

## Before the Building Practitioners Board

	BPB Complaint No. CB26210
Licensed Building Practitioner:	Christopher Win (the Respondent)
Licence Number:	BP116117
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	Board Inquiry
Hearing Type:	On the Papers
Hearing and Draft Decision Date:	10 May 2023
Final Decision Date:	16 June 2023

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Ms K Reynolds, Construction Manager  
Mr G Anderson, LBP, Carpentry and Site AoP 2

#### Appearances

S McLean for the Respondent

#### Procedure:

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

#### Draft Disciplinary Finding:

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

The Respondent **has not** committed a disciplinary offences under section 317(1)(i) of the Act.

The Respondent is censured. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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**Summary of the Board’s Draft Decision**

- [1] The Respondent was convicted of four charges under the Tax Administration Act 1994, for which the maximum penalty is five years of imprisonment. The Board initiated an inquiry into his conduct to consider whether the conviction meant the Respondent had breached section 317(1)(a) of the Act, which relates to being convicted of a crime that reflected on the Respondent’s fitness to be a Licensed Building Practitioner and whether his conduct had brought the licensing regime into disrepute contrary to section 317(1)(i) of the Act.
- [2] To make a finding under section 317(1)(a) of the Act, the Board must first find that an offence punishable by more than six months imprisonment has been committed and, secondly, that the conviction reflects adversely on the Respondent’s fitness. The issue for the Board was whether the offences for which he was convicted reflected

on his fitness. The Board decided that it did but that a restrictive penalty was not required. As the Respondent had been punished by the Courts and is paying reparation, the Board decided that it would censure the Respondent and record it on the Register for a period of three years so that the public is made aware of the conduct and findings.

- [3] The Board also decided that the Respondent had not breached section 317(1)(i) of the Act as, whilst the Respondent's offending was serious, there were no aggravating factors and the finding under section 317(1)(a) of the Act was seen as being sufficient.

### **The Charges**

- [4] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [5] In this matter, the disciplinary charge the Board resolved to further investigate<sup>2</sup> was whether:
- (a) been convicted, whether before or after he is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work contrary to section 317(1)(a) of the Act; and
  - (b) the Respondent may have conducted himself 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.

### **Draft Decision Process**

- [6] 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 necessary prior to it making a decision.
- [7] Ordinarily, the Board makes a decision having held a hearing.<sup>3</sup> The Board may, however, 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.<sup>4</sup>

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<sup>1</sup> Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

<sup>2</sup> The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

<sup>3</sup> Regulation 10 of the Complaints Regulations.

<sup>4</sup> Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

- [8] 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. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside a hearing will be scheduled.

### **Evidence**

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. Under section 322 of the Act, the Board has relaxed r/ules of evidence which allow it to receive evidence that may not be admissible in a court of law.

### The conduct under investigation

- [10] On 24 January 2023, the Respondent was convicted in the District Court of four charges under the Tax Administration Act 1994. The Board obtained the sentencing notes of Judge Couch.<sup>6</sup> The sentencing notes summarised the matter as follows:

[3] *The essential facts are these:*

- (a) *From 1 July 2015 you operated a business known as Win Building. You did so as a sole trader. You were registered with Inland Revenue for GST and then from 1 February 2016 as an employer.*
- (b) *The first charge relates to PAYE. Between November 2017 and September 2019 you deducted PAYE from the wages of eight employees, but you did not pay that money to Inland Revenue in a timely way. The amount not paid by the due date was \$176,804.10, although it appears at most times you had funds available to make those payments. That led to a charge of applying PAYE to a purpose other than payment to the Commissioner.*
- (c) *The second and third charges relate to GST. Between July 2017 and July 2020 you either failed to pay GST owing or to file GST returns. The total amount of GST involved was \$133,084.64. That has led to charges of evading payment of GST and failing to provide GST returns.*
- (d) *The fourth charge relates to income tax. You were required to provide annual tax returns for your self-employed income. For*

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<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>6</sup> *Commissioner of Inland Revenue Department v Christopher David Win* [2022] NZDC 1818

*the years ending 31 March 2018, 2019 and 2020 you did not file returns. The amount of income tax involved is estimated to be \$18,951.79. That has led to charges of failing to provide tax returns.*

- (e) You had a tax agent for most of the time period involved and you were reminded by the agent of your obligations and the consequences of not complying. You were also contacted personally on many occasions by Inland Revenue both by letter and by telephone to remind you of your obligations.*
- (f) On almost all occasions during the period in which the offences occurred there was sufficient money in your business account to meet the tax obligations. Rather than meet those obligations to Inland Revenue you used money in the business account for other purposes including personal expenses and cash withdrawals. This included overseas travel to play sport on three occasions.*
- (g) You were adjudicated bankrupt on 20 August 2020.*

[11] The Respondent was sentenced on each of the charges to home detention for a period of 12 months. The maximum penalty for each of the four charges was five years imprisonment and/or a fine of \$50,000.

### **Criminal Convictions**

[12] The disciplinary provision in section 317(1)(a) of the Act requires two matters to be satisfied. The first is whether the Respondent has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more. That element has been satisfied. The second is whether the commission of that offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work. The second element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.

[13] Unlike other licensing regimes, the licensed building practitioner regime does not contain any provisions which require an assessment of an applicant's character or fitness to hold a licence at the time they apply for a licence<sup>7</sup> or during the currency of their licence. Rather, in the Building Act, there is an ability to assess this subsequent to a person being licensed by way of section 317(1)(a) of the Act, and it does not matter that the criminal offending predated the person being licensed.

[14] The Courts have stated that fitness is not to be equated with competence and that when considering fitness deterrence, public confidence and upholding standards are

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<sup>7</sup> Compare with the licensing provisions in section 91(d) of the Electricity Act 1992 and section 36(d) of the Plumbers, Gasfitters, and Drainlayers Act 2006 both of which have a requirement to be a fit and proper person for registration

relevant.<sup>8</sup> In *Hart v Auckland Standards Committee 1 of The New Zealand Law Society*,<sup>9</sup> the High Court set out various factors that should be considered. They included the nature and gravity of the criminal charges, any previous history, any acceptance of responsibility, and the effect on public confidence.

- [15] Counsel for the Respondent submitted that whilst the first element of section 317(1)(a) of the Act had been satisfied but the second had not. Counsel referenced *Hart* and noted previous decisions of the Board,<sup>10</sup> and submitted that the current matter could be distinguished from them on the basis that the offending in those matters was more serious than the Respondent's offending and that the other practitioners both had previous criminal convictions. Counsel summarised:

*Mr Win's breaches of the Tax Administration were prolonged and was dishonesty offending. However, the circumstances of Mr Win's offending are significantly mitigated by his lack of previous offending, the full acceptance of responsibility and the steps taken since his bankruptcy to repair the harm caused. These factors are not present in the decisions of Sinclair and Morrow, and should satisfy the Board that the public confidence in the building regime will not be effected by allowing Mr Win to continue in his current role.*

- [16] The Board has taken the submissions into consideration. It notes, however, that the submissions somewhat downplay the conduct and that the sentencing Judge's comments paint a different picture. In particular:

[8] *In considering the appropriate starting point, I note the following factors in this case. The total amount of unpaid tax was more than \$300,000. There were multiple failures to meet tax obligations over a period of around three years. At all times you were aware of your obligations and you were frequently reminded of them by your personal accountant and by Inland Revenue. That being so, I regard your failure to meet your obligations as premeditated.*

[9] *On most occasions you had the money necessary to meet the tax obligations or the means to readily obtain it. Rather than applying that money to paying Inland Revenue, you used large amounts of it for personal expenditure, including as I have noted, overseas travel.*

[10] *The failure to pay involved serious breaches of trust. Money deducted from employees' wages was held by you in trust for payment to Inland Revenue on behalf of your employees. You breached their trust in you. There was also a broader breach of trust. In this country, our tax system operates on the basis that individual tax payers are trusted to make proper returns of information and to make payment of tax promptly and fully. Your default amounted to a gross breach of that trust.*

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<sup>8</sup> *Professional Conduct Committee v Martin* High Court WN 2007

<sup>9</sup> [2013] 3 NZLR 103

<sup>10</sup> BPB Complaint No C2-01244 *Sinclair* and BPB Complaint No C2-01666 *Morrow*

[17] Judge Couch discounted the penalty to reflect the Respondent's early guilty plea. He accepted that genuine efforts were being made to repay the tax and applied a further discount to reflect that effort. Ultimately, however, the Judge decided not to impose a penalty of imprisonment because of the Respondent's shared parenting responsibilities. These matters are noted as they go to the seriousness of the offending.

[18] The Board has considered the various factors noted in *Hart* as follows.

Nature and gravity of the charges

[19] Counsel noted that in *Sinclair and Morrow*, the Board highlighted the correlation between the nature of dishonesty offending and fitness as carrying out building work or supervising building work can involve the handling of client funds or entering credit arrangements. Counsel submitted that this was not applicable to the Respondent who is working as a subcontractor for a single contractor.

[20] Whilst the Respondent's current work arrangements may mean that he is not handling client funds or entering credit arrangements, there is nothing to prevent him from doing so in the future, especially after his bankruptcy comes to an end in September this year. As such, there is still a need to protect the public, and, in this respect, the Board notes the gross breach of trust found by the Court.

Acceptance of responsibility:

[21] Counsel submitted that:

*In Hart the willingness to participate fully in the investigative process, acknowledging one's error or wrongdoing and accepting responsibility for the misconduct, may indicate a lesser penalty than striking off is sufficient to protect the public.<sup>11</sup>*

[22] Counsel noted that the Respondent has cooperated, has been described as a "model client" in his pre-sentencing report, and has voluntarily increased his tax debt repayments. The submission made was that those factors are strong mitigating factors.

[23] The Board notes the factors and agrees that they are mitigating factors that should be taken into consideration. The question for the Board, however, is whether they should be taken into consideration in determining whether a disciplinary offence has been committed or, if the offence is upheld, whether they should be taken into account in determining the appropriate penalty. In this respect, the Board notes the comments in *Hart* as regards a lesser penalty.

Previous history:

[24] There are no aggravating features as regards previous history as the Respondent does not have a previous history with the Board or with the Courts.

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<sup>11</sup> *Hart* at [187]

[25] Counsel again referred to *Hart* and noted a lack of previous wrongdoing may suggest that the conduct is unlikely to be repeated, and a lower penalty is sufficient to protect the public. Again it is noted that the comments in *Hart* go to the action to be taken, not to whether a disciplinary offence has been committed.

The effect on public confidence:

[26] Counsel noted the different impact the present matter might have on public confidence versus that in *Sinclair* and *Morrow* and submitted that it was not likely that the offending would have a detrimental effect on public confidence in the building regime. The Board did note the high degree of public interest in the matter, and this, together with the convictions, will impact the public's confidence in Licensed Building Practitioners. The question for the Board is the degree to which it will impact.

Does the conduct reflect on the Respondent's fitness

[27] Weighing the various factors, the Board has decided that the Respondent's convictions adversely reflects on his fitness. As such, the offence has been committed.

[28] In coming to its decision, the Board has decided that the factors that Counsel has raised with respect to the matters the Board must take into account under *Hart* are reasons why the Board should be more lenient when it considers penalty and not reasons why it should not make a disciplinary finding. The offending was serious, which is made apparent by the sentencing Judge's comments and consumers should be made aware of it. In this respect, the Board has also considered the purposes of the licensing regime, which includes ensuring that consumers are informed when deciding to engage a Licensed Building Practitioner. In this respect, the purposes of the Register of Licensed Building Practitioners are:<sup>12</sup>

*The purpose of the Register is—*

*(a) to enable members of the public to—*

*(i) determine whether a person is a licensed building practitioner and, if so, the status and relevant history of the person's [licensing]; and*

*(ii) choose a suitable building practitioner from a list of licensed building practitioners; and*

*(iii) know how to contact the building practitioner; and*

*(iv) know which licensed building practitioners have been disciplined within the last 3 years; and*

*(b) to facilitate the administrative, disciplinary, and other functions of the Board and the Registrar under this Act.*

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<sup>12</sup> The Register is established under section 298 of the Act, its purposes are stated in section 299.



[29] Section 301 of the Act sets out the matters that must be contained in the Register, which includes their disciplinary history:

(1) *The Register must contain all of the following information, to the extent that the information is relevant, for each licensed building practitioner whose name is entered in the Register:*

(iii) *any action taken under section 318 on a disciplinary matter in respect of the person in the last 3 years:*

[30] The provisions make it clear that one of the purposes of the Register is to allow an informed consumer to choose a licensed building practitioner. Providing information as regards disciplinary action helps to facilitate this, and, in the Board's view, an informed consumer should be made aware of the Respondent's criminal history. A disciplinary finding enables that.

[31] The Board also noted that a Code of Ethics for Licensed Building Practitioners has been introduced, and it makes it clear that a high degree of professionalism is expected from Licensed Building Practitioners. Whilst the Code of Ethics was not in force at the time of the Respondent's conduct, it is indicative of a legislative intention to impose and enforce high standards.

### **Disrepute**

[32] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions<sup>13</sup>;
- honest mistakes without deliberate wrongdoing<sup>14</sup>;
- provision of false undertakings<sup>15</sup>; and
- conduct resulting in an unethical financial gain<sup>16</sup>.

[33] The Courts have consistently applied an objective test when considering such conduct.<sup>17</sup> The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.<sup>18</sup>

[34] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>19</sup> that the Respondent has brought the regime into

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<sup>13</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>14</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>15</sup> *Slack, Re* [2012] NZLCDT 40

<sup>16</sup> *Colliev Nursing Council of New Zealand* [2000] NZAR 7

<sup>17</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>18</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>19</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

disrepute and that conduct was sufficiently serious enough for the Board to make a disciplinary finding.<sup>20</sup>

- [35] As noted above, the conduct involved serious criminal offending. It was premeditated, and it involved a serious breach of public trust. The conduct was not, however, as serious as other matters that have come before the Board. As regards this matter, the Board finds that the conduct is distinguishable from that in *Sinclair* and in *Morrow*. Counsel submitted:

*... while Counsel accepts Mr Win's offending was moderate-serious and dishonest, the lack of personal aggravating factors for the offending, Mr Win's lack of previous convictions and the steps taken to actively remedy the situation upon being adjudicated bankrupt, means that Mr Win's conduct has not brought the regime into disrepute.*

- [36] By a narrow margin, the Board has accepted that submission and has decided that the Respondent has not brought the regime into disrepute. In coming to its decision, the Board has also taken into account that it has made a finding under section 317(1)(a) of the Act and that, in this instance, it considers that a finding under that section alone is sufficient.

### **Board's Decision**

- [37] The Respondent **has** breached section 317(1)(a) of the Act but **has not** breached section 317(1)(i) of the Act. The Board does note the commonality between the findings. For the purposes of considering the appropriate penalty, it will treat the two offences as a single matter.

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

- [38] 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.
- [39] 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.

### Penalty

- [40] The Board has the discretion to impose a range of penalties.<sup>ii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or

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<sup>20</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

aggravating factors present.<sup>21</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>22</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>23</sup>
- (b) deterring other Licensed Building Practitioners from similar offending;<sup>24</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>25</sup>
- (d) penalising wrongdoing;<sup>26</sup> and
- (e) rehabilitation (where appropriate).<sup>27</sup>

[41] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>28</sup> and applying the least restrictive penalty available for the particular offending.<sup>29</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>30</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>31</sup>

[42] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>32</sup>

[43] The Respondent has been punished by the Courts. He has accepted responsibility for his offending and is now working as a subcontractor. In terms of the reparation being made, it is important that the Respondent be able to continue to work. For those reasons, the Board decided that it would not impose a restrictive penalty.

[44] As noted in this decision, what is important is that those who seek to engage the Respondent to carry out building work as a Licensed Building Practitioner are made aware of his history and are able to make an informed decision. A censure will achieve that. As such, and on the basis that the Courts have already punished the Respondent, the Board will impose a censure which is a public expression of disapproval of his conduct.

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<sup>21</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>22</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>23</sup> Section 3 Building Act

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>25</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>26</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>27</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

<sup>28</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>29</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>30</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>31</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>32</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

## Costs

- [45] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>33</sup>
- [46] Ordinarily, the Board would seek costs in the range of \$500. However, as the Respondent is bankrupt and is paying reparation, the Board has decided that it will not make a costs order.

## Publication

- [47] 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>34</sup> and he will be named in this decision. The Board is also able, under section 318(5) of the Act, to order further publication.
- [48] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>35</sup> Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>36</sup>
- [49] Based on the above, the Board will not order further publication. In coming to that decision, the Board noted that there has already been media attention, and the Board does not consider that further publication is required.

## **Section 318 Order**

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

**Penalty:** Pursuant to section 318(1) of the Building Act 2004, the Respondent is censured.

**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 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.**

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<sup>33</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>34</sup> Refer sections 298, 299 and 301 of the Act

<sup>35</sup> Section 14 of the Act

<sup>36</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### **Submissions on Draft Decision**

- [51] 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.
- [52] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **14 June 2023**.
- [53] If submissions are received, then the Board will meet and consider those submissions.
- [54] 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.
- [55] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

### **Request for In-Person Hearing**

- [56] 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.
- [57] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **14 June 2023**.
- [58] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

### **Right of Appeal**

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

Signed and dated this 23<sup>rd</sup> day of May 2023.



**Mr M Orange**  
Presiding Member

**This decision and the order herein were made final on 16<sup>th</sup> June 2023 on the basis that no further submissions were received.**

Signed and dated this 30<sup>th</sup> day of June 2023.



**Mr M Orange**

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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 318 Disciplinary Penalties**

- (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*

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- (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 1 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.*

**iii 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.*