Plumbers,
Gasfitters and
Drainlayers Board

RADOVICH v LOVELL

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/12)

Summary

Dale Lovell, Certifying Plumber, Certifying Gasfitter, was charged with causing gasfitting to be carried out in a negligent or incompetent manner and failing to comply with a term or condition of his licence in relation to supervision. The charges related to the installation of a gas water heater carried out by Mr Lovell's supervisee at a property in Auckland/Tāmaki Makaurau.

Mr Lovell pleaded guilty to the charges.

The Board considered Mr Lovell's offending was moderately serious but at the higher end of that scale as he had allowed an unqualified person to undertake gasfitting without active supervision, including working on live gas. Mr Lovell had also certified the installation without personally inspecting it or carrying out any testing. The defects with the installation posed a serious risk of harm. The Board found there were no aggravating factors in the case and Mr Lovell was entitled to credit for his guilty plea, cooperation, and lack of any previous disciplinary offending. Mr Lovell had also remediated the work and re-certified the installation.

The Board ordered Mr Lovell to pay a fine of $3,250 and pay $4,200 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 **DALE LOVELL**
Certifying Plumber, Certifying Gasfitter, of Auckland/Tāmaki Makaurau

Registered Person

DECISION OF THE BOARD
30 JULY 2024

Hearing:	Held on the papers on 12 June 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, Ming-chun Wu, Tofa Suafole Gush, Selwyn Hikuroa
Counsel:	Keir Robinson for the investigator Joshua Pietras for Mr Lovell
Legal advisor:	Richard May

Disciplinary hearing

1. On 12 June 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Brooke Schmalkuchen against Dale Lovell, Certifying Plumber, Certifying Gasfitter. The complaint related to gasfitting work carried out by Mr Lovell's supervisee at a property in Auckland/Tāmaki Makaurau.

Guilty plea

2. On 19 April 2024, Mr Lovell pleaded guilty to charges of causing gasfitting to be carried out in a negligent or incompetent manner and breaching a term or condition of his licence and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Lovell is a registered and licensed Certifying Plumber and Certifying Gasfitter. Mr Lovell is the director of a plumbing company.

    b. In February 2022, Mr Lovell's company was engaged to carry out gasfitting work at a property in Massey, Auckland. The work was carried out by an employee of the company who was authorised to carry out sanitary plumbing and gasfitting under exemptions under the supervision of Mr Lovell. The supervisee installed a gas water heater, auto-changeover regulator, and associated pipework and connected the installation to the gas supply. This meant he had worked on live gas. Mr Lovell did not visit the property or personally inspect the work carried out by his supervisee.

    c. On 18 February 2022, Mr Lovell issued a Gas Safety Certificate and Certificate of Compliance (**Certificate**) for the installation. Mr Lovell relied on the job notes written by the supervisee to issue the Certificate. In the Certificate, Mr Lovell certified that the installation was safe to use.

    d. In October 2022, Ms Schmalkuchen, a Tradesman Plumber and Certifying Gasfitter, attended the property to undertake gasfitting work. While there, Ms Schmalkuchen identified a number of issues with the gasfitting work done by the Mr Lovell's supervisee and subsequently made a complaint to the Board. She also advised the property owner to contact Mr Lovell's company to rectify the work.

    e. In June 2023, Mr Lovell arranged for remedial work to be carried out on the installation and he subsequently issued a new Certificate.

    f. A technical advisor to the Board assessed the work that had been carried out by Mr Lovell's supervisee and identified the following issues:

i. The supply pressure to the gas water heater was inadequate, contrary to clause 5.2.5 of AS/NZS 5601.1:2013 (**Standard**).

ii. There were insufficient clearances around the flue terminal, contrary to clause 6.9.3 and Figure 6.2 of the Standard.

iii. The size of the gas cylinders was inadequate to supply the system, contrary to clause 2.4.2 and Figure J8 of the Standard. In addition, the placement of the auto changeover regulator meant that the correct sized cylinders could not be installed.

g. The Board's technical advisor assessed the risk with the installation as high because there was both a risk of combustion in relation to the proximity of the flue terminal to the wooden deck and a risk of carbon monoxide being produced because of inadequate combustion due to the undersized gas cylinders.

h. Mr Lovell accept the issues with the work done by his supervisee and that he had allowed them to work on live gas. He also accepted that he had issued the Certificate based only work notes without inspecting the installation himself,

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Lovell had committed disciplinary offences under sections 89(a)(i) and 89(c) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Mr Robinson submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to maintain proper industry standards. He 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. Mr Robinson submitted that Mr Lovell's conduct was at the upper end of moderately serious. While it was acknowledged that no harm occurred in this case, Mr Robinson submitted that the work that was carried out had posed a risk of serious harm. Mr Lovell took no meaningful steps to ensure his supervisee's work was carried out competently and also allowed him to work on live gas. Finally, he certified the installation as safe to use on the basis of limited job notes and did not view the installation himself or even have photographs of the work to rely on.

6. Based on the circumstances of the case and previous decisions of the Board, Mr Robinson submitted that an appropriate penalty in this case was a fine and the starting point should be in the range of $4,500 to $6,000. He submitted that the Board may also wish to consider ordering Mr Lovell to undertake training in respect of his responsibilities as a supervisor.

7. Mr Robinson referred the Board to its previous decisions in the cases of *Thomas v Sullivan and Botica* (2021/24), *Thomas v Sen* (2021/17), and *Radovich v Frogley* (2021/1). In the *Sullivan* case, Mr Sullivan pleaded guilty to causing gasfitting to be carried out in a negligent or incompetent manner. The work was carried out by his supervisee and involved the installation of gas pipework which was incompetent for a number of reasons. Recognising that Mr Sullivan's company had been removed from the job before the installation was completed, the Board adopted a starting point of $3,000 for the fine in that case. In the *Sen* case, Mr Sen was found guilty of causing gasfitting to be carried out in a negligent or incompetent manner and issuing a false or misleading gas certificate. The work involved the installation of a water heater, gas hob, and pipework and was incompetent and raised safety concerns. Mr Sen certified the work as safe and compliant. The Board adopted a starting point for the fine in that case of $5,500. Finally, in *Frogley*, Mr Frogley pleaded guilty to failing to comply with his supervision requirements and was found guilty of issuing a false or misleading gas certificate. The work, which was carried out by a supervisee remotely, involved the conversion of an existing installation from LPG to natural gas. The work was faulty and unsafe but was certified as safe on the basis of photographs taken by the supervisee. The Board adopted a starting point of $4,000 in that case.

8. Mr Robinson submitted that Mr Lovell's conduct was more serious than in the *Sullivan* case because the defects with the work had been serious in this case and Mr Lovell had certified it as safe. However, the case was slightly less serious than the *Sen* case as the defects with the work carried out in that case had posed an immediate risk. He submitted that Mr Lovell's conduct was more serious than Mr Frogley's as Mr Lovell did not view any photographs of the work when he certified it. The work Mr Lovell signed off also posed a higher risk than the work in the *Frogley* case.

9. Mr Robinson submitted that the investigator was not aware of any aggravating factors in Mr Lovell's case. He also acknowledged that a discount would be available for Mr Lovell's guilty plea, cooperation in the proceedings, and lack of previous disciplinary history.

10. Mr Robinson submitted that under section 107 of the Act, the Board could require Mr Lovell to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. He submitted that the usual starting point for an order of costs was half of the costs but any decision to order costs and the amount were matters for the Board to determine in its discretion. Mr Robinson submitted that Mr Lovell may be entitled to a reduction in any costs to recognise his guilty plea and cooperation.

11. On behalf of Mr Lovell, Mr Pietras accepted the principles relevant to imposing penalty submitted by the investigator. However, Mr Pietras submitted that the cases relied on by the investigator involved more serious conduct than Mr Lovell's and were therefore not of any assistance.

12. Mr Pietras referred the Board to its decisions in *Thomas v Goundar* (2022/2), *Thomas v Wood* (2021/27) and the *Sullivan and Botica* case. In the *Goundar* case, Mr Goundar pleaded guilty to carrying out gasfitting without supervision in relation to the installation of a gas water heater. The heater had been installed too close to the underside of a deck. The Board adopted a starting point of $4,000 for the fine in the case. In *Wood*, Mr Wood pleaded guilty to permitting an unauthorised person to carry out sanitary plumbing and gasfitting and carrying out or causing non-compliant gasfitting work to be carried out. Again, the Board adopted a starting point of $4,000 for the fine. In the *Sullivan and Botica* case, Mr Botica, who had supervised Mr Sullivan, pleaded guilty to failing to comply with a term or condition of his licence in relation to his supervision. The Board adopted a starting point for the fine of $4,000. In reliance on those cases, Mr Pietras submitted that a fine with a starting point of $4,000 was appropriate in this case.

13. Mr Pietras submitted that Mr Lovell's conduct fell within the range of low to moderately serious. Mr Lovell accepted that, as the supervisor, he should have taken more active steps to supervise his supervisee. He also accepted that the work his supervisee carried out was non-compliant. However, Mr Pietras rejected the investigator's submission that the work posed a serious risk of harm. He submitted that the lower kPa of the supply pressure for the heater meant that the risk of incomplete combustion and carbon monoxide were more theoretical than real. He submitted that occupants inside the property were also protected by a wood deck over the heater.

14. Mr Pietras submitted that there were a number of mitigating factors in Mr Lovell's case including his early guilty plea and cooperation with the investigation and immediate acceptance of responsibility. Mr Pietras submitted that Mr Lovell should be granted a 25% discount to recognise this. Mr Lovell was also remorseful and had apologised to the property owner and taken immediate steps to remedy the installation and re-certify it as soon as he became aware it was substandard. Finally, Mr Lovell had been a practitioner for 38 years and had an unblemished record in the profession. He currently supervised 22 staff and had trained over 100 apprentices over the course of his career. Mr Pietras submitted that Mr Lovell should be allowed a 5% discount for each of these further mitigating factors.

15. Applying all of the discounts, Mr Pietras submitted that there should be a 40% reduction from the starting point fine resulting in a final fine of $2,400.

16. With regard to costs, Mr Pietras submitted that any order of costs should be less than half and proportionate to the overall offending and fine imposed.

Decision on penalty

17. 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.

18. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Lovell's offending was moderately serious, but at the upper end of that scale. He had allowed an unqualified person to do gasfitting work without any active supervision, including allowing him to work on live gas. He had then certified the installation as compliant and safe to use based on only limited job notes and without personally viewing the installation or carrying out any testing. In the circumstances, the Board considered that it was unsurprising that the installation was defective and was concerned that the defects in this case posed a serious risk of harm.

19. The Board accepted that there were no aggravating factors in the case and recognised that Mr Lovell's guilty plea and cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. The Board also recognised that Mr Lovell had remediated the installation and re-certified it once he was made aware of the defects.

20. The Board considered that a fine was an appropriate penalty and determined that the starting point should be $5,000. This was reduced to $3,250 in recognition of the mitigating factors.

21. The Board considered the investigator's submission that Mr Lovell be required to undertake training on his responsibilities as a supervisor. However, the Board recognised that the topic of supervision had been covered extensively in its mandatory continuing professional development programme for practitioners over the past eight years and declined to make any training order. Instead, the Board recommended that Mr Lovell review the Board's supervision guidance and resources on the website.

Costs

22. 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 $10,544.30.

23. The Board accepted that Mr Lovell's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $4,200 towards costs which was around 40% of the total costs.

Publication

24. In accordance with section 74(1)(c)(viii) of the Act, the Board ordered that details of the action taken against Mr Lovell should be recorded on the register of plumbers, gasfitters, and drainlayers. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

    i. Pursuant to section 106(1)(f) of the Act, Mr Lovell pay a fine of $3,250.

    ii. Pursuant to section 107 of the Act, Mr Lovell pay $4,200 towards the costs of the investigation, prosecution, and hearing.

Appeal

26. If Mr Lovell 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 30 July 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board