

## Before the Building Practitioners Board

	BPB Complaint No. CB 25803
Licensed Building Practitioner:	Brendon Hamilton (the Respondent)
Licence Number:	BP 132569
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Queenstown
Hearing Type:	In Person
Hearing and Decision Date:	28 June 2022

#### Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)  
Mr C Preston, Chair  
Ms J Clark, Barrister and Solicitor, Legal Member  
Ms K Reynolds, Construction Manager  
Mr G Anderson, LBP, Carpentry, Site 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.

#### Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and (d) of the Act.

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**Summary of the Board’s Decision**

[1] The Respondent supervised building work in a negligent manner and in a manner that was contrary to a building consent. He is fined \$2,500 and ordered to pay costs of \$2,000. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

**The Charges**

- [2] The hearing resulted from a Complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [OMITTED], Central Otago. 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 (s 317(1)(b) of the Act) as detailed in the Complainant’s cover letter to the complaint, other than the matters which are contractual issues (Document 2.1, Pages 36-44 of the Board’s file): and/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) as detailed in the Complainant’s cover letter to the complaint, other than the matters which are contractual issues (Document 2.1, Pages 36-44 of the Board’s file).

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

- [3] In investigating the above grounds of complaint, the Board gave notice that it would consider, in particular:
- (a) the installation of the window and door units, including the clearances and associated flashings;
  - (b) the installation of the exterior cladding; and
  - (c) alleged poor workmanship in relation to the ridge capping and the structural fixings.

### **Function of Disciplinary Action**

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

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

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

[6] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons<sup>5</sup>:

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

[7] 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

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

<sup>3</sup> [1992] 1 NZLR 720 at p 724

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

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

conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.

- [8] The above commentary on the limitations of the disciplinary process are important to note as, on the basis of it, the Board's inquiries, and this decision, focus on and deal with the serious conduct complained about.

### **Inquiry Process**

- [9] 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.
- [10] 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**

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [12] 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.
- [13] In addition to the documentary evidence before it, the Board heard evidence at the hearing from:
- [OMITTED], Complainant
- Brendon Hamilton, Respondent
- [OMITTED], [OMITTED]
- [OMITTED], [OMITTED]
- Kevin O'Connor, Senior Council Inspector, Central Otago City Council

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

- [14] The Respondent was engaged to carry out an alteration and extension to the Complainant's residential dwelling. The building work was carried out under the Respondent's supervision and under a building consent. The building work was granted a Code Compliance Certificate dated 17 July 2020. When problems began to surface, the Complainant asked for a further council inspection which was undertaken by Mr O'Connor on 6 October 2020. This revealed work which was, in the Central Otago City Council's view, non-compliant with the building code and the building consent. As a result, a further building consent was issued in October 2020 for the required remedial work. The remedial work was also undertaken under the Respondent's supervision, and a Code Compliance Certificate was issued for the remedial work on 22 April 2021.
- [15] The hearing was only concerned with the original work that was granted a Code Compliance Certificate, but which was later found by the Council to be non-compliant and did not inquire into the remedial work.
- [16] As noted, the Respondent supervised the building work. It was carried out by [OMITTED], a qualified builder who had about 10 years' experience (mainly in renovation work) and a second-year apprentice in the employ of the Respondent.
- [17] The Respondent's experience covered a wide range of projects with a preference for light commercial and only one prior domestic renovation. He expressed a dislike of renovation work. He was, at the time of this project, also building his own new home.
- [18] The Respondent said that he was not at the site very often, and he acknowledged, at the hearing, that he would have picked up on the issues if he had been at the site and had checked the building work.
- [19] The Respondent also acknowledged in his written response to the complaint that *"I understand that I have done wrong by not supervising carefully enough and am very sorry for my actions, I fronted up and replaced everything defective and left the job finished correctly."* (Document 2.2.2, Page 184 of the Board's file).
- [20] Mr [OMITTED], in evidence, did, however, reinforce that the Respondent was always available by phone to discuss issues.
- [21] The particular workmanship issues that the Board focussed on at the hearing were:
- (a) The windows were installed without head and sill flashings;
  - (b) The weatherboard weather-groove flanges were cut off the new weatherboards installed to the renovated part of the house;
  - (c) Incorrect installation of the ridge cap to the roof; and
  - (d) Structural fixings through the timber piles not adequately tightened.

- [22] Mr [OMITTED] acknowledged that the lack of head flashings was a “*complete oversight*” by him. The Respondent said that this was “*part of the building consent that wasn’t followed*” and this was ultimately his fault.
- [23] As regards the cutting down of the weatherboards, the Respondent stated that he did not explore any other options. He said the cutting off of the weather groove “*should not have been done*” and “*was a terrible decision*”. Mr [OMITTED] stated that once the weather groove was cut off, the boards did not sit well, and this led to him double nailing the boards.
- [24] On the issue with the ridge cap, the Respondent said that he did not get an opportunity to go back and tidy that up.
- [25] The Board did not canvass the workmanship issues in any more detail as the Respondent accepted, at the hearing, that the work in issue was not compliant with the building code and the building consent. The Respondent accepted that his supervision should have been better.
- [26] The Board did raise with the Respondent his understanding of the minor variation and amendment process for changes to the building consent. He stated that he did not tend to need to make building consent changes in his projects and he was “*not overly clued up on different types of changes*”.

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

- [27] The Board has decided that the 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) 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)
- and **should** be disciplined.

#### Negligence

- [28] 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*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.
- [29] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test<sup>9</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a

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<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

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

professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction or, in other words, whether the conduct was serious enough.

[30] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act.<sup>10</sup> The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>11</sup>

[31] 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.*

[32] In terms of seriousness, in *Collie v Nursing Council of New Zealand*,<sup>12</sup> the court 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*

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

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

<sup>12</sup> [2001] NZAR 74

*which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[33] In *Pillai v Messiter (No 2)*,<sup>13</sup> 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.*

[34] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to Electricity Act 1992<sup>14</sup>. The definition of supervision in that Act is consistent with the definition in the Building Act and, as such, the comments of the court are instructive. In the case, Judge Tompkins stated, at paragraph 24:

*“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”*

[35] The Respondent acknowledged at the hearing and earlier in his written response to the complaint that his supervision of the restricted building work was inadequate. As a result of the lack of supervision, the work was not completed in accordance with the building code and the building consent. A second building consent had to be issued to enable remedial work to be completed.

[36] Given the above, the Board, which includes persons with extensive experience and expertise in the building industry, decided that the Respondent had 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

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

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

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<sup>13</sup> (1989) 16 NSWLR 197 (CA) at 200

<sup>14</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011



- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

- [38] 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.
- [39] Once a building consent has been granted, any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with; by way of a minor variation under section 45A of the Act; or as an amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used. The critical difference between the two options is that building work under a building consent cannot continue if an amendment is applied for.
- [40] If changes are made to what is stipulated in the building consent, and the correct process for the change is not used, then the building work can be said to have not been completed in accordance with the building consent.
- [41] Unlike negligence, contrary to a building consent is a form of strict liability offence. All that needs to be proven is that the building consent has not been complied with. No fault or negligence has to be established<sup>15</sup>.
- [42] Given the above factors, and the workmanship issues discussed above the Board finds that the building consent had not been complied with. It is noted, however, that the finding of negligence and that of building contrary to a building consent are integrally connected and, as such, they will be treated as a single offence when the Board considers penalty.

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

- [43] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

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<sup>15</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

- [44] The Respondent made submissions at the hearing as regards penalty, costs, and publication.
- [45] He advised the Board that he had replaced all of the exterior cladding at his own cost. He had also made changes to the way in which he works. The Respondent stated he no longer took on too much work and had a “*slower*” approach to his work. He now worked on each project with just himself and an apprentice.
- [46] The Board also noted that the Respondent, to his credit, in his written response to the complaint and at the hearing, accepted responsibility for the workmanship issues, acknowledged his failure to adequately supervise and apologised.

### Penalty

- [47] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>16</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The court noted:

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

- [48] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>17</sup> the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act, they do have the advantage of simplicity and transparency. The court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [49] Based on the above, the Board considers that the matter was at the middle level of seriousness and that a fine was appropriate. It adopted a starting point of \$3,500. This is an amount that is consistent with other penalties imposed by the Board for similar offending. The Board considered that there were mitigating factors, including that the Respondent has made changes to his work practice and his acceptance of wrongdoing. Taking those mitigating factors into account, the Board has set the fine at \$2,500.

### Costs

- [50] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”

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<sup>16</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>17</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

- [51] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>18</sup>.
- [52] In *Collie v Nursing Council of New Zealand*,<sup>19</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

*But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*

- [53] Based on the above, the Board adopted a starting point for a costs order of \$3,500, which is the Board's scale costs for a half-day hearing. The Board considered that the Respondent's early acceptance of responsibility was to be commended and was a mitigating factor. Accordingly, the Board's costs order is that the Respondent is to pay, toward the costs of and incidental to the Board's inquiry, the sum of \$2,000.

#### Publication

- [54] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act<sup>20</sup>. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

*In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

- [55] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [56] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>21</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>22</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>23</sup>. The High Court provided

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<sup>18</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>19</sup> [2001] NZAR 74

<sup>20</sup> Refer sections 298, 299 and 301 of the Act

<sup>21</sup> Section 14 of the Act

<sup>22</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>23</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>24</sup>.

[57] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>25</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

[58] Based on the above, the Board Will Not order further publication.

### Section 318 Order

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

**Penalty:** Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,500.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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(l)(iii) of the Act.

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

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

### Right of Appeal

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

Signed and dated this 15<sup>th</sup> day of July 2022



**Mr M Orange**  
Presiding Member

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<sup>24</sup> *ibid*

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

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**<sup>i</sup> Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
    - (i) *cancel the person’s licensing, and direct the Registrar to remove the person’s name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person’s licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
  - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person’s licensing class or classes and direct the Registrar to record the restriction in the register:*
  - (d) *order that the person be censured:*
  - (e) *order that the person undertake training specified in the order:*
  - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.”*

**<sup>ii</sup> Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
- (b) *to take any action referred to in section 318.*

**Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*