Plumbers, Gasfitters and Drainlayers Board

CANNELL V STOKES

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/7)

Summary

Scott Stokes, Certifying Plumber, Certifying Gasfitter, was charged with carrying out negligent or incompetent gasfitting work. The charge related to the installation of a gas hot water heater at a commercial property in Auckland. The installation had several defects and Mr Stokes issued a gas safety certificate confirming that the installation was safe and compliant when it was not.

Mr Stokes pleaded guilty to the charge.

The Board considered Mr Stokes' conduct was at the high end of moderately serious. The installation was non-compliant, unsafe, and able to be used. The Board also considered that Mr Stokes did not appear to understand the safety risks associated with the installation. The Board accepted there were no personal aggravating factors in the case and that Mr Stokes was entitled to credit for pleading guilty and for having no previous disciplinary offending.

The Board ordered Mr Stokes to pay a fine of $3,200, to undertake a course of gasfitting training, and to pay $4,700 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 **SCOTT DAVID STOKES**
Certifying Plumber, Certifying Gasfitter of Auckland

Registered Person

DECISION OF THE BOARD
23 May 2024

Hearing:	Held on the papers in Wellington/Te Whanganui-a-Tara on 27 March 2024
Members sitting:	Diana Kuhtz-Covich (Chair), Barry Willcox, James Smith, Selwyn Hikuroa, Ming-chun Wu
Counsel:	Abigail Stuart for the Investigator Mr Stokes was self-represented
Legal advisor:	Sarah Leslie

Disciplinary hearing

1. On 27 March 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Navin Soma against Scott Stokes, Certifying Plumber and Certifying Gasfitter. The complaint related to gasfitting work carried out at 1897 Great North Road, Avondale, Auckland (**property**).

Guilty plea

2. On 4 September 2023, Mr Stokes pleaded guilty to carrying out negligent or incompetent gasfitting, and signed an agreed summary of facts, the materials parts of which were:

    a. Mr Stokes is a registered and licensed certifying plumber and certifying gasfitter. In January 2022, Mr Soma engaged Mr Stokes to carrying out gasfitting work at the property. On or about 20 January 2022, Mr Stokes attended the property and installed a Rinnai A26 Infinity gas hot water heater, two gas fryers, and a gas grill.

    b. After carrying out the gasfitting work, Mr Stokes connected the installation to the gas supply, and signed and issued a gas certificate for the work. The certificate stated that the information in the certificate was correct and that the gasfitting work complied with the mandatory installation standards in AS/NZS 5601.1 (**Standard**).

    c. In March 2022, alterations were made to the gas installation.

    d. In July 2022, another certifying plumber and certifying gasfitter was engaged to carry out an inspection of the gas installation. He identified various issues with the work and advised that the work was non-compliant and dangerous.

    e. The certifying plumber and gasfitter who inspected the work reported the issues to Mr Soma, who subsequently made a complaint to the Board about Mr Stokes' work at the property.

    f. The work carried out by Mr Stokes was negligent or incompetent because:

        i. The water heater's flue terminal did not have the requisite clearance from an external corner for a fan-assisted appliance, contrary to clause 6.9.3 and figure 2 of the Standard;

        ii. The regulator vent terminal was installed within the exclusion zone and without the requisite clearance from a window which opened into a building, contrary to clauses 2.4.11 and 5.11.5.9 of the Standard.

        iii. The gas installation was connected to an inadequate gas supply due to the size of the cylinders, contrary to clauses 3.1 (b) and (c) of the Standard.

g. Mr Stokes admitted that he installed the gas cylinders and water heater at the property. He stated that he had intended to replace the gas cylinders with 45kg gas cylinders and to move the unit closer to the window and to seal the window shut. He acknowledged that the water heater unit was too close to an external corner. He explained that he would not normally do this but was trying to find a solution for his client.

h. Mr Stokes stated that the certificate was partially filled out because the job was incomplete. He stated that the certificate was only supposed to be "vaguely shown" to Mr Soma to prove that a certifying gasfitter was doing the job so that he would allow Mr Stokes to return to the property to install 45kg cylinders.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr Stokes had committed a disciplinary offence under section 89(a)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**).

Penalty and costs submissions

4. On behalf of the investigator, Ms Stuart 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, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Ms Stuart submitted that Mr Stokes' offending in this case was moderately serious. She submitted that it risked the safety of others, was carried out in and was in commercial premises frequented by the public. He had also falsely documented that his work was safe when he knew it was not.

6. Ms Stuart referred the Board to its previous decisions in the cases of *Radovich v Tan* (2020/6), *Radovich v Mitchell* (2021/32), and *Radovich v Rennie* (2022/15). In *Tan*, Mr Tan pleaded guilty to a charge of carrying out negligent or incompetent gasfitting which, amongst other defects, included installing a flue terminal too close to an opening. The Board adopted a starting point for a fine of $3,000. In *Mitchell*, Mr Mitchell pleaded guilty to carrying out negligent or incompetent gasfitting work which involved the conversion of an existing hob installation from LPG to natural gas but where he failed to install a regulator to ensure the hob was operating at a safe operating pressure. The Board adopted a starting point of $4,500. In *Rennie*, Mr Rennie pleaded guilty to charges of negligent or incompetent gasfitting and filing a false or misleading gas certificate. The Board adopted a starting point for a fine of $5,500 in this case.

7. Ms Stuart submitted that the *Rennie* case was more serious than Mr Stokes' case since it involved a greater number of defects which posed a safety risk plus a false certificate. She submitted that the *Tan* was less serious, since there were fewer

defects and no false certificate. She submitted that while the defects were more serious in the *Mitchell* case than Mr Stokes' case, Mr Stokes' case involved multiple defects and a false certificate. She submitted that the *Mitchell* case should therefore set the benchmark for a starting point for penalty.

8. Ms Stuart submitted that the appropriate penalty in this case was a fine with a starting point of $4,000 to $4,500. She submitted the investigator was not aware of any aggravating factors in this case and Mr Stokes was entitled to credit for his guilty plea and lack of previous disciplinary offending.

9. Ms Stuart submitted that the Board could require Mr Stokes to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the actual costs. Ms Stuart submit that the Board may take into account relevant factors such as the extent of a practitioner's engagement in the proceeding and the acceptance of liability when making a costs order. She submitted that the investigator had difficulty engaging with Mr Stokes at times until he ultimately decided to plead guilty. He submitted that this had resulted in increased costs for the investigator.

10. In his submissions, Mr Stokes submitted that the offending was at a low level of seriousness because of the unique circumstances of the case, namely that the installation was incomplete. He accepted that he should not have issued the gas certificate. He submitted that he issued the gas certificate as a means to regain access to the site to install larger 45kg gas cylinders after he had been prevented from accessing it by the landlord. He said that he didn't accept any payment for the work and felt pressured to do it as a favour to the tenant who was struggling to open his food business. He provided some information about his personal circumstances as well as his financial circumstances. He submitted that he would need to enter into a repayment plan if he was ordered to pay a fine and/or costs.

11. Mr Stokes asked the Board to grant him name suppression in this case. He submitted that publication of his name might result in him losing his job and might result in damage to his employer's reputation. He described the impact the job had had on his mental health and that it had taken him several years to find work that was the right fit for him.

12. In reply to Mr Stokes' submissions, Ms Stuart submitted that the investigator rejected Mr Stokes' submission that his conduct was of a low level of seriousness. She submitted that the investigator also did not accept Mr Stokes attributing what happened to the work being incomplete and to being physically prevented from returning to the site, and that these facts had not been accepted by the investigator in the agreed summary of facts signed by the parties. She submitted that even if Mr Stokes had tried to return to the site, it did not reduce his culpability. She submitted that even though Mr Stokes said the gas installation was incomplete, Mr Stokes acknowledged he connected it to the gas supply meaning it was able to be used by the staff at the restaurant in a non-compliant state. She submitted that the purpose

for which Mr Stokes says he issued the gas certificate does not diminish the seriousness of his conduct in issuing a gas certificate falsely stating the work was safe and compliant.

13. Finally regarding name suppression, Ms Stuart submitted that the investigator opposed Mr Stokes' application for name suppression on the basis that he had mischaracterised the seriousness of the offending and had not provided evidence to support his submission that publication would affect his employment or reputation. She submitted that it was well-established that reputational damage was an ordinary consequence of disciplinary proceedings and she submitted that that this did not warrant a departure from the principle of open justice.

Decision on penalty

14. 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.

15. The Board considered Mr Stokes conduct in this case was at the high end of moderately serious. The Board noted the potential safety risks associated with this installation at commercial premises, which was inappropriately located and had the incorrect bottle size. The Board expressed concern that, based on Mr Stokes' assessment of the seriousness of the offending, he did not appear to accept the safety risks associated with this installation. The installation was unsafe and could potentially be used.

16. The Board considered that there were no personal aggravating factors in this case and Mr Stokes' guilty plea and lack of previous disciplinary offending were mitigating factors in his favour.

17. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $4,000. Recognising the mitigating factors, the Board reduced the fine to $3,200.

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

Decision on 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 $11,763.25.

20. The Board accepted that Mr Stokes' guilty plea had avoided the costs of a full hearing and determined that he should pay $4,700 towards costs.

Decision on name suppression

21. The Board did not consider that Mr Stokes' personal interests in this case outweighed the public interest in open justice and his application for name suppression was declined.

Publication

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

Board orders

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

    a. Pursuant to section 106(1)(f) of the Act, Mr Stokes pay a fine of $3,200.

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

    c. Pursuant to section 107 of the Act, Mr Stokes pay $4,700 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

25. If Mr Stokes 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 23 May 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board