MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 152/00/64C

IN THE MATTER of the Medical Practitioners Act 1995

-AND-

IN THE MATTER of a charge laid by a Complaints Assessment Committee pursuant to Section 93(1)(b) of the Act against **MORGAN FRANCIS FAHEY** medical practitioner of Christchurch

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Mrs W N Brandon (Chair)

Dr F E Bennett, Ms S Cole, Dr J W Gleisner, Dr A M C McCoy (Members)

Ms G J Fraser (Secretary)

Mrs G Rogers (Stenographer)

APPEARANCES: Mr M F McClelland for a Complaints Assessment Committee ('The CAC')

Mr C J Hodson, QC for Dr M F Fahey

SUPPLEMENTARY DECISION:

THIS is a Supplementary Decision to the Tribunal's Decision No 144/00/64C dated 29 November 2000 and should be read in conjunction with that Decision.

1.0 REASONS FOR SUPPLEMENTARY DECISION:

1.1 **THIS** Supplementary Decision relates to the issue of the quantum of the Tribunal's order for costs made against Dr Fahey in its earlier Decision and corrects an error made in relation to the Tribunal's Order as to costs.

1.2 **IN** the earlier Decision, the Tribunal advised its determination as to the penalty which it considered it was appropriate to impose on Dr Fahey in relation to his conviction on a number of offences. The factual and procedural background to the convictions, and to the professional disciplinary charges is set out in the Decision dated 29 November 2000. Suffice to say that Dr Fahey's offending involved the most serious abuses of trust carried on over a period of some 31 years, all involved sexual misconduct, and all occurred in the context of his professional practice.

1.3 **IN** the High Court at Christchurch Dr Fahey was convicted of rape (x1), sexual violation (x1), and indecent assault (x11) and sentenced to a total of six years imprisonment. Seven of the criminal convictions related to charges lodged with the Tribunal in that they involved

the same victim/complainant and the same subject-matter. As stated in its Decision (at paragraph 2.4), at the hearing on 12 October 2000 the Tribunal proceeded on the basis that *"the charges laid in the Tribunal were amended, and came before the Tribunal as a referral of conviction, in the form set out [in the Notice of the Charge]"*.

1.4 **IN** all, a total of nine charges of disgraceful conduct in a professional respect have been lodged against Dr Fahey in the Tribunal. Two of the professional disciplinary charges were not the subject of any of the criminal charges or convictions.

Chronology

1.5 **THE** Chronology of the convictions and professional disciplinary charges laid before the Tribunal is as follows:

(a) Nine charges of disgraceful conduct were lodged with the Tribunal on 6 December 1999;

(b) On 1 June 2000, Dr Fahey was convicted in the High Court at Christchurch. Subsequently he was sentenced to serve a total of six years imprisonment.

(c) By letter dated 18 August 2000, Mr McClelland, Counsel for the CAC, advised the Tribunal that the CAC had completed its deliberations and determined that the convictions should be considered by the Tribunal. A disciplinary charge to that effect was enclosed for filing in the Tribunal.

(d) Mr McClelland also advised the Tribunal that *"It will be a matter for whoever prosecutes the [enclosed] disciplinary charge and the Tribunal but at this stage we would envisage that the charges of disgraceful conduct, which are*

also covered by the criminal convictions, will be withdrawn after the Tribunal has inquired into the disciplinary charge relevant to those convictions."

(e) The hearing of the Charge laid in relation to Dr Fahey's convictions was held on 12 October 2000. Mr Hodson advised the Tribunal that Dr Fahey pleaded guilty to the charge.

Relevant statutory provisions

1.6 **IN** its Decision, the Tribunal ordered, *inter alia*, that Dr Fahey should pay 75% of the costs and expenses of and incidental to the investigation, inquiry and prosecution of the Charges by the CAC, and the hearing of the charges by the Tribunal. The relevant provision is section 110(1)(f) of the Act. That section provides:

"(f) Order that the medical practitioner pay part or all of the costs and expenses of and incidental to any or all of the following:

(i) Any investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:
(ii) Any inquiry made by a complaints assessment committee in relation to the subject-matter of the charge:
(iii) The prosecution of the charge by the Director of Proceedings or complaints assessment committee, as the case may be:
(iv) The hearing by the Tribunal.

1.7 **PURSUANT** to clause 5(a) of the First Schedule to the Act, the Tribunal may regulate its own procedure, subject to the requirement that the Tribunal observe the rules of natural justice.

1.8 **SECTION** 110(3) of the Act is also relevant. That section provides that the Tribunal shall not impose a fine on any practitioner where it is dealing with any matter that constitutes an offence for which the practitioner has been convicted by a court. The Act is silent

regarding the Tribunal's power to order costs in the same circumstances. By inference, when it is dealing with "*any matter that constitutes an offence in respect of which the practitioner has been convicted*", the Tribunal may exercise its discretion as to whether or not it should order costs to be paid pursuant to section 110(2), and, if so, in what amount.

1.9 **THE** reasons for the Tribunal's Orders are set out in its Decision. In summary, the costs orders took into account the fact that the Tribunal is funded by the profession; that Dr Fahey had strenuously denied and defended all of the allegations made against him and the professional disciplinary charges lodged in the Tribunal and he had caused the CAC and the Tribunal to incur costs in both the High Court and the Tribunal by seeking an injunction to prevent the charges being lodged in the Tribunal prior to the hearing of the criminal charges; seeking a stay of the professional disciplinary proceedings until after the trial of the criminal charges, and name suppression.

1.10 **DUE** regard was given to Counsel's submissions made at the hearing that the Tribunal should not make any order of costs against Dr Fahey, notwithstanding the absence of any evidence in support of those submissions (some members initially favoured an order that Dr Fahey be ordered to pay 100% of the total costs incurred by the CAC and the Tribunal). Mr Hodson's submissions on costs did not raise or address the issue which he has now raised.

1.11 **WHEN** considering costs, the Tribunal also took into account the fact that Dr Fahey's offending was brought to an end by disclosure on the part of his victims rather than by any

voluntary action or disclosure on his part, and that he had pleaded guilty to the charges only at the very last moment before the trial of the charges was to commence.

1.12 **DR** Fahey's Counsel, Mr C J Hodson QC, has now written to the Tribunal stating as follows:

"I refer to the invoice which you have sent pursuant to the Order of the Tribunal that Dr Fahey pay 75% of the costs and expenses of and incidental to the investigation, inquiry and prosecution of the charges by the CAC and the hearing of the Tribunal.

There was only one charge before the Tribunal [at its hearing on 12 October 2000] namely that Dr Fahey was convicted of a number of offences set out in the Certificate of Conviction. That certificate is dated 2 June 2000 and reached the Medical Council on 6 June 2000. The charge was dated 17 August and was heard with admission on 12 October.

I cannot see that gross fees of $125,000.00 could have been incurred in relation to this charge. The Tribunal has of course no jurisdiction to add to the costs of this charge costs relating to any other matters. … . Would you please recalculate the invoice taking into account only those expenses properly incurred after the date of receipt of the Certificate of Conviction by the Medical Council."

2.0 **AMENDMENT TO DECISION:**

2.1 **THE** Tribunal has carefully considered Mr Hodson's letter and reviewed the order relating to costs and it acknowledges that it made an error in relation to the amount of the costs which it ordered Dr Fahey to pay. For the reasons that follow, an amended invoice will be sent to Dr Fahey requiring him to pay $72,767,57 (being 7/9ths of 75% of the total costs of $124,744.42 incurred by the CAC and the Tribunal in accordance with section 110(1)(f)). The costs are payable immediately.

2.2 **THE** invoice is to show an amount of $20,790.74 to be carried forward. This latter amount will be considered further in the context of the two charges lodged in the Tribunal which do not relate to a conviction and which remain outstanding.

3. REASONS:

Legal issues

3.1 **WHILST** Mr Hodson's assertion that Dr Fahey ultimately faced only one charge on 12 October 2000 may be literally correct, the charge encompassed some thirteen convictions, seven of which related to the same subject matter and complainants as the charges laid in the Tribunal. As Mr McClelland stated in his letter of 18 August 2000, the Tribunal's inquiry into the disciplinary charge on 12 October 2000 involved an inquiry into each of the disciplinary charges relevant to the convictions.

3.2 **THERE** is a difference between charges not proceeding to a hearing, and charges being dismissed or withdrawn. At the hearing on 12 October 2000, the Tribunal certainly proceeded on the basis that seven of the charges of disgraceful conduct came forward to the Tribunal as convictions because seven of the nine charges of disgraceful conduct brought to the Tribunal were identical in terms of their subject matter and complainants to seven of the criminal convictions.

3.3 **DR** Fahey had pleaded guilty to those charges in the criminal court, and he pleaded guilty to the charge brought to the Tribunal, therefore those seven charges of disgraceful conduct were effectively determined on 12 October 2000. It must be borne in mind for present purposes that seven of the professional disciplinary charges have been determined not by

the mere fact that Dr Fahey was convicted in a criminal court of offences relating to the same subject matter and complainants present in the charges laid in the Tribunal, but because, on 12 October 2000, he pleaded guilty to the allegations which were the subject matter of professional disciplinary charges, in the Tribunal; in effect, Dr Fahey pleaded guilty to seven of the nine charges of disgraceful conduct.

3.4 **MR** Hodson's letter begs the question - how could the Tribunal practically take any further steps to determine these charges? Dr Fahey has pleaded guilty to them for all practical and legal purposes. If those charges were brought forward for a hearing, then, as a matter of practical reality, Dr Fahey could only reiterate his guilty plea, and what would be the point of such an exercise? Such a hearing could only be for the purposes of 'formal proof' thereby enabling the Tribunal to determine penalty - an exercise which has now been completed.

3.5 **THE** Tribunal doubts, as a matter of law, and commonsense, that the charges can now be 'withdrawn'. They have been determined. There is no sensible purpose to be served by requiring those charges to be heard or to incur the costs associated with that course (although there is nothing to prevent that exercise from being repeated if necessary). There is clearly a distinction between (a) charges not proceeding because they have been determined by the plea of guilty to the charge brought to the Tribunal, and (b) the charges which might ultimately be withdrawn (two) because they have not been determined in any way and the CAC may decide not to prosecute these charges any further.

3.6 **THE** Tribunal does not accept that the charges of disgraceful conduct lodged in the Tribunal in relation to the same complainants and the same subject-matter can fairly and reasonably be described as constituting "*any other matters*", separate and discrete from the convictions which were the subject of the charge heard on 12 October 2000, as Mr Hodson asserts.

3.7 **AS** stated above, in light of Dr Fahey's admissions, the convictions and the disciplinary charge are inextricably linked.

3.8 **THE** Tribunal's view is that the purpose of the Act, and particularly sections 109 and 110, are clear. Part VIII of the Act is to provide for the disciplining of practitioners. If the Tribunal is satisfied "*after conducting a hearing on a charge ..*" that the practitioner is guilty of the charge, then it may impose any of the penalties available under section 110 of the Act.

3.9 **SECTION** 5 of the Interpretation Act 1999 applies:

"Ascertaining the meaning of legislation-

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.
(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
(3) Examples of those indications are preambles, the analysis, a table of contents, headings to parts and sections, marginal notes, diagrams, examples and explanatory material, and the organisation and format of the enactment."

3.10 **THIS** relatively recently amended legislation encapsulates the so-called 'purposive' approach to statutory interpretation. Legal commentators have concluded that the effect of

the repeal of the previous Act was that familiar provisions, such as section 5(j), were replaced by shorter, simpler provisions with the same effect (ref: McNamara P. *Interpretation Act 1999,* (2000) NZLJ 480) and that section 5(l) *"is basically just a re-enactment of section 5(j) in plainer and more economical terms"*, Burrows JF, Statute Law in New Zealand, 2ed, 1999. The new section 5 was intended to make it clear that it was a purposive provision, but *"shorter and less tautologous"* than section 5(j).

3.11 **THAT** section provided:

> *"(j) Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit…".*

3.12 **THUS**, the new section 5 leaves open the way in which the Courts should interpret an enactment in the light of its purpose; that may be narrowly, broadly or otherwise. But section 5 does not indicate any derogation from its predecessor, and does not implicitly or explicitly require a stricter, or literal, approach to interpretation. The position is likely to remain that *"strict grammatical meaning must yield to sufficiently obvious purpose"*; *MacKenzie v AG* [1992] 2 NZLR 14, 17 (CA).

3.13 **APPLYING** a purposive approach to sections 109 and 110 of the Act which is consistent with section 5 (and section 5(j)) the Tribunal has taken into account the following factors:

- the CAC's inquiries into at least seven of the nine charges of disgraceful conduct laid in December 1999 were made *"in relation to the subject-matter of the charge* [dealt with on 12 October 2000]";

- the prosecution of the charge heard on 12 October 2000 and the charges of disgraceful conduct lodged in December 1999 was a seamless process, the identity of the complainants, the substance of the complaints and the criminal charges were the same;
- Dr Fahey pleaded guilty to the charge brought in relation to the convictions, which convictions coincided in all respects with seven of the charges of disgraceful conduct lodged with the Tribunal;
- the costs incurred by the Tribunal and the CAC were incurred in relation to the subject-matter of the charge dealt with on 12 October 2000;
- all of the costs incurred by the Tribunal and the CAC are directly attributable to Dr Fahey's denials of the allegations made against him, which allegations he subsequently admitted in both the High Court and the Tribunal;
- the fact that only one charge was lodged on the basis of a single Certificate of Conviction encompassing thirteen convictions was ultimately presented to the Tribunal, is legally and practically irrelevant for present purposes. The CAC could equally have obtained and laid 13 charges, each with a its own certificate of conviction;
- Section 3 of the Medical Practitioners Act states that: *"the principal purpose of the Act is to protect the health and safety of the public by prescribing or providing for mechanisms to ensure that medical practitioners are competent to practise medicine by, among other things, ... providing for the disciplining of medical practitioners"*. Thus, the medical profession is, subject to the provisions of the Act, self-regulating. It pays for that privilege, and for carrying out its obligations, by means of a levy on all medical practitioners.

- The concomitant of the privilege of self-regulation is that the profession is required to conduct its business, including the disciplining of errant members, in the public interest.
- It would be manifestly unfair and unjust and contrary to the public good if it were the case that a practitioner could:
  (a) obtain a stay and thereby postpone the hearing of multiple professional disciplinary charges involving the most serious abuse and exploitation of the professional relationship on the basis of his denial of those charges;
  (b) subsequently plead guilty in relation to the subject-matter of those charges, yet
  (c) avoid the consequences of his professional misconduct on the basis that he has been convicted and imprisoned on criminal charges laid in relation to the same complainants and the same subject-matter, and the professional disciplinary charges could then only be dealt with by the Tribunal on the basis of his conviction/s;
- A strict, literal approach to the interpretation of ss109 and 110 which may permit a scenario such as this cannot have been what was intended by Parliament when it enacted these provisions. Rather, it is more likely that Parliament intended that the Tribunal should adopt a fair, sensible and practical approach, and the subsequent enactment of s5 of the Interpretation Act 1999 would appear to confirm such an approach, at least in general terms.
- The Tribunal's approach also accords with the principles underlying, and applicable to, costs orders generally, with the spirit, intent and purpose of the Act as a whole, and with the provisions of Part VIII of the Act in particular.
- The two jurisdictions (criminal and Tribunal) serve quite different and discrete purposes, a fact which section 109(1)(e) expressly acknowledges, but in some cases

the two jurisdictions will overlap. This will obviously be the case where the practitioner pleads guilty in both jurisdictions to allegations giving rise both to criminal charges and professional disciplinary charges;

- Because Dr Fahey pleaded guilty to the criminal charges brought in relation to the same subject-matter as seven of the professional disciplinary charges and at the hearing on 12 October 2000, Mr Hodson advised the Tribunal that Dr Fahey pleaded guilty to the Charge (which referred to the 13 convictions), the Tribunal was entitled to proceed on the basis that Dr Fahey admitted the professional disciplinary charges relevant to those convictions;
- Mr Hodson is, in effect, asserting that Dr Fahey was guilty of both the criminal and professional charges (brought in relation to the same subject-matter and the same complainants) for some purposes (i.e. now that Dr Fahey has been convicted the professional disciplinary charges should just 'go away'), but not for others (i.e. for the purposes of costs);
- The Tribunal was named as Second Defendant in judicial review proceedings commenced on behalf of Dr Fahey prior to the professional disciplinary charges being laid. The Tribunal took the approach that it had no interests in the charges at that stage, and indicated to the High Court that it would abide any directions made by the Court;
- Once the charges were laid, and the Tribunal's jurisdiction invoked, it heard and ruled on the applications made by Dr Fahey promptly. The High Court did not disturb the Tribunal's decisions. The Tribunal granted the application to stay the hearing of the professional disciplinary charges until after the trial of the criminal charges on the basis

that any hearing of the disciplinary charges might prejudice Dr Fahey's right to a fair trial (Decision 105/99/55C).

- The language of section 110 makes it clear that the purpose of that provision is that a practitioner can be ordered to *"pay part or all of the costs and expenses of and incidental to any or all of … any inquiry made by a CAC in relation to the subject-matter of a charge … the prosecution of the charge … [and] the hearing by the Tribunal"*;
- The Tribunal considers that its orders made in relation to costs best ensure the attainments of the Act, and are consistent with the meaning, intent and spirit of sections 109 and 110 of the Act.

3.14 **FOR** all of these reasons therefore, the Tribunal is satisfied that the costs that Dr Fahey has been ordered to pay are costs which were incurred in relation to the subject-matter of the charge which was dealt with on 12 October 2000.

Other factors

3.15 **DR** Fahey was convicted for offences he committed against seven of the same complainants in relation to whom professional disciplinary charges have been laid. The fact that his offending constituted both criminal offences and professional disciplinary offences is not a fact for which Dr Fahey should obtain credit; either in monetary terms or otherwise.

3.16 **THE** Certificate of Conviction referred to <u>all</u> of the offences in respect of which he was convicted; seven of these coincided with charges of disgraceful conduct in a professional

respect. The Tribunal's inquiry into the convictions necessarily encompassed an inquiry into the relevant charges lodged with it.

3.17 **THE** fact that a medical practitioner may face prosecution in both the criminal courts and in the Tribunal is especially significant when both the criminal charges and the professional disciplinary charges arise out of the practitioner's professional practice, and his abuse of the doctor-patient relationship. Dr Fahey could have pleaded not guilty to the charge heard on 12 October 2000 or any part of it. He did not.

3.18 **IT** is equally the case that had Dr Fahey been tried and found not guilty on any of the criminal charges, that would not have prevented the professional disciplinary charge, brought in respect of the same subject-matter, from proceeding, with possibly a different outcome. The determination of what constitutes a professional disciplinary offence is a matter for Dr Fahey's profession; a task which by virtue of the provisions of the Act is entrusted to this Tribunal, subject to the practitioner's rights to appeal; *Re A Medical Practitioner* [1959] NZLR 784 (CA), *Gardiner v Pharmaceutical Society Disciplinary Committee* [1986] 1 NZLR 551.

3.19 **MR** Hodson's claim that Dr Fahey is liable only for costs incurred by the CAC and the Tribunal since the Notice of Conviction was received by the Medical Council requires a very strict, grammatical interpretation of ss109 and 110. As the Court of Appeal stated in *MacKenzie's* case, any such interpretation *"must yield"* to a sufficiently obvious purpose. At the hearing on 12 October 2000, the Tribunal received evidence from the CAC in relation to all of the convictions. That evidence encompassed all of the victims who had

made complaints to the Medical Council and the subject-matter of the charges lodged with the Tribunal (with the exception of one complainant/two charges).

3.20 **THE** suggestion that seven of the complaints or charges must, in effect, now be disregarded ignores the full nature and extent of the harm caused to them, and the nature and context of Dr Fahey's offending.

3.21 **IN** considering Mr Hodson's assertions, the sentencing Judge's comments should be kept in mind. His Honour stated:

> *[8] The victim impact reports make compelling and harrowing reading. Almost without exception your victims have ongoing problems and difficulties arising from your offending. Some have relationship problems, and understandably struggle to trust men, particularly those in positions of responsibility. Your victims speak of feeling dirty, of depression and being upset. One has to force herself to undergo routine medical examinations. I think I can best express the effect of your offending on your victims by quoting directly from one of the victim impact reports. Essentially that encapsulates most of the bewilderment, hurt and pain suffered by all of these brave women who exposed your wrongdoing. This victim, in dealing with the impact on her life, said this, …"*

3.22 **TAKING** all of these factors into account, the Tribunal considers that the claim that Dr Fahey can be ordered to pay only 75% of the costs calculated since the date the Certificate of Conviction was received by the Council is demeaning to those women who had cause (and the courage) to lodge a professional disciplinary complaint against him, and also to the medical profession generally, as well as being wrong in law.

3.23 **THE** Tribunal has taken the approach that the requirement that it observe the principles of natural justice is intended to apply as a general rule, that is, that the Tribunal must be fair to all persons affected by its decisions and procedures. If it were to accept Mr Hodson's

interpretation, the result would be manifestly unfair and unjust to Dr Fahey's victims, the CAC, and to the medical profession.

3.24 **BY** far the bulk of the costs incurred by the CAC and the Tribunal which are the subject of the costs order were incurred as a direct consequence of Dr Fahey's strenuous denial of the allegations made against him and the proceedings commenced by him seeking to prevent professional disciplinary charges being laid against him, and subsequently to prevent such charges from proceeding and suppressing the fact of the charges from the public. Dr Fahey would now have all of those costs borne by the profession, in addition to the already considerable indirect costs he has caused it.

3.25 **AS** a matter of general principle, the unsuccessful party to litigation must pay, or contribute to, the costs of the litigation. Section 110 of the Act, which requires that only practitioners who have been found guilty of professional disciplinary charges may be required to pay costs, is consistent with that general principle. In this regard it is perhaps relevant to bear in mind that the professional disciplinary jurisdiction is self-funding, and only practitioners who have been found guilty of a professional disciplinary offence are liable to pay all or part of the costs incurred by the prosecution and the Tribunal. The mere fact that a practitioner has been charged with a disciplinary offence is not sufficient to attract any liability to make a contribution to the costs of the hearing of the charge.

3.26 **DR** Fahey subsequently pleaded guilty to the fact that he was convicted of criminal offences arising out of the same acts, perpetrated against the same complainants, as were the subject matter of professional disciplinary charges. He had previously denied all of the

charges and allegations made against him, his denials were ultimately revoked. It seems illogical to argue now that he is not liable to costs incurred in relation to the inquiry into the subject-matter of the charges, and to the hearing of that same subject-matter in this Tribunal.

3.27 **THESE** factors all reinforce the Tribunal's view that its interpretation as to the operation and effect of sections 109 and 110 is legally correct, it is consistent with the purpose of the Act and therefore accords with the requirements of section 5 of the Interpretation Act 1999; it is also fair and just in terms of the wider public interest, and the interests of the medical profession.

3.28 **HOWEVER,** in reviewing its orders as a result of Mr Hodson's letter, the Tribunal has come to view that what it should have done was to divide the quantum of costs by nine, being the total number of charges laid against Dr Fahey and in respect of which the costs were incurred. Seven of those charges related to convictions and have been determined on that basis, leaving two charges to be dealt with separately. Therefore two-ninths of 75% of the costs should be held over and considered further in the context of the two charges which do not relate to a conviction and which remain outstanding.

3.29 **THE** costs incurred in relation to each of nine of the charges lodged in the Tribunal were indivisible at the date of the Tribunal's Orders, 29 November 2000. At that point, all of the costs incurred in relation to the charges 'crystallised', and the total calculated. The order of costs against Dr Fahey, that he pay 75% of the total costs incurred by the CAC

and the Tribunal, will be divided by nine, 7/9ths invoiced, and 2/9ths carried forward until the remaining charges are also determined, or withdrawn.

3.30 **IN** the event the remaining two charges are dismissed or withdrawn, or Dr Fahey is found to be not guilty in relation thereto, then Dr Fahey will not be liable to pay any of the costs incurred by the CAC or the Tribunal since 29 November 2000, or the costs carried forward in relation to those two remaining charges.

3.31 **THE** Tribunal's Decision dated 29 November 2000 is amended accordingly.

4.0 **ORDERS:**

4.1 **THE** Tribunal orders:

4.1.1 **THE** Orders made by the Tribunal in its Decision dated 29 November 2000 are confirmed;

4.1.2 **THE** amount payable by Dr Fahey pursuant to the Tribunal's Order made in paragraph 6.1.3 of the Decision is $93,558.31

4.1.3 **AN** invoice in the amount of $72,767.57 is to be forwarded to Dr Fahey for payment immediately, in accordance with the usual practice;

4.1.4 **THE** invoice forwarded to Dr Fahey is to show an amount of $20,790.74 to be carried over and considered further in the context of the two charges which were not the subject of a conviction and which remain outstanding.

DATED at Auckland this 1st day of February 2001

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W N Brandon
Chair
Medical Practitioners Disciplinary Tribunal