Plumbers,
Gasfitters and
Drainlayers Board

CANNELL v RATLIFF

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/2)

Summary

Colin Roy Ratliff, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer was charged with negligent or incompetent gasfitting and with filing a false or misleading gas certificate. The charges related to gasfitting work carried out at in a glamping campsite in Waiuku.

Mr Ratliff pleaded guilty to the charges.

The Board considered Mr Ratliff's conduct was moderately serious. The Board accepted there were no aggravating factors in the case and that Mr Ratliff was entitled to credit for his early guilty pleas, being cooperative throughout the process, having no previous disciplinary history, remediating the work, taking steps to ensure the conduct did not occur again, and being remorseful.

The Board ordered him to pay a fine of $2,600 and pay $7,300 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 **COLIN ROY RATLIFF**
Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, of Pukekohe

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 Matthew Ratliff for Mr Ratliff
Legal advisor:	Richard May

Disciplinary hearing

1. On 14 February 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing by audio visual link to consider a complaint by Joshua Woolf against Colin Roy Ratliff, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to gasfitting and involved testing pipework and appliances at for three glamping tents and issuing a Gasfitting Certificate of Compliance for the work at a campsite in Waiuku (**property**).

Guilty plea

2. On 31 October 2023, Mr Ratliff pleaded guilty to charges of carrying out negligent or incompetent gasfitting and filing a false or misleading return and failing to issue a return. The parties filed an agreed summary of facts which is attached to this decision.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Ratliff had committed disciplinary offences under section 89(a)(i) and 89(f) 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 *Philips v Geange* (2020/3), *Radovich v Atkinson* (2022/16), and *Thomas v Choi* (2019/7). In *Geange*, Mr Geange, a tradesman plumber with some previous experience in gasfitting, pleaded guilty to carrying out unauthorised gasfitting work in a caravan. There were several defects with the work which created a risk of carbon monoxide entering the space. The Board adopted a starting point of $6,500 for the fine in his case to reflect the serious safety risk. In *Atkinson*, Mr Atkinson pleaded guilty to charges of carrying out gasfitting in manner contrary to an enactment and for filing a false or misleading gas certificate. The Board adopted a starting point of $7,000 for the fine in that case. Finally, in *Choi,* Mr Choi pleaded guilty to negligent or incompetent gasfitting and filing a false or misleading return. There were several non-compliance issues with the work though these did not pose a safety risk, and Mr Choi had only visited the site once and did not do any testing before signing the gas certificate. The Board adopted a starting point of a fine of $4,000.

6. Ms Mok submitted that Mr Ratliff's offending was moderately serious. While acknowledging that Mr Ratliff was not the installer of the gas appliances, she submitted that he should have taken steps to ensure the appliances were installed correctly when testing them and before certifying the work. She submitted that the issue with the flue was serious and posed a risk of harm since the complainant, a certifying gasfitter, had observed that the appliances appeared to be taking in insufficient air to ensure proper combustion and was discharging inside the tent. She acknowledged that no actual harm eventuated. Having regard to the nature and gravity of Mr Ratliff's conduct, Ms Mok submitted that a fine was the appropriate penalty with a starting point in the vicinity of $4,500 to $5,000.

7. Ms Mok submitted that the investigator was not aware of any aggravating factors personal to Mr Ratliff and accepted that his unblemished history in the industry, early guilty pleas, and acceptance of responsibility were mitigating factors in his favour. Ms Mok also acknowledged that Mr Ratliff had taken steps to remedy the defective work. She submitted that the Board may wish to take into account these factors by reducing the amount of any fine imposed.

8. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Ratliff 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. Ms Mok submitted that the Board could consider a reduction from the starting point in recognition of Mr Ratliff's guilty plea and cooperation.

9. On behalf of Mr Ratliff, Mr M Ratliff began his submissions by stating that Mr Ratliff accepted full responsibility for the offending, recognised the seriousness of the issue and the potential for harm. He expressed regret and remorse for what had occurred. He described the unusual nature of the installation which involved a tent with a timber superstructure covered by a removable fabric fly which could be pulled open and completely removed when working on the structure. He explained that when Mr Ratliff when to work on installation, the fabric fly was pulled back or removed and so the issue with the flue wasn't therefore immediately obvious to Mr Ratliff. He submitted that while Mr Ratliff should have foreseen this issue, the fact that he hadn't installed the fires himself undoubtedly led to the issue not being identified. He also described the difficulties accessing this particular site which he submitted put time pressure on Mr Ratliff and could have impaired his judgment.

10. Mr M Ratliff submitted that Mr Ratliff had learned from the experience, had rectified the work as soon as he became aware of it, and had changed his practices about the types of jobs he takes on. Mr Ratliff now paid particularly attention to jobs where he had not done the work himself or where an installation was unusual. He submitted that the offending was similar to that in *Choi* and that any penalty imposed should align with this.

11. In reply, Ms Mok submitted that while it was accepted the unusual nature of the installation in a glamping tent and the fly being pulled back may have not made the deficiencies with the flue immediately obvious to Mr Ratiff, it was nevertheless Mr Ratliff's responsibility to take steps to ensure the installation was operating safely and compliantly. She submitted that it was about an appreciation of the level of risk which she accepted that Mr Ratliff appeared to appreciate.

Decision on penalty

12. 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.

13. The Board considered that Mr Ratlif's offending in this case was moderately serious. Products of combustion being able to enter the tent had the potential to cause serious harm although the Board accepted that no actual harm eventuated in this case. The Board recognised that this was an unusual case in terms of the site of the installation and the fact that Mr Ratliff himself had not completed the work. The Board considered Mr Ratliff's explanation regarding the issue with the flues not being immediately apparent due to the tent fly being pulled back or removed was plausible. Nevertheless the Board agreed with the prosecution's assessment that while Mr Ratliff did not install the flues, he did have a duty to take steps to ensure the installation was safe and correct especially in the absence of any gas certificates for the installation.

14. The Board found there were no aggravating factors in the case and accepted that Mr Ratliff's guilty plea, cooperation, unblemished record, and lack of previous disciplinary offending were factors in his favour. The Board also accepted that Mr Ratliff was remorseful, had carried out remedial work at the earliest opportunity, and had made changes to his practices.

15. The Board determined a fine was the appropriate penalty in this case and chose a starting point of $4,000. Recognising the mitigating factors, the Board reduced this to $2,600.

Costs

16. 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 $18,399.53.

17. The Board accepted that Mr Ratliff's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $7,300 towards costs which was around 40% of the total costs.

Publication

18. The Board determined that details of Mr Ratliff'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

19. Being satisfied that Mr Ratliff was guilty of disciplinary offences under section 89(a)(i) and 89(f) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) and 106(3) of the Act, Mr Ratliff pay a fine of $2,600.

    b. Pursuant to section 107 of the Act, Mr Ratliff pay $7,300 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

21. If Mr Ratliff 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 COLIN ROY RATLIFF
Under subpart 1 of Part 3 of the Plumbers, Gasfitters, and Drainlayers Act 2006

PEOPLE INVOLVED

1. The registered person, Colin Roy Ratliff, is a registered and licensed certifying gasfitter, certifying plumber and certifying drainlayer (registration number [redacted]).

2. On 22 November 2022, the Plumbers, Gasfitters, and Drainlayers Board (**Board**) received a complaint from Joshua Woolf about gasfitting work carried out by Mr Ratliff at a glam camping tent at Glam Camping at Castaways, 685 Karioitahi Road, Waiuku (**the property**).

3. Serena Shine is the manager of the property and engaged Mr Ratliff to carry out gasfitting work there in June 2018.

4. On 15 December 2022, the Registrar of Plumbers, Gasfitters, and Drainlayers appointed Melissa Cannell to investigate the complaint against Mr Ratliff.

5. Brett McQuarrie is a registered and licensed certifying plumber and certifying gasfitter. He is employed by the Board as a Technical Advisor. Mr McQuarrie provided a technical assessment of the gasfitting work done at the property based on all of the information and documentation available to him.

FACTS OF THE CASE

6. The property is a "glam camping" (**glamping**) venue which provides accommodation in the form of luxury glamping tents. The property is comprised of three glam camp sites and one totara tree camp site. Each site has a self-contained glamping tent and these tents can then be booked as accommodation by guests.

7. On 12 June 2018, Mr Ratliff carried out gasfitting work at the property. Mr Ratliff's gasfitting work involved him testing the LPG pipe work to various appliances at the three glamping sites and the totara tree camp site at the property to check they were sound. Mr Ratliff did not have any involvement in the initial installation of the various gas heating appliances at the property, including installation of the flues for those appliances.

8. The property owners had arranged for those appliances to be installed before Mr Ratliff was engaged. When he carried out the relevant gasfitting work, Mr Ratliff did not check that the heaters had been installed correctly.

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9. On 14 June 2018, Mr Ratliff issued a Gasfitting Certificate of Compliance (**CoC**) for the gasfitting work he had carried out on 12 June 2018.

10. On 27 August 2022, Mr Woolf stayed the night at one of the glamping tents at the property. Mr Woolf is a certifying plumber and certifying gasfitter. Mr Woolf noticed that the gas heater flue terminated inside the enclosed glamping tent fly. He could smell combustion products (air pollutants which were a by-product of the heat being generated by the gas heater) entering the glamping tent. Mr Woolf also noticed that the gas appliance appeared to be taking in insufficient fresh air to maintain proper combustion.

11. On 29 August 2022, after finishing his stay at the property, Mr Woolf contacted the Board's technical team regarding his concerns about the gasfitting in the glamping tent at the property. He subsequently made a formal complaint to the Board.

12. On 4 October 2022, the Board contacted Mr Ratliff about the gasfitting work at the property. On 7 October 2022, Mr Ratliff responded to the Board saying that he had contacted the owner of the property and that he would complete the remedial work. On 5 December 2022, Mr Ratliff advised that he had installed new flue kits for the three gas heaters at the property, which would discharge outside. On 22 February 2023, Mr Ratliff provided an updated gas certificate in respect of the remedial work he had carried out. On 24 April 2023, Mr Ratliff confirmed that remedial work had been completed for the gasfitting work for each of the glamping tents at the site.

CARRYING OUT NEGLIGENT OR INCOMPETENT GASFITTING

13. The gasfitting work that Mr Ratliff carried out at the property on 12 June 2018 was negligent or incompetent.

14. In testing the gas pipework connected to the gas appliances, Mr Ratliff ought to have taken steps to ensure that the gas installations were compliant. He failed to do so. This meant that the gas installations were left in a state where they could have posed a risk to the health and safety of users of the glamping tents.

15. The flue outlet for the gas appliance that had been installed before Mr Ratliff's engagement did not comply with the manufacturer's instructions or clause 6.9.4 of the mandatory gas installation standards in AS/NZS 5601.1:2013. This standard requires flues to be installed outside of a building, away from any openings. In this situation, the flue had been installed inside the glamping tent fly, something which Mr Ratliff had not identified in undertaking gasfitting work at the property. As a result, the flue was not installed in accordance with the manufacturer's instructions, as products of combustion were able to enter the tent.

16. Mr McQuarrie completed a technical assessment of the gasfitting work at the property. He assessed the installation as posing a high risk of harm to person, property, or the environment, due to issues with the flue.

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ISSUING A FALSE OR MISLEADING RETURN / FAILING TO ISSUE A RETURN

17. A gasfitting CoC is a return required under reg 46 of the Gas (Safety and Measurement) Regulations 2010 (GSMR), an enactment relating to gasfitting which was in force at the time the gasfitting work was carried out.

18. As noted above, Mr Ratliff issued a gasfitting CoC for the gasfitting work he completed at the property in 2018. However, he failed to issue a Gas Safety Certificate (GSC) for the gasfitting work. A GSC is a return that was required to be issued under the GSMR, per reg 52D.

19. The CoC certified, among other things, that:

    (a) The gasfitting work was completed in accordance with sections 3 to 6 of AS/NZS 5601.1;

    (b) The gasfitting work had been done lawfully and safely, and that the information in the certificate was correct; and

    (c) The installation was connected to a gas supply and was safe to use.

20. There were several issues with the CoC that Mr Ratliff issued, including:

    (a) Based on the contents of the CoC, it appears that Mr Ratliff only tested the pipework connected to the appliances. Mr Ratliff failed to communicate whether he had commissioned the appliances or tested for products of combustion inside the tent while the appliances were in operation;

    (b) The manufacturer's instructions were not attached to the CoC;

    (c) The CoC incorrectly recorded that the gas installation was safe, but the flue was not compliant, for the reasons set out above. Therefore the installation was not safe to connect to the gas supply.

    (d) The CoC should have mentioned that the appliances were installed by others.

21. As a result of the issues with the work carried out by Mr Ratliff, the information recorded on the CoC issued by Mr Ratliff was false and/or misleading. Mr Ratliff also failed to issue a return that was required, namely the GSC. He had still not done so as at the date of this summary of facts.

MR RATLIFF'S COMMENTS

22. Mr Ratliff explained that the heaters in the tents were supplied and installed by the property owners, and that this took place before he tested for soundness in 2018. He said that he had not thought about the work he completed at the property until it was brought to his attention by the Board.

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23. Mr Ratliff stated that, while he did not complete the initial installation of the gas heaters in the three glamping tents at the property, as he was certifying the work as safe and compliant and connecting them to the gas supply, he accepted that it was his job to ensure the heaters were correctly installed. He advised that the work had since been remediated.

24. In explanation for not attaching the manufacturer's instructions to the CoC, Mr Ratliff explained that he did not attach instructions to the CoC because the owner had these from the initial installation. Mr Ratliff advised that he has now adopted the practice of including web links to all manufacturer instructions on CoCs issued by him.

Date:

[redacted]

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N Herewini

Counsel for the investigator

[redacted]

[redacted]

M Ratliff | C Ratlif

Lay advocate | Registered Person

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