

**Counsellor, Ms B**

**A Report by the  
Health and Disability Commissioner**

**(Case 03HDC02071)**



Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*



## Parties involved

Ms A	Consumer
Ms B	Counsellor/Provider
Ms C	Manager of a Counselling Centre / Ms B's supervisor

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## Complaint

On 7 February 2003 the Commissioner received a complaint from Ms A about the counselling services provided to her by Ms B. The complaint was summarised as follows:

*During 1998 Ms B had a professional therapeutic relationship with Ms A. During the time this therapeutic relationship existed, Ms B commenced an inappropriate sexual relationship with Ms A.*

An investigation was commenced on 18 August 2003.

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## Information reviewed

- Ms A's letter of complaint, dated 4 February 2003, including:
  - Ms A's account of the therapeutic and subsequent sexual relationship between her and Ms B
  - intake documents from the Counselling Centre
  - additional correspondence
- Information received from Ms A, dated 4 February 2003.
- Action note, dated 25 March 2003, detailing the recollections of Ms A.
- Further information from Ms A, dated 25 March 2003, including:
  - correspondence
  - ACC documentation
  - medical records.
- Letter to HDC from Ms A, dated 17 March 2003.
- Letter of notification, dated 18 August 2003.
- Action note, dated 21 October, detailing the recollections of Ms B.
- Letter of response from Ms B, dated 6 November 2003.
- Letter of response to the Commissioner's provisional opinion, from Ms A, dated 10 January 2004.
- Letters of response to the Commissioner's provisional opinion, from Ms B, dated 8 January, 2 February (enclosing apology to Ms A) and 16 March 2004.

## **Information gathered during investigation**

### *Counselling and sexual relationship with client*

On 30 November 1998, Ms A attended a Counselling Centre and consulted Ms B. Ms A presented in a confrontational manner, openly sceptical about counselling. Ms B allayed these concerns by offering assurances about counselling and her qualifications as a therapist. This discussion also involved clarifying the rules governing their therapeutic relationship, including the fact that Ms B did not intend to take notes of their consultations. Subsequent to this discussion, Ms A felt reassured and decided to consult Ms B on a weekly basis.

On 7 December 1998, Ms A attended her scheduled appointment with Ms B. The session was spent discussing Ms A's personal problems, among which were abusive relationships to which she had been subject. According to Ms A, she also disclosed her sexual orientation as a lesbian to Ms B during this consultation. However, Ms B denies being so informed. As the session progressed, Ms A developed feelings of attraction towards Ms B. These were not conveyed to Ms B, but were of sufficient intensity that Ms A anticipated their next consultation with considerable enthusiasm.

The third consultation between Ms A and Ms B, one week subsequent, involved discussing the "light and dark sides" of Ms A's character. Ms A claims that, in contrast to her expectations, the therapy also involved physical touching. Ms B denies this assertion. She further states that, at this consultation, Ms A presented as "buoyant and excited".

On 21 December 1998, Ms A attended her final session of therapy with Ms B. At this consultation, Ms A presented Ms B with an exercise book that contained passages relating to the admiration of women. Ms A requested that Ms B read these passages aloud. On reading these passages, Ms B noted that Ms A was watching her intently. Ms A appeared excited, but states that she was simply anxious. Ms B deduced that Ms A admired women. The session ended with some awkwardness, as Ms A seemed hesitant to leave. At the reception area of the Counselling Centre, Ms B confirmed her next therapy session with Ms A, which was scheduled for 11 January 1999.

Subsequent to parting with Ms B, Ms A determined to see her again that day. Consequently, Ms A waited at the Counselling Centre until Ms B's next scheduled therapy session was completed. Ms A waited approximately an hour for Ms B. On hearing from Ms C, Manager of the Counselling Centre, that Ms A was waiting, Ms B hastened to meet her. Ms A then wished Ms B a Merry Christmas, and requested an embrace. The pair embraced, and Ms A left the Counselling Centre.

On 22 December, Ms B responded to a message left at the Counselling Centre by Ms A. According to Ms A, she had initiated contact on Ms B's invitation. When Ms B called Ms A, the latter complained that she could not sleep and required support prior to their next consultation. As the Counselling Centre was not open that day, the pair decided to meet at a beach. Ms A contends that this decision was made by prior arrangement. Ms B describes Ms A's mood at this meeting as "euphoric". Ms A took this opportunity to inform Ms B of

her infatuation. Ms B replied that she could not continue as Ms A's therapist, and that she would have to consult her supervisor, Ms C, about the situation. According to Ms A, the pair engaged in sexual activity on 22 December 1998. This assertion is disputed by Ms B, who states that she intended to consult her supervisor prior to initiating a relationship. Nonetheless, Ms B admits to engaging in sexual activity with Ms A three days later. Given this admission, I do not consider it necessary to resolve this factual dispute.

Subsequent to her meeting with Ms A, Ms B met with her supervisor on 23 December 1998. After consulting with colleagues, Ms C informed Ms B that she would have to observe a three-month stand-down period before entering into a relationship with Ms A. Ms B agreed to observe this stand-down period. However, when Ms B informed Ms A of her decision, Ms A questioned it. Ms B admitted that she breached the three-month stand-down period by entering into a sexual relationship with Ms A. Ms B made the following comments about this decision:

“Here I failed myself and my profession. I got caught up in the emotions, allowing myself to be manipulated into relenting. I broke the non-contact agreement two days later. I have struggled with my conscience ever since, feeling guilty and unprofessional. I deceived [Ms C] and my colleagues and did not maintain my professional and personal integrity.”

#### *Subsequent events*

Ms B has acknowledged that her decision to commence a sexual relationship with Ms A on 25 December 1998 was inappropriate in the circumstances. She advised my staff that she is no longer providing counselling services, and does not intend to do so in the future.

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## **Response to Provisional Opinion**

Ms B later clarified that she is unsure whether she will return to counselling. However, she intends to abstain from providing therapeutic services for two years. She also notified my staff that, if she does return to counselling, she intends to do so under strict supervision in addition to the standard requirements. Ms B provided a written apology for Ms A.

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## **Code of Health and Disability Services Consumers' Rights**

The following Rights in the Code of Health and Disability Services Consumers' Rights (the Code of Rights) apply to this complaint:

### *RIGHT 2*

*Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.*

### *RIGHT 4*

*(1) Every consumer has the right to have services provided with reasonable care and skill.*

*(2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.*

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## **Relevant Standards**

### **New Zealand Association of Counsellors Code of Ethics 1990**

#### **The Counselling Relationship and Client Rights**

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#### **Sexual Harassment**

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“In the counselling relationship the client shall be free from the possibility of sexual exploitation or sexual harassment. Counsellors shall not engage in sexual activity with their clients.”

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## New Zealand Association of Counsellors Code of Ethics 2002

### General Guidelines

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### 5. The Counselling Relationship

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#### 5.13 Sexual Relationships With Clients

“(b) Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after the counselling has ended.”

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### Opinion: Ms B – Breach

#### *Sexual relationship with client*

According to Ms B’s letter of response, her sexual relationship with Ms A commenced on 25 December 1998. At this time, Ms B had not been informed that her membership request to the New Zealand Association of Counsellors (NZAC) had been approved. Nonetheless, the NZAC’s Code of Ethics dictate the professional standards for practising as a counsellor in New Zealand, and apply to Ms B’s actions irrespective of her membership status at the time.

I acknowledge that the NZAC guidelines that came into force in 2002 do not apply to the actions of Ms B in 1998. However, the earlier 1990 guidelines, which were in effect at the time of this event, refer to the necessity for clients to be free of “the possibility of sexual exploitation”. In my view, this included freedom from exploitation of “the potential for intimacy made possible in the counselling relationship” (as made clear in the 2002 guidelines). This potential extends well beyond a counsellor’s last consultation with his or her client.

In deciding to enter into a sexual relationship with Ms A four days after a counselling session, Ms B exploited the potential for intimacy provided by their counselling relationship and contravened the NZAC Code of Ethics (1990). In these circumstances, Ms B breached Right 2 and Right 4(2) of the Code of Rights.

#### *Record keeping*

Ms B kept no records of her consultations with Ms A. Surprisingly, the NZAC Code of Ethics (1990) contained no minimum standards in respect of note taking. However, the 2002 Code of Ethics has corrected this omission, and states:

### **5.7 Documentation of Counselling**

“(b) Counsellors shall maintain records in sufficient detail to track the sequence and nature of professional services provided. Such records shall be maintained in a manner consistent with ethical practice taking into account statutory, regulatory, agency or institutional requirements.”

Keeping accurate records is an essential element of the provision of health services. Right 4(5) of the Code of Rights requires providers to ensure continuity of services. Without the benefit of notes, a counsellor cannot guarantee continuity of care where a client chooses to consult another counsellor. In these circumstances, Ms B failed to provide services of an appropriate standard and breached Right 4(1) of the Code of Rights.

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### **Actions**

#### *Recommendation*

I recommend that, should Ms B decide to return to counselling in the future, she ensures appropriate supervision is in place and that she adheres to the advice of her supervisor.

#### *Copy of report to New Zealand Association of Counsellors*

A copy of my final report will be sent to the President of the New Zealand Association of Counsellors.

#### *Educational copies*

A copy of my final report, with identifying details removed, will be sent to the New Zealand Association of Counsellors. Additionally, it will be placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.

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