

Before the Building Practitioners Board

	BPB Complaint No. CB25495
Licensed Building Practitioner:	Keith Lockett (the Respondent)
Licence Number:	BP 118665
Licence(s) Held:	Foundations – Concrete or timber pile foundations, 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:	Auckland
Hearing Type:	In Person
Hearing Date:	3 November 2020
Decision Date:	6 November 2020

Board Members Present:

Chris Preston, Chair (Presiding)
Mel Orange, Deputy Chair, Legal Member
David Fabish, LBP, Carpentry and Site AOP 2
Rob Shao, LBP, Carpentry and Site AOP 1

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

Contents

Summary of the Board’s Decision	2
The Hearing	2
The Charges	2
Function of Disciplinary Action	2
Evidence	3
Board’s Conclusion and Reasoning	7
Penalty, Costs and Publication	10
Penalty	10
Costs.....	11
Publication	11
Section 318 Order	12
Right of Appeal	Error! Bookmark not defined.

Summary of the Board’s Decision

- [1] The Respondent has been negligent in his supervision of building work. He is fined the sum of \$2,500 and ordered to pay costs of \$3,500.

The Hearing

- [2] The Board, on receiving a Registrar’s Report in respect of the matter, reviewed the file and decided to deal with it by way of a Draft Decision.
- [3] The Respondent disputed the findings in the Draft Decision and sought a hearing. The Draft Decision was set aside, and a hearing was scheduled.

The Charges

- [4] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at *[Omitted]*.
- [5] The alleged disciplinary offences the Board resolved to investigate were that the Respondent carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act.

Function of Disciplinary Action

- [6] 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

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

the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

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

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

- [8] In a similar vein, the Board’s investigation and hearing process are 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 persons⁵:

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

- [9] 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.

- [10] 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.

Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

- [12] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question

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

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

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

⁶ *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.

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

Keith Lockett	Respondent
<i>[Omitted]</i>	Witness for the Respondent
<i>[Omitted]</i>	Complainant
<i>[Omitted]</i>	Licensed Building Practitioner, Carpentry and Site AoP 2
<i>[Omitted]</i>	Licensed Building Practitioner, Carpentry

[14] The Respondent was engaged, by way of his company Affordable Foundations Limited, to carry out a partial re-pile of an existing dwelling. The Respondent considered the building work came within the provisions of clause 1 of Schedule 1 of the Act and that a building consent was not required. The Respondent quoted for the work on 22 April 2018. The quote of \$25,300, included the following:

1. *To excavate new pile footings to the affected area of the dwelling being the master bedroom, guest bedroom and the sitting room through to the lounge.*
2. *Piles to be installed approximately @ 1.4 m centres.*
3. *Ordinary piles 450 x 450 x 450 deep footings.*
4. *To re-level floor in the affected area to existing highest point.*
5. *To supply and install new 125 x 125 H5 senton piles to the affected area .*
6. *To supply and place 20 mpa concrete to footings.*
7. *To remove and replace sub standard bearer timber if required, rotten bearer timber may be encountered.*
8. *To supply and install new bracing as required.*
9. *To remove old foundations and debris off site .*

[15] The work actual work undertaken related to eight piles.

[16] The Complainant alleged, following completion of the Respondent's work, that the floor in the area worked on had deteriorated. The Complainant provided a report completed by *[Omitted]* and another completed by *[Omitted]*. Photographs of the work were also provided. The authors of the reports appeared at the hearing and gave evidence.

[17] The [Omitted] report noted the work had not been carried out in accordance with the Building Code. It noted foundations were not fitted under point loads; a bearer protruded the building line; gaps between bearers and piles; and a lack of bracing and 6kn connections. Photographs supported the findings.

[18] The [Omitted] report findings included the following findings that were also supported by photographs:

The new piles fitted have no connection plates installed, this is a requirement of the building act. Due to the height of the home, the fixings would need to be stainless steel.

Our opinion the contractor (Affordable Foundations Ltd) that carried out this work has not followed procedure in relation to the building act and there workmanship does not meet the building code. No foundation 12KN & 6KN fixings have been fitted to comply with NZS 3604:2011 to the new piles installed, More than four piles have been installed which can fall into requiring a building consent.

One of the external new piles was dug around to show its depth and was measured to be only 360mm deep.

No bracing was installed, Due to lack of height bracing would not work.

Defective Connection Plates/Ties: No 6KN or 12KN fixings have been installed

[19] The Respondent, in his written response to the complaint, denied the work had been carried out in a negligent or incompetent manner. He stated the work was carried out under Schedule 1, that it involved less than 20% of the floor area, that a lot of the house was inaccessible being very low to the ground. He stated the Complainant did not want to obtain a building consent. The Respondent considered that a full re-pile was required. He noted that the reports provided mostly covered areas that he had not worked on. He believed the issues experienced with the floor after his work was completed were due to ground movement. His employees carried out the building work. The Respondent supervised.

[20] At the hearing, the Complainant produced a Notice to Fix from the Auckland Council. It stated that building work had been carried out without a building consent. It related to the foundations work carried out by [Omitted]. The Complainant stated that the Notice was issued after he consulted with the Council about the work and whether what had been done required a building consent.

[21] The Complainant also produced a Land Information Memorandum report for the property which, he noted, did not raise any "soil issues". He produced this on the basis that the Respondent had claimed that the post completion issues related to soil conditions.

[22] The Respondent gave evidence that the repair solution was limited by the access issues and the Complainant not wanting to adopt solutions which involved gaining

access through the floor or digging trenches along the pile line to increase access. He also reiterated his written submission that the post completion issues were the result of soil conditions (expansion and contraction) following a very dry summer and not as a result of workmanship. He also gave evidence that the Complainant was clear that he did not want to incur consenting or engineering costs and that resort to Schedule 1 of the Building Act was the only way around such costs. He believed that Schedule 1 was available as the repairs were to a limited area of the floor.

- [23] *[Omitted]* and *[Omitted]*, who both stated that they had extensive experience in foundations work in the Auckland region, did not consider that the issues that they had noted on site were the result of soil conditions or abnormally dry weather. The Respondent stated that the piles were installed to an adequate depth and he described his installation methodology. Their opinions were that the issues were to do with the quality of the work carried out and they considered that if the new piles had of been installed to a minimum depth of 450mm then the piles and the floor would have been stable (irrespective of soil conditions) and the observed issues of piles being out of level and not plumb would not have occurred. *[Omitted]* noted that one pile could easily be moved by hand. Neither *[Omitted]* or *[Omitted]*, considered it was a professional job.
- [24] The Respondent also maintained that he had warned the Complainant that it was unlikely the repairs would result in a long-term solution to floor level issues, given the soil conditions and the limitations of the repair solution adopted. He stated that the floor was level on completion. *[Omitted]* and *[Omitted]* both considered the floor was out of level by an amount that was greater than what could be attributed to post repair movement (*[Omitted]* noted it as being up to 30mm out in one place). The Complainant denied being given any warnings. Neither the Respondent's quote nor terms and conditions of contract contained any warnings or exclusions.
- [25] The Respondent did accept that 6KN connectors had not been installed. He put the failure down to him neglecting to carry out a final check, noting that the fixings are the last thing that is done. He stated that it was a simple fix. He considered the whole matter had been blown out of proportion.
- [26] The Respondent was questioned about why he had not installed any anchor or brace piles. He noted that a building consent would have been required if such piles were to be installed and that the installation of a brace pile was difficult given the limited access. Given those piles he opted to just use ordinary piles.
- [27] The Respondent was questioned about his supervision practices and procedures. He stated that he visited the site on a regular basis and that his workers were not left for long periods without his attendance. He stated that two of his three workers had three to four years experienced, with the other having about one year of experience. The Respondent did not give specific instructions to his staff. He stated that he relied on his workers experience and that they would have known what needed to be done. The Respondent only had one other job on at the time.

[28] The Complainant concluded by noting that the work had to be redone. The Respondent's position was that the only issue was the missing fixings and that he was happy to remediate any other issues that may have arisen since the work was completed. The Respondent also noted that there were no photographs of the allegedly substandard work. The Respondent did not produce any photographs of the work being completed to demonstrate matters such as the depth of piles.

Board's Conclusion and Reasoning

[29] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act) and **should** be disciplined.

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

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

[32] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹⁰. The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹¹.

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

3 Purposes

This Act has the following purposes:

(a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*

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

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

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

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

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

- (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.*

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

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

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

[36] The Board was satisfied, on the basis of the evidence received, that the building work carried out under the Respondent's supervision had not been completed in accordance with the Building Code. In short, it did not meet the structural requirements of clause B1 of the Building Code. In particular the Board found that there had been a failure to install connections between piles and bearers (which had been admitted), and that the piles had not been installed to an adequate depth or in an adequate manner.

[37] The Respondent stated that he would have attended to the issues had he been appraised of them. However, the evidence showed that they were brought to his attention but that he took no action to rectify them. As a Licensed Building Practitioner with a Foundations Licence, the issues should have been apparent to the Respondent, both at the time of completion and when they were later brought to his attention.

[38] Furthermore, the Board did not consider that ground and climatic conditions were relevant. The issue was that the building work was not carried out in a compliant

¹² Section 17 of the Building Act 2004

¹³ Section 40(1) of the Building Act 2004

¹⁴ [2001] NZAR 74

manner in the first place. Moreover, if the building work had of been completed in a compliant manner then the risk of any further issues raising from soil conditions would have been negated. As such the defence that floor movement was the result of soil conditions was not relevant.

- [39] The Respondent did not carry out the work. The Board considers that he was the supervisor of the work. In Board Decision C2-01143¹⁵ the Board found that the definition of supervise in section 7¹⁶ of the Act must be interpreted in such a way as to give effect to the purpose of the legislation which includes the regulation and accountability of Licensed Building Practitioners and, as such, it includes work carried out without a building consent. The Board's position, therefore, is that under the disciplinary provision in section 317(1)(b) supervision applies to all building work carried out under the supervision of a Licensed Building Practitioner and that where the work is carried out under a building consent, an additional requirement applies in that it must also comply with the building consent under which it is carried out. The fundamental requirement in section 7 that the supervision of the building work is *"sufficient to ensure it is performed competently"* applies to all building work carried out under the supervision of a Licensed Building Practitioner.
- [40] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992¹⁷. The definition of supervision in that Act is consistent with the definition in the Building Act and, as such, the comments of the Court are instructive. In the case Judge Tompkins stated at paragraph 24:

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

- [41] The Board noted that the Respondent stated he was regularly checking the work. if that had been the case then he should have identified the issues. He also stated that he relied on his workers knowing what to do. That approach does not accord with the above commentary on the responsibilities of a supervisor.

¹⁵ Board Decision dated 14 April 2016

¹⁶ Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) is performed competently; and

(b) complies with the building consent under which it is carried out.

¹⁷ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

- [42] Given those factors, the Board finds that the Respondent has allowed building work to be carried out under his supervision in a non-compliant manner. Given this and the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.
- [43] The Board has not made a finding as regards whether the building work required a building consent. Whilst a Notice to Fix was issued, it was issued after the work was carried out. The notice is indicative of a requirement for a building consent. At the same time Schedule 1 is open to interpretation. Notwithstanding the Board does caution the Respondent to take care in the future as regards whether a building consent is, or is not, required.

Penalty, Costs and Publication

- [44] 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.
- [45] The Board heard evidence during the hearing relevant to penalty, costs and publication 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

- [46] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁸ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

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

- [47] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁹ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The Court recommended adopting a

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

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

starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

- [48] The Board considered the Respondent's negligence to be in the mid-range of negligent conduct. It further considered that a fine was the appropriate penalty for the disciplinary offending. A starting point of \$2,500 was adopted. This is consistent with other penalties imposed by the Board for similar disciplinary offences. The Board does not consider that there are any mitigating factors. The fine is set at \$2,500.

Costs

- [49] 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."
- [50] 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 case²⁰.
- [51] In *Collie v Nursing Council of New Zealand*²¹ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

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

- [52] Based on the above the Board's 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. This is the Board's scale amount for a half-day hearing. It is less than 50% of actual costs.

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 Act²². The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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

- [54] 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

²⁰ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²¹ [2001] NZAR 74

²² Refer sections 298, 299 and 301 of the Act

of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

- [55] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁶.
- [56] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁷. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [57] Based on the above, the Board will not order further publication.

Section 318 Order

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

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

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

- [59] 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

- [60] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **10 December 2020**. The submissions should focus on mitigating matters as they relate to the

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

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

²⁶ *ibid*

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

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.

- [61] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 19th day of November 2020



Chris Preston
Presiding Member

ⁱ Section 318 of the Act

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

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

ii **Section 330 Right of appeal**

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

Section 331 Time in which appeal must be brought

An appeal must be lodged—

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