

## Before the Building Practitioners Board

|                                 |                                    |
|---------------------------------|------------------------------------|
|                                 | BPB Complaint No. 26982            |
| Licensed Building Practitioner: | Simon John Archie (the Respondent) |
| Licence Number:                 | BP 126103                          |
| Licence(s) Held:                | Carpentry                          |

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

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|----------------------------------|---------------|
| Complaint or Board Inquiry:      | Complaint     |
| Hearing Type:                    | On the Papers |
| Hearing and Draft Decision Date: | 4 May 2026    |
| Finalised Draft Decision Date:   | 11 June 2026  |

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Ms E Harvey McDouall, Registered Architect  
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director  
Mr S Hammond, LBP, Carpentry, Regulatory Consultant

#### Procedure:

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

#### Disciplinary Finding:

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

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

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## Summary of the Board's Decision

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

## 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], may have breached the Code of Ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act, in that he may have breached clause 10 of the Code, which states:

**10 You must comply with the law**

- (1) *When you carry out or supervise building work, you must ensure that the building work complies with the following:*
- (a) *the Building Act 2004:*

## Draft Decision Process

- [6] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [7] Ordinarily, the Board makes a decision after holding a hearing.<sup>3</sup> The Board may, however, depart from its normal procedures if it considers that doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice.<sup>4</sup>
- [8] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

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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> Regulation 10 of the Complaints Regulations.

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

## Evidence

- [9] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed<sup>5</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.
- [10] The complaint was made by the responsible Building Consent Authority (BCA). It related to renovation work to an existing dwelling that required a building consent and for which a Certificate of Acceptance had been applied for. The building work included the alteration of structural elements, the installation of a new wood burner, new external joinery the installation of a new sanitary plumbing.
- [11] The Respondent was not the main contractor. He had been assured by the main contractor that an exemption had been granted for the work, and he took assurance from the fact that an engineer was involved. He did not ask to see the exemption or make inquiries about it or the extent of what had been exempted.

## Code of Ethics

- [12] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.<sup>6</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>7</sup> for some time, and the Board has taken guidance from decisions made in other regimes.
- [13] The Code also differentiates between LBPs 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, albeit as a subcontractor.
- [14] 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>8</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.*

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<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>6</sup> Building (Code of Ethics for Licensed Building Practitioners) Order 2021

<sup>7</sup> Lawyers, Engineers, Architects and Accountants, for example

<sup>8</sup> [1992] 1 NZLR 720 at 724

- [15] The Board also notes that the courts have applied a threshold test to disciplinary matters. It is the same as those for negligence. The Board has, in considering the matter, applied those tests.

### The Conduct

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

*[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.*

- [18] The Respondent falls into the category of a person who was in a position to ensure unconsented work did not occur.
- [19] The Respondent was led to believe that an exemption was in place. A Council can grant an exemption from the requirement to have a building consent under clause 2 of Schedule 1 of the Building Act. The clause states:

#### **2 Territorial and regional authority discretionary exemptions**

*Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of this Act because the authority considers that—*

- (a) the completed building work is likely to comply with the building code;*  
*or*

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<sup>9</sup> Refer sections 40, 41 and 42A of the Act.

<sup>10</sup> Section 49 of the Act.

<sup>11</sup> Section 222 of the Act.

<sup>12</sup> [2015] NZHC 3299 [18 December 2015]

- (b) *if the completed building work does not comply with the building code, it is unlikely to endanger people or any building, whether on the same land or on other property.*

[20] Ordinarily, to obtain an exemption, a Council requires the provision of sufficient detail, including plans, to enable an assessment of the work. In this respect, the Selwyn District Council website notes:

- *you will need to include the same level of information you would supply for a building consent.*
- *we make our decision based on the information you provide with your application, there is no request for further information process so if it's not supplied it cannot be considered and this may lead to us not approving your application.*
- *your application may also have to be considered by council's Planning department so you should do some investigation before submitting about what district plan rules are relevant. A requirement for you to obtain a resource consent may influence our decision to grant an exemption if it has not already been granted.*

[21] Once considered and granted, a formal exemption notice is issued.

[22] Looking at the evidence, the Respondent had a hand-drawn sketch. Also, whilst the Respondent stated an engineer was involved, what was provided to the Council when the unconsented work was discovered did not include engineering calculations.

[23] The Board also notes that the extent of the work shown in the hand-drawn sketch was such that it was unlikely that an exemption would have been granted for it, and that an LBP should have known that.

[24] The Board would expect an LBP to know what is required for a clause 2 exemption, including the level of documentation, and would expect them to verify for themselves that an exemption had been granted, especially in circumstances where the documentation provided was not developed by a design professional. The Respondent did not do that and the Board's view is that his conduct has fallen below that expected of an LBP, and he has breached clause 10 of the Code of Ethics

#### Was the Conduct Serious Enough

[25] In *Tan v Auckland Council*,<sup>13</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:

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<sup>13</sup> [2015] NZHC 3299 [18 December 2015]

*[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.*

- [26] Because the building work proceeded without a building consent, a Certificate of Acceptance has had to be applied for. A Certificate of Acceptance is inferior to a Code Compliance Certificate, which would have been issued had a building consent been in place. Further, as noted, the Respondent should have known better, and the Board's view is that this was not a case of mere inadvertence, error or oversight. Rather, it is a case of the Respondent somewhat blindly going along with what he was told. The Board expects more of an LBP and finds that the Respondent's conduct does meet the threshold.
- [27] The Board does, however, accept that others were also involved in the failure to obtain a consent, and it will be taken into consideration as a mitigating factor when it considers a penalty.

#### **Board's Decision**

- [28] The Respondent **has** breached clause 10 of the Code of Ethics and, in doing so, has committed a disciplinary offence under section 317(1)(g) of the Act.

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

- [29] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [30] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

#### **Penalty**

- [31] The Board has the discretion to impose a range of penalties.<sup>ii</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>14</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>15</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>16</sup>

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<sup>14</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>15</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>16</sup> Section 3 Building Act

- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>17</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>18</sup>
  - (d) penalising wrongdoing;<sup>19</sup> and
  - (e) rehabilitation (where appropriate).<sup>20</sup>
- [32] 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>21</sup> and applying the least restrictive penalty available for the particular offending.<sup>22</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>23</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>24</sup>
- [33] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>25</sup>
- [34] The Board decided that a fine was the appropriate starting point, given the conduct's mid-range seriousness. The matter has been dealt with on the papers, and the Respondent has accepted a degree of responsibility. He has noted that he relied on others, and whilst he should not have, that has been taken into account as a mitigating factor. The Board, on the basis of those mitigating factors, has decided to reduce the penalty to one of a censure. A censure is a public expression of disapproval. The Board trusts that the Respondent will have learned from this and that there will not be any further transgressions.

### Costs

- [35] 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 LBPs should not be left to carry the financial burden of an investigation and hearing.<sup>26</sup>

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

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

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

<sup>20</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>21</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>22</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

<sup>25</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>26</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74



- [36] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>27</sup> The starting point can then be adjusted up or down, depending on the particular circumstances of each case.<sup>28</sup>
- [37] 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 simple. Adjustments are then made.
- [38] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a simple matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of actual costs.

#### Publication

- [39] 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 LBP scheme as is required by the Act,<sup>29</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.
- [40] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>30</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>31</sup>
- [41] 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.

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

<sup>28</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>29</sup> Refer sections 298, 299 and 301 of the Act

<sup>30</sup> Section 14 of the Act

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

### Section 318 Order

[42] For the reasons set out above, the Board directs that:

**Penalty:** Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(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.**

[43] 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 Draft Decision

[44] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[45] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **Wednesday 10 June 2026**.

[46] If submissions are received, then the Board will meet and consider those submissions.

[47] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[48] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

### Request for In-Person Hearing

[49] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.

[50] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **Wednesday 10 June 2026**.

- [51] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

### **Right of Appeal**

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

Signed and dated this 19<sup>th</sup> day of May 2026.



**Mr M Orange**  
Presiding Member

**This decision and the order herein were made final on 11 June 2026 on the basis that no further submissions were received.**

Signed and dated this 11<sup>th</sup> day of June 2026.



**Mr M Orange**  
Presiding Member

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#### **<sup>i</sup> Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
    - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
  - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
  - (d) *order that the person be censured:*

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- (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."

**ii Section 318 Disciplinary Penalties**

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

**iii Section 330 Right of appeal**

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

**Section 331 Time in which appeal must be brought**

An appeal must be lodged—

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