

Before the Building Practitioners Board

	BPB Complaint No. CB25149
Licensed Building Practitioner:	Meerten Soeteman (the Respondent)
Licence Number:	BP 110794
Licence(s) Held:	Carpentry and Roofing

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	Wellington
Hearing Type:	In Person
Hearing Date:	15 October 2019
Decision Date:	19 December 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
David Fabish, LBP, Carpentry Site AOP 2
Robin Dunlop, Retired Professional Engineer
Rob Shao, LBP, Carpentry Site AOP 1

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.

Board Decision:

The Respondent **has** committed a disciplinary offence under section 317(1)(b), 317(1)(d) and 317(1)(da)(ii) of the Act.

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Introduction

- [1] The hearing resulted from a complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
 - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
 - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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 building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act).

Function of Disciplinary Action

- [2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the

¹ The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

- [3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*⁴ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

- [4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.
- [6] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.
- [7] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Meerten Soeteman	Respondent
[Omitted]	Respondent’s Representative
[Omitted]	Complainants
[Omitted]	NZ House Surveys
[Omitted]	[Omitted] Drafting

- [8] The Respondent was engaged around November 2017 to carry out building work on a residential renovation and alteration. Work started on or about 23 January 2018 and came to an end on or about 18 December 2018.

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

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

- [9] The Complainant alleged that the Respondent had displayed poor workmanship, had failed to comply with the building consent issued for the work and that he had failed to provide a record of work on completion of restricted building work. The Complainant included a defects list with the complaint and a report from NZ House Surveys. The Complainant noted that the defects list had been provided to the Respondent but that a response was not received. Correspondence referring to a commercial dispute was also provided.
- [10] The Respondent provided a written response to the complaint in which he noted that the work was unfinished and that once payment had been received, he would be returning to complete it. In the response he noted that on 22 March 2019 he was advised that new contractors would be engaged to complete the work.
- [11] As part of the submissions received by the Board for the hearing was a report from [Omitted] of Maynard Marks. Included in the report was a table of Non-compliant/Incomplete Works and Defects listing 30 items. The Board went through the defects list with the Respondent and witnesses present. In respect of each:
- Item 1: Some cut edges of plywood were not painted with Green Metalex. The respondent agreed that some edges may not have been painted.
 - Item 2: Cladding between timber deck not painted. The Respondent indicated it was the Complaints role to do this painting however the Board did not feel that the Respondent should have gone ahead with the build before painting was carried out.
 - Item 3: Wall not straight. This was an existing wall and not the Respondent's responsibility.
 - Item 4: Poorly installed timber facing boards. The respondent agreed that this was not done correctly.
 - Item 5: Nail fixings to plywood cladding. The Respondent agreed that this was a defect.
 - Item 6,7: This was incomplete work.
 - Item 8: Flashing of meter board. The Respondent said he used an alternative method of sealing the meter board which was accepted by the council inspector. However, the Board heard evidence from the designer, [Omitted], that metal flashings are normally used, not sealant alone.
 - Item 9: Alternative wrap used. It appears an amendment to the approved plans had not been obtained for the different wrap.
 - Item 10,11: Incomplete work.
 - Item 12: Respondent said he would provide this paperwork.

- Item 13: Deck packer. The Respondent agreed that the packers were not installed as per the consented drawings.
- Item 14: One hanger missing and screw fixings to be fixed. The Respondent accepted these defects.
- Item 15: It was accepted that wet timber was used and hence shrinkage occurred.
- Item 16,17: Both these items were regarded more as aesthetic.
- Item 18: Steps. The step location and material changed from concrete to timber. Council said the tread width were inadequate. No handrail erected and the timber treatment of the some of the material used was not adequate. There was disagreement who was responsible for these defects.
- Item 19: Inconsistent gaps between decking boards. This appears to be more aesthetic.
- Item 20: Unfinished work
- Item 21: Aesthetic issue
- Item 22: Unfinished work
- Item 24: Aesthetic issue
- Item 25: Existing roof framing not fixed in accordance with the Building Consent. There was disagreement on whether this was a defect.
- Item 26: Prolam beam. Incomplete work however there was concern that incorrect screws had been used.
- Item 27: Roofing. Most of the roofing was carried out by a separate roofing company.
- Item 28: Incorrect flooring installed in the kitchen area. The Respondent accepted that the ply with the wrong treatment level had been used.
- Item 29: Incomplete work.
- Item 30: Bearer did not have adequate bearing on a pile The Respondent said he was going to install a tee plate to connect both bearers to the pile but was not able to go back to do this work.

Board's Conclusion and Reasoning

[12] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act); and
- (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) 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 building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act);

and should be disciplined.

[13] The reasons for the Board's decisions follow.

Negligence

[14] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.

[15] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[16] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰.

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

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

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

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

[17] The Board notes that the purposes of the Act are:

3 Purposes

This Act has the following purposes:

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) *people who use buildings can do so safely and without endangering their health; and*
 - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) *people who use a building can escape from the building if it is on fire; and*
 - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[18] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code¹¹ and be carried out in accordance with a building consent¹². As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

[19] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹³ the Court's noted, as regards the threshold for disciplinary matters, that:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[20] The Board was advised by the Respondent that he was on site most of the time supervising or carrying out the work. The Board was concerned that there were a high number of defects that occurred on site. It considers that it is not enough to that work is not complete or that it will be rectified at a later point in time.

[21] 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

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ [2001] NZAR 74

reading of changes to the Act around licensing¹⁴ 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.

- [22] 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 legislation¹⁵:

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 prides 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 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.

- [23] 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:*

¹⁴ Hansard volume 669: Page 16053

¹⁵ Hansard volume 669: Page 16053

- (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.*

- [24] It is within this context that the Board considers that the acceptable standards expected of a reasonable licensed building practitioner includes 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.
- [25] Overall the Board considers that the Respondent needs to pay attention to detail when carrying out work and ensure that errors are identified and dealt within in a prompt manner.
- [26] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Contrary to a Building Consent

- [27] Under section 40 of the Act all building work must be carried out in accordance with the building consent issued. Section 40 of the Act provides:

40 *Buildings not to be constructed, altered, demolished, or removed without consent*

- (1) *A person must not carry out any building work except in accordance with a building consent.*
 - (2) *A person commits an offence if the person fails to comply with this section.*
 - (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*
- [28] 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 the public at large. This accords with the purposes of the Act.

- [29] Once a building consent has been granted any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with; by way of a minor variation under section 45A of the Act; or as an amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used. The critical difference between the two options is that building work under a building consent cannot continue if an amendment is applied for.
- [30] If changes are made to what is stipulated in the building consent and the correct process for the change is not used then the building work can be said to have not been completed in accordance with the building consent. Unlike negligence contrary to a building consent is form of strict liability offence. All that need be proven is that the building consent has not been complied with, no fault or negligence must be established¹⁶. The Board does, however, consider that the seriousness of the disciplinary offending still needs to be taken into account.
- [31] The Maynard Marks report contained a number of items that had not been completed in accordance with the building consent and items that had been changed from that which had been specified in the building consent. Given those factors and the above legal provisions, the Board finds that the disciplinary offence has been committed.

Record of Work

- [32] 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 work¹⁷.
- [33] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [34] The Board discussed issues with regard to records of work in its decision C2-01170¹⁸ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [35] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.

¹⁶ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁷ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁸ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

- [36] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”.
- [37] In most situations’ issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. In the present case the contractual relationship came to end before all of the intended restricted building work had been carried out. Given this, and the fact that the Respondent was advised that new contractors would be completing the work on 22 March 2019, it should have been apparent to the Respondent that he would not be able to carry out any further restricted building work. In effect, as of 22 March 2019, completion had occurred, and a record of work was due. One has not been provided.
- [38] On this basis the Board finds that the record of work was not provided on completion as required and the disciplinary offence has been committed.
- [39] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits but the threshold for a good reason is high. No good reasons were noted.

Penalty, Costs and Publication

- [40] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [41] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [42] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*¹⁹ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of

¹⁹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [43] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*²⁰ the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [44] Based on the above the Board's starting point was a fine of \$4,000. This amount was consistent with penalties imposed for similar disciplinary offences. However, as the Respondent was cooperative and accepted that he had made mistakes, the Board decided it would reduce the fine to \$2,500.

Costs

- [45] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [46] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²¹.
- [47] In *Collie v Nursing Council of New Zealand*²² where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [48] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$2,000 toward the costs of and incidental to the Board's inquiry.

Publication

- [49] As a consequence of its decision the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act²³. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

²⁰ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

²¹ *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.

²² [2001] NZAR 74

²³ Refer sections 298, 299 and 301 of the Act

In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.

- [50] As a general principle such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [51] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²⁷.
- [52] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²⁸. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [53] Based on the above the Board will not order further publication.

Section 318 Order

- [54] For the reasons set out above, the Board directs that:
- | | |
|---------------------|---|
| Penalty: | Pursuant to section 318(1) f of the Building Act 2004, the Respondent is ordered to pay \$2,500. |
| Costs: | Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$,2000 (GST included) towards the costs of, and incidental to, the inquiry of the Board. |
| Publication: | <p>The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(iii) of the Act.</p> <p>In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.</p> |
- [55] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

²⁴ Section 14 of the Act

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

²⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁷ *ibid*

²⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [56] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **24 January 2020**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.
- [57] In calling for submissions on penalty, costs and mitigation the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and and/or its decision that the Respondent has committed a disciplinary offence the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 19th day of December 2019



Richard Merrifield
Presiding Member

ⁱ **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
 - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
- (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).*

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- (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 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.*