

Before the Building Practitioners Board

	BPB Complaint No. CB25342
Licensed Building Practitioner:	Neville Bray (the Respondent)
Licence Number:	BP 124032
Licence(s) Held:	Carpentry, Site AOP 1, Design AOP 1

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	Complaint
Hearing Location	Dunedin
Hearing Type:	In Person
Hearing and Decision Date:	16 July 2020

Board Members Present:

Mel Orange, Deputy Chair, Legal Member, Chair (Presiding)
Richard Merrifield, LBP, Carpentry and Site AOP 2
Bob Monteith, LBP, Carpentry and Site AOP 2
Faye Pearson-Green, LBP, Design AOP 2

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.

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Introduction

[1] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at *[Omitted]*. The alleged disciplinary offences the Board resolved to investigate were 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); IN THAT:

- (a) the building consent documentation developed by the Respondent may not be have been completed to an acceptable standard; and/or
- (b) the requests for information (RFI) received by the Respondent may not have been dealt with in an acceptable manner.

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*² and in New Zealand in *Dentice v Valuers Registration Board*³.

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

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

³ [1992] 1 NZLR 720 at p 724

- [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*⁴ Collins J. noted that:

“... 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] In a similar vein, the Board’s investigation and hearing process are not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁵:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [5] Finally, 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. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.
- [6] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board’s inquiries, and this decision, focus on and deal with the serious conduct complained about.

Inquiry Process

- [7] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar’s Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.
- [8] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

⁴ [2016] HZHC 2276 at para 164

⁵ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.
- [10] 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.
- [11] In addition to the documentary evidence before the Board heard evidence at the hearing from:
- | | |
|----------------|----------------------------------------|
| Neville Bray | The Respondent |
| Vaughn Bennett | Summoned Witness, Dunedin City Council |
- [12] The Respondent was engaged to develop a design for building consent purposes for an extension and alteration of a residential dwelling. The work was started in December 2017. A building consent application was made on 21 February 2018. A Request for Information (RFI) was issued on 19 March 2019. It contained some 53 items. The Respondent progressively responded to the items. A second RFI was issued 19 June 2019 with 15 items still outstanding. The Respondent had two in-person meetings with the council to go over the RFI letters. A building consent for the building work was granted on 26 July 2019.
- [13] The Complainant alleged the Respondent's design was initially deficient, that the Council had to make repeated requests for further information, and that extra costs were incurred due to extra consenting requirements.
- [14] The Respondent, in his response to the complaint, stated 53 RFIs can mean that the information is just not there, or not clear, and needs expanding on. It could also include details which were missed by the Inspector or not to his way of thinking.
- [15] At the hearing, the Respondent noted that his fees were very reasonable and cheaper than what others in the market charged. He gave evidence that he had extensive experience in the building industry in both New Zealand and the United Kingdom in building, design and engineering. He had, at the time he undertook the design in question, only carried out two to three design jobs. He has completed some 12 consents since he was licensed. He was assisted in the design and the associated documentation by his daughter.
- [16] The Respondent was questioned about his design process and experience with designing alterations. The Board also questioned the Respondent about specific design aspects of the alteration.

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[17] The Board noted:

- (a) the Respondent did not complete a risk matrix evaluation and lacked an understanding of the importance and impact of the risk matrix. The same applied as regards H1 calculations.
- (b) a Gib EzyBrace system was used to design bracing for the structure but the information programmed into it was incorrect, and bracing location information was not shown. There was a lack of roof bracing;
- (c) the Respondent used NZS 3604 to design the additions, but the design was incorrectly/inadequately designed in that:
 - (i) foundation, piles and floor framing to addition and deck required many RFI questions to resolve; and
 - (ii) references were given on plans to clauses in NZS 3604, but the design and details did not match the referenced clauses;
- (d) a lack of detailed understanding with regards to the details required for joining the existing dwelling with the addition such that guidance and assistance was needed from the building consent authority;
- (e) a lack of specified timber members and treatment grades. Structural members such as deck joists, tile battens and wall framing along with the associated fixings were requested by the building consent authority as part of the RFI's;
- (f) a lack of Building Code compliance with regard to E2 flashing, E1 roof stormwater collection, B1, F4 and D1 design for the new deck and barrier and the deck stairs;
- (g) a lack of construction details. Several standard and specific details were missing and had to be requested. There was an over-reliance on manufacturers information with a lack of understanding as to whether the information provided was relevant and/or appropriate;
- (h) failure to providing adequate specifications, either as a separate document or as notations on the plan documentation;
- (i) a lack of understanding as to what information is provided by sub-consultants, failure to check sub-consultant information and integrate into documentation leading to incomplete information, conflicting information and information that was lacking.
- (j) Failure to carry out quality assurance checks resulting in incomplete documents and conflicting information. Reliance was placed on the building consent authority to check, assist and provide guidance.

- [18] The Respondent acknowledged errors in the documentation he submitted for the building consent. He accepted that he needed to be more vigilant in his quality assurance processes.
- [19] Mr Bennett noted that the Respondent was cooperative in his dealings and that some of the issues in the RFI letter related to plumbing and drainage detail which would have been provided by others. He did state that the building consent application would have been assisted by a full specification as opposed to just manufacturer's instructions being supplied.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act) and **should** be disciplined.
- [21] The Board's considerations as regards negligence are in respect of the Respondents design work.
- [22] Under the definitions in the Building Act design work forms part of the wider definition of building work and as such, in respect of section 317(1)(b) it comes within the Board's jurisdiction. In this respect, the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:
- 3 *Design work declared to be building work***
- (1) *Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
- (2) *Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*
- [23] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.
- [24] 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, in this case a licensed building practitioner with a design license. This is

described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

- [25] The New Zealand Courts have stated that the assessment of negligence in a disciplinary context is a two-stage test⁹. 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 Act¹⁰. 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 practitioner¹¹.
- [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*
 - (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.*

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

[28] The Board also notes the provisions of section 14D of the Act which states:

14D Responsibilities of designer

- (1) *In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
- (2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[29] Given the above, when considering what is and is not an acceptable standard, the provisions of the building code need to be taken into account. In respect of design work, the Board also needs to take into account the wider requirements of resource management and town planning matters as they pertain to a design¹².

[30] The Board also notes, as regards the allegations that were before the Board, that the competencies a licensed designer is expected to be able to demonstrate in order to obtain a licence are set out in Schedule 1 of the Licensed Building Practitioners Rules 2007. Those competencies include Competency 4:

Develop design and produce construction drawings and documentation

This competency may be demonstrated by meeting some or all of the performance indicators in one or more of the following areas of practice.

Area of practice 1: Design 1 (Category 1 buildings)

- 4.1.1 *Apply design standards and identify and produce specific design solutions.*
- 4.1.2 *Apply basic knowledge of the principles of building technology and performance.*
- 4.1.3 *Coordinate and integrate specialist design inputs as required.*
- 4.1.4 *Prepare developed design drawings and specifications.*
- 4.1.5 *Update clients on timelines and costs.*
- 4.1.6 *Demonstrate knowledge of conditions of contract.*
- 4.1.7 *Produce detailed drawings, specifications and documentation suitable for building consent and construction.*

¹² Refer to the competencies required from a licensed designer in Schedule 1 of the Licensed Building Practitioners Rules 2007

- [31] Looking at the design developed, and the building consent submitted the Board found that the Respondent had not met the above competencies. There were fundamental failings as set out in paragraph [17] herein. The design was not completed to an acceptable standard. When looking at an acceptable standard, it is important to note that the standards expected of a licensed building practitioner are not based on the fee charged. The Respondent stated that his fee was very reasonable. Whilst that may have been the case, the building consent documentation still must meet the required standards. In this instance, it did not.
- [32] The Board noted a tendency by the Respondent to base his designs on assumptions rather than on reference to acceptable methods. An example is the failure to complete a risk matrix calculation. Assumptions can lead to failures, as was the case in the Respondent's consent documentation. The Respondent's assumptions may have also resulted in design choices being discounted without the client being given the benefit of making those choices. A risk matrix calculation could, for example, have resulted in different and cheaper cladding options being made available to the client.
- [33] There was also an over-reliance on the building consent authority to identify errors. The Building Consent Authority's role is to check that the design work has been carried out in accordance with the Building Code. It is not uncommon that a building consent authority will identify issues with designs and specifications. The question the Board will often have to answer is whether those issues should have been identified and dealt with prior to the consent being submitted. In this respect, it is noted that the building consent authority's job is to grant or refuse a building consent. It is not its role nor responsibility to assist a designer to develop its designs to the point where they achieve compliance with the Building Code.
- [34] A designer should be aiming to get their design and specifications right the first time and not to rely on the building consent authority to identify compliance failings and to assist them to get it right. In this respect it is also to be noted that under section 45(3) of the Act a licensed building practitioner with a design licence must submit a certificate of work with a building consent that states that the design complies with the building code:
- (3) *The plans and specifications that contain the design work referred to in subsection (2) must be accompanied by a certificate of work—*
 - (a) *provided by 1 or more licensed building practitioners who carried out or supervised that design work; and*
 - (b) *that identifies that design work; and*
 - (c) *that states—*
 - (i) *that the design work complies with the building code;*
 - or*

(ii) *whether waivers or modifications of the building code are required and, if so, what those waivers or modifications are.*

[35] The introduction of the licensed building practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation¹³:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes pride in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

[36] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁴ 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.

[37] The matters before the Board were serious. Compliant design is at the heart of safe and healthy buildings. More importantly, from a disciplinary perspective, the failings were not oversight or carelessness. Rather there was a serious failure to carry out the building work in accordance with acceptable standards.

[38] 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.

¹³ Hansard volume 669: Page 16053

¹⁴ [2001] NZAR 74

Penalty, Costs and Publication

- [39] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [40] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [41] 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*¹⁵ 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.

- [42] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*¹⁶. The High Court, when discussing penalty stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner’s offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner’s decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

¹⁵ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁶ [2012] NZAR 481

- [43] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [44] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁷ 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 a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [45] The Board considered cancellation or suspension. It considered making a finding of incompetence rather than negligence. Had it made that finding then it would have, at the least, suspended the Respondent's licence. The reason was that the licensing regime exists to ensure the public can have confidence in those who carry out restricted building work which is integral to the safe and healthy functioning of a home. A practitioner who fails to display the required competencies puts those objects at risk.
- [46] The Board took into account that the design was completed when the Respondent had only been licenced for a short period of time and that it may not have reflected his current design ability. In this respect, the Respondent gave evidence that recent designs have resulted in far fewer RFIs.
- [47] The Respondent stated he would take more care in the future and that he would charge a fee that allowed for a robust design process and that he would be more vigilant in his quality assurance processes.
- [48] Given the above, the Board decided that a fine will suffice. It has decided that the Respondent is to pay a fine of \$3,000. The amount of the fine reflects the seriousness of the conduct.
- [49] The Board also recommends that the Respondent join a member organisation and develop professional relationships to allow for peer review of his designs.

Costs

- [50] 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."
- [51] 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 case¹⁸.

¹⁷ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

¹⁸ *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.

[52] In *Collie v Nursing Council of New Zealand*¹⁹ 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.

[53] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,500 toward the costs of and incidental to the Board's inquiry. The amount is significantly less than 50% of actual costs and is below the Board's scale for a half-day hearing.

Publication

[54] 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 Act²⁰. 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.

[55] 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.

[56] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990²¹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²². Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²³. 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*²⁴.

[57] 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 interest²⁵. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

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

¹⁹ [2001] NZAR 74

²⁰ Refer sections 298, 299 and 301 of the Act

²¹ Section 14 of the Act

²² Refer sections 200 and 202 of the Criminal Procedure Act

²³ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁴ *ibid*

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

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,500 (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(l)(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.

[60] 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.

Right of Appeal

[61] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱ.

Signed and dated this 12th day of August 2020



Mel Orange
Presiding Member

ⁱ 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:

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- (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.*