

An Analysis of Ethics Complaints to NZAC: 1991–2000

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Abstract

An analysis of complaints received by the New Zealand Association of Counsellors and dealt with by the ethics complaints process between 1991 and 2000 is completed here. Included are analyses of who complains, who is complained about, the subject matter of complaints and the outcomes of the complaints process. Complaints are evenly spread around New Zealand and are mostly directed at private practitioners. Common concerns expressed in complaints are about breaches of confidentiality, disrespect for clients and sexual abuse of clients. An average of ten complaints per year have been received over the last ten years, about one-fifth of which end up being addressed through either a hearing or mediation.

Before 1990, the New Zealand Association of Counsellors (NZAC) had a Code of Ethics, but it was more an aspirational document than one to which members could be held accountable. It was not until the Code of Ethics was revised in 1990 (both authors were involved in the review committee at that time) that any kind of meaningful complaints process could be put in place. At first, the complaints process was administered by the NZAC national executive (assisted by two complaints assessment committees), until the task was given to the Ethics Committee that was appointed at the Association's annual general meeting in 1994. The number of complaints was at first small, and only later began to rise. The number of members was rising at the same time, and word was perhaps getting around that it was possible to lodge complaints with NZAC against counsellors. Now that NZAC has had ten years of experience of handling such complaints it is time to review what has happened and to take stock of the emerging trends in the expressed concerns about counsellors and counselling. In this article, we shall provide some of the basic data for such stocktaking and suggest some modest interpretations of the data.

The data presented here were collated by the authors through an archival research process. Both are members of the NZAC Ethics Committee and both have been involved in the process of handling ethics complaints throughout the period that these archives relate to. The archives referred to are those held by NZAC with regard

to every complaint it has received between 1991 and 2000. Every file was read and the relevant data was determined from the readings.

Total numbers of complaints

Complaints received by NZAC usually arrive in the form of a letter. This does not mean, however, that every letter received becomes a fully fledged complaint in NZAC's complaints system. Sometimes several pieces of correspondence are exchanged before a clear complaint emerges, if indeed one does. Nevertheless, in the ten years from 1991 to December 2000, 104 letters of complaint were received by the Ethics Committee. At the time of this analysis, six of these complaints were still being processed by the Ethics Committee (these six have not been included in the analyses below), leaving 98 complaints that have been processed by the Ethics Committee.

Complaints by year

Over the last ten years, complaints have been received at the average rate of ten per year. However, as Table 1 shows, there was a steadily increasing trend in complaints received during the first half of the 1990s, settling into a more established pattern in the latter half of the decade. Currently NZAC is receiving approximately fourteen complaints per year.

Table 1. Complaints received by year

2000	11
1999	14
1998	14
1997	23
1996	14
1995	3
1994	10
1993	5
1992	6
1991	4
Total	104

Complaints by region

Complaints received have been spread around the country proportionately in relation to population and membership. Table 2 shows the regional spread of complaints according to the geographical regions specified in the NZAC constitution. In some

cases, the client or the counsellor moved from one region to another in the course of processing the complaint. The region used here is the one where the counselling took place at the time to which the complaint refers.

Table 2. Regions complaints originate from

	n*	%
Te Tai Tokerau	3	3.1
Auckland	24	24.5
Waikato/BOP	8	8.2
Tairāwhiti/Hawke's Bay	4	4.1
Taranaki	2	2.0
Manawatu/Wanganui	5	5.1
Wellington	20	20.4
Canterb/Nelson/Marl	22	22.4
Otago/Southland	7	7.1
	98	

* Six current complaints omitted.

Counsellors complained about

Who gets complained about? The range is perhaps wider than many counsellors imagine. Table 3 gives some information about the counsellors against whom complaints have been made. However, for a variety of reasons, not all of these complaints were upheld. One reason is that sometimes NZAC receives complaints against counsellors who are not members of the Association. NZAC has no jurisdiction to proceed with such complaints. In these cases the Ethics Committee has no option but to write back and tell complainants this, and suggest other avenues for pursuing a complaint. In all, 105 counsellors have been complained about in the 98 complaints included for analysis. This figure includes some complaints where more than one member was complained about in the same complaint. Eighty-seven of the counsellors complained about were members of NZAC and 18 were not. This includes three who were members at the time the complaint was received, but had not been members at the time of the alleged ethical breach, therefore could not be held accountable to the Code of Ethics. Applicants do not appear more likely to be complained against than more experienced full members. Only eight of the 91 members complained about were applicants at the time of the complaint. NZAC has also had one complaint against a subscriber, which the Ethics Committee could not proceed with since subscribers to NZAC are not professionally bound by its Code of Ethics. Sixty-one of the 105 counsellors complained about were female and 44 were male.

The majority of complaints received by NZAC were directed at counsellors who were in private practice (57 complaints out of 98). This most likely reflects the fact that for private practitioners there is no employing body to which complainants can address their concerns. In contrast, complaints about school counsellors can be addressed to the school principal or to the school board. This may account for the fact that only 11 complaints have been about school counsellors. Twenty complaints have been about counsellors employed in a community agency of some sort, and seven have been about counsellors employed in tertiary institutions. One complaint has been about a member who was a trainer and one about a counsellor working in a health setting.

Table 3. Counsellors complained about (n = 105*)

	n	%
Membership status		
non-members of NZAC	18	17.1
applicant	8	7.6
full member	78	74.3
subscriber	1	1.0
Gender of counsellor		
male	44	41.9
female	61	58.1
Practice context of complaints (n = 98)		
private practice	57	58.2
school	11	11.2
community agency	20	20.4
tertiary institution	7	7.1
health system	1	1.0
trainer	1	1.0
unknown	1	1.0
Employed legal counsel	22	21.0

* More than the number of complaints because in some complaints more than one counsellor was complained about.

During the last ten years there has been an increasing trend for respondents to complaints to retain legal counsel to advise or represent them in the complaints process. The archive indicates that this has been the case in 22 of the complaints received. Some others may have received legal advice without the Ethics Committee knowing. Considering the number of complaints that do not proceed in our system (see below)

the proportion of counsellors taking legal advice is quite high. The Ethics Committee is required to work carefully within the constraints of legal process, not least because its workings may otherwise be subjected to legal challenge.

Complainants

Table 4 lists some information about those who have sent complaints to NZAC. Sometimes there is more than one complainant. For example, with regard to couples counselling, it is possible to receive a joint complaint from both members of the couple, or in family matters from both parents on behalf of a child. There are many important factors left out of this analysis. For example, there was no way of knowing about the ethnicity of complainants from the data studied.

Table 4. Complainants (n = 116*)

	n	%
Gender		
female	85	73.3
male	31	26.7
Age of client (n = 104**)		
adult	80	76.9
child	22	21.2
Relationship to counselling profession		
NZAC member	13	11.2
member of allied profession	20	17.2
counselling student	1	0.9
layperson	82	70.7
Relationship to client		
client	88	75.9
parent of client	15	12.9
spouse of client	2	1.7
other	11	9.5

* More than the number of complaints because some complaints were made by more than one complainant.

** Based on the number of complaints.

Eighty-five complainants (73%) were female and 31 (27%) were male. The figures with regard to age relate only to whether the client who received the counselling was an adult or a minor. In some cases where the complaint relates to a child, the complaint was made on their behalf by a parent.

It is interesting to note how many complaints are received from professionals who are likely to have a working knowledge of professional ethics. Twenty complainants (17%) were from professions somewhat allied to the counselling profession. Some were social workers, psychologists, nurses, teachers or doctors. In addition, 13 complainants (11%) were members of NZAC. Perhaps this suggests that some counsellors are taking seriously the injunction in the NZAC Code of Ethics to take appropriate action when they see unethical behaviour by colleagues. The remainder of complaints were from members of the public. Of these, 15 complainants (13%) were parents of a client initiating a complaint on behalf of a child. Two were from spouses complaining about the counselling received by their partner. One was from a counselling student complaining against a trainer.

Nature of complaints

What do people complain about? Table 5 lists an analysis of the subject matter of complaints. This analysis is an interpretation of the main elements mentioned in each letter of complaint. Each complaint is of course unique, and the selection of common features to group complaints under is in some ways a distortion of the meaning of the complaint for the complainant. Nevertheless, complaints were sorted into categories for the purpose of this exercise. Some individual complaints are about several different matters. For example a single complaint may relate to an issue of confidentiality, to inappropriate touch and to disrespectful language. In a case such as this the complaint is recorded here in three categories. As a result, the number of complaint subjects is greater than the total number of complaints.

Table 5. Nature of complaints

Confidentiality issue	22
Inappropriate/disrespectful remarks	21
Competence issues	20
Informed consent	11
Sex with client	10
Partiality	8
Fees issue	7
Inappropriate touch	6
Inappropriate relationship	6
Wrongful reporting	6
Dishonesty	5
Failure to respond to safety threat	5

contd

Nature of complaints contd

Disrespect for colleague/fellow professionals	3
Value imposition	3
Pressuring clients	3
Sexual harassment/sexual talk	3
Inappropriate disclosure	3
Notes falsified or wrong	3
Counselling methods	3
False report of abuse	3
Referral issues	2
Person of bad character	2
Employer/employee relations	2
Sexist attitude	2
Failure to warn	2
Labelling	2
Late to appointments	1
Soliciting clients	1
Poaching clients	1
Non-availability	1
Lack of supervision	1
Qualifications misrepresented	1
Non-appearance	1
Bad advice	1
Interruptions	1
Theft from employer	1
Not releasing records	1
Financial exploitation	1
Cancelled appointments	1
Failure to listen	1
Lack of cultural sensitivity	1
Violence in relationship	1
Termination issues	1

The range of issues complained about is wide, although there is also a clustering of a number of complaints around a small range of issues. In reading these data, it is important to remember that these are the concerns that were expressed to NZAC. They are not necessarily proven facts by any means. NZAC does at times receive malicious complaints and also complaints that are not borne out when investigated. Sometimes, respondents gave the Ethics Committee perfectly satisfactory explanations for things that complainants were concerned about. Sometimes too a complaint cannot be pro-

ceeded with for one reason or another and in these circumstances there is no way of knowing how valid the complaint was. Therefore these data are to be read as telling us what complainants are concerned about rather than as indicative of the ethical breaches of NZAC counsellors. There does not exist at present a large enough body of complaints that have been upheld to make definitive statements about the main ethical problems that are occurring in counselling in New Zealand. It is possible, however, to form an impression of the kinds of ethical concerns that counselling clients are moved to complain about.

Concern about breaches of confidentiality (22 complaints) featured highest in the subject matter of complaints. Only marginally less frequent were complaints about the things that a counsellor said to a client. Twenty-one complaints were about comments made by a counsellor that were experienced as hurtful or disrespectful by clients. Also highly represented in the letters of complaint were concerns about the competence of a counsellor (20 complaints). These were the complaints that counsellors did not know what they were doing or were not trained to do what they were doing. Eleven complaints were about informed consent issues in which complainants felt pressured to participate in counselling methods that they did not agree to. There have also been a number of complaints about counsellors having sex with a client (ten complaints). Interestingly, these complaints have concerned both male and female counsellors and both heterosexual and gay/lesbian sexual relations. These complaints have not, however, always been upheld. Further complaints in the area of inappropriate touch (six complaints) and inappropriate relationship (six complaints) (not always sexual or romantic) add to this area of concern. Partiality concerns were not uncommon in the context of relationship counselling (eight complaints).

A variety of concerns with regard to fees (seven complaints) also featured reasonably often. A number of clients were concerned about what was written in reports about them and complained about wrongful reporting (six complaints). Some issues were represented between three and five times in the archive of complaints: dishonesty by a counsellor (five complaints); failure to respond to a safety threat (five complaints); disrespect for a colleague or fellow professional (three complaints); value imposition (three complaints); pressuring clients to do something (three complaints); inappropriate sexual talk (three complaints); inadequate or falsified counselling records (three complaints); inappropriate counsellor self-disclosure (three complaints); use of inappropriate counselling methods (three complaints); and false reporting of abuse (three complaints).

These are all areas of concern that should be noted by NZAC members, by branches looking for issues to address through in-service training, and by counsellor educators

introducing counselling students to professional ethics in counselling. There are also a number of equally important ethical concerns that are mentioned on only one or two occasions. For example, lack of cultural sensitivity was only mentioned once and sexist attitudes twice. It is possible that some of these topics of complaint might grow in importance in future.

Outcomes of complaints

When a letter of complaint is first received by NZAC, it is assessed by the complaints assessment committee, which includes NZAC's legal adviser, to determine whether there is a *prima facie* case to answer. The questions asked here are to do with whether the matters complained about, if found to be true, would amount to "professional misconduct, conduct unbecoming a member or conduct prejudicial to the interest of the Association" (NZAC Constitution). At this point, complaints are screened out that, while not representing the best standards of counselling, nevertheless do not reach the threshold of concern that would justify spending potentially several thousand dollars of NZAC's money to process. An example of a complaint that does not warrant further action might be that a counsellor acted in a way that a client was later not happy with but that this action was undertaken in good faith at the time on the basis of the limited information that the counsellor had available. However, if the person complained about is not a member of NZAC then the Ethics Committee has no jurisdiction and even these questions cannot be answered. This situation can be frustrating for the complainant and risks bringing the profession into disrepute.

Table 6 shows that more than half the complaints received (53%) never got past this assessment process. Of these 52 complaints, 18 (17.1%) were rejected because they were not about members of NZAC. This figure suggests that a significant proportion of counsellors are not accountable to a professional association or code of ethics. In two further cases, because the counsellor was not identified by the complainant, no further action could be taken. Four were withdrawn by the complainant before they were assessed. In seven cases, the Ethics Committee asked the complainant for further information in order to make an assessment and never received a reply. Ten were considered not to have reached the threshold of concern that would warrant them being passed to a panel for consideration. Three amounted to hearsay that would not stand up to legal challenge without support from the person on whom the complaint focused. Three were considered outside the jurisdiction of NZAC (because they related to an employment matter rather than an ethical one or because they pertained to a counsellor's private life rather than to their professional duties). Two were reassessed after receiving a response from the respondent and the assessment panel

was satisfied at this point that there was no case to answer. In one case the matter was diverted to a supervision rather than processed through the complaints process and in two others the archive does not give enough information to determine the reason for the complaints not being assessed to proceed.

Table 6. Outcomes of complaints (n = 98)

	n	%
Initial assessment		
proceed	46	46.9
not proceed	52	53.1
Closed complaints		
withdrawn by complainant	5	5.1
closed by NZAC	20	20.4
Fully processed complaints		
mediation held	5	5.1
hearing held	16	16.3
charges upheld	12	12.2
charges not upheld	4	4.1
appeals	1	1.0
judicial reviews	0	0
Sanctions applied		
no penalty	1	
supervision	7	
education	5	
reprimand	1	
advise ACC	1	
membership downgraded	5	
expelled	0	
banned from reapplying	1	
resigned	2	
publication of hearing outcome	7	

If a complaint is assessed as worthy of further consideration, the counsellor is provided with a written copy of the complaint and asked to respond. The complaint and the counsellor's written response are then handed to a panel appointed from the Ethics Committee to form charges. The panel must also decide whether to refer the matter to a hearing or to a mediation. A panel was convened for 46 complaints. Of these, 25 complaints never reached a hearing or a mediation because the complainant withdrew the complaint (five complaints) or because the Ethics Committee closed the

file. Sometimes the panel appointed received the respondent's reply, decided that they were satisfied by this and proceeded no further (five complaints). Sometimes the panel met to set charges for a hearing and on consideration of further evidence provided after the assessment committee made its original recommendation decided that no charges could be brought, and the complaint file was closed at this point (seven complaints). On three occasions, the matter complained about was dealt with by another organisation (such as the New Zealand Association of Psychotherapists, the Psychologists' Board or the Christian Counselling Association) to the satisfaction of NZAC and further action was not deemed necessary. On three occasions, the respondent resigned from the Association and either retired or resigned from employment as a counsellor and NZAC decided there was nothing to be gained from proceeding with a hearing. In a further two complaints, the archive does not yield enough information to determine the reasons for the decision not to proceed.

Referral to mediation is voluntary for both complainant and respondent. Five mediations have been held. The decision to proceed to a hearing is made by the panel. Sixteen have taken place and in 12 hearings the complaint, or at least some aspect of it, has been upheld. In four cases, it has not. NZAC used to have an appeal process in its constitution, but this was abolished in 1995. However, one appeal was held (the complaint was still upheld) before this process was abolished.

As a semi-judicial process that has to take place within the laws of the country, NZAC's complaints process may always be challenged by the legal process known as judicial review, if a respondent considers that he or she has not been treated fairly. To date, no hearing process has been challenged in this way (although it has been threatened on two occasions). This is important in terms of legal and insurance costs for NZAC and in terms of the reputation for fairness that our complaints process has developed. It therefore deserves note in this analysis.

There have been 12 complaints that have gone to a hearing and been upheld. Table 6 also gives a list of the sanctions that have been applied by the Ethics Committee in these hearings. Sometimes several sanctions are applied in relation to the same complaint. The most common sanctions have required the counsellor to have some form of specified supervision (seven complaints) or to participate in an education programme (five complaints) to improve their understanding of the ethical issues complained about. On five occasions, the counsellor's membership has been downgraded. No one has yet been expelled from the Association although one member resigned before the hearing, which was held anyway, and this person was banned from reapplying for 25 years. On seven occasions a notice has been published in the NZAC newsletter telling of the Ethics Committee findings of ethical misconduct against a member.

Concluding remarks

With regard to the steady increase in the number of complaints received, it needs to be remembered that the membership of the Association has increased during this period and therefore the number of members who may be complained about has also increased. However, the rapid increases in membership of the early 1990s have slowed somewhat, perhaps contributing to the steadying in the rate of complaints received. It is likely too that the 1990 revised Code of Ethics and the setting up of a complaints procedure played a significant part in producing the membership increases. Belonging to a professional association with an adequate Code of Ethics was taken to be an important measure of professionalism by some third-party funders who began to insist on such things before they would pay for counselling.

These data do not give a clear picture of the counsellors who are complained about, except with regard to their place of employment. Private practitioners are far more likely to be the subject of complaint to NZAC than are those employed by a school or other agency. This makes sense when we consider that many complainants perhaps need to express to someone their unsatisfactory experience of counselling and will often choose the most direct route for doing so. Approaching the counsellor's employer is often more direct than approaching NZAC. With counsellors in private practice, the latter route is the only one available to dissatisfied clients.

Many of the complaints received are about hurts experienced during the course of counselling: offence being taken at something a counsellor has said, feeling not listened to, feeling pressured (for example to leave a marriage), or feeling coerced (into a viewpoint or a counselling method that the counsellor favours). These complaints do not always reach the level of concern that would warrant the use of the sanctions available to the Ethics Committee, and the development of the mediation option for handling such complaints is worth developing further. Concerns about having their confidentiality respected are highly represented among the matters complained about, and counsellors need to be vigilant about observing this on-going professional ethic.

It is worth commenting on the number of complaints against counsellors with regard to sexually inappropriate behaviour with clients. NZAC has received ten complaints about counsellors having sex with clients and none of these have led to expulsions from the Association. Why is this? Closer analysis of the data reveals that of these ten complaints, two were about non-members, two complainants withdrew their complaints, two were sent to panels which could not form charges that could be sustained on the evidence given, one complaint was not upheld in a hearing, one was dealt with through another organisation and only two were upheld in a hearing of the

NZAC Ethics Committee. In both of these cases, membership was downgraded and a series of other sanctions were put in place.

Overall, the sanctions used by the Ethics Committee have been at the lower end of the range of sanctions available to them. Only one member has been expelled from the Association in ten years, and much use has been made of educative and supervisory processes to bring about changes in counsellors' behaviour. Perhaps this reflects the belief in the possibility of change that counsellors bring to the work of the Ethics Committee and the caution with which the Committee has exercised its duties. This caution has also meant that the Association has not been exposed to legal challenge for not following due process. It may further mean that counsellors who continue to offend against our ethical standards are at times not being given strong enough messages through our process. There have been four counsellors who have been complained about on more than one occasion. The other side of this figure is that a number of counsellors who have been complained about may have been chastened by the experience and as a result have since become ethically more careful in their practice. It is to be hoped that the NZAC complaints process produces this kind of change.

References

New Zealand Association of Counsellors (1990). *Code of Ethics*. Hamilton: Publisher.