**Before the Building Practitioners Board**

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| | BPB Complaint No. CB 25302 |
| Licensed Building Practitioner: | Clinton Taylor (the Respondent) |
| Licence Number: | BP 116708 |
| Licence(s) Held: | Design 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 | Wellington |
| Hearing Type: | In Person |
| Hearing Date: | 16 June 2020 |
| Decision Date: | 23 June 2020 |

Board Members Present:

Chris Preston, Chair (Presiding)
Mel Orange, Deputy Chair, Legal Member
Robin Dunlop, Retired Professional Engineer
Faye Pearson-Green, LBP, Design 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.

**Board Decision:**

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and 317(1)(h) 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 Regulations[1] to hold a hearing. 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); and

(b) breached section 314B(b) of the Act (s 317(1)(h) 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 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].

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

[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] In a similar vein, the Board's investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint's Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons[5]:

> *… the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.*

[5] Finally, 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. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.

[6] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board's inquiries, and this decision, focus on and deal with the serious conduct complained about.

**Inquiry Process**

[7] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar's Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

[8] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

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[4] [2016] HZHC 2276 at para 164

[5] *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

[9] The Respondent sought leave to appear by video conference. Leave was granted.

**Evidence**

[10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[6]. 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.

[11] 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.

[12] In addition to the documentary evidence before the Board, it heard evidence from the Complainant, a Building Consent Officer from the Carterton District Council, and the Respondent. The Respondent called two character witnesses to give evidence on his behalf. He also called the owner of the property in question, who had commissioned the design, to give evidence.

[13] The Board, in its Notice of Proceeding, advised that the issues it would be further investigating were those identified in a document provided to the Board by the Complainant which was, in essence, a summary of issues with a design submitted for a building consent by the Respondent. The summary noted:

> *The plans and document provided for the above building consent are missing too much information to be completely processed. The processing check sheet has not be filled in yet, and further questions may be asked when the revised information has been provided. The following is a list of the most obvious conflicting and missing information. The processing clock has been stopped until the information requested below has been provided.*

[14] The document went on to note 38 items, most of which contained multiple issues.

[15] The Board was also provided with two Requests for information (RFI) issued by the Council. The first, dated 21 May 2019, contained 15 items that needed to be addressed. The second, dated 10 June 2019, contained 10 items.

[16] The Complainant noted, in the complaint, that:

> *The designer has twice attempted to submit an incomplete design to council with no clear path to compliance for B1 of the Building Code. It appears he is trying to obfuscate (but maybe not with purpose) the BCA by repeatedly appealing our decision.*
>
> *This is causing frustration with the owners and the BCA in that the designer does not understand his responsibilities under the Building Act or his role as*

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

*an LBP. The problem is excacerbated by a poorly presented sumbmission that is not typical of other design LBP's in the area.*

[17] The Complainant further noted:

*The first consent was refused with the following reasons;*

*The need for an engineer is governed by your proposed work being outside of the acceptable solution for timber framed buildings and therefore outside of your available design scope as an LBP.*

*There are a number of factors (twist, roll over, mid span weight, loaded dimensions) that have not been considered (with calculations) in your submission and inconsistency in beam sizes between drawings.*

*This is only one aspect of the submission but significant enough for us to refuse to grant consent as the submission cannot be considered complete.*

*There are a number of emails to document this process.*

*The second consent was provided without sufficient engineering guidance or review, prior to starting processing this time, we created an RFI to require the designer to seek a peer review of his engineering work. The engineer approached to look at peer review has raised concerns that the design is SED and outside the scope of an LBP. The BCA's agrees.*

*We have had to refuse the consent a second time as the submission is not complete, I am mindful of the frustration this must cause the owners but there is only one person responsible for the completness of the design for building consent submission under s14D of the building act (the designer).*

[18] The Respondent stated, in a submission made to the Board prior to the hearing:

*I have never had any building failures. If I have had any groans it was for delayed completion of the design process invariably caused by delay in information from Engineers.*

*I partially understand why this complaint has been made and with good old hind sight I should not have submitted to the Council until I had triple checked everything and employed my usual engineer [Omitted]. In this particular case I rushed the submission as the clients had booked in a builder.*

*Also working on your own there is no one to check your work and rely on the building inspectors to point out any problems. My recent experience with an engineer is that he had numerous RFIs from his peer review before PS1 & 2 were given.*

[19] In questioning the Respondent stated that he took the structural aspects of the design that he submitted for a building consent from another similar building and assumed that it would be sufficient. He accepted he should have used an engineer.

[20] The Respondent's response to the complaint, and his evidence at the hearing, noted the unavailability of his usual engineer and his incorrect assumption that the engineer he did use, following an RFI request, was competent to submit the required engineering detail. The Respondent used a civil rather than a structural engineer. He gave evidence that he had not realised that a structural engineer was required.

[21] The Respondent's response, and his submission received prior to the hearing, detailed his experience as a designer and his good record with clients and designs. The Respondent also spoke of his experience at the hearing and of the Complainant having an issue with the Respondent. The Complainant did not accept the allegation.

[22] The Board questioned the Respondent with regard to issues, over and above those identified in RFI letters, that Members had noted with the design. The Respondent accepted the issues stating he had not spotted them.

[23] The Respondent was also questioned about his quality assurance process and his process to respond to RFIs and in particular why he had not responded to RFIs. He stated his quality assurance process is to check thoroughly. He did not have any form of peer-review process. He further stated he also relies on the building consent authority to check his design.

[24] The Respondent spoke of his RFI process. He was asked why he had not responded to all of the first set of RFI questions. He stated he believed he would have responded to all of them. He was given five working days to provide further evidence to show that he had. No further evidence was provided. The Respondent did provide further mitigation submissions and a copy of a recent building consent.

[25] The Respondent's character witnesses were both industry persons, and both attested to the Respondent's skill as a designer noting that they had used his designs without issues arising from them. The owner of the property gave evidence that she was happy with the Respondent's services and that, in her opinion, the issues with the consent raised by the Council had more to do with wider relationship issues between the Complainant and the Respondent.

**Board's Conclusion and Reasoning**

[26] 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); and

(b) breached section 314B(b) of the Act (s 317(1)(h) of the Act)

and **should** be disciplined.

[27] The reasons for the Board's decisions follows.

Negligence and/or Incompetence – Design Work

[28] The Board's considerations as regards negligence and/or incompetence are in respect of the Respondents design work.

[29] Under the definitions in the Building Act design work forms part of the wider definition of building work and as such, in respect of section 317(1)(b) it comes within the Board's jurisdiction. In this respect, the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:

> ***3 Design work declared to be building work***
>
> *(1) Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
>
> *(2) Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*

[30] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.

[31] 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, in this case a licensed building practitioner with a design license. This is described as the *Bolam*[7] test of negligence which has been adopted by the New Zealand Courts[8].

[32] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test[9]. 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.

[33] 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 Act[10]. 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

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

[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 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

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

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 practitioner[11].

[34] 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.*

[35] The Board also notes the provisions of section 14D of the Act which states:

> ***14D Responsibilities of designer***
>
> *(1) In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
>
> *(2) A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[36] Given the above, when considering what is and is not an acceptable standard, the provisions of the Building Code need to be taken into account.

[37] Turning to seriousness in *Collie v Nursing Council of New Zealand*[12] 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*

[11] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71
[12] [2001] NZAR 74

> *which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[38] In this instance, the Respondent's design failed to address the requirements of clause B1 – Structure, of the Building Code. Clause B1 is fundamental to the safe functioning of a dwelling.

[39] There are two ways in which compliance with the Building Code can be demonstrated. One is by using an acceptable solution or a verification method. They are, in essence, details for construction which are known to meet Building Code requirements. The other is to use an alternative solution. When an alternative solution is proposed, there is a requirement that the design demonstrates how compliance with the Building Code will be achieved. With respect to clause B1, a means of achieving that is to provide designs and calculations from a suitably qualified engineer. The Respondent did not do that. Rather he submitted an engineering design from another consent. The Respondent should have known that the course of action that he took was not acceptable. When confronted with the issue, the Respondent engaged a civil, not a structural engineer. Again, the Respondent, as a licensed designer, should have known that a civil engineer was not appropriately qualified.

[40] The Board finds that the Respondent's conduct fell below an acceptable standard as regards the aspects of the structural design that required engineering details and how it was managed.

[41] Turning to the remainder of the design, it was seriously deficient. The Respondent was sent RFI details as a result. He did not deal adequately with the first set. That in itself was not acceptable.

[42] Receiving an RFI is not uncommon, and it does not follow that a designer will be negligent if they are issued. What was of concern, over and above the obvious deficiencies in the Respondent's design, was his stated reliance on the building consent authority (BCA) to identify his errors. At the hearing, the Respondent stated that he also relied on the BCA to check his design. In his written submission, he stated:

> *Also working on your own there is no one to check your work and rely on the building inspectors to point out any problems.*

[43] The BCA's role is not quality assurance. Its role is to ensure the design will meet Building Code requirements. A designer should be aiming to submit a compliant design which will enable the construction of the dwelling without further reference to the designer. That was not the case with the present design. There were errors, omissions and inconsistencies in it. The Respondent clearly did not have an adequate quality assurance process in place, other than his stated reliance on the BCA.

[44] 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.

Misrepresentation or Outside of Competence

[45] As regards working outside of one's competence 314B(b) of the Act provides:

> *A licensed building practitioner must—*
>
> *(b) carry out or supervise building work only within his or her competence.*

[46] In the context of the Act and the disciplinary charge under s 317(1)(h) and 314B(b) a licensed building practitioner must only work within their individual competence. The Respondent, as a licensed designer, is not deemed to be competent to carry out engineering design. By assessing that a previous design would be adequate and submitting it for a building consent, he was, in essence, taking on that role. The deficiencies of the engineering design for the dwelling being constructed showed that he did not have the requisite skill set, knowledge base or experience to do so. The Board, therefore, finds that he has committed the disciplinary offence.

**Penalty, Costs and Publication**

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

[48] The Board heard evidence during the hearing relevant to penalty, costs and publication. The Respondent also provided written submissions following the hearing. Those submissions included the character references, the Respondent's long history in the industry, that it was the first time he had appeared before the Board, his age, financial circumstances and the importance of his licence to him.

[49] The Respondent also stated, in his post-hearing submission:

> *I have taken this ordeal extremely seriously and I have amended my ways since being reported. I attach a file of a project in Martinborough which I recently gained consent for. This was a great deal more complicated and used Engineers as I should have in the project under review.. There were fewer RFIs and I am much happier with my process & design having learnt my lessons.*
>
> *I accept I should have used an Engineer, and I accept that not enough checking of details created this problem. I was going to plough through the RFIs and question some responses etc but decided to accept the situation I am in.*

Penalty

[50] 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*[13] 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 punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

[51] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[14] 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 do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

[52] The matters before the Board were serious. The Respondent has committed two disciplinary offences. A penalty that reflects those factors and deters others is required. The Board accordingly adopted a starting point of a fine of $4,000.

[53] The Board noted the mitigating factors present, including that the Respondent had accepted a degree of responsibility for his failings, had learnt from the matters and has undertaken to be more vigilant in the future. On the basis of those factors, the Board decided to reduce the fine to $1,500.

<u>Costs</u>

[54] 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."

[55] 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 case[15].

[56] In *Collie v Nursing Council of New Zealand*[16] 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.*

[57] Based on the above, the Board's costs order is that the Respondent is to pay the sum of $2,500 toward the costs of and incidental to the Board's inquiry. The Respondent

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

[14] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[15] *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.

[16] [2001] NZAR 74

should note that the Board's normal scale of costs for a hearing of this type is $3,500. The amount was reduced on the basis of the Respondent constrained financial position and the manner in which the hearing was conducted.

Publication

[58] 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[17]. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

> *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.*

[59] 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.

[60] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990[18]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[19]. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[20]. 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*[21].

[61] 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 interest[22]. 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.

[62] Based on the above, the Board will not order further publication.

[17] Refer sections 298, 299 and 301 of the Act
[18] Section 14 of the Act
[19] Refer sections 200 and 202 of the Criminal Procedure Act
[20] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350
[21] ibid
[22] Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

**Section 318 Order**

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

**Penalty:** **Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of $1,500.**

**Costs:** **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,500 (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 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.**

[64] 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.

[65] The Respondent may apply to the Registrar to enter into an arrangement to pay the fine and costs over time.

**Right of Appeal**

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

Signed and dated this 13th day of July 2020

**Chris Preston**
Presiding Member

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[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).*

*(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.*