Plumbers, Gasfitters and Drainlayers Board

CANNELL v STEWART

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/15)

Summary

Daniel Stewart, Certifying Plumber, Tradesman Gasfitter, was charged with carrying out unlicensed sanitary plumbing and gasfitting, negligent or incompetent gasfitting, and improper conduct. The charges related to the installation of sanitary and gas appliances and associated pipework in a restaurant in Auckland/Tāmaki Makaurau.

Mr Stewart pleaded guilty to the charge.

The Board considered Mr Stewart's offending was highly serious. He had known he was not licensed to do plumbing or gasfitting and had not held a gasfitting licence for an extended period of time. There were defects with the gasfitting work and Mr Stewart issued a gas certificate knowing he could not do so as a tradesman gasfitter. The Board found there were no aggravating factors in the case and Mr Stewart was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary offending.

The Board ordered Mr Stewart's gasfitting registration be suspended until he completed a competence programme, and he was fined $2,250 and ordered to pay $6,100 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 **DANIEL EDWARD STEWART**
Certifying Plumber, Tradesman Gasfitter, of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
16 August 2024

Hearing:	Held via audiovisual link on 24 July 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Martin de Gouw, Deborah Cranko, James Smith, Beth Healy
Counsel:	Elena Mok for the investigator Mr Stewart was self-represented
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 24 July 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing via audio visual link to consider a complaint by Pramendra Kumar against Daniel Stewart, Certifying Plumber, Tradesman Gasfitter. The complaint related to gasfitting work in commercial premises in Auckland/Tamaki Mākaurau.

Guilty plea

2. On 30 May 2024, Mr Stewart pleaded guilty to charges of carrying out sanitary plumbing and gasfitting in a manner contrary to an enactment, negligent or incompetent gasfitting, and improper conduct in relation to gasfitting. Mr Stewart also signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Stewart is a Certifying Plumber and Tradesman Gasfitter. He does not hold any current practising licences.

    b. Between August and September 2022, Mr Stewart carried out sanitary plumbing and gasfitting work at a restaurant located in Henderson, Auckland. The work involved installing a vanity, cleaner's sink, gas hot water heater, wok, and all associated pipework.

    c. Under sections 8 and 9 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**), only a person who is authorised under the Act can carry out sanitary plumbing or gasfitting. Being a registered practitioner, Mr Stewart required current practising licences in plumbing and gasfitting which he did not have at the time he carried out the work. His plumbing licence had expired on 31 March 2021 and he had not held a gasfitting licence since 1996. By carrying out the work without licences, Mr Stewart breached the Act.

    d. After completing the work for Mr Kumar, Mr Stewart provided him with a producer statement, receipt, and gas certificate. The gas certificate certified that the work was safe and compliant. Only a certifying gasfitter can issue a gas certificate and Mr Stewart was a tradesman gasfitter. In addition, the gas certificate contained several errors.

    e. In November 2022, the council advised Mr Kumar that Mr Stewart was not licensed and he would have to re-submit the producer statement and gas certificate in order to obtain a code compliance certificate. Mr Kumar engaged other certifying practitioners to produce the necessary documentation.

    f. In the course of issuing a new gas certificate, the following issues were identified with the gasfitting work:

        i. The above ground consumer piping was not made readily identifiable as consumer piping contrary to clause 5.1.12.1 of AS/NZS 5601.1:2013 and clause G10.3.4 of the New Zealand Building Code (**Code**)

ii. there was no condensate trap installed on the regulator contrary to clause G10.3.2 of the Code.

g. It cost Mr Kumar $6,000 in addition to the $4,500 he had paid to Mr Stewart to obtain the necessary documentation and have the gasfitting work remediated. In addition, the delay in obtaining a code compliance certificate prevented him from operating his business which also impacted him financially.

h. Mr Stewart confirmed he had completed the work at Mr Kumar's restaurant and accepted that he had not been licensed at the time he completed the work.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Stewart had committed disciplinary offences under sections 89(a)(ii), 89(a)(i), and 89(i) 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 to 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. Ms Mok submitted that Mr Stewart's offending was serious. She submitted that Mr Stewart was an experienced plumber and gasfitter who should have known of the need to be authorised in order to do this work. In terms of the gasfitting, Ms Mok submitted that he had not been authorised for decades which significantly increased the risk of him carrying out defective work. He had also engaged in improper conduct by issuing a gas certified when he was not qualified to do so. Finally, there were defects with the gasfitting work including errors with the certificate. She submitted that, viewed in totality, this made Mr Stewart's conduct serious.

6. Ms Mok submitted that a short period of suspension of three to six months was warranted in the case, possibly combined with a moderate fine. She submitted that a period of suspension had generally been imposed by the Board in previous cases where a practitioner had improperly issued a gas certificate or producer statement. She submitted that gas certificates were important legal documents that were relied on by consumers to know their installation was safe and compliant. For Mr Stewart to issue a gas certificate when he was not authorised to do gasfitting and not appropriately qualified to issue such a certificate was highly improper conduct that ought to be met by a short period of suspension.

7. Ms Mok referred the Board to its previous decisions in the cases of *Pidgeon v Browne* (2023/14), *Pidgeon v J McDonald* (2022/21), *Cannell v Dunlop* (2024/4), and *Radovich v Wilson* (2022/17).

8. In *Browne*, Mr Browne pleaded guilty to negligent or incompetent gasfitting and improper conduct in relation to the installation of a non-room-sealing instantaneous gas water heater in a bathroom. The installation risked producing carbon monoxide and posed a danger to the occupants of the property. In addition, Mr Browne forged his supervisor's signature on a gas certificate which, amongst other errors, certified that the installation was safe and compliant. The Board considered Mr Browne's conduct was highly serious and suspended his gasfitting registration for six months and fined him $4,000. Ms Mok submitted that Mr Stewart's offending was less serious than Mr Browne's as the defects with the work were less serious and he had not dishonestly used another practitioner's details on the certificate. However, Mr Stewart faced more charges than Mr Browne, had carried out two forms of restricted work when not authorised and, by using his name on the certificate, had given the impression he had authority to certify the work.

9. In *J McDonald*, Mr McDonald was found guilty of two charges of unauthorised work at two different properties and one charge of improper conduct for issuing a producer statement despite not being a certifying drainlayer or having a licence authorising him to do drainlaying. Recognising the importance of producer statements as documents relied on by building consent authorities to certify that building work is safe and compliant, the Board suspended Mr McDonald's drainlaying registration until he had completed a course of training. Ms Mok submitted that Mr Stewart's offending was more serious than Mr McDonald's as it involved two forms of unauthorised work as well as defective gasfitting work. Ms Mok submitted that given the length of time since Mr Stewart had last held a gasfitting licence, suspension until completion of training may not serve any purpose and a finite period of suspension may be more appropriate.

10. In *Dunlop*, Mr Dunlop was found guilty of carrying out gasfitting and drainlaying while unauthorised and issuing false or misleading gas certificates. The gasfitting work was defective and because Mr Dunlop did not hold a current gasfitting licence, he could not issue certificates for the work. The Board considered Mr Dunlop's offending was moderately serious and adopted a starting point for the fine in his case of $5,000. He was also ordered to complete a gasfitting refresher course in order to renew his licence. Ms Mok submitted that Mr Stewart's offending was more serious than Mr Dunlop's principally because he was not qualified to issue a gas certificate whereas Mr Dunlop has been qualified but had not held a current licence. Mr Stewart had also not held a gasfitting licence for an extended period of time increasing the risks associated with him doing this work.

11. Finally, in *Wilson*, Mr Wilson was found guilty of carrying out sanitary plumbing without a licence. It was his second conviction for unlicensed plumbing in four years. The Board considered his offending was low to moderate in terms of seriousness and he was fined $2,500. Ms Mok submitted that Mr Stewart's offending was significantly more serious because of the improper conduct and it involved gasfitting as well as plumbing.

12. Ms Mok submitted that the investigator was not aware of any aggravating factors in Mr Stewart's case. She also acknowledged that he had pleaded guilty and cooperated with the proceedings, and had no previous disciplinary history.

13. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Stewart to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the costs and she acknowledged that Mr Stewart may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

14. In his submissions on penalty, Mr Stewart advised that he had thought he had a plumbing licence at the relevant time, particularly when he signed the producer statement he provided to Mr Kumar.

15. In relation to the defects with the work, he submitted they were not dangerous in any way. He stated he remembered putting in clipping and thinks the customer must have removed it sometime afterwards.

16. In terms of his personal circumstances, Mr Stewart told the Board he was not working as a plumber or gasfitter at the present time and was labouring for a builder. He described his financial circumstances, advising the Board how much money he was earning from his work and some of the financial commitments he had. He stated that he wanted to get this matter sorted out as he wanted to get his plumbing licence so he could start doing plumbing again mostly in new builds. He stated he did not intend to do gasfitting again.

17. In relation to the work for Mr Kumar, Mr Stewart submitted that Mr Kumar was not concerned that he was not licensed. He also stated there were other people involved with the work: a couple of plumbers but he did not know their names. He stated he knew he could not issue a gas certificate for the work but was pressured to do so by the client as he wanted to get the restaurant opened. Mr Stewart submitted that he signed the certificate to satisfy the client.

18. In response to questions from the Board, Mr Stewart stated he did not consider any other options for getting the work he had done certified. He also admitted that he had done bits and pieces of gasfitting work over the years. In terms of what he had learnt as a result of the investigation and hearing, Mr Stewart said he had learnt that he needed to do his continuing professional development and pay for a new plumbing licence.

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. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Stewart's offending was highly serious. The Board considered that Mr Stewart had known what he was doing when he carried out the work without current licences and had known he could not issue a gas certificate as a tradesman gasfitter. And while the defects with the gasfitting work in this case had not been serious, given it has been 28 years since Mr Stewart had last been licensed the Board could not be confident about his gasfitting knowledge and skills. This was particularly concerning because of the potential risk this posed to the public.

21. The Board found there were no aggravating factors in the case and Mr Stewart's guilty plea and cooperation, and lack of previous disciplinary offending were mitigating factors in his favour.

22. Given its concern about Mr Stewart carrying out any further gasfitting work, the Board determined that his gasfitting registration should be suspended until he completed an appropriate competence programme to assess his gasfitting knowledge and skills and ensure he was safe to practice. To recognise that Mr Stewart had carried out sanitary plumbing without a current licence, the Board determined that he should also pay a fine. The Board adopted a starting point for the fine of $3,000 but reduced this to $2,250 to recognise the mitigating factors in his favour.

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 $15,427.70.

24. The Board accepted that Mr Stewart's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $6,100 towards costs which was around 40% of the total costs.

Publication

25. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Stewart should be recorded on the register of plumbers, gasfitters, and drainlayers in the usual way.

26. Any other publication of the Board's orders in this case would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers. However, the Board did request that an account of this case be reported in Info Brief as a learning for other

practitioners of the importance of keeping their knowledge, skills, and licences current if they were going to practice.

Board orders

27. Being satisfied that Mr Stewart was guilty of disciplinary offences under sections 89(a)(ii), 89(a)(i), and 89(i) of the Act, the Board made the following orders:

    a. Pursuant to sections 106(1)(b)(ii) and 106(2)(b), Mr Stewart's gasfitting registration is suspended from 23 August 2024 until he completes a competence programme.

    b. Pursuant to section 106(1)(f) of the Act, Mr Stewart pay a fine of $2,250.

    c. Pursuant to section 107 of the Act, Mr Stewart pay $6,100 towards the costs of the investigation, prosecution, and hearing.

    d. Pursuant to section 74(1)(c)(viii) of the Act, details of the Board's orders in respect of Mr Stewart be published on the register.

Appeal

28. If Mr Stewart 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 16 August 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board