

## Before the Building Practitioners Board

	BPB Complaint No. CB26101
Licensed Building Practitioner:	Lance Riddell (the Respondent)
Licence Number:	BP119885
Licence(s) Held:	Carpentry

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

#### Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Palmerston North
Hearing Type:	In Person
Hearing and Decision Date:	28 June 2023

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr D Fabish, LBP, Carpentry and Site AoP 2

#### Appearances:

K Jeffries for the Complainant

#### 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 not** committed a disciplinary offence.

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## Summary

- [1] The Complainant was undertaking a conversion of a bowling club to two residences. He obtained a building consent for some of the required work and hired two builders who were not Licensed Building Practitioners to undertake the build.
- [2] The Complainant maintained that the Respondent had agreed to be the supervising Licensed Building Practitioner for the restricted building work aspects of the build. Those aspects were the recladding of the eastern elevation with a cavity system and the installation of new windows, the installation of new lintels and the installation of a ranch slider. The Respondent denied that he was a supervising Licensed Building Practitioner.
- [3] The evidence heard was that when the builders reached the stage where they were to reclad the eastern elevation, they sought advice from the Respondent on how the work should be carried out. He attended the site and gave some instructions. The two unlicensed builders then carried out the work but did not obtain any Building Consent Authority (BCA) inspections as the work progressed. That resulted in the BCA removing the building work on the east elevation from the building consent. It required that a Certificate of Acceptance (CoA) process be followed for the work. As a CoA had been issued, the work ceased to be restricted building work.
- [4] There was no evidence that the Respondent was involved in any of the other building work that was carried out.
- [5] The Board had to decide whether the Respondent had a sufficient connection to the building work to be considered the supervising Licensed Building Practitioner of the restricted building work, which was the lintels and ranch slider because of the recladding being removed from the building consent.
- [6] The Board decided that the evidence did not establish a connection between the Respondent and the building work such that he was the supervising Licensed Building Practitioner and that it would not further investigate the allegations.

## The Charges

- [7] 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.<sup>1</sup>
- [8] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [OMITTED], Masterton, have:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have failed to:
    - i. adequately supervise building work; and
    - ii. ensure an approved building consent was in place before work commenced and that appropriate inspections were called for;
  - (b) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act; and/or
  - (c) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, IN THAT, he may have offered to be the Licensed Building Practitioner for the purposes of providing a record of work for restricted building work in circumstances where he neither carried out nor supervised the restricted building work.

## Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</sup>. 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

## Background to the Complaint

- [10] The Complainant, [OMITTED], purchased a bowling club with the intention of converting it into two residential dwellings as a development opportunity. He instructed [OMITTED], a Licensed Building Practitioner with a Design Area of Practice 2 Licence, to carry out the required design work to obtain a building consent for the work needed to create the two dwellings. Mr [OMITTED] gave evidence that the Complainant wanted to do as much building work as possible without a building consent. Mr [OMITTED]'s view was that the Complainant's approach complicated the build.
- [11] Mr [OMITTED] also gave evidence that he advised the Complainant before the build started that he would have to engage a Licensed Building Practitioner for the parts of the build that were restricted building work. The Complainant, who supplied materials and sub-contractors and who had some ongoing involvement in the build, stated he had no knowledge of the requirement for a Licensed Building Practitioner to carry out or supervise restricted building work until the build was underway. The Complainant had hired two builders to carry out the build. They were Mr [OMITTED] and Mr [OMITTED],<sup>4</sup> neither of whom was a Licensed Building Practitioner.
- [12] The build progressed. At the stage where exterior building wrap, cavity system, cladding and installation of new windows were to be undertaken (the restricted building work aspect), the Respondent, a friend of Mr [OMITTED]'s son, provided some guidance and instruction on how to do those aspects of the building work. The extent of the Respondent's involvement in the restricted building work was at issue. The Complainant's position was that the Respondent had agreed to be the supervising Licensed Building Practitioner. The Respondent did not accept that he was supervising.

## Procedure

- [13] In order to consider whether the Respondent has committed a disciplinary offence, the Board had to first decide whether the Respondent had sufficient connection to the restricted building work to warrant further consideration of the disciplinary matters under investigation.

## The Restricted Building Work

- [14] Section 84 of the Act provides:

*All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.*

- [15] Section 401B of the Act allows building work to be declared as restricted building work by Order in Council<sup>5</sup>. It only applies to building work that is carried out under a

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<sup>4</sup> Mr [OMITTED] appeared and gave evidence. Mr [OMITTED] did not due to a bereavement. The Board extends its condolences.

<sup>5</sup>401B Order in Council declaring work to be restricted building work

building consent. The Building (Definition of Restricted Building Work) Order 2011 was passed to establish restricted building work. Clause 5 of the Order stipulates:

- 5 *Certain building work relating to primary structure or external moisture-management systems of residential buildings to be restricted building work*
- (1) *The kinds of building work to which this clause applies are restricted building work for the purposes of the Act.*
- (2) *This clause applies to building work that is—*
- (a) *the construction or alteration of—*
- (i) *the primary structure of a house or a small-to-medium apartment building; or*
- (ii) *the external moisture-management system of a house or a small-to-medium apartment building;*

[16] The building consent issued for the bowling club conversion contained the following restricted building work: exterior cladding on a cavity system and new window joinery in the eastern elevation, new lintels and the installation of a ranch slider.<sup>6</sup> By volume of work, the predominant restricted building work was recladding and window installation. The Respondent provided some advice prior to that work being carried out. His position was that he would be called back to check the work as it progressed. That did not occur. In fact, no inspections of the work were called for as it progressed, either by the Respondent or the Building Consent Authority (BCA). In this respect, it appeared that the builders on site were not aware that there was a building consent and were under the impression that all of the work was exempt under Schedule 1 of the Building Act.

[17] The failure to obtain inspections of the building wrap, cavity system, and window installation before the elevation was clad resulted in the BCA removing the work, including the cladding itself, from the building consent. The BCA required that a Certificate of Acceptance be obtained for that work.

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- (1) *The Governor-General may, by Order in Council made on the recommendation of the Minister, declare any kind of building work (other than building work for which a building consent is not required) or any kind of design work to be restricted building work.*
- (2) *An order under subsection (1) may apply to any kind of building work or design work generally, or may apply to building work or design work in relation to particular types or categories of buildings or to particular parts of buildings.*
- (3) *The Minister may recommend the making of an order under this section only if the Minister is satisfied that the kind of building work or design work in question is (or is likely to be) critical to the integrity of a building or part of a building.*
- (4) *Building work or design work is not restricted building work if it relates to an application for a building consent made before the commencement of an order under subsection (1) declaring building work or design work of the same kind to be restricted building work.*

<sup>6</sup> The building consent file contained a note dated 13 August 2019 which stated: *Confirmed by agent all walls removed are non-load bearing.* Work on internal walls was not, therefore, restricted building work.

- [18] As noted above, only work that is carried out under a building consent is restricted building work. As the cladding and window installation was removed from the consent, it ceased to be restricted building work. In this respect, Mr Steven [OMITTED], the Building Control Services Manager from the Masterton District Council, emailed the board in relation to the complaint. He stated:

*There are no memos from Mr Riddell for that job as he did not do any of the restricted building work. As I attempted to explain the complaint is unfounded and raised by an over-zealous and difficult property developer. The restricted building work that Mr Riddell discussed with his friend Mr [OMITTED] was later removed from the Building Consent as it was not inspected by Council, Mr [OMITTED] is well aware of this as he applied for the subsequent Certificate of Acceptance.*

- [19] What remained was the installation of lintels and a ranch slider. The Board did not receive any evidence that connected the Respondent to that work. The email from Mr [OMITTED] reinforces that position as it states the Respondent “did not do any of the restricted building work”. Mr [OMITTED] reiterated that evidence at the hearing.
- [20] For completeness’ sake, it is noted that much was made by the Complainant of a firewall and the need for it to be supervised by a Licensed Building Practitioner. Under clause 7 of the Building (Definition of Restricted Building Work) Order 2011, the “preparation of any drawing, specification, or other document, according to which any fire-safety system attached to or forming part of a small-to-medium apartment building is proposed to be constructed or altered is restricted building work for the purposes of the Act”. As such, the construction of a firewall is not restricted building work.

#### **What was the Respondent’s Connection to the Restricted Building Work?**

- [21] As noted, there was conflicting evidence as to the extent of the Respondent’s involvement in the building work. The Complainant’s position was that the Respondent had agreed with Mr [OMITTED] to be the supervising Licensed Building Practitioner. The Respondent’s position was that he was helping out a friend’s father and that his ongoing involvement was subject to conditions that were not met. The Respondent’s engagement was not recorded in writing, and there was no evidence of the terms and conditions on which the Respondent would provide his services prior to him attending the site.
- [22] What was clear was that the Respondent’s actual on-site involvement was very limited. He attended the site to give some instructions on building wrap, cavity and window installation. He was noted as being on-site at an inspection dated 6 September 2019 together with Mr [OMITTED], but the Building Control Officer who conducted the inspection could not recall what his role was. Mr [OMITTED] noted some time on his invoices for the Respondent’s time (a total of \$520). The Respondent did not invoice anyone for that time. He stated that he simply received a gratuity payment from Mr [OMITTED], which he understood Mr [OMITTED]’s paid

out of his own pocket. The payment he stated he received was less than the amount Mr [OMITTED] had invoiced (\$320).

- [23] The Complainant alleged that the Respondent demanded payment to provide sign-off and that his refusal to do so caused him to suffer a financial loss. In his opening statement, the Complainant stated:

*It is emphasised the Sale of the property deemed not to have FULL COMPLIANCE CERTIFICATE was reflected in the Sale price.*

- [24] The evidence that Board received clearly showed that a full Code Compliance Certificate was not issued because the Complainant's builders did not call for inspections as work on the cavity, window joinery, and cladding progressed. That resulted in the work being removed from the building consent and a Certificate of Acceptance being issued. Those events were not caused by the Respondent's actions.

- [25] The Respondent did not deny that he demanded payment but did state that the amounts demanded were stated in anger and that he had to cover the risk that he would be undertaking if he was to provide sign-off.

- [26] A letter accompanying the complaint for the Complainant's legal representative stated:

*Mr Lance Riddell a local builder and Registered Licensed Building Practitioner was asked by Mr [OMITTED] on behalf of our Client if he would be responsible for ALL the LBP provisions as to signing off the job so we could apply for Council Compliance Certificate.*

- [27] It is to be noted that providing a record of work is not signing-off. Providing a record of work is not to be confused with a producer statement. It is not a statement as to the quality or compliance of restricted building work. It is, put simply, a statement of who did or supervised what in the way of restricted building work.

- [28] Building Consent Authorities often require producer statements to assure them that building work has been completed in accordance with the building consent and that the work is building code compliant. This is often referred to as signing off. There was no evidence that a producer statement was required for any carpentry work carried out, and the firewall was constructed under an engineer's observation and sign-off.

- [29] In terms of the Respondent's connection to the building work, the Board decided that the Respondent did not knowingly take on a supervisory role. He was not the primary builder, and no written agreement existed. The Board accepted that the Respondent required that certain conditions be met if he was to be involved and that they were not. Further, there was only a limited amount of restricted building work that remained after the reclad was removed from the building consent, and there was no evidence that the Respondent was involved in that work.

- [30] The Board does, however, caution the Respondent that, in future, he takes a cautious approach to providing advice and help as he may unwittingly find himself carrying liability and responsibility. If assistance is to be provided, he should make sure that the terms and conditions of that assistance are recorded in writing.

**Board's Decision**

- [31] The Respondent did not carry out or supervise the restricted building work. He has not committed a disciplinary offence.

Signed and dated this 12<sup>th</sup> day of July 2023

A handwritten signature in black ink, appearing to be 'M Orange', written in a cursive style with a long horizontal stroke extending to the right.

**M Orange**  
Presiding Member