

## Before the Building Practitioners Board

	BPB Complaint No. Cb25558
Licensed Building Practitioner:	Ronald Van der Plas (the Respondent)
Licence Number:	BP 108204
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Christchurch
Hearing Type:	In Person
Hearing Date:	25 May 2021
Decision Date:	4 June 2021

#### Board Members Present:

Mr C Preston, Chair (Presiding)  
Mr M Orange, Deputy Chair, Legal Member  
Mr D Fabish, LBP, Carpentry and Site AOP 2  
Mrs F 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.

#### Disciplinary Finding:

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

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### Summary of the Board’s Decision

[1] The Respondent was negligent in his supervision of building work, supervised building work that was contrary to a building consent, failed to provide a record of work and brought the regime into disrepute. His licence is cancelled for a period of six months. He is ordered to pay costs of \$3,500. The Board’s decision will be published.

### The Charges

[2] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:

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<sup>1</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 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 contrary to section 317(1)(d) of the Act;
- (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) of the Act contrary to section 317(1)(da)(ii) of the Act; and
- (d) 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 contrary to section 317(1)(i) of the Act.

[3] In further investigating the complaint, the Board notified the Respondent that it would:

- (a) in respect of section 317(1)(b) and 317(1)(d) of the Act, focus on the issues raised by James van Leeuwen in an email dated 24 May 2020 (pages 57 and 58 of the Board's file, document 2.1.44); and
- (b) in respect of section 317(1)(i) of the Act, further investigate an allegation that the Respondent misappropriated a deposit paid by the Complainant and an allegation that the Respondent traded whilst insolvent and/or recklessly, or allowed an entity to trade, recklessly and/or whilst insolvent.

#### **Function of Disciplinary Action**

[4] 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*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

[5] 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*<sup>4</sup> 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*

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

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

*maintained in order to protect clients, the profession and the broader community.”*

- [6] 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<sup>5</sup>:

*... 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.*

- [7] 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.
- [8] 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**

- [9] 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.
- [10] 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.

### **Background to the Hearing**

- [11] He was invited to attend a prehearing conference on 15 April 2021. A prehearing conference, amongst other things, is to discuss suitable dates for the matter to be set down for a hearing. The Respondent accepted the invitation but did not attend. The Respondent was served with a Notice of Hearing providing details of the hearing.

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<sup>5</sup> *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

- [12] On the date of the hearing, the Respondent did not appear. He was called on his mobile phone but did not answer. Messages were left for him prior to the commencement of the hearing which was delayed so as to allow him time to attend. He did not, and no contact was received from him. The hearing proceeded.

### Evidence

- [13] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence that allows it to receive evidence that may not be admissible in a court of law.
- [14] 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.
- [15] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Ethan Batten	Licensed Building Practitioner, BP136941 (first licensed on 26 February 2020)
James van Leeuwen	JVL Builders Limited
Tim Vick	Hadley & Robinson Limited, Engineer

- [16] The Respondent was the Licensed Building Practitioner engaged to carry out or supervise the building work on an alteration and extension to a residential dwelling under a building consent. The building work included restricted building work for which a record of work is required on completion.

### Building Issues

- [17] The issues that the Board gave notice that it would further investigate were contained in an email from Mr van Leeuwen who took the build over after the Respondent's termination. The email was accompanied by photographs of the issues noted. The email stated:

*The first issue we discovered was a discrepancy between the floor heights of the garage and the lower living area which there shouldn't have been. The garage concrete had been poured to the incorrect height. Heights are normally set by the builder using profiles. To remedy this, we were required to manually modify pre nailed frames and beams – roughly 2 days work for 2 guys.*

*Next we identified beams over the lounge and the master bedroom main windows had been incorrectly installed. To try and rectify this the previous*

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

*builder had cut sections out of the trusses which destroyed the structural integrity of the roof/building.*

*There appears to have been little care taken when installing trusses as they were at uneven heights. Even worse than this, one truss over the master bathroom wasn't resting on the exterior load bearing wall – it was just floating at one end.*

*To try and remedy the uneven trusses, the builder packed purlins with substandard material (plastic damp course), in some cases nearly 25mm. Blocking of 300mm long would have resolved the issue. All of the truss height issues could have been identified at time of installation by simply using a string line across the top. It took approximately 2 days for 1 guy to make right.*

*After further inspection of the lounge beams we found a smaller beam that adjoined the large beam was only butted and skew nailed to the large beam with no load bearing capacity below it. This was because the large beam was incorrectly installed by 45mm. Also a lot of the truss hardware attached to beams either was not connected to wood or had been cut and modified to fit.*

*Next was the fireplace lounge wall, this wall was 25mm out of square/parallel and at least the same out of plumb. The rectification of the wall took myself and one other a full day. The relocation of the beams and the reinstallation of the trusses into the correct position took two guys 3 plus days.*

*The owner had been informed by the previous builder that the structure was ready for a roof inspection. In my professional opinion it was no where near that stage although it was made out to be, perhaps to make it appear that the job was more advanced than it was. A council building inspector may not have picked up the discrepancies as they were not fully clear until such a time as we could have a close look at the workmanship. This could have 'passed' which would have resulted in an unsafe structure and consequently rebuild costs further down the track as the mistakes became evident.*

*Furthermore, the new building was located incorrectly in relevance to the existing house which resulted in the walkway not adjoining correctly. Rebates for windows in the concrete floor appear to have been installed in incorrect locations. The floor was installed by a 3rd party but should have been overseen by builders on-site to alleviate issues and inaccuracies.*

*Ceiling battens had been installed prior to the roof going on and because of that, weather exposure had resulted in the battens needing to be repaired/replaced. This adds cost for the home owner. In my opinion, installing battens pre roof going on is not best practice.*

*I have taken photos where possible to document the failings. Please find attached, I am happy to identify the issues should they need clarification. I*

*have been building for 30yrs and have not come across such substandard workmanship before. I believe the lead builder on the job was inexperienced and under supervised. I can only imagine the stress and financial burden that the home owners have had to endure because of the previous builders failings. Needless to say, if the builders had continued in this manner, the home owners could have ended up living in an unsafe home and should a natural disaster have occurred...who knows?*

*On a personal note I am very disappointed the LBP system allows builders of this standard to maintain their license.*

- [18] Mr van Leeuwen confirmed his observations at the hearing and confirmed that the photographs were accurate. With regard to the issues with trusses, Mr van Leeuwen noted the following photographs illustrated the issue. He stated that a beam had been installed in the wrong place and that, as a result, trusses had been altered to accommodate for the error:



- [19] The photograph shows cut trusses and compromised structural fittings. Mr van Leeuwen stated that 12 trusses had to be removed, and the beam stepped out by 45mm and set up above the level of the top plate as per the building consent. New trusses were ordered and installed as it was considered that the risks associated with remediating were, after discussions with the Engineer, considered to be too great.

- [20] The Board also received a summary of observations made by Mr Tim Vick, the Engineer for the build.

Site Address	[Omitted]	Project Reference	1816 5

Construction Monitoring Summary for Building Consent No. BC 190108			
Date of inspection	Extent of inspection	Comments/Observations	Status
30 <sup>th</sup> of October 2019	Pre-pour inspection of the lower ground floor slab and polyblock retaining wall footing	Stirrup spacing in EB1 on GL2 was greater than specified on the drawings. Stirrups not properly tied on FB3's and FB4's resulting in the beams not being the correct depth.	Fail
31 <sup>st</sup> of October 2019	Review of a photographic record of the above identified issues and review the EB1 with the increased stirrup spacing	Contractor provided a photographic record of the reinforcement that had been rectified.  Calculation undertaken show stirrup spacing as constructed is acceptable	Pass
21 <sup>st</sup> of November, 2019	Review of photographic record of the size and spacing of the reinforcing steel in the polyblock wall	Photos were reviewed and additional photos requested to confirm bar size and spacing. These were provided later the same day.	Pass
18 <sup>th</sup> of December, 2019	Pre-pour inspection of the garage floor slab	Reinforcement was inspected and found to be as per the design. However much of the reinforcement had insufficient cover to provide corrosion protection	Fail
19 <sup>th</sup> of December, 2019	Review of photographic record of the resolution of the cover issues	Video footage of a gauged measuring stick was provided to demonstrate that cover was achieved. Further comments issued following receipt of the videos.	Fail
6 <sup>th</sup> of January, 2020	Review of photographic record of the resolution of the cover issues	Video footage of a gauged measuring stick was provided to demonstrate that cover was achieved.	Pass
13 <sup>th</sup> of February, 2020	Site inspection to review reinforcement in the upper level floor slab	Reinforcement and cover were reviewed and following a couple of minor alterations on site was found to be in compliance with the design	Pass

## Notes:

Pass = We believe on reasonable grounds that the site work inspected complies with the building code. Fail = Remediation work is required.

- [21] At the hearing, Mr Vick confirmed his on-site observations.
- [22] The Board also heard from Mr Batten, the on-site foreman. Mr Batten, who is now licensed, but was not a Licensed Building Practitioner at the time. He gave evidence that the Respondent, who resided in Christchurch, was on site on the first day and was on-site one to two times thereafter for about one to one and a half hours. When on-site the Respondent did look around the site. Mr Batten stated that the Respondent did not make much of a contribution to the build. Mr Batten's own experience was mainly in commercial building at the time. He had some limited experience with residential building. He had previously worked with the Respondent on a labour-only basis. Mr Batten stated that he took one week off during the build and that it was during that period that issues arose, including those with the trusses. The Respondent was not involved in their resolution. The Respondent did not attend



any inspections. The other builders on site were one person who had just finished his apprenticeship, a second-year apprentice and an overseas trained carpenter. Mr Batten stated that he dealt directly with the Complainant who arranged and managed sub-trades. Mr Batten stated that the Respondent paid him from different entities and different accounts during the build.

- [23] The Respondent did not provide any form of a response to the allegations about the building work, other than to state:

*The Queenstown build was a reasonably complicated build which I supervised my staff on a weekly and sometimes fortnightly basis. The work that has been progressed by my team was completed with professionalism and in my opinion accuracy, in terms of the scope of the build the discrepancies mentioned are not major and in fact the issue with the roof was an issue with the detailing, for which the company (Akarana Timber) had accepted responsibility and were prepared to give a credit for any rectification work required.*

- [24] On 16 October 2020, the Respondent was asked by phone if he was going to make a substantive response. A note of the interview recorded:

- *says he never got Abby's email so i resent it (it hadn't bounced back so I don't know why he didn't get it)*
- *says he has had a gutsful*
- *not renewing his LBP*
- *leaving the industry*
- *wouldn't state if he would respond or not (and if he did when that might be by)*
- *it was an ongoing dispute with the complainant*

- [25] The Respondent was, at the time of the hearing, still a Licensed Building Practitioner.

#### Record of Work

- [26] The complaint noted that the owner had not received a record of work. The Board obtained the Council file. It did not contain a record of work from the Respondent.

#### Disrepute

- [27] The build was started under a contract with H&R Builders Limited dated 12 August 2019, a company of which the Respondent was the sole director and shareholder. The build started on 28 August 2019. H&R Builders was put into liquidation on 30 September 2019 by way of a special resolution. The build was continued in the name of Global Mindset T/A HR Builders. A company named Global Mindset Limited was incorporated on 4 September 2019. The Respondent was the sole director of that company, with the share being held by Quota Trustees Limited., the trustee of which

is an accountant, Reginald George Hintz of RH Accounting Services. Global Mindset was, at the time of the hearing, in the process of being removed from the Companies Officer Register.

[28] The Board was provided with details of the change in contract and a new contract in the name of Global Mindset dated 3 November 2019. The first contract, entered into by H&R Builders, was a labour only agreement. It provisioned for a \$15,000 deposit. The new contract with Global Mindset, which was on different terms, stipulated that the deposit that had been paid would be repaid in instalments by January 2020. It has not been repaid. The new contract provisioned for a revised labour rate that was lower than the previous rate.

[29] The First Liquidator's First Report into the liquidation of H&R Builders Limited noted:

- *The company was struggling with working capital for some time and had some sizable disputes on past contracts.*
- *As the director had extra resource with work slow down he undertook a development in a separate company. This development has not gone as planned which has resulted in the development company struggling to pay the building company.*
- *One trade creditor had issued a statutory demand.*

[30] The Liquidator's report did not contain any financial or other detail as regards the contract with the Complainant.

[31] The Complainant provided the Board with copies of invoices received as follows:

Date	Invoice Number	Invoicing Entity	Bank Acc	Amount
18 September 2019	0325	H&R Builders Limited	15 3976 0054987 00	\$3,519.00
19 October 2019	1103	H&R Builders Limited	38 9020 0763348 00	\$3,519.00
28 October 2019	1104	H&R Builders Limited	38 9020 0763348 00	\$10,384.50

[32] Replacement invoices for Invoices 1103 and 1104 were provided when the Complainant noted that HR Builders had been put into liquidation on 30 September 2019:

Date	Invoice Number	Invoicing Entity	Bank Acc	Amount
19 October 2019	1103	Global Mindset Limited	38 9020 0763348 00	\$3,381.00
28 October 2019	1104	Global Mindset Limited	38 9020 0763348 00	\$10,384.50

[33] The replacement invoices predated the contract with to which they related.

- [34] The building work under the Respondent's supervision came to an end in early 2020. Mr Batten, who was employed by the Respondent's entities, and who was on site carrying out the work as the on-site Foreman, gave evidence that the site was packed up prior to Christmas. The Respondent sent the following communication to the Complainant:

*[Omitted],*

*This email is to inform you that HR Builders (Global Mindset Ltd) will not be returning to continue the build on your house until such time as the following conditions are met.*

*The Original contract is the only valid contract and was assigned to Global Mindset Ltd when H&R Builders was placed into voluntary liquidation.*

*As such, going forward, if we are to continue, the original agreed hourly rate of \$60 per man hour will apply. This rate will also be backdated to when we were forced to continue at a lower rate and an invoice for the difference will be issued for same.*

*The Deposit paid on the original contract will be, as intended, carried through until the end of the build and will be credited by way of hours at that stage.*

*The above conditions are not negotiable and I am not prepared to discuss this any further.*

- [35] The Respondent concluded by stating:

*In conclusion, I am not happy to have to react in this manner but find your actions totally unacceptable and a complete breach of trust, this is something I would not normally do, I like to conduct my business in an honorable manner, but you have left me with no other option.*

- [36] The Complainant responded, noting the deposit had been expended by the Respondent on debts that were not related to the Complainant's job:

*Regarding your usage of the term 'blackmail I note that during our meeting 2 /11/2019, you admitted having spent all my deposit of \$15,000 inappropriately and completely without my knowledge. I told you then that I had lost complete trust in you as a friend & in our business relationship. You then became very emotional and voluntarily offered to reduce your hourly rate from \$60 +gst hr to \$55 +gst hr. I repeated that I didn't want to do business with someone who I didn't trust. You proceeded to give me a personal guarantee that you would pay back the \$15,000 deposit. We then agreed on a new contract with an hourly rate of \$50 +gst in the name of your newly formed company as the original contacting party has then in liquidation.*

*You also told me that the invoice that you sent me while your company was in liquidation, was fraudulent and said you would supply a backdated invoice along with the current due invoice, in the new company name.*

*I was the one that took pity on you, partly because of your emotional breakdown and agreed to the new contract. You offered to start paying the \$15,000 back on a weekly basis - and as Christmas holiday pay was coming due, and as a gesture, I suggested repayments start in the new year.*

*In my view. If anyone has acted inappropriately in our dealing is you, by withdrawing your builders and demanding a reinstatement of the original contract - but no mention of my \$15,000 refund.*

[37] In his response to the complaint and contractual matters the Respondent stated:

*My original company was put into voluntary liquidation late last year and I had over a period of time reduced my employees from 12 staff to the four who were retained going forward under a new company. Unfortunately I neglected to inform Mr [Omitted] of the change in circumstance and contracts and paperwork were not attended to as they should have been, I had recently undergone some major surgery and my father had also passed away so my focus on some detail was not as it should have been.*

*Mr [Omitted] however saw this as an opportunity to force a reduction in the original chargeable hourly rate, this created considerable financial difficulty for us and with the conditions that he insisted upon would have eventually led to the business failing.*

[38] The Respondent again concluded by stating:

*After the incredibly disappointing manipulation of my personal circumstance by Mr [Omitted] and the failure of my previous company ( a Voluntary Liquidation after suffering very large losses on a labour contract for a main contractor) I managed to find some work locally for my staff, however several of them left my employ at the end of February and with the lockdown at the end of March this year the company has not traded since.*

*In summary I have decided that I will no longer be involved in any building work and at 67 years of age have decided to retire and resign my LBP status.*

*I trust that this email is sufficient for your needs.*

[39] With regard to termination, the Complaint stated:

*Your foreman Ethan, told me that he and the team would be back on the job at [Omitted] after Christmas - 6th January was the start date as there was a concrete pour booked for 8th Jan.*

*I phoned Ethan around the end of December and left a message but with no reply. I arrived in QT 3rd Jan and discovered the build site & storage garage ,*

*had been completely cleared of all building equipment etc. After many texts, phone calls and emails to both you and Ethan, I finally received an email from you on the 10th January saying you would update me over the weekend!*

*I received an email at 2.52pm Sunday 12/1/20 from a contractor saying Ethan had trades booked and concerned that there was no communication from him. A tradesperson also commented that he'd been talking to Ethan before Christmas about the new year starting back and Ethan said at the time that he wasn't sure if they were coming back ! This suggests that there was already an intention of not returning in the new year and an avoidance by you Ron of not repaying \$15,000 debt owed to me. I spent 4 days on site dealing with regular calls from other trades asking why Ethan wasn't there and not responding - you finally sent me an email at 10.45pm Sunday night stating that you would not be returning to the site until the original contract was reinstated....blackmail ?*

### **Board's Conclusion and Reasoning**

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

- (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);
- (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);
- (a) 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)

and **should** be disciplined.

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

#### Negligence and/or Incompetence

[42] 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. The finding of negligence relates to the Respondent's supervision of non-licensed persons.

[43] 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*<sup>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.

- [44] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test<sup>9</sup>. 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.
- [45] 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<sup>10</sup>. 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<sup>11</sup>.
- [46] 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.*

- [47] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code<sup>12</sup> and be carried out in accordance with a building

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

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

<sup>11</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

<sup>12</sup> Section 17 of the Building Act 2004

consent<sup>13</sup>. 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.

[48] There were multiple serious non-compliant building issues. The most serious were the failure to install a beam and trusses correctly and the incorrect foundation levels. Both matters were fundamental errors that, with the correct oversight, should not have occurred. Both had serious implications for the build.

[49] The Respondent did not carry out the building work. He was the supervising Licensed Building Practitioner and, as the building included restricted building work, under section 84 of the Act, it had to be supervised by an appropriately licensed person.

[50] Supervise is defined in section 7<sup>14</sup> of the Act. The definition states:

*supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—*

*(a) is performed competently; and*

*(b) complies with the building consent under which it is carried out.*

[51] In C2-01143, the Board also discussed the levels of supervision it considers would be necessary to fulfil a licensed building practitioner's obligations noting that the level of supervision required will depend on a number of circumstances, including:

- (a) the type and complexity of the building work to be supervised;
- (b) the experience of the person being supervised;
- (c) the supervisor's experience in working with the person being supervised and their confidence in their abilities;
- (d) the number of persons or projects being supervised; and
- (e) the geographic spread of the work being supervised.

[52] The Board also needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

[53] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to Electricity Act 1992<sup>15</sup>. The definition of supervision in that Act is consistent with the definition in the Building

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<sup>13</sup> Section 40(1) of the Building Act 2004

<sup>14</sup> Section 7:

*supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—*

*(a) is performed competently; and*

*(b) complies with the building consent under which it is carried out.*

<sup>15</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

Act, and as such, the comments of the Court are instructive. In the case Judge Tompkins stated at paragraph 24:

*“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”*

- [54] Looking at the building work in question, there were serious errors and non-compliance issues. The Respondent was remote from the build. He did not engage in the build to an extent where he was providing adequate or appropriate supervision. He did not, on a regular basis, attend the site or check the work. He did not attend any Council or engineering inspections. The Board formed the view that he took a hands-off approach and allowed on-site staff to build without any effective supervision being provided.
- [55] 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

- [56] 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.*
- [57] 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.

- [58] Unlike negligence contrary to a building consent is strict liability offence. All that need be proven is that the building consent has not been complied with, no fault or negligence must be established<sup>16</sup>. The Board has already found, in relation to negligence, that there were serious non-compliance issues. A beam and trusses were not installed as per the building consent nor were foundations.
- [59] Given those factors, the Board has decided that the Respondent had committed the disciplinary offence. It does, however, note that there is a commonality in the findings between this finding and that of negligence. This will be taken into account by the Board when it considers what the appropriate penalty is determined.

### Record of Work

- [60] 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 work<sup>17</sup>.
- [61] 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.
- [62] The Board discussed issues with regard to records of work in its decision C2-01170<sup>18</sup> 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.
- [63] 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.
- [64] 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 ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*<sup>19</sup> “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.

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<sup>16</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>17</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

<sup>18</sup> *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

<sup>19</sup> [2018] NZHC 1662 at para 50

- [65] As to when completion will have occurred is a question of fact in each case. 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. Completion occurred in January 2020, when the contract came to an end. After that point in time, the Respondent would not be carrying out or supervising any further restricted building work. As such, his record of work was due. One has not been provided. The Board has therefore decided that the Respondent did not provide a record of work on completion as required, and the disciplinary offence has been committed.
- [66] 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 have been put forward.
- [67] In this instance, there was an ongoing commercial dispute. Whilst not stated as a reason for non-provision, the Board has repeatedly stated that a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, nor by contractual disputes. Licensed building practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine.
- [68] The Respondent should also note that the requirement is on the licensed building practitioner to provide a record of work, not on the owner or territorial authority to demand one. He is required to act of his own accord and not wait for others to remind him of his obligations.

#### Disrepute

- [69] The disrepute disciplinary provision in the Act is similar to legislation in other occupations, including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111<sup>20</sup> and discussed the legal principles that apply.
- [70] The Board, in C2-01111, considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above, there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example, in the High Court held in *Davidson v Auckland Standards Committee No 3*<sup>21</sup> a company director, who, in the course of his duties as a director was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time, however, he was not providing legal services. It was submitted in the case that when the acts are outside

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<sup>20</sup> Board decision dated 2 July 2015.

<sup>21</sup> [2013] NZAR 1519

of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example, dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.

[71] Similarly, in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants<sup>22</sup>, convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.

[72] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is “disrepute”. The Oxford Dictionary defines disrepute as “the state of being held in low esteem by the public”<sup>23</sup>, and the courts have consistently applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*<sup>24</sup>, the Court of Appeal held that:

*the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*<sup>25</sup>

[73] As to what conduct will or will not be considered to bring the regime into disrepute, it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect, it is noted disrepute was upheld in circumstances involving:

- criminal convictions<sup>26</sup>;
- honest mistakes without deliberate wrongdoing<sup>27</sup>;
- provision of false undertakings<sup>28</sup>; and
- conduct resulting in an unethical financial gain<sup>29</sup>.

[74] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act, although provision for one is made. What is clear from the cases though, is that unethical or unprofessional conduct can amount to disreputable conduct.

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<sup>22</sup> 24 September 2014

<sup>23</sup> Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

<sup>24</sup> [2012] NZCA 401

<sup>25</sup> [2012] NZAR 1071 page 1072

<sup>26</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>27</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>28</sup> *Slack, Re* [2012] NZLCDT 40

<sup>29</sup> *Colliev Nursing Council of New Zealand* [2000] NZAR 7

- [75] The conduct the Board was investigating in relation to disrepute was the possible misappropriation of a deposit paid by and an allegation that the Respondent traded whilst insolvent and/or recklessly, or allowed an entity to trade, recklessly and/or whilst insolvent.
- [76] Ordinarily, the Board does not investigate contractual matters. As noted, the exception is where the conduct comes with the disciplinary offence of disrepute, and the conduct causes the conduct and the professions to be held in low esteem by the public.
- [77] The Board noted that the Respondent had managed his financial affairs in an unethical manner. He failed to account for a deposit, put H&R Builders into liquidation one month after the build had started but continued the build as if the liquidation had not occurred. He continued to invoice as if H&R Builders was still operating. The invoices, however, contained the bank account details of another entity, indicating that a deliberate deception was being perpetrated.
- [78] Given the above factors, the Board finds that the Respondent has brought the regime into disrepute.
- [79] The Courts have stated that the threshold for disciplinary complaints of disrepute is high, and the Board notes that when the disciplinary provision was introduced to Parliament, the accompanying Cabinet paper noted:
- This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.*
- [80] The conduct was serious. It was deliberate and calculated. A disciplinary outcome is warranted.

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

- [81] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [82] 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**

- [83] 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*<sup>30</sup> commented on the role of

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<sup>30</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

“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.*

- [84] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*<sup>31</sup>. The High Court, when discussing penalty, stated:

*[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner’s offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner’s decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.*

- [85] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [86] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>32</sup> 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 a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [87] The Respondent has committed multiple serious disciplinary offences. The Board, does, however, note the commonality in the disciplinary offending in the negligence/incompetence finding and the finding as regards building contrary to a building consent. As such, it will treat those as a single offence.
- [88] The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work. Restricted building work, in turn, is that building work which is integral to the safe and healthy functioning of a home and the licensing regime was established so as to ensure persons with the requisite

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<sup>31</sup> [2012] NZAR 481

<sup>32</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

competencies carry out or supervise that work. The Respondent, by failing to supervise, has defeated the purposes of the regime.

- [89] The Respondent has also brought the regime into disrepute. The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work which is integral to the safe and healthy functioning of a home. A practitioner who brings the regime into disrepute puts those objects at risk.
- [90] The Respondent's approach to the matters under inquiry is also an aggravating feature as the manner in which a licensed person responds to a disciplinary complaint and conducts their defence can be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>33</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way. The Respondent has not engaged in the Board's investigations and has tended to place blame for his own conduct on the Complainant.
- [91] Taking all of the above factors into account, the Board considers that a cancellation of the Respondent's licence is not only warranted to punish the Respondent but also required to deter others from such conduct. Accordingly, the Board will cancel the Respondent's licence and order that he may not apply to be relicensed for a period of six (6) months.
- [92] The Board has noted that the Respondent stated he would not be renewing his licence. He does, at the present time, retain a licence. As such, cancellation is appropriate.

### Costs

- [93] 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."
- [94] 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<sup>34</sup>.
- [95] In *Collie v Nursing Council of New Zealand*,<sup>35</sup> 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.*

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<sup>33</sup> [2011] 3 NZLR 850.

<sup>34</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>35</sup> [2001] NZAR 74

- [96] Based on the above the Board's costs order is that the Respondent pay the sum of \$3,500 toward the costs of and incidental to the Board's inquiry. The amount is the Board's scale amount for a half-day hearing and is significantly less than 50% of actual costs.

#### Publication

- [97] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act<sup>36</sup>. 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.*

- [98] 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.
- [99] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>37</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>38</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>39</sup>. 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*<sup>40</sup>.
- [100] 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<sup>41</sup>. 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.
- [101] Based on the above, the Board will order further publication. Publication is necessary so that others can be informed of the offending and learn from it and so that the public can be made aware.
- [102] The publication will be carried out by way of an article or articles in Ministry of Business Innovation and Employment publications and on the Board's website.

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<sup>36</sup> Refer sections 298, 299 and 301 of the Act

<sup>37</sup> Section 14 of the Act

<sup>38</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>39</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>40</sup> *ibid*

<sup>41</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## **Section 318 Order**

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

**Penalty:** Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of six [6] months.

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

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

**In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.**

[104] 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**

[105] 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 July 2021. 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.

[106] 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/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

### **Right of Appeal**

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

Signed and dated this 15<sup>th</sup> day of June 2021





**Mr C Preston**  
Presiding Member

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

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

**<sup>ii</sup> 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.*