

Privacy and the school counsellor

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ABSTRACT

Although a counsellor in a school is employed as a specialist member of the teaching staff, the counsellor's role is complex and is significantly different from that of colleagues. In safeguarding the rights of students, counsellors can find themselves needing to negotiate conflicts with colleagues, parents or employers, who hold different perspectives. Privacy issues are a particular area of concern in this context. In this paper, the role of counselling and guidance in schools is discussed. The relationship between privacy and trust is explored within the role and function of the counsellor. The concepts of privilege, confidentiality and informed consent, including the determination of competence, are examined with reference to relevant statute, ethical guidelines and research. Potential tensions between the roles, perspectives and responsibilities of counsellors and parents, teachers and principals are examined in relation to privacy issues. Recommendations are made for resolving such conflicts, including the clear definition of roles and responsibilities, developing shared understandings of differing perspectives, of ethical and legal guidelines and of ethical decision making processes, and developing appropriate training for deans and other members of guidance networks.

Guidance and counselling in New Zealand schools

Since the introduction of the Privacy Act 1993, the debate about its relevance and implications has brought under legal and public scrutiny the practices of every type of organisation within the community. In a more rigorous way than before, management and all staff in schools are being challenged to examine and justify their practices in the handling of information. School counselling has been referred to as an ethical minefield (Hawkins & Monk, 1995). Counsellors in schools are not only working primarily with adolescents, whose rights are both limited and contentious, but they are also working in school systems of which they are a part, yet within which their roles are often significantly different from others. It could be argued that the role of the counsellor entails some of the most complex and potentially conflicting responsibilities with regard to privacy issues.

Counsellors have been employed in New Zealand secondary schools since the early 1960s. The initial appointment of sole counsellors to some secondary schools developed during the 1960s into the creation of guidance counselling positions in most state secondary schools, and the development of guidance departments and networks during the late 1960s and 1970s (Department of Education, 1971). The policy of maintaining designated positions for counsellors within the staffing allocation of schools has not been extended to intermediate and primary schools.¹ With the advent of Tomorrow's Schools, local advisory positions that had existed in the Department of

Education for the support of different specialist areas were disestablished, and schools now have greater autonomy in their internal allocation of resources and determination of needs. As a result, guidance counsellors' positions currently lack the degree of protection and monitoring that has been provided in the past. Nevertheless, counsellors are employed in the majority of state secondary schools and both the findings of a recent study in Christchurch (Miller, Manthei & Gilmore, 1993) and anecdotal evidence from other centres, indicate that the demand for counselling services is growing in the face of shrinking resources. In discussing school counsellors and privacy issues here, it will be assumed that counsellors are working in the secondary school context.

Although school counsellors have been regarded as specialist members of the teaching staff, recognition has been given to the demands of the guidance counsellor's role through training provisions that have been unique within the school system. From the mid-1970s, the Department of Education, and more recently the Ministry of Education, funded specialist training at graduate level for school counsellors as part of the policy of gradual and continuous appointment of counsellors to all secondary schools (Webb & Hermansson, 1993).²

Neither statute nor current guidelines for the management of schools refer to the position of the school counsellor specifically, but they do make reference to the provision of guidance and counselling for students. For example, under Section 77 (a) of the Education Act 1989, the principal of every state school has a responsibility to "take all reasonable steps to ensure that students get good guidance and counselling".

The National Education Goals, under the Revised National Education Guidelines (*Education Gazette*, 30 April, 1993: 3), include in the identification of priorities: "The highest standards of achievement ... enabling all students to realise their full potential" and "identifying and removing barriers to achievement". Guidance and counselling services play a direct role in the attainment of such goals, in that guidance programmes address psychological needs and provide lifeskills and social education as well as crisis intervention and therapeutic support. Barriers to achievement can include personal stressors that inhibit students' ability to function effectively as learners.

The National Administration Guidelines of the Ministry of Education (*Education Gazette*, 30 April, 1993: 4), also specifically require Boards of Trustees to:

provide a safe physical and emotional environment for students.

While the intended meaning of these terms is not specified, 'safety' can be interpreted as freedom from such things as harassment of all forms, including bullying and violence, emotional, physical and sexual abuse, and from discrimination such as racism and sexism. It can be seen as the maintenance of a caring and supportive environment in which students are enabled to develop effective communication, conflict resolution and relationship skills with their peers and with staff. Although responsibility for maintaining this safe environment rests with school management, effective counselling and guidance systems are integral to ensuring that this requirement is fulfilled. Comprehensive programmes involving both students and staff are needed if safe physical and emotional environments are to be created, and policies and procedures developed and maintained to deal with incidents as they arise. In addition to the need to work systemically, individual and group counselling and mediation for students are necessary to the effectiveness of such programmes. These are all counselling and counselling-related activities designed to meet the need of students for an environment in which they are physically and emotionally safe, so that as far as possible, impediments to learning are removed or minimised. In discussing interpretations of the law pertaining to school counsellors, Ludbrook (1991) noted that in terms of the Education Act 1989, the primary focus of counselling in schools is on the students and their needs.

Section 13 (4) of the Education Act requires principals to take all reasonable steps to ensure that any student suspended from school:

has the guidance and counselling that are reasonable and practicable in all the circumstances of the suspension.

The requirement to provide guidance and counselling has recently been drawn to the attention of school managers in *Guidelines for Principals and Boards of Trustees on the Statutory and Procedural Requirements for the Suspension and Expulsion of Students*, promulgated by the Ministry of Education in July 1996, (ref section 1.1 (a), Right to Counselling). Under section 1.3, Possible Difficulties, the *Guidelines* state:

If the principal has failed to provide guidance and counselling for the student as a means of dealing with the problem, any attempt to exclude the student may be countered by parents on the basis that the student has been denied the right to guidance and counselling and that this should be offered before suspension is considered.

It is also noted in these *Guidelines* (section 1.4) that:

The provision of a safe environment could help prevent many suspensions.

Under Section 77 (b) of the Education Act, the principal of a school has a legal duty to inform a student's parents of matters that are impeding the student's progress at school or harming the student's relationships with staff or students. Neither a principal nor a counsellor in a school, however, is obligated to inform parents that a particular student is receiving counselling. If parents are told by the principal that their son or daughter is seeing the counsellor, the school counsellor is not legally obliged to disclose to parents information that the student shared in confidence in counselling sessions (Ludbrook, 1991).

The roles of counsellors and guidance networks

Although initially it was anticipated that counsellors in schools would deal with specific social problems, a remedial-adjustive role which Wadsworth (1970) described as one of rescuer and troubleshooter, by 1968 a policy statement from the Department of Education identified the counsellor's responsibility as the provision of educational, vocational and personal guidance to all students, a 'mental health for all' approach (Webb, 1990: 41). By the time *Guidance in Secondary Schools*, known as the Working Party Report, was published by the Department of Education in 1971, 'guidance networks' already existed on an official basis in some secondary schools that were part of a pilot programme in which they were given additional PR allocation for guidance, and on an informal basis in others. Staff involved in such networks included form teachers, deans, principals, deputy principals, senior master/mistresses, counsellors and careers advisors (Miller et al, 1993). The establishment of such networks, through the involvement of a wide range of staff members in guidance related roles, was affirmed in a recommendation in the Working Party Report. Although some of the recommendations in this document were rejected, the notion of the guidance network has prevailed.

Within guidance networks, school counsellors hold key positions as staff members with specialist training in counselling, who have tended to deal with the most complex presenting issues. Whilst the main focus of their work is enhancing the wellbeing of students, Miller et al (1993) found that a high proportion were also counselling teachers and parents, and a range of issues were being addressed.

Although the Working Party Report emphasised educational and vocational counselling as having priority, personal/ social issues have always represented a significant aspect of the school counsellor's work (Baker, 1985; McDiarmid, 1981; Miller et al, 1993; Oliver, 1976; Pankhurst, 1975). Currently, anecdotal evidence suggests that 60 - 90% of most school counsellors' time is spent on personal/social counselling. It is important to note, however, that many, if not most, presenting issues that clients bring to counsellors do not involve one discrete problem but are multi-faceted and complex, and students bring these issues to the counsellor within the context of the school. Although discussions with school counsellors indicate that many students come to counselling with concerns regarding significant relationships in their lives, including family and peers, the

detrimental influence of such issues on their educational progress is frequently a significant aspect of the impact of these problems on their lives, and of their motivation in seeking help.

The recent study of the roles of guidance network staff revealed that a number of staff members besides designated counsellors currently include the counselling of students, teachers and parents in their guidance functions (Miller et al, 1993). Although traditionally there has been an emphasis on pastoral care in the roles of form teachers and deans, and indeed of teachers in general, the wide range of staff members who see themselves as engaged in counselling is a matter of some concern. Whilst this seems to reflect an increased demand for counselling services in schools³, Miller et al (1993) raised questions about the extent to which these staff operate from a common understanding of what counselling means, and questions about their training and competence to undertake this role. The more staff members may be entrusted by students and others with sensitive personal information, the greater the potential difficulties with maintaining students' privacy, particularly when consultation with other members of the guidance network may be seen as necessary.

Privacy and trust

Counselling is a change-oriented process that enables clients to explore their own values and relationships, in order to make decisions appropriate to them. A fundamental principle underlying counselling practice with adolescents as well as adults is the right of clients to choice and self-direction in their beliefs (Huey, 1986). Client autonomy is a core ethical principle underpinning all professional codes of ethics that guide the decision making of counsellors and other therapists, and concerns about protecting client privacy can be interpreted as relating to issues of autonomy.

The right to privacy follows from the assumption that autonomous individuals have the right to make autonomous decisions about their own lives and the information relevant to it (Kitchener 1984: 46).

Similarly, the principle of autonomy underlies the Privacy Act with regard to the gathering, storage and dissemination of personal information. Thus protecting client privacy is both a legal and an ethical obligation for counsellors and others.⁴

Whilst the client's interests must assume priority for the counsellor, consideration is also owed to society, and in the counselling relationship, the individual is not regarded in isolation from the social context. The development of family and cross-cultural counselling, and the increasing recognition given to the influence of socio-political, economic and cultural factors on counselling relationships (Sue & Sue, 1990; Waldegrave, 1990) have enhanced the broad, ecological view that counsellors have of their clients and their presenting issues. The analysis of contextual issues has also led to a more comprehensive understanding of the complex nature of power in the therapeutic relationship and its potential for reproducing oppression. Thus the counselling process needs to be carefully and responsibly facilitated, so as to enable clients and counsellors to recognise the ambiguities of significant contextual and relationship issues in the situations they are attempting to resolve. Ethical dilemmas revolve around balancing conflicting 'goods', and these often involve situations that require a counsellor to balance the good of the client with the good of society.

An example of the type of ethical dilemma that can arise involving a school counsellor's relative obligations to the client and the wider group, would be the case of a student who discloses to the counsellor that he is using drugs with other students, in the vicinity of the school. If the student agrees to disclosure of this information to school management, parents or possibly a specialist addiction counsellor to whom he is willing to be referred, the counsellor is at liberty to do so in terms of the agreement between client and counsellor. In this instance, if the student himself was unwilling to inform others or allow them to be informed by the counsellor, a judgment of potential harm to the wider group might seem a compelling reason to break confidentiality, in terms of the counsellor's professional ethics and obligations to the employer, who would possibly expect to be

informed of such situations. A counsellor could, however, decide that in light of all the circumstances disclosed by the student, including a minimal risk of danger to others, and particular characteristics of the student and the context, a preferable stance was to maintain confidentiality. It is conceivable that a greater risk could be foreseen by the counsellor, were confidentiality to be broken against the student's wishes, in that the counsellor would lose the student's trust. If this occurred, it would be unlikely they would have the opportunity to provide ongoing counselling to the student, unlikely they would be able to access the other students involved, and highly likely they would endanger their reputation as trustworthy with students in general. Thus although the decision to break confidentiality might be intended to achieve the greater good, this may in the long run be compromised if the counsellor's ability to do their job is impaired in the process.

The establishment of a trusting, open relationship is regarded as fundamental to the effectiveness of the helping process, because information disclosed to counsellors is highly personal, and the process of disclosure can evoke considerable anxiety in clients, who may find it threatening (Tompkins & Mehring, 1993). Students can experience a strong sense of personal risk and vulnerability when 'being open' with others (Broder, 1987). The establishment of trust and the preservation of boundaries of privacy around the counselling relationship are largely dependent on the expectation that anything communicated within the counselling relationship will be treated as confidential.

Littrell, Caffrey and Hopper (1987) cited research that indicated that potential clients use reputational as well as behavioural cues to decide whether they are willing to discuss concerns with a counsellor and to draw inferences about whether the counsellor is trustworthy and credible. Because of the close nature of adolescent peer groups, the influence of peers on opinions, and student 'grapevines', these authors expressed a concern shared by many school counsellors about the influence of a counsellor's reputation on potential clients. There is a possibility that some will be deterred from seeking help from a counsellor because of a neutral or negative reputation that develops. Their own study of adolescents' preference ratings for a male and a female counsellor in relation to negative reputational cues, illustrated the 'disastrous' impact that negative reputations had on student preferences (Littrell, Caffrey & Hopper, 1987: 231). Another study of student perceptions that inhibit them from seeking counselling revealed that the second most frequent response was, "Afraid counsellor will pass information about me to other people" (West, Kayser, Overton & Saltmarsh, 1991: 79).

There is much anecdotal evidence to indicate that if the word goes around, "Don't go to the counsellor - they tell!" students can become very reluctant to contact counsellors, and if they do, they monitor carefully the nature of their disclosures. Limited disclosure on the part of the client can hamper the counsellor's effectiveness in assisting the client. A negative reputation can undermine the counsellor's efforts, not only with the individual client but also with the student body as a whole, and can often be undeserved. Counsellors have found that while they have held confidences, their student clients have at times been the ones who have told friends their 'secrets', only to be let down by their peers. It seems more common, however, to blame the counsellor, than face their own indiscretion or deal with the matter of trust with their friends. If possible, counsellors need to discuss with clients not only their own but also the client's responsibility for the protection of the privacy of personal information. Although the client is not bound to maintain confidentiality in the same way as the counsellor, the client should be made aware of the possible pitfalls as well as the benefits of sharing personal information with friends and others.

Privilege and confidentiality

The confidentiality clause in the code of ethics of the New Zealand Association of Counsellors states:

Communication between counsellor and client shall be confidential and treated as privileged information unless the client gives consent to any particular information being disclosed (*NZAC Members Handbook*, 1995: 13).

Thus two associated concepts are identified here: the notion of *privilege*, and the concept of *informed consent*.

Although counsellors are generally required to treat information shared with them by clients as confidential, the protection of privilege does not apply in the legal sense in the same way as it does with regard to information disclosed in the context of clients' relationships with medical doctors, lawyers and clergy.

There is an important distinction to be drawn between the *ETHIC* of confidentiality which attaches to many groups (psychologists, marriage guidance counsellors, school counsellors, social workers) and the *SHIELD* of confidentiality which can be raised in legal proceedings to fend off questions designed to penetrate the relationship of confider and confidant (Jefferson, 1992: 29).

Some flexibility, however, has been evident in judicial rulings on matters pertaining to professional relationships, and Jefferson (1992) paraphrased Section 35 of the Evidence Amendment Act (No. 2) 1980 as indicating:

Sometimes it is more important to preserve confidences between people in 'special relationships' than it is to insist on those confidences being breached (p 32).

A number of commentators have noted that privileged communication is the client's right (Sheeley & Herlihy, 1987), not something that belongs to the counselling profession, and confidentiality can be waived by the client (Jefferson, 1992). Within counselling relationships, it is therefore important that counsellors establish the potential limits to confidentiality. In the case of the student and drugs, limits could be placed on a counsellor's ability to maintain confidentiality by a school policy and/or procedure that was mandated in such circumstances. In this case the counsellor would have a legal obligation to the employer, the school Board of Trustees, as well as an ethical obligation to warn the client of such limits. To be effective, this should occur prior to disclosure by the client, so that she or he could make the decision to disclose in full awareness of the possible consequences of doing so. It is not always possible, however, for the counsellor to anticipate the issues that may arise, as a problem the client may initially present can be quite different from the issues that are disclosed further on in the counselling process.

Limits to confidentiality are indicated in the following manner in the guidelines governing local counsellors:

when, in the professional judgment of the counsellor, there is clear and imminent danger to the client or others. This includes circumstances when the client's competence to make a decision is obviously limited. In these circumstances the counsellor shall take reasonable personal action or inform responsible authorities. (*NZAC Code of Ethics, Members Handbook*, 1995: 13)

Underlying the 'duty to warn' which is mandated here is the principle of giving priority to the public interest in appropriate circumstances. Normally this is interpreted as referring to risk of suicide or threat of violence to others. This has been given prominence in the professional literature internationally following the Tarasoff case⁵ in the United States (Corey, Corey & Callanan, 1993), which established that a therapist had a responsibility to act to protect the possible victim(s) in a situation where a client might pose a serious danger of violence (Jefferson, 1992). This would apply whether the client were an adult or a young person and the term 'therapist' could be assumed to include school counsellors (Waldo & Malley, 1992).

Informed consent and competence

The concept of informed consent applies not only in situations where confidentiality might be limited, but also to the client's rights with regard to participation in any kind of therapeutic activity.

Prior to the clause on confidentiality, the NZAC Code of Ethics includes the following statement entitled Consent:

Counsellors shall uphold the principle of free and informed consent for clients in counselling: that is to say that clients must be fully informed of what is meant by counselling and must freely consent to participate. Full information implies comprehension, and free consent implies lack of pressure to comply with proposals. (*Members Handbook*, 1995: 13)

The release of personal information is also a matter upon which the client's informed consent must be sought. In legal terms, the principle of informed consent is embodied in the Privacy Act, which uses principles rather than rules, as the Privacy Commissioner has stated in his article in this issue (Slane, 1997).

The argument that young people are not competent to make their own decisions has often been used as a justification for a paternalistic stance by adults in authority over young people. Kitchener (1984) suggested that the rights of adolescents to give informed consent hinge almost exclusively on their capacities to comprehend information and make competent decisions. In terms of legal precedent, the Gillick case⁶ in the United Kingdom established a common law position that as long as a young person under 16 years old understands the nature of the issues and consequences involved, he is deemed competent and therefore has a legal right to make an autonomous decision (Bond, 1993).

An early study by McGuire (1974) in the United States found considerable conflict among mental health professionals with regard to confidentiality issues and children. The trend was noted, however, for therapists to treat children the same way as their adult counterparts (McGuire, 1974). Similarly, Belter and Grisso (1984) reported that there was a trend through the 1970s and 1980s to recognise the 'self-determination' rights of young people as consumers of health care services over issues such as informed consent to treatment participation in treatment decisions, confidentiality and access to clinical records. A study reported in 1990 of the views of psychologists in New Zealand revealed that 42% of the participants would support the right of a 12 year old client to privacy over the right of his or her parents to have access to information shared in the therapeutic context (Leathley, 1990). No comparable study has yet been undertaken of local counsellors' opinions or practices.

The legal definition of consent requires that an individual's permission be given "knowingly, intelligently and voluntarily" (Grisso & Vierling, 1978: 415). A review of literature of children's problem solving abilities found that around age 12, most minors had attained the formal operations stage of cognitive development that predominates in the general population, and therefore intellectual capacity was not a valid argument for denying minors over 12 as a group the right of independent consent to treatment or veto of parental consent (Grisso & Vierling, 1978). This conclusion was supported by the findings of experimental studies by Keith-Spiegel and Maas (1981) and Weithorn and Campbell (1982).

In addition, research by Haines and Torgensen (1979) and Adelman and Chaney (1982) indicated that the fact that young people may have psychoeducational problems does not substantially impair their capacity to understand, evaluate, communicate, or perform in general, despite the assumptions that have been made to the contrary (Adelman, Lusk, Alvarez & Acosta, 1985). A series of studies has provided evidence in support of including minors in decision making about therapy, helping them improve their skills so they can participate effectively, and giving them the right to separate consent in situations where they have been referred by parents or others (Kaser-Boyd, Adelman & Taylor, 1985). In a study of therapists' attitudes towards informed consent with adolescent clients, it was found that the most common reasons given by therapists for gaining informed consent were to increase motivation for therapy and to enhance the therapeutic relationship (Beeman & Scott, 1991). Thus there is a therapeutic as well as a legal and ethical rationale for seeking informed consent from young people.

When a client is self-referred there seems to be less difficulty with issues of informed consent and participation in counselling than in the case of a referral. Although in the experience of the author as a school counsellor, and that of colleagues currently working in this role, the majority of clients are self-referred, all school counsellors work with students who have been referred by teachers, parents or their friends. In such situations, issues such as the nature of the referral, the needs of other interested parties and the consequences associated with the outcomes of counselling, all impinge on the contract that can be developed between client and counsellor.

Resentment about not having a choice in the matter, and negative perceptions of counselling, often based on previous experiences, have been cited as reasons for the resistance of some young people to engaging in the therapeutic process (Taylor, Adelman & Kaser-Boyd, 1985). Rather than interpret this resistance negatively, Taylor and her colleagues supported earlier hypotheses that the response of these young clients was a rational, reactive coping strategy, or a result of failure to establish a clear and mutually agreeable contract. They recommended involving clients fully in decision making, seeking feedback from clients about their satisfaction with the process and making changes accordingly (Taylor et al, 1985). Regardless of the circumstances surrounding the initiation of the counselling relationship, the principles of confidentiality and informed consent about the nature of the counselling process and the disclosure of information must apply.

The provision of accurate, impartial and comprehensive information to clients in ways that are appropriate to their understanding, presents a challenge to all counsellors (Muehleman, Pickens & Robinson, 1985). From their clinical experience and research, Taylor and Adelman (1989) have provided practical strategies for explaining privacy issues to young clients, and for enhancing their motivation and skills for communicating their own needs appropriately, in order to learn to relate effectively to significant others in their lives. In situations where disclosure is necessary, they suggested ways of minimising the damage to the counselling relationship. The steps include explaining to the client the reasons for disclosure, exploring with the client the likely consequences both within the counselling relationship and beyond it, and discussing with the client the question of how to proceed, in order to minimise negative consequences and maximise any potential benefits (Taylor & Adelman, 1989).

Relationships with parents and teachers

Central to the functioning of guidance networks is effective communication, but school counsellors frequently find themselves caught in an inherent tension between considerations of privacy, and colleagues' perception of their need to know information about students. Counsellors can be vulnerable to pressure from parents as well as from teachers and administrators in the school, and there is a tendency on the part of some parents, teachers and principals to regard possession of information as a 'right'. From a discussion of these issues with school counsellors, it appears that some parents express suspicion of a process they perceive as threatening their power and from which they are excluded, and some parents convey the impression, in the words of Robert Ludbrook (1991b), that their children

are seen as appendages of adults and are expected 'to be seen but not heard'. At best they are seen as objects of concern to be sheltered and protected ... generally the children are not listened to and their wishes and feelings are not treated seriously. (op cit: 1)

Parents do not have a legal right to demand that a school counsellor violates their child's privacy by divulging information disclosed within the counselling relationship. There are, however, good reasons for parents and teachers to be involved at times in the therapeutic process or informed of students' issues so they can be effective in supporting and assisting the student. Both morally and legally, parents have responsibilities for their adolescent children, and obviously, caring parents will want to know when their children are having difficulties. Perhaps as an aspect of the increased involvement of parents in the management of schools since the advent of Tomorrow's Schools,

counsellors have commented in collegial meetings on a perceived trend to advocate for 'parents' rights' over the last few years. In examining parents' views of counsellors' ethical dilemmas, a recent New Zealand study highlighted some differences between parents' and young people's views of particular situations, and raised questions about whether parents' views were considered sufficiently in counsellors' ethical decision making (Hawkins & Monk, 1995).

Nevertheless, in their relationships with their parents, many adolescents experience tensions that are a predictable outcome of the changes they are experiencing in this phase of their development. They express to counsellors the need to have a zone of privacy around them, so they have the opportunity to sort out their issues and arrive at their own understanding about matters affecting them. Research indicates that although adolescents recognise that there can be limits to privacy in counselling, if given a choice, they would prefer a greater degree of privacy than they believe they will be afforded (McGuire, Parnell, Blau & Abbott, 1994). Difficulty in talking to their parents about important issues seems endemic, and regardless of the traditions of their cultures, the majority seek control over the personal information disclosed within the counselling relationship (e.g. Fogarty, 1992).

An example was cited recently of parents who banned their 14 year old daughter from seeing the counsellors at her school (Winslade, 1996), and similar incidents have been reported to the author. Such a situation not only raises questions about the rights of a young person, but also has implications beyond the letter of the law. Winslade (1996) discussed ways in which both the young person's and the parents' perspectives could be honoured, and the importance of taking into account issues of the safety of the young person, should information that the student was receiving counselling reach the parents, or should the parents' ban on counselling reflect psychological abuse within the family. In a review of the international literature on psychological abuse, McDowell (1995) noted that in such cases the parent has prevented professionals from assessing the child's problems, and has also forbidden the child to receive counselling or other assistance.

Situations in which a parent is abusing or neglecting a son or daughter, or when a teacher is bullying or inappropriate in dealings with a student, can present counsellors with complex challenges. There is anecdotal evidence of students being threatened and sometimes physically punished by parents when they discover they have talked with a professional outside the family, and some students live in genuine fear of the consequences of parental involvement by the school.

Consider a hypothetical situation in which a counsellor is aware of a particularly destructive relationship between a parent and a student, and is concerned that this relationship has been a contributing factor in a suicide attempt. At the request of the student and after careful consideration including consultation with a professional supervisor, the counsellor decides not to inform the parent about the suicide attempt.

Although according to ethical guidelines and also in terms of the law, the counsellor would have been within her rights to have broken confidentiality, other ethical principles applied, and in the counsellor's judgment, there was greater risk of harm to the client if the parent had been informed. This example is an illustration of the limitations of ethical guidelines, and conflicts that can arise in attempting to apply them that have been identified by Mabe and Rollin (1986). Conflicts between considerations of autonomy and welfare are at the heart of many ethical dilemmas, the same principles that were at the core of disputes between utilitarians and Kantians in technical and applied discussions of ethics (Mabe & Rollin, 1986). Such dilemmas are not resolved simply by recourse to legal and ethical guidelines, but must ultimately be decided upon by the counsellor, preferably in consultation with the client, after considering all relevant information. In doing so, Barnett (1987) warned that counsellors must not allow awareness of accountability to parents and others to erode the rights of the child. Just as the school counsellor's situation is ambiguous, so also is that of the child, whose need and rights must be balanced in the ethical decision making process (Barnett, 1987).

Rather than viewing the counsellor's role in maintaining an adolescent's privacy as a divisive influence, contributing to the polarisation of parents and young people, a more helpful and I believe realistic view is to regard the function of the counsellor as one of a facilitator. The school counsellor is able to provide a useful private space in which the young person can examine the issues and conflicts with someone who will not add to the pressure, but when necessary enable the student to access relevant information and enhance his or her coping skills. By means of a variety of counselling strategies, a student can gain not only self-understanding but also a deeper appreciation of the perspectives of parents and others, and can decide how to approach a difficult issue or negotiate with significant people. Values can be identified and a variety of considerations incorporated into decision making processes, including the direct involvement in the counselling process, should the student wish it, of parents and other family members or peers. In this way, respecting autonomy can ultimately enhance connectedness, rather than being seen as oppositional and encouraging rebellion and conflict.

A similar approach is also appropriate with conflicts between students and teachers, but the issues of privacy of information within the school are somewhat broader. A form teacher in the study by Miller et al (1993) was quoted as saying: "Confidentiality is a problem I know, but sometimes the class teachers can modify their handling of kids if we were made aware that kids have problems' ". A dean at another school was quoted as blaming a lack of communication for the breakdown of the guidance system (Miller et al, 1993: 119). Whilst such statements are illustrative of the tensions, they also reflect the legitimate concerns of staff who are working with students in different capacities. It is the responsibility of the counsellor to consider with the client who needs to know, and what they need to know, in order to further the best interests of the client. Conflicts over entitlement to information and questions about what information can or should be shared, in what way and with whom, have been a frequent source of complex ethical dilemmas for counsellors working in schools. In the nature of an ethical dilemma, good reasons can be articulated for following several different courses of action (Corey, Corey & Callanan, 1993).

The advent of the Privacy Act has served to assist in this process of clarifying the boundaries around access to personal information, and the process of educating the public about the requirements of the Act has enhanced general awareness of the rights to privacy of young people as well as adults. Whereas to colleagues, school counsellors have sometimes expressed frustration that they seem to be the only members of staff monitoring students' rights and having to address privacy issues, the requirements that schools and other organisations appoint a privacy officer and monitor their practices go some way towards ensuring that sound practices are followed.

A safeguard that assists counsellors in resolving such ethical dilemmas, is professional supervision, which is mandatory for members of the New Zealand Association of Counsellors. In the counselling context, supervision is a consultative relationship with another practitioner who is usually more experienced than the counsellor, and who provides an opportunity for the counsellor to discuss issues pertaining to counselling casework and ethical decision making. Although this relationship between counsellor and supervisor is safeguarded by the codes of professional conduct including confidentiality, there is a danger that the privacy of clients could be violated if identifiable personal information about them is disclosed by the counsellor.

Within supervisory settings, counsellors discuss not only casework issues but also issues that arise from the context in which they work. In the context of training and supervision, counsellors have discussed concerns about protecting students' privacy in accessing counselling, including the location of the counselling rooms and visibility of the area where students must wait to see the counsellor, and other structural problems such as inadequate soundproofing of counselling rooms. Expectations and policies of principals and Boards of Trustees can also present problems if requirements for record keeping, access to records and reporting threaten to jeopardise the privacy of the counselling relationship (Tompkins & Mehring, 1993). Counsellors must deal with instances of teachers violating students' privacy by such practices as reading aloud a note delivered to class

and addressed to a student, to tell that student of an appointment with the counsellor or another member of staff; by passing on information to others that the student believed was confidential; or by humiliating students by commenting on personal matters in public. In such situations, counsellors' responsibilities to protect students' rights to privacy require them to act in a consultative/ educational role to improve the professional practices of colleagues, or to confront unprofessional conduct when necessary.

In referring to young children and their limited ability to comprehend their rights and act on their own behalf, Belter and Grisso (1984) recommended that a 'nurturance' or advocacy approach be taken to ensuring the protection of the rights of minors. There is no doubt that some adolescents also lack the necessary capacity to make sound independent decisions in some situations, or lack the power or skills to act effectively on their own behalf in protecting their privacy and their rights in general. School counsellors have recognised the need to act both as a source of relevant information and as an advocate for students as part of their role, particularly in relation to such situations as the example above, and in suspension processes, Family Court proceedings and the like. The advocacy role can be experienced in some situations as challenging or threatening by others, and questioning others' assumptions and practices can be a necessary function of this role which can be difficult for the counsellor.

Nevertheless, if a skilful, consultative approach rather than confrontational stance is taken, there is potential in such situations for a constructive and productive outcome for all concerned. Difficulty on the part of concerned others with the privacy of the counselling relationship could be resolved if the nature of these relationships was perceived less as oppositional than as complementary, and if a clear understanding of the roles and role boundaries of administrative and guidance staff were established among all staff members. The common goal of all who are involved in the teaching and guidance of students is surely the wellbeing and healthy development of the young person. There will inevitably, however, be conflicts of views over not only the nature of this vision but also priorities and processes for achieving it.

Relationships between counsellors and principals

Particularly influential in the functioning of the guidance system and the standards of ethical practice within a school is the relationship between the principal and the counsellor. Anecdotal evidence from professional supervisors of school counsellors suggests that tensions between counsellors and principals are a significant aspect of issues that some counsellors take to supervision. Kaplan (1995) presented an interesting analysis of the nature of conflicts in the relationships between school counsellors and principals, suggesting that they each work from different paradigms that are nevertheless complementary. The relationship with the principal can be critical for the school counsellor, in determining the level of support the counsellor has for the fulfilment of their role. In order to be effective, the counsellor needs to be able to relate professionally across all levels of staff and students. Because of the sensitive nature of the information they are dealing with, there needs to be mutual respect and trust between principal and counsellor, but their roles are quite different. The principal is concerned primarily with the management of a complex institution, including its image and reputation within the community. Consider the following hypothetical situation, based on situations known to the author to have been faced by counsellors.

A counsellor had good reason to believe that a student was being emotionally and physically abused by her family, and knew that the student had just undergone the termination of a pregnancy. The student had discussed the pregnancy and her options with the counsellor beforehand, and the counsellor had maintained confidentiality. A friend of the student mentioned knowing about the termination within the hearing of a teacher, who reported it to the principal. The principal asked the counsellor if she knew anything about it, and ordered the counsellor to tell the student's parents, despite hearing information from the counsellor that indicated the

likelihood that the student would be severely punished, and would probably run away from home and join friends in an at-risk lifestyle.

In this situation, the counsellor is ethically bound to give priority to the good of the client, and in her judgment, there was significant potential for physical harm to the student if confidentiality were to be broken. The counsellor is caught in a conflict, however, between responsibility to the employer, through the principal, and responsibility for upholding the ethical standards of the counselling profession in protecting the client's right to privacy by maintaining confidentiality. Thus an issue of responsible practice over privacy can become an employment issue when a counsellor is ordered to act in a way that is contradictory to the principles of ethical practice. Before such crises arise, as Kaplan (1995) points out, both principal and counsellor need to be willing to consider the rationale for one another's perspectives and priorities, and establish a basis for a sound, respectful working relationship.

Conclusion

A fundamental understanding needs to be established, that the safeguarding of individuals' privacy does not preclude the establishment of effective communication processes, nor does it preclude the sharing of essential information in an appropriate manner. As the Privacy Commissioner has noted in this volume, the Privacy Act is commonly misinterpreted and perceived as an impediment to legitimate functioning of an organisation.

Nevertheless, counsellors are faced with complex ethical dilemmas because of the nature of the counselling relationship, and the fact that there is a duality inherent in their position as both a full member of staff in an educational institution, and one who holds a specialist position that can entail challenging the practices of individual colleagues and the system itself, in order to safeguard and enhance the welfare of students. In order to do their job effectively, school counsellors must establish with colleagues and members of the school community relationships of mutual respect, in which there is a clear understanding of different roles and professional perspectives. Regular reviews need to be undertaken of the functioning of the guidance system in each school, to reduce overlap and ambiguity of roles and to examine policies and processes in the handling of personal information, to ensure that they are in accordance with legal and ethical guidelines for protecting students' privacy.

An essential aspect of counsellor education is developing an understanding of the principles of professional ethics, a knowledge of ethical and legal guidelines, and the practice of considering ethical dilemmas. This needs to be extended to deans and other members of guidance networks, because at the present time staff in guidance networks are working in powerful positions, largely unguided and unguarded. There are significant implications here for the professional development of teachers who have roles in guidance networks.

Neither codes of ethics nor the law, however, provide answers to ethical dilemmas. Each presents a unique set of circumstances and has to be resolved as it arises within a particular context. The Privacy Act makes an important contribution to the climate in which such decisions are made, by fostering respect for the individual (Slane, 1997), and embodying the fundamentals of good professional practice.

Notes

1. Although a pilot project was undertaken in appointing guidance resource teachers to a small number of intermediate schools in the late 1980s, and evaluation of the programme indicated its success (Adair, Manthei & Tuck, 1989), the Ministry of Education has so far failed to act on recommendations that counsellors also be appointed to all intermediate schools. In the Auckland area a few intermediate school boards of trustees are known to have created positions for counsellors from their

own resources, because of what their management perceives to be the serious presenting needs of students and their families.

2. Although this funding has continued to be provided, the Ministry is currently reviewing this policy.
3. Role overload has been identified as a problem for school counsellors from the beginning (Miller et al, 1993), but anecdotal evidence also suggests that there has been an intensification of pressure on school counsellors in recent years because of the numbers of students needing assistance, and the serious nature of many of their presenting issues, including family dysfunction and breakdown, abuse, violence and bullying, trauma and suicidality.
4. In addition to autonomy, other ethical principles embodied in ethical codes include beneficence (acting in ways that promote the welfare and best interests of clients), nonmaleficence (not doing harm), fidelity (honesty and trustworthiness) and justice (the NZAC Code of Ethics includes a statement that counsellors 'promote social justice through advocacy and empowerment') (Kitchener, 1984).
5. *Tarasoff v. Regents of the University of California*, 551 P.2d 345 (1976).
6. *Gillick v. West Norfolk and Wisbech Area Health Authority and another* [1985] 3 All ER 402.

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