

## Before the Building Practitioners Board

	BPB Complaint No. CB26383
Licensed Building Practitioner:	Michael Benson (the Respondent)
Licence Number:	BP104055
Licence(s) Held:	Carpentry

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Christchurch
Hearing Type:	In Person
Hearing and Decision Date:	26 November 2024
Board Members Present:	

M Orange, Chair, Barrister (Presiding)  
Mr G Anderson, LBP, Carpentry and Site AoP 2  
Mr P Thompson, LBP, Carpentry and 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 Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

The Respondent **has not** committed disciplinary offences under sections 317(1)(c) or (i) of the Act.

The Respondent is censured and ordered to pay costs of \$850. 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 carried out substantial amounts of building work that required consent without one being in place. Because he was a person who should have known that a consent was required and ensured that one was in place before the building work commenced, the Board found that he had conducted himself in a negligent manner. The Board censured the Respondent for his conduct and ordered that he pay costs of \$850. A censure was imposed on the basis that there were mitigating factors and surrounding circumstances that meant a fine was not appropriate.
- [2] The Board also decided that the Respondent had not breached section 317(1)(c) of the Act, because no restricted building work had been undertaken and had not breached section 317(1)(i) because there was insufficient evidence to make a finding.

## The Charges

- [3] 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>

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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.

- [4] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [Omitted], Christchurch, have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have failed to ensure an approved building consent and resource consent were in place before building work was commenced;
  - (b) carried out or supervised restricted building work of a type that he is not licensed to carry out or supervise contrary to section 317(1)(c) of the Act, IN THAT, he may have undertaken design work in relation to roof structures, retaining walls, decks, lintels and foundations that he is not licensed to carry out or supervise; and
  - (c) 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, IN RESPECT OF his actions, attitude and responses to the unconsented building work.
- [5] At the commencement of the hearing, the Board informed the Respondent that it would not further investigate the allegation under section 317(1)(c) of the Act because the disciplinary provision only applies to carrying out or supervising restricted building work. Section 401B of the Act allows building work to be declared as restricted building work by Order in Council<sup>3</sup>, but it limits the type of work that can be declared to be restricted as only that carried out under a building consent. Because a building consent had not been obtained for the building work under investigation, it followed that section 317(1)(c) could not apply.
- [6] The hearing proceeded on the basis that only the allegations under sections 317(1)(b) and (i) of the Act would be investigated.

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<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>401B *Order in Council declaring work to be restricted building work*

- (1) *The Governor-General may, by Order in Council made on the recommendation of the Minister, declare any kind of building work (other than building work for which a building consent is not required) or any kind of design work to be restricted building work.*
- (2) *An order under subsection (1) may apply to any kind of building work or design work generally, or may apply to building work or design work in relation to particular types or categories of buildings or to particular parts of buildings.*
- (3) *The Minister may recommend the making of an order under this section only if the Minister is satisfied that the kind of building work or design work in question is (or is likely to be) critical to the integrity of a building or part of a building.*
- (4) *Building work or design work is not restricted building work if it relates to an application for a building consent made before the commencement of an order under subsection (1) declaring building work or design work of the same kind to be restricted building work.*

### Consolidation

- [7] The Board may, under Regulation 13, consolidate two or more complaints into one hearing but only if the complaints are, in the opinion of the Board, about substantially the same subject matter and the complainant and the licensed building practitioner in respect of each complaint agree to the consolidation.
- [8] The Board sought agreement for consolidation of this matter with Board Inquiry CB[Omitted]. The consent of all those involved was forthcoming. The two matters were consolidated.

### Evidence

- [9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>4</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.
- [10] The building work under investigation related to alterations and additions to an existing dwelling and garage being undertaken by the owner, an experienced developer and qualified builder. The owner had obtained initial concept plans and engineering designs and had discussed them with the Christchurch City Council who were acting as the Building Consent Authority (BCA). The owner was informed of the need for resource standing or building consents at the meeting. Notwithstanding, a decision was made to proceed without any consents.
- [11] After the building work had been completed, the BCA investigated the unconsented building work. The Respondent was interviewed by the BCA. He admitted carrying out building work that fell outside of the available exemptions in Schedule 1 of the Building Act (meaning that a building consent was required). The specific work related to recladding, new exterior joinery, the construction of a workshop under a garage, new decks and retaining wall, a stand-alone shed and alterations to the main dwelling. The Respondent reaffirmed his admissions at the hearing.
- [12] Following the interview, the Christchurch City Council laid a complaint with the Board. The Council also informed the Board that the Respondent and the owner of the property were being prosecuted under section 40 of the Act in the District Court. Those proceedings have not been completed.
- [13] In response to the complaint, the Respondent outlined that he had done a considerable amount of work for the owner over the past 20 years and that the owner, who is a developer, normally organises designs, engineers, and consents. He stated he had some plans to work from and that it was not until after the work was complete that he noted the plans were not stamped building consent plans. He outlined that he is assisting the owner to get a Certificate of Acceptance (CoA) for the building work.

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [14] The Board also received evidence at the hearing that a designer and an engineer had been engaged, and both had provided preliminary designs and calculations.
- [15] The Respondent outlined the nature of his engagement by the owner. He stated, and the owner confirmed, that he is engaged on a labour-only basis and that the owner directs how the building work will be carried out and completed. The Board noted a marked power imbalance between the owner and the Respondent. The owner made it clear that he tells his contractors what they are to do and expects them to do it as directed.
- [16] The Board accepted that there were no quality issues with how the Respondent's building work was completed. The issues under investigation were limited to those relating to a lack of a building consent for the building work.

### **Negligence**

- [17] As noted, the Board's considerations related to a possible failure to ensure a building consent was in place prior to building work being carried out.
- [18] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.<sup>5</sup> The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken<sup>6</sup> and that the consented work is then assessed against the consent issued through scheduled inspections.<sup>7</sup> In *Tan v Auckland Council*<sup>8</sup> the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:

*[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.*

*[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*

- [19] The Respondent falls into the category of a person who was in the best position to ensure unconsented work did not occur. As such, he had a duty to assess whether a building consent was required prior to the building work being undertaken. The question then becomes, was the Respondent negligent for failing to do so?
- [20] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>9</sup> that the Respondent departed from an accepted standard

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<sup>5</sup> Refer sections 40, 41 and 42A of the Act.

<sup>6</sup> Section 49 of the Act.

<sup>7</sup> Section 222 of the Act.

<sup>8</sup> [2015] NZHC 3299 [18 December 2015]

<sup>9</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.

of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*<sup>10</sup> test of negligence.<sup>11</sup> A threshold test also applies. It is not enough that the Respondent has been negligent. The Board must also decide if the conduct fell seriously short of expected standards. If it does not, then a disciplinary finding cannot be made. The test has been described as follows by Justice Gendall in *Collie v Nursing Council of New Zealand*<sup>12</sup> as:

*[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.*

[21] In *Pillai v Messiter (No 2)*,<sup>13</sup> an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, it was described as:

*... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.*

[22] The Respondent has accepted that he carried out building work without a building consent. In doing so, his conduct has fallen below what is considered to be an acceptable standard. The question for the Board was whether the departure was sufficiently serious to warrant a disciplinary outcome.

[23] The building work carried out by the Respondent was extensive, and it should have been obvious that the plans he was working from were not consented because consented plans have a very obvious large stamp on them. Further, if the documentation he was using had been consented, he would have also been provided with specifications and manufacturer's documentation, which form part of a building consent package. Also, if a building consent had been in place, it would have been a requirement to call for building inspections as the building work progressed. Again, that did not occur.

[24] The Board does accept that the Respondent deferred to the owner and took his direction and that there was a power imbalance between them. That, however, is a matter that goes to mitigation and does not negate the Respondent's departure from an acceptable standard or the seriousness of that departure. Accordingly, the Board finds that the Respondent has conducted himself in a negligent manner.

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<sup>10</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>11</sup> 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)

<sup>12</sup> [2001] NZAR 74

<sup>13</sup> (1989) 16 NSWLR 197 (CA) at 200

[25] It should also be noted that the CoA process does not negate the conduct as, whilst a CoA can be granted by a BCA, it does not relieve a person from the obligation to ensure building work is carried out under a building consent. Section 96(3) of the Act specifically provides:

**96 Territorial authority may issue certificate of acceptance in certain circumstances**

(3) This section—

(a) does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and

(b) accordingly, does not relieve a person from the requirement to obtain a building consent for building work.

### Disrepute

[26] The Board also investigated whether the Respondent had brought the licensing regime into disrepute. The original complaint had alleged a breach of the Code of Ethics, but it was not in force at the time of the conduct, so a charge under it could not be considered.

[27] 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>14</sup>;
- honest mistakes without deliberate wrongdoing<sup>15</sup>;
- provision of false undertakings<sup>16</sup>; and
- conduct resulting in an unethical financial gain<sup>17</sup>.

[28] The Courts have consistently applied an objective test when considering such conduct.<sup>18</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>19</sup>

[29] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,<sup>20</sup> that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.<sup>21</sup>

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<sup>14</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>15</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>16</sup> *Slack, Re* [2012] NZLCDT 40

<sup>17</sup> *Collie v Nursing Council of New Zealand* [2000] NZAR 7

<sup>18</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>19</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>20</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.

<sup>21</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

[30] The specific conduct the Board gave notice that it would investigate was the Respondent's actions, attitude and responses to the unconsented building work. The evidence heard at the hearing did not establish conduct of the type or nature noted above. As such, the Board decided that the Respondent had not breached section 317(1)(i) of the Act.

### **Board's Decisions**

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

[32] The Respondent **has not** committed disciplinary offences under sections 317(1)(c) or (i) of the Act.

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

[33] 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.

[34] The Respondent made submissions at the hearing regarding penalty, costs and publication.

### Penalty

[35] 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 aggravating factors present.<sup>22</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>23</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>24</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>25</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>26</sup>
- (d) penalising wrongdoing;<sup>27</sup> and
- (e) rehabilitation (where appropriate).<sup>28</sup>

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<sup>22</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>23</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>24</sup> Section 3 Building Act

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

<sup>26</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

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

<sup>28</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



- [36] 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>29</sup> and applying the least restrictive penalty available for the particular offending.<sup>30</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>31</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>32</sup>
- [37] 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>33</sup>
- [38] Ordinarily, where the Board makes a finding that building work has proceeded without a building consent, it imposes a fine. It is noted, however, that there are ongoing proceedings in the District Court that are related to the same matters. Under section 318(3) of the Act, the Board cannot impose a fine in relation to act that constitutes an offence for which the person has been convicted by a court. Whilst the Respondent has not yet been convicted, the Board considered imposing a fine would be inappropriate, knowing that proceedings are underway.
- [39] The Board also noted that there were significant mitigating factors. First, the Respondent accepted that he had carried out building work that required a building consent without one. He is entitled to a reduction in any penalty for his admission. Second, the Respondent has cooperated with the Christchurch City Council and the Board's investigation. Third, the Board has noted the power imbalance in the relationship between the owner and the Respondent and that the building work meets Building Code compliance.
- [40] Taking all of the above into consideration, the Board decided that the Respondent should be censured. A censure is a public expression of disapproval of conduct.

#### Costs

- [41] 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>34</sup>

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<sup>29</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>30</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

<sup>32</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>33</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.

<sup>34</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [42] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>35</sup>. The starting point can then be adjusted up or down with regard to the particular circumstances of each case<sup>36</sup>.
- [43] 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 simple. Adjustments are then made.
- [44] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$850 toward the costs of and incidental to the Board's inquiry. This is half the Board's scale amount for a simple matter determined on-the-papers. The Board decided that it would impose costs as if the matter was dealt on-the-papers given the Respondent's admission and to acknowledge that the matter could have been dealt with without the need for a hearing. The Board then reduced the scale costs by one-half because it was a consolidated hearing.

#### Publication

- [45] 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>37</sup> 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.
- [46] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>38</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>39</sup>
- [47] 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.

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<sup>35</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>36</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>37</sup> Refer sections 298, 299 and 301 of the Act

<sup>38</sup> Section 14 of the Act

<sup>39</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Section 318 Order

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

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

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$850 (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.**

[49] 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.

## Right of Appeal

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

Signed and dated this 7<sup>th</sup> day of January 2025.



**Mr M Orange**  
Presiding Member

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

- (1) *In any case to which section 317 applies, the Board may*
- (a) *do both of the following things:*
    - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*

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- (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.*