

Before the Building Practitioners Board

BPB Complaint No. CB25575
Licensed Building Practitioner: Kevin Mullany (the Respondent)
Licence Number: BP 103929
Licence(s) Held: Carpentry and 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 Type: On the Papers
Hearing and Decision Date: 21 January 2021
Final Decision Date: 15 March 2021

Board Members Present:

Mr M Orange, Deputy Chair, Legal Member (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mrs F Pearson-Green, LBP, Design AOP 2
Mr F Thomas, LBP, Roofing, Registered Plumber

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)(b) and 317(1)(d) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent was negligent and failed to comply with a building consent when he failed to ensure that required engineering observations were completed during the building process. The Respondent is censured and ordered to pay costs of \$500.

The Charges

- [2] On 21 January 2021, the Board received a Registrar’s Report in respect of a complaint about the conduct of the Respondent.
- [3] Under regulation 10 of the Complaints Regulations the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies.
- [4] Having received the report, the Board decided that regulation 9 applied to aspects of the complaint but not to all of the allegations.

Regulation 9 Decisions

- [5] The complaint to the Board also contained allegations that the Respondent had failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or

supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

- [6] With regard to that allegation, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

(f) the investigation of it is—

(ii) unnecessary; or

- [7] In coming to that decision, the Board noted that a record of work was provided at or about the time of a code compliance certificate application and that the Respondent did not unduly delay the provision of a record of work. The Respondent is reminded, however, that a record of work must be provided to both the owner and the territorial authority, not just to one or the other.

Disciplinary Offences to be Investigated

- [8] On the basis of the Registrar's Report, the Respondent's conduct that the Board resolved to investigate was that the Respondent had:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act).
- [9] Under regulation 10 the Board is required to hold a hearing in respect of those matters.

Function of Disciplinary Action

- [10] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [11] 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*³ Collins J. noted that:

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

“... 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.”

- [12] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁴:

... 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] 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.
- [14] 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

- [15] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.
- [16] The Respondent was engaged to carry out building work on an alteration and extension to an existing residential dwelling under a building consent. The Complainant alleged that, during the build, the Respondent failed to obtain required geotechnical and structural engineering observations as and when they were required.
- [17] The Board was provided with building consent authority documentation. The building consent stipulated in Section C:

Producer Statement Construction (PS3) Balustrades

Producer statement construction (PS3) is to be submitted by the contractor for the installation of proprietary balustrades confirming that the work

⁴ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

complies with the design approved by this building consent and is in accordance with any relevant New Zealand Building Code clauses

Producer Statement Construction Review (PS4) Engineers observation

Producer statement construction review (PS4) is to be submitted by the engineer for the observation of Foundation, Firewall, Beams&SED Design confirming that the work complies with the design approved by this building consent and is in accordance with any relevant New Zealand Building Code clauses

Producer Statement Construction Review (PS4) Geotechnical

Producer statement construction review (PS4) is to be submitted by the geotechnical engineer for the observation and construction of the building platform, including site excavations, the installation of any sub-soil drainage and placement of compacted fill as necessary to form the building platform. Confirmation is also required that the work complies with the design approved by this building consent and meets the requirements and/or recommendations of the geotechnical report submitted at building consent application stage.

Producer Statement Construction Review (PS4) Type A or B Masonry

Producer statement construction review (PS4) together with all observation records is to be submitted by the engineer for the observation of the type A or B masonry. Confirmation is required that the work complies with the design approved by this building consent and any relevant New Zealand Building Code clauses

[18] The building consent documentation also provided:

Consent Documents on Site

Please ensure that a full copy of the approved building consent documents is on site at all times, together with the previous inspection records so that the Council staff can undertake inspections.

Producer Statements – Observations during Construction

If an engineer has been engaged to observe construction and provide a producer statement construction review, they must leave a record of the inspection on site describing the work that they have observed. The record must also identify any changes to construction and any instructions provided to the contractor. The record will be uplifted by a Council Inspector during their inspection.

[19] A Building Consent Authority record of 12 February 2020 noted:

Producer Statement construction review (PS4)

Geotechnical/Building subgrade

Not applicable

Foundation

Required

Structural Steel/connections Required

Engineer's site observations/diary notes **Required**

Engineer's site observations and diary notes – 04.0 **Required**

Foundation Engineer's site observations and diary notes - 11.0 Framing **Required**

[20] The engineers to the project, [Omitted], Consulting Engineers, noted, as part of their Producer Statement - PS1 – Design dated 13 December 2019, noted:

Important Notes:

- *Check building consent conditions for any inspections that are required by the Building Consent Authority.*
- *In order to issue Producer Statement – Construction Review (PS4) for specific item(s) as per the building consent conditions, [Omitted] needs to carry out the inspection for the item(s) specified. NO INSPECTION = NO PS4.*
- *It is the building consent applicant's (or authorised agent) responsibility to ensure that Wilton Joubert is notified in advance of the required inspection. Bookings should be made 48 hours prior to the intended time of inspection.*

[21] A letter from the Consulting Engineers dated 1 July 2020 also noted:

[Omitted] was contacted and engaged by the client as the concrete footing and blockwall were poured without engineer's pre-pour inspection. Pre-pour inspections were carried out by [Omitted] inspector(s) and the inspection records are appended.

We attended a site meeting with the [Omitted] inspector, builder and owner on the 14/05/2020. We have reviewed the inspection reports provided by [Omitted] dated: 12/02/2020 for Basement IT Foundation footing and report dated: 21/02/2020 for basement subfloor blockwall reinforcing. We have reviewed the photos provided by [Omitted] and held discussion over the relevant details with the builder and the [Omitted] inspector.

[Omitted] was not involved with the actual inspections and cannot provide any guarantees, but from our review of the information provided, we believe the foundation and blockwall were constructed as per [Omitted]'s details/requirements and should perform as intended.

[22] The geotechnical engineer, [Omitted], noted in an email to the Complainant dated 5 June 2020:

With regard to Section C of the Council "Schedule of inspections and documentation required for compliance", I note that a geotechnical PS4 is

required. Can you please check how many of the stated items are actually relevant, or even if there is a building platform. That is, I don't think there is any filling over 600mm in depth, or excavations other than a vertical basalt rock face. I recall the building platform was existing, as it was the floor of the original garage I think. I just don't want to be caught out at CCC time, and asked for a PS4, if there were items I was meant to inspect but wasn't asked to do so at the time. Looking at the current BC plans I don't think there is anything I need to look at, but I will leave that to you to advise.

- [23] The Respondent provided a response dated 3 August 2020. In it, in respect of observations, he noted:

In part 6 of the complaint, [Omitted] foreman, [Omitted] (nor Kevin Mullany) was not informed by the owner or the engineers that the engineers needed to be privy to that inspection with [Omitted]. Also, there was nothing on the plans to state that an engineer was required to inspect alongside [Omitted]. [Omitted] was advised this by [Omitted], onsite and was told that she had sent an email pertaining to this to Kevin, which has never been received by Kevin. The email was originally directed from [Omitted] at [Omitted], and was never passed on to [Omitted] by [Omitted].

[Omitted] engaged [Omitted] and [Omitted], rather than using the usual council inspectors. The responsibility lies with [Omitted] to organise inspections with both parties and the liability is not [Omitted] when we haven't been provided the full information by [Omitted].

- [24] The Board was provided with the building contract. It provided that the "Builder Agrees to book all inspections from Council and Registered Engineer if Required".

Draft Conclusion and Reasoning

- [25] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); and
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act)

and **should** be disciplined

- [26] The reasons for the Board's decisions follow.

Negligence

- [27] The findings of negligence relate to the Respondent's failure to ensure the requirements of the building consent were complied with.

- [28] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against

those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.

- [29] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁸. 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.
- [30] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. 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 practitioner¹⁰.
- [31] The Board notes that the purposes of the Act are:

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
- (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

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 at p.33

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

[32] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code¹¹ and be carried out in accordance with a building consent¹². 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.

[33] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹³, 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.

[34] As regards building consent changes, the Respondent had a duty to follow the stated requirements in the building consent. A failure to do so is, in effect, a breach of the building consent. In this respect section 89 of the Act states:

89 Licensed building practitioner must notify building consent authority of breaches of building consent

- (1) *A licensed building practitioner must, if he or she is of the view that any building work carried out under a building consent does not comply with that consent, notify—*
 - (a) *the territorial authority in whose district the building is situated; and*
 - (b) *the owner.*
- (2) *The notification must—*
 - (a) *state that the licensed building practitioner is of the view that building work carried out under the building consent does not comply with that consent; and*
 - (b) *state how the building work does not so comply; and*
 - (c) *be given as soon as practicable after the licensed building practitioner forms that view.*

[35] The building consent required engineering observation from both the structural and the geotechnical engineers. Those observations were not completed as the engineers were not called when the related work was ready to be observed. Building consent authority inspections were carried out.

[36] The Respondent stated that it was not his responsibility to ensure engineering observations were carried out. The building contract stated otherwise. It noted that the builder was to arrange such observations.

[37] Irrespective of whether the Respondent was contractually obliged to ensure observations were carried out, the Respondent had a duty to ensure the building

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ [2001] NZAR 74

consent was complied with. That included ensuring that the necessary engineering observations were carried out as and when they were required. Moreover, the failure to ensure the observations were carried out created a risk that the engineering producer statement required for the issue of a code compliance certificate would not be issued.

- [38] The Respondent has not fulfilled his duty. In failing to do so and failing to consult the Respondent has departed from what the Board considers to be an accepted standard of conduct and thereby has been negligent.

Contrary to a Building Consent

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

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

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

- [40] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act.

- [41] The Respondent, by failing to call for or ensure that the required engineering observations were completed as the building work progressed, has breached section 317(1)(d) of the Act. The reason is that the building consent clearly required that those observations occur, but they did not. The Board does, however, note that there is a commonality in the finding with the finding of negligence. That will be taken into consideration when deciding the appropriate penalty to be imposed.

Draft Decision on Penalty, Costs and Publication

- [42] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

- [43] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [44] 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*¹⁴ 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.

- [45] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁵ 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 starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [46] The offending is serious. The building consent process is a fundamental part of the building process. It ensures Building Code requirements are met. In this instance, it was fortunate that the building work was assessed as complying with the Building Code. Without the required engineering observations that was not guaranteed.
- [47] Taking the above into consideration and noting that this matter has been dealt with on the papers, the Board has decided that a fine is not required and that a censure will suffice. A censure is a public statement of disapproval.

Costs

- [48] 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.”
- [49] 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

¹⁴ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case¹⁶.

- [50] In *Collie v Nursing Council of New Zealand*¹⁷ 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.

- [51] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar's Report and in the Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such the Board will order that costs of \$500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

Publication

- [52] 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 Act¹⁸. 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.

- [53] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [54] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁰. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²¹. The High Court provided

¹⁶ *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.

¹⁷ [2001] NZAR 74

¹⁸ Refer sections 298, 299 and 301 of the Act

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

²¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²².

[55] 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 interest²³. 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.

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

Draft Section 318 Order

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

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

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

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

[58] 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 Draft Decision

[59] The Board invites the Respondent and the Complainant to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[60] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **12 March 2021**.

[61] If submissions are received, then the Board will meet and consider those submissions.

²² *ibid*

²³ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [62] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.
- [63] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

- [64] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.
- [65] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on 5 March 2021.
- [66] If a hearing is requested this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

Right of Appeal

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

Signed and dated this 16th day of February 2021



M Orange
Presiding Member

This decision and the order herein were made final on 15 March 2021 on the basis that no further submissions were received

Signed and dated this 18th day of March 2021



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 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.*