

## Before the Building Practitioners Board

|                                 |                               |
|---------------------------------|-------------------------------|
|                                 | BPB Complaint No. CB26130     |
| Licensed Building Practitioner: | Darshan Shah (the Respondent) |
| Licence Number:                 | BP132197                      |
| Licence(s) Held:                | Carpentry and Site AoP 2      |

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

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| Complaint or Board Inquiry | Complaint                                    |
| Hearing Location           | Auckland                                     |
| Hearing Type:              | In Person                                    |
| Hearing and Decision Date: | 13 June 2023                                 |
| Board Members Present:     |  |
|                            | Mr M Orange, Chair, Barrister (Presiding)    |
|                            | Mr D Fabish, LBP, Carpentry and Site AoP 2   |
|                            | Mr G Anderson, LBP, Carpentry and Site AoP 2 |

#### 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 sections 317(1)(b) of the Act.

The Board also found that the Respondent did not breach section 317(1)(h) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$3,500 for the breach of section 317(1)(b) of the Act. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary

- [1] The Board was investigating whether a building consent should have been obtained for a salon to be constructed at the Complainant’s residential address before the building work was carried out. The Board was also investigating the quality and compliance of the building work that was carried out and whether the Respondent had carried out building work that was outside of his competence by carrying out design work.
- [2] To make a finding that a building consent was required, the Board had to determine whether an exemption in Schedule 1 of the Act applied. In this instance, clause 3A of the Act was being relied on. The Board found that it was not applicable as the salon had sanitary facilities and was closer than its own height to the existing residential dwelling. The Board also found that the Respondent’s building work was not compliant with clauses B1, B2, D2 and E2 of the Building Code.
- [3] On the basis of the findings, the Board decided that the Respondent’s conduct had departed from an acceptable standard and that it was serious enough to make a disciplinary finding. The Board imposed a \$2,500 fine and ordered costs of \$3,500 in respect of the disciplinary finding. As per the requirements of the Act, a record of the

Respondent's disciplinary offending will be recorded on the public Register for a period of three years.

- [4] Having made the decision that the Respondent had been negligent and noting the Respondent's evidence that he departed from B1, B2, D2 and E2 of the Building Code because compliant materials were not available, the Board decided that the Respondent had not carried out design work and, as such, had not carried out building work outside of his competence.

### **The Charges**

- [5] 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>
- [6] 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) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and
  - (b) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out design work in relation to the building constructed.
- [7] The Board gave notice that in further investigating section 317(1)(b) of the Act, it would be inquiring into:
- (a) whether a building consent should have been obtained prior to the building work being undertaken;
  - (b) the issues noted in a Notice to Fix issued by the Auckland Council on 1 June 2022; and
  - (c) the issues noted by an architect engaged by the Complainant.

### **Evidence**

- [8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

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

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

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

## Negligence or Incompetence

- [9] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>4</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>5</sup> test of negligence.<sup>6</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 building work to an acceptable standard.<sup>7</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>8</sup> If it does not, then a disciplinary finding cannot be made.
- [10] The Respondent was engaged to construct a salon for the Complainant from which a business would be conducted. The building was to be constructed on the same site as the Complainant's residential dwelling. The Respondent knew the intended use. He formed the view that a building consent was not required for its construction on the basis that it was an outbuilding between 10 and 30m<sup>2</sup> to be constructed by a Licensed Building Practitioner and came within the provisions of clause 3A of Schedule 1 of the Building Act. The first question for the Board was whether a building consent should have been obtained for the building work prior to it being carried out or whether the exemption in clause 3A applied.
- [11] The second issue before the Board was whether the Respondent's building work had been carried out in an acceptable manner.

## Negligence or Incompetence: Building Consent Clause 3A of Schedule 1

- [12] All building work must also be carried out in accordance with a building consent.<sup>9</sup> The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and

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<sup>4</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>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</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)

<sup>7</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>8</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".

<sup>9</sup> Section 40 of the Building Act:

**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.

the public at large. This accords with the purposes of the Act as set out in section 3 of the Act.

- [13] In *Tan v Auckland Council*,<sup>10</sup> 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.*

- [14] Justice Brewer in *Tan* also noted:

*[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.*

- [15] The Respondent is such a person.

- [16] 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 that seek to rely on an exception to show that the building work comes with that exception.

- [17] The exemption relied on was clause 3A. It provides:

**3A Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area and constructed of lightweight building products**

(1) *Building work in connection with any detached building that—*

- (a) *is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and*
- (b) *exceeds 10 square metres in floor area, but does not exceed 30 square metres; and*
- (c) *is built using lightweight building products for the walls and roof, and in accordance with Acceptable Solution B1/AS1 for timber or steel buildings; and*

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<sup>10</sup> [2015] NZHC 3299 [18 December 2015]

- (d) *does not contain sanitary facilities or facilities for the storage of potable water; and*
  - (e) *does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and*
  - (f) *if it includes sleeping accommodation, has smoke alarms installed.*
- (2) *However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.*

- [18] Each element of the exemption must be satisfied for it to apply to the building work. Looking at those elements, the provisions in clause 3A(1)(a), (b) and (c) were satisfied, and (e) and (f) were not relevant as the intended use was as a salon.
- [19] Turning to clause 3A(1)(d), however, the salon included sanitary facilities, and the Respondent was aware of this. His quote included the supply of a shower base, a vanity and a kitchenette unit. A Council Notice to Fix was issued because the Council formed the view that a building consent was required. It also recorded that the building had been fitted with a bathroom, including a shower, toilet, vanity and associated plumbing and drainage works. On this basis, the exemption did not apply.
- [20] Further, the Council Notice to Fix recorded that the building did not comply with clause 3A(2) as the building was closer than the measure of its own height to the existing residential building. Again, this means that the exemption was not available.
- [21] Finally, correspondence from the Council in relation to the building noted that because members of the public would be using the building if it was a salon, under section 363 of the Act, a building consent was required.

Has the Respondent departed from an acceptable standard of conduct?

- [22] When considering whether the Respondent has met an acceptable standard, the Board must consider the purpose of the Building Act<sup>i</sup> as well as the Respondent's conduct. The test is an objective one.<sup>11</sup>
- [23] The Respondent stated that because he was not going to carry out the plumbing work, he did not have to make sure a building consent was in place before the building work was carried out. In essence, his defence was that a building consent would have to be obtained if and when plumbing work was installed.
- [24] If the Respondent was correct in his view, then some form of retrospective consent would have to be granted for the work that had already been completed. In this respect, The Building Act does not provide for retrospective building consents.

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<sup>11</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.

Rather, it provisions for Certificates of Acceptance, which are an alternative to a Code Compliance Certificate, and which note unconsented work without providing an assurance that the building work meets Building Code requirements.

- [25] That aside, the Board does not accept that a Licensed Building Practitioner can segment the whole of an intended build and form that view that, if they do some, but not all, of the work, they need not ensure a building consent is in place. To find otherwise would put the building consent process at risk.
- [26] Further, the Board considers that a Licensed Building Practitioner should know of and correctly apply the exemptions in Schedule 1 or, if there is any doubt, at least seek further professional advice or a written acknowledgement from a Building Consent Authority that an exemption does apply. The Board, therefore, finds that the Respondent's conduct has fallen below an acceptable standard.

### **Negligence or Incompetence: Building work**

- [27] Under section 17 of the Act, all building work must comply with the building code. The building code is contained in Schedule 1 of the Building Regulations 1992 (the Building Code).
- [28] The Complainant sought the opinion of an architect as part of a process to satisfy the Notice to Fix. The architect raised various issues. Those that the Board further investigated as serious issues were:
- (a) Undersized piles – 90 x 90 as opposed to 125 x 125 as required by NZS3604, an acceptable solution for compliance with clauses B1 and B2 of the Building Code.
  - (b) Failure to use building paper as required by E2/AS1.
  - (c) Undersized rafters, 140 x 45 as opposed to 190 x 45 as required by NZS3604.
  - (d) Roof fall less than 3 degrees and not as per E2/AS1, an acceptable solution for compliance with clause E2 of the Building Code.
  - (e) Door and window flashings were not in accordance with the manufacturer's specification or E2/AS1.
- [29] The Notice to Fix also set out that the build did not meet the requirements of clauses B1, B2, D2 and E2 of the Building Code.
- [30] The Respondent accepted the above. His evidence was that, because of Covid, he was not able to obtain the materials that he needed, so he used what he could get and, with respect to building paper, the exterior ply that was used also formed a ridged air barrier, even though it had not been taped to form a seal.

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

- [31] The building work was not completed in a manner that would have met Building Code requirements. An inability to obtain compliant products is not a defence. Either

the correct products should have been used or alternative solutions adopted. If neither were available, the build should have been delayed until they were.

- [32] It should also be noted that if a building consent had been obtained, then the consent would have specified compliant products, and Council inspections would have identified the non-compliance at an early stage.
- [33] Given the above, the Board finds that the Respondent has departed from an acceptable standard.

#### **Negligence: Was the conduct serious enough?**

- [34] Both of the Respondent's failings were serious. It was obvious on a cursory review of Schedule 1 that a building consent exemption did not apply. Also, the Respondent's building work did not meet Building Code requirements. In both instances, the Respondent chose his course of action. His conduct was not inadvertence. It was reckless, and it should be punished.

#### **Negligence finding**

- [35] The Respondent has carried out building work in a negligent manner by firstly failing to ensure a building consent was in place for building work that he carried out and secondly for carrying out building work in a non-compliant manner.

#### **Outside of Competence**

- [36] Under section 314B(b) of the Act, as regards working outside of one's competence, a Licensed Building Practitioner must only carry out or supervise building work that is within his or her competence.
- [37] The Board was investigating whether the Respondent had carried out design work that he was not competent to do. This was on the basis that the Respondent's building work did not appear to have been based on acceptable solutions, such as NZS 3604 or E2/AS1 (as noted above with respect to the negligence findings).
- [38] Having heard the evidence and noting that the Respondent had intended to use acceptable solutions but had not followed them, the Board decided that the finding of negligence was the appropriate finding and that an additional finding of working outside of his competence was not necessary.

#### **Board's Decisions**

- [39] The Respondent has conducted himself in a negligent manner and has breached section 317(1)(b) of the Act.
- [40] The Respondent has not breached section 314B(b) or 317(1)(h) of the Act.

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

- [41] Having found that one 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.

- [42] The Respondent made submissions at the hearing as regards penalty, costs and publication.

### Penalty

- [43] 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>12</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>13</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>14</sup>
  - (b) deterring other Licensed Building Practitioners from similar offending;<sup>15</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>16</sup>
  - (d) penalising wrongdoing;<sup>17</sup> and
  - (e) rehabilitation (where appropriate).<sup>18</sup>
- [44] 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>19</sup> and applying the least restrictive penalty available for the particular offending.<sup>20</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>21</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>22</sup>
- [45] 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>23</sup>
- [46] In this matter, the Board adopted a starting point of a fine of \$3,500, which reflects the seriousness of the offending and is consistent with other fines imposed by the

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<sup>12</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>13</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>14</sup> Section 3 Building Act

<sup>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>16</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>17</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>18</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>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

<sup>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</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.

Board for similar conduct. It considers that the fine will provide deterrence and that it is sufficient punishment.

- [47] There are some mitigating factors. The Respondent has foregone an invoice and has been ordered to pay an additional amount to the Complainant by the Disputes Tribunal. The Board has taken that into consideration and has reduced the fine to \$2,500.

### Costs

- [48] 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>24</sup>
- [49] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>25</sup>. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case<sup>26</sup>.
- [50] 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.
- [51] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$3,500 toward the costs of and incidental to the Board's inquiry. This is the Board's standard tariff for a half-day hearing, and it is less than 50% of actual costs.

### Publication

- [52] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act,<sup>27</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.
- [53] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>28</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>29</sup>

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

<sup>25</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>26</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>27</sup> Refer sections 298, 299 and 301 of the Act

<sup>28</sup> Section 14 of the Act

<sup>29</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [54] Based on the above, the Board will order further publication. The Board directs that an article be published in Code Words (or a similar publication) informing Licensed Building Practitioners of the limitations of clause 3A of Schedule 1, as set out in this decision. The Respondent will not be identified in the publication.

### **Section 318 Order**

- [55] 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 \$2,500.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

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

- [56] 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**

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

Signed and dated this 28<sup>th</sup> day of June 2023



**M Orange**  
Presiding Member

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### **<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:*

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- (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.*

***iv 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.*