Plumbers, Gasfitters and Drainlayers Board

RADOVICH V WONG

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/8)

Summary

Phillip Wong, Tradesman Plumber, was charged with employing, directing or permitting an unauthorised trainee to carry out sanitary plumbing work. The charge related to a trainee employed by Mr Wong's company, and who had not renewed his limited certificate authorisation for plumbing, carrying out or assisting with sanitary plumbing work at numerous properties in the Auckland/Tāmaki Makaurau and Northland/ Te Tai Tokerau areas.

Mr Wong pleaded guilty to the charge.

The Board considered Mr Wong's conduct was moderately serious. Sanitary plumbing work was carried out by the trainee at numerous properties over an extended period of time after his licence had expired. The Board accepted there were no aggravating factors in the case and that Mr Wong was entitled to credit for pleading guilty, being cooperative throughout the process, having no previous disciplinary offending, being remorseful, and taking proactive steps to change his practices.

The Board ordered Mr Wong to pay a fine of $1,950 and pay $2,500 towards costs.

IN THE MATTER OF a disciplinary hearing pursuant to section 101 of the Plumbers, Gasfitters, and Drainlayers Act 2006

BETWEEN **WAYNE RADOVICH**

Investigator

AND **PHILLIP AARON WONG**
Tradesman Plumber 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:	Sam McMullan for the Investigator Helen Twomey for the Registered Person
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 Sara McKee against Phillip Wong, Tradesman Plumber. The complaint related to sanitary plumbing work carried out by a trainee, who did not hold an authorisation to carry out sanitary plumbing, at 22 properties in the Auckland/ Tāmaki Makaurau and Northland/Te Tai Tokerau areas (**properties**).

Guilty plea

2. Mr Wong pleaded guilty to employing, directing or permitting an unauthorised person to do sanitary plumbing work and signed an agreed summary of facts, the materials parts of which were:

    a. Mr Wong is the sole director of Express Plumbing Limited (**Express Plumbing**). Mr Wong had a trainee who was employed by his company.

    b. Between 1 April 2021 and 2 December 2022, while employed by Express Plumbing, the trainee carried out sanitary plumbing work under the supervision of tradesman or certifying plumbers employed by Express Plumbing. The works were carried out at 22 sites across the Auckland and Northland areas.

    c. The sanitary plumbing work that the trainee undertook and/or assisted with included:

        i. installing copper watermain risers

        ii. bathroom renovation including re-piping buteline, adjusting waste pipes, and installing a vanity, toilet and shower

        iii. under slab plumbing including running PVC pipework inground

        iv. connecting a kitchen in new housing developments and commissioning/testing fixtures

        v. siliconing toilets

        vi. repairing a copper pipe in a ceiling

        vii. piping out water for new build townhouses in PEX pipe

        viii. installing a bath.

    d. Between 22 July 2020 and 31 March 2021, the trainee was authorised to do restricted work as a limited certificate trainee plumber. The trainee did not renew his authorisations after 31 March 2021 and was therefore not

authorised to do sanitary plumbing work under section 8 of the Plumbers, Gasfitters and Drainlayers Act 2006.

e. No defects or compliance issues were identified with the work the trainee carried out or assisted with.

f. On 2 December 2022, Sara McKee, a field officer for Total Risk Management, conducted a compliance visit on behalf of the Board to a construction site where the trainee was undertaking sanitary plumbing work. As a result, the Board began an investigation which uncovered the sanitary plumbing work in question.

g. On 7 December 2022, the Board contacted Mr Wong about the trainee. Express Plumbing subsequently followed up regarding his authorisation and on 13 December 2022, the trainee renewed his limited certificate for plumbing.

h. In response to the investigation report, Mr Wong acknowledged that the trainee had not been authorised to do sanitary plumbing work from 1 April 2021 until 13 December 2022. Express Plumbing was not aware that the trainee had not renewed his certificate but accepted that it should have and failed to confirm this with the trainee upon expiry of his previous licence. Express Plumbing took steps to rectify the issue upon being advised of the oversight.

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

Penalty and costs submissions

4. On behalf of the investigator, Mr McMullan submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and 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, treat practitioners consistently where possible, and to impose the least severe penalty appropriate in the circumstances.

5. Mr McMullan submitted that Mr Wong's conduct in this case was moderately serious given the number of properties at which the trainee had carried out sanitary plumbing work and the extended period of time in which he had worked without an authorisation. He submitted that while the trainee had some training and knowledge of sanitary plumbing, he was not particularly experienced and this increased the risk of the work being defective. However, he acknowledged that there were no known defects with the work. He submitted that Mr Wong's statement that it was an oversight that he was not aware that the trainee had not renewed his authorisation only mitigated the offending so far. He submitted that it was Mr Wong's

responsibility to ensure his employee was appropriately authorised to carry out the work.

6. Mr McMullan referred the Board to its previous decisions in the cases of *Radovich v Willis* (2023/7), *Radovich v Foster* (2020/15), and *Cannell v Lee* (2023/13). In all of these cases the registered person pleaded guilty to employing, directing or permitting an authorised person or persons to carry out restricted work. The Board adopted starting points for fines ranging from $3,250 to $4,000 in the cases.

7. Mr McMullan submitted that the present case was less serious than *Willis* and *Foster* but more serious than *Lee*. *Willis* involved an unauthorised employee carrying out drainlaying work across 55 sites over a period of seven months. In *Foster*, Mr Foster employed two unauthorised people to carry out sanitary plumbing work and was aware that neither employee was authorised when he employed them. In *Lee*, work was carried out at only one address.

8. Mr McMullan submitted that the appropriate penalty in this case was a fine with a starting point of $3,500 to $4,000. He submitted the investigator was not aware of any aggravating factors in this case and Mr Wong was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending.

9. Mr McMullan submitted that the Board could require Mr Wong 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 actual costs. Mr McMullan submitted that the Board may wish to consider a reduction from the starting point given Mr Wong's guilty plea and cooperation.

10. Ms Twomey accepted the principles and purposes of disciplinary proceedings. She submitted that Mr Wong's conduct was low to moderately serious since it involved only one employee who had previously been authorised and had some training and experience in plumbing. He had also been under the supervision of other tradesmen and certifying plumbers while carrying out or assisting with the work. She submitted there were no compliance issues identified with the work.

11. Mr Twomey submitted that the failure to ensure the trainee had authorisation to do sanitary plumbing work was an administrative oversight. Mr Wong had sent reminders to the trainee to have him provide his current authorisation and offering him assistance with renewing. She submitted that Mr Wong accepted he ultimately failed to confirm with his employee that he had renewed his authorisation and had allowed him to continue working prior to having received proof of his authorisation.

12. Referring to the cases cited by Mr McMullan, she submitted that *Willis* and *Foster* were more serious than the present case. *Willi*s involved an unauthorised person carrying out restricted work at 55 properties, more than twice the properties than Mr Wong's case. She submitted that Mr Willis had admitted he was aware his employee's paperwork for licensing had been sitting in his office and had not yet

been processed unlike Mr Wong who honestly believed his trainee was authorised. In *Foster*, two employees carried out the unauthorised work at 38 properties and Mr Foster had relied on what his employees had told him about their authorisations and did not check or request to see their licenses. Starting points for both *Willis* and *Foster* were set at $4,000. In *Lee*, she submitted that two employees were involved at one property but drew the distinction with the present case because Mr Lee was aware that one of the two employees was not authorised to carry out the work. The Board adopted a starting point of $3,250 in that case.

13. Ms Twomey referred the Board to the cases of *Radovich v Barnett* (2021/16), *Radovich v Dare* (2022/19), and *Pigeon v D McDonald* (2022/20) which she submitted were the appropriate cases for determining a starting point for penalty in Mr Wong's case. All the cases involved a charge of employing, directing or permitting an unauthorised person or people to carry out sanitary plumbing work, with *Barnett* also involving a second charge relating to supervision. Starting points for these cases ranged from $3,000 to $4,000.

14. She submitted that *Barnett* and *Dare* cases were more serious than Mr Wong's case. The *Barnett* case involved an unsupervised worker as well as an unauthorised worker and Mr Barnett was aware that the unauthorised worker was unauthorised when directing him to do the work. The *Dare* case involved five different unauthorised workers carrying out sanitary plumbing work over a six-month period. The Board considered this a systematic failure and Mr Dare should have had systems in place to record and track authorisations of employees. She submitted that Mr Wong's case involved a similar administrative failure of checking his employee's authorisation but it only involved one worker. She submitted that the *McDonald* case was like Mr Wong's case in that Mr McDonald had employed, directed or permitted an unauthorised person to carry sanitary plumbing work and had believed his employee was authorised at the time. Like Mr Wong, Mr McDonald had also requested evidence from his employee about his authorisations.

15. Accordingly, Ms Twomey submitted that the appropriate penalty in this case was a fine with a starting point of $3,000. She submitted that there were no aggravating factors in this case and agreed that Mr Wong was entitled to credit for his guilty, plea cooperation, and lack of previous disciplinary offending. She also submitted that Mr Wong had accepted responsibility for the offending, was remorseful for his actions, had taken steps to immediately rectify the issue. He had also proactively updated his company's processes to ensure the error did not occur again. This included installing software that would prevent employees who did not have current authorisations from being scheduled to attend jobs and sending employees text and email reminders about renewing their licences. She submitted that a 35% reduction to the starting point for the fine was warranted for the mitigating factors bringing the fine to $1,950.

16. Ms Twomey stated that Mr Wong accepted he would have to pay a portion of the costs of the proceedings and accepted the starting point of 50%. She submitted that an order for 40% of the total costs would be appropriate in the circumstances, having regard to the mitigating factors.

Decision on penalty

17. 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.

18. The Board considered Mr Wong's conduct in this case was moderately serious. Sanitary plumbing work was carried out by the trainee at numerous properties over an extended period of time after his licence expired. The Board accepted that the trainee was supervised and that no defects had been identified with the work.

19. The Board considered that there were no aggravating factors in this case and Mr Wong's early guilty plea, cooperation, and lack of previous disciplinary offending were mitigating factors in his favour. It also accepted that Mr Wong was remorseful, that he had taken proactive steps to get his trainee licenced as soon as he became aware of the oversight, and that he had made changes to his practices. The Board was particularly pleased to hear that Mr Wong had installed software on his systems that would prevent work being scheduled for employees who did not have current authorisations in the future.

20. The Board considered a fine was an appropriate penalty in this case and determined that the starting point should be $3,000. Recognising the mitigating factors, the Board reduced the fine to $1,950.

Costs

21. 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 $6,426.

22. The Board accepted that Mr Wong's guilty plea and cooperation had avoided the costs of a full hearing and determined that he should pay $2,500 towards costs which was around 40% of the total costs.

Publication

23. The Board determined that the details of Mr Wong'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

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

    a. Pursuant to section 106(1)(f) of the Act, Mr Wong pays a fine of $1,950.

    b. Pursuant to section 107 of the Act, Mr Wong pays $2,500 towards the costs of the investigation, prosecution, and hearing.

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

Appeal

26. If Mr Wong 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