	Lot 4 Sandry Lane	Laying sewer and stormwater drains
March 2022	19 Silverstone Loop	Laying sewer and stormwater drains
March 2022	28 Collier Drive	Laying sewer and stormwater drains
March 2022	8 Silverstone Loop	Laying sewer and stormwater drains
March 2022	Lot 42 Selwyn Road	Laying sewer and stormwater drains
March 2022	Lot 13 Silverstone	Laying sewer and stormwater drains
April 2022	Lot 560 Rosemerryn	Installing a silt trap
April 2022	191 England Street	Decommissioning a drainage

1 Mr Willis provided this address as "13 Owens Drive". This address does not exist.

April 2022	16 Westburn Terrace	Alteration sewer system including the sub-soil drain
April 2022	8 Saker Place	Installing a silt trap
April 2022	Units 43 and 44 Woodcroft Way	Laying sewer and stormwater drains
May 2022	38 Poulter Road	Laying sewer and stormwater drains
May 2022	16 Cadogon Street, Sydenham[2]	Decommissioning a drain
May 2022	49 Conifer Court	Laying sewer and stormwater drains
May 2022	47 Oates Street	Laying sewer and stormwater drains
May 2022	48 Poulter Road	Laying sewer and stormwater drains
June 2022	Lot 719 Rosemerryn	Laying sewer and stormwater drains
June 2022	Lot 49 Kennedy's Landing	Installing a silt trap
June 2022	54 Fendalton Road	Laying drain pipe for connection to water closet
June 2022	187 Henrys Ford Road[3]	Laying sewer and stormwater drains
June 2022	55 Hauschilds Road	Laying sewer and stormwater drains
July 2022	Lot 786 Rosemerryn	Laying sewer and stormwater drains

2 Mr Willis provided this address as "16 Cadagon Street". This address does not exist.

3 Mr Willis provided this address as "187 Henry Ford Lance". This address does not exist.

July 2022	Lot 762 Rosemerryn	Laying sewer and stormwater drains
July 2022	Lot 764 Rosemerryn	Laying sewer and stormwater drains
July 2022	Lot 763 Rosemerryn	Laying sewer and stormwater drains
July 2022	Lot 762 Rosemerryn	Installing a silt trap
July 2022	12 Felthams Road	Laying sewer and stormwater drains
July 2022	Lot 63 Faringdon subdivision, Rolleston[4]	Laying sewer and stormwater drains
July 2022	Lot 49 Kennedy's Landing	Laying sewer and stormwater drains
August 2022	Lots 71 & 72 Woodcroft	Laying sewer and stormwater drains
August 2022	Lot 41 Prevelles	Installing a silt trap
August 2022	7 Colesbury Street, Bishopdale[5]	Laying drain pipe for connection to water closet
August 2022	Lot 1003 Meadowlands	Laying sewer and stormwater drains
August 2022	26 McVicar Drive	Laying sewer and stormwater drains
August 2022	6 Norris Drive	Laying sewer and stormwater drains
August 2022	71 & 74 Woodcroft	Laying sewer and stormwater drains

4 Mr Willis provided this address as "Lot 63 Farrington". This address does not exist.

5 Mr Willis provided this address as "7 Colesbury Ave". This address does not exist.

September 2022	Lot 15 Silverstone	Installing a silt trap
September 2022	Lot 19 Silverstone	Installing a silt trap
September 2022	10 Drylands Drive, Rolleston[6]	Laying sewer and stormwater drains
September 2022	17a Derret Place	Laying sewer and stormwater drains
September 2022	Lot 194 Faringdon subdivision, Rolleston[7]	Laying sewer and stormwater drains
September 2022	48 Nethercote Way	Laying sewer and stormwater drains
October 2022	Lot 22 Silverstone	Installing a silt trap
October 2022	Lot 24 Silverstone	Installing a silt trap
October 2022	Lot 87 Silverstone	Laying sewer and stormwater drains
October 2022	28 Gemstone Place	Laying sewer and stormwater drains

9 On 25 October 2022, Ms Sharp made a written complaint to the Board about Mr Willis.

EMPLOYING, DIRECTING, OR PERMITTING UNAUTHORISED PERSON TO DO DRAINLAYING WORK (REPRESENTATIVE)

10 Mr Willis employed, directed, or permitted an unauthorised person, namely Mr Smales, to do drainlaying work for his company between February 2022 and October 2022 at 55 properties in the Christchurch region. As referred to above, Mr Smales was not authorised to do drainlaying work throughout this period, his limited certificate as a trainee drainlayer having previously expired.

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6 Mr Willis provided this address as "10 Drylands". This address does not exist.

7 Mr Willis provided this address as "Lot 194 Farrington". This address does not exist.

MR WILLIS' COMMENTS

11 Mr Willis provided the addresses and details of the drainlaying work Mr Smales had carried out, as outlined in the table above. Mr Willis stated that he had checked, provided guidance, signed off on and taken full responsibility for the workmanship of each job, as this had occurred under Mr Willis' employment and supervision.

12 Mr Willis stated that Mr Smales' licence had been overlooked and the paperwork was sitting in Mr Willis' office.

Date: 16/5/23

[redacted]

Dane Willis
Registered person

[redacted]

Abigail Stuart
Counsel for the investigator