Plumbers,
Gasfitters and
Drainlayers Board

CANNELL v PRADHAN

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/18)

Summary

Asish Pradhan, Certifying Drainlayer, was charged with carrying out drainlaying in a manner contrary to an enactment. The charge related to the remediation of stormwater and wastewater drains at a residential property in Kaiapoi.

Mr Pradhan pleaded guilty to the charge.

The Board considered Mr Pradhan's offending was moderately serious. While the risk from the defects with the work had been low and the defects themselves were compliance related, the Board was disappointed in the number and nature of the defects given Mr Pradhan was an experienced certifying drainlayer. The Board found there were no aggravating factors in the case and Mr Pradhan was entitled to credit for his guilty plea, cooperation, lack of any previous disciplinary offending, remorse, and changes he had made to his practices.

The Board ordered Mr Pradhan be fined $2,800 and pay $4,000 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 **ASISH PRADHAN**
Certifying Drainlayer, of Rangiora

Registered Person

DECISION OF THE BOARD
15 OCTOBER 2024

Hearing:	Held on the papers on 5 September 2024
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Selwyn Hikuroa, Sue Simons
Counsel:	Elena Mok and Keir Robinson for the investigator Mr Pradhan was self-represented
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 5 September 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Bruce Hogarth against Asish Pradhan, Certifying Drainlayer. The complaint related to drainlaying work at residential premises in Kaiapoi.

Guilty plea

2. On 8 July 2024, Mr Pradhan pleaded guilty to a charge of carrying out drainlaying in a manner contrary to an enactment and signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr Pradhan is a registered and licensed certifying drainlayer.

    b. In 2022, Mr Pradhan was subcontracted by Enviroflow to carry out drainlaying work at Mr Hogarth's property in Kaiapoi. The work involved inspecting and remediating stormwater and wastewater drains.

    c. Mr Pradhan carried out the work in early October 2022 when Mr Hogarth was on holiday. When Mr Hogarth returned, a family member, who was a trainee drainlayer, alerted Mr Hogarth to issues with the drainlaying work.

    d. Mr Hogarth contacted Enviroflow about the issues and in January 2023, Enviroflow staff re-laid the drains. Mr Hogarth subsequently made a complaint to the Board about Mr Pradhan's work.

    e. Hamish Alexander, a Certifying Drainlayer and technical advisor to the Board, identified the following issues with the work carried out by Mr Pradhan:

        i. there was no concrete around the gully dishes contrary to clause G13.3.2(c) of the New Zealand Building Code (**Code**)

        ii. the drain did not have adequate coverage contrary to clause G13.3.2(f) of the Code

        iii. topsoil was used for bedding and backfill for the drains on part of the property contrary to clause G13.3.2(c) of the Code

        iv. Gap 20 was used for backfill and bedding for the drains on part of the property contrary to G13.3.2(c)

        v. solvent welded joints were made without using acetone primer contrary to G13.3.2(c) of the Code

        vi. air and hydrostatic testing of the system was not carried out contrary to clause G13.3.2(a) and (c) of the Code.

f. Mr Alexander assessed the health and safety risk from the defects with the work as low.

g. Mr Pradhan acknowledged that he had made mistakes with the work and advised he had apologised to Mr Hogarth

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Pradhan had committed a disciplinary offence under section 89(a)(ii) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**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 Pradhan's offending was moderately serious. While the defects with the work posed only a low risk of harm to others, they did pose a risk to the effective functioning of the stormwater and sewer system. Mr Robinson also submitted that it was concerning that a certifying drainlayer would make routine mistakes such as not using primer when welding joints.

6. Mr Robinson referred the Board to its previous decisions in the cases of *Cannell v Parlour* (2023/4), *Thomas v Raika* (2021/23), and *Thomas v Huband* (2020/19) all of which involved non-compliant, negligent, or incompetent drainlaying work. In *Parlour*, Mr Parlour pleaded guilty to non-compliant drainlaying work in relation to the replacement of a wastewater system where the overflow relief gully (ORG) and gully dish were not installed deeply enough and there was insufficient cover for the ORG. The Board considered Mr Parlour's offending was low in terms of seriousness and adopted a starting point for the fine of $2,500. In *Raika*, Mr Raika was found guilty of negligent or incompetent drainlaying in relation to the installation of a house drain and wastewater disposal field where there were multiple defects with the work. The Board considered Mr Raika's offending was moderately serious as the disposal field for the wastewater system had been completely inadequate. The Board adopted a starting point for the fine of $3,500. Finally, in *Huband*, Mr Huband pleaded guilty to negligent or incompetent drainlaying in relation to the installation of an effluent disposal field which was too small and not fit for purpose. The Board considered Mr Huband's offending was moderately serious and adopted a starting point of $3,000 for the fine in his case.

7. Mr Robinson submitted that Mr Pradhan's conduct was similar to that in the *Parlour*, *Raika*, and *Huband* cases but more serious given it involved a greater number of defects with the work. Mr Robinson submitted that a higher starting point for a fine

in the case was therefore justified and submitted the appropriate range was $3,500 to $4,000.

8. Mr Robinson submitted that the investigator was not aware of any aggravating factors in Mr Pradhan's case. He also acknowledged that Mr Pradhan had pleaded guilty and cooperated with the proceedings, and had no previous disciplinary history.

9. Mr Robinson submitted that under section 107 of the Act, the Board could require Mr Pradhan 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 and he acknowledged that Mr Pradhan may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

10. In his submissions on penalty, Mr Pradhan submitted that any penalty imposed should be the minimum the Board considered appropriate. He submitted that all required re-work had been carried out without argument, he had paid financial compensation to the property owner for any inconvenience, and all other loss they had experienced had been covered by their insurer.

11. Mr Pradhan submitted that he was aware his actions in this case had put the Board and industry in a bad light but he had accepted responsibility for his conduct immediately, had never disputed what happened, and all work had been rectified. Mr Pradhan submitted that he had also introduced a quality assurance process to ensure the quality of his work going forward.

12. Mr Pradhan described the nature of his business and how his business was doing. He sought name suppression submitting that a small business like his could lose everything from the wrong publicity.

13. Mr Pradhan concluded by submitting he had been apologetic to the customer and had invited him to walk through his other sites in the vicinity so he could be assured that what had happened to him had been a one-off.

14. In response to Mr Pradhan's application for name suppression, Mr Robinson submitted that Mr Pradhan had not provided any evidence to support his claim that publication of his name would have an adverse effect on his business. Mr Robinson also submitted that reputational damage was an ordinary consequence of disciplinary offending and was not sufficient to displace the principle of open justice.

Decision on penalty

15. 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.

16. Having considered the parties' submissions and the facts of the case, the Board determined that Mr Pradhan's offending was moderately serious. The Board accepted that the risks from the defects with the work had been low and compliance-related rather than giving rise to any health or safety issues. However, the Board was disappointed with the number and nature of the defects with the work and considered that the work fell well below the standard expected of a certifying drainlayer such as Mr Pradhan.

17. The Board found there were no aggravating factors in the case and Mr Pradhan was entitled to credit for his guilty plea and cooperation, and lack of previous disciplinary offending. Mr Pradhan's remorse, remediation work, compensation to the homeowner, and introduction of a quality assurance step into his work were also mitigating factors in his favour.

18. The Board considered that a fine was the appropriate penalty in the circumstances. To recognise that the number and nature of the defects in this case should not be expected from a certifying drainlayer, the Board determined that the starting point for the fine should be $4,000. The Board reduced this to $2,800 to recognise the numerous mitigating factors in Mr Pradhan's favour.

Costs

19. 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 $10,042.49.

20. The Board accepted that Mr Pradhan's guilty plea and cooperation had helped to keep the costs down and determined that he should pay $4,000 towards costs which was around 40% of the total costs.

Name suppression

21. The Board accepted that the test for an order of name suppression was whether the interests of the person seeking suppression outweighed the principle of open justice and the right of the public to know about practitioners who had committed disciplinary offences.

22. The Board acknowledged Mr Pradhan's concern about the impact of any publication on his business. However, Mr Pradhan had not provided any evidence that his business would be adversely affected by publication and his concerns were therefore speculative only. In the circumstances, the Board considered that Mr Pradhan had

not established that his interests outweighed the public interest, and his application was declined.

Publication

23. In accordance with the requirements of the Act, the Board ordered that details of the action taken against Mr Pradhan should be recorded on the register of plumbers, gasfitters, and drainlayers in the usual way. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

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

    a. Pursuant to section 106(1)(f) of the Act, Mr Pradhan pay a fine of $2,800.

    b. Pursuant to section 107 of the Act, Mr Pradhan pay $4,000 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

25. If Mr Pradhan 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 15 October 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board