

Before the Building Practitioners Board

	BPB Complaint No. CB25772
Licensed Building Practitioner:	Nicholas Yardley (the Respondent)
Licence Number:	BP129520
Licence(s) Held:	Design 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 Type:	On the papers
Hearing and Decision Date:	24 April 2023
Finalised Decision Date:	6 June 2023

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr G Anderson, LBP, Carpentry and Site AoP 2

Appearances:

H Smith and S Hider 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.

Disciplinary Finding:

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

The Respondent is fined \$3,000 and ordered to pay costs of \$1,000. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary

[1] The Respondent was engaged to carry out design work and apply for a building consent for a new residential dwelling. A complaint was made alleging that the design work and building consent application were insufficient and incomplete. The Board appointed a Special Adviser to review the Respondent’s work. After reviewing the Special Adviser’s opinion, the Respondent accepted that he had been negligent but submitted that the conduct was not serious enough to warrant disciplinary action. The Board did not agree. It found that the Respondent’s conduct was serious and that he should be disciplined. The Board ordered that he pay a fine of \$3,000 and costs of \$1,000. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

[2] 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.¹

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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at OMITTED, have carried out or supervised building work (design work) in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.
- [4] The Board appointed a Special Adviser³ to assist the Board in its inquiries and at the hearing. Mr Ron Pynenburg, a Registered Architect, was appointed. He was instructed to review the original building consent application (as submitted and prior to any requests for information being issued) and to provide his expert opinion as to its quality and compliance. The Board gave notice that the matters it would further investigate under section 317(1)(b) of the Act at the hearing would be those identified in the Special Adviser's report.
- [5] The matter was originally set down for an in-person hearing. Following the issue of the Special Adviser's report, Counsel acting for the Respondent requested that the matter be dealt with on the papers. The request was granted, and timetable orders were issued. Both the Complaint and the Respondent were offered an opportunity to file submissions prior to the Board making its decision.

Evidence

- [6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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.
- [7] The complaint was about a building consent application developed by the Respondent for constructing a new residential dwelling. The Complainant alleged it was insufficient and incomplete.
- [8] The Special Adviser was asked to provide his opinion on various aspects of the Respondent's design and building consent application. The questions posed and responses provided are summarised as follows:⁵

Question	Special Adviser's Answer/Opinion
Whether the Respondent's design work was substandard	In my opinion, and based on my analysis below of the four relevant matters

² 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.

³ Pursuant to section 322(1)(d) of the Act

322 Board may hear evidence for disciplinary matters

(1) In relation to a disciplinary matter, the Board may—

(d) appoint any persons as special advisers to assist the Board (for example, to advise on technical evidence).

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁵ In addition to the following examples, the Special Advisers report provided detailed instances of each.

Question	Special Adviser's Answer/Opinion
	<p>raised by the Board, the design work was substandard.</p>
<p>Whether the building consent as originally applied for would, on reasonable grounds, have satisfied the provisions of the building code if the building work was properly completed in accordance with the plans and specifications that accompanied the application.</p>	<p>No.</p> <p>The Special Adviser provided reasons for his answer, including that there was:</p> <ul style="list-style-type: none"> • missing supporting information, such as structural engineer's design calculations, including bracing calculations; • no information such as for balustrades to the void in module 1, plumbing and drainage for the Laundry; • insufficient or conflicting information, such as floor slab foundation details and structural beams supporting first floor of module 1; • building work which, if built as shown, would be non-compliant, or could not be built as drawn (and therefore code compliance also could not occur), such as bathroom configuration in module 4 and dormer internal gutter
<p>Whether the building, as presented in the building consent as originally applied for, would, on reasonable grounds, have been able to have been constructed by a reasonable Licensed Building Practitioner.</p>	<p>No</p> <p>The opinion was based on two criteria. Was sufficient information provided from which a building element could be constructed by a reasonable Licensed Building Practitioner; and irrespective of information concerning a building element, was sufficient information provided from which building work could be constructed by a reasonable Licensed Building Practitioner.</p> <p>The Special Adviser noted and listed missing or conflicting information and areas where there was insufficient information.</p>

Question	Special Adviser’s Answer/Opinion
<p>Whether the design issues identified in Requests for Information (RFIs) should reasonably have been identified prior to the design being submitted for a building consent.</p>	<p>Yes</p> <p>The Special Adviser noted some of the RFIs related to the provision of manufacturer’s literature could reasonably not have been anticipated, but those related to the design and documentation should reasonably have been identified if the drawings and specification had been properly checked prior to the building consent application being made.</p>
<p>Whether the Respondent’s drawings and/or specifications were incomplete and/or did not relate to the specific building consent application</p>	<p>Yes</p> <p>The Special Adviser’s opinion was that, in general, the Respondent’s drawings and specification lacked sufficient accurate and coordinated information from which to either assess or construct the house. He noted it was a complex house with specific design applying for much of the structure as well as many of the architectural elements and features. He stated there is much still to be done to produce an adequate documentation set.</p>
<p>Whether the responses to the requests for information were dealt with appropriately and adequately.</p>	<p>No</p> <p>The Special Adviser noted the responses were made in a timely manner but that design and documentation matters, some responses were incomplete and/or non-compliant, with subsequent RFIs seeking further information that should have been included in the initial response.</p>

Negligence or Incompetence

[9] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁶ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of

⁶ *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.

the same class of licence. This is described as the *Bolam*⁷ test of negligence.⁸ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁹ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁰ If it does not, then a disciplinary finding cannot be made.

[10] The Respondent, when first presented with the complaint, denied any wrongdoing. It was submitted that there was a commercial dispute, the complaint was based on areas of dissatisfaction, minor errors and omissions were within the realm of a reasonable practitioner, and that the Respondent's design was used to build a house that had obtained a Code Compliance Certificate. Following the receipt of the Special Adviser's report, however, Counsel for the Respondent submitted:

2. *Mr Yardley accepts the Special Adviser's findings, but says he did not carry out the building work on 9 Longview Lane, Swannanoa (Property) in a negligent or incompetent manner that warrants disciplinary action under s 317(1)(b) of the Building Act 2004 (Building Act).*
3. *Discipline is not warranted because:*
 - (a) *The conduct was not sufficiently serious;*
 - (b) *The circumstances were unusual and are extremely unlikely to occur again; and*
 - (c) *Five years have elapsed since Mr Yardley responded to the RFIs and he has made significant improvements in his practice since then.*
4. *Publication is not required and Mr Yardley's name ought to be suppressed.*

[11] The Complainant, in response, submitted:

3. *During the building consent process, but particularly after building consent was obtained and construction had begun, it became abundantly clear, that the plans were incomplete and lacked sufficient*

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

⁸ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as "a demonstrated lack of the reasonably expected ability or skill level". In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as "an inability to do the job"

¹⁰ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] "Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness".

and/or had conflicting information, which meant the plans were incredibly confusing and in some cases incapable of being built from.

4. *This was unequivocally confirmed in the Special Adviser’s (“Mr Pynenburg”) Report. Mr Pynenburg’s findings and conclusions confirm the basis on which we have filed this complaint.*

[12] As noted above, the Board’s jurisdiction and the complaints process is inquisitorial. In this respect, whilst the Board will take submissions made by a Complainant into consideration, it has made its decision, in terms of the evidence, on the basis of the Special Adviser’s report.

Has the Respondent departed from an acceptable standard of conduct

[13] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act¹ as well as the requirement that all building work must comply with the Building Code¹¹ and any building consent issued.¹² The test is an objective one.¹³

[14] The Board also notes, with respect to design work, the provisions of section 14D of the Act, which states:

14D Responsibilities of designer

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

[15] The Special Adviser’s opinion was clear and firm. In his opinion, the Respondent’s design work had fallen below an acceptable standard. He concluded his opinion by stating:

In my opinion, the non-compliances are significant in that necessary and obvious information is missing for both compliance assessment and construction purposes in addition to the various documentation inadequacies listed in 4.3.19. A reasonable check or review of the documents prior to their submission for building consent would have made it obvious that much

¹¹ Section 17 of the Building Act 2004

¹² Section 40(1) of the Building Act 2004

¹³ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent’s subjective considerations.

remained to be done to produce a set of drawings and a specification that was suitable.

- [16] The Respondent has accepted the Special Adviser’s opinion and findings. The Board considers his acceptance to be appropriate and finds that the Respondent’s conduct did fall below that expected of a Licensed Building Practitioner with a Design AoP 2 Licence. In that respect, his conduct amounted to negligence. In making its finding, the Board did accept, by a narrow margin, that the Respondent had the required knowledge and skills but that he did not apply them in this instance. As such, the finding was one of negligence, not incompetence.

Was the conduct serious enough

- [17] Counsel for the Respondent submitted, with reference to Superior Court decisions, that the departure should not result in a disciplinary outcome:

Mr Yardley’s position is that there was no deliberate departure from accepted standards, nor was he indifferent to those standards. He appropriately acknowledges that, in hindsight, things could have been done better but a disciplinary sanction is not warranted in the circumstances.

- [18] Counsel submitted that, when taken in context, the conduct had not fallen seriously short of being acceptable. It was noted that the dwelling being designed was large and complex, and it was submitted that client pressures impacted. The Complainant disputed the later submission.

- [19] Counsel also submitted that the failings were: not deliberate, of little practical impact, unlikely to reoccur, and historical in nature. With respect to the time that had elapsed since the design work was carried out, Counsel referred to another matter that had come before the Board, where it decided that a design practitioner had not committed a disciplinary offence.¹⁴ The Board considered that decision was distinguishable as elapsed time was one only reason why the matter did not reach the seriousness threshold. The main reason was the involvement of other design professionals in the design failings. The matters raised may, however, go to mitigation.

- [20] The Board considered that the Respondent’s departures from an acceptable standard, whilst not deliberate, were serious. This was borne out by the Special Adviser’s opinion and his statement that: “the non-compliances are significant in that necessary and obvious information is missing for both compliance assessment and construction purposes in addition to the various documentation inadequacies”. Moreover, the Board does not have to find that the conduct was deliberate. Rather, the test is whether the conduct went beyond inadvertent error, oversight or carelessness, which it did. Again, the fact that it was not deliberate may go to mitigation.

¹⁴ Alan Simpkin [2021] BPB 25735

[21] In making this finding, the Board has noted that the Respondent was not aware of or willing to acknowledge the deficiencies in his design or his building consent application until such time as they were brought to this attention by the Special Adviser. The Board has also noted that many of the design failures were fundamental, and whilst the Respondent could and should have dealt with RFIs in a more effective manner, the substandard building consent application of itself would have been sufficient for the Board to make a disciplinary finding.

[22] In this respect, the Board considers that licensed building practitioners should be aiming to get design work right the first time and not to rely on the building consent authority to identify compliance failings and to assist them to get it right. The intention behind the legislative provisions were described by the responsible Minister during the first reading as follows:¹⁵

A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

[23] The same applies to design work. The licensed building practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The Minister went on to note:¹⁶

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

[24] The Board does not consider that the Respondent's initial building consent application lived up to those expectations.

¹⁵ Hansard volume 669: Page 16053

¹⁶ Hansard volume 669: Page 16053

Has the Respondent been negligent or incompetent

- [25] The Board finds that the Respondent has carried out building work (design work) in a negligent manner and that he should be disciplined.

Penalty, Costs and Publication

- [26] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [27] Counsel for the Respondent made written submissions, which indirectly addressed penalty, costs and publication. The Board has decided that it will make indicative orders and give the Respondent an opportunity to provide further submissions prior to it making a final decision.

Penalty

- [28] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ 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 aggravating factors present.¹⁷ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁸
- (a) protection of the public and consideration of the purposes of the Act;¹⁹
 - (b) deterring other Licensed Building Practitioners from similar offending;²⁰
 - (c) setting and enforcing a high standard of conduct for the industry;²¹
 - (d) penalising wrongdoing;²² and
 - (e) rehabilitation (where appropriate).²³
- [29] 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 cases²⁴ and applying the least restrictive penalty available for the particular offending.²⁵ In all, the Board should be looking to impose a fair, reasonable, and

¹⁷ *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]

¹⁸ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁹ Section 3 Building Act

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²³ *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

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

²⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty²⁶ that is consistent with other penalties imposed by the Board for comparable offending.²⁷

- [30] 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.²⁸
- [31] In this matter, the Board considered whether a restrictive penalty such as a suspension or a training order was warranted but decided, given the lapse of time and steps by the Respondent and the change in his working circumstances, that such a penalty was not required or appropriate. As such, the Board adopted a starting point of a fine. It has set the fine at \$3,000, an amount which is consistent with other penalties imposed by the Board for similar disciplinary offending and which it considers will deter future conduct. In setting the amount, the Board has taken into consideration the mitigating factors noted by Counsel the submissions filed.

Costs

- [32] 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.²⁹
- [33] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁰. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³¹.
- [34] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was complex. Adjustments are then made.
- [35] A matter such as this, if it was dealt with at a hearing, would incur a costs order of \$5,500. A Special Adviser has been appointed. Additional costs will not be sought to reimburse those expenses. The matter was dealt with on the papers. A reduction is warranted and, on that basis, the Board has decided that it will order the Respondent to pay the sum of \$1,000 toward the costs of and incidental to the Board's inquiry.

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁸ 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.

²⁹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁰ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³¹ *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.

Publication

- [36] 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,³² and he will be named in this decision which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [37] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³³ 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.³⁴
- [38] The Respondent has sought a suppression order.
- [39] The Board has found in previous decisions that it has, in certain respects, a summary jurisdiction. A summary jurisdiction is one in which the tribunal has a degree of flexibility in how it deals with matters and wherein it retains inherent jurisdiction beyond that set out in the enabling legislation.³⁵ On that basis, the Board considers that it does have the inherent jurisdiction to order the suppression of details relating to a hearing. Good grounds do, however, need to be shown as to why details should be suppressed.
- [40] The Criminal Procedure Act provides details on various grounds in respect of criminal matters. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³⁶. In *N v Professional Conduct Committee of Medical Council*,³⁷ the High Court stated the tribunal must be satisfied that suppression is desirable having regard to the public and private interests, and consideration can be given to factors such as:
- (a) issues around the identity of other persons such as family and employers;
 - (b) identity of persons involved and their privacy and the impact of publication on them; and
 - (c) the risk of unfairly impugning the name of other practitioners if the responsible person is not named.
- [41] Counsel has noted the impact publication may have on the Respondent and his work. The Board does not find that is a good reason. Accordingly, the details of this

³² Refer sections 298, 299 and 301 of the Act

³³ Section 14 of the Act

³⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

³⁵ *Castles v Standards Committee No.3* [2013] NZHC 2289 and *Orlov v National Standards Committee 1* [2013] NZHC 1955

³⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³⁷ *ibid*

matter will not be suppressed. Notwithstanding, the Board will not order publication over and above the Respondent being named in this decision, which will be published on the Board's website, and a record of the offending being noted in the Register.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision, which will be published on the Board's website.

[43] 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

[44] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **5 June 2023**. 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.

Right of Appeal

[45] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 15 day of May 2023

A handwritten signature in black ink, appearing to be 'NY', written in a cursive style.

M Orange
Presiding Member

Signed and dated this 15 day of June 2023



M Orange
Presiding Member

This decision and the order herein were made final on 15 June 2023 on the basis that no further submissions were received.

ⁱ Section 3 of the Act

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.*

ⁱⁱ 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."*

iii 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*
 - (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.*

iv 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.*