

**BPB Complaint No. C2-01247**

**IN THE MATTER OF**

Under the Building Act 2004 (the Act)

An inquiry by the Building Practitioners' Board  
under section 315 of the Act

**AGAINST**

[The Respondent], Licensed Building  
Practitioner No. [omitted]

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**DECISION OF THE BUILDING PRACTITIONERS' BOARD**

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**Introduction**

- [1] The matter before the Building Practitioners' Board (the Board) is a Board led inquiry as a result of a Board motion dated 11 August 2015 in respect of the conduct of [the Respondent], Licensed Building Practitioner.
- [2] The matters being investigated are whether the Respondent has, in relation to building work at [omitted]:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
  - (c) has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).
- [3] The Respondent is a Licensed Building Practitioner with a Carpentry Licence issued 19 October 2011. The Respondent voluntarily suspended his licence on 25 November 2014. In accordance with s 315(2) of the Act the Board has jurisdiction in respect of the Respondent as he was licenced at the time of the alleged conduct.
- [4] The Board has considered the inquiry under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- [5] The following Board Members were present at the hearing:
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|--------------------|-------------------|
| Chris Preston      | Chair (Presiding) |
| Richard Merrifield | Deputy Chair      |
| Brian Nightingale  | Board Member      |
| Mel Orange         | Board Member      |

Dianne Johnson	Board Member
Bob Monteith	Board Member

[6] The matter was considered by the Board in Queenstown on 24 February 2016 in accordance with the Act, the Regulations and the Board's Complaints Procedures.

[7] The following other persons were also present during the course of the hearing:

Alastair Dumbleton	Counsel for the Registrar
Sarah Romanos	Board Secretary
[The Respondent]	Respondent
Geoff Hardy	Special Adviser to the Board

Members of the public were not present.

[8] No Board Members declared any conflicts of interest in relation to the matters under consideration.

### **Board Procedure**

[9] On 4 December 2015 the Registrar of the Board prepared a report in accordance with regs 19 and 20 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the inquiry.

[10] The Board requested a Special Adviser be appointed to prepare a report. Geoff Hardy of Madison Hardy was appointed and his report was received and circulated to the Respondent and Complainant as part of the Registrar's Report.

[11] On 21 December 2015 the Board considered the Registrar's report and in accordance with reg 22 it resolved to proceed with the inquiry that the Respondent:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
- (c) has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

[12] On 27 January 2016 at 10 a.m. a pre-hearing teleconference was convened by Mel Orange, Board Member. The Respondent and Counsel for the Registrar were both present. The hearing procedures were explained and the Respondent's attendance at the substantive hearing was confirmed.

### **The Hearing**

[13] The hearing commenced at 10.30 a.m.

[14] At the hearing the Board was assisted in the presentation of the case by the Counsel for the Registrar.

- [15] The Respondent was sworn in, his evidence was presented and he answered questions from the Board and Counsel for the Registrar.
- [16] The Special Adviser spoke to his report and answered questions in relation to it.

### Substance of the Inquiry

- [17] The inquiry arose as a result of a complaint hearing into the conduct of another licensed building practitioner on the same matter<sup>1</sup>. The evidence heard by the Board on that matter indicted that the conduct of the Respondent may have come within the grounds for discipline under s 317 of the Act.
- [18] The Respondent was the project manager for the lead contractor on a new build where the house was incorrectly sited. This resulted in it encroaching on an adjoining lot. The conduct in question was the Respondent's involvement in the identification of boundary pegs, investigations undertaken when siting issues were brought to his attention by the subcontracted licensed building practitioner who was carrying out the build (the Builder), and the consequent instructions he issued to the Builder.

### Evidence

- [19] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*<sup>2</sup> where Justice McGrath in the Supreme Court of New Zealand stated:

*[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.*

*[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to "the reasonable satisfaction of the Tribunal". A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal's reasonable satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.*

- [20] The Respondent was an employed project manager for [omitted] who contracted to build a new home at [omitted]. The building work was subcontracted and the Respondent described his responsibilities as ensuring a good standard of work and being the first point of contact and more specifically as:

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<sup>1</sup> Board Decision C2-01158 dated 23 September 2015

<sup>2</sup> [2009] 1 NZLR 1

- (a) arranging trades including carpentry;
  - (b) time line, scheduling and progress;
  - (c) ordering materials; and
  - (d) contact and liaison between client and trades.
- [21] In September 2014 the build commenced and the Builder and the Respondent met on site to discuss set out, they walked the boundaries and located the boundary pegs. Only one boundary peg could be located in the area where the boundary issue arose.
- [22] During the set out by the Builder he identified a measurement discrepancy and alerted the Respondent. A site meeting took place and the Respondent advised the Builder to refrain from doing further work until he issued further instructions.
- [23] The Builder raised the matter with the Respondent on a Friday and on the following Monday the Respondent advised the Builder to continue. The Respondent considered the set out was within the setbacks and allowed tolerances (100-200mm). He confirmed that he did not make any further enquiries between being advised of a possible boundary discrepancy and issuing instructions to continue.
- [24] Following construction a fencing contractor, whilst measuring the boundaries, noticed an issue with them and, following a site survey from a local cadastral surveying company, an incorrect set out was confirmed.
- [25] The error arose from a wrong boundary peg being used as a reference point.
- [26] The Respondent confirmed that an electronic copy of the title was in the consent file which [omitted] had possession of and that he had not checked it and a copy of the title was not on site. He also confirmed that the [omitted] building contract with the client allowed for a survey of the land to be undertaken at the client's cost. This was not done prior to construction commencing nor following notice of the boundary issue.
- [27] The deposited plan associated with the title shows a three metre strip of land between that lot and the neighbouring lot (Lot 59) notated as Lot 59a. The incorrect peg used was that between Lots 59a and 59 (as indicated by the annotated blue arrow below). The peg between Lots 58 and 59a should have been used.

[Image omitted]

- [28] The result of the set-out error was the dwelling's soffit and southeast roof corner was positioned over the neighbouring lot (Lot 59a) and the dwellings position had rotated in a southerly direction by approximately 4.0 degrees.
- [29] The Respondent stated that [omitted] had built about 20 homes in the subdivision and the type of easement was peculiar and had not been encountered before. There was nothing on site to indicate that there was an easement on one of the boundaries. A perusal of the deposited plan for the subdivision, however, shows a dozen or more easements of this type.
- [30] The building consent required that the building be set out in accordance with the consented documents. The set out error meant it had not.
- [31] The dwelling failed its final inspection as a result of the siting issue. [Omitted] subsequently purchased the adjoining lot to allow for boundary adjustments.

- [32] When questioned on the quality assurance processes used by [omitted] the Respondent stated that at the time they relied on the Builder to “get it right” and the building consent authority inspector. As a main contracting company they did not check set out but now use a qualified surveyor for set out. He did state, however, that if he identified an issue on site at any time then it would have been his responsibility to ensure it was corrected.

## Board’s Conclusion and Reasoning

### Negligence

- [33] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v Far North Council*<sup>3</sup>. Judge McElrea provided guidance on the interpretation of those terms:

*[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.*

*[44] In my view a "negligent" manner of working is one that exhibits a serious lack of care judged by the standards reasonably expected of such practitioners, while an "incompetent" manner of working is one that exhibits a serious lack of competence.*

*[46] The approach I have adopted recognises that the terms "negligent" and "incompetent" have a considerable area of overlap in their meanings, but also have a different focus - negligence referring to a manner of working that shows a lack of reasonably expected care, and incompetence referring to a demonstrated lack of the reasonably expected ability or skill level.*

- [34] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*<sup>4</sup> as regards the threshold for disciplinary matters:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

- [35] In complaint decision C2-01158 into the conduct of the Builder the Board found that the Builder’s negligence was not sufficiently serious to warrant a disciplinary outcome. It did, however, find that he had carried out building work that was not in accordance with the building consent. In respect of negligence the Board was mindful of the relationship between the Builder and the Respondent, confusion as to roles and responsibilities on site and the fact that the Builder had placed a degree of reliance on the Respondent in respect of the set out issue.

- [36] It is clear the Respondent had involvement in the set out and the boundary error. The question for the Board is the extent of that involvement and a preliminary question is whether his involvement was by way of him “supervising” the Builder or whether he was actually “carrying out” building work.

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<sup>3</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>4</sup> [2001] NZAR 74

- [37] The Board received submissions from the Special Adviser, at the Board's request, as to the interrelationship between a person in a project management role in the circumstances of the case and supervision under the Act. Whilst the submissions were persuasive the Board considers the Respondent actually carried out building work as opposed to supervising the Builder.
- [38] The Building Act clearly envisages that more than one licensed building practitioner can be involved in a building project and that each practitioner is liable for their actions and conduct. The Act also clearly envisages that the actions and conduct of a practitioner can extend beyond physical building work and can include preparatory or auxiliary work such.
- [39] Building work is defined in section 7 of the Act as follows:
- building work —*
- (a) *means work—*
- (i) *for, or in connection with, the construction, alteration, demolition, or removal of a building; and*
- (ii) *on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and*
- (b) *includes sitework; and ...*
- [40] The phrase “for, or in connection with” used in the definition connotes, in the Board's view, a wide range of actions and conduct including those of the Respondent. The Board considers this interpretation is consistent with the requirement to interpret terms in the Act from the text so as to give effect to the purpose of Parliament<sup>5</sup>. The Board may (if necessary), in ascertaining the meaning, consider other indications provided in the Act. In this respect the provisions in s 3 “Purposes of the Act”<sup>6</sup>, s 14E “Responsibilities of the Builder”<sup>7</sup> and s 282A “Purposes of Licensing Building Practitioners”<sup>8</sup> have been taken into consideration.

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<sup>5</sup> Refer s 5 of the Interpretation Act 1999

<sup>6</sup> Section 3 Purpose

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
- (i) people who use buildings can do so safely and without endangering their health; and
- (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- (iii) people who use a building can escape from the building if it is on fire; and
- (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:
- (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

<sup>7</sup> S 14E Responsibilities of builder

- (1) In subsection (2), builder means any person who carries out building work, whether in trade or not.
- (2) A builder is responsible for—
- (a) ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates;
- (b) ensuring that building work not covered by a building consent complies with the building code.
- (3) A licensed building practitioner who carries out or supervises restricted building work is responsible for—
- (a) ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act; and

- [41] In this instance the Respondent took part in locating boundary pegs and more importantly undertook, when a boundary discrepancy was identified, to check siting issues. The Board considers such actions fall within the definition of building work and would expect a reasonable licensed building practitioner in such circumstances to take actual steps such as checking the title or instructing a surveyor both of which could have been done. The Respondent, however, took no such steps and in doing so he fell below the standards expected of a licensed building practitioner and has been negligent.

### **Contrary to a Consent**

- [42] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must be submitted as a variation to the consent before any further work can be undertaken.
- [43] In *Tan v Auckland Council*<sup>9</sup> the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:
- [35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act).*
- [44] Section 317(1)(d) of the Act is a strict liability offence albeit one that only applies to licenced persons. It is only necessary to show that there was “building work” as defined in the Act and it had not been carried out in accordance with the building consent.
- [45] In this case the Board has already found that the Respondent was carrying out building work and there is clear evidence, in respect of set out, that the building consent had not been complied with.
- [46] Given the above factors the Board finds the Respondent has contravened s 317(1)(d) of the Act. This is also consistent with the Board’s finding in C2-01158.

### **Record of Work**

- [47] There is a statutory requirement under s 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the building consent authority on completion of restricted building work.
- [48] In the present case the Board does not consider the Respondent has carried out restricted building work and as such there was no requirement to issue a record of work.

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(b) ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.

<sup>8</sup> S 282A Purposes of licensing building practitioners

The purposes of licensing building practitioners under this Act are—

- (a) to assess and record building practitioners as having certain skills and knowledge relevant to building work; and
- (b) to license building practitioners so that, in regard to restricted building work, licensed building practitioners can carry it out or supervise it.

<sup>9</sup> [2015] NZHC 3299 [18 December 2015]

- [49] Restricted building work is defined by the Building (Definition of Restricted Building Work) Order 2011. Clause 5 makes the primary structure of a house restricted building work and whilst set out may be a precursor to the structure the Board notes the Record of Work form provided by the legislation (Form 6A of the Building (Forms) Regulations 2004) stipulates primary structure as, in this respect, foundations and subfloor framing. It would be stretching the meaning of the legislation to say this extended to checking and verifying set out.

### Board Decision

- [50] The Board has decided that the Respondent:
- (a) carried out building work in a negligent manner (s 317(1)(b) of the Act); and
  - (b) carried out building work that does not comply with a building consent (s 317(1)(d) of the Act).
- and should be disciplined.
- [51] The Board has decided that the Respondent did not fail, without good reason, in respect of a building consent that relates to restricted building work to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

### Disciplinary Penalties

- [52] The grounds upon which a Licensed Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act<sup>i</sup>.
- [53] The Board's Complaints Procedures allow the Board to either set out the Board's decision on disciplinary penalty, publication and costs or to invite the Respondent to make submissions on those matters.
- [54] As part of the materials provided to the Board for the Hearing the Respondent provided submissions which were relevant to penalty, publication and costs and the Board has taken these into consideration. It has also taken into consideration the penalty awarded in case C2-01158.
- [55] Given the nature of the disciplinary offending, the mitigation already heard and the level of penalty decided on the Board has decided to dispense with calling for further submissions. The Respondent will, however, be given an opportunity to comment on the level of penalty, costs and on publication should he consider there a further matters which the Board should take into consideration.
- [56] The Board is aware that the common understanding of the purposes of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom:
- The primary purpose of professional disciplinary proceedings is not to punish, but to protect the public, to maintain the public confidence in the integrity of the profession and to uphold proper standards of behaviour.*<sup>10</sup>
- [57] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*<sup>11</sup>:

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<sup>10</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.



*Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*

- [58] The High Court in *Patel v Complaints Assessment Committee*<sup>12</sup> has, however, commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to uphold professional standards:

*[27] Such penalties may be appropriate because disciplinary proceedings inevitably involve issues of deterrence. They are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.*

*[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

- [59] In all the circumstances the Board considers a fine of \$1,500 to be the appropriate penalty. The Board notes this is more than the penalty ordered in C2-01158. The higher penalty reflects the Respondent's greater culpability in that had he of made the checks that he should have then the subsequent error would not have occurred.

## **Costs**

- [60] Under s 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."

- [61] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case. The judgement in *Cooray v The Preliminary Proceedings Committee*<sup>13</sup> included the following:

*"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure. In other cases, where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment."*

- [62] The judgment in *Macdonald v Professional Conduct Committee*<sup>14</sup> confirmed the approach taken in *Cooray*. This was further confirmed in a complaint to the

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<sup>11</sup> [1992] 1 NZLR 720 at p 724

<sup>12</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>13</sup> HC, Wellington, AP23/94, 14 September 1995

<sup>14</sup> HC, Auckland, CIV 2009-404-1516, 10 July 2009

Plumbers, Gasfitters and Drainlayers' Board, *Owen v Wynyard*<sup>15</sup> where the judgment referred with approval to the passages from *Coray* and *Macdonald* in upholding a 24% costs order made by the Board.

- [63] In *Collie v Nursing Council of New Zealand*<sup>16</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

*But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate. It is not hard to see that the award of costs may have imposed some real burden upon the appellant but it is not fixed at a level which disturbs the Court's conscience as being excessive. Accordingly it is confirmed.*

- [64] Given the above and the nature of the hearing the Board considers \$1,000 to be a reasonable contribution towards the costs of the inquiry.

### **Publication of Name**

- [65] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licenced Building Practitioners' scheme as is required by the Act.
- [66] The Board is also able, under s 318(5) of the Act, to order publication over and above the public register:

*In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

- [67] As a general principal such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing.
- [68] The Board does not consider any further publication is required.

### **Penalty, Costs and Publication Decision**

- [69] For the reasons set out above, the Board directs that:

**Penalty:** Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,500.

**Costs:** Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 301(1)(iii) of the Act.

**In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the register.**

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<sup>15</sup> High Court, Auckland, CIV-2009-404-005245, 25 February 2010

<sup>16</sup> [2001] NZAR 74

## Submissions on Penalty Costs and Publication

- [70] The Board invites the Respondent to make written submissions on the matters of disciplinary penalties, costs and publication up until close of business on 22 April 2016.
- [71] If no submissions are received then this decision will become final.
- [72] If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

## Right of Appeal

- [73] The right to appeal Board decisions is provided for in s 330(2) of the Act<sup>ii</sup>.

Signed and dated this 1<sup>st</sup> day of April 2016



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**Chris Preston**  
Presiding Member

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### <sup>i</sup> Section 318 of the Act

- (1) In any case to which section 317 applies, the Board may
- (a) do both of the following things:
    - (i) cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and
    - (ii) order that the person may not apply to be relicensed before the expiry of a specified period:
  - (b) suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:
  - (c) restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:
  - (d) order that the person be censured:
  - (e) order that the person undertake training specified in the order:
  - (f) order that the person pay a fine not exceeding \$10,000.
- (2) The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).
- (3) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.
- (4) In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.
- (5) In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."

ii **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*  
(b) *to take any action referred to in section 318.*

**Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*  
(b) *within any further time that the appeal authority allows on application made before or after the period expires.*