

Before the Building Practitioners Board

	BPB Complaint No. CB26100
Licensed Building Practitioner:	Ted Hsiao (the Respondent)
Licence Number:	BP105641
Licence(s) Held:	Site AoP 2

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 and Decision Date:	25 May 2023

Board Members Present:

- Mr M Orange, Chair, Barrister (Presiding)
- Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
- Mr D Fabish, 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)(h) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$3,500. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

- [1] The Respondent carried out renovations. The building work was not carried out under a building consent, and the Board investigated, under section 317(1)(b) of the Act, whether one was required. The Board also investigated, under the same section, the quality and compliance of the building work. Also under investigation, was whether the Respondent had carried out building work that was outside of his competence under section 317(1)(h) of the Act and whether he had brought the regime into disrepute under section 317(1)(i) of the Act.
- [2] The Board found that a building consent was not required as the work came within the exemptions in Schedule 1 of the Building Act. It also found that whilst there were some issues with the building work carried out, it was not serious enough to warrant disciplinary action.

- [3] The Board did find that the Respondent had carried out sanitary plumbing work and that he was not competent to carry out that work. Sanitary plumbing is restricted to authorised persons under the Plumbers Gasfitters and Drainlayers Act. The Respondent was not an authorised person, and the work that he completed was substandard.
- [4] The final allegation was that the Respondent had brought the regime for Licensed Building Practitioners into disrepute. The Board found that the conduct complained about was not disreputable.

The Charges

- [5] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [6] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, 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, IN THAT, he may have:
 - i. failed to consider if a building consent was required prior to undertaking the building work;
 - ii. failed to ensure sub-trades engaged were certified, registered or licensed to carry out the work;
 - iii. failed to carry out and/or supervise building and/or plumbing and electrical work in a code compliant manner and to an acceptable workmanship standard, with regards to the installation of two acrylic shower units, altering and installing the sliding cavity and hung doors, installing plumbing fitting and upgrading the hot water cylinder;
 - iv. installed insulation to exterior walls without obtaining a building consent; and
 - v. failed to check if the altered wall linings were existing bracing elements and the new gib board that was specified and installed was compliant and in accordance the manufacturer's specification;

¹ 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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

- (b) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out plumbing work when not licensed nor competent to do so; and/or
- (c) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, IN THAT, he may have threatened to increase the price if the Complainant took matters to the Disputes Tribunal, required further payment for the provision of plumbing certification documents, and played a threatening message from a subcontractor to the Complainant.

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. 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.

Background

- [8] The Respondent was contracted to carry out renovations to a residential dwelling. He engaged his brother, a trainee plumber, to assist him with plumbing work connected with the renovation. The full scope of the building work was not completed due to a commercial dispute which was litigated in the Disputes Tribunal.
- [9] The Respondent is the holder of a Site Area of Practice 2 Licence. A Site Licence holder cannot carry out or supervise restricted building work.⁴ The Respondent claimed the building work was carried out under an exemption to the requirement for a building consent. Because a building consent was not obtained, the building work was not restricted building work as the legal definition of restricted building work⁵ limits it to building work that is carried out under a building consent.
- [10] As part of the Board's investigations, it did inquire into whether a building consent should have been obtained.
- [11] The aspects of the building work that may have triggered a requirement to obtain a building consent were the installation of showers, sanitary plumbing fixtures, removal or replacement of structural elements and installation of exterior insulation. The Board, having questioned the witnesses and reviewed the documentary evidence, was satisfied that a building consent was most likely not required as:
- (a) the acrylic showers were replaced on a like-for-like basis under Schedule 1 of the Building Act (clause 32);

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Restricted Building work is defined by the Building (Definition of Restricted Building Work) Order 2011.

⁵ Refer section 401B of the Building Act.

- (b) no additional sanitary fixtures were installed, and sanitary fixtures were not moved (Schedule 1, clause 35);
- (c) no structural elements were removed, so the like-for-like provisions applied (Schedule 1, clause 1); and
- (d) whilst the dwelling did not have existing external insulation, the dwelling was permitted and built at a time when external insulation was required, and there was an external wall building wrap. Given those factors, it was more than likely that the dwelling permit included exterior insulation and a building consent for its installation was not required.

[12] Given the above factors, the Board decided that there was no requirement for a building consent to be in place prior to the building work being undertaken.

[13] The remaining issues related to the quality and compliance of the building work completed (negligence or incompetence), matters relating to carrying out work outside of the Respondent's competency, and the allegation that the Respondent may have brought the regime into disrepute.

Negligence or Incompetence

[14] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁶ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁷ test of negligence.⁸ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁹ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁰ If it does not, then a disciplinary finding cannot be made.

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

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

⁸ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as "a demonstrated lack of the reasonably expected ability or skill level". In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as "an inability to do the job"

¹⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] "Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness".

Has the Respondent departed from an acceptable standard of conduct?

- [15] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code¹¹ and any building consent issued.¹² The test is an objective one.¹³
- [16] Looking at the building work, the issues the Board investigated at the hearing were the installation of a cavity slider and the manner in which a shower lining was installed. The issues with the cavity slider were minor finishing issues. The shower lining had pulled away from the wall at the base. The Respondent described the methodology he had used to install the lining. The only issue identified from that methodology was that the shower lining was not propped or braced whilst the glue used was curing.

Was the conduct serious enough?

- [17] The Board has decided that whilst there were some minor issues with the building work, the matters complained about do not reach the threshold for the Board to make a disciplinary finding.

Has the Respondent been negligent or incompetent?

- [18] The Respondent has not carried out building work in a negligent or incompetent manner.

Outside of Competence

- [19] The matter under consideration was whether the Respondent had carried out or supervised building work outside of his competence. In this respect, section 314B(b) of the Act provides:

A licensed building practitioner must—
(b) carry out or supervise building work only within his or her competence.

Competence

- [20] To make a finding under the disciplinary provision, the Board must establish that the Respondent carried out work that he was not competent to do. Competence is the ability, skill, or knowledge required to perform the building work in a compliant manner.

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

Was there building work that was outside of the Respondent's competence?

- [21] The work under investigation was sanitary plumbing work. Plumbing work comes within the definition of building work in section 7 of the Act as it is work that is for or in connection with the alteration of a building.
- [22] The sanitary plumbing pipework was carried out by the Respondent's brother, [OMITTED], a trainee plumber. The Plumbers Drainlayers and Gasfitters Act 2006 restricts who can carry out or supervise sanitary plumbing work to those persons who are registered and licensed under the Act. The Plumbers Drainlayers and Gasfitters Act provides an exemption for trainees. An investigation by the Plumbers Drainlayers and Gasfitters Board established that while [OMITTED] was a trainee, he had to be supervised but was not. That is not a matter that the Board can investigate. What the Board can investigate is whether the Respondent knew or ought to have known that [OMITTED] was not authorised to carry out the work without being supervised. The Board was satisfied that the Respondent was told by his brother that he could carry out the work. As such, it will not make a finding with respect to the work that Bill Hsiao carried out. However, the Board advises the Respondent to check the appropriate public Register for licensed trades before he contracts a practitioner.
- [23] The Board also heard and received evidence that the Respondent fitted off sanitary fixings such as waste traps and taps. For example, the Respondent made a statement to the Plumbers Drainlayers and Gasfitters Board when they investigated [OMITTED] that he did fit off fixings. Those fixings fall within the restrictions in the Plumbers Drainlayers and Gasfitters Act. As the fixing off relates to a restricted trade, the Respondent must establish that he is competent. The Respondent was not trained in plumbing, and there was evidence that some of the work he completed had failed. Given those factors, the Board found that the Respondent had carried out building work (plumbing work) that was outside of his competence.

Disrepute

- [24] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:
- criminal convictions¹⁴;
 - honest mistakes without deliberate wrongdoing¹⁵;
 - provision of false undertakings¹⁶; and
 - conduct resulting in an unethical financial gain¹⁷.

¹⁴ *Davidson v Auckland Standards Committee* No 3 [2013] NZAR 1519

¹⁵ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹⁶ *Slack, Re* [2012] NZLCDT 40

¹⁷ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

- [25] The Courts have consistently applied an objective test when considering such conduct.¹⁸ The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.¹⁹
- [26] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,²⁰ that the Respondent has brought the regime into disrepute and that conduct was sufficiently serious enough for the Board to make a disciplinary finding.²¹

The conduct complained about

- [27] The matters the Board was investigating were a threat made by a subcontractor to the Respondent to remove tiles if he was not paid, a demand to be paid for the provision of plumbing certification, and a threat to increase the price if the Complainant took the matter to the Disputes Tribunal.
- [28] The Board was satisfied that the threat, which was a recorded telephone message, was played to the Complainant by the Respondent. The question for the Board was the intent behind the Respondent playing the message and how, from an objective standpoint, the message should be viewed. The Board accepted that the Respondent was, at the time, raising difficulties that he was experiencing with regard to cash flow and that his intention in playing the message was to reinforce those issues. At the same time, the Board accepts that the Complainant felt threatened by the message. However, when examined objectively and considering the Respondent's intention, the Board does not consider that the conduct was disreputable.
- [29] Regarding plumbing certification, the Respondent stated that he was commonly charged for plumbing certification and was looking to pass on those charges. He also stated that he had not been provided with any certification by his brother, who was not authorised to issue certification. Certification is normally provided by an authorised plumber as part of the overall service they provide. If a plumber is asked to certify work they did not carry out, they will charge for that service. It is likely that this was the reason for the charge the Respondent was looking to pass on, and this goes back to the Respondent engaging his brother, who was not an authorised plumber.
- [30] The other financial matter under investigation was the threat to increase the price if the Complainant took the matter to the Disputes Tribunal. The Disputes Tribunal decision noted, in paragraph 18, that a unilateral charge of \$4,616.45 was added to the final invoice to cover margin and overheads because a claim had been filed. The Disputes Tribunal held that the Respondent could not add that charge. The Respondent stated that he was going to appeal that decision, notwithstanding that

¹⁸ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹⁹ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

²⁰ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. 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.

²¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

he was outside of the appeal time limit. The Respondent maintained that it was a valid charge for overheads incurred in relation to the building work completed.

- [31] When considering the conduct, the Board must look at it from an objective standpoint, i.e., would a reasonable third person consider the conduct as likely to reduce the reputation of the licensing regime? Standing back and considering the conduct, whilst the Board can see that the Complainant felt threatened by the message that was played to her, it finds that the Respondent did not intend it to be received that way and that playing it to her was not disreputable conduct. With respect to adding additional charges, whilst this may not have been contractually viable, it was a commercial decision, and, as the Respondent felt justified in invoicing those charges, it was not disreputable to do so.

Was the conduct serious enough?

- [32] Further to the above, even if the conduct was disreputable, the Board finds that it was not serious enough to warrant disciplinary action. As with negligence and incompetence, the Board must consider how serious the conduct was, and, when the disciplinary provision was introduced to Parliament, the accompanying Cabinet paper noted:

This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.

- [33] The conduct before the Board did not reach that threshold.

Has the conduct brought the regime into disrepute?

- [34] The Respondent has not brought the regime into disrepute. He should note, however, that a Code of Ethics for Licensed Building Practitioners is now operational and that the behaviours complained about may well, in the future, come within the disciplinary grounds relating to the Code of Ethics.

Penalty, Costs and Publication

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

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

Penalty

- [37] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or

aggravating factors present.²² It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²³

- (a) protection of the public and consideration of the purposes of the Act;²⁴
- (b) deterring other Licensed Building Practitioners from similar offending;²⁵
- (c) setting and enforcing a high standard of conduct for the industry;²⁶
- (d) penalising wrongdoing;²⁷ and
- (e) rehabilitation (where appropriate).²⁸

[38] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases²⁹ and applying the least restrictive penalty available for the particular offending.³⁰ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³¹ that is consistent with other penalties imposed by the Board for comparable offending.³²

[39] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.³³

[40] The only charge on which the Board has made a finding is with respect to the Respondent working outside of his competence by carrying out sanitary plumbing work. That is a serious matter. The restrictions in the Plumber, Gasfitters and Drainlayers Act are there for a purpose, to safeguard the health and safety of persons.³⁴ The Respondent put that purpose at risk. Given that factor, the Board adopted a starting point of a fine of \$2,500, which it considers reflects the seriousness of the conduct and which will deter others. The Board has taken the financial loss that the Respondent may have incurred into account as mitigation. It has reduced the fine by \$500. The final fine is \$2,000.

²² *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

²³ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁴ Section 3 Building Act

²⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

³⁴ Section 3 of the Plumber, Gasfitters and Drainlayers Act 2006.

Costs

- [41] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁵
- [42] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁷.
- [43] 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 are then made.
- [44] The Board's scale for a half-day hearing is \$3,500. This is less than 50% of the actual costs incurred. The Board sees no reason to depart from that amount. As such, its costs order is that the Respondent is to pay the sum of \$3,500 toward the costs of and incidental to the Board's inquiry.

Publication

- [45] 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,³⁸ and he will be named in this decision which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [46] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.⁴⁰
- [47] The Board considers that others can learn from this decision. As such, it will order that an article be published summarising the findings as regards working outside of one's competence. The Respondent will not be identified in that publication.

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *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.

³⁸ Refer sections 298, 299 and 301 of the Act

³⁹ Section 14 of the Act

⁴⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[48] 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 \$2,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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(I)(iii) of the Act.

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

[49] 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

[50] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 13th day of June 2023



M Orange
Presiding Member

ⁱ Section 3 of the Act

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.*

ii 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.”*

iii Section 318 Disciplinary Penalties

- (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 1 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.*

^{iv} 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.*