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Alfred Allan
Edith Cowan University

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**The Profession's Role in Helping Psychologists Balance Society's Interests with their
Clients' Interests**

Alfred Allan

Edith Cowan University, Perth, Western Australia

a.allan@ecu.edu.au

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Abstract

Objective

Psychologists find it difficult to balance their clients' and society's interests when these interests differ from each other, such as when their clients pose a risk of harm to others. Society's increasing preoccupation with harm make their task even more difficult. The first aim with this paper is to determine the reactions of those who make, enforce and use law to address society's concerns and how they impact on psychologists. The second aim is to propose how the profession can assist psychologists deal with the competing demands prompted by these reactions.

Method

A legal-ethical analysis was used to identify the reaction of governments, the judiciary and investigators, followed by a proposal setting out how the profession could assist psychologists respond to the reaction of these entities.

Results

Society sets high privacy standards, but has paradoxically simultaneously been weakening its protection of aspects of individuals' privacy. Governments, the judiciary and investigators for instance expects psychologists to play a more active role in protecting individuals, property and the public from harm. This makes it difficult for psychologists to determine how to balance their clients' and society's interests whilst maintaining their trust. The situation requires the profession to help psychologists manage these challenges.

Conclusions

The profession and psychologists run the risks of losing the trust of society and/or the public or sections thereof if they do not find the appropriate balance between these societal expectations and their clients' autonomy and privacy. The profession can and should assist psychologists manage this challenge.

Keywords: assessment, ethics, harm, law, privacy, risk,

Key Points

What is already known about this topic?

- 1 Psychologists have a duty to provide psychological services that balance their clients' and society's interests.
- 2 Psychologists find this difficult when their clients' and society's interests differ, such as when their clients pose a risk of harm to others.
- 3 Psychologists risk losing the trust of society, or their clients, or both if they fail to balance their interests.

What this topic adds

- 1 Society has become more concerned about harm since the turn of the century.
- 2 The reaction of those who make, enforce and apply law to these concerns creates challenges to psychologists.
- 3 The profession can assist psychologists deal with these challenges.

The Profession's Role in Helping Psychologists Balance Society's Interests with their Clients' Interests

Psychologists have an ethical obligation to provide psychological services that balance their clients' and society's interests whilst maintaining their trust (Allan, 2018; MacDonald, 1995; Parsons, 1968). Psychologists, however, find it difficult to do this when their clients' and society's interests differ, such as when their clients pose a risk of harm to others (e.g., Felthouse, 2001). The core problem facing psychologists is the expectation that they must disclose clients' information, which they feel will violate their clients' right of autonomy and privacy (e.g., Kämpf, McSherry, Thomas, & Abrahams, 2008). Psychologists have wrestled with these ethical dilemmas for a long time (e.g., Felthouse, 2001), but society's increasing preoccupation with harm since the turn of the century has made their task even more difficult. My aim is to highlight some of the reasons for society's concern about harm and to conduct a legal-ethical analysis of how those who make law (governments), enforce it (judiciary) and investigate risk of harm (investigators such as lawyers, police, government employees and psychologists who undertake forensic investigations) reacted to society's concerns about harm. I will then propose how the profession can assist psychologists deal with the current demands placed on them.

Concerns About Harm in the 21st Century

There are ideological (see Aolain, 2009) and psychological (e.g., due to concept creep, Haslam, 2016) drivers behind society's concerns about harm, but my focus in this article is on recent international and national developments. They include the violation of people's privacy in the digital age (e.g., DeVries, 2003); or harm caused by perpetrators of violence in public and other settings such as hospitals, workplaces, and education facilities (see Bird, 2008) or caused by incompetent and unethical health practitioners (e.g., Finlay, 2016; Inquest

into the deaths and fire at the Quakers Hills Nursing Home, 2015; Thomas, 2007). Other relevant reasons include recognition of systemic harm (Daly, 2014; Wright, 2017) in Australia (Royal Commission into Aged Care Quality and Safety, 2018; Royal Commission into Institutional Responses to Child Sexual Abuse, 2017) and other countries (e.g. Canada; Gladu, 2017; National inquiry into missing and murdered Indigenous women and girls, 2017).

Governments' Reaction

Governments are primarily responsible for the protection of people in their jurisdiction and have several powers to achieve this. The Australian Federal government has powers to investigate that include appointing Royal Commissions to investigate allegations of harm (Royal Commissions Act, 1902), make executive decisions (Barker, 2105) and to legislate (see Pound, 1908). Governments have since the last quarter of the 20th century taken the protection of the private information seriously and in Australia the Privacy Act (1988) sets the benchmark in this regard. Australian (e.g., Privacy Amendment [Enhancing Privacy Protection] Act, 2012) and other governments (e.g., the European General Data Protection Regulation [GDPR], 2016) have in this century been making their privacy legislation even stricter to protect the digital privacy of their citizens. Paradoxically legislators across the world have simultaneously passed or amended legislation to give investigators unprecedented access to private information if necessary to prevent other forms of harm (see Privacy Commissioner of Canada, 2009), and three of them are of particular importance in this article.

First, countries passed security legislation (e.g., the United States' Patriot Act, 2001) or amended current legislation (e.g., Australia's Telecommunications [Interception and Access]

Act, 1979) that gives investigators wide-ranging powers to collect and share private information when investigating serious criminal and terrorist activities (Rule, 2007). The covert surveillance provisions in these Acts, for instance, allow investigators to record conversations between suspects and other people. These suspects might be clients of psychologists as perpetrators of serious harm often have serious mental illnesses (Duwe, 2007) that they receive treatment for (e.g., Huggler, 2015). Investigators can therefore covertly record psychologists' sessions with clients without their knowledge.

Second, the Federal government amended the Privacy Act (1988) in response to its security concerns (see Privacy Amendment [Enhancing Privacy Protection] Act, 2012) but in this process made the already complex Act, (see Allan & Allan, 2016) more difficult for psychologists to apply. This Act restricts the information psychologists can collect to what "is reasonably necessary for, or directly related to" (Principle 3) the services they provide (primary purpose). It further prohibits the use or disclosure of such information for another purpose (the secondary purpose) without clients' consent except in some well-defined situations.

Psychologists must for instance disclose information when there is a legal obligation to do so and the best known example of that amongst psychologists is legal provisions that require them to disclose suspected sexual abuse (see section (s)27 of the Children and Young Persons [Care and Protection] Act, 1998 in New South Wales [NSW] as an example). Principle 3 of the Privacy Act (1988) in other instances gives psychologists a discretion to disclose information, and they may therefore disclose information if they form a reasonable belief that it is necessary for law enforcement related activities conducted by enforcement bodies (clause 6[2]). Principle 3, read with s16A of the Privacy Act (1988), also says that they may disclose confidential information if they reasonably believe such disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public

health or safety; and it would be unreasonable or impractical to obtain consent. This is an example where the legislator has made the task of psychologists more difficult by removing the word *imminent* from s16A when it amended (Privacy Amendment [Enhancing Privacy Protection] Act, 2012).

Finally, the state and territory governments all passed versions of the Australian Health Practitioner Regulation National Law Act (National Law Act; 2009) that regulates health practitioners, including psychologists. This Act gives the regulator powers to investigate complaints made against allegedly incompetent or unethical health practitioners in the public interest (s3) that allows it to access practitioners' client files and related information. The Act further compels psychologists to notify the regulator of their reasonable beliefs that other practitioners engaged in sexual misconduct in the course of their practice or are placing the public at substantial risk of harm by practising while impaired, intoxicated or in a way that departs significantly from the accepted professional standards (Health Practitioner Regulation National Law and Other Legislation Amendment Bill, 2018). The regulator can take action against psychologists who fail to make such notifications even when the practitioners involved are their clients or supervisees (for an exception see the Health Practitioner Regulation National Law Act, 2010).

Judiciary's reaction

Judicial officers' (e.g., judges, coroners, chairs of inquiries) response to society's concerns about harm is important because they are influential interpreters (Epstein & Martin, 2010) and influencers (Stoutenborough, Haider-Markel, & Allen, 2006) of public opinion and legislators (Horowitz, 2010). Some can also create binding law within their jurisdictions (Allan, 2016). The judiciary's other roles are, however, of more importance in this article.

Their primary role is to apply law and they often do so strictly. In EZ and EY (2015) the Privacy Commissioner for instance found that a psychiatrist had contravened the Privacy Act (1988) when she told a police officer who enquired whether her patient was psychotic ‘it was possible but further assessment was needed’ without her patients’ consent (EZ and EY, 2015, ¶7). In HCCC v Dene and Donnelly (2010) a tribunal imposed sanctions against psychologists who delayed making a report required under s27 of the Children and Young Persons [Care and Protection] Act (1998) when there were reasonable grounds to suspect that a child was at risk of harm. Courts in other countries have also explicitly allowed psychologists to violate their clients’ privacy when they believe it is necessary to protect the public (e.g., the Canadian Inmate Welfare Committee, 2003 case).

Judicial officers can also authorise warrants and subpoenas that order psychologists to disclose confidential client information. The Australian Psychological Society’ (APS) Professional Advisory Service (PAS; personal communication, 14 May 2018) reports that the judiciary appears to be increasingly authorising warrants and subpoenas requiring psychologists to divulge client information and/or testify. This is happening in all courts, but particularly in family law matters where the independent children's lawyers appointed in terms of the Family Law Act (1975) appear to request subpoenas to access psychologists’ records routinely. Family court judges deny indiscriminately authorising subpoenas and publically criticise the “chase every rabbit down every hole” in family law litigation (Simic and Norton, 2017, ¶ 2), but admit that they find the information in psychologists’ files very useful (Collier, 2001). This might explain why a family court judge questioned why a psychologist failed to assess her client’s risk of perpetrating domestic violence even though he had been referred for a work related matter and was at the time separated from his spouse (personal communication, C Moore, 10 April 2018). The judge did not repeat the criticism in the published decision (see Finton and Kimble, 2017), but if the incident correctly reflects the

view of judicial officers it suggests that they might not fully understand the boundaries within which psychologists work.

The recommendations of judicial officers acting as the chairs of Royal Commissions can also be very influential and they have in recent times made recommendations to protect people from harm that are relevant to psychologists. Recommendation 16.42 of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017), for instance, provides:

“... each religious institution should require that candidates for religious ministry undergo external psychological testing, including psychosexual assessment, for the purposes of determining their suitability to be a person in religious ministry and to undertake work involving children”.

Coroner's non-binding recommendations are particularly influential even though they are generally not subject to appeal (see Freckelton & Ranson, 2006) and lacking the expert scrutiny generally found in the development of public policy. The comments and recommendations of the coroners in the *Inquest into the death of Adriana Donato* (Donato inquest, 2017) and *Inquest into the deaths arising from the Lindt cafe siege* (Lindt inquest, 2017) are of particular importance to psychologists.

The Donato inquest (2017) was about the killing by Mr. James Stoneham of his former girlfriend. Mr. Stoneham was at the time an out-patient of a psychologist following several self-harm attempts following the end of a romantic relationship. He assaulted strangers and family whilst in therapy and told his psychologist that he had feelings of aggression towards unnamed people without disclosing particulars of his thoughts. He denied plans or intent and his psychologist did not ask him specific questions about his feelings of aggression because she did not think there was sufficient evidence to make disclosures to third parties about a

potential risk. Mr. Stoneham had, however, unbeknownst to his psychologist, threatened to kill his former girlfriend and bought a skinning knife five days before he last consulted the psychologist and six days before the murder. The coroner's expert witness had minor criticism of the psychologist's performance, but concluded that her "treatment of James was reasonable and appropriate under the circumstances" (p. 29). The coroner nevertheless concluded:

I find that ... the threat of harm to a then unnamed person was such that Dr [...] should have questioned James on this matter. I further find that such questioning should have included specific reference to Adriana and in the context of such reference, should also have included questions designed to establish whether James had developed a plan as to how any such harm was to be inflicted (p. 33).

The coroner made several recommendations, including that the APS should review its Code of Ethics (APS, 2007). The coroner specifically recommended that the Code should indicate "when it should be reasonably concluded that the psychologist's obligation to disclose confidential Health record information under ... [privacy legislation] arises" (p. 37).

The Lindt inquest followed the death of three people when Mr Man Monis took hostages at a café. Mr Monis had a history of difficulties with authorities, but was not considered to pose a terrorist threat. He consulted a psychologist in 2010 and another psychologist prepared a profile of him in 2013 without interviewing him (Lindt inquest, 2017). The coroner did not find that either of these psychologists had failed to disclose information, but he nevertheless recommended that the APS reviews its Code "regarding the restrictions in clause A.5.2 of the Code of Ethics (2007) with respect to radicalisation, terrorism and politically motivated violence; and ... consider amending ... [it] to enable psychologists to report risks of a terrorist nature (Lindt inquest, 2017, ¶ 244).

Investigators' reaction

The confidential nature of investigators' inquiries and the information they require from psychologists normally shroud their interaction in secrecy and therefore the profession only becomes aware of problems when psychologists seek assistance or clients complain that psychologists have violated their privacy. The APS, however, reports that an unintended consequence of the amendment of the Australian Privacy Act (1988) has been that investigators increasingly make forceful demands for access to clients' files (personal communication, PAS, 10 April 2018).

Psychologists for example provide anecdotal examples of investigators using covert surveillance of their sessions with clients (e.g., Anonymous, 2010). They also report investigators sending emails threatening to serve search warrants on them if they fail to provide client information or quoting provisions from legislation without pointing out that they merely give psychologists a discretion to disclose information if ethically justifiable.¹ Psychologists report that investigators try to push them into disclosing information by pointing out that legislation provides that those acting in good faith will not incur civil or criminal liability and disclosure will not be regarded as a breach of professional ethics (e.g., s23(5) of the Children and Community Services Act, 2004).

Investigators also allegedly serve invalid warrants on psychologists to produce records and even when valid some warrants appear unjustified, such as requiring access to the records of clients who are neither complainants nor suspects in the matter under investigation (e.g., wife of a suspect). Investigators also use orders allowing them to obtain business records (e.g. s52 of the Criminal Investigation Act, 2006) to access the professional records of psychologists. Police for instance used this process to obtain the records of a psychologist who was treating

a person who had during a family gathering overseas exposed himself and sought her professional help. The police in the European country did not charge the client, but the Australian police launched an investigation when a family member reported the incident to them.

Psychologists further complain that lawyers and detectives appears to make unwarranted demands for information when the Royal Commission into Institutional Responses to Child Sexual Abuse, (2017) referred matters to them. A detective investigating whether to prosecute an alleged perpetrator, for instance, served a warrant on the victim's psychologist when the victim refused to give consent to the psychologist to release the relevant professional records. The detective did this this even though the victim authorised the psychologist to give the detective a comprehensive report.

The Profession's Response

All psychologists registered with the Psychology Board of Australia (PsyBA) must provide their psychological services within the law and therefore everything they do as professionals is in the final instance subject to legal and ethical scrutiny. The legal system expects psychologists to be able to identify and manage the risk that their clients might harm others. Psychologists whose clients harm others might therefore face criminal, or civil or professional sanctions if their lack of professional competency contributed to the outcome. Psychologists who improperly disregard clients' autonomy and privacy in an attempt to prevent harm, however, might similarly face legal or professional sanctions, and could also lose the trust of the public or sections thereof. Psychologists are ultimately responsible to ensure that they have the legal-ethical and professional knowledge and skills to identify and manage clients who might pose a risk of harm to others. Psychologists as a collective,

however, have a responsibility to ensure that their peers practise in a manner that will maintain the trust of society and all groups within it. They mainly do this through professional bodies that represent them by ensuring that all future and current psychologists have the legal-ethical and professional knowledge and skills to practice in a legal and ethical manner. The profession therefore bears the ultimate responsibility to respond to the changes in society's laws and expectations (see Allan, 2018; MacDonald, 1995; Parsons, 1968) through organisations such as the PsyBA, the Australian Psychology Accreditation Council (APAC) and professional bodies (e.g., the APS). Governments', judicial officers' and investigators' behaviour suggests that society is increasingly expecting psychologists to proactively identify clients who pose a risk of physically harming others, determine who their victims might be and divulge information to prevent such harm. This expectation is understandable because clients often spontaneously provide information about their past and present behaviour, cognitions and emotions, and future plans to their psychologists who generally record them in great detail. Psychologists therefore have opportunities to identify indicators of violent behaviour and their records are potentially valuable sources of information about people who perpetrate violence or might do so in future. Society also appears to expect that all psychologists have the skills required to undertake violence risk assessments.

Psychologists all over the world, however, find it difficult to decide when it will be appropriate for them to disclose clients' information to protect others (e.g., Walfish, Barnett, Marlyere, & Zielke, 2010). Kämpf et al. (2008) also found that many Australian psychologists do not know what law applies to them and that many wrongly thought that the *Tarasoff v Regents of the University of California* (1976) decision applied to them when they identify clients who pose a risk of harm to the public. To make matters worse in Australia the relevant state and territory legislation differ from each other and therefore the obligations of

West Australian psychologists under their state's Children and Community Services Act, (2004) differ from those of their NSW counterparts.

The response to the new, seemingly reasonable expectations of society will therefore have to come from the collective through professional bodies. The profession could start this process by applying its ethical principles that reflect the accumulated wisdom of generations of psychologists regarding what constitutes proper professional behaviour (Allan, 2015). The Responsibility principle requires psychologists to obey society's morally defensible law (Allan, 2018) and ensure their ethical codes and guidelines comply with legislation and binding legal court precedents. The APS should therefore attempt to accommodate reasonable recommendations of coroners regarding its Code even though this is challenging in Australia, which has multiple jurisdictions with different legislation.

The Responsibility principle, however, also requires the profession to prevent situations from developing that might ultimately harm society. Psychologists could, ironically harm society if they only focus on the Responsibility principle without considering the Respect and Fidelity principles. The public, or sections thereof, might, for instance, start regarding psychologists who proactively asks clients information beyond the limits of the agreed service or indiscriminately disclose confidential information without consent or justification as agents of the state. They could lose trust in the profession if they fear that what they say in private is secretly being recorded or that psychologists are otherwise not acting in their best interests. Such distrust might prevent people who need psychologists' services (e.g., parents with relationship problems) or who should be assisted because it will be beneficial for other people and society (e.g., people with anger management problems) to avoid psychologists. Distrustful people who nevertheless consult psychologists might be guarded and not respond to gentle probing, referrals to specialists or recommendations regarding more intensive

treatment from psychologists. The profession should therefore pre-empt such outcomes by interacting with legislators, judiciary and investigators as well as psychologists.

Governments

The profession should examine current and proposed legislation to identify provisions that compel or encourage psychologists to disregard the profession's privacy expectations and places obligations on psychologists to assist in the protection of the public. It should advocate for changes to legislation if necessary to ensure that legislators' expectations of psychologists are reasonable and realistic. The profession should further ensure that governments develop and/or fund resources (e.g., access to forensic practitioners in appropriate institutions who can do specialist assessments) that will allow psychologists to meet their legal obligations. A precedent for this exist as the Australian Commonwealth funded professional bodies including the APS, to provide training to their members about how to deal clients who make terror related threats (Personal communication, J English, 9 July 2019).

Judiciary

The profession could use informal methods to dispel unrealistic expectations judicial officers might have of psychologists by publishing articles in legal journals and presenting papers at law and judicial conferences, but it would arguably be the most effective if it works within the formal legal process. The profession, however, often only find out about contentious issues after the conclusion of proceedings (e.g., the Lindt inquest, 2017). When it is aware of such matters in advance the profession could identify and support competent psychologists to prepare amicus curiae briefs or give expert evidence and it could even consider applying to

intervene as a party in cases so that it can directly put forward the profession's concerns. The profession can also proactively work towards establishing legal certainty around the interpretation of problematic legislation or practices by obtaining legal opinions about the interpretation of provisions of legislation that are unclear. It can also assist psychologists who want to appeal judicial officers' decisions to grant warrants that appear unjustified or who want to resist investigators' attempts to use their powers beyond the spirit or the actual ambit of the legislation.

Investigators

The profession can only respond effectively to investigators' use of their powers to covertly collect, or compel psychologists to disclose, client information if it understands investigators' behaviour. The profession should know how frequently investigators exercise their powers or put informal pressure on psychologists to disclose information when it is beyond the ambit of the spirit, if not actual wording, of the relevant legislation. It should establish whether investigators do this because they misunderstand the rationale and extent of the relevant legislation and/or fail to understand the risks involved if they unnecessarily and/or unlawfully request access to clients' files.

The profession cannot control investigators and can only use indirect means to influence them. It could include encouraging police and government departments and law societies to educate their members about the rationale and actual extent of the relevant legislation and the risk to the greater good if they unnecessarily require psychologists to disclose confidential information. The profession could also encourage psychologists to explain to investigators what the risks are if they make unjustified or disproportional demands for client information

by publishing articles in investigators' professional journals and presenting papers at their conferences.

Psychologists

The profession's most effective way of responding is, however, by establishing and addressing psychologists' needs. It should therefore find out whether psychologists understand society's expectations that they should identify and manage clients that might pose a risk to the public, and whether psychologists are capable of doing this and appreciate the ethical implications of meeting these expectations. The profession should understand whether, and why, some psychologists might comply with investigators' improper demands. Some might be ignorant of their legal-ethical obligations, and particularly when they should refuse pressure to disclose client information ostensibly to protect the public. Others could be non-assertive or find it easier to yield to improper demands even though they appreciate the impropriety of their behaviour. Others might have strong protective personal values and use moral disengagement (specifically moral justification, see Bandura, Barbaranelli, Caprara, & Pastorelli, 1996) to justify their objectively unwarranted disclosure of information by arguing their obligation to prevent harm justifies the disclosure. An understanding of psychologists' needs will allow the profession to develop a strategy to address those needs and I anticipate it will have at least five aims.

Maximise clarity about known legal-ethical issues.

Researchers will most likely find that psychologists like the coroners in the Donato (2017) and Lindt (2017) inquests want clarity about the points where psychologists should adopt an investigative role and have an obligation to disclose confidential information without consent

to protect other people and/or the public. The Respect and Responsibility principles might in some circumstances justify, even oblige, psychologists to ask their clients screening, or even very searching, questions about their violence histories, thoughts, plans and means to execute them. The points where Australian psychologists are justified to disregard the Respect principle and adopt investigative roles or provide information to thirds without their clients consent will, however, always be context dependent because psychologists work in many different work situations (e.g., Pope, 2015) and are subject to different legislation. Ethical standards that are specific in these circumstances will therefore require so many exceptions and qualifications to allow for all possible conceivable situations that most psychologists will find them difficult to interpret and implement, especially in urgent situations. The APS' current approach of drafting standards that are general and broad enough to allow psychologists to consider contextual information, but augment this with practical guidelines and protocols that psychologists can use, still appears the best method.

The profession could, however, provide specific information that will help psychologists make appropriate decisions regarding the disclosure of client information. All psychologists should for instance understand that their role determines who they owe their primary responsibility to (Fisher, 2009), and therefore when they can adopt an investigative mindset to protect society. The primary responsibility of psychologists working in prison settings will generally be to society and their mindset will therefore be more investigative than that of a practitioner in private. They should inform clients of the implications of this at the onset. The primary responsibility of psychologists who provide counselling and therapy in private practice would usually be to assist their clients with their referral complaint. The Privacy Act (1988) therefore requires them to restrict their collection of information to what is strictly necessary for the service they provide. Even these psychologists should, however, appreciate that they do have the discretion to become more investigate if they reasonably believe it is

necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety (s16B of the Privacy Act, 1988). The implication of s16B is, nevertheless, that they should endeavour to obtain the consent of their clients unless it would be unreasonable or impractical to do so.

Inform psychologists about expectations and their responsibilities.

The profession should ensure that psychologists understand what role contemporary society expects them to play in the prevention of harm and the possible professional, criminal and civil consequences they face if they fail to meet those expectations. It should therefore inform psychologists that every one of them should have the competency to identify client factors pointing to an elevated risk of harm to others and to undertake at least a rudimentary risk assessment of clients. It should tell them that they must have the competency and resources to manage any client they identify in their work setting as posing a risk to others. This means that they should be capable of distinguishing among situations where they should manage clients under supervision, refer them to specialist services or disclose information with or without clients' consent to prevent harm.

The profession should also ensure that psychologists are capable of managing investigators' requests for confidential client information. Psychologists should for instance be able to distinguish between mandatory and discretionary situations, determine the lawfulness of purported legal orders (e.g., subpoenas or warrants) served on them, resist inappropriate legal orders, and know when to consult lawyers. Psychologists should also respect their clients' autonomy by taking reasonable steps to obtain their consent before they disclose information, even when requests are lawful.

They should further follow their clients' decisions to disclose information irrespective of their own feelings about the situations, but always limit the disclosure to what is strictly required. They should likewise respond to their clients' refusal to allow them to respond to legitimate orders for disclosure of information by suggesting a compromise, such as offering to write a report in lieu of handing over their files or copies of them. Psychologists will, however, have to disclose the information without their clients' consent if these offers are not accepted, but should make it clear that they are doing it under protest.

Encourage and assist psychologists to develop the necessary knowledge, skills and resources.

The profession should enable psychologists to acquire competencies they lack by promoting, developing and offering appropriate continuing professional opportunities. APAC could for instance require tertiary training providers to offer training that will give novice psychologists the necessary competencies. The profession could furthermore assist psychologists by developing the resources they need to manage clients who pose a risk and respond to demands from investigators for confidential information. These could include establishing helplines and networks of knowledgeable peers and experts whom psychologists can consult or refer clients to for advanced assessments or management.

Consider the broader impact of society's expectations.

The profession should encourage psychologists to consider the broader impact contemporary social expectations might have on their practice, especially the possibility that investigators could more frequently demand access to their professional records with or without their clients' consent. Psychologists should accept that this is an unescapable reality and that they

must adapt their practice in accordance, but with maximum adherence to the aspirational expectations of the profession. The Respect principle (privacy and autonomy standards) requires psychologists to consider whether the information they provide to clients when commencing the service accurately reflects the current obligations they have.

Investigators might also in future scrutinise psychologists' assessment and management of clients who other people think pose a risk of harm to the public or who have actually caused harm. Psychologists should therefore expect that their professional records will be dissected and they should therefore ensure that their records give an accurate account of their management of clients, justification for their decisions and behaviour and demonstrate that they treated these clients competently (Allan & Allan, 2016). Psychologists should appreciate that the tone and content of their records could create a risk of harm to their clients and themselves (e.g., Bemister & Dobson, 2011, 2012). The profession should encourage psychologists to consider the appropriateness of their recordkeeping practices and advise them about the risks of recording information that could incriminate and/or embarrass clients or could be considered to be defamatory if it enters the public domain (Allan & Allan, 2016).

Encourage supervision.

The profession should encourage psychologists to identify personal values that might prime them to disclose confidential information without legal-ethical justification and warn them of the risk that they could use moral disengagement to justify unlawful and unethical behaviour. It should encourage them to consult, or work closely, with senior psychologists when deciding whether to disclose confidential information. The profession should specifically encourage psychologists who work as investigators or in agencies that collect personal data

for security purposes to seek out supervision to counter the pressure their roles could put on them to divert from the professions' ethical expectations.

Conclusion

Circumstances constantly change and therefore society's morals and laws change and this impacts on professional ethics (Allan, 2011). Most psychologists will understand contemporary society's expectations that they should help prevent harm to others (Allan, 2018), but they might not understand the intensity of this expectation and how it changes their legal-ethical responsibilities. They might also find it difficult to identify clients who might pose a risk of harm and manage them or deal with judicial officers and investigators' demands for information about clients considered to pose a risk of harm to others. This creates a dual risk for the profession because if psychologists fail to identify clients who cause harm to others it could erode the trust of the public in them, but if they disregard clients' legal-ethical rights without justification they might also lose the trust of the public or sections thereof. The profession should therefore try to reduce the risk of this happening by proactively interacting with legislators, judicial officers and investigators to reverse and and/or prevent morally unwarranted law and to stop the use of legislation for purposes beyond its letter or spirit. The profession, however, might have an even bigger responsibility to ensure that psychologists fully understand their evolving legal-ethical obligations and have the knowledge and skill to balance their conflicting responsibilities to society and their clients in a legal-ethically defensible way.

Endnote

- ¹ Information on the author's files.

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