# Fellow Practitioner Issue 336
# Dated 23 June 2017

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IN OTHER NEWS

Letters to the Editor

**Dear Editor**

It looks like the employer in the Public Liability Insurance article has been pretty stupid, as has the employee.

Everyone knows you need to remove loose material and have a fire extinguisher when you weld in a wall.

I think they got what they deserved.

**Ed:**

Possibly, but we think you may want to look at the broader picture about why people have public liability insurance.

Most people have the insurance to cover the unlikely event of an accident and in this case the accident occurred but there is no insurance coverage.

If we were to apply your line of thought on say a

## Should We Prepare For Battle?


Over the last seven years the Federation has been involved in a number of skirmishes on behalf of the industry and we have had a lot of success.

Battles are hard fought even though we don't have the resources or perceived influence or contacts others have. Our wins have been evidence based and what our members believe is right for the industry as a whole rather than what is self serving for their individual business or situation.

We are not shareholders in training organisations, we don't have huge overheads to meet, we don't have a business model to follow, we are not accountable to sponsors or the government – we are simply tradespeople and supporters who want a better more productive industry that is regulated in a fair and equitable manner, unencumbered by having to "pay the piper."

Yet again there are possibly big changes ahead and we may have to fight for our rights and survival against those with self interest, this includes the Government. Remember the industry and the public ended up with a new gas certification system so the Government could save $2M. It ended up with gas certificate costs to the public increased by about 300%. Well it looks like it's happening again.

We know the Minister of Building and Construction wants to amalgamate engineers, architects, designers and construction trades under one regulatory organisation. Because of failures by the engineers, architects, and designers that have been identified during the Christchurch earthquakes he needs to regulate them appropriately. His answer is to chuck the constructions trades in with them in what we believe is an attempt for the government to save more money, with no guaranteed better outcome for those involved or those using the system.

car accident, where would a large sector of New Zealand be? A person is reversing out the driveway and hit the fence. If we were to apply your logic we all know there was a fence, we all know we should keep a safe distance from it but we reversed into it by accident. Do we deserve not to have insurance coverage?

When the article finishes we hope we will have changed your mind.

**Dear Editor**

With regard to the Public Liability article are you implying Public Liability Insurance is a waste of time?

I have a lot of it and reading through it I have the same fire clause in my policy and a few others I am looking at closely.

It makes me feel for the poor bugger you are writing about.

Ed:

Thanks for your comments. What we are writing about is one person's experience and the lessons others can learn from it. The fact you have looked at your policy is very pleasing to us because we don't want others to get caught and be bullied by their insurance company.

All policies are individual contracts and all we can do to help each other is to share experiences.

Contracts and legislation

This happened during the "Leaking Building" saga where tradespeople got blamed and had to upskill because of the failures of engineers, designers and suppliers. Why does this happen, simply because we are the easy targets that can fund the ideas of Government and we have no one body to represent us.

Our industry has worked hard and has been kicked in the guts enough by the Government (retrospective legislation etc) – well this time the Federation says 'NO' and if the Minister and Government want to fight about it then let the situation escalate.

At this stage we need you to get people involved in the future of the industry. Give us your thoughts; respond to surveys and requests for feedback. There is no doubt the Federation will be asked about how much of the industry we represent, so if you know of people who aren't on our mailing list or who haven't been receiving correspondence from us then get them to contact Wal Gordon, wal.gordon@xtra.co.nz, Mobile 027-6564811.

Last time we were asked about numbers we told them 1230 and we weren't lying. The then Minister flip flop Williamson made a comment *it was simply a mailing list* - well our way of thinking it's better to have a mailing list of interested people than to have a membership list where you pay hundreds or even thousands to be on that list and then get dictated to by people with self interest.

The simple truth is we need to outnumber others and if we are up against the Government then screw them, vote them out at the election at the end of the year.

We don't want to go back to fighting every man and his dog, or protesting during royal visits or even protesting at Parliament - but we will. The Federation has worked too hard to back down now. There is still so much more that can be done for a better industry – all we need to do is to make it happen and stop those with self interest from ruling the roost. We are so close to achieving great things for ourselves MAKE IT HAPPEN.

## Public Liability Insurance Part Three


Last issue of the Fellow Practitioner we finished off where the presence of a fire extinguisher under PLB510 was a joke when five fully kitted firemen, each with a 75mm fire hose fully charged and a helicopter with a monsoon bucket didn't meet the requirements of PLB510 as there was no suitable fire extinguisher.

We also questioned where an employer stood with regard to duty of care if they can't rely on the delegation of duties to the employee?

should be written so the average person can understand them but they aren't.

People drafting them seem to get tied up in wordiness and using terms that have multiple meanings.

In our opinion there would be a lot more compliance with legislation and contracts if people actually understood them.

**Dear Editor**

You mention some time ago about the number of exemption holders operating under so called supervision in our industry.

I'm presuming a lot of these people are from overseas and are helping fill the gap of New Zealand not having enough tradespeople.

I saw this in the news last week:

*Prime Minister Bill English says any drastic cuts to immigration would be bad for New Zealand's economic growth.*

*Mr English told Morning Report that, with near-full employment in some areas, slashing immigration when there was a need for workers would not be sensible.*

I feel we should be looking after our own people first. What do you think?

By the way I'm getting a lot out of your Public

Did this mean the employer must be present on each hot works job?

This comment was from the Plumbers Forum.

*"Hi guys/Wal, it seems to me that having Public liability Insurance against fire is a waste of time as:- if you had all the bases covered that were in the policy there would be no fire, cheers"*

That's a very good comment because it appears the PLB510 clause does not allow for ACCIDENTS so what is the coverage for?

Here's a comment from the insurance Company with regard to "Duty of Care":

*"In addition, you appear not to have taken reasonable precautions in order to meet the condition of "Duty of Care". According to the Plumbers, Gasfitters, and Drainlayers Board, Mr XXX, who is a limited certificate trainee, should only have been carrying out the works in the direct presence of his supervisor, yourself, or a registered certified plumber supervised by you.* **(Please note this is not what the insurance company was told by the Board as Mr XXX had done over 8,000 hours)**

*This requirement is to ensure that when Mr XXX carried out the work, he took reasonable precautions to prevent damage to property. Your company should not have sent Mr XXX to carry out the works unsupervised. Prior to the fire you knew, or should have known, that if Mr XXX carried out the work unsupervised, then there would be some risk of fire, and yet you permitted Mr XXX to carry out the works anyway"*

So it looks like the insurance company has taken the stance that after nearly five years in the industry the employee should have still been under direct supervision of his supervisor. So it's starting to look like "duty of care" can be anything the insurance company wants it to be. This is a prime example of the issues employers can face with regard to supervision in our industry.

You would probably understand that the employer was a little troubled at this stage as an insurance claim of this nature could quite easily destroy a business. **Take a couple of moments to reflect on what you would do – would you fight or fold?**

Obviously the employer had purchased insurance to cover accidents where there was liability. The employee didn't purposely start the fire - **IT WAS AN ACCIDENT.** We have already shown the difference between the training of apprentices and the wording of the insurance policy. The employer went from being a little agitated to being pissed off when the insurance company said this:

*"In our interview with Mr XXX, Mr XXX confirmed that he was aware of these are safety procedures which were taught to him at Weltech. Yet when Mr XXX carried out the work, he disregarded these steps. In the circumstances, the insured business did not take reasonable precautions to prevent the fire"*

When you look at the above paragraph, ignoring what the employee did or did not do, even though the employer has supplied training, Liability Insurance articles.

More of that type of thing would be good as we don't really get told much out here in the industry.

**Ed.**

Hi writer. Thanks very much for your comments on our articles and we will try to give you more information based articles.

As far as the comments from the Prime Minister go, it all gets confusing because we only get told what they want us to know which generally backs their ideas and in a lot of cases they are ideas to cover failures in other areas such as the lack of qualified tradespeople in New Zealand.

One that we picked up on the other night was the need for 40,000 houses to be built every year so to do that we will need to let 20,000 people into the country to help build them.

Our question would be do we need an extra 20,000 homes for those people or are they included in the 40,000?

If they are included in the 40,000 then perhaps they shouldn't be let in and then we only need 20,000 houses.

If they aren't included in the 40,000 then by letting them in we are making the housing shortage even worse by needing

knowledge and skills throughout the employee's apprenticeship and has supplied all safety equipment needed to do the job, the insurance company still claims the business didn't take reasonable precautions to prevent the fire.

It was mentioned by the investigator and the Insurance Loss Adjuster that the business should have issued a hot works permit to itself. What difference would a Hot Works Permit have made as it would contain the same information as the employee knew any way? Would having a Hot Works Permit put the employer into the realm of taking reasonable precautions or if it was ignored would they be in the same situation of being accused of not taking reasonable precautions?

It seems that apart from being on site and directly supervising the work the employer has no options.

Look at these two statements from the insurance company:

*If Mr XXX had complied with condition a., and had removed the loose building paper or shielded the building paper with a fire blanket, then it is likely that the fire never would have started.*

We ask "but what if it had?" Would the insurance company say we hadn't removed enough loose paper?

*If Mr XXX had complied with condition b. and had a fire extinguisher with him, then it is likely that had he not complied with condition a., he still could have extinguished the fire before it took hold. As we have noted, if only one of the conditions to the extension "Fire risk work away PLB510" is not satisfied, then there is no cover.*

Duty of care appears to have played a substantial part in the decision made by the insurance company. Duty of Care is defined in this employer's policy as:

*The persons insured will take reasonable precautions to prevent personal injury and damage to property and to:*

- *comply will all obligations and regulations set out in any legislation applicable or imposed by any authority;*

- *maintain premises and plant and everything used in the business in proper repair; and*

- *at their own expense remedy and defect or eliminate any danger that may give rise to personal injury or damage to property.*

What is your duty of care? Do you know what is expected of you and can you reasonably achieve the duty of care expected. Can your business delegate the duty of care?

Our intrepid employer argued Mr. XXX had a responsibility to honestly, diligently and to the utmost of his ability, carry out and perform the duties, responsibilities and work required of him and to carry out such duties, responsibilities and work in a careful, proper and legal manner and in accordance with any policies determined

60,000 houses.

Here's another point that if the people aren't staying in New Zealand then doesn't that mean their money is going off shore so how can that be good for the country?

Of course there is also the risk of dodgy workmanship because they are leaving the country and don't give a shit.

It seems problems are being created to cover up problems and we all know that problems, on top of problems, on top of problems, don't equal solutions.

It is lack of vision in the past that has caused the skilled tradespeople shortage and this lack of vision seems to be continuing on now.

We can't change the past but we can change the future. Perhaps what we need is for everyone to be up front and honest so we all get to know the entire story not just what they want us to hear.

and any directions or instructions given to him by or on behalf of the employer, as was detailed in his employment contract.

The insurance company didn't care.

As the insured the employer was expectant that the policy would cover any situation where Mr. XXX failed in his duties and contractual obligations where the insured has taken all reasonable steps.

Our employer is now a desperate man and wonders why he was so stupid to have signed a contract agreeing to such stupidity.

**Have you been that stupid and if so do you have in place mechanisms to prove you have taken all reasonable steps?**



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