

## Before the Building Practitioners Board

|                                 |                                 |
|---------------------------------|---------------------------------|
|                                 | BPB Inquiry No. CB25927         |
| Licensed Building Practitioner: | Gareth Ritchie (the Respondent) |
| Licence Number:                 | BP 131340                       |
| Licence(s) Held:                | Design – 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 | Board Inquiry     |
| Hearing Location           | Christchurch      |
| Hearing Type:              | In Person         |
| Hearing Date:              | 7 September 2022  |
| Decision Date:             | 12 September 2022 |

#### Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)  
Mr C Preston, Chair  
Mrs F Pearson-Green, LBP, Design AoP 2  
Mr G Anderson, LBP, Carpentry and Site AoP 2

#### Appearances:

L Barnett for the Respondent

#### 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) of the Act.

## Contents

|  |    |
|--|----|
| <b>Summary of the Board’s Decision</b> .....               | 2  |
| <b>The Board</b> .....                                     | 2  |
| <b>The Charges</b> .....                                   | 2  |
| <b>Consolidation</b> .....                                 | 3  |
| <b>Function of Disciplinary Action</b> .....               | 3  |
| <b>Inquiry Process</b> .....                               | 3  |
| <b>Evidence</b> .....                                      | 3  |
| <b>Board’s Conclusion and Reasoning</b> .....              | 7  |
| <b>Penalty, Costs and Publication</b> .....                | 10 |
| Penalty .....  | 10 |
| Costs.....   | 11 |
| Publication .....  | 12 |
| <b>Section 318 Order</b> .....                             | 13 |
| <b>Submissions on Penalty, Costs and Publication</b> ..... | 13 |
| <b>Right of Appeal</b> .....                               | 14 |

### Summary of the Board’s Decision

- [1] The Respondent carried out building work (design work) in a negligent manner. He is fined \$1,500 and ordered to pay costs of \$1,750. A record of the disciplinary offending will be maintained on the Public Register for Licensed Building Practitioners for a period of three years.

### The Board

- [2] The Board is a statutory body established under the Building Act.<sup>1</sup> Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

### The Charges

- [3] The hearing resulted from a Board Inquiry about the conduct of the Respondent and a Board resolution under regulation 22 of the Complaints Regulations<sup>2</sup> to hold a hearing in relation to building work at [OMITTED], Christchurch.
- [4] 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

---

<sup>1</sup> Section 341 of the Act.

<sup>2</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

negligent or incompetent manner (s 317(1)(b) of the Act) in that he may have failed to take all steps, reasonably expected of a Licensed Building Practitioner, to ascertain the legal boundaries to the property for which he completed the design and regulatory approval work.

### **Consolidation**

- [5] The Board may, under the Complaints Regulations, consolidate two or more matters into one hearing but only if the matters are, in the opinion of the Board, about substantially the same subject matter and the complainant and the Licensed Building Practitioners in respect of each matter agree to the consolidation.
- [6] The Board sought agreement for consolidation of this matter with complaint number CB25865. The consent of all those involved was forthcoming. The two matters were consolidated.

### **Function of Disciplinary Action**

- [7] 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*<sup>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>4</sup>.

### **Inquiry Process**

- [8] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

### **Evidence**

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [10] 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

---

<sup>3</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>4</sup> [1992] 1 NZLR 720 at p 724

<sup>5</sup> *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.

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

|                |   |
|----------------|---|
| Gareth Ritchie | Respondent                              |
| [OMITTED]      | Respondent in matter CB25865            |
| [OMITTED]      | Summoned witness, employee of [OMITTED] |

[12] The Board also received briefs of evidence from Mr Ritchie and Ms [OMITTED]. Counsel filed submissions.

[13] The building and design work related to an alteration and addition to a residential dwelling under a building consent. The alteration aspect involved an extension to create an entry and bathroom addition that would extend from the dwelling toward a boundary with a neighbouring property. As the project was residential and consented, it included restricted building work, and the design for the building consent had to be carried out by a Licensed Building Practitioner with the appropriate class of Design Licence.

[14] The Respondent was introduced to the project by Mr [OMITTED], who had, in turn, been instructed by the father of the owner, Mr [OMITTED]. The Respondent and Mr [OMITTED] had carried out a prior job for Mr [OMITTED].

[15] The Respondent attended the site and carried out an initial internal and external site measure-up. The actual boundary to the neighbouring property was not ascertained. There was a pailing fence on the boundary. Mr [OMITTED] gave evidence that he was not able to locate any boundary pegs.

[16] Prior to commencing the design work, the Respondent was provided with a copy of plans that had been prepared by another architectural studio ([OMITTED]) for previous consented works for earthquake repairs on the interior of the property. It contained a Site Plan with boundary offset dimensions. It was used for the development of the design. The Site Plan follows. The Respondent's design included a notation for the "contractor to verify all dimensions prior to commencing work". Provision was also made for a Building Location Certificate. The Respondent stated, in his brief, that a Location Certificate was discussed with Mr [OMITTED] during the design process due to the proximity of the bathroom to the boundary. The building consent that was issued included the requirement for a Building Location Certificate.



[OMITTED] Site Plan

- [17] The right-hand boundary measuring 2290 mm was the boundary where the building work for the bathroom was to be carried out. The Site Plan included the following notation:

**Set out**

*The location of site features shown on the site plan is approximate only. The contractor is to verify and note the location of all features within their scope on site and advise of any discrepancies.*

- [18] The design that was developed used all of the 2290 mm available between the existing building and the fence. The Respondent submitted that it was reasonable in the circumstances to rely on the [OMITTED] dimensions on the basis that there was a requirement for a Building Location Certificate that would have to be provided by a

Registered Surveyor and that dimensions were to be verified on site. In the Respondent's brief of evidence, he stated:

[13] *I believe that the approach taken in this situation was reasonable and the discrepancy in the dimensions would have been found at an early stage of the process and easily rectified if the correct process had been followed, as:*

- (a) *There were recent plans with dimensions stamped as approved by the Council for the property;*
- (b) *The scale of the project was small and allowed for a minor adjustment to the plans to correct (as was ultimately done);*
- (c) *There were clear requirements to confirm the provided dimensions were correct throughout the architectural drawings and specifications; and*
- (d) *There was a condition of consent requiring a BLC before the concrete pad was poured.*

[19] The design that was developed used 2280 mm of the 2290 mm available between the existing building and the dwelling. The Respondent submitted that it was reasonable in the circumstances to rely on the [OMITTED] dimensions on the basis that there was a requirement for a Building Location Certificate that would have to be provided by a Registered Surveyor and that dimensions were to be verified on site.

[20] The Respondent was asked whether consideration was given to obtaining a survey prior to the design being developed and submitted for a building consent. The Respondent accepted that it would have been advantageous and that he has now changed his process to obtain one sooner.

[21] Mr [OMITTED], who carried out the build, was not aware of the requirement for a Building Location Certificate. The build proceeded without a survey, or a certificate being obtained. Mr [OMITTED] set out the addition using the existing building as the reference point and the measurements provided in the consented design. The Respondent was not engaged for site observation but did answer some questions during construction over the telephone and did receive Council site and inspection notes.

[22] The requirement for a Building Location Certificate was brought to Mr [OMITTED]'s attention during the build by the Council. Once a survey was carried out, it was ascertained that the bathroom, as designed, had encroached the boundary. The exterior wall of the bathroom had to be reduced by 310mm. A redesign was required. The Respondent stated that the redesign that was developed was the same as the design that would have been developed had the issue with the boundary been known when the design was first developed. The redesign involved pulling the wall

framing back and moving the bathroom over, reducing the size of the shower and changing the veneer cladding to a sheet cladding system. Further, the redesign involved structural elements that required an engineer, and an amendment to the building consent.

### **Board's Conclusion and Reasoning**

- [23] 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.
- [24] The Board's considerations as regards negligence are in respect of the Respondent's design work.
- [25] Under the definitions in the Building Act, design work forms part of the wider definition of building work and, as such, in respect of section 317(1)(b), it comes within the Board's jurisdiction. In this respect, the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:
- 3      *Design work declared to be building work***
- (1)      *Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
- (2)      *Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*
- [26] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.
- [27] Turning to negligence, it 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, in this case, a licensed building practitioner with a design license. This is described as the *Bolam*<sup>6</sup> test of negligence which has been adopted by the New Zealand Courts<sup>7</sup>.
- [28] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>8</sup>. The first is for the Board

---

<sup>6</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

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

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.

[29] 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 Act<sup>9</sup>. 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 practitioner<sup>10</sup>.

[30] 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.*

[31] The Board also notes the provisions of section 14D of the Act, which states:

**14D Responsibilities of designer**

- (1) *In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
- (2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly*

---

<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

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

*completed in accordance with those plans and specifications or that advice.*

- [32] Given the above, when considering what is and is not an acceptable standard, the provisions of the building code need to be taken into account. In respect of design work, the Board also needs to take into account the wider requirements of resource management and town planning matters as they pertain to a design<sup>11</sup>.
- [33] Looking at the facts, the Respondent was engaged to design an extension where the margins between being within the boundary and potentially over it was very tight. He relied on an earlier consented plan that only had two boundary dimensions and a caveat to check measurements. That plan was for internal work only. As such, external boundary measurements would not have been critical. The Respondent identified the need for a survey and Building Location Certificate. He did not obtain one prior to carrying out the design. Rather, he made it a pre-construction requirement.
- [34] The question for the Board was, in the circumstances of the design brief and the site conditions, should the Respondent have obtained a survey of the site prior to undertaking the design work? The Board found that he should have. In circumstances where the margins were in millimetres, and a redesign would be necessary if the boundaries were not as expected, the investigations should have been carried out before the design work, not after. Also, a resource consent had been applied for and granted, project specific engineering design had been carried out, building consent documents completed and a building consent applied for and approved. They then had to be amended due to the addition being reduced in size. This created addition cost and delays. In this respect, it is noted that the Respondent has now amended his practices to ensure that a survey is a pre and not post-design process.
- [35] Turning to seriousness in *Collie v Nursing Council of New Zealand*,<sup>12</sup> 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 conduct was serious. It was a failing that the Board would not expect from a Design Licence holder. It should have been obvious from his site investigation and from the previous plans that margins were tight, they would building hard on the boundary, and that due diligence was required.

---

<sup>11</sup> Refer to the competencies required from a licensed designer in Schedule 1 of the Licensed Building Practitioners Rules 2007

<sup>12</sup> [2001] NZAR 74

- [37] Given 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.

### **Penalty, Costs and Publication**

- [38] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [39] 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

- [40] 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*<sup>13</sup> 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.*

- [41] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,<sup>14</sup> 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 do 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.
- [42] The Board has made a finding of negligence. It was at the lower end of the scale. As such, the Board adopted a starting point of a fine of \$2,000, which is consistent with other fines imposed by the Board for similar offending. The Board noted that if Mr [OMITTED] had obtained the Building Location Certificate as required, the issue would have been identified sooner and, whilst a redesign would still have been required, the path to it would have been smoother. As such, the Board has taken Mr

---

<sup>13</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>14</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[OMITTED]'s actions into consideration as a mitigating factor and has reduced the fine to \$1,500.

### Costs

- [43] 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."
- [44] 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 case<sup>15</sup>.
- [45] In *Collie v Nursing Council of New Zealand*,<sup>16</sup> 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.*
- [46] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,<sup>17</sup> the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [47] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was moderately complex. Adjustments based on the High Court decisions above are then made.
- [48] The matter proceeded as a consolidated hearing. As a result, the hearing costs were less. There was also an element of duplication in the investigation. The Board's scale amount for an investigation and hearing of this nature is \$3,500. It has decided,

---

<sup>15</sup> *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.

<sup>16</sup> [2001] NZAR 74

<sup>17</sup> CIV-2011-485-000227 8 August 2011

however, to impose a costs order of one-half of that amount to each of the Respondents. Accordingly, the Board's costs order is that the Respondent is to pay the sum of \$1,750 toward the costs of and incidental to the Board's inquiry.

#### Publication

[49] 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<sup>18</sup>. 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.*

[50] 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.

[51] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>19</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>20</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>21</sup>. 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*<sup>22</sup>.

[52] 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 interest<sup>23</sup>. 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.

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

---

<sup>18</sup> Refer sections 298, 299 and 301 of the Act

<sup>19</sup> Section 14 of the Act

<sup>20</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>21</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>22</sup> *ibid*

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

### Section 318 Order

[54] 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 \$1,500.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,750 (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.

[55] 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

[56] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **8 November 2022**. 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.

[57] 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

[58] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>ii</sup>.

Signed and dated this 17<sup>th</sup> day of October 2022



**Mr M Orange**  
Presiding Member

---

### <sup>i</sup> **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."*

### <sup>ii</sup> **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.*