

Before the Building Practitioners Board

	BPB Complaint No. CB25250
Licensed Building Practitioner:	Zunlong Guan (the Respondent)
Licence Number:	BP 114839
Licence(s) Held:	Carpentry and Roofing – Metal Tile Roof, Profiled Metal Roof and/or Wall Cladding, Shingle or Slate Roof

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

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	26 February 2020
Decision Date:	16 March 2020

Board Members Present:

Mel Orange, Legal Member (Presiding)
Richard Merrifield, LBP, Carpentry and Site AOP 2
David Fabish, LBP, Carpentry and Site AOP 2
Robin Dunlop, Retired Professional Engineer
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 disciplinary offences under sections 317(1)(b) and 317(1)(da)(ii) of the Act.

Contents

Introduction	2
Function of Disciplinary Action	3
Inquiry Process	4
Evidence	4
Board’s Conclusion and Reasoning	7
Negligence and/or Incompetence	7
Contrary to a Building Consent	9
Record of Work.....	9
Penalty, Costs and Publication	10
Penalty	11
Costs.....	11
Publication	12
Section 318 Order	13
Right of Appeal	13

Introduction

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

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, an inspection carried out by Auckland Council dated 3 October 2017 identified issues with roofing work that may have been carried out or supervised by the Respondent and the Complainant has identified that there were multiple failed inspections of the work and has alleged that the roof leaks, guttering was not properly attached and flashings were not done properly;
- (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 contrary to section 317(1)(c) of the Act, IN THAT, the roofing work included restricted building work that required a torch on membrane or liquid membrane licence which the Respondent may not have held at the time;

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

- (c) carried out or supervised building work or building inspection work that does not comply with a building consent contrary to section 317(1)(d) of the Act, IN THAT, an inspection carried out by Auckland Council dated 3 October 2017 identified issues with roofing work that may have been carried out or supervised by the Respondent and the Complainant has identified that there were multiple failed inspections of the work and has alleged that the roof leaks, guttering was not properly attached and flashings were not done properly;
- (d) 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) of the Act contrary to section 317(1)(da)(ii) of the Act, IN THAT, he may not have provided a record of work within a reasonable period of time of completion; and
- (e) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act, IN THAT, the roofing work included the application of membrane or liquid membrane roofing materials which the Respondent may not have been competent to carry out.

Function of Disciplinary Action

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

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

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

[4] In a similar vein the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complainant’s Regulations focuses on serious conduct that

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

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁵:

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

- [5] Finally, the Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.
- [6] The above commentary on the limitations of the disciplinary process 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.

Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [10] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

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

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

- [11] In addition to the documentary evidence before the Board heard evidence at the hearing from the Complainant and the Respondent.
- [12] The Complainant stated the Respondent was engaged to carry out building work on an alteration and extension to an existing dwelling under a building consent. He was a subcontractor to the main contractor. 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 in early 2014. The Complainant stated a record of work was not provided on completion.
- [13] The Respondent's work involved reroofing part of an existing dwelling with corrugated iron as well installing corrugated iron roofing to an extension to the dwelling. The Complainant complained to the Board about poor workmanship; the Respondent holding himself out to be licensed to carry out to supervise work he was not licenced to carry out or supervise and/or carrying out or supervising work that he was not licenced to carry out or supervise; that he had carried out work that did not comply with building consent; and that he had failed to provide documentation.
- [14] At the time of the complaint and the Board making its decision to proceed to a hearing, there was evidence that the Respondent may have carried out or supervised the installation of a membrane roof. The Respondent does not hold the required areas of practice for that type of roofing. As part of the Board's further investigations it obtained a producer statement from a person that had installed the membrane roof. On this basis of that evidence, the Board decided that it would not further investigate the related allegations.
- [15] In terms of the corrugated iron roofing the Complainant alleged that, following completion:
- (a) the roof leaked;
 - (b) guttering was not properly attached;
 - (c) the flashing from the roof covering the membrane has not been installed around the whole internal gutter;
 - (d) the existing roof to internal gutter had to have a down pipe and spreader on it at the rear of the house; and
 - (e) the flashing was not done properly causing the final inspection to be failed.
- [16] The Complainant noted that he had contacted the Respondent on numerous occasions and that the Respondent said he would go to the property and check the work, but did not do so.
- [17] An inspection of property by the building consent authority noted the following site notes:
- 3. RCLAD – Roof flashings and penetrations: not water tight, missing and lapped the wrong way;
 - 4. RCLAD – Spouting clearance: To far from barge;

5. RCLAD – Downpipe size and fixings: Suppers not to plans. Dropper onto membrane deck;
6. RCLAD – Spreaders: Spreader to go on at membrane deck.

[18] The inspection also noted the following:

4. Barge flashing has to go to the top of the roof ridge;
5. The membrane gutter is not to plan, it will require a minor variation for the change of product and design;
6. The flashing from the roof covering the membrane has not been installed around the whole of the internal gutter;
7. The existing roof to internal gutter has to have a down pipe and spreader on it. Rear of house.

[19] The Complainant provided photographs with the complaint of the substandard work which corroborated the issues raised by the Complainant and the building consent authority.

[20] The Respondent's initial response to the complaint was that whilst he did have a past association with the persons who were the main contractors, he did not have any records of him being involved in the project. He stated that the complaint had nothing to do with him.

[21] As part of the Board's further investigations it obtained two producer statements from the Respondent for steel long run roofing. One was dated 23 April 2014. The Respondent stated it was not his signature on the document. The other was dated 2 May 2014. It was for colour steel long run roofing. The Respondent accepted that it was his signature and his producer statement. The producer statement gave undertakings as to the quality and compliance of the completed roofing work.

[22] At the hearing the Respondent accepted that he had carried out roofing work at the site but stated that it was not complete and that he had not installed the flashings or guttering. The Complainant gave evidence that he had seen the Respondent carrying out that work and that the Respondent had ordered both the roofing and flashings.

[23] The Respondent was questioned by the Board as to why he had provided a producer statement if he had not completed the work. The Respondent was not able to provide a reason. He stated that he had been paid for the work.

[24] The Respondent was also questioned about the quality and compliance of the roofing work shown on the photographs. His response was that he would have remediate work had the issues been brought to his attention and/or that the work was not complete.

[25] The Complainant gave evidence that he has had to contract new contractors to remove and replace the roofing work carried out by the Respondent.

[26] The Complainant noted that he had been trying to get a record of work from the Respondent since 2018 and that the Respondent would hang up on him when he tried to make contact. The Complainant is yet to receive a record of work.

Board's Conclusion and Reasoning

[27] On the basis of the evidence received that another person had installed the membrane roofing material the Board decided it would not proceed with the allegations under sections 317(1)(c) or 317(1)(h) of the Act.

[28] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act); and
- (b) 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.

[29] The Board has also decided that the Respondent **has not** 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).

[30] The reasons for the Board's decisions follow.

Negligence and/or Incompetence

[31] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.

[32] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁹. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[33] 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

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

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

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

assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹⁰. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹¹.

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

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[35] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code¹² and be carried out in accordance with a building consent¹³. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

[36] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹⁴ the Court's noted, as regards the threshold for disciplinary matters, that:

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

[37] The evidence before the Board showed clear departures from acceptable standards. The Respondent maintained that the work was not complete or that he was not

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

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

¹² Section 17 of the Building Act 2004

¹³ Section 40(1) of the Building Act 2004

¹⁴ [2001] NZAR 74

responsible for flashings and guttering. The Board did not accept that. He had been observed doing such work, had invoiced and been paid for it and have provided a producer statement which implied that the work had been completed and to an acceptable standard.

- [38] The Complainant has noted that the roof leaks. This means that the provisions of E2 of the Building Code, which are critical to the long-term durability and health of a home, have not been met. This is a serious failing.
- [39] 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.

Contrary to a Building Consent

- [40] Under section 40 of the Act all building work must be carried out in accordance with the building consent issued. Section 40 of the Act provides:

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) *A person must not carry out any building work except in accordance with a building consent.*

- [41] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code. In doing so the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act.
- [42] Whilst, from a strict liability perspective, the building consent has not been adhered to the Board does not consider, given the finding of negligence above, that a further finding of the Respondent having carried out building work contrary to a building consent is necessary.

Record of Work

- [43] 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 work¹⁵.
- [44] 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.

¹⁵ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

- [45] The Board discussed issues with regard to records of work in its decision C2-01170¹⁶ 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.
- [46] 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.
- [47] 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*¹⁷ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [48] As to when completion will have occurred is a question of fact in each case.
- [49] 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. Completion occurred in 2014. A record of work has not been provided. On this basis the Board finds that the record of work was not provided on completion as required and the disciplinary offence has been committed.
- [50] The Respondent should also note 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. He is required to act of his own accord and not wait for others to remind him of his obligations.
- [51] 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. No good reasons have been put forward.

Penalty, Costs and Publication

- [52] 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.

¹⁶ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

¹⁷ [2018] NZHC 1662 at para 50

[53] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

[54] 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*¹⁸ 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.

[55] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁹ 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.

[56] The Respondent has committed two disciplinary offences. The conduct occurred in 2014 and the Board is mindful that the penalty that it imposes needs to reflect those which were imposed for similar conduct at that time.

[57] In terms of the negligence finding the Board orders that the Respondent pay a fine of \$1,500. The level of negligence was at the moderate level, the Respondent did not take responsibility for his failings and the consequences of those failings for the Complainant have been significant.

[58] Turning to the record of work in 2014 the obligation to provide a record of work was new and the Board was being lenient with those that failed to provide them. The Board's starting point at the time was a censure. The Board considers a censure to be appropriate in this case. A censure is a formal expression of disapproval of conduct.

Costs

[59] 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."

[60] 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

¹⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²⁰.

- [61] In *Collie v Nursing Council of New Zealand*²¹ 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.

- [62] 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.

Publication

- [63] 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 Act²². 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.

- [64] 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.
- [65] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. 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*²⁶.
- [66] 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 interest²⁷. It is,

²⁰ *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.

²¹ [2001] NZAR 74

²² Refer sections 298, 299 and 301 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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

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

Section 318 Order

[68] 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 and pursuant to section 318(1)(f) of the Act 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 \$1,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

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

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

Right of Appeal

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

Signed and dated this 16th day of March 2020



Mel Orange
Presiding Member

ⁱ **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*

-
- (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (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.*