

## Before the Building Practitioners Board

	BPB Complaint No. CB25672
Licensed Building Practitioner:	Clay Hoskin (the Respondent)
Licence Number:	BP 128169
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	Nelson
Hearing Type:	In Person consolidated with CB25825
Hearing and Decision Date:	13 April 2022
Board Members Present:	
	Mr M Orange, Deputy Chair, Barrister (Presiding)
	Mr C Preston, Chair
	Mrs F Pearson-Green, LBP, Design AOP 2
	Mr G Anderson, LBP, Carpentry and 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 a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent **has not** committed disciplinary offences under sections 317(1)(b) or 317(1)(d) of the Act.

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### Summary of the Board’s Decision

- [1] The Respondent failed to provide a record of work on completion of restricted building work. He is censured and ordered to pay costs of \$500. The disciplinary finding will be recorded on the public Register for a period of three years.
- [2] The Respondent has not carried out building work in a negligent or incompetent manner (section 317(1)(b) of the Act) or in a manner contrary to a building consent (section 317(1)(d) of the Act). The Board made the finding on the basis that the Respondent was neither carrying out nor supervising the building work under investigation.

### The Charges

- [3] 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]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent may have:
- (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;

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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.

- (b) 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; and
- (c) 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.

[4] In further investigating the allegations under sections 317(1)(b) and 317(1)(d) of the Act, the Board gave notice that it would be inquiring into the quality and compliance of the installation of the corrugated iron wall cladding and associated weatherproofing flashing and seals to the wall cladding, penetrations, window and door openings.

#### **Function of Disciplinary Action**

[5] 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>.

[6] 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.”*

[7] 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*

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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

*includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.*

- [8] 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.
- [9] The above commentary on the limitations of the disciplinary process is 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**

- [10] 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.
- [11] 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.

### **Consolidation**

- [12] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [13] The Board sought agreement for consolidation of this matter with complaint number CB25825. The consent of all those involved was forthcoming. The two matters were consolidated.

### **Evidence**

- [14] 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.
- [15] 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

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

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.

[16] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Clay Hoskin	Respondent
[OMITTED]	Licensed Building Practitioner, Carpentry, respondent in matter CB25825
[OMITTED]	Witness for the Respondent
[OMITTED]	Senior Building Technical Officer, Tasman District Council
[OMITTED]	Licensed Building Practitioner, Carpentry

[17] The Respondent was assisted at the hearing by Mr [OMITTED].

[18] The Board also summoned Mr [OMITTED], Building Control Officer, Tasman District Council. Due to a family bereavement, he was not able to attend.

[19] The complaint related to an alteration and extension to a residential dwelling. The building work was carried out under a building consent. The building work included restricted building work for which a record of work must be provided on completion.

[20] The Board was provided with building consent Council inspection documentation. Included in it was a Site Inspection Report of 16 March 2020 which noted:

***Site Communication:*** *Concerns have been raised with the installation of the cladding as there is water damage showing on one of the door jambs.*

*1: Please explain why no sill flashings were installed?*

*2: Meter box flashings appears to be incorrect as well?*

*3: Cladding has been installed hard down to the base flashing?*

*4: No inseal foam installed on joinery.*

[21] An email was sent to the Respondent on 9 April 2020 noting the issues. It also stated:

*The approved plans clearly show the requirement for both the sill flashings, as well as the inclusion of compressible foam seals.*

[22] The matters raised were at the centre of the Board's investigations.

[23] The Respondent was engaged after another contractor had started but not completed the alterations. The Respondent worked on the alteration and, when he finished on site, the building work on the alteration had not been completed, and the extension had not been started. The Respondent carried out and supervised some of the building work on the alteration aspect of the build and also engaged Mr [OMITTED] to assist with cladding and the installation of windows for the alteration. The Respondent's work included structural work and some cladding. He assisted Mr

[OMITTED] to lift one of the windows that did not have a compressible foam seal into place but did not assist in installing it.

- [24] The Respondent's involvement in the building work came to a premature end. He provided a record of work dated 4 March 2020 together with an email to the Council informing that he was no longer involved in the build. The record of work stated that the last inspection of building work that he was involved in was on 26 August 2019. It also stated that the cladding had been completed by the owner. The Respondent accepted that he should have stipulated that he did carry out some of the cladding and that he would be issuing a revised record of work.
- [25] The Respondent's engagement came to a formal end on 29 November 2019 when the owner, in response to a disputed invoice, informed him that his services were no longer required.
- [26] The Board received evidence at the hearing as to the timelines involved with reference to invoices and timesheets:
- 2 September 2019 – cladding and base flashings
  - 11 September 2019 – lift one window into the kitchen
  - 12 September 2019 – last day involved in cladding
  - 23 September 2019 – install of rondo battens
  - 21 October 2019 – site meeting as regards beam fixings
  - 30 October 2019 pick up scaffolding
- [27] Up until 12 September 2019, Mr [OMITTED] was carrying out building work as a subcontractor to the Respondent. After that date, he contracted his labour directly to the owner. The Respondent continued to supply some materials. At that point in time, the cladding had been installed to a point where windows could be installed.
- [28] Mr [OMITTED] was a Licensed Building Practitioner up until 18 September 2019, when his licence was suspended. At that point in time, he ceased to be a Licensed Building Practitioner as a result of the suspension. He gave evidence that he assumed the Respondent would have been supervising him from 18 September 2019 but also conceded that he was not aware, at the time, that his licence had been suspended. The Respondent had no knowledge of the suspension.
- [29] Neither the Respondent nor Mr [OMITTED] took issue with the matters raised in the Council Site Inspection Report. They did, however, note that another person had, unbeknownst to them and after their involvement had ceased, installed expanding foam air seals around the windows without backing rods that had deformed cladding flashings and which prevented the installation of the compressible foam sealant to the cladding flashings without invasive deconstruction.
- [30] Mr [OMITTED] also gave evidence that he had ordered the sill flashings and was intending to install them and the compressible foam sealant when the sill flashings

were supplied, notwithstanding that the associated joinery and flashings (excluding the sill flashing) had been installed. An invoice from the Respondent to the owner dated 7 October 2019 and notated “installed by [OMITTED]” recorded the order. The Board was also provided with an ITM invoice for the flashing dated 7 October 2019. It was noted that the flashings that had been installed were steel, whereas the building consent specified wood. Mr [OMITTED], in response to various questions as regards compliance with the building consent, noted that he was not aware of all of the design details specified in them and that he proceeded with the building work on the basis of his past knowledge and experience.

- [31] Mr [OMITTED] was questioned about when the windows and associated flashings were installed. He stated it would have been about a week after he started contracting directly to the owner (19 September 2019) but that he could not recall exactly when it was. There was no other evidence before the Board that established when the windows were installed.
- [32] The Respondent was asked why he did not provide a record of work until 4 March 2020. Reference was made to ongoing invoicing and payment issues.

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

- [33] 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.
- [34] The Board has also decided that the Respondent **has not**:
- (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).

- [35] The reasons for the Board’s decisions follow.

#### Negligence and/or Incompetence

- [36] The evidence before the Board established that the building work under investigation was carried out by Mr [OMITTED] and that the Respondent was not, during the period when Mr [OMITTED] was not licensed, supervising him. As such, he is not responsible for the issues that were noted in the Site Inspection Report.

## Record of Work

- [37] 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 work<sup>7</sup>.
- [38] 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.
- [39] The Board discussed issues with regard to records of work in its decision C2-01170<sup>8</sup> 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.
- [40] 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.
- [41] 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*<sup>9</sup> “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [42] As to when completion will have occurred is a question of fact in each case.
- [43] 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. That did not occur in this instance. The building work came to a premature end and it was continued by others. A record of work was provided on 4 March 2020. The question for the Board was, when did completion occur.
- [44] The Respondent’s evidence was that his last involvement on-site was uplifting scaffolding on 30 October 2019, that the last building work he did was on 23 September 2019 (installing Rondo ceiling battens) and that the owner had advised him that he was no longer required for the build on 29 November 2019. His record of work stated his involvement had ceased as of the Council inspection on 26 August 2019.

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<sup>7</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>8</sup> *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

<sup>9</sup> [2018] NZHC 1662 at para 50

- [45] Taking the latest of the possible dates, 29 November 2019, the record of work was provided four months after completion. The Board finds that the record of work was not provided within a reasonable period after completion and that the disciplinary offence has been committed.
- [46] 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.
- [47] In this instance, there was an ongoing payment dispute. 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.
- [48] 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.

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

- [49] 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.
- [50] The Respondent made submissions at the hearing as regards penalty, costs and publication.

### **Penalty**

- [51] 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>10</sup> commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

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

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<sup>10</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

- [52] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>11</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.
- [53] The only disciplinary matter that was upheld was a failure to provide a record of work. 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 amount which it considers will deter others from such behaviour. There are mitigating factors.
- [54] The Respondent suffered a financial loss and is, as a result of other unrelated events, in a constrained financial situation. The Board also noted that the owner did not complain about the failure to provide a Record of Work on completion but that it was a matter pursued by the Board under its inquiry jurisdiction. Given those factors, the Board decided that a censure would suffice. A censure is a public expression of disapproval.

#### Costs

- [55] 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."
- [56] 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>12</sup>.
- [57] In *Collie v Nursing Council of New Zealand*,<sup>13</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.*
- [58] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>14</sup> 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*

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<sup>11</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>12</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>13</sup> [2001] NZAR 74

<sup>14</sup> CIV-2011-485-000227 8 August 2011

*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.*

- [59] 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 moderately complex. Adjustments based on the High Court decisions above are then made.
- [60] Ordinarily, costs for a hearing of this type would be in the order of \$3,500. The board has, however, taken into account that the only disciplinary finding upheld was that relating to the Record of Work. Had the Board only dealt with that matter it would have been heard on the papers and costs would have been in the order of \$500. On that basis, and taking into account the Respondent's financial circumstances, the Board's costs order is that the Respondent is to pay the sum of \$500 toward the costs of and incidental to the Board's inquiry.

#### Publication

- [61] 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>15</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.*

- [62] 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.
- [63] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>16</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>17</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>18</sup>. The High Court provided

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<sup>15</sup> Refer sections 298, 299 and 301 of the Act

<sup>16</sup> Section 14 of the Act

<sup>17</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>18</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>19</sup>.

[64] 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>20</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.

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

### Section 318 Order

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

**Penalty:** Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

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

[67] 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.

[68] The Respondent can request that the Registrar allow time to pay the costs.

### Right of Appeal

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

Signed and dated this 10<sup>th</sup> day of May 2022



**Mr M Orange**  
Presiding

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<sup>19</sup> *ibid*

<sup>20</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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**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.*