

Before the Building Practitioners Board

	BPB Complaint No. 26544
Licensed Building Practitioner:	Robin William Verhoef (the Respondent)
Licence Number:	BP 100440
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 Draft Decision Date:	16 October 2024
Decision Reissued on:	30 April 2025
Final Decision:	12 June 2025

Board Members Present:

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

Procedure:

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

Disciplinary Finding:

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

The Respondent is fined \$1,500 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board's Decision

- [1] The Respondent was engaged to carry out building work that required a building consent. He commenced work without one, and the Board investigated whether the Respondent had breached the Code of Ethics for Licensed Building Practitioners (LBPs) in doing so.
- [2] The Board found that the Respondent had breached clause 10 of the Code, which requires that LBPs comply with the law. The finding was made on the basis that clause 10(1)(a) of the Code stipulates that LBP's must comply with the Building Act, which, in turn, requires that all building work be carried out under a building consent.
- [3] The Respondent was fined \$1,500 and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

- [4] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

- [5] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], have breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, in that he may have breached clause 10 of the Code, which states:

10 *You must comply with the law*

(1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*

(a) *the Building Act 2004:*

Draft Decision Process

- [6] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to making a decision.
- [7] Ordinarily, the Board makes a decision having held a hearing.³ The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.⁴
- [8] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers. It noted, however, that there may have been further evidence in relation to the matter that the Board was not aware of. To that end, it issued a Draft Decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. The Board further noted that if the Respondent requested an in-person hearing, then the Draft Decision would be set aside, and a hearing would be scheduled.
- [9] On 11 June 2025, a person representing the Respondent confirmed that the Respondent would not be asking for an in-person hearing.

Evidence

- [10] 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.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

³ Regulation 10 of the Complaints Regulations.

⁴ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

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

Code of Ethics

- [11] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.⁶ It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes⁷ for some time, and the Board has taken guidance from decisions made in other regimes.
- [12] The disciplinary provision in the Act simply states, “has breached the code of ethics”. Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board*,⁸ Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:
- Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*
- [13] The Board also notes that the courts have applied a threshold test to disciplinary matters. It is the same as those for negligence. The Board has, in considering the matter, applied those tests.

The Conduct

- [14] The issue under consideration is whether the Respondent has breached the Building Act by undertaking building work without a building consent. If he did, then that breach could, in turn, be considered a breach of clause 10 of the Code of Ethics.
- [15] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.⁹ The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken¹⁰ and that the consented work is then assessed against the consent issued through scheduled inspections.¹¹ In *Tan v Auckland Council*,¹² the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

⁶ Building (Code of Ethics for Licensed Building Practitioners) Order 2021

⁷ Lawyers, Engineers, Architects and Accountants, for example

⁸ [1992] 1 NZLR 720 at 724

⁹ Refer sections 40, 41 and 42A of the Act.

¹⁰ Section 49 of the Act.

¹¹ Section 222 of the Act.

¹² [2015] NZHC 3299 [18 December 2015]

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

- [16] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken.
- [17] The building work involved the construction of a garage and two cabins. The cabins contained a kitchen and a bathroom.
- [18] As noted, there are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those who seek to rely on an exception to show that the building work comes with that exception.
- [19] Looking at the building work, because the buildings contained sanitary fittings and cooking facilities, they did not come within any of the exemptions to the requirement to obtain a building consent provided for in Schedule 1 of the Building Act. Accordingly, a building consent was required and should have been obtained for the building work before it was started.
- [20] The Respondent, by proceeding with the building work without a building consent has breached section 40 of the Act, which states that all building work must also be carried out in accordance with a building consent:

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.*

- [21] It follows that the Respondent has breached the Building Act and, in turn, has breached clause 10 of the Code of Ethics.

Was the Conduct Serious Enough

- [22] In *Tan v Auckland Council*,¹³ the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.

- [23] This was not a case where it was a marginal call as to whether a building consent was required. The envisaged building work was substantial, and it should have been clear to any LBP that a building consent was required. Notwithstanding, the Respondent has proceeded to carry out the work without one.
- [24] The Respondent stated in his response to the complaint that a building consent had now been granted. The building consent he referred to was for the installation of an “AES wastewater system as per Engineer Design”. It was not for the construction of the garage or cabins, which are at the centre of this matter.
- [25] With respect to the garage and cabins, the Building Consent Authority (BCA) has granted a Certificate of Acceptance (CoA).
- [26] It should also be noted that whilst a CoA can be granted by a BCA for building work that is not carried out under a building consent or an exemption, it does not relieve a person from the obligation to ensure building work is carried out under a building consent. Section 96(3) specifically provides:

96 Territorial authority may issue certificate of acceptance in certain circumstances

(3) This section—

- (a) *does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and*
- (b) *accordingly, does not relieve a person from the requirement to obtain a building consent for building work.*

- [27] Further, a CoA is not the same as a Code Compliance Certificate (CCC), which is granted for building work that has been undertaken under a building consent and which has been verified as meeting Building Code requirements. It is inferior because the BCA has not had the opportunity to check and verify the building work as it progressed.
- [28] Given the above, whilst it could be said that the Respondent was somewhat ignorant of the Building Act provisions that apply to building consents, the conduct was not a case of mere inadvertence, error or oversight. The Board has made this decision because, as an LBP, the Respondent should have known that consent was required

¹³ [2015] NZHC 3299 [18 December 2015]

and because there is no evidence that the Respondent took any steps to satisfy himself that a building consent was not required prior to commencing the building work.

Further Evidence and Submissions Received

- [29] Following the Board issuing the Draft Decision, it received submissions on matters pertaining to penalty costs and publication that have been taken into consideration.

Board's Decision

- [30] The Respondent **has** breached section 317(1)(g) of the Act.

Penalty, Costs and Publication

- [31] 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.
- [32] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision. It has since received submissions and has made a final decision regarding penalty, costs, and publication.

Penalty

- [33] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.¹⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁵
- (a) protection of the public and consideration of the purposes of the Act;¹⁶
 - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹⁷
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁸
 - (d) penalising wrongdoing;¹⁹ and
 - (e) rehabilitation (where appropriate).²⁰
- [34] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst

¹⁴ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

¹⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁶ Section 3 Building Act

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

cases²¹ and applying the least restrictive penalty available for the particular offending.²² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²³ that is consistent with other penalties imposed by the Board for comparable offending.²⁴

- [35] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²⁵
- [36] In its Draft Decision, the Board indicated that a fine was the appropriate form of penalty to impose. Noting that the conduct was in the mid-range of seriousness, it adopted a starting point of a fine of \$3,500, which was consistent with other fines imposed by the Board for similar disciplinary offences.
- [37] The Respondent put forward his good history as an LBP and builder. The Board noted that it was the first time he had offended and that the matter had been dealt with on the papers. On that basis, it reduced the indicative fine to \$2,500.
- [38] After the Draft Decision had been issued, the Board received penalty costs and publication submissions. The submissions noted personal issues regarding the Respondent and his current circumstances. Taking those factors into consideration, the Board has decided to further reduce the fine to \$1,500.

Costs

- [39] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁶
- [40] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁷. The starting point can then be adjusted up or down, depending on the particular circumstances of each case²⁸.
- [41] 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 are then made.
- [42] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁷ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁸ *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.

scale amount for a moderately complex matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

Publication

- [43] 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,²⁹ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [44] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁰ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.³¹
- [45] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

²⁹ Refer sections 298, 299 and 301 of the Act

³⁰ Section 14 of the Act

³¹ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Section 318 Order

[46] 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 \$700 (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, the Respondent will be named in this decision, which will be published on the Board's website.

[47] 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.

Right of Appeal

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

Signed and dated this 4th day of July 2025



Mr 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.

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- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
 - (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
 - (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
 - (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

ii Section 318 Disciplinary Penalties

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

iii Section 330 Right of appeal

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

Section 331 Time in which appeal must be brought

An appeal must be lodged—

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