



Discipline of registered professionals for **misconduct outside work**: A mixed-methods analysis of Teachers, Lawyers and Health Practitioners' Disciplinary Tribunal Decisions in New Zealand

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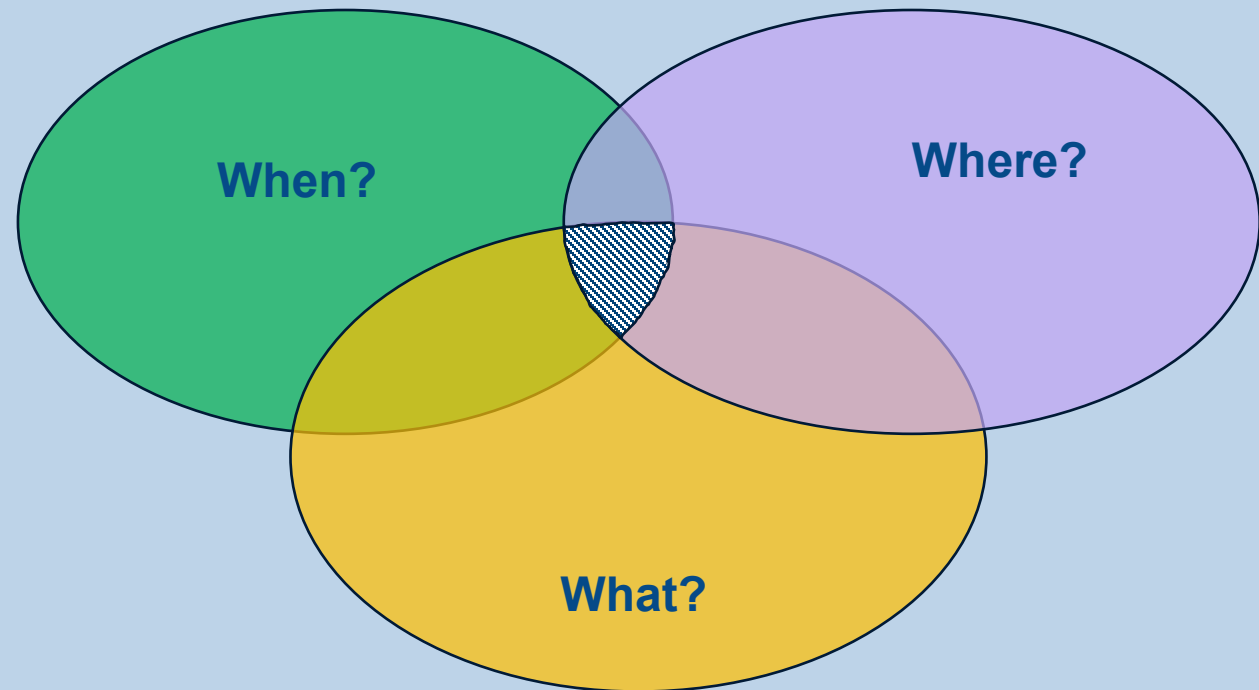
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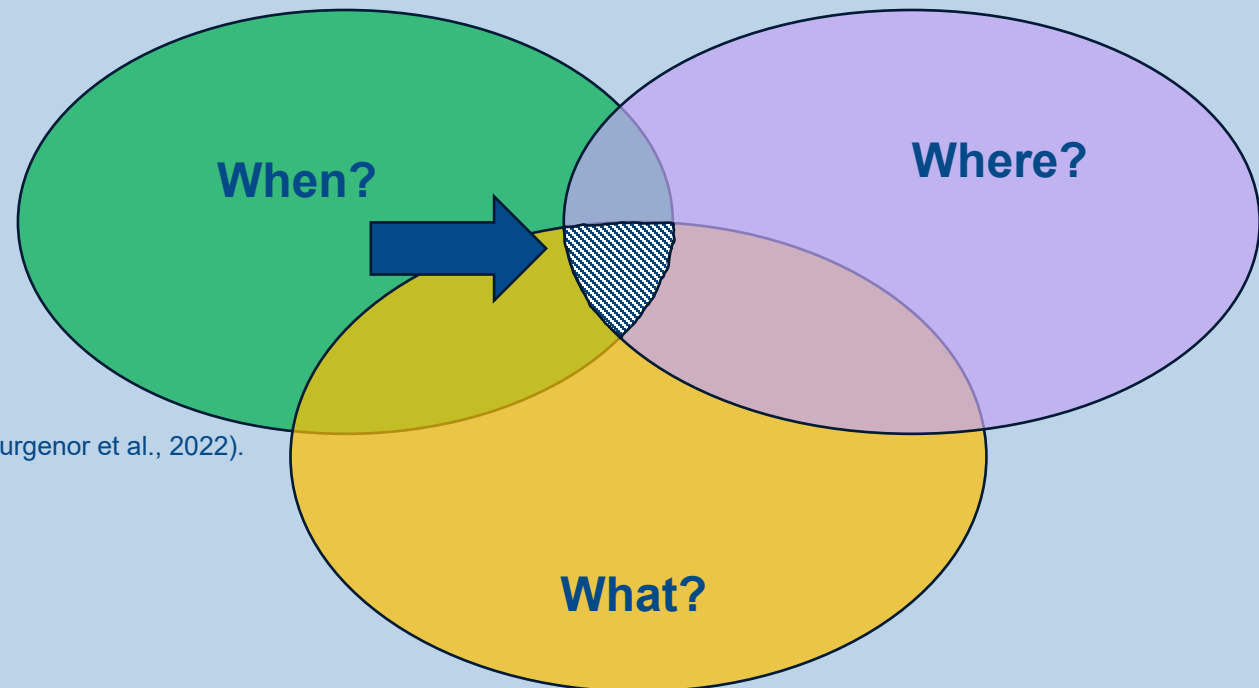
CONTROVERSIES

- Impact on **employees' privacy**
- Potential **regulatory overreach**
- 'Blurred boundary' → online behaviours



REGULATED PROFESSIONS

- National and state laws; e.g., National Registration and Accreditation Scheme for registered HP in Australia: “conduct of a practitioner, ***whether occurring in connection with the practice or not***, that is inconsistent with the practitioner being a fit and proper person”
- Conduct that reflects badly on a practitioner’s **fitness to practice** or harms the **reputation of the profession**
- Most cases in work setting:
72.5% of NZ HPDT decisions involved clinical issues (Surgenor et al., 2020),
44% of NZ HPDT decisions that involved criminal convictions involved circumstances unrelated to practice (Surgenor et al., 2022).






OUR STUDY

- **Aim:** identify the prevalence, key characteristics and categories of conduct that occurred wholly or partially outside work among 3 regulated professions






- Secondary aim: analyse qualitatively how the tribunals discussed the boundary between personal and professional
- **Methods:** All disciplinary decisions (2017–2021) from NZ TDT, LCDT, HPDT extracted; all decisions with established charges (n=538) coded: (a) “professional” (e.g., incompetent care, forging work invoice, assaulting patient, abuse of student at a school camp) (b) “**private**” (e.g., drink driving, downloading objectionable material at home, drug use in private) (c) “**both/mixed**”

RESULTS

				All 3 Tribunals
All disciplinary decisions 2017-2021	n=94	n=119	n=325	N=538
Conduct wholly or partially outside work	11 (11.7%)	14 (11.8%)	111 (34.2%%)	136 (25.3%)
→ wholly outside work	5 (5.3%)	9 (7.6%)	88 (27.1%) 72% crim conviction, 1 in 2 driving	102 (19%)
→ “mixed”/both	6 (6.4%)	5 (4.2%)	23 (7.1%)	36 (6.3%)




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NON-CONVICTION ROUTES TO TDT

- In teachers disciplinary matter arising wholly outside work, nearly one in 3 cases (28%) did not involve a conviction
 - **Police investigation** (e.g., TDT 2020/19 – a teacher investigated by the police after slapping her own children at home)
 - **Alternative court outcome** (e.g., TDT 2017/14 – discharge without conviction to a teacher who hit an adult family member during a family disagreement)
 - **Social and professional networks** (e.g., 2018/74 – a teacher made sexual advances towards a female teacher (from another school) at a house party and sexually harassed another female teacher; principal made aware through “**rumours circulating in the community**”)

'MIXED CASES'

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'MIXED' CASES

- Practitioners taking advantage of their professional position



→ **HP:** access to controlled drugs (e.g., 16/358P – cancelled reg for prescribing to family and friends; own use of meth)



→ **Law:** mixing of commercial pursuits/financial affairs with professional function (e.g., LCDT007/18 – lawyer's wife purchased residential property from one of his existing clients; advantageous loan terms, lawyers firm acted for both parties → 15m suspension)



→ **Education:** Boundary violations (47%) (TDT2020/31 socializing and FB communication outside school; TDT 2018/75 sharing drinks with a student immediately after student-teacher relationship ended)

TRIBUNAL DISCUSSIONS: TEACHERS AS 'ROLE MODELS'



*Ms Pecotic [defence] also submitted that Ms Kem's offending, "**did not impact on her role as a teacher at all**". However, we have said many times that there is **no bright-line between teachers' personal and professional lives** because of the obligation to both teach and model lawful behaviour [TDT 2019/06 at 20 – allowed premises for cultivation of cannabis]*

*The principal question is not whether the incident occurred in a **teacher's private or professional capacity**, but rather, whether the teacher's actions, wherever and whenever they took place, reflect adversely on **his or her fitness to be a teacher** and/or bring the teaching profession into disrepute. (TDT 2021/18 at 44 – supplied a friend with psilocybin mushrooms)*

LCDT DICHOTOMOUS APPROACH: PRIVATE vs PROFESSIONAL



For LCDT, key determinations hinge on whether the conduct in charges constitute personal or professional conduct:

If Ian Hay failed to fulfil professional obligations or breached regulations, was there a wilful or reckless breach; or alternatively, was his conduct disgraceful or dishonourable as judged by lawyers of good standing? (at [3])

If Ian Hay was acting in a personal capacity, was his conduct such as to justify a finding that he is not a fit and proper person or is otherwise unsuited to be a lawyer? (LCDT 003/17 at 4; Lawyer denied that he was acting in a professional capacity)

THE ROLE OF TIME AND PLACE



- **Risks to the public:** when “*the practitioner was intoxicated in the **early hours of a school night**, questions will be raised as to the teacher’s judgement and ability to perform his or her role appropriately*” (TDT 2019-8, at [23])
- Boundary violation cases with ex-students/ex-patients:
*Whether or not a relationship with a former patient is appropriate will always **depend on the circumstances and is not subject to arbitrary time limits.*** (20/485 at [51], nurse relationship with a former patient)

G v PCC [2024] NZHC 3629

- Overturned HPDT finding of misconduct (Nur 23/582P – 4 months; ‘unethical’ and therefore amounted to malpractice)

*It is a case falling into the category of “**an unwise act**” or **carelessness** by a health professional **in their personal life**, when the relationship between the Nurse and the Father [of a child] intensified “**too soon**”, both after the end of the Father's relationship with the Mother, and in relation to the nursing relationship with the family.*

*The short point is that, when the principal purpose of the HPCAA is to protect the health and safety of members of the public, that **purpose is not advanced by a disciplinary response to the human error or personal transgression** that occurred in this case.*



DISCIPLINE ON MORAL GROUNDS



- 'Immoral' and 'unethical' conduct in Nur 23/582P
- Viewing pornography on employer-issued laptop (TDT scrutinised nature of material)
- Involvement with drugs, even when no evidence of impact on professional role (methamphetamine vs alcohol)

DISCUSSION AND IMPLICATIONS

- One in 4 cases involved conduct outside work
- Prevention: educate on profession-specific risk factors and adopt strategies to prevent blurring
- Higher proportions in education sector, perhaps due to profession-specific risk factors and misconduct threshold and regs (different mandatory reporting by court registrar)
- The link between conduct and fitness to practice/reputation key but time and place relevant
- Three tribunals differed in where they draw the line
- Future?

Select references:

- G Carabetta, “Off-duty Misconduct and the Employment Relationship: A Review of the Case Law” (2020) 48(6) Australian Business Law Review 497
- S Noakes and S Hook, “The Blurred Line between the Professional and the Personal: Regulation of Teacher Behaviour on Social Media” (2021) 65(1) Australian Journal of Education
- M Rychert, K Diesfeld and I Freckelton, 'Professional Discipline for Vaccine Misinformation Posts on Social Media: Issues and Controversies for the Legal Profession' (2022) 29(3) JLM 895.
- L Surgenor et al, “Criminal Convictions of Disciplined Health Practitioners in New Zealand” (2022) 29(1) Journal of Law and Medicine 117.

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