

Before the Building Practitioners Board

	BPB Matter No. CB26444
Licensed Building Practitioner:	Toby William Sandbrook (the Respondent)
Licence Number:	BP125412
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 Type:	On the Papers
Hearing and Draft Decision Date:	30 April 2024
Finalised Draft Decision Date:	20 June 2024

Board Members Present:

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

Procedure:

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

Disciplinary Finding:

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

The Respondent's licence is cancelled. He may not apply to be relicensed for a period of two and a half years.

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Summary of the Board’s Decision

[1] The Respondent was convicted of serious criminal offending and was sentenced to a period of home detention. The nature of the criminal charges and the penalties imposed meant that the Respondent had breached section 317(1)(a) of the Act, which relates to committing criminal charges that reflect adversely on a person’s fitness to carry out or supervise restricted building work. The Board decided that it would be appropriate that the Respondent, who is not currently licensed, not be able to be licensed for a period of two and a half years so that he can work under supervision or on building work that is not restricted and establish that he is a fit person to be licensed.

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
- [3] In this matter, the disciplinary charge the Board resolved to further investigate² was whether the Respondent may have been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more, and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work contrary to section 317(1)(a) of the Act.

Draft Decision Process

- [4] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [5] Ordinarily, the Board makes a decision having held a hearing.³ 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.⁴
- [6] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

Evidence

- [7] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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.

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 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 Regulation 10 of the Complaints Regulations.

⁴ 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

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [8] The Respondent was found guilty at a defended hearing in August 2023 of one representative charge brought under the Films, Videos and Publications Classification Act 1993. The charge was:

That in or about 16 April 2021, without lawful authority or excuse, you had in your possession objectionable publications, namely recordings of children aged from between two to 14 years, engaged in sexual acts with others including adults, knowing or having reasonable cause to believe that the publications were objectionable.

- [9] The Respondent was sentenced in November 2023 in the District Court at Hamilton.⁶ The sentencing Judge noted:

[4] This offending was detected following the execution by the police of a search warrant at your property, not because they suspected that you had objectionable publications but because of a concern that you had committed certain firearm offences. Indeed, you had committed certain firearm offences which were ascertained at the time of that search. You were convicted of a number of charges relating to the possession of prohibitive firearms and ammunition and sentenced in this court on 23 September 2022, to seven months' home detention.

- [10] The Board, as part of its investigations, obtained a Criminal and Traffic History from the Ministry of Justice. The history dates back to 1997, when the Respondent, who is now 44, was 17 years old. The history discloses a high number of traffic and criminal convictions. Most of the criminal convictions occurred in or about 2020 to 2022. They involved multiple property and firearms convictions, as well as a conviction for resisting police and one for failing to comply with the conditions of a protection order. The history disclosed multiple convictions for crimes that carried a maximum penalty of more than six months imprisonment and which came within the parameters of section 317(1)(a) of the Act.

- [11] The Respondent, in his response to the Board's investigations, submitted:

I can hereby acknowledge that after hiring a visibly "rough" guy who turned out to be a gang member, I ended up in the position of drug taking and all the horrific spin-offs that unfortunately go with it. This situation is hard to describe, but it is almost impossible to get out of. I had an infatuation with firearms that ended with me being labelled a "go-to guy" for gangs dealing guns. Personally, I see this statement as quite a stretch, but understand how the dots were joined to draw this conclusion.

In regard to the matter of the sexual images, these were present on the laptop belonging to a person who I would describe as a "scumbag" who I

⁶ New Zealand Police v Toby William Sandbrook [2023] NZDC 25629

helped by providing accommodation in the loft above my workshop. This person would later testify against me claiming it was indeed my laptop.

I fully realise that it is wholly my actions that led me into this predicament but implore you to allow me to continue to rebuild my life. I am making very good progress in this regard and am hoping to continue my career as a builder later this year.

My actions have had no impact whatsoever on my quality of workmanship, of which I am very proud.

- [12] The Respondent's submission and attempt to distance himself from the offending was rejected by the District Court. The Sentencing Judge noted:

[8] Your defence was primarily advanced on the basis that you had no knowledge that such images were on your laptop. You blamed criminal associates that you were involved with at the time and indeed asserted that you were framed. That assertion continues through the report of the Probation Service.

[9] That defence was rejected by me for reasons more exactly set out in the decision I gave at the time and indeed now I am able to say that I considered it was a desperate attempt by you to avoid being identified as someone with prurient interests in pornography involving young girls.

[10] This is serious offending of its type. It could have been more serious if there was what is described as extreme child pornography, involving penetration. That really saves you from a prison sentence today.

- [13] The Judge also referenced the Respondent being a go-to person for firearms dealings and to his firearms convictions.⁷

- [14] The Judge went on to note:

[13] At the time you were apprehended, you were of course a relatively successful builder, you owned your own home, you were married and the father of two young children. However, it is abundantly clear to me that you had lost your way. You came from a good home, you had a good upbringing with plenty of advantages, and yet you had this fascination for the criminal underworld that has brought you to this sorry position. It has ended up with you losing your home, losing your family and losing your business.

- [15] The Judge noted that the Respondent had disassociated himself from his former criminal associates and elements.⁸

- [16] The Judge's penalty starting point was a term of 20 months imprisonment. Taking various mitigating factors into account, he sentenced the Respondent, who was

⁷ *New Zealand Police v Toby William Sandbrook* [2023] NZDC 25629 at [12]

⁸ *New Zealand Police v Toby William Sandbrook* [2023] NZDC 25629 at [17]

already on home detention for firearms convictions, to eight months home detention.

[17] The Respondent also sought permanent name suppression, which was not granted.

Section 317(1)(a) – Criminal Convictions

[18] 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.

The Conviction

[19] The Respondent has been convicted of multiple criminal offences that are 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

[20] This element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.

[21] The Supreme Court decision *New Zealand Law Society v Stanley*⁹ 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.

[22] 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.¹⁰ In furthering those purposes, the disciplinary regime was established, and more recently, a Code of Ethics has been introduced by Order in Council.¹¹

[23] 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

⁹ [2020] NZSC 83

¹⁰ Section 3 of the Building Act 2004.

¹¹ Building (Code of Ethics for Licensed Building Practitioners) Order 2021 which came into effect on 25 October 2022.

Respondent's case, he was to retain his licence.¹² The evaluation is an objective exercise in that the Board should not be influenced by sympathy for the Respondent,¹³ and it is a protective exercise, not a punitive one.¹⁴

[24] The Supreme Court summarised the relevant principles as follows. Whilst they were framed around lawyers, the same principles apply:

[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.*
- (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.*

[25] 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

¹² *New Zealand Law Society v Stanley* [2020] NZSC 83 at [38]

¹³ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [39]

¹⁴ *Ibid* [40]

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

[26] The Board received a submission from the Respondent. His submission attempted to distance himself from his offending and was at odds with the District Court sentencing decision. It is concerning that he is not taking full responsibility for his actions. He did, however, submit:

I fully realise that it is wholly my actions that led me into this predicament but implore you to allow me to continue to rebuild my life. I am making very good progress in this regard and am hoping to continue my career as a builder later this year.

My actions have had no impact whatsoever on my quality of workmanship, of which I am very proud.

[27] The sentencing Judge also noted that the Respondent was turning his life around.¹⁵

[28] 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.¹⁶

[29] 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

¹⁵ *New Zealand Police v Toby William Sandbrook* [2023] NZDC 25629 at [18]

¹⁶ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [45]

(d) whether the Respondent is honest, trustworthy and a person of integrity.

- [30] Looking at those factors and noting the response received, the Board formed the view that whilst the Respondent may be making progress in turning his life around, he does not appear to have accepted responsibility for his actions. Nor does he appear to have full insight into his offending. It is early days. It is yet to be proven whether he will stay on the right path. It follows that the Board is yet to be convinced that he can be trusted to meet the duties expected of a Licensed Building Practitioner, which now includes complying with an extensive Code of Ethics. The same comment applies to whether the Respondent will be an honest, trustworthy person of integrity if he were to regain his licence. The Respondent is yet to prove himself.
- [31] 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 criminal offending, both the extensive criminal history and the seriousness of the most recent offending, the Board is of the view that there is an unacceptable risk with respect to those factors, and it has decided that the Respondent is not a fit person.
- [32] In making this decision, the Board has not taken the Respondent's skill and abilities as a carpenter into account. The reason is that whilst the Respondent submitted that his actions "*have had no impact whatsoever on my quality of workmanship*", 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.
- [33] 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.
- [34] 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

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

Penalty, Costs and Publication

- [36] Having found that one or more of the grounds in section 317 applies, 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.
- [37] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. 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

- [38] 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.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
- [39] 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 proportionate penalty²⁶ that is consistent with other penalties imposed by the Board for comparable offending.²⁷
- [40] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²⁸
- [41] The Respondent is not presently licensed. He has indicated a desire to continue employment as a Licensed Building Practitioner.
- [42] The Board considers that a period of time is required following the Respondent's return to the workforce for him to establish that he is a fit person to hold a licence

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

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.

once again and to ensure the public is protected in the interim period. It adopted a starting point of three years. The starting point reflects the seriousness of the Respondent's extensive criminal offending. It is also consistent with other penalties imposed by the Board.²⁹

- [43] The matter has been dealt with by way of a Draft Decision, and there are indications that the Respondent is turning his life around. Taking those factors into account, the cancellation will be reduced to two and a half years (30 months).
- [44] The Respondent should note that, over the two and a half year period, he will be able to work in the building industry. A licence is only required where a person is carrying out or supervising restricted building work. The Respondent will, without a licence, be able to carry out building work that is not restricted building work, which covers a large scope of work, and he will be able to carry out restricted building work under the supervision of a licenced person.

Costs

- [45] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁰
- [46] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³¹. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³².
- [47] 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.
- [48] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$500 toward the costs of and incidental to the Board's inquiry.

Publication

- [49] 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,³³ and he will be named in

²⁹ In *Richard Robinson [2020] BPB 25333* the Board cancelled a licence for 5 years in relation to sexual offending, in *Matthew Biddle [2023] BPB 26235* the Board cancelled a licence for 2 years in relation to forgery, which was upheld on appeal to the District Court *Matthew Biddle v Ministry of Business Innovation and Employment [2024] NZDC 3321*

³⁰ *Collie v Nursing Council of New Zealand [2001] NZAR 74*

³¹ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society CIV-2011-485-000227* 8 August 2011

³² *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.

³³ Refer sections 298, 299 and 301 of the Act

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.

- [50] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁴ 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.³⁵
- [51] 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

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

Penalty: Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled, and the Registrar is directed to remove the Respondent's name from the Register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of 30 months.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

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

Submissions on Draft Decision

- [54] The Board invites the Respondent to:

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

³⁴ Section 14 of the Act

³⁵ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

(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.

[55] Submissions and/or further evidence must be filed with the Board by no later than the close of business on 19 June 2024.

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

[57] 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.

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

Request for In-Person Hearing

[59] 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.

[60] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on 19 June 2024

[61] 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

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

Signed and dated this 29th day of May 2024.



Mr M Orange
Presiding Member

This decision and the order herein were made final on 20 June 2024 on the basis that no further submissions were received

Signed and dated this 30th day of July 2024.



Mr M Orange
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.*