Plumbers, Gasfitters and Drainlayers Board

CANNELL v MORGAN

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/1)

Summary

Stephen Morgan, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer was charged with causing negligent or incompetent gasfitting work to be carried out, carrying out gasfitting contrary to an enactment, and employing, directing or permitting an unauthorised person to do sanitary plumbing. The charges related to gasfitting work carried out at a property in Tauranga.

The Board considered Mr Morgan's conduct in this case was moderately serious. It was apparent through Board questioning during the hearing that Mr Morgan had carried out the testing of the installation incorrectly and a leak had resulted. Mr Morgan had previous similar disciplinary offending from ten years prior which the Board considered an aggravating factor. However, the Board accepted that Mr Morgan was entitled to credit for his guilty pleas, his cooperation throughout the process, the changes he had made to his practices to ensure the conduct did not occur again, his proactive training, and being remorseful.

The Board ordered him to pay a fine of $3,000, to undertake a course of further training and to pay $6,500 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 **STEPHEN MORGAN**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Tauranga

Registered Person

DECISION OF THE BOARD
25 MARCH 2024

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 14 February 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, Selwyn Hikuroa, Martin de Gouw, Deborah Cranko
Counsel:	Elena Mok for the investigator Bradley Alcorn for Mr Morgan
Legal advisor:	Richard May

Disciplinary hearing

1. On14 February 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Kriss Hetherington against Stephen Morgan, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to gasfitting and sanitary plumbing work carried out at 22 Tawhiri View, Pyes Pa, Tauranga (**property**).

Guilty plea

2. On 18 October 2023, Mr Morgan pleaded guilty to charges of causing negligent or incompetent gasfitting work to be carried out, carrying out gasfitting contrary to an enactment, and employing, directing or permitting an unauthorised person to do sanitary plumbing, and signed an agreed summary of facts on 1 December 2023, a copy of which is attached to this decision.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Morgan had committed disciplinary offences under section 89(a)(i) and 89(a)(ii) and 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 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. Recognising that consistency with other cases was a consideration when determining penalty, Ms Mok referred the Board to its previous decisions in *Thomas v Roach* (2022/4), *Hammond v Morgan* (2013/14), and *Thomas v Sullivan & Botica* (2021/4). In *Roach*, Mr Roach was found guilty of a charge of causing negligent or incompetent gasfitting to be carried out. A significant gas leak was found on an uncrimped fitting and Mr Roach had not inspected, tested, or commissioned the installation and had issued a false or misleading gas certificate for the work. The Board adopted a starting point fine of $5,000 which was then uplifted by ten per cent for Mr Roach's previous disciplinary offending which had occurred in similar circumstances. In *Sullivan & Botica*, Mr Sullivan, pleaded guilty to one charge of causing gasfitting work to be carried out in a negligent or incompetent manner. His supervisee had carried out the work and there were numerous issues with it including a gas leak. The Board adopted a starting point of $3,000 for the fine in that case, which took into account the fact that Mr Sullivan had been placed in a challenging position because he had been removed from the site while the job was partially completed.

6. Ms Mok noted that Mr Morgan had previously been found guilty of disciplinary offences of a similar nature, albeit 10 years prior. Those offences were similar in nature to the current offending. Mr Morgan had pleaded guilty to one charge of causing negligent or incompetent gasfitting work to be carried out and was found guilty of issuing a false or misleading return. The investigator had proposed a starting point of between $3,000 of $4,000.

7. Having regard to the previous cases, Ms Mok submitted that Mr Morgan's offending was moderately serious. She submitted that the defective gasfitting work resulted in a significant gas leak and a serious risk of harm. Mr Morgan also failed to correctly identify that the gasfitting work was high-risk and had employed an unauthorised person to do sanitary plumbing. She submitted that the offending created a serious risk and Mr Morgan had disciplinary history for similar offending. Having regard to the nature and gravity of Mr Morgan's conduct and the cases cited, Ms Mok submitted that a fine was the appropriate penalty with a starting point in the range $3,500 to $4,500. She submitted that the Board might also consider an order for Mr Morgan to undertake further training on his responsibilities as a supervisor and in certification.

8. With regards to factors personal to Mr Morgan, Ms Mok submitted that the Board might consider an uplift to the penalty for his previous similar offending. In terms of mitigating factors, Ms Mok submitted that Mr Morgan's acceptance of responsibility and cooperation in the process were to his credit and should be taken into account by the Board when considering penalty.

9. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Morgan to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. Ms Mok 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.

10. On behalf of Mr Morgan, Mr Alcorn submitted that while Mr Morgan had pleaded guilty to the charges. He submitted that the Board should also take into consideration that the leak on the installation was found some 15 months after the work was carried out and may not have been present at the time of the installation. With regard to entering the work on WorkSafe's database, Mr Alcorn submitted that there were technical issues with logging on to the database and Mr Morgan was uncertain about whether he was required to enter this work. Finally, with regard to employing an unauthorised person to do sanitary plumbing, Mr Alcorn submitted that Mr Morgan had misunderstood his responsibilities as a supervisor given that his employee was fully qualified in South Africa and held a provisional licence to do sanitary plumbing in New Zealand.

11. Mr Alcorn agreed with the principles and approach taken to penalty in disciplinary cases. He submitted that the *Roach* case was more serious than the present case and

cited the case of *Pidgeon v Lye* (2023/6) as being helpful to the Board. In that case Mr Lye was found guilty of causing negligent or incompetent gasfitting to be carried out and for failing to enter details of the gas installation on WorkSafe's database. The Board applied a starting point of $4,000 and declined to order any training since it had already been covered in the 2023-2024 CPD programme. Mr Alcorn submitted that the offending in *Lye* was more serious than in Mr Morgan's case since Mr Lye failed to attend the property to inspect the work and the risk of harm was higher given the commercial nature of the property.

12. Ms Alcorn submitted that the offending was at the low end of moderate in terms of seriousness and that a fine with a starting point of $3,000 to $4,000 was appropriate in the case. He submitted that while Mr Morgan's previous offending was an aggravating factor it should be given limited weight due to the offending having taken place over 10 years prior and Mr Morgan had worked hard to since then to uphold professional standards. He submitted that a 10% uplift as in *Roach* and as submitted by the investigator would be disproportionately high in the circumstances and that a 5% uplift at the most would be more appropriate.

13. Mr Alcorn submitted that there were a number of mitigating factors in Mr Morgan's favour. He had accepted responsibility by entering guilty pleas at the earliest opportunity. He had cooperated with investigation and disciplinary process. He had taken proactive steps to educate himself with respect to registering high-risk gasfitting and on the supervision of employees, including completing the Board's CPD courses on supervision. He also described the various policies and procedures Mr Morgan had put in place to ensure staff were aware of the standards and operating procedures for carrying out these types of work. These included checklists he had developed and put in place for all jobs and regular reviews of work to ensure supervision and training was done. Recognising the significant mitigating factors he had described, Mr Alcorn submitted that a 20% discount should be applied, plus the 5% uplift for the previous offending. He also submitted that a 50% contribution towards the costs was also appropriate.

14. The Board asked Mr Morgan what type of test he conducted on the installation. Mr Morgan responded that he did a pressure test from the meter to the pipework where there was a hob installed inside and a new hot water unit installed outside. When asked to confirm whether he did a pipework test or simply an installation test, Mr Morgan responded that he had conducted an installation test. He explained that he could not gain access to test and disconnect the hob, so he was unable to pump it up more than working pressure. He advised that he completed a working pressure test which he understood came out at 2.75 kPa. Mr Morgan told the Board that he used an electrical multi-meter to carry out the testing.

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. The Board determined that the conduct in this case was moderately serious. It was apparent to the Board from Mr Morgan's answers to their questions that he had carried out the testing of the installation incorrectly. The Board recognised that Mr Morgan had made changes to his practices to ensure this conduct did not occur again. However, while accepting that Mr Morgan said he had changed his practices and undertaken training, the Board considered that his knowledge of testing and commissioning was not where it should be for a certifying gasfitter.

17. The Board accepted that Mr Morgan's previous disciplinary offending was an aggravating factor. However, the Board also recognised there were several mitigating factors in Mr Morgan's favour. They included his guilty pleas, cooperation, changes to his practices, and proactive training. The Board also accepted that Mr Morgan was remorseful.

18. The Board determined that Mr Morgan should undertake a refresher course in gasfitting to ensure that he was fully up to date and aware of his responsibilities as a gasfitter. The Board also considered that a fine with a starting point of $3,750 was appropriate in this case. Taking into account the aggravating and mitigating factors personal to Mr Morgan, the Board decided to reduce the fine to $3,000. This reduction also took into account the cost of the training that Mr Morgan would be required to pay.

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 investigations, prosecution and hearing amounting to $16,426.83.

20. The Board accepted that Mr Morgan's guilty pleas and cooperation had avoided the costs of a full hearing and determined that he should pay $6,500 towards costs which was around 40% of the total costs.

Publication

21. The Board determined that the details of Mr Morgan's disciplinary offending should be entered on the public register. Any other publication of the Board's orders would be at the discretion of the Registrar of Plumbers, Gasfitters and Drainlayers.

Board orders

22. Being satisfied that Mr Morgan was guilty of disciplinary offences under section 89(a)(i), section 89 (a)(ii) and section 89(g) of the Act, the Board made the following orders:

    i. Pursuant to section 106(1)(f) of the Act, Mr Morgan pay a fine of $3,000.

    ii. Pursuant to section 106(1)(e) and 106(2)(b) of the Act, Mr Morgan successfully completes the Master Plumbers Gasfitting Refresher course at his own cost before he next relicenses following the 2024-2025 licensing year.

    iii. Pursuant to section 107 of the Act, Mr Morgan pay $6,500 towards the costs of the investigation, prosecution, and hearing.

23. In accordance with section 74(1)(c)(viii) of the Act, the Registrar must publish the details of the action taken against Mr Morgan on the register of plumbers, gasfitters, and drainlayers.

Appeal

24. If Mr Morgan 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 25 March 2024

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 Stephen Morgan
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1 The registered person, Stephen Morgan, is a certifying plumber, certifying gasfitter and certifying drainlayer, registration number [redacted]. At the relevant time, Mr Morgan was the owner and director of Steve's Plumbing and Gas Company Limited (**Steve's Plumbing**).

2 Christopher Schwarzer and Miso Juric were employees of Steve's Plumbing at all relevant times. Their registration and licensing statuses at the relevant times were as follows:

(a) In November 2020, Mr Schwarzer was a registered and licensed tradesman gasfitter and tradesman plumber. Mr Morgan was recorded as Mr Schwarzer's supervisor for gasfitting work (and also plumbing).

(b) In August 2021, Mr Juric was not authorised to do sanitary plumbing work. He did not obtain a provisional plumber's licence permitting him to do plumbing work under supervision until September 2021. While the application process began in March 2021 and Mr Juric received his overseas-qualified eligibility approval in June 2021, there was a delay in Mr Juric providing necessary documentation, which delayed the processing of this application. Mr Morgan was listed as Mr Juric's supervisor.

3 Evelyn Lloyd resides at a residential property located at 2 Tawhiri View, Pyes Pa, Tauranga (**property**). In September 2020 Ms Lloyd engaged Steve's Plumbing to remove an old water heater and to replace it with a new 26 litre Rheem gas hot water unit at her property.

4 On 10 February 2022, Ms Lloyd's daughter, Kriss Hetherington, submitted a complaint to the Plumbers, Gasfitters, and Drainlayers Board (**Board**), raising concerns about the gasfitting and sanitary plumbing work carried out at her mother's property.

5 On 8 June 2022, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Melissa Cannell to investigate Ms Hetherington's complaint.

FACTS OF THE CASE

6 On or about 14 September 2020, Ms Lloyd contacted Steve's Plumbing for a quote regarding the installation of a new gas hot water system. Mr Morgan attended the property and discussed the new and old systems with Ms Lloyd. Steve's Plumbing later provided Ms Lloyd with a quote to install a new 26 litre Rheem gas hot water unit (a new gas hot water system), which she accepted.

7 On 6 November 2020, Mr Schwarzer attended the property and carried out gasfitting work by installing a new 26 litre Rheem gas hot water unit. On the invoice provided by Steve's Plumbing, the work completed was described as follows:

> ...install new 26 litre Rheem gas hot water unit on back side of house, disconnect existing gas cylinder inside and cap all pipes in cupboard, and remove flue from in cupboard. Connect onto existing hot and cold pipework in roof space. Connect onto gas pipework in roof space – will need to install new gas pipe to new unit. Install unit with copper pipe on outside of house. Arrange electrical connection to new unit – have allowed PC sum of $450.00 for this. Test and certify job.

8 On or about 9 November 2020, Ms Lloyd paid Steve's Plumbing $2,941 for carrying out the installation. Following the installation, Ms Lloyd said that she was not getting hot water and that the water was only "luke warm".

9 Mr Morgan attended the property on or about 16 November 2020. Mr Morgan tested the gas installation and found no leaks. Mr Morgan also tested the water temperature and volume, and advised Ms Lloyd that it was 55 degrees, that the water was the right temperature and that it was the correct water volume for the new system, which was less than 2 litres from turning the taps on to when the water reached the appropriate hot temperature of 55 degrees.

10 Following Mr Morgan's visit in November 2020, Ms Lloyd says that she was still experiencing issues with the water temperature. Ms Lloyd rang Mr Morgan in July 2021 and told Mr Morgan that she was drawing off five litres of cold water before any hot water was coming through the taps.

11 On or about 19 July 2021, Mr Morgan attended the property and climbed into the ceiling space to look at the pipes. Mr Morgan did not smell any gas in the ceiling space while he was in there. Mr Morgan advised that the size of the existing pipe work could be changed to 15mm, which would get the hot water through quicker. On 20 July 2021, Ms Lloyd received a quote from Steve's Plumbing to reduce the size of the pipes, which she accepted.

12 On 2 August 2021, Mr Juric and a labourer from Steve's Plumbing attended the property, and Mr Juric carried out sanitary plumbing work by changing the piping in the ceiling from 20mm to 15mm. Neither Mr Juric or the labourer smelt gas while working in the ceiling space. Ms Lloyd received an invoice dated 30 August 2021 totalling $347.35 from Steve's Plumbing for this work.

13 Following the work completed by Mr Juric, Ms Lloyd reported hearing "hammering" noises coming from the ceiling, where the pipes were.

14 In December 2021, Ms Lloyd called Tauranga Hardware & Plumbing Limited (**Tauranga Plumbing**) to investigate the hammering noise. On 15 December 2021, Brendan Romey from Tauranga Plumbing attended the property. He smelled gas in the ceiling space, and, by following the smell, he found a gas leak. Mr Romey carried out remediation work with a view that such work was required urgently. Mr Romey did not test the gas line prior to carrying out the remedial work. No one else had reported smelling gas in the ceiling space or the house.

15 On 22 December 2021, Ms Lloyd received an invoice for $508.12 from Tauranga Plumbing for the work completed.

16 On 2 February 2022, Ms Hetherington, Ms Lloyd and Martin Carr (a support person) met with Mr Morgan to discuss Steve's Plumbing's August 2021 bill. They showed him the invoice from Tauranga Plumbing and told Mr Morgan about the gas leak. During this meeting, it was agreed that Ms Lloyd would not have to pay the outstanding bill to Steve's Plumbing for the work completed in August 2021.

17 On 10 August 2022, a Senior Technical Advisor at the Board, Samuel Wood, provided a technical assessment regarding the issues with the installation. Mr Wood did not attend the property but relied upon information provided to him by the investigator. Mr Wood identified issues with the gasfitting work, as detailed below.

18 There was a gas leak on the brazed joint on a copper tee because the joint was not correctly brazed, resulting in the installation being unsafe. This was contrary to clause 2.4.1 of AS/NZS 5601.1, which requires gas pipe installations to be gas tight. It was also contrary to clause G11.2 of the New Zealand Building Code and regulation 9 of the Gas (Safety and Measurement) Regulations 2010 (**GSMR**), which require gas installations to be safe. The brazing on the joint may have held a gas test at the time of installation and accordingly, the gas leak may not have been present (and was not detected) when the installation was being carried out or when Steve's Plumbing returned to the property on later occasions.

19 Photos of the brazed joint are attached at **Tab 1** and form part of this summary of facts.

20 The gasfitting work carried out involved the removal of an old water heater and the installation of a new 26 litre Rheem gas hot water unit. This constituted high-risk gasfitting, as defined by regulation 5A(2)(a) of the GSMR. High-risk gasfitting requires that a record of the work be lodged on the Electricity and Gas High-Risk Database (**High-Risk database**), per regulation 52H of the GSMR.

21 No record of the gasfitting work was lodged on the High-Risk database, despite the installation having been connected to the gas supply.

22 Mr Morgan employed Mr Juric and directed him to carry out sanitary plumbing work at the property.

23 Mr Juric carried out sanitary plumbing work at the property on 2 August 2021. On that date, Mr Juric was not authorised to do or assist with sanitary plumbing, contrary to section 8 of the Act.

MR MORGAN'S COMMENTS

24 When spoken to in the course of the investigation, Mr Morgan accepted that he had attended the property and provided a quote to Ms Lloyd.

25 Mr Morgan stated that, when he had carried out gas testing on 16 November 2020, he did not find a gas leak and there was no indication of a gas leak when he went into the ceiling space on 7 July 2021.

26 Mr Morgan accepted that no record of the gasfitting work was lodged on the High-Risk database.

27 Mr Morgan explained that he believed that Mr Juric was able to complete work under his supervision. Mr Morgan stated he briefed and checked all jobs completed by Mr Juric.

Date: 1 December 2023

[redacted]

Stephen Morgan
Registered person

[redacted]

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A Stuart
Counsel for the Investigator