Before the Building Practitioners Board

	BPB Complaint No. CB24817
Licensed Building Practitioner:	Cleve Thompson (the Respondent)
Licence Number:	BP 126742
Licence(s) Held:	Carpentry

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Wellington
Hearing Type:	In Person
Hearing Date:	25 June 2019
Decision Date:	15 July 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
David Fabish, LBP, Carpentry Site AOP 2
Faye Pearson-Green, LBP Design AOP 2

Appearances:

Bruce Scott, Barrister and Solicitor, for the Respondent

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) 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 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); and

(b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) 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] 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 committed[5]. 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:

Cleve Thompson	Respondent
[Omitted]	Complainant
Darryl Scott	Board's Technical Assessor
[Omitted]	Witness, Building Surveyor

[8] The Respondent was an employee of Switched On Property Maintenance Limited (Switched On) who had been contracted to carry out repair work to a residential dwelling that had been partially destroyed in a fire by way of the property insurer.

[9] The complaint alleged a number of quality and compliance issues with regard to the building work carried out. These were summarised in a report from [Omitted] and in a Notice of Fix dated 30 October 2017 issued by the Porirua City Council as the Building Consent Authority (BCA).

[4] [2016] HZHC 2276 at para 164
[5] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[10] The Board's investigations showed that the Respondent was only licenced for limited periods of the build. The Respondent's licensing history and the related history of the build was as follows:

Date	**Event**
1 April 2016	Demolition work starts
1 April to 12 May	Demolition work and framing work for new structure carried out by Respondent
12 May 2016	Respondent's licence suspended – failure to comply with conditions of licensing – non-payment of fees
17 May 2016	Building Consent application lodged
14 June 2016	Building Consent granted
13 September 2016	Building work finishes
16 September 2016	Suspension ends
30 October 2017	Notice of fix issued`

[11] The Board noted that it only has jurisdiction over a licensed building practitioner when they hold a current licence. This is due to the effect of section 297(1) of the Act which states:

> ***297 Effect of licensing suspension***
>
> *(1) A person is not a licensed building practitioner, for the purposes of this Act, for the period for which his or her licensing is suspended.*

[12] Whilst it is an offence to carry out restricted building work when not licensed the specific offence does not come within the Board's jurisdiction.

[13] Given the above the only conduct the Board could consider was that prior to the Respondent's licence being suspended on 12 May 2016 and that which occurred once his licence was reinstated.

[14] With regard to the suspension of the Respondent's licence he gave evidence that he changed address and, as a result, did not receive communications to advise him that his licence renewal was due. The Board notes, however, that a licensed building practitioner has a duty to bring a change in circumstances to the attention of the Registrar within 10 working days of that change occurring[6]. It is also an offence to

[6] Refer section 302 of the Act.

fail to give written notice of a change[7]. Once again, the Board is not the enforcement agency for this provision.

[15] The Respondent also gave evidence that, following the suspension of his licence, there were other licensed building practitioners on the site who were carrying out and/or supervising the restricted building work. He identified who those persons were and identified one of them carrying out building work on a deck in a photograph. The Board resolved to carry out Board Inquiries into the building work carried out by those persons.

[16] Turing to the building work the Respondent carried out he stated that he carried out demolition work and propped the structure to provide structural support following the demolition of structural elements. He then carried out a limited amount of new framing to a bathroom area. He noted that all work was done in line with NZS 3604 but that engineering input was required as regards the structural support that was put in place following the demolition work being carried out.

[17] The Respondent stated that when he carried out the demolition and framing work he had plans on site and that those plans were the same as the plans that were later consented. He noted that obtaining the consent was not his responsibility and that his employer had undertaken to obtain the building consent and that he had been given assurances that the issue of the consent was imminent. He also noted that he was under extreme pressure from his employer to get on with the work.

[18] The Respondent was not relicensed until after the building work was complete. The Notice to Fix identified some 36 items that required attention. Those items were carried out whilst the Respondent was not licensed. Responsibility falls to the licensed persons on site. The Notice to Fix also noted, under Particulars for Contravention or Non-Compliance:

> *Building consent application BCA0261/16 was received by Porirua Council on the 17th May 2016 and the building consent was granted on the 14th June 2016. The Wellington Property Services Ltd report identifies that building work commenced on site in April 2016 before the building consent was approved.*

[19] The Notice to Fix also stated, under the heading Required Remedial Action:

> *As building was undertaken without first obtaining building consent, an application for a certificate of acceptance will be necessary. An amendment to the building consent will also be required to remove all building work undertaken before consent was granted from the building consent BCA0261/16.*

[7] Refer section 314 of the Act.

[20] The Respondent's Counsel noted that it is the owner's legal responsibility to obtain a building consent. He also submitted that there were no consequences flowing from the Respondent carrying out building work without a building consent and that the conduct did not reach the necessary seriousness threshold.

Board's Conclusion and Reasoning

[21] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act) and should be disciplined.

[22] The Board has also decided that the Respondent **has not** conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

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

<u>Negligence – Carrying out Building Work without a Building Consent</u>

[24] The Board's considerations in relation to negligence relate to the failure to ensure a building consent had been issued prior to carrying out demolition and framing work.

[25] Under section 17 of the Act all building work must comply with the building code. The building code is contained in Schedule 1 of the Building Regulations 1992 (the Building Code). All building work must also be carried out in accordance with a building consent. 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.*

[26] Building consents are granted under section 49 of the Act. A building consent can only be grated if the provisions of the Building Code will be satisfied. Section 49 provides:

> ***49 Grant of building consent***
>
> *(1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.*

[27] 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 as set out in section 3:

> ***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.*

[28] In *Tan v Auckland Council*[8] the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

> *[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.*

[29] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover, undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.

[30] Justice Brewer in *Tan* also noted:

> *[37] … those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.*
>
> *[38] … In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*

[8] [2015] NZHC 3299 [18 December 2015]

[31] The *Tan* case related to the prosecution of a project manager of a build. The project manager did not physically carry out any building work. The High Court on appeal, however, found that his instructions to those who did physically carry out the work amounted to "carrying out" for the purposes of section 40 of the Act.

[32] There are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act and this is further provided for in section 42A of the Act. The burden is on those that seek to rely on an exception to show that the building work comes with that exception.

[33] Certain demolition work can come within the provisions of Schedule 1[9]. The building work in this instance did not as it involved removal of the primary structure elements of the building. The framing work was intended to form part of the new structure and was detailed on the plans that were later consented. A consent was clearly required.

[34] When building work is carried out without a building consent it can be certified as meeting building code requirements by way of a Certificate of Acceptance. It should be noted that whilst a Certificate of Acceptance can be granted by a building consent authority for building work that is not carried out under a building consent it does not relieve a person from the obligation to ensure building work is carried out under a building consent. Section 96(3) specifically provides:

> ***96 Territorial authority may issue certificate of acceptance in certain circumstances***
>
> *(3) This section—*
>
> *(a) does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and*
>
> *(b) accordingly, does not relieve a person from the requirement to obtain a building consent for building work.*

[35] The Board considers the Court in *Tan* was envisaging that those who are in an integral position as regards the building work, such as a licensed building practitioner, have a duty to ensure a building consent (or an amended building consent) is in place prior to building work being carried out. It follows that failing to do so can fall below the standards of care expected of a licensed building practitioner.

[36] The evidence before the Board was that building work requiring a consent was carried out between 1 April 2016 and 12 May 2016 by the Respondent whilst he was licensed.

[9] Clauses 30 and 31 provide for demolition work in certain circumstances.

[37] It was clear to the Board that, at the time the building work was undertaken by the Respondent, he knew or ought to have known that a building consent was required for what was being undertaken. His evidence was that he was making enquiries and was receiving assurances that it was imminent. He had unstamped plans on site. These various factors show that he was aware that a building consent had not been granted but that he chose to proceed regardless. The question for the Board is whether the Respondent has, as a result, been negligent.

[38] 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*[10] test of negligence which has been adopted by the New Zealand Courts[11].

[39] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level".* In *Ali v Kumar and Others*[12] it was stated as *"an inability to do the job"*.

[40] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test[13]. 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.

[41] 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 purposes of the Act[14] which are outlined above. 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 practitioner[15].

[42] 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. The Board expects licensed building practitioners to be aware of their responsibilities and obligations as regards building consents. The Respondent ran the risk that the work

[10] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[11] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[12] Ali v Kumar and Others [2017] NZDC 23582 at [30]
[13] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[14] *Martin v Director of Proceedings* [2010] NZAR 333 at p.33
[15] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

he carried out may not have met the requirements of the building consent. As matters transpired it was fortunate that the plans he worked from and the plans that were consented did align. There was no guarantee that they would. It was also noted that whilst the Respondent considered NZS 3604 was adequate for his work the structure, a three storey dwelling, fell outside of the scope of NZS 3604 and that additional engineering input was required to ensure there was adequate structural support.

[43] Turning to seriousness in *Collie v Nursing Council of New Zealand*[16] 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.*

[44] Counsel for the Respondent submitted that the conduct did not reach the seriousness threshold and that as there was no flow on consequences and therefore the Respondent has not been negligent. The Board does not agree. The owner of the dwelling will be denied the benefit of a Certificate of Compliance for some of the work. Whilst a Certificate of Acceptance may be granted for it the two are not the same. A Certificate of Acceptance is inferior and carries a stigma. There are or will be consequences.

[45] The Board also considers that when looking at seriousness the true test is the degree to which the Respondent has strayed from acceptable standards. In this instance it was not a case of mere inadvertence, oversight or carelessness. The Respondent chose to continue with the building work notwithstanding that he was aware that a consent had not been granted. The conduct was wilful and the building was put at risk through NZS 3604 being applied and work that required engineering input being undertaken without it.

[46] The Board does, however, accept that the Respondent was under pressure and that whilst he had a duty not to proceed without a consent, he was not responsible for actually obtaining it. Those matters, however, go to mitigation, not to whether the conduct was serious enough. The Board therefore finds that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

<u>Disrepute</u>

[47] The Board resolved to further investigate whether the Respondent had brought the regime into disrepute as, on the evidence before the Board at the time it considered the Registrar's Report, it appeared that, once the Respondent was relicensed, he may not have taken appropriate action to bring the matter to the attention of the building consent authority.

[16] [2001] NZAR 74

[48] At the hearing the Board heard evidence, which it accepted, that there were other licensed building practitioners on site who were carrying out or supervising the restricted building work. Given this the Board does not consider it is necessary to further investigate disrepute. The disciplinary offence has not been committed.

Penalty, Costs and Publication

[49] 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.

[50] 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

[51] 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*[17] 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.*

[52] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[18] 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.

[53] Based on the seriousness of the matter the Board adopted a starting point of a fine of $3,000. Such a fine is consistent with findings made by the Board in similar cases of licensed building practitioners negligently carrying out building work without a building consent. Taking into account the mitigating factors present the Board has decided to reduce the fine to $2,000.

[17] HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27
[18] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

Costs

[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[19].

[56] In *Collie v Nursing Council of New Zealand*[20] 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 $2,000 toward the costs of and incidental to the Board's inquiry. This is significantly less than 50% of actual costs.

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[21]. 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[22]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[23]. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[24]. The High Court provided

[19] *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.
[20] [2001] NZAR 74
[21] Refer sections 298, 299 and 301 of the Act
[22] Section 14 of the Act
[23] Refer sections 200 and 202 of the Criminal Procedure Act
[24] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*[25].

[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[26]. 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.

Section 318 Order

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

Penalty: **Pursuant to section 318(F) of the Building Act 2004, the Respondent is ordered to pay a fine of $2,000.**

Costs: **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,000 (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)(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.

Submissions on Penalty, Costs and Publication

[65] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **6 August 2019**. 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.

[66] 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.

[25] ibid

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

Right of Appeal

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

Signed and dated this 15th day of July 2019

Richard Merrifield
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.