

NZAC and the Ethical Self-Regulation of Counselling

5.1 Introduction

The notion of ethics is not a 20th century construction, although the expression of this in a code of ethics by a profession may well be. As a branch of philosophy, the word 'ethics' is often used interchangeably with 'morality'. Ethics can have a wide meaning, referring to the overall subject matter of this field or it can have a narrower meaning to refer to the moral principles of a particular individual, group, or tradition. The field is often divided into meta-ethics, applied ethics, and the metaphysics of moral responsibility, i.e. the general study of 'goodness' and of 'right action'. It is within the field of ethics that questions are posed about what ends human beings ought to choose to pursue the good life and what moral principles ought to govern these choices.

Following the above definition of ethics or morality, counselling is a profession permeated with ethical issues and characterised by ethical practices where the development of a professional identity through a code of ethics is, after Foucault, a form of professional, ethical self-constitution. Perhaps, more than any other profession counselling is constituted in terms of ethical principles, at least ostensibly, for it is conceived as enabling the client to make choices, often moral choices, for themselves. Hence, counselling at its theoretical heart, involves implicit claims about the ethics of freedom construed as autonomy for the client. It is also clear that as one of the so-called 'caring professions', counselling embraces the ethical principle of 'care', promoting the 'interests' of the client above those of any one else. Certainly, these two principles can be seen to involve the metaphysics of moral responsibility, in that the counsellor has moral responsibilities to the client, which are set in action once a professional counselling relationship is formally established, and a conception of applied ethics embodying ethical practice is implemented. It is in the latter sense that many professional 'caring' organisations have begun to systematically formulate codes of practice and codes of ethics as described for counselling in New Zealand in section 5.4.

When discussing professional standards and ethics it is appropriate to explain terms because some are used almost interchangeably. Corey, Corey and Callinan (1993) pointed out that while 'values' refers to what is good and desirable, 'ethics' involves what is right and correct, particularly in terms of the behaviour and conduct of individuals and groups, and especially professional organisations. Professional standards may or may not involve ethical behaviour. For example, it would be unprofessional to use alcohol while at work, but it is not necessarily unethical behaviour. Ethical codes usually involve practical components in the form of 'mandatory ethics' or behaviour that must be complied with, in order to ensure safe practice and avoid censure. They sometimes involve philosophical or 'aspirational ethics' of ideal standards which reflect on the intentionality of the intervention for clients.

Codes of ethics are often pragmatic guides to action that help to regulate the profession by providing standards of practice. These codes enable clients to identify malpractice, misconduct, negligence and conflicts of interest, and to seek redress through a complaints or disciplinary procedure (see section 5.5). While often not discussed in critical terms in the literature, codes of ethical practice constitute important sociological criteria for the professionalisation of a discipline or activity. Section 5.2 looks at this aspect as it examines codes of ethics as a form of self-regulation. In other words, the development of a code of ethical practice constructs a framework that allows the profession to reflect upon its own practices, to gain status, power, and credibility in the public realm, and to regulate itself. Ethical codes tend to reflect and embody current, societal, normative orientations and they function to institutionalise the profession, often creating a bureaucracy that concerns itself solely with management, organisation and disciplinary functions. In this sense, codes, being pragmatic, tend to be less concerned with the relationship between codes of ethical practice, on the one hand, and ethical theory, on the other. Yet it is precisely this relationship that requires close examination in order to understand larger issues concerning the 'governmental', political or 'disciplinary' role that the profession might play within the wider society.

Although this chapter uses Foucauldian terminology and insights to raise the question of ethics in relation to questions of professional self-regulation in school counselling, it is more concerned to describe the historical development of ethical self-regulation as a major feature of the professionalisation of counselling. In this way the chapter provides a sociological and historical account of the profession and the importance of the development of a code of ethics for counselling in the New Zealand context. Yet there is great scope to analyse the relationship between the code of ethics and ethical theory more generally. Certainly, Foucault provides a model for tracing the genealogy of values (and ethics) within the 'caring' professions, or so-called psy sciences (Rose, 1989, 1998). Foucault provides us with some substantial clues about the relationship between the sociological fact of codes of ethical practice in general and ethical theory. These clues come to us from the connections he draws among the notions of truth, subjectivity, power, governmentality and the development of the disciplines or professions as discussed in the next section. If the real political task facing our society is to criticise the working of institutions, especially those institutions that appear to be both neutral and independent, as Foucault (1984) suggests, then counselling, its professional practices and Codes of Ethics are certainly open to scrutiny.

5.2 Foucault's poststructuralist approach to power, subjectivity, ethics.

One traditional account in ethics that assumes that we naturally seek the good life, has led to the development of a theory of human well-being. On this view, questions posed about the components of the good life are fundamentally about what ends we ought to pursue. By contrast, the other major approach makes no assumption about human nature. It proceeds by arguing that whatever is good in itself is worth pursuing. Thus the theory of intrinsic value has developed. The philosophical traditions of hedonism, as espoused by Epicurus and J.S. Mill, and of moral perfectionism, as espoused by Plato, Aristotle, the Stoics and Nietzsche, form different branches of a theory of well-being that first originated in ancient Greek ethics, and was known as *eudaimonia*, translated as "happiness" and "flourishing". Both theories are important to counselling and their adoption leads to quite different conceptions of practice. Rather than examine these approaches I shall focus upon the relevance of Foucault's thought for the code/practice-theory relationship, before documenting, in historical and sociological terms, the development of a code of ethics in New Zealand counselling.

The effect of traditional philosophical questions such as "What is the world? What is man? What is knowledge? How can we know something?" (Foucault, 1988c: 145) has been a focus on knowing and speaking the 'truth' of what we are, of our essence or human nature. It is from Friedrich Nietzsche's *The Genealogy of Morals* (Nietzsche, 1956, original 1887) that Foucault derives these notions, the "will to truth", and also "genealogy" as a model of historical critique and evaluation of morals. Nietzsche has influenced contemporary thought in providing a critique of traditional Christian morality, especially of those forms that derived their justification for absolute or eternal values directly from God, as a transcendental guarantee outside the system of values. Nietzsche's history of the question of European nihilism provides the theoretical background for the reappraisal of humanism, in both its Christian and atheistic forms (where Man has replaced God) for both Heidegger and Foucault.

Foucault's work is often considered to be within the poststructuralist tradition, but just as he denied being labelled a postmodernist, so he would deny such an appellation. Poststructuralism is not only difficult to define, but is also often confused or conflated with 'postmodernism' with which there are philosophical and historical overlaps. Poststructuralism developed in France in the 1960s from the work of Derrida, Lyotard, Foucault, Deleuze and Baudrillard. It provides a specific philosophical position that challenges the overly optimistic and social scientific pretensions of structuralism as it re-appraises the Enlightenment notions of universality and rationality. The development of French structuralism during the late 1950s and 1960s led to an institutionalisation of a transdisciplinary 'mega-paradigm' where semiotic and linguistic analysis became central to ways of understanding socio-cultural life in diverse disciplines such as anthropology, literary criticism, psychoanalysis, Marxism, history, aesthetics and popular culture. While poststructuralism shares structuralism's radical questioning of the humanist subject, it challenges the way structuralism's scientism and totalising assumptions had been elevated to the status of a universally valid theory for understanding language, thought, society, culture, and economy, and indeed, all aspects of the human enterprise (Peters, 1999). Poststructuralism challenges the rationalism and realism that underlies structuralism's faith in scientific method, in progress, and in discerning and identifying universal structures of *all* cultures and the

human mind. In other words, it is suspicious of metanarratives, transcendental arguments and final vocabularies. Such views involve Nietzsche's critique of truth and his emphasis upon interpretation and differential relations of power, and also Heidegger's influential interpretation of Nietzsche. Poststructuralism offers a new emphasis upon 'perspectivism' in interpretation (that there is no one textual 'truth' but that texts are open to multiple interpretation).

Like structuralism, poststructuralism provides a critique of the humanist subject as rational, autonomous and self-transparent; a theoretical understanding of language and culture as linguistic and symbolic systems; and a belief in unconscious processes and in hidden structures or socio-historical forces that constrain and govern our behaviour. Poststructuralism's innovations involve the reintroduction and renewed interest in history, especially the 'becoming' of the subject, where genealogical narratives replace questions of ontology or essence. Foucault's understandings of disciplinarity, governmentality, mental health, sexuality, subjectivity and ethical self-constitution contribute powerful and provocative new ways of approaching what we think about ourselves. Poststructuralism moves away from universalising notions towards an understanding of difference (from Nietzsche and Saussure, and developed by Derrida and Lyotard) respecting thus the multiplicity of cultures, of class, race, and gender and the dynamics of 'self' and 'other'. More recently, poststructuralism has developed a political critique of Enlightenment values, particularly of the way modern liberal democracies construct political identity on the basis of a series of binary oppositions (e.g., we/them, citizen/non-citizen, responsible/irresponsible, legitimate/illegitimate) that exclude 'other' or some groups of people. In this sense poststructuralism can be seen as a deepening of democracy (see Peters, 1996, 1999).

Poststructuralism invokes new analyses of power, particularly Foucault's "analytics of power" and the notion of *power-knowledge*. Notions of power have, arguably, been "much overlooked in the therapy literature generally, and in the benign view that we frequently take of our own practices" (White and Epston, 1990: 18). Analyses of power in therapy literature "have traditionally represented it in individual terms, such as a biological phenomenon that affects the individual psyche or as individual pathology that is the inevitable outcome of early traumatic personal experiences, or in Marxist terms as a class phenomenon" (White and Epston, 1990: 18-19). Feminist discourses have alerted many therapists to issues of abuse, exploitation and oppression in an analysis that generally sees power as operating repressively by a patriarchal hegemony. Foucault's understanding, as formulated in his later work, is that power is not only repressive or negative (as power is usually conceptualised in traditional liberal sociology and Marxist political thought) but also 'positive', not in the sense of being good or benign or something to aspire to, but in the sense of being constitutive in the shaping of peoples' lives and ideas. Foucault addresses issues of repression and emancipation in his analysis of power relations and its parallel in forms of resistance, through the way power operates in a capillary fashion and not simply as a binary opposition between rulers and the ruled (Foucault, 1977). Counselling has not considered the more general problematics of power, both its repressive and constitutive aspects and the operation of power-knowledge (Foucault, 1980). Foucault is primarily interested in *how* power is exercised, in "actions upon actions" which constitute power relations (Foucault, 1982: 220) and how it involves creative aspects in terms of relationships, discourses and consciousness (see Introduction). Thus, a Foucauldian interpretation provides a way of understanding the actions of a professional counselling association like NZAC, in terms of the power relations that constitute counselling and school counsellors.

Foucault links the will to truth "with the success of the professional disciplines in the production of the great meta-narratives of human nature and human development" (White, 1997: 222). Foucault suggests that rather than traditional philosophical questions that focus on knowing and speaking 'truth' about the world and ourselves, there is a change to focus on "the historical reflection on ourselves" and asks "What are we today?" (Foucault, 1988c: 145). Foucault's ruminations open up interesting possibilities for exploring how our lives, both professional and personal, are produced through cultural knowledges and practices. Traditionally, counselling, at least in its humanist modes, has anchored itself in grand-narratives of human nature and development. These grand theories have in large part constituted the body of knowledge and expertise as the basis of professional knowledge and practice. When we question, along with Foucault, theories of human nature, we are *ipso facto* questioning also a body of professional knowledge and a set of professional practices based upon these theories.

The questions, "What is man?" and "What is knowledge?" go to the heart of counselling as a profession. When answered in traditional humanist terms both human nature and our understanding of it is couched in terms that essentialise and universalise 'man' and theorise on notions of knowledge, of human nature and development. In turn, therapeutic or professional practices are derived from these theories. Theories of human nature also form and dictate the ethical framework for practice, because ethical protocols are derived or inferred from theories of human nature; i.e. theories of morality are often predicated or based upon or assume a theory of human nature. Rather than predicate professional counselling practices and bodies of knowledge upon a theory of human nature (or what it is to be human) a Foucauldian approach substitutes a critical reflection on who we are today, replacing questions of ontology with genealogical narratives concerning the social and historical construction of subjectivities, in the plural. Thus, a Foucauldian approach to professionalism and professionalisation in counselling is two-edged. Not only does it question "what is man?" and "what is knowledge?" in relation to counselling theory and practice, but it also turns the historical gaze back on counselling as a profession, suggesting that all that can be expected is a series of genealogical narratives about the growth of counselling as a profession.

Foucault's earlier work, with its archaeological orientation, did not adequately explain 'agency', that is, the ability of a person to act and to transform the world. His analysis of power was developed more fully later on with a return to the Kantian subject and to notions of human freedom, of agency and the ways in which we ethically constitute or regulate ourselves (Foucault, 1985, 1990, 1997). The later Foucault does not abolish the self, but questions the essentialism and humanism underlying the Cartesian-Kantian subject. He returns to the historical production and reproduction of subjectivity as an object of discourse actively constituted at the intersections of truth and power (Foucault, 1988a, 1988b, 1988c). The notion of the self as the centre of narrative gravity stresses the discursive production and reproduction of the self while at the same time preserving a notion of narrative agency, which embodies some aspects of traditional humanism.

The project of ethics that informed Foucault's later work was the liberation of human beings from constraints, which were masked as unsurpassable, *a priori* limits; and the contemplation of possible alternative forms of existence. "I believe that the concept of governmentality makes it possible to bring out the freedom of the subject and its relationship with others which constitutes the very stuff (*matière*) of ethics" (Foucault, 1991: 102). He analyses ethics in terms of the free relationship to the self (*rapport à soi*), emphasising the historical and conceptual relations between truth, freedom and subjectivity. Rabinow (1997) explains that Foucault examines such a relationship through four basic categories that are to be found in any historical configuration: ethical substance, mode of "subjectivation", ethical work, and *telos*. Ethical substance is understood in terms of "the will to truth" and refers to "the way that the individual has to constitute this or that part of himself as the prime material of his moral conduct" (cited in Rabinow, 1997: xxix). Mode of subjectivation is understood as "self-stylization or form-giving" and refers to "the way in which the individual establishes his relation to the rule and recognizes himself as obligated to put it into practice" (xxx). Critical work constitutes "critical activity" or "thought experience", that is: "The work one performs to attempt to transform oneself into the ethical subject of one's behaviour" (xxxi). Finally, *telos* stands for "disassembling the self". As Foucault writes: "The place an action occupies in a pattern of conduct. It commits an individual ... to a certain mode of being, a mode of being characteristic of the ethical subject" (cited in Rabinow, 1997: xxxviii).

Subjectivation, in particular, has application to understanding not only the processes by which clients 'become' subjects, but also how counsellors become professionals. Both are concerned with subject-making: the making of an autonomous subject, on the one hand, and a professional subject, on the other. It also concerns how individual counsellors establish a relation to a rule, practice or ethical protocol, set by the professional organisation that obligates them and acts as a template for practice. Thus the crucial element of this cycle of reflection is as a form of *professional self-knowledge*, that not only helps to set the parameters within which the counsellor engages with the client, but also sets in process, the learning processes by which the counsellor, in helping others, constitutes him- or herself as a professional. The next section examines how codes of ethics are a form of self-regulation of the profession and of the individual engaged in the profession.

5.3 Codes of ethics as professional self-regulation.

Ethics, in the ancient philosophical tradition, was both more than and different from simply rules of behaviour:

Ethics was good character and what that entailed – good judgement, sensitivity, openness, reflectiveness, a secure and correct sense of who one was and how one stood in relation to other people and the surrounding world. Ethical theory was the study of the best way to *be*, rather than any principles for what to do in particular circumstances or in relation to recurring temptations, or the correct philosophical basis for deriving or validating any such rules (Cooper, 1999: x).

Cooper's (1999) statement mirrors what is expected today of a counsellor in terms of their personal development, worldview and ethical behaviour. As will be apparent from later description, the current NZAC Code of Ethics is very much in line with this ancient tradition (NZAC, 1995). It combines both philosophical and practical components by centring on what Kitchener (1984) described as the five fundamental ethical principles of counselling and becomes somewhat practical in detailing fifteen situations in relation to client rights in counselling. These spell out more clearly what to do or, in fact, what not to do in the counselling relationship, for while ethics is tied to the belief systems of individuals and society, codes of ethics provide ways of ensuring through regulation, that behaviour accords with such belief systems.

Counselling codes of ethics have several purposes: first, to provide a set of standards to guide the counsellor's professional practice by clarifying the counsellor's responsibilities to clients and to society as a whole; second, to state how clients rights are protected; and third, to guide a counsellor's behaviour through a process of ethical decision-making. Several other purposes, though seldom stated explicitly are: fourth, to establish an association's professional identity; fifth, to differentiate itself to a certain extent from other professions; sixth, to improve its professional status in the workplace; seventh, to establish a form of accountability and acceptable professional standards of service delivery with implications for legal liability, especially in malpractice and negligence cases (Wilcoxon, 1987). Furthermore, whilst a code of ethics may differentiate one profession from another, it also has a role to play in bringing a profession into line with the standards of related professions. There is always a danger of a code being a set of motions that one simply goes through, in order to fulfil the criteria of being 'a professional'. But the hope of many professions is for a code to be more of a 'living' document, more of a way of life so there is a high degree of congruity between professional ethical practice and behaviour and 'responsibleness' in their personal life beyond their professional life. This is very much an expected characteristic of being a counsellor.

Strike and Ternasky (1993) suggested three ways in which ethics applies to education: ethical appraisal of educational policy; teaching ethical values as a part of moral education; and professional ethics. Professional ethics are considered distinguishable from, but connected to the other categories. Yet the category of professional ethics, while part and parcel of guidance counselling from the formation of a professional counselling organisation (NZCGA) has figured very little in the educational literature, teacher training or counsellor education programmes until very recently. In the USA, three factors seem to be behind this recent upsurge of interest (Strike and Ternasky, 1993). One factor centred on public scandals about the inappropriate behaviour of some teachers. A second was the push during the 1980 reforms to conceptualise education as a profession based on the assumption that professionalisation would make teaching more effective. A third was posited as a rejection of conceptualising teaching as a largely technical endeavour in favour of a vision of teaching as a moral pursuit linked to the ethical structure of schools (Strike and Ternasky, 1993). In New Zealand, the latter would fall currently within the orbit of groups such as "Living Values" pushing for more explicit "values education" in schools. What Strike and Ternasky did not suggest was the link with neoliberalism and managerialist notions as applied to education. This has certainly occurred in New Zealand since the 1988 reforms. One could posit that these two notions had been absent from the USA education scene about which Strike and Ternasky write, but since these notions were central to the neoliberal agenda of the Reagan-Bush years it may be assumed that they would have impacted on education in the USA.

How do counsellors learn about ethical codes and behaviour? Courses in counsellor education that involve such questions have emerged only relatively recently, especially since the neoliberalism of the mid-1980s emphasised accountability for professionals and challenged and de-emphasised existing notions of trust of professionals. That

ethical conduct can be developed via professional ethics courses is open to critique. Whilst the intention is that people will behave better in their professional life, many professional ethics courses ignore the importance of character, which is "usually formed over many years and is at least as much a matter of habituation and training as it is of cognition and reflection" (Strike and Ternasky, 1993: 5). Courses are inadequate when they signal only what is unacceptable behaviour without encouraging a genuine commitment to reasonable moral standards, and when they do not examine the institutional structures, "their prevailing ethos, and the pursuant socialization that initiation into the profession provides" (Strike and Ternasky, 1993: 6). This is because a professional ethics course may not necessarily counter a morally unhealthy ethos, and may in fact be a substitute for critique and reform. It must be therefore with such reservations and concerns in mind that appropriate and effective professional ethics courses are structured.

While it could be argued that the development of codes of ethics and education in professional ethics are signs of a profession's 'coming of age' or maturity, the counselling profession in New Zealand has had a Code of Ethics since 1976 (Abbott, 1988; Hummel, Talbutt and Alexander, 1985). Hummel *et al.* point out that for counselling maturity is not just about professional maturity, but also requires personal maturity because of the interpersonal nature of the counselling relationship. Adopting a developmental stage model may not prove useful. If codes change over time the implication is that an association's maturity also changes, which is debatable. The avowed intent behind the development of codes of ethics may be laudable in the effort to promote professional standards and acceptable behaviour whilst protecting the rights of its clients (i.e. students in schools). This may indicate a new level of professional 'maturity', but it also reflects an effort to improve counselling's professional status in the workplace. However, it may remove the opportunity for democratic reflection and may make counselling more rule-bound and less caring. In New Zealand it was because of the special nature of the job, that school guidance counselling developed and pushed for its counsellors to adhere to a code of ethics long before the neoliberal environment encouraged the development of such for teachers (despite an earlier, but largely ignored Code of Ethics for PPTA members).

The usefulness of codes highlights a major tension over philosophical and practical elements and impacts on how the identity of a profession is formulated. Should the code have a philosophical orientation with an expression of broad principles and guidelines that may be open to various subjective interpretations and misinterpretations? Or should it be essentially a practical code dealing precisely with situations that professionals frequently have to deal with? The answer does not need to be an either/or, but it tends to be. Perhaps the consideration needs to be context sensitive. Codes can encompass both, as has the NZAC code for counsellors in contrast to the earlier NZCGA code and the American Counseling Association code that does not provide any list of ethical principles, but rather, eight sections that provide practical detail (see <www.counseling.org>). Providing a set of ethical principles may help, but since many of the ethical dilemmas that counsellors will face are likely to be unique, ethical principles should address broad issues and not be legalistic because dealing with every possible circumstance that may arise is clearly an impossibility. Counsellors needed to develop their own moral conscience or sense of 'responsibleness' that extends beyond the notion of 'responsibility', which denotes an obligation to an external standard or authority, i.e. a code of ethics or a set of professional standards. If it is not codified, can counsellors then act freely and unethically? Not if they follow broad ethical principles and use a sense of "responsibleness" (Bond, 1992, 1993; Tennyson and Strom, 1986).

Because counselling in a school setting or beyond involves special relationships based on openness and trust, it is important that all counsellors act appropriately so that clients are protected. In New Zealand, where counselling is not subject to government regulation or to registration (licensure or certification) requirements, it becomes even more important that the profession is self-regulating. For members of a professional association like NZCGA and NZAC, a code of ethics is designed to promote self-regulation and to ensure, as much as possible, that counsellors are effective, behave in an ethical and professional manner and are accountable to their professional association for their practice. The process, which both NZCGA and NZAC used to develop their codes of ethics is outlined in the rest of the chapter.

The process of defining and establishing what is and what is not ethical professional practice and professional standards has been conducted from within the counselling profession and its practitioners without including clients' voices. Cooper (1992: 7) points out that "this raises questions about the ethics and beliefs within the systems and the organisations which draw up codes of practice, ostensibly for the benefit of the clients, but utilising a process which does not normally give the clients a voice in the process of establishing those codes". One layperson does have a voice on a Hearing Panel convened by the NZAC Ethics Committee to hear a complaint. Clients do get a voice in the complaints procedure, and in response to feedback from the Ethics Committee, changes may well be recommended to the Association. Whether or not clients should be given a voice (and if it is only the articulate that will be heard); which clients should be heard (adults, youth, children, different ethnic groups); and just how the Association would proceed with this, poses many questions for the Association to consider in any forthcoming revamp of their Code of Ethics. A move away from paternalistic attitudes and inwardly focussed professional self-regulation would result hopefully in better serving client needs. The notion of the client voice that has particular relevance in narrative therapy provides perhaps a possible direction. While these points do not translate into a set of desiderata, they do provide, at least, a possible perspective from which to evaluate the development of a code of ethics.

5.4 The development of the NZCGA and NZAC Codes of Ethics.

Professional identity in terms of formulating a code of ethics for counselling in New Zealand is a dynamic process with codes of ethics changing over time and in different contexts as outlined in the remainder of this section. Bob Manthei formulated the first Code of Ethics of NZCGA, basing it somewhat on codes of similar Associations (American Psychological Association – APA and American Counseling Association – ACA) (personal communication, Manthei). The Code of Ethics was approved at the 1976 AGM, and remained in place for the next fifteen years. This code, consisting of six principles, outlined the broad values of the Association rather than specific guidelines for the behaviour of guidance counsellors. It became inadequate for the Association's needs as the Association grew and changed its identity to NZAC. Challenges to the earlier code included ACC's concerns expressed in 1990, that the existing Code did not indicate that sexual intimacy between counsellor and client was unethical and that the confidentiality clause was too loose to provide sufficient protection for either counsellor or client (Hermansson, 1999). In establishing this part of their professional counselling identity NZCGA followed the lead of other closely related helping professions, but in re-developing the code in the 1990s, NZAC was influenced by and responsive to the requirements of outside agencies.

The NZCGA Code was replaced by a more comprehensive Code in 1991, which had been drafted by an Auckland branch subcommittee: Hans Everts, Rosemary Grueber, Dorothy McCarrison, Carol Mawhinney (White), Margaret Nelson-Agee, and John Winslade. This followed a workshop on accountability taken by Robert Ludbrook, a lawyer with Youth Law Project. Ludbrook led the subcommittee through a process of thinking about situations that had 'thrown' them or had been particularly difficult dilemmas. Without initial reference to any other codes, they brainstormed and talked about the situations and grouped them under headings, then set about writing statements on each. After this they looked at some codes from other groups, including the Surveyors Institute and British Association of Counsellors (BAC) to tweak a few words. The BAC code was used because of the enthusiasm of Beth Webster who had recently returned from Britain, and because Bridgid Proctor (from BAC) was currently in New Zealand. Rather than taking a code from another country, the subcommittee found it more useful to look at certain key questions: what do we know? What do we need to cover? (Personal communication with Carol White [formerly Mawhinney] member of the subcommittee and former NZAC President). The result was a second Code of Ethics (the first for NZAC) which, with only a few amendments, remained the same from 1991 to 2002.

The first Code of Ethics of NZCGA was very different from that which was developed in the 1990s by NZAC. Codes of ethics seem to be written often with autonomous adults in mind, but the NZCGA code reflected the context whereby the Association was primarily supporting counselling in educational institutions, and dealing mostly with adolescents in secondary schools. It was written primarily for school and vocational guidance counsellors yet did not provide specific guidelines nor recipes for their behaviour:

Preamble: The Association's purpose is to promote effective counselling and guidance services in educational institutions and related services. To this end its members subscribe to the following principles:

The member believes in the worth and dignity of every individual, and respects the right of each person to make decisions affecting his or her way of life.

The member's primary obligation is to promote the welfare of any individual in need of counselling and guidance, but will also recognise responsibility to the agencies and institutions providing such services by exerting what influence possible to foster their development and improvement.

The member will not claim or imply qualifications or competencies exceeding those possessed.

The member will use discretion and good judgement in giving information from a counselling or guidance relationship to other professional workers.

The member will continue his or her professional growth throughout his or her career, including participating in local and national counselling and guidance associations.

The member is concerned with the ethical behaviour of others engaged in counselling and guidance services and will endeavour to co-operate responsibly and constructively with them.

(NZCGA, 1976: 21).

This NZCGA code (1976) involved some, but not all, of the principles which were subsequently part of the 1991 NZAC Code and its amendments (as later described from the 1995 *NZAC Handbook*). The first and fourth principles relate to autonomy and confidentiality or the lack thereof, the second to beneficence, the third and sixth to fidelity, the fifth to professional development. It did not deal with nonmaleficence, social justice, supervision, nor state that sexual intimacy between counsellor and client was unethical. Furthermore, it had a very different, looser definition of confidentiality from the 1991 NZAC Code that did not provide as much protection for clients as the current NZAC Code. Principle four implies a high level of sharing of information within the school, and possibly to parents, suggesting that young people in secondary schools had limited rights to confidentiality at a point in time when the guidance orientation was more directive compared with current attitudes which emphasise autonomy and informed consent. This code refers particularly to relationships with employers and professional colleagues and is not particularly specific in describing the relationship with clients. The counselling relationship and client rights were expanded considerably in the Code that was subsequently devised.

The NZAC Code of Ethics (NZAC, 1995) covers five fundamental principles of counselling: autonomy; doing no harm (nonmaleficence); beneficence; justice; and fidelity, and fifteen situational principles regarding the counselling relationship and client rights that are provided in full in the Appendices. The five fundamental principles are:

NZAC Code of Ethics, 1995

The Five Principles

1. The principle of autonomy: Counsellors shall respect the dignity and worth of every individual, the integrity of families/whanau and the diversity of cultures. This implies respect for people's right to make decisions that affect their own lives, to choose whether or not to consent to anything that is done to them or on their behalf and to maintain their own privacy. Exceptions to the principle of autonomy occur when there is clear danger to the client, counsellor or public at large and when the individual's competence to make a decision is clearly limited.
2. The principle of not doing harm: Counsellors shall avoid any diagnostic labels, counselling methods, use of assessment data or other practices which are likely to cause harm to their clients.
3. The principle of beneficence: Counselling is a helping profession which expects counsellors to act in ways that promote the welfare and positive growth of their clients. In situations where there is the possibility of both harm and benefit the responsibility is on counsellors to ensure that their own actions are chosen with a view to bringing about the greatest balance of good.
4. The principle of justice: Counsellors shall be committed to the fair and equitable distribution of counselling services to all individuals and social groups. Counsellors shall also promote social justice through advocacy and empowerment.

5. The principle of fidelity: Counsellors shall be honest and trustworthy in all their professional relationships.

(NZAC, 1995: 21-22).

The principle of autonomy involves notions of the client's rights to choose and to take responsibility for their actions, so long as they and others are not endangered. This implies rights of privacy, informed consent and confidentiality. Nonmaleficence derives from medicine, and obliges counsellors to provide services that not only do not harm, but also have positive outcomes for clients. Beneficence is critical to counselling due to the flow-on effect. Since clients benefit, society permits the profession to operate because counselling is perceived to be good for humanity. As a corollary, incompetent, dishonest counsellors undermine the profession by bringing it into disrepute if the public lose faith in counselling. The notion of justice centres on the assumption of equity, with all people deserving equal access to services, but is consistent with acknowledging diversity. Fidelity involves faithfulness, keeping contracts, loyalty, and honesty. Without these, others' rights are unable to be respected.

The NZAC Code expands these five principles to cover the counselling relationship and client rights in fifteen situations: access, consent, confidentiality; discrimination; impartiality; group counselling; abuse of power; sexual harassment; fees; referral; termination; competence and professional development; responsibility to the wider community; responsibility to colleagues and the profession; relationship with employing institutions. These situations all have important implications for the manner in which school counsellors perform their work and therefore are components to be considered in terms of their relationship with adolescents, their professional identity and accountability.

Just as for any other NZAC member, a component of professional accountability for school counsellors who belong to NZAC involves upholding the association's Code of Ethics. An ethical requirement listed under "competence and professional development" requires members to uphold the Code of Supervision and to have regular supervision. This Code sets out standards for supervisors to meet so that counsellors seeking supervision are informed and protected about what to expect in the relationship. The Preamble to the Code of Supervision sets out the intent and some indication about the need for supervision:

The NZAC Code for Supervision is intended to promote the professional development of counsellors in order to best meet the needs of clients. It is therefore intended to be consistent with the Code of Ethics and Objects of the NZAC. In keeping with this, it is based on an absolute commitment to respecting the dignity and worth of each person, in particular of our clients, our colleagues, and ourselves. The NZAC Code of Ethics states that all Members and aspiring members of the association must have regular supervision with professionally competent supervisors. The need for supervision does not decline with experience or training, although the type of supervision may change (NZAC, 2000: 27).

The code of supervision includes the following six sections: the nature of supervision; responsibility in supervision; competence in supervision; management of supervision and confidentiality in supervision. A full time counsellor is required to have fortnightly supervision. For part-time counsellors (less than ten client contact hours per week) supervision is pro-rated. But regardless of the amount of time spent counselling, a counsellor is still expected to have supervision at least monthly. This supervision criterion goes part way to accounting for the removal of the twelve hours minimum counselling that was required for membership of NZCGA but which has been removed from the current NZAC membership criteria. The supervisor is expected to belong to either NZAC or another similar professional body with a Code of Ethics and to be familiar with counselling. From 1997, an annual report from a counsellor's supervisor was required to accompany the member's annual subscription. As a self-regulatory measure for retaining membership it clearly relies on not just the integrity of the counsellor, but also on that of the supervisor, thus setting up a system of checks and balances.

Counselling supervision is aimed at securing safety for clients by ensuring the counsellor is competent and behaves ethically. The supervisor provides support in a collaborative environment for the counsellor. The supervisor is able to be apprised of counselling issues, skills, and problems that the counsellor may present through case studies,

verbatim, audio or video tapes. These are critiqued with the counsellor who is enabled to consider alternative or better practices, to examine any difficulties, transference and parallel processes that may be involved. To protect the privileged nature of the counselling relationship, the Code of Supervision requires that supervisors maintain confidentiality. One surprising exception is "Where it is clearly stated otherwise in a supervision contract" (NZAC, 2000: 29). Why this clause should exist is open to both criticism and question. Other exceptions are when there is serious concern about the client's welfare that the counsellor is unable or unwilling to deal with, and when disciplinary action is being pursued against the counsellor.

The NZAC Code of Supervision is almost as long as the Code of Ethics and is quite detailed, being both descriptive and prescriptive about what, who, and how supervision is to be conducted. It provides more detail of the 'what' and 'how' of supervision than the Code of Ethics does about counselling. This is probably because the concept of supervision was not enshrined in the NZCGA Code of Ethics until the re-vamp of NZAC's code in 1991. It probably reflects something of what the authors of its formation believed was required for informing counsellors about supervision. Once there is a high level of general understanding about supervision, it may well be that the code can be abbreviated somewhat and incorporated as a clause into the Code of Ethics.

The Recognition of Supervisors is a rather cumbersome title for a set of guidelines defined by NZAC since 1997 that set standards and competency levels for those supervisors who undertake the process of becoming "recognised". This system for supervisors is akin to that of "accredited" NZAC members and is administered by the Accreditation Committee. Not all counsellors who provide supervision are expected to be "Recognised Supervisors", but it may well be that in time the Association expects this to be the case. To be an NZAC Recognised Supervisor, one must fulfil certain criteria that include: being an NZAC member for at least two years; being trained in supervision and being very experienced in counselling supervision and being able to demonstrate their skills to the accreditation committee (NZAC, 2000). This set of procedures has been aimed at improving the professional standard of supervision in much the same way that tightening the criteria for NZAC membership did. It is about increased professionalisation and accountability.

However, supervision can become a disciplinary practice particularly if the supervisor is expected to provide an evaluation report to employing organisations or third-party funders (e.g. ACC, schools) as a means of appraisal and accountability. A perhaps less feasible, but more appropriate check of accountability would be to ask clients about the quality of the counselling they receive. If power is assigned to supervisors to act in an overseeing, evaluative, hierarchical, judgmental manner there is a danger that counsellors will stop disclosing their vulnerabilities and difficulties and will no longer seek help. To maintain the impression of competence, they will instead present only their best work in supervision. Instead of ensuring client safety, supervision would become primarily a disciplinary relationship. For supervision to remain a supportive, open, trusting, non-evaluative relationship counsellors need to separate out clinical supervision from line management supervision within their employing agencies.

But in professional associations, if the evaluative gaze tends to focus more on individuals than on training programmes, it can create anxiety that undermine the professional confidence of members and, in turn can inadvertently lower professional standards rather than raise them. Rather than an association's role being one of policing, members should be made aware of required ethical and professional standards and should be expected as part of what constitutes 'being professional', to take responsibility for their own ethically competent practice. Policing members involves a burgeoning cost financially. There is no easy, effective or affordable way of policing or ensuring that a professional association's annual check on each member can ensure that they practise up to some mythical standard of safety. In the process of policing an association can become increasingly controlling and exclusionary over not only who qualifies for membership but also how members practice counselling through more stringent and restrictive requirements for training, membership and supervision. In Foucauldian terms, these moves could be seen as "dividing practices".

5.5 Introducing a complaints procedure.

Whilst NZAC had a Code of Ethics right from its inception, it was only later that it developed its closely related policies of a Code of Supervision and a complaints procedure. This section details the process by which the last of these ethical regulatory measures, a complaints procedure, was developed in the 1990s – an important aspect in constituting counselling as a self-regulating, ethical profession.

The first formal complaint against an NZAC member highlighted the inadequacy of the existing situation. The case was heard by a quorum of Executive Members and NZAC's legal advisor at a "Special Executive meeting on Monday 3 August 1992 to consider a resolution that a member of NZAC has been guilty of acts or conduct prejudicial to the interests of the Association" (NZAC Newsletter, 1992, Vol. 13 (2): 23). The NZAC constitution at this stage allowed for the hearing of complaints, but had no formal procedures for doing so apart from a Complaint Assessment Committee, which ascertained whether or not there was a case to answer. The only sanction provided was termination of membership if the member was found guilty of bringing the Association into disrepute (Crocket, 1992).

After carefully considering the initial letter of complaint, the evidence (and in particular the evidence of the respondent), correspondence and material tabled and the submissions made by the respondent's lawyer, the Executive put the resolution to the vote. The motion was lost (NZAC Newsletter, 1992, Vol. 13 (2): 23).

NZAC President, Ruth Anderson commented that both she and the Executive "have made and will continue to make every effort to ensure that we protect, not only the interests of the Association, but also the rights of individual members including those against whom complaints have been made" (NZAC Newsletter, 1992, Vol. 13 (2): 6). Because existing procedures placed an untenable burden on National Executive in what was an expensive process, especially if a General meeting rather than a Hearing was called, and to protect the rights of both members and clients, NZAC subsequently made considerable changes to its complaints procedure. This reflects the increasing professionalisation and a maturing of the association in taking responsibility for dealing with competency and with ethical conduct of its members. In this respect, as with other professions, NZAC has developed, as part of its identity, a clearly defined monitoring, policing and enforcement role.

Considerable work ensued in developing a complaints procedure and the formation of an Ethics Subcommittee in 1994 to administer this procedure. The process leading up to this involved input from various people especially from National Executive (Carol Mawhinney and Roseina Balsom) and included advice from Simon Jefferson, the Association's legal adviser. A group of Waikato branch members, led by Alistair Crocket, formed a Complaints Procedure Development Group which developed a discussion paper for the December 1992 Newsletter, setting out the existing procedures for dealing with complaints against members and a draft for the new process. The initial proposal included a Rationale that a "complaints procedure provides a process through which the Association ensures the maintenance of its Code of Ethics, by providing Clients and Counsellors with clear mechanisms for resolving matters of ethical concern" (Crocket, 1992: 40). It listed nine guiding principles:

open access; defined procedures; upholding of client rights; acknowledgement of rights of counsellor; acknowledgement of rights of NZAC; outcomes designed to enhance professional standards; seeking satisfactory resolution; peers taking responsibility for scrutiny; issues need to be resolved at the lowest appropriate level (Crocket, 1992: 40).

The initial Ethics Committee comprised: Janet Irwin (Convenor; Auckland), John Winslade (Hamilton), Nan Kingston-Smith (Tauranga), Jeanette Newport (Wellington), Tim Williams (Christchurch), and two National Executive representatives, Gay Summers (Hamilton), Bill Grant (Dunedin) plus Nicola Ngawati, Human Rights Commission (lay representative). The geographic spread was intentional for dealing with complaints effectively and sensitively throughout the country although it created communication problems for the subcommittee. The first Ethics Committee report by Convenor, Janet Irwin, outlined the first two tasks as "developing working procedures for the complaints process and establishing a network and guidelines for regional contact persons who would

provide support for complainants and respondents" (Irwin, 1995: 26). By the end of the first year of operation (1995), seven complaints had been made. One was not accepted because the respondent was not an NZAC member, one went to a hearing and the remainder were in various stages of processing. Some of the concerns of the committee included the length of time to reach completion; that supervision needed to improve and be used more by members; that ongoing professional education was important; that there needed to be NZAC input into training course structures and content; and that branches needed to take a "professionally responsible attitude to issues of concern in their own districts" (Irwin, 1995: 27). In the year to June 1996, of eight complaints lodged with the Ethics Secretary, one member was required to have professional supervision, three were in the preliminary stages of information-gathering and consideration and four were passed on to the Ethics Committee for assessment and action (Irwin, 1997: 32). By 1997, after four years in operation, Irwin commented that because of the heavy workload, "that early consideration and organisation be shared between the Convenor, the Ethics Secretary and the Association's legal advisor, freeing the National President and Secretary completely from this task" (Irwin, 1997: 32). Thus a clearer specialisation of tasks evolved within the Committee and for National Executive. The function of the Ethics Committee was spelt out in the *NZAC Annual Report, 1998*:

- a. To process complaints brought against members of the Association.
- b. To advise the Executive on ethical issues.
- c. To stimulate discussion and thinking about high standards of ethical care among members of the Association. (Winslade, 1998: 32).

Both the President (Sue Webb) and Convenor of the Ethics Committee (John Winslade) commented about the state of play of complaints in the 1998 NZAC Annual Report, suggesting that there has been a steady increase in the number of complaints as the process has become better known. Whilst 29 letters of concern were received in the first three years of the Committee's operation, by no means all became formal complaints, 25 letters of concern were received in 1997, but four of these were regarding non-members. Results were tallied in the *NZAC Annual Report, 1998*:

Four hearings have been held (three complaints have been upheld) and four complaints are currently awaiting hearings. Five have been judged by the Complaints Assessment Process not to be 'prejudicial to the interests of the Association.' Three complaints have been withdrawn by the complainant and six have been closed by the Ethics Committee after lack of response from complainants to correspondence (Winslade, 1998: 32).

Presumably this meant that the process had become better known to clients, but this probably included better knowledge by members, since information has been provided in *NZAC Newsletters* during the 1990s. How this process could have become better known is not elaborated. Do counsellors provide clients with copies of the process, or is it outlined somewhere on a wall of their rooms as is done in hospitals? At this point the Association does not provide a separate pamphlet for clients that spell this out, although it is referred to in the NZAC brochure *Counselling* (no date, circa 1995). This brochure mentions the Code of Ethics and the expectation of supervision and suggests that, firstly, dissatisfied clients could discuss concerns with their counsellor; secondly, to change counsellors if they are still dissatisfied and to write to the Association's Secretary in the event of a complaint. However, it has to be noted as alarming that so many complaints should be getting even as far as the committee.

The Ethics Committee was enlarged with the aim of providing a better spread of both representation and workload with hearing panels throughout the country. The Convenor (John Winslade) and Secretary (Nan Kinston-Smith) no longer sit on these hearing panels so are free to co-ordinate and direct activities. The intention is to provide updated material and training for the Contact/Procedural Advisor People.

Until 2000 NZAC had not researched nor published the number of complaints; what sector they are against (e.g. private practice, agency or school counsellors; new or established counsellors); nor which parts of the code are the focus of complaints. The provision of such information would be useful prior to updating the code or the complaints procedure. Also it would offer transparency and an indication to members and other interested parties of the level of professional self-regulation and of accountability that is provided by membership of NZAC. Although

a complaints procedure exists to deal with serious ethical issues of client safety where should the responsibility lie to ensure that association members meet the requirements of the Codes of Ethics? Should this lie with members, their supervisors, or the Association? Despite changes to a Code of Ethics, questions remain about the actual quality and standard of professional counselling that is achieved.

According to Irwin (personal communication), the complaints that the Ethics Committee had fielded up to 1999 have not been in the realm of deliberate actions. Rather they have been inadvertent actions whereby the counsellor has been caught up in either their own personal situation or agenda, or they have been in a community situation, especially in a small town. Many of the complaint issues have been boundary problems, which could have been avoided if counsellors had availed themselves of good quality supervision. Personal boundaries have involved such situations as touching or socialising with clients. When does 'therapeutic' massage become 'sexual' touching? Is it breaching a role boundary for a counsellor to visit or to invite a client out socially when they are seeing them professionally? To what extent does jealousy and petty politics in an agency lead to ethical complaints? Personal agendas have involved counsellors with strong religious beliefs not allowing the client space for expression of their own beliefs, or an obsession with only one modality of counselling regardless of whether the client feels comfortable with this. Situational difficulties arise, particularly in dealing with confidentiality in small towns or small close-knit communities where there are few counsellors and everyone knows everyone. In these situations dual roles, such as being the friend of the parent or partner of a client, can often become a problem.

That most complaints have been against counsellors in private practice and only one or two against school counsellors should not be surprising. The counsellor in private practice is often working alone, without the support of an agency or institution to ensure accountability and supervision. Furthermore, clients of agency and school counsellors are likely to complain firstly to the institutional authorities who would be expected to resolve the matter, before or even instead of taking complaints to NZAC. School students and their parents are probably less likely to know about the Code of Ethics and the existence of a complaints procedure than are adults in other counselling situations. Unlike the health sector, schools seldom adorn the walls with posters that outline client rights. Schools have tended to be quite self-protective and to keep problems in-house, but this may change in the current era that highlights client rights in many public sectors.

NZAC has developed a comprehensive set of procedures to ensure the professional accountability and ethical practice and behaviour of its members. These are extremely important given the private nature of the relationship between the counsellor and client. Despite the private nature of counselling, its effectivity is often judged publicly by others, based on what the client may have reported to others and/or how the client is subsequently seen to behave. In this way the counselling activity may be judged publicly by any or all of the following: parents, whanau, caregivers, the client's friends, teachers, deans, principals, Board of Trustees, outside agencies, NZAC. This may be quite unfair on the counsellor who is hardly able to contest this because of confidentiality requirements.

If school counsellors do not belong to NZAC, whilst they may subscribe to the professional codes, they are not required to do so. Why this should not be mandatory for school counsellors is not spelled out in official policy, which would seem to be a result of inertia on the part of school authorities and of the Ministry of Education. This raises serious questions about professional competence and indemnity. Schools insure themselves and their senior personnel for indemnity, but the counsellors are likely to be covered only if the administration, board and counsellors are aware of the need for cover. When counsellors belong to NZAC, a school can rely on professional accountability. To provide a safe protective environment for students and for the whole school community, schools might well ensure their counsellors fulfil appropriate professional accountability criteria as required for NZAC membership or for a similar professional body which has a Code of Ethics, Code of Supervision and a complaints procedure. It would seem only prudent that schools should therefore be encouraging or even insisting that their counsellors belong to NZAC.

Foucault (1988a, 1997) noted that in our modern world when ethics are referred to, it is usually in the sense of sets of rules or codes that govern the conduct of conduct, rather than in terms of personal ethics. The professional

disciplines take up the notion of institutional rather than personal ethics in an effort to ensure safe professional conduct. For counselling, ethics is couched in terms of client safety, the avoidance of harm or exploitation and in harnessing top-down forms of accountability that hierarchies or management might require as part of their performance management systems. Many counsellors whose income is derived from third-party funders, are forced to belong to a professional organisation that has ethical codes, professional standards and complaints procedures in place. But top-down accountability may not prevent and may in fact mask the very exploitation it is intended to counter. Taken-for-granted assumptions could be challenged by harnessing a principle of transparency that is:

...based on a commitment to the ongoing deconstruction of our own actions ...ways of being in this work [therapy] ... ways of thinking about life ... that requires us to situate our opinions, motives, and actions in contexts of our ethnicity, class, gender, race, sexual preference, purposes, commitments, and so on (White, 1997: 150).

In this way can we identify and challenge the practices and structures of domination of our culture and develop an alternative form of accountability via partnerships and collaborations with people or groups that are constitutive of our lives (a bottom-up form of accountability), which "bring[s] many possibilities for us to become other than who we are" (White, 1997: 150).

Although codes of ethics tend to be re-active rather than proactive, the way they change over time makes it clear that they are not set in concrete and that professional counselling organisations are, and need to be, self-reflective so that their codes are reviewed from time to time. There is often tension and confusion about what constitutes a code of ethics and a code of practice. It is within the latter that ethical dilemmas and guidelines for ethical decision-making can be elaborated in exploring issues of right and wrong, of morality and what constitutes 'a good life'. Ethical, culturally sensitive practice requires more than just a knowledge of a code of ethics, but such knowledge does at least provide a starting point. A code is not a substitute for active, reflective professional and personal ethical decision-making.