

BPB Complaint No. C2-01363

IN THE MATTER OF

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners' Board under section 315 of the Act

AGAINST

Jason Hepi, Licensed Building Practitioner
No. BP 127287

DECISION OF THE BUILDING PRACTITIONERS' BOARD

Introduction

- [1] [The Complainant] lodged a complaint with the Building Practitioners' Board (the Board) on 25 February 2016 in respect of Jason Hepi, Licensed Building Practitioner (the Respondent).
- [2] The complaint alleged the Respondent has, in relation to building work at [omitted]:
- (a) carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) carried out or supervised building work that does not comply with a building consent (s 317(1)(d) of the Act);
 - (c) breached s 314B of the Act (s 317(1)(h) of the Act); and
 - (d) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).
- [3] The Respondent is a Licensed Building Practitioner with Carpentry and Site Area of Practice 1 Licences issued 1 July 2014.
- [4] The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- [5] The following Board Members were present at the hearing:
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| Mel Orange | Board Member (Presiding) |
| Brian Nightingale | Board Member |
| Bob Monteith | Board Member |
| Dianne Johnson | Board Member |
- [6] The matter was considered by the Board in Hamilton on 19 October 2016 in accordance with the Act, the Regulations and the Board's Complaints Procedures.

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

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| Gemma Lawson | Board Secretary |
| Jason Hepi | Respondent |
| [Omitted] | Complainant (by telephone) |
| Warren Nevill | Special Adviser to the Board |

No members of the public were present.

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

Board Procedure

[9] The “form of complaint” provided by the Complainant satisfied the requirements of the Regulations.

[10] On 29 April 2016 the Registrar of the Board prepared a report in accordance with reg 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether it wishes to proceed with the complaint.

[11] On 26 May 2016 the Board considered the Registrar’s Report and directed that a Technical Assessor be appointed to review the complaint.

[12] On 1 August 2016 an Addendum to the Registrar’s Report was provided. It included a report from Warren Nevill as a Technical Assessor.

[13] On 18 August 2016 the Board considered the Registrar’s Report and Addendum and in accordance with reg 10 it resolved to proceed with the complaint that the Respondent:

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

[14] On 25 August 2016 a Notice of Hearing was sent to the Respondent advising the matter would be heard in Christchurch. The Respondent subsequently advised the Board that he was residing in Hamilton and the Board agreed to transfer the hearing to Hamilton. A revised Notice of Hearing dated 21 September 2016 was issued.

[15] On 3 October 2016 a pre-hearing teleconference was convened by Mel Orange. The Respondent and Counsel for the Registrar were both present. The hearing

procedures were explained and the Respondent's attendance at the substantive hearing was confirmed.

Function of Disciplinary Action

[16] 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 Kingdom¹.

[17] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*²:

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

[18] In *McLanahan and Tan v The New Zealand Registered Architects Board*³ Collins J. noted that:

"... the disciplinary process does not exist to appease those who are dissatisfied with their architect. The disciplinary process for architects exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community."

[19] The same applies as regards the disciplinary provisions in the Building Act.

[20] It must also be noted that the Board has jurisdiction only with regard to "the conduct of a licensed building practitioner" and with respect to the grounds for discipline set out in s 317 of the Act. It cannot investigate matters outside of those grounds, does not have any jurisdiction over contractual matters and cannot deal with or resolve disputes between a complainant and the person who is the subject of the complaint.

The Hearing

[21] The hearing commenced at 10.00 am.

[22] At the hearing the Board was assisted in the presentation of the case by the Counsel for the Registrar who provided an Opening and Summary of the case on behalf of the Registrar. This was read into the hearing by the Board Secretary.

[23] Persons giving evidence were sworn in, their evidence was presented and they answered questions from the Board.

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

Substance of the Complaint

- [24] The Respondent was engaged as the carpentry subcontractor by Williams and Co Ltd to carry out building work on a new single storey residence.
- [25] Shortly after commencing on site Williams and Co Ltd went into liquidation and the Respondent arranged with the Complainant to take over and complete the contract.
- [26] Following a number of failed inspections, the Complainant requested, on 11 February 2016, that the Respondent to leave site. The Complainant then raised a number of allegations as regards the quality and compliance of the work carried out.

Evidence

- [27] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*⁴ where Justice McGrath in the Supreme Court of New Zealand stated:

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

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

- [28] The Technical Adviser confirmed his report and;
 - a. tabled pages 50 to 90 of his report being papers that were not included in the hearing bundle;
 - b. advised of a number of minor typos and other corrections to his report.
- [29] The Technical Advisor's report identified the following issues with the building work:
 - a. That the Building Consent Authority (BCA) inspections recorded numerous failures due to non-compliance with clause F of the building code. This was confirmed as a failure to provide adequate safety fencing to the property to prevent unauthorised access. The last of these notices is dated 27 August 2015;

⁴ [2009] 1 NZLR 1

- b. That BCA inspection notices and file notes identified the following non-compliances with the building consent;
 - i. incorrect fixings had been used to fix the plywood substrate to the roof framing, in that the fixings were not stainless steel as specified;
 - ii. missing solid blocking to the edges of the plywood substrate;
 - iii. Holding down bolts, tie down straps etc that do not comply with acceptable trade practice for installation and possibly do not comply with the building consent;
- c. Failure to attend to items identified as non-complying in the BCA inspections in a timely manner;
- d. Installation of butynol roofing membrane over incorrectly prepared substrate;
- e. Metal roofing installed too short and with isolated areas of damage around the fixings;
- f. Poorly constructed apron flashings that would not comply with the requirements of B2 durability and E2 external moisture, of the building code.
- g. Building wrap exposure exceeding manufacturer's recommendations;
- h. Incorrect installation of external joinery, the omission of or inadequately installed flashing tape and head flashings; and
- i. Incorrectly profiled cavity battens that do not comply with the manufacturer's installation requirements nor the specification and therefore did not comply with the building consent. He also doubted that they would comply with the building code.

[30] The Respondent gave evidence that:

- a. he did not carry out any of the foundation work, but did carry out the wall and roof framing work;
- b. he started work on site shortly after 27 August 2015;
- c. when he commenced work on site one of his first tasks was to erect the appropriate site fencing;
- d. due to an illness he was not on site when the substrate to the membrane roof was installed and did not inspect it prior to the butynol membrane being laid;
- e. labourers fixed the plywood substrate on his behalf. He claimed that only a handful of the incorrect fixings were used;
- f. the solid blocking was installed later, after the plywood had been laid;
- g. he engaged a roofing contractor to carry out both the metal and membrane roofing work;
- h. the roofing contractor engaged a separate contractor to lay the butynol membrane;
- i. the windows were only temporarily fixed in place in order to prevent them being stolen from site and that he intended to come back to them to install the correct flashings and tapes at a later date;
- j. he installed the building wrap and some cavity battens; and

- k. that as he was short of the specified castellated cavity battens, he formed his own on site by saw cutting slots in square dressed timber.

[31] In response to questioning from Board, the Respondent;

- a. advised that he did not have the complete building consent documents on site;
- b. explained that as the building site was some distance from the nearest building hardware merchant and that it was not always practical to race off and get additional materials when they ran out. In such cases he would try and make do with alternative materials on site and what had been supplied;
- c. advised that as a practice, he would request inspections aware that not all of the work was complete. He did this so that he had other work areas available to work on when issues arose that meant work had to stop in a particular area, often due to a lack of materials;
- d. confirmed he used threaded rod and chemsets for the bottom plate fixings;
- e. accepted that he was responsible for providing overall coordination and supervision, including for the roofing and after the roofer had installed the cladding, notified the roofer that the flashings were not adequate;
- f. advised that he did not provide a record of works as he had not completed his work.

Boards Conclusion and Reasoning

Negligence or Incompetence

[32] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v Far North Council*⁵. Judge McElrea provided guidance on the interpretation of those terms:

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

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

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

[33] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*⁶ as regards the threshold for disciplinary matters and as outlined above it considers these are matters which are to be considered at the hearing:

⁵ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁶ [2001] NZAR 74

[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.

- [34] The Board considers that there were elements of the Respondent's work and practices that did not meet the standards reasonably expected of a licensed building practitioner such as;
- a. the delay in remedying failed inspections which ultimately frustrated the council;
 - b. the failure to ensure that the full building consent documents were onsite;
 - c. failure to inspect work prior to proceeding with the roofing membrane;
 - d. inadequate supervision of the roofing subcontractors in allowing poor inadequate workmanship; and
 - e. substitution of materials.
- [35] The Board considers that, whilst each if considered as isolated issues may seem minor, when combined, the effect of the Respondent's conduct has reached the seriousness threshold and as such the ground of discipline is upheld.

Carrying Out Work Not Licensed to Carry Out

- [36] There is a requirement under s 84 of the Act that:
- All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work*
- [37] Section 317(1)(c) makes it a disciplinary offence for a licensed building practitioner to carry out or supervise restricted building work for which they do not have an appropriate licence.
- [38] The form of complaint included in the items of concern, references to the poor workmanship in respect to the apron flashings and butynol membrane roofing and evidence that it may have been carried out or supervised by the Respondent.
- [39] It is noted that the Respondent was only licensed in Carpentry and Site 1 and as such was not licensed to carry out membrane roofing work where that work was restricted building work.
- [40] The evidence before the Board was that the Respondent engaged a roofing subcontractor to carry out both the metal roofing and membrane roofing.
- [41] The Board considers that there is no evidence to uphold this disciplinary offence.

Contrary to a Consent

- [42] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must be submitted as a variation to the consent before any further work can be undertaken. It is also an

offence under s 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.

- [43] In *Tan v Auckland Council*⁷ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act).

- [44] The Board notes its findings as regards negligence or incompetence and it considers the same applies as regards s 317(1)(d). There were elements of work which did not meet the requirements of the building consent. This was not helped by the Respondent not having the full building consent documents onsite. The evidence before the Board was that the work was incomplete and that the Respondent was unable to rectify the issues as he had been removed from the site.
- [45] The Board considers there is insufficient evidence to uphold this ground for discipline.

Record of Work

- [46] There is a statutory requirement under s 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁸.
- [47] Failing to provide a record of work is a ground for discipline under s 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [48] The Board discussed issues with regard to records of work in its decision C2-01170⁹ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, whom a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [49] The statutory provisions do not stipulate a timeframe for the licensed person to provide a record of work. The provisions in s 88(1) simply states “on completion of the restricted building work ...”.
- [50] In most situations issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. Contractual disputes or intervening events can, however, lead to situations where the licensed practitioner, owner, or territorial authority’s perceptions as to when the record of work must be provided may differ.
- [51] One such situation is where it is clear the licensed building practitioner will not be able to carry out any further restricted building work on a site. In such a situation, even though the intended work has not been completed, the licensed building practitioner’s restricted building work under the building consent has, in effect, been

⁷ [2015] NZHC 3299 [18 December 2015]

⁸ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁹ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

completed as the licensed building practitioner will not be carrying out any further restricted building work. A record of work is then due.

- [52] In this respect it must also be borne in mind that a record of work can capture not only what has been done but also what has not been done by the licensed building practitioner. By providing adequate detail within the record of work they can afford themselves a degree of protection against future liability by limiting the record to only that which they have completed.
- [53] Time frames have not been specified in the Act for when a record of work is to be provided other than on completion. Given this and taking into consideration the requirement to give effect to the purpose of Parliament, the Board considers the use of the words "on completion" denotes a short time thereafter.
- [54] It must also be noted that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. A claim that the licensed building practitioner was not asked for a record of work will not be a defence. They must act of their own accord and not wait for others to remind them of their obligations.
- [55] In this instance it is clear that a record of work has not been provided and as such the elements of the disciplinary offence are made out.
- [56] Finally s 317(1)(da)(ii) of the Act provides for a defence of the licensed building practitioner having a "good reason" for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed.
- [57] In this instance the Respondent has submitted that he did not provide a record of work as he had not completed the work. The Board does not accept this is "good reason" and upholds these grounds for discipline.

Board Decision

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

and should be disciplined.

Disciplinary Penalties

- [60] The grounds upon which a Licensed Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act¹.
- [61] The Board's Complaints Procedures allow the Board either to set out the Board's decision on disciplinary penalty, publication and costs or to invite the Respondent to make submissions on those matters.
- [62] Given the nature of the disciplinary offending the Board has decided to dispense with calling for further submissions. The Respondent will, however, be given an opportunity to comment on the level of penalty, costs and on publication should he consider there are further matters which the Board should take into consideration.
- [63] As stated earlier 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.
- [64] The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁰ has commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to uphold professional standards:

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

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

- [65] In all the circumstances the Board considers a fine of \$1,500 is appropriate.

Costs

- [66] Under s 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [67] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case. The judgement in *Cooray v The Preliminary Proceedings Committee*¹¹ included the following:

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

¹⁰ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹¹ HC, Wellington, AP23/94, 14 September 1995

where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment.”

- [68] The judgment in *Macdonald v Professional Conduct Committee*¹² confirmed the approach taken in *Cooray*. This was further confirmed in a complaint to the Plumbers, Gasfitters and Drainlayers’ Board, *Owen v Wynyard*¹³ where the judgment referred with approval to the passages from *Cooray* and *Macdonald* in upholding a 24% costs order made by the Board.
- [69] In *Collie v Nursing Council of New Zealand*¹⁴ where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

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

- [70] In all the circumstances the Board considers costs of \$1,500 is appropriate.

Publication of Name

- [71] 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.
- [72] The Board is also able, under s 318(5) of the Act, to order publication over and above the public register:
- In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*
- [73] 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.
- [74] The Board does not consider any further publication is required.

Penalty, Costs and Publication Decision

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

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| Penalty: | Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,500. |
| Costs: | Pursuant to s 318(4) of the Act, the Respondent is ordered to pay costs of \$1,500 (GST included) towards the costs of, and incidental to, the inquiry of the Board. |

¹² HC, Auckland, CIV 2009-404-1516, 10 July 2009

¹³ High Court, Auckland, CIV-2009-404-005245, 25 February 2010

¹⁴ [2001] NZAR 74

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

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


Submissions on Penalty Costs and Publication

- [76] The Board invites the Respondent to make written submissions on the matters of disciplinary penalties, costs and publication up until close of business on 14 December 2016.
- [77] If no submissions are received then this decision will become final.
- [78] If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 23rd day of November 2016



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:*
 - (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).*

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- (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.*