

Before the Building Practitioners Board

	BPB Complaint No. CB26450
Licensed Building Practitioner:	John Addison (the Respondent)
Licence Number:	BP103535
Licence(s) Held:	Carpentry

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

Complaint or Board Inquiry	Board Inquiry
Hearing Location	On the papers
Hearing and Draft Decision Date:	6 May 2024
Finalised Draft Decision Date:	18 July 2024

Board Members Present:

Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
Mrs J Clark, Barrister and Solicitor, Legal Member
Mr P Thompson, LBP, Carpentry, Site AoP 3, Quantity Surveyor

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 Board finds that the Respondent **has** breached section 317(1)(a) of the Act. He is censured and ordered to pay costs of \$875. The decision will be recorded in the Register of Licensed Building Practitioners for a period of three years.

Contents

Summary of the Decision	2
The Charges	3
Draft Decision Process	3
Evidence	4
Section 317(1)(a) – Criminal Convictions	5
The Conviction.....	6
Fitness	6
Consideration of Fitness	7
Board’s Decision	9
Penalty, Costs and Publication	9
Penalty	9
Costs	11
Publication.....	11
Section 318 Order	12
Submissions on Draft Decision	12
Request for In-Person Hearing	13
Right of Appeal	13
This decision and the order herein were made final on 18 July 2024 on the basis that no further submissions were received.	13

Summary of the Decision

- [1] The Board instigated an Inquiry into the conduct of the Respondent. The allegation was that the Respondent had been convicted, while he was licensed by a court in New Zealand of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on his fitness to carry out or supervise building work (section 317(1)(a) of the Act).
- [2] Consideration of the alleged disciplinary offence required that the Board consider two elements. The first was whether the Respondent had been convicted of a criminal offence that met the 6-month imprisonment threshold.
- [3] The Board found that it had, as the Respondent pleaded guilty to a charge under section 338(1)(b) of the Resource Management Act 1991. That offence carries a maximum penalty of imprisonment for a term not exceeding two years or a fine not exceeding \$300,000.
- [4] The second element required a forward-looking assessment of the Respondent’s fitness. The Board found that the offending was at the lower end of criminal

offending but was directly related to the work for which the Respondent holds a licence. Further, the Respondent lacked insight into his offending. On the basis of those factors, the Board decided that it would be appropriate for the Respondent, who is currently licensed, to be censured.

The Charges

- [5] The Board’s 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
- [6] The matter came before the Board as a Board Inquiry initially on the grounds that the Respondent may have breached section 317(1)(i) of the Act, in that he may have conducted himself in a way that brought the Licensed Building Practitioner’s scheme into disrepute. The Board did not pursue that allegation because it decided that the alleged offending was more appropriately considered under section 317(1)(a) of the Act.
- [7] The allegation that the Board resolved to consider was that the Respondent may have been convicted, whether before or after he was 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 his fitness to carry out or supervise building work (section 317(1)(a) of the Act).

Draft Decision Process

- [8] 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.
- [9] Ordinarily, the Board makes a decision having held a hearing.² 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.³
- [10] 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

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.

² Regulation 10 of the Complaints Regulations.

³ 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

decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

Evidence

- [11] 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.
- [12] In April 2008, the Respondent applied to the Council for building consent to construct, on his 2.99ha lifestyle property, a new implement shed with an attached lunchroom, including a toilet and handbasin. The Council advised that, as described, the building may be considered an additional dwelling and require Resource Consent. After further communication between the Respondent and the Council, the Respondent stated, *“the building would be a shed and a lunchroom and therefore would not be rented or used for habitable purposes, and he advised that “his business was as a builder and so the use was self-explanatory.”*
- [13] The Council then issued a building consent and the implement shed with lunchroom, toilet and handbasin was built.
- [14] Following a complaint in 2009 that the shed was being used as a dwelling the Respondent was prosecuted in the District Court⁵, convicted and fined the sum of \$7,682. Included in that judgment was an enforcement order which stated -
- “...The terms of the enforcement order will be that you are prohibited from permitting the implement shed at [OMITTED] to be used as a dwelling, unless you obtain resource consent allowing such use.”*
- [15] In September 2022, the Council received a further complaint that the shed was being lived in and this was confirmed by a Council inspection officer. In response at the time the Respondent said firstly that *“it was just being used as a smoko room”* and then that someone had moved in *“the previous Sunday.”* The Respondent subsequently confirmed to the Council Officer that he had a tenant living in the shed paying rent.
- [16] When the Council officer put to the Respondent that he had been previously prosecuted for using the shed as a dwelling, the Respondent stated, *“that occurred 20 years ago and he had seen pamphlets issued by the Council allowing for additional housing on properties, so he thought that it was alright to use the shed as a dwelling now.”*
- [17] In a formal interview with the Council officer the Respondent further stated:

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

⁵ *Western Bay of Plenty District Council v [the Respondent]* DC Tauranga CRI-2009-070-003761, 23 July 2010.

- (a) He did not ignore the enforcement officer but thought that the rules had been relaxed;
- (b) He was renting the shed as a favour and the tenant was the first in the shed since 2011 and had only been in there three days before the Council inspection; and
- (c) He subsequently admitted that his son had lived in the implement shed for 12 months at some stage before the current tenant.

[18] The Respondent pleaded guilty to a charge under section 338(1)(b) of the Resource Management Act 1991 that he contravened or permitted a contravention of an enforcement order⁶. He was convicted in the District Court on 29 November 2023 and ordered to pay a fine of \$28,875.

[19] In his sentencing notes, Judge D A Kirkpatrick commented⁷

“I assess the defendant’s culpability as high, as he was aware the shed could not be used as a dwelling due to the previous prosecution and the enforcement order made in 2010. It is also of note that the defendant attempted to conceal the illegal use of the shed, initially telling Council officers that it was just a smoko room and then that his son occupied the shed for a period of six months when it was in fact occupied for longer...His interactions with the Council enforcement officer tend to indicate that he was aware that the tenancing of the building was not lawful...While I accept that the shed had only been used as a dwelling for a short period on this occasion, I agree that this is probably only due to the Council investigation identifying the illegal use of the shed. I also note that the defendant has also admitted the shed was used as a dwelling by his son for a period of around 12 months.”

[20] At the time of the Respondent’s conviction, the Respondent was, and continues to be, a Licensed Building Practitioner.

Section 317(1)(a) – Criminal Convictions

[21] 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, 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. The second element of the disciplinary charge 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.

⁶ Western Bay of Plenty District Council v [the Respondent] DC Tauranga CRI-2009-070-003761, 23 July 2010.

⁷ Ibid at paras 36 and 37

The Conviction

- [22] The Respondent has been convicted of an offence that is punishable by imprisonment for more than six months. The first element of the offence has been satisfied. As such, the Board will consider the second element, the Respondent's fitness.

Fitness

- [23] This element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.
- [24] The Supreme Court decision *New Zealand Law Society v Stanley*⁸ is the leading case. It involved a person seeking to be admitted as a barrister and solicitor who had previous convictions and consideration of whether he was a fit and proper person. The decision noted:

[35] The first point to note is the obvious one. That is, the fit and proper person standard has to be interpreted in light of the purposes of the Act.

- [25] The purposes of the Building Act include providing for the establishment of a licensing regime for building practitioners, and 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.⁹ In furthering those purposes, the disciplinary regime was established, and more recently, a Code of Ethics has been introduced by Order in Council.¹⁰
- [26] The Supreme Court also noted that the fit and proper person evaluation is a forward-looking exercise and that it is a matter of undertaking an "evaluation as to the risks to the public or of damage to the reputation of the profession" if, in the Respondent's case, he was to retain his licence.¹¹ The evaluation is an objective exercise in that the Board should not be influenced by sympathy for the Respondent,¹² and it is a protective exercise, not a punitive one.¹³
- [27] The Supreme Court summarised the relevant principles as follows:

[54] From this discussion, the relevant principles can be summarised in this way:

- (a) The purpose of the fit and proper person standard is to ensure that those admitted to the profession are persons who can be entrusted to meet the duties and obligations imposed on those who practise as lawyers.*

⁸ [2020] NZSC 83

⁹ Section 3 of the Building Act 2004.

¹⁰ Building (Code of Ethics for Licensed Building Practitioners) Order 2021 which came into effect on 25 October 2022.

¹¹ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [38]

¹² *New Zealand Law Society v Stanley* [2020] NZSC 83 at [39]

¹³ *Ibid* [40]

- (b) *Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to maintain public confidence in the profession.*
- (c) *The evaluation of whether an applicant meets the standard is a forward looking exercise. The Court must assess at the time of the application the risk of future misconduct or of harm to the profession. The evaluation is accordingly a protective one. Punishment for past conduct has no place.*
- (d) *The concept of a fit and proper person in s 55 involves consideration of whether the applicant is honest, trustworthy and a person of integrity.*
- (e) *When assessing past convictions, the Court must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Court must look at all of the evidence in the round and make a judgement as to the present ability of the applicant to meet his or her duties and obligations as a lawyer.*
- (f) *The fit and proper person standard is necessarily a high one, although the Court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law.*
- (g) *Finally, the onus of showing that the standard is met is on the applicant. Applications are unlikely to turn on fine questions of onus.*

[28] The Board also notes that whilst the Supreme Court stated that the onus is on the applicant to show that the fitness standard has been met, the Board considers, within the context of a disciplinary matter, that it is for the Board to determine, on the balance of probabilities, whether the Respondent is or is not a fit person. Put another way, the Respondent does not carry the burden of proof.

Consideration of Fitness

[29] The Respondent was invited to give a written response to the Board Inquiry and did not do so. Instead, he spoke to an Investigator by telephone on two occasions and advised -

- (a) He was unsure why the Board had opened a complaint against him.
- (b) *“It has nothing to do with JMA Construction Limited it is a trust where the shed is on, and I can rent it to anyone I want, and it has nothing to do with you guys”.*
- (c) The Board can do whatever they like, but it has nothing to do with them.

[30] The Respondent was described by the Investigator as having a displeased tone of voice and using *“strong negative language”*.

[31] The Respondent seems by these statements to believe he can still rent the shed as a dwelling. His lack of understanding and insight into his offending after two prosecutions is concerning.

[32] An assessment of fitness is a forward-looking assessment taking into consideration conduct that occurred in the past. It is the Respondent's future fitness that must be assessed. In *Stanley*, the Supreme Court put it as:

[45] ... the decision maker is essentially trying to assess whether the convictions remain relevant to whether the applicant meets the fit and proper person standard and, if so, to what extent the conduct remains relevant at the time of the current inquiry. The inquiry into relevance will commonly require consideration of the circumstances of the offending and of whether the applicant can be seen to have moved on in the sense of being either reformed or having undertaken steps towards rehabilitation. Alternatively, there may be other features of character which mean that the convictions should assume less relevance. That it is not always easy to draw the line emphasises the fact-specific nature of the inquiry.¹⁴

[33] An assessment of fitness is not, however, an evaluation of a person's competence. The factors outlined in *Stanley* that must be considered are whether:

- (a) the Respondent can be entrusted to meet the duties and obligations imposed on a Licensed Building Practitioner.
- (b) the need to protect the public and to maintain public confidence in the Licensed Building Practitioner regime.
- (c) the risk of future misconduct or of harm to the Licensed Building Practitioner regime; and
- (d) whether the Respondent is honest, trustworthy and a person of integrity.

[34] Looking at those factors and noting the response received, the Board formed the view that the Respondent does not appear to have full insight into the impact of his offending on his position as a Licensed Building Practitioner. It is of concern that a Licensed Building Practitioner has considerable interaction with Territorial Authorities and the regulatory environment, and the Respondent has shown a disregard for abiding by these requirements. There is a direct relationship between the type of offending and the Respondent's work as a Licensed Building Practitioner with a Carpentry licence.

[35] When faced with the situation the Respondent, according to the sentencing notes, has not immediately been forthcoming in his explanations. The Board has also considered the Judge's categorisation of the Respondent's culpability as being high.

¹⁴ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [45]

- [36] Almost two years has passed since the latest offending was discovered by the Council Officer. In that time, the Respondent may have stayed on the right path. However, given the cavalier response to this Board Inquiry, the Board is yet to be convinced that the Respondent can be trusted to meet the duties expected of a Licensed Building Practitioner, which now includes complying with an extensive Code of Ethics.
- [37] The main factors, from a licensing perspective, are the need to protect the public, maintain public confidence, and to minimise the risk of future misconduct or harm to the Licensed Building Practitioner regime. Looking at those factors and at the Respondent's offending, the Board is of the view that there is an unacceptable risk in respect of those factors, and it has decided that the Respondent is not a fit person.
- [38] In making this decision, the Board has not taken the Respondent's skill and abilities as a carpenter into account. It is not his abilities that are in question. What has to be determined is whether he is a fit person, which the Board has found he is not.
- [39] Accordingly, the Board finds that the second element of section 317(1)(a) has been established in that the convictions reflect adversely on the Respondent's fitness to carry out or supervise building work or building inspection work. The disciplinary offence has been committed.
- [40] The Board does, however, recognise that the Respondent may yet prove himself to be a fit person. For that reason, its penalty order will take that possibility into account.

Board's Decision

- [41] The Respondent **has** breached section 317(1)(a) of the Act.

Penalty, Costs and Publication

- [42] Having found that the Respondent has breached section 317(1)(a) of the Act, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [43] 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

- [44] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.¹⁵ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁶

- (a) protection of the public and consideration of the purposes of the Act;¹⁷
- (b) deterring other Licensed Building Practitioners from similar offending;¹⁸
- (c) setting and enforcing a high standard of conduct for the industry;¹⁹
- (d) penalising wrongdoing;²⁰ and
- (e) rehabilitation (where appropriate).²¹

[45] 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 cases²² and applying the least restrictive penalty available for the particular offending.²³ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²⁴ that is consistent with other penalties imposed by the Board for comparable offending.²⁵

[46] 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.²⁶

[47] The Board adopted a starting of a formal censure. It did so because of the relationship between the offending and the work of a Carpentry Licensed Building Practitioner and the need to protect the public and uphold the purposes of the Building Act.

[48] There is a pattern to the Respondent's behaviour which demonstrates a disregard for regulation. This is not an acceptable attitude for a Licensed Building Practitioner, and the public should be aware of the Respondent's behaviour.

[49] The Board has taken into account that the Respondent was punished for his criminal offending. It does, however, note that the purpose of the penalty action it takes is, amongst those items noted above, to uphold the purposes of the Act and to protect the public. The Courts cannot take action as regards the Respondent's licence. The

¹⁵ *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]

¹⁶ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁷ Section 3 Building Act

¹⁸ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²¹ *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

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

²⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁶ 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.

Board can. Moreover, in terms of double jeopardy, the Supreme Court in *Z v Dental Complaints Assessment Committee*²⁷ held that professional disciplinary proceedings provide a different utility to criminal proceedings, and the sanctions imposed as a result of disciplinary proceedings are focused on public protection, not punishment.

[50] Taking those factors into account, and noting the Board's sanction should be the least required to give effect to the purposes of imposing a penalty, the Board has decided that it will censure the Respondent. A censure is a formal expression of disapproval.

Costs

[51] 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.²⁸

[52] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁹. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁰.

[53] 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. Adjustments are then made. The current matter was moderate and has been decided on the papers.

[54] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$875 toward the costs of and incidental to the Board's inquiry.

Publication

[55] 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,³¹ and he will be named in this decision, which will be available on the Board's website.

[56] The Board can, under section 318(5) of the Act, to order further publication. Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³² 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

²⁷ [2009] 1 NZLR 1, [2008] NZSC 55 at [97]

²⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁰ *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.

³¹ Refer sections 298, 299 and 301 of the Act

³² Section 14 of the Act

stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.³³

- [57] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

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

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

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$875 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

Submissions on Draft Decision

- [59] 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.

- [60] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **17 July 2024**.

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

- [62] 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.

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

³³ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

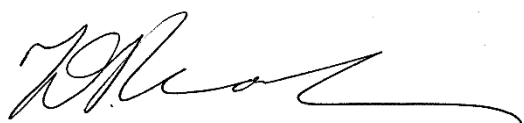
Request for In-Person Hearing

- [64] 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.
- [65] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **17 July 2024**.
- [66] 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

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

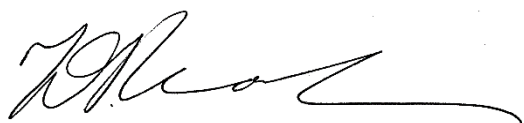
Signed and dated this 25th day of June 2024.



Mrs F Pearson – Green
Presiding Member

This decision and the order herein were made final on 18 July 2024 on the basis that no further submissions were received.

Signed and dated this 13th day of August 2024.



Mrs F Pearson – Green
Presiding Member

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 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.*

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.*