Plumbers, Gasfitters and Drainlayers Board

CANNELL v DUNLOP

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/4)

Summary

Rex Kenneth Dunlop, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer, was charged carrying out gasfitting and drainlaying in a manner contrary to an enactment (unauthorised work) and providing false or misleading returns under an enactment relating to gasfitting. The charges related to work carried out at two properties on Stewart Island/Rakiura.

Mr Dunlop did not appear at his hearing so the matter proceeded by way of formal proof. Mr Dunlop was found guilty of all three charges.

The Board considered Mr Dunlop's conduct was moderately serious, but at the higher end of that scale. The Board accepted there were no aggravating factors in the case and that Mr Dunlop had not previous disciplinary offending. However, Mr Dunlop's failure to engage in the investigation and hearing meant the Board had no knowledge of his attitude to his offending or the likelihood of it being repeated.

The Board ordered Mr Dunlop to pay a fine of $5,000, complete a gasfitting refresher course in order to relicense after the 2024-25 licensing year, and pay $11,000 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 **REX KENNETH DUNLOP**
Certifying Plumber Certifying Gasfitter, Certifying Drainlayer, of Stewart Island / Rakiura

Registered Person

DECISION OF THE BOARD
25 MARCH 2024

Hearing:	Held in Wellington/Te Whanganui-a-Tara on 15 February 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, Selwyn Hikuroa, Martin de Gouw, Deborah Cranko
Counsel:	Elena Mok for the investigator
Legal advisor:	Richard May

Disciplinary hearing

1. On 15 February 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing to consider a complaint by Tony Osbourne against Rex Kenneth Dunlop, Certifying Plumber, Certifying Gasfitter, Certifying Drainlayer. The complaint related to gasfitting and drainlaying work carried out by Mr Dunlop at two properties on Stewart Island/Raikura.

Charges

2. By Notice of Disciplinary Charges dated 11 July 2023, Mr Dunlop was charged with the following offences:

    a. carrying out gasfitting in a manner contrary to an enactment, which is a disciplinary offence under section 89(a)(ii) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**) (**charge one**)

    b. carrying out drainlaying in a manner contrary to an enactment, which is a disciplinary offence under section 89(a)(ii) of the Act (**charge two**)

    c. providing false or misleading returns required under an enactment relating to gasfitting, which is a disciplinary offence under section 89(f) of the Act (**charge three**).

Formal proof

3. Ms Mok submitted that Mr Dunlop had failed to engage with the proceedings despite being given notice of the proceedings, the scheduled hearing date, and being provided with the investigator's evidence. Ms Mok submitted that Mr Dunlop had also failed to engage with the investigator at any stage during the investigation. She submitted that if Mr Dunlop did not appear at the hearing, the matter should proceed by way of formal proof.

4. Being satisfied that Mr Dunlop had full notice of the hearing and had been provided with the evidence, there being no appearance by him the Board determined that the matter could proceed in his absence by way of formal proof.

Leave to amend charge three

5. Ms Mok sought leave to amend two of the particulars of charge three. She submitted that particular 8(d)(ii) of charge three alleged that each of the gas certificates issued by Mr Dunlop certified that the gasfitting work had been done lawfully and safely, and that the information in the certificate was correct. Following on from that, particular 9(i) of charge three alleged that the gas certificates were false and/or misleading because the gasfitting work had not been done lawfully because Mr Dunlop had not been authorised to carry out gasfitting at the time.

6. Ms Mok submitted that the box on each certificate certifying that the work had been done lawfully and safely and the information on the certificate was correct had not been ticked by Mr Dunlop. Ms Mok therefore sought leave to:

    i. delete particular 8(d)(ii)

    ii. amend particular 9(i) to state only that Mr Dunlop had not been authorised to carry out gasfitting at the time

    iii. add a new particular 8(e) alleging that Mr Dunlop had signed the gas certificates as a certifier recording that he was a person authorised to certify the connection.

7. Ms Mok submitted that there was no prejudice to Mr Dunlop from the changes sought as the core allegation against him remained the same. That being that the certificates he issued were false or misleading because he did not hold a current practising licence and was not authorised to do gasfitting work at that time.

8. The Board accepted that Mr Dunlop was not prejudiced by the changes sought and the amendments were granted.

Facts of the case

9. Ms Mok submitted that the facts in the case were as follows:

    a. Between 2019 and 2021, Mr Dunlop completed gasfitting work at the following addresses (jointly, **properties**):

        i. 9 Ayr Street, Stewart Island/Rakiura (**Ayr Street**)

        ii. 136 Elgin Terrace, Stewart Island/Rakiura (**Elgin Terrace**).

    b. At some time in 2021, Mr Dunlop installed a continuous flow water heater (**water heater**) and associate pipework at Ayr Street. On 7 July 2021, Mr Dunlop issued a gas certificate for the work certifying that it was safe and compliant. Mr Dunlop did not hold a currently practising licence authorising him to do gasfitting in 2021.

    c. On 12 December 2019, Mr Dunlop installed a gas hob, water heater, and associated pipework and fittings at Elgin Terrace. On 14 March 2021, he issued a gas certificate for the work certifying it was safe and complaint. Mr Dunlop did not hold a current practising licence authorising him to do gasfitting in 2019.

    d. Between June 2019 and mid to late 2020, Mr Dunlop also carried out drainlaying at Elgin Terrace included the installation of sewer and storm water drains. Mr Dunlop did not hold a current licence authorising him to do drainlaying during this time.

e. In 2022, the Southland District Council (**Council**) received applications for certificates of code compliance for the properties showing that Mr Dunlop had carried out gasfitting and drainlaying. Tony Osbourne, who worked at the Council in the Building Control Authority team at the time, checked the Board's public register and discovered that Mr Dunlop's gasfitting and drainlaying licences were expired when he carried out the work at the properties. Mr Osbourne subsequently made a complaint to the Board.

f. By carrying out gasfitting and drainlaying without current licences, Mr Dunlop breached sections 9 and 10 respectively of the Act.

g. Samuel Wood, a Certifying Plumber and Certifying Gasfitter employed by the Board as a Senior Technical Advisor, reviewed the gasfitting work carried out by Mr Dunlop. He found the following compliance issues with the gasfitting at Ayr Street:

   I. the water pipes to and from the water heater did not have adequate supports, which did not comply with G12.3.7(b) of the New Zealand Building Code (**Code**)

   II. the water heater did not have adequate supports as required by the manufacturer's instructions, which did not comply with section 2.6.2 of the gas installation standard AS/NZS 5601.1 (**Standard**)

   III. the pump installation was outside the thermal envelope of the building in an area where water pipes, which could be exposed to freezing temperatures, were not lagged, which did not comply with G12.3.7(b) of the Code.

h. As a result of these defects, the gasfitting work at Ayr Street was contrary to the Building Act 2004 and Building Regulations 1992, which require compliance with the Code, and the Gas (Safety and Measurement) Regulations 2010 (**GSMR**), which require compliance with the Standard.

i. Gas certificates are returns required under the GSMR. The gas certificates issued by Mr Dunlop for the properties certified, among other things, that:

   I. the gasfitting work was completed in accordance with the Standard

   II. the installation was safe to connect to the gas supply.

j. The certificates were false or misleading because the work had not been carried out lawfully given that Mr Dunlop was not authorised to carry out gasfitting work at the applicable times.

k. The certificate in respect of Ayr Street was also false or misleading because the gasfitting was non-compliant.

Investigator's opening submissions

10. Ms Mok submitted that the Board was required to be satisfied on the balance of probabilities that Mr Dunlop was guilty of the disciplinary offences before it could exercise its disciplinary powers. She submitted that the Board could be so satisfied in this case.

11. Ms Mok submitted that section 9 of the Act made it clear that a registered person such as Mr Dunlop had to hold a current practising licence in order to be authorised to do gasfitting. She submitted that Ms Cannell's evidence would show Mr Dunlop had been registered as a certifying gasfitting since 2015 but did not hold a practising licence or any other form of authorisation to do gasfitting between 31 March 2016 and 30 June 2022.

12. Ms Mok submitted that the evidence of the owners of the properties would show that Mr Dunlop had carried out gasfitting work at Ayr Street and Elgin Terrace during the period when he was not authorised. Mr Wood would provide evidence that the work involved in each case was gasfitting as defined in section 5 of the Act. She submitted that the evidence would therefore show that Mr Dunlop had carried out gasfitting in breach of section 9 of the Act.

13. Ms Mok submitted that Mr Wood's evidence would show that, because of the non-compliant aspects of the gasfitting at Ayr Street, it had been carried out in breach of the Building Act, the Building Regulations, and the GSMR.

14. Ms Mok submitted that, as with gasfitting, drainlaying was restricted work under section 10 of the Act and a registered drainlayer such as Mr Dunlop was only authorised to do such work if he held a practising licence. Mr Dunlop did not hold a licence or any other form of authorisation to do drainlaying between 31 March 2016 and 30 June 2022.

15. Ms Mok submitted that the evidence of the owner of Elgin Terrace, Mr McKinnon, would be that between June 2019 and mid to late 2020, Mr Dunlop had installed sewer and stormwater drains. Mr Alexander would give evidence that the work was drainlaying as defined in section 4 of the Act. Ms Mok submitted that the evidence therefore would show that Mr Dunlop had carried out drainlaying in breach of section 10 of the Act.

16. Ms Mok submitted that Mr Dunlop issued gas certificates for the gasfitting at the properties. The certificates were in his name and included his signature and registration number. She submitted that the certificate in respect of Ayr Street certified that the work complied with the Code and the Standard. However, the compliance issues with the work meant it did not comply with either and it was therefore false and/or misleading in that regard.

17. Ms Mok submitted that both the certificates were also false and/or misleading because, when they were issued, Mr Dunlop was not authorised to do gasfitting which including certifying gasfitting work. She submitted that Mr Dunlop recording on the certificates that he was a certifier and signing off the work misrepresenting him as being authorised and this was therefore false and/or misleading.

Summary of evidence – Melissa Cannell

18. The first witness was the investigator, Ms Cannell. The Board considered Ms Cannell's evidence contained in signed statements dated 15 and 19 January 2024.

19. Ms Cannell stated she was an investigator employed by the Board. She described being appointed on 6 September 2022 by the Registrar of Plumbers, Gasfitters, and Drainlayers to investigate Mr Osbourne's complaint against Mr Dunlop.

20. Ms Cannell described her investigation, including the people she spoke to as part of her investigation, and the information she collected about Mr Osbourne's complaint. Ms Cannell described her attempts to engaged with Mr Dunlop as part of her investigation including through emails, telephone calls, and finally a couriered letter to his recorded address. Ms Cannell stated she did not receive any response from Mr Dunlop to any of her attempts to contact him.

Summary of evidence – Maggie George

21. The next witness for the investigator was Maggie George. Ms George leased the Ayr Street property from her parents. The Board considered Ms George's evidence contained in a signed statement dated 23 January 2024.

22. Ms George stated that she approached Mr Dunlop in 2021 to do some gasfitting on her parents' property because she believed he was the only gasfitting on Stewart Island. On 7 July 2021, he had installed a gas water heater and associated pipework. About a week later he had issued a gas certificate for the work certifying it was safe and compliant. Ms George stated that Mr Dunlop did not tell her did not have a gasfitting licence when he carried out the gasfitting work or issued the certificate.

23. Ms George stated that the Council advised her she could not get a Certificate of Code Compliance for the property unless the gas certificate was signed by a practitioner who was licensed. She stated that Mr Dunlop provided an updated certificate on 2 December 2022, which the Council accepted.

Summary of evidence – Stuart McKinnon

24. The next witness was Stuart McKinnon. Mr McKinnon is the former owner of the Elgin Terrace property and was the owner at the time Mr Dunlop carried out the work there. The Board considered Mr McKinnon's evidence contained in a signed statement dated 15 January 2024.

25. Mr McKinnon stated that in December 2021 Mr Dunlop carried out gasfitting and drainlaying work at the property. The gasfitting involved the installation of a gas hob, water heater, and associated pipework and fittings. The drainlaying work involved the installation of sewer and stormwater drains. He stated that the drainlaying work was completed over an extended period between June 2019 and mid to late 2020.

26. Mr McKinnon stated that after the work was carried out, he was advised by the Council that Mr Dunlop was not able to do gasfitting or drainlaying because he did not have the necessary licences. The Council advised him he would not get a Certificate of Code Compliance unless a gas certificate was signed off by a practitioner who was licensed. Mr McKinnon said he subsequently submitted a further application for code compliance with a revised gas certificate from Mr Dunlop. He stated that he sold the property in July 2022.

Summary of evidence – Julie Conradi

27. The next witness was Julie Conradi. Ms Conradi works for the Council as the Manager Building Solutions. The Board considered Ms Conradi's evidence contained in a signed statement dated 16 January 2024.

28. Ms Conradi stated that on 10 June 2022, a previous colleague of hers at the Council, Tony Osbourne, made a complaint to the Board about Rex Dunlop. The complaint related to gasfitting and drainlaying work carried out at two properties on Stewart Island. Ms Conradi stated that she was aware of the complaint and took it over in December 2022 when Mr Osbourne left the Council.

29. Ms Conradi stated that part of Mr Osbourne's role at the Council had been reviewing applications for a code compliance certificate in relation to building work. On 6 April 2022, the Council had received such an application for a new dwelling at 136 Elgin Terrace, Stewart Island. A gas certificate was attached to the application dated 14 March 2021 signed by Mr Dunlop. The gasfitting work was recorded as having been completed on 12 December 2019. She stated that Council records showed that the drainlaying work at the property was largely completed by 11 December 2019.

30. On 12 April 2022, Ms Conradi stated the Council received an application for a code compliance certificate for work completed at 9 Ayr Street, Stewart Island. Accompanying that application was a gas certificate dated 7 July 2021 signed by Mr Dunlop.

31. Ms Conradi stated that as part of assessing whether the two applications should be granted, Mr Osbourne checked the Board's online public register and found that Mr Dunlop's gasfitting and drainlaying licences had expired. As a result, Mr Osbourne made the complaint to the Board.

32. In mid-2022, Ms Conradi stated that the Council became aware that Mr Dunlop had renewed his licences as a certifying plumber, certifying gasfitter, and certifying

drainlayer. Mr Dunlop subsequently issued a revised gas certificate for the work done at Ayr Street.

33. The Council received a second application for a code compliance certificate for the Elgin Terrace property on 18 July 2022. The second application included a revised gas certificate dated 11 July 2022 issued by Mr Dunlop.

Summary of evidence – Samuel Wood

34. The next witness was Samuel Wood. Mr Wood is a registered and licensed Certifying Plumber and Certifying Gasfitter. The Board considered Mr Wood's evidence contained in a signed statement dated 20 December 2023.

35. Mr Wood stated that he was previously employed by the Board as a Senior Technical Advisor but now contracts to the Board providing expert technical advice on matters relating to plumbing and gasfitting.

36. Mr Wood stated he was aware of the complaint made by Mr Osbourne about gasfitting and drainlaying work done at the properties by Mr Dunlop. He stated that in November 2022 he provided the investigator with a technical assessment of the gasfitting work carried out by Mr Dunlop. Following a request from Ms Cannell, Mr Wood provided a further, updated technical assessment in February 2023.

37. In his technical assessment, Mr Wood stated that the gasfitting work carried out by Mr Dunlop at the properties came within the definition of gasfitting in section 5 of the Act. It was his opinion that there were issues with the gasfitting work at Ayr Street, which were:

    i. no supports on water pipes to and from the gas heater which was contrary to G12.3.7(b) of the Code

    ii. the water heater lacked the supports required in the manufacturer's instructions, which was contrary to section 2.6.2 of the Standard

    iii. the pump installation was outside the thermal envelope of the building in an area where the water pipes could be exposed to freezing and the pipes had not been lagged. This was contrary to section 7.2.1(a) of G12/AS1 and G12.3.7(b) of the Code.

38. With regard to the gas certificates for the properties, Mr Wood's opinion was that both certificates were fraudulent because Mr Dunlop was not authorised to carry out gasfitting or issue certificates. He stated that him doing so was an offence under the GSMR.

Summary of evidence – Hamish Alexander

39. The final witness for the investigator was Hamish Alexander. Mr Alexander is a registered and licensed Certifying Plumber, Certifying Gasfitter, and Certifying Drainlayer. Mr Alexander contracts to the Board providing technical advice.

40. Mr Alexander stated that carrying out sewer and stormwater drain work at Elgin Terrace was drainlaying as defined in section 4 of the Act.

Consideration of liability

41. With regard to charge one, the Board was satisfied from the evidence of Ms George, Mr McKinnon, and the gas certificates provided in evidence that Mr Dunlop had carried out the specified gasfitting at the properties. The Board was also satisfied that the evidence of Ms Cannell established that Mr Dunlop did not hold a practising licence for gasfitting at the time the work was carried out at each property. This meant that he was unauthorised and had carried out gasfitting in breach of section 9 of the Act. In addition, the Board accepted Mr Wood's evidence that the gasfitting work at Ayr Street was non-compliant and this made it contrary to the Building Act, Building Regulations and the GSMR. The Board determined that charge one was made out.

42. With regard to charge two, the Board accepted the evidence of Mr McKinnon, the Council, and the As-Built plan signed by Mr Dunlop provided in evidence established that Mr Dunlop had carried out drainlaying work at Elgin Terrace. And again, Ms Cannell's evidence established that Mr Dunlop did not hold a practising licence for drainlaying at the time. Mr Dunlop had therefore carried out drainlaying in breach of section 10 of the Act and charge two was also made out.

43. Finally, the Board was satisfied from the evidence that Mr Dunlop had issued the gas certificates for the properties and that those certificates certified that the gasfitting work complied with the Standard and the installations were safe to connect to the gas supply. This was false or misleading in respect of Ayr Street because Mr Wood's evidence established that the installation did not comply with the Standard. The Board was also satisfied from the certificates themselves that Mr Dunlop had signed them as a certifier and that amounted to a representation that he was authorised to issue them. This was false and/or misleading because Mr Dunlop was not authorised to do gasfitting at the time or issue gas certificates. Charge three was therefore made out.

Investigator's submissions on penalty

44. Ms Mok submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and 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 that the principles and purposes of the disciplinary proceeding were met.

45. Ms Mok submitted that Mr Dunlop's conduct in this case was moderately serious. He had engaged in two forms of restricted work while unauthorised, completed non-compliant gasfitting at one property, and issued false or misleading certificates for the gasfitting work. She submitted that a fine with a starting point in the vicinity of $4,500 - $5,000 was appropriate having regard to other comparable cases and the need to maintain industry standards through deterrence. In addition, Ms Mok submitted that an order requiring Mr Dunlop to undertake a course relating to certifying gasfitting would also be appropriate given the issues with the certificates. She submitted that training may help to reduce the risk of any similar issues going forward given that Mr Dunlop was now authorised to carry out gasfitting.

46. Ms Mok referred the Board to the cases of *Radovich v Smith* (2020/27), *Radovich v Lyon* (2021/3), and *Thomas v Low* (2018/11). Mr Smith had carried out drainlaying without a current practising licence and the Board adopted a starting point for the fine in his case of $2,500. Ms Mok submitted Mr Dunlop's case was more serious than *Smith* as he had carried out two forms of work without a licence. In the *Lyon* case, Mr Lyon carried out gasfitting without any form of authorisation. The Board adopted a starting point for the fine of $6,000 in his case. Ms Mok submitted that Mr Dunlop's case was less serious than *Lyon* because Mr Dunlop was a registered certifying gasfitter, albeit unlicensed, and he therefore posed less risk to the public than Mr Lyon. Finally, in the *Low* case, Mr Low carried out non-compliant gasfitting and unauthorised drainlaying, as well as employing an unauthorised person to do drainlaying. Mr Lyon was fined $8,000 and a restriction was placed on his gasfitting licence. Ms Mok submitted that Mr Dunlop's case was less serious than *Low* because the non-compliant aspects of Mr Dunlop's work were compliance-related and did not raise any safety issues. Mr Low has also faced a charge of employing an unauthorised person.

47. Ms Mok submitted that Mr Dunlop did not have any previous disciplinary offending, and this was to his credit. Given that he had not engaged with the investigation, prosecution, or hearing at any stage, Ms Mok submitted that any discount to recognise this though should be minimal.

48. Ms Mok submitted that under section 107 of the Act, the Board could require Mr Dunlop to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that costs were a matter for the Board in its discretion but the usual starting point for an order of costs was half of the costs. She submitted that Mr Dunlop's failure to engage in the process had meant the investigator was required to prepare and file a number of witness statements.

Consideration of penalty

49. 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.

50. The Board considered that Mr Dunlop's conduct was moderately serious, but at the higher end of that scale. Mr Dunlop had breached his licensing requirements for a prolonged period and the Board considered that this showed a reckless disregard for his professional responsibilities. In addition, he had not completed any of the required continuing professional development training required to relicense during this time. Had he done so, the Board considered he may have had a better understanding of both the compliance and certification requirements of the gasfitting work he carried out.

51. The Board accepted that Mr Dunlop had no previous disciplinary history. However, as he had failed to participate at any stage during the investigation or hearing, the Board unable to determine what Mr Dunlop's attitude was towards his offending and therefore the likelihood that he might engage in similar conduct in the future.

52. The Board determined that Mr Dunlop should be fined in the present case and adopted a starting point of $5,000. The Board considered that there were no grounds on which to reduce the fine.

53. The Board also considered that Mr Dunlop should be required to do some training in gasfitting and determined that he must successfully complete a Master Plumbers gasfitting refresher course to renew his gasfitting licence after the 2024-25 licensing year.

Costs

54. 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 $22,775.33.

55. The Board determined that Mr Dunlop should have to pay $11,000 towards costs.

Publication

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

Board orders

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

    i. Pursuant to section 106(1)(f) of the Act, Mr Dunlop pay a fine of $5,000.

    ii. Pursuant to sections 106(1)(e) and 106(2)(b) of the Act, Mr Dunlop successfully complete a Master Plumbers gasfitting refresher course in order to renew his gasfitting practising licence after the 2024-2025 licensing year.

    iii. Pursuant to section 107 of the Act, Mr Dunlop pay $11,000 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

59. If Mr Dunlop 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