

## Before the Building Practitioners Board

	BPB Complaint No. CB24581
Licensed Building Practitioner:	Thomas Montgomery (the Respondent)
Licence Number:	BP 119777
Licence(s) Held:	Roofing – Profiled Meta and/or Wall Cladding; Roof Membrane

---

### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

#### Under section 315 of the Building Act 2004

---

Complaint or Board Inquiry	Board Inquiry
Hearing Location	Queenstown
Hearing Type:	In Person
Hearing Date:	5 February 2019
Decision Date:	28 February 2019

#### Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)  
Mel Orange, Legal Member  
Robin Dunlop, Retired Professional Engineer  
Faye Pearson-Green, LBP Design AOP 2

#### Appearances:

David Jackson, Barrister for the Respondent

#### Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Board Decision:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

## Contents

<b>Introduction</b> .....	2
<b>Function of Disciplinary Action</b> .....	2
<b>Evidence</b> .....	3
<b>Submissions</b> .....	5
<b>Board’s Conclusion and Reasoning</b> .....	5
<b>Penalty, Costs and Publication</b> .....	9
Penalty.....	9
Costs.....	9
Publication.....	10
<b>Section 318 Order</b> .....	11
<b>Submissions on Penalty, Costs and Publication</b> .....	11
<b>Right of Appeal</b> .....	11

## Introduction

[1] The Board Inquiry and hearing resulted from a complaint into the conduct of the Respondent. The Complainant sought to withdraw the complaint. The Board resolved to proceed with the matter as a Board Inquiry. The Board received a Registrar’s Report and resolved under regulation 22 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offence the Board resolved to investigate was that the Respondent carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).

## Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

[3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*<sup>4</sup> Collins J. noted that:

<sup>1</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

*“... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*

- [4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

#### **Evidence**

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [6] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [7] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Thomas Montgomery	Respondent
[Omitted]	Witness

- [8] The complaint received related to the installation of a replacement roof on a residential dwelling in 2013. The dwelling was one of two conjoined units. Only one roof was replaced. The Complainant noted that since the installation of the replacement roof there had been numerous leaks. The Complainant estimated that, at times, 20 to 30 litres of water has penetrated the house causing damage to ceilings and walls. The Complainant set out that the Respondent had returned to the property numerous times over the next four years to complete repairs but that some of the repair work made the situation worse. The Complainant's insurer, when looking at water damage to the interior, assessed the roof and identified that the product used did not meet the manufacturers' specifications or the Building Code.
- [9] The Complainant provided a report from [Omitted] of [Omitted] who completed a site visit and inspection. He noted that the fall on the area of the roof where leaking was experienced was 1.5 degrees but that a minimum of 3 degrees was required by the Building Code and the manufacturer. He also noted that the type of roofing product used was not a suitable product for the location. An insurance report from the Complainant's insurer also noted that the pitch of the roof did not meet compliance requirements.

---

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [10] Photographs of the roof were also provided to the Board. The photographs showed flashings and vents that had been installed that would not have met the requirements of E2/AS1 and which showed poor workmanship.
- [11] The Respondent provided a detailed written response to the complaint by way of his lawyer. He outlined the history of the Respondent's involvement with the property including that the roof had been replaced on a like for like basis for a former owner as part of a sale and purchase condition.
- [12] Included with the response was a report from [Omitted] of [Omitted]. His report noted:

*The workmanship was to a good standard. I could not see any issues about the way he was replacing the roofing under-lay/paper or the flashings and fixings of the roof cladding I suggested that the moisture issues may be condensation issues.*

- [13] The Respondent also considered that the likely cause of water damage was an accumulation of moisture from the bathroom. He stated he had been unable to identify a leak but as a matter of good faith he carried out extensive remedial work. The included installing a drip edge flashing to ensure that wind-driven rain was not going up and under the roofing iron, sealing underneath the toilet vent flashings and the waste pipe vent flashings, installing new paper underlay and new screws to ensure rubber washers on the screws did not split, install of new vent flashings, checking of capping turn ups, the install of a new drip edge flashing on the full length of the roof and the install of a new head capping in the vent flashing back-trays. The Respondent also offered to install new roofing iron as the roofing iron had been damaged by trades walking on it.
- [14] At the hearing the Respondent filed a Brief of Evidence. The Brief outlined the Respondent's experience as a roofer and the background to the complaint. The Respondent submitted:

*Whilst the materials were new, I was not engaged to install a new roof. I believe this is an important factor because a new roof would have required building work not only on the subject unit but also on its immediate and adjoining neighbour. Had I replaced and installed a new roof then issues of pitch and so on would have been addressed as per the code, the specifications and so on. However, because this was a shared roof I was not engaged or allowed to do any work on the neighbouring roof and/or any structural works to the roof. In fact, I was engaged to make sure that the new roofing iron matched the existing roofing iron. That is why I used the Calder Stewart roofing iron; because I was told it had to match what was there originally.*

- [15] The Respondent also stated:

*I accept that the roof as constructed is not as per current code insofar as the pitch is insufficient. I did not do anything to increase the pitch of the part of*

*the roof that I worked on for the reasons outlined. Rather, I replaced the roofing materials as instructed and approved by Mr Kirk.*

[16] The Respondent concluded by stating:

*I do not know what caused the leak at the property. I reject that it was a leak caused by the new roofing profile. I say that because it only leaked in one place; not everywhere. Further, I did not shy away from the job. I kept at it but could never satisfy the original complainant.*

[17] At the hearing the Respondent gave evidence that he was not aware of any previous issues with the roof. He stated that he was present when the roofing iron was installed but that he left finishing work and the installation of flashings to his staff. No new purlins were installed. Self-supporting paper was installed over existing damp proof paper. The Respondent stated he did not have a copy of E2/AS1

[18] The Respondent also accepted, at the hearing, that the building work had not been completed in accordance with the Building Code.

### **Submissions**

[19] Counsel for the Respondent made submissions on behalf of the Respondent. The submissions noted that the Board should take a wide view when determining whether the allegation had been substantiated and that the property experienced historic moisture ingress problems and that original design and construction issues were a contributing factor. Counsel submitted:

*The respondent's case is that his actions, when viewed in context, do not meet the high threshold required for a finding of negligence. It is submitted his behaviour - taking a wide view, encompassing all of his actions throughout this dispute - does not fall "seriously short" of the acceptable standard.*

[20] Counsel also submitted that the Respondent's engagement was limited to like for like replacement. He was not engage to diagnose and fix and that the evidence before the Board had not established the cause of the water ingress. He further submitted:

*The actions of the respondent subsequent to the work should also be taken into account in assessing context and judging whether in fact he was negligent, noting that competent tradesmen make mistakes and that the system relies upon such tradesmen returning and rectifying their building work, if deficient.*

### **Board's Conclusion and Reasoning**

[21] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act) and should be disciplined.

- [22] Negligence and incompetence are not the same. In *Beattie v Far North Council*<sup>6</sup> Judge McElrea noted:

*[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.*

- [23] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.

- [24] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*<sup>9</sup> it was stated as "*an inability to do the job*".

- [25] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

- [26] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act<sup>11</sup>. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>12</sup>.

- [27] The Board notes that the purposes of the Act are:

### **3 Purposes**

*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*

---

<sup>6</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>8</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>9</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>10</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>11</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>12</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (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.*

- [28] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code<sup>13</sup> and be carried out in accordance with a building consent<sup>14</sup>. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.
- [29] It is in consideration of compliance with the Building Code that the Board has reached its conclusion that the Respondent was negligent. The finding relates only to Building Code compliance. The Board has not made a finding of negligence with respect to water ingress as it accepts that there was no clear evidence as to the cause of it. It does, however, note that the Respondent left the more complex and critical aspects of the job (the finishing work and install of flashings) to less qualified staff and that the photographs showed work that was somewhat below trade standards. He is cautioned that care needs to be taken in future to ensure that those critical aspects are either supervised or carefully checked prior to completion.
- [30] It was apparent to the Board that the Respondent did not turn his mind to the requirements of the Building Code when carrying out the building work. Whilst the Board accepted that the building work did not require a building consent in that it could be carried out under the provisions of Clause 1 of Schedule 1 of the Building Act it still had to comply with the Building Code. This is because section 17 of the Act states:

**17 All building work must comply with building code**

*All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.*

- [31] Under the current Building Act work if building work is carried out without a building consent under schedule 1 on building work did not comply with the Building Code before the building work it must, at the least, continue to comply at least to the same extent as it did then comply. The section that allows for this is section 42A(2)(b)(ii), which only came into effect on 28 November 2013 after the building

---

<sup>13</sup> Section 17 of the Building Act 2004

<sup>14</sup> Section 40(1) of the Building Act 2004

work in question was completed. There was no similar provision in the Building Act prior to section 42A being enacted.

- [32] The Building Code is performance based. Compliance with it is achieved through the use of either an Acceptable Solution or an Alternative Solution. E2/AS1 External Moisture is an Acceptable Solution. If followed compliance with the Building Code is deemed to have been achieved. If an alternative solution is used then verification of how that solution will meet the requirements of the Building Code has to be supplied.
- [33] In the present case it was clear that the Respondent did not consider the provisions of E2/AS1 nor any alternatives to meet Building Code requirements. Had he done so then he would have adjusted the pitch of the roof by way of modifying the purlins or he would have selected a roofing product that meet Building Code requirements.
- [34] It was of concern to the Board that the Respondent did not possess a copy of E2/AS1 which is a free to download resource. Given that it is a commonly referenced in designs and documentation as a means of achieving Building Code compliance the Board would expect all licensed building practitioners who carry out or supervise weathertightness work to possess a copy and to refer to the same when carrying out roofing.
- [35] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>15</sup> the Court's noted, as regards the threshold for disciplinary matters, that:
- [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.*
- [36] The Board accepts that the Respondent did make extensive efforts to try and trace and resolve issues and that there were legacy issues. It considers, however, that these matters go to mitigation.
- [37] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome. The Board would expect a licensed building practitioner with a roofing licence to know of and apply the provisions of E2/AS1 and to ensure that the building work that they carry out or supervise to comply with the requirements of the Building Code. It is not enough to simply carry out a roof replacement on a like for like basis and, in doing so, to not consider compliance requirements.

---

<sup>15</sup> [2001] NZAR 74

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

- [38] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [39] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

#### Penalty

- [40] The purpose 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. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>16</sup> commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[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.*

- [41] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>17</sup> the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [42] The Board considered that the negligence was at the lower end of the scale. Its initial starting point was that a moderate fine would be appropriate. When taking the mitigating factors into account, including the efforts made by the Respondent to trace and resolve issues, the Board has decided that a censure will suffice.

#### Costs

- [43] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [44] 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

---

<sup>16</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>18</sup>.

- [45] In *Collie v Nursing Council of New Zealand*<sup>19</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.*

- [46] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$1,000 toward the costs of and incidental to the Board's inquiry. This is substantially less than 50% of actual costs.

#### Publication

- [47] 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 Licensed Building Practitioners' scheme as is required by the Act<sup>20</sup>. The Board is also able, under section 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.*

- [48] As a general principle 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. This is in addition to the Respondent being named in this decision.

- [49] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>21</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>22</sup>. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>23</sup>. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>24</sup>.

- [50] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>25</sup>. It is,

---

<sup>18</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>19</sup> [2001] NZAR 74

<sup>20</sup> Refer sections 298, 299 and 301 of the Act

<sup>21</sup> Section 14 of the Act

<sup>22</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>23</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>24</sup> *ibid*

<sup>25</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[51] Based on the above the Board will not order further publication.

### **Section 318 Order**

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

**Penalty:** Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

**Costs:** Pursuant to section 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 section 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 and the Respondent being named in this decision.**

[53] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

### **Submissions on Penalty, Costs and Publication**

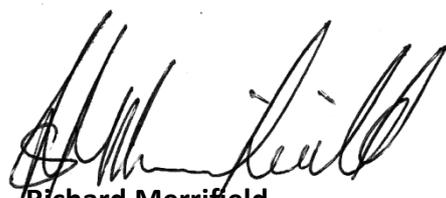
[54] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **21 March 2019**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received then this decision will become final. 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.

[55] In calling for submissions on penalty, costs and mitigation the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and and/or its decision that the Respondent has committed a disciplinary offence the Respondent can appeal the Board's decision.

### **Right of Appeal**

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

Signed and dated this 28<sup>th</sup> day of February 2019



**Richard Merrifield**  
Presiding Member

---

**<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."*

**<sup>ii</sup> 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.*