

Before the Building Practitioners Board

	BPB Complaint No. 25878
Licensed Building Practitioner:	Daniel Fogden (the Respondent)
Licence Number:	BP 114394
Licence(s) Held:	Carpentry

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

Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Board inquiry
Hearing Type:	On the Papers
Hearing and Draft Decision Date:	24 February 2022
Finalised Draft Decision Date:	11 April 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1
Ms J Clark, Barrister and Solicitor, Legal Member
Ms K Reynolds, Construction Manager

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.

Draft Disciplinary Finding:

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

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Summary of the Board's Draft Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is fined \$1,500 and ordered to pay costs of \$500. The disciplinary finding will be recorded on the Register for Licensed Building Practitioners for a period of three years.

The Charges

- [2] On 24 February 2022, the Board received a Registrar's Report in respect of a Board Inquiry into the conduct of the Respondent.
- [3] The Board Inquiry arose as a result of a complaint that was received by the Board about the main contractor for the build. The main contractor identified the Respondent as the Licensed Building Practitioner who had carried out or supervised the building work that was complained about. A Board Inquiry was initiated as a result of the main contractor's assertion.
- [4] Under regulation 22 of the Complaints Regulations, the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 21 of the Complaints Regulations applies.

- [5] Having received the report, the Board decided that regulation 9 applied to aspects of the complaint but not to all of the allegations.

Regulation 21 Decisions

- [6] The matters the Board was inquiring into included whether the Respondent had:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) 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),

- [7] With regard to an allegation made about floor levels, the Board decided that regulation 21(c) of the Complaints Regulations applied. It provides:

21 Matter not warranting continuation of inquiry

A matter does not warrant the Board continuing an inquiry into it if—

(c) there is insufficient evidence to continue the inquiry;

- [8] To test sufficiency, the Board needs to inquire whether there is evidence which, if un-contradicted, would, having regard to the degree of proof demanded¹, justify consideration of the complaint.
- [9] The Respondent was a labour-only contractor, and he accepted that he was the on-site Licensed Building Practitioner but claimed he was working under the main contractor's supervision. That was not a tenable position, and more will be discussed on the point with respect to the record of work matter.
- [10] The allegations being investigated related to a rise in the foundation in one specific area of the floor around the hall and study. It was assessed as being a 20mm rise across a 1.2-metre length. It was subsequently remediated by different contractors, and it was claimed an issue still remained. The rise in the floor was the subject of multiple investigations and reports. Those reports identified and quantified the issue but did not determine the cause. The need for further investigation by a geotechnical engineer was noted in the documentation, but an assessment had not been completed. On this basis, the Board has decided that there is insufficient evidence and that it will not further investigate.
- [11] With respect to the other matters raised in the original complaint, the Board decided that they did not meet the threshold for the matters to be further investigated. Accordingly, regulation 21(d)(ii) of the Complaints Regulations applied. It provides:

21 Matter not warranting continuation of inquiry

(d) continuing the inquiry is—

¹ The burden in complaints is on the balance of probabilities per *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

(ii) unnecessary;

[12] In considering whether further investigation is necessary, the Board is required to consider the directions of the courts as regards the threshold for matters to be dealt with as a disciplinary matter. In *Collie v Nursing Council of New Zealand*,² Justice Gendall stated, as regards the threshold for disciplinary matters:

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

[13] Again, in *Pillai v Messiter (No 2)*³ the Court of Appeal stated:

... 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.

[14] On this basis, the Board has decided that whilst there was some evidence of building work that may not have been completed to an acceptable standard, the matters raised did not reach the seriousness threshold as outlined in the above court decisions.

Disciplinary Offence to be Investigated

[15] On the basis of the Registrar's Report, the Respondent's conduct that the Board resolved to investigate was that the Respondent had, in respect of [Omitted] Auckland, 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).

[16] Under regulation 10, the Board is required to hold a hearing in respect of that matter.

Draft Decision Process

[17] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers is necessary prior to it making a decision. In this respect, the Act provides that the Board may regulate its own procedures⁴. It has what is described as a summary jurisdiction in that the Board has a degree of flexibility in how it deals with

² [2001] NZAR 74

³ (1989) 16 NSWLR 197 (CA) at 200

⁴ Clause 27 of Schedule 3

matters; it retains an inherent jurisdiction beyond that set out in the enabling legislation⁵. As such, it may depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.

- [18] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers.
- [19] The Board does, however, note that there may be further evidence in the possession of persons involved in the matter or that the Board may not have interpreted the evidence correctly. To that end, this decision is a draft Board decision. The Complainant and the Respondent will be provided with an opportunity to comment on the Board's draft findings and to present further evidence prior to the Board making a final decision. If the Board directs or the Respondent requests an in-person hearing, then one will be scheduled.

Evidence

- [20] 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 that allow it to receive evidence that may not be admissible in a court of law.
- [21] The Respondent was engaged to carry out building work on a new residential build under a building consent. The building work included restricted building work for which a record of work must be provided on completion. The Respondent's building work was carried out between 4 August and 6 December 2017. He has not provided a record of work.
- [22] The Respondent, in a written response to the complaint dated 13 December 2021, stated:
9. *I was the lead carpenter however [Omitted] and [Omitted] oversaw, managed, directed and supervised the entire project.*
 10. *I was the only builder from FBL but [Omitted] also supplied labour to the project to assist me which required and I offered guidance and support to them.*
 11. *There was also a Project Manager on-site, [Omitted] who was responsible for organising trades, materials and inspections.*
 12. *[Omitted] was ultimately responsible for overseeing and supervising the project.*

⁵ *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

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

19. *I was never asked by [Omitted] for a record of work as he was the LBP (carpentry) for the purposes of this project. This is confirmed by the fact that he signed off the record of work as supervisor.*
20. *I absolutely disagree with [Omitted] claims that he requested a record of work from me and that I refused to supply it. I am aware of my obligations as an LBP and would have simply refused to do this. I would have provided one confirming I had carried out the specific work I had done.*
21. *Normally this would happen when we reached practical completion but in this instance, FBL was unlawfully prevented from finishing the work when [Omitted] engaged other contractors to do so and I was not informed when practical completion was achieved, nor was I asked for my record of work when [Omitted] terminated the contract.*
22. *Also, I do not understand [Omitted] claim that my lawyers advised him that I was not required to provide a record of work. I did not seek legal advice until December 2018 when [Omitted] raised the issue of the hump with me. If [Omitted] had requested or even discussed the need for a record of work, this would have happened at the time of practical completion back in June 2018. I noticed that [Omitted] has not produced the email he says my lawyers sent him, I assume this is because it does not exist.*

Draft Conclusion and Reasoning

- [23] The Board has decided that the Respondent **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
- [24] There is a statutory requirement under section 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 work⁷.
- [25] Failing to provide a record of work is a ground for discipline under section 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.

⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [26] The Board discussed issues with regard to records of work in its decision C2-01170⁸ 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, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [27] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [28] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states "on completion of the restricted building work ...". As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*⁹ "... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work".
- [29] The Respondent has argued that he did not have to provide a record of work as [Omitted] provided one as his supervisor.
- [30] The legislative history of the record of work provisions shows that they are designed to create a documented record of all of the Licensed Building Practitioners who carried out or supervised restricted building work under a building consent. A record of work avoids uncertainty in situations where a single lead contractor (who may or may not be licensed) has engaged with the owner and/or Territorial Authority by going beyond those persons to all those that have carried out or supervised restricted building work. It ensures all those involved in carrying out or supervising restricted building work can be identified, following completion, by the owner (and any subsequent owner) and the Territorial Authority along with the restricted building work they carried out or supervised.
- [31] The use of the word "each" in section 88(1) of the Act makes it clear that every licensed building practitioner who carries out restricted building work has to complete a record of work for the work they did or supervised.
- [32] It must also be noted that the reference to supervision in the context of records of work is to the supervision of persons who are not authorised to carry out restricted building work, i.e., non-licensed persons. A licensed building practitioner does not require supervision by virtue of their own licence – they are authorised to carry out restricted building work. Even if one practitioner was to consider that they were in overall charge of a building site and of the work being carried out under a building

⁸ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

⁹ [2018] NZHC 1662 at para 50

consent (such as where they hold a Site Licence), the wording "each licenced person..." in section 88 cannot be ignored.

- [33] The wording of the section is clear. The obligation is for each and every licensed building practitioner to provide a record of work for the restricted building work they carried out or supervised under a building consent irrespective of whether there may be another licensed building practitioner on-site who may be providing overall supervision. Persons who provide a record of work for restricted building work that other licensed building practitioners have completed could be exposing themselves to potential disciplinary liability.
- [34] On that basis, the Respondent's argument that he did not have to provide a record of work because [Omitted] did is rejected. To the extent that [Omitted] supervised other non-licensed persons in his employ on the site, [Omitted] was required to provide a record of work for those persons. His record of work should exclude the work carried out or supervised by the Respondent.
- [35] The Respondent also argued that he had not been asked for a record of work. The obligation is for the Licensed Building Practitioner to provide a record of work, not on the owner, territorial authority or main contractor to demand one. The Respondent was required to act of his own accord and not wait for others to remind him of his obligations. Again, the argument is rejected.
- [36] The Respondent should also note that whilst it may be common practice in some quarters of the building industry for records of work to be provided to main contractors, it is a practice that carries with it the risk that the record of work will not be passed on to the required recipients, the owner and the Territorial Authority. This can occur for a variety of reasons, including as a result of a contractual dispute. If the main contractor does not pass a record of work on to the final recipients, it is the author of the record of work that will be held accountable by the Board, not the person or entity that they entrusted to fulfil their statutory obligation. It is also to be noted whilst, at times, a Respondent may not immediately know who the owner is, there are ways and means of ascertaining such details¹⁰ and that there should be no impediments to a record of work being provided to a Territorial Authority.
- [37] As the Respondent has not provided a record of work, the Board finds the disciplinary offence has been committed.
- [38] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced 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. Each case will be decided by the Board on its own merits, but the threshold for a good reason is high.

¹⁰ Ownership details of land are available on public registers.

- [39] The reasons put forward of being supervised and not being asked for a record of work have been dealt with. They are not good reasons.
- [40] In this instance, there was an ongoing dispute between the main contractor and the owner. Whilst the Respondent did not put this forward as a reason, he should note that the Board has repeatedly stated that a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract nor by contractual disputes. Licensed building practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine.

Draft Decision on Penalty, Costs and Publication

- [41] 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.
- [42] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [43] 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*¹¹ 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.

- [44] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹² 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] Record of work matters are at the lower end of the disciplinary scale. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an

¹¹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

amount which it considers will deter others from such behaviour. There are no aggravating nor mitigating factors present. As such, the Board sees no reason to depart from the starting point. The fine is set at \$1,500.

Costs

- [46] 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."
- [47] 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 case¹³.
- [48] 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.*
- [49] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁵ the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [50] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [51] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar's Report and in the

¹³ *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.

¹⁴ [2001] NZAR 74

¹⁵ CIV-2011-485-000227 8 August 2011

Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such, the Board will order that costs of \$500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

Publication

[52] 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 Act¹⁶. 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.

[53] 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.

[54] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁷. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁸. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁹. 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*²⁰.

[55] 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 interest²¹. 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.

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

¹⁶ Refer sections 298, 299 and 301 of the Act

¹⁷ Section 14 of the Act

¹⁸ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁰ *ibid*

²¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Draft Section 318 Order

[57] 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 \$1,500.

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

[58] 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 Draft Decision

[59] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[60] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **Friday 8 April 2022**.

[61] If submissions are received, then the Board will meet and consider those submissions.

[62] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[63] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

[64] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required, then one will be scheduled, and a notice of hearing will be issued.

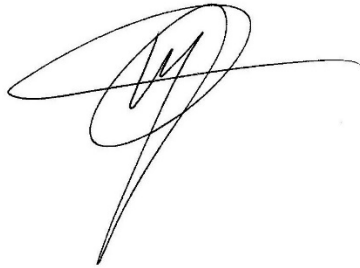
[65] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **Friday 8 April 2022**.

[66] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

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

Signed and dated this 18th day of March 2022.

A handwritten signature in black ink, consisting of a large, stylized 'M' with a horizontal line extending to the right and a vertical line extending downwards from the center.

Mr M Orange
Presiding

This decision and the order herein were made final on 11 April 2022 on the basis that no further submissions were received.

Signed and dated this 13th day of April 2022.

A handwritten signature in black ink, identical to the one above, consisting of a large, stylized 'M' with a horizontal line extending to the right and a vertical line extending downwards from the center.

Mr M Orange
Presiding

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).*
- (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.*