

Walking a tightrope: A balancing act by school counsellors

Nigel Pizzini, Helen Gremillion, and Tanya Newman

Abstract

When clients report harm or abuse to a counsellor and the threshold of “imminent harm” is not met, the counsellor faces potentially competing ethical imperatives. While reporting or informing others can bring safety, it can also harm relationships, including the therapeutic alliance. Focussing on the context of school counselling, this article makes a case for the relative autonomy of counsellors if they wish to consult with other professionals to help clarify their ethical, moral, and legal obligations. We argue that counsellors need not inform clients that such consultation has occurred. In addition, this article explores language that preserves the therapeutic relationship and advocates for a collaborative response to harm reduction that wherever possible prioritises client choice and agency around matters of disclosure.

Key Words:

school counselling, ethics, harm reduction, communities of care, disclosure

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“I can’t do right by everyone!” A school counsellor expresses her conflicted and distressed despair in supervision. Another female client had disclosed what sounded like a sexual assault and pleaded with the counsellor not to tell anyone. As counsellors working with young people, when a teenaged client is adamantly opposed to any action outside the privacy of the counsellor-client relationship, we can find ourselves needing to navigate competing ethical priorities. Freed from the requirements of mandatory reporting (Ludbrook, 2012) counsellors can face a seemingly impossible choice between respecting the client’s right to privacy (NZAC, 2020, Section 6.1.a.) and self-determination (NZAC, 2020, 3.3), thereby maintaining a spirit of partnership (NZAC, 2020, Section 3.2); or, in the interests of safety and protection, overriding confidentiality and client concerns by reporting the matter to the police or Oranga Tamariki (NZAC, 2020, Sections 4.5; 5.1.a., b.; 6.2.a., c., d.) and, in the process, risking the loss of the client’s trust and willingness to engage with us. The counsellor could be seen as avoiding doing harm either way (NZAC, 2020, Section 4.2) Section 6.2.c. of the Code of Ethics (NZAC, 2020) indicates that counsellors are obligated to inform authorities in situations of imminent harm, even if doing so goes against the wishes of the client. But when the threshold of imminent harm is not met, counsellors can find themselves walking a tightrope in their efforts to support harm reduction for clients going forward.

School counsellors hear about clients’ experiences of harm on a regular basis. Often, imminent harm is no longer present: the event/s may have occurred days, months, or even years in the past. Frequently, the client is fearful about parental reactions, judgement from peers, or the potentially stressful process of reporting and pursuing the perpetrator. Disclosure of harm outside the counselling relationship can elicit further discomfort and trauma. A school counsellor brought such a situation – involving a recent incident but not one of imminent harm – to a supervision conversation. The counsellor was concerned to ensure that they attended to everything and still preserved their relationship with the client.

The counsellor found themselves wrestling with what to do:

Do I uphold her request and keep this disclosure within our work together? Or do I risk losing her trust and respect by insisting that I notify the police or stressing the value of disclosing to friends or whānau to gain their support? Either way, someone is going to be upset with me or criticise my actions.

The counsellor was confused by the need to consider the potentially competing agendas and expectations of various stakeholders (Hughes, 2011), which can often come into play for school counsellors. Foremost among these stakeholders is the client, who has a right to respect, partnership, autonomy, personal integrity, and confidentiality (NZAC, 2020). According to the professional ethics of Aotearoa New Zealand counsellors, in most cases clients' wishes and concerns are of the utmost importance and are central to the counsellor's overarching principle of avoiding doing harm (NZAC, 2020). However, parents may feel they should be informed about what occurs in the life of "their teen" or hold a cultural position that extends the notion of "client" to include whānau (Hawkins & Monk, 1995), and may feel a responsibility or desire to be included in key counselling conversations that take place with their child¹. School principals and other senior leaders in schools can also hold views not only about being informed when harm to students has occurred, but also about what actions should be taken. However, schools' child protection policies often place responsibility for managing student risks with the school counsellor, as the "Designated Person" (Children's Act, 2014). Counsellors may also feel pressure to include or inform the Police or other agencies, such as Oranga Tamariki, as part of community safety expectations. Additionally, school counsellors may have their own ideas about what should be done, in terms of seeking the best interests of the client, while also ensuring they have followed legal and ethical requirements, including enlisting the support of the client's friends or whānau where possible.

The array of potentially competing responsibilities faced by the school counsellor can be summarised in the following obligations: to the client's choices and agency (their right to privacy, autonomy, respect, partnership, and confidentiality); to the client's safety and emotional wellbeing going forward; to the school community and beyond (for example, helping to prevent a perpetrator from harming others); to the wider community (for example, taking action to increase the safety of young people at a community level); and to duties and responsibilities determined by law (e.g.

Children’s Act, 2014, Oranga Tamariki Act, 1989, Privacy Act, 1993, & Health and Safety at Work Act, 2015). There are often various pathways a counsellor could take that would all be consistent with the NZAC Code of Ethics (NZAC, 2020).

The supervision conversation cited at the start of this article occurred with the main author in his supervision practice and motivated the present enquiry. After reviewing relevant legal and ethical requirements and recommendations, we put forward the idea that counsellors can, without identifying clients, seek guidance and information from authorities and others, such as Police and Oranga Tamariki, to navigate the pressures and responsibilities they hold, without an obligation to inform clients that they are doing so. To articulate this idea, we introduce the concept of the “relative autonomy” of the counsellor in relation to their clients. We then discuss collaborative approaches to informing others about harm when doing so could be helpful or is required. We focus on ways of speaking with clients about the value or importance of such a step that avoid a perceived binary choice between “keep it private and maintain confidentiality” or “disclose, and risk compromising the therapeutic relationship”. This article thus addresses the task of walking a tightrope between preserving the therapeutic relationship and also reducing harm.

Current legal and ethical requirements

Hughes (2011) characterises the NZAC Code of Ethics (2020) as giving “the client the privileged voice over that of all others, except the voice of the law, and when serious concerns for safety are present” (p. 116). The current state of New Zealand law does not mandate counsellors to report harm or abuse (Ludbrook, 2012).

Rather, the NZAC Code of Ethics compels us as counsellors to make a professional judgement to determine how at-risk a particular client may be and how competent that client is to make decisions about their own wellbeing (Agee, 2011a).

In his legal handbook for counsellors, Ludbrook (2012) specifies some circumstances that may compel a counsellor to make a notification. For instance, independent counsellors “receiving [Oranga Tamariki] referrals should pass on to child protection social workers any concerns they have as to the safety of any child...” (p. 246).

He goes further, noting:

... a counsellor with concerns that a child has been or is likely to be harmed, ill-treated, abused, neglected or deprived has *an ethical duty* to pass this information on to [Oranga Tamariki] even if the information is incomplete or cannot be verified. (Ludbrook, 2012, p. 246).

Oranga Tamariki advises any adult with worries or concerns about a young person's safety to call them or the police (Oranga Tamariki, 2020). Such a call is not a "notification" but a consultation and, as it does not require disclosing the name or other identifying details about the young person, does not require the young person's consent as it does not constitute a breach of confidentiality (Ludbrook, 2012). We return to this topic below, in relation to counsellors' responsibilities, specifically.

Meanwhile, schools have a legal obligation to provide a safe physical and emotional environment for students. Guideline 5 of the National Administration Guidelines (Ministry of Education, 2017) requires schools to have policies and practices in place to ensure that all students are safe from physical or emotional abuse. In the context of these requirements, schools are legally bound to develop and follow a child protection policy and disclosure protocols (NZ Government, 2014), which implicate school counsellors. The Ministry of Education (MoE) positions the school counsellor as the person "responsible for ensuring the procedure for reporting child abuse is effective and timely" (Ministry of Education, 2017, p. 42). MoE advice on this matter extends to all school community members while clearly indicating that the school counsellor is responsible for assessing the situation, including fulfilling any notification requirements. Specifically, Ministry guidelines state, "Any suspicion of risk or harm should be made known to the guidance counsellor straight away so *they can then assess the level of risk and whether anyone else needs to be informed to keep the student safe.*" (Ministry of Education, 2017, p. 44).

In a similar vein, a recent publication from Oranga Tamariki advises that community members should approach them with concerns they can then assess:

Even if you're not entirely sure about what is happening in a child's life, it's your responsibility to think of the child's safety and the law tells us this must always be your first consideration. You're not interfering if you're acting with professional integrity and, even as a member of your community, it's your role to help keep children safe. Trust your instincts and talk through your concerns with us – it's our job to work out whether these concerns might indicate abuse. (Oranga Tamariki, 2020, p. 36).

We now turn to a discussion of the assessment process itself, in the context of school counselling. Ludbrook (2012) cautions school counsellors to “proceed with considerable care” (p. 307) if a client discloses harm such as physical or sexual abuse. Care is first evidenced in the initial conversation about the event/s that occurred. Ludbrook outlines some important ground rules that should be observed: firstly, to believe the young person and take their complaint seriously, listen in an interested but matter-of-fact way (not reactive) with a focus on the young person’s feelings rather than probing for details of the incident, and record what is said in the young person’s own words (see Ludbrook, 2012, p. 308). Ludbrook’s positions on confidentiality and reporting are discussed below.

Oranga Tamariki has issued clear guidance on responding to suspected abuse or other concerns under the umbrella of the Children’s Action Plan (see Oranga Tamariki, 2015, pp. 27–29) and Working Together (see Oranga Tamariki, 2020, pp. 40–43). These guidelines and recommendations strongly advocate for consultation with and inclusion of Oranga Tamariki or the Police. When imminent harm is not applicable it still may be considered wise to err on the side of caution and advise these authorities about the client’s experience, in order to avoid ongoing potential harm. However, there is also a case to be made to maintain a stance of privacy and contain the information within the therapeutic relationship (Agee, 2011a). Client confidentiality lies at the heart of client-counsellor relationships and is a key component in the development of trust (Hughes, 2011; Hamilton & Hopegood, 1999). It is therefore central to the therapeutic relationship and to the effectiveness of any counselling process (Agee, 2011b). Confidentiality supports clients’ willingness to disclose. This issue is amplified in a school context where the counsellor’s reputation as trustworthy or not can impact students’ willingness to meet with them (Hawkins & Monk, 1995).

There is a body of evidence that many minors, particularly adolescents, are less likely to seek professional help if they fear their parents may be informed of sensitive or embarrassing health or lifestyle issues. The concern is that, if they are apprehensive about their confidentiality being preserved, they will not seek help at all or will withhold information from the counsellor or other professional. There is an allied risk that breaching the confidentiality of a child may increase the risk of harm (Ludbrook, 2012, p. 151).

Ludbrook (2012) writes about the capability of a “child” (legally defined as under 18 years of age [NZ Government, 2014]) to direct a counsellor to uphold confidentiality: “If a child is *Gillick*-competent², his or her confidentiality should be preserved unless there are compelling reasons to believe that failure to breach confidentiality is likely to present a real risk to the child’s safety, health or wellbeing” (p. 151). If, despite the young person’s protest, breaching their confidence is being considered, he lays out a possible procedure (see Ludbrook, 2012, pp. 256–257). Ludbrook strongly advocates for a collaborative approach:

If, in the course of the counselling process, the counsellor becomes aware of significant risks to the child, these risks and possible ways of avoiding, minimising, or dealing with them should be discussed with the child client. If the counsellor has gained the confidence and trust of the child, it should be possible for the counsellor and child to work together towards some mutually agreeable way forward. If that proves impossible, the counsellor has to undertake a balancing exercise, taking account of the child’s right to confidentiality on the one hand and the need to protect the child on the other. (Ludbrook, 2012, p. 149).

Here Ludbrook is referring to the conditions of the “tightrope” we are addressing in this article. Ludbrook acknowledges the complexities of this work, and cautions counsellors to consider carefully the possible effects of their decisions

...in every case where the counsellor forms the view that a child has suffered or may suffer harm, abuse or neglect the matter should be reported to the authorities. Reporting the matter may have the effect that the child is removed from the home and precipitate a personal and family crisis. There may be other ways in which the situation can be addressed which do not involve breaching the child’s confidentiality but which nevertheless will ensure his or her future protection. (Ludbrook, 2012, p. 150).

It is clear that Ludbrook's guidance requires counsellors to understand their clients' concerns about potential impacts of a disclosure beyond the counselling setting that is being considered. If those concerns persist and advocating for widening the circle of knowing presents more harm or distress, in order for any reporting to occur the criterion and high threshold of imminent harm is required by the NZAC Code of Ethics under the clause "exceptions to confidentiality" (NZAC, 2020, 6.2.c.). We now move on to consider the balancing act required when that threshold is not met.

A balancing act by school counsellors

In an ideal world, the school counsellor and client enter into a collaborative agreement as to whom (if anyone) to include in knowing about situations of harm in the interest of client safety and support; and, if needed, for the purpose of any potential legal action. Consulting with external professionals for advice or guidance may need to happen along the way. The ethical tension the school counsellor expressed in the opening of this article (within a supervision conversation) arose when they were unable to achieve a collaborative agreement – the client remained uncomfortable with the counsellor attempting to establish a community of care (Madigan & Epston, 1995) and with the idea of consulting Oranga Tamariki or the Police. And yet, the counsellor was unsure of how best to support the client.

The supervision conversation concluded that it is the counsellor's prerogative to attend to their own need for information and guidance via consultation and that this need stands as separate from any collaborative agreement with the client. A central part of this understanding is the concept of counsellors' relative autonomy from clients. Just as it is the client's prerogative to decide whether or not to disclose, the counsellor can legitimately claim a position of relative autonomy from their client when seeking advice from other professionals in a way that protects client identity.

In the case being discussed, the school counsellor and supervisor agreed that the counsellor did not need to share everything they did with the client, nor seek their client's consent for obtaining professional advice (as distinct from a formal referral or notification). We refer the reader to the advice from Oranga Tamariki and Ludbrook, cited above: consulting with Oranga Tamariki or the Police about a client's situation of harm, when identifying details are not disclosed, does not constitute a breach of confidentiality and does not require the client's consent. This advice is addressed to "any adult", and we suggest it applies to counsellors as well. Relative autonomy means we need not trouble a client by telling them of our need

to consult with external parties, if doing so could potentially give rise to a rupture in the therapeutic relationship, or the perception that confidentiality has been breached (even when it has not been).

The understanding reached was that when a client does not authorise the counsellor to disclose to anyone, and the circumstances do not meet the threshold of imminent harm, the priority can rightfully be placed on *maintaining the therapeutic relationship by upholding confidentiality*. However, this conclusion does not prohibit a counsellor's own process of consulting to help ensure they have met all their "responsible caring" obligations (NZAC, 2020, Section 3.4). We argue that such consultation is about the counsellor reviewing or clarifying their obligations and options and backing themselves to be confident that they are doing everything they need to do.

Collaborative approaches to informing others, and the importance of language

Having established the need for relative autonomy for the counsellor, we now explore collaborative ways in which counsellors can also seek to encourage clients that disclosing harm to others could be beneficial for their wellbeing. Here we are referring primarily to cases where imminent harm is not evident (although further below we briefly review supportive approaches to informing clients when disclosure must occur). We suggest that it is helpful for counsellors to avoid polarising their options into either keeping it private to maintain confidentiality or disclosing even if disclosure compromises the therapeutic relationship. Considering together with clients the value of informing family or whānau, the possibility of referral, and/or the option of seeking advice from external parties such as Oranga Tamariki allows a collaborative agreement to occur around such matters within the safety and context of the therapeutic relationship, with the aim of providing support and care for the client. The language used when doing so is an important consideration.

How something is said or storied contributes significantly to its meaning and subsequent impact (Monk, 1997; Freedman & Combs, 1996). Moreover, the meaning a person attributes to events significantly shapes their conclusions and behaviour (White & Epston, 1990). It follows that careful attention should be given to the language used to convey to a client any suggestion of needing to speak beyond or outside of the therapeutic relationship.

One of the authors speaks with clients about such issues this way:

I'm a bit like a GP (general practitioner). If there's a special issue to consider we need to make a referral or consult together with someone else to get the best care for you. I need to make sure I am looking after you as best I can.

The client's willing agreement would be required to proceed.

Another way such proposed action can be storied is as follows:

In this moment I need to do the best thing for you. You deserve the best... and I'm feeling a bit unsure. I need to make sure we are doing all that we can and that you're going to be OK, so I would like to talk with (OT/ Police/DHB Sexual Assault service)? They are our "go to" people and can advise us. Would you like to be part of that call or be here while I do that?

In the interests of transparency and client confidentiality it should be clarified that a client's identity need not be revealed for such a conversation to occur.

As a clear expression of the limits of confidentiality, school counsellors can inform students and parents alike at the start of counselling work that they will call home if the student is unsafe. The counsellor can clarify that such a call would occur only to help ensure safety and after discussion with the student. The authors (two of whom are school counsellors) report that, having followed this process, when a student's home has had to be called, they have not encountered a problem.

When suggesting to clients that disclosure to whānau members and/or friends might be supportive for their wellbeing, language that focuses on the significance and complexities of difficult problems and suggests the need for back-up or the value of supportive teammates encourages a broadly collaborative (i.e., non-individualised) approach to care (Pizzini & Gremillion, 2017). For example, the counsellor could say:

It seems that this is a really difficult situation/problem, one best suited to a team, so that you have others alongside you to support you and have your back. Who do you feel comfortable with or confident in to invite onto a support team?

Language is also important to consider when the threshold of imminent harm or seriousness compels a counsellor to make a report or notification, despite the client maintaining an unwillingness for such a disclosure. In such situations, regardless

of client concern, a supportive statement could be: “Thank you for telling me about that; now, I need to talk to someone so we can make sure you’re safe” (Oranga Tamariki, 2020, p. 40). We point out that the language modelled here is not apologetic or framed as “I need to break confidentiality”. Rather, the meaning conveyed is “I need to get the best support for you”.

Conclusion

School counsellors can find themselves in difficult situations, navigating the anxiety and concerns of young people who have experienced harm, maintaining client safety, preserving the therapeutic relationship, upholding privacy and confidentiality, as well as their credibility, in a school environment, while pressured by parental concerns and wishes to be informed. The best-case scenario is that the counsellor avoids an ethical challenge by arriving at a collaborative agreement with the client to involve appropriate others in their care and journey towards wellness.

When it comes to counsellors seeking their own support or clarity about options, consulting beyond the private space of the client-counsellor relationship may well be helpful and yet may also give rise to significant concerns for clients. This article introduces the concept of counsellors having relative autonomy from their clients when considering possible courses of action. Counsellors may find it supportive for their own process to discuss a client situation in ways that do not identify the client with professionals within, for example, Oranga Tamariki or the Police. The authors argue that such consultations do not constitute “breaking confidentiality” and therefore do not require the consent or prior knowledge of the client, especially if that would negatively impact the therapeutic alliance.

Deliberations about when to involve other professionals are sometimes fraught and unclear. There is rarely a single “right” response; rather, there are often various considerations, perspectives, and elements of risk and resilience to consider, and a multitude of circumstances to juggle and navigate. Supervision is the ideal context to examine and explore those potentially competing interests and sometimes conflicting priorities, and can contribute to a more comprehensive understanding of NZAC professional ethics. Whatever actions or non-actions one decides in supervision, others will think they could have or should have been something else. And we may well have lingering doubts of our own about whether we did the right thing or did our best for a client. In many ways it may well be true that you “can’t do right by everyone”.

Notes

1. We acknowledge the importance of the topic of whānau involvement within the context of Te Tiriti in Aotearoa/New Zealand. Exploring it in ways that would do justice to the varying contexts and positions of Māori young people and their whānau is beyond the scope of this short article.
2. The Gillick principle states that children can make their own decisions when they have sufficient maturity and understanding to weigh the risks and consequences of the particular decision. The principle is part of English common law, which also applies in New Zealand. It was formulated by the English House of Lords in the 1985 decision from which it takes its name (Ludbrook, 2012).

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