

## Before the Building Practitioners Board

	BPB Complaint No. 26471
Licensed Building Practitioner:	Samuel Blake (the Respondent)
Licence Number:	BP 129316
Licence(s) Held:	Carpentry

---

### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

---

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	25 March 2025
Decision Date:	11 April 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr G Anderson, LBP, Carpentry and Site 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 disciplinary offences under sections 317(1)(b), (d) and (da)(ii) of the Act.

The Respondent **has not** committed disciplinary offences under sections 317(1)(a), (g) or (i) of the Act.

The Respondent is fined \$4,500 and ordered to pay costs of \$4,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

<b>Contents</b>	
<b>Summary</b>	3
<b>The Charges</b>	3
<b>Evidence</b>	5
<b>Background to the Hearing</b>	5
<b>Background to the complaint</b>	5
<b>Consideration of the Charges</b>	6
317(1)(a) – Criminal Convictions	6
317(1)(b) – Negligence or Incompetence	7
<i>Has the Respondent departed from an acceptable standard of conduct</i>	11
<i>Was the conduct serious enough</i>	14
<i>Has the Respondent been negligent or incompetent</i>	15
Section 317(1)(d) – Contrary to a Building Consent	15
<i>Was there building work that differed from the building consent</i>	15
<i>Was the conduct serious enough</i>	15
<i>Has the Respondent breached section 317(1)(d) of the Act</i>	15
Section 317(1)(da)(ii) – Failure to Provide a Record of Work	16
<i>Did the Respondent carry out or supervise restricted building work</i>	16
<i>Record of work</i>	16
<i>Was the restricted building work complete</i>	16
<i>Has the Respondent provided a record of work</i>	16
<i>Was there a good reason for the Respondent to withhold his records of work</i>	16
<i>Did the Respondent fail to provide a record of work</i>	17
Sections 317(1)(g) and (i) – Code of Ethics and Disrepute	17
<i>The conduct under investigation</i>	18
<i>Did the conduct breach the Code</i>	19
<i>Has the Respondent breached the Code or Conducted himself in a Disreputable Manner</i>	20
<b>Board Decisions</b>	20
<b>Penalty, Costs and Publication</b>	20
Penalty	20
Costs	21
Publication	22
<b>Section 318 Order</b>	23
<b>Submissions on Penalty, Costs and Publication</b>	23
<b>Right of Appeal</b>	23

## Summary

- [1] The Board is investigating multiple disciplinary allegations. Included were allegations regarding how the building work was carried out. With respect to those, the Board decided that the respondent had supervised building work in a negligent manner and in a manner that was contrary to the building consent that had been issued. The Board also decided that the respondent had failed to provide a record of work on completion of restricted building work.
- [2] With respect to the remaining allegations, which were related to the Respondent's criminal convictions, breaches of the Code of Ethics, and distributable conduct, the Board decided that the respondent had not committed the distillery offences alleged.
- [3] Regarding the disciplinary charges that were upheld, the Board decided that the respondent should be fined \$4,500 and ordered to pay costs of \$4,150. 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.<sup>1</sup>
- [5] 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], Auckland, have:
  - (a) been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work contrary to section 317(1)(a) of the Act;
  - (b) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;
  - (c) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act;
  - (d) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out 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

---

<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.

building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act;

- (e) breached the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act; and
- (f) 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.

[6] The Board gave notice that in further investigating the Respondent's conduct under sections 317(1)(b) and (d) of the Act, it would be inquiring into:

- (a) the wall and floor framing with regard to the accuracy of plumb, true, level and square;
- (b) the installation of the flooring sheets;
- (c) installation of the aluminium window and door joinery;

all as set out in Mr [OMITTED] report (Pages 2026 to 2028 of the Board's file);

AND

- (d) the size and alignment of the poles and the alleged failure to obtain a structural engineer's inspection of the poles;
- (e) the installation of the roofing underlay and wall wrap contrary to building consent; and
- (f) the installation of the Linea wall cladding.

[7] With respect to the allegation that the Respondent breached the Code of Ethics, the specific provisions of the Code that would be further investigated at a hearing was:

**14. Your duty to inform and educate the client**

**18. You must normally follow your client's instructions –**

**19. You must behave professionally**

[8] The conduct the Board gave notice would be further investigated with respect to the Code of Ethics was alleged:

- (a) advice that the kitchen had been ordered when it may not have been (Principles 14 and 18);
- (b) representations that the work had passed Council inspections when it may not have, in order to release progress payments (Principle 19);
- (c) failure to maintain the Contract Works Single Project insurance policy (Principle 19); and

(d) misrepresentations as to the Respondent's convictions (Principle 19).

- [9] The specific conduct the Board gave notice that would be further investigated with respect to the allegation of disreputable conduct was the alleged misrepresentation of the Respondent's convictions.

### **Evidence**

- [10] 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.

### **Background to the Hearing**

- [11] The matter was first set down to be heard on 29 October 2024 but was adjourned at the Complainant's request. A new hearing date of 29 January 2025 was scheduled. The Respondent did not appear. He stated he had misunderstood a Minute that declined an adjournment. A further adjournment was granted.

### **Background to the complaint**

- [12] The complaint related to a new residential build. The Complainant had originally approached a franchise-building company but did not progress the build with it. She then approached North West Cabins Limited, a company that the Respondent was, at the time, a director of. The Complainant dealt with Sabrina Peacocke at North West Cabins, who was the Respondent's relationship partner at the time. North West Cabins builds portable buildings. Ms Peacocke provided the Respondent's written response to the complaint.
- [13] The Complainant stated that when it came to signing a contract, the contracting party carrying out the build was York Construction Limited, a company in which the Respondent is the sole shareholder and director. The Complainant stated she had no dealings with the Respondent before executing the contract or before the build commenced. Early versions of the contract and a quote did, however, make reference to the Respondent. The Complainant stated that she had asked Ms Peacocke whether the Respondent had any criminal convictions before signing the contract and was assured that he did not. During the build, the Complainant observed that the Respondent was wearing an electronic monitoring device used when persons are being monitored by the Department of Corrections.

---

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

- [14] The Respondent stated that he started York Construction in 2016. Prior to the build for the Complainant, York had provided labour-only services for the construction of six townhouses in Hobsonville but had not carried out any other residential builds. He stated that York focused on small to medium commercial construction.
- [15] The build was carried out under the Respondent's supervision. His father, Wayne Blake, was the project manager/construction manager. The site foreman was Zach, a trade-qualified builder, who was assisted by an apprentice and two hammer hands. All personnel were employed staff. The Respondent was also supervising two other builds at the time. The builds were spread out over the region, with one being a 2 to 3-hour drive from the Complainant's site.
- [16] The Respondent did not complete the build. A contractual dispute arose, and civil remedies were being sought. Mr [OMITTED], a Licensed Building Practitioner was engaged to assist with completion. Mr [OMITTED] gave evidence at the hearing. He had provided the Complainant with a report outlining work that needed to be attended to. His report formed part of the building issues under investigation.

### **Consideration of the Charges**

#### **317(1)(a) – Criminal Convictions**

- [17] The disciplinary provision in section 317(1)(a) of the Act requires two matters to be satisfied. The first is whether the Respondent has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more.
- [18] The Board obtained a criminal history from the Ministry of Justice. It showed that the Respondent had a criminal history dating back to 2002, with the most recent convictions occurring in February and April 2023. The criminal history included convictions for offences that were punishable by imprisonment for a term of six months or more. The first element has been satisfied.
- [19] The second is whether the commission of that offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work. The second element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.
- [20] Unlike other licensing regimes, the licensed building practitioner regime does not contain any provisions which require an assessment of an applicant's character or fitness to hold a licence at the time they apply for a licence<sup>4</sup> or during the currency of their licence. Rather, in the Building Act, there is an ability to assess this subsequent to a person being licensed by way of section 317(1)(a) of the Act, and it does not matter that the criminal offending predated the person being licensed.

---

<sup>4</sup> Compare with the licensing provisions in section 91(d) of the Electricity Act 1992 and section 36(d) of the Plumbers, Gasfitters, and Drainlayers Act 2006 both of which have a requirement to be a fit and proper person for registration

- [21] The Courts have stated that fitness is not to be equated with competence and that when considering fitness deterrence, public confidence and upholding standards are relevant.<sup>5</sup> In *Hart v Auckland Standards Committee 1 of The New Zealand Law Society*,<sup>6</sup> the High Court set out various factors that should be considered. They included the nature and gravity of the criminal charges, any previous history, any acceptance of responsibility, and the effect on public confidence. Applying those tests, the Board finds:
- (a) Nature and gravity of the charges:
  - (b) Acceptance of responsibility:
  - (c) Previous history:
  - (d) The effect on public confidence:
- [22] The Board questioned the Respondent about his criminal history and any rehabilitation he may have undertaken. He stated he had been through behavioural and addiction rehabilitation in 2012 and 2013. He noted that many of his offences related to firearms and that the offending arose because of his possession of firearms for hunting, which was common in the rural area where he lived. The respondent stated that his offending did not relate to any of his clients or building work.
- [23] The Board has decided that the second element of section 317(1)(a) has not been established. In short, it has decided that, whilst the Respondent's criminal history is extensive and he has committed serious criminal offences, the convictions do not reflect adversely on his fitness to carry out or supervise building work or building inspection work. The disciplinary offence has not been committed.
- [24] In coming to its decision, the Board has noted that the Respondent's convictions did not relate to his building work or clients. More importantly, however, it was noted that the more serious offending and his property-related offending occurred more than 10 years ago.

### 317(1)(b) – Negligence or Incompetence

- [25] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>7</sup> that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*<sup>8</sup> test of negligence.<sup>9</sup> To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise

<sup>5</sup> *Professional Conduct Committee v Martin* High Court WN 2007

<sup>6</sup> [2013] 3 NZLR 103

<sup>7</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 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.

<sup>8</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>9</sup> Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

building work to an acceptable standard.<sup>10</sup> A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>11</sup> If it does not, then a disciplinary finding cannot be made.

- [26] The issues fell into two categories: those noted by a builder who took over the project, [OMITTED], and those noted in Building Consent Authority (BCA) inspection reports.
- [27] With respect to Mr [OMITTED], he attended the site on 26 January 2024, after the Respondent had been removed from the build and provided an estimate to complete. As part of his estimate, which he outlined in an email, he made various observations, including those under investigation. Mr [OMITTED] observations in his email were not supported by any additional evidence. Mr [OMITTED] subsequently carried out and supervised the completion of the build.
- [28] The most serious issue was that relating to the installation of piles and the changes to the building consent noted in the BCA inspections. Those noted by Mr [OMITTED] lacked sufficient supporting evidence and/or did not reach the threshold for disciplinary action. Looking at the issues that did meet the threshold, they were significant departures from acceptable standards. The details of each follow.

#### *Foundation poles*

- [29] The Respondent used two subcontractors to assist with the installation of foundation piles. The Respondent was, however, the sole Licensed Building Practitioner involved. He stated that he was on site and carried out the set out for the piles but that he supervised the rest of the work.
- [30] The BCA granted a waiver for its required Foundation inspection. The waiver stipulated:

*This inspection has been waived subject on the condition all work is completed in accordance with the Building Consent and any remedial works are approved by the engineer and noted in their site observations.*

*This waiver is for a IFO house piles only The scope of this inspection waiver covers IFO house piles only*

*Council will require the following documentation (if applicable to the inspection) to be on-site at the next inspection or it will not proceed.*

---

<sup>10</sup> In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

<sup>11</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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”.



*Engineers who provide PS4 certificates for Structural and or Geotechnical work must be on the Auckland Council producer statement register: Refer to the following link. [https:// www.aucklandcouncil.govt.nz/building-and-consents/buildingconsents/producer-statement-authors/Pages/find-producerstatement-author.aspx](https://www.aucklandcouncil.govt.nz/building-and-consents/buildingconsents/producer-statement-authors/Pages/find-producerstatement-author.aspx)*

*The following must be provided at the next inspection:*

- 1. Geotechnical and/or structural engineers' site observations including photos relating to the waived inspection consented works.*
- 2. Surveyor set out certificate and FFL for floor slab inspections.*
- 3. The contractor is to keep a sound Quality Assurance process to assist in demonstrating compliance with the consented plans if council requires it.*
- 4. Markup plan of the consented works that have been inspected by the engineer.*

And

*This waived inspection may be deemed null and void if the above documentation is not provided with the building works are not as per the consented plans.*

*By accepting this waiver Council deems you to have understood and accepted the above documentation requirements. If there are any issues with supplying these documents respond within 24 hours.*

- [31] The conditions of the waiver were not adhered to.
- [32] The wrong size poles were ordered and installed. The building consent specified 275mm SED poles. 250mm SED poles were purchased and installed. The Respondent stated that he was not aware the wrong poles had been ordered and did not observe on-site that they were the incorrect poles. He noted that the weather conditions made observing the pole size difficult and that if he had noticed, he would have returned them and obtained the correct poles.
- [33] A change to the building consent was not obtained prior to the smaller diameter poles being installed. The Respondent stated he had obtained the structural engineer's approval and that he had documentation to verify this. He was given time to produce the documentation but was not able to do so. The Respondent accepted that he had not obtained BCA approval for the change.
- [34] The installation of the poles was not carried out under the observation of an engineer. The structural engineer confirmed this in emails dated 10 October 2023 and 30 November 2023.
- [35] Notwithstanding the lack of observation, the structural engineer provided approval to the BCA for the changed pole size. A BCA Site Meeting record dated 13 December 2023, recorded:

*Hutchinsons confirmed 250 SED poles ok and provided new calculations, this was approved as a minor variation, as Carters confirmed poles range from 250-275mm SED.*

- [36] The poles were initially installed out of alignment. They had to be removed, redrilled and reinstalled. The Respondent noted that weather conditions made the installation of the poles difficult.
- [37] The Respondent stated that the Complainant had asked that the finished floor level be lifted by 600mm. A building consent change was not processed in relation to the change in finished floor height. The Complainant gave evidence that the finished floor level had to be lifted because the building was placed in the wrong position. There was a Surveyor's Certificate on file that certified the positioning of the dwelling. The change in height meant that what were supposed to be anchor piles no longer met anchor pile requirements, and additional bracing was required. The Respondent stated he had engineering evidence he could submit regarding the change. Nothing was filed.
- [38] The Respondent stated it was a complicated project, and he accepted that he should have stopped the building work early on when changes were being made and carried out an assessment of the implications of the change.

*Roofing underlay used as wall wrap*

- [39] An inspection dated 12 September 2023 noted:

*roofing paper used on the walls as wrap - provide in writing from the manufacturer they are happy with using the wrap in this way.*

- [40] A building consent change was not obtained prior to the substituted product being installed. An email from the supplier indicated that the product was suitable for use on walls.

*Linea wall cladding*

- [41] The staff on site carrying out the weatherboard installation did not have any experience with it. The Respondent stated the manufacturer's documentation was on site and that he had taken his staff through it, noting nailing positions and that by the time he returned to the site to check on the work, most of it had been completed.
- [42] A failed Cladding inspection dated 31 October 2023 noted:

*failed items;*

*1. Cladding integrity and orientation ( Fail ) minimum 10mm cover behind window flanges not achieved*

*2. Cladding fixings ( Fail )*

*boards not nailed through both boards as per james hardie specs.  
have James Hardie rep come to site and provide a resolution to the fixings.*

*3. Cladding: junction details ( Fail ) some joins not minimum 100mm away  
from studs*

[43] A further failed cladding inspection on 27 November 2023 noted:

*3. Cladding integrity and orientation ( Fail )*

*minimum 10mm cover behind window flanges not achieved scribes fixed  
with finishing pins  
pls remove some scribes to inspect jamb cover; other scribes to be fixed as  
per manufacturer's specifications*

*4. Cladding fixings ( Fail ) Fail Comments*

*boards not nailed through both boards as per james hardie specs. - not as  
details on a201 (photo'd)  
James Hardie report 1/11/23 but does not reflect on site scenario.  
SMALL AREAS HAVE BEEN REFIXED BUT MAJORITY OF WBs ARE INCORRECT*

*5. Cladding: junction details ( Fail )*

*some butt joins not minimum 100mm away from studs external corners on  
site are box corners, BC details on a201 show soakers  
linea WB butt joins not sealed*

[44] The same comments were repeated in a Cladding inspection dated 3 January 2024.

[45] The Respondent stated he became aware of the issue at the first cladding inspection. His evidence was that the BCA Inspector had shown them the areas that had to be fixed and that 31 weatherboards were removed and replaced. He estimated it at between 10 to 15% of the weatherboards. The Complainant stated that further weatherboards had to be remediated.

[46] The Board also noted that the building consent specified soakers, whereas boxed corners were installed. A building consent change had not been obtained for the product change.

*Has the Respondent departed from an acceptable standard of conduct*

[47] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>12</sup> as well as the requirement that all building work must comply with the Building Code<sup>12</sup> and any building consent issued.<sup>13</sup> The test is an objective one.<sup>14</sup>

---

<sup>12</sup> Section 17 of the Building Act 2004

<sup>13</sup> Section 40(1) of the Building Act 2004

<sup>14</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

- [48] As noted, the areas of concern for the Board were those identified during BCA inspections.
- [49] It is somewhat inevitable that a BCA will identify compliance issues that require remediation and it will not necessarily follow that a Licensed Building Practitioner will have been negligent because the BCA has issued failed inspections. What needs to be considered by the Board are factors such as:
- (a) the extent and seriousness of the non-compliance;
  - (b) whether there is a pattern of continued non-compliance; and
  - (c) what steps are taken when non-compliance issues are raised.
- [50] The Board considers that licensed building practitioners should be aiming to get building work right the first time and not to rely on the building consent authority to identify compliance failings and to assist them to get it right. Moreover, when compliance failings are identified the Board would expect prompt action to be taken and that they would not repeat the same failings. In this respect, during the first reading of changes to the Act around licensing,<sup>15</sup> it was noted by the responsible Minister:

*In February this year the Minister announced measures to streamline and simplify the licensed building practitioner scheme. A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.*

- [51] The introduction of the licensed building practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation<sup>16</sup>:

*The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes pride in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.*

*We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are*

---

<sup>15</sup> Hansard volume 669: Page 16053

<sup>16</sup> Hansard volume 669: Page 16053

*accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.*

- [52] Section 3 of the Act, which sets out the Act's purposes notes that the Act includes the purpose of promoting the accountability of builders. Section 14E of the Act encapsulates the statements in Hansard noted above. It sets out that:

**14E Responsibilities of builder**

- (1) *In subsection (2), builder means any person who carries out building work, whether in trade or not.*
- (2) *A builder is responsible for—*
  - (a) *ensuring that the building work complies with the building consent and the plans and specifications to which the building consent relates;*
  - (b) *ensuring that building work not covered by a building consent complies with the building code.*
- (3) *A licensed building practitioner who carries out or supervises restricted building work is responsible for—*
  - (a) *ensuring that the restricted building work is carried out or supervised in accordance with the requirements of this Act;*  
*and*
  - (b) *ensuring that he or she is licensed in a class for carrying out or supervising that restricted building work.*

- [53] It is within this context that the Board considers that the acceptable standards expected of a reasonable Licensed Building Practitioner include taking steps to ensure building work is carried out competently and compliantly as and when it is carried out and that if there are issues that they will be dealt with and learnt from.

- [54] Looking at the Respondent's building work, he was the supervisor and was responsible and accountable for what occurred on site. There were significant failings with respect to the foundations and the cladding. The wrong size poles were used for the foundations. The poles were initially installed out of alignment. The conditions of a building consent waiver issued were not adhered to. Cladding was installed in a manner that did not adhere to the manufacturer's specifications and had to be replaced.

- [55] Building consent change processes were not used when the Respondent departed from the building consent with respect to changes of pole sizes, the change of the finished floor level, redesign of brace piles, a change of wall wrap, and a change from cladding soakers to boxed corners.

- [56] As noted, the Respondent supervised the building work. Supervision is a defined term in the Act.<sup>17</sup> There are various factors that the Board needs to consider when it determines whether a Licensed Building Practitioner's supervision has met an acceptable standard. The District Court has stated, albeit in the context of the Electricity Act, that at the very least, supervision requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to the compliance of the work with the requisite regulations.<sup>18</sup>
- [57] When considering supervision, the Board needs to consider what type of supervision was required and how well that supervision was undertaken. The Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.
- [58] There are varying types of supervision. The Ministry of Business Innovation and Employment has issued a supervision guidance document.<sup>19</sup> It notes the different types of supervision: direct, general and remote. It also provides a matrix to assist in determining the appropriate form of supervision to be used. Generally, the greater the complexity of the work, the higher the need for direct supervision. The skill level of the person being supervised also needs to be taken into consideration.
- [59] The question for the Board then is whether the Respondent has been negligent or incompetent in his supervision of the building work. The Board finds that he has been negligent in that his supervision has fallen below an acceptable standard. He did not pay close enough attention to what was being done on site with respect to the foundations, and did not comply with a BCA waiver, did not provide adequate instructions on how cladding work was to be carried out and did not follow acceptable practices as regards changes to the building consent that were made.

*Was the conduct serious enough*

- [60] The conduct was serious. The departures from acceptable standards were more than minimal and were not the result of mere inadvertence, oversight or error. The Board formed the view that the Respondent was out of his depth with it being his first full residential build as the main contractor and that he took on a project that he was not ready for. Prior to the build, he had minimal residential experience, and it was one of the first builds he had been involved in, other than in relation to his cabin business.

---

<sup>17</sup> Section 7:

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

*(a) is performed competently; and*

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

<sup>18</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

<sup>19</sup> Practice Note: Supervision, August 2017, issued under section 175 of the Act.

*Has the Respondent been negligent or incompetent*

[61] The Respondent has supervised building work in a negligent manner.

Section 317(1)(d) – Contrary to a Building Consent

[62] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.<sup>20</sup> Once issued, there is a requirement that the building work be carried out in accordance with the building consent.<sup>21</sup> Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.<sup>22</sup> Inspections ensure independent verification that the building consent is being complied with.

[63] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that departure was deliberate or a result of negligent conduct.<sup>23</sup> The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>24</sup> If it does not, then a disciplinary finding cannot be made.

*Was there building work that differed from the building consent*

[64] The changes to the foundations, finished floor level and product substitutions were departures from the building consent, as was the failure to adhere to the foundations inspection waiver. He failed to follow the required processes to make changes to the building consent in respect of the same. That failure was also a breach of the building consent.

*Was the conduct serious enough*

[65] The Board finds, for the same reasons as its findings in relation to negligence, that the conduct was serious.

*Has the Respondent breached section 317(1)(d) of the Act*

[66] The Respondent has supervised building work that did not comply with the building consent issued.

[67] The Board notes the commonality of the Board's findings with respect to sections 317(1)(b) and (d) of the Act. It will take that into consideration when it decides what the appropriate penalty should be.

---

<sup>20</sup> Section 49 of the Act

<sup>21</sup> Section 40 of the Act

<sup>22</sup> Section 222 of the Act

<sup>23</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>24</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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".

Section 317(1)(da)(ii) – Failure to Provide a Record of Work

- [68] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.<sup>25</sup>
- [69] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work<sup>26</sup> unless there is a good reason for it not to be provided.<sup>27</sup>

*Did the Respondent carry out or supervise restricted building work*

- [70] The Respondent was engaged to carry out and supervise building work on a new residential dwelling under a building consent. His work included supervision of work on the primary structure and external moisture management system of a residential dwelling, both of which are forms of restricted building work.<sup>28</sup>

*Record of work*

- [71] The Respondent accepted that he had not provided a record of work. In his written response to the complaint, he stated that a record of work could not be provided because some of the work had not been completed. The response also stated the record work was on file but had been held back because of the “client being extremely hostile and not making payments and forewarned time.” The two statements are somewhat contradictory.
- [72] The Complainant gave evidence that the building work had obtained a code compliance certificate in April 2024 without the Respondent’s record of work having been provided.

*Was the restricted building work complete*

- [73] The Respondent’s restricted building work was complete when he ceased to be involved in the project, which was in October 2023, because, after that date, he would not be carrying out or supervising any further restricted building work. October 2023 is when a record of work was due.

*Has the Respondent provided a record of work*

- [74] The respondent has not provided a record of work.

*Was there a good reason for the Respondent to withhold his records of work*

- [75] The Respondent put forward noncompletion and payment issues as reasons for not providing a record of work. Neither are good reasons.
- [76] Firstly, completion occurred when the Respondent’s contract came to an end. At that point, he would not be able to carry out any further restricted building work.

---

<sup>25</sup> Section 88(1) of the Act.

<sup>26</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>27</sup> Section 317(1)(da)(ii) of the Act

<sup>28</sup> Clause 5 of the Building (Definition of Restricted Building Work) Order 2011



Accordingly, with respect to section 88 of the Act, completion had occurred, and a record of work was due. It should be noted that if the Respondent's interpretation was applied, there would never be an obligation to provide a record of work, and the purpose of section 88 of the Act, which is to create a complete record of all of the Licensed Building Practitioners who have carried out or supervise restricted building work in relation to a building consent, would be defeated.

- [77] Secondly, in relation to the ongoing payment dispute, the Board has repeatedly stated that a record of work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract nor by contractual disputes. Licensed Building Practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine.

*Did the Respondent fail to provide a record of work*

- [78] The Respondent has failed to provide a record of work on completion of restricted building work.

Sections 317(1)(g) and (i) – Code of Ethics and Disrepute

- [79] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.<sup>29</sup> 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 regimes<sup>30</sup> for some time, and the Board has taken guidance from decisions made in other regimes.
- [80] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.
- [81] 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*,<sup>31</sup> 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.*

---

<sup>29</sup> Building (Code of Ethics for Licensed Building Practitioners) Order 2021

<sup>30</sup> Lawyers, Engineers, Architects and Accountants, for example

<sup>31</sup> [1992] 1 NZLR 720 at 724

[82] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand*,<sup>32</sup> the test was stated as:

*[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.*

[83] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

[84] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions<sup>33</sup>;
- honest mistakes without deliberate wrongdoing<sup>34</sup>;
- provision of false undertakings<sup>35</sup>; and
- conduct resulting in an unethical financial gain<sup>36</sup>.

[85] The Courts have consistently applied an objective test when considering such conduct.<sup>37</sup> The subjective views of the practitioner or other parties involved are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.<sup>38</sup>

[86] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>39</sup> that the Respondent has brought the regime into disrepute and that conduct was sufficiently serious enough for the Board to make a disciplinary finding,<sup>40</sup> with the same legal test applying.<sup>41</sup>

#### *The conduct under investigation*

[87] The allegation made in the complaint was that the Respondent had ordered a kitchen when it may not have been, represented that building work had passed Council inspections when it may not have so as to obtain progress payments and

---

<sup>32</sup> [2001] NZAR 74

<sup>33</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>34</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>35</sup> *Slack, Re* [2012] NZLCDT 40

<sup>36</sup> *Collie v Nursing Council of New Zealand* [2000] NZAR 7

<sup>37</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>38</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>39</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 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.

<sup>40</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>41</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

failed to maintain the Contract Works Single Project insurance policy, and misrepresented his convictions.

- [88] With respect to the kitchen, the Complainant alleged the Respondent had informed her that a kitchen had been ordered when it had not and that she had paid for the kitchen in advance. She referred to a scope of work that would be covered by the deposit paid. That communication made reference to building materials and a 50% deposit on sub-contractors. There was no direct reference to the kitchen. Nor was there any express reference to the kitchen in the signed building contract. The Respondent gave evidence that he was waiting on a decision from the Complainant regarding her kitchen design and that the Complainant had short paid him on various progress payments. The Complainant stated she had provided a design, and that the Respondent had charged for work that had not been completed.
- [89] In terms of inspections, a waiver had been granted for the foundations, but the terms of that waiver had not been met. That issue has been dealt with by the Board's findings under section 317(1)(b) and (d) of the Act. Other inspections had failed, and progress payments related to them had been obtained. It is not, however, uncommon for a BCA to fail an inspection and to allow building work to continue on to the next stage
- [90] The Respondent stated the insurance policy referenced was a multi-project policy. It's currency ended on or about 14 October 2023, at about the same time that the Respondent's involvement in the project came to an end. There was a period of some two to three weeks where there was no cover. The insurance policy wording excluded loss or damage "arising from fault, defect, error or omission in materials or workmanship".
- [91] Finally, with regard to representations made about the Respondent's criminal history, the Respondent did not make any direct representations. The statement relied on by the Complainant was made by Sabrina Peacocke. At the time of the statement, which was prior to the contract being entered into, which was signed on 11 November 2022, the Respondent had not been convicted of his most recent offending (convictions were entered on 23 February 2023). The Respondent stated that the response from Ms Peacocke was a statement about his present status.

*Did the conduct breach the Code*

- [92] When considering conduct of this type, the courts have stated that it has to be viewed objectively. The subjective views of the practitioner or other parties involved are irrelevant.<sup>42</sup>
- [93] The Board decided that whilst the alleged conduct was disconcerting, the representation regarding criminal convictions was not made by the Respondent and that there was insufficient evidence before it watch it could make a decision that the respondent had, in relation to the other allegations, on the balance of probabilities, breached the Code of Ethics or conducted himself in a disreputable manner. The

---

<sup>42</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

Board also considered that the conduct may not have reached the threshold outlined by the courts for it to make a disciplinary decision in relation to the alleged conduct

*Has the Respondent breached the Code or Conducted himself in a Disreputable Manner*

[94] The Respondent has not breached section 317(1)(g) of (i) of the Act.

#### **Board Decisions**

[95] The Respondent has breached sections:

- (a) 317(1)(b)
- (b) 317(1)(d); and
- (c) 317(1)(da)(ii) of the Act.

[96] The Respondent has not breached sections:

- (a) 317(1)(a);
- (b) 317(1)(g); or
- (c) 317(1)(i) of the Act.

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

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

[98] The Board heard evidence relevant to penalty, costs, and publication during the hearing 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**

[99] The Board has the discretion to impose a range of penalties.<sup>iii</sup> 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.<sup>43</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>44</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>45</sup>

---

<sup>43</sup> *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]

<sup>44</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>45</sup> Section 3 Building Act

- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>46</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>47</sup>
- (d) penalising wrongdoing;<sup>48</sup> and
- (e) rehabilitation (where appropriate).<sup>49</sup>

[100] 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 cases<sup>50</sup> and applying the least restrictive penalty available for the particular offending.<sup>51</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>52</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>53</sup>

[101] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>54</sup>

[102] The Board considered a penalty that would restrict the respondent's licence, such as a suspension, but decided that, as this was a first offence it would not take that action but would impose a fine. It adopted a starting point of a fine of \$4,500, which reflects the seriousness of the offending and which is consistent with other penalties imposed by the Board for similar disciplinary offending.

[103] The Board did not consider that the ongoing commercial issues between the parties were a mitigating factor. Nor does it consider that there are any other mitigating factors it should take into consideration to reduce the penalty from the starting point. Similarly, it is not aware of any aggravating factors. On that basis, the penalty is set at \$4,500.

### Costs

[104] 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.<sup>55</sup>

<sup>46</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>47</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>48</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>49</sup> *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

<sup>50</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>51</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>52</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>53</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>54</sup> 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.

<sup>55</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [105] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>56</sup>. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case<sup>57</sup>.
- [106] 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 complex. Adjustments are then made.
- [107] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$4,150 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a complex hearing. No additional costs have been imposed because of adjournments. The amount of costs is less than 50% of actual.

#### Publication

- [108] 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>58</sup> 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.
- [109] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>59</sup> 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.<sup>60</sup>
- [110] 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.

---

<sup>56</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>57</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>58</sup> Refer sections 298, 299 and 301 of the Act

<sup>59</sup> Section 14 of the Act

<sup>60</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Section 318 Order

[111] 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 \$4,500.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$4,150 (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.**

[112] 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

[113] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Monday 12 May 2025**. 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.

## Right of Appeal

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

Signed and dated this 16<sup>th</sup> day of April 2025



**Mr M Orange**  
Presiding Member

---

<sup>i</sup> **Section 3 of the Act**

*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.*

**ii 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.”*

**iii 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.*

<sup>iv</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.*