

## Before the Building Practitioners Board

|                                 |                                |
|---------------------------------|--------------------------------|
|                                 | BPB Complaint No. CB25265      |
| Licensed Building Practitioner: | Gerald Carter (the Respondent) |
| Licence Number:                 | BP 113819                      |
| Licence(s) Held:                | Design Area of Practice 3      |

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

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|----------------------------|-----------------|
| Complaint or Board Inquiry | Complaint       |
| Hearing Location           | Christchurch    |
| Hearing Type:              | In Person       |
| Hearing Date:              | 21 January 2020 |
| Decision Date:             | 5 March 2020    |

#### Board Members Present:

Chris Preston (Presiding)  
David Fabish, 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 into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> 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) with specific reference to matters set out in building consent authority requests for information (RFI) dated 11 March 2019 and 3 May 2019 and a table entitled notes on RFI.

## 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>.

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<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

- [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:

*“... 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 is 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 persons<sup>5</sup>:

*... 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 are important to note as, on the basis of it, the Board 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.

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

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

- [9] It is to be noted that a reference was made to the Respondent knowing the Board Chair. The Chair disclosed the relationship. The Board determined that there was no conflict of interest.

### Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</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.
- [11] 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.
- [12] In addition to the documentary evidence before the Board heard evidence at the hearing from:
- |                  |                               |
|------------------|-------------------------------|
| Gerald Carter    | Respondent                    |
| <i>[Omitted]</i> | Complainant, <i>[Omitted]</i> |
- [13] The Respondent made an opening submission detailing his extensive experience and outlining his overall concerns with the Complainant's process, attitude and breach of process.
- [14] The Complainant sent the homeowners the first request for information (RFI) on the 11 March 2019. This was based on what they called a "Vetting" stage which deals with major omissions from the consent application.
- [15] The Respondent replied to this RFI in respect of the details he felt he was responsible for and forwarded those relating to gas fitting and drainage to his client who was a Plumber, Gas fitter and Drainlayer and assumed he would respond directly to the I. It was noted that the Respondent's client lodged the building consent to the Council and that he failed to include all of the information supplied by the Respondent for the application.
- [16] The Complainant then sent the homeowners a further and substantial RFI on 3 May 2019. This was based on what they describe as the "Processing" stage of the consent process where they look in more detail at the specific aspects of the documentation provided covering such things as the accuracy of the material and the consistency of drawings and specifications. The Processing stage looks at the completeness of the information provided and assesses it to determine compliance with the Building Code. This process was undertaken by the Complainant.

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [17] The Respondent, in receiving the 3 May RFI, became frustrated and in his reply dated 7 May 2019, described the number of items as being excessive, in some cases not required (in his view), unclear, nit picking and that some of the questions had not been asked for in his prior dealings with this council nor other councils.
- [18] The Respondent gave evidence that he did not, at that stage, contact the Complainant to discuss his frustration or to clarify the need for some of the information but produced a response dealing with each point in the RFI.
- [19] The Complainant, on receiving the response, was of the view that it still lacked a lot of the information he felt was required and that the general tone of the response was uncooperative and unprofessional. As a result, the Council made the decision to lodge a complaint with the Board and advised the homeowners that *“the building consent was refused under section 50 of the New Zealand Building Act 2004 ....”* And that *“... a new building consent application would need to be lodged”*.
- [20] The Complainant provided a summary of the RFI’s along with the response from the Respondent. He also provided a commentary on the response with reasons as to why the Council felt the response was inadequate.
- [21] At the hearing the Board went through a number of these items to gain a better understanding of the response to the RFI from the Respondent and then the Complainant to understand its position. The Respondent still felt, in some cases, the information was provided or that it was not required or was nit picking.

### **Board’s Conclusion and Reasoning**

- [22] 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.
- [23] The Board’s considerations as regards negligence are in respect of the Respondent’s design work.
- [24] 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.*

[25] 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.

[26] Turning to negligence and incompetence the Board notes that they are not the same. In *Beattie v Far North Council*<sup>7</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.*

[27] 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*<sup>8</sup> test of negligence which has been adopted by the New Zealand Courts<sup>9</sup>.

[28] The New Zealand Courts have stated that assessment of negligence 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.

[29] 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>.

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

### **3 Purposes**

*This Act has the following purposes:*

<sup>7</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>8</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<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

- (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.*

[31] 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.*

[32] 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 design<sup>13</sup>.

[33] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>14</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.*

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<sup>13</sup> Refer to the competencies required from a licensed designer in Schedule 1 of the Licensed Building Practitioners Rules 2007

<sup>14</sup> [2001] NZAR 74

- [34] In coming to the Boards decision, it did not look at each item listed on the RFI or look to arbitrate between the respondent and the Council on any of the disagreements on substance or the need for particular information. If there is a disagreement between the respondent and the council on any specific item, the respondent has the avenue of asking for a Determination from MBIE.
- [35] The Board looked at the standard of the design work, the quality and depth of the responses to the FRI's as would be expected by a very experienced Design Three Practitioner.
- [36] In terms of the design work the Board felt that it did not meet the standard it would have expected. While it was a simple job the design lacked some of the detail required to ensure a builder could build to the design and that the design would show how it would meet the Building Code. Examples included:

**Specification** – the specification was:

- (a) basic and generic. It was not project specific, contained outdated documents and outdated Building Code clause references;
- (b) contained conflicting clauses, clauses unrelated to the project and vital, project related clauses, were missing;
- (c) conflicting notes / references / understanding of the Building Code, Handbook, approved documents and New Zealand Standards and what the references related to;
- (d) reference made to 'Building Certifier' an outdated reference;
- (e) reference to an outdated NSZ 3604:2011 Appendix 'A' nail schedule;
- (f) reference to glass and glazing to comply with NZSS 1512 with glazing shall comply with NZSR 2 and outdated and/or incorrect standard;
- (g) no reference or correct specifications for timber sizes and grades, reinforcing steel grades or brace fixing details;
- (h) electrical – reference to all work must be inspected, tested and approved by the Local Authority before completion and subcontractor shall have given his Notice of Completion outdated information and a lack of understanding of the current regulatory requirements;
- (i) plumbing – noted as needing to comply with two conflicting standards (on both plans and in specification);
- (j) plumbing – reference to a HWC but no hot water storage shown on plans;
- (k) reference to Engineers specification and bracing but no specification included;
- (l) fixings incorrectly specified – bottom plate fixings should be @1200crs, not 1350crs as specified;

- (m) check lintels into trimmer specified at 12mm but required to be 15mm – 20mm, nail fixing for Hardies sheet incorrectly specified, not as per manufacturers specifications;
- (n) roofing – noted as not in scope but the design included a roofed addition to the existing building;

**Drawings** – Certificate of Design was issued with the documents to the owner for lodging to the Council for a Building Consent, therefore it would be deemed that the documents were complete as far as the Designer was concerned for lodgement, notwithstanding:

- (o) generic notes were on the plans that did not relate to the project ( sub floor framing, parapets and ground piles);
- (p) there were conflicts between the plans and the specifications including:
  - bracing system designed used conflicting systems with no specification, and/or clarification;
  - log fire specified with no Environment Canterbury classification provided;
  - no smoke detectors shown to comply with Clause F7;
  - no complying cladding ground clearances shown;
  - blend of codes/standards for plumbing design and specifications;
  - storm water not addressing the discharge from the addition, no additional downpipe or connection to the existing stormwater system;
  - hot water system not addressing the new shower room;
  - detailing and fixings specified were incorrect on the expanded details provided;
  - job specific details missing; penetrations, flashings, fixing details;
  - incorrect and/or missing notations for structural, cladding and waterproofing elements; and
  - dimensions/site plan do not reflect the existing as built on site situation.

[37] With regard to the Respondent’s handling of the RFI’s the Board was of the view that the Complainant was entitled to ask whatever questions it considers are needed to assure it that a design can be built and will meet the Building Code.

[38] In the Board’s view the response lacked detail, did not, in some cases, attempt to answer the questions asked and, in some cases, appeared flippant and dismissive.

[39] Some examples of where the Board felt the Respondent’s answers were not helpful included statements such as, *“irrelevant, this is a complying activity, mixing up the building code with the standard 3604 that is referenced in the code, not necessary- Never been required previously, this isn’t required or requested from SCD”*. The Board noted that there was little in the way of supporting reasoning to accompany the statement.

- [40] The Respondent claimed that the RFI requests needed to be reasonable and in this regard the Respondent did have the option to seek a Determination on some aspects of the request or elevate the issue within the Council.
- [41] The Board expresses no opinion with regard to the need for the information required by the Complainant in the RFIs. The Board considers that any concerns as regards the appropriateness of RFI questions should be dealt with separately to the actual consent application itself so as to ensure that consumers applications are dealt with in a timely manner and at reasonable cost.
- [42] The Respondent, by voicing his frustration with the Council in the way he did, ran the risk of time delays and additional costs, which is what happened on this occasion.
- [43] 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.

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

- [44] 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.
- [45] 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

- [46] 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>15</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.*

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<sup>15</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [47] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>16</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 do 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.
- [48] The Board adopted a starting point of a fine. There were mitigating factors included that the relationship between the Council and the Respondent were strained and this impacted on the Respondent's approach to the building consent. It was also noted that the documents, with some amendments have, since the complaint was made, been re-submitted to the Selwyn District Council and subsequently a Building Consent has been issued.
- [49] Based on the above the Board decided that a censure will be sufficient penalty. A censure is a formal expression of disapproval.
- [50] The Board does consider that the Respondent needs to bring himself up to date with current compliance documentation and legislation and to pay more attention to quality assurance of his documentation prior to submitting it for a consent application.

### Costs

- [51] 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."
- [52] 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<sup>17</sup>.
- [53] In *Collie v Nursing Council of New Zealand*<sup>18</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.*
- [54] 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 significantly less than 50% of actual costs.

<sup>16</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>17</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>18</sup> [2001] NZAR 74

## Publication

[55] 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>19</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.*

[56] 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.

[57] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>20</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>21</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>22</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>23</sup>.

[58] 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>24</sup>. 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.

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

## **Section 318 Order**

[60] 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.

<sup>19</sup> Refer sections 298, 299 and 301 of the Act

<sup>20</sup> Section 14 of the Act

<sup>21</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>22</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>23</sup> *ibid*

<sup>24</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

**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 the note in the Register and the Respondent being named in this decision.

- [61] 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**

- [62] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **26 March 2020**. 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.

- [63] 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**

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

Signed and dated this 5<sup>th</sup> day of March 2020



**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."*

**<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.*