Before the Building Practitioners Board

	BPB Complaint No. CB25170
Licensed Building Practitioner:	Shawn Williamson (the Respondent)
Licence Number:	BP 106094
Licence(s) Held:	Carpentry and Site AOP 2

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:	On the Papers
Hearing Date:	11 September 2019
Draft Decision Date:	21 October 2019
Final Decision Date:	12 November 2019

Board Members Present:

Mel Orange, Legal Member (Presiding)
David Fabish, LBP, Carpentry Site AOP 2
Robin Dunlop, Retired Professional Engineer
Bob Monteith, LBP Carpentry and Site AOP 2

Procedure:

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

Board Decision:

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

Contents

Introduction

[1] On 11 September 2019 the Board received a Registrar's Report in respect of a complaint into the conduct of the Respondent.

[2] Under regulation 10 of the Complaints Regulations the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies.

[3] Having received the report the Board decided that regulation 9 did not apply. Under regulation 10 the Board is required to hold a hearing.

[4] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers is necessary prior to it making a decision. In this respect the Act provides that the Board may regulate its own procedures[1]. It has what is described as a summary jurisdiction in that the Board has a degree of flexibility in how it deals with matters; it retains an inherent jurisdiction beyond that set out in the enabling legislation[2]. As such it may depart from its normal procedures if it considers doing so would achieve the purposes of the Act and it is not contrary to the interests of natural justice to do so.

[1] Clause 27 of Schedule 3
[2] *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

[5] In this instance the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers.

[6] The Board does, however, note that there may be further evidence in the possession of persons involved in the matter or that the Board may not have interpreted the evidence correctly. To that end this decision is a draft Board decision. The Respondent will be provided with an opportunity to make comment on the Board's draft findings and to present further evidence prior to the Board making a final decision. If the Board directs or the Respondent requests an in-person hearing, then one will be scheduled.

Disciplinary Offences Under Consideration

[7] On the basis of the Registrar's Report the Respondent's conduct that the Board resolved to investigate was that the Respondent had carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act) in that he carried out building work without a building consent.

Function of Disciplinary Action

[8] 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*[3] and in New Zealand in *Dentice v Valuers Registration Board*[4].

[9] 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*[5] 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."*

[10] 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

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[6]. Under section 322 of the Act the Board has

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[3] *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.
[4] [1992] 1 NZLR 720 at p 724
[5] [2016] HZHC 2276 at para 164
[6] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

[12] The Respondent was engaged to construct employee accommodation on an orchard. The building work required a building consent. The Complainant alleged the Respondent undertook the building work prior to the required building consent being issued. The Complainant provided a copy of District Court Sentencing Notes[7] in support of the complaint.

[13] The general rule is that all facts in issue or relevant to the issue in a case must be proved by evidence. There is, however, the doctrine of estoppel which can create a legal bar to asserting a particular position. An estoppel can arise from a previous determination of the matter by a court[8].

[14] The doctrine of issue estoppel seeks to protect the finality of litigation by precluding the re-litigation of issues that have been conclusively determined in a prior proceeding. The key principle is that issue estoppel precludes a party from re-litigating an identical issue (whether of fact or of law) that has previously been raised and determined with certainty between the parties[9]. Issue estoppel can only be founded on findings which are fundamental to the original decision and without which it cannot stand. Other findings cannot support an issue estoppel, however definite the language in which they are expressed[10].

[15] The application of issue estoppel is ultimately a matter at the discretion of the court or tribunal in the subsequent proceedings:

> *A judicial doctrine developed to serve the ends of justice should not be applied mechanically to work an injustice*[11].

[16] The Board considers, in this case, that issue estoppel applies as regards the judgements made by the District Court.

[17] The Board also notes that the Respondent provided a written response by way of his legal counsel which did not dispute the findings.

[18] As such, given the acceptance of the facts by the Respondent and the estoppel, the Board need not make further inquiry with regard to the facts.

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[7] *Western Bay of Plenty District Council v Shawn Williamson Building Limited and Shawn Herbert Williamson* CRI-2018-070-004109, [2019] NZDC 3040

[8] Refer section 50 of the Evidence Act 2006 and in particular section 50(2)(b) and *Gillies v Keogh* [1989] 2 NZLR 327, 345 (CA).

[9] *Fidelitas Shipping Co Ltd v V/O Exportchleb* [1965] 2 All ER 4 at 8 per Lord Denning; *Thoday v Thoday* [1964] 1 All ER 341 at 352

[10] *Talyancich v Index Developments Ltd* [1992] 3 NZLR 28 at 38; *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 (HL) at 965, per Lord Wilberforce

[11] *Danyluk v Ainsworth Technologies Inc* 2001 SCC 44, [2001] 2 SCR 460 at 460

[19] Turning to the facts, as set out in the Sentencing Notes, the Respondent's company was contracted to construct six four-person cabins, sleeping quarters and a common facility including ablution, kitchens and recreational areas. The Court noted:

> *[3] Work started without the consents and continued through to completion. The authorities became involved and the company and Mr Williamson are prosecuted under s 40 Building Act 2004. The charges allege that between 15 November 2017 and 17 April 2018 the company and Mr Williamson failed to comply with s 40(1) Building Act by carrying out building work that was not in accordance with a building consent. The statute provides that the penalty is a fine not exceeding $200,000 and a further fine not exceeding $1000 for every day or part day during which the offence is continued. The company and Mr Williamson pleaded guilty. I am now obliged to sentence.*

[20] The building consent was granted on 17 April 2018 by which time the building work was substantially complete. The Respondent had not been involved in the building consent process, but the Court did note that, as of late December 2017, he was well aware that a building consent had not been issued but that he continued through to completion notwithstanding.

[21] The Court noted:

> *[48] I consider that the most culpable of the defendants is Mr Williamson. He drives the company, it cannot operate with his decision making. He enjoys the status of registration and can be expected to not only know the law but to comply with it.*

[22] The Respondent was fined $16,875 and his company $10,125.

Draft Conclusion and Reasoning

[23] 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) by carrying out building work without a building consent and should be disciplined.

[24] 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.*

[25] Building consents are granted under section 49 of the Act. A building consent can only be granted 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.*

[26] 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.*

[27] In *Tan v Auckland Council*[12] 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.*

[28] 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.

[12] [2015] NZHC 3299 [18 December 2015]

[29] 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.*

[30] 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.

[31] It should also 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 or an exemption 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.*

[32] 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.

[33] This is consistent with the findings of the District Court in the proceedings taken against the Respondent under section 40 of the Act.

[34] The question for the Board to consider is whether, 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 and if so whether the Respondent has, as a result of the failing, been negligent or incompetent.

[35] Negligence and incompetence are not the same. In *Beattie v Far North Council*[13] Judge McElrea noted:

> *[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.*

[36] 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*[14] test of negligence which has been adopted by the New Zealand Courts[15].

[37] 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*[16] it was stated as *"an inability to do the job"*.

[38] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test[17]. 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.

[39] 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[18] 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[19].

[40] Turning to seriousness in *Collie v Nursing Council of New Zealand*[20] 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*

[13] Judge McElrea, DC Whangarei, CIV-2011-088-313
[14] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[15] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[16] Ali v Kumar and Others [2017] NZDC 23582 at [30]
[17] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[18] *Martin v Director of Proceedings* [2010] NZAR 333 at p.33
[19] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71
[20] [2001] NZAR 74

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

[41] Turning to the facts as they apply to the above the Board notes that the Court found that the Respondent was aware from December 2017 that a building consent had not been issued but that he carried on with building work regardless. Given the Respondent's status as a licensed building practitioner the Board would expect him to have made enquiry and satisfied himself that a building consent had issued prior to the work commencing. Licensed building practitioners should be aware that there is a requirement to build strictly in accordance with the building consent. To do that requires copies of the consented plans to be available and on site. That the consented plans were not on site in this instance should have been enough for the Respondent to be aware that a building consent had not been issued, and that building work could not proceed.

[42] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has been negligent in that he 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.

Draft Decision on Penalty, Costs and Publication

[43] 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.

[44] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

<u>Penalty</u>

[45] 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*[21] 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.*

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

[46] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[22] 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.

[47] The Respondent's legal counsel made penalty submissions. He noted that the building work was undertaken under urgency and pressure to complete worker accommodation; that there were a number of people involved in the decision to proceed without a building consent; that an indemnity agreement was entered into to allow workers to inhabit the accommodation; and that there were no issues raised in respect of the competency of the work and the potential for harm was mitigated in a number of ways.

[48] Counsel also noted that the Board could not impose a fine as the Respondent had been fined for the same matters in the District Court. Counsel submitted:

> *7. In respect of the other penalties available to the Board, the consequences of a suspension of Mr Williamson's licence will have a significant impact on him and his business. His company employs approximately 30 staff and Mr Williamson personally supervises approximately 8 builders. Not being able to carry out work or supervise staff will impact on his ability to trade. In order to complete current commitments, he will have to employ someone to carry out his role.*
>
> *8. It is submitted that Mr Williamson has paid a significant price as a consequence of his actions, has learnt his lesson and further punishment such as a suspension will be out of proportion to the act, given the conviction and fine already publicly imposed by the Courts.*
>
> *9. Given the circumstances, it is submitted that if the Board decides a disciplinary penalty is warranted, a censure of Mr Williamson would be appropriate.*

[49] The Board agrees that it cannot, as a result of section 318(3) of the Act, impose a fine. The Board also agrees that, given the District Court proceedings and the fine imposed in the Court, that a censure is the appropriate penalty. A censure is a formal expression of disapproval. Accordingly, the Board will order that the Respondent be censured.

Costs

[50] 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."

[22] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[51] 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[23].

[52] In *Collie v Nursing Council of New Zealand*[24] 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.*

[53] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar's Report and in the Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such the Board will order that costs of $500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

<u>Publication</u>

[54] 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[25]. 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.*

[55] 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.

[56] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990[26]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[27]. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[28]. The High Court provided

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[23] *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.
[24] [2001] NZAR 74
[25] Refer sections 298, 299 and 301 of the Act
[26] Section 14 of the Act
[27] Refer sections 200 and 202 of the Criminal Procedure Act
[28] *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*[29].

[57] 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[30]. 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.

[58] The Board notes that the matter is already in the public domain as a result of the District Court proceedings. Given this it does not consider that any further publication is required. The Respondent will be named in this decision.

Draft Section 318 Order

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

Penalty:	**Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $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(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.

[60] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

Submissions on Draft Decision

[61] The Board invites the Respondent to:

(a) provide further evidence for the Board to consider; and/or

(b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[62] Submissions and/or further evidence must be filed with the Board by no later than the close of business on 11 November 2019.

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

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[29] ibid

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

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

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

Request for In-Person Hearing

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

[67] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on 11 November 2019

Right of Appeal

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

Signed and dated this 21st day of October 2019

Mel Orange
Presiding Member

This decision and the order herein were made final on 12 November 2019 on the basis that no further submissions were received.

Signed and dated this 12th day of November 2019

Mel Orange
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.