

**Review of the Plumbers
Gasfitters and Drainlayers
Board Investigation and
Discipline Hearing into
Mr. Paul Gee
April 2009 – May 2011**

**Plumbers Gasfitters and Drainlayers Federation
18 December 2017**

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Part 1: Introduction

1. 1 On 3 - 5 May 2011, the Plumbers, Gasfitters and Drainlayers Board ("the Board") held an inquiry pursuant to section 42 of the Plumbers, Gasfitters and Drainlayers Act 1976 ("the Act") into the conduct of Mr. Paul Gee, Craftsman Plumber and Craftsman gasfitter, registration number 15908, in relation to gasfitting work undertaken at seven properties in the Tasman Bay and Westport area between May 2003 and June 2006.
1. 2 The hearing was held in public. Mr. Gee waived his right to name suppression as he felt he had nothing to hide and that the NZ public and practitioners would be better served with full and transparent disclosure.
1. 3 Mr. David Laurenson, Barrister, Wellington, appeared for and on behalf of the Investigator, Mr. Anthony Hammond.
1. 4 Mr. Wal Gordon, Craftsman Plumber, Licensed Gasfitter and Craftsman Drainlayer, appeared as advocate for Mr. Gee. Mr. Gee employed a law firm initially but after being told to plead guilty to all charges he ceased the services of this law firm and was from that point assisted by Mr. Gordon and the Plumbers Gasfitters and Drainlayers Federation ("the Federation").
1. 5 Mr. Bruce Corkill QC appeared as the Board's Legal Assessor, appointed under section 44 of the Act.
1. 6 This review was initiated to assess whether the investigation and the conclusions were reached by fair process and was reasonable and if they were not then what was the impact on the findings of the Plumbers Gasfitters and Drainlayers Board judicial committee.
1. 7 Issues dealt with in this report will consider if individual and cumulative issues have been fair from an administrative law point of view and fair and reasonable in the eyes of the fair minded average lay person.
1. 8 The Review will look to see if the process was let down by reason of insufficient or poor investigation of the facts and if there was anything done or omitted in bad faith or without reasonable care.
1. 9 The review is written so an average lay person can understand the impact of the investigation and subsequent hearings in the hope that similar mistakes or detrimental actions aren't repeated.

- 1.10 The Plumbers Gasfitters and Drainlayers Board was invited to participate in the review but declined. As a result the review has been conducted using relevant information available.

Part 2: Background Information

2. 1 Mr. Gee was employed by Allgas Products Limited ("Allgas") as a Craftsman Gasfitter from 24 February 2003 until 2 December 2003, when he resigned due to safety concerns. Whilst still employed and after leaving Allgas, Mr. Gee raised concerns regarding the work standards, attitude toward safety, certification processes and business practices of Allgas with Allgas, Shell, the Board, Members of Parliament and industry groups. First contact to the Board was December 2003, then in writing January 2003, 2004, 2005, 2006 and letters to MP's Nick Smith June 2006, Damian O'Conner and Dr Cullen Sept 2006.
2. 2 There was little or no response to Mr. Gee's concerns. Personal issues prevented Mr. Gee from pursuing the matter as he was devoting his time to his family.
2. 3 On 9 April 2009 an explosion occurred at the Milton Street Fish and Chip Cafe, 136 Milton Street Nelson ("the cafe"). Mr. Lance Windleburn of the Department of Labour undertook an investigation of the incident, isolating the explosion to a gas leak which developed at the rear of two gas fryers, specifically to one gas bayonet type hose connecting one of the fryers to the installed pipe work. Mr. Gee came forward on the day of the explosion, voluntarily.
2. 4 The gas certification certificate ("gas certificate") for the installation of the two fryers at the cafe was allegedly signed by Mr. Gee on 26 June 2003 when he was employed by Allgas. Mr. Gee installed the pipework and female part of the bayonet fittings to supply the fryers but not the appliances themselves, nor the hoses. When he signed the certificate, the "pipework only" box was ticked and the fryers were not detailed on the certificate, his assertion being that they were added after he signed the certificate. The test date on this certificate is the 15 June 2003, which is the date Mr. Gee believes he did the pipe out to the bayonets, with the fryers being delivered some time after the 15 June 2003. **Of note: the 15 of this date is in blue with the rest in black ink on the gas certificate.**
2. 5 The Board was made aware nine days after the explosion that another Gasfitter Mr. John Darnley had not registered a pizza oven on a gas certificate 345138. This pizza oven was installed at the same kitchen a year after the two fryers and without the gas leak test result filled in. Confusingly there is a copy of this certificate on the PGDB Fox-Pro certificate electronic system with the same details, even down to the missing test for leaks and this certificate 345138 is named in the DOL complaint. In one of his reports the investigator claims that he saw the original of this certificate 345138.

2. 6 Mr. Windleburn lodged a complaint with the Board on 8 July 2009, asking the Board to investigate the matter and also to explore the possibility of other substandard gasfitting installations that may have occurred in the region during the early 2000s. The complaint was not laid against Mr. Gee specifically but was more a general complaint.
2. 7 After receiving the complaint from Mr. Windleburn, the Board appointed Mr. Anthony Hammond as Investigator in respect of the complaint. Mr. Windleburn's complaint was about the certificate process and Mr. Hammond was told that at no point was Mr. Gee's work under question.
2. 8 It is believed the then Registrar at the Plumbers Gasfitters and Drainlayers Board, Mr. Phil Routhan, for whatever reason, named Mr. Gee and Mr. Darnley as the main subjects of interest in the investigation. It is presumed it was because they were the last two gasfitters to have been recorded as working on the café.
2. 9 It would appear two separate investigations have been conducted, one in respect of Mr. Gee and one in respect of Mr. Darnley. No notes or information regarding the investigation into Mr. Darnley were provided to Mr. Gee during the course of the investigation or the relevant hearings.
2. 10 In addition to his investigations in respect of the café, the Investigator inspected seven other installations certified by Mr. Gee. The Investigator identified one issue which he felt was of concern that of not protecting "Pexal" pipe work from UV exposure. Mr. Gee was interviewed by the Investigator and satisfactory explanations were given in answer to the concerns by means of the proprietary materials manufacturer's instructions as per the directions of NZ 5261. No charges were laid in respect of these locations.
2. 11 Prior to interviewing Mr. Gee regarding the above seven installations the Investigator requested, through the Board's Registrar, a series of additional audits which were carried out by Casey Services (NZ) Ltd. The Investigator requested 24 installations, being 10 per cent of the installations certified by Mr. Gee between 2003 and 2006 be audited. Confusingly a letter sent from the PGDB's lawyer dated July 2011 claims all work certified by Mr. Gee between 2003 and 2006 was audited, which may go toward explaining the length of time spanned for the site inspections, this point of view is also reiterated in a letter by MP Patsy Wong.
2. 12 During the course of the investigation defamatory letters were sent to six of the property owners, by the Acting Registrar of the Board, Mr. Kern U'ren, that stated "...it appears a number of gas certificates may have been unlawfully sold or issued by practitioners in areas from Northland to Waikato and the Bay of

Plenty. The above Gas Certification Certificate number relating to your gas property is one of those involved in the issue.....” **This information was false.**

2. 13 The property owners had not been interviewed at this stage and the impact of the letters is not known. These letters were sent out on 2 October 2009.
2. 14 The Board claimed prior to Mr. Gee’s Hearing that the Letters and the Audits had nothing to do with the investigation. The Investigator, under cross examination at the hearing, stated he had requested the Audits. The Audits in the North Island had some 560 certificates signed blank with 90% non compliance with 16 of them life threatening, someone from this case may still be before the PGDB all these years later.
2. 15 Mr. Gee believed the most damaging letter was one to Motueka High School, the main centre for Mr. Gee’s business. From that date onward Mr. Gee believes his business floundered and work became scarce, he was also verbally attacked on sites and shunned by other tradesman.
2. 16 All six letters were sent to the properties which were the subject of charges laid against Mr. Gee by the Investigator additional to the explosion at Milton Street. The letters implied that the gas certificate issued to the properties, by Mr. Gee, were certificates involved in the issue outlined above. That allegation was false and was compiled and sent out to Mr. Gee’s customers without reasonable care. The letters had suggested Mr. Gee had acted dishonestly. The PGDB admitted in an apology letter issued much later after the hearing, that the letter could have given the impression that Mr. Gee was capable of acting unlawfully in other parts of the country.
2. 17 The Board was aware of the false statements made in the letters but did not retract the letter until some 18 months later when they sent out a second letter admitting they had incorrectly stated that the audit was undertaken as a result of an issue regarding the alleged unlawful sale of gas certificates by practitioners in the Northland, Waikato and Bay of Plenty region. By this stage the damage was done.
2. 18 As a result of the investigation and audits, the Investigator referred the matter to the Board to convene a due inquiry in respect of allegedly substandard gasfitting work carried out at the cafe and six other properties identified as a result of the second round of audits. There were no charges from the first seven properties audited by Mr. Hammond.
2. 19 By a notice of charges ("the charges") dated 12 August 2010, charges were laid in the alternative under section 42(1) (b) and (c) of the Act. Charges were laid in

respect of seven locations. The charges pertained to action taken and not taken and the use of gas certificates.

2. 20 When the charges were laid it appears a lot of evidence had been ignored by the Investigator such as four books of gas certificates being ordered in Mr. Gee's name, gas certificates with writing on the master copy but the same writing absent on the carbon copy, a letter sent to the Board in Mr. Gees name by Allgas dated 3 months after he left Allgas and the receipt for a third gas hose sold 50 days after Mr. Gee left Allgas, this being the same type of hose that caused the explosion.
2. 21 There was a perception in the plumbing, gasfitting and drainlaying industry over that period that there was a certain amount of intimidation in the laying of charges by the Board in that a guilty plea would result in fines where a not guilty plea would result in fines and costs which were generally well in excess of the fines and could be into the tens of thousands of dollars, the PGDB also boasted of a 100% conviction rate. Mr. Gee pleaded not guilty to all charges as laid.
2. 22 When Mr. Gee pleaded not guilty the Investigator had laid charges but had not conducted scene examinations, gathered evidence or interviewed witnesses to support the charges he had already laid. It would appear charges were laid based on the Audits conducted by Casey Inspection Services (NZ) Limited. This appears to have left a situation of fitting the information and circumstances to the charges and the omitting of relevant facts that could have refuted the charges. It seems it was a desktop investigation based on the audits and Mr. Windleburn's complaint and report.
2. 23 On 1 February 2011, Mr. Laurenson, Barrister, acting for the Investigator, sought leave to amend a large percentage of the charges on the basis that the amendments would bring the charges into line with the evidence to be given. Mr. Laurenson said that there would be no prejudice to Mr. Gee as the amendments were based on information contained in witness statements provided to Mr. Gee and the application gave sufficient notice of all amendments. At this stage a hearing was scheduled for around 22 February 2011. Three week's notice was given after a two year investigation.
2. 24 Mr. Gordon opposed the application arguing that the amendments were based on information collected from witnesses after the investigation had been concluded and that the application was made very close to the hearing despite the significant length of time the Investigator had been given to prepare. From the time of the explosion to the hearing date was a period of 25 months.

2. 25 The Board received legal advice from Mr. Corkill QC and, having deliberated, granted the application finding that there was no direct prejudice to Mr. Gee and the amendments would be in the interests of justice. Accordingly, 44 Particulars of offence were filed with regard to seven locations.
2. 26 On 25 January 2011, a Motion to Dismiss Charges with Prejudice was made by Mr. Gordon, acting for Mr. Gee, based on issues relating to the appointment of the Investigator, the impartiality of the Investigator, the impartiality of the Board and the issues as to defamatory letters sent without reasonable care.
2. 27 A separate hearing was held on 22 February 2017. The Board made judgment with regard to the appointment of the Investigator, its own impartiality, the impartiality of the Investigator, and the defamatory letters sent by the Acting Registrar. The application was dismissed.
2. 28 Over the period 3-5 May 2011, the Board held an inquiry pursuant to section 42 of the Plumbers, Gasfitters and Drainlayers Act 1976 ("the Act") into the conduct of Mr. Gee in relation to gasfitting work undertaken at seven properties in the Tasman Bay and Westport area between May 2003 and June 2006. The 1976 Act was used as that was in place when the alleged offending occurred.
2. 29 Amendments and additional evidence was still being produced by the prosecution up to two days before the hearing which left very little time Mr. Gee to work on the defence of allegations. The investigator took 13 months to lay the first charges. Mr. Gee only had days to prepare a line of defence in some cases.
2. 30 The Board Members (Some of whom had not sat or made decisions at the Motion to Dismiss hearing held on 22 February 2011) were:
- Mr. S Parker (Presiding Board Member), an administrator
 - Mr. A Bickers, an administrator
 - Mr. S Ineson, a consultant
 - Mr. J Simmiss, a Craftsman plumber and drainlayer
 - Mr. G Hardie, a Craftsman gasfitter, drainlayer and Licensed plumber

The hearing was held in public and Mr. David Laurensen, Barrister, Wellington, appeared for and on behalf of the Investigator, Mr. Anthony Hammond.

2. 31 Mr. Wal Gordon, Craftsman plumber, Licensed gasfitter and Craftsman drainlayer, appeared as advocate for Mr. Gee.
2. 32 Mr. Bruce Corkill QC appeared as the Board's Legal Assessor, appointed under section 44 of the Act.

2. 33 Mr. Corkill, QC briefed the Board members that in terms of the law of burden and standard of proof, the burden of proving the charges was on the investigator. There was absolutely no onus or burden on Mr. Gee to prove anything. This was very much misleading in that the onus of proof was forever shifting and Mr. Gee mostly found himself having to prove his innocence or in some cases his non involvement.
2. 34 Throughout the course of the hearing particulars were heard with regard to the seven locations. It was established charges were laid by the Investigator prior to scene examinations by him and prior to witness statements being recorded. There had been very little searching for the truth.
2. 35 Mr. Gee alleged work had been done by other people and his gas certificates had been altered by office staff. These issues did not hold much weight with the Investigator and were not looked at with any reasonable care. Even though irrefutable evidence was brought to his attention he appeared to ignore it.
2. 36 Particulars, information and interpretations appeared to have been manipulated to meet the Investigator's needs even to the extent where witness changed their statements at the hearing when giving evidence, going against statements they were purported to have made for the prosecution. There appeared to be confusion between what was recorded in the statements and what the witness actually wanted to say.
2. 37 Some witnesses refused to sign the statements prepared for them by Mr. Laurenson. Some witnesses failed to attend the hearing.
2. 38 With regard to the statements recorded by Mr. Laurenson, Mr. Gordon requested all notes recorded at the time by him. Mr. Corkill, QC, ruled the notes were protected by legal privilege. Mr. Gordon argued legal professional privilege is a term applied to the protection of confidential communications between a lawyer and a client not between a lawyer and a witness. Mr. Corkill ruled the notes and communications were protected. Mr. Gordon still believes the rule of legal privilege does not apply.
2. 39 The hearing also revealed that the Investigator had withheld information during the discovery process, by way of notes recorded and photographs taken. Such was the extent of this that Mr. Laurenson apologised to Mr. Gordon at the Hearing stating he didn't know the Investigator had the information. A second investigator was also involved in the investigation but this information was not released to Mr. Gee until after the hearing when penalty submissions were requested and costs pertaining to the investigator were reviewed.

2. 40 It was also revealed that over a hundred photographs had been excluded by the forensic scientist, and prosecution. At least one of these photographs revealed in cross examination, showed exactly what Mr. Gee had said about the repositioning of pipes to the offending fryers, something he had maintained and told the Investigator years before, but a point that was ignored.
2. 41 At one site one appliance alleged to have been installed by Mr. Gee had not even been manufactured in Japan when it was alleged to have been installed by him. Such was the nature of the investigation and tactics used.
2. 42 The result of the hearing was Mr. Gee was found not guilty on 42 particulars of offence relating to six properties, including the site of the explosion. No one to this day has been held accountable for this explosion.
2. 43 The two remaining particulars of offence pertained to 6 Malvern Avenue, Atawhai, Nelson.
2. 44 In June 2006 Mr. Gee installed two Bosch 25 water heaters at 6 Malvern Avenue, Atawhai. During an audit no issues were found with one of the gas water heaters however the Board claims there were issues with the second water heater, gas certificate number 388566.
2. 45 Mr Gee installed one Bosch water heater under a window with reduced clearances according to the non mandatory part 2 of NZS 5261:2003, he based his decision on his knowledge and experience as a Craftsman Gasfitter and the information he had available to him at the time which included a document faxed from Rinnai New Zealand that provided installation clearance distances for a Rinnai Infinity Flush Mount kit for use with Infinity 32 and Infinity 26 which were both greater in mega joule rating than the Bosch 25 installed by Mr. Gee, industry practice being that the clearance increases proportionately to mega joule rating, the greater the mega joule rating the larger the clearance. The califonts of these two brands are extremely similar if not exactly the same, especially with regards to the behavior of the powered flue fumes.
2. 46 The document had been supplied to him by his previous employer, Mr Darnley of Allgas as justification for installing water heaters at a reduced clearance. Mr Gee was satisfied what he was doing met the mandatory part 1 requirement of NZS 5261:2003. He felt he had demonstrated compliance.
2. 47 Mr. Gee had kept the document which is dated 20 August 2003 as a reference document which was relevant to his work. As Mr. Gee was installing a unit with a lower mega joule rating than the units detailed in the letter he believed he would be well within the clearances.

2. 48 Mr Gee's understanding of the behaviour of flue gases, both fan driven and gravity driven were explained to the tribunal and are recorded in the transcript. He produced a diagram also showing the differing behaviour between the two, it is of note that nearly all standards show lessening tolerances for clearance for fan powered flues to gravity flued appliances, both in NZS5261:2003 and the BS (British Standard) actually states a 300mm gap is appropriate for the very same appliance. British Standards are referenced numerous times in the New Zealand Standards. Mr. Gee had left a 540mm clearance, almost double the British standard.
2. 49 There is also a confusing measurement for clearance tolerances in the Table 16 referenced by the Investigator in NZ 5261, which allows clearance to a mechanical powered vacuumed vent 500mm nearer than a passive non vacuumed opening window to flues and their products, Mr. Hammond being one of the authors of NZ 5261 containing table 16.
2. 50 Mr. Gee had good reason to believe that the water heater positioned as he had, would cause no more flue gases to enter the building than a flueless cabinet heater used in the room, if any at all. The products with a powered flue are ejected at a 90 degree angle to the wall, away from that wall for some 2 to 3 meters, before rising due to its heat.
2. 51 He installed the Bosch water heater with the honest belief that the clearances he had allowed were well within the clearances required based on the information he had been given by Mr. Darnley and backed up by a reputable firm like Rinnai and his considerable knowledge of gas behaviour and effects obtained in the UK, and New Zealand, whilst working as a gasfitter. He was aware of his responsibility to demonstrate and changes to the normal requirements.
2. 52 Mr. Gee asked the Board on previous occasions for technical advice and was told by Colleen Singleton (then the Registrar at the Board), amongst others, to ask his colleagues within the industry and industry providers, and therefore he thought he was following the Board's instructions. There is no agency that gas fitters can go for advice so they are left up to their own interpretation of the relevant legislation. Any questions to Energy Safety generally get the response that you should seek legal advice if you are unsure.
2. 53 On the 2nd of September 2009, Mr. Peter Lamborn, Casey Inspection Services (NZ) Limited, visited 6 Malvern Avenue, Atawhai, Nelson, to carry out a special audit in respect of the gas installation at that property, which comprised of the two external Bosch 25 water heaters and a Rinnai gas fire connected to two 45 kg LPG gas cylinders. **This was over three years after the installation.**

2. 54 On his audit report and in cross examination he stated the workmanship was quite good with the exception of the one issue being the reduced clearance on one of the water heaters. Mr. Lamborn stated the standard of workmanship was of a good standard at all locations audited, this being contrary to the lowered pipe at the site of the explosion, which showed a pipe running downward at an angle from the corner of the room with screw holes above it that were level, i.e. the original position of the pipe, as shown in police forensic photographs which had been withheld and were discovered at the hearing in cross examination.
2. 55 The owners of Malvern Avenue made no comment to Mr. Lamborn regarding any smell of gas or fumes and he did not notice any means of additional security on the windows however Mr. Hammond, the investigator noted there were security chains fitted to the window. It seems it wasn't a very thorough audit.
2. 56 On 13 January 2011, five months after he laid the charges against Mr. Gee, Mr. Hammond, the Investigator, visited 6 Malvern Avenue and took photographs. When he visited the installation he measured the clearance between the nearest part of the flue of the Bosch 25 water heater at the rear of the house and the window as 540 millimeters. He saw the window was top hung and opened outwards and was for the dining room. This was the first time he had visited the site.
2. 57 Mr. Hammond spoke to the property owners Mr. and Mrs. Anderson as he checked the installation. He recorded notes, which were not provided to Mr. Gee during discovery. Mr. Hammond in his evidence made no mention of security chains that were fitted to the window to prevent it from opening more than 150mm but admitted in cross examination that they were indeed fitted to the window.
2. 58 The window opening to a maximum of 150mm would place the window behind the end of the flue exhaust vent of the water heater which protrudes 170mm from the wall. This 20mm difference added to the expulsion of the fumes some 2 to 3 meters away from the wall makes the entry of fumes very difficult if not impossible, which is borne out by the owner's observations and experience of some 3 to 4 years. It is still there today.
2. 59 On 28 January 2011, Mr. Anderson the property owner gave a statement to Mr. Laurenson, acting for the Investigator. The statement outlined how long he had lived at the property and details regarding the installation. It omitted to mention there had never been any smell of gas in the room above the water heater and there had never been harm to people in the four plus years the unit had been installed. Notes regarding the interview were withheld under legal privilege.

2. 60 In cross examination Mr. Anderson stated he had never smelt any gas entering the windows above the heater, there had been two safety chains to prevent the window being opened more than about 6 inches (150mm) and that from a lay person's point of view, where it was installed was absolutely the logical place for the water heater.
2. 61 On 27 September 2011, the Board convened to consider penalty. The Board released a penalty decision on 4 November 2011, ordering that:
- a) Mr. Gee attend, at his own cost, a course of instruction in Unit Standard 21893: "install and Commission Type 2 gas appliances and equipment" provided by a training provider or qualified persons approved by the Registrar
 - b) The course be completed no later than 31 March 2013
 - c) Mr. Gee provide evidence of having passed that course before he can uplift a practicing license as a certifying gasfitter for the licensing year beginning 1 April 2013, or any subsequent year should he fail to complete the required course before 1 April 2013.
2. 62 Mr. Gee met the requirements of all conditions imposed on him.
2. 63 On 5 March 2012 an Appeal hearing was held in the High Court regarding the two charges Mr. Gee had been found guilty of. The appeal was dismissed. The Hon Justice Kos stated in his judgment:

The fundamental difficulty faced by Mr. Gee is this: to set aside the decision of a specialist tribunal of this kind, he has to point to a failure by it to take into account evidence showing that although he had not followed the 1500mm vertical separation recommendation in Part 2, his method of installation nonetheless in fact minimized the risk of harm to persons.

Clear evidence to the contrary was given by witnesses for the prosecution. I do not find their evidence to have been disturbed by cross examination. The Board was not wrong to prefer that evidence to that of Mr. Gee. His evidence was strongly reliant on the Rinnai tech note. While it is perhaps understandable that he would rely on such a document, he should have concentrated on the provisions of Table 16. He needed to show through cogent, independent evidence that for this installation the 1500mm separation recommendation in Table 16 was excessively precautionary. His evidence did not meet the standard.

2. 64 Mr. Gordon who appeared along with Mr. Gee was censured by Justice Kos for a comment made pertaining to the Board's decision. The Board's decision says that Mr. Gee had referred to himself as a "mere plumber". That was incorrect

and it is common ground that no such comment is recorded in the hearing transcript.

2. 65 Mr. Gordon had alleged the fabrication of the statement for the Board's decision but Justice Kos believed there was no basis for the "presumption" and that the erroneous reference is perfectly consistent with mere faulty recollection.

Part 3: Critical Timeline

- 3.1 As the investigation and discipline process was over a number of years it is felt appropriate to show a critical timeline of events.

| Serial | Date | Event |
|--------|------------------|--|
| 1 | May 2003 | 68 Greenwood Street installation done. |
| 2 | May 2003 | 68 Greenwood Street Certified |
| 3 | 26 June 2003 | Mr. Gee Certified the Installation of the deep fryers at Milton Street. (alleged) |
| 4 | July 2003 | Mussel boy Installation 73 Main Road North |
| 5 | 15 July 2003 | Mussel boy Installation Certified |
| 6 | July 2003 | Motueka School, Pah Street installation done. |
| 7 | July 2003 | Motueka School, Pah Street Certified |
| 8 | September 2004 | Powick Street Installation |
| 9 | October 2004 | Powick Street Certification |
| 10 | February 2005 | 37 Dommatt Street, Westport installation done. |
| 11 | June 2005 | 37 Dommatt Street. Certified |
| 12 | June 2006 | Mr. Gee installed two Bosch 25 water heaters at 6 Malvern Avenue, Atawhai. |
| 13 | July 2006 | 6 Malvern Avenue Certified |
| 14 | 9 April 2009 | Explosion occurred |
| 15 | 8 July 2009 | Mr. Windleburn, Energy Safety requests review of gasfitting in the area. |
| 16 | 20 July 2009 | Mr Hammond appointed as investigator. |
| 17 | 29 July 2009 | First Interview of Mr. Gee by Mr. Hammond. |
| 18 | 30 July 2009 | Meeting between Mr. Hammond, the Registrar and Ms Greer to arrange audits. |
| 19 | 5 August 2009 | Paul Gee interviewed a second time. |
| 20 | 6 August 2009 | Mr. Hammond inspected 7 installations certified by Mr. Gee over the period Jan 2003 to March 2006 |
| 21 | 20 August 2009 | Hammond Requested special audits by Casey Services NZ Ltd |
| 22 | 2 September 2009 | Mr. Peter Lamborn, Casey Inspection Services (NZ) Limited, visited 6 Malvern Avenue, Atawhai, Nelson, to carry out a special Audit |
| 23 | 2 October 2009 | Letters sent to Mr. Gees Customers containing misleading and false information. |
| 24 | 20 May 2010 | Mr. Gee Interviewed a third time. |
| 25 | 29 July 2010 | Due Inquiry by the Board recommended |
| 26 | 12 August 2010 | Notice of Charges laid |

| | | |
|----|------------------|--|
| 27 | 12 January 2011 | Mr. Hammond inspects 5 Powick Street |
| 28 | 13 January 2011 | Mr. Hammond Visits 6 Malvern Avenue for the first time |
| 29 | 28 January 2011 | Mr. Anderson the property owner of 6 Malvern Avenue gave a statement to Mr. Laurenson |
| 30 | 1 February 2011 | Mr. Laurenson, Barrister, amends the charges |
| 31 | 22 February 2011 | Separate hearing was held in Wellington after a motion to Stay Proceedings was submitted by Mr. Gordon, acting for Mr. Gee |
| 32 | 19 April 2011 | Mr. Hammond makes his first statement |
| 33 | 27 April 2011 | Mr. Hammond makes his second statement |
| 34 | 3-5 May 2011 | The Plumbers Gasfitters and Drainlayers Board hearing |

3.2 The Department of Labour investigation took three months.

3.3 The Board investigation took **13** months until the time the charges were laid.

3.4 It took the investigator six months after the charges were laid to conduct scene examinations and for the lawyer appointed to assist him in prosecuting the charges to record witness statements and for the charges to be amended.

3.5 The time from alleged offences to laying of charges was as follows:

- 68 Greenwood Street - 7 years and 3 months
- Milton Street Café - 7 years and 2 months
- 73 Main Road North - 7 years and 1 months
- Motueka School Pah Street - 7 years and 1 month.
- Powick Street - 6 Years
- 37 Dommett Street - 5 years and 6months
- 6 Malvern Avenue - 4 years and 2 months

As can be seen considerable time had passed where the installations could have been altered

3.6 The time from alleged offences to scene examinations was as follows:

- 68 Greenwood Street - 7 years and 8 months
- Milton Street Café - 7 years and 7 months
- 73 Main Road North - 7 years and 6 months
- Motueka School Pah Street - 7 years and 6 months.
- Powick Street - 6 Years and 4 months
- 37 Dommett Street - 5 years and 11 months
- 6 Malvern Avenue - 4 years and 7 months

3.7 The Board investigation took 22 months from commencement until the hearing.

3. 8 Due to time constraints there was insufficient time and resources for a proper investigation to be conducted by Mr. Gee and Mr. Gordon so Mr. Gee's defence was based on Cross Examination of witnesses. Only one witness was called by Mr. Gee and that was the Acting Registrar at the time Mr. Kern Uren.

Questions to be answered

3. 9 From the time of the installation to the time of the explosion was around six years. How long does a gasfitter remain responsible for the work they have done – is there a statute of limitations and if not why not? Is a legislative change needed as even the Tax Act has a statute of limitations of seven years.
3. 10 Why weren't Mr. Gee's concerns and complaints, made years before the explosion, specifically about dangerous/altered gas fitting work covered by unreliable gas certificates, specifically naming John Darnley, not taken into account or given any weight in the investigation?
3. 11 Why did the Investigator wait months before he interviewed Mr. Gee regarding the first audits conducted by the Investigator?
3. 12 Why did it take 13 months before any charges were laid? It would appear no evidence was gathered over that time.

Part 4: Motion to Dismiss

4. 1 On 25 January 2011 a Motion to Dismiss Charges with Prejudice was submitted by Mr. Gordon on behalf of Mr. Gee.
4. 2 A timetable was established for the filing of evidence and submissions. A separate hearing held in Wellington and proceeded on 22 February 2011. Time for the hearing was scheduled for three days but the hearing took less than a few hours. This marooned Mr. Gee in Wellington for two days.
4. 3 The Board Members were:
 - Mr. Mark Whitehead, Certifying Gasfitter, Plumber and Drainlayer – (Chair)
 - Mr. Peter Jackson, Certifying Gasfitter, Plumber and Drainlayer
 - Mr. Stephen Parker, Administrator
 - Mr. William Irvine, Certifying Drainlayer
 - Mr. Graham Hardie, Certifying Gasfitter, and Drainlayer and Tradesman Plumber

At the hearing, the Board was advised by its Legal Assessor, Mr. BA Corkill QC;

4. 4 Mr. Wal Gordon appeared as advocate for Mr. Gee, and Mr. D Laurenson appeared as Counsel for the Investigator. The process adopted at the hearing was that Mr. Gordon presented his arguments in support of the application, based on his written submissions; Mr. Laurenson gave his submissions in reply, based on written submissions. Mr. Gordon was given an opportunity to reply. Then the Legal Assessor gave directions to the Board.
4. 5 It was only after Mr. Gordon gave his opening address that Mr. Corkill informed Mr. Gordon and Mr. Gee that there would be no questioning of witnesses. A normal hearing where evidence is given and witnesses questioned was expected.

Mr. Gee Submitted

4. 6 The central issues in these proceedings before the Board Discipline Committee are whether or not the processes and procedures dealing with the investigation into Mr. Gee have been conducted in a fair and impartial way and whether or not the actions and practices by the Board, secretariat and contractors, have impeded on Mr. Gee's right to fairness in the investigation and the hearing.

4. 7 It is vital the Board uses its statutory powers properly. Administrative law is there to safeguard people against the improper use of public power. The principles of administrative law are summarised as being “simply that the decision-maker must act in accordance with the law, fairly and reasonably”¹

4. 8 It is clear what is expected of the Board and it is not only that they meet the requirements of natural justice and administrative law but they are seen to be adhering to the principles. The Office of the Auditor General has stated:

“In our view, the Board needs to maintain a clear overall focus on the need to build and maintain trust in the Board. To build trust, it needs to behave fairly and reasonably at all times, and make sure that this is apparent to all those interacting with it. It needs to build the values of openness, accountability, integrity, and fairness into all aspects of its work. It is important that the people the Board regulates, and who fund its work, are able to see and understand what it is doing and why”.²

4. 9 The relationship in dealings between regulated persons, in this case Mr. Gee and a regulating body, the Plumbers, Gasfitters and Drainlayers Board (the Board), must be fair, open and transparent. The adjudicative function means the Board must enjoy independence from the secretariat, and must also be perceived as being independent. The perception is in many ways as important as the reality.

4. 10 Mr. Gee submits the Board must be beyond reproach and follow their processes and procedures. They must be able to stand by what they promulgate to the industry and the industry must be able to believe and trust the word of the Board.

4. 11 It is submitted the Board must use its authority appropriately and has failed to do so in its overall dealings with Mr. Gee. The Office of the Auditor General stated:

“In our view, there is a reasonably widespread perception that the Board has used its authority inappropriately against individuals. Even if there is no foundation for this perception, the fact that it exists is a matter of concern and needs to be addressed urgently. It is undermining trust in the organisation and its regulatory role”³.

¹ Sir Robin Cooke (1986). “The Struggle for Simplicity in Administrative Law” in Michael Taggart (ed) Judicial Review in the 1980’s: Problems and Prospects, Oxford University Press, Auckland, page 5.

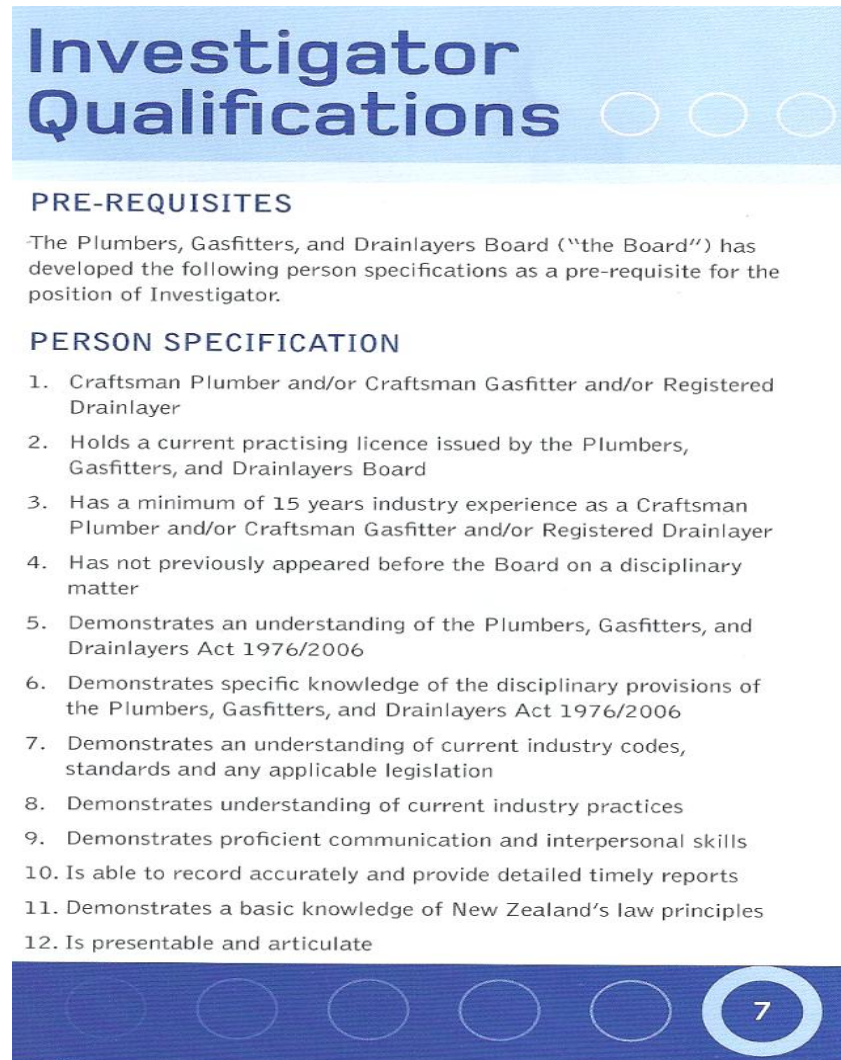
² Controller and Office of the Auditor General “Inquiry into the Plumbers, Gasfitters and Drainlayers Board” July 2010, page 9.

³ Controller and Office of the Auditor General “Inquiry into the Plumbers, Gasfitters and Drainlayers Board” July 2010, page 33.

- 4. 12 To regulate in a fair manner the Board must be impartial and that impartiality must be open and transparent. The principles of the impartiality must be embedded in all the Board does and must also flow on to those that support the activities of the Board – the secretariat and contractors.
 - 4. 13 The justice system recognises that every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.
 - 4. 14 Mr. Gee submits that the investigation into him has not been conducted in a fair and impartial way and a number of actions and practices by the Board, secretariat and contractors, have impeded on his right to fairness in the investigation and the hearing.
 - 4. 15 This motion to dismiss is not about guilt, not about the Board achieving a result, but is about fairness, about the possibility of bias against Mr. Gee and about perceived fairness. It's about the definitive line that should exist between the investigator, the investigators counsel and the Board under the Plumbers Gasfitters and Drainlayers Act.
 - 4. 16 Mr. Gee contests that a definitive line does not exist which places into question the impartiality of the Board. In preparation for the hearing of the Motion to Dismiss the definitive line was crossed by the Board on two occasions. Firstly the Investigator's counsel was afforded an advantage by being supplied with a copy of a submission by the defence which gave him the opportunity to counter the submission.
 - 4. 17 Secondly having the Investigators counsel respond to the actions of the then Acting Registrar Kern U'ren and by detailing the appointment process of the Investigator is a clear indicator there is no separation and that the Board, secretariat, Investigator and investigator's counsel could all be bundled as one entity "the Board".
 - 4. 18 It is submitted that the inclusion of the Investigator's counsel is inappropriate as the evidence of the case and investigation will not be discussed as they are not relevant to the fairness of the process. This is an administrative issue to do with Natural Justice and processes and procedures. The Investigator's counsel inclusion is a clear demonstration of the close association between the actions of the investigator, the secretariat and the Board.
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Appointment of the Investigator

4. 19 It is submitted the Investigator Mr. Hammond was not appointed under the processes and procedures as promulgated to the industry. (June 2008 edition of the Board News)



4. 20 Mr. Hammond does not meet the specifications as detailed in items 1 and 3 in that he is not a Craftsman plumber or gasfitter or a registered drainlayer and as such cannot have 15 years minimum experience as a Craftsman plumber or gasfitter or as a registered drainlayer.
4. 21 Mr. Hammond was a gas inspector however he has not been licensed since 1 April 2010. The investigation was still underway at that time so he does not meet the requirements of section 2. Gas inspectors do not fall into any of the criteria as detailed above.
4. 22 Mr. U'ren in his affidavit claimed the "pre-requisites" for investigators was intended to provide guidelines for those persons interested in becoming an

investigator for the Board and the list was not definitive and nor was it intended to be seen as mandatory.

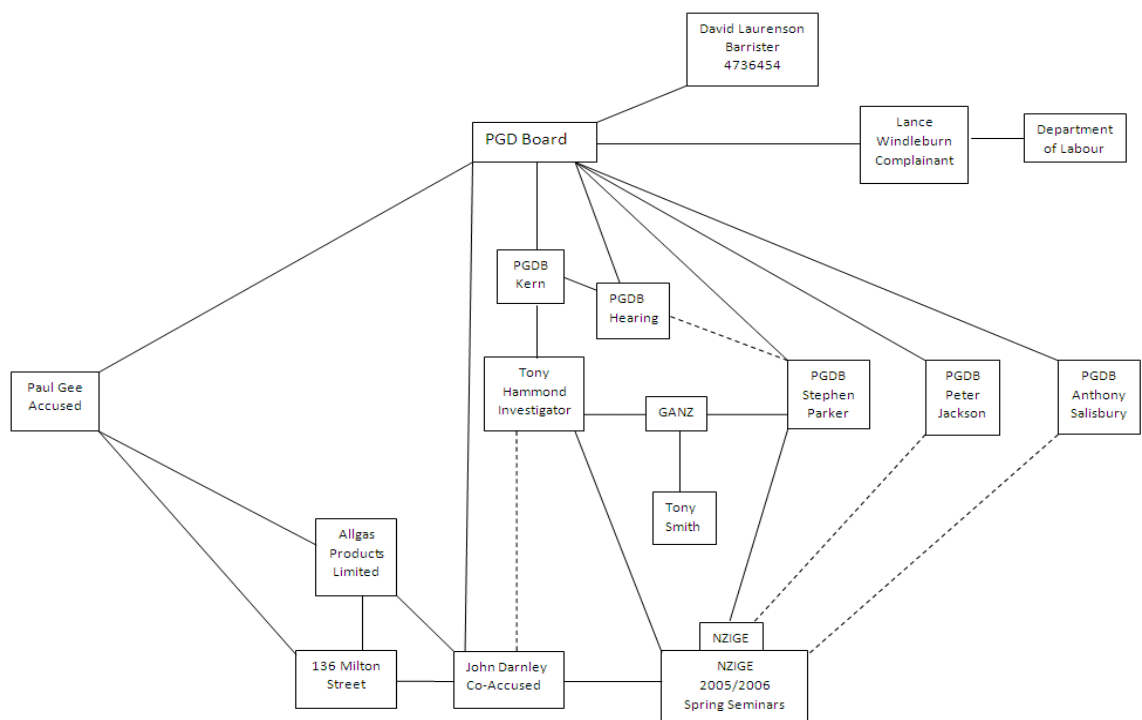
- 4. 23 That may well have been the intention however the information provided to the industry is clear - it is the investigator qualifications, it is the person specification pre-requisites as developed by the Board for the position of investigator and it details the person specifications. That is the information that was sent to the industry.
- 4. 24 There is no mention of it being a guideline or that it was not definitive. The average person in the industry would see it as being the requirements of an investigator and hence the Board's Policy on investigators. Mr. Gee contests the Board appointed an investigator outside the scope of its policy as promulgated to the industry. Mr. Hammond does not meet the pre-requisites.

Impartiality of the Investigator

- 4. 25 The impartiality of Mr. Hammond is questioned. He is a strong advocate of safety and standards in the gas industry and has written a paper on "Deregulation from a Gas Utility's Perspective" and is listed as a Fellow of the New Zealand Institute of Gas Engineers. He was on the Gas Detection Committee (P5263) for the Standards Council, established under the Standards Act 1988. He is also a co-author of the NZ 5261 2003 representing GANZ.
- 4. 26 By all indications he has based his career around the gas industry and its processes and procedures, which place him in a position of bias regarding issues of non compliance and faults in the system which may damage the image of the industry. Mr. Gee contests Mr. Hammond is not impartial.
- 4. 27 It is submitted that Mr. Hammond placed himself in a situation where he had a conflict of interest or a perceived conflict of interest in that the co-respondent, during the conduct of the investigation, Mr. Darnley was known to him. By his own admission he had previously interviewed Mr. Darnley for craftsman status in 1988 which resulted in Mr. Darnley obtaining full certifying status as a Craftsman Gasfitter after one oral assessment with no apprenticeship served and had also spoken to him regarding another investigation.
- 4. 28 Mr. Hammond is a member of the New Zealand Institution of Gas Engineers as was Mr. Darnley. Photographs provided show Mr. Darnley and Mr. Hammond attending seminars at the same time.
- 4. 29 The possible personal association with the co-respondent, Mr. John Darnley; placed into question the suitability of Mr. Hammond to investigate the complaint. As the co-respondent was personally known to him and in the interest of fairness he should have disqualified himself as the investigator. Mr.

John DeBernardo who was the second investigator was also linked to Mr. Darnley by way of the same Institution and is a contractor to the Board.

4. 30 Mr. Darnley, Mr. Hammond, Mr. DeBernardo, Stephen Parker (Deputy Chair of the Board and Chair of the May 2011 Hearing), and Mr. Anthony Salisbury (Board member during the investigation) are or were members of the New Zealand Institute of Gas Engineers which is a small active and supportive network of gas professionals.
4. 31 This close organisational relationship shows a number of like minded people with a common purpose. The matrix diagram provided to the Board shows clearly the linked relationships between the co-respondent, investigators, Board members and other main players in the investigation.
4. 32 The Matrix diagram produced clearly depicts the one sided organisational relationships in this investigation. Mr. Tony Smith who recommended Mr. Nick Hobson to the Department of Labour also has a direct link to others in this investigation. Mr. Hobson is now part of the investigation. Nepotism in this investigation is rife and should not occur in a professional enforcement organisation



4. 33 Mr. Hobson claiming not to know Mr. Gee initially according to Mr. Hammond's assertions, but when Mr. Hobson was reminded by Mr. Gee at a plumbing merchant that Mr. Gee had worked for Mr. Hobson numerous times for some six months continuously for Rockgas and could produce the invoices and bank deposits as evidence, Mr. Hobson rescinded this by means of a letter.

4. 34 Mr. Hammond and Mr. Parker ran the Kennedy Trust for many years together and were a duo on the presentation circuit representing several (common to both) gas orientated organisations.
4. 35 It is submitted the relationship between the co-respondent and members of the Board and the Investigators was such that on a balance of probabilities it was more probable than not that any benefit of doubt with regard to the investigation would fall in the direction of Mr. Darnley not Mr. Gee, whilst ignoring blatant irrefutable proof. The impartiality of the Investigator is questioned and as such so is the fairness and impartiality of the investigation.
4. 36 Mr. Hammond should have disqualified himself from the investigation once he identified who he was investigating, i.e. Mr. Darnley whom he knew. We contest that the investigation has proceeded in bad faith after that time, led by Mr. Hammond.

Impartiality of the Board

4. 37 As detailed the Matrix diagram shows there are certain association links between the investigator, the co-respondent and Board members. To that end the independence and the integrity of the Board is placed into question regarding this case and to whether Mr. Gee will actually receive a fair and impartial hearing.
4. 38 Mr. Gee submitted that Mr. Mark Whitehead had a conflict of interest in his capacity as Chairman of the Board of Directors of Master Plumbers, Gasfitters and Drainlayers NZ Inc of which Mr. Gee was a member.
4. 39 The Controller and Auditor General has this to say regarding Conflicts of Interest:

“When making decisions about conflicts of interest, public entities need to be guided by the concepts of integrity, honesty, transparency, openness, independence, good faith, and service to the public. They also need to consider the risk of how an outside observer may reasonably perceive the situation”⁴.

4. 40 In the public sector there is a conflict of interest where:

⁴ Managing conflicts of interest: Guidance for public entities. K B Brady Controller and Auditor-General 1 June 2007 Forward

“A member's or official's duties or responsibilities to a public entity could be affected by some other interest or duty that the member or official may have. This is the key test to keep in mind”⁵

4. 41 Another way of considering whether a conflict of interest may exist is to ask:

“Does the member's or official's other interest create an incentive for them to act in a way that may not be in the best interests of the public entity?”⁶

4. 42 The possibility of a conflict of interest has been identified by members of Master Plumbers, Gasfitters & Drainlayers NZ Inc who have put forward a rule change which states:

“To avoid any real or perceived conflict of interest, any Director holding the position of President or Chair of the Society shall not serve concurrently on the Plumbers, Gasfitters and Drainlayers Board (PGDB), nor the Industry Training Organisation Board (ITO Board)”.

4. 43 A conflict of interest or a perceived a conflict of interest by Board members being part of Master Plumber, Gasfitters and Drainlayers Inc is a possibility. To publicly criticise Mr. Gee will be to breach the Code of Conduct and therefore place into question their credibility. The two organisations obviously overlap.

4. 44 The Office of the Auditor General Guidelines state:

“A member’s or official’s duties or responsibilities to a public entity could be affected by some other interest or duty that the member or official may have”

We contest there is a possibility for improper conduct.

4. 45 Mr. Whitehead, Mr. Parker, and Mr. Salisbury all have an association links with Mr. Darnley and Mr. Gee hence a possible conflict of interest and yet they have all participated in the appointment of Mr. Hammond to investigate Mr. Gee and Mr. Darnley.

4. 46 Mr. Whitehead and Mr. Salisbury were both involved when the Board resolved to exercise its powers under section 43 of the Act in respect of Mr. Gee.

Letters Submitted by the Acting Registrar

4. 47 Mr. Kern U’reen, Acting Registrar at the time of the investigation, has become involved in the investigation process and as such has lost the impartiality of the

⁵ Managing conflicts of interest: Guidance for public entities. Part 2, 2.1

⁶ Managing conflicts of interest: Guidance for public entities. Part 2,2.2

Board. His actions have resulted in possible witnesses being influenced by his statements at every site of charges laid additional to the site of the explosion.

4. 48 Mr. U'ren issued a number of letters to prospective witnesses which may have harmed the reputation of Mr. Gee by making false statements about him. The statements are more likely than not going to cause the recipients of the letters to shun or avoid the services of Mr. Gee and worse have a bad perception of Mr. Gee's integrity, in the PGDB's own words, a willingness to act unlawfully.

4. 49 The letters stated in part:

*"Recently the Plumbers, Gasfitters and Drainlayers Board undertook an audit of your gas installation as a result of an issue with gas certification that affected a number of homes and businesses where it appears a number of gas certificates may have been **unlawfully sold or issued by practitioners** in areas from Northland to Waikato and the Bay of Plenty" and "The above **Gas Certification Number relating to your property is one of those involved in this issue**, and following our audit it was confirmed that the following item(s) were found non-compliant in your gas installation and require remedial work;"*

4. 50 The statement is defamatory and false in the most part in that it states Mr. Gee may have been involved with the unlawful sale or use of gas certificates, this was false. It also states the certificate issued to the property, obviously by Mr. Gee, was one of the certificates involved in the issue, this was also false. The letter suggests Mr. Gee has acted dishonestly.

4. 51 These letters have the effect of stating Mr. Gee is dishonest and could well form a prejudice in the eyes of the recipients, thus affecting the chances of fair and impartial evidence being given by them if called as witnesses. Prejudice is defined simply as:

- a. An adverse judgment or opinion formed beforehand or without knowledge or examination of the facts.*
- b. A preconceived preference or idea.*

4. 52 All letters purported to be signed by the Acting Registrar Kern U'ren. Mr. U'ren's authority under the Plumbers Gasfitters and Drainlayers Act 2006 stated the Registrar may, unless delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the Registrar was the Board.

4. 53 The actions of the Acting Registrar, who by definition represents the Board in whatever he does and is deemed to have acted for the Board, has shown poor judgment which has adversely affected Mr. Gee's right to a fair and impartial hearing. The fact the letters were issued in the format they were is another

indicator that there is no definitive line between the actions of the Board and the conduct of the investigation, especially to an uninformed public. The letters were sent without informing Mr. Gee and only came to his attention when the Motueka High School made contact with him.

- 4. 54 It begs the question “what other aspects of the investigation is the Board and secretariat involved with and what would be the impression of an average fair minded lay person looking at the activities”
- 4. 55 The Board, via the actions of the then Acting Registrar Kern U’reen, acted in a manner which was bias to Mr. Gee and falsely stated he was involved in a dodgy scheme thus jeopardising his chances of getting true and accurate information from the witnesses.
- 4. 56 The Board’s actions may have influenced the witnesses or could be seen by an average fair minded lay person to have influenced them.

Summary

- 4. 57 The Board and its actions have displayed what could appear to be a results orientated interest in the outcome, and have not acted with regard to the overarching values of truth, openness, fairness and impartiality, in respect of the processes and procedures and conduct of the investigation.
- 4. 58 It is submitted the policies and procedures relied upon throughout this discipline process have been wanting. The Office of the Auditor General had this to say:

“To ensure that its decisions are lawful, the Board needs to ensure that it has clear policies and procedures that are well grounded in law. One of the main problems in the past has been that the Board has lacked clear policies on its various operational functions to guide its decision-making”⁷

“In 2008/09, we found examples of inconsistent action by the Board. For example, the Board took varying stances on the supervision of limited certificate holders by craftsmen. As we noted, the Board lacked written published policies for most of its core functions. One of the risks of not having such policies is that a body will act inconsistently or inappropriately, or follow a poor process”⁸

⁷ Controller and Office of the Auditor General “Inquiry into the Plumbers, Gasfitters and Drainlayers Board” July 2010, section9.27

⁸ Controller and Office of the Auditor General “Inquiry into the Plumbers, Gasfitters and Drainlayers Board” July 2010, section9.28

4. 59 Mr. Gee submits he has already incurred substantial loss due the actions of the Board and loss of business in particular in the areas to which letters were sent. The actions of the Board and secretariat have asked lot of questions of the processes and procedures used by the Board which may need to be explored further.

Specific Request for Relief

4. 60 It is submitted there is sufficient evidence to show the Board and secretariat have not adhered to the principles of Natural Justice and have not conducted themselves in a fair manner towards Mr. Gee.
4. 61 Although the Discipline Hearing has not commenced the process certainly has and as such still must be fair. The fact that Board members have had limited input into the hearing of the charges they have still had sufficient input to justify involvement in the process.
4. 62 Mr. Gee seeks relief by way of dismissal of all charges

The Investigator Submitted

Introduction

4. 63 Mr. Gee has applied to have the charges against him dismissed. The application is in effect an application for a stay of this disciplinary proceeding based on four grounds:
- a. the Investigator was appointed outside the scope of the Board's policy;
 - b. the Investigator is not impartial;
 - c. the Board is not impartial;
 - d. letters sent by the Acting Registrar to customers of Mr. Gee contained defamatory statements.
4. 64 The Investigator opposes the application.

Stay Principles in Disciplinary Proceedings

4. 65 The discretion to stay a disciplinary proceeding is vested in the Board as part of its powers to regulate its own procedures and to observe the principles of

natural justice (s.43(10) and clause 9 of schedule referred to in s.18A of 1976 Act)¹ .

4. 66 The principles to be applied in applications for stay in criminal and disciplinary proceedings are similar, but not identical. Courts will be more prepared to stay a criminal proceeding than a civil, disciplinary proceeding.
4. 67 In *L v. Dentists' Disciplinary Tribunal* (at para.[75]), Lang J said that the distinction between the approach to be taken in criminal and disciplinary proceedings when deciding stay applications is explained in the following passage from *Walton v. Gardiner*(1993) 112 ALR 289:

"The question whether disciplinary proceedings in the tribunal should be stayed by the Supreme Court on abuse of process grounds should be determined by reference to a weighing process similar to the kind appropriate in the case of criminal proceedings but adapted to take account of the differences between the two kinds of proceedings. In particular, in deciding whether a permanent stay of a disciplinary proceeding in the tribunal should be ordered, consideration will necessarily be given to the protective character of such proceedings and to the importance of protecting the public from incompetence and professional misconduct on the part of medical practitioners."

4. 68 Lang J then said (at para.[77]):

"This issue arises because of the protective character of disciplinary proceedings. The purpose of such proceedings is not to determine and punish criminal wrongdoing. Rather, the jurisdiction exists to protect the profession in question and those members of the public who come into contact with it. Whether or not the protective influence of disciplinary proceedings is required to serve these purposes is, in my view, a relevant factor to be weighed in the mix in any application for stay."

4. 69 In *Chow v. The Canterbury District Law Society*, John Hansen J referred with approval (at para.[63]) to the following statement of Gendall J in *Ford v. Medical Practitioners' Disciplinary Tribunal*/3:

"[61]... There is public interest in ensuring that those charged with criminal and disciplinary offences not be subject to the jeopardy of trial or adverse results if they are prejudiced in defence of the allegations to such an extent that a fair hearing could not be obtained. But there is a balancing public interest factor. The disciplinary provisions of the Medical Practitioners' Act 1995 are designed to protect the public and maintain proper professional standards and ensure that medical practitioners are accountable to their

patients and public. The public (and members of the medical profession are also members of the public) are entitled to expect that doctors who are charged with offences have those charges heard after proper inquiry before what is, in the context of this case, an expert tribunal assisted by a legal assessor. The Court has to balance the interests of the public in ensuring that professional persons are required to answer disciplinary charges properly brought by their professional body or whether the doctors' personal, private or professional interests require that they be exempted from such a hearing through a failure of prompt adjudication."

4. 70 The most common ground advanced in support of a stay application is delay (which is not alleged in this case). However, as well as delay impacting on the ability to have a fair hearing, stays can also be granted on the basis of egregious conduct by prosecuting authorities. In *R v. W7*, Williams J said (at p.524):

*"To conclude, the jurisdictional power of the Court in these cases is a reserve power to be exercised only in cases where there have been wholly unacceptable delays which render a fair trial impossible, or alternatively where there has been egregious conduct by prosecuting authorities which is such as to require judicial intervention. In my judgment the present case does not fall into either category. First, I am of the view that, to the extent that there has been any unfairness to the accused as a result of delay, it is possible for the Court to take into account along with any other mitigating factors when considering the matter of sentencing. Secondly, I do not believe that this case approaches the type of extreme situation that is required under the established principles, and in particular those laid down in *Moenvao* (supra), to justify Court intervention. The delay by the Police here was not so reprehensible or deserving of criticism as to amount to an abuse of process."*

4. 71 The principles laid down in *Moenvao* referred to are those in the following passages from *Moenvao v. Department of Labour*:

"Considerations of these kinds are, in my view, at the heart of the abuse of process principle. The concern is with conduct on the part of a litigant in relation to the case which unchecked would strike at the public confidence in the Court's process and so diminish the Court's ability to fulfill its functions as a Court of law...."

The justification for staying a prosecution is that the Court is obliged to take that extreme step in order to protect its own processes from abuse. It does so in order to prevent the criminal processes from being used for purposes alien to the administration of criminal justice under law. It may intervene in this way if it concludes from the conduct of the prosecutor in relation to the

prosecution that the Court processes are being employed for ulterior purposes or in such a way (for example, through multiple or successive proceedings) as to cause improper vexation and oppression. The yardstick is not simply fairness to the particular accused. It is not whether the initiation and continuation of the particular process seems in the circumstances to be unfair to him. That may be an important consideration. But the focus is on the misuse of the Court process by those responsible for law enforcement. It is whether the continuation of the prosecution is inconsistent with the recognised purposes of the administration of criminal justice and so constitutes an abuse of the process of the Court." (per Richardson J at p.482/14)

and:

it cannot be too much emphasized that the inherent power to stay a prosecution stems from the need of the Court to prevent its own process from being abused. Therefore any exercise of the power must be approached with caution. It must be quite clear that the case is truly one of abuse of process and not merely one involving elements of oppression, illegality or abuse of authority in some way which falls short of establishing that the process of the Court has itself been wrongly made use of." (per Richmond Pat p.470/47)

4. 72 In *Fox v. Attorney-General*, after referring to *Moeyao*, the Court of Appeal said (at para.[37]):

"These principles set a threshold test in relation to the nature of a prosecutor's conduct which warrants a decision to end the prosecution, prior to trial, as an abuse of process. Conduct amounting to abusive process is not confined to that which will preclude a fair trial. Outside of that category it will, however, be of a kind that is so inconsistent with the purposes of criminal justice that for a Court to proceed with the prosecution on its merit would tarnish the Court's own integrity or offend the Court's sense of justice and propriety. The power of stay is not available for disciplinary purposes nor to reflect the Court's view that a prosecution should not have been brought. The hallmarks of official conduct that warrant a stay will often be bad faith or some improper motive for initiating or continuing to bring a prosecution but may also be simply a change of course by the prosecution having a prejudicial impact on an accused. Finally, to stay a prosecution, and thereby preclude the determination of the charge on its merits, is an extreme step which is to be taken only in the clearest of cases."

4. 73 These principles have also been applied in the context of disciplinary proceedings. In *Faris*, after referring to *Moeyao*, Gallen J said (at p.73/30):

"A number of authorities have considered the question in terms of fairness or

unfairness. For the purposes of these applications, I approach the matter on the basis that the Courts will intervene generally to stay proceedings where circumstances establish that person's the subject of those proceedings cannot have the matters in dispute determined in accordance with the accepted standards of justice and, in addition and specifically, where the behaviour of the initiating authority is for some reason unacceptable to the Court in a manner which justifies intervention."

Investigator Appointed Outside the Scope of the Board Policy

4. 74 The application and the witness statement of Wallace George Gordon dated 9 February 2011 ("the Gordon statement") refer to a notice in the June 2008 edition of Board news headed "Investigator Qualifications" (Gordon statement, annex E). The notice states that the Board has "developed the following person specifications as a pre-requisite for the position of Investigator'. Mr. Hammond's appointment as Investigator is challenged on the basis that he does not meet the first three of the "person specifications" listed because he is a gas inspector and has never been registered as a craftsman plumber, a craftsman gasfitter or a registered drainlayer.
4. 75 It is correct that Mr. Hammond has never been registered as a craftsman plumber, a craftsman gasfitter or a registered drainlayer. However, he has extensive experience in the gas industry (Hammond, paras 1-9) and was registered as a Gas Inspector from 30 April 1993 to 31 March 2010 (U'ren, para 17; Hammond, para 8).
4. 76 The notice published in the Board's newsletter was intended to provide guidelines for those persons interested in becoming an investigator. It was not definitive and was not intended to be seen as mandatory (U'ren, para 15).
4. 77 In any event, at the time of Mr. Hammond's appointment (July 2009), the Board's power to appoint investigators was provided for in s.40 of the 1976 Act. Section 40 provided that the Board may "appoint any person, not being a member of the Board, who is a registered person" (among other things). Section 2 defines "Registered person" as including a "gas inspector'. The Board therefore had the statutory power to appoint Mr. Hammond as an investigator and, given his extensive experience in the gas industry, his appointment was entirely appropriate.
4. 78 Mr. Hammond ceased to be registered as a gas inspector on 1 April 2010 when the remaining parts of the 2006 Act came into force (including s.186, which repealed the 1976 Act) and the gas inspector registration status ceased to exist (U'ren, para 18; ss.28-30 of the 2006 Act). However, s.181(1) and (2) provide

for Mr. Hammond's appointment as investigator for the purposes of this complaint to continue as if the 1976 Act was still in force.

Investigator Not Impartial

4. 79 The application alleges that Mr. Hammond is not impartial because:
- a) as a result of being "a strong advocate of safety and standards in the gas industry' and the industry organisations he belongs to, he is in "a position of bias regarding issues of non compliance and faults in the system which may damage the image of the industry';
 - b) of his close personal relationship with John Darnley.
4. 80 One of the rules of natural justice is the rule against bias. These are allegations of apparent bias (as opposed to actual bias) against Mr. Hammond. The test for apparent bias is that a decision maker is disqualified if:
- ... a fair-minded lay observer might reasonably apprehend that the [decision maker] might not bring an impartial mind to the resolution of the question the [decision maker] is required to decide".¹⁰*
4. 81 The investigator is not the decision maker in relation to disciplinary charges before the Board. It is the Board that is the decision maker and so the body that the rule against bias applies to.
4. 82 The only basis for a stay based on the conduct of the investigator would be if it could be established that there has been egregious conduct by the investigator as the prosecuting body so as to amount to an abuse of the disciplinary process. However, there is no suggestion, let alone evidence, that Mr. Hammond has done anything that would justify a stay on this ground.
4. 83 It cannot be an abuse of the process for an investigator to have the extensive experience in the gas industry that Mr. Hammond has. The fact that he has been actively involved in the review and development of gas standards enhances his suitability to be an investigator.
4. 84 Mr. Hammond does not have a close personal relationship with Mr. Darnley. When appointed as investigator, Mr. Hammond did not even recognise Mr. Darnley's name. It was not until after he had interviewed Mr. Darnley in relation to this complaint that he realised he had met Mr. Darnley on one previous occasion (in 1998 to carry out a craftsman gasfitter oral technical assessment of Mr. Darnley) and spoken to him twice on the telephone (in 2008 in relation to another complaint). Although it appears Mr. Hammond and Mr. Darnley have both been members of the New Zealand Institution of Gas

Engineers ("NZIGE"), Mr. Hammond does not recall ever having met Mr. Darnley at any NZIGE gatherings and was not even aware Mr. Darnley was a member until he read Mr. Gee's motion to dismiss application. (Hammond, paras 11-15)

4. 85 Even if the rule against bias did apply to the investigator (for example to the Investigator's consideration as to whether there is substance to a complaint under s41(5) of the 1976 Act), there is no basis for a finding of apparent bias against Mr. Hammond in conducting the investigation. There is no basis for finding - based on his experience in the gas industry or his previous dealings with Mr. Darnley - that a *"fair-minded lay observer might reasonably apprehend that [Mr. Hammond] might not bring an impartial mind"* to the investigation.

Board Not Impartial

4. 86 The application alleges that the Board is not impartial because:

- a) as well as Mr. Darnley, Board member's Stephen Parker, Anthony Salisbury and possibly Peter Jackson are members of NZIGE; and
- b) Mr. Gee and Board members Mark Whitehead, John Simmiss and Peter Jackson are members of Master Plumbers, Gasfitters & Drainlayers NZ Inc.

4. 87 The starting point in relation to these allegations is that the Board has not yet made its decision in relation to the charges against Mr. Gee. Therefore, the most that this application could achieve is a finding that particular Board members cannot sit at the hearing of the charges against Mr. Gee - and it is not accepted that such a finding should be made in the circumstances of this case.

4. 88 The application and the Gordon statement refer to the Board resolutions to appoint Mr. Hammond as investigator under s41(4A) and to convene a due inquiry under s43 of the 1976 Act in respect of the complaint against Mr. Gee. However, even if any of the Board members did have an association with Mr. Gee or Mr. Darnley that would disqualify them from sitting at the hearing of the charges against Mr. Gee (and it is not accepted that any of the Board members had any such disqualifying association), any such association:

- a) would not disqualify them from being on the Board that made either of the two resolutions; and
- b) would not be an abuse of process of any kind, let alone one justifying a stay of the charges against Mr. Gee.

4. 89 The only options open to the Board in relation to a complaint referred to it are to:

- a) consider the complaint in accordance with the disciplinary provisions of the 1976 Act (which includes serving a notice of charges and convening a hearing in respect of the charges); or
- b) before doing so, to appoint an investigator under s41(4A) to investigate the complaint and reach a conclusion as to whether it has substance.

4. 90 If the Investigator concludes that the complaint does have substance, then the complaint must be referred to the Board to be considered in accordance with the disciplinary provisions of the 1976 Act. However, if the investigator concludes that the complaint has no substance, then it will go no further - i.e., it will not be referred to the Board to be considered in accordance with the disciplinary provisions of the 1976 Act.

4. 91 The first resolution was therefore exercising the Board's statutory power under s41(4A) to refer the complaint to an investigator at a time when the only information the Board had in relation to the complaint was who it was made by and who it was against (U'ren, para 13, annexure A). Of the two options open to the Board, this was the most favourable course from Mr. Gee's point of view as it meant the complaint would only be considered by the Board if the investigator found the complaint to have substance.

4. 92 The second resolution resolved to do what the Board was bound to do under s43(1) once the investigator found the complaint had substance and referred it to the Board (as he was bound to do) under s41(5) - i.e., to convene a due inquiry in respect of the complaint in accordance with the procedure set out in s43. The Board had no option other than to do this and still had no substantive information in relation to the complaint (U'ren, para 14, annexure B).

4. 93 It is also submitted that there is no evidence that any Board member has any conflict of interest that would justify disqualifying him/her from hearing the charges against Mr. Gee.

4. 94 Any alleged associations between Board members and Mr. Darnley are irrelevant. Mr. Darnley is not a "co-respondent" with Mr. Gee. Although both were the subject of the initial complaint, the charges they each face are in respect of completely different installations. Mr. Gee faces charges in respect of seven installations. Mr. Hammond interviewed Mr. Darnley in relation to one of the installations (at the Milton Street Fish and Chip Cafe) but he did not interview him in relation to the other six installations (as far as he is aware, Mr. Darnley had nothing to do with those other installations). The particular of the charges against Mr. Gee in relation to the Milton Street Fish and Chip Cafe is based solely on Mr. Gee's certification (he signed the Gasfitting Certification Certificate) of that installation. Mr. Darnley will not be called as a witness at

the hearing of the charges against Mr. Gee. There will therefore be no question of conflicting evidence from Mr. Gee and Mr. Darnley and the Board having to make credibility decisions as to which evidence should be preferred. (Hammond, paras 20 and 21).

4. 95 In any event, the alleged associations between Board members and Mr. Darnley/Mr. Gee go no further than common memberships of two industry organisations, which is not sufficient to satisfy the test for apparent bias. In dismissing an allegation of bias in *NZ Financial Corporation Ltd v New Zealand Kiwifruit Authority* the Court said:

"So far as the relationship between Mr. Honeybone and Mr. Wickham is concerned, I am satisfied it was no more than the ordinary relationship one would expect between two persons heavily involved in the same industry with some common interests. There is nothing at all to indicate any close association which could in any way be seen to affect Mr. Honeybone's consideration of the application by Kiwi Harvest. Evidence was given of the existence of rumours of disquiet, but that in my view can be entirely disregarded for present purposes, there being no substantive evidence adduced from any person.

The personal relationship between Mr. Honeybone and Mr. Wickham could not reasonably give rise to any cause for concern, and there is certainly no evidence to suggest that Mr. Honeybone did not in fact carry out his Authority responsibilities on the occasion in question other than objectively and conscientiously."

4. 96 Further, the statutory constitution of the Board (in s6 of the 1976 Act) is such that Parliament must have intended that there might be situations where Board members hearing, and registered persons facing, disciplinary charges have common memberships of industry organisations.
4. 97 Section 6 provides that the 10 members of the Board must include two registered persons from each of the three trades. The Board is therefore a specialist body, the majority of which is drawn from those directly involved in the three trades. Parliament must have envisaged that the Board hearing disciplinary charges against a registered person from a particular trade would include Board members from that trade (those Board members being the experts in respect of that trade) - and that the Board members from that trade, and the registered person, might belong to organisations the membership of which includes people involved in that trade. Parliament therefore would not have intended the Board members with the specialist knowledge and experience in relation to the relevant trade to be disqualified from hearing charges against a registered person simply because they and the registered person are members of the same industry organization.

4. 98 The Gordon statement alleges (at paragraphs 26-30) that it would be a breach of the Code of Conduct, and the rules, of the Master Plumbers, Gasfitters & Drainlayers NZ Inc for Board members who are also members of that organisation to hear the charges against Mr. Gee. Whether or not that is correct is an issue to be determined by that organisation. It has no relevance to this Board's determination of whether those members should hear the charges against Mr. Gee. Further, it should be noted that the rule change referred to in paragraph 29 of the Gordon statement is only a proposed rule change that will not be tabled for discussion and voting until 24 March 2011 (Annex O to the Gordon statement).

Defamatory Letters Sent By Acting Registrar

4. 99 The application alleges that letters sent by the Board's Acting Registrar to the customers of six installations in respect of which Mr. Gee is charged were defamatory, in that they in effect state that Mr. Gee is dishonest, and therefore affect the chances of those customers giving fair and impartial evidence at the hearing.
4. 100 Mr. U'ren explains the background to those letters being sent (U'ren, paras 4-12). They were sent to notify home owners of the results of audits carried out on gas installations at their properties and to ensure that any defects identified were rectified. The letters were not sent as part of the investigative/disciplinary process in respect of the complaint against Mr. Gee. They were sent as part of a process of auditing approximately 500 gas installations throughout New Zealand for the purpose of ensuring public health and safety was not placed at risk.
4. 101 Although Mr. U'ren accepts that, in hindsight, the standard letter sent out could have been more appropriately tailored to a given situation, the Investigator does not accept that these six letters could in any way prejudice a fair hearing of the charges against Mr. Gee. In any event, the actions of the Acting Registrar in sending the letters is not conduct by a prosecuting authority (or any party to this disciplinary process) that could constitute an abuse of the process in any way, let alone egregious conduct serious enough to justify the charges against Mr. Gee being stayed. The letters were not even sent as part of the investigative/disciplinary process. And any inaccurate information in them resulted purely as a matter of oversight when the audit process was extended from North Island areas into South Island areas.

The Board Concluded

4. 102 It is convenient to set out the issues which the Board was required to consider, these being:

- a. Issues relating to the appointment of the Investigator.
 - b. An issue as to the impartiality of the Investigator.
 - c. An issue as to the impartiality of the Board.
 - d. An issue as to an alleged defamatory statement by the Acting Registrar.
4. 103 In this decision, each party's contentions with regard to the issues will be outlined and then discussed.
4. 104 A final preliminary point is that the Board was asked to consider a number of legal points as to the various criteria which were relevant to the application it was required to consider. Mr. Laurenson outlined these in detail. The legal propositions did not appear to be contested by Mr. Gordon - although he did rely on some statements from the Auditor-General's Office, which are referred to below where relevant.
4. 105 The Legal Assessor gave directions to the Board on the legal and procedural points.
4. 106 In the absence of any significant controversy as to the legal principles, the Board accepts the Legal Assessor's directions; in that regard where relevant in this decision those directions are reproduced, and they are the basis of the Board's determination.
4. 107 The Board also notes that the charge relates to matters that occurred in 2009. The disciplinary charges arising from those events therefore must be considered under the 1976 Act, which are carried over under the transitional provisions of the 2006 Act.

Jurisdiction

4. 108 The first matter the Board was asked to consider is whether it had the jurisdiction to deal with stay issues. In that regard, the Board was advised, and accepts, that it did have jurisdiction on the following basis, as outlined by the Legal Assessor (footnotes omitted):
- "(a) *When dealing with disciplinary matters, the Board is required to observe the principles of natural justice and may otherwise regulate its own procedure.*
 - (b) *It is well established that a disciplinary body may stay disciplinary proceedings, as an aspect of the principles of natural justice and the ability of the body to regulate its own procedure.*

(c) *In the many cases which have considered applications for stay by disciplinary bodies, the following principles have emerged:*

- *In deciding whether a permanent stay of a disciplinary proceeding should be ordered, consideration will necessarily be given to the protective character of such proceedings and to the importance of protecting the public from incompetence and from professional misconduct.*
- *The disciplinary body is required to undertake a weighing process similar to the kind appropriate in the case of criminal proceedings, but adapted to take account of the differences between the two kinds of proceedings.*
- *The purpose of disciplinary proceedings is not to determine and punish criminal wrongdoing, but to protect the profession in question and those members of the public who come into contact with it. This is a relevant factor to be weighed in the mix in any application for stay.*
- *But there is a public interest in ensuring that those charged with disciplinary offences not be subject to the jeopardy of trial or adverse results if they are prejudiced in defence of the allegations to such an extent that a fair hearing could not be obtained? It is this factor that has to be weighed against the matter referred to in paragraph (c).*
- *The power to stay should be exercised only in cases where there have been wholly unacceptable delays which render a fair trial impossible, or alternatively where there has been egregious (or outstandingly bad or shocking) conduct by the prosecuting authorities which is such as to require judicial intervention.*
- *Cases relating to criminal proceedings have held that:*

The concern is with conduct on the part of the litigant in relation to the case which if unchecked would strike at public confidence in the Court's process and so diminish the Court's ability to fulfill its functions as a Court of law.

Staying a prosecution is an extreme step in order to protect processes from abuse.

Any exercise of the power must be approached with caution.

Outside of the category of delay, the conduct must be of a kind that is so inconsistent with the purposes of criminal justice that for a Court to proceed with the prosecution on its merits would tarnish the Court's own integrity or offend the Court's sense of justice and propriety.

To stay a prosecution, and thereby preclude the determination of a charge on its merits, is an extreme step which is to be taken only in the clearest of cases.

- *The principles just described relating to criminal proceedings are applicable in the disciplinary context. That is, where persons the subject of proceedings cannot have the matters in dispute determined in accordance with accepted standards of justice and, in addition and specifically where the behaviour of the initiating authority is for some reason unacceptable, intervention may be justified.*
- (d) *In summary a high threshold must be established; a stay should be granted only in the clearest of cases, namely where, in the opinion of the Board its processes would be abused were the charge permitted to proceed.*
- (e) *Reference is made in the submission filed for Mr. Gee to certain statements of the Office of the Auditor-General in its report "Inquiry into the Plumbers Gasfitters and Drainlayers Board" (2010). Reference is also made to a statement contained at paragraph 2.59 of the report, which relates to a comment made by the authors of the report when discussing historic "organisational issues".*
- (f) *The comments referred to do not relate to the way in which the Board's decision making when it has carried out its disciplinary functions. For what it is worth, any issues relating to its disciplinary role would be a matter for consideration by the High Court on appeal.*
- (g) *That said, there could be no disagreement with the proposition that the Board must use its disciplinary powers in a proper and reasonable manner, having regard to the legal principles developed with regard to stay applications, as outlined above."*

4. 109 The Board accepts this statement as the basis for its consideration of the stay application.

Appointment of Investigator

4. 110 Mr. Gordon submitted that the Board had appointed the Investigator outside "Investigator Qualifications", which were published in the June 2008 edition of the Plumbers Gasfitters and Drainlayers Board News. It was submitted that the person specification required the Investigator to be a craftsman plumber and/or craftsman gasfitter and/or a registered drainlayer, and that Mr. Hammond did not fit this person specification.

4. 111 For the Investigator, it was accepted that Mr. Hammond had not been registered as a craftsman plumber, a craftsman gasfitter or a registered drainlayer. It was submitted, on the basis of evidence filed, that he had extensive experience in the gas industry and was registered as a Gas Inspector from 30 April 1993 to 31 March 2010. It was also submitted that the notice in the Board's newsletter was intended to provide guidelines for those persons interested in becoming an Investigator; that it was not definitive and was not intended to be seen as mandatory- this in reliance on evidence from the Deputy Registrar.

4. 112 Finally, for the Investigator, it was submitted that in any event at the time of Mr. Hammond's appointment {July 2009} the Board's power to appoint Investigators was provided for in section 40 of the 1976 Act.

4. 113 The Legal Assessor's direction was as follows:

a. The starting point must be section 40 of the Act which states:

"For the purposes of this Act, the Board may from time to time appoint any person, not being a member of the Board, who is a registered person, or who is employed by a local authority as an environmental health officer within the meaning of the Health Act 1956, to be an Investigator, and may at any time revoke the appointment." (emphasis added)

b. The primary question is whether the Investigator has been appointed within those criteria; this issue is addressed at paragraphs 15 and 16 of the Investigator's submissions.

c. It is for the Board to determine what weight if any is to be given to the guidelines published in the Newsletter, since the statute does not refer to those criteria."

4. 114 The Board considers that there has been compliance with section 40 of the Act. At the time of appointment Mr. Hammond was a registered person, because he was a gas inspector under section 2 of the Act.
4. 115 The Board also accepts the submission made that although Mr. Hammond ceased to be registered as a gas inspector on 1 April 2010 when the remaining parts of the 2006 Act came into force, and the Gas Inspector registration ceased to exist, section 181{1} and {2} of the 2006 Act provided for Mr. Hammond's appointment as Investigator for the purposes of the complaint to continue as if the 1976 Act was still in force.
4. 116 Consequently, the Board does not consider there are any disqualifying issues with regard to Mr. Hammond's appointment as Investigator.

Impartiality of Investigator

4. 117 The application stated that Mr. Hammond was not impartial, because he was, it is said, "... a strong advocate of safety and standards in the gas industry and has written a paper on "Deregulation from a Gas Utilities Perspective" and is listed as a Fellow of the New Zealand Institute of Gas Engineers.". It was also stated that he is on the Gas Detection Committee for the Standards Council, under the Standards Act 1988. It was submitted that by all indications he had based his career around the gas industry and its processes, and this placed him in a position of bias regarding issues of non compliance and faults in the system which might damage the image of the industry.
4. 118 It was also submitted that he had a conflict of interest, because Mr. Darnley was known to him.
4. 119 For the Investigator, it was submitted that the Investigator is not the decision maker in relation to disciplinary charges before the Board, and so the formal natural justice obligations fall on the Board, not the Investigator. Consequently, it was submitted that the only basis for considering a stay would be whether there had been "egregious conduct by the Investigator as the prosecuting body so as to amount to an abuse of the disciplinary process".
4. 120 In that regard it was submitted:
- (a) It could not be an abuse of the process for an Investigator to have extensive experience in the gas industry as Mr. Hammond has.
 - (b) Mr. Hammond did not have a close personal relationship with Mr. Darnley. When appointed as Investigator, Mr. Hammond had not even recognised Mr. Darnley's name. It was not until after he had interviewed Mr. Darnley,

in relation to the complaint which became the subject of the charge against Mr. Gee, that he realised he had met Mr. Darnley on one previous occasion (in 1998} and spoken to him twice on the phone (in 2008} in relation to another complaint. He did not recall ever meeting Mr. Darnley at New Zealand Institute of Gas Engineers gatherings, and was not even aware he was a member.

4. 121 It was submitted therefore that even if the bias principles did apply, there was no basis for a finding of apparent bias.

4. 122 The Legal Assessor's advice was as follows (footnotes omitted):

"(a) It is to be noted that it is not the Investigator who would determine the charge if it proceeds; it will be for the Board to determine the charge. Consequently, the obligation to comply with the rules of natural justice, is not one that falls on the Investigator, but on the Board: section 43(10), and clause 9(1} of Schedule 1 of the Act.

(b) Rather, the key question (based on the stay principles already identified} is whether there has been such "egregious [or shocking or outstandingly bad behaviour] on the part of the prosecuting authority that amounts to an abuse of process".

(c) The Investigator has disclosed details of his experience and qualifications; it is for the Board to determine whether there is any conduct of the kind referred to in paragraph 18.

(d) Please note that if the Investigator gives evidence at the substantive hearing, which would be the usual practice, he will be able to be cross examined by Mr. Gee's representative. His opinion evidence can be evaluated by the Board as to whether it withstands logical scrutiny. While expert evidence may guide the Board, the views of experts do not necessarily determine the ultimate outcome, although the evidence of acceptable practice will normally be highly relevant. The evidence of expert witnesses has to be carefully evaluated and the soundness of opinion carefully scrutinised just as is the case in connection with the evidence of any witness.

(e) Accordingly, the Investigator can be questioned about any issues of concern with regard to the process by which he obtained information, and as to the soundness of his views."

4. 123 The Board considers that the fact Mr. Hammond has been actively involved in reviews and developments of gas standards could arguably enhance his suitability as an Investigator.
4. 124 The Board has no reason to doubt the accuracy of the information that it has been given by Mr. Hammond, as contained in his affidavit, as to his lack of knowledge of Mr. Darnley.
4. 125 It does not regard the limited interaction with Mr. Darnley as constituting bias, even if bias principles were to apply, which the Board has been advised it does not. The Board also notes that, in any event, Mr. Hammond can be cross examined as to the way he went about his work, and as to his qualifications, at the substantive hearing.
4. 126 The Board is not satisfied that there is any disqualifying factor here, relating to the Investigator's impartiality. The test of "egregious conduct" is not satisfied.

Impartiality of the Board

4. 127 It was submitted by Mr. Gee, by way of a matrix diagram, that there were various "association links" between the Investigator, Mr. Darnley, Mr. Gee and certain Board members.
4. 128 So that this issue could be properly considered, the Board was advised that it would be appropriate for it to make a statement at the commencement of the hearing outlining the correct facts. The Board accepted that advice, and the following statement was made to the parties, via the Chairperson, at the commencement of the hearing:
- a. "To ensure transparency and to clarify some aspects of the Board members' perceived relationships in this hearing, we wish to record the following:
 - b. Mr. Whitehead is currently Chair of the Board of Master Plumbers, Gasfitters and Drainlayers Inc and has been for the last three years. He is aware of Mr. Gee as a member of this organisation but has no relationship with him. He does not know Mr. Darnley at all.
 - c. Mr. Parker is a member of the New Zealand Institute of Gas Engineers. He has no relationship with Mr. Darnley or Mr. Gee and is unaware of their names. Mr. Parker's relationship with Mr. Hammond when at the Gas

Association up until September 2010 and at the Plumbers, Gasfitters and Drainlayers Board has been only in a professional capacity. Mr. Hammond was a contractor from time to time with the Gas Association, to add clarity to that statement.

- d. Mr. Jackson has never been a member of the New Zealand Institute of Gas Engineers. He is a member of the Master Plumbers Organisation and has no association or knowledge of Mr. Gee or Mr. Darnley.
- e. Mr. Hammond is engaged by the Board with regard to various matters and has been required to give evidence to the Board from time to time on technical and discipline issues. All members have no personal relationship with Mr. Hammond."

- 4. 129 For Mr. Gee it was submitted that there were disqualifying conflicts of interest, with reliance being placed on certain statements from the Office of the Auditor-General. It was submitted that Mr. Whitehead, Mr. Parker and Mr. Salisbury all have "Association links" with Mr. Darnley and Mr. Gee and hence a possible conflict of interest and that they had all participated in the appointment of Mr. Hammond to investigate Mr. Gee and Mr. Darnley. It was also submitted that Mr. Whitehead and Mr. Salisbury were both involved when the Board resolved to exercise its powers under section 43 of the Act in respect of Mr. Gee.
- 4. 130 For the Investigator it was submitted that the starting point was that the Board had not yet made its decision in relation to the charges against Mr. Gee. Therefore the most that the application could achieve was a finding that particular Board members could not sit at the hearing.
- 4. 131 Counsel for the Investigator took the Board through relevant sections of the 1976 Act, and stated that the decision the Board had made to this point (referring the complaint to the Investigator, and causing a notice of charge to be sent out to Mr. Gee) was simply what the Board was required to do under the Act.
- 4. 132 It was submitted that there was no evidence any Board member had any disqualifying conflict of interest; and that any alleged associations between Board members and Mr. Darnley were irrelevant; it was pointed out that Mr. Gee faced charges in respect of seven installations, and that Mr. Darnley faced a charge in relation to only one of these installations, and on a different basis.

4. 133 It was submitted that the alleged associations went no further than being common memberships of two industry organisations, which was not sufficient to satisfy the test for apparent bias.
4. 134 Finally, it was submitted that reference to a proposed rule for the Master Plumbers Gasfitters and Drainlayers NZ Inc for Board members, was an issue to be determined by that organisation (even if the rule was passed).
4. 135 The Legal Assessor gave the Board the following direction (footnotes omitted):

"(a) It is first necessary to identify the correct legal principles. Mr. Gee's submission refers to statements of the Auditor-General regarding conflicts of interest. However in the quasi judicial field, it is decided cases of the Court which must be referred to for the relevant principles, since the Courts have over the years considered this issue on very many occasions, including with regard to disciplinary bodies such as the Board. The Board must apply those legal principles.

(b) Relevant principles are:

- There are two types of bias - "presumptive" and "apparent". Presumptive bias arises where a decision maker has a direct pecuniary or personal interest in the outcome of the case; apparent bias is where the decision maker has some personal or professional relationship to a party or witness, or a prejudice against or a preference towards a particular result or predisposition leading to a predetermination of the issue(s).*
- The content of the bias rule is flexible, varying with the factual and legal circumstances.*
- It is at its most demanding when applied to the judiciary, and it is at its least demanding when applied to informal, low level administrative Tribunals. The test for bias reflects the standards and expectations of the reasonable person or observer.*
- In respect of apparent bias, the decision maker is disqualified "if a fair minded lay observer might reasonably apprehend that the [decision maker] might not bring an impartial mind to the resolution of the question [the decision maker] is required to decide ...".*
- This rule, however, is subject to necessity - for example, where the*

legislation itself requires persons who will have a particular association to determine the issue.

- *It is to be noted that the fair minded lay observer is "neither unduly sensitive or suspicious nor complacent about what might influence the decision". The assessment is to be "tempered with realism".*
- (c) *The above principles apply to disciplinary bodies dealing with occupational matters, where context will be recognised, and in particular that members of the decision making body will include members of the profession or trade.*
- (d) *In summary, then, the question will be whether, having regard to the particular statutory provisions within which the Board is required to operate a fair minded lay observer might reasonably apprehend that the Board might not bring an impartial mind to the resolution of the question it is required to decide.*
- (e) *Turning to the relevant provisions of the 1976 Act, it is important to note:*
- *Section 6, which provides that the members of the Board must include two registered persons from each of the three trades. Like most occupational disciplinary bodies, the specialist expertise of person who are involved in the relevant occupation is ensured by having representatives from those trades and professions.*
 - *Reliance is placed for Mr. Gee on the power, under section 41{4A} for the Board to refer a complaint to an Investigator. Obviously, the statute itself envisages that where a complaint is referred to an Investigator, the Board has to do that, being the Board which will subsequently convene a hearing, and determine any charge. However, safeguards to protect the integrity of the ultimate hearing have been introduced, and should be recognised.*
 - *Section 43{1} provides that where a complaint is referred or made to the Board, the Board shall before acting under section 42, cause a notice to be served. The same comment applies here: the Board is required to cause to be served on the registered person a notice of the intended charge. That is an entirely standard procedure for disciplinary bodies; and again safeguards have been introduced.*
- (f) *Against the background of the above principles and legislative*

provisions, there are three broad questions the Board must consider:

- *Does the fact that Board members have had to make relevant determination in the pre-hearing process give rise to appearance of bias? Reference has already been made to statements in such cases as Jeffs, and NZ/ Financial Corporation, where Courts have held that the legislative intention was to exclude the rule against bias to a certain extent, in respect of the statutory decision making body in question.*

In the professional disciplinary field, the dicta of Clifford J in Knight (supra) assists. The issue was whether there was a conflict of interest between a veterinarian who chaired a first Complaints Committee {Dr Twyford} and a person who chaired a second Complaints Committee (Dr Gibson}, in connection with the laying of charges against a Dr Knight, and where the Chairperson of the first Complaints Committee had communicated, at the commencement of the process, with the Chairperson of second Complaints Committee. After analysing the facts, (at {76}), the Judge said:

"[77]. In summary, therefore, the evidence indicates that there is some, very limited, degree of overlap between the practices and business arrangements of Dr Twyford and Dr Gibson and between Dr Twyford's practice and the practice of Dr Knight (both generally and in terms of afterhours services offered). I further accept that both Dr Twyford and Dr Gibson had interests in referral practices. In addition, Dr Twyford clearly played some role in the bringing of the referral, in that it essentially resulted from the failure of Dr Knight and the first Complaints Committee (which Dr Twyford chaired) to agree on the diversion proposal. Dr Gibson's role appears to have been much more limited, but I accept that he signed the notice of charges in August 2006, which charges, despite being amended by the introduction of a further particular, remains substantively the charges Dr Knight faced.

[78} I am not, however, persuaded that, in these circumstances, a fair minded lay observer might reasonably apprehend that Dr Gibson or Dr Twyford might not bring an impartial mind to the decisions they

were required to make. Both the relationship between Dr Gibson and Dr Twyford, and the overlap of Dr Knight's business with the practices of both, are very minor and are the sorts of links that almost inevitably will be present in a relatively small profession in a relatively small country. I am not persuaded that these connections would give rise to any real concern in a fair minded lay observer.

{79} *Insofar as both Dr Gibson and Dr Twyford have interest in referral practices, I am not persuaded that this bare fact is an indication that they would not be impartial in bringing charges relating to a failure to refer. The statutory framework provides for two professional members on every Complaints Committee. It seems to me that, in this context, a fair minded observer would require something more than those professionals having an interest in a referral practice to give rise to reasonable concerns about partiality.*" (emphasis added)

Thus, the Board must exercise its powers as required by the statute. It is required to consider referral to the Investigator, and must then set up the hearing, if a recommendation to that effect is made. This aspect of the matter, then, falls to be considered against those cases which have held that the legislative intention excludes the rule of bias; and/or the principle of necessity that requires the Board to take the decisions it has.

- *Secondly, the Board must consider whether given the network of Associations that exist in New Zealand, there are any particular links with Board members which would persuade a fair minded lay observer that there was a possibility the Board would not be impartial. As to this issue:*

see {78} of Knight, above.

In Man O' War Station Ltd v Auckland City Council (No 1) the Privy Council rejected a claim that because a Judge of the Court of Appeal sitting in the case had a personal relationship with a witness {the witness in question was the son of a man who had been the Judge's former employer, long term partner and mentor for some 30 years, and the brother of another partner of the Judge for some 11 years). The Privy Council approved a statement that "to take any other view would be unrealistic in the New Zealand situation".

In Wang v Cornwell the case concerned an agreement for sale and purchase of land. It emerged in the evidence that a good friend of Mrs. Wang's husband was also a friend of the Judge. The Judge declined to recuse himself holding that even though the witness' credibility was in issue, a friendship that was more recently on a two monthly or so interval between get togethers, and where the Judge was unaware of the connection, was too remote. A factor was that New Zealand in general, and Auckland in particular, was a small society.

By contrast, in re Sutherland, the personal and professional relationship that existed over four years between a Coroner {who also identified the body and knew the deceased was taking medicine for manic depression) and the deceased resulted in the Coroner's decision being set aside.

- *The final issue raised is with regard to associations with a Mr. Darnley. The Investigator, through Counsel, states that Mr. Darnley will not be called, and that his circumstances are not relevant to the claim against Mr. Gee. It is for the Board to determine whether this factor could have any impact on the Board's partiality.*

(g) Finally, reference is made to a "rule", yet to be passed, of the Master Plumbers Gasfitters and Drainlayers NZ Inc for Board members; that is an issue for that organisation, and it cannot bind the Board; it is the statutory requirements of the Board which must regulate the current procedure, informed by judicial cases on the topic."

4. 136 Reference was made in Mr. Gordon's submission to certain observations of the Office of the Auditor-General, but the Board understands it is obliged to apply the principles as developed by the Courts. It has therefore focused on the principles outlined above.
4. 137 In his submissions, Mr. Gordon submitted that there was a lack of delineation between the Board itself, the Registrar, and the Secretariat. The Board wishes to make it clear that for the purposes of its disciplinary functions, it pays strict regard to the boundaries which must exist between it on the one hand, and the Registrar and the Secretariat on the other. In this case, the very limited information that was placed before it when it was required to consider a

recommendation to appoint the Investigator, and when it was required to authorise the issuing of the charge, demonstrates this. The Board recognises that it is bound by the statutory processes that have been described in the Act, and it is the Act it follows.

4. 138 As far as "Association links" are concerned, Parliament has seen fit to set up a regime where six specialist tradespersons are required to be appointed to the Board; and it was also Parliament's intention that specialist expertise would be available in the disciplinary process, when hearing charges such as the present, that involve technical issues relating (for example) to gasfitting.
4. 139 In line with cases that had been heard in the High Court, the Board does not consider therefore that there is any apparent bias. The Board members believe that appropriate safeguards have been introduced to limit the amount of information that any Board member has placed before him or her prior to a hearing, and that all reasonable steps have been made to ensure the integrity of the disciplinary process.
4. 140 Taking all these factors into account, the Board does not consider that any of the Board members scheduled to hear this matter should be disqualified; it thinks that a fair minded lay observer would not reasonably apprehend that the Board might not bring an impartial mind to the resolution of the issues it is required to consider - this being the test which the Board has been advised it must apply.
4. 141 The Board takes its responsibilities when exercising its judicial functions, very seriously. The parties can be assured that it will do so on this occasion, as it always does.
4. 142 Finally, reference was made to a potential rule in another organisation. The Board accepts that that particular rule is not applicable in the present context.

[Alleged defamatory statement by Acting Registrar](#)

4. 143 For Mr. Gee, Mr. Gordon said that certain letters that had been sent out by the Acting Registrar meant that the impartiality of the Board had been affected; and that the letter resulted in possible witnesses being influenced by the statements in the letter. This was because the letter would have harmed the reputation of Mr. Gee by making false statements about him. The statements were more likely than not to cause the recipients of the letter to shun or avoid the services of Mr. Gee.

4. 144 In part, the letters stated:

"Recently the Plumbers Gasfitters and Drainlayers Board undertook an audit of your gas installation as a result of an issue with gas certification that affected a number of homes and business where it appears a number of gas certificates may have been unlawfully sold or issued by practitioners in areas from North/and to Waikato and the Bay of Plenty ... The above gas certification number relating to your property is one of those involved in this issue, and following our audit it was confirmed that the following item(s) were found non compliant in your gas installation and required remedial work."

4. 145 It was submitted the statement was defamatory and false in that it stated Mr. Gee may have been involved with the unlawful sale or use of gas certificates, which was false. The statement also implied that the certificate issued to the property, obviously by Mr. Gee, was one of the certificates involved in this issue, and that also was false. The letter had suggested that Mr. Gee had acted dishonestly.

4. 146 In response, for the Investigator it was submitted, on the basis of evidence filed by the then Acting Registrar, that these letters had been sent to notify homeowners of the results of audits carried out on gas installations at their properties and to ensure that any defects identified were rectified. They were not sent as part of the investigative/disciplinary process in respect of the complaint against Mr. Gee. They were sent as a part of a process of auditing approximately 500 gas installations throughout New Zealand for the purpose of ensuring public health and safety. It was accepted in hindsight that the standard letter could have been more appropriately tailored to a given situation, but the central submission was that the six letters could not in any way prejudice a fair hearing of the charges against Mr. Gee. Any inaccurate information was purely a matter of oversight when the audit process was extended from the North Island areas into South Island areas.

4. 147 The direction of the Legal Assessor was as follows:

"The issue which must be focused on here is whether the sending of that letter in some way impacts on the possibility of a fair hearing of the charge, to the extent that conduct by the prosecuting authority {the Investigator} could thereby be said to constitute an abuse of the Board's processes.

The letter appears to have been sent by a person other than the Investigator {Mr. Uren, not Mr. Hammond}; and although it is a matter for the Board, the Board might well conclude that the letter has no relevance

to the issues which are set out in the charge, and which the Board will have to determine."

4. 148 The Legal Assessor went on to say that, in respect of the assertion that possible witnesses may have been influenced by the statements, there was no evidence to that effect at the present; but in any event any such witnesses who might be called, for example consumers, could be asked about the role of the letter in the formation of their views when giving their evidence.

4. 149 The letter was circulated in the interests of public health and safety as required by the Act; it is regrettable that, as the then Acting Registrar has acknowledged, it was not tailored for a particular situation, but be that as it may the Board does not consider the letter will compromise a fair hearing. It does not amount to egregious misconduct on the part of the Acting Registrar.

4. 150 Accordingly this ground is not established.

Cumulative effect of allegations

4. 151 Mr. Gordon made the submission that it was important not only to consider the allegations on an individual basis, but on a cumulative basis.

4. 152 The Board has done so, but since has reached the conclusion that no single assertion is established, it must follow that considered cumulatively the issues raised do not come anywhere near the high standard required for a stay application.

Conclusion

4. 153 None of the four grounds raised in the application are established, and accordingly the application must be dismissed.

4. 154 The Secretariat is now asked to arrange a teleconference between the Chair, the parties and the Legal Assessor, to discuss rescheduled.

4. 155 Dates for the hearing of the substantive charge, and a timetable for the filing of evidence for the purposes of that hearing.

Additional Facts Not Previously Reported

4. 156 In a Presiding Board Member minute dated 2nd February 2011 pertaining to the "Motion to Dismiss" he clearly stated:

“ In the first instance, then, if the parties have a different view as to how the process should be adopted, they are to indicate this by 5.00pm on Wednesday, 2 February 2011; the Board will then consider any representations so made and advise the parties Immediately”

- 4. 157 Mr. Gordon complained to the Board that he was in receipt of a Memorandum to the Board submitted by Mr. Laurenson on behalf of the Investigator which was sent to him and the Board by email at 5.33 pm. He noted that the Investigators Counsel had been provided with a copy of Mr. Gees response prior to this time placing him at an unfair advantage in that he knew prior to submitting his response what we had proposed enabling him to counter any of Mr. Gees suggestions.
- 4. 158 He noted also the time at which the Memorandum to the Board was submitted by Mr. Laurenson being 5.33pm 2 February 2011. This he stated was a display of latitude in the favour of the Investigator.
- 4. 159 During Cross Examination at the main hearing Mr. Hammond admitted he was now aware of Mr. Darnley and was also a member of the New Zealand Institute of Gas Engineers of which Mr. Hammond is a Fellow.
- 4. 160 He also stated he was one of two people who conducted an oral assessment of Mr. Darnley to determine whether he should be granted craftsman status.
- 4. 161 Mr. Darnley resigning from NZIGE in the May 09 newsletter, weeks after the 9 April 2009 explosion.
- 4. 162 When questioned on his involvement in the development of the processes that he was now enforcing it was put to him that he would be very protective of it and would not be very tolerant of anyone who would look like they may have breached the legislation in any way, he did not agree.
- 4. 163 He stated the average tradesperson may not know the full extent that he knew about gas regulation but that was not a significant matter in his view.
- 4. 164 Mr. Hammond and Mr. Parker ran the Kennedy Trust for many years together and were a duo on the presentation circuit representing several (common to both) gas orientated organisations. This was omitted from the impartiality hearing with regards to how well Mr. Parker knew Mr. Hammond. Their relationship was played down with facts either under emphasised or totally left out.

Review Comments

4. 165 The central issues of the motion was whether or not the processes and procedures dealing with the investigation into Mr. Gee were conducted in a fair and impartial way and whether or not the actions and practices by the Board, secretariat and contractors, impeded on Mr. Gees right to fairness in the investigation and the hearing. The key word here is **investigation** and the counsel for the investigator quickly averted from investigation to hearings.
4. 166 The Motion to Dismiss Charges with Prejudice submitted by Mr. Gordon on behalf of Mr. Gee highlights a number of issues with the legislation and Board policies and procedures.
4. 167 Firstly the legislation forces the Board to take action once the Investigator has told them there is a case to answer. In this case Mr. Gee was aware of all the facts pertaining to the nature of the investigation however that information was not able to be used as it would be impinging into the disciplinary gambit of the case. This created a situation where only snippets of wrong doing could be used.
4. 168 Mr. Laurenson was employed to assist the investigator in prosecuting the case against Mr. Gee so it was surprising to say the least that he was doing the Boards representation at the hearing after all it was a hearing to determine administrative issues to do with the case not a hearing of evidence to do with the case. Yes there were issues regarding the investigator but they were all to do with decisions made by the Board. It was a hearing to do with administrative issue not prosecution issues.
4. 169 This same problem was encountered at the appeal to the High Court where Mr. Laurenson appeared for the investigator and wanted the respondents changed from the Board to the Investigator but the Judge ruled it was the Board who made the decision. This highlights the blurred lines between the appointed Boards responsibilities and the Board as an organization.
4. 170 A further example was where the Investigator and Mr. Gordon were both given deadlines to make submissions to the Board regarding how the application to dismiss should be dealt with. Mr. Gordon met the deadline. The Board passed Mr. Gordon's proposal to the Investigator rather than wait for both parties to respond as was proposed in the letter from Mark Whitehead. Mr. Laurenson submitted a late response sitting Mr. Gordon's response in his submission.

4. 171 The manner in which this process was dealt with put the Investigators Counsel at an unfair advantage. This was another example of the Board operating in their interest and certainly not in the spirit of being fair and reasonable.
4. 172 The involvement of the investigators lawyer quickly changed the application into a legal battle consisting of multiple case laws and the moral issues were not looked at. The Board was forced into a situation where their obligations compelled them to find in the way that they did without taking into account the moral issues or how a fair minded average lay person may view the issues.
4. 173 The subsequent main hearing would show Mr. Gee's allegations had substance.
4. 174 Very little weight seems to have been given to the fact letters were sent to Mr. Gee's customers. It is very hard to believe that it was coincidence and that the letters had nothing to do with the investigation. The audits were either part of the investigation or they were not. The average fair minded layperson would find it hard to believe that it was only coincidence that letters were sent to six people who owned sites Mr. Gee was being charged for doing work at.
4. 175 There appears to have been a lot of legal maneuvering and manipulation for example the advertisement that the Board issued regarding the appointment of investigators. Mr. Laurenson produced a statement from Mr. Uren claiming the advertisement was not a pre-requisite but yet that is exactly what the advertisement said. The average person would see it as a pre-requisite. Why would the Board retract the statement possibly because it meets their needs to do so.
4. 176 With regard to Mr. Hammond's registration status it's noted he was granted Gasfitters Certifying registration in December 2011. It is believed this status was granted to him by the Board without having to do any type of exam or apprenticeship. The circumstance surrounding the granting of the registration needs to be confirmed.
4. 177 Great lengths were taken to defend the credibility of the process and the Board with regard to associations. It is noted the Board members sitting on the Motion to Dismiss hearing consisted of three Certifying gas fitters, a Certifying drainlayer and an administrator. Three of them were replaced on the discipline hearing panel.

4. 178 The Board at the discipline hearing consisted of one gasfitter, one consultant, two administrators, one contractor and one plumber. This begs the question why did the board go to such lengths justifying the non bias association when three members were being changed.
4. 179 During the hearing Mr. Laurensen held the Board as being an expert tribunal and held Mr. Hammond in high regard pertaining to his vast experience in the industry. He argued that egregious behavior was defined as being “shocking, outstandingly bad”, very bad reprehensible conduct on the part of the prosecuting body. He went on to say the investigator was the prosecuting body.
4. 180 Due to the nature of the hearing no evidence of the investigators behavior was able to be submitted. This is now open to the public to form a view regarding any egregious behavior the review may find.
4. 181 It appears this hearing was about the Board maintaining its legal justification and the need to build and maintain trust in the Board was ignored. The Boards adjudicative function means the Board must enjoy independence from the secretariat, and must also be perceived as being independent. The perception is in many ways as important as the reality.
4. 182 It is the opinion that the inclusion of the investigators counsel to defend the Boards position at the hearing was inappropriate as the evidence of the case and investigation were not discussed. This was an administrative issue to do with Natural Justice and processes and procedures. The investigators counsel inclusion is a clear demonstration of the close association between the actions of the investigator, the secretariat and the Board.
4. 183 Mr. U’ren in his affidavit claimed the “pre-requisites” for investigators was intended to provide guidelines for those person interested in becoming an investigator for the Board and the list was not definitive and nor was it intended to be seen as mandatory. That may well have been the intention however the information provided to the industry is clear - it is the investigator qualifications, it is the person specification pre-requisites as developed by the Board for the position of investigator and it details the person specifications.
4. 184 There is no mention of it being a guideline or that it was not definitive. The average person in the industry would see it as being the requirements of an investigator and hence the Board’s Policy on investigators.

4. 185 Had Mr. Gordon's suggestion of having an outside agency hear the Motion to Dismiss application been given due consideration there was a huge possibility that this travesty of justice may have been avoided. The Motion to Dismiss hearing was lead down a legalistic path with little or no reference to moral issues.

Questions

4. 186 Mr. Hammond provided Mr. Parker technical support in his role at GANZ, which means he would be inclined to believe, Mr. Hammond over most others, if not over everyone. Should Mr. Parker have stood down when he became aware of whom the investigator was?

Part 5: Charges

- 5.1 By a notice of charges ("the charges") dated 12 August 2010, charges were laid in the alternative under section 42(1)(b) and (c) of the Act.
- 5.2 On 1 February 2011, Mr. Laurenson sought leave to amend the charges on the basis that the amendments would bring the charges into line with the evidence to be given. Mr. Laurenson said that there would be no prejudice to Mr. Gee as the amendments were based on information contained in witness statements provided to Mr. Gee and the application gave sufficient notice of all amendments.
- 5.3 Mr. Gordon opposed the application arguing that the amendments were based on information collected from witnesses after the investigation had been concluded and that the application was made very close to the hearing despite the significant length of time the Investigator had to prepare and the lack of time Mr. Gee would have to respond.
- 5.4 The Board received legal advice from Mr. Corkill QC and, having deliberated, granted the application finding that there was no direct prejudice to Mr. Gee and the amendments would be in the interests of justice.
- 5.5 Accordingly, the material parts of the charges, as amended, are in the following terms:

4. *It is alleged pursuant to section 42(1)(b) of the Act that you, being a craftsman gasfitter and a craftsman plumber, have been guilty of such improper or incompetent conduct in performing your work as renders you unfit to be registered under the Act, namely:*

Milton Street Takeaways, 136 Milton Street, Nelson

- 4.1 *On or about 26 June 2003, in Gasfitting Certification Certificate number 282245 dated 26 June 2003 ("Certificate No 282245"), you did certify the installation of two Blue Seal GT 45 gas fryers ("the Fryers") at 136 Milton Street, Nelson, in contravention of regulation 24A(4) of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No 282245 were accurate, namely, the statement to the effect that the installation was safe and/or the statement to the effect that all work carried out on the installation was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:*

- (a) *clause 106.1.1 of NZS 5261:1996, the flexible gas pipework connected to the Fryers was not connected to the Fryers in a manner that would avoid damage to that flexible gas pipework; and/or*
- (b) *clause 108.2.9 of NZS 5261:1996, a restraint was not fitted to the Fryers so as to prevent stressing of the gas pipework connected to the Fryers.*

73 Main Road, Havelock (Mussel Boys)

4.2 *In or about July 2003, you did install a Blue Seal GT 45 gas fryer ("the Fryer") at 73 Main Road, Havelock, in contravention of:*

- (a) *clause 106.1.1 of NZS 5261:1996 in that the flexible gas pipework connected to the Fryer was not connected to the Fryer in a manner that would avoid damage to that flexible gas pipework; and/or*
- (b) *clause 108.2.9 of NZS 5261:1996 in that a restraint was not fitted to the Fryer so as to prevent stressing of the gas pipework connected to the Fryer.*

4.3 *On or about 15 July 2003, in Gasfitting Certification Certificate number 286044 dated 15 July 2003 ("Certificate No 286044"), you did certify the installation of the Fryer at 73 Main Road, Havelock, in contravention of regulation 24A{4} of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No 286044 were accurate, namely, the statement to the effect that the Fryer was safe and/or the statement to the effect that all work carried out on the Fryer was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:*

- (a) *clause 106.1.1 of NZS 5261:1996, the flexible gas pipework connected to the Fryer was not connected to the Fryer in a manner that would avoid damage to that flexible gas pipework; and/or*
- (b) *clause 108.2.9 of NZS 5261:1996, a restraint was not fitted to the Fryer so as to prevent stressing of the gas pipework connected to the Fryer.*

68 Greenwood Street, Motueka

4.4 In or about May 2003, you did install a Westinghouse 517 gas cooker ("the Westinghouse cooker") at 68 Greenwood Street, Motueka, in contravention of:

- (a) *clause 108.2.9 of NZS 5261:1996 in that a restraint was not fitted to the Westinghouse cooker so as to prevent stressing of the gas pipework connected to the Westinghouse cooker; and/or*
- (b) *clause 106.3.2 of NZS 5261:1996 in that the bayonet fitting connecting the Westinghouse cooker hose to the fixed gas pipework was located in a wall cavity and so the gas pipework is not located to avoid any hazardous build-up of gas should leakage occur.*

4.5 On or about 1 May 2003, in Gasfitting Certification Certificate number 278223 dated 1 May 2003 ("Certificate No 278223"), you did certify the installation of the Westinghouse cooker at 68 Greenwood Street, Motueka in contravention of regulation 24A{4} of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No 278223 were accurate, namely the statement to the effect that the installation was safe and/or the statement to the effect that all work carried out on the installation was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:

- (a) *clause 108.2.9 of NZS 5261:1996 a restraint was not fitted to the Westinghouse cooker so as to prevent stressing of the gas pipework connected to the Westinghouse cooker; and/or*
- (b) *clause 106.3.2 of NZS 5261:1996 the bayonet fitting connecting the Westinghouse cooker hose to the fixed gas pipework was located in a wall cavity and so the gas pipework was not located to avoid any hazardous build-up of gas should leakage occur.*

Ball Unit, Pah Street, Motueka High School

4.6 In or about July 2003, when installing a Rinnai RF1004 gas space heater ("the Space Heater") at 8 Ball Unit, Par Street, Motueka, you did either:

- (a) *install two 45kg LPG cylinders ("the LPG cylinders") in a metal enclosure with insufficient ventilation to allow the safe dispersal*

of any gas discharged in that metal enclosure; or

- (b) not ensure that the metal enclosure that you knew or ought to have known the LPG cylinders would be located within had sufficient ventilation to allow the safe dispersal of any gas discharged in that metal enclosure.*

4.7 On or about 17 July 2003, in Gasfitting Certification Certificate number 286049 dated 17 July 2003 ("Certificate No 286049"), you did certify the installation of the Space Heater and fittings at 8 Ball Unit, Par Street, Motueka, in contravention of regulation 24A(4) of the Regulations in that you were not satisfied on reasonable grounds that the statement in Certificate No 286049 to the effect that the installation was safe was accurate because either:

- (a) the LPG cylinders were installed in a metal enclosure with insufficient ventilation to allow the safe dispersal of any gas discharged in that metal enclosure; or*
- (b) you had not ensured that the metal enclosure that you knew or ought to have known the LPG cylinders would be located within had sufficient ventilation to allow the safe dispersal of any gas discharged in that metal enclosure.*

37 Dommatt Street, Westport

4.8 In or about February 2005, you did install a Rinnai Infinity 20 water heater ("the Rinnai Infinity 20") at 37 Dommatt Street, Westport, in contravention of clause 1.6.3(f) of NZS 5261:2003 in that there was insufficient clearance between the Rinnai Infinity 20 and an openable window to minimise the risk of harm to persons inside the building at 37Dommatt Street, Westport.

4.9 On or about 1 June 2005, in Gasfitting Certification Certificate number 349722 dated 1 June 2005 ("Certificate No 349722"), you did certify the installation of the Rinnai Infinity 20, at 37 Dommatt Street, Westport, in contravention of regulation 24A(4) of the Regulations in that you were not satisfied on reasonable grounds that statements in Certificate No 349722 were accurate, namely the statement to the effect that the Rinnai Infinity20 was safe and/or the statement to the effect that all work carried out on the Rinnai Infinity 20 was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or clause 1.6.3(f) of NZS 5261:2003 there was insufficient clearance

between the Rinnai Infinity 20 and an openable window to minimise the risk of harm to persons inside the building at 37 Dommett Street, Westport.

6 Malvern Avenue, Atawhai

4.10 *In or about June 2006, you did install a Bosch 25 water heater ("the Bosch 25") at 6 Malvern Avenue, Atawhai, Nelson, in contravention of clause 1.6.3(f) of NZS 5261:2003 in that there was insufficient clearance between the Bosch 25 and an openable window to minimise the risk of harm to persons inside the house at 6 Malvern Avenue, Atawhai, Nelson.*

4.11 *On or about 1 July 2008, in Gasfitting Certification Certificate number 388566 dated 1 July 2008 ("Certificate No 388566"), you did certify the installation of the Bosch 25 at 6 Malvern Avenue, Atawhai, Nelson, in contravention of regulation 24A(4) of the Regulations in that you were not satisfied on reasonable grounds that statements in Certificate No 388566 were accurate, namely the statement to the effect that the Bosch 25 was safe and/or the statement to the effect that all work carried out on the Bosch 25 was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or clause 1.6.3(f) of NZS 5261:2003 there was insufficient clearance between the Bosch 25 and an openable window to minimise the risk of harm to persons inside the house at 6 Malvern Avenue, Atawhai, Nelson.*

5 Powick Street, Westport

4.12 *In or about September 2004 when installing a Rinnai Infinity 32 gas water heater ("the Rinnai Infinity 32") at 5 Powick Street, Westport, you did not ensure that the two 45 kg LPG cylinders ("the LPG cylinders") either:*

- (a) were located on a base of non-combustible material in that they were located on a timber deck; or*
- (b) would not subsequently be located on a combustible material, namely a timber deck.*

4.13 *On or about 21 October 2004, in Gasfitting Certification Certificate number 319000 dated 21 October 2004 ("Certificate No 319000"), you did certify the installation of the Rinnai Infinity 32 and fittings at 5 Powick Street, Westport, in contravention of regulation 24A(4) of the*

Regulations in that you were not satisfied on reasonable grounds that the statement in Certificate No 319000 to the effect that the installation was safe was accurate because either:

- (a) the LPG cylinders were located on a base of non-combustible material in that they were located on a timber deck; or
- (b) you did not ensure that the LPG cylinders would not subsequently be located on a combustible material, namely a timber deck.

The allegations in paragraph 4.1 to 4.13, either separately or cumulatively, are particulars of the conduct alleged in paragraph 4 for which, if proven, you may be liable to the penalty or penalties which may be imposed under section 42(2) of the Act or section 106(1)(a)-(e) of the Plumbers, Gasfitters and Drainlayers Act 2006 ("the 2006 Act").

Part 6: Milton Street Takeaways, 136 Milton Street, Nelson

Particulars of Charge

6.1. Particular 4.1/5.1

It is alleged that ¹¹On or about 26 June 2003, in Gasfitting Certification Certificate number 282245 dated 26 June 2003 ("Certificate No 282245"), you did certify the installation of two Blue Seal GT 45 gas fryers ("the Fryers") at 136 Milton Street, Nelson, in contravention of regulation 24A(4) of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No 282245 were accurate, namely, the statement to the effect that the installation was safe and/or the statement to the effect that all work carried out on the installation was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:

- (a) clause 106.1.1 of NZS 5261:1996, the flexible gas pipework connected to the Fryers was not connected to the Fryers in a manner that would avoid damage to that flexible gas pipework; and/or*
- (b) clause 108.2.9 of NZS 5261:1996, a restraint was not fitted to the Fryers so as to prevent stressing of the gas pipework connected to the Fryers.*

The Investigator Submitted

6.2. With regard to this particular, the Investigator submitted:

6.2.1 Allgas Ltd were contracted to install the pipework, LPG cylinders, connect the fryers and certify the installation.

6.2.2 Mr. Gee was the only Allgas employee recorded as having carried out work at the cafe and he signed the certificate for the installation of the fryers on 26 June 2003, their having been delivered to the site on 24 June 2003.

6.2.3 In reference to Mr. Gee's allegations that work had been added to the certificate after he signed it, this is not reasonable because (in summary):

6.2.3.1 Mr. Gee ought to have known that, as he carried out the pipework and installed the wingbacks to connect the fryers, he would be required to certify them.

- 6.2.3.2 It is difficult to understand why Mr. Gee would have signed a certificate with only the install pipework only" box ticked; that the appliances should have been clearly excluded from the certificate if this was the case.
- 6.2.3.3 That Mr. Gee had, in respect of another installation in May 2003, described the gasfitting carried out as Re Run pipe work only in roof space".
- 6.2.3.4 Mr. Gee had the blue copy of the certificate and the checklist in respect of the installation since early 2004, and had never previously raised concerns regarding fraudulent certification in respect of the Milton Street installation.
- 6.2.3.5 Mr. Gee said that he only installed the bayonet fitting at 209 Haven Road, which is when he says he first became aware that information was being added to his certificates, however the bayonets are the third item described on the certificate and it is difficult to understand why the first two lines would be left blank and filled out later.
- 6.2.3.6 That Mr. Gee has been inconsistent in statements regarding a number of matters, first denying that he signed certificates and later accepting that he did.

Mr. Gee Submitted

6.3 Mr. Gee submitted that:

- 6.3.1 He installed the pipework and bayonets only, and after signing the certificate it was altered to include the fryers, as evidenced by the different handwriting on the certificate.
- 6.3.2 That the installation as seen in the 2009 photographs was not the same as Mr. Gee's original installation.
- 6.3.3 That the fryers were classed as mobile appliances which is common for such commercial operations where frequent cleaning requires them to be moved in and out for access purposes, and there is an onus on the owner to ensure that appliances are maintained in a manner that ensure they remain safe and compliant.
- 6.3.4 A pizza oven was installed and certified by Mr. John Darnley of Allgas on

9February 2005.

6.3.5 On 9 April 2009 there was an explosion at the cafe as a result of a gas leak from the flexible hoses attached to the fryers.

The Board Concluded

- 6.4 The Board first considered whether Mr. Gee certified the fryers detailed on certificate 282245. It is correctly accepted by the Investigator that there is no evidence to suggest that Mr. Gee installed the fryers at the cafe. Mr. Gee accepts that he installed the pipework and the bayonets connecting to the fryers however, alleges that this work has been changed from his original installation.
- 6.5 The Board notes that the invoice and quote issued by Allgas for the work at the cafe includes the provision of a certificate. Accordingly, the Board accepts that certification of the fryers was to be carried out by Allgas.
- 6.6 Mr. Gee accepts that it is his signature on the certificate issued in respect of this work, after initially appearing to question the authenticity of it. In his defence, Mr. Gee asserts that the fryers were added to the certificate after he had signed it, and that the only information on the certificate when he signed it was the address, date and a tick in the "pipework" box.
- 6.7 However, the Board does not accept that it was reasonable for Mr. Gee to sign a gas certificate with only the "pipework" box checked. In the very least, the Board finds that the bayonets installed by Mr. Gee ought to be detailed on the certificate. Further, the Board finds that signing a certificate with the "pipework" box checked would appear to be inconsistent with past practice by Mr. Gee (see certificate 282222).
- 6.8 Mr. Gee has made a number of allegations regarding the business practices employed by Allgas in respect of gas certificates. There is no evidence presently before the Board to substantiate these allegations but yet the Board said Mr. Gee didn't have to prove anything. The Board has heard evidence that the practice at Allgas was for the office staff to complete the certificates for signing by the craftsman gasfitter. Mr. Gee has stated that he relied on the office staff to carry out this task correctly and that the blue certifier's copy was stored at the Allgas offices after he had signed the certificate.
- 6.9 He did not retain the blue copy of the certificate when he signed the master copy, which was supposedly held by Allgas, or take any steps, such as specifying the limited scope of his work and/or crossing through the unused lines on the page to prevent details of further work being added by others which would then be

attributed to him as the "Craftsman-Certifier".

- 6.10 Mr. Gee gave evidence that he first requested a copy of the certificate in relation to the cafe in early 2004 however, the Board notes that Mr. Gee did not bring this certificate to the attention of the Board or any other party, until after the explosion at the cafe.
- 6.11 Mr. Gordon, on behalf of Mr. Gee, noted that a pizza oven had been installed at the cafe in 2005 (certificate number 345138). This installation was certified by Mr. Darnley and it was alleged by Mr. Gordon that Mr. Darnley, in certifying subsequent gasfitting work at the cafe, took responsibility for ensuring that the complete installation, including preceding work, was compliant.
- 6.12 The Board does not consider that it needs to address this issue as the charge relates to certification of work on or about 26 June 2003 and accordingly does not alter any later assumed responsibility.
- 6.13 The Board finds that Mr. Gee knew the fryers were to be installed at the cafe and that the certificate filed with the Board was signed by him and included the fryer. The Board accepts that the fryers may not have been detailed on the certificate however the Board does not consider it credible that Mr. Gee would not have been expected to take responsibility for them when he would have known that they were part of the gas installation he was responsible for carrying out.
- 6.14 The Board then turned to consider the allegation that Mr. Gee had certified the fryers in contravention of regulation 24A(4) of the Regulations. The Board has heard considerable evidence on the state of the pipework and the wingbacks and has been unable to determine from the evidence adduced the exact state of the installation as at 26 June 2003.
- 6.15 In particular, there has been additional gasfitting work carried out at the cafe since that time which, together with an intervening explosion, may have considerably altered the original installation.
- 6.16 For this reason, the Board finds that Mr. Gee did not carry out gasfitting work contrary to regulation 24A(4) of the regulations. Accordingly, the Board finds this particular not established.

Additional Facts Not Previously Reported

- 6.17 It was noted by Mr. John Douglas Strachan, a Director of Host Service Limited which supplies and services commercial catering equipment that the gas lines were not finished when he delivered the fryers to the café. When questioned about if

there was a possibility of the fryers having been changed at some stage he responded yes there was a chance, but it would be very unlikely. It was never confirmed by the investigator or anyone else that the fryers present at the time of the explosion were the same ones installed initially.

- 6.18 When interviewed by the investigator Mr. Gee detailed how he had installed the pipework at the café. He stated that neither the fryers nor the cylinders were on site when he completed his work, although he had been told where the cylinders were to go. Mr. Gee outlined the systems used for allocating and recording work, he stated that he completed a job sheet which was returned to the office. He said the details relating to the pipework were filled by him, but that he did not fill in the details of the appliances or the final test.
- 6.19 While giving evidence Mr. Hammond gave the opinion that if Mr. Gee had signed a certificate only for the pipework he should have clearly indicated this on the document when he signed it. He stated Mr. Gee said he believed that the certificate covered only the pipework and this was shown by the tick in the pipework box on the right-hand side and that to the best of his recollection the line referring to the fryers was blank when he signed the form.
- 6.20 When questioned about the legalities of Gas Certificates Mr. Hammond was of the opinion that after the certifying gasfitter has signed the certificate any alterations would render the certificate invalid. He was unsure whether there is an offence in the Gas Regulations covering altering of certificates, but in his general view the certificate represents what is in place at the time the work is completed and therefore, if somebody makes an alteration then that may not represent the correct certificate so it's only of value at that time.
- 6.21 He further stated if someone alters the gas certificate after the tradesman has done it, it makes it invalid and the tradesmen probably can't be held responsible for those alterations. If this was the case why did he pursue Mr. Gee?
- 6.22 During the course of the hearing it was established three of the Darnley family were working from the office in managerial, administrative type roles. Mr. Hammond stated none of them were interviewed with regard to the altering of the certificates.
- 6.23 When questioned about the processes and procedures that were in place at Allgas Mr. Hammond stated he spoke to [name suppressed] who indicated that she on some occasions filled in some of the details on the certificate ready for the gasfitter to certify. It was ascertained that this process was before the café incident and that it was Ms Darnley and Mrs. Darnley that were running the office at the time. Mr. Hammond claimed Mr. Gee never produced any information for him that led him to believe that certificates were being altered, so he didn't think it

was appropriate to investigate that aspect any further.

- 6.24 When questioned regarding the scene at the café Mr. Hammond stated he didn't conduct a scene examination and a lot of the information that he had submitted was based on photographs and he had no way of knowing if the scene had been altered or not.
- 6.25 Mr. Hammond believed he spoke with the cleaners at the café but had no notes but he didn't think they had reported any damage to the hose. He also admitted no-one had checked the serial numbers on the fryers to see if they were the same ones installed originally.
- 6.26 When questioned regarding the gas certificate Mr. Hammond admitted it was possible that the fryers could have been added after Mr. Gee has signed for the pipework. He admitted there appeared to be a different shade for some of the writing, and it appeared that a number 2 had been altered at some stage, as it looked like there was a 1 underneath it. He wouldn't comment on if the certificates had been altered or not because since it contained Mr. Gee's signature, then he believed the certificate was as submitted by Mr. Gee.
- 6.27 When questioned further about when Mr. Gee stated he had concerns about the certificates being altered after he'd signed them and Mr. Hammond stated "it's not a significant issue in my view", he confirmed he still stood by that view. When asked if he had spoken to Mr. Darnley about the issue he stated he would have to check his notes to confirm what Mr. Darnley had said. When asked why the notes from the interview weren't supplied to the defence he stated those notes were relative to the complaint involving Mr. Darnley and he provided those in connection with that complaint not in connection with the complaint against Mr. Gee but admitted parts of them were relevant to Mr. Gee.
- 6.28 When asked if Ms Darnley, Mr. John Darnley's daughter, was interviewed with regard to any of the gas certification he stated she wasn't but he felt he had satisfactory information in that respect from his interview with [name suppressed] as she told him of the processes that were used in the company, although that was a year previous he felt that met the requirement.
- 6.29 When questioned about at what stage does Mr. Gee stop being responsible for what he signed Mr. Hammond responded that it depends in which sense it is meant in, a certificate is only relevant on the day that the installation is actually carried out and commissioned and put to work, so that Mr. Gee's responsibility ends for that installation once he has completed commissioning. But in the other sense a certificate needs to be retained by the gasfitter who certifies the work for seven years implies that he is responsible for ensuring that the information relevant to that job is retained and available if needed for up to seven years after

the work is completed. He went on to say that if there's gasfitting carried out on the installation, and alteration of pipework would be defined as gasfitting, then the work needs to be re-certified.

- 6.30 Mr. Hammond agreed it was quite possible that things may have changed and what is being looked at now isn't the way it was when it was installed but that Mr. Gee at no time pointed out that information to him. Mr. Hammond admitted he did not have any statements from anyone who saw the original installation.
- 6.31 A job cover and summary sheet was produced which read "Install two 45 kg LPG bottles and Rego Combi regulator. Run gas line from bottles to salamander along to fryers. Fit two bayonet hoses, test and certify. For security a bottle cage has been included" Mr. Hammond agreed there was nothing there about the install of the actual fryers themselves or the commissioning of the fryers. Mr. Gordon suggested that with regard to Mr. Gee's certificate, if the fryers weren't written on that certificate then it would be quite fair to say that what Mr. Gee signed for being the pipework was what he'd actually done. Mr. Hammond stated that he would have expected Mr. Gee to have put on the certificate what he was signing for.
- 6.32 When cross examined about an extra gas hose sold to the café 7 months after the original installation and before the addition of the pizza oven. Mr. Hammond didn't know what it was for and did not question anyone about it. Mr. Gee submitted that this is the very hose that caused the explosion, sold 50 days after his last day with Allgas. It had, due to the lowering of the pipe work, split once before the explosion.
- 6.33 With regard to a letter sent out by Allgas Products dated 4th of March 2004 from Allgas to the Plumbers Gasfitters Drainlayers Board which contained Mr. Gee's signature block Mr. Hammond agreed that Mr. Gee wasn't actually employed at Allgas at that time as his employment terminated in November 2003. Mr. Hammond agreed this would indicate that the staff at Allgas were quite happy to use other people's signature blocks and send it out on letters.

Review Comment

- 6.34 The Board stated Mr. Gee has made a number of allegations regarding the business practices employed by Allgas in respect of gas certificates. There is no evidence presently before the Board to substantiate these allegations. This is because the investigator failed to investigate the allegations.
- 6.35 The Board commented it was not credible that Mr. Gee would not have been expected to take responsibility for the fryers when he would have known that the fryers were part of the gas installation he was responsible for carrying out. Mr. Gee

has performed his tasks as per the job sheet issued to him. He was not the business owner and had no control over who was to return to the job. He had certified the work he had done.

- 6.36 It was noted that a pizza oven had been installed at the cafe in 2005 (certificate number 345138). This installation was apparently “certified” (but not registered with the PGDB) by Mr. Darnley and it was alleged by Mr. Gordon that Mr. Darnley, in certifying subsequent gasfitting work at the cafe, took responsibility for ensuring that the complete installation, including preceding work, was compliant. Of Note: the start of the gas supply i.e. the gas cylinder station was altered, as shown by the original invoice compared to the site photographs taken after the explosion, the middle of the supply altered by this addition of a pizza oven and the termination of supply altered by the lowering of the pipework and replacement of the flexible hose, nothing was as Mr. Gee had left it, all of this extra work done by Allgas in John Darnley’s name. The Board did not consider that it needed to address that issue as the charge related to certification of work on or about 26 June 2003 and accordingly did not alter any later assumed responsibility. It is believed this issue has never been dealt with.
- 6.37 Mr. Hammond brought to interview photocopies of certificate done in black ink on pink paper (pink being the colour of the top original certificate copy) this hide the multitude of different colour inks all over these originals accepted by the PGDB. This only became apparent later due to an official information act request.
- 6.38 During Cross Examination Mr. Hammond was questioned regarding his appointment as the investigator and the fact in his statement he claimed to be appointed in respect of a complaint made by Lance Windleburn of the Department of Labour against Mr. Paul Gee. Mr. Gordon put it to Mr. Hammond that that was not true because Mr. Windleburn didn't actually lay a complaint against Mr. Gee but rather asked for the matter of the gas certificates to be looked at, or looked into and for the Board to explore the possibility of other substandard installations that may have occurred in the region over the 2000 period.
- 6.39 Mr. Hammond claimed he received a letter from the Registrar of the Board appointing him to investigate a complaint that had been received from Mr. Windleburn. Attached to that letter was a copy of the letter from Mr. Windleburn setting out the details, but his actual appointment was by the Registrar to look into the complaint.
- 6.40 Mr. Hammond claimed Mr. Gee never produced any information for him that led him to believe that certificates were being altered, so he didn't think it was appropriate to investigate that aspect any further.
- 6.41 Mr. Hammond should have investigated the issue of Gas Certificates being altered

and this highlights his protectionism of the certification system which he assisted in developing. This protective stance is also highlighted by him taking pink paper photo copies to an interview, that hid the multiple uses of differing ink on the certificates accepted by the PGDB. Also Mr. Hammond's comments that the certificate system was "too big to fail" and that Mr. Gee should ensure his own house was in order before "dobbing people in" goes toward showing Mr. Hammond's bias. During the investigation he stated that if a certificate had the gasfitters signature then that was all that mattered.

- 6.42 It was put to Mr. Hammond that its standard practice for an Investigator to use notebooks generally with numbered pages to alleviate anything accusations of things being added or deleted. Mr. Hammond stated that may be the practice but he had not discerned it necessary to do that in terms of the investigations that he had carried out on behalf of the Board.
- 6.43 Mr. Hammond admitted that he used loose leaf pages and they could be rewritten or submitted as new pages without it being traceable. It was also noted he did not rule off lines which could leave scope for additions to be made after an interview was completed.
- 6.44 When questioned regarding the seven properties Mr. Hammond inspected he stated a lot of them were to do with Pexal pipe being exposed to ultraviolet light and that Mr. Gee provided an extract from a manufacturer's brochure regarding Pexal pipe which stated that an aluminium internal sleeve was present and so offered protection from ultraviolet light. Mr. Hammond admitted he had applied current requirements but Mr. Gee demonstrated to him with that document that he provided that at the time there was a justification for him following the manufacturer's recommendations and therefore those charges did not proceed - or those aspects of the complaint did not proceed where Pexal pipe was concerned.
- 6.45 It was ascertained that from those seven inspections no charges were laid however it was later noted that Mr. Gee was not interviewed about those seven inspections until 20 May 2010. This was some 9 months after Mr. Hammond had requested Audit of 25 of Mr. Gees installations. Mr. Hammond believed there were sufficient concerns to have a wider look at the work that Mr. Gee had done even before he had given Mr. Gee the opportunity to respond to the allegations. Mr. Hammond had applied legislation that did not apply to the installations when the work was performed and it was the catalyst for further action by way of the Audits.
- 6.46 Mr. Hammond stated he spoke with the Registrar and indicated that he had identified seven installations in addition to the Milton Street Fish and Chip Shop where there may be some concern and asked that a further number of installations be audited. From notes not provided during discovery Mr. Hammond

claimed he met with Belinda Greer and Phil Routhan on the 30th of July 2009 at 2.30 at the Board offices. They discussed the possible falsification of certificates and Mr. Routhan provided Mr. Hammond with a document from Mr. Gee's file if Mr. Hammond required handwriting expertise to determine if necessary, certificates had been signed by Mr. Gee. There appears to be confusion here as this meeting appears to have occurred before the inspections were conducted on the seven properties by Mr. Hammond which he stated was on 6 August 2009.

- 6.47 Mr. Hammond confirmed he had requested the Audits and they were part of the investigation. He had selected which installations were audited. He don't think the Registrar had any inputs other than to make the arrangements - make the necessary financial arrangements for the auditing company to carry out the work.
- 6.48 It was put to Mr. Hammond that at the start of this process Mr. Gee and Mr. Gordon had requested copies of all the investigator's notes but didn't recall seeing the notes detailing the above sequence of events. Mr. Hammond stated he believed the whole bundle was copied, but he stood to be corrected if it wasn't, he believed it was. He stated there certainly was no intent to withhold that information.
- 6.49 When questioned about letters sent out during the Audits he requested Mr. Hammond stated after he had requested the audits, the next involvement he had was when a set of audit findings were provided to him for the 25 installations carried out by Mr. Gee and for a similar number carried out by Mr. Darnley and that from memory was some four to five months after he had requested the audit. It would appear there was considerable involvement in the investigation by the Board.
- 6.50 During the Motion to Dismiss Hearing it was stated by Mr. Laurenson letters sent out were not part of the investigative or disciplinary process and any inaccuracy in the letter was simply as a result of an oversight which occurred when the audit process conducted for the purpose of ensuring public safety was extended from the North Island into South Island areas. Mr. Hammond stated in his view the audits were carried out and provided information that was a part of the investigation.
- 6.51 When asked if Ms Darnley, John Darnley's daughter, was interviewed with regard to any of the gas certification he stated she wasn't but he felt he had satisfactory information in that respect from his interview with [name suppressed] as she told him of the processes that were used in the company, although that was a year previous he felt that met the requirement. The Federation is of the view that the processes at the time of the alleged offending should have been investigated.
- 6.52 The evidence available indicated illicit use of gas certificates and other people's

qualifications but this hasn't been investigated or followed up on by the investigator. His job was to investigate.

- 6.53 The Board stated it was not reasonable for Mr. Gee to only tick the "pipework" box. Why is this so? What is the box for?
- 6.54 The Board claimed there was no evidence before them to substantiate Mr. Gee's claims regarding the Business practices at Allgas. Surely it was the Investigators responsibility to look at the facts and not just the legislation. Mr. Gee was told he was being vexatious by Kern Uren, acting registrar, in producing copies of missing information on carbon copies from the top original copy and different colour inks, and other certificate inconsistencies during the investigation.
- 6.55 The Board stated there was no need to look at the pizza oven install as the charges relate to the certification of the job and not later assumed responsibility. Does taking responsibility cover the issuing of a new gas certificate, a new certificate that had its carbon copies issued by John Darnley but not the top copy registered at the PGDB? This same certificate 345138 mentioned by number in the DOL letter to the PGDB, with all available copies missing the recording of a test for gas leaks. This same certificate 345138 having an electronic copy on the fox-pro system dated 8 April 2005, four years to the day of the explosion, but it can't be found by the PGDB 9 days after the 9 April 2009 explosion? This is yet to be explained so as a fair minded lay person can accept this.
- 6.56 Mr. Hammond claimed that Mr. Gee should have shown that the gas certificate was for pipework only but never produced any rules as to what was required when filling out a certificate.
- 6.57 Mr. Hammond stated if someone alters a gas certificate after the tradesman has done it, it makes it invalid and the tradesman probably can't be held responsible for those alterations by yet he still laid charges where that has occurred on numerous occasions in the charges. He later stated he wouldn't comment on the certificates being altered or not because since it had Mr. Gee's signature, then he believed the certificate was submitted by Mr. Gee. Where was the benefit of the doubt here?
- 6.58 The Darnley family were heavily involved in the administration of the business but were not interviewed,
- 6.59 Mr. Hammond stated *a certificate is only relevant on the day that the installation is actually carried out and commissioned and put to work, so that Mr. Gee's responsibility ends for that installation once he has completed commissioning...* This is effectively a snapshot in time but this doesn't appear to have been taken into account throughout the investigation.

- 6.60 Allgas sent a letter out in Mr. Gee's name after his employment terminated in 2 December 2003. Mr. Hammond agreed this would indicate that the staff at Allgas were quite happy to use other people's signature blocks and send it out on letters.
- 6.61 There was a huge reliance from the investigator on his expertise and that Mr. Gee should know as much as the investigator. The investigator used the terms, should have known, ought to have known and difficult to understand why on a number of occasions.
- 6.62 Also ignored was a DOL hazard alert issued Feb 2010 which stated that-

Incident

A Fish and Chip Café was subject to an explosion and extensively damaged following a gas leak from a poorly maintained gas supply line. The gas was ignited by a cycling chest freezer. As a result of the explosion the café's structural integrity was compromised and it had to be demolished and re-built.

The café owner was standing at the epicentre of the blast and suffered extensive burns to his face and arms as a result of the explosion, requiring special care at Hutt Hospital plastics unit.

Circumstances

- *The café had no system in place to ensure the regular ongoing maintenance of gas or electrical equipment.*
- *Failed gas supply lines had slowly degraded over time through movement and no regular maintenance.*
- *The owners were previously alerted to the smell of gas but had failed to engage a suitably qualified person to identify the source of possible leaks.*
- *Anomalies with the Gasfitting Certification Certificate could have potentially alerted owners to substandard workmanship.*

Questions to be answered

- 6.63 Why has none of these certificate discrepancies and altered work not chased up and investigated?
- 6.64 It appears Mr. Gee has actually had to prove more than Mr. Hammond. Why has Mr. Hammonds word been taken a gospel and Mr. Gee has had to substantiate everything he has said?

- 6.65 A smell of gas was reported for days before the explosion but ignored. Why wasn't this investigated?
- 6.66 The offending gas hose was replaced due to splitting before with an apparent lack of servicing/maintenance. Why wasn't this investigated?
- 6.67 The offending hose showed evidence of being cut with something sharp according to the forensic expert. Why wasn't this taken into account?
- 6.68 The obvious lowering of the pipe was ignored, even hidden. Why wasn't this investigated?
- 6.69 Why wasn't the DOL Hazard alert looked at more closely as they seem to have come up with an alternative result to what Mr. Hammond pursued?

Part 7: 73 Main Road, Havelock (Mussel Boys)

Particulars of Charge

7.1. Particular 4.2/5.2

It is alleged that "In or about July 2003, you did install a Blue Seal GT 45 gas fryer ("the fryer") at 73 Main Road, Havelock, in contravention of:

(a) clause 106.1.1 of NZS 5261:1996 in that the flexible gas pipework connected to the Fryer was not connected to the Fryer in a manner that would avoid damage to that flexible gas pipework; and/or

(b) clause 108.2.9 of NZS 5261:1996 in that a restraint was not fitted to the Fryer so as to prevent stressing of the gas pipework connected to the Fryer.

The Investigator Submitted

7.2. With regard to this particular, the Investigator submitted:

7.2.1. Mr. Gee accepts he installed the fryer.

7.2.2. The hose connecting the vertical metal pipework from the rear of the base of the fryer to the wall, was not compliant because Mr. Gee did not fit the additional vertical metal pipework to the base connection of the appliance so that the hose would not touch the floor.

7.2.3. Mr. Gee, in a letter from his lawyer, admits that he did not install this additional pipework because to do so would expose the hose to excessive heat from the fryer in normal use.

Mr. Gee Submitted

7.3. Mr. Gee submitted:

7.3.1. Mr. Gee installed the fryer and fitted the necessary restrain chain, which has since been altered with an additional gas appliance installed.

7.3.2. The additional gasfitting work was carried out sometime after Mr. Gee's

work and shortly before Mr. Lamborn's attendance at the site and the job sheet evidence suggests that the original installation configuration was now different. This extra work being done just a few days before the audit according to the PGDB registered certificate.

The Board Concluded

7.4. The Board finds the key dates as follows:

7.4.1. Mr. Gee installed the fryer at 73 Main Street on 5 July 2003.

7.4.2. A gas hob was installed at the site on 1 September 2009, certified by certificate number 629404 on 4 September 2009.

7.4.3. Mr. Lamborn attended the site on 3 September 2009 to carry out his audit. In evidence, Mr. Lamborn stated that he was unaware that the gas hob had been installed shortly before his visit.

7.4.4. Mr. Gee attended the site on 21 August 2010 and found that the kitchen had been completely remodelled from what he had worked on in 2003.

7.5. The Board accepts the evidence of Mr. Gee and is further supported by Mr. Lamborn's admission that he was unaware at the time of his audit that any other gasfitting work had been carried out at the property.

7.6. Accordingly, the Board finds this particular not established.

Particulars of Charge

7.7. Particular 4.3/5.3

It is alleged that "On or about 15 July 2003, in Gasfitting Certification Certificate number 286044 dated 15 July 2003 {"Certificate No 286044"}, you did certify the installation of the Fryer at 73 Main Road, Havelock, in contravention of regulation 24A{4} of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No 286044 were accurate, namely, the statement to the effect that the Fryer was safe and/or the statement to the effect that all work carried out on the Fryer was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:

- (a) clause 106.1.1 of NZS 5261:1996, the flexible gas pipework connected to the Fryer was not connected to the Fryer in a manner that would*

avoid damage to that flexible gas pipework; and/or

(b) clause 108.2.9 of NZS 5261:1996, a restraint was not fitted to the Fryer so as to prevent stressing of the gas pipework connected to the Fryer.

The Board Concluded

7.8. For those reasons previously expressed above namely, the finding that the installation the subject of the charge, is not that carried out by Mr. Gee, the Board finds this particular not established.

Additional Facts Not Previously Reported

7.9. Mr. Lamborn stated the Board provided him with a copy of the gasfitting certification certificate in respect of that installation and he visited and reported on 3 September 2009. When cross examined he was unsure if anything else was connected to the two 45 kg bottles supplying the fryer. When shown a photograph of a cooker beside the deep fryer he was still not sure if it was connected to the same line but supposed it was but added that when they went to do the audits they were looking at specific things on the certificate.

7.10. He stated he spoke to the owner and they'd not seen the person doing the work but that no other gasfitting work had been conducted on that site. Mr. Lamborn was informed by Mr. Gordon that a gas certificate was issued for that site on 4th September 2009 and that had a test date of the 1st of September 2009. This meant two days prior to the audit another gasfitter had been there and did some work. Mr. Lamborn admitted it appeared that there had been additions and alterations done in the six years from the time that it's alleged Mr. Gee did his work to when the audit was conducted. When asked who should have checked for that sort of information, him or the Investigator he stated they were given the certificates to check and ask the questions.

7.11. Mr. Lamborn confirmed his audit sheet stated that the workmanship was of a reasonable standard.

7.12. For clarification Mr. Laurenson submitted in terms of the charge the Investigator's case was not going to be based on the photographs of the chain that Mr. Lamborn took as it was accepted that it had been changed. He went on to say the case would be based on what Mr. Suisted says who was there at the time and so it will fall or stand on what he says as to the nature of the installation at that time. Mr. Suisted failed to attend the hearing and no evidence was submitted from him.

7.13. During cross examination Mr. Hammond admitted he did not conduct a scene examination at that location and that he didn't record notes of him speaking to the current owner as apparently the entire area had been gutted. Mr. Hammond admitted he had not interviewed the gasfitter who had done the gas installation days before the audit.

7.14. The credibility of the auditing service was questioned at the hearing but the line of questioning was quickly closed down by the Legal advisor and Mr. Parker.

Review Comment

7.15. A gas hob was installed at the site on 1 September 2009, certified by certificate number 629404 on 4 September 2009. The standard of the Audit was such that the Auditor did not notice a 2 day old installation within 1 meter of the installation he was auditing.

7.16. It would appear the Auditor has targeted specific work and has not deviated from that target. If Mr. Hammond was laying charges on the basis of Audits it would be expectant that there would be scope for the auditor to explore further.

7.17. Mr. Hammond admitted he had not interviewed the gasfitter who had done the gas installation days before the audit. It would appear this is vital to the investigation to prove what the site was like and what was altered. It would appear no one has been held accountable for altering Mr. Gees work.

Questions to be Answered

7.18. Why were notes withheld by the investigator?

7.19. What information did Mr. Laurenson have to say the case would be based on what Mr. Suisted says?

7.20. Why wasn't the other gasfitter interviewed?

7.21. Did the other gas fitter move Mr. Gee's installation to make room for the new installation?

7.22. Why wasn't the other gasfitter pursued for possibly altering Mr. Gee's installation?

Part 8: 68 Greenwood Street, Motueka

Particulars of Charge

8.1 **Particular 4.4/5.4**

It is alleged that "In or about May 2003, you did install a Westinghouse 517 gas cooker ("the Westinghouse cooker") at 68 Greenwood Street Motueka, in contravention of:

(a) clause 108.2.9 of NZS 5261:1996 in that a restraint was not fitted to the Westinghouse cooker so as to prevent stressing of the gas pipework connected to the Westinghouse cooker; and/or

clause 106.3.2 of NZS 5261:1996 in that the bayonet fitting connecting the Westinghouse cooker hose to the fixed gas pipework was located in a wall cavity and so the gas pipework is not located to avoid any hazardous build-up of gas should leakage occur.

The Investigator Submitted

8.2 With regard to this particular, the Investigator submitted:

8.2.2 The body of evidence relies primarily on that of the property owner, Mr. Donnelly who had purchased the property and started renovating it with the permission of the owner, prior to taking possession.

8.2.3 Mr. Donnelly gave written evidence that Mr. Gee carried out the work at the property, however, Mr. Donnelly later stated that another person attended the site after Mr. Gee.

8.2.4 Regardless of who carried out the work, Mr. Gee certified the water heater, the cooker, and associated pipework.

Mr. Gee Submitted

8.3 Mr. Gee submitted:

8.3.1 He installed the exterior pipework from the gas cylinders to a water heater, however the work of connecting the exterior gas pipework to the cooker and installing the cooker itself was not carried out by him.

8.3.2 The cooker and additional pipework were added to the gas certificate after he signed it; that he only certified the water heater and associated pipework.

8.3.3 The different type of piping used for the cooker installation supports his assertion that the cooker was installed some time after the water heater, as part of the kitchen remodeling.

The Board Concluded

8.4 The Board determined.

8.4.1. The Board has heard evidence from the investigator regarding the state of the installation at the time of his inspection, and from Mr. Gee regarding the work that he carried out at the property. In particular, Mr. Gee contends that another person, also being an employee of Allgas attended the property at a later date and altered the work which he certified as being compliant, adding the pipework extension to the cooker and the installation of the water heater.

8.4.2. The Board heard evidence from Mr. Gee regarding the difference in the type of pipework used to install the cooker, as opposed to the water heater. Mr. Donnelly, the homeowner, also gave evidence that the exterior pipework was installed before he had legal possession of the building with the approval of the vendor. He also stated that the kitchen renovations were undertaken by him at the time of the cooker installation which was after he had obtained legal possession of the site.

8.4.3. The Board finds that a bayonet fitting was installed within the wall cavity at the dwelling to provide for a flexible hose connection, a branch hose was installed, both of which is contrary to the Regulations. The Board has heard evidence to the effect that the cooker was installed after the water heater however, both items are recorded on the gas certificate signed by Mr. Gee on 1 May 2003.

8.4.4 The Board finds that there is insufficient evidence to establish whether a restraint chain was fitted to the cooker because the cooker was installed before the kitset kitchen was built and it is conceivable that the builder or another person on site removed the cooker and in doing so, did not re-fit any chain.

8.4.5 The Board has heard inconclusive evidence regarding the pipework to the cooker in particular, the homeowner's verbal and written evidence differed significantly. For this reason the Board is unable to determine on the

balance of probabilities that Mr. Gee carried out the installation of the pipework to the cooker.

8.4.6 Having regard to the evidence, particularly that of the home owner Mr. Donnelly, the Board concluded that there is a strong possibility that the bayonet fitting and branch hose connection to the cooker, and its installation, was not carried out by Mr. Gee but by another person after the kitset kitchen had been installed. Hence the allegation that Mr. Gee installed a bayonet fitting in an unsafe manner in the wall cavity, or did not secure the cooker with a chain, has not been proven on the balance of probabilities.

8.4.7 The evidence shows that a possibility of the gas certificate for Mr. Gee's work being incomplete at the date of signing did occur, and has been referred to in the Board's conclusions concerning 136 Milton Street, Nelson.

8.4.8 Accordingly the Board finds this particular not established.

Particulars of Charge

8.5 **Particular 4.5/5.5**

It is alleged that "On or about 1 May 2003, in Gasfitting Certification Certificate number 278223 dated 1 May 2003 ("Certificate No 278223"), you did certify the installation of the Westinghouse cooker at 68 Greenwood Street, Motueka in contravention of regulation 24A{4} of the Gas Regulations 1993 ("the Regulations") in that you were not satisfied on reasonable grounds that statements in Certificate No278223 were accurate, namely the statement to the effect that the installation was safe and/or the statement to the effect that all work carried out on the installation was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or:

(a) clause 108.2.9 of NZS 5261:1996 a restraint was not fitted to the Westinghouse cooker so as to prevent stressing of the gas pipework connected to the Westinghouse cooker; and/or

clause 106.3.2 of NZS 5261:1996 the bayonet fitting connecting the Westinghouse cooker hose to the fixed gas pipework was located in a wall cavity and so the gas pipework was not located to avoid any hazardous build- up of gas should leakage occur.

The Board Concluded

8.6 The Board finds

8.6.1 That Mr. Gee may not have been aware of the installation of the cooker at the time of certifying the installation and it would appear that he may have signed the certificate undated with the detail completed by the Allgas office staff once the job had been completed.

8.6.2 The Board finds that Mr. Gee should have taken greater care in his certification responsibilities however, as the cooker installation occurred at a later date than when Mr. Gee signed the certificate, the Board does not consider it reasonable for Mr. Gee to have been aware of any non-compliant work.

8.6.3 Accordingly, the Board finds the particular not established.

Additional Facts Not Previously Reported

8.7 Charges were amended as Mr. Laurenson claimed that while briefing Mr. Donnelly it became apparent that the kitchen and the benches weren't actually installed at the time Mr. Gee was alleged to have installed the cooker.

8.8 Mr. Donnelly changed his statement at the hearing and added that there was an older person who had attended the site as well and Mr. Donnelly was having doubts as to if Mr. Gee had fitted the gas stove. He stated he was talking to Mr. Hammond about it, and he said well they're not worrying about that stove anymore, so there doesn't need to be any concern on that. Mr. Donnelly had talked to Mr. Hammond because Mr. Donnelly had concerns about whether or not Mr. Gee had actually fitted the stove because there's this older guy that and he now believed that it was a possibility that the older guy may have fitted the gas stove.

8.9 Mr. Donnelly stated in examination "You know, the statement that I sent to you was basically how I saw it at the time. What's here is words that have been - bigger words that have been added in for me, you know? Mr. Donnelly's initial thoughts varied considerably to the statement recorded from him by Mr. Laurenson.

8.10 In cross examination Mr. Donnelly confirmed that a second person installed the stove as he got him to look at the Bosh water heater that had already been installed. When questioned about the statement he made to Mr. Laurenson he said Mr. Laurenson went over issues but the statement was basically his words that were used and possibly not necessarily Mr. Donnelly's.

- 8.11 In cross examination Mr. Lamborn who had audited the site on 31 August stated there were insufficient clearance and that the stove was lower than the bench. He admitted he did not ask the question about what was installed first, the stove or the bench. As it was in place with the bench besides it, so as far as he was concerned it didn't comply. With regard to a bayonet fitted into a cavity behind the stove he admitted that he took photos that you can actually see the hole but somehow, in the process of jotting it down he'd missed it.
- 8.12 In examination Mr. Hammond agreed that when he interview Mr. Gee on the 20th of May he claimed that he did not install the cooker. However, Mr. Robert Donnelly told him that the cooker and water heater were installed at the same time by the same person. With regard to the different colour of gas pipe supplying the cooker it was a different and this may account for the difference in colour. In Mr. Hammonds view, the differing colour and/or brands did not indicate that the tee and branch were installed at different times to the main run.
- 8.13 In cross examination Mr. Hammond admitted when he made his recommendations to the Board regarding Mr. Gee he had not conducted a scene examination but he had spoken to Mr. and Mrs. Donnelly by telephone but they had not made statements. Mr. Hammond stated he'd spoken to Mr. Donnelly and got some information, when it came to preparing the details for the case Mr. Laurensen obtained a statement from Mr. Donnelly.
- 8.14 Mr. Hammond admitted he had inspected the installation on the 13th of January and took photographs of the back of the stove. He recorded notes to do with his examination of the scene. He did not provide those notes during discovery.

Review Comment

- 8.15 When questioned about the standard of auditing in that they had not made any mention about the recessed bayonet Mr. Hammond didn't think he could comment on that.
- 8.16 In review of the manner in which statements are recorded the question must be asked why Mr. Laurensen is recording the statements from witnesses. Does the Investigator not have the skills to record the truth in the persons own words?
- 8.17 The different coloured piping must have raised suspicion regarding a second person as generally a tradesperson will have one brand that they use not two different types.
- 8.18 The standard of Auditing on which initial charges have been laid again is in question regarding chain marks on the rear of the cooker and the different colour of pipework.

- 8.19 The Board has not made comment that there is the possibility the gas certificate may have been changed.

Questions to be answered

- 8.20 The Board stated *“The evidence shows that a possibility of the gas certificate for Mr. Gee's work being incomplete at the date of signing did occur, and has been referred to in the Board's conclusions concerning 136 Milton Street, Nelson”*. Was it an incomplete job or did Mr. Gee submit a gas certificate for the work he did and it was altered with the cooker added after signing?
- 8.21 Has anyone been held to account for the stove installation?
- 8.22 Has anyone been held to account for altering the Gas Certificate?

Part 9: Ball Unit, Pah Street, Motueka High School

Particulars of Charge

9. Particular 4.6/5.6

It is alleged that "In or about July 2003, when installing a Rinnai RF1004 gas space heater {"the Space Heater"} at 8 Ball Unit, Par Street, Motueka, you did either:

- {a) install two 45kg LPG cylinders {"the LPG cylinders"} in a metal enclosure with insufficient ventilation to allow the safe dispersal of any gas discharged in that metal enclosure; or*
- {b) not ensure that the metal enclosure that you knew or ought to have known the LPG cylinders would be located within had sufficient ventilation to allow the safe dispersal of any gas discharged in that metal enclosure.*

The Investigator Submitted

9.1. With regard to this particular, the Investigator submitted:

- 9.1.1. Mr. Gee installed two LPG cylinders at Motueka High School with insufficient protection and the steel cabinet installed was not compliant because it failed to provide high level ventilation and was therefore unsafe.
- 9.1.2. A craftsman gasfitter should be able to demonstrate a degree of knowledge sufficient to minimise the risks associated with LPG cylinders as required by NZS5261:2003.
- 9.1.3. While NZS5261:2003 was not incorporated into the Gas Regulations 1993 until 2 September 2004 (being a date after the LPG cylinders were installed), the New Zealand Standards Council had approved and published the 2003 version. Therefore, as the work had been carried out in June 2003, he expected a craftsman gasfitter to be aware of the requirements.

Mr. Gee Submitted

9.2. Mr. Gee submitted:

9.2.1. He did not install the steel cabinet as there was no need to at the time of the original installation because there was a fence around the area at that time which provided protection for the cylinders (aerial photos from the local authority were submitted in evidence to show the previous existence of the fence and other photographic evidence showing the remnants of the removed fence posts).

9.2.2. He installed a restraint chain around the gas cylinders which was still in place inside the steel cabinet (the auditor admitted that it was unusual to have both a restraint chain and the steel cabinet).

9.2.3. LPG bottles installations do not fall within the statutory definition of "gasfitting" work and therefore the Board does not have jurisdiction.

The Board Concluded

9.3. The Board finds the key facts as follows:

9.3.1. Since the time of the original installation in 2003 there had been significant change to the geographic area, including the addition of a car park, removal of fence posts and, presumably, a fence.

9.3.2. Mr. Gee installed and connected the LPG bottles, which were chained.

9.3.3. The steel cabinet is not compliant with NZS5261:2003 however there is insufficient evidence to indicate that Mr. Gee acquired and/or installed the cabinet.

9.3.4. The Board has considered the evidence before it and finds that there is insufficient evidence to establish on the balance of probabilities whether or not Mr. Gee installed the metal enclosure surrounding the LPG bottles. Mr. Gee has stated that he fitted a metal restraint chain around the bottles at the time they were installed and that there were substantial geographic differences at the school when he carried out the work, namely that the car park had been added and in doing so, a fence which provided protection to the bottles was removed. Ms Mary Wilson, the Executive Officer of the Motueka High School stated that she could not recall the existence of a fence, but the Board was unable to accord significant weight to her evidence as she commented that it was some eight years ago, and from the aerial plans produced in evidence she could see the potential for a fence existing.

9.3.5. In addition, Mr. Lamborn has provided evidence that when he inspected the property there was a metal restraint chain fitted inside the enclosure which he considered to be unusual.

9.3.6. Accordingly, the Board finds this particular not established.

Additional Facts Not Previously Reported

- 9.4. There was the addition of a witness two days out from the hearing, who in cross examination said she wouldn't have signed the statement if she had seen the photographs, referring to aerial photos produced by the defence.
- 9.5. Mr. Laurenson amended the charges as a result of Mr. Gee's statement. Mr. Gordon found it difficult to believe that when Mr. Gee made his statement it was in April 2010 and the amendment to the charges weren't made until 1 February 2011.
- 9.6. In cross examination Mr. Lamborn stated he attended the site on 31 August 2009 and the work was of a reasonable level but there was one thing that didn't comply being the installation and connection of the gas appliance in the areas of LPG cylinder enclosure namely ventilation. When questioned about the steel cabinet over the bottles he stated it would not be normal to put restraint chains on those bottles as it is restrained by being in the cabinet. Evidence produced showed there was a chain installed on the bottles inside the cabinet.
- 9.7. Mr. Lamborn admitted his summary was under the current NZS 5261. He had no idea what section would it be under in the 1996 version. He needed to confirm if the requirements were the same under the 1996 standards. During cross examination it was established gas bottles weren't mentioned or covered in that standard. This immediately proved the Board did not have jurisdiction or that there was a case for Mr. Gee to answer.
- 9.8. In examination Mr. Hammond inspected the site on 13 January 2011 where he came to the view the installation was unsafe in that the absence of any high level ventilation in the metal enclosure meant that there was insufficient air movement to allow the safe dispersal of any gas that might leak from the LPG cylinders, hoses or regulator or be discharged from the cylinder pressure relief valves.
- 9.9. Mr. Hammond stated the enclosure fitted at this site reduced the risk of interference but introduced another hazard by limiting ventilation.
- 9.10. A few days prior to the hearing Mr. Hammond and Mr. Laurenson submitted a statement from Ms Wilson in an attempt to refute what Mr. Gee had claimed in his statement. Ms Wilson stated there had always been vehicle access to the area of the building where the gas bottles are and there has always been a huge amount of parking. She did not recall there ever being anything separating the car park from the building. She had a clear recollection of driving her car around to that side of

the building and parking when visiting the children in the classroom.

- 9.11. In cross examination Ms Wilson when shown photo of the area stated "It's a shame I didn't actually get given these photos sooner before I was asked to commit things to paper and so forth, because I can see there is clearly potentially has been fencing across there somehow, but - yeah I just have this feeling that I was able to drive around through that entrance to the north of the building and access the students from that northern end, but like I say....."
- 9.12. In cross examination Mr. Hammond admitted when he made his recommendations to the Board regarding Mr. Gee he had not conducted a scene examination and didn't believe he had interviewed anyone at the school.
- 9.13. He admitted he later conducted a scene examination and took photos. He recorded notes but did not provide copies to Mr. Gee or Mr. Gordon. He admitted he did not interview Allgas staff to ascertain whether the enclosure was delivered at the same time as the first bottles.
- 9.14. When questioned about venting of the relief from the bottles at that time Mr. Hammond believed it would be covered by the Hazardous and New Organisms Regulations and previously by the Dangerous Good Regulations and of course by the summaries, in the summaries of NSZ 5261:2003.
- 9.15. When put to Mr. Hammond that at that time it was a bit of a legislative minefield for gasfitters and that it would fair to say that if there was changes then it would be fairly difficult for gasfitters to keep up with what was happening with all those pieces of legislation Mr. Hammond replied the requirements around the cylinders had been well established for many years. There haven't been any changes in the details, the changes have rather come in the legislative structure that recorded those details, the requirements to vent, and requirements to protect had been the same for many years.
- 9.16. When questioned if the Board had any jurisdiction over the gas bottle installation and the hoses between the gas bottle and the regulator Mr. Hammond was of the opinion that because that work is carried out by the gasfitter, that compliance of that work with whatever the regulations might be responsibility falls on the gasfitter and it is the competency of the gasfitter that is the concern of this Board. Mr. Hammond agreed it was an extra duty of care and that a gasfitter can strongly argue that it's not gasfitting, because the definition of gasfitting does not include the cylinder.

Review Comment

- 9.17. It appears that the investigator has taken a stance that all gas fitters should know what he knows with regard to the implied duty of care and the application of other Acts.
- 9.18. As the review has progressed it has become apparent the Investigator was basing a lot on his opinion rather than on fact or proof. The Board seemed to be accepting of this.
- 9.19. The jurisdiction issue over the bottles should have been resolved in the course of the investigation not at the hearing.
- 9.20. The Investigator had ample time to investigate what changes there had been to the site and also to interview Allgas staff but he appears to have been concentrating on the finer points of legislation. The aerial photograph obtained by Mr. Gee from the local TDC council offices verified his claim and was publically available if sought out, which the investigator did not.

Questions to be Answered

- 9.21. Has anyone been interviewed with regard to the cabinet install?
- 9.22. Has anyone been held to account for the cabinet install?
- 9.23. How long must a tradesperson prove their innocence?
- 9.24. Why has the cabinet been left in-situ if it is so dangerous?

Part 10: 37 Dommatt Street, Westport

Charge Particulars

10.1. **Particular 4.8/5.8**

It is alleged that "In or about February 2005, you did install a Rinnai Infinity 20 water heater ("the Rinnai Infinity 20") at 37 Dommatt Street, Westport, in contravention of clause 1.6.3(f) of NZS 5261:2003 in that there was insufficient clearance between the Rinnai Infinity 20 and an openable window to minimise the risk of harm to persons inside the building at 37 Dommatt Street, Westport."

The Investigator Submitted

10.2. With regard to this particular, the Investigator submitted:

10.2.1. The Rinnai Infinity, the subject of the charge, was installed with a vertical clearance of 1340mm from an openable window when a minimum vertical clearance of 1500mm was required as the appliance had an input rating of 160Mj/h.

10.2.2. Mr. Gee did not install the appliance in accordance with the requirements of NZS5261 or to the manufacturer's appliance installation instructions which detailed the clearance requirements.

10.2.3. Mr. Gee relied on a Memorandum ("Tech note") from Rinnai provided to him by Allgas as justification for a dispensation from the Standard's requirements. The appliance was an external wall mounted heater, not a flush mounted heater, and therefore the Rinnai "tech note" that Mr. Gee followed does not apply.

Mr. Gee Submitted

10.3. Mr. Gee submitted:

10.3.1. He relied on the Rinnai "tech note" given to him by his employer at the time and he believed this to be a valid reference document, but, regardless, the requirement that there be 1500mm vertical clearance is a means of compliance and not mandatory.

10.3.2. He made arrangements with the owners for the window above the water heater to be riveted shut as an added precaution as it was not

readily accessible and there had been no problems with the installation since that time.

The Board Concluded

10.4. The Board finds the key dates as follows:

10.4.1. The pipework was installed by Mr. Gee and tested on 4 February 2005

10.4.2. On or about 7 February 2005, the window was riveted shut by Mrs. Montgomery, the homeowner, who accessed it using a cherry-picker.

10.4.3. Mr. Gee certified the installation on 1 June 2005.

10.4.4. On a date unknown Mrs. Montgomery's father subsequently jimmied the window open.

10.5. The Board has heard evidence regarding the state of the window which was situated above the Rinnai Infinity in particular, as to whether the window was openable at the time of the installation in February 2005 and when certified by Mr. Gee on 1 June 2005.

10.6. The homeowner had provided evidence that she had arranged for the window to be riveted the window shut 3-10 days after the installation had been installed by Mr. Gee and that it was later jimmied open by the homeowner's father. The gas certificate for this property was signed on 1 June 2005, at a time when the window was likely to have been riveted shut, however the Board is unable to determine whether the window was openable at the time Mr. Gee certified the installation on 1 June 2005.

10.7. The Board concluded it was willing to give Mr. Gee the benefit of the doubt in that it was not sufficiently established that at 1 June 2005, when the installation was certified, the window was left openable because the evidence points to the likelihood that the openable window was secured shut on Mr. Gee's instructions, albeit that work was not personally performed by Mr. Gee.

10.8. The Board finds that there is insufficient evidence to establish, on the balance of probabilities, that Mr. Gee carried out gasfitting work contrary to NZ5261:2003 however, it notes with concern the reliance by Mr. Gee on a "tech note" issued by Rinnai New Zealand Ltd in 2001 in respect of Bosch flush mounted gas water heaters. As a craftsman gasfitter, the Board considers that Mr. Gee should have been thoroughly conversant in the current applicable standards and have recognised the different application of the tech

note, namely that it did not apply to the type of installation carried out at 37 Dommett Street.

10.9. Further, the Board considers that to make absolutely sure that the window would not be opened in the future, it may have been appropriate for the gasfitter to affix a sign noting that the window was not to be opened.

10.10. However, the Board finds this particular not established.

Charge Particulars

10.11. **Particular 4.9/5.9**

It is alleged that "on or about 1 June 2005, in Gasfitting Certification Certificate number 349722 dated 1 June 2005 ("Certificate No 349722"), you did certify the installation of the Rinnai Infinity 20, at 37 Dommett Street, Westport, in contravention of regulation 24A(4) of the Regulations in that you were not satisfied on reasonable grounds that statements in Certificate No 349722 were accurate, namely the statement to the effect that the Rinnai Infinity 20 was safe and/or the statement to the effect that all work carried out on the Rinnai Infinity 20 was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or clause 1.6.3(f) of NZS 5261:2003 there was insufficient clearance between the Rinnai Infinity 20 and an openable window to minimise the risk of harm to persons inside the building at 37 Dommett Street, Westport."

The Board Concluded

10.12. The Investigator has not established on the balance of probabilities that the window was not secured at the time certification occurred. Accordingly, the Board finds this particular not established.

Additional Facts Not Previously Reported

10.13. In cross examination Mr. Lamborn stated he conducted the audit on 30 August 2009. He admitted he had stated the distance from the water heater to the window was about one metre but he didn't put a tape on it. Mr. Lamborn's measurements were different to those made by Mr. Hammond who measured the distance to be 1.340 meters. Mr. Lamborn admitted the owners said nothing to him about smell coming into the room and that he did not check for any signs of the window being riveted or screwed shut. He confirmed that had the window been screwed or riveted shut the installation would have been legal.

10.14. During cross examination Mr. Hammond admitted when he made recommendations to the Board regarding Mr. Gee he had not conducted a scene examination or interviewed anyone. Mr. Hammond stated he had visited the site on 12th of January and took some photographs and recorded notes. Those were

not provided to Mr. Gee or Mr. Gordon. Even if relevant Mr. Hammond claimed he had no intention to withhold them but yet they were along with the notes from the other sites.

10.15. Mr. Hammond stated the owners didn't say anything about any smell in the room, from gas and but Mr. Montgomery indicated that the window was normally closed but that it had recently been opened. Mr. Hammond explained Mrs. Montgomery got quite upset with him during the course of the interview with her over the telephone but she went on to say the window was screwed shut ten days after the heater was installed and she put a notice up to stop her father from opening it. She said there's been absolutely no problems in the last four years. Mr. Hammond claimed she said Mr. Gee told her the clearance was okay and never mentioned the window needed to be shut.

10.16. Neither of the Montgomery's were called to give evidence.

10.17. Again there were no notes from Mr. Hammond or Mr. Laurenson.

Review Comment

10.18. The Board stated it was prepared to give Mr. Gee the benefit of the doubt. This is not their choice as the level of proof is beyond reasonable doubt.

10.19. During the Audit there was no check to see if the window was screwed shut but yet charges went ahead based on the audit and that the window wasn't secured. Mr. Lamborn stated the installation would have been legal had the window been screwed shut. He made no attempt to confirm one way or the other.

10.20. Mr. Hammond claimed Mrs. Montgomery said Mr. Gee told her the clearance was okay and never mentioned the window needed to be shut. No evidence of this was provided. This is hard to believe when the window was screwed shut just days after the installation.

Questions to be answered

10.21. Why wasn't the window checked during the audit?

10.22. Why were charges laid before a scene examination was conducted?

10.23. Why were charges laid before the witness statements were recorded?

Part 11: 6 Malvern Avenue, Atawhai

Charge Particulars

11.1 Particular 4.10/5.10

It is alleged that "In or about June 2006, you did install a Bosch 25 water heater ("the Bosch 25") at 6 Malvern Avenue, Atawhai, Nelson, in contravention of clause 1.6.3(f) of NZS 5261:2003 in that there was insufficient clearance between the Bosch 25 and an openable window to minimise the risk of harm to persons inside the house at 6 Malvern Avenue, Atawhai, Nelson."

The Investigator submitted

11.2 With regard to this particular, the Investigator submitted:

11.2.1. The Bosch water heater, the subject of the charge, was installed with a vertical clearance of 540mm from an openable window when a minimum vertical clearance of 1500mm was required.

Mr. Gee Submitted

11.3 Mr. Gee submitted:

11.3.1. He installed two Bosch water heaters at 6 Malvern Avenue which were certified accordingly.

11.3.2. One of the water heaters was positioned under an openable window with a reduced clearance which he believed was acceptable under the Rinnai "tech note" previously mentioned. Although the heaters were Bosch and not Rinnai, in Mr. Gee's view the "tech note" was equally applicable.

11.3.3. There was no smell of gas and no reported problems with the installation in its 5 years of operation.

11.3.4. The installation is an acceptable solution under Part 3 of NZS5261:2003 which allows for alternatives to Part 2 requirements.

The Board Concluded

11.4 The Board finds the key dates as follows:

11.4.1. Mr. Gee installed a Bosch 25 water heater in June 2006- and signed the gas certification certificate 388566 dated 1 July 2006.

- 11.4.2. Vertical clearance was 540mm to the openable window of a dining room in contravention of NZS 5261:2003 table 16 (n) where 1500 was required, or the window be secured closed.
- 11.4.3. There was no basis to depart from the mandatory requirements of NZS 5261.
- 11.4.4. Mr. Gee certified the installation.
- 11.4.5. Unlike 37 Dommett Street, there is no issue as to whether the window was openable.
- 11.5 The Board finds that, by his own admission, Mr. Gee carried out the gasfitting work at 6 Malvern Avenue and, having considered the evidence before it, finds that Mr. Gee carried out the work, the subject of the charge, contrary to clause 1.6.3(f) of NZS5261:2003 as there was insufficient clearances between the appliance installed and an openable window because the Bosch 25 water heater was installed 540m below the window with no alternative means demonstrated by which products of combustion could be diverted away.
- 11.6 Mr. Gee has stated in his defence that the installation was compliant with the Rinnai NZ "tech note", supplied to him by his employer Mr. Darnley. For reasons previously expressed, the Board does not consider it reasonable for a craftsman gasfitter to rely on this "tech note" which is out of date and applies to a different model and type of installation. Nor has any evidence been adduced that the installation was acceptable under part 3 of NZS5261:2003.
- 11.7 Mr. Gee has stated that there was no discernible smell of gas at the property and that there were no reported problems with this installation in its five or so years of operation. The Board does not consider this to be a credible defence as carbon monoxide (CO) is a product of incomplete gas combustion and does not have the distinctive odour of natural gas or LPG; it is odourless and can cause death by asphyxiation without occupants being aware of its presence. In this respect, the Board does not consider the absence of CO or any gas odour to be an acceptable basis for deviating from the Standard or justifying Mr. Gee's actions.
- 11.8 Accordingly, the Board finds this particular established.

Charge Particulars

11.9 Particular 4.11/5.11

It is alleged that "on or about 1 July 2008, in Gasfitting Certification Certificate number 388566 dated 1 July 2008 ("Certificate No 388566"), you did certify the

installation of the Bosch 25 at 6 Malvern Avenue, Atawhai, Nelson, in contravention of regulation 24A{4} of the Regulations in that you were not satisfied on reasonable grounds that statements in Certificate No 388566 were accurate, namely the statement to the effect that the Bosch 25 was safe and/or the statement to the effect that all work carried out on the Bosch 25 was in accordance with all applicable requirements of the Regulations, because in contravention of regulation 12 of the Regulations and/or clause 1.6.3{f} of NZS 5261:2003 there was insufficient clearance between the Bosch 25 and an openable window to minimise the risk of harm to persons inside the house at 6 Malvern Avenue, Atawhai, Nelson."

11. 10 For those reasons detailed above, the Board finds the installation to be in contravention of regulation 12 and clause 1.6.3{f}. The certificate should not have been signed; therefore this particular is established.

Additional Facts Not Previously Reported

11. 11 Mr. Anderson, the owner of the property stated that sometime during 2009 an auditor advised him that the installation of the Bosch water heater at the rear of the house was non-compliant because it was too close to that window. He therefore bolted the window shut to prevent it from being opened and it has remained like that ever since. He stated no-one has changed the installation of the two Bosch water heaters since Mr. Gee installed them. In particular, the location of the Bosch water heater at the rear of the house and the window above it have not changed in any way".
11. 12 In cross examination he thought it was a bit unusual that Mr. Gee would install one unit as per the legislation and then install the other one in a non compliant manner as from a lay person's point of view, where it was installed was absolutely the logical place to put it.
11. 13 In cross examination Mr. Lamborn stated he conducted the Audit on 2 September 2009 and the standard of workmanship was okay, the owner made no mention of smells in the room and there were no signs of the window being screwed shut. He made no mention of chains being fitted to the window although he stated he checked the window.
11. 14 Under cross examination Mr. Hammond again admitted he had not conducted a scene examination or interviewed anyone when he made his recommendations to the Board. He stated he visited the scene on the 12th of January and he took some photos and recorded notes. No notes were provided to the defence. He confirmed there were chains on the windows.

Review Comment

11. 15 Was the installation acceptable under part 3 of NZS5261:2003, the Board deemed it was not as there was not demonstrated need to deviate from the Standard. The question is who does the Tradesperson have to demonstrate to? If he is happy with the installation would the onus of proving the method was not acceptable fall on the Investigator. For example would he need to prove the method failed because gas was entering the room?
11. 16 It is an industry perception that the lea-way granted by the non mandatory part two of NZ 5261 is specifically to allow installations in awkward/difficult applications, as long as the mandatory part one is adhered to, i.e. in this case no fumes were to enter the building.
11. 17 The drawing of the behavior of the flue gases from these powered flued califonts submitted by Mr. Gee at the May 2011 hearing are totally consistent with smoke bomb experiments and the 540mm clearance is nearly twice the British Standard clearance of 300mm, why is Mr. Hammond's ignorance of these facts allowed by the PGDB but are ignored when in favour of Mr. Gee's innocence?
11. 18 Mr Gee is and was aware at the time that pure CO has no smell, but the mechanically churned flue gases have a signature smell whether any CO is present or not, this is due to the thorough mixing by the fan to form a volume of flue gas with a very distinctive smell.

Questions to be Answered

11. 19 Who does Mr. Gee have to demonstrate compliance to?
11. 20 At what stage does he have to demonstrate compliance?
11. 21 At what level does he need to demonstrate compliance?
11. 22 If the investigator isn't as informed as the gasfitter, should the investigator be given bias by the PGDB to his opinions over that of the experience of the gasfitter?

Part 12: 5 Powick Street, Westport

Charge Particulars

12. 1 *Particular*

4.12/5.12

It is alleged that "In or about September 2004 when installing a Rinnai Infinity 32 gas water heater ("the Rinnai Infinity 32") at 5 Powick Street, Westport, you did not ensure that the two 45kg LPG cylinders ("the LPG cylinders") either:

- (a) were located on a base of non-combustible material in that they were located on a timber deck; or*
- (b) would not subsequently be located on a combustible material, namely a timber deck.*

The Investigator Submitted

12. 2 With regard to this particular, the Investigator submitted:

- 12.2.1. Mr. Gee installed a Rinnai Infinity 32 at 5 Powick Street in September 2004, supplied by two 45kg bottles which were also installed by Mr. Gee.
- 12.2.2. Mr. French, the owner of 5 Powick Street, was carrying out renovations at his property which included the addition of a new wooden deck, upon which the LPG cylinders were to be eventually located. Mr. French told Mr. Gee about the proposed deck which was not in place when Mr. Gee installed the LPG bottles.
- 12.2.3. Mr. French discussed the proposed location of the bottles with Mr. Gee and the site was agreed upon and, as an interim measure, the LPG cylinders were placed on wooden blocks at the same level as the proposed wooden deck to allow the LPG cylinders to be connected to gas and provide the house with hot water while the deck was being built.
- 12.2.4. The wooden deck is potentially combustible and is not a suitable platform for LPG cylinders to be located on.

Mr. Gee Submitted

12. 3 Mr. Gee submitted:

- 12.3.1. He never spoke with Mr. French because he was engaged to carry out the work via a third party, namely Allan Walker of Craddocks Energy Centre.

- 12.3.2. He was not supplied, and nor did he ever sight, any house alteration plans and no alterations had begun when he carried out the gasfitting work.
- 12.3.3. The Rinnai Infinity 32 was already installed and plumbed in by another person when he was on site to re-route some existing pipework, re-run the gas pipe, test the installation and certify it.
- 12.3.4. The subsequent installation of a further Rinnai Infinity resulted in the repositioning of gas pipework and bottles which he had no knowledge of at the time he carried out his work, the extent of which is detailed in the Craddocks invoice dated 12 October 2004.

The Board Concluded

- 12.3.5. The Board has considered the evidence in respect of 5 Powick Street and notes that the primary issues would appear to be whether Mr. Gee knew the wooden deck was to be installed when he carried out the gasfitting work at the property. The owner of 5 Powick Street, Mr. French, maintains that, while Mr. Gee carried out the gasfitting work prior to the installation of the deck, he knew that the intention was to have the deck fitted because he discussed this with Mr. Gee directly. Mr. French gave evidence by telephone link and was not, in the Board's view, entirely consistent with his recollection of events.
- 12.3.6. Mr. Gee disputes this, maintaining that he was subcontracted to do the job by Allan Walker of Craddocks Energy Centre, and this work was limited to a re-run of pre-existing pipework from the bottles to the Rinnai Infinity 32 which was already fitted. Mr. Gee has also produced gas certificates detailing additional work carried out at 5 Powick Street by another gasfitter.
- 12.3.7. Mr. Gordon contended that Mr. French was clearly confused about sequences of events. Those events were over a substantial period. He was unclear what actually occurred, what appliances and the models were installed, by whom and exactly when; and gas certification certificate number 319000 presented in evidence covers all the work undertaken as submitted, and highlights the need for the "vent around cylinders to be sealed"
- 12.3.8. For this reason, the Board has concluded that, on the balance of probabilities, it is unable to definitively determine the work carried out by Mr. Gee.
- 12.3.9. Accordingly, the Board finds this particular not established.

Additional Facts Not Previously Reported

12. 4 During cross examination Mr. Lamborn stated he conducted an audit on 30 August 2009. He confirmed the Gas Certificate showed the job was an alteration. The certificate indicated it was a water heater outside being a Rinnai Infinity 32. He did not know to what extent the alterations went to. He did not see any vents that needed sealing but admitted it was possible that Mr. Gee did reposition the cylinders as part of the alteration. He added there was an Infinity 24 mounted just along from the gas bottles that looked like a new installation.
12. 5 During cross examination Mr. Hammond stated he had not conducted a scene examination or interviewed anyone when he made the recommendation to the Board. He admitted he visited the scene on the 12th of January and took some photographs and recorded notes about that visit which were not supplied to Mr. Gee or Mr. Gordon.
12. 6 When discussing the gas bottle installation Mr. Hammond noted the walls behind the bottles were a cement rendered finish and it was painted in a very good condition. He confirmed for that rendering to occur the bottles would have had to have been out of the way. He confirmed he did not have access to any project plans for that job. He did not see any vents that needed sealing. Mr. Hammond was unaware who did the plumbing on the job and confirmed he did not interview any plumber.
12. 7 Mr. Hammond stated he wasn't able to confirm what was new and what was alteration work but all he was aware was that Mr. Gee made the gas connections to a 32 water heater and signed the certificate for that water heater.
12. 8 During cross examination Mr. Hammond was shown four invoices from Caltex Westport Limited issued to Mr. French from Powick Street. The first invoice for an Integrity 24 was dated 26th of the 7th 2002. Mr. Hammond agreed. The second invoice showed and integrity 24 which was credited to Mr. French. Mr. Hammond agreed. And following on from that Mr. French was sold an Infinity 32 Mr. Hammond agreed. The next page showed the invoice for work conducted by Mr. Gee and Mr. Hammond again agreed. The next page dated 14th of the 1st 2005 an Infinity 24 was sold to Mr. French. Mr. Hammond agreed.
12. 9 Mr. Hammond agreed that Mr. French had been sold and Infinity 24 which has been mounted on to a wall, about six months later they've exchanged that Infinity 24 for an Infinity 32 which is a unit which Mr. Gee moved to upstairs in the building and then later on they've been sold another Infinity 24 to mount in the new alterations which is the heater that was discussed. Mr. Hammond agreed that theoretically two gas certificates haven't been issued, namely the first one would be the exchange of the 24 for a 32. And the second one would be the installation of the new 24 downstairs on the alteration.

Review Comment

- 12. 10 Mr. Hammond did not interview the plumber or any other gasfitter, at least one indicated on the other gas certificates, who did work on this site.
- 12. 11 It would appear substantial gas fitting work has been done by someone unknown

Questions to be Answered

- 12. 12 Why wasn't the plumber or gasfitter interviewed?
- 12. 13 Has anyone been held to account for the work done?
- 12. 14 Has anyone been held to account for the gas bottle install?
- 12. 15 Is this certificate manipulation a fraud?

Part 13: The Hearing

Sequence of the Hearing

13. 1 In general terms the Hearing was run in a professional manner however it did not follow a logical sequence. The sequence was as follows:

3 May 2011

- Opening address by Mr. Laurenson
- Witness regarding Milton Street
- Second Witness regarding Milton Street
- Witness regarding 68 Greenwood Street
- Witness regarding 6 Malvern Avenue
- Witness regarding all Sites
- Examination of the Investigator

4 May 2011

- Witness regarding Ball Unit Pah Street
- Investigator Cross Examination
- Investigator Re-Examination
- Witness regarding Powick Street
- Investigator Re-Examination continued
- Opening Address by Mr. Gordon on Behalf of Mr. Gee
- Witness regarding general Board issues.
- Examination of Mr. Gee

5 May 2011

- Examination of Mr. Gee continued
- Third Witness regarding Milton Street.
- Mr. Gee Cross Examination
- Mr. Gee Re-Examination
- Investigator Recalled

13. 2 The schedule did not allow for continuity of questioning and fact delivery.

13. 3 Due to time constraints closing addresses were submitted in written form submitted at a time determined and allocated.

13. 4 As Mr. Gee was the “offender” he wasn’t initially afforded the same treatment as the prosecution and witnesses.

13. 5 When it came to the first meal break of the hearing the Board members adjourned to the hotel restaurant, the Lawyer and witnesses to an allocated breakout room, being a motel unit where they were catered for and Mr. Gee and Mr. Gordon were asked to leave the hearing room and were forced out side and when it rained had to sit in the car in the car park.
13. 6 This repeated each time there was a break or the Board wished to discuss issues in private. On day two and three a breakout room and catering was provided.
13. 7 It appears this type of treatment at that time was common place where the accused were treated as second class citizens.
13. 8 Stephen Parker, a long time colleague of Tony Hammond closed the hearing down just as Mr. Gordon was cross examining Mr. Hammond about the mandatory part one and non mandatory part two of NZ 5261, with Hammond stating that if the fumes were not entering then part one was served just before closure.

Findings in relation to the charge

13. 9 The Board considered the established particulars (in relation to 6 Malvern Avenue) and found Mr. Gee guilty under section 42(1)(c) of the Act. The established particulars were not so serious as to warrant a more serious finding under section 42(1)(b) of the Act.
13. 10 As part of its consideration of the established particulars the Board stated:
- Mr. Gee is not a "mere plumber", as he referred to himself, but an experienced craftsman gasfitter. For a practitioner of Mr. Gee's status, these applied professional shortcomings are seen as being very serious and his conduct unacceptable.*
13. 11 There is no record of Mr. Gee having ever stated that during the hearing. What Mr. Gee did state was:
- "That's yep that's why I didn't put them there. You're ignoring the evidence that the 24 was fitted after I was there. It was fitted to an extension where the cylinders are situated. Now we can talk about how I word things, how I speak, I'm a bloody plumber. I don't go to elocution lessons, I speak like I do. I am a common working man. I work with these (Indicates hand) not that (indicates mouth)"*
13. 12 The statement by the Board was later put down to being consistent with "mere faulty recollection"

13.13 In the Boards Penalty Decision they took another attempt at the comment and stated:

“When questioned by the Board about apparent discrepancies in matters of compliance, the Board found Mr. Gee’s statement to the effect that he was “only a plumber” a derogation of the responsibilities and high standards of trade practice expected of a certifying gasfitter”.

Part 14: Review Summary

- 14. 1 This review was initiated to look into whether the investigation into the actions of Mr. Paul Gee and the conclusions were reached by fair process and were reasonable and if they were not then what was the impact on the findings of the Plumbers Gasfitters and Drainlayers Board judicial committee.
- 14. 2 Issues dealt with in this report considered if individual and cumulative issues have been fair from an administrative law point of view and fair and reasonable in the eyes of the average person.
- 14. 3 It looked to see if the process was let down by reason of insufficient or poor investigation of the facts and if there was anything done or omitted in bad faith or without reasonable care.
- 14. 4 Had Mr. Gordon's suggestion of having an outside agency hear the Motion to Dismiss application been given due consideration there was a huge possibility that this travesty of justice may have been avoided. The Motion to Dismiss hearing was lead down a legalistic path with little or no reference to moral issues.

The Unanswered Questions

- 14. 5 Why did it take 18 months for the Board to admit the letters sent to Mr. Gee's customers were not appropriate?
- 14. 6 How did others view the action of altering the charges so close to the hearings?
- 14. 7 Why were Board members changed after such a huge justification at the Motion to Dismiss hearing?
- 14. 8 Why go from three Gasfitters on the initial discipline committee that heard the Motion to Dismiss application to one gasfitter on the discipline hearing committee?
- 14. 9 Would charges have been laid if the investigation been conducted prior to the laying of the charges?
- 14. 10 Why was the participation of a second investigator withheld from the prosecution during discovery and only disclosed after the discipline hearing when finances were being looked at for penalty submissions. .
- 14. 11 How did the dates on the Rinnai infinity califont at Powick Street go unnoticed?
- 14. 12 Who did Mr. Gee have to demonstrate the installation was safe to?

14. 13 Wee there two investigations and if so why? The costs incurred in the Gee case were over \$220,000. How much for the Darnley case?
14. 14 Did investigations run concurrently or were they combined and divided off later. No notes were provided to Mr. Gee. The Investigator claimed the complaint was laid against both Mr. Gee and Mr. Darnley so why was there two investigations?
14. 15 What power does the investigator have to decide what to pursue? How certain must they be that there is a case to answer. For example do they have to have evidence or can they go on a hunch.
14. 16 There are two stories about the status of the audits and the letters sent to Mr. Gee's customers. Who is right? The lawyer and Mr. U'ren state it was not part of the investigation and the investigator claims he requested the Audits and choose which locations. Who is "Mistaken"?
14. 17 Would those with a professional relationship with the investigator be more likely to believe him or the person he has accused of committing offences?
14. 18 A number of offences have been identified so why haven't the offenders been pursued with the same gusto that Mr. Gee has been pursued.
14. 19 If Mr. Gee believed he had demonstrated compliance then surely the investigator had to prove non compliance. This does not appear to be the case. Who sets the level of proof to say what is complainant and what is not? As there is no one for Mr. Gee to prove compliance to then it must be to himself.
14. 20 From the time of the installation to the time of the explosion was around six years. How long does a gasfitter remain responsible for the work they have done – is there a statute of limitations?
14. 21 Why were notes withheld by the investigator on most sites and witness interviews?
14. 22 What information did Mr. Laurenson have regarding 73 Main Road Havelock to say the case would be based on what Mr. Suisted says?
14. 23 Why wasn't the other gasfitter interviewed at 73 Main Road, Havelock?
14. 24 Did the other gasfitter move Mr. Gee's installation to make room for the new installation at Main Road Havelock?
14. 25 Why wasn't the other gasfitter pursued for possibly altering Mr. Gee's installation at Main Road Havelock?

14. 26 The Board stated *"The evidence shows that a possibility of the gas certificate for Mr. Gee's work being incomplete at the date of signing did occur, and has been referred to in the Board's conclusions concerning 136 Milton Street, Nelson"*. Was it an incomplete job or did Mr. Gee submit a gas certificate for the work he did and it was altered. The Board appear to hold no credence in what Mr. Gee had to say at all.
14. 27 Has anyone been held to account for the stove installation at Greenwood Street and if not why not?
14. 28 Has anyone been held to account for altering the Gas Certificate at Greenwood Street and if not why not?
14. 29 Has anyone been interviewed with regard to the cabinet install at Pah Street and if not why not?
14. 30 Has anyone been held to account for the cabinet install at Pah Street and if not why not?
14. 31 Why wasn't the window checked during the audit at Dommet Street?
14. 32 Why were charges laid before scene examinations were conducted at all sites?
14. 33 Why were charges laid before the witness statements were recorded regarding all sites?
14. 34 Who does Mr. Gee have to demonstrate compliance to?
14. 35 At what stage does he have to demonstrate compliance?
14. 36 At what level does he need to demonstrate compliance?
14. 37 Why wasn't the plumber interviewed regarding Powick Street?
14. 38 Has anyone been held to account for the work done at Powick Street and if not why not?
14. 39 Has anyone been held to account for the gas bottle install at Powick Street and if not why not.
14. 40 How could John Darnley face a charge for the explosion but have this charge disappear before his hearing? Was this dual laying of the same charge for the explosion done to force two separate investigations/hearings preventing cross examination of John Darnley by Mr. Gee's team?

14. 41 Why was Mr. Gee's previous concerns not taken into account, warnings about altered dangerous work, warnings that could not have been better suited to fit the later blatant, irrefutable evidence.
14. 42 Why did the PGDB pursue Mr. Gee in the press after he was found innocent of 42 of the 44 charges laid, none of which was to do with the explosion?
14. 43 After it was quite obvious the investigation was a failure why was no compassion shown to Mr. Gee and his family?

Were conclusions reached by fair process and were they reasonable

14. 44 There is no doubt Mr. Gee was targeted as a person of interest from the commencement of the investigation. The initial complaint from Mr. Windleburn did not name Mr. Gee as a suspect. The decision to investigate Mr. Gee appears to have come from the Registrar of the Plumbers Gasfitters and Drainlayers Board. It can only be presumed it is because Mr. Gee and Mr. Darnley were the last gasfitters to record working at the Milton Street site. Is it fair that there is alleged guilt due to an association with the site rather than proof during the course of the investigation?
14. 45 The Board commented it was not credible that Mr. Gee would not have been expected to take responsibility for the fryers when he would have known that the fryers were part of the gas installation he was responsible for carrying out. Mr. Gee has performed his tasks as per the job sheet issued to him. He was not the business owner and had no control over who was to return to the job. He had certified what he had done. Is it not credible for the Board to believe that?
14. 46 It was noted that a pizza oven had been installed at the cafe in 2005 (certificate number 345138). This installation was certified by Mr. Darnley and it was alleged by Mr. Gordon that Mr. Darnley, in certifying subsequent gasfitting work at the cafe, took responsibility for ensuring that the complete installation, including preceding work, was compliant. The Board did not consider that it needed to address that issue as the charge related to certification of work on or about 26 June 2003 and accordingly did not alter any later assumed responsibility. It is believed this issue has never been dealt with. Why has the Board been so persistent in pursuing Mr. Gee but don't appear interested in pursuing others?
14. 47 Reference was made in Mr. Gordon's submission to certain observations of the Office of the Auditor-General, but the Board understands it is obliged to apply the principles as developed by the Courts. It has therefore focused on the principles outlined by the courts and seems to have ignored the other principles of the industry trusting them and the industry seeing them as having integrity.
14. 48 As far as "Association links" are concerned, Parliament has seen fit to set up a

regime where six specialist tradespersons are required to be appointed to the Board; and it was also Parliament's intention that specialist expertise would be available in the disciplinary process, when hearing charges such as the present, that involve technical issues relating (for example) to gasfitting. Why only one gasfitter on the discipline committee to hear Mr. Gees charges?

14. 49 With regard to the Motion to Dismiss, the Board did not consider that any of the Board members scheduled to hear the matter should be disqualified; it thought that a fair minded lay observer would not reasonably apprehend that the Board might not bring an impartial mind to the resolution of the issues it was required to consider - this being the test which the Board had been advised it must apply. If this is true why were three people replaced?
14. 50 As can be seen by this review the Motion to Dismiss section is substantial and concentrated on the Boards rights and justifications but didn't address the actual application that of the investigation being conducted in a fair and impartial way.
14. 51 The Motion to Dismiss application went from moral issues to legal very quickly and ended up as a case law festival. Moral issues were quickly ignored. The question needs to be asked about the appropriate use of case laws. Does a case law relating to child molestation have any place in a gasfitting discipline hearing?
14. 52 There appeared to be favouritism regarding the Motion to Dismiss with extra time being given to the prosecution for submission and a copy of the defence submission also being provided to the prosecution. There was also the fact the defence was not told there would be no questioning of witness at the hearing until the day of the hearing.
14. 53 At the Motion to Dismiss hearing the prosecution lawyer stated *"The only basis for a stay based on the conduct of the investigator would be if it could be established that there has been egregious conduct by the investigator as the prosecuting body so as to amount to an abuse of the disciplinary process. However, there is no suggestion, let alone evidence, that Mr. Hammond has done anything that would justify a stay on this ground"* How bad does behavior need to get to meet the criteria of egregious? Was the Boards behavior of sending out letters egregious (outstandingly bad)?
14. 54 Even if the rule against bias did apply to the investigator (for example to the investigator's consideration as to whether there is substance to a complaint under s41 (5) of the 1976 Act), there is no basis for a finding of apparent bias against Mr. Hammond in conducting the investigation. There is no basis for finding - based on his experience in the gas industry or his previous dealings with Mr. Darnley - that a *"fair-minded lay observer might reasonably apprehend that [Mr. Hammond] might not bring an impartial mind'* to the investigation. This statement is open to public opinion now.

14. 55 The only options open to the Board in relation to a complaint referred to it are to:

- consider the complaint in accordance with the disciplinary provisions of the 1976 Act (which includes serving a notice of charges and convening a hearing in respect of the charges); or
- before doing so, to appoint an investigator under s41 (4A) to investigate the complaint and reach a conclusion as to whether it has substance.

This seems to be a vulnerability or failure in the system in that if the Investigator acts in bad faith or doesn't take reasonable care in the investigation then the Board has no option than to progress with the actions legislated. How does this seem fair to the accused who then becomes the victim?

14. 56 If the investigator concludes that a complaint does have substance, then the complaint must be referred to the Board to be considered in accordance with the disciplinary provisions of the 1976 Act. However, if the investigator concludes that the complaint has no substance, then it will go no further - i.e., it will not be referred to the Board to be considered in accordance with the disciplinary provisions of the 1976 Act. This is a huge amount of power given to the investigator and allows scope for abuse particularly if they lay charges before investigating the incident.

14. 57 The question is asked, how long must a tradesperson prove their innocence? The initial charges were based on audits performed years after the installations so should there be a statute of limitations?

14. 58 During the main hearing there was discussion of the Boards jurisdiction over LPG bottles. Surely this is an issue the investigator should have resolved in the course of the investigation. LPG Bottles are not gasfitting as they are the supply.

14. 59 The Investigator had ample time to investigate what changes there had been to the Pah Street site and also to interview Allgas staff but he appears to have been concentrating on the finer points of legislation rather than the truth.

14. 60 When questioned about the standard of auditing in that they had not made any mention about the recessed bayonet fitting at Greenwood Street Mr. Hammond didn't think he could comment on that. He was very vocal at criticising Mr. Gee but appeared to have lost his voice when it came to passing judgment on an associate in the gas industry.

14. 61 In review of the manner in which statements are recorded the question must be asked why Mr. Laurenson is recording the statements from witnesses. Does the Investigator not have the skills to record the truth? The issue regarding legal privilege and the appropriateness of the Lawyer recording the statements needs to be addressed. Where does investigative work finish and where does assisting with

prosecuting the case start?

- 14.62 Mr. Hammond confirmed he requested audits. Mr. Hammond stated after he had requested the audits, the next involvement he had was when a set of audit findings were provided to him for the 25 installations carried out by Mr. Gee and for a similar number carried out by Mr. Darnley and that apparently it was some four to five months after he had requested the audit. It would appear there was considerable involvement in the investigation by the Board however they claim no involvement.
- 14.63 Mr. Hammond stated if someone alters a gas certificate after the tradesman has done it, it makes it invalid and the tradesman probably can't be held responsible for those alterations by yet he still laid charges where that has occurred on numerous occasions in the charges. He later stated he wouldn't comment on the certificates being altered or not because since it had Mr. Gee's signature, then he believed the certificate was submitted by Mr. Gee. Where was the benefit of the doubt here? Where was the open mindedness required of an investigator to search for the truth?
- 14.64 Mr. Hammond stated a *certificate is only relevant on the day that the installation is actually carried out and commissioned and put to work, so that Mr. Gee's responsibility ends for that installation once he has completed commissioning...* This is effectively a snapshot in time but this doesn't appear to have been taken into account throughout the investigation.

Were issues fair from an administrative law point of view and fair and reasonable in the eyes of the average person

- 14.65 An average person, being a hypothetical person in society who exercises average care, skill, and judgment in conduct and who serves as a comparative standard for determining liability. A lot of the industry may look at the process and investigation and wonder if the same could happen to them with such ease.
- 14.66 During Cross Examination Mr. Hammond was questioned regarding his appointment as the investigator and the fact in his statement he claimed to be appointed in respect of a complaint made by Lance Windleburn of the Department of Labour against Mr. Paul Gee. Mr. Gordon put it to Mr. Hammond that that was not true because Mr. Windleburn didn't actually lay a complaint against Mr. Gee but rather asked for the matter of the gas certificates to be looked at, or looked into and for the Board to explore the possibility of other substandard installations that may have occurred in the region over the 2000 period.
- 14.67 Mr. Hammond claimed he received a letter from the Registrar of the Board appointing him to investigate a complaint that had been received from Mr. Windleburn. Attached to that letter was a copy of the letter from Mr. Windleburn setting out the details, but his actual appointment was by the Registrar to look into

the complaint.

14. 68 In cross examination it was ascertained that documents were provided to the investigator by the Board, most of which were dated prior to him being appointed, so someone at the Board made the decision to investigate Mr. Gee. Mr. Hammond stated the letter of appointment from the Registrar named Mr. Gee and Mr. Darnley.
14. 69 The Board stated it was not reasonable for Mr. Gee to only tick the “pipework” box on a gas certificate. Why is this so? What is the box there for is it is not for you to tick when you do pipework?
14. 70 The Board claimed there was no evidence before them to substantiate Mr. Gee’s claims regarding the Business practices at Allgas. Surely it was the Investigators responsibility to look at the facts and not just the legislation. The manner in which the charges were laid moved the onus of proof onto Mr. Gee immediately as he had to defend himself against false accusations.
14. 71 The Board stated there was no need to look at the pizza oven install at Milton Street as the charges relate to the certification of the job and not later assumed responsibility. Does taking responsibility cover the issuing of a new gas certificate for work done or for any safety issues identified?
14. 72 During the Stay of Proceedings Hearing it was stated by Mr. Laurenson that letters sent out to Mr. Gees customers were not part of the investigative or disciplinary process and any inaccuracy in the letter was simply as a result of an oversight which occurred when the audit process conducted for the purpose of ensuring public safety was extended from the North Island into South Island areas. Mr. Hammond stated in his view the audits were carried out and provided information that was a part of the investigation.
14. 73 Mr. Laurenson submitted at the Motion to Dismiss hearing, on the basis of evidence filed by the then Acting Registrar, that these letters had been sent to notify homeowners of the results of audits carried out on gas installations at their properties and to ensure that any defects identified were rectified. They were not sent as part of the investigative/disciplinary process in respect of the complaint against Mr. Gee. They were sent as a part of a process of auditing approximately 500 gas installations throughout New Zealand for the purpose of ensuring public health and safety. It was accepted in hindsight that the standard letter could have been more appropriately tailored to a given situation, but the central submission was that the six letters could not in any way prejudice a fair hearing of the charges against Mr. Gee. Any inaccurate information was purely a matter of oversight when the audit process was extended from the North Island areas into South Island areas. Mr. Hammond has been believed all the way through the proceedings but now his

credibility has been questioned by his own prosecuting Lawyer who seems to be defending the Boards stance as well as the investigators.

14. 74 How can the damage from the letters be measured as they were sent out to the six properties before anyone had been interviewed to support the charges that had been laid. Who really knows what impact the letters had on how the property owners viewed Mr. Gee.
14. 75 Although Mr. U'ren accepts that, in hindsight, the standard letter sent out could have been more appropriately tailored to a given situation, the Investigator does not accept that these six letters could in any way prejudice a fair hearing of the charges against Mr. Gee. In any event, the actions of the Acting Registrar in sending the letters is not conduct by a prosecuting authority (or any party to this disciplinary process) that could constitute an abuse of the process in any way, let alone egregious conduct serious enough to justify the charges against Mr. Gee being stayed. The letters were not even sent as part of the investigative/disciplinary process. And any inaccurate information in them resulted purely as a matter of oversight when the audit process was extended from North Island areas into South Island areas. The letters may not have prejudiced a fair hearing but did the influence what the property owners had to say in their statements?
14. 76 In review of the manner in which statements are recorded the question must be asked why Mr. Laurenson is recording the statements from witnesses. Does the Investigator not have the skills to record the truth?
14. 77 Was it reasonable for the investigator to base his charges on the initial audits performed by Casey Services, whose services have been shown to be wanting?
14. 78 The Board have not made comment that there is the possibility the certificate may have been changed and have not indicated any belief in what Mr. Gee had to say.
14. 79 The Board stated it was prepared to give Mr. Gee the benefit of the doubt. This is not their choice as the level of proof is beyond reasonable doubt.
14. 80 Was the Malvern Avenue installation acceptable under part 3 of NZS5261:2003, the Board deemed it was not as there was not demonstrated need to deviate from the Standard. The question is who does the Tradesperson have to demonstrate to? If he is happy with the installation would the onus of proving the method was not acceptable fall on the Investigator. For example would he need to prove the method failed because gas was entering the room?
14. 81 A letter was sent out by Allgas after Mr. Gee terminated his employment with them. Mr. Hammond agreed this would indicate that the staff at Allgas were quite happy to

use other people's signature blocks and send it out on letters. This didn't seem to hold much weight when it came to accusations that gas certificates had been altered.

- 14.82 For Milton Street it was stated "Mr. Gee ought to have known that, as he carried out the pipework and installed the wingbacks with the female sockets for the bayonets to connect the fryers gas supply hoses to, he would be required to certify them". Would it be Mr. Gee's responsibility or the person who installed the fryers? Mr. Gee was an employee not the business owner. The bayonet fixture is there to allow an ease of disconnection and it is common industry practice to provide these fixtures so that people can have the facility of gas at a later date. The fitting as well as a form of disconnection, is self sealing too with regards to the passing of gas through that fitting once disconnected. It can be disconnected by hand and without the use of any tools.
- 14.83 A gas hob was installed at the Mussel Boys Main Road, Havelock on 1 September 2009, certified by certificate number 629404 on 4 September 2009. The standard of the audit was such that the auditor did not notice a 2 day old installation within 1 meter of the installation he was auditing.
- 14.84 It would appear the Auditor has targeted specific work and has not deviated from that target. If Mr. Hammond was laying charges on the basis of Audits it would be expectant that there would be scope for the auditor to explore further.
- 14.85 When questioned about the standard of auditing in that they had not made any mention about the recessed bayonet at Greenwood St Mr. Hammond didn't think he could comment on that.
- 14.86 It appears that the investigator has taken a stance that all gas fitters should know what he knows. This is the danger in having an industry "expert" as an investigator.
- 14.87 There was perception in the plumbing, gasfitting and drainlaying industry over that period that there was a certain amount of intimidation in the laying of charges by the Board in that a guilty plea would result in fines where a not guilty plea would result in fines and costs which were generally well in excess of the fines and could be into the tens of thousands of dollars. Mr. Gee pleaded not guilty to all charges as laid.
- 14.88 Mr. Corkill, QC briefed the Board members that in terms of the law of burden and standard of proof, the burden of proving the charges was on the investigator. There was absolutely no onus or burden on Mr. Gee to prove anything. This was very much misleading in that the onus of proof was forever shifting and Mr. Gee mostly found himself having to prove his innocence or in some cases his non involvement.
- 14.89 On 27 September 2011, the Board convened to consider penalty. The Board released a penalty decision on 4 November 2011, ordering that:

- a. Mr. Gee attend, at his own cost, a course of instruction in Unit Standard 21893: “install and Commission Type 2 gas appliances and equipment” provided by a training provider or qualified persons approved by the Registrar
- b. The course be completed no later than 31 March 2013
- c. Mr. Gee provide evidence of having passed that course before he can uplift a practicing license as a certifying gasfitter for the licensing year beginning 1 April 2013, or any subsequent year should he fail to complete the required course before 1 April 2013.

- 14.90 The above decision in itself created problems as there was no Unit Standard instruction available. Mr. Gee had to source a person to develop and conduct a period of assessment for him. This cost thousands of dollars. It is believed that if a condition is being issued then it should be readily available.
- 14.91 During the Audits there was no check to see if the window was screwed shut but yet charges went ahead based on the audits and that the windows weren’t secured. Mr. Lamborn stated the installation would have been legal had the window been screwed shut. He made no attempt to confirm one way or the other.
- 14.92 Mr. Hammond claimed Mrs. Montgomery said Mr. Gee told her the clearance was okay and never mentioned the window needed to be shut. No evidence of this was provided. This is hard to believe when the window was screwed shut just days after the installation.
- 14.93 Mr. U’ren in his affidavit claimed the “pre-requisites” for investigators was intended to provide guidelines for those person interested in becoming an investigator for the Board and the list was not definitive and nor was it intended to be seen as mandatory.
- 14.94 That may well have been the intention however the information provided to the industry is clear - it is the investigator qualifications, it is the person specification pre-requisites as developed by the Board for the position of investigator and it details the person specifications. That is the information that was sent to the industry and to change its meaning now seems like a matter of convenience.
- 14.95 There is no mention of it being a guideline or that it was not definitive. The average person in the industry would see it as being the requirements of an investigator and hence the Board’s Policy on investigators. Mr. Gee contests the Board appointed an investigator outside the scope of its policy as promulgated to the industry. Mr. Hammond does not meet the pre-requisites.

14. 96 For clarification Mr. Laurenson submitted in terms of the charge the Investigator's case was not going to be based on the photographs of the chain that Mr. Lamborn took as it was accepted that it had been changed. He went on to say the case would be based on what Mr. Suisted says who was there at the time and so it will fall or stand on what he says as to the nature of the installation at that time. Mr. Suisted failed to attend the hearing and no evidence was submitted from him. Mr. Laurenson just wouldn't give up.
14. 97 Could the Board have worded their findings in a more industry friendly way for example they have voiced all decision in that they have done Mr. Gee a favour? There were not critical of the investigator or the prosecution. It has adhered to a strict enforcement stance. Where is that enforcement now?
14. 98 Mr. Hammond appears to have had the same strict enforcement attitude as well and it reflected in his investigation. A prosecution at all costs.
14. 99 The Board needs to consider the risk of their decisions and how an outside observer may reasonably perceive the situation.
14. 100 Why listen to advise from the Office of the Auditor general when you can get away with what has been done in the past.
14. 101 It is submitted there is sufficient evidence to show the Board and secretariat have not adhered to the principles of Natural Justice and have not conducted themselves in a fair manner towards Mr. Gee.
14. 102 Legal propositions were not contested at the Motion to dismiss hearing by the defence and there was no mention of what was fair and reasonable from the prosecution only legal enforcement arguments.
14. 103 The legal adviser stated the obligation to comply with the rules of Natural Justice did not fall on the investigator but on the Board.
14. 104 What weight was given to the continued bad behavior by the investigator? Considerable weight was given to Mr. Gees behavior why not that of the investigator? It was stated at the motion to dismiss hearing that the investigator hadn't acted egregiously, the evidence in review would indicate different.
14. 105 Seems the Board wanted a result from a high profile case.
In respect of apparent bias, the decision maker is disqualified "if a fair minded lay observer might reasonably apprehend that the [decision maker] might not bring an impartial mind to the resolution of the question [the decision maker] is required to decide ..."
14. 106 The Board has relied on the courts and has focused on legalities and has not looked at the decisions of others such as the Office of the Auditor General and the

Ombudsman. It seems the circumstance of this case have not been taken into account.

14. 107 Now we have accurate information, oversight how does Mr. Gee's professional behaviour compare to that of the investigator?
14. 108 Mr. Gee submits that the investigation into him has not been conducted in a fair and impartial way and a number of actions and practices by the Board, secretariat and contractors, have impeded on his right to fairness in the investigation and the hearing.
14. 109 There was extensive use of case law by Mr. Laurenson and a lot gets lost in translation. Any good legislation or process doesn't need legal interpretation.
14. 110 Mr. Laurenson claimed "It cannot be an abuse of the process for an investigator to have the extensive experience in the gas industry that Mr. Hammond has. The fact that he has been actively involved in the review and development of gas standards enhances his suitability to be an investigator" The review has shown this may not necessarily be the case as they can become so ingrained into the enforcement of the process they have assisted in developing that people who waver from the designated path are persecuted. Did his lobbying for the self certification system from the perspective of the gas companies make him biased to that system and to those companies?

Was the process let down by reason of insufficient or poor investigation of the facts and was anything done or omitted in bad faith or without reasonable care.

14. 111 The Federation believes the purpose of an investigation into plumbers, gasfitters and drainlayers is to seek the truth of a potential violation of the Plumbers Gasfitters and Drainlayers Act to determine what happened, what were the causes, who was responsible, what actions should be taken to correct the current situation, and what actions should be taken to ensure that a similar violation does not occur in the future.

14. 112 Bad faith is a lack of honesty in dealing with other people

It could include:

- deceptive practices or deliberate misrepresentations
- Deliberate misrepresentations of records or policy
- Unreasonable litigation conduct
- Failure to investigate
- Failing to maintain adequate investigative procedures

14. 113 Reasonable care is the degree of caution and concern an ordinarily prudent and rational person would use in similar circumstances. It is a standard used to determine a legal duty and whether such duty was fulfilled.

What did the investigator do

14. 114 Mr. Hammond withheld notes pertaining to nearly every sit that Mr. Gee Incurred charges.
14. 115 Mr. Hammond inspected seven sites during August 2009 and found issues with ultraviolet light exposure to Pexal pipe he applied current legislation and instructions and used that analysis as the catalyst to request further audits. Had he applied legislation and procedures that applied at the time of installation he would have found it wasn't an issue at that time. Mr. Gee was not interviewed about those seven inspections until 20 May 2010. Mr. Gee provided an extract from a manufacturer's brochure regarding Pexal pipe which suggested that if protection from ultraviolet light is required, then painting was sufficient but the presence of the internal aluminum sleeve did this in any case. Mr. Hammond admitted he had applied current requirements but Mr. Gee demonstrated to him with that document that he provided that at the time there was a justification for him following the manufacturer's recommendations and therefore those charges did not precede - or those aspects of the complaint did not proceed where Pexal pipe was concerned.
14. 116 When questioned about the legalities of Gas Certificates Mr. Hammond was of the opinion that after the certifying gasfitter has signed the certificate any alterations would render the certificate invalid. He was unsure whether there is an offence in the Gas Regulations covering altering of certificates, but in his general view the certificate represents what is in place at the time the work is completed and therefore, if somebody makes an alteration then that may not represent the correct certificate so it's only of value at that time. But yet he did not apply that principle.
14. 117 When questioned regarding the gas certificate Mr. Hammond admitted it was possible that the fryers could have been added after Mr. Gee has signed for the pipework. He admitted there appeared to be a different shade for some of the writing, and it appeared that a number 2 had been altered at some stage, as it looked like there was a 1 underneath it. He wouldn't comment on if the certificates had been altered or not because since it contained Mr. Gee's signature, then he believed the certificate was as submitted by Mr. Gee. This seems to be targeting by Bureaucracy.
14. 118 When questioned further about when Mr. Gee stated he had concerns about the certificates being altered after he'd signed them and Mr. Hammond stated "it's not a significant issue in my view", he confirmed he still stood by that view. When

asked if he had spoken to Mr. Darnley about the issue he stated he would have to check his notes to confirm what Mr. Darnley had said. When asked why the notes from the interview weren't supplied to the defence he stated those notes were relative to the complaint involving Mr. Darnley and he provided those in connection with that complaint not in connection with the complaint against Mr. Gee but admitted parts of them were relevant to Mr. Gee. The guilt or innocence of a man is not a significant issue? What about finding the real offender.

What didn't the investigator do

- 14. 119 The investigator failed to investigate allegations made by Mr. Gee regarding the business practices employed by Allgas in respect of gas certificates. This resulted in the Board stating "There is no evidence presently before the Board to substantiate these allegations" Mr. Gee had to prove his innocence again because of opinion not fact.
- 14. 120 Mr. Hammond claimed Mr. Gee never produced any information for him that led him to believe that certificates were being altered, so he didn't think it was appropriate to investigate that aspect any further. Is not an altered certificate information or proof enough for an investigator?
- 14. 121 It is standard practice for an Investigator to use notebooks generally with numbered pages to alleviate anything accusations of things being added or deleted. Mr. Hammond did not follow this practice as he had not discerned it necessary to do that in terms of the investigations that he had carried out on behalf of the Board.
- 14. 122 Mr. Hammond used loose leaf pages and they could be rewritten or submitted as new pages without it being traceable. It was also noted he did not rule off lines which could leave scope for additions to be made after an interview was completed.
- 14. 123 The Investigator did not interview Ms Darnley, John Darnley or any other member of the Darnley family with regard to any of the gas certification. It appeared that the Darnley family was out of bounds for the investigation.
- 14. 124 The Darnley family were heavily involved in the administration of the business but were not interviewed regarding any of the gas fitting work.
- 14. 125 The evidence available indicated illicit use of gas certificates and others qualifications but this hasn't been investigated or followed up on by the investigator. His job was to investigate.

14. 126 Mr. Hammond claimed Mr. Gee never produced any information for him that led him to believe that certificates were being altered, so he didn't think it was appropriate to investigate that aspect any further.
14. 127 Mr. Hammond should have investigated the issue of Gas Certificates being altered and this highlights his protectionism of the certification system which he assisted in developing. During the investigation he did state that if a certificate had the gasfitters signature then that was all that mattered.
14. 128 There was a huge reliance from the investigator on his expertise and that Mr. Gee should know as much as the investigator. The investigator used the terms, should have known, ought to have known and difficult to understand why on a number of occasions.
14. 129 Mr. Hammond believed he spoke with the cleaners at the café but had no notes but he didn't think they had reported and damage to the hose.
14. 130 He also admitted no-one had checked the serial numbers on the fryers to see if they were the same ones installed originally.
14. 131 Mr. Hammond admitted he had not interviewed the gasfitter who had done the gas installation days before the audit. It would appear this is vital to the investigation to prove what the site was like and what was altered. It would appear no one has been held accountable for altering Mr. Gees work.
14. 132 The different coloured piping must have raised suspicion as it is common knowledge that trades people generally have one preferred product and stick to it.
14. 133 As the review has progressed it has become apparent the Investigator was basing a lot on his opinion rather than on fact or proof.
14. 134 At no time did the investigator believe anything Mr. Gee said.
14. 135 Most charges laid against Mr. Gee were the result of Audits that were conducted years after the installs without any cognisance being taken that the installations may have been alter and also that certificates had been altered. It appears that Mr. Gee pleading not guilty has caught the investigator by surprise.

The Impact

14. 136 The ongoing repercussions for Mr. Gee and his Family have been vast.
14. 137 Mr. Gee has since the hearing had to either work away from his home and family within his trade or has managed to secure local work outside of his trade, working as a trainee in two different industries.

14. 138 At the time of the explosion Mr. Gee had a profitable business and was mortgage free in a recently renovated modest home, Mr. Gee owned all his tools and vehicles out right and only had the debt run up monthly at the plumbing suppliers. Mr. Gee was at the point of considering taking on an apprentice or taking on another tradesman.
14. 139 Mr. Gee had bought a derelict property to create the business opportunity of a cafe for his wife to run, but when Mr. Gee's family business failed he was forced to sell the family home and move his family into a caravan on the site of the derelict property.
14. 140 Mr. Gee's wife, after suffering the trauma of reading and feeling threatened by the sending of child sexual abuse case notes by the prosecution, was forced to live in this caravan for a whole winter, some 19 weeks.
14. 141 Mrs. Gee was forced to collect drinking water and empty a chemical toilet at the local i-site in front of the local population who had shunned the family business. This was done whilst Mr. Gee worked in New Plymouth immediately after the hearing. Since this Mr. Gee has worked in Upper Hutt, Blenheim and Wellington on two separate occasions. The condition of this derelict property prevented any sale and relocation. Mr. Gee has been forced to lend heavily to re-build the property and so has run up debt he would never have incurred if it were not for the persecution of the Board, and now has a sizable mortgage.
14. 142 Mr. Gee's reluctance to supervise and/or sign off work has hampered each and every work opportunity and led towards him having to leave each position, ironically for coming across similar situations that were inflicted on him at Allgas.
14. 143 A local building inspector once, unaware of who Mr. Gee was, said he wanted to meet that gasfitter from Upper Takaka because he heard he was "border line psychotic" , this was said after spending smoko with Mr. Gee for some time and getting on quite well with him. When Mr. Gee informed the inspector who he was, the inspector looked very uncomfortable and left. This is the result of the character assassination leveled at Mr. Gee, and sadly is but one example of this type of treatment.
14. 144 Mr. Gee tried to re-launch his business several times, doing letter drops and contacting his old customers with a brief overview of how he was treated, but very little work was found, not enough to support his family.
14. 145 Mr. Gee is often referred to as the "guy who blew up the chip shop"; even people at the Board refer to Mr. Gee in this way, even though no-one has been held accountable for the explosion.

14. 146 The first local job found at the local power station lasted 3 years but came to an end when Mr. Gee was made redundant. Mr. Gee felt he was “managed out” because he was told they were de-manning the power station, but all the other employees kept their jobs and a person was hired to replace him, all be it in a mobile reaction team. Mr. Alan Bickers who had sat on the discipline panel was involved in the restructure.
14. 147 Mr. Gee’s reputation has been effected globally as Mr. Gee found his case being discussed on a UK plumber’s forum where the people posting said Mr. Gee got what he deserved, when Mr. Gee put his side forward it was deleted and censored by the site adjudicator. Mr. Gee is originally from the UK.
14. 148 The problem appears to be that the investigator’s, and so the Boards, opinion is given such weight that they are blindly believed and this is why they both have a duty to be, or perceived to be, run with transparency, impartially, integrity and honesty. Mr. Gee believes he has seen none of this.
14. 149 Mr. Gee now works as a shift worker in a factory operating a 8mw steam producing boiler, steam is something he has spent the last 25 years trying to prevent in the central heating and hot water systems he has installed over that time to avoid any explosions. Even though this industrial system is tried tested and apparently safe and designed to produce steam it is very stressful to him.
14. 150 Mr. Gee feels it is the only way to provide for his family and not disrupt their lives and schooling. The shift patterns mean he is quite often working alone when his family is at home and at home alone while his family is at school and work. With the position being a solitary one this makes for a lot of time alone. Before the explosion Mr. Gee enjoyed being on a different site every day having smoko with different people every day. The position means regularly working a night shift, Mr. Gee finds this very disorienting and not conducive to being a hands on parent.
14. 151 The outfall from the treatment by the Plumbers Gasfitters and Drainlayers Board lasts to this day for Mr. Gee and his family. Mr. Gee and his wife wanted to build the now lost business to hand down to their two sons; this is now out of the question.

The Final Minutes

14. 152 The final three minutes of the hearing held against Mr. Gee were probably the most telling that appear to have been ignored. Mr. Hammond the Investigator under Cross Examination by Mr. Gordon regarding Malvern Avenue. Here is the copy from the transcript:

Q. That's fine. Now, the second thing I have just to clarify and you're talking about Part 1 and Part 2 of the Act. Now Part 1 is what must be done, what you must comply with?

A. Part 1 is the mandatory requirement.

Q. Mandatory requirement, yes, and Part 2 is a way of compliance?

A. That's correct.

Q. Now, the reason I was asking about that, because on page 35 of the edition I have here, 1.5.7, it meanings about flue terminals and in the second paragraph of that section it reads: "Flue terminals shall be located to minimise entry of combustion products into any building and to minimise the effects of adverse draft on the performance of the gas appliances". So in reading that, if there's no gas entering into a building, then it complies with Part 1?

A. Yes, the aim of that is to make sure that gas does not enter into the building.

Q. So that's the aim of it, so if there is no gas, say in this case we've got two situations where people are saying there's no gas entering, then according to that paragraph then it complies with Part 1 of the Act?

A. No, I don't rely on consumers whether the gas was entering or not, it is the gas fitter's job to locate it in such a way that gas does not enter the building.

Q. But that's what it's saying here though isn't it, it's saying that if the flues aren't entering the building then it complies with Part 1?

A. Yes, but -

Q. And if the customers are saying fumes aren't entering the building then it's compliant with Part 1?

A. But in order to ensure that under all conditions products of combustion do not enter into the premises, then one way of complying is to ensure that the clearances are in accordance with Part 2. If you are putting in an appliance with clearances other than those in Part 2, then you need to demonstrate how the - how you have ensured that under all conditions the products of combustion can't enter the property.

Q. That doesn't say "in all conditions" there. Does it say in here "all conditions"?

A. No it doesn't say all conditions, but that's surely a general inference from the requirements of the standard to meet all conditions.

Q. Well an inference is fine, but as per it says here the - that's located to minimise entry of combustion products and to minimise the effects of adverse draft et cetera. So those - if there's no fumes entering those two locations that we've been talking about, then they're actually compliant with the mandatory part of the NZS 5261?

A. I don't have any knowledge of whether products of combustion are in fact entering or not. I have not carried out any tests to demonstrate. I am unaware of any tests that have been carried out to demonstrate that.

MR PARKER:

Well I think we have reached the point where we are having submissions, so I think we can adjourn now.

MR BICKERS

Q. Mr. Hammond, I'm sorry I'm just thinking about what Mr. Gordon had put, under what circumstances does 1.5.7 take precedence over 1.6.2? And 1.6.2 which is the manufacturer's instructions, which in turn is table 16, so what would be necessary to say that you've complied with 1.5.7 and you can override 1.6.2?

A. If the manufacturer had carried out some tests and designed a particular appliance in a particular fashion that he felt that it could be put closer to some other part of the building or whatever, then presumably he would provide that information to the gasfitters so they could see that it was appropriate to do so other than was specified in the means of complying.

MS INESON

Q. Supplementary on that, so does that mean on page 101, is that the point of number 6?

A. Sorry?

Q. In page 101 is that the point of note 6 at the bottom of the page?

A. Yes, that note is there specifically for.

Q. To describe what you've just described?

A. Yeah.

(Witness excused)

14. 153 As can be seen the Investigator didn't have any knowledge of whether products of combustion were in fact entering the building or not. He had not carried out any tests to demonstrate they were. He was unaware of any tests that had been carried out to demonstrate that. His job was to prove the offence and part of that offence was non compliance but yet he just admitted he didn't know if the installation was complaint or not.

14. 154 It is quite disturbing that the hearing was abruptly cut short at this stage by the Presiding Member Mr. Parker.

14. 155 Note 6 that Ms Ineson referred to stated:

(6) Some gas appliances may be suitable for closer installation, refer to manufacturer's instructions.

14. 156 British Standards state 300mm based on the manufactures instructions but they were not referred to in the hearing. Needless to say the installation was safe and had been demonstrated by Mr. Gee to be safe. The Investigator did not prove that it was unsafe. Mr. Gee was found guilty of installing the unit closer than 1500mm based on the manufactures instructions which were based on the NZS 5261:2003.

14. 157 It must be remembered that the Legal advisor stated the Burdon of proof is on the investigator and Mr. Gee doesn't need to prove anything.

Part 15: The Cost Disclosure

- 15.1 As part of the penalty submission Mr. Gee and Mr. Gordon were asked to comment on costs. This required the Board to release records of costs to them. This revealed the extent of what had been attributed to the investigation into Mr. Gee but also posed more questions with regard to information withheld from Mr. Gee during the discovery process.
- 15.2 Throughout the investigation the Gas Certificate process came under scrutiny and in particular the fact a number of the certificates seemed to have been completed by more than one person. Amongst the selection of invoices was an invoice from a forensic document examination and handwriting expert for 12 hours of consultation, examination and report.
- 15.3 No report was used in the prosecution of Mr. Gee nor was one supplied during the pre-hearing discovery process. On 25 January 2011, prior to the hearing, Mr. Laurenson sent a memorandum for Mr Gee to sign. The email the memorandum was attached to stated in part:

“Further to our telephone conversation this morning, would you please let me know whether Mr. Gee is prepared to sign the attached memorandum. As I explained, if there is any dispute about whether Mr Gee signed the gasfitting certificates that are the subject of the charges, I will call a handwriting expert to give evidence to the effect that it is Mr Gee’s signature on those certificates. Given that I have to provide the Investigator’s witness statements by 1 February, I would be grateful if you would let me know as soon as possible. If he is prepared to sign the memorandum, would you please arrange for him to date and sign it and then send it back to me”.

- 15.5 As can be seen there is no mention of a report and no mention of evidence Mr. Laurenson already had, such as an opinion in a report. The invoice from the handwriting expert was dated 20 September 2010 so it is presumed the prosecution had been in possession of the report since around that time. If Mr. Laurenson had evidence in the report and was going to record a statement if necessary why did he not supply the report to Mr. Gee and Mr. Gordon?
- 15.6 So what did the report contain as 12 hours is a considerable amount of time for a document examiner? Did the report confirm more than one person had completed some of the forms and was anything contained in the report relevant to Mr. Gee’s defence?

- 15.7 During the course of the investigation and hearings it was claimed the investigation into Mr Gee and Mr Darnley was conducted as two separate investigations however the invoicing from the investigator indicated that was not the case as some invoices stated as the reference "Windelburn v Gee and Darnley, others stated DOL vs Gee and Darnley. It wasn't until January 2011 that the reference changed to Windelburn v Gee.
- 15.8 Throughout the investigation and the hearing the Board claimed the Audits conducted by Casey Inspections were not part of the investigation but were part of the national review that occurred at that time, yet in the costs of the investigation there is an invoice from Casey Inspections for 25 audits performed on Mr. Gee. It should be noted also that the invoice contained an amount of \$1,950.00 plus GST for review of three other totally unrelated cases.
- 15.9 The cost disclosure also revealed 70 hours of work by a second investigator, Mr. John DeBernardo, Gas Safety Limited. He was not called to give evidence and his notes were not supplied until after the case had finished and the notes were requested under the Official Information Act.
- 15.10 The notes showed another eight audits performed on Mr. Gee's work and that an interview with Mr. Darnley had acknowledged some errors may have been made in the certification process. There was also an indication in the notes that Host Service Company may have installed the appliances. All very relevant facts to Mr. Gee's defence.
- 15.11 There was also a reference in the notes regarding a third cooker hose supplied under warranty in early 2004. The obvious question was who was it supplied to and who fitted it? Reference was made to a Mr. D Bergemann who was a truck driver for Elgas but had moved into the service department. There is no record of him being interviewed.
- 15.12 The disclosure of costs posed more questions and identified more areas where information had not been supplied to the defence. The industry should be worried about how open and fair the process was in the case of Paul Gee.
- 15.13 Of even greater concern was the cost imposed on the industry. For example nearly \$20,000 on expert assistance such as audits, over \$20,000 in investigator costs, over \$37,000 in a lawyer costs to assist the investigator, nearly \$10,000 for a legal advisor and nearly \$17,000 for the three day hearing. These figures do not include the Board lawyers and administrative assistance.
- 15.14 The cost of the Motion to Dismiss hearing was separate as was the appeal to the high court.

Part 16: Conclusion

- 16.1 This review has no power to hold anyone to account for the manner in which the case has been dealt with. Mr. Gee has endured eight years of mental anguish because reasonable care has not been taken in the investigation of the allegations against him. The investigation was not in accordance with generally accepted rules or standards.
- 16.2 With regard to the appointment of the investigator the Board's power to appoint investigators was provided for in s.40 of the 1976 Act however the information provided to the industry was clear - it is the investigator qualifications, it is the person specification pre-requisites as developed by the Board for the position of investigator and it details the person specifications. It is what an average person in the industry would believe.
- 16.3 In this case there is a thin line between acting in bad faith and not taking reasonable care. This, it would seem, relies on a state of mind, the purpose of decisions made and actions taken by the investigator, acting Registrar and the Board. There seems to have been protectionism of the gas certification system and a great deal of credibility was afforded to the investigator even when it was obvious investigative standards had not been met.
- 16.4 It is quite clear Mr. Hammond requested audits based on seven inspections he conducted where he applied current legislation to the audits and came up with a flawed conclusion. This conclusion was the catalyst for requesting further audits. Those questionable additional audits resulted in the identification of six sites where there were alleged issues. Mr. Hammond failed to investigate the audit findings and laid charges based on information from those audits.
- 16.5 There is confusion between the Board and the investigator about the state of the audits however the six sites where charges were laid were all part of the audit. The Registrar should have known that the sites were the subject of investigation and as such should have proceeded administratively with caution. The Board has claimed that any wrong information in the letters was purely an oversight.
- 16.6 The Board correctly found Mr. Gee not guilty of 42 counts and should be commended for that however the transcripts of the hearing show the word of the investigator held more weight than that of Mr. Gee. The Board in its decision alleged Mr. Gee had referred to himself as a "Mere plumber". This erroneous reference is apparently consistent with "mere faulty recollection" but what impact would that statement have on an average person reading the decision? The Board

had a second version of the statement in their Penalty Decision where they stated he referred to himself as *“only a plumber”*

- 16.7 The purpose of an investigation into plumbers, gasfitters and drainlayers is to seek the truth of a potential violation of the Plumbers Gasfitters and Drainlayers Act to determine what happened, what were the causes, who was responsible, what actions should be taken to correct the current situation, and what actions should be taken to ensure that a similar violation does not occur in the future. The Investigation into Mr. Gee failed on all counts.
- 16.8 This review concludes there is sufficient evidence to show there was insufficient or poor investigation of the facts and the investigation was performed in bad faith or without reasonable care. As charges were laid prior to the matters being properly investigated it appears the remainder of the actions were about personal preservation and about professional reputation.
- 16.9 The Plumbers Gasfitters and Drainlayers Board is not blameless in the resulting situation and although they found there was insufficient proof to support the charges they still went to great lengths to denigrate Mr. Gee. They appear to have made great efforts to achieve an outcome from the explosion investigation within common industry focused legacies. People have been given the opportunity to protect those personal legacies through the misplaced trust and authority entrusted to them. Those same people have failed to hold anyone to account for any of the offences Mr. Gee was accused of.
- 16.10 Mr. Gee has been a victim of poor legislation with regard to what, how and to whom he must demonstrate his actions. The findings of the Board show that to demonstrate or justify the tradesman’s actions they must prove it to the Board but this is not what the legislation states. The Certifier must pit his skills and knowledge against the skills and knowledge of the investigator and then the Board. In this case it is simply the Boards opinion against Mr. Gee’s opinion. The Investigator did not prove gas or fumes were entering the building or could enter the building.
- 16.11 **This review has no jurisdiction to force any action by the Plumbers Gasfitters and Drainlayers Board but believe that as the Board is a perpetual Board there should be accountability and Mr. Gee and his family should receive official recognition of wrong doing and should be compensated.**