

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2024-009-000064
[2025] NZDC 16964**

BETWEEN

DANIEL GREAME WILLIAMSON
Appellant

AND

EOGHAN O'NEILL
Respondent

Hearing: 23 July 2025

Appearances: Appellant appears in Person (via AVL)
A van Echten and K Kerrigan for the Respondent (via AVL)

Judgment: 7 August 2025

RESERVED JUDGMENT OF JUDGE P R KELLAR

Introduction

[1] In the early 2022, the appellant, Mr Williamson, complained to Engineering New Zealand about the conduct of Mr O'Neill. He alleged that in drafting a report about the Waipori Falls Wastewater Treatment Plant ("the Treatment Plant") Mr O'Neill had breached the code of ethical conduct by falling short of standards expected of a chartered professional engineer. The focus of Mr Williamson's complaint concerned how a rock filter should function.

[2] The Registration Authority for Chartered Professional Engineers ("the Registration Authority") conducted an initial investigation into the complaint. On 23 March 2023, the Registration Authority dismissed the complaint finding that there were no applicable grounds of discipline.

[3] Mr Williamson appealed to the Chartered Professional Engineers Council (“the Council”). It too found the complaint to be without merit. The Council dismissed the appeal, ruling that none of the grounds of the appeal had been made out.

Approach on appeal.

[4] Mr Williamson now appeals to the District Court. Pursuant to s 37 of the Chartered Professional Engineers of New Zealand Act 2002 (“the Act”) first appeals to the Council and second appeals to the District Court are by way of rehearing. The Court may confirm, vary, or reverse the decision or part of the decision to which the appeal relates. The court may refer the matter back to the decision authority for it to reconsider either generally or in relation to specific matters.

[5] A general appeal is conducted based on the record of the court or tribunal appealed from. The “appellant bears and onus of satisfying the appeal court that it should differ from the decision under appeal”.¹ It is only if the appellate Court considers that the appealed decision was wrong that it is justified in interfering with it.

Deference to specialist bodies

[6] It is well-established that, where the decision-maker has specialist or technical expertise, the appellate court may approach the resultant decision with due deference.²

The Regulatory Regime

Chartered Professional Engineers of New Zealand Act 2002

[7] The purpose of the Act is to establish the title of “chartered professional engineer” as a “mark of quality”. The Act establishes a registration system and requires a code of ethics and disciplinary process to apply.

[8] Pursuant to ss 8, 24 and 39 of the Act, the Registration Authority is the professional body charged with determining whether a person should be registered as

¹ Austin, Nicols & Co Inc v Stitching Lodestar [2008] 2 NZLR 141 at [4]

²Lodestar above n 1 at [5]

a chartered professional engineer. It also makes rules relating to chartered professional engineers and receives, investigates, and hears complaints about the conduct of chartered professional engineers.

[9] The “standard” against which to measure the performance of a Chartered Professional Engineer for alleged breaches of the Act or the Chartered Professional Engineers of New Zealand Rules (No 2) (“the Rules”) is:

... whether there has been a serious lack of care judged by the standards reasonably expected of a Chartered Professional Engineer. That standard may be informed by whether reasonable members of the public would consider such act or omission, if acceptable to the profession, were to lower the standards of that profession in the eyes of the public.

The complaints process

[10] Under s 20(1) of the Act, any person may complain to the Registration Authority about the Conduct of a Chartered Professional Engineer in accordance with the Rules. Once receiving a complaint, the Registration Authority must carry out an initial investigation and either refer the complaint to an investigating committee or dismiss the complaint on a ground in Rule 57. Rule 58 outlines how the initial investigation will be completed. Essentially, a complaints research officer is appointed to carry out an initial investigation of the complaint. The complaints research officer forms a recommendation of whether the decision should be investigated further or dismiss the complaint. The recommendation is passed to a chairperson of investigating committees who is referred to as “the adjudicator” and who will consider whether the complaint can be resolved via mediation.

[11] The chairperson of investigating committees decides to refer the complaint to an investigating committee. A committee of three is then appointed. The investigating committee will decide again whether to dismiss the complaint or to refer a complaint on to a disciplinary committee.

Factual background

[12] The treatment plant was built in 1966 to treat and discharge wastewater from the Waipori Falls village into the Waipori River. The treatment plant operates under a

discharge permit granted by the Otago Regional Council (“the Council”) and is managed by the Body Corporate.

[13] The treatment plant is comprised of several components. The filter at the centre of this proceeding was added by 2008 and is the last stage of treatment before the effluent is discharged to the riverbank.

The original discharge permit in 2004

[14] The original discharge permit was issued in 2004. In the application for the 2004 permit, Duffill Watts & King Ltd, now Fluent Solutions, an engineering consultancy, proposed that a rock filter be installed on the riverbank. Local iwi were consulted as part of the proposal.

[15] With respect to the rock filter, the 2004 Council Report relevantly states:

The applicant proposes to undertake some minor improvements to the treatment system to ensure optimal performance. This includes installation of a rock filter to even out fluctuations in the treatment plant performance and assist in addressing cultural (iwi) concerns by providing some “land contact” and effluent purification prior to discharge to the river.

Although DWK propose to construct a rock filter on the riverbank to provide “land contact”, a discharge permit to discharge wastewater to land is not considered necessary. Contact with the riverbank will be minor and the primary receiving environment is the river as wastewater will overflow from the filter to the river.

The rock filter would be constructed as an excavation filled with rock/gravel. While the soils are relatively impermeable, DWK considers this will enhance the “naturalness” of the system and encourage some seepage to the ground before overflow to the river, increasing effective detention time in the filter...

[16] The discharge permit was issued with the condition that a rock polishing filter be installed which was done by February 2008.

The 2019 storm event

[17] In early 2019, a storm event badly damaged the treatment plant, rock filter and outlet infrastructure. Photographs taken after the storm event showed significant damage to the riverbank itself and the near complete destruction of the rock filter.

[18] IT Plumbing completed insurance fund repair works by 20 May 2019. The repair works included the “reinstatement of Waipori riverbank with large rocks, netting and clay” and “replacement/reconstruction of the rock filter bed; reconstructed to a deeper specification of 2.5m”.

The 2019 renewal of the discharge permit

[19] The discharge permit was due for renewal in 2019. Fluent Solutions was engaged to assess the treatment plant and provide information to support the consent application. They visited the site on 5 June 2019 before providing an “Assessment of Environmental Effects”.

[20] The Assessment of Environmental Effects provided a description of how the treatment plant treated wastewater and stated the rock filter: “... polishes the secondary treated effluent and provides ‘land contract’ before the effluent is discharged to the riverbank ...” It further stated that “[t]he final discharge point after the rock filter is on the gravelly riverbank rather than directly into the flow of the river”.

[21] The Council engaged Pattle Delmore Partners to review the technical aspects of the Assessment of Environmental Effects. On 9 July 2019 they completed a technical memorandum for the Council. The memorandum stated:

... the applicant notes that discharge through the buried rock filter is effectively a limited discharge to land indicating that the system is not sealed.

While it is considered likely that a limited volume of treated effluent enters the groundwater locally from the buried rock filter, there are no nearby takes to be affected. Given the low permeability of the geology and the likely presence of fractures and preferential flow paths, it is considered likely that shallow groundwater discharges into the river in the vicinity. It is therefore considered that any effects of groundwater quality would be extremely localised, and the effects would be less than minor.

[22] Council consent officers prepared a recommendation report recommending the Council grant the discharge permit subject to terms and conditions. The Report noted the comments made in the Pattle Delmore Partners’ memorandum regarding effects of the discharge of groundwater. The recommendation report also notes the cultural

significance associated with discharging wastewater to water, but that the local iwi had provided written approval to the application.

[23] On 7 October 2019 the discharge permit RM 19.201 was issued by the Council. The permit was granted on the basis the system was a discharge of wastewater to water as opposed to a discharge to land.

The 2020 Pattle Delmore report

[24] In early January the Body Corporate determined that the sewage plant had not been fixed properly. Subsequently, it engaged Mr O'Neill of Pattle Delmore to visit the treatment plant and prepare a report commenting on the storm event and the damage resulting from it, remediation of the rock filter, arrangement of the pipework and the resultant nature of the discharge with respect to the consent requirements.

[25] On 21 October 2020, Mr O'Neill visited the treatment plant. Other engineers at Pattle Delmore then prepared the 2020 report which Mr O'Neill approved and signed on 15 December 2020.

[26] The 2020 report found that:

- (a) There were faults with the outlet pipe construction, materials used (including the use of house drain, telecom duct and what appeared to be a downpipe).
- (b) The pipework had been inserted into a "decommissioned concrete pipe".
- (c) A liner appeared to have been placed during the reconstruction of the rock filter bed, but it was unclear if this was an original or new liner.
- (d) The rock fill appeared to have been placed directly against the liner in the upper visible portion of the rock filter, but it would have been best practice to use a blinding layer; a layer of sand or round gravel directly against the liner to prevent it from being damaged by the granite chip

used as the primary fill in the rock filter. However, there is no visible evidence of a blinding layer.

- (e) The purpose of the rock filter was to provide a sealed space for wastewater to have contact with the rock prior to the wastewater discharging via the outlet pipe.
- (f) Wastewater flow was percolating through the ground and into the river through the riverbank, which indicated that the rock filter was inappropriately sealed. Such an appropriate seal was due to inadequate liner placement or damage being caused to the liner when rock fill was placed.

[27] The 2020 report also made the following recommendations for the remediation works so that the treatment plant could comply with the 2019 discharge permit:

- (a) Replacement of the rock filter liner with a new polyethylene plastic to be fully sealed.
- (b) Re-laying of the outlet pipe from the rock filter to the river outlet.
- (c) Refilling of the rock filter with appropriately graded material including a blinding layer.

The complaint

[28] On 6 March 2022, Mr Williamson complained to Engineering New Zealand about Mr O'Neill. The primary concern was that the 2020 Pattle Delmore report concluded that the rock filter was not appropriately sealed either through inadequate placement of the liner for through damage to the liner. Mr Williamson was concerned that this contradicted the 2004 discharge permit and 2019 Pattle Delmore memorandum.

[29] During the initial investigation by the Registration Authority, Mr Williamson's complaint raised six specific concerns. They included his concern that the 2020

Pattle Delmore report recommended a liner when “this would be contrary to its whole purpose of addressing the cultural concerns held by the local iwi” as a liner would “prevent the required ... land contact for treated wastewater before it is discharged into the river”. None of Mr Williamson’s grounds of complaint related to Mr O’Neill’s reliance on information supplied to by Messrs Jansen or Murphy. This ground of complaint raised for the first time before the Council on appeal to the District Court.

The chairperson of investigating committee’s report

[30] On 23 March 2023, the committee dismissed all aspects of the complaint finding that there were no applicable grounds of discipline.

[31] With respect to the 2020 Pattle Delmore report recommendations to install a liner in the rock filter, the committee considered that Mr O’Neill’s conduct did not need further investigation. The committee found that Mr O’Neill had determined that treated effluent accumulating within the rock fill due to their being no connection to the discharge pipeline, was finding its way into the groundwater through holes in the liner and emerging as seepage through the rock face of the riverbank.

[32] The adjudicator considered that Mr O’Neill had observed part of the liner during his site visit and, as such, concluded it was probably a “like for like” replacement. The committee considered Mr O’Neill carried out the brief given to him, which did not include a request to seek an expert opinion about whether the rock chamber as installed addressed iwi expectations regarding “cultural treatment”.

The Council decision

[33] Mr Williamson appealed against two parts of the committee’s decision. The first part is no longer relevant. The second aspect of his appeal related to his concern that the 2020 Pattle Delmore report recommended a liner be installed in the rock filter contrary to cultural concerns held by local iwi. He raised 10 discrete grounds of appeal including that Messrs Jansen and Murphy were not trustworthy sources for Mr O’Neill to base his report on; his observations about effluent ponding and seepage through the reinstated riverbank were not witnessed on site; and could not be correct.

[34] On 15 December 2023, the Council issued its decision dismissing the appeal. The Council devoted a considerable portion of its decision to issues associated with the liner. First, it considered that the committee's findings that there was a liner in place around the original rock filter, and that it was installed or replaced were reasonably available given the available photographic evidence. The Council considered that, even if those statements were in error, this would not indicate negligence or incompetence on Mr O'Neill's part.

[35] The Council also identified that there was a discrepancy between the 2019 Assessment of Environmental Effects and the 2019 Pattle Delmore memorandum which suggested an unsealed system and the liner that Mr O'Neill observed on-site. The Council observed that in hindsight it "might have been ideal to raise and resolve" this discrepancy; doing so they have led Mr O'Neill to expand on his reasoning as to different options and the most appropriate way to remediate the rock filter in the circumstances. However, given the scope of his engagement it was "reasonable for [him] ... to have focused on a resolution of the non-compliance issue identified - uncontrolled discharge - through a method which it appeared to him according with the rock filter's construction - a liner which prevented lateral seepage through the bank".

[36] The Council also considered whether, in recommending reinstatement of the liner, Mr O'Neill failed to consider cultural concerns regarding land contact before discharge to the river. The Council accepted that the rock filter was designed to address those concerns by providing land contact, although it was unclear as to whether that was intended to be achieved via the rocks contained in the rock filter, the surrounding ground, or the final discharge to the gravelly riverbank rather than into the flow of the river. The Council concluded that it was not in the position to make a finding as to what the most culturally appropriate design of the rock filter would be. It considered that, based on the appearance of the liner, Mr O'Neill made recommendations that the liner should be reinstated in a better way to comply with the requirements of the 2019 permit that there is a controlled discharge via the outlet pipe rather than seepage through the banks.

[37] The Council noted that Mr O'Neill had acknowledged the 2004 report contained new information that confirmed the rock filter was intended to be built into impermeable soils rather than being fully encased with an artificial liner. However, Mr O'Neill explained why the information did not change his recommendations. The Council concluded that as Mr O'Neill reviewed the 2019 Assessment of Environmental Effects report, review of the original 2004 Assessment of Environmental Effects report would have been prudent, but not essential. He was reviewing compliance with the current 2019 permit.

[38] The Council stated that, aside from whether there was sufficient evidence to support the claims regarding Messrs Jansen and Murphy's alleged misconduct, it was unclear the extent to which Mr O'Neill was reasonably expected to have been aware of them, what difference his awareness would have or should have made to his opinions and the 2020 Pattle Delmore report and, consequently, how the 2020 report, or Mr O'Neill's conduct in relation to producing the report, gives rise to a ground of discipline. The Council observed that it had "not seen anything to suggest that Mr O'Neill had acted other than in good faith in his approach to his engagement and issuing of the Pattle Delmore report".

Analysis

Construction of the original rock filter and the "illegal construction record"

[39] Mr Williamson contends that the original construction of the rock filter was done unlawfully, by unqualified residents. He considers this work was not compliant with the original 2004 discharge consent as it was constructed with a liner.

[40] Mr Williamson argues that the Registration Authority and the Council failed to acknowledge "unqualified civil works" occurred at the site. Mr Williamson seeks the Court consider whether the original construction of the rock filter was lawful or not. Mr Williamson makes related criticisms regarding the conduct of Mr Murphy and others involved original construction. He contends that they are guilty of breaches of the Plumbers, Gasfitters and Drain Layers Act 2006. He asserts that a prosecution against Mr Murphy is afoot.

[41] Mr Williamson has misunderstood the nature and scope of the disciplinary and appeal processes. The chairperson of the investigating committee was solely concerned with Mr Williamson's original complaint and the conduct and competency of Mr O'Neill as the engineer who was involved. The chairperson of the investigating committee appropriately held that the question of whether it was appropriate for there to be a liner in the original construction was outside his jurisdiction.

[42] On appeal to the Council, the question was whether the decision under appeal was afflicted by any material error such that it should be overturned. That is the same question for this court to determine on appeal. The Council referred to the statement of the chairperson of the investigating committee that the original construction was outside its jurisdiction. It did not, however, suggest there was any error in approach.

[43] I agree with the respondent's submission that there can be no suggestion the Council was wrong in failing to consider the legality of the original construction of the rock filter. The complaints and the appeal process are not the appropriate vehicle for pursuing general grievances relating to the actions of the parties or investigating the operation or construction of the rock filter or treatment plant generally.

Reliance on material provided by clients.

[44] Mr Williamson contends that Mr O'Neill inappropriately relied on material provided by Messrs Murphy and Jansen who were not trustworthy sources of information for Mr O'Neill to base his report on. He pursued this ground of appeal before the Council based on accusations against Messrs Murphy and Jansen. Mr Williamson now focuses upon a fresh allegation that Mr O'Neill inappropriately and fraudulently relied upon an "illegal construction of record" during the appeal.

[45] The reference to the "illegal construction record" appears to be to the photographs Mr O'Neill produced before the Council. The photographs were provided to Mr O'Neill by a former chairperson of the Body Corporate and supervisor of the works, Mr Murray Moore not Mr Murphy as Mr Williamson alleges. The photographs depict the original construction of the rock filter. Mr O'Neill supplied the photographs to the Council on the basis they verified his assumption that the rock filter was originally constructed with a liner.

[46] Mr Williamson alleges that by relying on those photographs he is guilty of “deception”. Mr Williamson says the court needs to “consider whether Mr O’Neill made use of a document to the Authority knowing it was false. He claims that MrO’Neill was either deceived by the “illegal construction record” or that he knew the record was “false” and is therefore in breach of section 21(b) of the Chartered Professional Engineers Act 2002.

[47] The decision of the Council records that Williamson as the appellant “does not dispute that these photos are of the original construction of the rock filter”. MrWilliamson did not raise any issues with Mr O’Neill providing the photographs to the Council or otherwise of the lineage that Mr O’Neill had committed full. Indeed, Mr Williamson referenced and expanded on those photographs in support of his arguments.

[48] Mr Williamson’s argument may be that reliance on the photographs was wrong given his assertion that construction of the rock filter was done in breach of section 8 (1) of the Plumbers, Gasfitters and Drain Layers Act 2006. That section sets out what “unsanitary works” are and cannot operate to prevent the sharing of photographs. There is no basis to suggest that Mr O’Neill ought not to have relied on the photograph let alone that he knew he should not. The allegation that Mr O’Neill acted fraudulently would need to have been supported by compelling evidence. It was not.

[49] Mr Williamson has misunderstood the purpose of a rehearing. He bears the onus to demonstrate that the decision of the Council was wrong. The Council’s decision was based on the allegations put to it at the time. Mr Williamson’s appeal centred around other allegations, such as the client withholding details of rock filter construction and members of the Body Corporate lying to the Council. Mr Williamson has failed to demonstrate that the decision of the Council was wrong. This aspect of appeal is dismissed.

Replacement in a “like for like” manner.

[50] Mr Williamson contends that the Council erroneously upheld the findings that the liner was replaced in 2019 in a “like for like” matter. He appears to argue that this

statement contradicts the decision of the Disputes Tribunal in which it held that the liner was pulled up on three sides rather than the original four.

[51] The decision of the Disputes Tribunal is irrelevant to the appeal. It was issued in September 2023, well after the findings of the investigating committee and after submissions were filed on the appeal before the Council. The factual findings contained in that decision were not and could not have been available to the investigating committee.

[52] Mr O’Neill observed a liner during his site visit 2020 and his recommendations were based on a liner being part of the original construction albeit the 2004 permit contemplated and unlined system.

Seepage through riverbank

[53] Mr Williamson contends had Mr O’Neill realised the rock filter was intended to be unsealed, he would not have “perceived the seepage via preferential flow path there is an actual fault when that is [what] was originally consented”. Mr Williamson also complains that Mr O’Neill miscategorised the seepage by describing “slight seepage” through the riverbank as the “discharge of all wastewater via seepage through preferential flow via the riverbank”.

[54] At the time of Mr O’Neill’s inspection, the 2019 permit did not envisage that the bulk of the effluent would discharge from the rock filter through the riverbank, whether the gravelly riverbank or mounded riverbank as Mr Williamson contends. The 2019 Assessment of Environmental Effects contemplated that the final discharge from the rock filter would be via an outlet pipe. As such the Council’s finding that the 2019 permit envisaged “a controlled discharge via the outlet pipe – not seepage through the bank” is unassailable.

[55] Mr Williamson appears to accept that the treated effluent was seeping through the “gravelly part” of the riverbank. He does not accept whether there was any seepage through the soil bank. The 2019 Assessment of Environmental Effects required discharge via the outlet pipe. Furthermore, the investigating committee’s decision refers to “seepage through the rock face of the riverbank” and the Council decision

also refers to the seepage through the “untouched, gravelly part of the riverbank”. It is unclear why Mr Williamson contends that those decisions were wrong.

[56] The Council found, identifying the contradiction around whether the system was permitted based on an unsealed system “might” have led Mr O’Neill to expand on his reasoning as to different options of the most appropriate way to remediate the rock filter. The Council correctly considered it was “reasonable” for Mr O’Neill to focus on resolution of the non-compliance, namely the uncontrolled discharge, through a method which appeared to be in accordance with the construction of the rock filter. Mr O’Neill explained that a liner had in any event become unnecessary to comply with the conditions of the 2019 permit by ensuring discharge via the outlet pipe rather than seepage.

Other matters

[57] Mr Williamson alleges that Mr O’Neill acted outside his area of competence when assessing the surrounding geology. He did not raise this issue in either of the previous hearings. This appeal is by way of rehearing. Hence this allegation is beyond the scope of this appeal.

[58] Mr Williamson also alleges that Mr O’Neill should have informed the Dispute Tribunal that his 2020 report was “under investigation” at the time of the hearing in the Disputes Tribunal and that his failure to do so is a breach of his obligation to act honestly. The decision dismissing the complaint had been issued by the time of the hearing. It is incorrect to say that the 2020 report was “under investigation”. Again, this is a new issue that was not raised as part of the initial complaint or the appeal to the Council. Hence, it is outside the scope of this appeal.

[59] Mr Williamson alleges that Mr O’Neill has “by association, engaged in and supported corrupt practices”. Mr O’Neill’s conduct following the 2020 was not raised as an issue in the initial complaint to the committee. Again, these issues cannot be considered as part of a rehearing.

[60] Mr Williamson alleges that Mr O'Neill did not clearly state the difference between the reinstated riverbank that forms the protective back wall of the rock filter allowing the Authority to believe there was an uncontrolled discharge.

[61] Those issues were appropriately addressed in the Council's decision. Any new matters are outside the scope of the rehearing.

Conclusion

[62] Mr Williamson has failed to show that the decision of the Council was wrong. The appeal is dismissed.

Costs

[63] As the unsuccessful party, Mr Williamson is ordered to pay costs. If the parties are unable to agree upon costs, they are to file memoranda of no more than four pages in length – the respondent by 29 August 2025 and the appellant by 19 September 2025.

Judge P R Kellar

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 07/08/2025