



## Fellow Practitioner Issue 391 Dated 21 February 2020

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#### Dear Editor

The Federation needs to keep its head down for its own protection. The Board has taken its first shot at you by kicking you out of the Stakeholder Liaison Group so there is no telling what is next.

You guys may find yourselves on the end of some form of vindictive action against the Federation or you guys personally. Putting your heads above the parapet waiting to get shot at is all well and good but it's risky so stay safe.

#### ED

Thanks for the words of advice reader.

You mention about the Board taking its first shot at us, well that may be the first shot in this battle but certainly not the first shot in the war. Over the years we have been excluded, threatened and have had letters from some of Wellington's top lawyers regarding slander and

### OMBUDSMAN DECISION



Last edition we mentioned the bid to obtain information regarding the Accelerated Apprenticeship scheme from the Plumbers, Gasfitters and Drainlayers Board had failed.

Now we're not too worried about not getting the information as it appears the scheme is not being progressed, probably due to ROVE. What is concerning is the manner in which development of the scheme was started and the use of surplus industry money to fund its development.

We say surplus industry money because the Skills Organisation is our Industry Training Organisation which is a non profit organisation. They are funded by TEC (Tertiary Education Commission) for our industry and from apprenticeship fees which incidentally have gone from around \$3,000 just over a decade ago to around \$13,000 now.

The Skills Organisation and the Board entered into a Memorandum of Understanding which is basically the rules the two organisations will abide by when dealing with each other. In the Memorandum it stated the Accelerated Apprenticeship scheme was an industry lead project.

The Board's commitment to the scheme was to look at altering the supervision requirements of Accelerated Apprentices once they had finished their 12 month Polytechnic course.

The question must be asked would they have actually been an apprentice when on the course or was it an elongated and glorified pre-trade course?

Remember this scheme was born out of an overseas "fact finding mission" by Skills, the Board and Master Plumbers. Funding for the trip was paid for with industry money by Skills and the Board and Master Plumbers paid for their representatives.

We find it very interesting that the Ombudsman found in favour of the Federation in his initial decision but reversed his decision after further feedback from the Board. This is what he said:

defamation.

This has been at an organisational level as well as personally for some of the Federation Executive Committee members. It's quite ironic that those of us wanting change to improve the industry and make it more productive pay all the costs and take all the risks.

The legislators take no risk at all and the regulators liability is limited and is really only covered if actions are careless or in bad faith. Both very hard to prove. It really boils down to the fact that if the Government or its regulators, such as the Board, want to get you they can.

Everything is written to support them and although the Office of the Ombudsman says they are there to provide "Fairness for All" it is very limited to what they can do. Its only fairness if it falls within the legislation.

Legislation is written to support the regulators and the rest is just a bureaucratic minefield which we have to pay to get through via lawyers and courts. The system relies on Boards being fair and transparent and as practitioners we know that is not always the case.

### Dear Editor

Could you please stop the Fellow Practitioner coming to me as I am retired after 50 years in the industry and it seems the same things that happened in the 1970 when I become a

*I previously advised you that I had formed a provisional opinion on your complaint and I was providing the Board with an opportunity to comment, before I decided whether to confirm my opinion as final.*

*I have now received a further response from the Board and having considered this material, I have decided to revise my provisional opinion. I appreciate this delay is frustrating for you, however, I trust you understand the importance of allowing the affected party to comment.*

In essence the Board had partially refused our request under section 9(2)(ba)(ii) of the Official Information Act 1982 (OIA). In the response to the Ombudsman's decision they changed it to section 9(2)(ba)(i) of the OIA. Maybe this was a typing error but we will never know as we don't get to see the response the Board sent to the Ombudsman however the Ombudsman stated:

*Section 9(2)(ba)(i) applies if the withholding of the information is necessary to 'protect information which is subject to an obligation of confidence ... where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied'*

He later stated:

*Section 9(2)(ba)(i) of the OIA requires that disclosure 'would be likely to prejudice the future supply of similar information, or information from the same source. In this case, I am satisfied that such consequences would be likely. Skills entrusted the concept to the Board to assist with its functions in relation to the approval of registration requirements for plumbers, gasfitters and drainlayers. The Board considers that the concept would not have been provided if Skills had been advised that the Board would not be able to maintain confidentiality of the concept.....*

The Board considers that the concept would not have been provided if Skills had been advised that the Board would not be able to maintain confidentiality of the concept – this is amazing in that the Board was part of the fact finding mission that started the project.

Apparently the Board advised it receives a range of information of a similar nature, as part of its role, so the Ombudsman considers it likely that other organisations would be reluctant to provide the Board with their similar information, if the Board was unable to maintain confidentiality.

The following quote is from the Board's response to the Ombudsman:

*"If such industry training organisations cease to liaise with the Board over proposed changes to registration requirements, the Board's ability to ensure the development of appropriate course offerings will be impaired and the Board will be unable to properly carry out its statutory functions"*

It would seem the importance of the relationship and the free

Registered and then Craftsman plumber and gasfitter are still happening and being discussed.

## ED

Thank you for your fifty years of service to the industry and for protecting the health and safety of the public and we don't say that lightly as it is the practitioners that do all the work and the regulators and the government that try to take the credit.

Like many others who are reaching retirement age you have seen that not much has changed and over the decades there has simply been a rehash of the same garbage and its discussion has been on a cyclic rotation.

The successive governments have turned a blind eye to the plight of the industry by simply accepting the regulation that is in place. The Plumbers Gasfitters and Drainlayers Act 2006 was supposed to resolve a lot of issues but in reality has probably made the situation worse.

As an industry we can probably sit back and wait another few years for the review to be completed and laugh at what the bureaucrats do and what their lap dogs implement as part of the regulation of the industry.

## LEARNING FROM THE PAST

In 2013 Chris Hipkins had this to say about retrospective legislation when it was the Plumbers,

passage of so called confidential information between Skills and the Board is more important than the industry knowing what is happening.

The Ombudsman mentions about the public interest as follows:

*Notwithstanding the above, section 9(1) of the OIA requires that I consider whether there are any public interest factors in favour of disclosure, that outweigh the interest protected by section 9(2)(ba)(i). In this case, the Board has identified the specific public interest in the registration requirements that are approved by the Board for plumbers, gasfitters and drainlayers. I have also considered the general public interest in transparency and accountability. In particular, there is an interest in disclosure of information that enables people to understand how organisations such as the Board are performing their functions.*

*However, I consider this public interest has been met by the information already released. I note that you have been provided with a summary of the concept, as part of the MOU. This gives an adequate description of the concept and the extent of the Board's interactions with Skills in respect of this. Further, should such a proposal be fully developed, the Board would provide this to industry and other interested persons to enable them to provide feedback and comments, as per their statutory obligation. Release of the concept in its current form would not further the relevant public interest, as the concept is still at a formative stage and was only provided to the Board to allow the Board to preliminarily determine the consistency with standards and registration requirements.*

*The public interest in this information does not outweigh the importance of the Board maintaining confidentiality, in matters such as this.*

The Federation was invited to comment on the Ombudsman's decision which it did. This is the Ombudsman's response to the Federation approximately 8 months after the initial complaint:

*Thank you for your letter of 6 January 2020, concerning your complaint about the decision of the Plumbers, Gasfitters and Drainlayers Board to refuse your request for the above information.*

*I have now had an opportunity to consider your comments on my provisional opinion. You have explained that the purpose of your request was to confirm the scope of the proposed project, in order to understand the potential effect of an accelerated pathway for apprentices. You are mainly concerned about public safety and potential anticompetitive behaviour. You also note that, 'the industry has no representation on the Board or say in the manner Skills operate and the only way to hold them accountable is to have access to information by way of OIA requests to the Board.'*

*You may be aware that the Government is currently reviewing the provision of vocational training in New Zealand with the goal of developing a new Vocational Education and Training System. This means that all work on the accelerated pathway concept has now been put on hold. In any case, I would reiterate my comments*

Gasfitters, and Drainlayers Amendment Bill.

He said, "simply imposing this by way of a legislative override, effectively, of a whole lot of organisations—the Regulations Review Committee, the Ombudsman, and various others ... to ride roughshod over those organisations through a legislative process is not the right way to do it. It is manifestly unjust. It is simply not right. Retrospective legislation is not right."

In our opinion he was right with regard to retrospective legislation and doesn't the same apply to all other legislation? Should the legislation be used AGAINST industries to enforce the will of the Government.

Our industry has been through this cycle before where the Board uses exclusion tactics and legislation to impose their will on the industry and when they hit rock bottom with regard to credibility they fall back on members of the cartel to survive and start again.

We need your feedback about how do we get what we want. Do we negotiate, protest, strike, or simply ignore the regulation of the industry?

*regarding the Board's statutory obligation to provide any fully developed proposal to the industry to enable them to provide feedback and comments and note that you would still have the opportunity to view and comment on the proposal, if it were to be progressed.*

*I remain satisfied that the summary of the concept provides an adequate description and demonstrates the extent of the Board's interactions with Skills in respect of the work done. I have previously acknowledged the public interest in this information and remain of the view that this does not outweigh the importance of the Board maintaining confidentiality.*

*For the reasons set out above, and in my provisional opinion, I have now formed the final opinion that the Board was entitled to refuse your request under section 9(2)(ba)(i) of the Official Information Act 1982. I have concluded my investigation*

So there you have it – as an industry we have no rights to know what is happening between Skills and the Board if they claim confidentiality. Even though both are funded completely or in part by the industry we are excluded from projects if confidentiality is claimed.

The Ombudsman seems adamant that the industry would still have the opportunity to view and comment on the proposal, if it were to be progressed.

For those of us who have been battling for fairness for a while would know this is very debatable and could cite the Industry Connection for Excellence (ICE) project developed by the Skills Organisation.

This was established with virtually no input from the wider industry despite Skills providing seed money for it, along with a senior staff member for the ICE Board.

The behaviour displayed does not appear to be that of open and transparent organisations.

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