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PROFESSIONAL DISCIPLINE: ANALYSIS OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL DECISIONS

KATE DIESFELD

AUT University

ABSTRACT *Analysis of teachers' professional misconduct is rarely researched but of great public interest. This legal analysis examines the 28 decisions of the New Zealand Teachers Disciplinary Tribunal from 2008. With a view to prevention, the categories of misconduct, types of victims and penalties are examined. For comparison of disciplinary decision-making, the Health Practitioners Disciplinary Tribunal is discussed. Topical issues including attendance at hearings, legal representation and name suppression are illuminated. The article aims to foster further discussion regarding reform and specific strategies for reducing professional misconduct by teachers.*

KEYWORDS

Professional misconduct, discipline, disciplinary tribunal, teachers' deregistration

INTRODUCTION

This analysis aims to increase our understanding of how the New Zealand Teachers Disciplinary Tribunal ("the Tribunal") operates by examining the decisions from 2008. References to select decisions from other tribunals are comparators and the debate regarding public hearings is raised.

Examination of the Tribunal's processes is timely in light of the proposed governmental review of tribunals (Ministry of Justice, 2008). Few scholars, occupational groups or lawyers have published on decision-making by New Zealand tribunals (but see Davenport, 2009; Spiller, 2003). However, there has been a call for greater analysis (Jamieson, 2005).

Exploration of these teachers' hearings extends recent research on mental health review bodies in England (Diesfeld, 2003), Victoria, Australia, (Diesfeld & Sjoström, 2007) and New Zealand (Diesfeld & McKenna, 2006, 2007). Also, the analysis contributes to our understanding of disciplinary processes across occupational groups, including New Zealand's Health Practitioners Disciplinary Tribunal (Davenport, 2009; Diesfeld, 2007a; Diesfeld & Godbold, 2010, Freckelton, 2008; Godbold & Diesfeld, 2006).¹ Furthermore, the exploration contributes to existing scholarship on discipline of teachers and related education law in New Zealand (Varnham, 2001a, 2001b, 2001c, 2003).

The research was inspired by an article in *The Sunday Star Times* on 22 March 2009:

Seven teachers have been banned from teaching for serious misconduct including indecently assaulting young boys, kissing and

touching high school students, sending girls emotionally manipulative text-messages and letting young boys see an album of pornography. (Woulfe, 2009, p. A5)

While this article piqued my interest regarding tribunal decision-making, the back-story is more extensive, nuanced and complex than portrayed in the article. It is more extensive because 18 cases were reported on the website of the Teachers Council (“the Council”). Also, the complete written Tribunal decisions reveal a spectrum of misconduct, beyond those involving inappropriate relationships and sexual transgressions. Importantly, the detailed decisions reveal the Tribunal’s reasoning and breadth of discretion. This preliminary analysis examines the types of conduct that qualified for discipline and corresponding penalties.

LEGISLATIVE BACKGROUND

The Education Act 1989 Section 139AB (1) defines “serious misconduct as conduct by a teacher—
a) that

1. adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students, or
 2. reflects adversely on the teacher’s fitness to be a teacher, and
- b) is of a character or severity that meets the Teachers Council’s criteria for reporting serious misconduct”.

The Tribunal is composed of a Chair and four panel members (Appendix A); its powers are defined in Section 139AW (Appendix B). This review body hears professional disciplinary charges brought by or on behalf of the Council. The Tribunal determines factual and legal issues within the substantive and procedural constraints of the legislation and regulations. The purpose is to ensure that teachers comply with their obligations. Also, the disciplinary process ensures that teachers, students and the public can be assured that the standards of behaviour expected of teachers are properly enforced and that students are protected from teachers who do not adhere to those standards (NZTDT 2008/05: 10).²

THE TRIBUNAL DECISIONS

The cases were examined in chronological order and categorised by type of misconduct. Within the categories, cases were placed on a continuum based on the gravity of the misconduct (according to the severity of the penalty)³. Broadly, a thematic analysis was applied; unintentional bias may exist in the interpretation of this continuum. Also, arguably the analysis has limited generalisability because of the small sample. However, the research is a foundation for constructive evaluation of the Tribunal’s functioning, examination of discipline across professions, and comparative international research.

Eighteen decisions were reported on the Council’s website as of 23 March 2009.^{4 5} The decisions are available on the Council’s website and contain detailed information. In all the cases reviewed, charges were brought by the Complaints

Assessment Committee (“the CAC”) of the Council. All respondents were censured. Thirteen respondents were deregistered, the most serious penalty.

Categories of misconduct

The following is a brief summary of facts and penalties. The five categories of conduct provide a foundation for examining consistency in the penalties.

Honesty: Two cases involved intentional deception and reflected upon the respondents’ honesty and trustworthiness. In the less serious case, a teacher defrauded her employer, an early education centre, of more than \$7000. She was suspended for nine months and was ordered to repay the centre (NZTDT 2008/12). The teacher who financially benefitted from his deception regarding his bachelor’s and master’s qualifications was deregistered and required to pay 50 percent costs to the CAC (NZTDT 2008/08).

Assault. Two decisions involved assault that occurred off the school premises. In the more serious case, a teacher was convicted for driving while intoxicated, breaking and entering and assault of his ex-partner. His registration was cancelled and he was ordered to pay \$3000 costs to the CAC (NZTDT 2008/16). In contrast, another teacher struck his 16-year-old student eight times. The penalty was a \$1000 fine to the complainant and \$3000 costs to the CAC (NZTDT 2008/05).⁶ The teacher was neither suspended nor deregistered.

Pornographic material: Of the three cases that involved pornographic material, two teachers were deregistered. A teacher viewed child pornography on the school computer for two years (NZTDT 2008/02). Another teacher created a photo album and allowed children as young as seven years old to view it while he was on and off the premises with them (NZTDT 2008/17).

In contrast, a principal viewed pornography while on school premises and engaged in school business but was not deregistered (NZTDT 2008/06). The Tribunal applied the following conditions for three years. The respondent must continue to see a psychiatrist at least every three months. If necessary, the psychiatrist shall refer the respondent for further assessment, including neurological investigations. Also, the psychiatrist shall produce regular reports to the Council to “manage issues of impairment” at least every 12 months (“or sooner if health issues may be impacting on the respondent’s teaching ability”). If the respondent applies for employment as a teacher, he must notify the employer of these conditions. The Register will record that he is subject to conditions without further information.

Discussion: The conditions placed upon the principal may be viewed as a rehabilitative, therapeutic response. Interestingly, the teachers were not offered this therapeutic consideration. This raises the prospect that the Tribunal may not offer consistent rehabilitative options for all educators. One explanation of the differential treatment may be that some people are viewed as more deserving of investment than others (e.g. principals). In the context of health professionals, it was observed that this phenomena may reflect the Tribunal’s perspective that some professionals may be relatively more difficult and costly to replace. Also, there may be an unconscious bias towards offering lenient penalties to those of higher status (Diesfeld & Godbold, 2010).

Criminal prosecution for sexual assault: Two teachers that were criminally convicted for sexual assault were deregistered. The more serious offence resulted in a conviction for five years' imprisonment. According to the decision, "Although it is not a matter that the Tribunal is in a position to determine, it is not the Tribunal's expectation that the (Council) would consider re-registering the respondent at any time in the future" (NZTDT 2008/13, p. 2).

The second offender resided with his two foster sons on the school premises; he sexually assaulted three boys between the ages of six and 11. The sentence was imprisonment for two years and two months. Importantly, he was ordered to pay reparations to the victims in the amount of \$15,000, \$10,000 and \$10,000 (NZTDT 2008/09).

Discussion: The comparison introduces the concept of reparation. It is not entirely clear how the Tribunal determines who will be granted compensation. This feature is of relevance to victims, their advocates and legal counsel.

Inappropriate relationships: The most frequent type of misconduct involved inappropriate relationships. The criteria for reporting serious misconduct pursuant to Rule 9(1)(e) of the NZTC (Making Reports and Complaints) Rules 2004 is "... being involved in an inappropriate relationship with a student with whom the teacher is, or was, when the relationship commenced, in contact with as a result of his or her position as a teacher".

The majority of decisions from 2008 (7) involved inappropriate relationships across a spectrum from "romantic" non-physical conduct to physical contact of a sexual nature. Within this category, the majority (5) involved male teachers and female students. Two involved female teachers and male students (NZTDT 2008/7, NZTDT 2008/11) and one involved a female teacher and female students (NZTDT 2008/15).

There were two non-physical cases (NZTDT 2008/11 and 15) and five physical cases (NZTDT 2008/3, NZTDT 2008/4, NZTDT 2008/7, NZTDT 2008/14, NZTDT 2008/18).⁷

Penalty comparison

In some ways, comparisons between decisions are difficult to analyse due to the distinctions in the type and duration of the misconduct and the participants' ages, among other factors. Nevertheless examination of the range of penalties illuminates the Tribunal's response to professional misconduct. The following comparison of physical and non-physical misconduct indicates the Tribunal's method of evaluating the gravity of the transgression and formulating the corresponding penalty.

Non-physical relationships: registration cancelled

Two non-physical cases that resulted in the most grave penalty (deregistration) will be compared with a physical case that resulted in the lighter penalty of suspension. First, a female teacher sent written messages with explicit sexual content to her 13-year-old male student during class over three months (NZTDT 2008/11). She was

deregistered because the Tribunal determined that the conduct was “extremely serious” (p. 9).

Secondly, a female teacher developed a non-physical relationship with two female students. The respondent engaged in a range of activity unrelated to her role as a teacher. For example, she attended A’s regatta, counselled A about personal difficulties and encouraged a lack of openness with A’s parents about a queer group meeting. The misconduct involved a second student, B. The respondent “communicated with B as a friend”, texted B as frequently as daily (and texted that she loved B). The respondent revealed details about her personal life, expressed that she could not live without B and resisted B’s attempts to end the relationship. Importantly, the respondent pursued this relationship although she had been warned about professional boundaries as a result of the relationship with A. The tribunal deregistered the teacher based on the “predatory” nature of the conduct (NZTDT 2008/15).⁸

Physical relationship: suspension

The above cases of female teachers’ transgressions may be contrasted with a male teacher’s conduct in which intimate physical contact occurred. The male respondent expressed his feelings for his 17-year-old female student by text and invited her to dine alone with him. During the two nights she spent at his home, they had physical contact “falling short of sexual intercourse” (NZTDT 2008/04, p. 7). He was suspended until the commencement of the next scholastic year (approximately one year). According to the Tribunal, the penalty decision was influenced by the teacher’s voluntary resignation, accompanied by his early admission of wrongdoing to the student’s parents and the school. The Tribunal noted that the teacher had not engaged in predatory activity and was unlikely to engage in similar activity in the future.

ANALYSIS

The ability to more fully examine the Tribunal’s reasoning is limited because the proceedings and deliberations are not public. The decisions are a partial rendering of the decision-making process. Consequently, the ability to draw comparisons is challenging. Producing the written decision itself involves a complex social and legal process. The Tribunal’s decision synthesises the hearing, relevant documents, legislation, regulations and case law while expressing its reasoning in an abbreviated form (Diesfeld & Sjostrom, 2007; Dingwall, 2000).

Nevertheless, observations and questions are generated from analysis of the written decisions. From the small sample of cases, there was considerable variation in the penalties. One explanation for the differential may be the values of the Tribunal members. As noted in the context of decision-making by judges (Posner, 2008), review bodies are influenced by unconscious and intended biases. Like penalties issued against health professionals, the lenience or harshness may reflect decision-makers’ bias towards the relative status of the respondents.⁹ Although the sample is very small, the variation in penalties for men and women for broadly similar conduct warrants close scrutiny.¹⁰ Also, future analysis of a larger sample

may scrutinise whether relatively harsher penalties may be issued when there is a reversal of the stereotypical order in sexual misconduct (e.g. when a female teacher engages in inappropriate activity with a male student)¹¹. This type of continuing critique and comparative research (Davenport, 2009) is relevant to all disciplinary bodies.

OBSERVATIONS

Representation

Remarkably 50 percent (9) of the teachers were not represented and of those seven were deregistered. This finding may indicate benefits in representation and is an issue that has been analysed in other tribunal contexts (Beupert, 2009). Specifically, other professional hearings demonstrated the same phenomena. For example, approximately 50 percent of the first 25 nurses disciplined before the Health Practitioners Disciplinary Tribunal were not represented (Godbold & Diesfeld, 2006). Teachers, like nurses, may be disadvantaged by their responses to the disciplinary processes and this includes the failure to obtain legal counsel. Perhaps this is explained by the cost or failure of the unions to have the resources to fund legal counsel. The benefits of representation may be a factor that educators, their unions and professional bodies consider in the future.

Non-attendance

The Tribunal specifically addressed the potential disadvantages of the respondent's absence from a hearing:

The Tribunal entirely understands that in the case of a respondent who is not a member of a union there is a significant cost factor associated with obtaining representation ... Nevertheless, the Tribunal does not find it particularly helpful for a respondent to participate in the process at a minimum level. This is particularly so where the behaviour ... is not at the most serious end of the scale. (NZTDT 2008/18, p. 6)

Also, the Tribunal expressed that it could have reached a different (and more lenient) outcome if the respondent had provided more information about himself and revealed "the circumstances in which the relationship had developed" (p. 6). Therefore, respondents may benefit from being informed about the significance the Tribunal places on their attendance.

The reasons for non-attendance are not apparent from the decisions. Perhaps respondents do not fully appreciate the complexity of the Tribunal's processes and legal impacts. Also, respondents may fail to attend due to denial and anxiety (Godbold & Diesfeld, 2006). Attendance with support and advocacy may be a consideration for all who face disciplinary hearings.

Preventive strategies

Educators and their professional bodies might establish strategies to assist those who face similar dilemmas. For example, the Tribunal analysis may offer

preventive potential. Clearly, the majority of cases of misconduct related to inappropriate relationships and this information could be disseminated widely in undergraduate and continuing teachers' education to avert misconduct. Misconduct may be reduced by addressing the potential for, and challenges of, managing complex relationships with students in training for future teachers and continuing education.

Additionally, formal mentorship programmes may prevent problematic practices. For example, the University of Otago Medical School included "structured activities of reflection" in medical education through journals, critical incident analysis, supervision and mentorship (Wilson, 2005; Diesfeld, 2007b). This strategy may have equal value for members of the teaching profession.

Also, other well-established professions have devised confidential counselling to aid members who face difficult ethical and professional situations.¹² For example, the New Zealand Psychological Society offers a professional development programme to assist members to develop their professional skills and knowledge and to fulfil their responsibilities under the Code of Ethics. In the spirit of best practice and public safety, the teaching profession might contemplate a similar initiative.

COMPARISON BETWEEN TRIBUNALS

Arguably there should be similar penalties across broadly similar professions. For example, both educators and health providers have positions of power and occupations that require trust. Therefore presumably their misconduct warrants an equivalent legal response. Admittedly, difficulties may arise in case comparisons due to a range of factors including distinctive legislative purposes and provisions, circumstances and the parties' characteristics. Yet children, like patients, are in a relatively dependent and emotionally vulnerable position. Therefore, those who engage in serious misconduct within the occupational context should be expected to be held similarly accountable (and victims similarly compensated) across the occupational groups.

Registered health practitioners

The following example demonstrates the Health Practitioners Disciplinary Tribunal's response to sexual misconduct. Dr P had a sexual relationship with a patient who he treated for mental illness, while also acting as her daughter's physician (59/MED06/36D). Dr P was suspended for two years, and ordered to undertake a Sexual Misconduct Assessment (SMAT). He was subject to any treatments or conditions ordered by Medical Council, was required to recertify for future practice, fined \$10,000, censured and ordered to pay 50 percent of the costs of the hearing and prosecution.¹³ This could be construed as a relatively light and rehabilitative penalty, similar to the principal who held a relatively high position in the profession (NZTDT 2008/06).

Non-registered (or non-licensed) health providers

People who are not in registered health professions but are employed in health occupations are also subject to review. Mr M was a natural therapist and found in breach of the Code of Health and Disability Services Consumers' Rights 1996 by the Human Rights Review Tribunal ("HRRT") for sexual relationships with two clients (NZHRRT 2007/27). The total compensation to the patients (and one patient's husband) was \$50,000 with exemplary damages of \$38,000. He had no registration to cancel.¹⁴

Likewise, Mr O in his capacity as a disability support provider sexually exploited a 17-year-old young man with intellectual disability and his girlfriend for two months (NZHRRT 2009/02). The HRRT awarded \$20,000 compensatory damages, \$10,000 exemplary damages and \$10,000 costs.

While children were not the victims in these three cases, all of the aggrieved parties were vulnerable on the basis of their conditions and relative powerlessness. Yet the outcomes across occupational groups has considerable variation. For example, Dr P was merely suspended while the Teachers' Disciplinary Tribunal deregistered teachers for consensual sexual activity and non-physical relationships. Mr M and Mr O, non-registered health providers, were required to pay substantial fines to the victims while the teachers' review body rarely issues fines and they are relatively low.

On the one hand it could be argued that educators' relatively low salaries are insufficient to fund fines and damages, particularly if their registration is cancelled. However, it is also unlikely that a disability support worker will have the means to pay \$40,000 in damages. Likewise, the enforceability of the damages and fines may be problematic. But a counter-argument is the fines and damages symbolically express the gravity of the misconduct and the Tribunals' condemnation. Perhaps the appropriateness of fines and victims' compensation in the educational disciplinary context will attract further debate and consideration.

PUBLIC VERSUS PRIVATE HEARINGS: THE DEBATE

The issue of public hearings is a current debate. This may be partially explained by the increasing reportage in the press, which has generated greater public awareness of professional standards and violations. For example, "North Shore teacher faces sex offence charge" (2009) reported that a 42-year-old teacher appeared in the North Shore District Court on charges of sex offences against a teenage female pupil relating to indecent assaults in 2001 and 2002 when she was 14 and 15 years old. The teacher and the school had name suppression. However, the police opposed name suppression because further complainants might come forward if the teacher's identity was published.

A range of arguments inform the debate regarding public hearings. The first two Teachers Disciplinary Tribunal cases of 2008 addressed several of the issues¹⁵. In the first, the father of a 16 year old who was struck eight times by his teacher off the school premises requested that the hearing be held in public and that all relevant documents be published. He argued that the matter was already in the public arena

and the parties had been named. Importantly, the matter generated enquiry from the public and media. He asserted that a closed hearing would “frustrate legitimate enquiry” (NZTDT, 2008/01, p. 2).

Based on natural justice, the father claimed that full public disclosure would be a requirement for a satisfactory resolution for the student victim. The father claimed that 1200 students and the wider community might unjustly believe the victim “deserved” the beating or, conversely, that the teacher “got away with” assaulting the student. According to the father: “To continue to suppress the truth of this issue would deny the victim the right to clear his name from rumour and gossip and would indeed continue to victimise the victim” (p. 3).

Citing the Education Act 1989 Rule 31, the Tribunal reported that the hearing must be private unless the exception under Rule 33 (1)(a) applied. However, pursuant to Rule 33 (2), the Tribunal has discretion to authorise a public hearing “if it is desirable to do so, having regard to the interests of any person and to the public interest”. The complainant’s counsel noted that this rule is unique in New Zealand and the Teachers Disciplinary Tribunal is the “only statutory body which is not required to hold its hearing in public” (p. 4).¹⁶ The Tribunal was not persuaded that it was in the interests of any party or the public to hold the proceeding in public.

Recently other professions have addressed the transparency of disciplinary processes. For example, the publication of a legal practitioner’s name is “still an intermittent and haphazard affair” (Davenport, 2009, p. 6). According to Kate Davenport (2009), the Chair of the Health Practitioners Disciplinary Tribunal:

It would be fair to say that the legal profession has not been wholehearted in its embrace of the principles of open justice. In contrast, the discipline of doctors and nurses and others have been carried out in the public eye, with the Tribunals showing a willingness to adopt the principles of open justice and section 14 of the New Zealand Bill of Rights Act 1990 (p. 6).

Arguably, private hearings are justified in Teachers Disciplinary Tribunals that relate to students. However, the disciplinary hearings of other professions that involve victims are public and the review body has the discretion to opt for private hearings. For example, the Health Practitioners Disciplinary Tribunal holds public hearings, lists hearing dates and locations on its website, and considers name suppression on an individual basis. Public hearings demonstrate the government’s and professions’ commitment to natural justice through transparent disciplinary processes.

CONCLUSIONS

In summary, it is valuable to examine the Teachers Disciplinary Tribunal decisions and analyse disciplinary proceedings across occupational groups. Perhaps preventive strategies may avert these types of misconduct. And at this stage of the maturation of tribunal jurisprudence, it is important to debate the potential for conducting public hearings while protecting relevant interests.

Also, New Zealand has a visible international presence as an innovator in restorative justice. Many New Zealand schools now adopt this approach in relation

to student discipline. Already there is evidence that the Teachers Disciplinary Tribunal integrates rehabilitative concepts in select circumstances. Perhaps the time is ripe to debate the merits of a more systemic integration of restorative justice within our professional disciplinary processes.

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APPENDIX A

New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR2007/305)

10 Establishment of Disciplinary Tribunal

(1) Rule 23(1) is revoked and the following subclause substituted:

“(1) The Teachers Council must appoint a Disciplinary Tribunal that comprises—

“(a) at least 1 member, and no more than 5 members, of the Teachers Council; and

“(b) at least 5, and no more than 20, other people who are not members of the Teachers Council, of whom at least 1 must be a person selected from the list, referred to in section 139AQ(3B) of the Act, of people who are neither—

“(i) members of the Teachers Council; nor

“(ii) teachers, employers, or members of an employing body.”

(2) Rule 23 is amended by inserting the following subclause after subclause (3):

“(3A) As required by section 139AQ(3C) of the Act, the majority of members on the Disciplinary Tribunal must be registered teachers.”

APPENDIX B

Education Act 1989 Section 139AW Powers of Disciplinary Tribunal

- (1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:
 - (a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2):
 - (b) censure the teacher:
 - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
 - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - (e) annotate the register or the list of authorised persons in a specified manner:
 - (f) impose a fine on the teacher not exceeding \$3,000:
 - (g) order that the teacher's registration or authority be cancelled (*see* section 129(1)):
 - (h) require any party to the hearing to pay costs to any other party:
 - (i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing.
- (2) Despite subsection (1), following a hearing that arises out of a report under section 139AP of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in paragraphs (d), (f), (h), or (i) of subsection (1).
- (3) A fine imposed on a teacher, and a sum ordered to be paid to the Teachers Council under subsection (1)(i), are recoverable as debts due to the Teachers Council.

Sections 139AK to 139AZC were inserted by section 37(1) Education Standards Act 2001 (2001 No 88). *See* clause 2(2) Education Standards Act Commencement Order 2001 (SR 2001/384) as to those sections coming into force on a date to be appointed by Order in Council. Sections 139AK to 139AZC came into force, as from 1 September 2004, pursuant to clause 3 Education Standards Act Commencement Order 2004 (SR 2004/235).

Subsection (1)(g) was substituted, as from 17 May 2006, by section 32 Education Amendment Act 2006 (2006 No 19).

¹ The HPDT hears cases across the 19 occupational groups of registered health practitioners. In 2008, of the 23 cases, 19 practitioners were found guilty, one was found not guilty and three received convictions. Paramedics and psychotherapists are contemplating registration under the Health Practitioners Competence Assurance Act 2003 (HPCAA). Health Practitioners Disciplinary Tribunal decisions are available at www.hpdt.org.nz

² Appeal provisions are in Section 139AZB (1): The teacher who is the subject of a decision by the Tribunal made under section 139AU(2) or section 139AW, or a decision by the Teachers Council made under section 139AZC, may appeal that decision to a District Court.

³ Section 139AW identifies the range of penalties: censure; conditions on practising; suspension; annotation of register; fine not to exceed \$3000; cancellation of registration; costs to other party; costs to Teachers Council.

⁴ Case NZTDT 2008/10 was in the process of being appealed.

⁵ In comparison, 16 cases were reported for 2006 and 12 cases for 2007.

⁶ NZTDT 2008/01 is the request by the Complainant's father that the hearing take place in public and relates to the decision of NZTDT 2008/05.

⁷ All cases ordered the respondent to pay costs except NZTDT 2008/18, in which leave was reserved for the complainant to apply for costs.

⁸ All 18 hearings were chaired by the same Chairperson except NZTDT 2008/15.

⁹ NZ2008/02 and NZ2008/17 contrasted with NZ2008/06.

¹⁰ NZ2008/11 and 2008/15 contrasted with 2008/04.

¹¹ NZ2008/11 contrasted with NZ2008/04.

¹² Information on the New Zealand Psychology Society's additional professional development programmes is located at www.psychology.org.nz.

¹³ The HPDT is not authorised to order damages.

¹⁴ As a health provider, he was bound to uphold the 10 rights of the Code. But as a non-registered provider, he was not subject to the Health Practitioners Competence Assurance Act or to discipline by the Health Practitioners Disciplinary Tribunal.

¹⁵ NZ2008/01, NZ2008/02.

¹⁶ This is not completely accurate. The Mental Health Review Tribunal, for example, holds private hearings (but recently its decisions have been made available on the public website www.nzlri.org). Presumably this is because of the sensitive nature of the information and the potentially stigmatising nature of a diagnosis of a mental disorder.