

**Psychologist, Mr C**

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

**(Cases 00HDC08029 and 00HDC10721)**



Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*



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## Parties involved

Ms A	Complainant
Ms B	Consumer
Mr C	Provider / Registered Psychologist
Mr D	Complainant
Ms E	Counsellor
Ms F	Mr D's ex-wife
Ms G	Psychologist

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## Complaint

On 4 August 2000 the Commissioner received a complaint from Ms A, psychologist, about the services provided to the consumer, Ms B, by Mr C. On 17 October 2000 the Commissioner received a similar complaint from Ms B's former partner, Mr D, about the services provided to himself and Ms B by Mr C. Ms A's complaint is that:

- *Mr C, registered psychologist, was treating Ms B and her partner, Mr D. While Mr C was their counsellor he engaged in a sexual encounter with Ms B.*

Mr D's complaint is that:

- *Mr C, registered psychologist, counselled Mr D from 1995 until early 1999. In November 1998 Mr C betrayed Mr D's trust when he had a sexual encounter with Ms B, Mr D's partner, while he continued to counsel Mr D.*
- *The sexual encounter occurred at a particularly vulnerable time in both Mr D's and Ms B's lives as in October 1998 she had had a termination of their pregnancy.*
- *Mr D feels betrayed because Mr C did not disclose his sexual encounter with Ms B to him but continued to counsel him.*
- *During counselling sessions Mr D disclosed his feelings about his relationship with Ms B not knowing about their sexual liaison. Mr C did not declare a conflict of interest or refer him to another counsellor.*

An investigation was commenced on 16 November 2000.

## Information reviewed

- During the course of this investigation Mr C provided testimonials from several people who have attended his workshops or group therapy sessions. Some of those who provided testimonials were also interviewed. Where participants were able to give first-hand accounts of events, relevant to the complaint, the information has been included in this report.
  - Expert advice from an independent registered psychologist, Dr Fred Seymour.
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## Information gathered during investigation

### *Professional background*

Mr C was a registered psychologist and lecturer at a University. In 1985 he gained his registration from the New Zealand Psychologists' Board and in the same year joined the New Zealand Psychological Society. He remained an active member of the Society for five years (leaving in 1990) and rejoined in 1998. In 1996 Mr C joined the staff of the Psychology Department at the University. He began practising privately as a psychologist full-time in June 2000 but continued teaching until December 2000. He resigned his position at the University but continued to lecture there in the first semester of 2001.

Mr C advised me that he had been counselling and facilitating workshops on a part-time basis since 1975. He commenced studies towards a master's degree in psychology in 1975 and while he was collecting data for his thesis he and his wife co-facilitated a workshop for a small group of people. It had been their practice to have groups of people meet at their home on Sunday evenings to discuss personal issues. Some people from these sessions attended the first workshop. From those beginnings he and his wife began facilitating "couples communication" classes for the Department of Continuing Education at the University in 1976. Mr C said that 1976 to 1981 were learning years for him. He learned about counselling from a colleague on the staff at the Psychology Department, who also supervised his research in marital therapy. Both he and his colleague were engaged in part-time counselling of students at the University, as were other Psychology Department staff.

Between 1981 and 1989 Mr C conducted from one to four workshops and several courses and seminars a year. He counselled an average of two to four people a week until the end of 1999 when he decided to leave his hometown and move to the city. Mr C advised me that he and his wife separated in 1981.

Over the years his work expanded to include other areas of personal growth development including courses and workshops for professionals working in the realm of couples counselling and family therapy. He also conducted courses and workshops for the general public, usually with the help of a female co-facilitator.

Mr C advised that between 1990 and 2000 he focused more on facilitating workshops, and the number of courses and seminars declined. He and his co-facilitator conducted up to eight or nine workshops at year. The theme of the workshops reflected an emphasis on helping people to heal psychologically, and addressed a range of personal issues including intimacy. The objective of the workshops was to encourage non-married/partnered participants to explore non-sexual sharing in a safe environment of mutual trust and respect. Attendees were explicitly requested not to engage in sexual relationships with other participants at the workshop.

#### *The workshops*

Ms A was Mr C's co-facilitator from 1992. Ms A advised me that she and Mr C conducted workshops throughout the North Island, sometimes in public halls but mostly in private homes. The number of participants attending workshops ranged from five to 25. Some people came to one workshop only but in most instances people came to several workshops over a couple of years. As far as counselling was concerned, people who came for group counselling could select individual counselling if particular issues were identified that could benefit from individual therapy. Ms A did not take individual counselling sessions because she did not have time. Mr C conducted all the individual counselling sessions.

Ms A advised me that Mr C conducted counselling sessions in his bedroom. She said that Mr C had a large home in his hometown with an office and five bedrooms, one of which could have been converted into a counselling room. She told Mr C that she considered this practice "unprofessional". After Ms A spoke to Mr C about it he used another room for counselling sessions.

Ms E began co-facilitating workshops with Mr C in 1993. Ms E advised me that workshops usually commenced with a gathering of workshop participants on Friday evening in Mr C's home. Sometimes the Friday night session would continue until midnight and recommence at 9.00am the next day. The downstairs area had a large lounge, toilet and kitchen. Often participants would bring a mattress and sleep on the floor. Some would return to their own homes for the night.

Ms E confirmed that Mr C conducted some counselling sessions in his bedroom. She described the room as very large with a number of pieces of furniture. There were at least three bookcases and a bed over in one corner and a number of objects between the bed and the counselling area. Participants sat on large cushions on the floor and were stopped from sitting on the bed. Mr D advised me that he could not recall any furniture separating the counselling area from the bed.

Mr C advised me that all participants attended workshops on a voluntary basis. As each workshop began, he emphasised the importance of confidentiality. He encouraged participants to voice any concerns they had about personal safety. He began each workshop with this understanding, which was reinforced during and at completion of the workshop. Each workshop was planned with co-facilitators meeting beforehand to discuss the plan and format of the workshop, its facilitation and ways of dealing with any issues that required attention. In his view, facilitators gave one another a lot of feedback about their personal conduct, and ways of improving interpersonal communication and self-awareness.

Similarly, workshop participants were invited to give honest feedback to one another and to the facilitators.

*Professional relationship with Mr D and Ms F*

Ms F was a student in Mr C's class at the University. Mr C advised me that Ms F approached him early in October 1994 to ask whether he knew of a counsellor who could help her with marital problems. He recommended several counsellors. In late January 1995 Ms F approached him for individual counselling. These sessions began in February. In May 1995 Mr D informed Mr C that Ms F wanted to end their marriage. Mr C offered to counsel Mr D.

Mr C continued to counsel Ms F, while at the same time counselling Mr D, until late 1996. Mr C saw Ms F almost weekly. About mid-1996 Ms F told Mr C that she did not agree with him counselling both her and her husband. Mr C advised me that Ms A and Ms E challenged him about counselling Mr D and Ms F but he "did not listen to their wisdom". Mr D continued counselling sessions with Mr C and attended several personal growth workshops until early 1999. Mr C advised me that between 1997 and early 1998 he often had weekly counselling sessions with Mr D. Mr D advised me that he pre-paid Mr C \$5,000 in late 1997 and (according to Mr C) remained in credit of about \$1,000.

Mr D said that his wife told him that, although she and Mr C never had intercourse, this was only prevented by her values and ability to maintain counsellor/client boundaries. Mr C denied having any sexual feelings for Ms F, but said that, towards the end of their counselling relationship, Ms F declared her strong feelings for him.

Ms G is a registered psychologist. Ms G advised me that she boarded with Mr C while she was a student at the University. She knew Mr C, Ms A, Mr D and Ms F, and Ms B. She said that she first met Ms F when her marriage to Mr D was in the process of breaking up. Mr C was counselling Ms F and he asked Ms G to act as a support person for her. In Ms G's opinion Ms F became infatuated with Mr C. Ms G advised me that Mr C made a point of not being alone with Ms F. If he knew Ms F was coming to the house, and he was alone, he would leave.

*Relationship with Ms B*

Ms B explained that in December 1997 she applied to do some counselling papers at the University. Mr C was the lecturer and during a conversation with him he suggested that she might need counselling. She was required to undertake counselling as a part of her counsellor training also. Ms B began individual counselling with Mr C. She paid him \$60.00 for each session but did not sign a counselling contract with him. She attended infrequently and would make appointments when she felt the need.

Initially Ms B had individual counselling but after Mr C sent her information on group therapy she attended his group workshops. All of these sessions were conducted at his home.

In July 1998 Mr D met Ms B at one of Mr C's workshops. Mr D advised me that Ms B told him that she was very unhappy in her marriage. Ms B left her husband in early

September 1998. Soon after, Ms B became pregnant by Mr D and they agreed that she should have the pregnancy terminated. This occurred in late October 1998. Mr C continued to counsel Ms B during and after the termination and Mr D had “occasional counselling sessions” with him until late 1998. Ms B denied that they were counselling sessions. Mr D and Ms B purchased a house together in March 1999.

Ms B said that in November 1998 she attended a workshop in Mr C’s home. Mr C advised me that, after the workshop, Ms B stayed to talk with him and, from their conversation, he gained the impression that her relationship with Mr D had ended. Ms B stayed that night in his home and the following morning they had sexual intercourse. Both Mr C and Ms B informed me they did not begin a sexual relationship as implied by Ms A and Mr D; sexual intercourse occurred on one occasion only.

Ms B advised me that after they were intimate Mr C told her not to tell anybody but she heard later that he had discussed it with a number of people. It seemed to her that everyone else knew but Mr D was the last to know. She advised Mr C that Mr D had to be told.

Ms A recalled the time Mr C told her about his encounter with Ms B. He said that he had something to say but instructed her not to say anything to Ms B or Mr D. Mr C told her he had had sexual intercourse with Ms B. Ms A advised me that Mr C insisted that it remain secret.

Mr C advised that he did not insist on secrecy but he had a responsibility to Mr D and Ms B, because they were both his clients. He promised Ms B that either she could be the first to tell Mr D or they could arrange to tell him together. She was to telephone him when she had decided. Mr C advised me that he understood Ms B would speak to Mr D alone but it was seven months before Mr D was told. In the meantime, Mr C continued to counsel Mr D in December 1998 and early 1999. He did not tell Mr D that he had been intimate with Ms B. Mr C asked Ms B to let him know as soon as she had informed Mr D.

Mr D advised me that Ms B told him in July 1999 that she had been sexually intimate with Mr C in November 1998. Mr C also said that Ms B told him she spoke to Mr D in July or August 1999. As soon as Mr C knew, he telephoned Mr D and apologised for betraying him. He met Mr D on several occasions to help him resolve his hurt. Mr D confirmed that Mr C invited him to his home for meals on two occasions to try to resolve the issues. This was unsuccessful and he discontinued seeing Mr C in March 2000.

#### *Ongoing counselling*

Mr C advised me that Ms B attended a workshop he co-facilitated with Ms A in December 1998 and he had met up with her on a “friendship” basis about three or four times over the following 18 months. He telephoned her several times in the months immediately following the night they had sexual intercourse but these telephone calls were not of a sexual nature and he had no desire to become involved with her romantically. Ms B denied Mr C counselled her on an individual basis after the sexual encounter, although she did attend a group therapy session with him.

Mr D also attended the December 1998 workshop that Ms B attended. Ms B had not told Mr D about her encounter with Mr C the previous month. Mr C said that he found the workshop extremely difficult. Ms A said that it was then that Mr C told her about the encounter with Ms B. Mr C advised me that he told Ms A in November, the morning after, and not in December.

#### *Testimonials*

Mr C supplied me with a number of testimonials from participants of his workshops. Several people who supplied testimonials were interviewed during this investigation.

One testimonial was from Ms G. Ms G had known Mr C for over seven years as her landlord, lecturer and counsellor. She first met him when she rented a room at his home. She boarded for about four and a half years, while she attended the University as a psychology student. She said that she had observed him for about eight months as a flatmate and lecturer before approaching him for counselling.

Ms G advised me that, in her experience, Mr C had very clear boundaries and high moral ethics. While she was a boarder in his home he was living with Ms E. She described his behaviour toward Ms E as a “loving and loyal partner”. She said that he established the boundaries between flatmate/student/lecturer very clearly. She attended nearly every workshop with Mr C and Ms A or Ms E for the next three years and also had individual therapy sessions with Mr C for a year and a half. She described his behaviour as “above reproach”. There were never any sexual overtones or contact. She witnessed, on more than one occasion, women, including clients, seeking sexual contact with him. Ms G believed that the incident under investigation happened shortly after the break-up of his long-term relationship with Ms E. To her knowledge this was the only occasion that Mr C has had sexual intercourse with a client.

Ms E also provided a testimonial for Mr C. Ms E verified that she had known Mr C since June 1992 in a number of different contexts, initially at University and later as a co-facilitator of psycho-educational and personal growth workshops, and then as a partner in an intimate relationship. After she and Mr C terminated their relationship, by mutual agreement, they remained friends.

Ms E advised me that she could never describe Mr C as a predatory male and was not aware of him having sexual intercourse with a client on any other occasion. In her opinion it would be very easy for a woman to misread or misinterpret Mr C because of his soft, loving, and compassionate nature. If she were to encapsulate Mr C’s approach to workshop participants it would be that “his heart was bigger than his capacity for wisdom”. He has a huge capacity for compassion but in her estimation he was naïve in his expectation of how others would perceive this.

#### *Submission from Mr C’s lawyer*

Mr C’s lawyer submitted that Mr C had been “guilty of a most unfortunate error of judgement, even carelessness perhaps, but to elevate this to the serious matter of a breach of professional duty is harsh and may be unwarranted”. It was further submitted:



“This is not a case where [Mr C] failed to treat the interests of his client as paramount. There must also be some recognition that not all relationships are characterised by mutual autonomy and professional rules of conduct cannot always define the boundaries of propriety with precision in any given situation.”

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## **Response to Provisional Opinion**

Mr D was sent a copy of the ‘Information gathered’ section of the report. In response, Mr D advised me that he no longer wished to pursue his complaint, for personal reasons. However, he wished to clarify the following points:

- Mr C was fully aware of his relationship with Ms B when he had sex with her.
- Mr D telephoned Mr C the day Ms B told him she did not want to continue their relationship. They talked for about an hour but Mr C did not tell him about his sexual encounter with her.
- Mr D continued face-to-face counselling with Mr C until late January 1999.
- Mr D and Ms B attended a workshop in December 1998. Mr C could have denied him entry to the workshop but did not do so.
- Mr C continued to counsel Mr D for at least eight months after the event when he had ample opportunity to refuse to continue counselling him or refer him to another counsellor.
- Mr C was fully aware of the likely impact the news that he had sex with Ms B would have on Mr D as he had counselled him (Mr D) for many years.

## Independent advice to Commissioner

The following expert advice was obtained from an independent registered psychologist, Dr Fred Seymour:

“This matter was referred to me for my opinion on 17 January 2002. The matter essentially involves a complaint that [Mr C], Registered Psychologist, had a sexual encounter with [Ms B] during a period when he was engaged in counselling [Ms B] and [Mr D]. [Mr D] and [Ms B] were in a partner relationship. Furthermore, the complaint is that [Mr C] failed to promptly disclose to [Mr D] that he had had this sexual encounter, and that this omission constituted a breach of the trust that [Mr D] had in his counsellor. Further, the complaint is that in continuing to provide counselling to [Mr D], [Mr C] failed in his duty to declare a conflict of interest. There is also the matter that this sexual encounter occurred at a time when the parties were particularly vulnerable, [Ms B] having just had a termination of her pregnancy from [Mr D].

The evidence of [Ms B] contradicts the claim by [Mr D] that he and [Ms B], were in ‘couple counselling’. The evidence of [Mr C] appears to confirm that they were. The evidence of [Ms B] also claims that she did not receive formal counselling from [Mr C] following her termination and that this was more in the nature of a favour provided in friendship. It is not disputed that she was in individual counselling at other times.

[Mr C] acknowledges that both [Ms B] and [Mr D] had been his clients. He also acknowledges that a sexual encounter took place and that this was inappropriate. These matters then are not in dispute. He says that at the time of the sexual encounter he believed that the relationship between [Mr D] and [Ms B] had ended. He says that there was only one sexual encounter.

In providing this opinion I read the following documents:

- Letter of complaint from [Ms A] to the Commissioner
- Letter of complaint from [Mr D] to the Commissioner
- Record of interview with [Ms F] (wife of [Mr D])
- Record of interview with [Ms A]
- Record of interview with [Mr D]
- Record of interview with [Ms B]
- The Commissioner’s investigation letter to [Mr C]
- [Mr C’s] response to the Commissioner, including letters of reference from various individuals and copies of workshop advertisements
- Record of interview with [Ms E]
- Record of interview with [Ms G]

I am asked to give an opinion on a range of specific questions. I address these in turn as follows:

**Whether [Mr C] betrayed [Mr D's] trust in the therapeutic (professional sense) by having a sexual encounter with his partner [Ms B] while counselling [Mr D]?**

He did betray [Mr D's] trust, in having a sexual encounter with his partner. Such behaviour is improper on other grounds (see below), but in the context of this question, it represents a conflict of interest of significant proportions. Perhaps if there had been explicit prior agreement between all three parties for the sexual encounter to take place it would have been less of a 'conflict of interest'. But such circumstances are hard to imagine (and the behaviour would still be unethical in terms of the prohibitions in the Code of Ethics to which [Mr C] had an allegiance).

Having a sexual encounter with a client's partner would constitute a breach of trust whether or not that partner was also his client. In this case the partner was also his client. Furthermore, the situation was arguably worse in that [Mr C] was fully aware that the couple's relationship was under strain and that he had been counselling them in regard to this.

The basis for the above statements would seem self-evident. However, the relevant professional guidelines are also clear in these matters and are detailed below. [Mr C] also acknowledges that his behaviour was a breach of [Mr D's] trust.

**Whether [Mr C] had a professional obligation to disclose the sexual encounter to [Mr D]?**

[Mr C] argues that he had an obligation to his client, [Ms B], to protect her confidentiality (about the sexual encounter). He says that he thought it appropriate for [Ms B], or the two of them together, to tell [Mr D], eventually. That this did not occur for a considerable period of time constitutes an abrogation of his responsibility – which he surely had.

It was predictable that [Mr D] would feel betrayed by [Mr C]. It was also predictable that [Mr C] would have difficulty in providing counselling when he was carrying such a significant secret. It was not appropriate for him to continue counselling in such circumstances given his obligations to his client's ([Mr D]) welfare.

**Whether [Mr C] should have disclosed a conflict of interest to [Ms B] and/or [Mr D] and, if so, what would have been appropriate for [Mr C] to have done in the circumstances?**

It is an ethical breach to have sexual relations with a client (see below). Such behaviour also represents a conflict of interest, in terms of both of his clients. Conflicts of interest should be declared.

Once this behaviour had occurred, [Mr C] should have immediately disqualified himself from further counselling to either [Mr D] or [Ms B]. He should instead have provided appropriate referral of both to other practitioners. This should have occurred whether or not he disclosed his behaviour to [Mr D] at the time, although it may have been difficult to arrange an effective referral without disclosing the reasons.

If one accepts [Mr C's] logic that he needed to wait for [Ms B] to inform [Mr D] of the event (to protect her confidentiality), he could have reduced the risk of harm to [Mr D] by not continuing his counselling of him.

### **What professional and ethical standards apply in this situation?**

[Mr C] had advertised his services (see brochures) with his academic qualification (M.Soc.Sc.), his membership of NZ Psychological Society, and his status as a 'Registered Psychologist'. His membership of NZPsS obliges him to comply with the Code of Ethics of the NZPsS (1986), and the Psychologists Board endorses this same code as the appropriate standard for professional practice for Registered Psychologists.

[Mr C] ... was a Registered Psychologist at the time of the events leading to this complaint. ...

### **Did [Mr C] breach these standards?**

As discussed above, he did breach the standards of the NZPsS Code of Ethics. Specifically he breached the following:

- '1.4 The welfare of research subjects, students and clients takes precedence over the self-interest of psychologists. ...'
- '2.4 Psychologists act in such a way that they are able to justify their professional decisions and activities in the light of current psychological knowledge and standards of practice.'
- '5 Psychologists do not exploit their professional relationships with clients. ...'
- '5.1 Psychologists do not condone or engage in sexual harassment, which is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient. Sexual relations with clients are unethical.'
- '5.2 Informed consent includes: c) being informed in advance of important aspects of the psychologist-client relationship that might influence that client's decision to enter that relationship, for example. ...'

- ‘5.4 Psychologists terminate a clinical or consulting relationship where it is clear that the client is not benefiting from it. When appropriate they help the client find alternative sources of assistance.’

**Comments on [Mr C’s] counselling techniques (if possible)**

I will not comment on this as I do not have sufficient information to know the detail of his ‘techniques’.

**How appropriate is it to conduct counselling in the bedroom?**

It is not appropriate.

**Should you counsel both parties in a relationship?**

This depends on several things. If the counselling is, from the outset, for the couple relationship, it may be appropriate to see the parties separately as part of that work but with the consent of them both. If counselling begins with one party and is for their individual issues, then it may be difficult to maintain objectivity and to protect each party’s rights to confidentiality, if counselling commences with their partner. If a practitioner is to proceed with seeing both parties to a relationship, it should be done with extreme caution and with the consent of them both.

**Whether it is appropriate to counsel students/work colleagues/boarders?**

The existing Code of Ethics is not explicit on conflicts of interest (apart from the general statement reproduced above in 5.2c). However, in the clinical psychology training programme of which I am Director, it is considered inappropriate for staff to provide counselling to students (with or without financial gain). Indeed this is notified to students in course outlines. I cannot comment on what was accepted or not at [the] University.

It is also generally considered inappropriate to counsel work colleagues or boarders. Both of these circumstances would be described in the relevant literature as representing ‘dual relationships’. These are explicitly prohibited in the codes of ethics in many comparable overseas professional bodies.

**Conclusions**

1. To answer your first question I do not consider that [Mr C] ‘provided [Ms B] and [Mr D] with services which met appropriate professional standards’ for the reasons given above.
2. There is a suggestion in the complaints and some of the interviews that the services provided to other clients of [Mr C] may also fall short of adequate professional standards. He claims this to be a one-off breach. I have confined my comments to the particulars of this complaint but note that there may be reason for a wider concern.

3. He is currently working in a more traditional setting, is receiving regular supervision from a Registered Psychologist and, by his account, has less access to female clients. These factors may reduce the risk of further complaints of breaches of ethical and professional standards.”
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## **Code of Health and Disability Services Consumers’ Rights**

The following Right in the Code of Health and Disability Services Consumers’ Rights is applicable to this complaint:

### *RIGHT 4*

#### *Right to Services of an Appropriate Standard*

...

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

### **Advice from the Psychologists Board on your Responsibilities as a Registered Psychologist**

#### **Introduction**

This pamphlet has been produced to remind Registered Psychologists of the importance of the Psychologists Act 1981 and the New Zealand Psychological Society Code of Ethics.

The NZPsS Code of Ethics has been adopted by the Psychologists Board as the ethical standard by which all Registered Psychologists should conduct themselves.

...

As a registered psychologist you must make sure that your practice is consistent with the New Zealand Psychological Society Code of Ethics, and with the Psychologists Act 1981.

...

## Code of Ethics 1986 New Zealand Psychological Society Incorporated

...

### 1 Responsibility

**Psychologists are expected to maintain professional objectivity and integrity; to apply professional knowledge and skills to all psychological work undertaken; to support actively the objective of advancing psychological knowledge; and to respect the cultural environment in which they work.**

1.3 While taking account of their obligations under the law, psychologists who are practitioners hold the interests and welfare of their clients to be of primary importance. They recognise that, since psychological practices so directly and intensely affect clients, these should be used only in the best interest of clients.

1.4 The welfare of research subjects, students and clients takes precedence over the self-interest of psychologists. ...

### 5 Professional relations

**Psychologists do not exploit their professional relationships with clients, supervisors, students, employees, research participants, colleagues in psychology or other professions. They ensure that clients are fully informed of all aspects of the services offered and obtain their informed consent to participate and remain in interventions.**

5.1 Psychologists do not condone or engage in sexual harassment, which is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature. Sexual relations with clients are unethical.

5.2 Informed consent includes: c) being informed in advance of important aspects of the psychologist-client relationship that might influence that client's decision to enter that relationship.

...

5.4 Psychologists terminate a clinical or consulting relationship where it is clear that the client is not benefiting from it. When appropriate they help the client find alternative sources of assistance.

## **Opinion: Breach**

### **Right 4(2)**

In my opinion Mr C breached Right 4(2) of the Code of Health and Disability Services Consumers' Rights.

Ms B and Mr D, as clients of Mr C, had the right to psychological services that met appropriate ethical standards. The ethical standard expected of a registered psychologist is stated by the Psychological Association and accepted by the New Zealand Psychologists Board. Mr C as a registered psychologist had a duty to provide services that met these standards. In my opinion he failed to do so.

#### *Sexual encounter*

The Code of Ethics of the Psychological Society is quite specific: sexual relations with a client are unethical. Psychology practices so directly and intensely affect the client that the psychologist has an ethical obligation to protect the welfare of those seeking psychological services. When Mr C had sexual intercourse with Ms B, he breached the ethical standards in clauses 1.3, 1.4 and 5.1 of the Code of Ethics.

Mr C acknowledged that he had sexual intercourse with Ms B. In his defence Mr C said that the encounter happened once and was unplanned and he understood that Ms B's relationship with Mr D was over. In my opinion the number of times or the fact that it was unplanned or that Ms B no longer had a relationship with Mr D is irrelevant. Mr C was in a position of trust in relation to Mr D, and betrayed that trust. I have carefully reviewed the information available to me and I am unable to identify any circumstances that would justify Mr C's defence.

Accordingly, Mr C failed to provide psychological services that met ethical standards, and breached Right 4(2) of the Code.

#### *Client's vulnerability*

Mr C had an ethical obligation to protect Ms B's welfare at a time of vulnerability and to place her interests above his own. He failed to do so.

When Mr C had sexual intercourse with Ms B he behaved unethically. He knew Ms B was particularly vulnerable. She had left her husband, had undergone a termination of pregnancy, and her relationship with Mr D was under strain.

In taking advantage of a vulnerable client, Mr C failed to meet the ethical standards expected of a registered psychologist and breached Right 4(2) of the Code.

#### *Betrayal of trust*

In having a sexual relationship with the partner of a client (Mr D), Mr C also betrayed the trust of his client. Mr D should have been able to trust that Mr C place his client's welfare first. Instead, Mr C placed his own interests first. In doing so, Mr C breached clause 1.3 of the Psychologists Code of Ethics.



Mr C failed to inform Mr D about his encounter with Ms B. There is evidence that he urged her to secrecy. Mr C said that they discussed how Mr D was to be informed, but Mr D was not informed for eight months. In the meantime, Mr C failed to take positive steps to ensure Mr D was informed. I agree with my expert advisor that leaving the decision to Ms B was an abdication of his responsibility to Mr D. Clearly Mr C had a duty to disclose what had happened. I do not accept his explanation for the delay.

I reject the submission of Mr C's lawyer that "this is not a case where [Mr C] failed to treat the interests of his client as paramount". In my opinion Mr C's behaviour towards his client, Mr D, was characterised by sustained efforts to protect himself, rather than his client.

In these circumstances, Mr C failed to provide psychological services that met ethical standards, and breached Right 4(2) of the Code.

#### *Conflict of interests*

Mr C had a duty to hold his clients' interests and welfare as his primary consideration. He allowed Ms B's and Mr D's interests to conflict and failed to refer Mr D to another counsellor.

My independent registered psychologist said that individual counselling of both parties in a relationship should only be entered into cautiously because there is a heightened potential for conflict. He advised that it should be contemplated with the agreement of those involved and only after all the issues have been identified. Clearly Mr D and Ms B were clients of Mr C before they entered into a relationship. However, Mr D was not aware that Mr C had been sexually intimate with his partner, Ms B, when he continued counselling with Mr C. In my view this was important information likely to influence Mr D's decision to continue therapy and should have been disclosed.

Mr C said that he continued to counsel Mr D until Ms B made her decision when to disclose their secret. I am not persuaded by Mr C's attempt to invoke his duty of confidentiality to justify his non-disclosure for several months. In any event, the situation was of Mr C's making, and the obvious solution was to terminate his professional relationship with Mr D immediately.

Mr C was privy to confidential and personal information about Ms B's and Mr D's relationship, some of which was obtained during counselling. Mr C understood the relationship was in trouble, and Mr D admitted disclosing his feelings about Ms B during counselling sessions. Mr C's intimacy with Ms B meant that he was unable to counsel Mr D with objectivity.

As a registered psychologist Mr C had an obligation to provide services that met professional and ethical standards. Mr C clearly failed to meet those standards, and breached Right 4(2) of the Code.

## Action

I recommend that Mr C take the following action:

- Review his practice and seek ongoing supervision in light of this report.
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## Further actions

- In accordance with section 45(f) of the Health and Disability Commissioner Act 1994, I will refer this matter to the Director of Proceedings to determine whether any further action should be taken.
  - A copy of this opinion will be sent to the New Zealand Psychologists Board.
  - A copy of this opinion with identifying features removed will be sent to the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists, and placed on the Health and Disability Commissioner website, [www.hdc.org.nz](http://www.hdc.org.nz), for educational purposes.
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## Addendum

On 12 February 2003 the New Zealand Psychologists Board found Mr C guilty of professional misconduct and imposed the following penalty:

1. Mr C's name be removed from the register of psychologists, for an indefinite period.
2. Mr C pay approximately 40% of any costs and expenses incidental to the inquiry by the Board. (The exact amount has yet to be determined.)
3. Mr C's name and details of the case, excluding complainants, will be published. The Board is still determining which media would be appropriate.