School Counsellor, Ms C

A Girls' School

A Report by the

Health and Disability Commissioner

(Case 03HDC16962)

Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Parties involved

Miss A	Consumer
Ms B	Complainant/Consumer's mother
Ms C	Provider/School counsellor
Ms D	Head school counsellor, a Girls' School
Ms E	Dual diagnosis therapist, case manager at a District Health Board, child and adolescent mental health services
Ms F	Psychologist, a District Health Board, child and adolescent mental health services
Ms G	Intake co-ordinator, a District Health Board, child and adolescent mental health services
Ms H	Friend of provider/school teacher
Ms I	Ms C's supervisor
Ms J	Current Principal, a Girls' School
Dr L	Psychiatric registrar
Dr K	Psychiatrist

Complaint

On 12 November 2003 the Commissioner received a complaint from Ms B about the services provided to her daughter, Miss A, between 2000 and 2002, by Ms C, school counsellor. The following issues were investigated:

- *Whether Ms C, counsellor, provided services to Miss A in accordance with professional and ethical standards between mid-2000 and December 2002, during which period it is alleged Ms C initiated a sexual relationship with Miss A.*

An investigation was commenced on 6 May 2004.

Information reviewed

- Information received from:
  - Ms B
  - Miss A
  - Ms C
  - Ms H
  - Ms D

— Ms I
— Ms J, current principal, a girls' school
— Ms E
— Ms F
— Ms G
— The Police

- Miss A's clinical records from the child and adolescent mental health services at a public hospital.

Independent expert advice was obtained from Ms Virginia Wilkinson, school guidance counsellor.

Summary

This report raises important issues in relation to the setting of boundaries in the counsellor–client relationship. It is about a school counsellor who provided counselling and support to a teenage client struggling with complex issues, including deliberate self-harm, drug and alcohol abuse, family relationships and difficulties with motivation.

In my opinion, the counsellor took on issues that she did not have the skills or expertise to manage. The counsellor did not set clear boundaries around the professional relationship, and it ultimately became a relationship of dependency. This later developed into an intense personal relationship between the counsellor and the student whereby they made plans to move to a new area together[1]. These actions were unprofessional and unethical, and were in breach of the Code of Health and Disability Services Consumers' Rights. Other school employees were aware of the inappropriate relationship between the counsellor and the client and did not intervene. When two written complaints were made to the school about this relationship, a superficial investigation was conducted but no further action was taken. In this respect, the school is vicariously liable for the counsellor's actions.

People who approach counsellors for counselling services are often vulnerable. Counsellors need to take extreme care to establish the boundaries of the new relationship at

[1] During this investigation, there was insufficient evidence to substantiate the allegation that Ms C had initiated a sexual relationship with Miss A. After the Commissioner had concluded his investigation and issued his final opinion, the Director of Proceedings filed proceedings in the Human Rights Review Tribunal seeking remedies on behalf of Miss A (the aggrieved person). It was only once the Director had filed the evidence to support these proceedings that Ms C admitted that a sexual relationship had developed out of the counselling relationship. In light of this admission, the Tribunal made orders for damages to be awarded to Miss A by consent (discussed further 40 below).

the outset. If any doubt is raised about the counsellor's ability to counsel the client within acceptable professional boundaries, a referral should be made. The consumer's ability to trust a counsellor is paramount and must not be exploited.

Information gathered during investigation

Overview
Miss A, aged 14 years, a pupil at a girls' school ("the school"), sought counselling from the school's guidance counselling service in March 2000, because of the difficulties she was experiencing at home with her mother, Ms B. Miss A self-referred to a school guidance counsellor, Ms C. In September 2000 Ms C became aware that Miss A was self-harming and abusing drugs and alcohol, and in November 2000 she referred Miss A to the public hospital's child and adolescent mental health services ("the service"). Ms E, a dual diagnosis therapist with the service, took over the management of Miss A's care supported by Ms C. Over the next 10 months Miss A's behaviour and the nature of her relationship with Ms C became a concern to Ms E and other staff at the service. In August 2001 Ms E and Ms B made separate formal complaints to the school, reporting their concerns about the relationship. Ms D, the head school counsellor, spoke to Ms C about the complaint and reported to the school principal that there was no cause for concern. Miss A's behaviour deteriorated and suspension was considered. The service recommended that she should not be suspended and that Ms D take over as Miss A's counsellor while Ms C continue as Miss A's support person. In the first two terms of 2002 Miss A lived with Ms C and her partner, Ms H. However, Miss A's behaviour remained unstable and in November 2002 she became upset about Ms C's domestic arrangements, and assaulted her. The Police were involved and Miss A was referred to the public hospital mental health crisis team.

Ms C
Ms C, aged 57 years, was employed at the school from 1980 to 2002. Ms C was initially employed at the school as a teacher, but in late 1992 she was appointed to a counselling position. In 1994 she commenced training as a school guidance counsellor. Ms C completed her Postgraduate Diploma in Counselling in 1995, and became a member of the New Zealand Association of Counsellors (NZAC). Ms C took leave from her position as guidance counsellor in October 2002 and resigned from the school in November 2002. She resigned from NZAC on 30 May 2003 and is not currently employed as a school guidance counsellor.

Chronology

March–December 2000 — counsellor and client
In March 2000 Miss A self-referred to the school counselling service. Miss A was experiencing difficulty in settling back in New Zealand and at the school after spending time with her father's family overseas.

Ms C informed me that at her first meeting with Miss A she felt she was "being checked out". Ms C stated that Miss A "seemed like she needed to be able to talk to some adults

and hoped for a confidential person to talk to". Ms C initially saw Miss A on a monthly basis.

Miss A informed me that she went to see Ms C because she and her mother were frequently in conflict. She said that Ms C was "very nice and caring".

In September Miss A began self-harming, cutting herself, and Ms C increased the frequency of the counselling sessions to weekly. Ms C recalled:

> "She had a lot of damage to her body, all self inflicted and, in consultation with my supervisor and school counsellor, my senior, I decided I needed to refer her on. This was far too difficult."

On 21 September Ms C telephoned Ms B, Miss A's mother, because she was concerned that the school holidays were approaching and that Miss A needed to be watched because she was expressing suicidal thoughts. Information from the school indicates that Miss A was with Ms C when this call was made. Ms C gave Ms B the contact details for persons who could assist her and Miss A during the holidays, if required. She recalled that Ms B reacted in anger and did not want to know about the situation. Ms C reiterated that she believed Miss A was at risk of seriously harming herself, and requested that Ms B take responsibility for Miss A's safety during the school holidays.

The same day, Ms B contacted the service and spoke to Ms G, intake co-ordinator. Ms G recorded the telephone conversation she had with Ms B, who expressed concern about Ms C's call. Ms B informed Ms G that Miss A was getting into trouble at school and was difficult to manage at home. Ms G advised Ms B to "link in with a private counsellor". Ms G recorded:

> "Mº [mother] feels worried & confused due to her discussion with [Ms C]. I said to Mº if things aren't going well then to phone me again but at this point I think she needs to get more clarity from the school re the school situation & link in with a private counsellor to provide [Miss A with] someone to talk to as she does not want to talk to [Ms C] and Mº."

Ms C resumed counselling Miss A after the school holidays, and noted that her mood had shifted from depression to "sadness". Miss A was self-harming and taking drugs "to blank out bad memories".

On 17 November Ms B wrote to Ms G to list her concerns about Miss A's behaviour, which included making cuts to her wrists, abusive physical and verbal outbursts, and mood swings. Ms B stated:

> "The school counsellor, [Ms C], said that she would make a referral to your services and this letter is in support of that and also a plea for help.
>
> I hope you can make an appointment for [Miss A] urgently and I am concerned for our welfare and her safety, as our relationship is very fragile. I could bring [Miss A] into

> an appointment whenever it would be available. She is willing to come and does acknowledge she has an anger problem."

Ms C referred Miss A to the service, and on 21 November Ms G recorded that she had invited Ms C to meet with members of the service team to discuss the referral. Ms C met with Ms G and Ms F, psychologist. Ms C was informed that she needed to communicate with both Miss A and Ms B about her referral and concerns relating to Miss A's drug and alcohol abuse. Ms G stated that the service would not be willing to assess Miss A until she and her mother had all the information. Ms G recorded:

> "[Ms C] is going to think about this as she is a bit hesitant due to not wanting to affect her counselling relationship with [Miss A]. Once she has or hasn't spoken with Mº & [Miss A] she will ring & let me know what is happening."

Over the next week, Ms G and Ms C spoke a number of times about Miss A's behaviour. On 28 November Ms C informed Ms G that she had reports from pupils at the school that Miss A was "walking round at lunchtime saying she wanted to find a razor-blade". An urgent appointment was made for her to be assessed by the service team on 4 December.

On 4 December Ms G conducted an assessment of Miss A and Ms B, recorded a social history, and talked about the issues of concern. Three further family therapy sessions, one with Dr L, a psychiatrist, and two with Ms G, were organised.

January–August 2001 — support person/counsellor and client
Miss A stated that Ms C became "more of a friend" in 2001, and gave Miss A her private telephone number so that Miss A could contact her at home.

Ms C informed me that she considered that she ceased to be Miss A's counsellor at the beginning of 2001 when Miss A came under the care of the service. Ms C stated that she was still seeing Miss A at school during this time and considered that she was "a support person but still in a counselling model". Ms C said that in May 2001 her role changed when she moved into a "support role", and in July that year her role changed again when she became a "supporter/friend".

The service assessment
Dr L saw Miss A and Ms B on 23 January 2001. He wrote to Miss A's general practitioner to inform her of his assessment of Miss A and his plan for her ongoing therapy.

On 14 March Ms E, a dual diagnosis therapist with the service, who had been appointed as Miss A's case manager, saw Miss A for the first time. Ms E recorded details of Miss A's drug and alcohol use, and they agreed to a plan for Miss A to limit and monitor her use of drugs and alcohol. Ms E noted:

> "[Miss A] has made an agreement with [Ms C] to attempt not to get stoned at school for a whole week. Encouraged to continue with this plan and to keep a journal of time, place, thoughts & feelings during the week each time she wants to get stoned. F/U in 2/52 with feedback from this experiment."

On 16 March Ms G recorded that she had received a telephone call from Ms C, who was expressing concern about Miss A's risk-taking. Ms G provided Ms C with advice on managing the risk and said that she would make an appointment for Miss A in one week. Ms G telephoned Ms B to inform her of Ms C's concerns and the new appointment.

Ms E saw Miss A on 21 March. Miss A told her that she had been feeling angry and depressed since September 2000 and had cut herself in an attempt to "make the anger go", but was currently not depressed and was not suicidal. Ms E formulated a plan for Miss A to contact either her or Ms G if her mood changed, and reiterated the previous plan to abstain from using cannabis. Ms E saw Miss A weekly during March 2001.

On 30 March Ms C telephoned Ms G to inform her that Miss A had started self-harming again, which was "possibly associated with disclosure of a traumatic event". Ms G noted that Ms C had not developed a safety plan. She advised Ms C to develop a plan and provided Ms C with information and handouts. Ms G contacted Ms B to inform her of developments. Ms B expressed her concern about how to manage Miss A's behaviour. Ms G advised her on strategies and invited Ms B to contact her if she had further concerns.

During April Ms B separated from her husband. Miss A continued to exhibit difficult behaviour, arriving at school "stoned". On 5 April 2001 Miss A was suspended for drug possession. The suspension was lifted on 20 April on the advice of the service, who believed that Miss A would benefit from continuing to attend school and being supported by Ms C. Included in the conditions of Miss A's reinstatement was that the role of her school counsellor would be transferred to Ms D, and Ms C was to continue to support Miss A and her family outside her role as school counsellor. However, according to the school, Miss A refused to see Ms D while Ms C was in the school acting as her support person and friend.

On 28 April Miss A was admitted to the public hospital with acute alcohol intoxication.

Miss A informed my staff that after her parents separated she and her mother moved to an area which was close to where Ms C lived, and that she went for walks on the beach with Ms C. On occasion Ms C would provide her with rides to and from school.

Ms C recalled:

> "When [Ms B] separated from [her husband], which I think was April, they [Ms B and Miss A] moved out to an apartment along the way from where I lived. On an occasion I offered to take [Miss A] for a walk up the mountain. … I had a strong belief that people who got fit, enjoyed the outdoors, that there was a whole way of life there that she certainly had no glimmer of. Yes, I was imposing my interests, but she seemed quite happy with that and [Ms B] seemed very happy with that. On the first occasion, I actually picked her up from her house and our arrangement was that I would be delivering her back at the house at 4 o'clock."

On 9 May Ms C contacted the service (without Miss A's knowledge) to inform them that she was extremely concerned about Miss A, who was stating that she "wanted to end it

all". Ms E was informed and arrived at the school with the Crisis Team. Miss A was upset by the arrival of the Crisis Team and tried to run away. Ms E formulated a Care Plan on 11 May, which Miss A agreed to and signed, that between 11 and 14 May "[Miss A] will remain safe, she will not self-harm or make any attempt to suicide during the time frame stated". Ms E saw Miss A again on 14 May. Miss A expressed feelings of depression about her relationship with her mother and mentioned a "sensitive issue", but was not prepared to discuss this matter further. A further Care Plan was formulated to keep Miss A safe, signed by Miss A and Ms B, for the next seven days.

On 15 May Miss A, Ms B, Ms E and Dr L met. Strategies for managing Miss A's behaviour were discussed, including going overseas for a period. However, Miss A stated that she "would miss [Ms C]" and again disclosed that there was a "sensitive issue". Ms E recorded:

> "[Miss A] said [Ms C] knows about it but they don't really talk about it. Negotiated with [Miss A] for me to contact [Ms C] to ensure that she is happy to work with [Miss A] on this 'sensitive issue'. If not, I will re-negotiate with [Miss A]."

Ms E noted that she had discussed Miss A's case with another member of the service team, her supervisor. The plan was to discuss with Ms C whether she had worked with suicidal teens before and if she had "enough support considering [Miss A's] dependency on her". Ms E visited Ms C the following day and noted:

> "[Ms C] realises [Miss A's] dependency on her at present and is happy for that to continue for now — deal with it later. Feels she has adequate support through [Ms D, the school's head of counselling] + the school + [the service]. Has worked with similar situations in the past. Happy to work with [Miss A] on 'sensitive issue' and happy for me to check how this is going each week."

Dr L wrote to Miss A's general practitioner on 16 May to inform her that he had met that day with Miss A, Ms B and Ms E. He stated that Miss A had been prescribed the antidepressant paroxetine. He advised that Ms E would see Miss A daily "until the suicidal risk has diminished".

In the afternoon of 22 May Miss A met Ms C in her office for a counselling session. On 23 May Ms C provided a report for the school on the events of that afternoon. In her report she stated that Miss A arrived at the counselling session "very morose" and stating her intent to self-harm. Ms C removed a blade that Miss A had in her possession and a razor from her bag. However, Miss A took up scissors that were in the office and inflicted a minor cut on herself. Ms C telephoned her partner, Ms H, who assisted her to transport Miss A to the public hospital emergency department for treatment. Ms C telephoned Ms B from the hospital to inform her that Miss A had been admitted.

The 23 May unsigned report stated:

> "[Ms C] reports that the mother and [her mother's] friend were unhappy with the way things had been handled and the lack of information from [Ms C] to the mother. They

> gave permission for the girl to go to the toilet (alone?) and she absconded from there. [Ms C], after further discussion, left A & E without seeing the girl again but obtained permission from the mother to call the Police. … [Ms C] is going to see the girl but expects there may be ongoing problems with the parent and friend."

At 3.15pm on 23 May Ms E saw Miss A at the public hospital in relation to her suicide attempt. Ms E recorded that while she was speaking with Miss A she was "interrupted by arrival of [Ms C]". Ms E recorded that she had a private conversation with Ms C:

> "[Ms C] had felt this morning that it would be OK for [Miss A] to go home. After seeing her now agrees with my opinion that [Miss A] does not seem to be her normal self. Also has some hesitation in [Miss A] going home in this state. Also concerns for how [Miss A] will cope at school as rumours are circulating and quite untruthful. [Miss A] stated she was worried about school."

That day Ms G spoke to Ms B, who expressed her concern about Miss A's dependency on Ms C. Ms G said that Miss A's attachment to Ms C was a "safety factor" for her. As a result of this conversation Ms G contacted Ms C. Ms C explained that she was caught between the wishes of Miss A and those of Ms B. She informed Ms G of the details of the "sensitive issue". Ms G arranged to meet with Miss A and Ms C to discuss this matter.

Miss A informed my staff that the "sensitive issue" referred to was:

> "What happened while I was [overseas], I felt uncomfortable around my Grandad. He did a lot of inappropriate things with regard to talking about sex to me all the time … kissing my neck and really uncomfortable things. When I was back in New Zealand [he] sent me some really horrible e-mails as well, with regard to things like that. One day [Ms C] and I were walking on the beach and she put the idea that he had raped me in my head, and I went along with it. It gave me a lot more attention from her and a lot of other people. I really regret it. It turned into a huge story."

On 25 May Ms G met with Ms C and Miss A to discuss their relationship and the possible reasons for Miss A's recent suicide attempt. Ms G spoke with Ms C on her own to discuss a plan to transfer Miss A to an ACC-registered counsellor specialising in sexual abuse. Ms G noted:

> "Talked about how this work needed to be done by s/one who was not a support person for [Miss A] — that frequent exposure to the person associated with reactivation of the trauma would not help [Miss A] contain her feelings & that [Ms C] → would be serving [Miss A's] needs better as a support person. Reviewed [Ms C's] boundaries & asked her how she saw her & [Miss A's] relationship & was it sustainable? & was it possible to go back to the client–therapist/counsellor r'lationship given the walks on the beach, the phone calls to [Ms C's] home, the chats with her son etc. [Ms C] agreed with my thoughts & said probably not. Planned transition to ACC therapist for future."

Ms C informed me that she was clear from that meeting that although she was no longer Miss A's counsellor, she had Ms G's approval to continue to offer Miss A friendship, support and outings.

On 28 May Ms G met with Ms C and Ms B to discuss Miss A's disclosure about being sexually abused by her grandfather. Ms G noted Ms B's "ambivalence about whether abuse did occur". She recorded that there was evidence that the abuse occurred because Ms B admitted her own observation of his sexualised behaviour towards Miss A, and Ms B had read the emails he sent.

Ms G recorded that Ms C agreed to have only scheduled/planned face-to-face contact with Miss A, to let Ms B know when she was coming and going from the house, and that there were to be no further evening visits.

During June Miss A received sexual abuse counselling from an ACC-approved therapist and was monitored by Ms E. However, Miss A continued to use cannabis during this time, which caused tension between her and her mother, and Ms E discussed alternative accommodation arrangements with Miss A and Ms B. On 14 June Ms E met with Miss A, Ms B and Ms C to discuss future therapy for Miss A. As part of the discussion, Ms E raised the issue of Ms C and Miss A's relationship. She recorded:

> "Contact between [Ms C]+[Miss A]
>
> Discussed amount of time out of school hours spent with [Miss A] or on the phone with [Miss A]. [Ms C] would like this to continue as is. Discussed need for time out for [Ms B] and [Miss A] only ~ without being disturbed/interrupted by [Ms C]. Agreement reached that Sundays after 10.30am [Ms B] would spend time with [Miss A] and [Ms C] would not contact [Miss A].
>
> Discussed need for [Ms C] to have regular supervision and adequate support people as she has chosen to be in a risky situation professionally and personally."

Ms C recalled that during this meeting Ms B was "very aggressive and unreasonable — the meeting was badly managed". Ms C stated that the large majority of the telephone contacts between herself and Miss A were initiated by either Miss A or her mother. She agreed that Ms B talked about needing special time with her daughter and specified Sunday from 10.30am as being "exclusively her time". Ms C stated that, in her opinion, the problem was around Miss A and Ms B's "extremely dysfunctional (and sometimes violent) relationship". Ms C said that Ms E contacted her the following week to apologise for what had occurred.

Miss A's relationship with her mother continued to be difficult throughout June and July, and she remained unsettled at school. During July Ms C and Ms H went overseas on holiday. Miss A telephoned Ms C a number of times while she was overseas.

Ms H informed my staff:

> "When [Ms C] and I were going on holiday [overseas] in July 2001, [Ms B] asked [Ms C] to take [Miss A] with us. She refused. However, while we were [overseas], [Ms B] apparently agreed for [Miss A] to ring around various resorts in order to locate us. [Miss A] wanted us to look up her aunty when we went to church on the Sunday."

Ms E recorded on 17 July that Miss A intended to spend the weekend with Ms C when she returned.

On 18 July Ms E saw Miss A and noted:

> "[Ms C]. [Ms C] went [overseas] for the holidays. While there she met [Miss A's] Auntie and Grandfather and had photos taken with them. [Miss A] is feeling very hurt and angry by what has happened. In particular a photo of [Ms C] and [Miss A's] Grandfather with his hands/arms all over [Ms C]."

Ms E arranged for Ms C and Miss A to discuss these issues. Ms C informed me that her recollection of this meeting is that it went well because "finally [Miss A] had begun to speak out, state her position and feel included in the discussions". She does not recall either herself or Miss A being defensive, but that Miss A viewed the discussions about the amount of contact between them as "another attempt by her mother, through [Ms E], to unsettle this supportive friendship".

On 27 July Ms C telephoned Ms G to inform her that Miss A was at school threatening to harm herself. The reason given for this outburst was that Ms B was considering moving to another city and Miss A did not want to leave the area. Ms G recorded: "[Ms C] spent last night on the phone for a few hours talking to [Miss A] & thought she got her through the rough patch, but it seems today that she is wanting to harm herself again."

Ms C explained that she spoke to Ms G on that occasion as she was concerned for Miss A's safety. She said that Miss A had been very agitated and aggressive that day and had "crashed her head into a wall and later a tree out of frustration and anger". Ms D called Ms C out of class to help deal with the situation and the two women escorted Miss A to the school nurse. Ms C stated that she took from her discussion with Ms G that her plan was to make Miss A more responsible. Ms C stated that she was agreeable to this and to creating more visible boundaries when at school, and agreed to show Miss A that she could not be expected just to drop everything and continue to be her rescuer.

During this time Miss A went to the house of a man she did not know, where she took drugs and engaged in sexual activity with him. A day or two after this incident, Miss A took a quantity of illicit drugs and became "stoned". She contacted Ms C, who collected her and took her home to Ms B.

On 2 August Miss A was admitted to the public hospital following a drug overdose. Miss A informed Ms E that she had intended to take the tablets and go to Ms C's house, "curl up with her on the couch and die in her arms". During her conversation with Ms E, Miss A

became distressed, screaming out, "Where is [Ms C,] if she loved me she would be here." The suicide note Miss A wrote was addressed to "Aunty [Ms C]".

That afternoon Ms E spoke to Ms C and discussed her concern about Miss A's need and dependence upon her. Later that day, at a clinical team meeting with a consultant psychiatrist, Ms E explored strategies and alternative accommodation for Miss A, to ensure her safety after she was discharged. It was decided to make enquires with specialist accommodation facilities outside the area, to put the sexual abuse counselling on hold until Miss A was more stable, and to inform the sexual abuse therapist of the plan to wean Miss A off her dependency on Ms C.

Miss A informed one of the hospital staff that she was pleased that access to her school counsellor (whom the staff member understood to be Ms C) had been restricted. The hospital staff member recorded the discussion and that Miss A was "aware that it was an unsafe relationship".

Formal complaint
On 2 August 2001 Ms E wrote to Ms C at the school, and copied the letter to Ms D, the then school principal at the time of the complaint), and the service's clinical co-ordinator. Ms E stated:

> "Further to the informal discussion we have had over the last few months, I now find it necessary to formally outline my concerns in writing. I have discussed this matter within our multidisciplinary team setting and with [the service's clinical co-ordinator].
>
> First and foremost, the most obvious concern I have is about the professional versus personal involvement and the blurring of professional/ethical boundaries.
>
> As you are aware, I am the primary Case Manager within [the service] for [Miss A] and it is my professional opinion that the consistent blurring of professional/ethical boundaries has a huge impact on [Miss A] and her Mum which inhibits the progress on the long term treatment goals for [Miss A]. I refer specifically to:
>
> 1. The unhealthy influence that the ongoing relationship has on [Miss A]. [Miss A] seems to be dependent on the contact she has with you, she isolates herself from other supports.
>
> 2. The negative impact that your involvement with [Miss A] has on the mother/ daughter relationship.
>
> 3. The need to clarify your role. What exactly is your role in this equation? Are you a 'Guidance Counsellor' or a 'Support Person'?
>
> In addition, it concerns me that [Miss A] has often been absent from classes, I also question your level of objectivity given what appears to be your very enmeshed

involvement with [Miss A]. Furthermore, I wonder about the impact all of this has on the other students within the school.

I would like to suggest that we meet at a time that is acceptable to all of us to discuss these issues further with the intent of coming to an amicable resolution."

On 6 August Ms B sent a formal complaint to the school principal at the time about the extent of the relationship between Miss A and Ms C. She concluded her complaint as follows:

"In closing I have included a copy of the Code of Ethics for Counsellors from the NZ Association of Counsellors to which I am also submitting a copy of this letter and laying a complaint about the situation. I feel as a counsellor [Ms C] has abused her power in a young person's life, and crossed professional boundaries for which I question her motives. Finally I wish to state that this is not a personal vendetta, but a genuine concern about someone in a professional role."

On 6 August 2001 Ms C provided a written statement relating to her relationship with Miss A (supplied by the public hospital as part of Miss A's clinical records). The statement was not addressed to any one person and stated:

"[Miss A] has been told that she has a dependency on me and that this is a concern to the medical people dealing with her and her mother. It seems to me that this apparent dependency has been developing over time and that it arises from two significant factors.

The first factor relates to [Miss A] having been subjected to verbal and emotional abuse over a period of several years with a significant intensity in the last few months. This has given rise to strong feelings of hopelessness, worthlessness, not being wanted and being a burden to everyone. The abuse is now given to [Miss A] from her mother's friends as well. [Miss A] often responds to her mother in similarly abusive ways.

The second factor related to her being sexually abused by a family member about two years ago. The abuse was only disclosed earlier this year although it had been apparent for some time that something significant was disturbing her. Drugs were the way that she initially dealt with this, but over time they did not continue to do the 'blocking out' job that they had initially done.

Over time, and especially after her sexual abuse disclosure, she developed a trust and hope in me, and even on the occasions I had to call in the crisis team, or contact [the service] or her Mum because I feared for her safety, she forgave or remained with me.

[Miss A] is a delightful young woman with lots of potential. She has a sunny, outgoing disposition and is very giving. I moved into a support person role (following a consultation with [Ms F] at the time of [Miss A's] second admission to hospital, [Ms E] felt that because of the nature of the work needing to be done in relation to sexual abuse in addition to the fact that [Miss A] was working with [Ms E] at [the service] around

other issues, that it would be more beneficial if I was prepared to work in the role as a support person). I am clearly a significant person in [Miss A's] life and feel comfortable about this. I try to provide her with consistency, honesty, and practically based experiences around doing activities in the outdoors. My belief is that I am one of the significant people in her life and there is no way that I could contemplate walking away from her. I do not believe at this point that abandoning [Miss A] would help her.

Her Mum has at times expressed jealousy at our relationship and I admire her for being able to do this. At the same time she thanks me for my involvement. I always have in mind that the ideal outcome will include [Ms B] back as a loved and respected mother hopefully with mother and daughter having a more adult to adult relationship.

I am aware that to others, [Ms B] indicates that she wants me removed from [Miss A's] life and would like agencies such as [the service] to write letters to that effect. Meantime, significant suggestions to me or my family from [Ms B] have been: 1/ that my 26 year old son befriend [Miss A] because she likes him, 2/ that I took [Miss A overseas] with me when she heard that I was going over in September and 3/ that [Miss A] should live with me seeing that I seem to be doing the parenting role. [Ms B] is clearly looking for answers to [Miss A's] problems from a multitude of sources.

Where to from here? We need to keep in mind the presenting issues and not let my involvement become the major focus. This young woman needs to experience some unconditional love. She is learning slowly that some adults are trustworthy, caring and consistent. Years of inconsistency have caused a distrust in adults and a lack of belief in herself. She needs to be in a safe environment with consistency in order for her trust in adults to build. Fundamentally she needs support and help so that she stays alive."

In a separate document, also dated 6 August 2001, which was written in response to Ms B's letter of complaint, Ms C stated:

"For [Ms C] there was no abuse of power. Since the referral to [the service] [Ms C] has had the role of the significant person who has tried to keep [Miss A] alive. This was made difficult because [Ms C] did not believe that [Ms B] would monitor her consistently."

On 14 August Ms D wrote to Ms E to acknowledge the receipt of her complaint and invite her to contact the school so that they could meet to discuss the issues.

On 16 August Miss A left a message on Ms E's telephone stating, "I want you to burn in Hell for what you have done." Ms E discussed the incident with her supervisor and it was decided that "effectively" Miss A had fired Ms E, and that she should have no further contact with her. Arrangements were made for Dr L and Dr K, psychiatric registrar, to take over responsibility for Miss A's treatment and care.

On 31 August Ms D provided Ms J (the acting school principal) at the time with a written report regarding her investigation into the complaints against Ms C. In her cover letter to the report she stated:

> "[The school principal at the time]
>
> I have met with [Ms C] and discussed [Ms B's] letter. A report of [Ms C's] response to the letter is attached as is a letter written by [Miss A] when she ran away from the hospital.
>
> A meeting was arranged with [Ms E and the service's clinical co-ordinator], but [Ms E] later withdrew claiming ill health.
>
> The relationship between [Ms C] and [Ms B] has entered another phase with [Ms C] receiving many phone calls from [Ms B] requesting [Ms C's] assistance.
>
> [Ms C] has taken the matter to supervision and continues to work through issues with her supervisor. I have discussed with [Ms C] the need for professional and personal safety when working with clients.
>
> It appears at this point, with [Ms B] deciding not to send a complaint to NZAC, that the matter has been addressed and I suggest that the enclosed report be kept on file against the possibility of the situation arising again in the future."

Ms C informed me:

> "From August 2001 onwards, [Ms B] repeatedly asked me to take [Miss A] in as a boarder. This was after the letter of complaint had been sent."

On 11 September Ms J wrote to Ms E and Ms B to inform them that their complaint against Ms C had been investigated, and that she was satisfied that all school procedures had been followed. Ms J stated:

> "I am also aware that there are difficult and ongoing issues for [Miss A] that have required support.
>
> I am confident that in providing this support [Ms C] has remained within the boundaries of her role as a school guidance counsellor. This being the case I do not perceive any need for intervention at this point."

The school advised me that in this letter Ms J was referring to Miss A's ongoing difficult behaviour at school.

On 12 September Miss A was seen by psychiatrists Dr L and Dr K. Dr K wrote to Miss A's general practitioner, and copied the letter to the various team members of the service involved in Miss A's care. He noted that Miss A was not seeing her current boyfriend or taking drugs, and her relationship with her mother had improved. He also recorded that Ms B was "more supportive" of Miss A's friendship with Ms C.

During Labour Weekend (21–23 October) Ms C was on holiday with Ms H, when she received a telephone call from Miss A, who was very distressed because there had been a

dispute between her and her mother. Ms C contacted Ms B to ask her to delay any decisions until Ms C returned to the area, so that alternative options could be considered.

Ms B and Miss A met with Ms C and Ms H, and it was agreed that Miss A would move in with them for five weeks so that she could prepare for her School Certificate. Ms C stipulated that Miss A was to remain drug- and alcohol-free while she lived with them. Ms H (who was a schoolteacher) prepared extra work for Miss A, who was behind with her schoolwork. Ms C informed me that it was agreed that after Miss A had sat her School Certificate, and if her fitness was good enough, they would attempt a tramping trip. The trip took place on the last weekend that Miss A stayed with Ms C and Ms H.

Tramping trip

Ms C stated that Miss A managed the tramp very well in spite of conditions not being ideal. She said that Ms H was very stressed by the tramp and retired to their cabin, leaving Miss A and Ms C to cook the evening meal in the cookhouse. There is discrepancy in the information supplied by Ms C and Miss A about the events of that evening. Miss A informed my staff:

> "We went to the kitchens and made a meal and drank half a bottle of wine each, and we went back and were lying in the room, adjacent to the room that [Ms H] was in. There were no doors, so she could hear us and we were lying together in the same bed, kissing each other and stuff. [Ms H] got up and packed up all her stuff and walked out and said 'I'm going home', and she went home. We spent the rest of the night by ourselves and then she came and picked us up the next day and was very moody."

Miss A informed me that she did not know at that time that Ms C and Ms H were in a relationship. She said that this was the first time that she and Ms C kissed and "I felt like I really, really loved her".

Ms C stated:

> "We ate our food and talked to all these wonderful young people who were out there doing it. I enjoyed the fact that [Miss A] was able to see these 18 to 25 year olds talking about their adventures … it was just awesome and exhilarating that she was able to see these kids. We were loud and talking when we came back. I don't think she lay [on my bed] but she sat on the floor beside where my bed was, we were all in sleeping bags and stuff, and we just kept on talking and we goofed around and were thoughtless. … [Ms H] was really fed up with it and instead of logically saying, 'You guys are being really unfair', she just upped and left and then I felt devastated that I had been so self centred. … There was no kissing."

Ms H said that when they returned from the trip to the mountain Ms B informed them that she had made arrangements for Miss A to board with friends (a 48-year-old man, his 18-year-old girlfriend, and another teenage female boarder). She said that Miss A was very distressed by this arrangement. During the time Miss A boarded with Ms B's friends, Ms B telephoned Ms C and Ms H, worried about Miss A's mood, and they provided Miss A with opportunities to spend time in their company to alleviate her depression.

In November 2001 Miss A told Ms C that there were things she wanted to talk about. She said that she found her work with Ms E unhelpful, and had not been seen by the service for many weeks. Miss A asked Ms C to arrange for Ms D to see her. Ms C recalls that Ms D started counselling Miss A in December 2001.

Miss A moved back to her mother's house over Christmas, but when her mother moved away from the area at the beginning of 2002 she started boarding with a young couple and a school friend. She said that the boarding arrangement did not work out, and on her 16th birthday, 24 January, Ms C and Ms H invited her to stay with them again.

September 2001–December 2002 — support person and friend
Miss A told my staff that when she was staying with Ms C and Ms H during the first part of 2002, she and Ms C "kissed each other a lot when [Ms H] wasn't around, and at night I would quite often sleep in her bed. … I just thought that I really love her and she really loves me. Sometimes I would try to take things a step further with her and she would say 'No. No. I can't. You know I can't'. She would say that no-one can find out and things like that."

Ms C stated that she and Miss A did not kiss and cuddle. She said that there were a "few emergency times" when she and Miss A were in bed together. One of these occasions was when Miss A had returned to the house very drunk and Ms C got into bed with her so that she could hold Miss A's head over a bowl for her to be sick. On another occasion when Miss A was in a self-destructive phase, she had gone into Ms C's room. Ms C stated:

> "She was looking for razors or something like this, and in the end I just held her. I knew I could not survive much longer and she did stay."

The school stated that it was at the beginning of 2002 that Ms J first became aware that Miss A was living with Ms C and Ms H through a change of details in the school database. Ms J contacted Ms B to confirm that she knew about the arrangement. Ms B confirmed that she not only knew, but it had her full support.

On 16 April 2002 Dr K wrote to Miss A's general practitioner to inform her that he had seen Miss A at Outpatient Psychiatric Liaison Clinic. He noted that he had seen her three weeks earlier when she presented at the public hospital emergency department "feeling depressed and wanting to end her life". He stated that this was an acute stress reaction to being called a lesbian at school and being victimised by other students. Dr K stated that Miss A had restarted taking cannabis and other illicit drugs. He said:

> "[Miss A] informed me that she was aware that [the service] team were trying to get her to spend less time in [Ms C's] company. She said, 'a lot of people were saying that the relationship we had was unhealthy' and [that Ms C had told her], 'As long as it's not doing you any harm, its OK. I am just helping you. If I wasn't here for you, no-one else would be'."

Miss A stated:

> "We had gone into a sexual relationship about June, cos I left school, and it was the last week I was at school that it happened. In October I found out from her that she had been in a relationship with [Ms H] for 16 years, and I got really angry and told her that she had to tell [Ms H], or I was going to tell [Ms H] that we had been together."

Ms C stated, "I was not involved in a sexual relationship [with Miss A]."[2]

Assault incident

On 9 November Ms C was staying temporarily in a campervan at a caravan park so that she could spend time with her brother and his wife who were visiting. Miss A telephoned Ms C a number of times that day asking that they meet. At 9pm that evening Ms C met Miss A in a local park. Miss A became abusive, calling Ms C a liar, and started to kick and hit her. She then ran off, stating that she was going to kill herself. Ms C tried to locate Miss A, but when she failed to do so returned to the caravan park. Miss A was at the campervan trying to break in. Ms C suggested that they go for a walk on the beach to talk, but Miss A was "wildly out of control". Ms C let Miss A into the campervan whereupon Miss A became violent. Ms C left the campervan, and with the assistance of her brother restrained Miss A. Miss A left the scene, but returned shortly afterwards and the Police were called. Miss A was taken home by the Police. However, later that night she telephoned Ms C, who agreed to meet her in the park at 3pm the following day.

Ms C met Miss A as agreed. Ms C recalled that Miss A appeared reasonable at this meeting and suggested that they go ahead with the plans they had previously made to travel together to another part of the country to pick fruit and undertake polytechnic study. Ms C told Miss A that she had decided not to proceed with this plan, because of the previous night's events. Miss A said she understood and left the park, stating that she was going to get cigarettes. She returned after a short time and sat smoking. With no provocation, Miss A pushed Ms C onto her back and threatened her with a knife. Miss A told Ms C that if she would not be with her she would be with no one. Ms C managed to wrestle the knife off Miss A and fend Miss A off until she reached the road, where members of the public came to her assistance.

The Police were called. Ms C provided a statement about the incident, but informed the Police that she did not want any criminal action taken against Miss A. The Police called the public hospital's mental health crisis team to take care of Miss A. Miss A disclosed to the Crisis Team members and Police that she had been in a sexual relationship with Ms C from the age of 15, and that Ms C had advised her to leave school because of their relationship. Ms B was contacted and informed about the situation. Miss A signed a statement that she did not want to make a complaint against Ms C. Ms C denied that she had been in a sexual relationship with Miss A since Miss A was 15 years old. She did, however, confirm that she had previously been Miss A's school counsellor and that their relationship was now personal. She confirmed that they had planned to travel to another part of the country together.

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[2] See footnote 1 above

On 19 November Dr L recorded in Miss A's clinical records that she had "disclosed alleged sexual relationship with guidance counsellor ([Ms C]) when still a minor", and that he had discussed the significance of this information with the service team. He listed options for further action, but there is no record of whether any action was taken in relation to this matter.

(Miss A later told my staff that the last time she had engaged in sexual activity with Ms C was on 10 December. She said, "It was that night that I took the remainder of my prescribed sleeping pills and [Ms C's] pills.")

Miss A was admitted to the public hospital on 11 December as a result of tablets she took during the night of 10/11 December.

On 19 December Dr K wrote to Miss A's general practitioner to update her about Miss A's current status. He advised that Miss A was living with her mother, who had moved back to the area. He stated that Miss A did not appear to have a significant drug and alcohol problem at that time, but needed assistance to overcome her dependency, sexual identity problems and "enmeshed relationship pattern" with Ms C.

Additional information

Miss A
Miss A said that she continued to keep in contact with Ms C throughout 2003 by telephone, and saw her once, in 2004, at Easter. Miss A stated:

> "I just wish that she had never encouraged all the attention I was wanting from her. … I think because she made me think I really love[d] her, I was obsessed with her and it's taking me a really long time to get over it. I can't pick up the phone anymore. I'm on medication. I have to see people. I don't want to go to see them. I'm supposed to be seeing counsellors, but I don't want to go and see them. I'm really anxious and I can't do anything for myself. She made me just totally dependent on her."

Ms C
Ms C stated (in relation to her supervision) that during the time she was employed as a school guidance counsellor at the school she undertook regular supervision, once a month, from Ms I. Ms C stated that during the supervision sessions (from September 2000 until approximately May/June 2001) Miss A's treatment, care and support were frequently discussed and reviewed. Her referral to the service and subsequent counselling at the service were also discussed. Ms C stated that her ongoing concerns about Miss A's personal safety were taken to her supervision. When she was no longer Miss A's counsellor, she discussed with Ms I the difficulties she was experiencing with Ms B, and her continuing concerns about the counselling and assistance Miss A was receiving. Ms C was "unclear" whether she showed Ms I her response to the complaints made by Ms B and Ms E in August 2001, but confirmed that she discussed the complaints with Ms I. (I note that Ms C says she took her relationship with Miss A and Ms B to supervision in August 2001.)

Ms C stated that during her discussions about Miss A, Ms I indicated that working with some adolescents was "very tricky and there was a need to be careful". Ms I was supportive of her role as a "friend/support person" to Miss A and considered that this was "important to help get Miss A through some very difficult times". Ms C stated that Ms I knew that Miss A lived with her and Ms H for five weeks in 2001 and that she returned in 2002.

Ms C recalled: "In the later part of 2001 and during 2002 [Miss A] did not feature as a case to review in supervision. However, passing comments and information giving were made by me at times."

Ms C stated that she was unhappy that issues concerning Ms B and Ms E had not been able to be addressed at a meeting and felt that her subsequent dealings with the service were affected by this.

In relation to changes she made to her practice as a counsellor at the school, Ms C recalled:

> "I continued to review in my own mind the essence of maintaining appropriate boundaries in my role as a guidance counsellor. In effect, the issue of maintaining boundaries was highlighted in my thought processes. I was also mindful of early participation by parents, if this was appropriate."

In relation to changes she made to her practice as Miss A's counsellor/support person, Ms C recalled:

> "From May 2001 onwards I was [Miss A's] friend/support person, **not her counsellor**. I did not counsel her at all and was focussed on providing her with a listening ear, a stable, fun and consistent set of experiences, primarily in outdoor activities. I continued the walk/fitness, outdoor activities with [Miss A] as [Ms F and Ms E] had both supported them and thought they were of value to her. [Ms B] also purchased a second-hand bike for [Miss A] so that she could go cycling with [Ms H] and I.
>
> [Miss A] very desperately needed someone to believe in her, be reliable and to be caring and consistent with her even when the times got hard. I was happy to be that person, while always mindful that a group of consistent and fun adults would be preferable to one and so included friends whenever possible.
>
> I always spoke of her mother in very positive ways and supported the view that one day they would be able to appreciate each other, be happy in each other's company and move forward. At times [Miss A] became angry at my support of her mother but I did not waiver from this position. …
>
> I was not involved in a sexual relationship with [Miss A]."

Ms H
Ms H informed my staff:

> "[Miss A] was a risk taker and destructive to herself, her mother and property. Her legs, arms and wrists are scarred from self-harming/suicidal attempts. … Drugs and alcohol played a role in some of these destructive events. On two occasions [Miss A] was found on our doorstep highly drugged/intoxicated. On the first occasion [Miss A] had run away from the hospital after a suicide attempt at school on the Friday. …
>
> [Miss A] was a young woman crying out for someone to provide the love and security she felt she lacked in her relationship with her mother. [Miss A] appeared to need a great deal more attention that the average teenager. It was an exclusive type of need irrespective of the relationship, ie mother/[Miss A], not mother/stepfather/[Miss A]. She resented relationships her mother formed with other men and would perform badly when [Ms B] tried to establish new relationships."

The Girls' school
Documents relevant to the school's school guidance counsellors are attached as Appendices 1 and 2.

Ms J confirmed that Ms C received regular monthly supervision from Ms I as required by the New Zealand Association of Guidance Counsellors (NZAGC). Ms J stated that the school pays the supervision fees for its guidance counsellors.

The school stated that the information that Ms C provided to her supervisor, Ms I, relating to her relationship with Miss A was not disclosed to Ms D or the school by either Ms C or Ms I.

Ms I
Ms I stated:

> "I left my role as the Clinical Leader at Relationship Services in […] in October 2002. … I am an accredited supervisor and member of NZAC. I supervised [Ms C] for a period of approximately two years, although the exact dates have been archived on our database. The supervision contract terminated when I left [the school] in October 2002.
>
> [Ms C] was supervised by me on a monthly basis and from memory was diligent in attending supervision, and brought issues relevant to her work as a counsellor at [the school] to supervision.
>
> As I now recall, my experience of [Ms C] was that she was a professional and committed counsellor who was aware of ethical and safety concerns, and whenever such concerns were brought to supervision they were explored competently and professionally.

My practice as a supervisor is to encourage supervisees to keep detailed notes of all cases, and to always keep their line managers and internal supervisors informed of any contentious and difficult situations which could arise in their day to day work."

Independent advice to Commissioner

Expert advice was obtained from Virginia Wilkinson, an independent school guidance counsellor. The advice is attached to this opinion as Appendix 1.

Responses to Provisional Opinion

Ms C

Ms C responded to the provisional opinion stating that she was concerned that the telephone call she made to Ms B after meeting with Miss A on 21 September 2000 was interpreted as a breach of confidentiality. She said that the 21st of September was the last day of school term and she was of the view that Miss A was at risk of suicide. Ms C stated that Miss A was very clear that it was her intention not to live, and as a consequence and after a lot of thought Ms C decided she needed to inform someone about the situation and chose Ms B. She stated, "I did not make the decision lightly but in my mind was the thought that if I failed to act and [Miss A] died, could I at an inquest state I had taken all reasonable steps to [e]nsure her safety." Ms C stated that there was no time to consult her supervisor.

Ms C stated that she was "fully aware of the difference between self harming and suicidality" but had not heard of dialectical behaviour. Ms C stated that she had attended some workshops on youth suicide. She said that they were "all very much on alert" to suicide after the suicide of an ex-student and a student enrolled at the school in 1999.

Ms C acknowledges that Miss A's living arrangements were unusual. Miss A had a long history of living outside of her immediate family. Ms C stated that when she offered to have Miss A to stay "I was very clear in my mind that I was not, and had not been, in a counselling relationship for some time."

Ms C stated that when she encouraged Miss A to enjoy various outdoor activities, appreciate the fresh air and get fit, she was simply a supporter/friend and not attempting to work in an "adventure based counselling programme". It was during these walks that, after several attempts, Miss A told Ms C about her grandfather. Ms C stated, "I did not suggest that he raped her as her statement claims." Ms C did not take notes or counsel Miss A but they did discuss Miss A's personal issues. Ms C stated:

> "On a couple of occasions we even discussed confidentiality and [Miss A] and I were both very clear that I was not counselling her. Any confidentiality between us was in the sense of a 'friend' not telling others, not the 'counselling' confidentiality understanding."

Ms C stated that she did not take Miss A to school on a regular basis as has been suggested. She stated that Miss A's mother almost always took her to school and Ms C did so only when specifically requested. Ms C agrees that it is not a school counsellor's responsibility to take a student to school. She said, "I was not her counsellor. I was a friend of her family and her mother felt fine about asking me to help out when needed."

Ms C stated that she was never informed that Ms D was to take on the role of Miss A's counsellor following Miss A's reinstatement at school after the suspension meeting. Ms D did not take over as Miss A's counsellor until December 2001 when Miss A requested that Ms D see her for counselling.

Ms C summarised her response as follows:

> "Right through this difficult period I was open and honest about what I was doing. While there was a strong dependency on me from [Miss A] I viewed it as my being a significant person in her life. I worked towards a time when more significant people became a part of her life, most importantly her mother. Despite the things I have stated at times about [Ms B], I always believed that the best outcome was for [Miss A] and [Ms B] to develop a trusting adult relationship.
>
> I felt very isolated at times but people such as [Ms F], [Ms E], my supervisor [Ms I] and [Ms D] were very supportive of what I was doing. I seriously thought that [Miss A's] life was at risk at times and her hospital admissions support this. This report often identifies self-harm as the problem. But there were some suicidal attempts which seem to have been misnamed 'self-harm'.
>
> With hindsight there were things I could have done differently. I am disappointed that some of the discussions about me at [the service] did not result in them meeting with me to help find better ways (including possibly my withdrawal) of managing this situation. There had been a meeting set up by [Ms D] with [Ms E], [the service's clinical co-ordinator], and myself that [the service] requested. It was cancelled because [Ms E] was ill and never rescheduled.
>
> The period I was involved with [Miss A and Ms B] was a very frustrating and stressful period for me — one which ultimately affected my own health. It would be an understatement to say I wished things had worked out differently for all concerned in the welfare of this young woman."

The girls' school

In response to the provisional opinion, the school's lawyer submitted:

"[Ms D] regarded the outside agencies such as [the service] as the place to refer students requiring in-depth diagnosis and support from experts. For this reason, once an agency had assumed responsibility for a student, the responsibility becomes the agency's and the school would be involved only at their direction. In this case [the service] maintained [Ms C] in a support relationship for [Miss A].

[Ms D] did not have access to knowledge of the extent of [Ms C's] out of school involvement with [Miss A]. The actions and responses from the school were based around [Miss A's] in-school behaviour, which was in itself problematic.

The finding that [Ms D] should have severed the contact between [Ms C] and [Miss A] would have been contrary to the direct instructions from [the service]. Furthermore, this would only have been enforceable by the school from 8.30am to 3.30pm, Monday to Friday.

There is reference in the report to confusion over the time that [Ms D] became [Miss A's] counsellor. There is no confusion, [Miss A] failed and/or refused to access [Ms D] as her counsellor and this is not something that could be coerced.

An additional communication problem for the school (including [Ms D]) was that [Ms C] blurred the boundaries of support person/counsellor so that she could maintain access for [Miss A] during school time.

…

[Ms D] says her knowledge was that [Ms C] was drawn into a support role by [Miss A's] suicidal tendencies with the support/supervision of outside agencies. If this is an 'inappropriate relationship' it had [the service's] and mother's support.

[Ms D] also says that she knew of no events outside the school at the time they occurred although they may have been mentioned later.

The investigation of complaints by the school is deemed to be superficial but it completely followed the school complaints policy dealing only with issues within the school domain — not outside, unknown issues. …

[Ms D] notes that she also saw [Ms C] as 'not [Miss A's] counsellor', but [Ms C] represented this differently at times, in order to give [Miss A] access to her during school time. [Ms D] points out that once referral to an outside agency has been made they are the supervisor/driver of the process. …

[Ms D] is clear that she used [Ms C] at this time in the supporter/friend role which is what [she] understood should be the case. … [the service], [Ms B and Ms C] were all clear that [Ms C] was being maintained in the support/friend role. … At the beginning of 2002, when for the first time [Ms J] became aware that [Miss A] was living with [Ms C] and [Ms H] through a change of details on the school data base, [Ms J] phoned [Ms

B] to confirm that she knew of the arrangement. [Ms B] confirmed that she not only knew, it had her full support. …

Whether the support role was unconventional or not, it had [the service's] support. … Ms Wilkinson may advise that it was inappropriate to continue the relationship. Her opinion, however, is in direct opposition to [the service's] advice to [Ms C] at the time.

…

[Ms D] takes exception to the comment that an experienced HOD/supervisor would have instructed [Ms C] to withdraw completely from the relationship. [The service] were supervising [Ms C] at this time and because this case had been handed over to the external agency [Ms D] regarded them as supervisor of [Ms C] and [Miss A's] contact and relationship. [Miss A] did not disclose their circumstances to [Ms D] or the school and neither did [Ms C]. At school [Ms C] was not [Miss A's] counsellor but [the service] wanted the school support role effectively removing the steps that could have been taken with [Ms C] as counsellor."

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

RIGHT 2
Right to Freedom from Discrimination, Coercion, Harassment, and Exploitation

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

RIGHT 4
Right to Services of an Appropriate Standard

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.*

Other relevant standards

New Zealand Association of Counsellors, Handbook

CODE OF ETHICS (February 2000)

(NZAC advised that the current Code of Ethics was adopted by the Annual General Meeting of the Association in 2002. The Code prior to that time was adopted in 1990. It was reprinted as needed (1995 and 2000). It should be referred to as being adopted in 1990.)

"**GENERAL PRINCIPLES**

…

1. 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.

2. 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.

…

5. THE COUNSELLING RELATIONSHIP AND CLIENT RIGHTS

Confidentiality

Communication between counsellor and client shall be confidential and treated as privileged information unless the client gives consent to any particular information being disclosed. Exceptions to the principle occur when, in the professional judgement of the counsellor, there is clear and imminent danger to the client or others. This includes circumstances where 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.

…

Abuse of Power

Counsellors shall not abuse their position by taking advantage of clients for purposes of personal, professional, political, financial or sexual gain. Counsellors are responsible for setting and monitoring the boundaries between a counselling relationship and any

other kind of relationship and for making such boundaries as clear as possible to the client.

Sexual Harassment

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."

New Zealand Association of Counsellors, Professional Codes and Guidelines

"**CODE OF SUPERVISION**

…

3. Supervision includes monitoring, developing, and supporting individuals in their role as counsellors. To this end, supervision is concerned with:

   a. the relationship between counsellor and client, to enhance its therapeutic effectiveness;

   b. the relationship between counsellor and supervisor in order to enable the counsellor to develop his/her professional identity through reflection, which is both constructively critical and supportive;

   c. clarifying the relationships between the counsellor, client, the supervisor, the referring agent and any involved wider systems.
   d. ensuring that ethical standards consistent with the NZAC Code of Ethics are maintained throughout the counselling."

Opinion: Breach — Ms C

March–December 2000 — counsellor and client
Under Right 4(1) of the Code of Health and Disability Services Consumers' Rights (the Code), Miss A had the right to have services provided by Ms C with reasonable care and skill. In accordance with Right 4(2) those services were also to be provided in accordance with relevant standards, including those set out in the New Zealand Association of Counsellors' Handbook (NZAC Code of Ethics) in February 2000.

Miss A first approached the school guidance counselling service in March 2000 and was seen by Ms C. Miss A saw Ms C monthly from March 2000, then fortnightly from September 2000.

As the therapeutic relationship developed, it became apparent that Miss A was experiencing significant problems with readjusting to New Zealand after living overseas, and in her relationship with her mother. Miss A was having trouble with motivation and had begun to rely on drugs to blank out bad memories. By September 2000, Ms C was concerned that Miss A had begun to deliberately self-harm. In November 2000, Ms C referred Miss A to the child and adolescent mental health service (the service) at the public hospital because she was concerned about the seriousness of Miss A's problems.

My independent school guidance counsellor, Ms Wilkinson, advised that when a school counsellor meets a client for the first time, the counsellor should explain what counselling is, discuss the issues around confidentiality, find out about the client's family and background, and establish a trusting relationship. Occasionally a client will present to a school counsellor with obvious symptoms of mental health difficulties, with the most common problem being adolescent depression. Ms Wilkinson advised that it is not a school counsellor's responsibility to make a diagnosis, but to recognise a situation that would be better managed by another appropriate agency.

Ms C appears to have viewed Miss A's deliberate self-harming as suicidal intent. Ms Wilkinson stated that this was not the appropriate response to this aspect of Miss A's behaviour, which is best addressed using a therapy known as Dialectical Behavioural Therapy. There is no indication that Ms C was familiar with this therapy. Ms Wilkinson advised that Ms C should have identified whether Miss A was self-harming and taking drugs to self-soothe, or whether this was evidence of a mental health diagnosis such as depression, anxiety disorder, post-traumatic stress disorder or serious suicidal intent.

If this assessment had revealed that Miss A had a mental health problem, Ms C should have consulted her supervisor to discuss the next step. Ms Wilkinson stated that if an assessment suggests grave concerns and the supervisor agrees, then the school counsellor must advise her client that someone else needs to know about the situation. Unless there is a clear and imminent danger to the client, such as risk of suicide, the client is entitled to confidentiality, and the counsellor must have the client's permission to act before making a referral.

In her response to the provisional opinion, Ms C stated that there was no time to consult her supervisor. Instead, her response to the situation was to call Miss A's mother and ask her to monitor Miss A closely during the school holidays. Ms Wilkinson commented that this was a concerned but poorly considered call, and adequate support was not put in place for Ms B to deal with the situation. Ms Wilkinson advised that Miss A's presence in the room does not necessarily indicate that she gave her consent for the call to be made.

I am guided by the advice of my expert that Miss A's escalating behaviour in September 2000 should have prompted an assessment to determine whether Miss A's issues would be better managed by another agency. If a referral was required, this should have been discussed first at supervision and then with Miss A before a referral was made. While Miss A's behaviour was worrying at that stage, I am not satisfied that she was in imminent danger.

When the referral to the service was eventually made in November 2000, Ms C breached Miss A's confidentiality by discussing her situation with the service before Miss A had consented to the referral.

I accept my expert's advice that Ms C did not provide Miss A with counselling services with reasonable care and skill and in compliance with professional standards between March and December 2000, in breach of Rights 4(1) and 4(2) of the Code.

January–August 2001 — support person/counsellor and client
There is discrepancy about Ms C's role and when her role as counsellor ceased. Ms C stated that she ceased to be Miss A's counsellor after Miss A was referred to the service in December 2000. However, she also said that she was still seeing Miss A for "sessions" at school until May 2001 as a "support person but still in a counselling model". During this time Ms C indicated that Miss A was one of the cases reviewed when she attended supervision. Ms C stated that in July 2001, her role changed again and she became a supporter/friend.

As part of her therapy programme for Miss A in early 2001, Ms C drew up a drug-free contract and worked around motivation issues. However, Miss A had a serious drug-taking problem (daily use of marijuana and other drugs, even at school) and Ms Wilkinson advised that changing a drug habit of this nature requires more expertise than most school counsellors have. In my view, Ms C did not have the skills or experience necessary to treat Miss A's substance abuse and should have referred her to another agency for treatment.

It is reasonable to assume that Miss A thought the information she was sharing with Ms C was confidential, which it should have been, even if Ms C considered that she was acting in a supportive role. Ms C notified Ms E on 9 May 2001 that Miss A planned to commit suicide. Ms E arrived at the school accompanied by the Crisis Team. Because Ms C had not informed Miss A that she intended to call Ms E, when Miss A saw the service team her reaction was one of shock and confusion. This event, in conjunction with Ms E's subsequent complaint about boundaries, led to Miss A terminating her previously successful therapeutic relationship with Ms E.

The most notable characteristic about this phase of Miss A's relationship with Ms C, however, was Miss A's increasing level of dependency. Miss A initially started working with the service when she saw Dr L on 23 January 2001 and Ms E on 14 March 2001. Ms E saw Miss A weekly during March. In April 2001, Miss A was suspended for arriving at school under the influence of cannabis. One of the conditions of her reinstatement was that responsibility for her counselling at school be transferred to Ms D. There is discrepancy about this issue, as the school stated that this did not take place because Miss A refused to be counselled by Ms D. However, Ms C recalled that Ms D began counselling Miss A when her relationship with the service deteriorated. Soon after this, Miss A moved with her mother to an area which was close to where Ms C lived. Ms C began to collect Miss A for walks along the beach, which Ms C believed would benefit Miss A's fitness and mental health, and to give her rides to school.

In mid-May, Ms E suggested that Miss A try returning overseas, but Miss A indicated that she "would miss [Ms C]" and that she was working through a sensitive issue. It was agreed that Ms C would continue working with Miss A on the sensitive issue she had not yet disclosed to the service. However, the service raised their concerns with Ms C about Miss A's dependency on her, and queried whether Ms C had worked with suicidal teens before. Ms C acknowledged Miss A's dependency on her, but said that she would deal with it later.

On 25 May 2001 Ms F explained to Ms C that she thought Miss A should be referred to a sexual abuse counsellor to work through the alleged abuse by Miss A's grandfather (the sensitive issue). Ms G's notes record that she explained to Ms C why this work needed to be done by someone who was not a support person and queried whether Ms C was managing boundaries in the relationship. Ms C took it from this meeting that she would not be counselling Miss A any more but would continue to act as a support person.

During June and July 2001, Miss A's dependence on Ms C intensified, with Miss A making threats of self-harm and relying on long telephone calls with Ms C to get her through difficult periods. Ms C was called out of class when Miss A became aggressive at school, and reported her concerns to Ms G. Ms G advised Ms C to create more visible boundaries at school so that Miss A would not rely on Ms C to be her rescuer. It became apparent that Miss A's relationship with Ms C was a source of some tension between Miss A and her mother, although it appears that some of the telephone calls and visits by Ms C were in fact requested by Ms B.

My expert advisor, Ms Wilkinson, advised that it is very important to the counselling–client relationship that clear boundaries are established, understood and maintained. The NZAC Code of Ethics (2000) is explicit about the need for counsellors to monitor boundaries. Ms Wilkinson stated that Ms C has not provided an explanation for her decision to conduct counselling sessions with Miss A while walking on the beach, and did not record any details about these sessions and her strategies. Ms Wilkinson advised that although it is preferable to conduct counselling in a designated space, such as an office, there are some situations where a less formal setting is preferable and may assist the client to relax and enhance communication. However, it is essential in this situation for the counsellor to make the purpose of the session explicit and make a record of the session. Ms Wilkinson stated that a properly structured adventure-based counselling programme, or similar group activity that focused on the social and emotional development of the participants would be justified, but by conducting these outdoor activities with just one student, Ms C was exposing herself to a high level of risk.

In response to the provisional opinion, Ms C stated that when she and Miss A went for walks as a supporter and friend, she was encouraging Miss A to appreciate the fresh air and to help her to get fit. She was not attempting to work in any particular programme. Ms C stated, "[Miss A] and I were both very clear I was not counselling her."

On occasions Ms C drove Miss A to and from school. Ms Wilkinson advised that this is not a school counsellor's responsibility and placed Ms C in a rescuing rather than a helping

role. By July 2001 Miss A was addressing Ms C as "Aunty [Ms C]". This suggested a blurring of boundaries and that a more intimate, non-counselling relationship had developed between Ms C and Miss A.

Ms Wilkinson stated that Ms C's ongoing involvement and actions with Miss A were influenced by her belief that she was in a position to save Miss A from her circumstances; and by her assumptions that Ms B was not a competent or reliable mother and that she, Ms C, could turn Miss A's life around by introducing her to healthy activities and exposing her to reliable, trustworthy adults. This plan did not work because it was not based on sound principles or practice. Ms Wilkinson advised that Ms C was confused about her idea of a support role and what she actually did. Miss A's dependency on Ms C effectively removed the opportunity for people who were more appropriate and experienced to support Miss A. Ms Wilkinson advised that Ms C's behaviour "especially undermined the mother/daughter relationship, adding to the conflict and estrangement".

In August 2001, Ms E (Miss A's dual diagnosis therapist at the service) and Ms B formally complained regarding their concerns about the nature of the relationship that had developed between Ms C and Miss A. Ms E alleged that the professional/ethical boundaries had been blurred and that this had had "huge impact on [Miss A]" and inhibited progress on her long-term treatment goals.

In response to the complaints, Ms C stated, "[T]here was no abuse of power." Miss A said, "I just wish that [Ms C] had never encouraged all the attention I was wanting from her. … She made me just totally dependent on her."

Ms Wilkinson advised:

> "It is my view that the 'support role' that [Ms C] provided was unconventional and strayed on a number of occasions from what is considered accepted professional conduct. I believe this added to the family's difficulties by damaging the mother/daughter relationship, possibly increased the instances of drug and alcohol abuse and self-harm … and ultimately affected [Miss A's] trust of counsellors and therapists to the point where she still claims she is unable to access help when she needs it.
>
> …
>
> I believe most school counsellors would consider these events, particularly the outdoor activities and providing [Miss A] with a home, with severe disapproval. Most school counsellors would recognise the personal risks to themselves and see it as rescuing behaviour which seldom benefits a client."

Ms C moved seamlessly from one role to another in her dealings with Miss A. In my view, Ms C had no clear understanding of the appropriateness of these roles she assumed and changed from counsellor to friend to support person depending on what she perceived to be Miss A's need at the time.

I accept my expert's advice that Ms C breached professional standards by allowing professional boundaries to become blurred and a relationship of dependency to develop. While I acknowledge that other agencies encouraged Ms C to take on a supportive role, I note also that there were several occasions where Ms C was reminded about the need to monitor boundaries and Miss A's dependency on her. Ms C had an individual responsibility as a counsellor and as a support person to ensure that her relationship with Miss A remained within acceptable limits.

By taking on issues outside her area of competence and allowing professional boundaries to become blurred and a relationship of dependency to develop, Ms C breached Rights 4(1) and 4(2) of the Code.

August 2001–December 2002 — support person/friends
Under Right 2 of the Code, Miss A had the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation. "Discrimination" is defined in clause 4 of the Code as including "any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence".

The complaint Ms B made to this Office in November 2003 included an allegation that Ms C had initiated a sexual relationship with Miss A. Miss A provided information to support this allegation. She said that the relationship became intimate from late 2001 when she took part in a tramping trip with Ms C and Ms H and that it developed into a sexual relationship from June 2002, during her last week of school (when Miss A was aged 16 years). Miss A advised my staff that she and Ms C were planning to travel to another part of the country together at the end of 2002 for fruit-picking and polytechnic training. She said her physical attack on Ms C in November 2002 occurred because she was upset that Ms C had decided to pull out of this plan and Miss A believed the relationship between them was ending. I note that Miss A told the Police and the service about a sexual relationship with Ms C in November 2002, but gave conflicting information about when the relationship started.

The physical attack and the involvement of the Police brought the relationship between Ms C and Miss A under scrutiny. Ms C acknowledged to the Police that she had initially been Miss A's counsellor but that now their relationship was personal. She confirmed that she had made plans with Miss A to travel to another part of the country and that Miss A had become upset when Ms C advised Miss A that she no longer intended to go. Ms C denied Miss A's allegation to the Police that she had been in a sexual relationship with Miss A since Miss A was 15. During my investigation, Ms C has also denied all allegations of a sexual relationship. She has, however, acknowledged that she did share a bed with Miss A on occasions when Miss A needed to be nursed after an alcohol binge or needed to be held for emotional comfort.

In considering this issue, I have also taken into account Ms H's reaction to the interaction between Miss A and Ms C on the tramping trip in late 2001, and Miss A's reaction to the news that Ms C would not be travelling to another part of the country. In my view, these reactions suggest that the relationship between Miss A and Ms C was very close.

On balance, I do not have enough information to resolve the conflicting information from Miss A and Ms C, and cannot, therefore, make any finding as to whether the relationship between them was sexual[3]. I am, however, persuaded that the relationship was intimate and enmeshed from at least June 2002 onwards, with the result that Miss A described herself as becoming "obsessed".

In response to my provisional opinion, Ms C stated:

> "Right through this very difficult period I was open and honest about what I was doing. While being aware there was a strong dependency on me from [Miss A] I viewed it as my being a significant person in her life. I worked towards a time when more significant people became part of her life."

Because the relationship between Ms C and Miss A had started out in a therapeutic model, Miss A had been vulnerable in the relationship from the beginning and could not have been expected to make the transition to a non-therapeutic personal relationship. Dr K from the service described Miss A's mental health issues in December 2002 as follows:

> "There are definite issues of dependence, sexual identity problems and an enmeshed relationship pattern with an ex-counsellor. These issues need to be dealt with at a psycho-therapeutic level."

The NZAC Code of Ethics is explicit about the responsibility of counsellors to monitor boundaries and to avoid using their position to take advantage of their clients for personal gain. It could be argued that the gain in this case was the opportunity for Ms C to "save" Miss A by being the "good mother" she believed Miss A needed. Although Ms C relabelled herself as a "support person" then as a "friend", in reality she continued to counsel Miss A. Ms Wilkinson advised that it was inappropriate for Ms C to enter into any kind of personal relationship with Miss A because the relationship had started out in the context of counselling when Miss A was young and vulnerable and there was an inherent imbalance of power. It was 100% Ms C's responsibility to maintain appropriate boundaries.

There were sufficient signals to alert Ms C that her relationship with Miss A was inappropriate. Ms E had been quite clear that she was concerned about the extent of the relationship. In my view, Ms C was not being "open and honest" about the relationship. She knew that Miss A was a vulnerable adolescent and had moved away from other significant people in her life, preferring to confide in and spend time with Ms C. There is evidence that in the two years when Ms C was associated with Miss A the relationship became more enmeshed, which indicates that Ms C did not genuinely discourage Miss A's dependency. Ms C stated that she was encouraged by Ms E and Ms B to support Miss A (which is true and is discussed later). However, she should have been aware of the responsibility counsellors have to monitor boundaries and to avoid exploiting potential

[3] See footnote 1 above

dependency situations. In my view, Ms C exploited Miss A's trust in her as a counsellor by allowing an inappropriate personal relationship to develop between them after June 2002, in breach of Right 2 of the Code.

Opinion: Breach — The Girls' school

Vicarious liability
The Health and Disability Commissioner Act 1994 (the Act) envisages that an employer can be vicariously liable for breaches of the Code by its employees. Section 72(2) provides:

> *"… [A]nything done or omitted by a person as the employee of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, whether or not it was done or omitted with that employing authority's knowledge or approval."*

However, to be an "employing authority" and fall within the ambit of section 72, the school must be a health care provider or a disability services provider. A list of health care providers is set out in section 3 of the Act and includes:

> *"(k) Any other person who provides, or holds himself or herself or itself out as providing, health services to the public or any section of the public, whether or not any charge is made for those services."*

To determine whether a person or an organisation is providing "health services", one must consider the definition in section 2 where "psychotherapy and counselling services" are specifically included.

Having given detailed consideration to the statutory definitions, I consider that schools provide counselling services to a section of the public (students) and, in this very limited aspect of the services they offer, schools fall within the definition of a health care provider. Accordingly, a school which employs counsellors can be found vicariously liable for any breaches of the Code by its employees pursuant to section 72.

Section 72 includes a defence to an allegation of vicarious liability if an employing authority can show that it took such steps as were reasonably practicable to prevent its employee from breaching the Code.

The school provided a Job Description and Person Specification for the position of guidance counsellor. The Job Description specified that the guidance counsellor was responsible to the "HOD [Head of Department] Guidance", who in this case was Ms D. One of the performance indicators for the position of guidance counsellor at the school is that the guidance counsellor must work within the ethical code of the New Zealand Association of Counsellors (NZAC) and attend regular supervision.

On 5 April 2001 Miss A was suspended for drug possession. This suspension was lifted on 20 April on the advice of the service, who believed that Miss A would benefit from

continuing to attend school and being supported by Ms C. Included in the conditions of Miss A's reinstatement was that Ms C's role as her school counsellor would be transferred to Ms D. Ms C's role was to continue to support Miss A and her family outside her role as school counsellor. However, there seems to be some confusion about when Ms D assumed this role, as Ms C stated that this did not take place until December 2001, and there is evidence that Ms C continued to have a counselling role, as previously discussed. The school denies that it knew of the extent of Ms C's involvement in Miss A's life outside school. However, the school was aware of Ms C providing Miss A with temporary accommodation. Ms Wilkinson stated that while Ms C's actions (in having contact with Miss A outside school) were not unlawful, it was unprofessional behaviour because it breached boundaries.

Ms Wilkinson advised that when Ms E and Ms B wrote to Ms C and the school, in August 2001, with their concerns about the nature of the relationship between Miss A and Ms C, Ms D as HOD should have consulted Ms C's supervisor and followed this with an informal discussion of the issues with the principal of the school. Ms D was sufficiently concerned about Miss A's dependency on Ms C to discuss with her the need for professional and personal safety when working with clients, but she does not appear to have taken any further steps to ensure that Ms C's actions in relation to Miss A were appropriate. Instead, Ms D asked Ms C to provide a written response to the complaint and attempted to arrange a meeting with Ms E, Ms B and the service's clinical co-ordinator to discuss the issues. (The meeting did not take place due to Ms E's ill health.) Ms C's report contained assertions of Ms B's poor parenting skills, and detailed the actions she had taken to "support" Miss A. Ms Wilkinson stated that this document would have alerted an experienced HOD/supervisor to the danger of allowing this situation to continue, and the need to instruct Ms C to withdraw completely from the relationship. Ms D provided the school principal with a brief summary of her investigation of the complaints (to accompany Ms C's report), but appeared to take no further action on the matter.

In response to the provisional opinion, the school stated that Ms D was unaware of the extent of Ms C's out-of-school involvement with Miss A. The school does not accept that Ms D should have ensured that all contact between Miss A and Ms C be severed as this would have been contrary to the direct instructions from the service, and commented that whether the support role was "unconventional or not, it had the service's support". The service had made a condition of the lifting of Miss A's suspension be that Ms D replace Ms C as Miss A's counsellor. In the early part of 2001, the service encouraged Ms C's role of supporter/friend to Miss A. However, in June 2001 Ms E discussed with Ms C her concerns about the nature of the relationship that was developing between Ms C and Miss A. Ms E advised Ms C of the need for her to undertake regular supervision as she had "chosen to be in a risky situation, professionally and personally". In August, before she formally complained to the school, Ms E again spoke to Ms C about her concern regarding Miss A's dependence on her. In September Ms J informed Ms E (who in August withdrew as Miss A's case manager due to conflict between them over her relationship with Ms C) that she was confident that Ms C had remained within the boundaries of her role as school guidance counsellor and that she saw no reason for intervention at that time. Ms J also wrote to Miss A's mother to inform her of the outcome of the school's investigation of her

complaint. The school stated that Ms D "completely followed the school complaints policy dealing only with issues within the school domain".

I do not accept the school's submission that because the service was the "supervisor/driver of the process" the school had no responsibility. The service had no responsibility for Ms C's actions: the school employed Ms C. The conditions of her employment included that she was to abide by the ethical code of the NZAC and was responsible to the "HOD Guidance". Ms D was aware of the extent of Miss A's problems at school, but denies that she knew about the extent of Ms C's involvement with Miss A outside school. At the beginning of 2002, the school knew that Miss A had moved into Ms C and Ms H's house. At this time Miss A was being victimised by some pupils who accused her of being a lesbian. It is hard to believe that the situation did not come to the attention of staff at the school and Ms D. In my view it is unusual in the extreme for a principal to be unconcerned that a pupil with ongoing disturbing behaviour should be living with a member of staff. Additionally, when a senior member of the service team raised concerns about the appropriateness of the extent of this relationship there is no evidence that the principal, or Ms D, considered the seriousness of the concerns or reviewed their decisions.

I accept Ms Wilkinson's advice that the school did not take reasonable steps to prevent the shortcomings of its guidance counsellor. Therefore in my opinion the school is vicariously liable for Ms C's breaches of the Code.

Other Comment

Supervision

Ms C informed me that she attended regular monthly supervision throughout her counselling of Miss A, and that Miss A's treatment, care and support were frequently discussed and reviewed. Ms C stated that she discussed her concerns for Miss A's personal safety with her supervisor (Ms I), who advised that working with some adolescents can be "tricky", but generally supported Ms C's role with Miss A.

I confirmed that Ms I was Ms C's supervisor and that they met once a month throughout the period in question but that she "can give no details of [this] specific case". Ms I advised me that she has no records of her sessions with Ms C as all records would have been shredded after two years or returned to Ms C. However, Ms I stated that Ms C was a professional, committed counsellor who was aware of ethical and safety concerns.

Ms Wilkinson noted that counsellors are advised to attend at least one one-hour session of supervision per fortnight, which may be paid for by the school or the counsellor. (Recent research indicates that the school and counsellor agree to a 50/50 split.)

The NZAC Code of Ethics 2000 defines the responsibilities of professional supervisors as monitoring, developing and supporting individuals in their role as counsellors. The relationship between counsellor and supervisor should enable the counsellor to develop his

or her professional identity through reflection, which is both constructively critical and supportive.

Ms Wilkinson advised that Ms I had the necessary qualifications and experience to act as a supervisor and Ms C would have felt confident about engaging her for this purpose. However, Ms Wilkinson was disappointed by Ms I's response to this investigation, and felt that Ms I owed it to Ms C to provide more information about the sessions and to assist the investigation as much as possible. I draw my expert's comments to Ms I's attention so that she is aware of the significance of her role as supervisor.

The child and adolescent mental health service

My independent advisor expressed some concern about the service team's inconsistency regarding their concern about Ms C's role in Miss A's care. Ms Wilkinson stated that they appeared to recognise that the relationship was problematic, yet, despite numerous conversations with Ms C where she was counselled about the personal and professional risk of becoming too involved with Miss A, they supported Ms C's involvement in matters relating to the "sensitive issue" and supported her belief that outdoor activities would benefit Miss A.

Ms Wilkinson stated that there was no evidence that the service advised Ms C against providing Miss A with accommodation.

When Ms C did pull back from the relationship, it resulted in Miss A "acting out" which had the effect of drawing Ms C back into the relationship. Ms Wilkinson acknowledged that Ms C and her supervisors should have realised that her actions were breaching normal counsellor/client boundaries. However, Ms Wilkinson considered that stronger intervention from the service was required in this situation and that the staff who had primary responsibility for Miss A should have insisted that Ms C sever the relationship.

I draw Ms Wilkinson's comments to the District Health Board's attention so that this case can be reviewed with a view to ensuring that the interaction between school guidance counsellors and the service teams are appropriately monitored in future.

Recommendations

I recommend that Ms C take the following action:

- Apologise in writing to Miss A and Ms B for her breaches of the Code — this apology is to be sent to the Commissioner's Office and will be forwarded to Miss A and Ms B.

I recommend that the school take the following actions:

- Apologise in writing to Miss A and Ms B for Ms C's breaches of the Code — this apology is to be sent to the Commissioner's Office and will be forwarded to Miss A and Ms B.

- Review its counselling supervision procedures and complaints process.

Actions

- Ms C will be referred to the Director of Proceedings in accordance with section 45(2)(f) of the Health and Disability Commissioner Act 1994 for the purpose of deciding whether any proceedings should be taken.

- Copies of this report will be sent to the District Health Board, the New Zealand Association of Counsellors, and Ministry of Education with details identifying the parties removed, except for the children and adolescent mental health service (in the copy to the District Health Board), Ms C and Ms I (in the copy to the NZAC), and the girls' school (in the copy to the Ministry of Education).

- A further copy of this report, with details identifying the parties removed, will be placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes, upon completion of the Director of Proceedings' process.

Addendum

After the Commissioner had concluded his investigation and issued his final opinion, the Director of Proceedings filed proceedings in the Human Rights Review Tribunal seeking remedies on behalf of Miss A (the aggrieved person). It was only once the Director filed the evidence to support these proceedings that Ms C admitted that a sexual relationship had developed out of the counselling relationship. In light of this admission, the Tribunal made the following orders by consent:

(a) a declaration that the actions of Ms C were in breach of Right 2 of the Code in that she failed to provide healthcare services that were free from sexual exploitation;
(b) Damages of $25,000 to be paid to Miss A for humiliation, loss of dignity and injury to feelings;
(c) Damages of $10,000 to be paid to Miss A for the flagrant disregard of her rights;
(d) Costs of $5000 to be paid to the Director of Proceedings;
(e) Prohibition on publication of Miss A's name.

Appendix 1

"Report from Virginia Wilkinson, Independent Advisor to the Health and Disability Commissioner.

Complaint Whether [Ms C], counsellor, provided services to [Miss A] in accordance with professional and ethical standards between mid-2000 and December 2002, during which period it is alleged [Ms C] initiated a sexual relationship with [Miss A].

I, **Virginia Austen Wilkinson** have been asked to provide an opinion to the Commissioner on **Case Number 03/16962/WS** and I have read and agreed to follow the Commissioner's Guidelines for Independent Advisors.

QUALIFICATIONS AND RELEVANT WORK EXPERIENCE

I have a Master of Education Degree with a specialty in Counselling from Auckland University and I am a trained teacher (practising certificate registration #172306). I have worked as a full-time school guidance counsellor since 1995; at Onehunga High School from 1995–1999, and currently at St Cuthbert's College since Nov 1999. I am the Central Auckland Guidance Network Co-ordinator and a full member of NZAC.

As well I have had ten years' experience working collegially with Community, Child, Adolescent & Family Service (CCAFS) now known as the Kari Centre (Auckland Central) and Campbell Lodge (South Auckland), both equivalent agencies to [the service]. This has involved contacting families to inform them of the existence of Mental Health Services and about referring a student, writing referrals, attending counselling sessions when required, and transporting students to appointments.

In March 2003 I organised a one day Professional Development workshop for 45 Auckland school counsellors to learn about the increasingly prevalent incidence of Deliberate Self-harm. This was run by two clinical psychologists, Rebecca Daly-Peoples and Mike Batcheler, both from the Kari Centre, who also supplied all participants with their excellent workbook **YOUNG PEOPLE AND DELIBERATE SELF-HARM:** ***Insights and Opportunities from Dialectical Behaviour Therapy***.

REFERRAL INSTRUCTIONS

Expert Advice Required

To advise the Commissioner whether, in your expert opinion, [Ms C] provided [Miss A] with services of an appropriate standard. In particular:

1. What is a school guidance counsellor's responsibility when a pupil at the school is causing concern?
2. Did [Ms C] follow that practice? If not, what should she have done?

3. What are the school guidance counsellor's professional responsibilities regarding her relationship with a pupil she is counselling for stress and behavioural problems? In particular, was it appropriate for [Ms C] to provide [Miss A] with her home telephone number or to take her for walks on the beach?
4. Did [Ms C] have a clear therapeutic model or treatment plan when she was counselling [Miss A]?
5. Were the strategies [Ms C] employed to support [Miss A] to deal with her stress, such as walks on the beach, appropriate?
6. Was [Ms C's] response to [Miss A's] self-harming in September 2000 appropriate?
7. If [Ms C's] management of [Miss A's] situation (as outlined in 3 to 6 above) was not appropriate, what would be the expected practice for a counsellor in these circumstances? What are the school counsellor's professional responsibilities regarding her relationship with a pupil when she is acting in a support role for that pupil (when the responsibility for therapy has been taken over by another agency). For example, was it appropriate for [Ms C] to have [Miss A] living with her at her home, or take her away for weekends?
8. If not, why not?
9. Was [Ms C's] response to concerns raised about her relationship with [Miss A], by members of [the service] team, appropriate?
10. If not, why not?
11. What resources are available to a school guidance counsellor to provide professional support and development?
12. What action would you expect a senior school guidance counsellor to take if notified of concerns about:
    - — the relationship that had developed between a pupil and one of the counsellors on staff?
    - — the pupil was living with the counsellor?
    - — the counsellor had taken the pupil away on holiday ?

    In addition:

    - If in answering the questions you believe that [Ms C] did not provide an appropriate standard of care, please indicate the severity of her departure from that standard. To assist you on this point we note that some experts approach this question by considering whether the provider's peers would view the conduct with mild, moderate, or severe disapproval.

13. Any other comments you consider relevant that may be of assistance?

Sources of information reviewed

Below is a list of the material supplied to me by the Commissioner. I have read all the documents carefully.

Supporting Information

- Letter of complaint from [Ms B], dated 12 November 2003, marked with an 'A'. (Pages 1 & 2)
- Letter of response, and supporting documentation, from [Ms C] to the Commissioner, dated 22 May 2004, marked with a 'B'. (Pages 3 to 21)
- Letter of response, and accompanying documentation, to the Commissioner from [the school], dated 27 May 2004, marked with a 'C'. (Pages 22 to 30)
- Letter of response, and accompanying documentation, to the Commissioner from [the school], dated 15 June 2004, marked with a 'D'. (Pages 31 to 57)
- Transcript of an interview with [Miss A] recorded 23 August 2003, marked with an 'E'. (Pages 58 to 71)
- Further information provided by [Miss A] on 3 September 2003, marked with an 'F'. (Page 72)
- Letter of response and accompanying documentation to the Commissioner from the New Zealand Police dated 14 September 2004, marked with a 'G'. (Pages 73 to 87)
- Transcript of an interview with [Ms C] recorded on 21 September 2004, marked with an 'H'. (Pages 88 to 105)
- Further information provided by [Ms B] on 29 September 2004, marked with an "I'. (Page 106 & 107)
- Questions sent to [Ms C] on 27 September 2004, marked with a 'J'. (Pages 108 to 110)
- Response to questions about concerns raised by [the public hospital's children and adolescent mental health services] staff with [Ms C], received from [Ms C] on 16 November 2004, marked with a 'K'. (Pages 111 to 116)
- Letter from [Ms H] to the Commissioner, received 16 November 2004, marked with an 'L'. (Pages 117 to 119)
- [Miss A's] clinical records from [the public hospital children and adolescent mental health services] (relating to [Ms C's] involvement in [Miss A's care]) marked with an 'M'. (Pages 120 to 265).

FACTUAL SUMMARY

Background

[Ms C], aged 57 years, was employed at [the school] from 1980 to 2003. [Ms C] was initially employed at the school as a teacher, but in late 1992 she was appointed to a counselling position and in 1994 commenced training as a school guidance counsellor. [Ms C] completed her Postgraduate Diploma in Counselling in 1995, and then applied to and became a member the New Zealand Association of Counsellors (NZAC).

In March 2000, [Miss A], a pupil at [the school] aged 14 years, self referred to the school counselling service. [Miss A] was experiencing difficulty in settling back in New Zealand and [the school] after spending time with her father's family [overseas]. [Miss A] and her mother, [Ms B] were frequently in conflict.

[Ms C] initially saw [Miss A] on a monthly basis, but in September when [Miss A] began self-harming, cutting herself, [Ms C] increased the frequency of counselling to weekly.

When the school holidays approached, [Ms C], in the belief that [Miss A] was at risk of seriously harming herself, contacted [the public hospital's child and adolescent mental health service (the service)] and spoke with [Ms G], intake co-ordinator about her concerns. [Ms G] contacted [Ms B] and advised private counselling.

After the holidays [Ms C] continued counselling [Miss A], but in November [Miss A's] behaviour deteriorated, she was self-harming and taking drugs 'to blank out bad memories'. [Ms C] referred [Miss A] to [the service]. [Ms C] was invited to meet [the service] team and explain her concerns, but was advised that [Miss A] and [Ms B] had to be informed of the referral before they would assess [Miss A]. [The service] team accepted [Miss A] in December 2000 and she was assessed by [Ms F], psychologist, and [Dr L], psychiatrist.

[Ms C] considered that she was no longer [Miss A's] counsellor after she was accepted by [the service], but was acting in a 'support role'. She gave [Miss A] her private telephone number so that she could contact her at home.

In March 2001 [Ms E], [the service's] dual diagnosis therapist, was appointed as [Miss A's] case manager. Later that month [Ms C] contacted [Ms E] to inform her that [Miss A] had resumed self-harming which was 'possibly associated with disclosure of a traumatic event'.

In April [Miss A] was hospitalised with acute alcohol intoxication. At this time she started going for walks on the beach with [Ms C]. In following sessions with [Ms E], [Ms C] and [Miss A] hinted at the 'sensitive issue', but [Miss A] stated that she was not ready to discuss this in detail. [Ms E] discussed for the first time with [Ms C] her concern about [Miss A's] increasing dependency on her.

On 15 May during a counselling session with [Ms C] at [the school], [Miss A] cut her wrists with a blade. [Ms C] telephoned her partner [Ms H] for assistance and the two women took [Miss A] to [the public hospital] Emergency Department. [Ms C] telephoned [Ms B] from the

hospital to inform her that [Miss A] had been admitted.

During [Miss A's] admission, [Ms E] again spoke to [Ms C] about the nature of the relationship that had developed between her and [Miss A]. It was during this admission that [Ms C] disclosed that [Miss A] had been sexually abused by her paternal grandfather when she had been [overseas] in 2000. [Ms E] referred [Miss A] to an ACC registered sexual abuse counsellor.

In July [Ms C] travelled [overseas] with [Ms H] and met with [Miss A's] family. [Miss A] became upset when she was shown — by [Ms C] — photographs of her arm-in-arm with [Miss A's] grandfather.

After she was discharged from [the public hospital] [Miss A] took a quantity of illicit drugs, was picked up by a man she did not know, went with him to his house and engaged in sexual activity. She later contacted [Ms C] who picked her up and took [Miss A] to her home. Shortly after this [Miss A] took a drug overdose and was again admitted to [the public hospital].

On 2 August [Ms E] wrote to [Ms C], copied to the senior school guidance counsellor, [Ms D] and [the school principal]. [Ms E] was concerned that the relationship between [Miss A] and [Ms C] 'inhibits the progress on the long term treatment goals for [Miss A]'. [Ms D] asked [Ms C] to provide a statement about the relationship, and informed [the school principal] that '[Ms C] has taken the matter to supervision and continues to work through issues. I have discussed with [Ms C] the need for professional and personal safety when working with clients'. No further action was taken.

During Labour weekend in October [Miss A], who was holidaying with her mother in [the city], telephoned [Ms C] distressed that her mother had proposed that they move to [another part of the country]. [Ms C] suggested to [Ms B] that [Miss A] move in with her and [Ms H] for five weeks so that she could prepare for her school certificate exams.

While [Miss A] was staying with [Ms C] and [Ms H] they went [away for a weekend tramping trip]. That evening [Ms H] became unhappy with [Ms C and Miss A's] behaviour. She walked out taking the vehicle leaving [Miss A and Ms C] without transport. However, she returned the following day.

[Miss A] stayed with [Ms C and Ms H] during the first part of 2002. When [Ms H] was not present [Miss A and Ms C] 'kissed each other a lot' and [Miss A] quite often slept in [Ms C's] bed. [Miss A and Ms C] commenced a sexual relationship in June of that year in the last week

[Miss A] attended [the school].

In October [Miss A] discovered that [Ms C] and [Ms H] had been sexual partners for 16 years. On 9 November [Miss A] assaulted [Ms C] and threatened her with a knife. The Police were involved and [Ms B] was notified. [Ms C] declined to make a complaint.

[Miss A and Ms C] continued to see each other and the last time they engaged in sexual activity was on 10 December. That night [Miss A] took an overdose of prescription pills and was admitted to [the public hospital].

[Ms C and Miss A] continued to keep in contact by telephone and met for the last time at Easter 2004.

[Ms C] is no longer working as a school guidance counsellor and she is no longer in contact with [Miss A].

EXPERT ADVICE

Having reviewed the material provided by the Commissioner it is my view that [Ms C] was well meaning but misguided in her judgement about:

- how best to help her client [Miss A]
- what she was skilled and experienced enough to manage and
- how the care she provided for [Miss A] impacted on [Miss A's] mother, other students, herself and other staff, [the school], and staff at [the child & adolescent mental health specialist service (the service)] at [the public hospital].

Instead of helping [Miss A], [Ms C's] actions allowed a relationship of dependency to develop which undermined other vital relationships such as that between [Miss A and her mother Ms B], and staff at [the service].

Advice and guidance from others, including the senior school counsellor [Ms D] and staff at [the service], especially [Ms E], should have picked up on this problem but the evidence suggests that they were either misguided themselves or gravely lacking in leadership. Help could have come in the form of good supervision but the material I have received does not include the name of [Ms C's] supervisor nor any notes relating to the content of supervision appointments.

Although I have strong reservations regarding the truth of [Miss A's] allegations of the existence of a sexual relationship I believe she and her mother have grounds for objecting to the care/service/treatment they received from [Ms C] in her role as the school counsellor. [Miss A] describes the effects of the contact she had with [Ms C] better than I can.

> 'I just wish that she had never encouraged all the attention I was wanting from her, I wish she had just, you know, said, 'right'. […] I was obsessed with her and its

taking me a really long time to get over it. I can't pick up the phone any more. I'm on medication. I have to see people. I don't want to go and see them, I'm supposed to be seeing counsellors but I don't want to go and see them. I'm really anxious; I can't do anything for myself...'.[4]

School Counselling

Schools employ counsellors to provide a personal guidance and counselling service for students. Students who are referred by others or who seek an appointment themselves become the counsellor's clients. This service is confidential, meaning that staff, the student's parents and/or friends or anyone else will not be informed about appointments or the content of the appointments. See Appendix 1.

When a school counsellor meets a client for the first time they should use the initial appointment to explain what counselling is, to discuss issues around confidentiality and its limitations, and to conduct a geno gram to find out about the client's family and background. This provides the groundwork for the formation of what should be a trusting relationship.

Most students who use a school guidance service are not ill. They are more likely to be feeling sad, confused, lonely, scared, angry or frustrated. They want to talk to a trained adult so that they can identify and work out what to do about their perceived problem/s.

As a school counsellor my goals are to help identify and acknowledge the above, and to help my client alleviate the pain she is feeling and any related symptoms. The key task is to help clients remove obstacles and discover and build resources so that they can continue to develop and mature. This process takes time and an open mind about what the client is experiencing.

Occasionally a client will present with obvious symptoms of mental health difficulties. The most common in my practice is adolescent depression. It is not a school counsellor's responsibility to make a diagnosis but if I recognise a cluster of depression-like symptoms I will consider how best to refer the student to an appropriate agency for assessment. Unless there is clear and imminent danger to the client such as a suicide plan I must have the client's permission to act. Acting would involve contacting her parents to seek permission to make a referral. No agency providing mental health services that I refer students to will see students without parental consent.

[4] References to page numbers of documents reviewed by the expert have been omitted for ease of reading. Ellipses indicate where pages numbers have been removed. While reference to the appendices appended to the expert advisor's are retained in the text, the appendices themselves have not been reproduced here.

Professional Supervision

All school counsellors who belong to The New Zealand Association of Counsellors (NZAC) are bound by the Association's Code of Ethics. This requires that counsellors attend regular ongoing supervision with a competent supervisor, who is either a member of NZAC or another professional body with an acceptable Code of Ethics. It is recommended that counsellors attend at least one, one hour session per fortnight. This supervision may be paid for by the school or the counsellor. Recent research into who pays for school counsellor supervision suggests about a 50/50 split. Supervision costs vary from between $50 and $120 per hour. Ms C became a full member of NZAC around 1995. There are no details about Ms D, the senior counsellor at the school, but if she too was a member of NZAC she would have been required to have supervision. (Please read page 33/34 in Appendix 6 if more information regarding supervision is required.)

1. What is a school guidance counsellor's responsibility when a pupil at the school is causing concern?

I am assuming that this question relates to the counsellor's concern for her client and not a more general concern from teachers or a dean about a student's behaviour.

When a counsellor has concerns about a client's wellbeing, their behaviour or their safety they should first of all acknowledge these concerns to the client and seek that person's permission to access further support if this seems appropriate. For many good reasons some clients are very reluctant to consent to this. They know more about their family and circumstances than the counsellor does and they are entitled to confidentiality. It is very rare for a counsellor to have to breach confidentiality. There must be evidence of clear and imminent danger to the client's life or another's life. All schools should have a copy of *Young People At Risk of Suicide: A Guide for Schools* (1998) which contains a table that helps school counsellors assess suicide risk (Appendix 2). Unless the assessment interview reveals serious risk the client is entitled to confidentiality. If the counsellor is unsure about the assessment — ie does it indicate moderate or high risk? — she should consult with health professionals such as CAMHS but the client's identity should remain anonymous.

Some serious issues that students seek counselling for may involve a referral to an outside agency without the need to obtain permission from parents. The most common of these referrals are to sexual health, pregnancy and abortion services, or sexual abuse and drug and alcohol agencies (Appendix 1). School counsellors frequently help their clients to arrange such appointments.

School counsellors are experienced in working with students who indulge in very risky behaviours — not just to themselves, but to other students, their families and members of the public. Occasionally they will hear that a client is being abused or neglected. These issues are difficult to resolve which is why regular fortnightly supervision is vital. Discussing the concerns with a fellow professional often reveals a way forward so that problems can be addressed effectively. If the assessment suggests grave concern

and the supervisor agrees, then the counsellor must convey this to her client letting the person know that someone else needs to know about the situation. It is desirable to get the client's consent but if this is not forthcoming the counsellor must decide who best to tell. The counsellor must inform the principal before she informs anyone else.

If the counsellor decides to inform CYFS or the police about the neglect or abuse of a young person and she has that person's permission to do so she is protected under the Children, Young Persons and Their Families Act 1989 Section 16 that states that "no civil, criminal, or disciplinary proceedings will lie against any person reporting the ill-treatment or neglect of a child or young person in respect of the disclosure of that information". (Appendix 1, P.5)

In conclusion Robert Ludbrook cautions school counsellors in his recent book, *Counselling and the Law* (2004 page 184) where he writes:

> 'It is important that school counsellors are fully acquainted with their legal duties in relation to client confidentiality (Appendix 5 — set out in some detail in chapter 8) rather than rely on the NZAC Code of Ethics, which could be read as giving counsellors a very wide discretion to breach confidentiality. The code does not displace the counsellor's legal obligation to the student client.'

2. Did [Ms C] follow that practice? If not, what should she have done?

It is my view that [Ms C] departed from professional care standards on 21 September 2000 when she made a concerned, but poorly considered phone call to [Miss A's] mother [Ms B] before the school holidays without [Miss A's] consent […]. Both [Ms C and Ms B] report that this phone call was unpleasant ([Ms C]: 'The phone call went very badly,' […] and '[Ms B] was very angry about my call and did not perceive there was a problem' […]. It is unclear what information [Ms C] passed on to [Ms B] but it must have come as a shock and to hear it over the phone was not appropriate. Being told to watch out for problems is insufficient on its own and adequate support was not put in place for the family. [The service's] notes show that [Ms B] phoned them later that day saying she had had a call from [Ms C] and was worried and confused about what to do. They suggested she contact a private counsellor […].

I believe it was this incident that set all concerned on the path that eventually caused so many problems. [Ms C] states she was becoming increasingly worried about [Miss A's] moods and behaviour. She considered that [Miss A] was at increased risk because of the approaching holidays when [Ms C] would not be available to support her, nor would her friends be there to alert [Ms C] to difficulties. It is dangerous for school counsellors to believe that they are needed to this extent and it is not appropriate to rely on client's friends as informants. If the situation is this serious and it is not a mental health issue it may be appropriate to involve CYFS.

The main behaviours that [Ms C] was worried about were drug and alcohol use, suicidal ideation and deliberate self-harm (cutting the body) […]. Although worrying none of these issues automatically come under the heading of clear and imminent

danger. Deliberate self-harm is a growing problem amongst adolescents in New Zealand and therefore an issue school counsellors need to be knowledgeable about. On discovering that a client is cutting themselves a counsellor must then decide if the client is doing this to self sooth[e], in much the same way some people abuse alcohol and drugs, or whether there is evidence of a mental health diagnosis such as depression, post traumatic shock syndrome, an anxiety disorder or serious suicide intent.

Had such an assessment indicated the possibility of a mental health diagnosis [Ms C] should then have consulted her supervisor to discuss the next step. Given that [Miss A] had not given permission for [Ms C] to contact her mother this step was vital.

The NZAC Code of Ethics states on page 30:

> 6.2 Exceptions to Confidentiality
>
> a) Wherever possible, the decision to make an exception to confidentiality is made:
>
> - After seeking the client's cooperation, unless doing so would further compromise the safety of the client or others
> - After consultation with a supervisor.

There is no evidence from the material provided by [Ms C] or in her interview that she did contact her supervisor on this occasion.

The issue of [Ms C's] supervision is an important one. There are two comments from other people, namely her principal and the senior counsellor [Ms D] stating that she attended regular supervision and that her supervisor was kept fully informed of all developments […], but nowhere is there any information stating who the supervisor was or what input she may have had, if any.

Agencies I refer students to in Auckland have a common approach to self-harm referrals. If individuals do not meet criteria for a mental health diagnosis they will not be seen urgently, if at all. Even the more serious cases do not always result in immediate appointments — most young people who self-harm do not suicide. A calm, considered approach with clear boundaries of how families, schools and health professionals respond to self-harm is considered the best approach (Appendix 3).

[Ms C] may have thought that by phoning [Ms B] at the end of Term 3 she was considering [Miss A's] safety. Instead [Ms B] was upset. She did contact [the service] as [Ms C] had suggested but parents are not able to refer their own children and so effectively [Ms B] was without support. No doubt her focus then went onto [Miss A] who probably wasn't prepared for this level of attention and so began a kind of rivalry between [Ms C and Ms B] over who cared the most.

Had [Ms C] discussed [Miss A's] problems with a supervisor it is possible that together they would have agreed that a referral to [the service] was appropriate. This conclusion would have included the decision to go ahead without [Miss A's] permission if they felt the circumstances warranted it, although I believe that this would not have been

necessary as [Miss A] would most likely have agreed to this action had she been fully informed of the process and that some aspects of her behaviour such as the drug use which she did not want her mother to know about could be kept confidential. [Ms C's] first step then would have been to invite [Ms B] into school to inform her of her concerns and to explain what kind of service [the service] can provide for families. [Ms B] had a history of accessing help for herself and [Miss A], (from 1991–1993 when [Miss A] was 5yrs […], and in 1998 when she was 12yrs […] so there was a strong likelihood that she would have welcomed the support. Had [Ms B] then agreed to the referral she would have been invited to [the service] for the first appointment too. This process would have provided much more support for all concerned, including the counsellor.

3. **What are the school guidance counsellor's professional responsibilities regarding her relationship with a pupil she is counselling for stress and behavioural problems? In particular, was it appropriate for [Ms C] to provide [Miss A] with her home telephone number or to take her for walks on the beach?**

It is very important for the counselling/client relationship that clear boundaries are established understood and maintained. This relationship would not be affected by the type of issues the client presented with. As a full member of The New Zealand Association of Counsellors (NZAC) [Ms C] should have been guided by the NZAC Code of Ethics which states on page 29 of the handbook that:

> 5.11 Multiple Relationships
>
> a) Counsellors assume full responsibility for setting and monitoring the boundaries between a counselling relationship with a client and any other kind of relationship with that client and for making such boundaries as clear as possible to the client.
> b) Counsellors should consult with their supervisor(s) when dual or multiple relationships arise.
> …
> f) If conflicting roles with clients emerge during counselling, counsellors must clarify, adjust or withdraw from these roles by an appropriate process.
>
> 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.

On the evidence made available to me it appears that up until the point when [Ms C] made a referral for [Miss A] to [the service] in November 2000 she had a normal counselling relationship with [Miss A]. That is, [Miss A] made regular appointments during school time which she attended. It is not uncommon for counsellors to draw up suicide contracts with clients who experience suicidal ideation and to give out their

phone number to be used in an emergency. I have given my cell phone number to students in such circumstances myself.

Although it is preferable (for safety reasons for the counsellor) to conduct counselling in a designated space such as an office, in some situations where the client's needs indicate a less formal setting counsellors may make a decision to take a walk or go for a drive. This may help a client to calm down and relax especially if they have been sent to the counsellor for fighting for example. The informality of the activity is believed to induce a relaxed, less formal atmosphere [t]hereby enhancing communication. On these occasions it would be expected that the counsellor would adhere to all professional counselling protocols such as making the purpose of the session explicit, and filing a written record of the session.

Going for walks on the beach with [Miss A] and taking her [on trips] appear to be connected to [Ms C's] assumption that by getting [Miss A] involved in the outdoors she could protect her from problematic behaviours such as drug and alcohol use. A properly structured adventure-based counselling programme or a similar group activity that focused on the social and emotional development of the participants would be well justified. However by conducting these outdoor activities on her own with just the one student [Ms C] exposed herself to a high level of risk. The NZAC Code of Ethics states that there must be a clear distinction between a professional and a personal relationship otherwise the boundaries may become blurred making the relationship difficult to manage.

Some counsellors allow students to address them by their first name. There would be no problem with this as long as the relationship adhered to counselling standards. By 2001 there is evidence that [Miss A] was addressing [Ms C] as Aunty [Ms C]. This would suggest a blurring of boundaries and the existence of a more intimate, but not necessarily sexual, non-counselling relationship.

On occasions [Ms C] drove [Miss A] to and from school. Her reason for doing this was that they lived close to each other but some distance from the school and it made sense. Perhaps she also believed it would enable [Miss A] to attend school more regularly. This is not a counsellor's responsibility but a mother's, and in my view is a sign of rescuing (ie doing something the person or their family is quite able to do themselves), not helping.

4 Did [Ms C] have a clear therapeutic model or treatment plan when she was counselling [Miss A]?

[Ms C] makes some comments about her work with [Miss A] regarding the drawing up of a drug-free contract and some regular monitoring of this […]. Given the severity of [Miss A's] drug use (daily use of marijuana, including at school as well as other drugs […] it was not surprising that this had limited effect […]. Changing a drug habit of this nature would require more expertise than most school counsellors have. She also seems to have worked around motivation issues but again with the competing drug

issues this too had little impact. From what I can tell [Ms C] treated the deliberate self-harm as suicide intent which again did not address that problem effectively.

Current thinking around deliberate self-harm is that it is best addressed using a therapy known as Dialectical Behavioural Therapy. Very few school counsellors would have had training in this method of treatment and there is no evidence that [Ms C] knew about it or used it.

As stated before, school counsellors do not diagnose or treat illness and therefore tend not to use a framework of a treatment plan. If a client's problems cannot be effectively addressed through listening and talking and the insights and strategies that this provides then this is a strong indication that a referral to an outside agency is necessary.

With increasing workloads and decreasing resources school counsellors are finding themselves in a situation where they do attempt to provide therapy for needy clients who fall outside mental health criteria. This should only be attempted after appropriate in-service training and excellent supervision. [Miss A's] issues appeared to be beyond [Ms C's] and probably most school counsellors' expertise.

Having stated this I believe [Ms C's] ongoing involvement and the actions she took related to two assumptions she had made; 1) that [Ms B] was not competent or reliable as a mother, […] and 2) that she, [Ms C], could turn [Miss A's] life around by introducing her to healthy activities such as tramping and to responsible adults who would act as models, challenging what she believed were [Miss A's] beliefs about adults; that they would eventually abandon her or let her down […]. [Ms C] was much taken with [Miss A's] bright personality, intelligence and social nature and must have believed that she was in a position to save her from her circumstances. Combined, these two elements could be seen as [Ms C's] rational[e] for her actions.

This plan did not work because it was not based on sound princip[les] or practice. Two key aspects of her explanation are of concern. First of all she appears confused about her idea of a support role and what she actually did […]. She claims that when a counsellor is in a support role they do not offer counselling, and are not bound by confidentiality issues. However after [Miss A] was referred to [the service] in Feb 2001 and [Ms C] assumed a support role she continued to provide counselling for drug and alcohol problems as well as the 'sensitive issue,' this being [Miss A's] claim that she had been sexually abused by her grandfather in 1999 ([Miss A] withdraws this allegation later). [Ms C] defines her ideas regarding the duties of a support person as being 'to help the family, to pick up the pieces, deal with the disasters but not provide any therapeutic assistance.' […] These are the tasks normally associated with a counsellor and/or a social worker.

Secondly [Ms C] engaged in certain activities with [Miss A] which could not be justified using a counselling rational[e]. These included offering [Miss A] a home, and taking her on walks, tramps, [on trips] which were not organised by the school or offered to other students […]. It is my view that certain people who knew about these

activities, namely [Ms D], the staff at [the service], and [Ms C's] supervisor (if this person existed) should have insisted that they not take place.

Each time [Ms C] took [Miss A] to hospital, checked to see if she had taken an overdose, provided her with a home, coached her for School Cert exams, nursed her through alcohol binges, and the list goes on, she took away the opportunity for those who were more experienced or legitimately entitled to be involved to act. This especially undermined the mother/daughter bond, adding to the conflict and estrangement. It also got in the way of other therapeutic relationships rendering them almost useless. At one point [Miss A] 'fires' [Ms E] her [therapist at the service] because [Ms E] takes a strong stand about aspects of [Miss A's] treatment […]. [Miss A] sees [Ms C] as the only one who understands her and won't tolerate the insistence of firm boundaries, something that in retrospect she acknowledges is what was needed, and which is considered fairly normal practice in treating deliberate self-harm.

5. **Were the strategies [Ms C] employed to support [Miss A] to deal with her stress, such as walks on the beach, appropriate?**

I have touched on this question in my answer to Question 4 and I will address it in more detail in Question 9.

6. **Was [Ms C's] response to [Miss A's] self-harming in September 2000, appropriate?**

This question has been answered in detail under Question 2.

7. **If [Ms C's] management of [Miss A's] situation (as outlined in 3 to 6 above) was not appropriate, what would be the expected practice for a counsellor in these circumstances? What are the school counsellor's professional responsibilities regarding her relationship with a pupil when she is acting in a support role for that pupil (when the responsibility for therapy has been taken over by another agency**.) **For example, was it appropriate for [Ms C] to have [Miss A] living with her at her home, or take her away for weekends?**

I believe I have already answered the first question posed here in my answer to question 2 so my answer to question 7 will focus on the second question, 'What are the counsellor's professional responsibilities …. etc'

It is common for a school counsellor to move into a support role when a client is referred to an outside agency. The agency usually likes to have a contact person within the school and it makes sense for this person to be the counsellor. The agency will keep the counsellor informed of progress and will notify him/her when the case is closed. It is possible that the counsellor will take and collect the student from appointments if they are scheduled during school time.

This new role will affect the previous counsellor/client relationship. The counsellor and the student should discuss how this new role differs from the previous one and what impact the change will have on their relationship. It is normal to acknowledge that the school counsellor will no longer be available for counselling but this should be done sensitively because it would be unwise to leave an already vulnerable student with a sense that she/he is being abandoned. However having more than one counsellor/therapist is considered counterproductive and the new role needs to be defined.

To me being in a support role means liaising or advocating with others in the school on behalf of the student if necessary, and providing a bolt-hole for them if they are having a bad day. It is common for students who are being referred to a mental health agency to have multiple issues, some of these relating to disruptive class room behaviours, poor interactions with staff and complex family and peer relationships. These students need somewhere to go if they are not coping. When this happens I use the opportunity to help a student document what has happened so that she can use it at her next agency session. This gives the student an immediate outlet for her feelings but ensures that the therapy focus remains with the agency counsellor.

It must be noted here that there is a limit to how disruptive a school can allow a student to be. Once a referral is made to an agency such as [the service] a school is wise to seek an agreement from a student who also has behavioural difficulties to abide by school rules within reason. If a student is unable to manage this then school is probably not the appropriate place for the student at that time. The agreement may state that the student must report to a DP, Dean or Counsellor if they leave the classroom, that they must go straight to the nurse if they cut themselves and then return to class, and that any cuts must be covered from view at all times. These expectations may appear somewhat draconian but they are consistent with DBT treatment for deliberate self-harm, and I have seen this approach work for a number of students. Working means students have remained at school and completed their education.

I have had experiences where insisting that a student adheres to such an agreement turned the student against all school personnel including the counsellor. Although this can be problematic for the counsellor's reputation amongst the student's friends, it may strengthen the relationship between the agency counsellor and the student and this would be a good thing.

As already stated it is my opinion that this case started to go awry when [Ms C] made her initial phone call to [Ms B] on 21 September 2000 without consulting with her supervisor and without obtaining [Miss A's] permission. This on its own would not have resulted in the severity of the difficulties that developed. [Miss A] may have continued to 'not trust counsellors […]' but once the referral was made to [the service] some progress may have been made in terms of addressing [Miss A's] drug and alcohol problems and her ongoing relationship difficulties within her family. I say this because once the referral was made the notes suggest that [Ms B and Miss A] developed good

relationships with the therapists at [the service] and attended their appointments regularly.

It is important to note that [Miss A's] problems existed before [Ms C] became her counsellor and would most likely have worsened as she passed through adolescence even without [Ms C's] involvement. During early 2001 it is clear that [Miss A's] drug taking and alcohol use was increasing. [Ms C] made her referral to [the service] on 17 November 2000 […]. This came with a letter in support from [Ms B …] setting out the difficulties she too was having with [Miss A]. The first appointment was on 5 December and both [Miss A and Ms B] continue to attend appointments either together or on their own from early 2001.

At her Alcohol and Drug assessment appointment on 14 March [Miss A] stated that her drug taking was not a problem […]. The notes taken during the assessment stated that, '[Miss A] has made an agreement with [Ms C] to attempt to not get stoned at school for a whole week, next week. Encouraged to continue with this plan and to keep a journal.' […]. This seemed to indicate that despite the referral to [the service [Ms C] was still working therapeutically with [Miss A] and [the service] supported this.

The next day, 15 March 2001, [Miss A] was caught for being stoned at school. [Ms C] phoned [the service] to inform them of this and to say that she was concerned that because [Miss A] might be now be suspended she might be at increased risk for suicide. [The service] instructed [Ms C] to get more information, which she did, stating that by the afternoon she was not so concerned.

On 5 April 2001 [Miss A] was caught once more for drug use at school, was suspended and went in front of the Board of Trustees but was not expelled. From this time until mid-May her mood and behaviour deteriorated. [Ms B] separated from her husband which pleased [Miss A] but within a short time [Ms B] began a new relationship with a man called […]. This event seemed to signal a decline in [Miss A's] outlook and demeanour.

During her [appointment with the service] on 5 May [Miss A] appeared very low and [Ms E] reported this to [Ms C] (possibly a breach of client confidentiality). [Ms C] said she would check her mood during her scheduled appointment with [Miss A] on Mon 8 May which she did. [Ms C] then phoned [the service] to say that [Miss A] had a plan to O/D on ecstasy that Friday after school. As will be explained further on it was likely that [Miss A] had not given [Ms C] permission to pass on this information. [Miss A] probably assumed that the information she was sharing with [Ms C] was confidential, which it should have been, but [Ms C] may have considered that in a support role it was not. [Miss A] had another appointment with [Ms E] at 10am on 9 May and [Ms E] recorded that her mood remained +++low. Before [Ms E] had phoned [Ms C] to pass on her concerns, which the notes indicate she planned to do, at 12am [Ms C] had phoned the crisis team to say that [Miss A] had told a friend that she planned to kill herself and was indulging in other concerning behaviours such as giving away money and making generous gifts.

It was agreed that [Ms E] would come to the school to meet with [Miss A] and [Ms C], bringing the crisis team with her. When [Miss A] saw [Ms E] she tried to run away. When she returned she agreed to meet with the crisis team and [Ms C], but she would not consent to [Ms E] being present. Up until that time [Miss A] had had a good relationship with [Ms E]. The notes show that she was open and confiding. It is likely that her reaction on seeing [Ms E] was one of shock and confusion. The visit was sprung on her and she reacted accordingly. [Ms C] had not asked for her permission or told [Miss A] that she planned to pass on the information about her suicide plan to [Ms E].

Without [Ms E's] input it was decided that [Miss A] could go home under her mother's supervision and that [Ms C] would drop her at her mother's work after school. Later that night [Ms B] discovered [Miss A] cutting her arm and she called the Crisis Team and [Miss A] was admitted to hospital.

At this point it seems clear that [Ms E] was becoming concerned about [Ms C's] role because she took the case to her supervision with [her supervisor] the next day. The result of this was that [Ms E] would discuss the following with [Ms C]:

- D/W [Ms C]— does she have enough support considering [Miss A's] dependency on her
- Has [Ms C] worked with PTSD/suicidal teens before. […]

On 17 May [Ms E] visited [Ms C] and raised these issues. [Ms C] acknowledged [Miss A's] dependency but stated she was 'happy for that to continue for now — will deal with it later' and that she had adequate support from [Ms D], the school and [the service]. There is no mention of a supervisor and it would not be appropriate for [Ms D] to have had this role as she was the senior counsellor and in effect [Ms C's] boss.

NZAC's Code of Ethics states on page 33:

> 9.1 c) 'Counsellors should seek supervision from a person who is not in a position of power over them).

At this point [Ms E] seemed to be satisfied with [Ms C's] explanation because she agreed to an arrangement whereby [Ms C] would 'work with' [Miss A] on the 'sensitive issue' while she would concentrate on the Alcohol and Drug work and the relationship and living issues […].

By 23 May [Miss A] was no better. She cut herself in [Ms C's] office and [Ms C] took her to A & E. On 27 May she turned up drunk on [Ms C's] door and she took her to hospital where she was admitted. On both of these occasions [Ms C] did not phone [Ms B] first to either inform her of what had happened or to seek her permission to take [Miss A] to hospital. There were several other similar incidents in the months ahead.

Following this event [the service] psychologist [Ms F] and [Ms E] discussed [Ms C's] role with her and it changed. She was still referred to as a 'support person' but she

would not be doing any therapeutic work. By July the role has changed again to supporter/friend.

I have detailed these events carefully because they are a good example of the ill-defined nature of [Ms C's] role and the impact this had on all involved. It is my view that the 'support role' that [Ms C] provided was unconventional and strayed on a number of occasions from what is considered accepted professional conduct. I believe this added to the family's difficulties by damaging the mother/daughter relationship, possibly increased the instances of drug and alcohol abuse and self-harm (see Appendix 4 for clinician's view on the link between [Miss A's] self-harm and her relationship with [Ms C]) and ultimately affected [Miss A's] trust of counsellors and therapists to the point where she still claims she is unable to access help when she needs it […].

8. If not, why not?

Already answered elsewhere**.**

9. Was [Ms C's] response to concerns raised about her relationship with [Miss A], by members of [the service's] team, appropriate?

As you will see from the answer to Question 7 and from reading Appendix 4 there was an evident lack of consistency regarding [the service] team's concerns about [Ms C's] role. They seemed to recognise that the relationship was problematic but continued to go along with her involvement. They agreed to her working on the 'sensitive issue' when she was nominally in a support role, and sometime later they considered that allowing [Ms C] to focus on outdoor activities with [Miss A] was a good idea.

> [Ms C]: 'I'm reasonably clear that they [the service] were very supportive of what I was doing, from the going out and seeing stuff, from seeing the world beyond drugs but from having physical exhaustion and the good feelings that brings. I thought that that was quite supported.' […]

and

> [Ms C]: 'I continued the walk/fitness outdoor activities with [Miss A] as [Ms G] and [Ms E] had both supported them and thought they were of value to her' […]

There is no evidence that once it was discovered that [Ms C] had invited [Miss A] to live with her that anyone from the school or [the service] pointed out that this was unwise or unacceptable.

At times [Ms C] did agree to reduce her involvement but this usually resulted in [an] acting out episode from [Miss A] and she was drawn back in. This is where I believe much stronger intervention from [the service] was needed, insisting that the relationship be severed. Having said this, as I have already stated, had [Ms C] been conversant with the NZAC Code of Ethics she should have realised herself that her

actions were breaking normal counsellor/client boundaries, and her supervisor too should have recognised the risks and acted decisively.

On page 33 of the NZAC Code of Ethics it states,

> Responsibilities in Professional Supervision
> b) Supervisors shall be responsible for:
>
> - Helping counsellors to monitor their competence, safety and fitness to practice
> - Disclosing concerns about the counsellor's practice, before taking further action.

In other words neither she nor the supervisor should have allowed the situation to have arisen in the first place.

[Ms B's] concerns also oscillated back and forth from being upset and concerned to seeking out [Ms C's] involvement. This is understandable. Whenever [Ms B] tried to reduce [Ms C's] level of involvement [Miss A] reacted against her. Contact with [Ms C] was one way of keeping in touch with her daughter and knowing what was happening to her.

10. If not, why not?

Answered in question 9.

11. What resources are available to a school guidance counsellor to provide professional support and development?

Most Auckland school counsellors have good access to professional development. I imagine there is not the same level of opportunity in [this area] but some courses are probably available. I try to attend about three courses a year and this is subsidised by the school's professional development fund. As a member of NZAC it is expected that counsellors have regular professional development and they require a record of what this is.

The sorts of short-term training opportunities on offer are run by mental health agency professionals, Continuing Education, support groups such as Toughlove or through the efforts of counsellor cluster groups such as the Central Auckland Counsellor Network which I belong to. In March 2003 we arranged a one day workshop for school counsellors in the Auckland region on Deliberate Self-harm. This was run by Mike Batcheler and Rebecca Daly-Peoples, two clinical psychologists experienced in using dialectical behaviour therapy in their work with adolescents. Forty-eight school counsellors attended the workshop, a high number, suggesting the issue was highly relevant.

NZAC runs a conference every year with much on offer to interest school counsellors.

12. What action would you expect a senior school guidance counsellor to take if notified of concerns about:

- **the relationship that had developed between a pupil and one of the counsellors on staff?**
- **the pupil was living with the counsellor?**
- **the counsellor had taken the pupil away on holiday?**

When [Ms E] wrote to [Ms C], and [Ms B] wrote to the school principal in early August 2001 complaining about [Ms C's] relationship with [Miss A], [Ms D] should have consulted her supervisor about what to do. Following this an informed discussion could have taken place involving [Ms D] and her principal. No doubt the discussion would have centred on the need for a careful investigation. In the circumstance [Ms D] did ask [Ms C] to write up her version of events […]. Had these explanations then been shown to [Ms D's] supervisor I am in no doubt that much stronger action would have been taken. These two documents are full of [Ms C's] assumptions about [Ms B's] poor parenting skills and the actions she had taken to 'support' [Miss A], and I believe any experienced supervisor would have seen the dangers of allowing the situation to continue unchecked. Once alerted to the seriousness of the situation [Ms D] should then have instructed [Ms C] to withdraw completely from the relationship. It might be claimed that this action could have been seen by [Miss A] as abandoning her and therefore psychologically damaging. However by this stage [Miss A's] counselling was well established with [the service] and they should have been able to manage any difficulties had they arisen.

In answer to the second and third item it is not against the law for a counsellor to provide a home for a client or to take her on holiday, but it is unprofessional because it is breaching boundaries. [Ms D's] role was to point this out and to insist that it be discussed in supervision. Had this happened it is unlikely that [either] situation would have arisen. In the event that [Ms D] did advise [Ms C] in this way and she ignored her, [Ms D] could have advised [Ms C's] supervisor herself of her concerns or consulted NZAC which has a complaints process.

In addition:

- If in answering the questions you believe that [Ms C] did not provide an appropriate standard of care, please indicate the severity of her departure from that standard. To assist you on this point we note that some experts approach this question by considering whether the provider's peers would view the conduct with mild, moderate, or severe disapproval.

I believe most school counsellors would consider these events, particularly the outdoor activities and providing [Miss A] with a home, with severe disapproval. Most school counsellors would recognise the personal risks to themselves and see it as rescuing behaviour which seldom benefits a client. The issues relating to breach of confidentiality and the ongoing counselling once the referral to [the service] was made

would be seen as slightly less serious mainly because of it being 'there but for the grace of god etc.' This would be because managing the care of unhappy, confused and often difficult adolescents can be frustrating, unrewarding hard work. At times the resources are not available in the community to help or they are overloaded. This puts pressure on schools and counsellors to do what they can. But this is not a good enough rational[e] to act expediently. As can be seen in this case it is unwise to operate contrary to one's professional code of ethics because in doing so a client may in time view the actions as inappropriate or detrimental and complain. …"

Further advice

Ms Wilkinson was asked further questions to clarify certain aspects of her advice. The following documents were provided:

- Letter to the Commissioner from [Ms C], dated 17 March 2005, marked with an 'A'. (Pages 1 & 2)
- Letter to the Commissioner from [the school], dated 18 March 2005, marked with a 'B'. (Page 3)
- Letter to the Commissioner from [Ms I], dated 5 April 2005, marked with a 'C'. (Page 4)
- New Zealand Association of Counsellors, Code of Ethics (February 2000).
- New Zealand Association of Counsellors, Code of Supervision (1990).

1. **In your report you quoted the New Zealand Association of Counsellor Code of Ethics (2002). The events complained about commenced in early 2000 going through to November 2002. As the 2002 Code of Ethics did not come into effect until August 2002, it is the 1990 Code of Ethics that applied to the period under investigation.**

   We have compared the 2002 Code and the 1990 Code, and find that although most of the provisions are similar, and in some cases are worded identically, there are some differences. For example, the provisions that relate to supervision were set out in a separate Code of Supervision in 1990 (copy enclosed). The 1990 Code of Ethics also includes provisions on referrals, competence and scope of practice (access) which are relevant to this case. Additionally the 2002 Code makes a specific statement about intimate relationships, "even after the counselling has ended". However, the 1990 Code does not cover this.

   Could you please review your advice with reference to the 1990 Code of Ethics and Code of Supervision? (See below for the relevant sections of the Codes.)

   Code of Ethics (2002) Code of Ethics (1990)

6.2 Exceptions to Confidentiality	**Confidentiality**
Wherever possible, the decision to make	Communication between counsellor

an exception to confidentiality is made: • after seeking the client's co-operation, unless doing so would further compromise the safety of the client or others, • after consultation with a supervisor.	and client shall be confidential and treated as privileged information unless the client gives consent to any particular information being disclosed. Exceptions to the principle occur when, in the professional judgement of the counsellor, there is clear and imminent danger to the client or others. This includes circumstances where 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.
5.11 Multiple Relationships (a) Counsellors assume full responsibility for setting and monitoring the boundaries between a counselling relationship with a client and any other kind of relationship with that client and for making such boundaries as clear as possible to the client. (b) Counsellors should consult with their supervisor(s) when dual or multiple relationships arise. … (f) If conflicting roles with clients emerge during counselling, counsellors must clarify, adjust or withdraw from these roles by an appropriate process. **5.13 Sexual Relationships with Clients** (a) Counsellors shall not engage in sexual or romantic activity with their clients. (b) Counsellors shall not exploit the potential for intimacy made possible in the counselling relationship, even after the counselling has ended.	**Abuse of Power** Counsellors shall not abuse their position by taking advantage of clients for purposes of personal, professional, political, financial or sexual gain. Counsellors are responsible for setting and monitoring the boundaries between a counselling relationship and any other kind of relationship and for making such boundaries as clear as possible to the client. **Sexual Harassment** 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.

9.2 Responsibility in Professional Supervision … (b) Supervisors shall be responsible for: • assisting counsellors to explore an address their professional practice, • helping counsellors to monitor their competence, safety and fitness to practice — disclosing concerns about the counsellor's work to the counsellor, before taking further action. • maintaining the boundaries between supervision and other relationships the supervisor may have with the counsellor.	A separate **Code of Supervision** was in effect during the relevant period. It states: 3. Supervision includes monitoring, developing, and supporting individuals in their role as counsellors. To this end, supervision is concerned with: a. the relationship between counsellor and client, to enhance its therapeutic effectiveness; b. the relationship between counsellor and supervisor, in order to enable the counsellor to develop his/her professional identify through reflection, which is both constructively critical and supportive; c. clarifying the relationships between the counsellor, client, the supervisor, the referring agent and any involved wider systems.

Response

"I have read the NZAC 1990 Code of Ethics carefully and compared it with the NZAC 2002 Code of Ethics. I have also read the former NZAC Code of Supervision that you supplied. I have noted the differences in the section on confidentiality and the circumstances under which a counsellor can breach a client confidence but I am still of the opinion that [Ms C] was under the same constraints to keep her communications with [Miss A] confidential.

Because I do not have the transcripts to hand I cannot consult them for the exact text but I recall examining the excerpt that related to [Ms C's] phone call to [Ms B] carefully. [Miss A] asked [Ms C] not to contact her mother. [Ms C] [then made the decision to ignore this request, to not consult anyone else such as her supervisor and went ahead and made the phone-call. [Miss A] was in the room but this does not mean she gave her consent. In fact this was a good example of the manipulation that [Miss A] herself acknowledges she indulged in during this time. By not giving her consent but standing by and watching [Ms C] make the phone call she was a witness to her own power to draw in, disrupt and escalate events. [Ms C] should have followed normal counsellor practice when considering breaching a client's confidentiality; that being to weigh up the facts by doing a careful assessment and to make an effort to get

professional advice (ideally from a supervisor) about whether there was a need to involve parents, CYFS or [the service]. As I said in my earlier opinion the idea of informing the mother about such serious issues over the phone, whether the client had given consent or not was flawed — it left the mother at the start of the holidays with no support etc.

The 2002 Code of Ethics is more explicit about seeking advice from a supervisor when considering the necessity to breach a client's confidentiality, but the requirement for a counsellor to be confidential except in extreme circumstances was a well understood concept amongst counsellors before this date. Robert Ludbrook's book *Counselling and the Law (2004)* was not available at the time [Ms C] was grappling with her problems but he summarises the law's long held view about a client's right to confidentiality, and cites the case of *JD v Ross* (1998) as an example of what can happen when a counsellor breaches this right — in this case it was about sharing privileged information with another professional.

Both codes clearly state that a counsellor can only breach confidentiality if there is clear and imminent danger to the client or others. It is the counsellor's responsibility to make this judgement. Such a judgement would be based on one's relationship with the client, knowledge and understanding of the issues, and the accumulation of past experience.

1. What ethical responsibilities apply after May 2001 when [Ms C] says that she was only offering [Miss A] support as a friend?

Response
I believe the 1990 Code of Ethics is explicit about the responsibility of counsellors to monitor boundaries and to avoid using their position to take advantage of their clients for personal gain. It could be argued that the gain in this case was the opportunity for [Ms C] to 'save' [Miss A] by being the 'good mother' she believed [Miss A] was so in need of. Although it does not say to consult with a supervisor when dual relationships arise it does state that counsellors are responsible for 'monitoring the boundaries' and this would imply a responsibility to share any concerns about changes in a relationship with a supervisor, head of department or a principal.

As I stated in my earlier opinion, in addition to breaches in confidentiality and other poor practices indicating a lack of skill and ability, [Ms C] acted unprofessionally when she treated [Miss A] differently from her other clients e.g. allowing her to live in her house, taking her on trips etc. Although [Ms C] and others at [the service] renamed her role to one of supporter and then friend, in fact she continued to counsel [Miss A] and her mother.

It is my view that [Ms C] was never in a position to act as a friend to [Miss A] let alone enter into a sexual relationship with her either during or once she left school if this is in

fact what happened.[5] Because of the imbalance of power that existed between her as a member of staff and [Miss A], a school student, maintaining this boundary was 100% [Ms C's] responsibility. Some codes such as the College of Physicians and Surgeons of Ontario recommend that if the professional relationship involved a form of psychotherapy a personal relationship should never be entered into. Other professionals such as doctors, lawyers etc are bound by similar requirements especially in relation to current clients. The relationship between [Ms C and Miss A] started as a counselling one at a time when Miss A was young and vulnerable. Allowing the relationship to develop into something more personal was unwise, unprofessional and damaging to both parties.

2. When you provided your advice you did not have sufficient information to determine whether [Ms C] had been supervised. We have obtained information from [Ms C], [the school] and [Ms C's] supervisor, [Ms I] (see attached). Could you please comment on [Ms I's] role in this matter.

Response
Following is a summary of the information I have taken from [Ms I's] response:

- She confirms that she was [Ms C's] supervisor and that they met once a month throughout the period in question.
- She has since left the full-time employment she was engaged in at the time and has no records of her sessions with [Ms C] stating they would have been shredded after two years or returned to [Ms C].
- She does not provide any recall of details relating to the case involving [Miss A], nor does she state that she does not recall the case.
- She states that [Ms C] was a professional committed counsellor who was aware of ethical and safety concerns but provides no evidence or examples to support this opinion.

I have also been copied a letter from [Ms C] supplying for the first time the name of her supervisor and her recall of how [Miss A's] case was handled in supervision. She did not provide any supervision notes to verify these details. From this I have concluded that she did not keep her own supervision notes nor did she receive any notes from [Ms I] when their contract ended.

There is a striking difference between the two accounts. [Ms I] makes no reference to the issue and she states that she no longer has access to the notes, but she does not say that this is why she cannot or will not comment on the case. [Ms C] on the other hand recalls much about the sessions including her view that [Ms I] was fully informed and supportive of her handling of the case. She also states that [Ms I] knew of the letters of

[5] See footnote 1 above

complaint but she does not comment on her reaction to them which would be relevant to this case.

I have found this supplementary material of minimal use. If anything I am left feeling curious about the following:

- [Ms C's] motive for not making any reference to [Ms I] and the nature of her supervision experience until specifically requested to provide it.
- The quality of [Ms I's] response. With no reference or even passing comment I am left with the following conjectures and no evidence to suggest that they are either true or not:
    1. [Ms C] did not in fact raise the case.
    2. [Ms I] does not recall the case either because it was not raised by [Ms C] or only in passing.
    3. The case was discussed in supervision but [Ms I] has chosen not to comment. If this is the case she is ignorant of the obligations on supervisors in regard to supervisee and client safety or is choosing to ignore them. References are made in both the old Code of Supervision and the section on Supervision in the new 2002 Code about situations when a supervisor may need to breach confidentiality or intervene if they are concerned about a client's practice. The old code states in 35 b) that an exception to a supervisee's right to confidentiality exists when a supervisor 'considers it is necessary to take action in relation to a counsellor's client because of serious concern for the client's welfare, and the counsellor is unable or unwilling to' or in c) 'Where disciplinary action is being pursued etc'. The new code states in 9.2 b) that 'supervisors shall be responsible for disclosing concerns about the counsellor's work to the counsellor, before taking further action' implying that the act of taking action is an option and expected and involves informing others.
    4. A counsellor cannot be held responsible for the inadequacies of the supervisor. [Ms I] had the necessary qualifications and experience to act as a supervisor and [Ms C] would have felt confident about engaging her for this purpose. It is my view that [Ms I's] response is unprofessional. She should have known or discovered through seeking advice that when she was approached by the Commission she was obliged to comment on the case she was asked about. She also owed it to [Ms C], her one-time client, to be as helpful as she could be. I am left with the impression that her response has been motivated by a desire to minimise her involvement thereby protecting herself and her reputation.

4. **In providing your additional advice could you please comment on the professional standard that can be expected of a reasonable school counsellor working in a small regional city in 2000–2002, and whether the service [Ms C] provided to [Miss A] met this standard.**

Response

At my request you have provided me with additional information regarding [Ms C's] supervision during the period under investigation. … This additional material has strengthened my view that many aspects of the counselling service [Ms C] provided were unprofessional and I stand by my earlier comments (please refer to the final comments in my initial opinion). In particular I believe [Ms C's] failure to set and maintain an appropriate client/counsellor relationship resulting in a serious breach of trust would be viewed with severe disapproval by any reasonable or capable school counsellor or any other counselling professional."

Appendix 2

JOB DESCRIPTION : GUIDANCE COUNSELLOR 1MU

RESPONSIBLE TO: HOD GUIDANCE

FUNCTIONAL RELATIONSHIP: OTHER HEADS OF FACULTY ADMINISTRATION LIAISON.

KEY TASKS	PERFORMANCE INDICATORS
To provide a professional counselling service to the school community.	▪ Guidance Counsellors work within the ethical code of NZAC Appendix 1 ▪ Guidance Counsellors attend regular supervision. ▪ In counselling the Guidance Counsellors provide individuals, families, groups with expanded or alternative perspectives and choices. ▪ Guidance Counsellors establish personal and social conditions in which client growth and development can occur. ▪ The Guidance Counsellors accept self referrals from students, staff, parent / caregivers. ▪ Guidance Counsellors accept appropriate referrals from staff, parent / caregivers or outside agencies. ▪ Clients will be referred to other agencies if appropriate. ▪ Staff and students are informed of the process for a counselling session. ▪ Constructive relationships will be established with community agencies to ensure staff, students or parent / caregivers can access resources most appropriate to their needs. ▪ Guidance Counsellors provide advocacy and mediation service when required.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name

To provide a professional counselling service to the school community. (contd)	▪ Guidance Counsellors will not be involved in the execution of punishment.
To provide a Guidance Pastoral Care service to the school community	▪ Guidance programmes will be developed to meet the needs of students. ▪ Resources will be made available to staff. ▪ Guidance Counsellors will provide staff with assistance in the development of pastoral care programmes eg Physical Health and Well-being Careers. ▪ Guidance Counsellors will share their expertise to support teachers guidance and teaching rolls. ▪ Guidance Counsellors will consult with Deans in regard to the welfare of students at their level. ▪ Guidance Counsellors will share, with student consent, appropriate information with staff so that individual needs will be accommodated. ▪ Guidance Counsellors will conference with teachers to develop appropriate strategies to meet the needs of particular students. ▪ Professional development is available for staff eg, conflict resolution, listening skills. ▪ Guidance Counsellors will liaise between family and school as required. ▪ Guidance Counsellors will communicate with Principal and Administration Liaison person about issues being faced in Guidance Work

To provide students with information to ensure they receive the financial assistance they are entitled to.	▪ Year 13 students will be reminded each term of the possibility that they may be entitled to an allowance when 18 years of age. ▪ Guidance Counsellors will assist students who are eligible to apply. ▪ Students who are eligible for student allowances for their tertiary studies will be assisted in their Study Link application.

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name

Appendix 3

PERSON SPECIFICATION

In general terms the following attributes are considered desirable for an appointee to the position of Guidance Counsellor.

The appointee should:

- Possess a first degree or equivalent qualification or be able to point to qualifications and/or experience relevant to the position of school Guidance Counsellor.
- Possess current NZAC membership.
- Be a trained teacher and have had classroom experience preferably in teaching adolescents.
- They should be emotionally stable, self-confident, reliable, self-motivated, resilient and trusting of others.
- Be sensitive to the needs and feelings of others. This must include an acknowledgment of and respect for difference stemming from culture, gender, age, disability or any other perspective. Applicants should demonstrate a willingness to understand the Treaty of Waitangi.
- Have proven oral and written skills, an ability to communicate ideas clearly and concisely, and have effective interpersonal communication skills particularly with adolescents. They should also have a sense of humour.
- Provide evidence that she/he is accepted and respected by others and is able to work effectively and constructively with them.
- Have organisational skills to enable effective and flexible use of time and fulfil the tasks of co-ordinator and facilitator.
- Be able to play an active part in staff/school affairs and contribute to management decision making.

Job Descriptions 2003 / Guidance Counsellor

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name