

Before the Building Practitioners Board

	BPB Complaint No. CB26407
Licensed Building Practitioner:	Jordan Timothy Jensen (the Respondent)
Licence Number:	BP139497
Licence(s) Held:	Foundations – Concrete foundation walls and concrete slab-on-ground

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	Tauranga
Hearing Type:	In Person
Hearing Date:	2 August 2024
Decision Date:	12 August 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

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 a disciplinary offence under section 317(1)(b) or (d) of the Act.

The Respondent is fined \$1,000 and ordered to pay costs of \$2,800. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary	2
The Charges	3
Evidence	3
<i>Starter Bars</i>	4
<i>Floor Tolerances</i>	5
Negligence or Incompetence and Contrary to a Building Consent	6
Was there building work that departed from an acceptable standard of conduct or was contrary to a building consent?	7
<i>Starter Bars</i>	7
<i>Floor Tolerances</i>	8
Has the Respondent breached sections 317(1)(b) or (d) of the Act?	9
Failure to Provide a Record of Work	9
Did the Respondent carry out or supervise restricted building work?.....	9
Was the restricted building work complete?.....	9
Has the Respondent provided a record of work?.....	9
Was there a good reason for the Respondent to withhold his records of work?	10
Did the Respondent fail to provide a record of work?	10
Board Decisions	10
Penalty, Costs and Publication	10
Penalty	10
Costs.....	11
Publication	12
Section 318 Order	13
Submissions on Penalty, Costs and Publication	13
Right of Appeal	13

Summary

[1] The Board was investigating three alleged disciplinary offences. The first, negligence and/or incompetence, requires that the Respondent may have departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same licence class and that the conduct was serious. The second is building work that may be contrary to a building consent, which does not require a deliberate departure. However, the Board does have to consider the seriousness of the conduct. With respect to both allegations, whilst there was some work that may have come within the grounds of discipline, there was insufficient evidence on which to find that he had committed serious disciplinary breaches.

- [2] The third allegation was a failure, without good reason, to provide a record of work on completion of restricted building work. The Board found that the Respondent did fail to provide a record of work on completion of restricted building work. In respect of that finding, the Board decided that it would fine the Respondent \$1,000, and order that he pay costs of \$2,800.

The Charges

- [3] 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
- [4] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Tauranga, have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
 - (b) carried out or supervised building 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 or supervise, or has carried out 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.
- [5] The Board gave notice that in further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, that would be inquiring into whether ground and first-floor concrete floors were within acceptable horizontal tolerances from level and into the placement of steel starter bars for a concrete block wall.

Evidence

- [6] 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.
- [7] The complaint related to a new residential build. The Complainant, a retired Carpenter who had previously been a Licenced Building Practitioner (LBP), Acted as the project manager. He ordered materials, arranged subcontractors, and called for

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.

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

engineering and council inspections. The Complainant stated that he had extensive concrete industry experience. He lived in another dwelling that was on the same site during the build and was present most of the time.

- [8] The Respondent is an employee of Magna Construction Limited. He appeared at the hearing together with his employer, Mr Jeram McLay. Magna was asked by the Complainant to price the subfloor construction, including blockwork. The Complainant engaged a separate block layer. Magna's engagement was limited to the construction of the basement-level foundation and the upper-level unispan floor. The Respondent was the LBP on site carrying out and supervising the work that Magna had contracted to complete. When the basement-level concrete was poured, a subcontractor assisted. The subcontractor's staff included an LBP.
- [9] During the build, an issue arose with regard to the placement of starter bars for a block wall. After the basement level and front portion of the upper-level concrete floors had been poured, the Complainant raised issues with the floor levels, which he considered were outside of acceptable tolerances. He engaged another LBP, Mr [OMITTED], to review the work and provide his opinion.

Starter Bars

- [10] The Respondent, who set out the foundation, accepted that some of the starter bars were not in the correct position. He submitted that the formwork may have moved when the concrete was poured. The Complainant noted that he had recommended a different method of securing the starter bars but that the Respondent declined to follow that methodology. At the hearing, the Respondent accepted that the Complainant's methodology, which involved the use of blocks to secure the starter bars, may have been a better solution.
- [11] The Board received evidence that the issue as regards the starter bar placement was known prior to the blockwork to which it related being commenced. A decision was made to use a wider series 25 concrete block size⁴ to provide more cover between the reinforcing and the inside edge of the block to compensate for the issue. The Respondent was not involved in that decision and was not made aware of the issue until after the blocks had been laid.
- [12] The engineer who developed the specific engineering design for the foundations gave evidence that he had been consulted about the issue and that he had recommended that a series 25 block be used. The engineer did not attend the site at that time to carry out an on-site observation. Once the blockwork had been installed to its full height, the engineer attended the site and measured the cover from the washouts on the outside face of the blocks. He noted, for retaining wall B, the concrete cover for reinforcing steel was 80mm and, for retaining wall C, the cover varied from 75mm to 120mm. The cover specified in the drawings was 60mm. The

⁴ A series 20 block and been specified. A series 25 block was used.

reinforcing steel differed from the consented drawings and the engineer's recommendations.

- [13] The engineer was asked whether the correct cover could have been achieved by moving the block work in from the edge of the foundation. He stated that this could have been possible and that creating a larger heel where the blockwork met the foundation would not have been a compliance issue.

Floor Tolerances

- [14] The Respondent accepted that there were issues with the concrete floor finish. In particular, he stated that there were some corrugations, two peaks and hollows and that exterior joinery rebate inserts had lifted on the upper floor concrete area that he was responsible for.⁵ The Respondent was not aware of any issues with the basement level floor.
- [15] The building consent stipulated that the concrete floors were to be constructed in accordance with NZS 3109, which stipulates in Table 5.2 a tolerance of ± 12 millimetres. Guidance documentation issued by the Ministry of Business Innovation and Employment also references NZS 3109 with regard to deviations in the floor plane. The Complainant gave evidence that his requirement was for a floor that had a variation of not more than ± 3 millimetres over 3 metres so that he could lay strip flooring. The Respondent stated that he was not aware of the Complainant's tolerance requirements and that the work was priced based on the standard carpet and vinyl floor coverings being installed.
- [16] When informed of the issues with the concrete finish on the upper-floor, Magna arranged for a floor grinder to attend the site and remediate noted issues. The Complainant's and the Respondent's evidence differed as regards who instructed the floor grinder once on site. The Respondent gave evidence that neither he nor Magna were aware that there were issues with the concrete floor finish in the basement area.
- [17] The Board heard evidence that when the floor grinder undertook the grinding of the upper-floor area, the entire surface was ground, meaning that pre-existing humps or hollows may not have been removed.
- [18] The Complainant gave evidence that since the floors were poured, he has had the basement level ground a total of four times, and the upper-level a total of six times, the first being the occasion when the grinder Magna contracted attended site. That contractor completed two more grinds and then declined to carry out any further work on the basis that they did not consider they could achieve any more than what had been achieved. The Complainant also stated that he had also used floor-levelling compound in an attempt to obtain a finish that would accommodate strip flooring.

⁵ Another contractor was engaged to pour a rib-raft foundation to the rear of the unispan floor.

[19] On 16 August 2023, Mr [OMITTED] attended the site, carried out an inspection and produced a report. His report noted:

*Heavy grinding marks visible in an attempt to reduce variation and levels.
These will require remedial work prior to floor finishing.*

[20] Photographs produced in the report showed scouring marks and exposed mesh chairs. Mr [OMITTED] stated that during the site visit, he used the Complainant's level and made an assessment as regards the degree to which the floor was out of tolerance on the horizontal plane. His report noted variations between 12 and 20 millimetres. At the hearing, Mr [OMITTED] stressed that he had not been engaged to complete a comprehensive report and that he did not make accurate measurements of the floor tolerances.

Negligence or Incompetence and Contrary to a Building Consent

[21] 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.

[22] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹¹ Once issued, there is a requirement that the building work be carried out in accordance with the building consent.¹² Building consents also stipulate the number and type of inspections the

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".

¹¹ Section 49 of the Act

¹² Section 40 of the Act

issuing authority will carry out during the build.¹³ Inspections ensure independent verification that the building consent is being complied with.

- [23] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that departure was deliberate or a result of negligent conduct.¹⁴ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁵ If it does not, then a disciplinary finding cannot be made.

Was there building work that departed from an acceptable standard of conduct or was contrary to a building consent?

Starter Bars

- [24] The Respondent accepted that some starter bars were not in the correct position. He also accepted that there were some issues with the finish of the upper-level floor.
- [25] Dealing with the starter bars, the building work did not accord with the building consent and the failure to place them in the correct position may have been a result of negligent conduct. The question for the Board is whether the departures were serious enough to warrant disciplinary action.
- [26] Justice Gendall in the High Court in *Collie v Nursing Council of New Zealand*,¹⁶ stated, as regards the threshold for disciplinary matters:

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

- [27] In *Pillai v Messiter (No 2)*,¹⁷ an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, 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.

¹³ Section 222 of the Act

¹⁴ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁵ *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".

¹⁶ [2001] NZAR 74

¹⁷ (1989) 16 NSWLR 197 (CA) at 200

- [28] Looking at the conduct, the evidence indicated that there were serious repercussions that resulted from the issue. The Board noted, however, that other solutions, such as repositioning the blocks, may have resulted in a different outcome. As such, the Board has to differentiate between the seriousness of the original departure and the resulting outcomes. In this respect, the Board has found that the original conduct does not meet the tests outlined above. The error, in isolation from the flow on effects, was, in the circumstances, minor in nature.

Floor Tolerances

- [29] As noted, there were some admitted departures. As regards the seriousness of the conduct, on the same basis as the above, the Board finds that those departures were not serious enough to warrant a disciplinary outcome. When making that decision, the Board took into account that there was insufficient evidence to establish that the issues as regards the floor being out of tolerance that were complained about were caused by the Respondent, or came about as a result of remedial grinding work. In this respect, the Board noted that measurements were not taken before the grinding work was undertaken and that the only measurements that were taken were taken after repeated grinding had been completed.
- [30] With respect to the evidence required to make a finding, as noted, the Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*,¹⁸ where Justice McGrath in the Supreme Court of New Zealand stated:

[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction of the Tribunal”. A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal’s reasonable

¹⁸ [2009] 1 NZLR 1

satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.

[31] The Board does not have strong evidence to establish that the full extent of the floor tolerance issues complained about were caused by the Respondent.

Has the Respondent breached sections 317(1)(b) or (d) of the Act?

[32] The Respondent has not breached sections 317(1)(b) or (d) of the Act.

Failure to Provide a Record of Work

[33] An LBP must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.¹⁹

[34] There is a statutory requirement under section 88(1) of the Act for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work?

[35] The Respondent carried out and supervise building work on a new residential dwelling under a building consent. His work included building work on the foundations, which is restricted building work because they form part of the primary structure of a residential dwelling.²²

Was the restricted building work complete?

[36] The Complainant issued a notice to Magna terminating the contract on 6 June 2023. Mr [OMITTED] gave evidence that the termination was not accepted and that there was an expectation that more restricted building work may have been carried out. At that time, Magna was still receiving council inspection reports. An inspection report dated 28 July 2023 noted that the remaining restricted building work Magna had been contracted to do had been completed by another LBP. On that basis, the Respondent had notice that the restricted building work had been completed and 28 July 2023 was, therefore, the date of completion. A record of work was due on or soon after that date.

Has the Respondent provided a record of work?

[37] A record of work has not been provided. The Respondent stated that one has been filled out. He undertook to provide it to the Board within a week of the hearing.

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Was there a good reason for the Respondent to withhold his records of work?

- [38] There was a commercial dispute between the contracting parties. Whilst not cited as a reason for a failure to provide the record of work, the Respondent is reminded that commercial disputes are not a good reason to withhold a record of work.
- [39] A submission was also made that no demands or requests had been made for a record of work. The requirement is for the LBP to provide a record of work, not 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. Again, the lack of demand is not a good reason.

Did the Respondent fail to provide a record of work?

- [40] The Respondent has failed to provide a record of work on completion of restricted building work as required under section 88(1) of the Act.

Board Decisions

- [41] The Respondent **has not** breached section 317(1)(b) or (d) of the Act.
- [42] The Respondent **has** breached section 317(1)(da)(ii) of the Act.

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 Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [44] The Board heard evidence relevant to penalty, costs, and publication during the hearing and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [45] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴
- (a) protection of the public and consideration of the purposes of the Act;²⁵
 - (b) deterring other Licensed Building Practitioners from similar offending;²⁶

²³ *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]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

- (c) setting and enforcing a high standard of conduct for the industry;²⁷
- (d) penalising wrongdoing;²⁸ and
- (e) rehabilitation (where appropriate).²⁹

[46] 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 cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³

[47] 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.³⁴

[48] The only disciplinary finding made was that the Respondent failed to provide a record of work on completion of restricted building 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. The Board provided the Respondent with an opportunity to provide a record of work before it made its decision. He did so, and the Board took it into account as a mitigating factor and has reduced the fine by \$500 to a fine of \$1,000.

Costs

[49] 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

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *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

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ 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.

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

- [50] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.³⁶ The starting point can then be adjusted up or down, having regard to the particular circumstances of each case.³⁷
- [51] 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 moderate. Adjustments are then made.
- [52] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,800 toward the costs of and incidental to the Board's inquiry. That is the Board's scale costs for a moderately complex half-day hearing.

Publication

- [53] 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.
- [54] 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
- [55] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

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

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$1,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,800 (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, the Respondent will be named in this decision, which will be published on the Board's website.

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

Submissions on Penalty, Costs and Publication

[58] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on 24 October 2024. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 4th day of October 2024.



M Orange
Presiding Member

ⁱ **Section 318 of the Act**

(1) *In any case to which section 317 applies, the Board may*

(a) *do both of the following things:*

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

ii Section 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.*

ⁱⁱⁱ 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.*