Towards Effective Supervision for the Legal Profession: 
A Focus on Supervised Practice

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Synopsis

This thesis explores the issue of supervision in the legal profession, with a focus on supervised practice. Supervised practice is a form of work-based training and acts as an important segue between formal university-based legal education and independent legal practice.

Supervision is an important issue relevant to a number of contemporary legal education and legal profession debates including: the legal education framework; changes in the nature of legal practice driven by technology; and mental health and well-being. Despite this, the area remains very underdeveloped in the literature. There is some indirect empirical evidence that identifies supervision as important to the development and well-being of lawyers. However, a conceptual understanding of supervision, and the processes it includes, is absent in the literature. Specifically, there is no evidence that identifies the nature of supervision received during supervised practice, whether that supervision is effective and what the impact of that supervision is.

This thesis will address this gap in the literature by asking and answering the following Central Research Question: “What are the implications of the legal profession’s current conception of, and approach to, supervision during supervised practice?” This gap in the literature will be addressed by developing an empirically supported theoretical understanding of supervision in legal practice, which surprisingly is yet to be done. The empirical dimension of this research is derived from comprehensive, supervision-specific survey data that provides a rich source of information on the perceptions and experiences of a broad cross section of practising lawyers in Queensland.

This thesis relies on a mixed-methods approach to answer the central research question by developing a conceptual framework used to guide and inform the analysis of quantitative and qualitative data. Developing the conceptual framework includes a review and analysis of aspects of the legal education, legal profession and legal practice management literature. This uncovers that supervision in legal practice is conceived primarily as a tool for risk management and profitability.

The legal profession’s approach to supervision is myopic when contrasted with supervision in other professional disciplines. The supervision scholarship in other related endeavours has a
stronger theoretical foundation and evidence base. In other professional disciplines, supervision is conceived as a multi-functional, relationship-based endeavour concerned with training and development in the workplace. Effective supervision is underpinned by a strong supervisory relationship supported by a range of mechanisms including regular and frequent meetings.

When positioned against the literature in other professional disciplines, the legal profession’s conception of supervision can be described in terms of focussing on normative (management) functions with an emphasis on monitoring. This is a limited form of administrative supervision and deficient in its lack of focus on formative (training) and restorative (supportive) functions.

The survey data provides evidence that current supervision practices are likely to be ineffective for several reasons including a failure to foster strong supervisory relationships. Supervisees completing supervised practice are significantly more likely than other supervisees to perceive their supervision as inappropriate given their lack of practice experience. There are number of reasons why this is the case. The main underlying reason is that supervision fails to act as a forum for training, development and support. In addition, the supervisory relationship is weakened by a failure to structure supervision around regular frequent meetings and create an environment where supervisees generally feel able to disagree with their supervisor.

These factors together provide evidence that the impact of current supervision practices is that lawyers completing supervised practice are at a high risk of not receiving the training and development needed at this stage of their legal training. From this central finding, this thesis makes a number of recommendations directed at the legal profession (including law societies, admitting authorities and individual firms) about how to respond to this challenge. In addition, this thesis also identifies a series of prospects for further research to build on these base-line findings in an underdeveloped area of scholarship.
Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

(Signed)

Michael John McNamara
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I would also like to thank the Griffith Law School generally, especially John Flood who stepped in as principal supervisor at the end of my candidature, and Kieran Tranter who provided encouragement and support at various times during my candidature. In addition, I am thankful for the invaluable support and encouragement I received in the early stages of this project from John Briton and Lyn Aitken, then at the Queensland Legal Services Commission. In the final stages of my thesis, I have been surrounded by a new group of colleagues at Flinders University who usefully provided me with new perspectives as I tied this project together. I thank them for their support and their commitment to legal education.

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I also acknowledge the following related publications and research that have been completed during the course of my candidature:

- Jeff Giddings and Michael McNamara ‘Constructive Supervision in Regional Remote & Rural Practice’ in Trish Mundy et al (eds), Bush Law 101: Legal Practice in Rural and Regional Communities (Federation Press, 2017)

- Michael McNamara, ‘Ethical Development during Supervised Legal Practice’ (Paper Presented at 5th Australian and New Zealand Legal Ethics Colloquium, Monash University Law Chambers, 3-4 December 2015)

- Jeff Giddings and Michael McNamara ‘Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do with It?’ (2014) 37(3) UNSW Law Journal 122
I Supervision: The Link Between Legal Education and Legal Practice

A Introduction

This thesis considers how supervision is a crucial process in the development of legal practitioners, as part of legal education and in legal practice. In Queensland and all other Australian states, legislation requires newly admitted lawyers to complete a compulsory two-year period of supervised practice, as a condition on their practising certificate (“Supervised Legal Practice”), which is the final stage in the transition from law student to autonomous, unrestricted legal practitioner. This thesis focuses on understanding how Supervised Legal Practice can be effectively utilised as a final stage of preparation for practice. This involves understanding the nature and purpose of Supervised Legal Practice, current supervision practices and processes in place during Supervised Legal Practice, and which factors contribute to the effectiveness of these practices and processes. This thesis argues that Supervised Legal Practice can be enhanced by greater structure and improved supervision practices, and provides significant insight into what these improved measures entail.

The legal profession has always relied on learning by doing in the workplace, and the supervision of work completed by junior lawyers is an important process in a range of legal practice environments. While supervision arrangements have always been central to legal education and legal practice, the importance of the Supervised Legal Practice period has increased in recent times, to the extent that it has been described as an issue which ‘lies at the heart, and the future, of the profession...’1. There are a range of reasons why this is the case.

The entire legal education framework is again on the reform agenda and Supervised Legal Practice has emerged as a crucial aspect of that agenda,2 amidst continuing concerns regarding

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1 Caitlin Hamilton and Jim Milne, ‘Supervising Graduate Lawyers in Legal Practice’ (Paper presented at Conference of Regulatory Officers, Hobart, 5-6 November, 2015).
2 See Law Admissions Consultative Committee ‘Assuring Professional Competence’ (Briefing Statement, Law Council of Australia, 2016). The Law Admissions Consultative Committee (“LACC”) ‘consists of representatives of the Law Admitting Authority in each Australian jurisdiction, the Committee of Australian Law Deans, the Australasian Professional Legal Education Council and the Law Council of Australia. Its ‘main role is to forge consensus between the bodies represented by its members on matters relating to the academic and Practical Legal Training requirements for admission to the Australian legal profession, the accreditation and appraisal of academic and Practical Legal Training institutions and courses, and other matters related to admission to the Australian legal profession.’ See Law Council of Australia, Law Admissions Consultative Committee <https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee>. The position of supervision in the legal education framework is given extensive treatment in Chapter II.
newly admitted lawyers preparedness for legal practice. Additionally, newly qualified lawyers are entering legal practice in a period where there has been an ‘avalanche of law schools’ and positions for law graduates are ‘scarce’. Concerns about legal education and the transition to practice are part of broader recent trends in society where the status quo, in a range of disciplines, is that professional education is split between universities and workplace settings.

Supervision has also emerged as relevant to a range of legal practice issues such as complaints management, workplace culture, ethical infrastructures, regulating law firm management, and problems associated with billable hour regimes. The relevance of supervision to legal practice emerges out of broader critiques regarding the commercialisation of law. In this regard, Rhode has commented that ‘experienced lawyers who are under growing pressure to generate business and billable hours often have inadequate time or incentive to train junior colleagues.’ This situation is complicated by a rapidly changing practice environment, which is driven by disruptive innovation and where lawyers require a new range of skills that may be better developed in legal practice. If these skills are to be developed in the practice environment, then Supervised Legal Practice is the obvious forum for that to occur.

3 These concerns were revealed in a number of submissions to LACC following a review of the academic requirements prescribed for admission to law in Australia in 2015. These submissions are available at Law Council of Australia, Review of Academic Requirements <https://www.lawcouncil.asn.au/resources/law-admissions consultative-committee/review-of-academic-requirements>. In particular, see submissions by the Queensland Law Society and the Law Institute of Victoria. From the academy this concern has been addressed by a push to focus on developing a wider range of interpersonal qualities such as: leadership skills – see for example Paula Monopoli and Susan McCarty, Law and Leadership: Integrating Leadership Studies into the Law School Curriculum (Ashgate Publishing Ltd, 2013); and a variety of other “soft skills” – see for example: Rachel Field, James Duffy and Anna Higgins, Lawyering and Positive Professional Identities (LexisNexis, 2014).


Given all this, it is perhaps unsurprising that there are ongoing concerns regarding the mental health and well-being of lawyers, especially junior practitioners, and this too is linked with supervision.\textsuperscript{14}

Despite supervision being central to legal education and legal practice, a systematic literature search completed at the beginning of this research project ("Systematic Literature Search") \textsuperscript{15} revealed that the scholarly literature on the legal profession and the practice of law has not closely analysed the processes underpinning supervision generally, or the purpose and structure of Supervised Legal Practice. Remarkably, there is a complete absence of academic literature on the topic of Supervised Legal Practice.

**Part B** of this chapter builds on these opening comments and, with specific reference to the Systematic Literature Search, outlines the contributions this thesis makes to scholarship in the fields of legal education, the legal profession and the practice of law. By way of preview, this thesis will contribute to the literature by developing a conceptual framework that describes the purpose and functions of supervision in legal practice, and generating empirical evidence regarding existing processes and practices underpinning supervision in legal practice.

**Part C** then explains why this thesis incorporates literature from clinical legal education and other professional disciplines. In short, the existing literature and practice resources dealing specifically with supervision in legal practice are limited, and suffer from both a lack of theoretical foundation and empirical validation. Supervision has been more thoroughly considered in the clinical legal education literature, and it is this endeavour that is most closely related to legal practice. Other professional disciplines, notably psychology, have a significantly more developed body of supervision literature, which includes some empirical evidence regarding what constitutes effective supervision practices.

**Part D** covers the Research Design, including an outline of the research aims, questions and methods. This part will describe how this thesis is underpinned by a pragmatic worldview,

\textsuperscript{14}The mental health and well-being crisis is well documented elsewhere and discussed in detail in Chapter III. For an overview of the current debate, see Christine Parker, ‘The ‘Moral Panic’ over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?’ (2014) 37(3) University of New South Wales Law Journal 1103. The relevance of supervision to this issue is revealed in Tristan Jepson Memorial Foundation, ‘TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession’ (2014) ("The TJMF Guidelines"). The link between supervision and well-being is also clearly articulated in Chapter III.

\textsuperscript{15}A copy of the entire Systematic Literature search is included at Appendix 1. This section includes a truncated overview of the findings from that search.
adopts a mixed-methods approach, and incorporates quantitative and qualitative survey data, to answer questions directed at informing and improving supervision practices. Part E concludes with a thesis outline and chapter overview.

B Contributing to the Scholarship of Legal Education and the Legal Profession

Academic scholarship on supervision, both in legal practice generally and during Supervised Legal Practice, is very underdeveloped. This Systematic Literature Search identified the following gaps in the literature:

- There is an absence of any clear theory underpinning supervision as an activity in legal practice, generally or during Supervised Legal Practice. (“Absence of Theory”)

- There is a dearth of systematic empirical research about the actual supervisory activities that occur in day-to-day legal practice. (“Lack of Empirical Evidence”)

This thesis will address these gaps in the literature by developing an empirically supported theoretical understanding of supervision in legal practice, which surprisingly is yet to be done. The following two sections provide an outline of the state of the relevant literature, and position this thesis’ contributions in terms of that literature.

1 Absence of Theory

Scholars frequently refer to supervision in the context of other legal profession issues, but do so without paying close attention to the nature and purpose of supervision, or what processes make it effective. Arguably, some of the clinical legal education literature serves as an exception. However, a close inspection of that literature reveals that supervision in clinical legal education is contextually different from supervision in day-to-day legal practice. See Part C below.

The Systematic Literature Search revealed that these types of references to supervision are copious and the content cannot be easily reduced. However, two relevant themes emerged.

Firstly, supervision was historically, and continues to be, a distinctive and important aspect of the legal education framework. This is especially so in jurisdictions, including Queensland and

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16 Arguably, some of the clinical legal education literature serves as an exception. However, a close inspection of that literature reveals that supervision in clinical legal education is contextually different from supervision in day-to-day legal practice. See Part C below.
17 The Systematic Literature Search is set out in full in Appendix 1.
other Australian states and territories, which are steeped in the British tradition. In these educational contexts, supervision has been described vaguely in terms of needing to be ‘close’, ‘personal’, and ‘direct’. These types of comments are not supported by any pre-existing theoretical scholarship that underpins supervision as an activity in legal practice. In particular, conspicuously missing from these discussions is any clear definition of what “supervision” actually means, in terms of its purpose and functions, or what processes are required to make it effective. Remarkably, there is also no academic literature at all, which specifically examines Supervised Legal Practice, the critical final stage of the legal education framework in Australia.

Secondly, supervision features in the contemporary legal profession literature in the context of a wide range of issues, which are canvassed in the remainder of this section. Fundamentally, supervision is positioned as an important process underlying the structures used by traditional law firms to manage their work. These structures rely on senior lawyers supervising legal work performed by junior lawyers (as well as non-lawyers) in a cost-effective way. However, the literature covering law firm structures and processes assumes, or pre-supposes, that supervision simply involves monitoring output and checking final work. This literature lacks any underlying theory justifying, or determining the effectiveness of, these processes. This literature also tacitly treats supervision as being distinct from training and mentoring and by doing so fails to recognise its educational dimensions, which are central to Supervised Legal Practice.

In addition to the traditional law firm environment, supervision also emerges as an important underlying feature of many aspects of the changing legal services sector, which is characterised by a range of factors including specialisation, globalisation, legal process outsourcing and disruptive technology. For example, supervision has been identified as a relevant factor in maintaining the quality of specialised legal work; in particular, in some instances ‘stronger...
supervision is preferable’. Unfortunately, it is not clear what strong, or for that matter weak, supervision actually entails in terms of its functions or what processes may make it effective. This is another example of commentary on supervision that could be strengthened by an underlying theoretical conception of supervision. In the context of legal process outsourcing, supervision has been flagged as a ‘concern’. Again, this is done without any meaningful consideration of the nature, purpose, and processes underpinning supervision. Rather, supervision is positioned in this new environment as a compliance issue, best dealt with by a cautionary doctrinal analysis of the relevant professional conduct rules and potential liability in tort. In the context of legal process outsourcing, supervision is again, without justification, treated as separate from training and mentoring. This approach overlooks the broader goals of supervision that are associated with Supervised Legal Practice. Emerging legal technologies also pose a number of supervisory issues, such as supervising technological processes that automate legal document production, and supervising the ‘relational’ aspects of legal practice. The academic literature is yet to grapple with these issues, and it is difficult to see how it could, given the lack of any obvious theory for discussing the nature and purpose of, or the processes that underpin, legal practice supervision.

This “pigeon-holing” of supervision as merely being an aspect of lawyers’ professional responsibility obligations is a common feature of the literature. In this sense, there is a tendency for the analysis of supervision to be myopic with a focus of legal rules. Further, supervision is often positioned as being an important aspect of risk management and avoiding

28 This issue was raised in the FLIP report, above, n 13.
29 The provision of relational-security is predicted to become an increasingly important aspect of legal practice as it is disrupted by legal technologies, see: Bob Murray and Alicia Fortinberry Leading the Future: The Human Science of Law Firm Strategy and Leadership (ARK Group, 2016).
malpractice/professional indemnity claims. In these contexts, there is a general failure to look past the wording of the rules in order to understand the functions of supervision and effective practices. Even though a doctrinal analysis is a useful starting point for developing theory on legal practice supervision, the existing academic literature on lawyers’ supervisory duty is entirely American in its origins and focus. This limits its value in Australian contexts.

There is however, a range of non-academic publications in Queensland and other Australian jurisdictions, which cover the professional responsibility and risk management dimensions of supervision. These publications are written by practising lawyers and they are characterised by a parochial attitude towards supervision. A key feature of these publications is an over-reliance on legal materials and reference to local conventional wisdom.

By way of example, in May 2014 the Queensland Law Society published a fact sheet entitled “I pay you … just get on with it” – Supervising employees for fun and profit. This fact sheet reminds solicitors what they should already know; that a failure to supervise employees can potentially result in disciplinary action as well as tortious liability. This reminder is complete with reference to the relevant professional conduct rule and a disciplinary case.

Another example is a 2015 proposal by a South Australian law firm to ‘charge newly admitted lawyers an upfront fee of $22,000 for a two year graduate position’. This proposal ‘sparked outrage’ and was eventually blocked by the Law Society of South Australia. The proposal, which effectively required students to pay a fee ‘to cover the cost of supervision, mentoring and education programs’ was rejected by the Law Society because part of the program was inconsistent with an ‘employment relationship’. Based on this report, the Law Society characterised Supervised Legal Practice, fundamentally as an employment relationship, as opposed to a period practical legal training.

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31 John S Dzienkowski, ‘Legal Malpractice and the Multistate Law Firm: Supervision of Multistate Offices; Firms as Limited Liability Partnerships; and Predispute Agreements to Arbitrate Client Malpractice Claims’ (1995) 36 South Texas Law Review 967.
32 This American literature is considered further in Chapter II Part F ‘The General Supervisory Duty’.
34 These matters will be considered in detail in Chapter II.
35 Aaron Lane, ‘Law Graduates: Regulations a barrier to finding employment’, The Australian (24 July) 2015
36 Ibid.
38 Ibid.
39 Ibid.
The key lessons from these examples of supervision discussed in the legal “trade-press” is that legal practitioners view supervision in terms of legal interactions and obligations, and that Supervised Legal Practice is not informed by scholarship. The reason for the latter is, of course, that there isn’t any relevant scholarship available to inform practice.

Finally, poor supervision has been identified as a potential cause of junior lawyers acting unethically\textsuperscript{40} and supervision features as an important aspect of law firm management and the development of ethical infrastructures.\textsuperscript{41} Similarly, supervision is associated with mental health and well-being problems facing the legal profession.\textsuperscript{42} However, there is no clearly articulated link between supervision and well-being, and this is partly because a meaningful conception of supervision is missing from the literature. In these contexts, supervision appears to emerge as a cure of sorts; however, the precise ingredients for that cure remain unknown.

This thesis contributes to the literature canvassed in this section by developing a conceptual framework, which explains: the purpose and functions of supervision, in legal practice generally and during Supervised Legal Practice; and factors contributing to effective supervision. In addition to developing this conceptual framework, this thesis also generates empirical evidence about the processes and practices that underpin supervision in legal practice. The next section outlines the limited existing empirical literature which raises the spectre of supervision.

2 The Shortage of Empirical Evidence

There is very little empirically grounded information about the nature of supervision practices actually occurring in day-to-day legal practice, generally or during Supervised Legal Practice. The Systematic Literature Search identified two pieces of empirical research dealing specifically with supervision in legal practice. They are:

- An informal survey completed by participants in a symposium focussed on supervision in legal practice in Queensland.\textsuperscript{43}

\begin{thebibliography}{1}
\bibitem{Parker2009} Parker, above n 9.
\bibitem{Queensland2009} Queensland Legal Services Commission / Griffith University, ‘A Symposium Series presented by Griffith Socio-Legal Research Centre and the Legal Services Commission Shouldering the Supervision Load - A Report on the Symposium’ (Queensland Legal Services Commission, 2009). Participants included lawyers in private practice and from the
\end{thebibliography}
• A survey of 78 UK Legal Aid workers.44

This embryonic empirical research identified that:

• Supervision in legal practice is in need of systematic research.
• There is a need to identify effective practices and learn from other professions.
• “Close” supervision is essential for the professional development of junior lawyers.

This thesis addresses all three of these preliminary findings. Firstly, this thesis appears to be the first comprehensive attempt to systematically research the topic of supervision in legal practice. Secondly, this thesis utilises evidenced-based supervision literature from other professional disciplines – Part C below provides an introduction to that literature which is then addressed in Chapter V. Thirdly, what constitutes “close” supervision for professional development of junior lawyers is addressed by this thesis’ focus on Supervised Legal Practice.

Since the Systematic Literature Search, I have contributed to further supervision-specific empirical research. That research was outlined at the outset in the “Acknowledgements” section. The following is a summary of relevant findings (which this thesis will add to):

• There is a need for ‘greater structure in terms on integrating supervision in the legal education framework’ and ‘first and foremost on the agenda for greater structure should be training of supervisors’;45
• Collectively, legal practitioners seem to have ‘severely underestimated the interpersonal skills involved in supervision’;46
• Supervisors do not, or are unable to allocate sufficient time for supervision. This seems to be due to ‘systematic issues in relation to fee-earning and billing’ which ‘impede the development of effective structures’;47
• There is some evidence of a ‘discord between the perceptions and attitudes of supervisors and supervisees’48 regarding the focus and aims of supervision.

45 Jeff Giddings and Michael McNamara ‘Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do with It?’ (2014) 37(3) UNSW Law Journal 1226, 1261.
46 Ibid 1259.
48 Michael McNamara, ‘Ethical Development during Supervised Legal Practice’ (Paper Presented at Australian and New Zealand Legal Ethics Colloquium, Monash University Law Chambers, 3-4 December 2015). Available for download at <https://www.monash.edu/law/research/centres/clars/news-events/anzlec5-sustainable-legal-
There is also some related empirical research which raises the spectre of supervision. None of the limited research in this area was directly aimed at understanding supervision; rather supervision arises as an incidental issue. This related empirical research, which is canvassed in the remainder of this section: (a) confirms the need for the theory development, discussed in section 1 above; and (b) uncovers the need for additional supervision-specific empirical research, especially research generating evidence regarding the nature of actual supervision practices and the effectiveness of those practices during Supervised Legal Practice.

Of particular relevance, a study by Holmes et al, 49 which included interviews with 11 newly admitted legal practitioners in the Australian Capital Territory, identified that appropriate supervision is crucial to development of autonomy and task competence. However, the nature of appropriate supervision was not clearly identified.

There is also some limited empirical evidence confirming that supervisory issues appear related to lawyers’ well-being and satisfaction. In this regard, James50 has identified:

- Most lawyers’ stress is related to management issues including poor quality mentoring and supervision; and
- The legal workforce is highly mobile with failure of senior lawyers to guide or supervise junior lawyers being a common reason for attrition.

In addition, there is some empirical research confirming that supervisory issues are intertwined with other significant legal practice matters. In particular, there is evidence that:

- Supervisees are unwilling to discuss ethical concerns about billing with supervisors.51
- There is widespread supervisee uncertainty in relation to reporting complaints to supervisors.52
- Junior lawyers are, generally, uncertain how to address ethical issues concerning their own supervisor.53

51 Christine Parker and David Ruschena, above n 11.
52 Christine Parker and Linda Haller, above n 7.
53 Christine Parker and Lyn Aitken, above n 8.
• Law firms, in particular those structured as Incorporated Legal Practices, face uncertainty regarding their supervisory obligations.  

These indications from the Australian literature are reinforced by some American studies. For example, Fortney’s earlier findings, in relation to survey data from 487 law firm associates in Texas, identified that supervisees were reluctant to discuss billing concerns with supervisors and that supervisors may not be properly scrutinising associate billing practices. She argued that the pressure of billable hours is associated with a decline in mentoring and supervision because training and supervision activities are essentially an unprofitable and timely opportunity cost.

Fortney also identified, reporting on a survey of 191 Texas law firm partners, that partners are largely unsupervised but are subject to some informal peer-review.

The National Association for Law Placement (“NALP”) Foundation’s “After the JD” longitudinal studies provided some limited insight in relation to the state of supervision practices amongst the United States legal profession. Satisfaction with supervision was not measured directly. However, the ‘performance evaluation process’, which related to supervision, was the area with which respondents were least satisfied. This study also indicates informal mentoring is ‘central in the careers of new lawyers’. The nature of supervision, and the seemingly related process of mentoring, was not clearly defined or distinguished in this study.

A 2004 survey of 847 Latino lawyers in Los Angeles County indicates that this demographic was moderately satisfied with their ‘relations with supervisors’. However, respondents were unhappy in relation to the following two categories (both of which are related to the process of supervision): ‘lack of control over the amount of work’ and ‘the policies and administration of

54 Christine Parker, Tahlia Gordon and Steve Mark, above n 10.
56 Ibid 256-257.
57 Ibid 281-283.
60 Ibid 47.
61 Ibid 80.
63 Ibid 1611-12.
64 Ibid.
their place of employment’. Similarly, a survey of interviews with 788 Chicago lawyers revealed that, while respondents were moderately satisfied with relations with supervisors, their satisfaction in relation to supervision was less than their overall satisfaction rating.

Moorhead and Boyle surveyed 158 trainee solicitors in England and Wales. Their focus was on quality of life but they reported that ‘many trainees clearly feel that they are poorly trained, that supervision is ad hoc and that personnel management is, at best, primitive’. Moorhead and Boyle identified: ‘signs of this training being an inadequate basis for qualification, and that supervision on qualification was relaxed beyond acceptable levels’; and that satisfaction with ‘informal training ... had much to do with the person who was currently supervising them.’ Overall, this study identified an unexplored relationship between training and supervision.

Finally, after completion of the Systematic Literature Search, the Solicitors Regulation Authority of England & Wales recently released a workplace experience report completed by researchers at Nottingham Law School (‘the Workplace Experience Report’). This report was based on a survey completed by ‘804 respondents, who self-identified themselves as undergraduate or postgraduate law students, trainee solicitors, paralegals, legal executives or people working in another position in the legal sector’. The Workplace Experience report made a number of valuable findings relevant to the current regime of workplace learning in England & Wales. However, the findings were also indicative of the treatment of supervision in legal practice to date. It usefully highlighted the ‘importance of good supervision’ and noted that improved supervision was a challenge for improving workplace experience. The characteristics of good supervision were not clearly articulated in the Workplace Experience Report.

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65 Ibid.
68 Ibid 238.
69 Ibid 237.
70 Jane Ching and Pamela Henderson ‘Pre-Qualification Work Experience in Professional Legal Education’ (Report for the Solicitors Regulation Authority, 12 August 2016).
71 Ibid 5.
72 Ibid 41.
73 Ibid 43.
However, the Workplace Experience Report was accompanied by a literature review that also considered ‘adequacy of supervision, mentoring and feedback’⁷⁴. This literature review highlighted the need for supervision to achieve a balance between the needs of the supervisee and the workplace and the need for supervisor training. It is important to note that this literature review was not directed specifically at supervision, rather the broader process of workplace learning. Crucially, however, it reinforces supervision as being critical to that broader process; highlights the need for further evidence regarding the effectiveness of current supervision practices; and how these practices could be enhanced to cater for the broader goal of workplace learning.

This thesis contributes to the literature canvassed in this section by generating empirical evidence regarding the processes underpinning supervision during Supervised Legal Practice and the effectiveness of those processes.

C Learning from Clinical Legal Education and Other Professional Disciplines

There is a clear need to engage with the supervision literature from other professional disciplines. The Systematic Literature Search also revealed that supervision practices are more thoroughly considered in the clinical legal education literature. The distinction between clinical legal education and legal practice is blurry at best.⁷⁵ This thesis treats clinical legal education supervision as a useful related process but as distinct from legal practice supervision. This is primarily because clinical legal education supervision is characterised by the involvement of academic supervisors, who facilitate the supervisory process either directly or indirectly. To be clear, Supervised Legal Practice is a final stage of training occurring entirely in the workplace and is completely separated from the university context.⁷⁶

In the field of clinical legal education, scholars have noted the limitations of the ‘common workplace understanding of supervision that stresses power, control and hierarchy.’⁷⁷ As such

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⁷⁶ The legal education framework, the stages of legal practice and the relationship with clinical legal education methods is covered extensively in Chapter II.

⁷⁷ Meltsner, Rowan and Givelber, above n 75.
in the context of their field, which is focused on educational outcomes, supervision is conceived as a training tool where:

Effective supervision is fundamental to clinical legal education (CLE). It is essential to ensure a sound educational experience as well as quality to clients. However, supervision is important beyond just ensuring the provision of effective legal work. Clinical supervision is also fundamentally concerned with developing student understandings and abilities.\textsuperscript{78}

This approach is student-focused and provides useful insights into the education and training dimension of supervision. However, this thesis argues that the clinical legal education literature on supervision is incomplete.\textsuperscript{79} In short, with its focus of student learning, it diverges from the demands (or realities) of legal practice and is not supported by a significant body of empirical evidence regarding effective supervision processes. For these reasons, there is a need to step out of the realm of legal education and legal practice completely, and look to lessons from other professional disciplines, where there is a more established and sophisticated body of empirical literature informing supervision practices.

The relevance of scholarship from other professional disciplines is best understood by positioning the process of supervision, in a professional context, as part of a wider societal issue where the very nature of learning has, and continues to shift. In particular, in the past century there has been a shift from occupational learning occurring entirely in the context of work to schools, colleges and universities.\textsuperscript{80} Obtaining skills or learning in the circumstances of work is an ancient aspect of human society. In this regard, Billet explains that:

\begin{quote}
... before the advent of mass schooling in most modern western-style economies (i.e. schooled societies), the vast majority of the initial learning and ongoing occupational capacities occurred through the participation in its practice. There were no school, college or university courses for most occupations or for the vast majority of learners across human history. Consequently, the settings and circumstances where occupations were practised stood and still stand as key sites for learning. That is, outside of ‘schooling’ this is how people have mostly learnt across human history and likely how individuals learn currently across most of their lives. However, since the formation of modern states and development of the compulsory and tertiary education systems serving them, there has been a tendency to centre such learning in programs in educational institutions, and to make distinctions between the experiences and learning outcomes obtained through “schooling” systems and those in practice settings.\textsuperscript{81}
\end{quote}

In the context of modern schooled societies, learning in practice settings:

\begin{flushright}
\textsuperscript{79} Chapter IV provides a comprehensive overview of that literature and its relevance to legal practice generally, and Supervised Legal Practice.
\textsuperscript{80} Billett, above n 6, 7-8.
\textsuperscript{81} Ibid.
\end{flushright}
... has often been addressed by positioning workplace settings as settings in which to refine and exemplify what has been learnt in the academy and the learning being informal and the outcomes concrete. However, now these settings are consistently being used within educational programs preparing doctors, lawyers, nurses, physiotherapists, trade workers, aged care workers, and so on.  

The new status quo is joint responsibility where professional training spans formal education providers (universities and colleges) and practitioners in their day-to-day work. In a number of professional disciplines, the interpersonal process that can position the workplace as a setting for professional development is supervision. These arrangements vary significantly depending on professional discipline and jurisdiction.

The legal profession appears not to have fully adapted to this new status quo. Rather, supervision is positioned as a process of monitoring work and fulfilling professional responsibility obligations. This approach is often justified by a narrow look at legal materials. This monitoring approach is not dissimilar to the traditional approach of a past era, where:

... the supervisor was the person in charge of a group of towrope pullers or ditchdiggers. That person was literally the “fore man,” since he was up forward of the work crew, and he set the pace for the rest of the workers. The term supervisor has its roots in Latin, where it means “looks over.” It was originally applied to the master of a group of artisans.

Other professional disciplines have grappled with the issues stemming from the new status quo by acknowledging and realising greater potential for the process of supervision. Supervision in a professional context is a relatively new concept that has evolved in the past century, simultaneously with the modern professions of social work and those based on psychotherapy (such as psychology). Supervision as an aspect of professional practice (in disciplines other than law) is more nuanced than the traditional oversight conception, and takes into account varying objectives. For example, Milne, who is a clinical psychologist, formulated the following, empirically rigorous, definition of supervision:

The formal provision, by approved supervisors, of a relationship-based education and training that is work-focused and which manages, supports, develops and evaluates the work of colleague/s. It therefore differs from related activities, such as mentoring and therapy, by incorporating an

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82 Ibid.
83 Chapter V covers the “clinical” or “professional” supervision literature and compares supervised practice arrangements in different professional disciplines.
84 For an overview of the different arrangements of workplace learning in a range of jurisdictions in law and other professional disciplines, see Ching, above n 74.
evaluative component and by being obligatory. The main methods that supervisors use are corrective feedback on the supervisees’ performance, teaching and collaborative goal setting. The objectives of supervision are ‘normative’ (e.g. case management and quality control issues), ‘restorative’ (e.g. encouraging emotional experiencing and processing) and ‘formative’ (e.g. maintaining and facilitating the supervisees’ competence and general effectiveness) ...  

This conception of supervision transcends the traditional oversight function and positions supervision as a multifunctional process facilitated by a number of structured and unstructured activities. It clearly provides scope for the educational (“formative”) dimensions of supervision associated with stages of workplace learning such as Supervised Legal Practice. Equally, it acknowledges the monitoring (“normative”) aspects of supervision, and adds a third dimension that relates broadly to interpersonal support (“restorative”).

In addition, the supervision literature from other professional disciplines has a growing body of evidence that provides insight into the nature of “effective” supervision. By way of introduction, effective supervision requires a blend of the relevant functions of supervision, as appropriate for a particular context. In addition, the strength of the supervisory relationship, together with the structure provided around that relationship, are critical to the success of supervision.

While it might be tempting to simply cut the lessons from other professional disciplines, and paste them on the legal practice landscape, to do so would be unwise and entirely unscientific. In fact, a clear message from wider supervision literature is that ignoring the context of supervision risks ‘peril’. This thesis will eventually return to Milne’s definition of supervision, and the effective supervision evidence-base. However, that literature and evidence will be used to fulfil a specific purpose in accordance with the overall research design and methods, which Part D now covers.

86 Derek Milne, Evidence-Based Clinical Supervision: Principles and Practice (Wiley-Blackwell, 2009), 15–16.
88 Milne, above n 86, 214.
D Research Design

1 Scope, Aim and Questions

(a) Clarifying the Scope

The legal practice sector in Australia has many different modes of practice and is best characterised by its diversity. This thesis’ scope is limited to a specific but predominant subset of legal practice, namely the solicitors’ branch of the profession (the other main branch being barristers). To clarify, for the purpose of this research, the term solicitor includes all legal practitioners other than those practitioners whose practising certificate, or membership of a bar association, restricts them to practise as a barrister only. In other words, it excludes members of the legal profession, who in the English tradition, specialise in advocacy and work in chambers.

The main reason for exclusion of the barristers’ branch of the profession is that the available survey data relates only to solicitors. In addition, the following aspects of the way barristers engage in legal practice indicate an entirely different supervisory context:

- Barristers work independently and are not permitted to form partnerships or employ other barristers. Therefore, the extent to which barristers actually supervise junior barristers is unclear, and contextually different from solicitors.
- Commonly, intending barristers will begin their career as solicitors. This means that most legal practitioners in the early years of practice are solicitors.

As such, any reference to “practising lawyer” or “legal practitioner” in this thesis should be interpreted as a reference to the above definition of the solicitors’ branch of the profession. Similarly, any reference to legal practice, or the practice of law, is a reference to legal practice by a solicitor.

89 Janet Chan, Suzanne Poynton and Jasmine Bruce, ‘Lawyering stress and work culture: An Australian study’ (2014) 37(3) University of New South Wales Law Journal 1062, 1072-1073. This diversity will be considered further in Chapter III.
90 That data comes from the Queensland Legal Services Commission’s Supervision Practices Check. See Section 2(c) below.
91 Michelle Sanson, Thalia Anthony and David Worswick, Connecting with the Law (Oxford University Press, 2010), 373.
The scope of this thesis is further narrowed by its focus on Queensland. Again, the primary reason for this is that the available survey data (introduced in section 2 below) is Queensland specific. A secondary reason is that my own legal practice experience is primarily in Queensland, and is therefore of special interest. Despite a focus on the situation in Queensland, the findings will likely be of interest and relevance to other jurisdictions.

Finally, there is a deliberate focus on the period of Supervised Legal Practice, which the Systematic Literature Search revealed as being completely underdeveloped in terms of scholarship. For clarity, in this thesis, the term Supervised Legal Practice refers specifically to the compulsory two-year period, which newly admitted lawyers in Queensland (and all other Australian jurisdictions) complete after admission to practice, as a condition on their practising certificate. The more general term “supervised practice” refers to similar arrangements in either other countries, or other disciplines. Finally, the terms “legal practice supervision” or “supervision in legal practice”, refer generally to any supervisory process occurring in legal practice, irrespective of whether it occurs as part of Supervised Legal Practice.

This approach of focussing on a particular cross-section (solicitors in Queensland) and stage of legal practice (Supervised Legal Practice) allows for sufficient depth of analysis. This in turn will provide a framework for future research, directions for which are discussed in the final chapter.

(b) Research Aim

The aim of this research is to provide a resource for the legal profession to inform the processes and structures underpinning supervision during Supervised Legal practice. This will be done by developing a conceptual framework for understanding supervision in legal practice, and generating empirical evidence regarding the nature, and effectiveness, of supervision during Supervised Legal Practice. This research focusses on understanding how Supervised Legal Practice can be utilised as an effective final stage of legal education.

A secondary aim is to assist the development of various debates in the legal profession, and trends in legal practice, where supervision emerges as relevant. These debates and trends were introduced in Part B (1) above.
(c) Identifying the Research Questions

This research is driven by the following central question:

“What are the implications of the legal profession’s current conception of, and approach to, supervision during Supervised Legal Practice?”  

(Central Research Question)

This Central Research Question is multi-layered and answering it requires development of a number of preliminary issues. In particular, the Central Research Question presupposes a meaningful understanding of the present conception of, and approach to, supervision during Supervised Legal Practice. This information is not clearly present in the literature. Therefore, it is necessary to address the following sub-questions:

How is supervision positioned in the legal education and legal practice regulatory frameworks and what does this reveal about the legal profession’s approach to supervision, generally and during Supervised Legal Practice?  

(Sub-question 1)

What is the role, potential and shortcomings of supervision in contemporary legal practice, generally and during Supervised Legal Practice?  

(Sub-question 2)

These two sub-questions, addressed in Chapters II and III, together provide an outline of the legal profession’s current conception of, and approach to, supervision (generally and during Supervised Legal Practice). However, as outlined in Part C above, the legal profession can usefully take lessons from the related endeavour of clinical legal education, as well as other professional disciplines. Lessons from these wider fields are integrated into the conceptual framework by asking the following questions:

How has supervision and supervised practice been understood and treated in related endeavours and other disciplines?  

(Sub-question 3)

What are the characteristics of appropriate or effective supervision?  

(Sub-question 4)

Chapters IV and V are directed at these sub-questions. Answering sub-questions 1-4 enables articulation of a conceptual framework for understanding the implications of the legal
profession’s approach to supervision. Beyond this, a meaningful discussion of the “implications” requires a consideration of evidence regarding the actual perceptions, practices and experiences of supervisors and supervisees. This leads to the following final sub-question:

*What does the available evidence tell us about the effectiveness of supervision in legal practice, generally, and during Supervised Legal Practice? (Sub-question 5)*

This sub-question drives the data presentation and analysis chapters (Chapters VI, VII & VIII). Answering this question provides a basis for assessing supervision in the context of the conceptual framework (developed by addressing sub questions 1-4). This in turn enables a meaningful discussion of the “implications” for answering the Central Research Question.

2 *Methodology and Methods*

I have adopted a mixed methods approach that is underpinned by an underlying pragmatic worldview.93 I have used ‘all approaches available to understand the problem.’94 In this regard, I endorse the views of Johnson and Onwuegbuzie who position ‘pragmatism as the philosophical partner for mixed methods research’ in the following terms:

We do not aim to solve the metaphysical, epistemological, axio-logical (e.g., ethical, normative), and methodological differences between the purist positions. And we do not believe that mixed methods research is currently in a position to provide perfect solutions. Mixed methods research should, instead (at this time), use a method and philosophy that attempt to fit together the insights provided by qualitative and quantitative research into a workable solution.95

A pragmatic worldview is consistent with the overall aim of providing a resource for the legal profession to inform the processes and structures underpinning supervision during Supervised Legal Practice. In addition to being ‘the philosophical partner to pragmatism’, a mixed-methods


94 Ibid.

95 R B Johnson and A J Onwuegbuzie ‘Mixed Methods Research: A Research Paradigm Whose Time Has Come’ (2004) 33(7) Educational Researcher 14. (Citations Omitted). Furthermore, Johnson and Onwuegbuzie ‘advocate consideration of the pragmatic method of the classical pragmatists (e.g., Charles Sanders Peirce, William James and John Dewey) as a way for researchers to think about traditional dualisms that have been debated by the purists. Taking a pragmatic and balanced or pluralist position will help improve communication among researchers from different paradigms as they attempt to advance knowledge. Pragmatism also helps to shed light on how research approaches can be mixed fruitfully; the bottom line is that research approaches should be mixed in ways that offer the best opportunities for answering important research questions.’
approach is justified because this thesis is concerned with theory development and generating empirical evidence.

In terms of generating empirical evidence, this research design has features of a “Convergent” Mixed-Method Design Type. According to Creswell and Clark the purpose of this design is:

to obtain different but complementary data on the same topic to best understand the research problem. The intent in using this design is to bring together the differing strengths and nonoverlapping weaknesses of quantitative methods (large sample size, trends, generalization) with those of qualitative methods (small sample, details, in depth). This design is used when the researcher wants to triangulate the methods by directly comparing and contrasting quantitative statistical results with qualitative findings for corroboration and validation purposes. Other purposes for this design include illustrating quantitative results with qualitative findings, synthesizing complementary quantitative and qualitative results to develop a more complete understanding of a phenomenon, and comparing multiple levels within a system (emphasis added).  

The empirical evidence component of this thesis reflects, to some extent, a ‘Convergent Parallel Design: data validation variant’. Creswell and Clark describe how this variant is used when:

the researcher includes both open- and closed-ended questions on a questionnaire and the results from the open-ended questions are used to confirm or validate the results from the closed-ended questions. Because the qualitative items are an add on to a quantitative instrument, the items generally do not result in a complete context-based qualitative data set. However, they provide the researcher with emergent themes and interesting quotes that can be used to validate and embellish the quantitative survey findings.  

In particular, this thesis utilises survey data (introduced in section 2 below) which includes a mix of closed-ended and open-ended questions. Beyond this, the mixed-method design type for this thesis contains a number of unique characteristics that do not clearly fit within any particular convergent design variant contemplated by Creswell and Clark. In particular:

- Rather than distinct and discrete qualitative and quantitative sections, the data will be organised and analysed according to three issues distilled from the conceptual framework.
- The quantitative data and qualitative data will be analysed together for each of these issues. The qualitative data will be used to embellish some aspects of the quantitative data, as well as being standalone data in relation to other aspects of the analysis. From

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96 Creswell, John W and Vicki L Plano Clark, Designing and Conducting Mixed Methods Research (SAGE Publications, 2010), 77 (Citations omitted).
97 Ibid 81.
98 Ibid.
99 The survey data used in this research is introduced in section 2(c) below and a copy of the survey in included at Appendix 2.
this, a number of findings will be presented in relation to each of the three guiding issues.

- All findings will then be merged as part of an overall discussion directed at addressing the research questions. This subsequent discussion will expand beyond the empirical findings.

Within the overall scheme of this mixed-methods design, this research utilised a range of methods. The Systematic Literature Search, undertaken in the early stages of this research project: (a) served to position legal practice supervision in terms of the existing academic literature (see Part B above); (b) informed selection of the following methods:

- Analysis of legal materials
- Interdisciplinary literature review
- Secondary analysis of survey data

An explanation, and justification, of each of these methods now follows.

(a) Analysis of Legal Materials

The supervision dimensions of the regulatory framework covering legal education and legal practice are multi-layered. In particular: supervision is a general feature of lawyers’ professional responsibility; Supervised Legal Practice is a distinct legislative requirement; and supervision appears as an aspect of pre-admission educational requirements.\(^{100}\) The Systematic Literature Search revealed that the legal profession tacitly bases its conception of supervision on these legal rules and obligations. However, the Systematic Literature Search also revealed that there is no Australian academic literature that comprehensively examines the supervision dimensions of this regulatory framework. Therefore, as a first step in developing a conceptual for understanding supervision in legal practice, Chapter II analyses a range of legal materials, historical and present, that are relevant to the supervision dimensions of the regulatory framework. The purpose is not to critique the way in which supervision is regulated;\(^{101}\) rather to explore the relevant legal framework and highlight it as one factor relevant to understanding the processes and practices underpinning supervision. This involves, to a certain extent, a

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\(^{100}\) This was revealed by a preliminary review of the following legislative materials Legal Profession Act 2007 (Qld); Legal Profession Regulation 2007 (Qld); Australian Solicitors’ Conduct Rules; Supreme Court (Admission) Rules 2004 (Qld). These materials are covered in detail in Chapter II.

\(^{101}\) The analysis may, however, uncover regulatory issues that may warrant further research. This possibility will be re-visited in the concluding chapter (Chapter IX).
doctrinal legal analysis aimed at: (a) organizing the relevant legislation, regulation and professional conduct rules that include, or envisage, supervisory duties; and (b) identifying vagueness, inconsistencies and uncertainties in their application. However, given the lack of useful legislative guidance and case law, this doctrinal analysis has a distinctive historical flavour. Historical resources are included with the view to understanding the overall purpose of some aspects of the regulatory framework.

Generally, lawyers are concerned with making decisions according to, and around, what the law says. Therefore, even though this thesis argues against an over-reliance on legal materials, this legal analysis is a necessary first step to fulfil the aim of providing a useable resource for the legal profession. In other words, ‘in order to help improve communication among researchers from different paradigms’, I deemed it was pragmatic to begin with the familiar (i.e. sources of law) and use this as a platform for developing a conceptual framework.

(b) The Literature: Review, Analysis and Synthesis

Following the analysis of legal materials in Chapter II, Chapters III, IV and V canvass various streams of literature. However, these chapters are not a “literature review” in the traditional sense. Ridley describes the scope and flexibility of format for a literature review as follows:

The literature review often appears as a distinctive chapter or a group of chapters in the final draft of the dissertation or thesis. The titles for these chapters vary and can often be topic related instead of being called ‘the literature review’. However, it is also possible that the literature review may be integrated throughout the whole thesis and a single chapter is not identifiable. In the latter case, it does not mean that a literature review has not been completed as it is an integral part of all research. The researcher has simply chosen to use the related literature in a more integrated way throughout the thesis.

Furthermore, the literature review should be a ‘dynamic’ not ‘static’ process and the format for incorporating the literature is a decision for the researcher. With this in mind, building on the

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102 For an overview of the type of doctrinal analysis contemplated, see Caroline Morris and Cian Murphy, Getting a PhD in Law (Hart, 2011) 30-31.
103 See Johnson and Onwugebuze above n 95.
104 For an example of this traditional approach see: by Gina Wisker, The Postgraduate Research Handbook (Palgrave, 2007) ch 15.
analysis of legal materials in Chapter II, I decided to analyse and synthesise relevant literature as a narrative beginning in Chapter III and ending in Chapter V.

This narrated analysis and synthesis of literature drives the first part of the thesis and addresses the lack of theory identified by the Systematic Literature Search. This part of the thesis is distinctive in the following senses: it has not been done before; is cross-disciplinary; and looks at supervision in ways not done before in the context of legal practice. In this sense, the coverage of literature in this thesis has a number of markers of what is means to be original\(^{107}\) and makes a significant contribution to knowledge in its own right. Finally, this theory development facilitated the identification of issues that provide a guiding structure for discussing the survey data.

\(\text{(c) Secondary Analysis of Survey Data}\)

This thesis incorporates data from the Queensland Legal Services Commission’s (“the QLSC”) Supervision Practices Check (“the Survey”).\(^ {108}\) As the data was collected by a third party organisation, which authorised the use of that data for this thesis,\(^ {109}\) there was no actual direct data collection and no ethics clearance was required.

The Survey responses provide a rich source of quantitative and qualitative data which specifically focuses on supervision in legal practice (“the Survey Data”) and is, therefore, directly relevant to the research questions. The Survey Data will be incorporated as part of the overall mixed-method design with Chapters VI, VII & VIII being centred on the Survey Data. Consistent with the mixed-methods design, the data is analysed using both quantitative and qualitative methods.

A secondary analysis of the Survey Data, as opposed to a fresh collection of data, was decided in order to:

- Save time and cost; and
- Incorporate data that the researcher would find difficult to obtain otherwise.\(^ {110}\)


\(^{109}\) See the ‘Welcome’ component of the QLSC Survey in Appendix 2.

In this regard, I considered accessibility of the target population i.e. practising lawyers in Queensland. Based on previous personal industry experience, I concluded: notwithstanding potential limitations of the existing data, without significant resources beyond that appropriate for a PhD thesis, it was impractical to obtain additional data that improves on the Survey Data.

There are of course some disadvantages. In this case, those disadvantages are largely mitigated by: the recentness of the data; my ability to discuss aspects of the survey with one of the survey’s original developers; and my input into the design of the second version of the survey. In addition, I verified the appropriateness of using the Survey Data by undertaking a preliminary review and analysis, which revealed that:

- The Survey Data had not been analysed, interpreted or reported elsewhere (except in research I have completed during the course of my candidature).
- The Survey was completed by a range of practising lawyers across a variety of legal practice settings in Queensland. This population is directly relevant to this research.
- It will be possible to generalise the results to a broader population to a certain extent. In this regard the Survey Data suffers from self-selection or non-response bias. The effect of non-response in survey research is largely unknown. This type of data has been described previously as a form of participatory action research but at the same time has been used to draw inferences where:
  - ‘the patterns and relationships in the data are so strong that it is unlikely they could be explained any other way’; and
  - ‘to throw doubt on theories where patterns and relationships in the data are completely inconsistent with that theory’.

The Survey Data was analysed with these limitations in mind. The issue of secondary analysis aside, the following additional information is covered at the beginning of Chapter VI (which is the first of three chapters that present and analyse the Survey Data):

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111 For an overview of the potential disadvantages, see Vartanian, ibid 15-17; and Kiecolt and Nathan, ibid.
112 The survey was developed by the QLSC and Professor Jeff Giddings (the candidate’s external supervisor).
113 See Appendix B for a list of questions in the 2013 survey which were drafted by the researcher.
114 For a list of suggested criteria, see Vartanian, above n 110, 17-22.
115 See ‘Acknowledgements’ section at beginning of this thesis.
117 Parker and Aitken, above n 8, 416. The data utilized in this research was also survey data which had already been obtained by the Queensland Legal Services Commissioner.
118 Ibid.
119 Ibid.
• Survey Background and Respondent Demographics; and
• Data Analysis Steps and Methods.

The final section of the introductory chapter will outline the structure of this thesis and provide an overview of each of the remaining chapters.

**E Thesis Structure and Chapter Overview**

There are three main parts to this thesis. The first part, comprising Chapters II-V, develops a conceptual framework for understanding the purpose and functions of supervision, and factors contributing to effective supervision. This framework itself addresses a gap in the literature but also provides a structure for the second part, which presents and analyses the Survey Data.

Chapter II is a historical and doctrinal analysis of the legal education and legal practice regulatory framework. This analysis begins by examining legal practice supervision in a historical context and traces the development of legal rules, related to supervision, from the beginning of the modern legal profession to the present. Chapter II then undertakes a detailed doctrinal analysis of current legal rules related to supervision, with a focus on understanding the purpose of key legislative provisions. This preliminary legal analysis reveals that:

- Supervised Legal Practice, although positioned as a stage of final legal training, is not supported by any clear structure or program of training. In fact, Supervised Legal Practice is largely unregulated.
- The supervision dimensions of the regulatory framework emphasise discipline over development.

Building on this preliminary legal analysis, Chapter III shifts the discussion away from legal materials and towards the legal profession and legal practice management literature. That literature uncovers how the legal profession conceives supervision in a limited way by focusing on reducing the risk and cost associated with supervision, via a range of monitoring activities. Chapter III then describes how broad trends facing the legal profession, including disruptive technologies, elevate the importance of supervision and the need for a broader conception of supervision that caters to the relational aspects of legal practice and supervision. Finally, this chapter describes how the limited monitoring based approach to supervision is particularly
problematic in relation to junior lawyers because it fails to cater to their training and interpersonal needs.

Chapter IV explores how supervision is an important aspect of the closely related and, at times overlapping, endeavour of clinical legal education. The clinical legal education literature positions supervision as a tool for achieving educational outcomes. Fundamental to the success of supervision in this field, is student responsibility and intervention by law faculty staff. This chapter will also outline what clinicians regard as best practices and introduce the notion of “effective” supervision. The chapter will conclude by arguing that effective supervision scholarship in clinical legal education is limited and depends on engaging in a “functional discourse”, the starting point of which should be supervision literature arising from other professional disciplines.

Chapter V will cover lessons the legal profession can learn from other professions. This chapter will present a purposive selection of supervision literature from other professions. In particular, this chapter will uncover that supervision theories and practices arising from other professional settings reveal a complex interplay between supervisor, supervisee and client. Fundamentally, supervision has three main functions: restorative (i.e. mentoring/support); normative (i.e. managerial/administrative) and formative (i.e. educational/training). This functional approach to supervision provides a means for realising the training and support needs of lawyers completing Supervised Legal Practice, while also catering to practice management requirements. This chapter will also describe the following key aspects of effective supervision: understanding the context; a strong supervisory relationship (or alliance); and appropriate structures supporting the relationship, most fundamental of which is regular supervision meetings.

The first part of this thesis will conclude at the end of Chapter V, where the legal practice conception of supervision is revisited in light of lessons from clinical legal education and other professional disciplines. At this point, the conceptual framework is distilled into three key issues, which will provide a flexible guiding framework for the second part of the thesis.

The second part of this thesis uses the three issues identified at the end of Chapter V as a guiding framework for presenting and analysing the Survey Data. Chapter VI will analyse Survey Data
directed at addressing the first of three issues identified at the end of Chapter V. That first issue relates to the functions of supervision. This chapter will provide baseline findings in relation to:

- How supervisors and supervisees perceive the functions of supervision and how those perceptions differ between supervisors and supervisees; and
- How organisational factors impact supervisory functions.

Chapter VII will analyse Survey Data directed at addressing the second of three issues identified at the end of Chapter V. That issue relates to how the relationship between supervisor and supervisee is as vital factor for effective supervision. This chapter will provide evidence regarding the nature of effective supervision, from the perspective of both supervisors and supervisees. This chapter will also analyse qualitative data that provides insight into the experience of supervisees. From this a number of themes will be developed. These themes will generate additional findings in relation to the strength of the supervisory relationship, and the effectiveness of supervision.

Chapter VIII analyses aspects of Survey Data directed at addressing the third and final issue identified at the end of Chapter V. That issue relates to newly admitted lawyers completing a period of Supervised Legal Practice. This chapter will consider the extent to which the supervision given and receive differs for this subset of supervisees. This chapter will also use qualitative data to construct profiles of supervisees completing Supervised Legal Practice, and then complete a meta-analysis of those profiles to generate additional findings.

The final part of this thesis, Chapter IX, summarises and synthesise the findings from chapters VI, VII and VIII. This summary and synthesis will lead into a discussion of the implications of these findings. This chapter will then re-visit, and answer, the Research Questions as well as make a number of recommendations for the legal profession. This thesis will conclude with a discussion of prospects for future research and some final comments.
II REGULATION OF SUPERVISION: A HISTORICAL AND DESCRIPTIVE OVERVIEW

A Introduction

Like most areas of legal practice, supervision is regulated by statute, regulations, professional conduct rules and case law (“the Regulatory Framework”). This chapter provides the first comprehensive overview of the supervision dimensions of the Regulatory Framework in the state of Queensland. Although this chapter focuses on the Queensland situation, the Regulatory Framework is similar in all other Australian states and territories and much of the content in this chapter is relevant Australia-wide.

There are no existing, similarly comprehensive accounts, of this subject matter. Therefore, this overview is a significant contribution in its own right. At present, the supervision dimensions of the Regulatory Framework are given an overly simplistic treatment or not covered at all in mainstream professional responsibility texts. This chapter will reveal the following key points:

- The Regulatory Framework has evolved over a 250-year period to a point where supervision appears to be dealt with differently (or perhaps haphazardly), for law students, junior lawyers and general legal practice.
- The quality and purpose of supervision appears to be taken for granted.
- On a profession-wide basis, the supervision of newly qualified lawyers lacks any structured training or support component.
- Overall, the focus is on discipline (as opposed to professional development).

The material in this chapter is organised under the following headings:

- The Regulatory Framework: An Overview - Part B
- Supervision and the Development of Stages of Legal Education – Part C
- Supervision of Law Students - Part D

1 Part B below provides an overview of the statute, regulations and rules in Queensland, together with the corresponding legislation in other states and territories.
2 Dal Pont for example does not specifically cover Supervised Legal Practice and links supervision with ‘attendance at practice’. See G E Dal Pont, Lawyers’ Professional Responsibility (Law Book Co, 6th ed, 2017), 676-679. The leading Queensland text includes a brief section on the ‘Duty to Supervise’ at the beginning of a chapter which deals with the different types of legal practice structures. That section outlines the relevant professional conduct rule and provides a brief summary of some disciplinary cases. Again, there is no coverage of the compulsory Supervised Legal Practice condition for newly admitted lawyers. See Stephen Corones, Nigel Stobbs and Mark Thomas, Professional Responsibility and Legal Ethics in Queensland (Thomson Reuters, 2014), 159-163.
3 For example, see Ysaiah Ross, Ethics in Law: Lawyers’ Responsibility and Accountability in Australia (LexisNexis Butterworths, 2014) and Ysaiah Ross and Peter J M MacFarlane, Lawyers’ Responsibility and Accountability: Cases, Problems and Commentary (LexisNexis Butterworths, 2012).
A significant amount of literature exists that considers the way in which the legal profession is regulated and the effectiveness of that regulation. That literature considers a number of “big picture” issues including: limitations of, and alternatives to, regulating individual lawyer conduct;4 and the purpose, place and usefulness of professional rules.5 Although the subject matter of this chapter is relevant to these issues, this chapter is not directly concerned with adding to that literature. The overarching purpose of this thesis is to improve understanding of supervision as an activity that is a central part of legal practice.

It is also necessary to clarify my approach to regulation in this chapter. The term “regulation” is used in this chapter in a limited sense to refer to ‘legal rules’6 in the form of legislation, regulations, professional conduct rules and case law (i.e. formal regulation). This limited definition can be contrasted with wider definitions used by regulatory scholars such as any ‘intentional activity of attempting to control, order or influence the behaviour of others’.7 In this regard, scholarship adopting a regulatory approach is concerned with the issue of how regulation should occur and ‘what the appropriate role of government should be’.8

The intentional consequence of this approach is this chapter does not examine the ‘regulatory space’9 of supervision or explain the various ways formal regulation controls behaviour or interacts with other forms of regulation.10 Hence the use of the term Regulatory Framework, as opposed to “Regulatory Space” is deliberate. Examining the way in which supervision is

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5 Although professional codes are more often than not analysed in a critical light, there is a general consensus that they do at least serve some purpose, however marginal that may be. For example, Hutchinson, who advocates a consideration of professional responsibility beyond mere rules, acknowledges that the professional conduct rules are ‘…a starting point or resource in the broader debate about appropriate ethical behaviour...’ and ‘...they act as the outside limits within which debate can and must occur.’ See Allan C Hutchinson, Legal ethics and professional responsibility (Irwin Law, Incorporated, 2006) 16. Another is Evans who, while emphasising professionalism as crucial to overcome ethical failures, acknowledges the relevance of regulation that ‘pushes’. See Adrian Evans, Assessing Lawyers’ Ethics (Cambridge University Press, 2010), 56.
6 For an overview of ‘legal’ and ‘non legal’ regulation and of ‘state regulation of a firm’s own internal regulation’, see Julia Black, ‘Law and Regulation’ in Christine Parker et al (eds) Regulating law (Oxford University Press, 2004) 33. In particular, Black (p 54) describes the state regulation of a firm’s internal regulation as a form of ‘meta regulation’.
8 Arie Frieberg, The Tools of Regulation (Federation Press, 2010), 1.
9 Ibid 18-19. Some of the material in later chapters may in fact touch on other aspects of the ‘regulatory space’ however this is merely a by-product of the research design and is not an attempt to cover the entire regulatory space.
10 For an overview of these aspects of regulatory theory see: Parker et al above n 6.
moulded by formal regulation is one means of exploring supervision as an activity in the context of legal practice.

B The Regulatory Framework: An Overview

The central components of the Regulatory Framework for solicitors in Queensland are:

- *Legal Profession Act 2007 (Qld)* (“the LP Act”)
- *Legal Profession Regulation 2007 (Qld)* (“the LP Regulation”)
- *the Australian Solicitors’ Conduct Rules* (“the ASCR”)
- *Supreme Court (Admission) Rules 2004 (Qld)* (“the Admission Rules”)

There is corresponding legislation in all Australian States and Territories. As in Queensland, in Western Australia, Tasmanian, the Northern Territory and the Australian Capital Territory, the legislation is based on a Model Bill for the legal profession. The corresponding legislation in both Victoria and New South Wales was previously based on the Model Bill but was superseded by new legislation, incorporating what is misleadingly described as the Legal Profession Uniform Law. South Australia has maintained its own framework.

The Law Council of Australia developed the Australian Solicitors Conduct Rules (ASCR) as a uniform set of professional conduct rules to be adopted by the Law Societies in each state and territory. In addition to Queensland, the Australian Capital Territory, New South Wales, Victoria and South Australia have adopted the ASCR. The professional conduct rules in the Northern Territory are based on previous versions of model rules developed by the Law

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11 Legal Profession Act 2008 (WA); Legal Profession Regulations 2009 (WA).
12 Legal Profession Act 2007 (Tas); Legal Profession Regulations 2007 (Tas).
13 Legal Profession Act (NT); Legal Profession Regulations (NT).
14 Legal Profession Act 2006 (ACT); Legal Profession Regulation 2007 (ACT).
15 For an overview of the Model Bill, including its purpose and shortcomings, see Dal Pont, above n 2, 22-23.
16 It is misleading because it has only been adopted by New South Wales and Victoria. For an overview of the “Uniform Law”, see: Legal Services Council Uniform Law (5 December 2016) <http://www.legalservicescouncil.org.au/uloverview.html>
17 Legal Practitioners Act 1981 (SA). The relevant point of difference is that supervised practice is not dealt with in this piece of legislation. Rather, the Rules of the Legal Practitioners Education and Admission Council 2004 (LPEAC Rules) impose a similar condition that supervised practice must be completed before being entitled to practice as a principal. See LPEAC Rules r 3.
18 Legal Profession (Solicitors) Conduct Rules 2015 (ACT)
20 Ibid.
21 Law Society of South Australia, Australian Solicitors Conduct Rules.
22 Law Society of the Northern Territory, Rules of Professional Conduct and Practice (May 2005).
Council of Australia. The Western Australian professional conduct rules, while different, share a number of similarities with the ASCR. The Tasmanian professional conduct rules are not based on any version of the model rules.

To confirm, this chapter refers primarily to the Regulatory Framework in Queensland. However, most of the supervision aspects of the Regulatory Framework are consistent across all Australian jurisdictions. Therefore, reference is made to the corresponding legislation in other states, only where there are material differences that are relevant to the discussion. This chapter will also mention particular aspects of the regulatory frameworks in England & Wales and the United States, where there are interesting points of difference. The intention is not to engage in a through comparative analysis, rather to add context and perspective to the discussion. In addition, the legislation is complemented, to a certain extent, by case law (including decisions of disciplinary tribunals), which is also covered in this chapter.

C  Supervision and the Development of Stages of Legal Education

1 Historical Overview of Supervision and Legal Education for Solicitors

‘Unacademic and informal’ training has been a key aspect of legal training at least since the period of the Roman Republic. This historical overview, however, is limited to the relationship between supervision and legal education for the solicitors’ branch of the profession in medieval and early modern England before branching off and focussing on developments in colonial New South Wales and then Queensland (after it separated from New South Wales in 1859). This section does not claim to be a comprehensive historical account of supervision as an aspect of legal education. Rather, the purpose of this section is to provide context for the subsequent

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24 Legal Profession Conduct Rules 2010 (WA)
26 For a more comprehensive comparison of the various approaches to supervised practice as part of legal education, see Jane Ching, Pre-Qualification Work Experience in Professional Legal Education: Literature Review (Nottingham Law School, 12 August 2016) 42-62 <https://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/workplace-learning.page>.
discussion of the current Regulatory Framework. As such, materials have been selectively
included to paint an overall picture of the relationship between supervision and legal education,
as an important factor in the evolution of the solicitors’ branch of the profession. Although not
covered in this chapter, supervisory issues were also relevant in the development of legal
education in the barristers’ branch of the profession, which was originally centred on the Inns
of Court.  

(a) Birth of a Profession in Medieval England and the Origins of Articles of Clerkship

Traditionally, for the solicitors’ branch of the legal profession in the English common law system,
there was no sharp distinction between legal education and legal practice. The role of attorney
gradually developed in Norman England from ‘lay friends casually assisting in suits’ to a
‘professional class’ around the reign of Edward I (1272-1307) and the number of attorneys
swelled in the fourteenth century. By 1402, the House of Commons petitioned the King ‘on
account of the great number of attorneys’ who according to the petitioners:

were unlearned in the law; some of them of tender age, they were negligent as well as ignorant,
were guilty of covin and collusion, improper persons were appointed, erasures were made in
writs and records ...’

The House of Commons reacted with a statute which was ‘the first attempt, by the
establishment, or recognition, of a Roll of Attorneys and otherwise, towards the regulation of
the profession by Parliament which has constantly increased in stringency until this day.’ The
1402 Act required all attorneys to be examined by a judge before having their name entered on
the Roll of Attorneys.

29 In fact, supervisory issues were influential in the demise of the traditional form of training for the barristers’
branch of the profession. By the 15th century, pleaders (the precursor to the barristers’ branch of the profession)
were educated through an experiential approach centred on the Inns of Court. The Inns of Court were a communal
arrangement where apprentices lived together with qualified barristers, received lectures and engaged in moots.
Eventually the practitioners whom the system relied on became prosperous and too busy such that the educational
system in the Inns of Court declined to a standstill in the latter part of the 17th century and formal training of
barristers remained dormant until the second half of the 19th century. See Julian Disney et al, Lawyers (Lawbook,
1986) 7–16.
30 Edmund B V Christian, A Short History of Solicitors (Reeves & Turner, 1896) 9.
31 Ibid 16-17.
32 Ibid 18.
33 Ibid 18-19.
34 Ibid 19.
35 Ibid.
Subsequent legislation in 1605 (3 Jas. I. c. 7), although mainly concerned with attorneys’ billing practices, also sought to limit the number of attorneys and solicitors by providing, according to Christian, that ‘none should be admitted but those brought up in the courts or otherwise well practised in the soliciting of causes and proved by their dealings to be skilful and honest.’ A 1633 rule of the Court of Common pleas, ‘prescribed as a qualification for admission six years’ service as a clerk to an attorney, or in the alternative that the applicant’s legal education should be approved by the judges’. Similarly, a 1654 rule of the Supreme Court prescribed that:

... none should be admitted an attorney unless he had served five years as a clerk to some judge, Serjeant-at-Law, Barrister, Attorney, Clerk or other Officer of the Court; and who on examination should be found of good ability and honesty for such appointment.

Hence, from the origins of the profession in Norman England, and through the medieval period, an experiential / apprenticeship system of learning existed for attorneys. This was complemented by some formal training including lectures and practical training such as instruction in drafting writs. Most aspiring attorneys were members of one of the Inns of Chancery.

This experiential system was reinforced and formalised at the beginning of the modern period with legislation, Geo. II. C. 23, in 1729 (“the 1729 Statute”), which again required in-service training of five years’ service as a clerk. However, this change was not simply reinforcing the status quo. The 1729 statute was different because it required that the five years’ experience be gained while ‘bound by contract’ or pursuant to ‘articles of clerkship’. The difference between the 1729 statute and earlier regulation is subtle, but important. Christian describes the situation as follows:

... so that from 1729, the persons applying for admission were ... to be not merely ordinary clerks who had acquired knowledge of practice and endured a sufficient number of years’ clerkship,
but persons who had deliberately elected attorneydom as a profession, and whose clerkship was
ab initio a process of education, and not merely a means of livelihood. 44

In other words, the 1729 statute marked a shift away from mere ad hoc service alone towards
an experiential learning arrangement, which required commitment from aspiring attorneys and
solicitors. Articles of clerkship were complemented by an examination system which, to begin
with, ‘amounted in practice to little more than an interview’ with a judge. 45 This examination
system in England evolved in strictness over the next 250 years while gradually being replaced
by university legal education. 46 Supervisory issues were an impetus for this shift with solicitors’
lack of time to ‘direct and supervise a clerk’s studies’ identified as a shortcoming of the articles
system as early as the mid-19th Century in England. 47 Similar issues arose, and led to similar
developments, in the Australian colonies. The next section looks at how the articled clerk
system evolved, and eventually gave way to the current system of legal education, in colonial
New South Wales from its beginnings in 1788, and then Queensland after it separated from New
South Wales, as a separate colony, in 1859.

(b) Transplantation of the Article System to Queensland and the Rise of University Legal
    Education

The requirement for five years’ service pursuant to articles of clerkship, as mandated by the
1729 statute, was adopted in the Australian colonies. Smith describes the article system in 1831
(as it related to John William Thurlow (1810-1873) who completed one of the first articles of
clerkship in Australia) as follows:

In 1831 there was no exam or other educational requirement attached to successful completion
of articles. The 1825 Regula Generalis of the [New South Wales Supreme] Court simply prescribed
five years articles as the pre-requisite. An affidavit of faithful and diligent service from the
principal was sufficient for admission; this was learning by observing, and doing under
supervision. In that pre-typewriter era the job itself would have involved much engrossing of
documents and general clerical duties. The five years of service was however rigidly enforced. 48

44 Ibid 112.
45 Disney et al, above n 29, 21.
46 Ibid 21-22.
47 Ibid 22.
48 Simon Smith, Barristers Solicitors Pettifoggers: Profiles in Australian Colonial Legal History (Maverick Publications,
2014) 127
Although there was no exam analogous to our understanding of exams today, the judges were ‘empowered to test the fitness of applicants in their character and legal knowledge’\(^49\) in the same vein, it seems, as prescribed by the 1729 statute. Articles of clerkship in early colonial Australia were a genuine contractual relationship with training obligations attached. These articles of clerkship just commented on, required payment of 80 pounds to the principal who in return agreed to:

- take the said John Wm (sic) Thurlow for the term aforesaid to serve him as an articled clerk and to teach him according to the best of his ability the science of an Attorney Solicitor Proctor and Notary Public …find him in good and sufficient meat drink clothing and lodging and to pay him £15 pounds a year for the second and third years rising to £20 pounds for the fourth and fifth year and £30 upon completion.\(^50\)

After separation from New South Wales in 1859, the first comprehensive Queensland specific admission rules appeared in 1866. These rules continued the existing system, with some slight changes, setting in place the following admission requirements: five years as an articled clerk or a judge’s associate; resident in the colony for one year; and successfully passing a number of prescribed exams (“The Solicitors Board Exams”).\(^51\) This basic structure remained relatively unchanged until the second half of the 20th century. This was despite early concerns in the colony about the standard of legal education\(^52\) and the lack of supervision of junior practitioners (especially in remote areas).\(^53\) In fact, this basic structure set in place by the 1729 statute remained an option for admission in Queensland until the end of the 20th Century.\(^54\)

Two overlapping issues dominated debates in the legal profession regarding legal education in the years following World War II. They were:

- The adequacy of the examination system conducted by the Solicitors’ Board; and
- Support given to articled clerks.

These issues coalesced with the rise of university legal education and eventually led to the downfall of the traditional structure put in place by the 1729 statute. University law faculties

\(^{50}\) Smith, above n 48, 127.
\(^{53}\) Ibid 15.
began to emerge in Australia in the 1850s.\textsuperscript{55} Queensland was, compared to the other states, a latecomer with the first university law faculty established at the University of Queensland in 1935.\textsuperscript{56} In Australia, generally, university legal training began to emerge as the dominant setting for legal education in the Post World War II period. This trend was later in Queensland, as well, where, even in the early 1960s, by far ‘most solicitors qualified for admission through the Solicitors Board examinations rather than a university degree course.’\textsuperscript{57}

This slowly began to change in Queensland in the second half of the 20\textsuperscript{th} century. One reason was a belief that the Solicitors’ Board examination system was sub-standard.\textsuperscript{58} Another was that the Queensland Law Society’s ‘ultimate aim was to ensure that all solicitors were educated in degree courses’.\textsuperscript{59} Another key ingredient for change were persistent grumblings, echoing those in England 100 years earlier, about the adequacy of the system of articled clerkships. These grumblings caused one contemporary to raise the following questions: ‘What has any solicitor done for his articulated clerks in the last five years? How has he complied with that covenant in his articles that he will give instruction in the principles of the law?’\textsuperscript{60} While another described the situation as follows:

As you are no doubt aware, the average articulated clerk obtains a copy of Stephens Commentaries (1928 edition), sits for his intermediate examination two or more years later without having had any lectures or tuition in the intervening period.\textsuperscript{61}

Also in the latter part of the 20\textsuperscript{th} century, articulated clerks themselves formed associations to harness greater support and training and there was a feeling that supervision needed to improve.\textsuperscript{62} Partially in response to these collective concerns regarding the status quo, and following broader trends in England and other Australian jurisdictions, seemingly haphazard changes were made to the traditional 1729 admission requirements system in Queensland following the introduction of university legal education.

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\textsuperscript{56} Gregory, above n 52.
\textsuperscript{57} Ibid. Interestingly, a university law degree was more common for the barristers' branch of the profession in Queensland.
\textsuperscript{58} Ibid 152-153.
\textsuperscript{59} Ibid 159.
\textsuperscript{60} Ibid 154 quoting L W H Butt.
\textsuperscript{61} Ibid quoting J G Drake.
\textsuperscript{62} Ibid 160.
\end{flushleft}
For those who completed a university law degree, a shorter articled clerkship was required (initially three years\(^{63}\) subsequently lowered to two years\(^{64}\)). Other forms of practical training were also permitted, including a postgraduate legal practice course.\(^{65}\) The Solicitors Board exams were eventually\(^{66}\) phased out and replaced with an external university law degree, which was first offered by the Queensland Institute of Technology in 1978.\(^{67}\) As was the case with the Solicitors Board exams, students studying under this course were required to complete five years of articles concurrently.

Consequently, a number of options to admission evolved. Prior to a major overhaul in the first decade of the 21\(^{st}\) century, the Solicitor Admission Rules 1968 (Qld) were the last major change to the admission rules.\(^{68}\) The 1968 Admission Rules were amended from time to time, and as at August 1999, allowed practical training requirements to be filled in a variety of ways including:

- Articles of clerkship (two years when completed after completion of a law degree or five years when completed concurrently with a law degree)\(^{69}\)
- Service as a judge’s associate (two years when completed after completion of a law degree or five years when completed concurrently with a law degree)\(^{70}\)
- Service as a judge’s clerk (four years when completed after completion of a law degree or eight years when completed concurrently with a law degree)\(^{71}\)
- Acting as a managing clerk in the office of a solicitor (eight years when completed after completion of a law degree or ten years when completed concurrently with a law degree)\(^{72}\)
- Service as a public servant in certain positions for ten years\(^{73}\)

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\(^{63}\) Ibid 153.
\(^{64}\) Centre for Legal Education, above n 54, 33-34.
\(^{65}\) Ibid 33-37.
\(^{66}\) The Solicitors’ Board exams were originally planned to be discontinued in 1970 but this did not eventuate because of the failure of a short-lived articled clerks’ course at the University of Queensland. See Gregory, above n 51, 156. Even after the commencement of the QIT external law degree, the Solicitors Board exams continued as an option for those unable to gain entry in that course. There are mixed reports as to exactly when the Solicitors’ Board exams finally stopped. See: Centre for Legal Education, above n 54, 37 - which reports that the Solicitors’ Board exams stopped in 1985; and White, above n 51, 308-309 who reports that the last examinations were held in November 1989.
\(^{67}\) Gregory, above n 52, 162.
\(^{68}\) White, above n 51, 308.
\(^{69}\) Centre for Legal Education, above n 54, 33-34.
\(^{70}\) Ibid.
\(^{71}\) Ibid.
\(^{72}\) Ibid. A managing clerk is a particular type of paralegal or legal assistant. More specifically, a managing clerk ‘was a personable, albeit by having acquired skill and knowledge by practical experience rather than by formal study, to perform the work of a solicitor, and did so.’ Managing clerks often conducted matters in their principal’s absence. See Charles Dickeson, ‘Paralegals in Law Firms’ (Paper presented at Australian Institute of Criminology: Improving Access to Justice: The Future of Paralegal Professionals, 19-20 February 1990).
\(^{73}\) Ibid 37.
• Completion of a practical legal training course

When this version of the Admission Rules was published in 1999, university legal education was well and truly the dominant setting of legal education in Queensland. The university law degree followed by two years articulated clerkship had become the standard mode of admission in the final decades of the 20th century in Queensland. At that point, articles of clerkship continued to take the form of contractual training where a solicitor covenanted to:

...accept and take the Clerk as his clerk during the said term and will by the best means he can and to the utmost of his skill and knowledge teach and instruct the Clerk or cause her to be taught or instructed in the practice or profession of a Solicitor of the Supreme Court of Queensland in such manner as he the Solicitor now practices and professes or shall at any time practice or profess the same ...

Articles of clerkship at that time differed from early arrangements in that the articulated clerks no longer paid for this type of training. However, the general contractual nature of articles of clerkship remained intact. Irrespective, the practical legal training course option was poised to replace articles of clerkship as the dominant mode of pre-admission practical legal training.

(c) The Bureaucratisation of Experiential Learning and the Death of Articles

According to Lamb and Littrich, the rise of the university law school as the dominant mode of legal education, ‘became a source of ambivalence and tension’ between legal academics and legal practitioners. This tension never fully resolved itself and remains in what Weir describes as a ‘dissonance’ between academics and practitioners. In the Queensland context, Weir considers that this dissonance is caused partly by a ‘perceived differing set of goals’. Weisbrot has also commented on the relationship and described it as ‘even less healthy’ than a mere tension. In a similar vein Giddings has reported on a situation where clinicians (i.e. law faculty members focussing on clinical legal education) are treated as second-class citizens by other law school faculty members, in a world where legal practice is not first priority. These authors have

74 Ibid 33-34.
75 Articles of Clerkship between Dennis John Lillie (“Solicitor”) and Zoe Scott Rathus (“Clerk”) dated 25 March 1981. I cited the original and hold a copy. (Emphasis added). The Clerk, Zoe Scott Rathus, is my associate supervisor and I have quoted, and retained a copy of, her articles of clerkship with her permission.
76 For example, see above n 50 and the surrounding text.
77 Lamb and Littrich, above n 55, 25.
79 Ibid 148.
80 Weisbrot, above n 55, 146.
81 Jeff Giddings, Promoting Justice Through Clinical Legal Education (Justice Press, 2013) 157-158.
adequately described the extent of this “tension”. However, relevant to the present discussion, that tension relates, significantly, to the preparation of law students for professional practice.

Overall, it seems that both legal academics and legal practitioners have shared responsibility for training and supervising the professional development of aspiring practitioners. However, neither seems able to focus exclusively on this particular task. Legal academics need to balance their teaching commitments with other university-based activities, notably research. While legal practitioners must find time away from the demands of clients and practice management issues in order to find time for aspiring practitioners. Arguably, a lack of awareness or appreciation of the professional commitments of each other lies at the heart of the issue.

The “tension” was a major factor in the recommendations of the Martin Report in the mid-1960s, which set in course the current system of legal education. This system of education has effectively replaced articles of clerkship with Practical Legal Training (PLT) courses. In relation to the shift from articles to PLT courses, Weisbrot has commented that:

The ascendency of the practical legal training courses had as much to do with concern over the inadequacy of the articles system as it did with the belief in the efficacy of formal, institutional training. The theory of articles, as with other apprenticeship training, was that articled clerks were given an early introduction to office practices and procedures; experience in real life situations (rather than simulations); supervision by a master solicitor; exposure to a wide range of legal business; and sufficient time off to complete complementary part-time studies. The reality of articles was frequently quite different, however. Articled clerks were often assigned tedious, menial tasks, and their status and salaries reflected this. Supervision was often poor in the busier firms, and the range of work limited in the smaller firms.

Following the Martin Report, the first PLT courses emerged in 1972 in the Australian Capital Territory and Tasmania, followed by courses in New South Wales and Victoria in 1974, and in South Australia in 1976. The first PLT course in Queensland, which began as a one year full-time course, was first offered by the Queensland Institute of Technology in 1978. PLT courses have grown in popularity and replaced articles of clerkship (except in Queensland, Victoria and Western Australia where modified versions of the article system, called Traineeships, exist). In Queensland and Western Australia, a PLT course is now, by far, the dominant mode of practical

83 Weisbrot, above n 55, 149.
84 Disney et al, above n 29, 267.
85 Gregory, above n 52, 162.
86 These modified versions of Articles, which are an alternative to the standard PLT course are considered in greater detail below in Part D(2).
legal training with the modified 12 month articulated clerkship option only taken by less than 5% of new entrants. The same overall trend is true in Victoria but to a lesser extent.

While the PLT solution has improved training in generic legal skills, it has not fixed the problems articulated above by Weisbrot. The PLT solution has simply shifted it to the post-admission stage where newly admitted lawyers are now subject to a period of supervised practice (“Supervised Legal Practice”). This period is a focal point for this thesis, and is considered in detail below in Part E. For present purposes, it is relevant to point out that the Supervised Legal Practice period is entirely unstructured.

2 General Comments on the Stages of Legal Education

Overall, we can see a broad trend beginning with an attempt to formalise the experiential requirement set by the 1729 statute, institutionalisation of legal education in the post-War period, the development of stages of legal education, and the core experiential component of legal education, now occurring during the Supervised Legal Practice period, being unstructured once again. The original measure was to bind experienced practitioners in contract to train aspiring lawyers via the system of articles of clerkship. This ultimately proved to be unsuccessful. The next measure, a product of the Martin Report, attempted to segregate legal education into a number of stages (while shifting the problem of experiential, on-the-job training to the post-admission period). Following the Martin Report, legal education has been commonly described as occurring in the following stages:

- Academic
- Practical Legal Training (“PLT”)
- Continuing Professional Development (“CPD”)

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87 For example, in the 2015/2016 financial year, the Queensland Legal Practitioners Admission Board considered only 42 applications for supervised traineeships (the new terminology for articulated clerk). In this same period the Board considered 1036 applications for admission. See: Legal Practitioners Admission Board (Qld) ‘2015-2016 Annual Report’. In Western Australia, 20 law graduates registered articles of clerkship during the 2015/2016 financial year while there were 452 local admissions in the same period. See: Legal Practice Board of Western Australia, ‘Annual Report 2015-16’.

88 In Victoria, supervised legal training (the modern incarnation of articles of clerkship) appears to have remained a viable alternative to PLT. In the 2015/16 financial year, there were 195 supervised trainees compared to 1277 new admissions in the same period. See: Victoria Legal Admissions Board ‘Annual Report 2015-2016’.

89 See above n 83 and surrounding text.

This staged approach has resulted in an unstructured approach to supervision during legal education. Furthermore the distinction between the first two stages is increasingly blurry as a result of three trends: (a) the increase in legal work experience, via clinical legal education courses, at the Academic stage; (b) a trend towards less workplace experience in PLT courses, with the minimum requirement being just 15 days; and (c) the growth in variety of formats and delivery in PLT courses. In addition, PLT course providers may allow entry into PLT courses before formal completion of a law degree and most ‘permit students to claim credit for previous practice based experience.’ Finally some universities offer integrated courses incorporating both the Academic and PLT components. In short, it is possible for students to get equal or more “hands-on” practical training during a university law degree than during a separate PLT course, depending on choice of university and PLT course provider. The division between the Academic and PLT stages is also unclear given the current Regulatory Framework. While both are given some passing treatment in the Regulatory Framework, experiential learning for unqualified students falls into the same category of legal practice irrespective of whether it is done as part of a law degree or PLT course; that is unqualified legal practice, which is technically prohibited.

In addition, the third stage of legal education, CPD, is particularly problematic when it comes to newly admitted lawyers. It fails to acknowledge the statutory (and practical) difference between newly admitted lawyers subject to Supervised Legal Practice requirements and more experienced practitioners. In particular, newly admitted lawyers do not have any special or additional requirements to facilitate their transition to practice. The Queensland Law Society

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91 See Jeff Giddings and Michael McNamara ‘Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do with It?’ (2014) 37(3) UNSW Law Journal 1226, 1240-141.
92 For an overview of the development of Clinical Legal Education in Australia, see Giddings, above n 81, 9-12.
93 See Law Admission Consultative Committee, Practical Legal Training Competency Standards for Entry-Level Lawyers (2015) (“the Competency Standards”). The actual duration of workplace experience varies by institution and these placements are not necessarily integrated into the rest of the PLT program. See Giddings and McNamara, above n 91, 1234-1236.
94 Originally these courses were designed as ‘simulated articles’. However, ‘... development of diversity in provision had led to considerable diversity and flexibility in design and delivery, a progressive and irrevocable shift from the original approach of ‘simulated articles’.’ See Lamb and Littrich, above n 55, 34-36. Included in this diversity of provision is online delivery which may not be entirely appropriate for the teaching of some skills. See: Gaye T. Lansdell, ‘Have We Pushed the Boat Out Too Far in Providing Online Practical Legal Training: A Guide to Best Practices for Future Programs’ (2009) 19 Legal Education Review 149.
95 See the Competency Standards, above n 93, 3.
96 See Giddings and McNamara, above n 91, 1236.
97 Programs at Flinders University and University of Newcastle enable students to complete the Academic and Practical Legal Training stages concurrently as part of integrated programs. In addition, the University of Technology, Sydney allows students to complete the Practical Legal Training in the final semester entirely within their law degree.
98 This is considered next in Part D.
offers CPD seminars that cater for ‘for young lawyers, legal support staff and regional practitioners.’ However, these seminars are optional and do not appear to be specifically directed at Supervised Legal Practice.

For these reasons, rather than describing the supervision dimensions of the Regulatory Framework in terms of the contemporary description of the stages of legal education, it is more appropriate to do so in terms of stages of legal practice, which are:

- Law Students and Legal Workplace Experience
- Newly Admitted Lawyers and Supervised Legal Practice
- General Supervisory Duty in Legal Practice

The next three sections will canvass the supervision dimensions of the Regulatory Framework relevant to each of these three stages.

D Supervision of Law Students

As outlined in Part C above, the dividing line between the Academic and Practical Legal Training (“PLT”) stages of education is becoming increasingly blurry. Overall, the Academic / PLT nomenclature is misleading and, except for some limited exceptions, it is simply the case that there are two separate qualifications required for admission purposes. They are:

- A university degree in law (Law Degree); and
- Completion of a program described as a PLT Course (or the far less common option of a Traineeship).

At both of these stages of legal education, students have the opportunity to participate in actual legal practice, at varying degrees, depending on the institution and courses selected, as part of their clinical legal education, which is a process of education as opposed to stage of education and often involves students participating in actual legal practice. Clinical legal education can

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100 See above n 97 and accompanying text.  
101 Following admission, lawyers then have the right to apply for a practising certificate.  
102 The standard qualifications are the undergraduate Bachelor of Laws (LLB) and the postgraduate Juris Doctor (JD).  
103 The standard qualification awarded is the Graduate Diploma in Legal Practice.  
104 Clinical legal education comes in three main forms: Simulation-based courses; In-house Clinics; and Externships (also referred to as Placements and Internships). The latter two forms involve students engaged in actual legal
occur during a Law Degree or a PLT Course, however, is only mandated when completing a PLT Course.¹⁰⁵

Given that law students participating in actual legal practice have no practising certificate, they must be subject to direct supervision.¹⁰⁶ In this regard, they are akin to non-lawyers, such as clerks or paralegals. As such, the supervisory experience of lawyers begins during their formal pre-admission legal education. This section provides a brief outline of the relevant aspects of the Regulatory Framework, at this pre-admission stage, with the view to providing context to the later discussion (Parts E and F) in relation to later stages of legal practice.

1 Legal Practice Experience for Students Completing Law Degrees and PLT courses

Even though both Law Degree students and PLT Course students are practically the same in the sense that they are not admitted as lawyers, the Regulatory Framework treats them as two different types of unqualified legal practice.

There is no specific permission, by way of statute or subordinate legislation in either Queensland or other Australian jurisdictions, for Law Degree students to participate in legal practice.¹⁰⁷ This means that the regulatory requirements for the supervision of students engaging in legal practice as part of Law Degree clinical legal education courses are very unclear. This should be compared to the American situation where student practice rules permit law students student to practise law where they are under the supervision of a qualified legal practitioner member of

¹⁰⁵ The nature and length of that placement requirement during a PLT course is covered in section 1 below.
¹⁰⁶ Although mandated for PLT courses and increasingly common for Law Degree students, placements operate in a kind of statutory limbo. Strictly speaking, while students gain work experience, they are not entitled to engage in legal practice during that work experience.
¹⁰⁷ The closest to any form of regulation on the matter is the Council of Australia Law Schools, CALD Standards for Australian Law Schools as adopted 17 November 2009 and Amended to March 2013 (“CALD Standards”). This type of learning is only acknowledged to the extent that the CALD standards (at p 4) require that a law school: ‘endeavours to provide, so far as is practicable, experiential learning opportunities for its students, including, but not limited to, clinical programs, internships, workplace experience, and pro bono community service.’
the faculty. Although implementing similar rules in Australia has been proposed, this has not happened and there is nothing at present to indicate it is on the agenda.

For the purpose of engaging in legal practice, it seems that law students are treated, by the Regulatory Framework, the same as other general law office staff including secretaries and paralegals. Therefore, presently in Australia, it seems the only regulatory guidance available is the General Supervisory Duty in Legal Practice. This aspect of the Regulatory Framework is discussed below in Part F, however, there is no specific information regarding law students. Given that clinical legal education has wide-ranging support in the legal profession, the judiciary and in government, it is surprising that when it comes to participating in legal practice, Law Degree students operate in a legislative blind spot. Despite this, there is a significant body of academic literature considering supervisory issues for clinical legal education. This literature, which is generally more concerned with the process of supervision as opposed to the regulation surrounding it, is considered in detail in Chapter IV.

The legislative basis for PLT students engaging in legal practice are the Queensland Admission Rules. There are admission rules in all other states and territories, which broadly correspond to the Queensland Admission Rules. In addition, the national Law Admissions Consultative Committee (“LACC”) has developed a set of model admission rules, which ‘reflect the principles generally followed by Admitting Authorities under their respective rules relating to admission.’ Relevant to this discussion, the uniform admission rules include a set of Competency Standards for Entry Level Lawyers (“the Competency Standards”).

Section 9AA of the Queensland Admission Rules gives power to the Chief Justice to issue admission guidelines. In relation to PLT courses, the Chief Justice has issued the Competency Standards. Therefore, the Competency Standards operate in Queensland as a form of delegated legislation.

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110 There are appearance programs in some clinical legal education programs, most notably at Monash University. However, these programs operate outside any formal student practice rules; usually law students are required to seek leave of the court.
113 Competency Standards, above n 93.
The Competency Standards set a requirement of ‘15 days’ of workplace experience’ for PLT Courses. ‘Workplace experience’ is defined as ‘supervised employment in a legal office, or supervised paid or unpaid placement in a law or law-related work environment’. While the basis of the workplace experience requirement seems to be supervised legal work (in both versions of the standards), the definitions are somewhat tautological and this seems to come about because of a lack of any obvious conception of supervision. In addition to these unhelpful definitions, the Competency Standards require supervisors to have ‘substantial’ experience in the practise of law. They also require PLT providers to assist students with mental health and well-being matters, however, there is no link made between such matters and supervision.

In 2016, the LACC also developed additional ‘Standards for PLT Workplace Experience’ due to concern ‘about the effectiveness of, and variation in the prevailing practise of PLT providers relating to, workplace experience undertaken as part of a PLT course’. These Workplace Experience Standards ‘were adopted by all Admitting Authorities during 2016.’ At present, it is not clear to what extent these standards have actually been implemented. The process of supervision is central to these Workplace Experience Standards, which require the provision of ‘appropriate’ supervision. Despite this, they provide no guidance on what this entails.

2 Traineeships – Articles of Clerkship by Another name

Despite the ascendancy of PLT courses, it is still possible to meet the PLT requirements in Queensland by completing one year of supervised workplace experience (“Traineeships”) instead of a PLT Course. Given the dwindling number of students undertaking this form of practical legal training, this section of the chapter is less significant than the surrounding sections, but is nonetheless included for completeness. Traineeships, which are one year in duration, are the current incarnation of articles of clerkship, which followed completion of a Law

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114 Ibid 4.
115 Ibid 2.
117 Ibid 4-5. The link between supervision and these matters is considered in detail in Chapter III Part E.
119 Ibid.
120 Victoria and Western Australia are the only other states to retain this option.
121 Supreme Court Admission Rules 2004 (QLD) rule 7A.
122 See above n 87 and surrounding text.
Degree. The option of five years articles of clerkship completed concurrently with external studies or a series of examinations no longer exists in any form. Traineeships are regulated more than the workplace experience requirement in PLT courses. Surprisingly, Traineeships are also subject to more regulation than the entirely unstructured post-admission Supervised Legal Practice period, despite both have similar training objectives. Irrespective, the relevant aspects of the Regulatory Framework lack any clear underlying conception of supervision.

Traineeships must be approved by and registered with the Legal Practitioners Admission Board (“the Board”). The following table provides a summary of relevant regulatory requirements in relation to traineeships:

Table 2.1: Summary of Relevant Requirements in relation to Traineeships (Supreme Court Admission Rules)

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Requirement</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisor Experience</td>
<td>At least three years</td>
<td>Rule 9C(1)</td>
</tr>
<tr>
<td>Can traineeship be completed under more than one supervisor?</td>
<td>Yes</td>
<td>Rule 9C(5)</td>
</tr>
<tr>
<td>Maximum number of trainees per supervisor</td>
<td>Two</td>
<td>Rule 9F</td>
</tr>
<tr>
<td>Is additional programmed training required?</td>
<td>Yes – at least 90 hours which must include training in ethics</td>
<td>Rule 9O</td>
</tr>
<tr>
<td>Approval of Traineeship</td>
<td>A principal of the law practice must give notice, in approved form, to the board setting out 'how, over the traineeship period, the supervised workplace experience to be given under the traineeship is to be given'</td>
<td>Rule 9I</td>
</tr>
<tr>
<td>Requirements at End of Traineeship</td>
<td>A principal of the law practice must give the trainee a 'response statement', detailing the work done under the traineeship and certifying that the trainee is a suitable person to be admitted to the legal profession and the trainees supervisor must give the trainee a statement setting out the extent to which the training satisfied the skills, practice areas and values set out in the Competency Standards</td>
<td>Rule 9K</td>
</tr>
</tbody>
</table>

Similar requirements are in place in Victoria while in Western Australia the traditional system of entering into a deed of articles remains.

124 The Board publishes an information kit to register a supervised traineeship. See Queensland Law Society, above n 123.
125 Programmed training is defined, in Rule 9O to mean “programmed training means structured and supervised training activities, research and tasks with comprehensive assessment.” In practice, it requires traineeships to complete coursework similar in nature to that in a PLT course.
126 These are the same Competency Standards used for PLT courses. Where a workplace cannot provide training in relation to all Competency Standards, a trainee can undertake ‘supplementary training’ approved by the board for a particular skill, practice area or value Rule 7A(2)(b). In practice this involves trainees undertaking additional coursework similar to that completed in a PLT course.
The Traineeship option is similar to the training contract system, which still exists in England and Wales at the time of writing. However, that system is set to be phased out and replaced with a centralised two-stage solicitors qualifying exam examination (“SQE”) and what appears to be an entirely unstructured period of workplace experience.129 Interestingly, the current (pre-SQE) system in England & Wales, on the face of it, considers the training and development functions of supervision in a way that the Australian regulatory framework has failed to do.130 Even still, that system does not provide an answer to the actual processes of supervision, or how learning in the context of work may be best achieved. In this regard, the final report of the Legal Education and Training Review independent research term131 (the “LETR Report”) identified the following key issues in relation to supervision and teaching in the workplace:

... lack of clarity regarding the educational purpose of workplace learning and its relationship with classroom learning; a failure to specify outcomes for workplace learning, and proper procedures for signing-off achievement of those outcomes; over-prescription of training environments, yet a lack of effective audit procedures. 132

Despite this, the Solicitors Regulation Authority (SRA) in England & Wales has confirmed that under the new SQE system, it will be moving towards an entirely unstructured requirement of two years of ‘qualifying legal work experience under the supervision of a solicitor’. 133 Rather than addressing the existing gaps in the system in terms of improving supervision and processes for workplace learning, the SRA moved towards a system where aspiring solicitors seem to be required to learn by osmosis in preparation for both the second stage of the SQE exam (which is a skills based centralised exam) and their future careers as solicitors. Leaving the issue of the

129 Solicitors Regulation Authority ‘A New Route to Qualification: The Solicitors Qualifying Exam (SQE): Summary of responses and our decision on next steps’ (April 2017) 5.
130 The Training Regulations describe the purpose of the training contract and require trainees to meet a set of practice skill standards (SRA Handbook Training Regulations 2011, Part 1 – Qualification Regulations r 18). Part 2 of the Training Regulations specifically regulates training providers. It requires prior authorisation by the regulator before entering into a training contract (SRA Handbook Training Regulations 2011, Part 1 – Qualification Regulations Part 2) and outlines the responsibilities of a training establishment (SRA Handbook Training Regulations 2011, Part 1 – Qualification Regulations Part 3). These responsibilities include: providing a range of practical experience sufficient to meet the practice skills standards; ensuring maintenance of a training record linking experience to skills; provide close supervision; regular feedback and appraisals; providing study leave; and limiting partners to two trainees (SRA Handbook Training Regulations 2011, Part 1 – Qualification Regulations r 6). There is also specific guidance in relation to providing ‘close supervision’ and that includes: ensuring work covers skills set by the practice skills standards; ensuring work given is of an appropriate level; delegating work with an increased level of difficulty over time; providing clear instructions; monitoring workload; and providing regular feedback (SRA Handbook Training Regulations 2011, Part 1 – Qualification Regulations r 16). Furthermore, the professional conduct rules in England and Wales are more detailed in relation to the management of legal practices and supervision practices generally (See: SRA Handbook, Code of Conduct 2011, Chapter 7 Management of Your Business; SRA Handbook, Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011; and SRA Handbook, Practice Framework Rules 2011).
132 Ibid 278.
133 Solicitors Regulation Authority, above n 129.
SQE exam to one side, the workplace experience or supervised practice component of the new training system in England & Wales actually now more closely resembles the entirely unstructured stage of Supervised Legal Practice in Australia. The difference in Australia is that this ad-hoc stage of workplace training occurs after admission as a lawyer. The next part of this chapter, Part E, considers this unstructured post-admission stage of Supervised Legal Practice in detail.

3 Pre-Admission Supervision: Summary

There is minimal recognition in the Queensland Regulatory Framework of the supervision that must accompany experiential learning for law students completing a Law Degree or a PLT Course. For Traineeships, the need for supervision is more firmly rooted in the Regulatory Framework; however, this form of training is no longer the norm. While there are limited requirements, they all skirt the important issue of what exactly is supervision. As such, it seems that upon admission as a lawyer and entering legal practice, junior practitioners will have experienced some supervision; however, the exact nature of that supervision cannot be determined with reference to the Regulatory Framework.

E Supervised Legal Practice and Newly Admitted Lawyers

As noted above in Part C, a ricochet effect of the introduction of PLT Courses, and demise of articles of clerkship, was the creation of a period of post-admission supervised practice (“Supervised Legal Practice”). This period is now enshrined in legislation in all Australian jurisdictions. In effect, PLT Courses, which lack any extensive placement requirement, are best understood as an addition to the formal legal education requirements; albeit with greater use of simulations and a focus on competencies rather than traditional doctrinal pedagogy. Supervised Legal Practice, therefore, should be positioned as catering for newly admitted lawyers who have limited legal workplace experience. In this sense, newly admitted lawyers are in need of significant training and development, which is not dissimilar to that which articled clerks formerly required. It is for this reason that Supervised Legal Practice has been dubbed ‘the new articles’.  

134 The placement requirement is set at a minimum of 15 days, see Competency Standards, above n 93. Actual PLT placement requirements range from 3 weeks to 15 weeks. See Giddings and McNamara above n 91.

135 See Giddings and McNamara above n 91, 1236.
In this Part, I argue that, despite initial intentions to the contrary, these “new articles” lack any significant structure, and this disorganised system of experiential learning is no more sophisticated than what existed for aspiring attorneys and solicitors prior to the 1729 statute.

1 The Statutory Condition

Supervised Legal Practice is a statutory requirement in all Australian states and territories. The duration depends on the type of practical legal training undertaken. For newly admitted lawyers who have completed a PLT Course (which is the most common option), the period is two years.\textsuperscript{136} For those who have completed a Traineeship, the period is 18 months.\textsuperscript{137} The statutory condition, set out in section 51(1) of the LP Act, states that:

> It is a statutory condition of a local practising certificate for a solicitor that the certificate holder must engage in supervised legal practice only, until the certificate holder has completed—
> (a) if the certificate holder completed supervised legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 18 months supervised legal practice, worked out under a regulation, after the day the holder’s first practising certificate was granted; or
> (b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 2 years supervised legal practice, worked out under a regulation, after the day the holder’s first practising certificate was granted

The term ‘Supervised Legal Practice’ is defined in the LP Act as follows

supervised legal practice means legal practice by a person who is an Australian legal practitioner—

(a) as an employee of a law practice if—

(i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i) \textsuperscript{138}

\textsuperscript{136} Legal Profession Act 2007 (Qld) s 56; Legal Profession Act 2006 (ACT) s 50; Legal Profession Regulation 2007 (ACT) s 13; Legal Profession Act (NT) s 73; Legal Profession Act 2007 (Tas) s 59; Legal Profession Act 2008 (WA) s 50. For Victoria and New South Wales, see the Legal Profession Uniform Law s 49. In SA, the requirement is not contained in the Legal Practitioners Act 1981 (SA) but in the Rules of the Legal Practitioners Education and Admission Council 2004 (SA) (LPEAC Rules): see Rule 3 of the LPEAC Rules.

\textsuperscript{137} Legal Profession Act 2006 (ACT) s 50; Legal Profession Regulation 2007 (ACT) s 13; Legal Profession Act (NT) s 73; Legal Profession Act 2007 (Qld) s 56; Legal Profession Act 2007 (Tas) s 59; Legal Profession Act 2008 (WA) s 50. In SA, the requirement is not contained in the Legal Practitioners Act 1981 (SA) but in the Rules of the Legal Practitioners Education and Admission Council 2004 (SA) r 3.1. For Victoria and New South Wales, s 59 of the Legal Profession Uniform Law contains the same condition.

\textsuperscript{138} Legal Profession Act 2007 (Qld) Schedule 2. (Emphasis added)
This definition is tautological and depends on the meaning of “supervision” which is not defined anywhere in the legislation. Rather, the LP Act simply provides that Supervised Legal Practice must occur under the supervision of a legal practitioner with an unrestricted practising certificate in the context of an employment relationship.139 Interestingly, it is possible to obtain a principal practising certificate with two years post-admission experience. Therefore, the experience required to be a supervisor for the purposes of the Supervised Legal Practice period is less than the experience required to be a supervisor for a Traineeship.140 In addition, the LP Regulation contains mainly prescriptive rules rather than a supervisory framework.141

It is possible to apply for an exemption or reduction of Supervised Legal Practice.142 The Queensland Law Society also publishes a set of guidelines143 (“the Exemption Guidelines”) for such applications. The Exemption Guidelines focus mainly on the meaning of “legal practice” rather than “supervision”. The Exemption Guidelines do, however, give a hint of what is expected during this period. The Exemption Guidelines provide that:

...the Society interprets Section 56 as requiring the prescribed period of supervised legal practice as a necessary step in the education of a solicitor for the protection of the public and maintenance of professional standards and the prescribed period of such supervised legal practice should only be departed from when the particular facts of a case justify it.144

The Exemption Guidelines indicate that the only circumstances that would justify an exemption from, or reduction in, Supervised Legal Practice is where the applicant demonstrates ‘substantial and recent period of practice in a similar jurisdiction.’145

In Legal Services Commission v Gould [2016] QCAT, Justice Thomas commented that:

A legal practitioner has a duty to supervise employed staff. The level of supervision required depends upon the level of experience of the staff member. In the case of a staff member who

139 Ibid
140 See Table 2.1 in Part D (2) above.
141 For example, the rules prescribe how to calculate the two-year period of Supervised Legal Practice. The supervised legal practice period can be completed full-time or part-time and as a continuously period or aggregation of separate periods (Legal Profession Regulation 2007 (Qld) r 8(2)). To calculate the relevant period public holidays and normal periods of leave are included (r 8(3))
142 Legal Profession Act 2007 (Qld) s 56(3). There is a set process for applying for an exemption or reduction. Queensland Law Society Administration Rule 2005, s 23(3)-(8).
143 Queensland Law Society, Guidelines for Applications Under Section 56(3) of the Legal Profession Act <http://www.qls.com.au/For_the_profession/Regulating_the_profession/Practising_law_in_Queensland>
144 Ibid 2.
145 Ibid.
holds a restricted practicing certificate, and has been admitted for a short time, the level of supervision required will be at a high level.146

This comment was made in the reasons for decision of a disciplinary case that is discussed further in Part F below. For present purposes, it is relevant to note that Justice Thomas was asked to consider a potential breach of the general duty to supervise arising from the conduct of an employed solicitor who held a restricted practicing certificate (i.e. s solicitor completing Supervised Legal Practice). Interestingly, neither the term Supervised Legal Practice, nor the accompanying statutory provision was mentioned at all in the decision.

Other than this indirect consideration by the Queensland Civil and Administrative Tribunal, there has been no useful, in terms of understanding the nature of supervision, judicial consideration of the term ‘Supervised Legal Practice’.147 Overall, the Regulatory Framework itself provides little explicit information in terms of understanding the meaning of Supervised Legal Practice.148 Therefore, to ascertain a richer understanding of this statutory requirement, and identify elements in any underlying conception of supervision, by utilising legal rules and legal approaches, it is necessary to look at its purpose.

2 Interpreting the Statutory Requirement: A Purposive Approach

The view initially expressed in Queensland following introduction of the new system of Supervised Legal Practice was that: ‘the purpose underlying this new requirement is to prevent new admittees prematurely becoming sole practitioners without having an appropriate period of mentoring from more experienced practitioners.’149 However, this view does not reveal all aspects of Supervised Legal Practice. The following paragraphs outline two reasons for needing a more nuanced understanding of Supervised Legal Practice.

146 Legal Services Commission v Gould [2016] QCAT [52].
147 The meaning of the “legal practice” has been considered in Queensland (Legal Services Commissioner v Walter [2011] QSC 132) and in Victoria (Victoria Ltd v Maric & Anor [2008] VSCA 46 (19 March 2008) and Cornall v Nagle [1995] 2 VR 188). In addition, the Supreme Court of the ACT examined s 50 of the Legal Profession Act 2006 (ACT). However, the Court was not required to consider the provision in sufficient depth to make its finding useful to the meaning of supervision. The Court was only required to make a finding that the ‘the holder of an unrestricted practising certificate must be a person who is suitable to conduct a law practice as a principal and, other than as a supervised partner, to be qualified to engage in unsupervised legal practice’. See Barlow v Law Society of the Australian Capital Territory [2013] ACTSC 68, [73] (Refshauge, Burns and Marshall JJ). Finally, there is a Tasmanian case dealing with an application for an exemption to the supervised legal practice period. However, this case focussed on the issue of applying the condition to a person wishing to practise as barrister and did not consider the meaning of “supervised”: Cinar v Law Society of Tasmania [2014] TASSC 44 (Blow CJ).
148 There are, however, some non-binding practice guides which are canvassed in Chapter III.
Firstly, this seems to be a product of thinking regarding the previous system which was in place prior to the current system. Relevantly, the predecessor to the current condition for Supervised Legal Practice, section 40A(1) of the Queensland Law Society Act 1952 (Qld), provided that the following condition was attached to practising certificates issued to newly admitted solicitors:

... the solicitor to whom it is issued shall not practise as a solicitor on his or her own account, either alone or in partnership, until the solicitor has completed 52 weeks since the solicitor’s admission as a solicitor in full-time employment as an employed solicitor of a practising practitioner either continuously or in periods aggregating 52 weeks.

Importantly, for the present discussion, section 40A(1) was specifically worded only in terms of employment, without any mention of "supervision". This means, not only was the duration of the condition different, but the very nature of it as well.

Secondly, in addition to mentoring, Supervised Legal Practice is as a continuation of legal training, put in place following the demise of articles of clerkship. This change occurred as articles of clerkship were phased out and PLT Courses were on the rise. The recommendation in the Martin Report to replace articles of clerkship with PLT Courses recognized ‘...the need for actual and supervised office practice in the handling of clients’ affairs’ still existed. The phasing out of articles was not an attempt to phase out experiential learning as a requirement in legal education. Rather, it seems this conclusion was reached on the basis that ‘apprenticeship training by itself is unsatisfactory, and that such education is inefficient’. Arguably, it was more convenient to streamline competency-based learning into a structured course which operates outside the circumstances of legal practice.

The introduction of PLT Courses was only part of the solution. More recent policy and reform documents, both nationwide and Queensland-specific, confirm that Supervised Legal Practice was supposed to be a further stage of practical legal training, and not merely a stage of legal practice subject to the ordinary CPD requirements (as seems to be the current view of the national Law Admissions Consultative Committee (LACC)).

150 See versions in place prior to the 2004 reforms. For example: Reprint No. 4DA.
151 Which is how the current supervised legal practice statutory condition is described. The current requirement was outlined in section 1 above.
152 See above n 82.
153 Ibid 60 [11.50] (emphasis added) (citations omitted).
154 Ibid 60 [11.50] (emphasis added) (citations omitted).
155 See above Law Admissions Consultative Committee, Submission No DR162 above n 90.
In 1994, the Law Council of Australia published a Blueprint for the Structure of the Legal Profession.\textsuperscript{156} The Blueprint clearly positioned Supervised Legal Practice as a second stage of practical legal training and envisaged that it would include a ‘program of professional training’.\textsuperscript{157} Similarly, the ‘Legal Profession Reform: Green Paper’, released by the Queensland government in 1999, envisaged ‘compulsory academic or practical legal training for restricted practitioners and continuing legal education for unrestricted practitioners’.\textsuperscript{158} There is actually no connection between the content of a PLT Course and the training received during the Supervised Legal Practice period. In fact, the provision of training during the Supervised Legal Practice period is virtually devoid of any profession-wide structure. There is no benchmarking, skill development, or ethics requirements. The only requirements for any form of education or training, other than learning by osmosis, are the general CPD requirements, which are in place for all practitioners alike.

This is in stark contrast to the Law Council of Australia’s vision when the Blueprint was created. The Blueprint described the professional training aspect of Supervised Legal Practice as ‘experience in prescribed field of practise; acquisition of prescribed legal practise skills; and understanding of prescribed areas of professional responsibility’.\textsuperscript{159} The Blueprint set out the requirements of each stage of training in terms of a number of principles. In relation to Supervised Legal Practice, Principle Seven provides that:

\begin{quote}
An employed lawyer must demonstrate that each of the following skills has been acquired to an acceptable level of professional competence and diligence:
- interviewing and taking instructions;
- advising;
- legal research;
- fact investigation and case analysis;
- planning and carriage of legal matters;
- legal writing;
- legal drafting;
- advocacy or dispute resolution; and
- negotiation.\textsuperscript{160}
\end{quote}

\textsuperscript{156}Law Council of Australia, \textit{Blueprint for the Structure of the Legal Profession: A National Market for Legal Services} (1994) ("Blueprint").
\textsuperscript{157}Ibid 8–9.
\textsuperscript{159}Blueprint, above n 156, 9.
\textsuperscript{160}Ibid 10–11.
There is no evidence of the implementation of Principle Seven. The status quo appears to be simply that Supervised Legal Practice has been left ‘unregulated’\(^\text{161}\) in terms of the appropriateness of any workplace experience. Recently however, the place of supervised practice, generally, has appeared on the legal education reform agenda in Australia.\(^\text{162}\) However, nothing has been implemented yet.

3 Supervised Legal Practice: Summary

The Regulatory Framework itself provides no guidance on the meaning of supervision for the purposes of Supervised Legal Practice. Therefore, at this stage of the thesis, it is only possible to draw the following general conclusions regarding Supervised Legal Practice:

- Supervised Legal Practice is clearly formulated in the Regulatory Framework as being separate from other professional responsibility issues (such as the general supervisory duty, which is covered next in Part F) and requires supervision of a newly admitted lawyer by a supervisor who is more experienced.
- An intended aspect of that supervision is systematic experience based legal training. However, there is nothing in the Regulatory Framework, which structures this on a profession-wide level.

Supervised Legal Practice, a compulsory requirement for all newly admitted lawyers, is of central importance to this thesis. This period of intended, but unfilled, practical legal training is addressed throughout this thesis as follows:

- Chapter III moves beyond the strict contours of the Regulatory Framework and considers some practice management resources that are directed at, or touch on, Supervised Legal Practice.
- Chapter V compares the arrangements for Supervised Legal Practice with similar arrangements that are in place in other professional disciplines.
- Chapter VIII considers, with reference to QLSC survey data, the experience of newly admitted lawyers completing Supervised Legal Practice in Queensland.

\(^{161}\) Law Admissions Consultative Committee, above n 118.

\(^{162}\) See Law Admissions Consultative Committee ‘Assuring Professional Competence’ (Briefing Statement, Law Council of Australia, 2016).
Other than the specific instance of Supervised Legal Practice considered in the previous section, the LP Act does not specifically refer to supervision.\textsuperscript{163} However, the duty to supervise features in professional conduct rules\textsuperscript{164} and also exists independently from these codified rules. The duty to supervise is a general aspect of a lawyer’s professional responsibility associated with management and oversight of all legal work for which they have responsibility. The duty requires that a ‘lawyer should properly supervise all legal work carried out for, and on, his or her behalf’.\textsuperscript{165}

The duty to supervise stems from a ‘lawyers’ individual personal responsibility to a client’\textsuperscript{166} and is described in terms of being ‘vigilant’.\textsuperscript{167} The duty to supervise is closely related to other civil liabilities in contract\textsuperscript{168}, tort\textsuperscript{169} and equity\textsuperscript{170} as well as statutory obligations to employees.\textsuperscript{171} The duty to supervise is also closely related to, and inseparable from other misconduct matters.\textsuperscript{172} This part explores the duty to supervise by focusing on the way supervision is conceived in conduct rules and disciplinary cases.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{163} There is however a specific section which presupposes a supervisory duty. Section 701 of the LP Act creates liability for failing to supervise without actually mentioning supervision. Principals will be liable for acts of other principals and employees unless they can show there is good reason for them not to be liable. The general framework is the same in other Australian jurisdictions. In addition, in relation to Incorporated Legal Practices, section 117 of LP Act, makes legal practitioner directors responsible for ensuring ‘appropriate management systems’.
\item \textsuperscript{164} See for example, Australian Solicitors Conduct Rules r 37.
\item \textsuperscript{165} Riley’s Solicitors Manual (LexisNexis Australia, 2011) [2085].
\item \textsuperscript{166} Dal Pont, above n 2, 819.
\item \textsuperscript{167} Ibid.
\item \textsuperscript{168} Legal practitioners are subject to claims for breach of contract in performance of their retainer and negligence claims for failing in their duty of care. For an overview, see Ysiaah Ross, Ethics in Law: Lawyers Responsibility and Accountability in Australia (LexisNexis Butterworths, 2010) 308-337.
\item \textsuperscript{169} A legal practitioner employer, like other employers, may be vicariously liable for actions of their employees. See Dal Pont above n 2, 676-677.
\item \textsuperscript{170} Corones, Stobbs and Thomas, above n 2, 159.
\item \textsuperscript{171} The growing importance of ‘psychological risk factors’ in complying with occupational health and safety legislation need to be considered. For an overview of this concept in the legal practice environment, see Rebecca Michalak, Beyond Slips, Trips and Falls (2013) 33(4) Proctor 22.
\item \textsuperscript{172} In particular, the issue of billing malpractieces. See for example the following NSW disciplinary cases: Legal Services Commissioner v Keddie [2012] NSWADT 106; and Legal Services Commissioner v Scroope [2012] NSWADT 107.
\end{itemize}
\end{footnotesize}
Rule 37 of the ASCR provides that:

A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter.

The exact scope of rule 37 depends on the meaning of the word “reasonable”. However, this rule has not been closely analysed and there is a lack of scholarship on point. This is in contrast to the situation in the United States which is discussed briefly below.

The American Bar Association adopted the ABA Model Rules of Professional Conduct (“ABA Model Rules”) in 1983. The ABA Model Rules have been adopted by all states except California. ABA Model Rule 5.1 contains a supervisory duty that is markedly different to the general supervisory duty in rule 37. Nonetheless, there is some academic literature which discusses these supervisory duties. This literature is unanimous that the ABA Rules do not achieve widespread, appropriate supervision standards. In the absence of any similar Australian literature, the next section turns to commentaries and case law.

Western Australia is the only state that has not adopted ASCR, but which has professional conduct rules with a similar supervisory duty. The scope of the duty to supervise in Western Australia hinges on the meaning of the word ‘adequate’. See R 17.4 of Legal Profession Conduct Rules 2010 (WA).


Ibid


The wording of this rule bears greater similarities to s 701 of the LP Act. See above n 163 and surrounding text.


Miller, ibid, argues against relying solely on ad hoc, reactive disciplinary proceedings to foster appropriate supervision standards noting the ‘prophylactic’ nature of the ABA Model Rule 5.1. Reiland, ibid, critiques a rejected change to the Model Rule 5.1. Cover, ibid, calls for a new expanded supervisory rule specific to the Office of Legal Counsel; that proposed rule includes an expanded definition of supervisor and a constructive knowledge component where supervisors are held liable for a supervisee’s conduct even if they were not aware of it but should have known.
The Law Council of Australia publishes a commentary to the ASCR, the purpose of which is to ‘provide additional information and guidance in understanding how particular Rules might apply in some situations.’ The commentary for certain rules covers several pages. There is no commentary whatsoever for the duty to supervise in rule 37. This reflects either a lack of understanding and/or a lack of appreciation of the significance and complicated nature of this duty. The Queensland Law Society has published its own commentary to the ASCR and that commentary provides the following examples of where a lack of supervision may amount to professional misconduct or unsatisfactory professional conduct:

- The lawyer is aware, or ought reasonably to be aware, of factors that may suggest to a reasonable person that greater supervision is required...
- The solicitor failed to discharge his personal obligations with respect to operation of his firm’s trust account and to discover his partner’s misappropriation of trust funds...
- A solicitor simply accepts assurances from staff that everything is in order...

This type of guidance is prescriptive and based on disciplinary cases. Importantly, there is virtually no guidance of what is effective supervision, only guidance as to what is not. Some of the cases mentioned in the QLS commentary relate to failures to properly check and monitor trust accounts. A common theme in these cases is carelessly relying on assurances from partners or employees, as opposed to fulfilling fiduciary and statutory obligations in relation to the holding of trust money. The selection of cases in this QLS commentary is peculiar for two reasons.

Firstly, the keeping of trust accounts is a unique aspect of practice management that is subject to other onerous regulatory requirements. While maintaining trust accounts certainly raises supervisory issues, the actual monitoring of those accounts is only one element of the delivery of legal services. Nonetheless, these cases do indicate that supervision is not merely about asking questions; rather it involves active participation in the task.

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181 Queensland Law Society, The Australian Solicitors Conduct Rules 2012 in Practice - Rule 37 Commentary. This Commentary also refers to the “Queensland Law Society, Guide to Effective Supervision” which is a non-binding practice management resource. This resource is considered further in Chapter III.
Secondly, other case law exists that provides better guidance on the nature of “reasonable” supervision, outside the unique circumstances of trust account maintenance. These other cases are considered below.

3 Case Law

(a) Supreme Court Cases

Justice Mahoney’s judgement in Law Society of New South Wales v Foreman\(^{183}\) (“Foreman’s case”) is perhaps the most comprehensive judicial pronouncement of the duty to supervise. That case concerned failure to supervise the work of an unqualified general law clerk who essentially handled the conduct of some transactions on behalf of Foreman. In this regard, Justice Mahoney noted that:

> What will be proper in one kind of practice may not be proper in another. It is therefore proper to confine what is said in this case to the responsibilities of a sole practitioner in respect of a non-qualified person who has been given the duty of conducting matters involving the application of the law and requiring the observance of proper standards of conduct.\(^{184}\)

Therefore, strictly speaking the usefulness of this case in understanding the duty to supervise is limited to these circumstances. Nonetheless, given the limited judicial pronouncements on these issues, it is useful to consider some of Justice Mahoney’s deliberations. Perhaps one of the most useful parts of Justice Mahoney’s judgement is the following guidelines in relation to discharging the duty to supervise:

> What will be required for the discharge of a solicitor’s responsibilities in a case such as the present must, even within such confines, be affected by the circumstances of the case. It will, for example, be affected by the solicitor’s knowledge on a continuing basis of the competence and integrity of the clerk. It will be affected also by the nature of the transactions taking place or apt to take place within the clerk’s scope of activities. But, without seeking to be definitive or exhaustive, it will be of assistance to see as involved in the conduct of a solicitor’s practice, inter alia, five things: (1) a knowledge of the law to be applied; (2) the proper application of the law to the individual transactions carried out by the clerk; (3) the efficient and effective processing of those transactions from their commencement to the completion of them; (4) the observance of the statutory and other requirements in respect of the dealing with moneys received into the practice; and (5) the observance of the general obligations of those involved in the conduct of a legal practice, relating to, for example, conflict of interest, the conduct of fiduciaries, and the general ethics and etiquette of lawyers and those associated with them.\(^{185}\)

\(^{183}\) Law Society of New South Wales v Foreman (1991) 24 NSWLR 238.

\(^{184}\) Ibid 249.

\(^{185}\) Ibid 250.
Justice Mahoney also indicated that the duty to supervise involves a duty to identify and monitor ethical problems.  

186 Notwithstanding the above, Justice Mahoney seemed to have quite a relaxed view on supervising non-legal practitioner employees. Of note, he indicated that:

- It may not be necessary in all cases for a solicitor to be concerned with all transactions;
- Sufficient oversight is only necessary when there are potential ethical issues such as conflicts of interest;
- In some cases it may be sufficient to leave matters under the unsupervised control of a clerk;
- Poor supervision will not necessarily be misconduct so long as a solicitor applies their mind to supervision.

Foreman’s case occurred prior to implementation of the current Regulatory Framework and Justice Mahoney’s comments, while made in passing, seem at odds with the intent of the general supervisory duty outlined in the ASCR. In addition, it seems difficult to imagine how a solicitor could become aware of ethical issues without there being sufficient oversight in the first place. Given this, Foreman’s case may well no longer be good law.

The Queensland cases of Attorney-General and Minister for Justice v Kehoe188 (“Kehoe’s case”) and Attorney-General and Minister for Justice v Delaney189 (“Delaney’s case”). Both of these cases also arose prior to the introduction of the current Regulatory Framework. Together they seem to demonstrate an element of sympathy by the courts in relation to supervision failures. Both these cases arose out of a transaction where Kehoe’s firm received instructions from Delaney’s firm to act for a lender in relation to an advance of money to a company of which the principal of Delaney was a director. The instructions given by Delaney’s firm and the subsequent handling of the matter by Kehoe’s firm raised questions of failure to supervise for both sides.

In Kehoe’s case a secretary did not follow usual procedures and handled a mortgage matter in its entirety without the knowledge of the legal practitioner. The way the matter was handled by the secretary effectively meant that the client lender was deceived into thinking it was obtaining independent legal advice when it was not. The Solicitors Complaint Tribunal found

186 Ibid 251.
the solicitor guilty of unprofessional conduct and imposed a fine of $7,500 for failing to adequately supervise his secretary. The appeal was made on the basis that the punishment was manifestly inadequate. The court dismissed the appeal even though it was of the view that Kehoe ‘placed undue reliance on his secretary.’

The unsatisfactory conduct in the case of Delaney’s case included other conduct in addition to the failure to supervise. The appeal, in this case, was also made on the basis that the punishment was manifestly inadequate. The court dismissed the appeal but did note that failure to supervise, in circumstances of ‘habitual neglect’ or ‘serious systemic inadequacies in practice management’, may warrant removal from the roll. Interestingly a system, which placed undue reliance on a secretary, was not bad enough to meet this threshold. This system placed an employee, with no legal qualifications, in a situation where they were allowed (or perhaps felt compelled) to take the responsibility for the running of a matter; yet this system was not inadequate enough to be considered ‘serious’. It is therefore unclear just how bad or poor supervision must be in order to meet this test.

The key messages are that:
(a) Poor supervision often appears to be part of a broader problematic picture;
(b) Supervision failures appear more obvious when involving conduct of non-legally qualified staff; and
(c) Given the relaxed approach to supervision failures in these cases and the current trend towards organisation-based regulation, these cases are unlikely to be reflective of the current standard of supervision expected by regulators.

A common feature of the failure to supervise disciplinary cases is that the supervisee is a non-legal practitioner employee working in a small firm. Overall, the Supreme Court of Queensland (as well as in other states) has not had to decide on the scope of the duty to supervise as it relates to employed solicitors. In this regard, the duty to supervise remains largely untested in the superior courts. In addition, supervision issues often appear as part of a complex

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190 Attorney-General and Minister for Justice v Kehoe [2000] QCA 222 at [18]
191 Attorney-General and Minister for Justice v Delaney [2000] QCA 504 at [33] (See Footnote 6 in that judgement).
192 In Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498 and Law Society of Tasmania v Scott [2007] TASSC 30, the supervisee was a conveyancing clerk; In Law Society of New South Wales v Foreman 1991) 24 NSWLR 238, the supervisee was a ‘clerk’; In Attorney-General and Minister for Justice v Kehoe [2000] QCA 222, the supervisee was a secretary.
factual matrix and sometimes play a subsidiary role to other forms of misconduct.\textsuperscript{193} Another general theme emerging from the case law is a fairly relaxed and sympathetic approach by the judiciary to supervision failures. Arguably, this is why there aren’t many such cases.

(b) Queensland Disciplinary Tribunal and Legal Practice Committee Cases

The common factor of the supervisee being a non-legal practitioner employee is also present in lower level tribunal /committee decisions.\textsuperscript{194} In particular, a failure to supervise has been found in relation to: conduct of an employee bookkeeper;\textsuperscript{195} an undertaking given by a clerk;\textsuperscript{196} and other employees dealing with trust accounts.\textsuperscript{197} In this regard, these lower level decisions do not add any additional insights. However, two other decisions do. They are:

- *Legal Services Commissioner v Baker*\textsuperscript{198} (“Baker’s case”) and
- *Legal Services Commissioner v Gould*\textsuperscript{199} (“Gould’s case”).

These two cases consider a failure to supervise the conduct of employed solicitors. Baker’s case involved a series of allegations of misconduct, centred on overcharging clients, including failure to supervise. In this case, as far as Baker was concerned, ‘being nominated as partner responsible did not impose any additional responsibility...’\textsuperscript{200} In addition the Tribunal seemed to form the view that ‘there is no evidence about the functioning, safeguards or objectives of that system from the clients’; however, noted that the ‘reviews seem to have been directed at least

\textsuperscript{193} For example in *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498, Justice Thomas (at 503) noted that ‘there was a good deal of evidence which would have left it open to the Statutory Committee to find ... that the supervision ...was purely cosmetic.’ However, because the Statutory Committee made no adverse finding in relation to the supervision arrangements at first instance, the Court was not in a position to intervene of this point. Similarly in *Leon Nikolaidis v Legal Services Commissioner* [2007] NSWCA 130 which, primarily, considered deliberate charging of grossly excessive costs, Justice Hodgson noted (at [93]) that: ‘On the facts of the present case, if the appellant was guilty of any such misconduct, it was of the nature of failure adequately to supervise his staff; and he was not charged with misconduct of that kind.’ In *Law Society of Tasmania v Scott* [2007] TASSC 30, while lack of supervision was clearly at issue, the judgement revealed little in relation to appropriate situation as this issue was clouded by the practitioner’s general incompetence.

\textsuperscript{194} To manage the content-level, this section only considers lower level (i.e. below the Supreme Court) decisions in Queensland and those decisions which are recorded on the Queensland discipline register which is a register of ‘every order of a disciplinary body or court that finds a lawyer guilty of professional misconduct’. See Queensland Legal Services Commission *The Queensland Discipline Register* (Updated, 10 December 2016) <https://www.lsc.qld.gov.au/discipline/the-queensland-discipline-register>. There may also be additional relevant decisions made by the Legal Practice Committee (which hears less serious not involving ‘professional misconduct’) that are not available to the public. Decisions released by the Legal Practice Committee are publicly available at: Legal Practice Committee Disciplinary Decisions <http://www.lpcommittee.qld.gov.au/disciplinary-decisions>. Only one of the cases listed on this website deals with the Duty to Supervise and is considered below.

\textsuperscript{195} In the Matter of Jennifer Mary Cheney.

\textsuperscript{196} In the Matter of Owen Frank Cooper.

\textsuperscript{197} In the Matter of Howard James Charles Cremin; and LSC v Rowland Edward Taylor LPC (24 January 2011).

\textsuperscript{198} *Legal Services Commissioner v Baker* LPT [2005] LPT 002.

\textsuperscript{199} *Legal Services Commissioner v Gould* [2016] QCAT.

\textsuperscript{200} *Legal Services Commissioner v Baker* LPT [2005] LPT 002 at [53].
as much to the firm’s interest in the progress of files and the recovery of fees as to the client’s interests.  

Despite this seemingly clear lack of any discernible supervision system, three of four charges relating to a failure to supervise employed solicitors were not made out. The reasons are unclear. However, it seems the Tribunal did not have sufficient evidence to prove a failure to supervise. This is remarkable given that, in relation to one charge not proved, the practitioner admitted: ‘he had no involvement whatsoever in relation to [the] matter.’

The one charge of failure to supervise that was made out related to the drafting and sending of a letter to the Queensland Law Society responding to a complaint. Again the practitioner had ‘no involvement in the matter and maintains that he may not necessarily have seen the letter before it was sent. However he acknowledged he would expect the partner (i.e. him) to see such a letter.’

Implicit in the reasons for decision was that Baker had delegated substantial responsibility to a senior employed solicitor. However, as noted above, the exact supervision arrangements within the relevant firm were not entirely clear. Therefore, this case only really indicates that, in order to breach the duty to supervise in relation to an experienced employed solicitor, a complete lack of involvement in a matter is necessary but not sufficient. This is a very low threshold, which explains in part why there are not many cases of this kind. It does not however explain why there are no other cases involving the failure to supervise a junior employed solicitor.

Gould’s case considered a breach of the current r 37 of the ASCR in conjunction with a number of other potential misconduct issues including general standards of competence and diligence. In this case, the charge of failure to provide reasonable supervision arose from Mr Gould’s employment of an employed junior solicitor whose practising certificate was subject to the Supervised Legal Practice statutory condition and a conveyancing clerk. Gould accepted that he failed to exercise full time supervision of these two employees but shifted the responsibility to another employed senior solicitor to oversee his conveyancing department. Mr Gould essentially labelled this employee as incompetent. As a result, Mr Gould was not aware of erroneous advice given by the employed junior solicitor and the conveyancing clerk (during the course of a conveyancing transaction until) after the employed senior solicitor had ceased employment with him. The Tribunal found in relation the alleged breach of r 37 that:

201 Ibid.
202 Ibid [184].
203 Ibid [190].
In answer to this charge, Mr Gould is critical of a property lawyer who he engaged to manage and oversee his conveyancing department. The employment of a more senior lawyer, in a management role, does not absolve the principal of overall responsibility with respect to supervision. In failing to supervise his employed solicitor, who was the holder of a restricted practicing certificate, Mr Gould’s conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Taking into account that Mr Gould had in fact employed a more senior practitioner to manage and oversee his conveyancing department, and so believed that the more junior practitioner were being supervised, Mr Gould’s conduct in relation to charge 4 is not sufficiently substantial or repeated to amount to professional misconduct but does amount to unsatisfactory professional conduct.²⁰⁴

In short, Gould wasn’t able to completely absolve himself of his supervisory responsibility by blaming his employed senior solicitor. However, in the Tribunal’s view, delegating responsibility to another senior employed practitioner did lessen the seriousness of his misconduct. Two questions remain entirely unanswered. Firstly, the Tribunal did not address Mr Gould’s failure to reasonably supervise the employed senior solicitor, who Gould thought was incompetent. Secondly, there is no indication of separate disciplinary proceedings for the employed senior solicitor, who was the responsible lawyer and, like Gould, subject to r 37 (in relation to that solicitor’s failure to supervise the junior solicitor and the conveyancing clerk). Overall, this case describes a situation where there was a weak chain of supervision and where no one was held to be ultimately responsible in a meaningful way.

(c) Supervision and Incorporated Legal Practices

Supervision matters are also relevant to whether the directors of an Incorporated Legal Practice (“ILP”) have fulfilled their duty to ensure appropriate management systems.²⁰⁵ A recent NSW disciplinary case provides an example of the unique supervisory issues facing incorporated legal practices. In the Council of the Law Society of New South Wales v Loris Hendy,²⁰⁶ a legal practitioner director was found guilty of unsatisfactory professional conduct for failing to adequately supervise an employee. However, the breach was determined with reference to the obligations of ILP directors, not the general supervisory duty. It is unclear why this was so, but reveals that the general supervisory duty can be easily overlooked where a supervision failing occurs in the context of a complex set of facts. Even though supervision is central to the internal

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²⁰⁵ This is a matter which has been addressed in the academic literature as well. See Parker, above n 4.

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management of law firms (not just ILPs), there continues to be a focus on discipline rather than developing effective supervision practices. This thesis attempts to re-direct the discussion towards understanding supervision with the view to improve the effectiveness of supervision given and received.

4 Concluding Comments Regarding the General Supervisory Duty in Legal Practice

Overall, the general supervisory duty does not place any significant obligation on practitioners except that it requires a certain amount of oversight to prevent severe failings by employees. This duty appears to be most relevant in relation to non-legal practitioner employees. The general duty only appears capable of being breached when a supervisor fails to prevent an activity that exposes the supervisor (or clients of the supervisor) to financial loss or some other civil liability or disciplinary action. Although it is possible, in theory, for this duty to be breached without other serious consequences flowing from that breach, the relevant threshold appears high enough so, in practice, this will rarely happen. In addition, where supervision failures emerge as part of a complex factual matrix, disciplinary decisions focus on other aspects of lawyers’ professional responsibility. For these reasons, the case law on the duty to supervise provides only very limited guidance in relation to establishing good supervision practices. There is a clear need to move beyond this paradigm and consider supervision as a pervasive activity in legal practice, rather than as a matter for which there is a specific professional responsibility obligation.

G Conclusion

The supervisory aspects of the Regulatory Framework have moved full circle since the statute of 1729. That statute was aimed at formalising the experiential learning framework for legal education. However, that aim was undermined by supervisors’ general lack of time (or unwillingness) to properly train supervisees. The end result was the addition of a further stage of institutionalised legal training (i.e. Practical Legal Training) and shifting the final experiential component of legal training to after formal admission as a lawyer (i.e. from articles of clerkship to Supervised Legal Practice). This current final stage, Supervised Legal Practice, is now just as unstructured and unregulated as experiential learning prior to the 1729 statute, even if the institutional component of legal education is much more sophisticated and practical in nature.
Because of this “full-circle” historical development, the supervisory aspects of the current Regulatory Framework are different for law students, junior lawyers and general legal practice.

It is clear that all junior lawyers will have some experience of being supervised upon admission. However, the nature of the supervision experienced pre-admission is completely ignored by the Regulatory Framework (except for a small minority who undertake Traineeships). Despite the regulatory limbo that exists for pre-admission experiential learning, there is significant academic literature, which sits outside the Regulatory Framework. This includes the clinical legal education literature that is covered in Chapter IV.

Supervised Legal Practice is now the final stage before unrestricted legal practice. A purposive interpretation of this statutory requirement shows that it currently stands as an unrealised stage of practical experienced-based legal training. Despite being premised on supervision of some sort, the supervision dimensions of this stage have not been effectively addressed. In fact, the Regulatory Framework is completely silent in relation to the meaning of “supervision” for the purpose of Supervised Legal Practice. In addition, there is growing literature (covered in Chapter III) which indicates that lack of adequate supervision contributes to various problems facing junior lawyers. It is for these reasons that Supervised Legal Practice is in dire need of being better understood.

The Regulatory Framework indicates that supervision, in legal practice generally, focusses on discipline rather than development. The general supervisory duty in legal practice seems to heavily weigh on the side of monitoring employees (especially, but not exclusively) those without legal qualifications, for the purpose of avoiding civil liability. It is therefore not surprising that outside the Regulatory Framework, there is significant literature that focusses on supervision as a component of legal practice management. This literature (also discussed next in Chapter III) is heavily tied to the idea of monitoring and risk management.

Chapter I (Part A) described the central importance of supervision to contemporary legal education and legal practice. This chapter has outlined legislation, delegated legislation and disciplinary cases, which uncovered supervision as a critical process in the development of law students and junior lawyers. Remarkably, despite being the linkage between legal education and legal practice, there is no specific body of supervision literature for legal practice (this is
Rather, supervisory issues generally feature as being implicit, unarticulated features of the professional responsibility landscape. The next chapter will look specifically at how supervision features in the legal practice environment.

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207 Supervision scholarship from other professional disciplines is dealt with desperately in Chapter V.
III CONCEPTIONS OF SUPERVISION IN LEGAL PRACTICE

A Introduction

1 Chapter Overview

Building on Chapter II’s historical and regulatory overview, this chapter discusses supervision in legal practice using a range of academic literature, legal practice management guidelines and articles from the legal “trade-press”. The purpose of this discussion is to explicate the role, potential and shortcomings of supervision in contemporary legal practice. This discussion is moulded around the following four key messages:

- The legal profession collectively lacks understanding of the nature and potential of supervision. In short, fiscal concerns and risk management appear to be the key forces impacting supervisory activities in legal practice. These key forces restrict the training and development of practitioners. This is addressed in Part B.

- Broad trends in legal practice mean that supervision has an increasingly important role. This is particularly so in relation to developments regarding the changing nature of legal practice and professional work. An account of these developments is provided in Part C.

- Despite a diversity of roles and contexts in legal practice, supervision does not seem to be appropriately tailored to specific circumstances. This is most pronounced and problematic in the context of Supervised Legal Practice, where supervision should have a developmental role. This is analysed in Part D.

- Part E describes the unarticulated link between supervision and well-being. In particular, the negative impact current supervision practices potentially have on the well-being and mental health of junior lawyers.

Part F will then conclude the chapter by outlining the need to look at scholarship in clinical legal education and other professional disciplines, in order to meet the supervisory challenges facing the legal profession, now and in the future.
Prior to moving on to these key messages, it is necessary to set some general context by describing the diversity of the legal practice environment.

2 Understanding the Diversity

Any study of supervisory activities in legal practice must recognise the ‘diversity of practice settings within the profession’ whereby ‘it is difficult to generalise about the way lawyers work.’

Chan et al. usefully summarise this diversity as follows:

The Australian legal profession has been described as one of the most structurally diverse, geographically dispersed, and unintegrated in the Western world, with an unusually wide variety of patterns of practice. In the last two decades there has been a large increase in the number of lawyers, as well as a strong growth in the international trade of legal services by national and multinational law firms in Australia. The legal profession is highly stratified and culturally diverse, with differences according to type of practice (barristers or solicitors in small, medium or large organisations), areas of specialisation, clientele, geographical location (urban, suburban or rural), experience, prestige, income and political influence. Commercial lawyers – both barristers and solicitors who work in large city law firms – are the professional leaders in status and income.

Historically, the Australian legal profession followed the British tradition and the main division in the Australian legal profession was that between barristers and solicitors. As detailed in Chapter I, the scope of this thesis is limited to the larger, solicitors’ branch of the profession. The legal profession has been described as being divided in two ‘hemispheres’. One hemisphere comprises ‘lawyers who represent large organisations (corporations, labour unions or government)’ and the other comprises ‘those who represent individuals’. Although the term ‘hemisphere’ was coined in relation to the American profession, Weisbrot observed that these hemispheres are a feature of the solicitors’ branch of the legal profession in Australia. In

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1 Suzanne Le Mire and Rosemary Owens, ‘A Propitious Moment? Workplace Bullying and Regulation of the Legal Profession’ (2014) 37(3) UNSW Law Journal, 1037
2 Janet Chan, Suzanne Poynton and Jasmine Bruce, ‘Lawyering stress and work culture: An Australian study’ (2014) 37(3) University of New South Wales Law Journal 1062, 1072-1073
3 This is even the case in the fused jurisdictions’ where the formation of independent bar associations has undermined formal attempts to unify the two historical branches of the profession. See David Weisbrot, Australian Lawyers (Longman Cheshire, 1990) 164-171.
4 See Chapter I Part D(1).
5 John P Heinz and Edward O Laumann, Chicago Lawyers: The Social Structure of the Bar (Russell Sage Foundation, 1982) 319-321. Also see John P Heinz et al Urban Lawyers: The New Social Structure of the Bar (University of Chicago Press, 2005) 44-47. This more recent study of the Chicago Bar indicates that while the hemispheres still exist, they are less distinct. Further the term hemisphere may no longer be technically correct, significantly more than half of lawyers work in the corporate sphere. There has also been an increase in specialisation within both hemispheres.
6 Heinz and Laumann, ibid 319-321.
7 Ibid.
8 In the Australian context, Weisbrot has described the two hemispheres as a ‘bifurcation of the solicitors’ branch into consumer-oriented, high volume legal clinics for the routine representation of individuals and large firms offering customised, specialised services for corporations and wealthy individuals’. See Weisbrot, above n 3, 273.
addition, Tomasic\textsuperscript{9} has categorised the types of lawyers in Australia in a similar way, but using different terminology. Tomasic’s categorisation is similar to the individual/corporate split but includes a third category of mixed-client lawyers.

These sociological categorisations of the legal profession appear not to have been thoroughly updated (although they continue to be cited with approval and patterns of practice continue to be described in a similar way\textsuperscript{10}). For example, Walker, in what is really a more recent acknowledgement and criticism of the ‘hemispheres’, has commented in relation to “commercial lawyers” that they are:

> Really part of the client’s entourage, being served with the client by the litigators and counsel. ...Perhaps it is time for that division to be recognised formally: by the business-services part of the legal profession, the lawyers closest to the big money of their business clients, having nothing really to do with the general corpus of law and no real interest in the administration of justice, to leave the legal profession and join with the management consultants, accountants, finance brokers and mortgage bankers. \textsuperscript{11}

Given a number of recent and rapid changes to the practice environment,\textsuperscript{12} this broad categorisation of legal practice into “corporate” and “individual” hemispheres, though still relevant, needs to be treated with caution. In lieu of any comprehensive Queensland specific (or more recent Australia-wide) sociological categorisation of the various sectors of legal practice, Table 3-1 on the following page provides a summary of solicitors in Queensland by firm size and office type, together with corresponding national figures.

\begin{flushleft}
\textsuperscript{9} Roman Tomasic, ‘Social Organisation amongst Australian Lawyers’ (1983) 19(3) \textit{Journal of Sociology} 447.
\textsuperscript{10} See Ainslie Lamb and John Littrich, \textit{Lawyers in Australia} (Federation Press, 2011) 126.
\textsuperscript{11} Brett Walker SC ‘Lawyers and Money’, 2005 Lawyers’ Lecture, St James Ethics Centre, Sydney, 18 October 2005 as cited in Ainslie Lamb and John Littrich, ibid 127.
\textsuperscript{12} See Chan et al, above n 2; and Part C below.
\end{flushleft}
Table 3-1 – Breakdown of Solicitors by Law Office Type

<table>
<thead>
<tr>
<th>Law Office Type</th>
<th>% of Solicitors (Queensland)</th>
<th>% of Solicitors Australia-wide</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Practice – Sole Practitioner</td>
<td>9.2%</td>
<td>20.9%</td>
<td>Generally sole practitioners and small firms serve individuals’ personal and business interests and practice in one or more of the following areas: conveyancing and property law; business law; wills and estates; family law, criminal law; and personal injuries law.</td>
</tr>
<tr>
<td>Private Practice – 2-4 Partners</td>
<td>18.3%</td>
<td>13.5%</td>
<td>Property</td>
</tr>
<tr>
<td>Private Practice – 5-10 Partners</td>
<td>13.2%</td>
<td>7.9%</td>
<td>These mid-sized firms are most difficult in terms of making generalisations. There are generally three types: • Small practices which have merged or incorporated other firms (often in different towns or cities) which serve the personal and business interests of individuals • Franchise or publicly listed compensation law firms (which may also provide other services) serving individuals. • Aspiring (or boutique) commercial firms that serve the interests of the corporate sector.</td>
</tr>
<tr>
<td>Private Practice – 11-20 Partners</td>
<td>10.4%</td>
<td>6.2%</td>
<td>Generally, most of these firms are full service commercial firms serving corporate and government clients (with occasional services for high-end individuals). However, some multi-office, franchise or publically listed compensation firms, serving individuals, may now fit into this size category.</td>
</tr>
<tr>
<td>Private Practice – 21-39 Partners</td>
<td>4.4%</td>
<td>5.0%</td>
<td>The vast majority of solicitors Australia-wide work in private law firms. The proportion of solicitors working in private firms in Queensland is higher than the national average.</td>
</tr>
<tr>
<td>Private Practice – 40+ Partners</td>
<td>19.7%</td>
<td>15.5%</td>
<td>This includes corporate in-house and consultancy roles.</td>
</tr>
<tr>
<td>Private Practice - Subtotal</td>
<td>75.2%</td>
<td>69.0%</td>
<td>This includes government in-house roles and government legal officers.</td>
</tr>
<tr>
<td>Corporate</td>
<td>10.3%</td>
<td>15.9%</td>
<td>Other (Includes Community Legal Centres</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>All figures included in this table have been obtained from the URBIS National Profile of Solicitors Report 2016 prepared for the Law Society of New South Wales (19 June 2017). The arrangement and some calculations are the authors own.</td>
</tr>
</tbody>
</table>

13 These comments have been formulated by the author. The comments are informed as follows: recent practice as a solicitor in Queensland; consultation with colleagues who also have recent experience practising in Queensland as a solicitor; a review of a sample of firms (and the number of employees) from the publically available Queensland Law Society members’ records.
Overall, Table 3.1 on the preceding page confirms that legal practice settings in Queensland (and Australia-wide) are diverse and that the two ‘hemispheres’ categorisation has some relevance. However, rather than two discrete hemispheres, it appears to be more of a spectrum with a heavy concentration of practitioners at each end. In addition, this general spectrum is subject to two trends in the legal services industry:

- **Employment Sectors are shifting**: ‘The great majority of Australian solicitors continue to work in private practice. However, the proportion of solicitors working in private practice has dropped from 75% to 69% in the last five years. This is due to a significant growth in the number of solicitors working in the corporate sector and government.’\(^{14}\)

- **The Rise of “NewLaw” Firms**: ‘While traditional law firms still dominate the legal services market’, a range of new business models that diverge from the traditional law firm model and which are often characterised by how they embrace disruptive legal technologies (NewLaw) are ‘gaining ground’.\(^{15}\)

These broad trends affecting the legal services market, especially disruptive legal technologies will be revisited in Part C. Next, however, Part B considers how supervision is presently conceived as being a component of legal practice management, and how this conception is rooted in the traditional large law firm model.

### B Law Firms, Legal Practice Management and Supervision: An Unintegrated Approach

The contemporary legal profession literature provides little directly in terms of an underlying conception of supervision. In order to uncover such an underlying conception of supervision in legal practice, this part turns to other academic literature that considers the growth and internal self-regulation of large law firms, together with a variety of legal practice management resources. These materials position supervision in terms of profitability and risk management, and uncover aspects of the dominant approach to supervision in legal practice. This approach

\(^{14}\) URBIS ‘National Profile of Solicitors 2016 Report’ (Law Society of New South Wales, 19 June 2017), Executive Summary.

appears to strictly segregate supervision from development activities, such as mentoring, in an overly simplistic way. However, this is understandable given that this literature was not directly geared at providing a transferrable conception of supervision. Firstly, a provisory note; this section is not advocating or endorsing aspects of the large law firm literature, rather this literature is examined purely to see what it uncovers about how the legal profession conceives supervision. This proviso is particularly relevant in relation to “tournament theory” literature, which, while no longer a sufficient model for the growth of the large law firm, nonetheless provides a revealing account of supervision that remains pervasive in contemporary legal practice.

1 The Large Law Firm: Understanding the Forces at Play

The large law firm literature, while not providing any explicit theory on supervision, usefully uncovers the importance of an underlying transaction involving human capital in the evolution of law firms\(^\text{16}\) and the importance of informal social mechanisms for regulating conduct within these firms.\(^\text{17}\) The discussion in this section is arranged around themes – monitoring and leverage – both of which reveal something about the nature of supervision given and received in law firms.

(a) Large Law Firms and the Cost of “Monitoring”

The term large (or big) law firm (“large firm”) is relative and just how many lawyers there needs to be for a firm to be considered a large firm ‘depends on place and time.’\(^\text{18}\) The large firm literature is generally associated with practitioners working in the “corporate hemisphere” and is, therefore, also relevant to any medium sized firms, small boutique firms, or in-house legal departments that serve corporate and government clients.\(^\text{19}\) In fact, Galanter and Palay are of the view that large firms set the standards for the profession and ‘like the hospital as a way to practice medicine, the big firm has provided the standard format for delivering complex legal services.’\(^\text{20}\) However, given the rise of franchise and publicly listed firms catering to individual

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\(^\text{18}\) Galanter and Palay, above n 16, 2. In fact, the determining characteristics of the large firm are more to do with work practices than size.

\(^\text{19}\) As shown in the Table 3.1 above, the corporate hemisphere is not the exclusive domain of the large law firms.

\(^\text{20}\) See Marc Galanter and Thomas Palay, 'Large Law Firm Misery: It's the Tournament, Not the Money' (1999) 52(4) *Vanderbilt Law Review* 953, 956. Similarly, Francis has stated that they are ‘a key site of socialisation for the
clients, the commercially driven methods associated with the large firm are likely to have spread to the individual sector. As such, the large firm approach to legal practice is pervasive and factors underly ing that approach have shaped the legal profession’s conception of supervision. Such factors are rooted in the development of the large law firm, but also appear in the general legal practice management literature that is covered in section 2 below. This is a useful development from the perspective of spreading commercial and risk management know-how across the sector, and could be enhanced by better developed theory on supervision.

Galanter and Palay have written on the growth of the large firm in the 20th century and how a distinct ‘tournament’ culture, where lawyers compete to become partners, has caused this growth (“tournament theory”). 21 Although “tournament theory” is no longer an adequate model explaining how large firms operate, this section argues certain factors that underlie tournament theory are still relevant for describing the foundational aspects of the relationship between supervisor and supervisee in the large firm setting.

A feature of the tournament culture is where inexperienced young recruits receive training and a ‘graduated increase in responsibility’ during an ‘extended probationary period’. 22 Galanter and Palay argue that the transaction underlying the growth of the large firm is an exchange of the partners’ human capital for the associates’ labour. This exchange includes transferring ‘experience dependant skills’ 23 to the associate. This transaction involves bringing an associate into the partner’s professional fold, from which skills and experience can be transmitted. This exchange involves a transfer of the partners ‘non-rival assets’ which creates a situation, where in order to take advantage of their ‘non-rival assets’, a partner requires:

… an effective method on monitoring performance and behaviour of other lawyers. Markets will provide ineffectual in the governance role because the underlying assets are unique; hence parties seeking to lend human capital will search for alternative governance mechanisms to regulate their exchanges. 24
This ‘monitoring’ comes at a cost which, assuming quality control is maintained, limits a partner’s leveraging ability. The partnership incentive, according to Galanter and Palay, reduces the monitoring costs of associates. This arguably influences the nature of supervision provided, as a monitoring only approach to supervision would likely reduce the overall quality of supervision. However, while monitoring is central to the underlying transaction between partner and associate, other incentives and mechanisms are also relevant.

Building on Galanter and Palay’s classic tournament theory, Wilkins and Gulati argue that the partnership incentive alone does not reduce monitoring costs and that associates are provided the following additional incentives: high wages; reputational bonds and the promise of general training. However, the purpose of these incentives is the same as the partnership incentive: to reduce the need for supervision.

There is also some debate about the actual cost of monitoring. For example, Kordana disputes the high monitoring costs and argues that partners can simply check the number of hours billed and review final work, and that monitoring is not a cost to the firm because it can be directly billed to the client. However, Wilkins and Gulati dispute Kordana’s argument that monitoring costs are not high and instead maintain that the partnership incentive is needed because ‘the quality of legal work is both expensive and difficult to supervise’. In this regard, Wilkins and Gulati contend partners are unable to cost-effectively determine the underlying quality of legal research and analysis because to do so would involve retracing ‘virtually every step of a junior lawyer’s work’. Wilkins and Gulati take the view that ‘this kind of checking goes well beyond the level of scrutiny with which partners review the work product of associates’.

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25 Ibid 123.
26 Wilkins and Gulati consider the monitoring costs aspect of the tournament model at length in their re-conception of the tournament theory. David B Wilkins and G Mitu Gulati, ‘Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms’ (1998) 84(8) Virginia Law Review 1581. This re-conception has been accepted by Galanter and Palay as ‘providing important observations on the contemporary embodiment of the Tournament’, see: Galanter and Palay, above n 18, 961. In addition, Galanter and Henderson have subsequently updated the classic tournament model referring to it as an ‘elastic tournament’, see: Marc Galanter and William Henderson, ‘The Elastic Tournament: A second Transformation of the Big Law Firm’ (2008) 60(6) Stanford Law Review 1867.
27 Wilkins and Gulati, above n 26, 1599 - 1600.
29 See Wilkins and Gulati, above n 26, 1591.
30 Ibid, 1599.
31 Ibid.
Irrespective of the cost of monitoring, the debate itself, not the outcome, is relevant to the present discussion because it uncovers underlying supervision dynamics in large law firms. They are:

- A dominant function of supervision, from the perspective of efficiently transferring human capital, is to monitor employees in a cost-effective way, and where possible create processes or incentives that reduce the need for supervision.
- The training and development aspects of the transfer of human capital are not clearly integrated into a coherent mechanism for supervision.
- An important (if not the primary or even only) method of supervision utilised in large firms is reviewing final work.

This final point, reviewing final work as a method of supervision, appears elsewhere in the large firm literature. Regan identifies supervision as a factor in the fall of American law firm Jenkins and Gilchrist, which was forced to close after dubious tax work led to a series of lawsuits and government investigations. In particular, Regan highlights the insufficiency of merely having another lawyer review and sign-off on an advice – especially for highly technical work. Regan’s analysis highlights reviewing work as a heavily relied upon method of supervision in legal practice, and the potential shortcomings of that method. In particular, the reviewer is unable to validate extrinsic information that is presented in an advice. Regan is criticising this method of supervision from the perspective that it fails to ensure the correctness of the work.

Again, this reinforces the perceived monitoring function of supervision. However, this method could also be criticised on the basis that it unduly narrows the purpose of supervision to avoiding ostensible mistakes, which is a form of quality control or risk management. This is a prominent issue in legal practice management resources. These resources are considered in section 2 below.

Similarly, Lazega, although not directly concerned with the processes by which partners supervise associates, also touches on the monitoring aspect of supervision. Lazega differs from the largely economic-based tournament theory in that he moves beyond ‘reasoning exclusively in terms of human capital’ and positions partners as individual entrepreneurs who are

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33 Lazega, above n 17,

34 Ibid, 37.
governed within the firm by a range of informal social mechanisms. Lazega’s structural theory describes an informal process of peer supervision among partners in the absence of a formal hierarchy. However, Lazega also provides some indirect insights relevant to the subject of this thesis, that being the supervision of junior lawyers (or how law firm partner’s supervisee associates).

Lazega’s case study of the law firm, Spencer, Grace and Robbins, reveals in that firm ‘when associates are young, partners must supervise them to prevent gross and visible mistakes’.35 This re-enforces a focus on monitoring revealed in the tournament theory literature. Interestingly, Lazega’s case study also highlights a system where partners arrange themselves into discrete committees responsible for discrete supervisory functions.36 The underlying supervisory processes, which these committees implement, were not revealed in Lazega’s case study, but nonetheless provide a further indication that supervision is treated as a narrow process of overseeing particular aspects of the firm’s objectives. Importantly and relevant to this thesis, Lazega’s case study provides a further example of how formal training and mentoring are not integrated into supervisory processes.37

Although the focus of this thesis is legal practice in Queensland, this section has relied on international, mainly American literature (or in the case of Lazega, a French scholar studying an American law firm). The large firm model described in this section was originally an American phenomenon. However, that model was adopted and has existed in Australia since at least the 1970s,38 and has grown in influence since. Despite this, there is no significant Australian literature that impacts or qualifies the aspects of the international literature discussed in this section. As such, the reliance on international literature in this section is appropriate.

(b) Leverage

Supervisory issues underpin the mode of practice that has developed in large law firms. The large firm literature reveals that such firms have been structured and developed to provide legal services in a way to decrease the perceived need for supervision, as opposed to providing the

36 Ibid, 66 and 73.
37 Ibid 83.
38 See Oliver Mendelsohn and Matthew Lippman, ‘The Emergence of the Corporate Law Firm in Australia’ (1979) 3 University of New South Wales Law Journal 78, 98.
appropriate environment for effective supervision. Central to this argument is the concept of "leverage".

Leverage involves requiring an employee (commonly referred to as a "fee-earner" or "associate") to do as much work involved in a matter as possible in circumstances where the employee is paid at a rate less than what is being paid to the firm for performance of that work. The result is that the more "fee-earners" a partner can supervise and delegate tasks to (i.e. the more "leveraged" a partner is), the more profitable that partner will be.

In fact, the central concept of leverage, although not discussed in terms of tournament theory, is a key feature of the business model of contemporary Australian large firms. Interestingly, large firms in Australia that have reduced leverage levels have done so by reducing the need for junior lawyers (and therefore the need for their supervision). This issue is considered further in Part C, which considers changes in legal practice and professional work.

Leverage also features heavily in Queensland practice management resources. The Queensland Law Society endorses "leverage" as an effective tool for supervision and, it seems, that the mode of practice developed originally by large American firms has had practice management repercussions for a large segment of the Queensland legal profession. The way in which supervision is treated as a practice management "tool" in Queensland is now considered in more detail.

2  Supervision – A Carrot and Stick Approach

This section now turns to legal practice management resources that fall outside the ambit of scholarly academic literature. It does not aim to summarise the entire corpus of such resources, rather, it will focus, primarily, on Queensland and other Australian resources that

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41 This term has been adopted from this QLS factsheet discussed in the Chapter I Part A (1): Queensland Law Society, "I Pay You … Just Get on with It" – Supervising Employees for Fun and Profit" (2014) <http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Supervision_of_legal_services>.
42 General legal practice management texts cover an incredibly wide range of issues from 'sensible diet' (Philip King, Professional Practice Management (LBC Information Services, 1995) 181-182) to implementing a change in management structure (William Newbold, Organising Lawyers: Organisational Structures in Law Firms (Chancery Law Publishing, 1991)).
provide practical guidance on undertaking supervisory activities. However, before moving on, it is useful to highlight that international resources reinforce the pervasiveness of external financial demands, and a preoccupation with risk management procedures, as forces shaping supervisory activities. In particular, supervision is not seen as a distinct endeavour but rather as a tool of practice management where the overall aim is to minimise risk and maximise profits.

(a) Supervision Generally

The Queensland Law Society’s Guide to Effective Supervision (‘the QLS Supervision Guide”) also highlights the prominence of risk management and profitability as drivers of supervision systems. The guide begins with the following disclaimer:

This guide has been prepared as an introduction to key considerations for effective supervision in modern legal practice, largely from a risk management and professional standards perspective, and is not intended as a comprehensive guide on personal supervision or leadership skills.

In addition to risk management, another standout theme of the QLS Supervision Guide is that ‘supervision can be seen as a driver of profitability’. This potential “side-effect” of effective supervision appears to be used as a “sales-pitch” to encourage effective supervision by

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43 For example, see Arthur Greene, The Lawyer’s Guide to Governing Your Firm (American Bar Association, 2009). Greene’s text provides a useful example of how supervision is often treated (or perhaps ignored) in the field of practice management. Like a number of practice management texts, the intended audience seems to be managing partners who may or may not directly supervise legal work. Greene essentially avoids use of the word supervision in relation to junior lawyers or associates. Supervision is a word reserved for paralegals working ‘under a lawyer’s supervision’ (at 67). Also see: Jo Bond ‘Developing and Managing Talent in Law Firms’ in Jill Andrew (ed), Managing People in a Legal Business (The Law Society, 2010) 83. Bond describes the role of partners in ‘driving successful talent management’ as: ‘Mentoring and training less experienced employees’; ‘Delegating work to the appropriate levels of expertise in the firm’; and ‘Giving feedback—effectively and timely; good and bad’ (at 83). Like Greene, Bond does not describe these activities as supervision. However, according to conceptions of supervision outside practice management literature, these activities are part and parcel of the supervisory process. This edited text, despite the title, is void of any useful discussion of supervision.

44 For example, see Michael Downey, Introduction to Law Firm Practice (American Bar Association, 2010). Downey who does use the term supervision is of the view that its purpose ‘making sure that a new lawyer has enough work and is otherwise complying with the firm’s relevant standards’ (at 235).


46 For example, see Arthur Greene, above n 43. For junior lawyers (or associates) it seems that the underlying purpose for developing associates in this way is so the firm retains productive professional staff which results in ‘more stable support and client service’ and ‘a financially healthy firm’ (at 121). According to Greene (at 123), a training program comprising orientation, mentoring and training is an investment which can ‘pay huge dividends’. Generally the development of associates is removed from day to day practice: Greene (at 125-127) advocates a centrally managed training program where mentoring is provided by ‘someone removed from day-to-day work’ and a ‘formal … evaluation process’ centred on an ‘evaluation form’ where ‘the individual partner or the committee responsible for the associate evaluations should synthesize the information obtained in the process and craft a message to the associate which describes the results of the evaluation.’


48 Ibid. The QLS Supervision Guide also refers to issues of profitability at p 5-7, 12-13, 15, 20, 24, 31, 48 and 49.
offsetting the perceived problem that ‘many see’ supervision as ‘... a drain on potential fee-
earning’.\textsuperscript{49} The QLS Guide endorses two other hallmarks of tournament theory: leveraging (or
gearing)\textsuperscript{50} and monitoring.\textsuperscript{51}

The QLS Supervision Guide advocates many reasons for delegating work including ‘to pass on
skills.’\textsuperscript{52} However, it seems that such reasons are subservient to the primary goal of ‘elevating
the return of investment to partners’\textsuperscript{53} which is done via leverage. The key supervision systems
advocated by the QLS Supervision Guide are:

...risk identification and monitoring; risk management; checklists and prompts; file audits; client
engagement and work allocation; monitoring communications; formal supervision meetings;
reactive supervision: access, availability and attitude; induction and training; corrections and
corrective actions; performance management; partner supervision and self-supervision...\textsuperscript{54}

The dominant message from these supervision systems is that supervision is a process of
monitoring that can help prevent mistakes. If we add the profitability dimension, the QLS
Supervision Guide’s conception of supervision can be described as follows: \textit{Supervision is a series
of activities aimed at monitoring employees to prevent mistakes and, if done effectively, it can
increase profits}. Overall, this understanding of supervision is not dissimilar to the treatment of
supervision in tournament theory; the difference is the QLS Supervision Guide advocates this
approach to the \textit{entire} profession (not just for growing large law firms).

In addition, the QLS Supervision Guide highlights communication and feedback as important
inter-personal skills relevant to effective supervision\textsuperscript{55} and suggests a relationship between
supervision and well-being.\textsuperscript{56} However, despite formal acknowledgement of these “other”
aspects of supervision, it seems that lawyers generally may struggle to balance risk management
with appropriate empathy and other interpersonal skills. In particular, the burden of supervision
appears to overshadow the interpersonal aspects of supervision. For example, the author of a
Queensland article titled “The Boss ... and why there’s a reason to worry”\textsuperscript{57} commented that:

\begin{itemize}
\item \textsuperscript{49} Ibid.
\item \textsuperscript{50} Ibid 11-14.
\item \textsuperscript{51} Ibid 19 and 24.
\item \textsuperscript{52} Ibid 12.
\item \textsuperscript{53} Ibid 13.
\item \textsuperscript{54} Ibid 19-29.
\item \textsuperscript{55} The QLS Supervision Guide, above n 47, 30-36.
\item \textsuperscript{56} Ibid, 41-43.
\item \textsuperscript{57} Neil Watt, 'The Boss ... and Why There’s a Reason to Worry!' (2008) 28(9) Proctor 45.
\end{itemize}
One thing I’ve noticed is that, if responsibility lies heavily on command, then principals just about need the biceps of Atlas to hold their particular world up. And their world just got heavier.  

Arguably, the tone of this article positions supervision as a risk management burden, an attitude which is reinforced in a New South Wales article titled “Are you looking over their shoulder.”

This article makes it clear that supervision is important ‘for the individual solicitors in that they can grow and develop in the role of a competent practitioner’ and goes as far as to say that:

...perhaps the most important aspect of supervision is the two-way communication between the supervisor and their charge – that is, communication between the individual and those within the team so that the employed solicitor has the confidence to speak easily and freely with the supervisor.

However, according to this article, the underlying purpose of this communication is so ‘mistakes can be prevented, or detected so that they can be corrected before they have an adverse effect on the client or the firm.’ It is almost as if the training and interpersonal aspects of supervision will not be taken as serious issues unless backed with an alarming message. Similarly, the Queensland Law Society published a practice note titled “Keep an eye on supervision” which begins by commenting that:

Supervision is a challenge for all of us but is a key tool for effective law management ... Getting it wrong not only exposes us to unhappy clients, civil claims and endless discussions with our insurers but may also lead to a regulatory investigation.

Together, the available resources providing guidance on supervision begin and end with a risk management lesson.

(b) The Mentoring Juxtaposition

A narrow, risk management and monitoring approach to supervision is also seen in the way that supervision is separated from another activity commonly dealt with in practice management resources - mentoring. Generally, there appears to be significant confusion within the profession regarding the relationship between supervision and mentoring.

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58 Ibid.
60 Ibid.
61 Ibid.
62 Ibid.
The following extract from the Law Society of South Australia bulletin contrasts supervision and mentoring:

Although the terms "supervision" and "mentoring" are often used interchangeably, that is an error. This is because supervision and mentoring generally require different skills and competencies. However, it would also be incorrect to assume that someone who is a good supervisor will not be a good mentor and vice versa. Let us therefore look at the essence of supervision and mentoring.

Supervision carries with it a sense of hierarchical structure: a manager or appointed supervisor (usually someone with some seniority in a firm or workplace) looks at the work of those for whom he/she is responsible and ensures it meets the required standards of the particular context. This is not to suggest that supervision is unnecessary: good supervision "ensures maintenance and implementation of high quality work". Supervision therefore could be referred to as a process of overseeing work done by employees.

**Mentoring is more than oversight, though oversight may be part of the mentoring process.**

Mentoring is a shared or collaborative experience where mentor and mentee share both professional and personal experiences in order to develop self-discovery and confidence in the position in which one is placed; it is thus about more than mere performance. Good mentoring will likely have as a result enhanced performance because mentoring is about guiding a person in the right direction, rather than directing a person to a particular position which direction, depending on how it is given, may be perceived as bullying.64

This approach seems to confine supervision to a traditional oversight or monitoring role, whereas mentoring has broader goals. These broader goals focus on training and development. In this regard, a more recent article in the New South Wales Law Society Journal has argued that:

Just as much as graduates have a responsibility to work to improve their skills, those who are senior to them have a responsibility to nurture and assist the careers of junior lawyers. Ultimately, this comes down to good-quality mentoring.65

The article goes on to outline the qualities of a good mentor and a mentee. While these qualities position mentoring as a collaborative work-based relationship, the article concludes as follows:

**Mentors appear in many guises, not all of them in the employee/employer context.**

Interactions between solicitors on opposing sides of matters can be just as important and can have a big impact on the learning and confidence of junior solicitors. When we deal with junior solicitors in any context, they will learn something from us: for better or worse.66

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66 Ibid (emphasis added).
This highlights how mentoring is treated as a general activity, beyond the immediate legal practice environment. In fact, currently, a number of mentoring programmes operating outside the employment context, and therefore beyond the supervisory relationship, are in place. These programmes are not organised on a profession-wide level and appear to cater to specific subsets\(^{67}\) of the legal profession. In fact, there appears to be a greater focus on mentoring programmes for law students\(^{68}\) than practising lawyers. In addition, some law firms run in-house mentoring programs – these mentoring relationships are also usually separate from day to day practice and used as a retention strategy.\(^{69}\) The Queensland Law Society piloted a mentoring program in 2014; however, the program met with difficulties and was discontinued. The reported reasons were as follows:

There were some difficulties in matching mentors and mentees in line with stated preferences, as not all preferences could be accommodated, and participants indicated a lack of engagement due to the mismatching of aspirations and the skill sets of available mentors. Some mentees’ expectations of the extent to which a mentor could aid them in a job search or career advancement were not in line with the program’s goals. As a result, and due to capacity constraints, the program in this form was not offered again in 2015.\(^{70}\)

In short, even though mentoring is a relationship-based substitute or alternative to supervision, which focuses on development, it has emerged in the legal profession as a relationship separate from day-to-day legal practice. This approach, of developing mentoring relationships outside the workplace, appears to be the same in the United States\(^{71}\) and England & Wales.\(^{72}\)

If mentoring takes this role, then a juxtaposition emerges. Supervision is a process for monitoring work in day-to-day practice. In contrast, mentoring attempts to fill the need for training, development and support arising from legal practice. It is not clear how such mentoring relationships can effectively fill this need if they do not regularly occur in the context of day-to-

\(^{67}\) See for example:
The Law Society of New South Wales NSW Young Lawyers Mentoring Program
Association of Corporate Council, ACC Australia National Mentoring Program
<https://acla.acc.com/careers/mentoring>
Woman Lawyers Association of Queensland Ladder Program
<https://acla.acc.com/careers/mentoring>

\(^{68}\) For an overview, see: Nickolas John James ‘Professional Mentoring Programs for Law Students’ (2011) 30(1) University of Tasmania Law Review 90.


\(^{71}\) For example, see Michael Downey, above n 44, Chapter 40. Also see University of South Carolina National Legal Mentoring Consortium <http://www.legalmentoring.org/index.shtml>.

day legal practice. This is not to say that these mentoring programmes are pointless, rather I argue that this complete separation of mentoring and supervision is overly simplistic. In this regard, the relationship between supervision and mentoring, as conceived by other professions, is far more nuanced.73 The relationship between supervision and mentoring in legal practice is revisited in Chapter V, which covers relevant literature from other professional disciplines.

3 Pro-Bono and Publicly Funded Law Offices

Risk management objectives also mould supervisory activities for pro-bono work, where the standard monitoring approach to supervision is replicated. Publicly funded law offices, like private law firms, are also constrained by external financial forces. However, these external forces arise not because of a need to increase profits, but because of the limited funding available. In addition, supervision in publicly funded law offices is moulded by risk management objectives because of constraining regulation that is linked to funding. Pro-bono work and publicly funded law offices are now considered in turn.

(a) Supervising Pro Bono Matters

Another source of limited practical guidance for supervision is a section in the National Pro Bono Resource Centre Australian Pro Bono Manual (“the Pro Bono Manual”) which is ‘a manual compiled for law firms to enhance and encourage the provision of pro-bono legal services’.74 The Pro Bono Manual is a useful resource because it outlines a perceived standard of supervision for the legal profession. In this regard, the Pro Bono Manual is premised on the belief that ‘pro bono matters should be subject to the same supervision as matters for fee-paying clients’.75 This ‘same supervision’ includes partner ‘sign-off of letters and advices’ and ‘periodic file review.’76

The Pro Bono Manual suggests that fee-paying clients actually play a role in the supervision of legal work. In particular, the Pro Bono Manual advocates closer supervision of pro-bono matters on the basis that:

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73 See Chapter V Part B.
76 Ibid.
• pro bono clients may not be as familiar with legal processes and lawyers as commercial clients and may not themselves be in a good position to monitor or query the quality or timeliness of service provided;
• in relation to pro bono matters, the client may not be engaging in the kind of supervision or scrutiny that arises from paying for a service.77

In addition, the Pro-Bono Manual suggests ‘supervision through billing arrangements and financial reporting’.78 This essentially involves a review of time recorded against a matter as a means for monitoring the work done and time spent. A unique feature of the proposed supervision systems for pro-bono matters is ‘supervision by pro bono partners, coordinators and/or committees’79 which essentially involves monitoring by a dedicated third party to ensure work is being given appropriate priority and supervised properly. In short, the Pro-Bono Manual reinforces monitoring as the key driver of supervision in legal practice.

(b) Publicly Funded Law Offices

Traditionally a key aspect of supervision in publically funded law offices, especially community legal centres, has been ‘improving staff competence.’80 In addition, community legal centres have strong linkages with clinical legal education, which brings with it a focus on educational outcomes81 and broader notions of social justice.82 However, the extent to which community legal centres can maintain this orientation, outside the context of clinical legal education, is uncertain.

Financial pressures mould supervisory activities in publically funded law offices. Although these external forces are similar to those impacting large firms, they are present not to increase profits but because of problems with funding. The funding of state-sponsored legal services often arises in the context of broader access to justice issues and those seeking help find that ‘due to chronic funding shortages, ongoing help is often restricted to those on the lowest incomes, and then

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77 Ibid.
78 Ibid.
79 Ibid.
80 Bruce Mayor, ‘Case Management and Supervision in Legal Services: The Experience in Hartford, Connecticut’ (1977) 11 Clearinghouse Review 629. Mayor (at 629-631) describes the usefulness of a case reporting system which ‘gave substance and shape to our monthly supervision meetings’ and measures to ensure those meetings were ‘supportive’.
81 The focus on educational outcomes in clinical legal education supervision is covered in detail in Chapter IV.
82 Jeff Giddings, Promoting Justice through Clinical Legal Education (Justice Press, 2013).
only for a limited range of mainly family law and criminal law issues.’ 83 In addition, the practice arrangements in community legal centres are further complicated by extensive reliance on volunteers. Community legal centres may become stretched in their ability to properly train and supervise these volunteers. 84

Risk management imperatives now also appear to impact the nature of supervision in community legal centres where supervision is one of many activities monitored by professional indemnity insurers. 85 In addition Commonwealth government funding arrangements add another layer of bureaucracy 86 which positions supervision as primarily concerned with checking advices and casework. 87 The limited resources available indicate that despite noble intentions community legal centre supervision (except when it interacts with clinical legal education) is overcome by the same imperatives as the private sector – risk management and monitoring.

4 Legal Practice Supervision: Summary

Legal practice is stratified with a substantial concentration of practitioners operating in large firms serving the interests of large corporations and governments. The approach to supervision in this forum of legal practice has become pervasive across the legal profession. Fiscal matters and risk management, with monitoring being the dominant activity, heavily influence the large firm approach to supervision. This approach is promoted in a variety of legal practice management resources and has come to represent the “conventional wisdom” of the entire profession, for fee-paying and pro-bono clients alike. Even in community legal centres, risk management and monitoring are unavoidable imperatives that affect the nature of supervision.

This type of monitoring supervision, which pervades the legal profession, is mechanical and diminishes the opportunity for interpersonal and professional development. In addition,

85 Members of the National Association of Community Legal Centres must appoint in writing at least a person responsible for the overall supervision and must advise their state or territory Professional Indemnity Insurer representative of the name of this person. See, Caxton Legal Centre, ‘Risk Management Guide Excerpt’ (January 2014).
86 Community Legal Centres funded by the Commonwealth Government must comply with the Commonwealth Community Legal Services Program Service Standards. See, Caxton Legal Centre, ibid.
87 Attorney-General’s Department, Service Standards Manual for the Community Legal Services Program (30 June 2015) <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/LegalServicesProgram/Pages/CommonwealthCommunityLegalServicesProgram.aspx>
monitoring based supervision is unlikely to meet the needs of the legal profession as legal practice is impacted by disruptive innovation. This issue and other broad trends in legal practice are considered next in Part C. In addition, irrespective of what the future may hold, this prevailing monitoring based approach is rigid and does not cater to the present training and development needs of newly admitted lawyers completing Supervised Legal Practice (this issue will be addressed later in Part D).

C Understanding Broad Trends Impacting the Legal Profession and Legal Practice

This section will argue that, to successfully navigate current trends, and predicated changes, to legal practice, lawyers need to rejuvenate the way they interact with each other by renewing focus on trust-based relationships. This is particularly so in the context of supervision, which requires a shift in thinking and practice away from the current focus on monitoring-based supervision.

The legal profession literature continues to be concerned with ‘commercialism’, ‘managerialism’ and more generally the ‘business of law’. The way in which the profession, the practice environment and the delivery of legal services is undergoing change pervades these issues. Large mega-firms engaged in globalization and ‘cosmopolitan lawyers’ appear to be the trend setters. Changes to legal practice include: globalisation and outsourcing; increased specialisation; and a range of disruptive legal technologies.

These trends not only impact legal practice on a macro-level but also on a micro-level in the sense that the individual players (i.e. lawyers themselves) need to re-think engagement with each other. In this regard, legal profession scholars are now turning their attention to matters

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88 For an overview of these topics and the relevant literature, see Christine Parker and Lyn Aitken, 'The Queensland "Work Culture Check": Learning from Reflection on Ethics Inside Law Firms' (2011) 24(2) Georgetown Journal of Legal Ethics 399, 402-403.
94 Disruptive legal technologies are discussed separately in section 1 below.
such as ‘workplace bullying’, 95 ‘lawyering stress and work culture’, 96 and ‘developing leadership’. 97 Law firm leaders are turning to ‘human science’ 98 to lead their firms in this changing environment and aspiring lawyers, concerned about their career, are (or perhaps should be) tuned into legal futurist theories. 99

Professional responsibility scholars have been quick to note the potential problems associated with these changes. For example, Dal Pont notes the following in relation to “outsourcing” of legal work:

The trend towards “outsourcing by law firms – where in legal (and non-legal) services are delegated to a person outside the firm, including outside the jurisdiction – has been described as a salutary one for our globalized economy, especially to the extent that it affords lawyers the ability to reduce the cost of legal services (although it may equally be driven by profit-maximisation objectives). It has been described as quickly becoming part of mainstream legal practice, especially against the backdrop in economic turns, increasing competitive pressures and tightening of legal services market, and client savviness. At the same time, though, it presents various challenges, including the need to monitor the quality of the services and the ethical context in which they are supplied. 100

Interestingly, the literature covering these issues is not grounded on any firm conception of supervision or any clear understanding of typical activities associated with supervision. In fact, this literature seems to fail to recognise, or simply ignore, the potential complexities of supervision that exist irrespective of these changes to legal practice. As far as supervision goes, it is premature to engage extensively in this literature. The findings from this thesis may, however, prompt such further engagement. For present purposes, it is sufficient to note that, as the legal profession grapples with changes to the delivery of legal services, the diversity that characterises the legal practice environment is exacerbated. Perhaps most concerning for aspiring lawyers, and most likely to impact supervisory practices, is the “threat” and “opportunity” provided by disruptive legal technologies. These disruptive technologies necessitate an immediate re-consideration of the nature of supervision given and received in legal practice.

1 Disruptive Legal Technologies: Re-thinking the Very Nature of Supervision

95 Le Mire and Owens, above n 1.
96 Chan et al, above n 2.
100 See Dal Pont, above n 92, 677-678 (citations omitted).
According to Susskind ‘disruptive technologies fundamentally challenge and change the functioning of a firm or a sector’. Susskind claims there ‘are at least 13 disruptive technologies in law’.

These 13 disruptive technologies, together with a brief description of each and potential implications regarding supervision, are set out in Table 3-2 on the following page.

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101 Susskind, above n 99, 39.
102 Ibid 40.
<table>
<thead>
<tr>
<th>Disruptive Technology</th>
<th>Brief Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automated Document Assembly</td>
<td>“customized first drafts of documents, in response to questions asked of their users.”</td>
</tr>
<tr>
<td>Relentless Connectivity</td>
<td>“systems that together prevent lawyers from entirely disengaging”</td>
</tr>
<tr>
<td>Electronic Legal Market Place</td>
<td>“online reputation systems ...; price comparison systems ...; and online legal auctions”</td>
</tr>
<tr>
<td>E-Learning</td>
<td>“online facilities to support legal learning and training”</td>
</tr>
<tr>
<td>Online Legal Guidance</td>
<td>“systems that can provide legal information, legal guidance, and even legal advice across the internet”</td>
</tr>
<tr>
<td>Legal open-sourcing</td>
<td>“online mass-collaboration”</td>
</tr>
<tr>
<td>Closed Legal Communities</td>
<td>“restricted groups of like-minded lawyers with common interests to come together and collaborate online in private social networks”</td>
</tr>
<tr>
<td>Workflow and project management</td>
<td>“For high-volume, repetitive legal work, workflow systems are like automated checklists that drive a standard process from start to finish”</td>
</tr>
<tr>
<td>Embedded legal knowledge</td>
<td>“legal rules will be embedded in our systems and processes” and “where rules are embedded, lawyers are no longer needed to draw clients’ attention to circumstances of legal work”</td>
</tr>
<tr>
<td>Online Dispute Resolution</td>
<td>“When the process of actually resolving a legal dispute, especially the formulation of the solution, is entirely or largely conducted across the internet ...”</td>
</tr>
<tr>
<td>Intelligent Legal Search</td>
<td>“Emerging systems, if properly primed, are now able, in terms of precision and recall, to outperform paralegals and junior lawyers”</td>
</tr>
<tr>
<td>Big Data</td>
<td>“yield patterns and correlations that previously we could not have identified ... for example, by aggregating search data we might be able to find out what legal issues and concerns are troubling particular communities”</td>
</tr>
<tr>
<td>AI-based problem-solving</td>
<td>“...vast stores of structured and unstructured legal materials ... that can understand legal problems spoken to it in natural language, that can analyse and classify the fact pattern inherent in legal problems, that can draw conclusions and offer legal advice ...”</td>
</tr>
</tbody>
</table>

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103 Ibid Table 5.1 on page 40.
104 Ibid 41-49.
Although Susskind doesn’t specifically contemplate the impact of these disruptive technologies on supervision, he does call for a re-think of legal training as follows:

If law firms are genuinely committed to training, I suggest that it should be founded on three basic building blocks in the future. The first is a reversion to some variant of the apprenticeship model. Once young lawyers have their paper qualifications, research and experience suggest that working closely alongside experienced lawyers is a powerful and stimulating way of learning how to move from the law in books to the law in action. Second, when significant bodies of work are sourced from beyond the firm, young lawyers, may nevertheless, in parallel, undertake samples of this work, partly to learn their trade and partly perhaps as a way of controlling the work done by external providers. Finally young lawyers should benefit from existing and emerging techniques of e-learning … 105

Broadly speaking, these disruptive technologies have the potential to disrupt supervision practices as follows:

- Reduction in work formerly done by junior lawyers which in turn reduces the need for monitoring content and quality;
- The need for supervisor and supervisee to share clients’ increased demand for contact which in turns increases the need for supervision to effectively develop client relationship skills;
- Greater transparency in relation to the delineation of work between supervisor and supervisee such that it will become more difficult to charge client’s for monitoring supervisee’s work;
- Reduced need for transmission by supervisor of “black-letter” and procedural knowledge; and
- Paradigm shift in supervision where there is a need to supervise a machine or software and the persons, who may or may not be legal practitioners, who are responsible for maintaining that machine or software. 106

These disruptions together call for a re-think of the status-quo of monitoring based supervision towards greater collaboration between supervisor and supervisee. This in turn requires a renewed focus on the supervisor / supervisee relationship.

105 Ibid 143.
106 A similar issue was mentioned in the FLIP Report, above n 15. In particular, (at 102) that ‘there could be a requirement that providers of so-called standard electronic documents, such as confidentiality deeds or contracts, be explicitly constrained by statute to do so only where the technology has been designed by and is delivered to the consumer under the supervision of a licensed legal practitioner, to be held strictly accountable under current law.’
Beyond Monitoring: The Need for Trust-Based Relationships

Murray and Fortinberry emphasise the relational aspects of the legal services industry, noting that:

It’s a fundamental fact about humans that we seek safety within relationships. Recent research has shown that almost all of our actions are related to our drive to form or consolidate relationships with those who we believe will support us. Our greatest fear is of abandonment.

All those pieces of the legal business which are not germane to establishing supportive relationships are the ones increasingly in danger of being, disaggregated. What will be left is the factor which is most saleable: the relationship between the partner – or whatever they may be called in 10-15 years – and the client.107

When it comes to leading a law firm that is cognisant of the relational aspects of legal practice, Murray and Fortinberry emphasise the importance of a range of interpersonal factors and processes (including persuasion, developing trust, dialogue and effective collaboration and cooperation). Murray and Fortinberry do not specifically address the issue of supervision, as their audience is law firm leaders at the very top of the pyramid seeking to implement change who may not be involved in day-to-day client work. Nonetheless, the implication for supervision of legal work is that the current monitoring approach will not adequately develop the future generation of trusted legal advisors charged with providing their clients with relational security. Machines, systems and software will be able to monitor legal accuracy, precision and procedures. However, supervisees will need their supervisor to foster the development of the “soft-skills” associated with providing clients with relational security. Therefore, in terms of supervision, supervisors will need to re-focus on their relationships with their clients, but also their supervisees.

Irrespective of whether and how quickly, legal practitioners are transformed from “providers of legal advice” into “givers of relational security in a legal context”, the current approach to supervision is already lacking in terms of preparing newly admitted lawyers for the current legal practice environment (which is yet to be entirely disrupted by legal technologies). In other words, these changes exacerbate a problem where the current system is failing to prepare newly admitted lawyers for the demands of practice. The next section turns to this more pressing issue.

107 Murray and Fortinberry, above n 98, 4-5.
D  Supervised Legal Practice and the Experience of Newly Admitted Lawyers

This part of the chapter separately considers the unique supervisory context facing newly admitted lawyers. The historical and regulatory backdrop was considered separately in Chapter II. To recap, in the first years of practice, junior lawyers are required to complete a period of Supervised Legal Practice and, although this period was originally envisaged as a final stage of practical legal training, this period is void of any clear profession-wide teaching or learning arrangements.

For reasons that remain unclear, in practice, the legal profession seems not to enact a purposive approach to Supervised Legal Practice where it functions as a final stage of practical legal training. For example, Westbrook\(^{108}\) attempts to take a strict literal interpretation of Supervised Legal Practice, which focuses on monitoring. Westbrook’s analysis also seems to mix the Supervised Legal Practice requirement with the supervision of law students and other staff. Overall, this is reflective of a broader, confused approach to Supervised Legal Practice, which is present in the limited practical guidance available - this material is covered in Section 1.

**Section 2** discusses recent evidence that identifies supervision as being crucial to the training and development of junior lawyers. Although there is no obvious conception of supervision for the purpose of training and developing junior lawyers, some tentative remarks can be made that highlight the current state of affairs.

**Section 3** then provides a summary of the way supervision appears to be conceived in the unique context of Supervised Legal Practice.

1  Supervised Legal Practice in Action

The QLS Supervision Guide\(^{109}\) provides the following comments in relation to Supervised Legal Practice:

> There is no real definition of what constitutes “supervision” and minimal guidance as to the extent of supervision required to satisfy the “supervised legal practice” requirements in the LPA. An examination of the legislation, some case law and other jurisdictions has revealed the following matters which should be taken into consideration:

\(^{109}\) See QLS Supervision Guide, above n 47.
- the person must be supervised by someone with an unrestricted practising certificate with appropriate experience
- there must be daily contact between the supervisor and the supervised person
- the supervisor must be fully aware of the work being done
- the supervisor must have direction, oversight, the ability to give instructions and assign tasks and the ability to amend, override or intervene in relation to the matter and the tasks being undertaken
- the supervisor must give regular feedback and guidance to the person
- the supervisor should satisfy him or herself that correspondence and advice is accurate and well-founded, with advice being endorsed and signed off
- the supervisor should be fully aware of matters essential to the conduct of a file in relation to advice, documentation and correspondence, with minor matters and non-essential matters requiring less strict supervision 110

Although ostensibly based on legislation and case law, it is not entirely clear where some of these matters come from111 and this could be usefully explained in greater detail. In particular, the cases considered in the guide do not consider Supervised Legal Practice. Furthermore, of the matters listed, only the requirement that a supervisor has a principal practising certificate is grounded in the legislation. Overall, there appears to be confusion in terms of the nature of Supervised Legal Practice and the extent to which it overlaps with supervision generally.

Given this confusion and lack of guidance, it is not surprising that the ‘Queensland Law Society receives many questions about supervision conditions on Queensland practising certificates’. 112 Consequently, in an attempt to provide guidance on Supervised Legal Practice, the Queensland Law Society published guidelines in 2015 dealing specifically with Supervised Legal Practice (“the QLS Supervised Practice Guidelines”). The QLS Supervised Practice Guidelines appeared as a two-page guideline in the Law Society’s monthly trade publication “Proctor”. As such, the underlying authority and intent of these guidelines is uncertain. Similar guides are available in other jurisdictions. 113 The guidelines in South Australia114 appear to be the most comprehensive, in terms of providing guidance on the purpose and nature of the supervision to be given and received.

110 Ibid 11.
111 As covered in Chapter II Part E, the Regulatory Framework provides virtually no guidance in terms of the supervision required during Supervised Legal Practice.
113Law Society of New South Wales, Supervised Legal Practice Guidelines (2017); Legal Practice Board of Western Australia, Supervised Legal Practice Guidelines (5 August 2015); Victoria Legal Services Board, Supervised Legal Practice Policy (2016).
114 Legal Practitioners Education and Admission Council (South Australia) Guidelines for the Supervision of Newly Admitted Practitioners (22 July 2016). The South Australia Supervised Practice Guidelines actually rely on my preliminary research which was published during the course of my candidature. In particular, they endorse the view that Supervised Legal Practice is a continuation of practical legal training and different from the general duty to supervise.
While it is not clear the exact nature of the questions the Queensland Law Society receives, the QLS Supervised Practice Guidelines are clearly directed at new practitioners, and seem to be a response to inquiries involving a perceived lack of appropriate supervision. 115 If this is the case, there is scope for these guidelines to be further developed.116 The QLS Supervised Practice Guidelines leave room for such further development by usefully noting in the final paragraph that:

> Aside from being required under the Act, the Society considers supervision to be a vital part of maintaining standards in the profession and ensuring that all solicitors receive adequate training, support and mentoring during their formative years in the profession.117

This is a general acknowledgement that Supervised Legal Practice is, in fact, a forum for training and supporting junior lawyers. However, the extent to which supervision can facilitate this wider objective is not covered. This reflects a general reluctance in Queensland, which also appears to be mirrored in other Australian jurisdictions, to adopt a specific supervision model for Supervised Legal Practice that caters for the systematic training and development of newly admitted lawyers. The extent to which newly admitted lawyers receive appropriate training and professional development support therefore depends on the approach adopted by individual firms and supervisors. The next section will consider the impact this type of arrangement has on professional development and training.

2 Professional Development and Law Firm Training

A study by Holmes et al118, which included interviews with 11 newly admitted legal practitioners in the Australian Capital Territory, identified that appropriate supervision is crucial to development of autonomy and task competence. Holmes et al gathered qualitative data regarding ‘the lived experience of entry level-lawyers’.119 The purpose of their research was to look at how newly admitted lawyers forge their professional identities. However, their grounded theory approach identified supervision as a significant issue in relation to the development of

115 I met with a Senior Ethics Solicitor at the Queensland Law Society during the course of my candidature to discuss the nature inquiries it receives regarding Supervised Legal Practice. I was not provided with any specific details however the nature of the discussion indicated that these questions are mainly from junior lawyers who feel they are not receiving appropriate supervision or guidance.
116 Especially in relation to the training and development aspects of supervision.
117 See Fitzgerald, above n 112.
119 Ibid.
autonomy. Their research provides useful insights in relation to identifying appropriate supervision for developing autonomy. Regarding the relationship between supervision and autonomy, they concluded that:

the optimum work environment for developing in new lawyers both competence and the capacity for autonomous practice exhibits two characteristics. First, the new lawyer is exposed to gradual and planned learning which balances the known, safe and comfortable, but which also provides an exposure to the unknown and unfamiliar. Second, the new lawyer is encouraged, and given the opportunity, to reflect on lessons learned from such exposures. The transition to competent, autonomous practice is hampered where this combination of experiences is never created, or is unsustained after an initial period of development. We observed this when new lawyers had only intermittent exposure to immersive learning opportunities. When such exposure was not sustained, participants observed a plateau in their learning and a corresponding decrease in their sense of autonomy at work. This in turn impacted negatively on their developing sense of professional identity.

In a related publication, Foley et al identify two factors associated with a positive experience in developing competence. They are:

- ‘a tailored (emphasis added) mentoring/supervisory program which acted as a ‘safety net’ to ensure that their experiences were a catalyst for improvement (rather than for loss of confidence and with it competence)’,¹²² and
- ‘exposure to challenging learning experiences in which they felt (emphasis added) they were being stretched beyond their comfort zone (emphasis added).’¹²³

Importantly it seems this research reveals that the appropriate balance is a subjective matter and will be different from person to person. Based on this it seems part of the supervisor’s role is to individually assess supervisees, in particular, a supervisee’s skill level and perceived comfort zone. Although not explicitly stated, this presupposes a high degree of interpersonal connection. In this sense, supervision is very much a fluid, interpersonal endeavour as opposed to any prescribed model or process. This dynamic, interpersonal relationship goes beyond the development of mere technical skills: supervisors can play an important role in helping new lawyers further develop their ‘emotional intelligence’.¹²⁴ On the issue of supervision, Foley et al conclude:

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¹²⁰ Holmes et al, outlined how autonomy is an attribute of what they describe as the ‘traditional’ conception of professionalism. Ibid 30-31.
¹²¹ Ibid 46.
¹²³ Ibid.
¹²⁴ Ibid 8-9 [Citation Omitted].
We were consistently told about the crucial importance of appropriate supervision and mentoring to a new lawyer’s gaining autonomy and task variety competence. Supervision which provides challenging work, underpinned by a safety net of mentoring and support, greatly assisted in developing the core attribute of competence. A good supervisor provided a ‘safe space’ in which the new lawyer could learn to deal with the many facets of uncertainty that arose in practice. While the importance of good supervision may seem obvious, it is apparent that such supervision is not always the experience of new lawyers. Those without good supervision were stretched to the point of hating practice, bored to the point of leaving it, or undeservedly labelled as incompetent from the outset. Several supervisors commented on the irreparable dangers to reputation and career inherent in poorly supervised new lawyer positions. Practices which take on new lawyers need to recognise that part of their professional responsibility is to supervise adequately on an ongoing basis.125

Interestingly, it seems this research revealed supervisors were not, on the whole, equipped to deal with, or prepared to have, the personalised relationship that effective supervision requires.

The relationship between supervision and the development of junior lawyers also arises in academic literature concerning training programs for trainee solicitors126 and newly admitted lawyers. In short, further indications are present that, on the whole, supervisors are unable, or unwilling, to adequately meet the needs of supervisees.

Moorhead and Boyle surveyed 158 trainee solicitors in England and Wales. Their focus was quality of life but reported that ‘many trainees clearly feel that they are poorly trained, that supervision is ad hoc and that personnel management is, at best, primitive’.127 A substantial minority of respondents expressed concern with training and supervision.128 Overall, there was a disparity in training provided by supervisors (with some respondents reporting being left unsupervised on certain tasks) and there seemed to be an excessive weakening in supervision after formal qualification as a solicitor.129

Crebert interviewed a group of graduates from a Practical Legal Training (“PLT”) course to ‘inform their understanding of the term legal competencies’.130 Again, this study was not

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125 Ibid 12.
126 The term ‘trainee solicitor’ is used in England and Wales to a prospective solicitor who has completed a law degree and practical legal training. As mentioned in Chapter II Part D, trainee solicitors are at virtually the same developmental stage as newly admitted lawyers in Australia.
128 Ibid.
130 Gay Crebert and Anne Smith, ‘Firming up the Framework: Untangling the Web of Confusion over Competency Development in Entry-Level Lawyers’ (1998) 16 Journal of Professional Legal Education 1, 2. The interviewees were graduates of the Queensland University of Technology Legal Practice Course. It should be noted that PLT courses have evolved significantly since the 1990s. In particular, there has been a sector-wide shift away from exams towards competency-based assessments.
specifically directed at understanding supervision, rather respondents were asked to comment on how their PLT course and their employers exemplified the following approaches to teaching and learning:

*modelling (involving an expert performing a task so that students can observe and build a conceptual model of the processes involved);
*coaching (observing students performing a task and offering feedback, reminders, etc.);
*scaffolding (providing necessary support);
*articulation (getting students to explain their knowledge, reasoning or problem-solving processes within a specific domain);
*reflection (helping students to compare their own processes with those of others, and to develop their own concept of expertise); and
*exploration (encouraging students to set and solve their own problems themselves).131

While mixed in their responses in relation to how the PLT courses had exemplified each of these approaches, respondents were:

much more critical of their employers, who generally had ignored the first five stages listed above and had pushed them head first into the exploration stage, forgetting that they had neither the background experience nor the expertise to work entirely within a problem-solving context. This had caused unnecessary and avoidable crises of confidence for the new employees, which would not have occurred, had their employers encouraged the "monitoring and reflection" needed to convert experience into expertise.132

Arguably, the respondents’ critique of lawyers could be interpreted as describing poor or ineffective supervision. A complete failure to engage in the first five stages could also be interpreted as a “throw them in the deep end” or “sink or swim” approach to supervision. These responses highlight (in a similar vein to the Foley et al133) that supervisors tend to be unable, or unwilling, to engage with supervisees in a way which would allow supervisors to meaningfully consider the individual supervisee, and the reality of what they know and can reasonably do.

As part of a study of law firm training programs, Greenebaum identifies ‘on-the-job supervision’ as ‘the most pervasive and valued form of training’.134 By supervision, Greenebaum is referring to what he describes as ‘the traditional sitting with experienced solicitors’ where ‘trainees witness and try out models of solicitors’ work, exploring how one produces and survives, even

131 Ibid 16-17.
132 Ibid.
133 Foley et al, above n 112.
134 Edwin H Greenebaum, ‘Development of Law Firm Training Programs: Coping with a Turbulent Environment’ (1996) 3(3) International Journal of the Legal Profession 315, 327. The study included 19 law firms in the United Kingdom. These firms were all engaged in commercial practice and ranged in size from approximately 60 fee-earners up to the largest firms in the world.
flourishes, on the job.'\textsuperscript{135} Greenebaum also identifies ‘prior supervision’ as ‘a source of information for appraisals’ and that ‘appraisals provide guidance for future supervision.’\textsuperscript{136} Although supervision (as described by Greenebaum) is highly valued, the nature of legal practice seems to place it under threat. In particular, Greenebaum describes how potential supervisors face ‘esoteric issues’ and ‘pressure to produce billable hours’ which prevent dedicating time to supervision.\textsuperscript{137}

In addition, Greenebaum suggests that lawyers appear more comfortable with traditional educational models.\textsuperscript{138} This has led to what Greenebaum describes as ‘adherence to traditional pedagogy’ in the form of ‘talking heads for one to two hours’.\textsuperscript{139} In short, Greenebaum has identified that law firms find it easier, as a substitute for actual supervision, to arrange a seminar that follows the traditional format of orally transmitting information to the audience.

While recent literature indicates the practice setting as crucial to the development of newly admitted lawyers, the literature regarding law firm training is dated. Irrespective, while supervision issues permeate both these streams of literature, a clear theoretical understanding of supervision, and the processes that make it effective, is quite clearly missing. In addition, there appears to be something about the very nature of legal practice that is incompatible with an education and training agenda (this issue surfaces again in the clinical legal education literature considered in Chapter IV). It is not clear exactly why this is; however, it may be in part due to the billable hour regime, which causes supervision to be treated as an opportunity cost. The literature also uncovers an unwillingness or inability to engage in supervision on an interpersonal level. This seems to stem from inertia caused by the monitoring based approach to supervision, which causes training to be shifted away from the process of supervision. Together these factors have a negative impact on the development of competencies in junior lawyers.

3 \textit{Supervision of Newly Admitted Lawyers: Summary}

The practical guidance available on Supervised Legal Practice is very limited. While there seems to be a general acknowledgement that this supervisory context requires a broader set of

\begin{itemize}
  \item \textsuperscript{135} Ibid 327-328.
  \item \textsuperscript{136} Ibid 334.
  \item \textsuperscript{137} Ibid 327-328.
  \item \textsuperscript{138} Ibid 332.
  \item \textsuperscript{139} Ibid 331-332.
\end{itemize}
objectives than risk managements and monitoring, there is no obvious theory or approach to supervision applicable to newly admitted lawyers. At best, supervision of newly admitted lawyers can be described in negative terms (i.e. what it does not achieve). In particular, the current approach to the supervision of newly admitted lawyers (whatever it may be), shaped by the realities of legal practice, fails to cater to the training and developmental needs of supervisees. This in turn manifests as a further problem that is uncovered by examining the well-being literature. In particular, there is an unarticulated link between supervision and well-being. This link is discussed below in the next section.

E  Lawyers, Mental Health and Well-Being

1  The Relevance of Supervision to Junior Lawyers’ Mental Health and Well-being

Reports of a mental health “crisis” in the Australian legal profession has achieved significant attention from the media and professional associations. The issue of lawyer wellbeing has reached a new level of significance given the devastating impact legal study and legal practice may have on the mental health of law students and young lawyers. This was brought to light following the suicide of law graduate Tristan Jepson. The Tristan Jepson Memorial Foundation (“TJMF”) was formed to honour his memory. Research by the TJMF has identified that law students and legal practitioners suffer from mental illness at a rate significantly higher than the general population. A look within that disproportionately high rate indicates that the problem is worse for younger age groups.

The seriousness of this problem has, in turn, led to the issue being prominent in the contemporary Australian legal profession literature and has led to the development of a movement in legal education aimed at developing positive professional identities and resilience. Parker argues the literature to date has reduced the issue to an individual level,

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140 For an overview of the issue in Australia and the response of professional bodies see Kendall, Christopher, ‘Report on Psychological Distress and Depression in the Legal Profession’ (The Law Society of Western Australia, 2011).
141 Norm Kelk et al, ‘Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers’ (Report, Brain and Mind Research Institute, University of Sydney, January 2009).
142 Ibid 1-3.
143 Ibid 11.
144 For a useful overview of that the “crisis” and associated literature see Christine Parker, ‘The ‘Moral Panic’ over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response?’ (2014) 37(3) University of New South Wales Law Journal 1103, 1103-1110 and Appendix 1. The majority of this literature relates specifically to law schools and the experience of law students. The response from the profession and practising lawyers has been less prolific.
focussing on treatment and resilience, and she calls for a more collective response that addresses deficiencies with the legal profession as a whole. Parker warns that:

It is important to note dissatisfaction with legal professional roles and jobs, and respond compassionately and appropriately to individual distress. It is also important to notice that these statements of distress and discontent raise fundamental enduring questions about the role of the legal profession and the rule of law in society. We should be extremely wary of the possibility instead we are creating a regime that treats, manages and palliates lawyers and law students in distress so that they can cope with getting back to work in a system that is itself broken.146

Parkers’ comment cautions against a one-sided, simplistic response, and serves as a useful reminder of the need to look deeply at a complicated social issue. Some of the existing literature seems to have focussed on individual “symptoms” and not systemic “causes”.147. Other aspects of the well-being literature represent the first stage of responses to the issue, while also raising concerns that are more pervasive. For example, in addition to covering awareness and well-being, Chan et al raise fundamental questions ‘about whether the nature of legal practice and the work culture of the industry have contributed to the level of stress and depression.’148

This section argues that the issue of supervision is central to the well-being issue and ineffective supervision is one of the reasons why (to use Parker’s words) ‘the system is broken’. This section will also argue that the relationship between supervision and well-being is particularly relevant to junior lawyers.

Gibson summarises the state of the research in terms of causal factors as follows:

There has been little research into the causes of any higher rate of psychiatric problems in lawyers compared to the general population. Hypotheses range from lawyers being bullied in the workplace, and billing targets imposing unrealistic deadlines with unreasonable demands placed on lawyers, the lack of control junior lawyers have over their work. None of these explains why law students exhibit problems. Some commentators suggest that the nature of the legal

146 Parker, above n 144, 1135-1136.
148 Chan et al, above n 2, 2.
profession, which is adversarial and conflict-driven, together with attributes shared by lawyers, including perfectionism and pessimism, put lawyers at higher risk of depression.149

John Briton, whilst serving as Queensland’s Legal Services Commissioner, identified ‘poor supervision’ as one of a number of possible ‘underlying structural or cultural issues that contribute to the problem.’150 Recent findings from a comprehensive study by Chan et al.151 pinpoint some specific causal issues that support Briton’s statement. Overall, Chan et al found that mental or emotional disturbance152 was ‘highly correlated’153 with a number of variables used to measure ‘perceived job demands’.154 More specifically, the following results are particularly relevant to this thesis as they touch on issues that are relevant to supervision:

- In terms of job satisfaction, respondents were most happy with ‘their relationships with colleagues’ and ‘level of responsibility’ but were least satisfied with the ‘performance evaluation process’ and the ‘control over amount of work.’155
- More than two thirds of respondents ‘agreed that they had constant time pressure due to a heavy workload’.156
- The majority of the sample agreed that ‘their supervisor accommodates their personal and family needs’.157 Yet ‘more than half of respondents (59 per cent) agreed that plans or activities they wanted to do at home were not completed because of the demands their job put on them’.158 Furthermore, ‘a high proportion of respondents’ agreed that ‘stress is part of the challenge of practising law’ and ‘to excel as a lawyer one must be willing to work long hours’.159

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151 From a national survey of nearly 1000 Australian legal practitioners conducted in 2012–13 to examine the working conditions, work experience, and health and wellbeing of solicitors and barristers who practise in a variety of settings. See Chan et al, above n 2.
152 In the form of depression, anxiety and stress measured using the DASS scale.
153 Chan et al, above n 2, 1099.
154 Perceived job demands were measured in terms of the following variables: job substance; job setting; job social value; job power track; Effort-Reward Ratio; Over commitment; Work-Family Conflict; Organisational Culture; Practice Ethos. For a description of each of these variables and how they were measured see: Chan et al, above n 2 1075-1080.
155 Ibid 1075.
156 Ibid 1076-1077.
157 Ibid 1079.
158 Ibid 1078.
159 Ibid 1080.
Similarly, Bergen and Jimmieson examined ‘the workplace demands, resources and strain experienced by Australian lawyers working on a full-time basis.’\(^{160}\) This study did not directly address supervisory issues except that it found that the majority of respondents received praise from their supervisors. However, their findings in relation to “role ambiguity” and “role conflict” raise supervisory issues that are particularly relevant to the discussion. Role ambiguity ‘refers to a lack of the necessary information available to a given organizational position’.\(^{161}\) Role conflict refers to ‘the extent to which individuals receive conflicting instructions from others about their own work requirements’.\(^{162}\) In relation to these two workplace demands, they found:

Junior lawyers experience greater role ambiguity and role conflict compared with their more senior colleagues. Clarification of the roles of junior lawyers within their workplaces may be necessary. Compared with more experienced lawyers, junior lawyers experienced significantly less control, pay satisfaction, job security and social value in their work, as well as greater symptoms of stress and anxiety.\(^{163}\)

This indicates that a feature of Supervised Legal Practice may be confusion on behalf of both supervisors and supervisees in relation to the type of work practitioners at this stage of development can or should be doing.

Also in relation to junior lawyers, James\(^{164}\) has identified ‘poor quality of mentoring and supervision in the first few years of practice’ as a cause of stress. James also notes that the legal workforce is highly mobile and a common cause for attrition is failure of senior lawyers to guide or supervise junior lawyers.\(^ {165}\) James’ findings are supported by individual reports from young lawyers in Western Australia\(^ {166}\) that they are:

- ‘subject to poor management’\(^ {167}\)
- ‘frequently … left waiting for work to be settled …’\(^ {168}\)


\(^{161}\) Ibid 429. For example, one of the questions asked to measure role ambiguity asked “I am clear what is expected of me at work.”

\(^{162}\) Ibid. Respondents were asked whether “I do things, which are accepted by one person, but not by another”.

\(^{163}\) Ibid 438.

\(^{164}\) Colin James, ‘Lawyer Dissatisfaction, Emotional Intelligence and Clinical Education’ (2008) 18 Legal Education Review 123.

\(^{165}\) Ibid.

\(^{166}\) These individual reports formed part of a submission by the Young Lawyers Committee (WA) to an Ad Hoc Committee which was formed to investigate psychological distress and depression among lawyers. For a report on findings of the Ad Hoc Committee see: Christopher Kendall, above n 140, 15-16.

\(^{167}\) Ibid.

\(^{168}\) Ibid.
• ‘given instructions to complete tasks after the supervising partner/solicitor has known about the task for hours or days (or even weeks) ’ and ‘then required to complete the task in an unrealistic timeframe’\textsuperscript{169}

• ‘have a crippling lack of control over the level of work they perform’\textsuperscript{170}

Similarities with the issues raised in the well-being literature are seen in the therapeutic jurisprudence literature. The latter is concerned with the well-being of stakeholders in the legal system (including but not limited to lawyers). King, who discusses emotional intelligence in the context of restorative justice and therapeutic jurisprudence, notes that:

These techniques and approaches have significant implications for the law, the way judges, magistrates and lawyers undertake their work and legal education. Although the traditional focus in training lawyers and members of the judiciary has been on knowledge of the law, skills in fact-finding and application of the law, key non-adversarial approaches suggest that emotional intelligence and interpersonal skills are also important parts of their roles.

Therapeutic jurisprudence and restorative justice assert that emotional issues can be intimately related to a dispute’s development or to harmful behaviour, and that effective management of emotions is important in resolution processes. Therapeutic jurisprudence examines the law’s effect on the wellbeing — including the emotional wellbeing — of its subjects. It recommends law reform based on behavioural science to minimise negative effects and to promote positive effects on wellbeing.\textsuperscript{171}

This scope of this thesis does not include advocating the use of therapeutic jurisprudence. However, in terms of the well-being issue, this thesis endorses the notion that emotions and legal practice are interconnected. Well-being appears to be an issue that permeates legal practice, and should not be reduced, simply, to the ability of individuals to cope and build resilience. In fact, this too seems to echo Parker’s comments regarding a ‘system that itself is broken’.\textsuperscript{172} This thesis also argues that supervision is the appropriate forum for lawyers to engage their thinking in “emotional” and “interpersonal” paradigms. This is not additional to legal practice, but at its very core.

To summarise, the literature canvassed in this section indicates that supervision is one underlying factor causing lawyers’ mental health problems and this factor is particularly relevant for junior lawyers. Rather than seeking to address the root causes of the mental health and

\textsuperscript{169} Ibid.
\textsuperscript{170} Ibid.
\textsuperscript{172} See above n 144 and surrounding text.
well-being crisis, the profession’s policy response to date has focussed on the individual lawyer and developing resilience. This circumventive solution is discussed further in the next section.

2  Supervision as a factor in the Policy Responses to Date

There have been a range of policy responses to the mental health and well-being issue to date.\textsuperscript{173} As foreshadowed in the previous section, most responses to date are concerned with raising awareness and promoting resilience.\textsuperscript{174} A significant number of these responses, like the well-being literature generally,\textsuperscript{175} focus specifically on law students.

A typical example of the policy responses to date, on the national level, is the “Resilience@law” program, which is a collaboration between the College of Law and five international commercial law firms. The four objectives of this program are: awareness and education; removing the stigma around mental illness; self-care strategies; support and resources for mental health concerns.\textsuperscript{176} The Queensland Law Society has a dedicated program called ‘Love Law Live Life’\textsuperscript{177} which provides a range of self-help resources for practitioners. Similarly, the Law Society of New South Wales publishes specific information for junior lawyers but which again is primarily an exercise in awareness raising and self-help.\textsuperscript{178} There are similar initiatives by other professional associations and in other states and territories.\textsuperscript{179}

The Law Society of New South Wales in conjunction with the Australian National University published ‘Being Well in the Law: A Guide for lawyers’.\textsuperscript{180} This guide appears to be the lengthiest consolidated “well-being” resource available. This guide includes some recent empirical research and refers to a balance between autonomy and supervision as promoting well-being.\textsuperscript{181} Beyond this, the main purpose of this guide appears to be to raise awareness, provide a range of self-help resources and facilitate self-referral to mental health services.

\textsuperscript{173} Christine Parker, above n 144, 1103-1110 and Appendix 2.
\textsuperscript{174} In this sense, Parker’s description of the shortcomings of the existing literature is correct.
\textsuperscript{175} Christine Parker, above n 144, 1103-1110 and Appendix 2.
\textsuperscript{179} For an overview see Christine Parker, above n 144, 1103-1110 and Appendix 2.
\textsuperscript{181} This empirical research was discussed above in Part D (2) ‘Professional Development and Law Firm Training’.
Overall, the profession’s response to the issue is sending a message that “it’s not us, it’s you!” In this sense, Parker’s description of the shortcomings of the literature is also equally relevant to the overall policy response by the legal profession. Rather than taking a reform-based approach as advocated by the therapeutic jurisprudence literature, it seems that the approach has been to push back on individuals in the system. Remarkably, the legal profession continues to maintain this approach despite the mounting research regarding systemic issues, one of which is supervision of junior lawyers.

The only exception to this general approach comes from an independent volunteer-run charitable organisation. The TJMF has now published the TJMF Psychological Well-being: Best Practice Guidelines for the Legal Profession182 (“The TJMF Guidelines”). The TJMF Guidelines are, perhaps, the most comprehensive practical response to the “crisis” because they go beyond mere awareness and resilience, and focus on changing patterns of behaviour that are contributing to the underlying problem.

The TJMF Guidelines refer frequently to supervision especially in relation to issues concerning junior lawyers. The TJMF Guidelines are organised around 13 psychosocial factors. The supervisor’s role is crucial to the implementation of the TJMF Guidelines in relation to one of those psychosocial factors: ‘growth and development’183. Overall, the suggested implementation framework recommends, inter alia, the following action:

- ‘Establish: practices which enable people to have ready access to their supervisors or delegates throughout the life of a matter.’184
- ‘Establish: practices where supervisors provide positive and constructive feedback on work and professional development in a timely manner.’185
- ‘Provide: supervisors with appropriate management and leadership training.’186

Supervision also features in the in the TJMF Guidelines in relation to another psychosocial factor: ‘workload management’. The suggested implementation framework relevantly includes:

- ‘Establish: practices that promote regular meetings with supervisors to discuss workload.’187

183 Ibid 16.
184 Ibid.
185 Ibid.
186 Ibid.
187 Ibid 17.
Both of these psychosocial factors, ‘growth and development’ and ‘workload management’ are of particular relevance to newly admitted lawyers completing Supervised Legal Practice. The TMJF Guidelines correctly identify supervision as an appropriate forum for addressing these psychosocial factors, which affect well-being. Further, the implementation framework, vis a vis supervision, provides useful, base-line practical steps which appear not to be a consistent feature of legal practice supervision. Overall, relevant to this thesis, the TMJF Guidelines have begun to articulate the link between supervision and well-being. This thesis builds on this articulation by arguing that the well-being of junior lawyers be promoted by adopting a supervision model for Supervised Legal Practice that caters for the training and interpersonal needs of newly admitted lawyers.
F Conclusion

This chapter has described how the mainstream “monitoring” approach to supervision, which is rooted in the growth of large firms and which now permeates legal practice, insufficiently caters to the training, development and interpersonal needs of supervisees, especially newly admitted lawyers. The process of supervision has the potential to do much more than serve as a tool for profitability and effective risk management. The need to reach this potential appears to be greater given emerging and predicted trends in legal practice, where relational aspects of legal practice are becoming more prominent and the need for monitoring of routine tasks are set to become less.

More pressing are the immediate needs of newly admitted lawyers. Firstly, Supervised Legal Practice is supposed to be a final stage of practical legal training. However, there is nothing to indicate the current approach to supervising newly admitted lawyers, at least on a profession wide level, fulfils this training and development objective. Secondly, there is evidence of a link between supervision and well-being. In this regard, there appears to be a need for supervisors to take on a support role.

Although supervision is central to these issues, a framework for understanding supervision and the processes that make it effective is clearly missing from the academic literature, practice management resources and the legal “trade press”. This is especially so for Supervised Legal Practice. In the absence of such framework, the legal profession needs to seek lessons elsewhere. The next two chapters will begin this process by considering relevant insights arising from:

- The closely related and overlapping endeavour of clinical legal education – Chapter IV
- Other professional disciplines which have engaged heavily in supervision scholarship and practice - Chapter V

These two chapters will outline wider conceptions of how supervision can integrate training and other interpersonal dimensions.
IV LESSONS FROM CLINICAL LEGAL EDUCATION

A Introduction

1 Chapter Overview

The previous two chapters described how the collective understanding of supervision, as an activity in legal practice, is limited. In particular, the collective understanding is limited to it being “something” which legal practitioners are obliged to do, and if done “well” can improve risk management procedures and lead to an increase in profits. In short, in the context of legal practice, supervision focuses on monitoring, while training and support aspects are less developed. This reflects a commercially driven, compliance-based approach. This is quite different from the approach in clinical legal education and other disciplines, covered respectively in this chapter and the next.

This chapter is the first of two, which examine supervision outside the specific context of legal practice. Collectively, the purpose of this chapter and the next is to gain an understanding of supervision, conceptually and practically, that is broader than the “monitoring” supervision uncovered in the preceding two chapters. This chapter considers supervision in the closely related, and overlapping, endeavour of clinical legal education. The main purpose of this chapter is to demonstrate how supervision, in the context of clinical legal education, is used as a tool for teaching, and developing professional skills.

This chapter explores a range of clinical legal education materials including academic journals, guidelines and reports. This material is organised across the following two sections:

- ‘Understanding the Nature of Supervision in Clinical Legal Education’– Part B. This part will canvass literature that describes various general conceptions of, and approaches to, supervision in clinical legal education.
- ‘Making the Most out of Supervision in Clinical Legal Education’ - Part C. This part reviews specific methods, processes and procedures that contribute to supervision being a productive learning tool. This will include a review of current “Best Practices” and emerging “effective” supervision research.
Part D will then conclude with a discussion of the extent to which the materials covered in this chapter assist in answering the research question. In particular, this will include a discussion of the extent to which the supervision methods currently used in clinical legal education can be applied generally in legal practice, especially during Supervised Legal Practice.

Chapter V will then move beyond the legal profession entirely and consider supervision, as conceived and practised in other professional disciplines.

2 Clinical Legal Education ("CLE"), Work Integrated Learning ("WIL") and Practical Legal Training ("PLT")

Law students complete legal work experience as part of their legal education. This is only mandated at the PLT stage (which is most commonly completed via a PLT course). However, it can also be undertaken as an option during the academic (university law degree) stage of legal education.\(^1\) There has been a general trend for a reduction in the duration of workplace experience during PLT courses, with the minimum placement duration now only three weeks.\(^2\) Conversely, there has been 'significant growth in the number of work-placement-type programs (called externships or internships)'\(^3\) undertaken during university law degrees as part of law school CLE programs. At the same time, there has been a sector wide push in tertiary education to provide opportunities for WIL.\(^4\) Evans et al describe the similarities and differences between CLE, WIL and PLT as follows:

CLE is similar to practical legal training (PLT) courses, work-integrated learning (WIL) and service learning in several respects. All of these approaches expose students to practical aspects of legal workplaces. Each approach also reinforces for students that a knowledge of legal theory is insufficient for legal practice and that their 'law school' impressions of what it is like to actually practise law will be expanded by time and a variety of experiences.

... But there are some subtle differences between CLE and PLT or WIL. CLE is an approach to integrating and strengthening the academic phase of legal education in the interests of students and clients. Its emphasis on meeting the diverse and complex needs (legal, emotional, systemic and therapeutic) of real clients, either individuals or organisations, places it well beyond the vocational focus of PLT and WIL, which can limit themselves to a 'how to' approach to practising law. CLE avoids any default concentration on

\(^1\) Chapter II Parts B, C & D provided an overview of staged approach to legal education in Australia.
\(^2\) See Chapter II, footnote n 93 and surrounding text. Although the minimum placement requirement is only three weeks, this does not necessarily mean that is the norm. Actual length varies from institution to institution and if given a choice, students may in fact prefer a longer placement to reduce the fee-paying course work component on the PLT course.
\(^3\) Adrian Evans et al, Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School (ANU Press, 2017), 47.
\(^4\) Ibid 25.
apparently value-neutral practical skills and is intended to develop a critical and analytical consciousness of law.\(^5\)

Consequently, CLE can contribute to overcoming the ‘lack of effective arrangements to assist Australian LLB, JD and PLT students and junior lawyers undertaking Supervised Legal Practice to make the best use of experiential learning opportunities.’\(^6\)

With this in mind, it is useful to consider three broad types of learning which potentially come under the banner of CLE, and they are:\(^7\)

- Simulation-based courses
- In-house clinics
- Externships (also called Internships)

The first type, simulations, involves assumed roles and hypothetical situations, but does not involve participation in actual legal practice. The inclusion of simulations as a type of CLE is controversial. In Australia, there is no consensus as to whether simulations are in fact a type of CLE. Nonetheless, there is a general acceptance of their ‘importance in preparing students for ‘real client’ experience.’\(^8\)

The latter two types of CLE, both involve participation in actual legal practice, often with direct contact with real-clients. The main difference between these two types is the nature of the involvement by law school staff. For in-house clinics, law school staff are actively involved in the management of the clinic and/or take a hands-on-role supervising students participating in client work. For externships, students are placed in an external law office (e.g. law firm, legal aid, or government legal team) and law school staff fulfil an enabling, quality-control role. This categorisation of CLE courses is, however, becoming blurred. For example, in some CLE courses, students engage in an external live-client clinic under the supervision of law school staff;\(^9\) these arrangements are sometimes described as an “agency clinic”. Furthermore, some CLE courses, for example those focussed on community legal education, are not simulated, but deal with real situations outside the purview of actual legal practice.

\(^6\) Ibid 37.
\(^7\) Roy Stuckey et al, Best Practices for Legal Education: A Vision and a Road Map (Clinical Legal Education Association, 2007) 166. See also Australian Best Practices in CLE, above n 5, 4.
\(^8\) Evans et al, above n 3, 44.
\(^9\) Evans et al, above n 5.
Irrespective, for the purpose of this thesis, CLE refers to those modes that involve students participating in actual legal practice (whether it be an in-house clinic, agency clinic or externship). It is in these modes of CLE that supervision of students, whether by law school staff or another legal practitioner, shares some characteristics with the supervision of newly admitted lawyers in legal practice. In other words, this thesis categorises CLE modes as those where students participate in legal practice, and those that don’t. The former, and not the latter, are the forum for supervision discussed in this chapter. Rather than engaging in any further categorisation of these modes of CLE involving actual legal practice, it is simply noted that the role of law school staff differs depending on the exact nature of the course. Therefore, unless otherwise specifically stated, supervision in this chapter is a reference to supervision in modes of CLE where students participate in legal practice.

Even though this thesis focusses on the Australian (especially the Queensland situation), this chapter relies heavily on American literature. This is because ‘much of the clinical literature comes from the USA’ and there is no specific Australian (let alone Queensland) specific supervision models or approaches. Reference to the American literature is appropriate given that the CLE literature has somewhat of an international flavour, which transcends national boundaries. Nonetheless, local cultures and contexts are still relevant. In particular, the American literature should be considered in light of the finding from Chapter II, that there is very limited official acknowledgement of workplace experience in the Australian Regulatory Framework. In contrast, in the United States, educational reforms have focussed to a greater degree on CLE. In addition, the supervisory models and approaches contained in the American CLE literature are often written by scholars practising in jurisdictions where there are student practice rules. This enables students to take on the role of lawyer with more authenticity. This is in contrast to CLE students in Australia who “participate” in legal practice in a regulatory blind spot.

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10 Jeff Giddings, Influential Factors in the Sustainability of Clinical Legal Education Programs (PhD Thesis, Griffith University, 2011) 7.
11 Ibid 4-5.
12 Ibid.
13 See Chapter II, Part D.
14 Giddings, above n 10, 6.
15 Ibid 118.
B Understanding the Nature of Supervision in Clinical Legal Education

1 Moving Beyond Legal Practice: The Bike Tour Leader’s Dilemma

The distinction between CLE and legal practice is blurry at best. This is clearly demonstrated by Meltsner et al\(^{16}\) in their comprehensive expose of ‘supervision of legal work’.\(^{17}\) This seminal piece considers supervision against the backdrop of an extended metaphor. That metaphor compares the job of a supervisor to that of a hesitant bike tour leader who is unsure how to lead a group of cyclists, with varying skills and requirements, across the Swiss Alps. This esoteric\(^{18}\) metaphor is probably rightfully justified on the basis that ‘so little has been written about supervision of legal work, and because much of what takes place in its name is invisible or unrecorded’.\(^{19}\) Against the backdrop of this analogy, Meltsner et al cover a range of supervisory issues straddling CLE and legal practice; at times, it is entirely unclear where one ends and the other begins. Although Meltsner et al premise their work on former clinic students who went on to work at various law firms, they base their actual findings on interviews with students and supervisors involved in externships.\(^{20}\) For this reason, and because the authors are known clinicians, I have treated this work as emanating from the CLE literature. Regardless, Meltsner et al’s expose acts as a useful segue between the two chapters.

Meltsner et al make a number of findings that provide useful context to the ensuing discussion (which considers how clinicians conceive supervision). In this regard, they note that clinicians have ‘made a few attempts to map the supervisory process and the variables that affect supervision. But these efforts are largely unknown to supervisors and supervisees in legal practice.’\(^{21}\) In other words, Meltsner et al position clinicians as possessing knowledge of, and capacity for, supervision beyond that of the general population of legal practitioners. In this regard, Meltsner et al ‘suggest’ the following ‘propositions represent the general understanding lawyers bring to supervision’:\(^{22}\)

\(^{17}\) Ibid 403.
\(^{18}\) At least for those unfamiliar with both Bike Tours and the Swiss Alps.
\(^{19}\) Meltsner et al, above n 16.
\(^{20}\) Ibid at footnote 17.
\(^{21}\) Ibid 408-409.
\(^{22}\) Ibid 409.
• Emphasis on oversight of work at the expense of professional development.23
• Due to time pressures, communication is used as a tool to react to problems.24
• Supervision of day-to-day work is not the forum for mentoring type relationships.25
• Training is present to the extent it helps completion of immediate work demands.26
• A ‘sink or swim mentality’ is a feature of law firm culture.27
• Large firm culture has a negative impact on supervision relationships.28

Incidentally, these issues coincide with the limited conception of supervision discussed in the previous chapter. They also provide context for clinicians’ scepticism about the legal practice environment – this scepticism is fundamental to the way clinicians approach supervision and is a recurring theme in this chapter. Moving on, the next section considers various attempts by CLE scholars to conceptualise supervision.

2 Conceptions and Approaches to Supervision in CLE

(a) Overview

As Meltsner et al’s extensive use of metaphor signposts, defining supervision in terms of its purpose and functions, is a step that is skipped in much of the CLE literature. Supervision is usually positioned as a method of teaching which is closely connected with reflective-practice. For example, Milstein positions supervision as the ‘most intensive’29 of three learning modes used by clinicians and describes it as a process that involves:

Meetings between teacher and student teams ... to discuss preparation or to critically analyse work that has been done. These meetings are frequent and include, among other things, review of the students’ written work, strategic choices, and reflections on what has been learned.30

23 Ibid.
24 Ibid 410.
25 Ibid 411.
26 Ibid 411.
27 Ibid 411-412.
28 Ibid 412.
29 Elliott S Milstein, ‘Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations.’ (2001) 51(3) Journal of Legal Education 375, 377. The other two learning modes outlined by Milstein are: case rounds; and seminars using readings, simulations, and classroom discussion to teach the lawyering process.
30 Ibid.
According to Milstein, ‘helping students extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience is the supervisory ideal.’ 31 Milstein argues, albeit without reference to any empirical work32 or other existing literature: ‘the best supervision deals with the particular problems in the pending case and also uses that case or student experience as a metaphor for larger recurring issues that the students will face in their careers.’33

Generally, a supervisor is recognised as being in a position of influence. For example, Shalleck describes supervision as follows:

Supervision is an ongoing dialogue between student and teacher about that representation. The teacher gives shape to the dialogue through each decision about what to include in, and how to conduct, the discussion. The student’s practice is the focus of the supervisory discussion, but the teacher frames how that practice is understood. In shaping the dialogue, the teacher conveys both explicitly and implicitly a vision of law, legal institutions, and lawyering.34

After identifying supervision as the primary teaching method for CLE, Shalleck notes that:

As clinical education matured, clinical teachers developed other methodologies to supplement supervision. Simulations, case rounds or case meetings, and classroom lectures and discussions became common in the repertoire of clinical teachers. Still, supervision has remained a touchstone for clinicians.35

Interestingly, both Milstein and Shalleck slice supervision cleanly from other teaching methodologies, such as case rounds and discussions. Rather than attempting to define what supervision is (or isn’t) some CLE scholars often tackle the issue by describing its importance. For example, Kreiling describes the importance of supervision in CLE using the following terms:

31 Ibid.
32 A Lack of empirical grounding appears to be a common failure of American clinical legal education literature. A notable exception is Givelber et al’s empirical study of legal internships which is considered below in Part C (1).
33 Milstein, above n 29.
35 Ibid.
Unless the supervisor appreciates the possibility for debilitating anxiety and properly structures the
clinical experience, both to avoid overtaxing the student’s integrative capacity and to facilitate the
learning process, the enormous potential of the experience will not be realized.\textsuperscript{36}

Hoffman simply states that ‘supervision is at the core of effective clinical teaching.’\textsuperscript{37} Similarly,
Alexander and Smith argue that an ‘organized system of supervision is absolutely essential to
the successful employment of law students.’\textsuperscript{38} Overall, supervision is seen as an important
interpersonal training method used in CLE. However, its relationship with other teaching
methods is unclear.

In addition to covering broad conceptions of CLE supervision, this section describes pertinent
aspects of various attempts by CLE scholars to describe their approaches to supervision.
Generally, these “approaches” do not seek to be, or fall short of being, a complete “theory”,
“framework” or “model”. Rather, they are “guides” or “visions”. In addition, these “approaches”
are sometimes, entirely or in part, formulated based on personal experience or consensus. The
next two subsections, (b) and (c), explore these “approaches” across the following two
organising themes:

- A Non-Directive Approach
- The Critical Role of Faculty Staff

These two themes appear central to the treatment of supervision in the CLE literature.

(b) A Non-Directive Approach

A non-directive approach is a central feature of supervision in the CLE literature. A study by
Bauer et al revealed that ‘most clinicians favour a non-directive model of supervision’, however,
this ‘ideology’ conflicts with the ‘need at times to intervene to safeguard client interests.’\textsuperscript{39}
Significantly, Bauer et al do not seek to define the term “supervision”. It is treated as a given,
and as an activity which can be either “directive” or “non-directive”. Bauer et al, do however,

\textsuperscript{36} Kenneth R Kreiling, ‘Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience
\textsuperscript{39} James H Bauer et al ‘Directiveness in Clinical Supervision’ (1993) 3 Boston University Public Interest Law Journal
35, 67. This finding was based on the results of a survey of 107 clinical teachers across 59 law schools in 29 states of
the United States.
explain the difference between “directive” and “nondirective” supervisors. Non-directive supervisors ‘stress the value of fostering student independence’ whereas a directive supervisor ‘emphasizes that client service must take precedence over student autonomy or educational objectives’. In this sense, the directive approach shares some similarities with the dominant approach to supervision, which is focused on risk management dimensions.

Meltsner and Schrag, provide an early account of how clinicians conceive supervision, which foreshadows the development of the “non-directive approach”. The following extract is a reflection on Schrag’s experience of leading students in a clinical program:

Before the semester began, Schrag ... imagined a relationship to the students somewhat analogous to that of a senior partner ... But on the very first day he decided that another sort of relationship, offering far greater opportunity for learning, was possible ... Tentatively at first, but then with mounting confidence and enthusiasm, Schrag turned the seminar into a semester of closely supervised student practice. Schrag told the students at the outset that, although he might argue with their decisions when he disagreed, they were handling the cases, and the decisions were theirs to make. Similarly, he attended the hearings in which they took part, but sat in the back of the room, observing and taking notes; they and the clients, adversaries and adjudicators had to know that it was the students who were on the line. He took no cases of his own, and actively conducted only one interview all semester.

Meltsner and Schrag’s approach to supervision is characterised by significant decision-making, freedom and responsibility for the student. Although not described in such terms, this approach is consistent with a “non-directive” or “consultative approach”. Similarly, “non-direction” or “consultation”, even though not described in such terms, are key features of Hoffman’s stages of supervision. Hoffman describes how he envisages that, by the end of a single clinical course, the supervisory relationship will have rapidly progressed to a third stage where ‘students are...
sufficiently secure and competent to act, in effect, as lawyers in their own right.\textsuperscript{46} and the supervisor’s role ‘is that of a confirmer and guider’.\textsuperscript{47} In addition to a rapid increase in student responsibility, Hoffman’s work is also notable because it conceptualises the supervisory process as a relationship that ‘varies through time’.\textsuperscript{48}

Alexander and Smith describe a ‘contemporary model’\textsuperscript{49} of supervision where supervisory responsibilities are shared between employer (supervisor) and law student (supervisee). This contemporary model is distinguished from a ‘traditional model’\textsuperscript{50} of supervision, which is characterised by a focus on the supervisor’s responsibility for directing and evaluating work. Under Alexander and Smith’s contemporary model, both employer and law student are responsible for ensuring supervision is effective. Alexander and Smith’s model takes the form of recommendations for delegating and completing tasks, and providing feedback over the course of an internship, which is characterised by an underlying transaction of employment. A key aspect of this underlying transaction of employment is that both the supervisee and supervisor need to bring certain skills/capabilities to the supervisory relationship.

Eyster’s account of supervision\textsuperscript{51} further develops aspects of student responsibility. Eyster’s approach to supervision relies on students bringing the following skills to the supervisory relationship:

- An understanding of ‘learning style theory’.\textsuperscript{52}
- Competence in “managing up”. For example, where supervisors have failed to provide clear direction with tasks, students need to be able to approach their supervisor to clarify the task. Another example is implementing strategies to get more from their placement in terms of direction or feedback.\textsuperscript{53} Overall this managing up requires student to pragmatically work around the seemingly inevitable problem of poor supervision.

\textsuperscript{46} Ibid 309.
\textsuperscript{47} Ibid.
\textsuperscript{48} Ibid 302.
\textsuperscript{49} Alexander and Smith, above n 38. Alexander and Smith’s ‘contemporary’ model has been described elsewhere as ‘time tested and seminal.’ See Barbara A. Blanco and Sande L Buhai, ‘Externship Field Supervision: Effective Techniques for Training Supervisors and Students’ (2004) 10(2) \textit{Clinical Law Review} 611, 613.
\textsuperscript{50} Alexander and Smith, above n 38, 38.
\textsuperscript{51} Mary Jo Eyster, ‘Designing and Teaching the Large Externship Clinic’ (1999) 5(2) \textit{Clinical Law Review} 347.
\textsuperscript{52} Ibid 398.
\textsuperscript{53} Ibid 400.
The Greater Los Angeles Consortium on Externship’s approach to supervision (“GLACE Standards”), which reflect a culmination of CLE supervision scholarship,⁵⁴ are grounded in the belief that:

Generally, students learn more effectively when supervision is non-directive and student-centered (emphasis added). Rather than telling a student exactly what to do and where to find the answer, a supervisor should take the time and explain the context of an issue and the nature of the task being assigned, to discuss the student’s reaction to the problem, to help the student form problem solving strategies, to agree upon a schedule for the project and the form which the student’s work should take. Interim meetings should be held to discuss progress and to avoid misdirection, as well as to reassess the nature of the issues in light of the student’s work to date.⁵⁵

The above outline, beginning with Schrag and Meltsner’s early reflections, demonstrates a progression in supervisory approach as follows:

Maximising student experience by allowing students to make decisions and take an active role of the running of cases (Meltsner and Schrag, 1976)

↓

Staged and Rapid Progression to Independent Legal Practice (Hoffman, 1986)

↓

Contemporary Model: Shared Responsibility for Ensuring Supervision is Effective (Alexander and Smith, 1989)

↓

Enhanced Student Responsibility: Students need to understand Learning Theory and Develop Competence in Up-Ward Management (Eyster, 1999)

↓

A Non-Directive Student-Centred Approach (GLACE - Present)

⁵⁴ GLACE was formed by six law schools in the Los Angeles area and its initial goal ‘was to develop and adopt joint standards for the six law schools for shared field placements such as government agencies or public interest placements, as well as specific standards for judicial externs’. See Barbara A. Blanco and Sande L Buhai, ‘Externship field supervision: effective techniques for training supervisors and students’ (2004) 10(2) Clinical Law Review 611, 627.

⁵⁵ Greater Los Angeles Consortium on Externships, Field Placement Supervision Model (2013) (“the GLACE Standards”), Section VIII.
Non-Direction or Facilitation?

At present, supervision scholarship has reached a point where the overall approach is described in terms of being student centred and “non-directive”. Despite the consensus that being “non-directive” is the best approach to supervision,\(^\text{56}\) the CLE literature is also concerned somewhat paradoxically with how much “non-direction” is needed.\(^\text{57}\) Although this approach to supervision is characterised by placing student autonomy and educational outcomes at the forefront,\(^\text{58}\) CLE students still require some form of direction; undoubtedly students cannot be left completely to their own devices. As such, “non-direction,” as a model for supervision, is really a starting point for asking how much “non-direction” is needed to appropriately enhance educational outcomes and foster autonomy. It is just as easy to ask the question, how much “direction” is appropriate.

Arguably, it may be more useful to consider the level of direction or intervention, not as two discrete alternatives, but as being on a continuum. For example, the level of direction or “intervention” is a prominent issue in the Alternative Dispute Resolution literature, especially in relation to mediation, where:

> a long-standing debate in the mediation literature has centred on the motivations and actions of the mediator as evidenced in the comparison of the facilitative versus the evaluative model.\(^\text{59}\)

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\(^\text{56}\) See Bauer et al, above n 39.

\(^\text{57}\) For example, the “direction” / “non-direction” debate also arises in some specific instances. Grose, for example, considers the specific issue of whether clinical supervisors should attend initial client interviews. Grose argues, that a decision to attend an interview should be made on a case by case basis following: an individual diagnosis of the student’s background and ability; critical reflection of the clinician’s motive for attending the interview; and a pre-interview conversation with the student. Grose does not start from a general definition or conceptualisation of supervision rather she analyses opinions of her fellow clinicians in relation to this particular issue and identifies that clinicians ‘seem to feel a tension between their role as educators and their role as lawyers. See Carolyn Grose, ‘Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews’ (2008) 14(2) Clinical Law Review 415,424. Similarly, Gundlach considers the clinical supervisor’s role in the specific circumstance of a court appearance. This context calls for close supervision due to the risks involved for the client. Gundlach takes the view that ‘the courtroom is a valuable extension of the law school classroom and a critical site in which student attorneys learn by doing’. See Jennifer A Gundlach, “This is a Courtroom, not a Classroom”: So what is the Role of the Clinical Supervisor?” (2006) 13(1) Clinical Law Review 279, 289. However, Gundlach also argues that the courtroom is not the appropriate forum for reflective discussion or frequent intervention by the supervisor and that the role of supervisor, in court appearances, is limited to guided exercises and discussions before and after the court proceeding.

\(^\text{58}\) See, above n 41 and surrounding text.

\(^\text{59}\) David Spencer and Michael Brogan Mediation Law and Practice (Cambridge university Press, 2007) 104.
Ultimately, the distinction between these models is one of direction or intervention, with facilitative mediators favouring a low intervention role.\textsuperscript{60} If this terminology is adopted, it seems the CLE literature is advocating a model of supervision that is characterised by a supervisor who performs an educational role to facilitate the development of autonomy. One feature of this facilitation is a low level of direction.

\textit{(c) The Critical Role of Faculty Staff}

A fundamental aspect of supervision in CLE is that it relies on law school staff in order to generate positive learning experiences for students. This is true irrespective of whether the mode of delivery is an in-house clinic, agency clinic or externship. In fact, a hallmark of the in-house clinic is the use of skilled law school supervisors who are cognisant,\textsuperscript{61} and capable,\textsuperscript{62} of fulfilling a role different to that typically found in legal practice. Externships also rely heavily on academic staff; these types of courses are usually organised on the basis that practising lawyers will be more concerned with client outcomes than educational outcomes and that some supervisors may either struggle with, or be unsuitable for, the role. In other words, law school staff question practitioners’ ability to be “unsupervised” in their supervision of CLE students. The literature appears premised on practitioners having less time for supervision and operating from a different starting point than law school supervisors do.

For example, Kibble,\textsuperscript{63} who places supervision ‘at the centre of the debate’ regarding the value of externships, describes one criticism of externship supervision which is that legal practitioners are less equipped to manage the complex supervisory task than their counterparts in the academy do.\textsuperscript{64}

A related criticism\textsuperscript{65} is the issue of quality control over individual supervisors, which Kibble argues, can be appropriately addressed by sufficient information flow between the academic supervisor and student. Another criticism\textsuperscript{66} is that the level of supervision in externships will be negatively influenced by competing workplace demands. Kibble notes the importance of

\textsuperscript{60} Ibid 101 -102.
\textsuperscript{61} Meltsner and Schrag, above n 42 outlining a shift away from the traditional role of a Law Firm partner.
\textsuperscript{62} See above n 21 and surrounding text.
\textsuperscript{64}Ibid 102-103.
\textsuperscript{65} Ibid 104-105.
\textsuperscript{66} Ibid 103-104.
selecting supervisors who actually care about the student’s education\textsuperscript{67} and proposes dual supervision,\textsuperscript{68} where the burden is split between the academic supervisor and placement supervisor. The challenge in this situation is that they operate in different locations and are subject to different organisational constraints. The inherent conflict between client requirements and student’s educational needs has not been sufficiently resolved.

Maurer and Siebel\textsuperscript{69} have also emphasised the need for supervision\textsuperscript{70} of the placement supervisor by the academic supervisor, as a means of quality control\textsuperscript{71} and addressing power dynamics. In addition, according to Blanco and Buhai:

> Monitoring effective and motivated supervision of off-campus law externs in a structured field placement program has traditionally been the chimera of law school curriculum. In an off campus field placement, the primary concern of the supervising attorney must be the work of the agency or judicial chambers, while the concern for the education of the field extern must by nature be a secondary goal.\textsuperscript{72}

The involvement of faculty staff is central to Cole’s ‘model for Mentor Training.’\textsuperscript{73} Essentially this method of supervision involves:

- Carefully selecting supervisors who are experienced, well regarded and ‘have the desire to teach and the time to do it’.\textsuperscript{74}
- Providing these carefully selected mentors with training in ‘effective critique’, which includes teaching: ‘a basic technique for giving feedback’ and allowing ‘mentors to realize the benefits of planning in teaching as well as practice.’\textsuperscript{75}

Significantly, this model requires selection and training by law faculty staff. These aspects are elsewhere in the CLE literature. Eyster’s account of supervision also heavily relies on law faculty

\textsuperscript{67} As opposed to seeing the student as someone who can assist with the workload.
\textsuperscript{68} Neil Kibble, above n 63, 106.
\textsuperscript{70} Maurer and Siebel, ibid 187, are careful to couch the role of the academic placement supervisor in terms of a ‘consultant’.
\textsuperscript{71} Their emphasis is on ‘power dynamics’.
\textsuperscript{72} Blanco and Buhai, above n 54, 611-612.
\textsuperscript{73} Liz Ryan Cole, ‘Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers’ (1989) 19 \textit{New Mexico Law Review} 163, 164. This model is used at the Vermont Law School Semester in Practice Program. Here the term mentor is used to describe the placement supervisor.
\textsuperscript{74} Ibid 164-165.
\textsuperscript{75} Ibid.
staff but adds additional dimensions that place significant further responsibility on law faculty staff. In particular, for externships, law school faculty should:

- Screen prospective placement opportunities (based on a particular organisation’s ability or willingness to meet the goals of the program) and oversee the type of tasks assigned to students. 76
- Select and train supervisors. 77
- Monitor the placement by responding to problems with supervision such as ‘insufficient guidance and direction, inadequate feedback and critique of completed work, and inaccessibility of the supervisor for routine questions and clarification of tasks.’ 78

Similarly, Blanco and Buhai describe how the GLACE standards:

- Empower faculty staff to ‘select, educate, train and monitor shared placements and placement supervisors’; 79 and
- ‘Reflect a carefully crafted joint effort to implement reasonable, non-arbitrary supervision guidelines and standards for field supervisors in an effort to continually motivate them to incorporate law school educational goals and objectives in each field placement, thus improving the overall quality of each placement for each GLACE school.’ 80

The role of faculty staff also intersects with the issue of non-direction and student responsibility (discussed in the preceding sub-section). This is because current CLE scholarship expects students to bring certain skills to the supervisory process in order to meet their responsibilities; however, faculty staffs are tasked with developing these skills. 81 This intersection reveals a third, albeit opaque and underdeveloped, theme in the CLE supervision literature, that faculty staff and students need to pragmatically work around inevitable problems regarding the quality of supervision.

76 Eyster, above n 51, 387-389.
77 Ibid 389-392.
78 Ibid 396.
79 Blanco and Buhai, above n 54, 630.
80 Ibid 631.
81 For example, Blanco and Buhai, ibid 635-648, also advocate a ‘pro-active approach to training field externs’ (i.e. students) by implementing a practical curriculum which includes training in ‘communication, reflection’ and ‘self-assessment’. Similarly, Eyster’s model envisages that law faculty staff will develop students’ capacity to be self-directed learners. Fundamental to this is ‘teaching students to be supervised effectively’. See Eyster, above n 51, 397-400.
There have been some ad-hoc attempts to define and conceptualise supervision in the CLE literature. The CLE literature positions supervision as part of the clinician’s “toolkit”. The literature reveals that supervision is an activity which should be student centred and non-directed, and which relies on the involvement of law school staff (even where students are supervised on a day-to-day basis by other practitioners). In addition, the process of reflection is closely connected with supervision. However, the relationship between supervision and other teaching and learning activities, as well as other support-based processes (such as mentoring) remains unclear.

The lack of clarity regarding the dividing line between legal education and legal practice means the CLE supervision literature is insightful when considering legal practice supervision. This is because, in the absence of a comprehensive framework for supervision in legal practice, it is the next best thing. In this sense, the CLE literature is the wider legal profession’s best attempt to understand and describe the very nature of supervision.

The CLE literature is particularly insightful regarding supervision as a tool to facilitate teaching and learning. However, the CLE literature falls short of providing a comprehensive framework for supervision that is potentially transferrable to legal practice. Firstly, while CLE scholars are careful to note other considerations relevant to the supervisory relationship (such as the relationship with the client), the literature invariably seeks to look at supervision from a “what is best for the student?” perspective. Giddings contemplates the unique nature of supervision in the CLE context, with its focus on student learning (as compared to legal practice in general), and suggests that effective supervision actually involves legal work being completed in a slower and less efficient way. This approach is in conflict with the typical “leveraged, risk management” approach to supervision in legal practice. At times, rather than balancing competing commercial demands, clinicians work around them.

Secondly, in terms of adopting CLE methods to legal practice generally, perhaps the single greatest limitation of the CLE approach to supervision is that it relies heavily on law school staff. The jurisdiction of law faculty staff does not extend into legal practice. Once a student has

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82 Part C below will look at the role of reflection in effective supervision.
83 Roy Stuckey et al, above n 7, 196; Giddings, above n 10, 68.
84 Giddings, above n 10, 62.
completed their formal, institutionalised legal training, there is no existing third party who fills the void of law faculty staff, nor is there any obvious replacement. In this sense, the student-centred approach, focussing on educational objectives, which clinicians have sought to create, is somewhat, but necessarily, artificial. It is unclear how this supportive, “pastoral care” type role, undertaken by law school supervisors, can be filled in legal practice.

Despite not providing an overall framework addressing all the needs of supervisor and supervisee, the insights that CLE provides about supervision being a tool for teaching and learning are useful for legal practice supervision. Part C immediately below considers specific lessons from the CLE literature regarding what makes supervision “effective”.

C  Making the Most out of Supervision in Clinical Legal Education

The CLE literature is also concerned with describing processes, methods and other features associated with making supervision a productive and useful learning tool. Section 1 below covers these aspects of the literature, which have culminated in “Best Practice” Guidelines/Standards for CLE supervision in Australia, the United Kingdom and the United States. These “Best Practice” resources are covered in section 2. Finally, there have been some attempts by CLE scholars to examine the supervisory process in terms, and in a manner, which hone in on the, sometimes, elusive notion of “effective” supervision; section 3 covers that material.

1  Supervisory Methods in Clinical Legal Education

Krieling, with reference to literature from the fields of education and social work, identifies ‘valid feedback’ and ‘the quality of the relationship’ between supervisor and student as ‘conditions for maximal learning from experience’. Krieling incorporates these conditions into a ‘supervision cycle’, which he suggests helps realize the potential of clinical experiences.

85 Krieling, above n 36, 297.
86 Ibid 300.
87 Ibid 318.
88 Ibid 318-336. Krieling’s supervision cycle is based upon a model for supervision of graduate student-teachers developed after substantial experience with and study of the supervisory process at the Harvard Graduate School of Education.
This cycle includes the following six stages (stages 2-5 are likely to be repeated throughout the placement):

- **Stage 1** - Initial conference to occur at the beginning of the placement. The purposes of the initial conference are to allow the supervisor to make an initial assessment of the supervisee and assign initial tasks. More generally, the initial conference ‘sets the stage for the supervisory relationship.’

- **Stage 2** - Pre-performance or planning conference, to occur prior to the student undertaking any significant task on a case.

- **Stage 3** - Observations of the students, mannerisms, speech and interactions.

- **Stage 4** - Preconference analysis and strategy where the supervisor considers the student’s performance and carefully prepares for the post-performance conference with the student.

- **Stage 5** - Post-performance conference where the supervisor and student mutually discuss the student’s performance. It is a forum for feedback and reflection.

- **Stage 6** - Final evaluation and termination at the end of the placement summarising the level of progress and identifying issues for the student to focus on in the future.

Krieling’s “supervision cycle”, provides a useful framework for delegating work, managing student performance and providing feedback during the course of a temporary supervisory relationship. However, it is rather mechanical and does not conceptualise broader issues such as the functions of the supervisory relationship, nor does it provide an overall model for, or approach to, the supervisory relationship. Krieling’s “supervision cycle” is also significant in that it draws on literature from other professions.

In line with their contemporary (joint responsibility) model for supervision, Alexander and Smith describe effective supervision from both the supervisor and supervisee’s experience. From the supervisor’s perspective, effective supervision includes two important components: ‘Necessary direction’ and ‘Feedback’.

Necessary direction involves ‘defining the assignment’ and ‘exercising control over it’.

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89 Ibid 319.

90 This literature is important and expansive. It is dealt with separately in Chapter V.

91 See above n 49 and surrounding text.

92 Alexander and Smith, above n 38, 39-40.

93 Ibid 40-41.

• Defining the assignment involves providing: sufficient background, a realistic framework for completing the assignment, suggestions of available resources, accessibility to answer questions.

• Effectively exercising control is accomplished by: assigning tasks with varying degrees of difficulty, ensuring students have the right amount of work to do, and assigning work that involves both procedural and substantive dimensions. This second aspect appears to provide more guidance in relation to the type of assignments that should be given rather than what practical steps the supervisor can do in relation to supervising completion of the assignment. Limiting the amount of work that the student is expected to do is an important practical step.

Feedback is characterised by ‘constructive criticism’ across the following categories: Research Ability, Legal Analysis, Intellectual Capacity, Writing Skill, Clarity of Oral Expression, Judgement and Responsibility. Effective feedback, according to Alexander and Smith, requires a definite meeting time of 15 – 25 minutes’ duration occurring early on in an internship and then every one to two weeks thereafter with final feedback at the end of the internship. From the law student’s (supervisee’s) perspective, effective supervision requires ‘clarification’ which is a process of questioning by the student to overcome ill-defined or open-ended assignments and insufficient facts. It also requires supervisee ‘self-assessment’ characterised by a ‘fiercely personal examination’ across the following categories: Legal Research Skills, Legal Reasoning Skills, Writing Skills, Oral Skills, Development Skills and Interpersonal Skills.

Shalleck draws on ‘the traditions of, and (her) own experiences within, the clinical community in order to describe one vision of clinical supervision.’ Shalleck’s vision ‘reflects and critiques’ what is presented as a collective understanding of supervision among CLE scholars. By way of summary, Shalleck’s vision is a process where:

... the teacher is constantly identifying those aspects of the law, lawyering, and the legal system that are critical to an understanding of what it means to be a lawyer. The issues that the teacher frames as the most important for supervision (the decisions) and the ways that she chooses to

95 Ibid 43.
96 Ibid 43-44.
97 Shalleck, above n 34.
98 Ibid 111.
99 Ibid 113.
100 Shaleck, ibid 111-112 (at footnote 6), describes significant collaboration with clinical teachers and practitioners over a three-year period.
view those issues (the contexts) create a complex and constantly shifting scheme requiring the teacher's constant attention to the fundamental assumptions underlying each choice she makes. This scheme permits the supervisor to shift back and forth between the concrete and the abstract, the practical and the reflective, the specific and the general. By engaging in this process, the teacher constructs a concept of supervision out of the material presented by the cases and the students, the dynamics of the educational enterprise, and the self-conscious application of critical perspectives to daily work in the clinic.

The particular characteristics of supervision will, therefore, constantly change. Identifying these characteristics at any particular time helps us to see the themes and concerns we have made central to the supervisory project.101

Shalleck outlines a detailed case study that she considers is a ‘realistic portrayal of an actual supervisory experience’, which is not intended to be a model of supervision but a ‘heuristic device, providing a focus for discussing the fundamental concepts, techniques, and assumptions of supervision.’102 Shalleck uses the case study to explore three supervisory decisions which ‘powerfully shaped the supervisory dialogue’103 in six contexts which ‘reflect aspects of present clinical theory and practice that influence a teacher’s decision making.’104 The six contexts are:

- Course Structure
- Case-Related Experiences
- Acting and Learning (the Process of Creating Meaning from Experience)
- Relationships Between Students and their Clients
- Differences Among Students
- The Teacher

Shalleck’s “vision” stands out as being less mechanical, more nuanced and relationship based, and is closer aligned to the effective supervision literature arising from other professional disciplines (considered in Chapter V). In particular, supervision is context specific and involves multiples stakeholders and viewpoints; these aspects of supervision are revisited in Chapter V. Shalleck’s vision is based on an informal collaborative case study, and while it provides useful insight, it lacks empirical grounding. This shortcoming appears to be general reoccurring feature

101 Ibid 179.
102 Ibid 112.
103 Ibid 136.
104 Ibid 140.
of the American CLE supervision literature. A notable exception is Givelber et al’s empirical study of legal internships.105 This subsection concludes with a discussion of that study.

Givelber et al106 reported on questionnaires administered to 161 law students who had undertaken legal internships. This study considered students’ supervisory experience as one of the determinants of a good learning experience.107 Givelber et al argue that their findings ‘challenge one of the bedrock assumptions of clinical methodology - the centrality of an intensive, education-focused supervisory relationship.’108 Givelber et al identify feedback and evaluation as key components of this education-focused supervisory relationship.109

The overall findings can be summarised as follows:

In our entire model of what makes for a good learning experience, the variables characterising the work and the work setting have the greatest explanatory power ... followed by the supervision variables. 110

Givelber et al’s analysis is based on categorising certain factors as either ‘work or work setting’ or ‘supervision factors’.111 The factors placed in the work or work setting set were ‘the tasks assigned, the fit between the work assigned and the student’s perception of her abilities, and the extent to which the respondent had idle time.’112 While the factors placed in in the supervision set were ‘the overall assessment as to the adequacy of supervision as well as the more particular features - the existence of an agreement which is honoured, difficulties with assignments and the ease of clarification, and the nature of the feedback received.’113 The theoretical basis for categorising a certain factor as one or the other is unclear, and appears to be based on an unduly narrow interpretation of supervision. Arguably, the factor relating to matching work with skill level could just have easily been categorised as a supervision variable. In addition, the supervision variable regarding the overall adequacy of supervision is tautological, and quite possibly, could be conflated with a range of other factors.

106 Ibid.
107 Ibid 33-38.
108 Ibid 3.
109 Ibid.
110 Ibid 41-42.
111 Ibid
112 Ibid
113 Ibid
These findings could be interpreted as undermining the importance of supervision. However, I argue that such interpretation misses the main point. Relevant to this thesis, these findings highlight that everyday work practices are just as important to the overall learning experience as are narrowly defined notions of educational-focused supervision, and that adequate supervision needs to integrate work flow related matters in order to achieve good learning experience outcomes.

These findings therefore also challenge the idea of non-directive or facilitative supervision as it is unrealistic for students to have control over the nature and flow of their work in a law office setting. In this case, in the context of learning in a law office, supervision needs to be broader and not restrained by any unduly narrow or theoretical conception of “education”. In terms of maximising learning in a law office, there needs to be a better overall framework for supervision that incorporates all factors that affect learning while working in a law office. The legal practice approach to supervision needs to move beyond “monitoring” supervision. However, the CLE approach to supervision is unsuitable for wider application because of the critical role played by law faculty staff and the, at times, unrealistic focus on narrowly defined educational outcomes. This is a further reason to look for lessons from other professional disciplines, as will be done in Chapter V.

2 Best Practices in CLE Supervision

In addition to the CLE academic literature there is another grouping of resources that warrant specific attention. These resources take the form of publicly available “Best practices”, “Guidelines” and “Standards” which range in scope from national, regional or university-specific. The latter two are justifiably local in nature and as such will not be addressed in this section. Rather this section focusses on best practice guidelines or standards in Australia, the United Kingdom and the United States with national scope. They are:

- Best Practices: Australian Clinical Legal Education
• Model Standards for Live-Client Clinics (UK)\textsuperscript{118}
• Best Practices for Legal Education (US)\textsuperscript{119}

These best practice guides vary in scope of educational format\textsuperscript{120} but all consider supervisory issues in live client clinics. Evans et al have usefully compared the content of these three best practice guides\textsuperscript{121} and table 4.1 below sets out their comparison for supervisory issues\textsuperscript{122} in live-client clinics (Australia, UK and US) and externships (Australia and US only):

\begin{itemize}
\item \textsuperscript{118} Clinical Legal Education Organisation 'Model Standards for Live-Client Clinics' (2007).
\item \textsuperscript{119} Stuckey et al, above n 7.
\item \textsuperscript{120} Evans et al, above n 3, 222-224.
\item \textsuperscript{121} Ibid 232-236.
\item \textsuperscript{122} Evans et al, ibid, organize their comparison across the following themes: Course Design; Law in Context in a Clinical Setting; Supervision; Reflective Learning; Assessment Staff and Infrastructure. This table includes the content under the heading 'Supervision' as well as content from other headings which I argue directly relate to supervision.
\end{itemize}
Table 4.1 – Comparison of Australian, British and American best practices for supervision in live client clinics

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Specific Supervision Components</strong></td>
<td></td>
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</tr>
<tr>
<td>1. Supervisors are able teachers and practitioners</td>
<td>2. Supervision</td>
<td>2. Best Practices for Experiential</td>
</tr>
<tr>
<td>2. Clinic designed to advance clients’ interests</td>
<td>2.1 Use competent and experienced</td>
<td>Courses, Generally</td>
</tr>
<tr>
<td>3. Students are prepared and trained for work</td>
<td>supervisors</td>
<td>f. Train those who give feedback</td>
</tr>
<tr>
<td>4. All supervisors are trained (in agency clinics</td>
<td>2.2 Adhere to special qualification and</td>
<td>to employ best practices</td>
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<tr>
<td>and externships, training is provided by the law</td>
<td>registrations necessary for practice areas</td>
<td>j. Enhance effectiveness of</td>
</tr>
<tr>
<td>school in conjunction with agency)</td>
<td>2.3 Designate one or more persons as</td>
<td>faculty in experiential courses,</td>
</tr>
<tr>
<td>5. Law schools effectively support supervisors</td>
<td>director(s) of clinic</td>
<td>includes using qualified faculty</td>
</tr>
<tr>
<td>(in agency clinics and externships, supervisor</td>
<td>2.4 Solicitors should be well qualified</td>
<td>and assigning reasonable</td>
</tr>
<tr>
<td>training includes provision of feedback to students)</td>
<td>2.5–2.7 Supervision has to be adequate at all</td>
<td>workloads</td>
</tr>
<tr>
<td>6. Supervisors are accessible</td>
<td>times, includes law office management</td>
<td></td>
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<tr>
<td>to deal with unexpected events (externship</td>
<td></td>
<td></td>
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<tr>
<td>supervision agreements include regular meetings</td>
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<tr>
<td>involving clinical academic)</td>
<td></td>
<td></td>
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<tr>
<td>7. Supervisors provide constructive feedback to</td>
<td></td>
<td></td>
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<tr>
<td>students in a timely manner</td>
<td></td>
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<tr>
<td><strong>Other Supervisory Issues</strong></td>
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<tr>
<td>Law in Context</td>
<td>Reflective Student Learning</td>
<td></td>
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<tr>
<td>5. Supervision draws out law in context dimensions</td>
<td>20.1.3 Weekly meetings with supervisors</td>
<td></td>
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<tr>
<td>of client interactions</td>
<td></td>
<td></td>
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<tr>
<td>Assessment</td>
<td>Staff</td>
<td></td>
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<tr>
<td>9. Clinical supervisors consult with each other in</td>
<td>15. Supervision and Staffing</td>
<td></td>
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<tr>
<td>assessing the same students</td>
<td>15.1 Minimum</td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>15.1.1 No more than 12 students in teams of</td>
<td></td>
</tr>
<tr>
<td>1. Clinical supervisors have status consistent with</td>
<td>15.1.2 At least two supervisors per clinic</td>
<td></td>
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<tr>
<td>their positions (in agency clinics a clinical</td>
<td>15.1.3 Supervisor available at all times</td>
<td></td>
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<tr>
<td>supervisor/teacher with academic status has</td>
<td>clinic is open</td>
<td></td>
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<tr>
<td>overall responsibility for the course)</td>
<td></td>
<td></td>
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<tr>
<td>2. Clinical staff (supervisors and professional</td>
<td>15.1.4–6 Describes supervision</td>
<td></td>
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<tr>
<td>staff) are appointed with comparable terms and</td>
<td>15.1.7–12 Describes supervisory practices</td>
<td></td>
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<tr>
<td>conditions of employment as law school peers (agency</td>
<td>and staffing</td>
<td></td>
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<tr>
<td>clinic supervisors receive appropriate training)</td>
<td>15.2 Recommended</td>
<td></td>
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<tr>
<td>3. Workload allocation and research expectations</td>
<td>15.2.1 Dedicated administrative/clerical</td>
<td></td>
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<tr>
<td>recognise actual hours spent in clinical supervision</td>
<td>staff</td>
<td></td>
</tr>
<tr>
<td>4. Clinical supervisors have discretion as to student</td>
<td>15.2.2 Describes client appointment process</td>
<td></td>
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<tr>
<td>loads depending on the number and complexity of</td>
<td>23. Management</td>
<td></td>
</tr>
<tr>
<td>files</td>
<td>23.1 Minimum</td>
<td></td>
</tr>
<tr>
<td>5. Clinical supervisors with academic positions</td>
<td>23.1.1 Clinic supervisors have overall</td>
<td></td>
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<tr>
<td>requiring research and publication should have</td>
<td>management authority</td>
<td></td>
</tr>
<tr>
<td>student ratios adjusted</td>
<td>23.1.2 Supervisors report to director or</td>
<td></td>
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<tr>
<td>7. Appointment criteria for clinical supervisors</td>
<td>person with overall responsibility</td>
<td></td>
</tr>
<tr>
<td>includes practice experience</td>
<td>23.1.3 Management ensures students meet</td>
<td></td>
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<tr>
<td>9. The law school should encourage suitable</td>
<td>stated learning outcomes</td>
<td></td>
</tr>
<tr>
<td>academic staff to rotate into clinics as clinical</td>
<td>23.2 Recommended</td>
<td></td>
</tr>
<tr>
<td>supervisors</td>
<td>23.2.1 Use a clinic advisory committee</td>
<td></td>
</tr>
<tr>
<td></td>
<td>that includes members of the bar and public</td>
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The key message from the American guidelines is that supervision should focus on educational objectives. However, in order to achieve these over-arching objectives, law school supervisors need to carefully and closely manage all other stakeholders including students, clients and site supervisors. This message is echoed in the Australian best practice guidelines. The Australian guidelines also touch on broader managerial issues. In particular, the place of clinical staff in the university structure, workload and supervision ratios.

Supervision ratios, being ‘the maximum number of students that a law school ought to require a clinician to simultaneously supervise’ are a ‘sensitive topic’. Generally speaking, the quality of supervision depends on keeping supervision ratios as low as possible. In Australia student-supervisor ratios of 6:1 - 8:1 are the norm for clinics involved in casework. The UK guidelines specify a maximum supervision ratio of 12:2 or 6:1. As a general observation, the supervisory aspects of the UK best practice guide are more concerned with risk management objectives and less concerned with educational objectives. The opposite is true with the American best practice guides. The Australia guidelines appear to sit somewhere in the middle.

Irrespective of such differing inclinations and focus, these guidelines suffer from a lack of any underlying conception of supervision that provides a basis for identifying how supervision can balance the competing objectives of legal education and legal practice management. It is not surprising then that there is some evidence that ‘staff involved in Australian clinical programs showed clear recognition of the need for effective supervision, while also demonstrating a lack of clarity about the processes that would best be used to improve supervision standards.’ This idea of “effective” supervision is developed further in the next section.

3 Towards Evidenced-Based Effective Supervision in CLE

The preceding sections have foreshadowed the idea of effective supervision. In fact, much of the discussion in the CLE literature appears to be directed at making supervision effective, often without ever explicitly saying so. The CLE literature contains significant insights and guidance in relation to how law school staff can contribute to effective supervision. These insights and

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123 Evans et al, above n 3, 7.
125 Ibid, 125.
126 The term “effective” supervision, which commonly arises in the clinical legal education literature, appears to have been taken from supervision literature emanating from other professional disciplines. That literature is covered in Chapter V.
guidance appear to reflect some type of “conventional wisdom”. However, any attempt to pinpoint the actual qualities of “effective” supervision, reveals only ‘an elusive set of skills’. In this regard, there is very limited empirically-grounded literature that elucidates these qualities or skills.

An Australian project directed at enhancing law student supervision represents the only empirical study in the context of CLE that considers assessing supervision in terms of whether it is “effective”. This study, which based its findings on a series of surveys completed by supervisors and supervisees, found that the following factors contribute to effective supervision (in the context of CLE):

- Negotiating a learning contract
- Supervisor training
- Adequate student preparation for a particular environment
- Provision of resources for common issues (legal and organisational)
- A continued relationship where students feel comfortable to approach their supervisor for instruction and feedback

The surveys also generated a number of other findings regarding the differences between various modes of CLE (i.e. in-house clinics, agency clinics and externships). Relevant to the present discussion, students completing externships (in law offices other than Community Legal Centres), presented unique supervisory issues. Overall, this environment, which most closely resembles the dynamics of legal practice, presented as being less amenable to the effective supervision arrangements listed above. This provides notional support for the prevailing view, among CLE scholars, that the legal practice environment does not naturally facilitate learning opportunities. To extend this further, it also indicates that, perhaps, the legal practice environment does not foster effective supervision practices. However, it is premature to conclude this, at this stage.

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128 Ibid.
129 Ibid, 18-23.
130 Ibid, 31-32.
131 In particular, a student is placed in a law office under the direct supervision of a legal practitioner in their ordinary practice.
This project also confirmed the potential value of looking outside one’s own professional discipline for lessons about implementing effective supervision. The next chapter will explore that potential value for the legal profession further by turning to supervision literature emanating from other professional disciplines, with the view to uncovering additional aspects of effective supervision.

D  Conclusion

This chapter began by reviewing how the legal profession seems to have adopted a certain “attitude” towards supervision. That attitude seems to rest on a reluctant acceptance that supervision is something that legal practitioners are professionally obliged to do. Overall, this approach focusses on discipline rather than development. Further, in lieu of exploring the complexity of their duty to supervise as part of wider legal practice management, the collective legal profession has instead focussed on utilising supervision as a tool for tightening risk management procedures and increasing profits. This thesis argues that this “attitude” is an unsatisfactory approach to supervisory duties in a professional context.

The endeavour most closely related to legal practice, where supervisory issues arise, is CLE. The literature in this field positions supervision as a method used to teach law students the art of practical lawyering. Providing feedback and facilitating reflective practice are central to the role of supervisors in this context. The key tenets of the CLE approach to supervision depend significantly on student responsibility and the involvement of law school staff. The literature reveals an underlying scepticism regarding the ability of legal practitioners to fulfil educational objectives, if left to their own devices. Consequently, in externships, law school staff assume a critical role in overseeing the relationship between law student and supervisor.

Best practice guidelines echo the messages from the literature and reveal that supervision has a range of objectives and a number of stakeholders. Overall, the guidelines are geared at making supervision “effective”, a term that, despite some evidenced-based research, remains elusive.

The “Bike Tour” expose of supervision by Meltsner et al was introduced early in this chapter, and I now return to that briefly. Beyond their metaphorical description of supervision, and

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132 Giddings, above n 127, 15 and 24.
133 Meltsner et al, above n 16.
... effective supervision involves a functional discourse that takes account of a complex interplay of environmental, personal and interpersonal forces overtime. While many features of supervision may be beyond the control of either the supervisor or supervisee, supervision may nevertheless be viewed as a product of a series of critical choices made by the participants ...  

Despite the useful inroads made by CLE about supervision CLE, this “functional discourse” has not been seriously attempted. While it is not clear why subsequent CLE scholarship has not instigated this discourse, the next chapter in this thesis will. The starting point for that functional discourse is the supervision literature stemming from other professional disciplines.

Accordingly, in order to develop an enriched understanding of supervision - one that uncovers the core purposes of supervision and elucidates the qualities of effective supervision in unaltered professional settings - the next chapter will move beyond the walls of the legal practice and legal education, by looking at supervision in other professional disciplines.

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135 Ibid 442 (Emphasis added).
V  LESSONS FROM OTHER PROFESSIONS

A  Introduction

The previous two chapters explored the respective approaches to supervision in legal practice and the closely related endeavour of clinical legal education. Both these approaches are restricted, but for different reasons. The general approach to supervision in legal practice is primarily concerned with risk management and monitoring. The clinical legal education approach positions educational outcomes at the forefront. However, this is done in a way where law school staff, acting as academic supervisors, take steps to mitigate what they perceive as a practice environment that does not naturally foster training and development. Neither approach to supervision balances the realities of a commercially driven practice environment with sufficient training and development opportunities. In addition, while both the legal practice and clinical legal education approaches to supervision acknowledge mentoring and support as important issues for supervisors, these interpersonal aspects of supervision are not integrated into a working conception of supervision. Collectively, the respective approaches to supervision in legal practice and clinical legal education do not add up to what could be considered a comprehensive conception of supervision.

This chapter turns to supervision literature from other professions, which is far more developed than the corresponding legal practice and clinical legal education supervision literature. The overall purpose of this chapter is to present an overview of that literature in such a way that lessons can be drawn and applied to legal practice. Importantly, to preview these potential lessons, supervision is commonly conceptualised as a relationship-based activity with three functions – “normative”, “formative” and “restorative”. In addition, there is a growing body of evidenced-based “effective” supervision literature, which uncovers relevant factors for fulfilling these three functions. Finally, there are specific aspects of the literature, as well as guidelines
from other professions, directed at arrangements analogous to Supervised Legal Practice. Accordingly, the chapter is organised as follows:

- Supervision: A Functional Approach – **Part B**
- Effective Supervision: The Evidence Base – **Part C**
- Arrangements for Supervised Practice in Other Professions – **Part D**

**Part E** will position the legal profession’s approach to supervision in light of the lessons from the literature canvassed in this chapter, and then articulate three issues that emerge. These three issues are used in Chapters VI, VII and VIII as a guiding framework for incorporating and analysing the QLSC Survey Data.

**Purposive Selection of Literature**

The literature covered in this chapter does not form part of a systematic review nor does it claim to comprehensively cover supervision literature in all professional disciplines and contexts. Similarly, this chapter does not claim to be a ‘meta-synthesis’ or ‘meta-analysis’.¹ Such an undertaking was neither feasible² nor, given the existence of other meta-studies, was it necessary.

Rather, the literature and materials have been selected using what is described in data analysis terms as a ‘purposive sampling’ approach where ‘the principle of selection is the researcher’s judgement as to typicality or interest’ and ‘a sample is built-up which enables the researcher to satisfy her specific needs in a project’.³

In this regard, I selected the literature supporting the narrative in this chapter to fulfil the purpose of **drawing tentative conclusions for use in legal practice**. Therefore, where possible, I have favoured existing literature that is evidence-based or empirically grounded. This is particularly important when considering what makes supervision “effective”.

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¹ For an overview and comparison of both these terms, see Denis Walsh and Soo Downe, ‘Meta-synthesis Method for Qualitative Research: A Literature Review’ (2005) 50(2) *Journal of Advanced Nursing* 204.

² Outside the legal profession and legal practice, supervision literature is voluminous and wide ranging beyond the scope of a single chapter.

Other scholars have already undertaken systematic, evidenced-based, or empirical, meta-analyses of the corpus of supervision literature. Particularly useful, is Milne’s evidence-based approach to supervision. This approach is a response to identified deficiencies in existing supervision scholarship that can be described broadly in terms of weak ‘empirical support’ and ‘lack of conceptual rigour’.

Milne’s evidence based approach is grounded in a working definition of supervision tested using a ‘best evidence synthesis approach’ to the literature. This involved:

- Carefully selecting a sample of 24 ‘empirical studies ... in which clinical supervision was studied with interpretable designs, and where it had proved successful’; and
- Testing ‘whether the findings from these studies corroborated the working definition.’

The result of this process is a definition of supervision ‘associated with positive outcomes, giving it empirical support’. Given the weak conceptual foundation of supervision in the wider legal profession literature, a rigorously tested definition linked to favourable supervision outcomes is a useful starting point for developing supervision theory for the legal profession. I have therefore endorsed Milne’s definition of supervision as a platform for further work and also refer to other aspects of his evidenced based approach to supervision throughout this chapter. This endorsement of Milne’s work is not, however, reflective of a decision to exclusively rely on Milne, adopt his model in whole, or neglect other scholarship. A range of other professional supervision literature is also considered and included in this chapter. Notably, I have drawn on Robin and Shohet’s ‘seven-eyed supervisor model’ to draw out the relevant factors for exploring the supervisory context. In addition, it is useful to emphasise that Milne’s work is a useful synthesis of existing supervision scholarship and in canvassing Milne’s work I also address some of the literature he has relied on (such as the Essential Staff Development Model which Milne identified as having some empirical validation).

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4 Derek Milne, Evidence-Based Clinical Supervision: Principles and Practice (Wiley-Blackwell, 2009)
5 Ibid 46.
6 Ibid 47.
7 Ibid 16.
8 Ibid.
9 Ibid 17.
10 See Part B(3) below.
12 See Part B(3) below.
A notable absence from the discussion in this chapter is that stemming from the general field of business management, particularly supervisory management and supervisory leadership. Although this literature has been excluded from this chapter, its relevance has been meaningfully considered and its absence from this chapter was a deliberate choice rather than an option of convenience. In this regard, I refer to a discussion of the business literature in previous related research. The following is an outline of reasons for this deliberate decision to exclude that literature:

- The legal profession’s current conception of supervision, grounded in legal practice management, already seems to have a strong association with business concepts. Even a cursory glance at the legal practice management literature already covered in this thesis shows a close connection with the business literature. In this regard, coverage of supervision aspects of the legal practice management literature is, in itself, coverage of the wider business literature (at least to a certain extent), and that literature is quite distinct from the professional supervision literature covered in this chapter.

- The focus of this thesis is Supervised Legal Practice, which is a stage of training, and therefore other professions with similar supervised practice regimes were considered as a more likely source of useful comparative detail. It is important here to again differentiate this focal point, Supervised Legal Practice, from supervision as a general concept. Supervised Legal Practice, and similar regimes from other disciplines are a creature of regulation, where a person is permitted to engage in a restricted activity (in the present case, that activity is legal practice), however must do so subject to supervision. As a general principle, activities in the wider business do not face this type of supervisory context.

- In a similar vein, legal practitioners are subject to a range of professional responsibility obligations, and again this raises specific supervisory issues that do not, generally
speaking, arise in a purely commercial setting. Other professional disciplines, although subject to different ethical frameworks, are forums that at least need to consider the professional responsibility dimension.

These reasons aside, I acknowledge that the business management literature is wide-ranging and covers a range of social scientific issues that transcend the profession versus business debate and, as such, could be usefully considered for application to the legal practice environment as part of future research endeavours.\(^{18}\) However, as will be argued in this chapter, any further research or development relies on a strong conceptual understanding of a specific supervisory context and this thesis goes part way to achieving that.

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\(^{18}\) A noteworthy example is “Supervisory Ethical Leadership”. See, Michael E Brown, Linda K Trevino and David A Harrison, ‘Ethical leadership: A Social Learning Perspective for Construct Development and Testing’ (2005) 97(2) Organizational Behavior and Human Decision Processes 117, 120-130. Brown, Trevino and Harrison, drawing on social learning theory, have developed a conceptual basis for understanding ethical leadership which they define as: ‘as the demonstration of normatively appropriate conduct through personal actions and interpersonal relationships, and the promotion of such conduct to followers through two-way communication, reinforcement, and decision-making.’ Brown, Trevino and Harrison have shown that ethical leadership is ‘positively related to leader honesty ..., interactional fairness..., supervisor effectiveness ...satisfaction with supervisor..., extra effort or job dedication..., and employee willingness to report problems’. They also highlight the importance of how supervisees perceive their supervisor in terms of ‘altruistic motivation’. In addition, a recent study by Mayer et al provides additional empirical support for the potential benefits of ‘supervisory ethical leadership’ but with the proviso that those benefits are ‘enhanced when co-workers are ethical and support each other in doing the right thing.’ See David Mayer et al, ‘Encouraging Employees to Report Unethical Conduct Internally: It Takes a Village’ (2013) 121(1) Organizational Behavior and Human Decision Processes 89, 89-90, 102.
B  Supervision: A Multi-Functional Approach

1  Introduction

Supervision, from both scholarly and practical standpoints, is significantly more developed in other professions, than it is in law. This is particularly so in social work and the psychotherapy based professions, such as counselling psychology and clinical psychology. This part of the chapter presents a purposive overview of that literature with the view to engaging in the ‘functional discourse’ that Meltsner et al referred to in the context of clinical legal education.

To begin with, Section 2 provides a brief historical overview of supervision in a professional context and outlines what can be a confusing range of terminology. Section 3 will then outline, and endorse, an evidenced-based and multi-functional definition of supervision.

2  Supervision in Other Professions: Historical Overview and Nomenclature

(a)  Brief Historical Overview

Although, learning in the circumstances of practice has occurred since ancient times, social work and psychotherapy are credited as having been the first professions to formalise “supervision” practices. Supervision in the field of social work emerged from a process at the end of the 19th century where: ‘volunteer social workers gathered around experienced leaders and, through a process which has been likened to an apprenticeship, learned through observation and instruction’. Supervision in psychoanalysis emerged in the early 20th century from Freud’s psychoanalytic school of practice and included, ‘guided reading’, ‘word association tests’, and ‘psychoanalysis’ of junior therapists. Davys and Beddoe distinguish these early forms of supervision in social work and psychotherapy by their respective emphases.

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19 See above n 3 and surrounding text.
20 See Chapter IV Part D.
23 Davys and Beddoe, ibid.
24 Milne, above n 4, 8.
25 Ibid.
26 Ibid 9.
Early social work supervision emphasised ‘adherence to agency policy’, whereas psychotherapy supervision concerned ‘client work’. This early distinction revealed an ongoing conflict in supervisory activities between the needs of the supervisee and client on one hand, and the demands or requirements of organisations on the other. Supervision as a professional activity continued to develop in the first half of the 20th century in social work along with the many psychotherapy-based professions and, by the mid-20th century, had become a ‘clearly specified requirement’ of training for psychologists. Eventually the field of counselling-psychology ‘established itself as a key developer and researcher of supervision theory and practice’.

From its beginnings in social work and psychotherapy, supervision practices and accompanying literature have emerged in the medical, nursing, and allied health professions in a way they have not emerged in law.

(b) Understanding the Nomenclature

The term supervision is used loosely at times, and with a distinct activity or process in mind at other times. In addition, the nomenclature for similar activities varies across professions. Overall, there is ‘ample opportunity for confusion and misunderstanding, particularly with respect to the terminology of supervision and the varied constructs underpinning supervision practice’. Fowler and Cutcliffe describe supervision as ‘an umbrella term’. However, it seems that “umbrella” varies in size and scope depending on the author. The following is a non-exhaustive list of activities which have variously been described as being: a type of supervision or being associated with supervision: ‘professional supervision’, ‘clinical supervision’,

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27 Davys and Beddoe, above n 22, 11.
28 Ibid 12.
29 Milne, above n 4, 6.
30 Davys and Beddoe, above n 22, 13.
32 For example, Bond and Holland, above n 22.
33 For example, John Driscoll, *Practising Clinical Supervision: A Reflective Approach for Healthcare Professionals* (Baillière Tindall, 2nd ed, 2006).
35 John Fowler and John R Rutcliffe ‘Clinical Supervision: Origins, overviews and rudiments’ in Routledge *Handbook of Clinical Supervision: Fundamental International Themes* (Routledge, 2010) 8, 11
36 Rose and Best, above n 34, 7; Davys and Beddoe, above n 22.
37 Fowler and Rutcliffe, above n 35, 12; Bond and Holland, above n 22, 23; Owen and Shohet, above n 31; Nadine Pelling, John Barletta and Philip Armstrong, *The Practice of Clinical Supervision* (Australian Academic Press, 2009); and Milne, above n 4.
‘mentoring’;38 ‘preceptorship’;39 ‘reflective practice’;40 ‘clinical education’;41 ‘coaching’;42 ‘supervised practice’;43 ‘structured peer support’;44 ‘tutorial supervision’;45 ‘training supervision’;46 ‘educational supervision’;47 ‘managerial supervision’;48 ‘consultancy supervision’;49 and ‘administrative supervision’.50

Some terms seem to describe a specific type of supervision for practitioners at an early stage of practice (e.g. preceptorship and supervised practice).51 Others emphasise a particular aspect of supervision (e.g. administrative or managerial supervision)52 or a specific supervisory activity (e.g. reflective practice). Overall, the confusing nomenclature seems to reflect an adaption of general supervisory principles to specific professional contexts and/or stages of development and for different professions. Outside these delimited circumstances, the word supervision is used most commonly as being synonymous, or interchangeable, with the terms “professional supervision” and “clinical supervision”. Incidentally, the difference between these two terms is also unclear. One view is that ‘professional supervision encompasses several subjects one being clinical supervision.’53 Another view is that the difference is merely one of professional orientation with the terms being essentially synonymous.54

38 Fowler and Rutcliffe, above n 35; Rose and Best, above n 34; Bond and Holland, above n 22.
39 Ibid.
40 Fowler and Rutcliffe, above n 35, 12.
41 Rose and Best, above n 24, 7.
42 Bond and Holland, above n 22, 23
43 Ibid.
44 Ibid.
45 Hawkins and Shohet, above n 11, 65.
46 Ibid.
47 Owen and Shohet, above n 31, 7.
48 Hawkins and Shohet, above n 11.
49 Ibid.
50 Pelling, Barletta and Armstrong, above n 37, 7.
51 Preceptorship appears most often in literature written for the nursing and allied health fields where it is treated as being distinct from both clinical education and clinical supervision. For example, Rose and Best describe the process of precepting as follows as an extension of clinical education which is focussed on the transition to a specific work environment. See Rose and Best, above n 34, 4. The authors note however that there is some confusion between the role of clinical educator, preceptor and mentor in some of the allied health professions. However, this view is not universal and some preceptorship literature positions it as a process occurring pre-registration as opposed to post-registration. See Alison Morton-Cooper and Anne Palmer, Mentoring, Preceptorship and Clinical Supervision: A Guide to Clinical Support and Supervision (Blackwell Science, 1999) 90.
52 For example, Pelling, Barletta and Armstrong, above n 37, distinguish clinical supervision (in the field of counselling) from ‘administrative supervision’ as follows being ‘involved with organisational, managerial and procedural issues’. For an overview of the relationship between clinical and management supervision, see Morton-Cooper and Palmer, ibid 139-143.
Irrespective of the lack of uniformity in the nomenclature, in the absence of its own record of supervision scholarship, the legal profession can usefully build on, and take lessons from, existing work from other professional disciplines. In particular, this chapter argues that Milne’s evidenced-based formulation of supervision be adapted to legal practice.

Milne’s formulation is sufficiently broad, without preference to any particular professional orientation, and therefore flexible enough to apply to different contexts. Similarly, it is not restrictive in that is doesn’t prescribe or proscribe any particular activity. Milne, who advocates an evidenced-based approach to supervision, is critical of some prior definitions, for a number of reasons including: lack of clarity regarding ‘nature and purposes’; lack of ‘specificity’; failure to ‘recognise that supervision may be provided across professional boundaries’; and ‘no emphasis on the importance of the supervisory relationship’. In response to these shortcomings, Milne developed an empirical definition of supervision, which was formulated following a rigorous review of existing literature. For these reasons, and consistent with the fundamentally pragmatic and empirical nature of this thesis, I endorse Milne’s definition of supervision as a useful starting point for the legal profession. Section 3 now turns to Milne’s definition of supervision.

3 Milne’s Evidenced Based Definition

Milne defines supervision as:

The formal provision, by approved supervisors, of a relationship-based education and training that is work-focused and which manages, supports, develops and evaluates the work of colleague/s (precision). It therefore differs from related activities, such as mentoring and therapy, by incorporating an evaluative component (precision by differentiation) and by being obligatory. The main methods that supervisors use are corrective feedback on the supervisees’ performance, teaching and collaborative goal setting (specification). The objectives of supervision are ‘normative’ (e.g. case management and quality control issues), ‘restorative’ (e.g. encouraging emotional experiencing and processing) and ‘formative’ (e.g. maintaining and facilitating the supervisees’ competence and general effectiveness) ...

Milne’s definition is useful in that it ‘embraces various supervision formats, professions, therapeutic orientations and stages of provision (pre-qualification and CPD)’. The three

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55 For a justification of this type of approach in the context of psychology practice, see Derek Milne and Robert P Resier, ‘A Rational for Evidenced-Based Clinical Supervision’ (2011) 42 Journal of Contemporary Psychotherapy 139.
56 Milne, above n 4, 10.
57 Ibid, 15–16. Milne himself interchanges between the terms “supervision” and “clinical supervision”.
58 Ibid.
objectives Milne refers to, have been described as functions elsewhere. This multi-functional approach to supervision represents a consensus in the wider literature. Table 5.1 below shows three different versions of this multi-functional approach, which all predate Milne’s 2009 definition:

Table 5.1 – Functions of Supervision

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational</td>
<td>Formative</td>
<td>Developmental</td>
</tr>
<tr>
<td>Supportive</td>
<td>Restorative</td>
<td>Resourcing</td>
</tr>
<tr>
<td>Managerial</td>
<td>Normative</td>
<td>Qualitative</td>
</tr>
</tbody>
</table>

Despite its wide grasp, Milne notes that his definition excludes ‘staff training, consultancy, performance management, mentoring, coaching and other variations on the supervision theme that do not satisfy the above definition’60. Mentoring is a noteworthy exclusion and relevant to this discussion given that the legal profession appears to have failed to properly consider the relationship between supervision and mentoring. The preferred view in the legal profession seems to be that they are entirely distinct processes.61

Mentoring, like supervision, partakes ‘in the unitary craft of adult human development and in particular the craft of enabling real-time learning that simultaneously transforms an individual, team and organization and their work’.62 Mentoring can mean different things depending on the context and is, at times, used interchangeably with the term supervision itself.63 However, they should not be treated as the same thing. Milne excludes mentoring from his definition of supervision because it is not necessarily in the workplace, does not have an evaluative component and is not directed at specific formative objectives.64 The term mentoring is commonly used to describe an informal process, which is characterised by unpaid professional and social development of someone (protégé) by another, usually older, more experienced person (mentor). Although mentoring and supervision are distinct endeavours, there is overlap.

59 This table has been reproduced from Hawkins and Shohet, above n 11, 62.
60 Milne, above n 4, 16.
61 See Chapter III Part B.
62 Peter Hawkins and Nick Smith, Coaching, Mentoring and Organizational Consultancy: Supervision and Development (Open University Press, 2006), 119.
64 Milne, above n 4, 16.
In particular, both supervision and mentoring have “formative” and “restorative” functions and cater for development. However, mentoring is generally less structured, includes wider goals such as facilitating networks, and is geared at being long-term with no formal assessment.\[^{65}\] Overall, supervision should encompass some mentoring components; however, not all mentoring is akin to supervision.

Similarly, there is much confusion about the relationship between supervision and mentoring in the legal profession. While the legal profession’s approach of treating supervision and mentoring as distinct processes is consistent with Milne’s definition of supervision, separating these two activities completely is overly simplistic. In particular, while a purely mentoring-based relationship may be another useful professional development mechanism, supervision still has ‘restorative’ and ‘formative’ functions, which overlap with a mentoring role. In this sense, it seems inappropriate to adopt the approach expressed by some in the legal profession\[^{66}\] where supervision is devoid of any mentoring component. Rather, adopting a multi-functional approach to supervision means that supervisors should still carry out some mentoring related activities in order to fulfil restorative objectives.

In addition to covering three objectives / functions, Milne’s definition of supervision conceives supervision as:

- Based on a relationship centred on work in the workplace;
- Incorporating a variety of different methods; and
- Being obligatory with an evaluative component.

These aspects of Milne’s definition of supervision foreshadow elements of “effective” supervision and will be analysed in the next part of this chapter. With this broader, functional understanding of supervision as a platform, I will now move to that part.

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\[^{65}\] Morton-Cooper and Palmer, above n 51,200.
\[^{66}\] See Chapter III, Part B.
C Effective Supervision: The Evidence Base

Research identifying the ‘nature of supervision’\(^{67}\) (as opposed to research identifying ‘what supervision should be’\(^{68}\)) has dominated the supervision literature from other professional disciplines, and a purposive overview of that research was outlined in Part B above. Research identifying what supervision should be or “effective” supervision has recently gained some traction is considered in this part of the chapter.

First, a cautionary note is appropriate. A fundamental challenge\(^{69}\) for determining effective supervision is first asking and answering the question: - effective for whom? How do we balance the interests of the supervisor, the supervisee, the client and the organisation? Alternatively, are we concerned with process or outcomes? In addition, empirically testing the effectiveness of supervision poses a number of methodological issues.\(^{70}\) In the face of this challenge, there is a ‘smattering of supervision research resulting in the ability to draw only tentative conclusions’.\(^{71}\)

Milne’s evidenced-based approach, which is useful for conceptualising supervision, consolidates and adds to this ‘smattering’ of effective supervision literature. Accordingly, given its rigorous empirical approach incorporating existing literature, Milne’s work will be utilised in this part of the chapter as well to provide a concise but empirically grounded summary of the qualities of effective supervision.

The qualities of effective supervision have been organised in this part as follows:

- **Section 1** – Understanding the Context.
- **Section 2** – The Supervisory Relationship.
- **Section 3** – Structuring Supervision.

\(^{67}\) Ming-sum Tsui, *Social work supervision: contexts and concepts* (SAGE Publications, 2005) 143.

\(^{68}\) Ibid.


\(^{71}\) Ibid.
1 Understanding the Context

A consensus present in the supervision literature is that supervision is an activity moulded by the context and the stakeholders involved. This aspect is not explicit in Milne's definition but is central to his evidence-based approach to supervision, stemming from it being relationship-based and centred on the workplace. Milne summarises the issue as follows:

The knowledge-base, relevant history, governmental policy, and the framework adopted by individuals in addressing supervision are prominent amongst the myriad factors that moderate supervision. The behaviour of the supervisor and supervisee will surely be a function of their personal characteristics, in the context that they operate, and the interaction between the two ... Ignore the context at your peril (emphasis added).\textsuperscript{72}

Milne adds that ‘individual characteristics of supervisor and supervisee’ will create a micro-context for one another.\textsuperscript{73} The contextual basis of supervision, moulded by individual micro-contexts is present in the widely popular ‘seven-eyed supervisor model’.\textsuperscript{74} This model is premised on supervision, involving at a minimum, the following five elements:

- ‘A supervisor’;
- ‘A supervisee’;
- ‘A client’;
- ‘A work context’; and
- ‘The wider systemic context’\textsuperscript{75}

From these five elements, Hawkins and Shohet derive their model on the basis that:

Of these five, normally only the supervisor and the supervisee are directly present in the supervision session, except in live supervision. However, the client and the organisational and systemic context of the work are carried into the session in both the conscious awareness and the unconscious sensing of the supervisee ... Thus, the supervision process involves two interlocking systems or matrices:

- The client-supervisee matrix
- The supervisee-supervisor matrix.\textsuperscript{76}

\textsuperscript{72} Milne, above n 4, 214
\textsuperscript{73} Ibid.
\textsuperscript{74} Hawkins and Shohet, above n 11. Milne and Reiser, above n 55, credit Hawkins and Shohet as being authors of the best-selling supervision book in the UK, however, they appear sceptical of the lack of empirical work supporting their theories and models.
\textsuperscript{75} Hawkins and Shohet, above n 11, 86.
\textsuperscript{76} Ibid.
This description is not included to endorse Hawkins and Shohet’s model, but rather to illustrate the depth of thinking potentially required to properly contextualise supervision and also the interplay of various stakeholders and standpoints. This model provides a useful way for thinking about supervision in legal practice. The legal profession itself, as distinct from the law firm, represents the wider systemic context. The legal profession is bound together by its history, standards of professional conduct and educational requirements. The formative and restorative elements of supervision are perhaps most relevant to this context. The normative aspects of supervision seem to be directed towards the needs of the client and the supervisor stakeholders. The supervisee is concerned with all three aspects – normative, formative and restorative – as he or she strives to be part of the wider systemic context (the profession itself) while catering to the demands of client and supervisor stakeholders.

Present in the recognition of “contexts”, “individual micro contexts”, “elements” and “relationship matrices” is something more fundamental or axiomatic to supervision. That is that supervision needs to be considered in terms of how it is ‘delivered across the professional career-span’ and ‘the available evidence would appear to point to the more flexible, developmentally appropriate application of some core approaches to supervision’. In other words ‘problem-solving activities in supervision’ should be moulded by the ‘supervisee’s competence level’.

2 The Supervisory Relationship

The strength of the supervisory relationship is critical to the success of supervision. Following a comprehensive review of literature on effective supervision, Kilminster and Jolly concluded, in the context of clinical medical education: ‘the quality of the relationship between supervisor and trainee is probably the single most important factor for effective supervision.’ Similarly, in the context of psychotherapy supervision, Inman and Ladany note that the ‘... supervisory working alliance is at the heart of effective supervision’. Accordingly, in considering whether an aspect of supervision is effective, it is useful to consider its impact on the supervisory relationship.

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77 See Milne, above n 4, 223.
78 Ibid.
80 Inman and Ladany, above n 70, 502.
The supervisory relationship also referred to as the ‘supervisory alliance’ is part of a broader process of ‘relating in supervision’.\textsuperscript{81} Although displeased with the quality of the empirical evidence Milne acknowledges ‘the professional consensus is unanimous in affirming the importance of the supervisory alliance’ and endorses its importance, commenting that: ‘we cannot deny that the relationship is the arena for supervision, nor the strong evidence for its importance within human development’.\textsuperscript{82} Milne’s analysis of the supervisory alliance endorses Polomo’s Supervisory Relationship Questionnaire (SRQ)\textsuperscript{83} and includes a list of possible ‘actions that supervisors might take to promote their supervisory relationship’.\textsuperscript{84} These actions, which are organised according to the six components of the SRQ, are set out in the Table 5-2 below:

\begin{table}[h]
\centering
\begin{tabular}{|l|l|}
\hline
\textbf{Components} & \textbf{Possible Actions} \\
\hline
\textbf{Facilitative Conditions} & \\
Safe Base & Empathise and connect emotionally (e.g. through self-disclosure); seek understanding and consensus (e.g. shared expectations); offer warmth and respond to learner’s needs; avoid hostility, criticism and being judgmental. \\
Structure & Be clear about duration and purpose (including shared goals/joint agenda-setting); regular and structured supervision. \\
Commitment & Show interest and enthusiasm; be approachable and attentive; offer constructive feedback; address and repair alliance ruptures \\
\hline
\textbf{Goals and Tasks} & \\
Role Model & Draw on expertise within system; provide practical support; demonstrate your approach and key skills, especially respect for patients and colleagues \\
Reflective Education & Draw on multiple models flexibly; encourage reflection; foster theory-practice integration; promote interesting discussion of techniques; focus on the process of supervision (including acknowledging the power differential) \\
Formative Feedback & Encourage interest in feedback from the supervisee, adapting it to fit his/her understanding and level of confidence; provide feedback regularly, including positive and negative comments, made in a balanced and constructive way \\
\hline
\end{tabular}
\end{table}

\textsuperscript{81} Milne above n 4, Chapter 4. \\
\textsuperscript{82} Ibid, 93. \\
\textsuperscript{83} 2004 version. \\
\textsuperscript{84} Milne above n 4, 80-81.
The strength of the supervisory relationship is entwined with fulfilment of the ‘restorative’ function of supervision\textsuperscript{85} which is concerned generally with providing support and fostering the emotional well-being of supervisees.

3 \textit{Structuring Supervision}

(a) General Structures Around the Supervision Relationship

In addition to the inter-personal factors discussed above, effective supervision relies on appropriate structure guiding the process. Existing empirical research indicates that the relationship will benefit from support by the following structures/systems:

- Continuity over time.\textsuperscript{86}
- Supervisees sharing control over the products of supervision (supervision may only be effective when this is the case) and that there is some reflection by both participants.\textsuperscript{87}
- The supervision process is separated from line management.\textsuperscript{88}
- The supervisee has time for individual reflection.\textsuperscript{89}
- Regular and frequent meetings.\textsuperscript{90} Regular and frequent supervision is also associated more generally with job satisfaction.\textsuperscript{91}
- Supervision contracts\textsuperscript{92} outlining expectations, role and responsibilities.

Successful fulfilment of the restorative function of supervision is likely to come from developing and nurturing a strong relationship supported by these general structures. The formative function of supervision also relies on a strong relationship supported by appropriate structures but relies on supervisors and supervisees to generate learning from that relationship. Effective supervision literature considers a variety of models and methods directed at this objective.

\textsuperscript{85} Ibid, 155.
\textsuperscript{86} Kilminster and Jolly, above n 79, 833.
\textsuperscript{87} Ibid.
\textsuperscript{88} Bond and Holland, above n 22, 250.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
\textsuperscript{91} Carpenter et al, above n 54, 6.
\textsuperscript{92} Stanton and Dunkley, above n 69, 127.
(b) Achieving Formative Outcomes - Models and Methods

There exists a plethora of supervision models in the wider supervision literature with numerous authors either proposing their own, or modifying an existing model. This thesis does not propose to endorse any particular model. Most of these models are geared at a particular outcome relevant to the author’s professional discipline. Although I have widely endorsed Milne’s rigorous evidenced-based approach, I do not propose to set out or endorse his own Evidenced-Based Supervision Model. It is after all formulated in the context of the practice of psychology and has at its core improved patient outcomes.

As such, an adoption or endorsement of any particular model would be ignoring the first lesson outlined in this part, which is to consider the context of supervision. Although beyond the scope of this thesis, a critical review of existing models with the view of developing a comprehensive model for legal practice supervision is a matter worthy of future research. Nonetheless, in terms of effective formative outcomes, aspects of the literature in relation to developing particular models and methods, appear to have general application and are relevant to the present discourse.

The Essential Staff Development Model

The Essential Staff Development Model (“ESDM”) is not a supervision model per se and therefore coverage of it here does not contradict the introductory comments regarding supervision models above. Rather, it is a ‘systematic approach to training’ and has been selected for inclusion here because it stands the test of Milne’s rigorous evidenced-based approach and which is considered to be ‘congruent’ with supervision. In this regard I emphasise that supervision is a process which incorporates three functions – the training aspect (or the formative function) is but one part.

The ESDM is an evaluative process based on providing feedback across the following stages:

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93 One such is Hawkins and Shohet’s Seven-Eyed Model which was mentioned above to highlight the importance of context and different stakeholders. See Hawkins and Shohet, above n 11. Milne himself proposes his own Evidenced-Based Supervision Model, see Milne above n 4, 64.
94 Milne above n 4, 96.
95 Ibid 126. On a pragmatic note, the empirical foundations of the discipline of psychology (and its close association with training and development) is enriched enough that reliance on Milne’s conclusion is a more sensible undertaking than for legal profession scholars to seek to replicate this work.
96 Ibid 43.
• Assess needs and define development objectives
• Derive Training Content
• Design Methods and training material
• Conduct development activity

In the context of supervision, the ESDM model envisages that a supervisor will assess a supervisee’s capabilities, and then carefully build competencies by using a range of activities that connect theory and practice. It may be useful for the legal profession to utilise the ESDM to develop a comprehensive model for Supervised Legal Practice.

Methods

Whether supervision is effective will also depend on the methods used. Milne selected 52 studies in which there was clear evidence that the supervision was educationally and clinically effective and then identified the common supervision methods present in this sample of effective supervision scenarios. The “common methods” identified by Milne can usefully be treated as key ingredients to educationally and clinically effective supervision. The five most common methods identified are:97

• Feedback (including praise and constructive criticism): 81% of the studies.
• Observation and outcome monitoring: 79%
• Discussion (including providing a rationale; questions and answers; objective setting; problem solving; challenging supervisees thinking): 75%
• Written / verbal prompts and instructions (including guidelines): 48%
• Encouraging autonomy (time management): 21%.

Other methods present in the effective supervision scenarios were: formulation, modelling skills, behavioural rehearsal, and homework assignments (for example, guided reading). Although key to effective supervision, feedback alone is not sufficient. Feedback should be regular and ongoing.98 Formal reviews and performance management may be an appropriate forum for some feedback, however, these formal processes should not be a substitute for “real-time” feedback.

97 Ibid 120-121.
98 Inman and Ladany, above n 70, 503.
Although identified as “key ingredients”, the subsequent data analysis chapters do not directly test for the presence of these common methods (or for that matter other aspects of the effective supervision literature). This was not feasible because, as covered in Chapter 1 Part D(2) – “Methodology and Methods”, the research design relies on secondary analysis of data. Therefore, the survey questions were not designed for the purpose of identifying these “key ingredients”. This is a limitation of the research design.

The Role of Supervisees

The above methods are focussed on the contributions of the supervisor. However, the wider supervision literature acknowledges the role supervisees play in supervision in order to achieve effective outcomes. The clinical legal education literature described the important role that supervisees play and, in fact, emphasised that aspect to a level that is probably not justified. Nonetheless, ultimately, supervisees need to actively contribute to the process in order to transform structured supervision, founded upon a strong relationship, into actual learning. Reflection is the ‘most commonly acknowledged supervisee duty’\(^\text{99}\), which is also widely recognised in the clinical legal education literature.\(^\text{100}\)

4 Effective Supervision: Summary

The starting point for developing effective supervision arrangements is a thorough consideration of the context and the relevant stakeholders. Within the context of legal practice there are at least two distinct sub-contexts relevant to this thesis. One is supervision of newly admitted lawyers completing Supervised Legal Practice and the other is supervision of practising lawyers who have, or should have, developed to the stage that they can engage in legal practice with relative autonomy. Part D below will consider how other professions in Australia have devised supervision arrangements in contexts analogous to Supervised Legal Practice.

Within each particular context, effective supervision will depend above all on developing and sustaining the supervisory relationship. The development of this relationship relies on both parties to genuinely engage in what is a deeply interpersonal endeavour. However, it seems that supervisors will be largely responsible for taking the initiative early on, especially in relation to providing a comfortable environment for dialogue and understanding the micro-context of a

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\(^{99}\) Milne, above n 4, 153.
\(^{100}\) See Chapter IV.
supervisees’ competence level. Sustaining the relationship relies on a range of factors, of which regular supervision meetings and feedback appear central. Formative outcomes need to be formulated according to an appropriate model that can be built into the relationship.

D Arrangements for Supervised Practice in other Professions

In Australia, three established health professions (Psychology, Medicine and Pharmacy) have a system similar to Supervised Legal Practice. These systems involve junior practitioners in a transition period where they are technically qualified, licensed or registered to practice despite their practice rights being conditional upon completion of a designated period of supervised practice. This period provides for a transition where practitioners can “officially” call themselves a “lawyer”, “psychologist”, “doctor” etc. and work as such; however, technically they have no right to independent practice and are dependent on their supervisors.

Each of these three professions has established arrangements, supported by guidelines, which are more comprehensively structured than those for Supervised Legal Practice. As covered in Chapter II Part E and Chapter III Part D, Supervised Legal Practice guidelines are generally silent or vague in terms of: (a) competencies that need to be achieved; and (b) processes and procedures for achieving any such competency. Similar guidelines in these other three professions cover these issues, to varying extents, in a way that the legal profession has not. Guidelines in these other professions seem to be underpinned by a more nuanced understanding of supervision than that which is present within the legal profession. The arrangements and accompanying guidelines for each of these professions are set out below.

The corresponding arrangements (or lack thereof) in the legal profession, and the supervision literature covered in the Parts B and C above, are incorporated into this discussion where relevant. Importantly none of these professions refer to legislation or case-law as a basis for providing a framework for supervised practice, which is a default tendency for the legal profession.

101 In addition to the three professions covered here (Psychology, Medicine and Pharmacy), there are of course a number of other professions where aspiring practitioners are required to complete practical experience, however that practical experience usually occurs prior to any official qualification, licensure or right to practice. Hence the “supervised practice”, “provisional registration” or “restricted practice” is limited to a few professions.

102 Some of the existing material which attempts to provide guidelines for Supervised Practice focuses on the relevant statutory provision and associated rules. See Chapter II Part E and Chapter III Part D.
There are a variety of pathways to practice as a psychologist in Australia. Relevant for present purposes is the pathway where, after completing an accredited two-stage sequence of academic study, aspiring psychologists are eligible for provisional registration. They are then required to complete two years of supervised practice, as part of an “internship”, before being eligible for general registration. This pathway is analogous to the most common pathway in law which also involves a two-stage sequence of study (law degree followed by PLT course) and which is also followed by a two-year period of Supervised Legal Practice. As noted above, the field of psychology dominates the scholarship on supervision. Therefore, it is not surprising, that the two years of supervised practice is supported by comprehensive guidelines which, compared to the legal profession, are underpinned by a meaningful conception of supervision. These resources will be considered below.

The Psychology Board of Australia publishes guidelines for aspiring psychologists seeking general registration via a two-year internship (the “Psychology Internship Guidelines”) which follows two stages of academic training across four years. The internship comprises eight core capabilities and contains the following ‘three main components’:

- **176 hours of Supervision.** Over a two-year period, this equates to, including the maximum eight week leave provision, less than two hours’ supervision per week. Supervision is described in the Psychology Internship Guidelines as:

  an interactive process between the provisional psychologist and the supervisor. It provides the provisional psychologist with a professionally stimulating and supportive opportunity for growth. Supervision for the internship program involves a special type of mentoring relationship in which direction and instructive critique is given by supervisors to assist provisional psychologists to achieve their professional goals. Supervisors oversee provisional psychologists’ application of particular procedures for given tasks and this process is fundamental to provisional psychologists achieving the core capabilities of the internship program.

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104 See above n 30 and surrounding text.
105 Psychology Board of Australia, Guidelines for 4+2 Internship Programs for Provisional Psychologists and Supervisors (Effective from 27 September 2013) (“Psychology Internship Guidelines”).
106 Ibid 17.
107 Ibid 1.
Up to 75% of this “Supervision” must be provided by a principal supervisor and up to 25% can be provided by a secondary supervisor. At least 66% must be direct, individual, face-to-face supervision. A maximum of 33% of the Supervision may occur in a face-to-face small group setting. Further, Supervision must be regular (at least one hour per week), include an evaluative component and include direct observation.

- 2784 hours of Psychological Practice (Supervised Practice) ‘carried out in an approved setting under the guidance of a principal supervisor and a secondary supervisor’.\(^{109}\) Direct client contact must comprise at least 40% of this time and the remainder must be spent on client-related activities.

- 120 hours of Professional Development ‘activities such as workshops, courses, seminars, lectures, conferences, classroom activities, role plays, literature reviews etc.’\(^{110}\)

The two year internship program must be conducted ‘in accordance with a personalised supervised practice program that has been agreed to by the provisional psychologist and supervisors and approved by the Board.’\(^{111}\)

Overall, the Psychology Internship Guidelines outline clearly defined roles and responsibilities for supervisors, and carve out supervision as being a distinct and integral component of internships for psychologists. Importantly the arrangements are based on an ongoing relationship with a principal supervisor who is responsible for a range of objectives (including formative, normative and restorative aspects). In addition, the Psychology Internship Guidelines set rigid standards regarding the nature and type of work appropriate for supervised practice – this is an aspect of Supervised Legal Practice for which there is significant uncertainty.

2 Medical Practitioners

Similarly, in the medical profession, after completing an approved medical degree, junior doctors are eligible for provisional registration as medical practitioners. A condition of

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\(^{109}\) Ibid 11.
\(^{110}\) Ibid.
\(^{111}\) Ibid 29.
provisional registration is that the junior doctor must complete a regimented training program known as “internship” before being eligible for general registration.\textsuperscript{112}

The medical internship is also supported by ‘a suite of intern training documents’,\textsuperscript{113} including a ‘Guide to Intern Training in Australia’ (“Medical Intern Training Guide”).\textsuperscript{114} Overall Internship programs for medical practitioners appear to be well-developed and structured training programs where:

postgraduate medical councils (PMCs) accredit intern training programs (and terms) using criteria to assess quality. These criteria outline minimum standards, including for program management, program structure, feedback, assessment, clinical experience and supervision.\textsuperscript{115}

Intern training is organised across ‘a series of terms (sometimes known as rotations or placements) in a range of specialties’\textsuperscript{116} each of which includes ‘orientation, supervised practice, education and assessment’.\textsuperscript{117}

The actual nature and place of supervision is less clear than for psychologists and specific supervisory tasks appear to be unclearly split between different persons. In this regard, the Medical Intern Training Guide provides the following:

During internship, you will be supervised at a level appropriate to your experience and responsibilities at all times. In each term, the supervision arrangements (who supervises you, and for which activities) should be clear and explicit. You will usually have a number of supervisors with different functions:

• A Term Supervisor – the person responsible for your orientation and assessment.
• A Primary Clinical Supervisor – a consultant or senior medical practitioner with experience managing patients in the term’s discipline.
• An Immediate Supervisor – a doctor (usually a registrar) who is at least postgraduate year three, and who has direct responsibility for patient care.\textsuperscript{118}

Here the formative, normative and restorative functions seem to be filled by different persons. These structures appear less likely to foster effective supervision as there is less opportunity to

\textsuperscript{112} Medical Board of Australia \textit{Australian and New Zealand Medical Graduates} (5 May 2015) <http://www.medicalboard.gov.au/Registration/Types/Provisional-Registration/medical-graduates.aspx>
\textsuperscript{113} Medical Board of Australia \textit{Guidelines, Resources and Tools on Intern Training} (5 June 2017) <http://www.medicalboard.gov.au/Registration/Interns/Guidelines-resources-tools.aspx>. The Australian Medical Council developed these documents which are approved by the Medical Board of Australia.
\textsuperscript{114} Australia Medical Council / Medical Board of Australia ‘Guide to Intern Training in Australia’ (As Approved by Medical Board of Australia, 18 December 2013) (“Medical Intern Training Guide”).
\textsuperscript{115} Ibid 4.
\textsuperscript{116} Ibid 1.
\textsuperscript{117} Ibid 2.
\textsuperscript{118} Ibid 3.
develop and sustain a strong relationship with a supervisor who is aware of all aspects of a supervisee’s development. This problem is exacerbated by changing supervisors each term. This is actually not unlike the approach in the legal profession where: normative aspects of supervision are fulfilled by a supervisor in day to day practice;\(^{119}\) restorative aspects are fulfilled by an external mentor (if at all)\(^{120}\) and formative aspects are fulfilled on a firm wide level (if at all).\(^{121}\) Overall, it appears the approach in psychology is more aligned with the effective supervision literature.

That being said, unlike Supervised Legal Practice, which exists outside any formal training program, medical internships benefit from a series of structured rotations, which provide scope for meaningful fulfilment of the formative aspects of supervision.

3 **Pharmacists**

Similar to the medical profession, after completing an approved pharmacy degree, aspiring pharmacists are entitled to provisional registration. Then, in order to be eligible to apply for general registration, they must complete an “internship” program, which includes a requirement to complete one year of supervised practice.\(^{122}\)

The Pharmacy Board of Australia has developed ‘Intern pharmacist and preceptor\(^{123}\) guidelines’\(^{124}\) (“Pharmacy Internship Guidelines”) which outline the following arrangements for supervised practice:

- Supervised practice must be completed under the direction and/or supervision of a designated approved supervisor and supervised practice must be undertaken under the direct supervision of their approved supervisor or another fully qualified pharmacist.
- Interns must complete an accredited intern training program underpinned by a training plan based on a series of competency standards.

\(^{119}\) As covered in Chapter III Part B, day to day supervision has a clear and distinct focus on normative functions such as risk management and monitoring.

\(^{120}\) Ibid.

\(^{121}\) See Chapter III Part D.


\(^{123}\) The Pharmacy profession uniquely, and somewhat anomalously, use the term preceptor to describe what other professions would call a supervisor.

• The period of supervised practice is 1824 hours.
• At least 50% of the required hours must be undertaken in a particular setting (community pharmacy or hospital pharmacy).
• Supervised practice may only occur in premises where there is at least one supervising pharmacist for every one intern.
• Weekly uninterrupted supervision meetings.
• Practice exposure aimed at developing competence.

Similar to psychology and medicine, but unlike Supervised Legal Practice, supervised practice is not isolated and occurs as part of a training program.

4 Arrangement for Supervised Practice: Summary

Of these three professions, psychology stands out as being most useful in terms of providing lessons for the legal profession. Not only does psychology and related psychotherapy professions dominate the interdisciplinary field of supervision, there are two useful similarities with the legal profession. Firstly, psychology, like law, is a widely applied social science. Just as, not all lawyers defend accused people in court, not all psychologists are working with people experiencing mental health problems (although many do). Rather ‘psychologists can work at an individual, group or organisational level and their ability to positively influence human behaviour is called on by businesses, market research companies, and consulting firms.’ This is similar to the wide variety of settings in which lawyers work.

Overall the Psychology Internship Guidelines outline a model which facilitates structured practice-based training for psychologists during the first two years of practice. Generally speaking, it provides a useful example for the way in which training during Supervised Legal Practice can be structured around actual practice experience. Specifically, significant numbers of hours of individualised face-to-face supervision sessions provide an appropriate forum for supervisors to help supervisees to fulfil restorative objectives. This is not to suggest that the model described in the Psychology Internship Guidelines is necessarily a practical and viable

125 Davys and Beddoe, above n 22, 11–14.
model which can be adapted to legal practice.\textsuperscript{127} In this regard, despite the similarities noted above the legal practice context is of course different to psychology practice. Rather, it demonstrates a useful example in terms of the detailed considerations for structured professional training as part of a supervised practice framework.

E Conclusion: Towards Effective Supervision in Legal Practice

This thesis endorses Milne’s conception of supervision. However, a key lesson from the supervision literature from other professional disciplines is that the specific supervisory context requires consideration. In other words, although Milne’s conception of supervision is flexible enough to be adapted to different contexts, any potential context needs to be carefully considered first. In light of this, I now re-consider legal practice as a supervisory context.

In legal practice the supervisory context is distinctive for a number of reasons including:

- Particular knowledge and practical requirements required for admission as a lawyer;\textsuperscript{128}
- Standards of professional conduct which are part of a larger regulatory framework and which include a general “normative” based supervisory duty;\textsuperscript{129}
- The size of, and common work practices, in law firms and the diversity of work that occurs within firms;\textsuperscript{130} and
- Legal professional culture and prevailing attitudes towards training and development.\textsuperscript{131}

Legal practice, as a supervisory context, is moulded by a regulatory framework that positions supervision as a professional duty concerned with preventing mistakes. Supervised Legal Practice, although a final stage of practical legal training, is often erroneously grouped together as being one and the same, as this general professional duty. This reveals an approach that is focussed on discipline not development. Legal practice as a supervisory context is also moulded by legal practice management norms, which conceive supervision as a tool for managing risk.

\textsuperscript{127} In fact, the Australian Psychology society has raised a number of concerns regarding the practical implementation of the 4+2 Internship model. See Australian Psychological Society, \textit{Guidelines for the 4+2 Internship Program: An APS Submission to the PsychBA} (January 2012).

\textsuperscript{128} See Chapter II Parts C, D and E.

\textsuperscript{129} See Chapter II Parts B and F.

\textsuperscript{130} See Chapter III Part A.

\textsuperscript{131} See Chapter III Parts B, C and D.
and driving profitability. Both these “moulds” limit supervision to only achieving, and fulfilling, what Milne and others have described as the “normative” aspects of supervision.

There is potential for supervision to fulfil a greater training role (i.e. fulfil a formative function). This is particularly important given emerging and predicted trends in legal practice where relational aspects of legal practice are set to become even more important. It is also important during Supervised Legal Practice so that junior lawyers can complete their legal training. Supervision, as a forum for developmental instruction, is at the heart of clinical legal education. However, this mindset has not developed in the legal practice environment. It is not entirely clear why this is the case; however, it appears to relate to legal practitioners having a range of competing demands. In addition, there is a potential for supervision to fulfil a much needed support role (i.e. fulfil a normative function). However, this aspect of supervision appears to have been misunderstood or undervalued by the legal profession. This is surprising given the ongoing concern regarding well-being in the legal profession and the link with supervision.132

With a focus on risk management and monitoring, it appears that the main objective or function of supervision in legal practice is ‘normative’ in nature. The attitudes of legal practitioners in relation to supervision and/or other factors in legal practice potentially impede fulfilment of ‘formative’ and ‘restorative’ objectives of supervision. (Issue 1)

Beyond this multi-functional approach to supervision, there is evidence in relation to what contributes to effective supervision. The effectiveness of supervision generally, and during Supervised Legal Practice, depends on a multi-functional approach supported by a strong supervisory relationship. There are a number of processes that support a strong supervisory relationship, all of which rely on regular and frequent supervision meetings, from which the supervisor can create a safe base.

A key driver of effective supervision is the strength of the relationship between supervisor and supervisee and the structures in place to support that relationship. The conduct of both supervisor and supervisees in day-to-day legal practice, and the experience generated by this conduct, is relevant to considering the effectiveness of supervision given and received. (Issue 2)

132 Chapter III Part E articulated the link between well-being and supervision.
This thesis has already highlighted the difficulties in making generalisations about legal practice supervision given, as outlined in Chapter III, the diversity of legal work. This existing diversity is compounded given, as outlined in Part C of this chapter, there are a range of other contextual factors impacting supervision. Acknowledging and understanding the context is particularly crucial to understanding the needs of newly admitted lawyers completing Supervised Legal Practice, and this is discussed further below.

There is confusion within the legal profession regarding the relationship between the general duty to supervise and Supervised Legal Practice.\(^{133}\) It seems plausible that this confusion plays out in practice. Although there is no literature which has meaningfully described an approach to supervision during Supervised Legal Practice, Chapters II and III uncovered that:

- Supervised Legal Practice was intended to be a continuation of practical legal training. That intended purpose remains entirely unrealised.
- The current attitude to supervision for newly admitted lawyers seems to fail to cater for training and interpersonal needs of supervisees.

These preliminary findings can be described, using Milne’s terminology, in terms of Supervised Legal Practice being a unique supervisory context characterised by the following:

- Supervisees practical skills are limited and they need support of supervisors to develop into competent autonomous practitioners (Knowledge base\(^{134}\))
- The historical context of Supervised Legal Practice is that it is a final stage of experience-based practical legal training (Relevant History\(^{135}\))
- Based on current policy, it occurs after completion of academic and practical stages of legal education. Supervisees are admitted to the profession, and initially take the role of practitioner but on a restricted basis. (Policy Context\(^{136}\))

The apparent absence of clear ‘formative’ and ‘restorative’ objectives in the legal profession’s approach or attitude to supervision is particularly problematic for the focus area of this thesis: Supervised Legal Practice. These characteristics play out in the wider context of legal practice.

\(^{133}\) See Chapter II Part E and Chapter III Part D.
\(^{134}\) See above n 72 and surrounding text.
\(^{135}\) Ibid.
\(^{136}\) Ibid.
where the supervisory relationship is impacted by other stakeholders including: law firm partners, clients and professional bodies.

**Supervised Legal Practice is a unique supervisory context where supervisees lack legal practice experience and are in need of competence based practical training as well as a range of interpersonal support mechanisms. Despite this, formative and restorative aspects of supervision are not organised on a profession-wide level. However, it is not clear the extent to which these aspects of supervision are carried out in practice on a case-by-case basis. Therefore, a deeper understanding of the common experiences of newly admitted lawyers is needed to understand the extent of the problem. (Issue 3)**

**Summary of Issues and Next Steps**

The three issues uncovered and articulated above will be used as guiding framework for incorporating the Survey Data into the discussion and analysis in Chapters VI, VII & VIII. These issues are summarised in Table 5-3 below with additional comments in relation to how they will guide the discussion in the next three chapters.

<table>
<thead>
<tr>
<th><strong>TABLE 5-3 – ISSUES FOR DISCUSSION</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issue</strong></td>
</tr>
</tbody>
</table>
| **Issue 1** – With a focus on risk management and monitoring, it appears that the main objective or function of supervision is ‘normative’ in nature. The attitudes of legal practitioners in relation to supervision and/or other factors in legal practice potentially impede fulfilment of ‘formative’ and ‘restorative’ objectives of supervision. | This issue guides the discussion for Chapter VI which will address aspects of the Survey Data which address:  
- Perceptions Regarding the Functions of Supervision  
- Organisational Issues Impacting Supervision Practices |
| **Issue 2** – A key driver of effective supervision is the strength of the relationship between supervisor and supervisee and the structures in place to support that relationship. The conduct of both supervisor and supervisees in day-to-day legal practice, and the experience generated by this conduct, is relevant to considering the effectiveness of supervision given and received. | This issue guides the discussion for Chapter VII which will present aspects of the Survey Data which address:  
- Supervisor and Supervisee contributions to effective supervision  
- Common supervisory experiences |
Issue 3 - Supervised Legal Practice is a unique supervisory context where supervisees lack legal practice experience and are in need of competence based practical training as well as a range of interpersonal support mechanisms. Despite this, formative and restorative aspects of supervision are not organised on a profession-wide level. However, it is not clear the extent to which these aspects of supervision are carried out in practice on a case-by-case basis. Therefore, a deeper understanding of the common experiences of newly admitted lawyers is needed to understand the extent of the problem.

This issue guides the discussion in Chapter VIII which will present aspects of the Survey Data which consider
- Perceptions regarding level of experience and the extent to which this impacts supervision given and received.
- Profiles, and experience of supervisee respondents completing Supervised Legal Practice.
VI QUEENSLAND SUPERVISION PRACTICES CHECK PART 1- THE FUNCTIONS OF SUPERVISION

A Introduction

This chapter is the first in a series of three chapters, which incorporate data (“the Survey Data”) from the Queensland Legal Services Commission (“QLSC”) Supervision Survey (“the Survey”). Importantly, the Survey Data is distinct in that it provides information about attitudes, practices, and perceptions of supervision in legal practice on a scale and depth not previously available.¹ This thesis is the first time the Survey Data has been comprehensively incorporated into any scholarly work.²

Prior to moving onto the substantive aspects of this chapter, the remainder of this part outlines: (1) Survey Background and Respondent Demographics; (2) Data Analysis Steps and Methods. This information applies to the data presentation and analysis in this chapter as well as Chapters VII and VIII.

1 Survey Background and Respondent Demographics

The Survey was originally completed and disseminated by the QLSC in 2011 (“the 2011 version”)³. The Survey was updated in 2013 (“the 2013 version”), with some limited input from me. I drafted eight new questions which were added in light of preliminary findings arising after completion of the Systematic Literature Search.⁴ Relevant to this thesis are additional questions which allow identification and isolation of respondents involved in Supervised Legal Practice (as either a supervisor or supervisee).⁵ The QLSC agreed to inclusion of these additional questions in the 2013 version. In addition, the QLSC made a number of insignificant structural and typographical changes to the survey following on from a review of the 2011 version.

¹ As noted in Chapter I Part B (2), there is a dearth of empirical evidence that specifically relates to supervision in legal practice.
² Certain aspects of the Survey Data have been presented in related research published during the course of my candidature. This complimentary research is included in the “Acknowledgements” section at the beginning of this thesis.
⁴ See Chapter I Part B and Appendix 1.
⁵ Chapter VIII is dedicated to an analysis of this special type of supervisory relationship.
The 2013 version, as disseminated, is included in Appendix 2. In addition, a list of all changes from the 2011 version, including an explanation of the new questions that I drafted, are included in Appendix 3. After completing the 2013 updates, the QLSC:

- Invited all law firms with seven or more legal practitioners to participate in the 2013 version; and
- Sent an e-newsletter to over 9000 Queensland legal practitioners (from a range of practice types and sizes) inviting them to participate.

The 2013 version was completed in full, or in part, by 360 respondents. The Survey Data was collected via a Survey Monkey account controlled and operated by the QLSC, an online survey software.6

The Survey Data provides a rich source of data and covers a broad cross-section of legal practitioners in Queensland. Respondents include supervisees, supervisors and those who were both supervisors and supervisees. Supervisee only respondents comprised the single largest subset.7 Respondents came from a range of legal practice types including private firms, government practice and community legal centres.8 Private practice respondents came from firms of all sizes.9 Respondents working in private practice came from law firms, which varied in size, client base and structure.10 Respondents fulfilled a number of roles, including those that required a practising certificate and those that did not, with the most common being that of employed solicitor (who hold a practising certificate).11 Respondents who held a practising certificate had a range of experience levels.12 Both genders were represented well, with slightly more female respondents than male.13

Importantly, the Survey Data from the 2013 version identifies the number of newly admitted lawyers completing Supervised Legal Practice. This enables a comparison of perceptions and practices for this important sub-set of supervisees (this is done in Chapter VIII). Given the richness of the available data, at numerous points during this thesis, I was tempted to compare

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6 This is an online survey software. See <www.surveymonkey.com>. The survey data was subsequently transferred by the Queensland Legal Services Commission to my Survey Monkey account.
7 See Table RD 2 in Appendix 4.
8 See Table RD 3 in Appendix 4.
9 Ibid.
10 See Tables RD 4, RD 5 & RD 6 in Appendix 4.
11 See Tables RD 7 & RD 8 in Appendix 4.
12 See Table RD 9 in the Appendix 4.
13 See Table RD 10 in Appendix 4.
supervision practices against a range of other demographic variables such as: practice type, client type, firm size or gender. However, the lack of existing research eventually caused me to conclude that this is an untenable process for the purpose of this thesis. The available literature does not include any consistent theory which provides a clear indication of demographic trends impacting supervision practices. While this thesis has improved the available theory by developing a conceptual framework, the scope of this framework does not address demographic factors such as practice type, client type, firm size or gender. Identifying trends in these demographic variables would have involved extended exploratory data analysis beyond the confines of the Research Design (See Chapter I Part D), and potentially detract from the focal issue – Supervised Legal Practice.

2 Data Analysis Steps and Methods

(a) Building on the Conceptual Framework: Incorporating the Data

Before presenting and analysing the Survey Data, it is necessary to revisit how the Survey Data fits within the overall Research Design, and importantly the limitations associated with this design. To recap from Chapter I, this thesis addresses the following Central Research Question: What are the implications of the legal profession’s current conception of, and approach to, supervision during supervised practice?

The first part of the thesis (guided by Sub-questions 1-4) developed a conceptual framework used to guide and inform the analysis of the Survey Data. That conceptual framework was framed as three issues (articulated at the end of Chapter V) to be used as an analytical framework for conducting the data analysis. The central concept from each of these issues can be summarised as follows:

- The functions of supervision (Issue 1)
- The supervisory relationship (Issue 2)
- The supervisory context (Issue 3)

The second part of this thesis beginning with this chapter (and continuing in Chapters VII and VIII) is driven by the following sub-question: What does the available evidence tell us about the effectiveness of supervision in legal practice, generally, and during Supervised Legal Practice?
(Sub-question 5). The three issues (and underlying concepts) are therefore used as a guiding framework for addressing this question.

These three issues (and sub-question 5) have been framed deliberately in such a way that is consistent with the overall Research Design underpinned by a pragmatic world view (see Chapter 1 Part D(2) “Methodology and Methods”). Importantly the overall analytical framework is intended to be flexible enough to mitigate the problems associated with the secondary analysis of data.

I have already outlined how, in the case of this thesis, the benefits associated with a secondary analysis of the Survey Data (as opposed to a fresh collection of data) outweighed the disadvantages. This decision was largely driven by resources available for a PhD thesis. I also flagged the disadvantages associated with the deliberate choice of using secondary data (see Chapter 1 Part D(2) “Methodology and Methods”). However, in light of the theory development completed in the first part of the thesis, it is now necessary to outline those disadvantages and, in particular, contextualise the limitations associated with secondary analysis of the Survey Data.

Vartanian has identified a number of limitations of secondary analysis. Importantly Vartanian describes how:

One of the problems with using secondary data is lack of control over the framing and wording of survey items. This may mean that questions important to your study are not included in the data. Also, subtleties often matter a great deal in research, and secondary data may get to broader or related questions, but not to the exact question being posed by your research. Thus, you may be looking at particular definitions of concepts such as abuse, depression, or intelligence that may differ greatly from the definitions of such concepts in the survey data. Often, the survey may get to broader conceptualizations, whereas you may be looking for more specific aspects of a concept.

Although I had some input into the 2013 version, when considered in the context of the whole survey, this input was limited (See Section 1 above “Survey Background and Respondent Demographics” and Appendix 4). Importantly, irrespective of this input, the QLSC’s primary purpose for disseminating the survey was not to generate data for this thesis. Using the Survey

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14 Thomas P Vartanian Secondary data analysis (Oxford University Press, 2011) 15-17
15 Ibid, 15.
Data for this thesis was authorised, but subsidiary to the QLSC’s objectives. The result is that the central concepts underpinning the analytical framework are not clearly captured by specific questions. This in turn, ultimately impacts the nature of the analysis of the Survey Data (as the discussion at times becomes necessarily speculative).

For example, if a fresh survey had been designed for this thesis, it could have been useful to rely heavily on Milne’s evidenced-based approach to devise the research questions and construct an analytical framework. Another shortcoming of the survey design, beyond my control, related to matching supervisors with supervisees. Although respondents included both supervisors and supervisees, they did not complete the same questions. Supervisees were given greater scope to communicate their experiences in an open-ended personalised way. Secondly, while this thesis considers the supervisory relationship, it was not possible to match responses for both parties in a specific supervisory relationship. The end result is a potential bias favouring the supervisee’s perspective.

Therefore, rather than pinning particular aspects of the data to specific measurable variables, the data is analysed through the broad lens of the concepts underpinning the analytical framework (i.e. “functions of supervision”, “supervisory relationship” and “the supervisory context”).

Vartanian also relevantly notes that:

Secondary data may subvert the research process by “driving the question,” or only looking at questions that can be answered by the available data. Researchers need to keep in mind that this sort of approach may be appropriate for doing exploratory work and for developing hypotheses, but not for testing hypotheses.  

It is for this reason that the analytical framework is framed in terms of “issues” (with underlying concepts) rather than variables or hypotheses. In addition, it is for this reason the quantitative data is primarily descriptive in nature with very limited use of inferential statistics (see subsection (C) below “Quantitative Methods”). In particular, inferential statistics are only used in relation to isolating differences between two groups of supervisees – those completing Supervised Legal Practice and those have already completed it. This was one of the few areas

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16 Ibid, 17.
where I had input into the survey design (see Section 1 above “Survey Background and Respondent Demographics” and Appendix 4) and where the question clearly drives the analysis. For this reason, I argue that the use of inferential statistics for this particular issue is appropriate.

In addition to these specific problems associated with secondary analysis, the Survey Data inevitably suffers from self-selection or non-response bias. The effect of non-response in survey research is largely unknown.\textsuperscript{17}

For all these reasons combined, the extent to which any findings or observations derived from the data analysis are generalizable is limited. In this regard, the utility of this type of data analysis in terms of drawing inferences is limited to:

- where ‘the patterns and relationships in the data are so strong that it is unlikely they could be explained any other way’;\textsuperscript{18} and
- ‘to throw doubt on theories where patterns and relationships in the data are completely inconsistent with that theory’.\textsuperscript{19}

With these cautionary remarks in mind, I now turn to the data analysis steps and methods used in the second part of this thesis.

\textbf{(b) Preliminary Steps}

- Survey Data (2011 & 2013 versions) transferred to my Survey Monkey account
- 19 October 2015 –Review Number of Responses.
  - The 2013 version yielded 372 responses. A filter was applied to show responses collected during the planned collection period (NOV - DEC 2013). This reduced the total responses to 359. It is not clear who and on what basis the later responses were completed – therefore they were removed from analysis. The total of 359 is one less than that reported by LSC on the Website. This is because one respondent subsequently re-entered and modified their responses after publication of the results. Therefore, this response was removed from analysis.

\textsuperscript{17} Floyd J Fowler, \textit{Survey Research Methods} (Sage Publications, 2009) 48-68.  
\textsuperscript{19} Ibid.
The 2011 version yielded 504 responses. A filter was applied to show responses collected during the planned collection period (APRIL - MAY 2011). This reduced the total responses to 432. Again it is not clear who and on what basis the later responses were completed – therefore they were removed from analysis. The total of 432 is two less than that reported by LSC on the Website. This is because two respondents subsequently re-entered and modified their responses after publication of the results. Therefore, these responses were removed from analysis.

- 20 October 2015 – 2013 version “All responses data” exported to SPSS file.
- 3 November – 2013 version data cleaned. Responses where no useful data (i.e. did not progress past the first page of the survey) were removed. A total of 77 responses fell into this category.
- 5 November – 2011 version data cleaned. Responses where no useful data (i.e. did not progress past the first section (Qu 1-10) of the survey which contained only demographic questions) were removed. A total of 25 responses fell into this category.

(c) Quantitative Methods

The quantitative data enables ‘descriptive research’ which is ‘conducted with the goal of exploring the attributes of a phenomenon or the possible relationship between variables’.[20] Here the relevant phenomenon is supervision practices in Queensland law firms and there are a range of variables associated with the perceptions, attitudes and practices of the respondents. This aspect of the research includes ‘descriptive statistical analysis’ in order to obtain ‘summary indicators and the relationship between variables in a group’.[21]

In addition, there is also limited use of ‘inferential statistical analysis’ to test for ‘differences between group means...’.[22] This method of analysis is used in Chapter VIII to test for differences between two groups of supervisees – those completing Supervised Legal Practice and those have already completed it.

[21] Ibid.
[22] Ibid 24.
(d) Qualitative Methods

For the qualitative data, I have utilised a combination of ‘categorical strategies’ and ‘contextualising strategies’. The ‘categorical’ strategies are used in Chapters VII in order to ‘breakdown the narrative into smaller units and then rearrange those units to produce categories that facilitate a better understanding of the research question.’ In Chapter VII, the relevant ‘narrative’ is the experience of supervisees and I analysed the relevant qualitative data, using the seven-step typical phases described by Marshall and Rossman, as a guide. The following is a summary of the analytic procedures that I carried out:

i. Data Organisation – The data was already largely organised in useable format in the online survey software platform.

ii. Data Immersion – All responses were read and then re-read for the purposes of understanding general trends and assisting with theme identification.

iii. Identify Themes – Reoccurring ideas and similar responses were analysed and provisional themes were developed. Tentative conclusions made regarding the respective importance of emerging themes.

iv. Data Coding – Each response was categorised and tagged according to one of more of the themes.

v. Further Analysis and Linkages – The various themes were then considered in light of each other and themes were categorised as follows:
   - “Key Themes” being ideas and sentiments that consistently arose and were of obvious importance.
   - “Secondary Themes” being ideas and sentiments that consistently arose and were of significance but to a lesser extent than the Key Themes.
   - “Subsidiary Themes” being other important ideas and recurring responses.

Key Themes and Secondary Themes were developed by amalgamating similar provisional themes. Where appropriate, Subsidiary Themes were linked to a Key Theme and/or a Secondary Theme and the relationship, if any, between Key Themes and Secondary Themes considered.

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23 Ibid, 25.
24 Catherine Marshall and Gretchen B. Rossman, Designing Qualitative Research (SAGE, 2011).
vi. Synthesis – The results and themes for each question were revisited in light of the corresponding analysis for all other questions with the view of identifying further linkages or inconsistencies.

vii. Finding Summary – A summary of the findings is presented in the form of tabulated themes, sub-themes and linkages.

The qualitative component of Chapter VIII – which focusses on newly admitted lawyers completing Supervised Legal Practice – adopts a composite or ‘holistic’ strategy to ‘interpret narrative data in the context of a coherent whole...’ 25 In particular, discrete qualitative responses for a selection of newly admitted lawyers completing Supervised Legal Practice were merged together and analysed as a whole. This qualitative data was then used to construct profiles of those supervisees and their relationship with their supervisor. This process, in turn provides a more complete picture of a selection of supervisory relationships.

**Emphasis on the 2013 Version**

Both versions of the Survey provide a rich source of descriptive-quantitative and qualitative data. This thesis places an emphasis on the 2013 version for the following reasons:

- The 2013 version is more recent and therefore the data is likely to accurate in terms of any recent changes in practice and perceptions.
- A focus of this thesis is newly admitted lawyers completing Supervised Legal Practice. The 2011 version was not prepared with this in mind and does not allow for an accurate isolation of this variable.
- Results for the 2011 version were made publicly available prior to the commencement of this thesis. In the interests of maintaining the integrity of this research project, especially in terms of identifying base-line quantitative data within the framework of this thesis, the 2013 version is more appropriate.

For these reasons, in relation to the quantitative components, the data from the 2013 version is elevated to that of primary data source with the data from the 2011 version being relegated to an additional source of data. Therefore, only the results to the 2013 version are included in the body of this thesis. Data from the 2011 version is only used to validate or verify base-line observations. In relation to the qualitative open-ended questions, which allow an exploration

25 Teddie and Tashakkori, above n 20, 25.
of particular experiences and themes (as opposed to making general observations), a more liberal approach has been taken with responses from both versions being incorporated into the analysis. Unless otherwise indicated, all references to the Survey Data or particular questions, in this thesis, are references to the 2013 version.

... The remainder of this chapter is guided by the first of three issues identified at the conclusion of Chapter V:

**Issue 1– With a focus on risk management and monitoring, it appears that the main objective or function of supervision in legal practice is ‘normative’ in nature. The attitudes of legal practitioners in relation to supervision and/or other factors in legal practice potentially impede fulfilment of ‘formative’ and ‘restorative’ objectives of supervision.**

This chapter focuses on the perceptions of supervisors and supervisees regarding the nature, purpose and functions of supervision in legal practice. In this regard, the literature indicates that:

- Supervision is perceived primarily as a risk management tool and that monitoring the work and conduct of junior lawyers is the dominant supervisory activity;
- Supervisors do not necessarily consider it their role to provide training and support to junior lawyers;
- Supervisees suffer from a lack of training and support from their supervisors; and
- Organisational factors constrain the time given to, and nature of, supervision provided.

The Survey Data, used in the remainder of this chapter, is presented and discussed across three sections. They are:

- **Part B** - The Functions of Supervision: Supervisors’ Perceptions
- **Part C** – Adding Supervisees to the Mix: Comparing Supervisor and Supervisee Perceptions
- **Part D** - Organisational Issues Impacting Supervision Practices

**Part E** – will conclude this chapter by providing a response to the following questions:

- In What Ways do the Results Align with the Literature?
- In What Ways Do the Results Differ?
- What other Observations Are Relevant?
As identified by Issue 1, supervision in legal practice functions primarily on a normative level. In particular, according to the practice management literature, supervisors perceive their role as being primarily concerned with monitoring work, in a way that prevents mistakes and increases profitability. This part of the chapter presents aspects of the Survey Data that relate to how supervisors perceive supervision in terms of its focus, role, objectives or functions. These aspects of the Survey Data are organised across the following sections:

1. Focus of Supervision
2. Supervisors’ Views on the Purpose of Supervision
3. Characteristics of Supervision Provided
4. Supervisor Activities
5. Supervisor Responsibilities
6. Supervisors’ Perceived Functions of Supervision.

Collectively, these responses provide evidence on the extent to which actual supervision practices in day-to-day legal practice, according to supervisors, fulfil the three core supervisory functions. These three functions are normative (managerial), formative (educative) and restorative (supportive) and are central to Milne’s definition of supervision.

1 Focus of Supervision

Question 22 asked supervisors to self-report what they considered was the focus of their supervision. Respondents were asked to rank a number of factors using a five point Likert-type scale (with “1 – Not at all” being the lowest and “5- A Great Deal” being the highest”). The mean for each factor is shown in Table 6-1 immediately below.

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26 The legal practice management literature was covered in Chapter III Part B.
27 See Chapter V Part B (3).
Using the mean score for each factor, “Potential Risks” ranked as the number one focus while “Productivity and Time Recording” and “Billing” ranked as the two factors least focussed on. This was also the case for the corresponding question in the 2011 survey. The high mean-score for “Potential Risks” is unsurprising given the high degree of focus on risk management apparent in the legal practice management literature, and the focus on discipline rather than development in the regulatory framework. The low rank of “productivity and time recording” and “billing” are surprising given the apparent link between supervision, leverage and profitability uncovered in the legal practice management literature. These issues will be revisited in Part D below.

These questions also allowed respondents to enter other factors that were a focus of their supervision. The open-ended component of this question yielded five comments. Given the small number, all of these comments are set out below:

1. “No Ethical issues have arisen, thankfully”
2. “Ours is an administrative role”
3. “My organisation is quasi government and does not bill time”
4. “Style of drafting and advising is also important, as is the extent to which the advice is pragmatic and practical and not just a legal answer that ticks legal boxes”
5. “The answers to this question could be deceptive”

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28 See Table 6.1A in Appendix 4.
29 See Chapter II Part G.
Most of these responses fail to add any useful insight and are somewhat cryptic (especially #5). The exception is response #4, which refers to “style”. Incidentally, this emerges as a recurring issue for supervisees and Chapter VII addresses this issue in detail.

2 Supervisors’ Views on the Purpose of Supervision

Question 23 addressed supervisor perceptions in relation to how they viewed the purpose of supervision. In addition, it also asked supervisors whether they considered supervision as “additional” to their main role. It is possible to link five of the six sub-components of the question with one, or more, of the three main functions of supervision. This linkage is contestable and is an example of how the interpretation involves a degree of speculation given these questions were not designed specifically for the purpose of this research. Notwithstanding this I argue that these sub-components can be linked to the three main functions of supervision as follows:

- Mentoring Tool = Restorative and Formative Functions
- Educational Tool = Formative Function
- Identifying & Confronting Supervisee Problems = Restorative and Formative Functions
- Management Tool = Normative Function
- Legal Responsibility = Normative Function

With this in mind, the responses to question 23 are outlined below in Table 6-2:

<table>
<thead>
<tr>
<th>2013 Question 23 - Do you view supervision principally as</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>A mentoring tool</td>
<td>94.69%</td>
<td>5.31%</td>
</tr>
<tr>
<td>An educational tool</td>
<td>91.89%</td>
<td>8.11%</td>
</tr>
<tr>
<td>A means of identifying and confronting problems that arise in your supervisees’ work</td>
<td>87.39%</td>
<td>12.61%</td>
</tr>
<tr>
<td>A management tool</td>
<td>86.11%</td>
<td>13.89%</td>
</tr>
<tr>
<td>A legal responsibility</td>
<td>85.19%</td>
<td>14.81%</td>
</tr>
<tr>
<td>Additional to your main role</td>
<td>57.29%</td>
<td>42.71%</td>
</tr>
</tbody>
</table>
These results, somewhat unexpectedly, indicate that supervisors view supervision principally as a mentoring tool, followed by an educational tool and then a management tool. The results for the 2011 version of the Survey were broadly consistent with this analysis. As a separate but noteworthy point, the majority of supervisors considered supervision is “additional” to their main role. This question also contained an open-ended component inviting supervisors to comment on the reason for their response. The open-ended component of the Question yielded 12 comments, all of which are set out below:

1. Supervision provides learning on the job for both the supervisor and supervisee, while achieving customer service

2. The importance of supervision is to ensure that the firm employs good lawyers

3. Supervision is equally a management tool, necessary to meet my and the firm’s legal responsibilities and an opportunity to educate, mentor and grow better lawyers.

4. I see my role as primarily being to develop my supervisees into the best professional that they can be, which involves technical training and personal mentoring. Other aspects (such as management of problems) should flow through that development as a natural result.

5. You cannot be successful as a lawyer unless you build a team around you that is effective and capable, supervision leads to mentoring, which in turn leads to a strong team. It is an essential tool.

6. Supervision is integral part of my main role due to the nature of our service. The work we do cannot be carried out efficiently in the absence of supervised staff.

7. If my support staff don’t get their work done with my supervision I am responsible for the work not being completed

8. I think supervision is all of those things except “additional to my role … I am the principal of the firm and supervision is therefore quite central to my role … it is not an “extra” duty.

9. Supervision and mentoring is at the core of the firm leaders’ objectives.

10. Duty to the court, best interest of client, fiduciary duty to employer and collegiate responsibility to another more junior professional

11. I see supervision as a hallmark of myself as a member of a profession; it is a contribution society rightly asks me to make to the development of new lawyers

12. Staff are encouraged to self-educate where appropriate or are referred to training if required

---

30 See Table 6.2A in Appendix 4.
Generally, these qualitative responses embellish the findings set out in Table 6-2, to the extent they provide a range of views indicating supervisors, at least notionally, view supervision as being something that is broader than risk management and monitoring. Also present in these responses is, what was expected to be the prevailing view, that training and support are separate from the supervisory process (e.g. see Response #12).

The responses to Question 23, both quantitative and qualitative, are unexpected for two reasons. Firstly, according to the legal practice management literature, mentoring is treated as being separate from supervision. Secondly, mentoring is closely associated with the formative and restorative functions of supervision and Issue 1 posits these functions as impeded by a focus of the normative function. Secondly, this result is somewhat inconsistent with the responses to Question 22 outlined in the preceding section, which, in accordance with Issue 1, indicated that normative aspects of supervision are dominant.

It is not clear exactly why this is the case; however, arguably it may be a matter of aspirations versus actuality. In other words, while supervisors may hold certain views about what the principal focus of supervision ought to be, other prevailing factors prevent supervisors from carrying out their supervisory activities in a way that is consistent with such view. This explanation is supported by comparing the wording of Question 22, which asked supervisors what “they” focussed on in “their” supervision. In that question “potential risks” ranked as the principal focus. In contrast, Question 23 asked, in general terms, “do you view”, and this contributed to supervisors viewing supervision principally as a mentoring tool.

However, it is necessary to consider other relevant aspects of the Survey Data before concluding that this discrepancy between the literature and the Survey Data can be explained in terms of aspirations misaligning with actual practice.

3 Characteristics of Supervision Provided

Question 25 asked supervisors to rank a number of statements using a Likert-type scale (with “1 – Not at all” being the lowest and “5- A Great Deal” being the highest). The statements required supervisors to consider the characteristics of the supervision they provided. This question differed from the questions covered in subsections 1 and 2 above in that supervisors were
required to self-assess their supervision in terms of actual activities, as opposed to general notions. The means for each statement are shown in Table 6-3 below.

<table>
<thead>
<tr>
<th>2013 Qu 25 - Supervisors- How descriptive are the following statements of the supervision that YOU provide?</th>
<th>Mean Statistic (Out of 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I pass on my knowledge and experience to my supervisees</td>
<td>4.44</td>
</tr>
<tr>
<td>I demonstrate fairness in my dealings with all staff, whether they are my supervisees or not</td>
<td>4.43</td>
</tr>
<tr>
<td>I demonstrate openness and honesty in my work</td>
<td>4.37</td>
</tr>
<tr>
<td>I safeguard the interests of the client</td>
<td>4.34</td>
</tr>
<tr>
<td>I work collaboratively with my supervisees</td>
<td>4.17</td>
</tr>
<tr>
<td>I provide both positive and constructive critical feedback</td>
<td>4.16</td>
</tr>
<tr>
<td>I help my supervisees to develop technical skills</td>
<td>4.08</td>
</tr>
<tr>
<td>I teach my supervisees about being ethical</td>
<td>4.08</td>
</tr>
<tr>
<td>I demonstrate patience and flexibility with my supervisees</td>
<td>4.00</td>
</tr>
<tr>
<td>I contribute to the personal growth of my supervisees</td>
<td>3.84</td>
</tr>
<tr>
<td>I focus on solving critical issues and problems that arise for my supervisees</td>
<td>3.76</td>
</tr>
<tr>
<td>I closely manage cases</td>
<td>3.53</td>
</tr>
<tr>
<td>I teach my supervisees to become lawyers</td>
<td>3.41</td>
</tr>
<tr>
<td>I provide emotional support to my supervisees</td>
<td>3.39</td>
</tr>
<tr>
<td>I maintain a professional distance from my supervisees</td>
<td>3.30</td>
</tr>
</tbody>
</table>

The statement “I pass on my knowledge and experience to my supervisees” ranked highest. This is a further acknowledgement of the formative function of supervision. On the other end of the scale, the statement “I provide emotional support to my supervisees” ranked very low. This arguably provides evidence that supervisors shy away from the restorative function of supervision. Similarly, although supervisors apparently view supervision primarily as a mentoring tool, the statement “I contribute to the personal growth of my supervisees” ranked
in the bottom half. These aspects of the results were consistent for the corresponding question in 2011 version of the Survey.  

4  Supervisor Activities

Question 27 asked supervisors to review a list of methods relating to supervision and tick which ones they applied systematically. The results are set out below in Table 6-4 below.

<table>
<thead>
<tr>
<th>2013 Qu 27 – Supervisors – How Do You Supervise?</th>
<th>% of Respondents who indicated they do these activities systematically</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have an open door policy and staff come to see me when they have problems</td>
<td>96.40%</td>
</tr>
<tr>
<td>I review work done and allocate new work</td>
<td>76.58%</td>
</tr>
<tr>
<td>I update and share information with staff in my office</td>
<td>73.87%</td>
</tr>
<tr>
<td>I monitor staff for fatigue, stress and other problems</td>
<td>56.76%</td>
</tr>
<tr>
<td>I review/check all communications</td>
<td>51.35%</td>
</tr>
<tr>
<td>I identify my supervisees' training needs</td>
<td>45.95%</td>
</tr>
<tr>
<td>I review central risk indicators (eg no time recorded on file, unbilled files, long hours, excessive time entries)</td>
<td>44.14%</td>
</tr>
<tr>
<td>I meet the training needs of my supervisees, or ensure they are met</td>
<td>37.84%</td>
</tr>
<tr>
<td>I set aside a regular time to review workloads, prioritise work and deal with problem cases</td>
<td>34.23%</td>
</tr>
<tr>
<td>I inspect all files at regular intervals</td>
<td>34.23%</td>
</tr>
<tr>
<td>I implement workflow systems to ensure or assist process compliance</td>
<td>33.33%</td>
</tr>
<tr>
<td>I inspect sample client files at regular intervals</td>
<td>29.73%</td>
</tr>
<tr>
<td>I monitor how staff engage in peer file review</td>
<td>23.42%</td>
</tr>
<tr>
<td>I only inspect problem client files</td>
<td>6.31%</td>
</tr>
</tbody>
</table>

The most common reported method of supervision was having an “open door policy” (96.40%). The widespread adoption of the open-door policy as a catch-all supervision method has been reported elsewhere in complementary research I completed during the course of this thesis.  

31 See Table 6.3A in Appendix 4.
32 See Jeff Giddings and Michael McNamara ‘Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do with It?’ (2014) 37(3) UNSW Law Journal 1226, 1250-1252. This research is noted in the “Acknowledgements” section at the beginning of this thesis.
Further to those findings, the following comments are relevant to this discussion. The open-door policy arrangement involves proactivity on behalf of the supervisee and reactivity of behalf of the supervisor. This type of arrangement is unlikely to adequately fulfil any supervisory function unless there is an existing, open and strong supervisory relationship, which has already been developed by a supervisor taking a proactive approach to supervision. In addition, even if there is an existing open relationship, this approach does not appear to focus on or facilitate any learning or development, rather, assumes ad-hoc availability to resolve problems as they arise. In this case, unless supervisors are skilled at identifying and capitalising on opportunities for experiential learning in the ordinary course of daily legal practice, it is likely that the resulting supervision will be limited to normative aspects.

The second most common reported method of supervision applied systematically was “I review work done and allocate new work” (76.58%). This method aligns with the normative aspects of supervision and is really just a form of administration. This is an expected result given the predominance of the monitoring aspect of supervision detailed in the legal practice management literature. The third most common reported method of supervision, “I update and share information with staff in my office” (73.87%), also clearly relates to the normative aspects of supervision. Together this indicates that the most common supervisory methods, including the general notion of an open-door policy, are linked to the normative functions of supervision.

Two of the methods considered in this question provide additional insight regarding the extent to which supervisors enable the formative function of supervision. Less than half the supervisors (45.95%) ticked “I identify my supervisees' training needs” as a systematic component of their supervision. This portion dropped further (37.84%) in relation to “I meet the training needs of my supervisees, or ensure they are met”.

Finally, there was a strong acknowledgement of the need to “monitor staff for fatigue, stress and other problems” with this method reported as being applied systematically by 56.76% of supervisors. However, the extent to which supervisors address these matters, beyond merely “monitoring” is uncertain.

The results for the 2011 version of the Survey are consistent with the above analysis.33

33 In particular, the ranking and ordering of these factors was almost identical, however, the actual percentages differed. See Table 6.4A in Appendix 4.
5 Supervisor Responsibilities

Question 28 also provides some insight into the perceived functions of supervision according to supervisors. Supervisors were asked to rank a number of statements, relating to their supervisory responsibilities using a Likert-type scale. The results are set out in Table 6-5 below.

| 2013 Survey Question 28 – Supervisors - As a supervisor I have responsibility for … | Mean Statistic (Out of 5) |
|  | (A higher mean indicates a greater perceived focus on that particular factor) |
| Ensuring that supervisees know that I will attempt to deal with or rectify any serious mistakes they have made | 4.51 |
| Ensuring that supervisees know they can tell me about serious mistakes they have made | 4.50 |
| Ensuring that my supervisees know I will support their attempts to deal with or rectify any serious mistakes they have made | 4.44 |
| Being a role model to demonstrate good practice | 4.36 |
| Keeping an “open door policy” and ensuring I am available when needed | 4.34 |
| Being vigilant in file management so serious mistakes are avoided | 4.25 |
| Ensuring that any expressions of client dissatisfaction are brought to my attention | 4.23 |
| Assigning tasks that fit my supervisees’ level of skill and experience | 4.19 |
| Assigning tasks that are appropriate and meaningful to my supervisees | 4.05 |
| Ensuring that supervisees adhere to the firm’s complaint management policy | 3.53 |
| Checking my supervisees’ wellbeing | 3.48 |

The issue of “mistake handling” was perceived as being very important. The three highest ranking perceived responsibilities related to this issue. These perceived responsibilities are associated with the normative function of supervision. This was also the case for the corresponding question of the 2011 survey.\(^{34}\)

\(^{34}\) See Table 6.5A in Appendix 4.
The following three responsibilities relate most obviously to the training and development of supervisees (or the formative function of supervision):

- Being a role model to demonstrate good practice
- Assigning tasks that fit my supervisees' level of skill and experience
- Assigning tasks that are appropriate and meaningful to my supervisees

The first, which is perhaps more aspirational and less practical than the second and third, ranked fourth highest. The second and third, which relate to suitable activities to actually enable training and development ranked significantly lower (both in the bottom half of the perceived responsibilities).

The lowest ranking perceived responsibility was “Checking my supervisees’ wellbeing”. This was also the case for the corresponding question of the 2011 survey. This perceived responsibility sits clearly within the restorative function of supervision.

The responses to this question also re-enforced the perceived importance of the “open door policy”. Supervisors seemed strongly in their view that “keeping an open door policy” was part of their “responsibility” as supervisor. Arguably the perceived importance of the open door policy which was also revealed in the responses to Question 27 (see Table 6.4 above) stem from a belief that this is part of responsible risk management, as opposed to any belief that this is an effective or efficient way of facilitating the supervisory relationship.

6 Supervisors’ Perceived Functions of Supervision

In terms of the focus, activities and responsibilities of supervision, there are strong indications in the data that supervisors are primarily engaging in an administrative or managerial role, which focuses on monitoring, reviewing and eliminating mistakes. In other words, supervisors perceive themselves as primarily enabling the normative function of supervision. This finding is consistent with the findings from Chapters II and III that supervision in legal practice is focussed on monitoring and risk management. However, the data reveals a more complex situation regarding the formative and restorative functions of supervision than anticipated.

35 Ibid.
Most supervisors also perceive their role as including a training and development dimension (i.e. a formative function). In this regard, supervisors clearly acknowledge and accept the formative functions of supervision. However, the formative function of supervision does not appear to be enabled in actual practice to the extent that it is recognised. This issue is revisited in the remainder of this chapter.

Supervisor perceptions in relation to the restorative function of supervision appear muddled. On the one hand, there is almost universal acknowledgement of the mentoring aspects of supervision, which seems to straddle both the formative and restorative functions of supervision. There are also clear indications in the data that supervisors perceive supervision as requiring cognisance of matters relating to stress and coping. However, supervisors do not seem to perceive their role as including the taking of any active steps in relation to emotional support or supervisee well-being. In this regard, there are virtually no indications in the data that the restorative function of supervision is enabled in any meaningful way. This issue is revisited in the synthesis in Chapter IX.

C Adding Supervisees to the Mix: Comparing Supervisor and Supervisee Perceptions

Some of the questions in the supervisor-only component of the Survey had corresponding, but separate, questions in the supervisee-only component of the survey. This Part C will present the responses to those questions. The survey data presented in this section will provide:

- Further support for the literature indicating the perceived dominance of the normative function of supervision; and
- Some evidence of a discord between supervisor and supervisee perceptions regarding the restorative (or support) function of supervision.

1 Focus of Supervision

Question 43 asked supervisees to self-report on what they considered was the focus of the supervision they received. Respondents were asked to rank a number of factors using a five point Likert-type scale (with “1 – Not at all” being the lowest and “5- A Great Deal” being the highest”).

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As covered in Part B above, supervisors were asked a corresponding question (Question 22). For supervisors, the question referred to supervision given. For supervisees the question referred to supervision received. As such a direct statistical comparison, as would be done if supervisors and supervisees were asked the same question, was not feasible. Even still, besides this minor difference, the two questions were virtually identical and placing the results side by side allows for a visual comparison of the results. Table 6-6 below provides a summary of results for both the supervisor and supervisee question. The same five point Likert-Type scales were used for both questions and the mean, for each factor has been calculated.

<table>
<thead>
<tr>
<th>TABLE 6-6 – Focus of Supervision – Comparison on Supervisor and Supervisee Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Qu 22 - Supervisors – To what extent do you focus on the following in your supervision</td>
</tr>
<tr>
<td><strong>Mean Statistic (Out of 5)</strong></td>
</tr>
<tr>
<td>(A higher mean indicates a greater perceived focus on that particular factor)</td>
</tr>
<tr>
<td>Potential risks</td>
</tr>
<tr>
<td>Client relationship management and service</td>
</tr>
<tr>
<td>Ethical behaviour</td>
</tr>
<tr>
<td>Timely processing of matters</td>
</tr>
<tr>
<td>How your supervisee is coping</td>
</tr>
<tr>
<td>Application of legal reasoning</td>
</tr>
<tr>
<td>Compliance with your firm’s systems</td>
</tr>
<tr>
<td>Productivity and time recording</td>
</tr>
<tr>
<td>Billing</td>
</tr>
</tbody>
</table>

Supervisees ranked “Potential Risks”, followed by “Client Relationship Management and Service” as the two factors most focussed on. “Potential Risks” was also the number one focus according to supervisors. This result is unsurprising and provides further support that the prevailing approach to supervision in legal practice is centred on risk management.
The first difference between the results is that, for all the factors considered, the supervisor responses yielded noticeably higher mean scores. Arguably, supervisors were more optimistic regarding the extent to which their supervision could properly cover a range of functions. Alternatively, supervisors may simply be clearer in their sense of purpose.

Secondly, both supervisors and supervisees ranked “Potential Risks” and “Client Management and service” as the two highest factors. However, the relative perceived importance of other factors varied. In particular, supervisors ranked the following two factors clearly and obviously higher than supervisees did: “Ethical Behaviour” and “How your supervisee is coping”. Conversely supervisees ranked “Application of legal reasoning” higher than supervisors did. “How your supervisee is coping” was clearly the least focussed on factor according to supervisees. Supervisees ranked this factor significantly lower than supervisors did. This could be explained in terms of supervisors thinking they are communicating a particular message, which may ultimately be received, or interpreted by a supervisee, differently than intended. This it turn may be symptomatic of a wider dissonance in perceptions, an issue that is revisited below.

2 Supervisors According to Supervisees

Question 45 asked supervisees to rank a number of statements, relating to their supervisor, using a Likert-type scale (with “1 – Not at all” being the lowest and “5 - A Great Deal” being the highest). The results are shown in Table 6-7 below.
The statement “Requires me to take responsibility for my work” rated highest. This is a particularly interesting result since, according to supervisors, the most commonly encountered supervisee related obstacle in supervision is a failure by some supervisees to take responsibility. Together these results indicate a mismatch of expectations regarding the level of supervisee responsibility.

The supervisor component of the Survey contained a corresponding question (Question 25, the results to this question are presented in full in Table 6-3 above). Although the factors detailed in each question were not identical, some points of comparison are possible. Of the commonly considered statements, the largest disparity appears to be in relation to the extent to which supervisors “pass on knowledge and experience to supervisees”. This was the highest rated statement by supervisors, however, supervisees ranked this statement much lower and it appeared in the bottom half of responses. There was a similar but less pronounced disparity in relation to the extent to which supervisors assist supervisees “develop technical skills”.

<table>
<thead>
<tr>
<th>2013 Survey Question 45 – How descriptive are the following statements of your supervisor?</th>
<th>Mean Statistic From 1 (Not at All) to 5 (A great deal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires me to take responsibility for my work</td>
<td>4.41</td>
</tr>
<tr>
<td>Treats me fairly</td>
<td>4.32</td>
</tr>
<tr>
<td>Models ethical conduct and practice</td>
<td>4.21</td>
</tr>
<tr>
<td>Has a collaborative relationship with me</td>
<td>4.18</td>
</tr>
<tr>
<td>Focuses mainly on the best interests of our clients</td>
<td>4.11</td>
</tr>
<tr>
<td>Helps me achieve ethical conduct and practice</td>
<td>4.10</td>
</tr>
<tr>
<td>Maintains a professional distance from me</td>
<td>4.00</td>
</tr>
<tr>
<td>Demonstrates patience and flexibility with me</td>
<td>3.98</td>
</tr>
<tr>
<td>Helps me to become better at what I do</td>
<td>3.96</td>
</tr>
<tr>
<td>Is passing on to me his or her knowledge and experience</td>
<td>3.93</td>
</tr>
<tr>
<td>Focuses on solving critical issues and problems that arise for me</td>
<td>3.82</td>
</tr>
<tr>
<td>Helps me to develop my technical skills</td>
<td>3.77</td>
</tr>
<tr>
<td>Promotes my personal growth</td>
<td>3.58</td>
</tr>
<tr>
<td>Provides me with emotional support when needed</td>
<td>3.33</td>
</tr>
<tr>
<td>Closely manages my work</td>
<td>3.23</td>
</tr>
</tbody>
</table>
“Closely manages my work” rated lowest by supervisees. Supervisors also ranked the statement, “I closely manage cases” on the lower end of the scale, but clearly higher than the equivalent supervisee statement. Once again, this points to a mismatch of expectations. It is also interesting given the extent to which, as uncovered in Part B above, supervisors focus on risk management and monitoring aspects of supervision. Overall, the level of monitoring and risk management does not seem to translate to a perception of favourable case management.

Generally, supervisees responded positively in terms of being treated fairly and their supervisor working ethically and collaboratively. This was largely consistent with supervisors’ self-assessment of their own supervision. These responses indicate the importance of having a collaborative relationship. These sentiments are of course an overall reflection and there are a number of instances in which “fairness” and collaboration” were absent from the supervisory relationship. The results for the 2011 version of the survey are consistent with this analysis.36

3 Aims of Supervision

Question 53 was the only question which directly related to the functions of supervision and which was directed at all respondents – supervisors and supervisees - alike. Question 53 asked all respondents to rate the importance of a list of possible aims for supervision using a Likert-type scale (with “1 – Not very important” being the lowest and “4- Very Important” being the highest”). Further, Question 11 asked all respondents whether they were supervising others, being supervised or both. This allowed cross-tabs to be created for Question 53, according to supervisory status. A summary of the results for Question 53 together with the cross-tabs by supervisory status are presented in Table 6-8 below. The mean score for each factor is displayed with separate columns for: the overall results, supervisor only results, supervisor and supervisee results, and supervisee only results. The factors are arranged according to the means for the overall scores from highest to lowest.

36 See Table 6-7A in Appendix 4.
Table 6-8 – Aims of Supervision
2013 Survey Question 53 – How would you rate the following aims of supervision –
Comparison by Supervisory Status (Out of 4)

<table>
<thead>
<tr>
<th>Mean Scores - A Higher mean indicates greater perceived importance</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Both a Supervisee and Supervisor</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhancing quality</td>
<td>3.59</td>
<td>3.67</td>
<td>3.63</td>
<td>3.53</td>
</tr>
<tr>
<td>Risk management</td>
<td>3.58</td>
<td>3.67</td>
<td>3.65</td>
<td>3.50</td>
</tr>
<tr>
<td>Promoting ethical practices</td>
<td>3.56</td>
<td>3.65</td>
<td>3.65</td>
<td>3.47</td>
</tr>
<tr>
<td>Encouraging work practices that are sustainable in the long-term</td>
<td>3.55</td>
<td>3.52</td>
<td>3.63</td>
<td>3.50</td>
</tr>
<tr>
<td>Discouraging bad workplace conduct such as bullying</td>
<td>3.50</td>
<td>3.41</td>
<td>3.63</td>
<td>3.47</td>
</tr>
<tr>
<td>Mentoring junior staff</td>
<td>3.44</td>
<td>3.48</td>
<td>3.47</td>
<td>3.41</td>
</tr>
<tr>
<td>Monitoring workloads</td>
<td>3.38</td>
<td>3.39</td>
<td>3.40</td>
<td>3.37</td>
</tr>
<tr>
<td>Managing employee wellbeing</td>
<td>3.32</td>
<td>3.28</td>
<td>3.27</td>
<td>3.37</td>
</tr>
<tr>
<td>Fostering resilience in employees</td>
<td>3.24</td>
<td>3.33</td>
<td>3.32</td>
<td>3.16</td>
</tr>
<tr>
<td>Identifying and supporting staff facing personal difficulties</td>
<td>3.08</td>
<td>3.16</td>
<td>3.02</td>
<td>3.09</td>
</tr>
</tbody>
</table>

This direct comparison of supervisor and supervisee perceptions regarding the aims of supervision allow for the following two observations:

(i) Confirmation of the Perceived Dominance of the Normative Function of Supervision in Legal Practice.

These results align with the literature and support the Survey Data already presented in this chapter. In particular, the normative function, especially aspects associated with risk management and monitoring, are the principal focus of supervision in legal practice. In this instance, the factors that closely related to the normative function of supervision - “enhancing quality” and “risk management” - rank highest. This is the case for all respondent groups, supervisors and supervisees alike. The corresponding question in the 2011 survey generated a similar result.37 Arguably “enhancing quality” could be viewed as being aligned with the

37 See Table 6-8A in Appendix 4. The 2011 version of the question was identical except that the factor “managing employee well-being” was not included. This factor was added by the QLSC for the 2013 version.
formative function. A supervisor aiming to enhance quality, as opposed to other possible aims of supervision (e.g. mentoring junior staff) is as much consistent with a managerial outlook as a developmental one. While there is certainly scope for quality control measures to have educational value for supervisees, this would more likely be a result of osmosis and not an intentional process of training. Therefore, while there is certainly some potential overlap, I argue that enhancing quality is more closely aligned with the normative function, rather than the formative function.

In addition, factors closely related to the restorative function of supervision, such as “managing employee well-being”, “fostering resilience” and “identifying and supporting staff facing personal difficulties” ranked at the bottom. This result was also replicated in the 2011 version of the survey. Furthermore, “mentoring junior staff”, which straddles the formative and restorative functions of supervision, ranked in the middle.

(ii) Differences between Supervisor and Supervisees Perceptions

A visual comparison of the results, for each group (i.e. supervisor only, supervisor and supervisee, and supervisee only), shows only minor differences. Overall, there appears to be no clear and obvious difference between the perceptions of supervisors and supervisees regarding the aims for supervision, based on supervisory status. This is corroborated by a similar inspection of the corresponding results for 2011 version of the question.

How then can this result be reconciled with the result regarding the focus of supervision (see analysis of Question 43 and 22 in section 1 above), where significant differences between supervisor and supervisee were observed? Arguably, it seems it is a matter of the construction and purpose of the respective questions. Question 53 (discussed in this section) is aspirational and refers to the aims of supervision. Generally, it seems that in terms of what is expected from supervision, there is no evidence that supervisors and supervisees views differ greatly. However, Question 43 and 42 asked respondents to comment specifically on the supervision that they actually give and receive. In this sense there is an overall discord between supervisor and supervisee perceptions, which is most pronounced in relation to the extent to which supervisors consider how their supervisees are coping (a facet of the restorative function of

\[38\] Ibid.

\[39\] Ibid.
supervision). A perceived lack of empathy from supervisors, and a desire for greater collaboration, seems to underpin this discord.

4 Supervisors and Supervisees: Not Always On the Same Page

Collectively the Survey Data presented in Part B above and this Part C provides clear evidence that, overall, the perceived dominance of the three functions of supervision can be ranked as follows:

- Normative Function - Most Dominant
- Formative Function - Less Dominant
- Restorative Function - Least Dominant

Beyond this general finding, the Survey Data also uncovers the following nuances:

- Supervisors conceive supervision more broadly than the literature indicates they would. In particular, supervisors acknowledge the formative and (to a lesser extent the restorative) functions of supervision as relevant. While the formative function has been labelled as less dominant, that is not to say that it is absent, and the above analysis has shown that its presence is stronger than might have been expected from the existing literature canvassed in Chapter III. However, there is a discord between supervisors’ general (or perhaps aspirational) views regarding the functions of supervision, and the supervision that they actually carry out.

- Consistent with the literature, supervisees perceive the supervision they receive as focussing on risk management and monitoring (i.e. the normative function) but lacking in matters relating to training and support (i.e. the formative and restorative functions of supervision).

- Even though both supervisors and supervisees view the restorative function of supervision as least dominant, their respective perceptions, about how supervisors fulfil this function, misalign. Specifically, there is some evidence suggesting that supervisors’ messages or activities geared at support and ethical behaviour are either ineffective or misunderstood.

D Organisational Issues Impacting Supervision Practices

The literature concerning the professional development of newly admitted lawyers and law firm training (covered in Chapter III Part D) indicates that the legal practice environment stymies the
formative and normative functions of supervision. In particular, in relation to newly admitted lawyers, there seem to be forces external to the supervisory relationship that create an environment where supervisory activities fail to provide sufficient training or interpersonal support. In addition, the clinical legal education literature (covered in Chapter IV) reveals that the demands of legal practice are, at times, incompatible with an educational agenda. The clinical legal education literature also raised the issue of supervision ratios, and how the quality of supervision depends on keeping supervision ratios as low as possible.

This Part D presents aspects of the Survey Data that consider potential restraints that the practice environment places of supervision practices. These aspects of the Survey Data are presented across the following two sections:

- **Obstacles encountered.** Section 1 presents the responses to a series of questions that gave supervisors the opportunity to consider and rank obstacles encountered in their supervision.

- **Supervision Ratios.** Section 2 presents the results to questions that asked supervisors for information about the number of legal and non-legal staff they are responsible for supervising. This aspect of the Survey Data provides some baseline information about supervision ratios.

Collectively, these two parts provide evidence that a number of organisational issues impact the way supervisors engage in supervision.

1 **Obstacles Encountered**

Question 26 listed a number of possible obstacles encountered by supervisors. Respondents were asked to score each of these postulated obstacles based on frequency of occurrence using a Likert-type scale (with “1 – Rarely” being the lowest and “5- Often” being the highest”). A summary of the results for the question is set out for in Tables 6-9 immediately below. The proposed “obstacles” can broadly be categorised as either relating to practice management or supervisee conduct. The exception to this is the lowest rated obstacle – “Having limited interest in managing or supervising others” which relates to a personal characteristic of supervisors. This categorisation of each obstacle is noted in column 3 in Table 6.9 below.
<table>
<thead>
<tr>
<th>Table 6-9 –Obstacles Supervisors Encounter</th>
<th>Mean Statistic</th>
<th>Grouping</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Qu 26 – Supervisors - Do you encounter any of the following obstacles in providing effective supervision? From (rarely) to 5 (often)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Having insufficient time for supervision</td>
<td>2.97</td>
<td>Practice Management or Organisational</td>
</tr>
<tr>
<td>Split supervision- where supervision responsibilities are shared with another supervisor</td>
<td>2.54</td>
<td>Practice Management or Organisational</td>
</tr>
<tr>
<td>Lack of flexibility and options (e.g. to motivate or develop through role changes or work allocation)</td>
<td>2.47</td>
<td>Practice Management or Organisational</td>
</tr>
<tr>
<td>Having supervisees who work hard but not effectively</td>
<td>2.46</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having supervisees who don't take sufficient responsibility</td>
<td>2.33</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Inadequate practice management systems (IT and others)</td>
<td>2.26</td>
<td>Practice Management or Organisational</td>
</tr>
<tr>
<td>Having supervisees who do not follow instructions</td>
<td>2.18</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having supervisees who do not communicate clearly</td>
<td>2.09</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having supervisees who don't understand when to seek advice</td>
<td>2.06</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having supervisees who don't think they need to be supervised</td>
<td>2.04</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Being faced with the consequences of my supervisees having poor experiences with previous supervisors</td>
<td>1.97</td>
<td>Practice Management or Organisational</td>
</tr>
<tr>
<td>Having supervisees who are not effective team members</td>
<td>1.92</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>My supervisees and I having different understandings of what supervision entails</td>
<td>1.90</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having supervisees who lack respect for me and other colleagues</td>
<td>1.74</td>
<td>Supervisee Conduct</td>
</tr>
<tr>
<td>Having limited interest in managing or supervising others</td>
<td>1.73</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Overall, the 2013 results indicate that practice management obstacles were more frequently encountered than obstacles relating to supervisee conduct. However, the 2011 results differed in that overall supervisee conduct obstacles generally ranked higher. Given this lack of substantiation, there are no grounds to explore this point further. However, within these groupings, some other trends emerge.

Insufficient time was clearly the principal obstacle encountered, both overall and for the practice management category. This was also the case for the corresponding question of the 2011 survey. In relation to the supervisee conduct category, “supervisees who work hard but not effectively” followed closely by “supervisees who don't take sufficient responsibility” were the

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40 See Table 6-9A in Appendix 4.
41 Ibid.
most frequently encountered obstacles. This too was also the case for the corresponding question of the 2011 survey.\textsuperscript{42}

In addition, the legal practice management literature argued that the monitoring approach to supervision stems from the perception of supervision as an opportunity cost. In a similar vein, the law firm training literature also indicated that the quality of supervision suffered because of pressure on supervisors to produce billable hours. In addition, the limited previous research reporting on certain aspects of the Survey Data\textsuperscript{43} found that: supervisors struggle to find time for supervision; and supervision duties are subservient to fee-earning duties in terms of allocating time for each.

The responses to this question confirm that finding time for supervision appears to be a significant barrier to effective supervision. However, the exact reason for the lack of time is unclear. Possible reasons are that:

- Supervisors simply do not have enough time for supervision because of other commitments (e.g. billable client work);
- Supervisors do not have the skill set to supervise effectively in the time available. For example, it could be that supervisors are spending too much time on one aspect of supervision (e.g. monitoring) at the expense of another aspect;
- Supervisors are overburdened with supervisees (or in other words, supervision ratios are too high).

The next section will consider other aspects of the Survey Data that considers these issues, especially supervision ratios.

2 Supervision Ratios

Question 5 of the 2013 asked supervisors “How many staff in each of the following groups do you currently supervise?” The results are set out in Table 6-10 below.

\textsuperscript{42} Ibid.

\textsuperscript{43} See Giddings and McNamara, above n 32.
Table 6-10 – Supervision Ratios – Part 1

<table>
<thead>
<tr>
<th>2013 Qu 5 – Supervisors - How many staff in each of the following groups do you currently supervise?</th>
<th>% of Respondents who selected each number grouping</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1-2</td>
</tr>
<tr>
<td>Legal staff</td>
<td>50.00%</td>
</tr>
<tr>
<td>Administrative staff</td>
<td>67.20%</td>
</tr>
<tr>
<td>Fee-earning staff who are not pc holders</td>
<td>85.11%</td>
</tr>
<tr>
<td>Other (eg consultants or contractors)</td>
<td>65.00%</td>
</tr>
</tbody>
</table>

The vast majority of supervisors reported supervising a combination of legal practitioners and non-practitioners. In addition, a majority of supervisors reported supervising only 1-2 legal staff, with a significant minority (27%) supervising 3-4. The corresponding question in the 2011 survey yielded similar results.44 A small minority reported supervising beyond this norm; however, these responses appear to be from senior partners in management positions who may not have been responsible for direct day-to-day supervision. Here, it is important to distinguish between managerial responsibility and direct supervision of employees.

The clinical legal education literature indicated effective supervision in live-client clinics depends on keeping supervision ratios as low as possible and should not be more than six students for every supervisor.45 It is difficult to make any direct comparison to the situation of supervising law students in live-client clinics. However, the general trend from the Survey Data is that the vast majority of supervisors are responsible for supervising within the constraints of the recommended or normal supervision ratios, in live-client clinics.

Questions 6, 7 and 8 of the 2013 version were new questions, not in the 2011 version. I prepared these questions for inclusion in the 2013 version after a preliminary review of the legal practice management literature that indicated that supervision is used as a tool to increase profitability, which is determined by leverage levels. The purpose of including these questions in the 2013

44 See Table 6-10A in Appendix 4
45 See Chapter IV Part C.
version was to try to understand the rationale for team size, and to search for evidence that supervision is subject to pressures stemming from leverage levels and profit demands.

Question 6 asked supervisors to choose between the following statements: “Could you effectively supervise more staff than you currently do? Would your supervision be more effective if you supervised fewer staff? Or do you think you supervise about the right number?” The results are set out in Table 6-11 below.

| 2013 Qu 6 – Supervisors - Could you effectively supervise more staff than you currently do? Would your supervision be more effective if you supervised fewer staff? Or do you think you supervise about the right number? | % of Respondents who selected each response |
|---|---|---|
| - | More | Fewer | The right number |
| Legal staff | 46.61% | 3.39% | 50.00% |
| Administrative staff | 39.52% | 2.42% | 58.06% |
| Fee-earning staff who are not practising certificate holders | 32.31% | 0.00% | 67.69% |
| Other (eg consultants or contractors) | 30.00% | 3.33% | 66.67% |

The majority of supervisors thought they were supervising the right number of supervisees. Exactly 50% of supervisors believed they supervised the right number of legal staff. A significant minority reported that they could supervise additional legal and non-legal staff, with only a small portion reporting their supervision would be more effective if they had fewer supervisees. This result does not clearly align with the literature and responses discussed in section 1 above. If finding time for supervision is a significant pervasive issue, then it is not clear why the vast majority of respondents were not of the view that their supervision could be more effective if they supervised fewer staff. This indicates that ineffective or inefficient supervision processes, as opposed to the quantum of supervisory responsibility may cause the perception of insufficient time for supervision.
This question included an open-ended component, which yielded 20 comments. The following comments reveal a recurring point that is relevant to the present discussion:

“The amount of supervision required of legal staff and administrative staff depends upon the individual’s experience/training. That is, with experienced staff they require very little supervision but trainees require constant supervision”

“The number really depends on the experience of those you supervise. Two of the junior staff I supervise are very new and require a high level of close supervision. This would not be effective if I had any more staff to supervise. However, in the past I have supervised more staff that had more experience and this was quite manageable.”

“Depending on experience and skill set of staff under supervision”

These comments reveal how some supervisors recognise that junior lawyers require closer supervision than senior lawyers do.

Question 7 asked supervisors to consider a number of statements in relation to the administrative staff working under their supervision. Supervisors were required to rank the accuracy of these statements on a Likert-Type scale (from 1 - Not at all to 5 – Very accurate). Question 8 asked the same question but in relation to legal staff. The results are set out in table 6-12 and 6-13 below.

<table>
<thead>
<tr>
<th>2013 Survey Question 7 – Supervisors - How accurate are the following statements in relation to the number of administrative staff working under your supervision?</th>
<th>Mean Statistic (1 - Not at all to 5 - Very accurate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined at a firm-wide level and I have limited personal control over this number.</td>
<td>3.27</td>
</tr>
<tr>
<td>Budgetary controls restrict the number of staff I can have working under my supervision.</td>
<td>3.15</td>
</tr>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined primarily by me according to how much assistance I feel I need.</td>
<td>2.49</td>
</tr>
<tr>
<td>My clients demand that I personally complete certain work and this limits the amount of work I can delegate.</td>
<td>2.49</td>
</tr>
<tr>
<td>Having more staff under my supervision increases my own profitability and/or productivity. I supervise the number of staff required to meet billing/financial targets.</td>
<td>2.49</td>
</tr>
<tr>
<td>I have a set number of staff working under my supervision. This number is determined primarily by me based on my assessment of how many people I can effectively supervise.</td>
<td>2.13</td>
</tr>
<tr>
<td>The number of staff working under my supervision varies constantly. I get whatever help I can from others within the firm to meet client demands.</td>
<td>1.91</td>
</tr>
<tr>
<td>I am not sure exactly why I supervise the number of staff that I do. This is just how my practice has evolved.</td>
<td>1.83</td>
</tr>
</tbody>
</table>
Table 6-13 – Fee-Earning Staff

<table>
<thead>
<tr>
<th>2013 Survey Question 8 – Supervisors - How accurate are the following statements in relation to the number of fee-earning staff working under your supervision?</th>
<th>Mean Statistic (1 - Not at all to 5 - Very accurate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budgetary controls restrict the number of staff I can have working under my supervision.</td>
<td>2.84</td>
</tr>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined at a firm-wide level and I have limited personal control over this number.</td>
<td>2.63</td>
</tr>
<tr>
<td>Having more staff under my supervision increases my own profitability and/or productivity. I supervise the number of staff required to meet billing/financial targets.</td>
<td>2.50</td>
</tr>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined primarily by me according to how much assistance I feel I need.</td>
<td>2.49</td>
</tr>
<tr>
<td>My clients demand that I personally complete certain work and this limits the amount of work I can delegate.</td>
<td>2.41</td>
</tr>
<tr>
<td>I have a set number of staff working under my supervision. This number is determined primarily by me based on my assessment of how many people I can effectively supervise.</td>
<td>2.19</td>
</tr>
<tr>
<td>The number of staff working under my supervision varies constantly. I get whatever help I can from others within the firm to meet client demands.</td>
<td>2.04</td>
</tr>
<tr>
<td>I am not sure exactly why I supervise the number of staff that I do. This is just how my practice has evolved.</td>
<td>1.62</td>
</tr>
</tbody>
</table>

Using the mean score, for both question 7 and 8, the following statements ranked highest:

- I have a set number of staff (which may vary over time) working under my supervision. This number is determined at a firm-wide level and I have limited personal control over this number; and
- Budgetary controls restrict the number of staff I can have working under my supervision.

These questions also included an open-ended component and yielded 19 and 13 responses respectively. The comments for Question 7 (administrative staff) indicated workload and efficiency as another important determining factor. Interestingly, in this regard, one respondent commented that:

“The volume of work dictates the number of support staff required. An experienced secretary is of greater benefit than an inexperienced trainee”
The comments for Question 8 (legal staff) also identified workload/workflow as an important determining factor. In this regard, the following comments were made:

“It is workload of the team that drives the number of authors doing the work”

“Number of staff required to undertake available work”

“The number of staff that I have working for me are the number I need to meet the demands of my practice”

One respondent commented that:

“Employment of fee earning staff often occurs without direct benefit to me, yet I have a substantial responsibility for Supervision”

This comment also hints at feelings of supervisory-burden in relation to supervising legal staff. This is consistent with the negative portrayal of supervision in the legal practice management literature.

Overall, the responses to questions 7 and 8 provide evidence that supervisory arrangements are moulded by external forces, or to put it in the words of another open-ended response to Question 8:

“Conscious decision to add add (sic) one more fee earner to the mix. Still want to remain small specialised firm. Again, decision not based on supervisory ability”

It also seems, in some instances, not only are external factors considered in the decision making process but the decision-maker is removed from the supervisory relationship itself. In this regard another respondent, again in relation to Question 8, commented that:

“Subject to decisions by the board of directors, I determine as managing director the staffing of the management team and the the (sic) overall staffing of the practice.”

In this case with such decisions being made on a firm-wide level, supervisors are placed in a situation of personal responsibility over matters for which they have limited control.
3 Organisational Issues Impacting Supervision: Summary of Findings

The results in this section provide evidence that:

- The most common reported obstacle for supervisors in providing effective supervision is a lack of time. However, that lack of time does not appear to be caused by an overburden in terms of the actual quantum of supervisory responsibility. In particular, there is no evidence that this perceived lack of time is caused by unmanageable or impractical supervision ratios.

- The supervisory relationship is subject to external restraints, most notably firm-wide policies (the detail of which is unclear), budgetary controls and client demands.

In addition, this section raised, incidentally, the issue of supervisee experience as a factor determining the appropriate number of supervisees. This is particularly relevant where supervisees have limited experience and are completing Supervised Legal Practice. This issue will be revisited in Chapter VIII, which is dedicated to that unique supervisory context.
In What Ways do the Results Align with the Literature?

- From the perspective of both supervisors and supervisees, supervision in legal practice functions primarily on a normative level. This chapter also provides evidence that supervision processes driven by supervisors are directed primarily at risk management.

- Supervisors have insufficient time for supervision. The supervisory relationship is moulded by organisational parameters including: supervision ratios; billing targets; and client demands.

- Supervisees perceive the supervision they receive as lacking in training and support (i.e. the formative and restorative functions of supervision).

In What Ways Do the Results Differ?

- Supervisors view supervision as encompassing more than just risk management and monitoring. There is evidence that supervisors endorse supervision, in principle, as a forum for wider objectives including mentoring and education. However, this does not mean these wider objectives are a feature of supervision actually carried out.

- Supervisors are not overburdened in terms of the quantum of supervision. Although there is evidence that supervision ratios and billing targets place parameters on the supervisory relationship, there is no clear evidence of rapaciousness to the extent that supervision ratios are unmanageable.

What other Observations Are Relevant?

- There is a discord between supervisors’ general views on supervision and the actual supervisory practices they implement. This is particularly so in relation to supervision acting as a tool for mentoring and education. Supervisors acknowledge these aspects as important but there is no evidence they are uniformly carried out.
• Even though supervisors acknowledge supervision as a forum for mentoring, it is unclear exactly how supervisors understand mentoring. This is especially so regarding the extent to which mentoring involves providing support to supervisees. In this regard, the evidence indicates that supervisors are reluctant to function in a restorative (supportive) capacity.

• Irrespective, supervisors still take the view that the supervision they provide manages to fulfil some kind of restorative function in terms of identifying ethical behaviour and how supervisees are coping. However, supervisees do not acknowledge the restorative function as being fulfilled to the extent supervisors do.

• Even though there is no evidence supervisors are overburdened in terms of the number of supervisees, there is still clear evidence that time restraints and the perceived burden of supervision restrict the scope of supervision.

Note: All findings presented at the end of this chapter are based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. These findings are not supported by inferential statistics.

These findings are revisited in the final chapter where their implications are discussed together with the findings from Chapter VII and VIII, which now follow.
A  Introduction

This is the second of three chapters, which incorporate and analyse the Survey Data. Moving on from the functional analysis of supervision in legal practice covered in Chapter VI, this chapter will present and analyse additional aspects of the Survey Data that provide insight into relational aspects of supervision. The second of three issues identified at the conclusion of chapter V guides the discussion in this chapter:

**Issue 2 - A key driver of effective supervision is the strength of the relationship between supervisor and supervisee and the structures in place to support that relationship. The conduct of both supervisor and supervisee in day-to-day legal practice, and the experience generated by this conduct, is relevant to considering the effectiveness of supervision given and received.**

Supervision literature from other professional disciplines, covered in Chapter V, highlighted how a strong supervisory relationship is central to effective supervision. A strong relationship relies on the supervisor fulfilling a number of restorative functions including: role modelling; providing a safe base; and commitment demonstrated by interest and enthusiasm.¹ In addition, interpersonal training involving reflective education and formative feedback are relevant to building a strong supervisory relationship.² All of these aspects should occur in the context of regular and structured supervision.³

There is no literature, which specifically considers the effectiveness of supervision in legal practice, let alone any empirical research that considers the strength of the supervisory relationship.⁴ However, there are some clear indications that supervisors and supervisees may encounter obstacles in implementing work practices that are conducive to a strong supervisory relationship. In particular:

¹ See Table 5-2 in Chapter V and surrounding text.
² Ibid.
³ Ibid.
⁴ See Chapter I Part B and Systematic Literature Search in Appendix 1.
• The regulatory framework\(^5\) focuses on discipline rather than development engendering a culture of monitoring supervision (focused on avoiding civil liability and professional discipline). This backdrop may make it difficult for supervisors to create a safe base for supervisees.

• Similarly, the practice management literature,\(^6\) which positions supervision as a tool for risk management and increasing profitability, is also potentially at odds with supervisors demonstrating genuine commitment to the supervisory relationship.

• Finally, the clinical legal education literature\(^7\) is partially premised on a perceived inability of legal practitioners to fulfil a formative function (without intervention or facilitation from law school faculty staff). If this is the case, then supervisors may struggle to effectively provide interpersonal training involving reflective education and formative feedback.

These indications from the literature regarding potential weaknesses in supervisory relationships are supported by the Survey Data presented in the previous chapter. In particular, there is some evidence that

• Time pressures, client demands and billing targets limit the opportunity for regular and structured supervision.

• Supervisees perceive the supervision they receive as lacking in training and support (i.e. the formative and restorative functions of supervision).

• There is a dissonance between supervisors and supervisees regarding the provision of support and providing a forum for promotion of ethical behaviour. In this sense, supervisors may not be acting as appropriate role models.

These findings together indicate, on a macro-level, the legal practice environment - which is moulded by the regulatory framework and shaped by legal practice management norms - does not naturally foster strong supervisory relationships. This chapter will examine the supervisory relationship at a micro-level by presenting and analysing additional Survey Data as follows:

• **Part B** - Supervisor and Supervisee Contributions to Effective Supervision. This part will analyse the responses to a series of questions directed at, and answered by, both supervisors and supervisees regarding effective supervision.

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\(^{5}\) See Chapter II Part B.

\(^{6}\) See Chapter III Part B.

\(^{7}\) See Chapter IV Part B.
• **Part C** – Identifying Common Supervisee Experiences. This part will cover a series of open-ended qualitative-style questions, which were answered by supervisees and which provide insight into their experiences with their supervisors.

**B Supervisor and Supervisee Contributions to Effective Supervision**

This section presents the responses to a series of questions answered by both supervisors and supervisees, which address modes and structures of supervision. The responses to these questions provide insight into what supervisors and supervisees consider contribute to effective supervision.

1 **Structuring Supervision**

Question 54 of the 2013 Survey asked both supervisors and supervisees where they found the most “valuable” supervision occurs. Respondents were asked to answer “yes” or “no” in relation to two contrasting scenarios – “formal, structured and planned” and “informal, ad-hoc and unplanned situations”. The results are set out in Table 7.1 below.

| Table 7-1- 2013 Survey Question 54 - Where do you find the most valuable supervision occurs – Comparison by Supervisory Status |
|---|---|---|---|
| | Overall | Supervisor Only | Supervisor & Supervisee | Supervisee Only |
| In formal, structured and planned situations, such as regular meetings | Yes | 67.7% | 77.8% | 67.3% | 63.2% |
| | No | 32.3% | 22.2% | 32.7% | 36.8% |
| In informal, ad hoc, or chance situations (eg in lunch rooms, corridors etc) | Yes | 66.0% | 54.5% | 70.9% | 68.3% |
| | No | 34.0% | 45.5% | 29.1% | 31.7% |

*These results are largely confirmed by a similar inspection of the corresponding results for 2011 version of the question.*

Overall, the results indicate that supervisors and supervisees see value in both structured and unstructured supervisory activities. This result is unsurprising and is consistent with the effective supervision literature canvassed in Chapter V that described a variety of activities,

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8 See Table 7.1A in Appendix 4. The overall trend was similar, albeit the extent to which supervisees seemed to favour informal encounters was less pronounced.
planned and unplanned, which constitute effective supervision. In this sense, supervisor and supervisee perceptions regarding how effective supervision can be achieved align with the evidence-base.

However, two aspects of this data warrant closer consideration. Firstly, a significant minority of respondents (approximately one-third) reported that they did not think valuable supervision occurs in formal, structured and planned situations. This is an important finding given that regular, planned and structured contact is (according to the effective supervision literature) a very important factor in developing a strong supervisory relationship. In this regard, the perceptions of this significant minority do not align with the literature. Secondly, supervisees were more positive than supervisors in terms of the value of informal supervision encounters. In fact, overall, supervisees seemed to prefer these informal encounters to more structured supervision.

The data doesn’t provide any explicit indication as to why this might be the case. However, I argue that one reason for the lack of appreciation of formal meetings may have something to do with the approach to supervision in the legal profession, which focuses on monitoring and risk-management. If supervision focuses on these aspects, it is unlikely that there is any real opportunity for training or development in formal meetings. Formal, pre-arranged “normative” supervision meetings are likely to resemble a performance management or appraisal, rather than the formal supervision meetings envisaged by the effective supervision literature. To be clear, the commentary in this paragraph is somewhat speculative as opposed to having a firm grounding in the data.

The effective supervision literature described how, in addition to regular and frequent meetings, supervision is best structured when it is separated from line management. If formal supervision meetings are driven by “normative” directives, then this “line management” distinction may explain why supervisee perceptions misalign with the effective supervision literature. For example, supervisees may formally meet with their supervisor expecting something which meaningfully develops them as lawyers, but are in fact met with something more mundane such as a checklist identifying common risk factors associated with a particular matter type. This would lead to a negative perception regarding the value of such organised meetings. Conversely, on the occasion that supervisees receive informal supervision, it may be less restricted by

9 See Chapter V Part C.
immediate management concerns and therefore may allow the provision of direction, insight or support in terms of practice issues faced by a supervisee. There is a clear lack of appreciation of the wider purpose of formal and structured supervision meetings. Regular supervision meetings are a forum for supervisors to discuss issues with supervisees who are struggling with work or emotional issues. For example, a supervisor may notice significant changes in mood or enthusiasm, or they may notice increasing anxiety when the supervisee is faced with certain tasks. Regular, structured supervision meetings are the appropriate forum for raising and resolving these issues. This can also work the other way round where supervisees may notice significant emotional or habitual change in their supervisors, suggestive of an underlying issue that may need to be raised with an appropriate third party.

2 Approachable Supervisors

Question 55 of the 2013 Survey asked supervisors and supervisees to consider how supervisors can ensure they are approachable. Respondents were asked to respond “yes”, “no” or “possibly” in relation to a list of potential supervisor characteristics. The results to this question are presented in Table 7-2 below.

<table>
<thead>
<tr>
<th>Comparison by Supervisory Status</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>By making it known that people can see them about any issue</td>
<td>Yes</td>
<td>93.8%</td>
<td>97.8%</td>
<td>94.9%</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>5.0%</td>
<td>1.7%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>1.2%</td>
<td>2.2%</td>
<td>3.4%</td>
</tr>
<tr>
<td>By making it known that people can ask to see them at any time</td>
<td>Yes</td>
<td>87.1%</td>
<td>91.1%</td>
<td>89.8%</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>2.9%</td>
<td>2.2%</td>
<td>1.7%</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>10.0%</td>
<td>6.7%</td>
<td>8.5%</td>
</tr>
<tr>
<td>Being known to give constructive feedback where possible</td>
<td>Yes</td>
<td>95.2%</td>
<td>97.8%</td>
<td>94.9%</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.5%</td>
<td>1.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>4.3%</td>
<td>2.2%</td>
<td>5.1%</td>
</tr>
<tr>
<td>Being known to deal with problems quickly</td>
<td>Yes</td>
<td>85.2%</td>
<td>87.0%</td>
<td>89.8%</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>2.9%</td>
<td>6.5%</td>
<td>1.7%</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>11.9%</td>
<td>6.5%</td>
<td>8.5%</td>
</tr>
<tr>
<td>Being known to help supervisees deal with problems themselves</td>
<td>Yes</td>
<td>78.9%</td>
<td>76.1%</td>
<td>84.5%</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>5.3%</td>
<td>4.3%</td>
<td>1.7%</td>
</tr>
<tr>
<td></td>
<td>Possibly</td>
<td>15.8%</td>
<td>19.6%</td>
<td>13.8%</td>
</tr>
</tbody>
</table>
All respondents viewed a range of factors as contributing to being approachable. The most important perceived factors were “making it known that people can see them about any issue” and “being known to give constructive feedback”. This was consistent among all respondents irrespective of supervisory status. On the flipside, “being known to help supervisees deal with problems themselves” was rated less important than any of the other factors. This too was consistent across all respondents. These results are supported by a similar inspection of the corresponding results for the 2011 version of the question. This aspect appears likely to be important to developing autonomy. Therefore, it is not clear why this was viewed less favourably than the other factors. Perhaps supervisors who are known to take this approach do it in a way that puts the onus on supervisees in a way that supervisees are not comfortable. This result provides insight about how supervisors may initiate the development of a strong supervisory relationship. Specifically, supervisors should focus initially on creating a safe space before emphasising the need for supervisees to deal with problems themselves. In other words, pushing self-autonomy too hard initially may be counter-productive.

In terms of differences between supervisors and supervisees, only one trend was consistent across both versions of the survey, making it worthy of mention. Supervisors considered the following factors more favourably (in terms of ensuring availability) than supervisees: “making it known that people can ask to see them at any time” and “being known to deal with problems quickly”. This is consistent with the previous finding regarding over-reliance of the open-door policy. Together, these findings indicate that supervisors structure their supervision based on time-based factors and convenience, as opposed to other factors that relate to context and process.

### 3 Supervisor and Supervisee Contributions to Effective Supervision

Question 56 asked all respondents to rate a number of supervisor attributes in terms of their importance for fostering effective supervision. Similarly, Question 57 asked all respondents to rate a number of supervisee attributes in terms of their importance for fostering effective supervision. Together these two questions asked respondents to consider what supervisors and supervisees, respectively, can do to make supervision effective. Both questions asked

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10 See Table 7.2A in Appendix 4. The overall trend was similar, albeit the extent to which supervisees seemed to favour informal encounters was less pronounced. The most favourable characteristics, regarding approachability was the same however the ordering of these top two results was reversed.

11 See Chapter VI Part B (4).
respondents to rate the relevant attributes using a Likert-type scale (with “1 – Unimportant” being the lowest and “5- Very Important” being the highest”). A summary of the results to each question is presented below in Table 7.3 (Question 56) and Table 7.4 (Question 57) below.

### Table 7.3 - 2013 Survey Question 56 – How Important are the following to fostering effective performance? Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>Mean Scores - A Higher mean indicates greater perceived importance</th>
<th>Overall (n = )</th>
<th>Supervisor Only (n = )</th>
<th>Supervisor &amp; Supervisee (n = )</th>
<th>Supervisee Only (n = )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide clear instructions</td>
<td>4.74</td>
<td>4.55</td>
<td>4.83</td>
<td>4.78</td>
</tr>
<tr>
<td>Be available when supervisees need help or direction</td>
<td>4.41</td>
<td>4.38</td>
<td>4.54</td>
<td>4.34</td>
</tr>
<tr>
<td>Consider the professional development of their supervisees</td>
<td>4.21</td>
<td>4.09</td>
<td>4.26</td>
<td>4.24</td>
</tr>
<tr>
<td>Be aware of the wellness of their supervisees</td>
<td>4.05</td>
<td>3.98</td>
<td>4.02</td>
<td>4.10</td>
</tr>
<tr>
<td>Foster trust and respect</td>
<td>4.56</td>
<td>4.34</td>
<td>4.64</td>
<td>4.62</td>
</tr>
<tr>
<td>Ensure continuity and consistency</td>
<td>4.47</td>
<td>4.34</td>
<td>4.51</td>
<td>4.51</td>
</tr>
<tr>
<td>Take a solution focus on mistakes (rather than blame)</td>
<td>4.61</td>
<td>4.45</td>
<td>4.67</td>
<td>4.66</td>
</tr>
<tr>
<td>Give credit where it is due</td>
<td>4.57</td>
<td>4.57</td>
<td>4.66</td>
<td>4.52</td>
</tr>
</tbody>
</table>

### Table 7.4 - 2013 Survey Question 57 – How can supervisees contribute to being effectively supervised? Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>Mean Scores - A Higher mean indicates greater perceived importance</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listen to advice and comments</td>
<td>4.666</td>
<td>4.57</td>
<td>4.69</td>
<td>4.68</td>
</tr>
<tr>
<td>Prepare well for supervision meetings</td>
<td>4.28</td>
<td>4.09</td>
<td>4.35</td>
<td>4.33</td>
</tr>
<tr>
<td>Ask questions about details, timelines, priorities</td>
<td>4.48</td>
<td>4.36</td>
<td>4.50</td>
<td>4.53</td>
</tr>
<tr>
<td>Develop a clear framework on frequency of meetings</td>
<td>3.91</td>
<td>3.79</td>
<td>3.95</td>
<td>3.94</td>
</tr>
<tr>
<td>Discuss expectations</td>
<td>4.37</td>
<td>4.22</td>
<td>4.40</td>
<td>4.41</td>
</tr>
</tbody>
</table>

Both supervisors and supervisees viewed all the proposed relevant attributes as being important to effective supervision. Overall, the supervisor responses yielded lower mean score than supervisees. The corresponding questions in the 2011 survey yielded similar results confirming
this overall trend. Across both versions of the survey, the only factor that was an exception to this general trend was: “giving credit where it is due”. It is unclear why this factor stands out as being the sole deviation from the general trend.

This means that supervisees were more positive regarding the extent to which actual activities and attributes, by both supervisors and supervisees, could make supervision effective. For all respondents the least important supervisee attribute was “Develop a clear framework on frequency of meetings”. This is consistent with the finding from section 1 above regarding the apparent devaluing of structured supervision meetings.

4 Supervisor and Supervisees: An Intuitive Understanding of Effective Supervision

The Survey Data presented in this part of the chapter indicates that supervisors and supervisees have some intuitive understanding of what constitutes effective supervision (as described in the literature in Chapter V). However, this intuitive understanding is limited to the extent that developing a framework for regular and frequent meetings is devalued. This finding is in addition to the Survey Data presented in the previous chapter that confirmed a focus on normative aspects of supervision, to the detriment of formative and, especially, restorative aspects. It seems these issues are related and that regular structured meetings are the appropriate forum for broadening the scope of supervision beyond normative aspects.

Although supervisors and supervisees may (save for a critical misunderstanding regarding the purpose of regular supervision meetings) have a general intuitive understanding of what constitutes effective supervision, this does not mean that supervision is effectively carried out in practice. Inevitably, a range of individual traits coupled with organisation pressures will affect the implementation of best practices. The next part of this chapter moves beyond these general indicators and considers some specific supervisee experiences.

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12 See Tables 7.3A and 7.4A in Appendix 4.
C Identifying Common Experiences

This part draws on a group of four open-ended questions (from both the 2013 and 2011 versions of the Survey), which were directed at supervisees. Responses for both versions of the survey have been analysed together using Marshall and Rossman’s\(^{13}\) seven-step procedure as a guiding framework. Collectively, this aspect of the Survey Data provides useful insight into the experience of supervisees. More specifically this Survey Data provides insight into the functioning of aspects of specific supervisory relationships from the perspective of the supervisee. This “insight” has been arranged into a number of themes, which are summarised in Table 7-5 below.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Key Themes and subsidiary themes where relevant</th>
<th>Secondary Themes and subsidiary themes where relevant</th>
<th>Comments/Linkages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisees Want More</td>
<td>1. Contact Time - Meetings - Discussion - Communication 2. Training and Development - Feedback - Autonomy &amp; Responsibility</td>
<td>1. Empathy &amp; Support - Workload &amp; Work life balance</td>
<td>Key Themes 1 &amp; 2 are linked to the extent that more training and development would require more contact time. In addition, both Key Themes seemed to reveal an underlying sense of removal. In the case of “Contact Time”, a sense of being “removed” from their supervisor. And in the case of “Training and Development”, removed from the inner workings of legal practice.</td>
</tr>
<tr>
<td>Supervisees Want Less</td>
<td>1. Monitoring &amp; Control</td>
<td>1. Lack of Respect 2. Buck-passing</td>
<td>Indications that too much monitoring and control (or excessive micro-management) is stifling and detrimental to the development of autonomy. Secondary Themes 1 and 2, are arguably related to the Empathy and Support theme.</td>
</tr>
<tr>
<td>Disagreements are Addressed by:</td>
<td>1. Discussion</td>
<td>1. Analytical Discussion 2. Inconclusive Discussion</td>
<td>Secondary Theme 2 may also be related to the Empathy and Support theme.</td>
</tr>
</tbody>
</table>

\(^{13}\) Catherine Marshall and Gretchen B Rossman, *Designing Qualitative Research* (SAGE, 2011). Marshall and Rossman’s seven-step procedure for analysing qualitative data was outlined in full in Chapter VI Part A.
The following sections explain the rationale for each theme. Sample responses are included in the analysis where relevant.

Key Themes are those identified as being most prevalent or dominant. Secondary Themes are additional themes that are clearly relevant but less prevalent or dominant than the Key Themes. Both Key Themes and Secondary Themes are linked with Subsidiary Themes, which are additional recurring ideas that are not sufficiently prevalent or dominant to constitute a standalone theme.

1 Variations Between Different Supervisors

Question 37 of the 2013 version and Question 40 of the 2011 version asked supervisees to “Describe the main variations between different supervisors.” Across both versions of the survey, this question yielded a total of 13714 qualitative style open-ended responses. The results are discussed below.

(a) Key Theme 1 – “Level of Supervision”

Supervisees frequently expressed that the level of supervision differed between supervisors. This theme was described in a number of different ways regarding the extent that work was monitored and the degree of control a supervisor exerted. The following example responses aptly capture the varying nature of the responses.

- One supervisee, described the situation as: “Difference in level of supervision given, closeness of attention, level of care given”
- Another described the situation in slightly different terms as follows: “Some supervisors are more detail oriented and focused on daily tasks, whereas others may take a broader approach.”
- Moreover, some responses were blunt and cynical. For example, one respondent commented that: “Some supervisors ACT as supervisors Some supervisors close their eyes”

A number of subsidiary themes were linked with this Key Theme. These subsidiary themes add additional insight. They are:

14 47 responses from the 2013 version and 90 responses from the 2011 version.
- “Hands-on versus Hands-off”. For example, one supervisee commented that: “some supervisors are more ‘hands on’ where others give only general direction but allow more use of initiative” and another that “One was very hands on with supervision. The other is very much free range.”
- Supervisees also frequently raised the notion of “Micro-management” and this was often seen as the opposite of a “Hands-Off” approach. One supervisee succinctly illustrated this distinction as follows: “Chalk and cheese - hands off v micro-management”.

A number of respondents described the level of supervision as two extremes both of which were unfavourable. For example, one supervisee commented that: “Neither has been a good supervisor but for opposite reasons - one paid no attention at all to what I did and the other is a micro-manager.” Notwithstanding this, collectively, the responses indicate a continuum in terms of the level of supervision and one supervisee alludes to this as follows: “Some SAs¹⁵ can micro-manage, some provide an appropriate level of interest, guidance and support, some provide very limited input. Each SA differs.”

(b) Key Theme 2 – “File Management”

A second, closely related, but distinct, theme concerned how supervisors manage tasks. This Key Theme 2 is distinguishable from Key Theme 1 in that it covers specific incidences of work practices (whereas Key Theme 1 describes general sentiments). This theme integrated the following subsidiary themes: “Delegation”, “Feedback” and “Guidance”. The following responses exemplify the range of issues regarding the different ways supervisors manage tasks:

- Delegation and Feedback - “One supervisor prefers to provide assistance during completion of tasks and review at end of completion. The other supervisor prefers to review only upon completion of a task when settling work.”
- Delegation - “Instructions are given in different ways eg. some do everything by email, others verbally.”
- Guidance - “Early guidance as to how a task should be completed, general approach to ongoing guidance of task, follow up and review of completed tasks”

(c) Secondary Theme 1 – “Writing Style”

¹⁵ The respondent appears to be referring to mid-level position in a law firm commonly called a Senior Associate.
An important but less dominant theme related to the specific issue of writing and drafting style. This appeared to be a particularly “live” issue in the 2013 version of the survey (where 10 of the 47 responses alluded to this issue). This theme is succinctly summarised by the following two responses:

“Predominantly writing style and tone of correspondence.”

“Some supervisors make changes for style or drafting preference more than others”

Arguably, this theme is also linked to the micro-management theme identified above. The writing style aspect of supervision is interesting and is open to two interpretations. In one sense, if supervisees are correct and supervision is characterised by predominantly stylistic changes to writing style, then it seems this may not be an efficient use of supervision time. This type of practice may explain the sense of burden supervisors feel in relation to their supervisory duties, even though they are not overburdened in terms of supervision ratios. Alternatively, supervisees may be wrong in their categorisation of such changes as purely stylistic. In this case, supervisors may fail to explain the reason for such changes, which is indicative of failing to take the opportunity to turn correcting work into an edifying experience for supervisees.

(d) Secondary Theme 2 – “Personality: Individual Characteristics and Work Practices”

A final, less distinct but still present, secondary theme was inferred from a variety of responses that at first glance appeared to be rather vague. Together these responses indicate the supervisees are often at the whim of personal preferences dictated by their supervisor’s personality. Arguably, Secondary Theme 1 above, which is in relation to Writing Style, is a specific example of this broader issue. The following responses together illustrate this theme:

“Some are more helpful than others, variations in their approach are just a reflection of personality”

“Different styles, different manner and approaches”

“Different people have different supervision styles and different priorities for what they consider to be important”

“Different personalities. Different interpretations.”

16 This was covered in Chapter VI Part D.
This emphasises the need for supervisors and supervisees to be clear about how they agree to approach supervision. According to the effective supervision literature, this should involve setting shared goals and an agenda for supervision. In order to foster a strong relationship, supervisors ought to be cognisant of their own preferences and be clear to communicate such preferences to their supervisees.

2 What Supervisees Would Like More of from Their Supervisor

Question 46 of the 2013 version and Question 48 of the 2011 version asked supervisees to indicate “What would you like more of from your supervisor, and why?” Across both versions of the survey, this question yielded a total of 246 qualitative-style open-ended responses. They are discussed below.

(a) Key Theme 1 – “Contact Time”

Supervisees gave an overwhelming sense that they wanted more contact time with their supervisor on a daily basis. This desire for more supervisor Contact Time was expressed in a number of different ways. While one respondent simply described the issue as “More time” (another was even more succinct simply responding: “Time”), others provided more insight into the surrounding circumstances. The following responses together capture aspects of the practice environment where there is an unmet demand for structured supervision time:

“one on one time without being interrupted by the telephone”

“Perhaps more structured time to formally check on my files”

“when I have an issue, I would like my supervisor to set aside appropriate time to dedicate to it”

“More time to work with him, because I feel I gain a lot”

These responses describe the need for more time in a rather generic sense. The following subsidiary themes were linked to this Key Theme: “Meetings”, “Discussions”, and “Communication”. Responses exemplifying each of these subsidiary themes are set out below:

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17 83 responses from the 2013 version and 163 responses from the 2011 version.

“Meetings” - “Opportunity to meet more regularly and in a less hurried pace about matters” AND “Regular scheduled time - perhaps an hour a fortnight - to review files and discuss "hard" cases. Unless time is scheduled this doesn’t happen”

“Discussions” – “More time if possible to discuss their reasoning for changes” AND “Debrief at the end of matters - i.e. discussion on what could have been done better, etc”

“Communication” – “More accessibility, more openness to talking about issues that aries (sic), more attention to my matters so tht (sic) when a question arises, they know more about the background of the matter” AND “I would like more communication and support from my supervisor. I would like my supervisor to talk to me about matters, talk to me about what has to happen and by when, keep me updated when there is communication with the client (whether by phone or email)”

Overall, supervisees raising the issue of more “Contact Time” seemed to have a sense of being “distant” or “removed” from their supervisor. This appears to be in circumstances where client files are passed back and forth with supervisees being left to their own devices, until they randomly encounter their supervisor at which time an unplanned exchange may occur.

(b) Key Theme 2 – “Training & Development”

Key Theme 1 identified issues that relate mainly to the immediate tasks and duties requiring completion by the supervisee. Another repeated sentiment was a desire for something more, in terms of general training and development. These sentiments appeared to relate to something akin to personal and professional growth, as opposed to assistance with immediate tasks. A range of responses covering this theme were provided. A sample of those varied responses is outlined below:

“more legal advice and sharing of expertise”

“To sit in on more initial meetings and discussions with the client so that I am fully aware of their expectations and what we are trying to achieve and also learn what the supervisor says to clients in certain situations”

“More training on how to actually complete tasks. Or what is important to look for in particular tasks.”

“More personal development opportunities. It becomes too easy to keep me doing the same kind of work - e.g. I have been to court three times since starting here as a graduate and the fear of not having this experience grows!”

“sharing of knowledge and experience”
As with Key Theme 1, the responses under this theme convey a sense of “removal” from their supervisor and client matters. However, the nature of that sense of removal is slightly different. Here, there seems to be a sense of being removed from the inner workings of legal practice. Again, subsidiary themes are linked to this main theme, which further reveal the experience and sentiments of supervisees. These subsidiary themes - “Feedback” and “Autonomy & Responsibility” - are exemplified below.

“Feedback” - “feedback as to the quality of my work, greater effort to develop my skills as a new lawyer, as I am not sure currently whether I am making progress or not.”

“Autonomy & Responsibility” - “More responsibilities and more information on how certain jobs are done” and “Greater delegated responsibility to develop further practical expertise”

One respondent expressed a desire for both feedback and greater autonomy as follows: “Feedback and the opportunity to draft in my own style” while another illustrated the link between responsibility and professional development as follows: “Greater delegated responsibility to develop further practical expertise”. Collectively supervisees seemed to express a desire for professional development, with the end goal being greater autonomy and additional responsibility. Supervisees perceived better feedback as the means to this end. One supervisee expressed this sentiment by responding: “more time given in speaking about strategy, but ultimately, more responsibility delegated so that I am not just ‘assisting’ on matters as a ‘junior’ lawyer.”

(c) Overlap of Key Themes 1 and 2.

Although Key Themes 1 and 2 were described separately, there was an obvious overlap across these two themes. For example, one supervisee insightfully responded that:

“I would like more opportunity to present my views as to the approach to take to issues which arise and discuss whether my supervisor’s opinion of my proposed approach. I would like more of these opportunities to ensure that I have some contribution to the case theory in the files which I work on her have carriage of (sic), so that when I begin running my own files I will have confidence in my ability to take the right approach to issues which arise.”

The two themes also overlapped in relation to the desire for more “Feedback”. Finally, a further subsidiary theme - a general notion of requiring more Assistance/Direction/Guidance – permeated both Key Themes 1 and 2. One supervisee illustrated these linkages by responding:
“Sometimes I would like to be able to spend more time with my supervisor during the week to get more guidance with what I am working on. Maybe some more feedback as well”. Another alluded to these linkages in the following terms: “Supervising through the entire process - not just reviewing work at end stages and then advising that it is wrong.”

In short, training and development facilitated by the provision of timely feedback and appropriate assistance is not possible without sufficient and regular contact time with supervisor. Arguably, Key Themes 1 and 2 combined could be summarised as describing a desire among supervisees that they receive more structured help in becoming autonomous.

(d) Secondary Theme 1 – “Empathy and Support”

A final theme, which was prominent but not as dominant as those above, related to the extent to which supervisors appear to fail to “understand” their supervisees’ position. This theme also touched on issues regarding how supervisors fail to support supervisees on an interpersonal level (as opposed to a technical level, which was more clearly present in Key Theme 2 above).

This issue was explicitly described by one supervisee who responded: “My supervisor does not model compassion or any depth of understanding of human emotions. I would like my supervisor to receive ‘empathy’ training and to treat staff with fairness and impartiality.” Arguably, this may simply be a description of an isolated difficult individual supervisor. However, it seems more likely that this is an obvious and dramatic example of what is a pervasive issue. Another respondent also specifically desired greater empathy stating: “I couldn’t expect much more other than empathy on occasion”. Another supervisee described the situation as follows: “A more personable and client focused approach - my current supervisor is a “tick a box” supervisor. Any meetings held with him involve him going through a checklist in a cursory fashion just so that he can say that he has discharged his responsibilities - there is no feeling behind it.”

Another supervisee seemed to be touching on a similar issue by responding: “Supervision, understanding and timely assistance. As a new practitioner there are many legal processes that I don’t understand so when I asked my supervisor a question I would expect to be given the answer and not fobbed off and ignored then having to make repeated requests in relation to the same issue.”
A subsidiary theme, relating to “Workload / Work-life Balance” appears linked to this theme. This issue is aptly represented by the following brief, but clear, responses:

“Understanding of work/life balance Emotional support”

“Understanding of workloads”

“Flexibility and recognition of a healthy work life balance”

3 What Supervisees Would Like Less of from Their Supervisor

Question 47 of the 2013 version and Question 49 of the 2011 version asked supervisees “What would you like less of from your supervisor, and why? Across both versions of the survey, this question yielded a total of 159 qualitative-style open-ended responses. Although there were 159 responses, a significant number failed to provide any meaningful insight (for example by stating “nothing” or “n/a”). Specifically, 57 responses were tagged as being not meaningful, leaving 102 which were meaningful enough to form part of the analysis. These responses can be contrasted to similar responses where respondents had nothing to include because they were clearly happy with their current supervisor. I have interpreted this as meaning that overall, supervisees could benefit from more positive action from their supervisor as opposed to a reduction in negative action. This is mainly because a significant number of respondents who stated “nothing” or “n/a” for this question, did in fact provide a meaningful response for the previous question. In other words, supervisees, as a collective group, seem to seek more of the “good” rather than less of the “bad”. However, this is a general statement, which must be treated with caution. There are a significant number of counter-examples where certain supervisory conduct was negative and in fact detrimental to the supervisory process.

(a) Key Theme 1 – Less Monitoring and Control.

Supervisees repeatedly described a sense of being monitored and controlled to a degree that was stifling. One respondent neatly communicated this sentiment as follows: “I would like less monitoring of my work style, to allow some freedom to develop my own methodologies.”

---

18 55 responses from the 2013 version and 104 responses from the 2011 version.
This theme appears heavily linked to the idea of micro-management, which was discussed above in section 1. In addition, excessive control is likely to frustrate supervisees wishing to develop greater autonomy. For example, one supervisee insightfully described these linkages by stating

“Less micro-management. It makes the production of work slower in general and getting work out is difficult when the supervisor is absent. Micro-managing forces the person being supervised to be dependent on their supervisor, rather than improving their own professional skills and knowledge.”

Monitoring and Control also related closely to the idea of writing style (which was also discussed above in section 1). One supervisee sought less “Correction of sentence structure as it is a style point not necessarily an error”. Besides the specific issue of stylistic changes, there was also a more general concern over pointless interference. The following responses demonstrate this:

“Nit picking about file matters which do not have any bearing on the outcome of the file or the result for the client”

“Less particular with some of the things which may not be of significance, depending on circumstances”

(b) Secondary Theme 1 – Lack of Respect

This theme brings together an eclectic mix of responses where a supervisee described a general dissatisfaction with a particular aspect of their supervisor’s behaviour. The common-thread in these responses related to, what seemed to be, a general disregard for the fact that the supervisee in question was a person with their own professional responsibilities. Hence, I chose the word “respect” to label this theme as a blanket term for a range of sub-par behaviour, even though the word “respect” was not used specifically by any of the respondents. I selected the following responses, from a range of responses, to exemplify reoccurring facets of disrespect exhibited by supervisors:

“Smart ass remarks and belittling behaviour. Not helpful and lowers morale”

“Irrational criticism which is levelled before knowing the facts of an issue.”

“Attitude, put downs”

“The portrayal of lack of confidence”

“The feeling that I am wasting their time, or asking silly questions”
“I would like my supervisor to be calmer and not so quick to anger or frustrate.

“sudden involvement and direction on a file when he hasn’t been involved from the beginning and may not necessarily know what the best way is to deal with a client (especially if they are a difficult client for whatever reason)”

“Less verbal delegations as the constant interruptions are very disruptive”

These responses have been presented as a continuum, with the most obvious examples of disrespect listed first. On one level, the last two responses are indicative of poor task management and delegation skills. However, on a deeper level, it is necessary to consider the underlying reasons. Perhaps an inability to properly delegate, provide instructions, or otherwise effectively engage in the supervisory processes is a symptom of a lack of respect or consideration. Arguably, this is the same thing as the lack of Empathy and Support identified in the preceding section.

(c) Secondary Theme 2 – Buck-passing

This theme is arguably an extension of the previous theme, providing another example of supervisors acting in ways that go against general notions of appropriate or considerate behaviour. However, there were enough specific incidences of what has been collectively labelled as “Buck-passing” for this to be categorised as a stand-alone theme. Overall, the responses provided a sense that it is not uncommon for supervisees to be dumped with tasks that in their view are not their responsibility.

Interestingly, one supervisee reported a fluctuation between micro-management and buck-passing as follows:

“A supervisor cannot expect to micro-manage a supervisee and then, in effect, wipe-their-hands of a matter when an issue arises and direct the supervisee to "come to me with a possible solution." Less time on the phone during business hours discussing personal interests not directly connected with the practice of law.”

Besides this, the following responses provide an indication of the range, and extent, of the perceived buck-passing:

“Passing on management roles because I feel i should not be responsible for certain tasks”
“Expectations that others do supervisor’s work”

“A little less responsibility in relation to particularly difficult clients who only speak with me when my supervisor is not available.”

“Getting me to do things on a file that I know nothing about. Partner doesn’t take much interest in the matters that I have substantial carriage of.”

“Less 'throwing me in the deep end'. I realise this is how you learn, but it does not help build confidence when you are constantly concerned that you're not on the right track/wasting time that should be billed.”

As above with the “Lack of Respect” theme, some of these responses are perhaps more indicative of something else. For example, the second last one relates closely to delegation, communication or support. Alternatively, in the case of the final response, this may relate to a lack of training and as well as a lack of support. However, when read collectively and in the context of the question and the other responses, it seems possible that there is something more fundamental in terms of how supervisees are treated. Section 1 described these issues in terms of “Personality”, Section 2 touched on lack of “Empathy”, and now in this section “Lack of Respect” and “Buck-Passing” are the labels used to describe what may be a common thread.

4 Addressing Disagreement with Supervisors

Question 50 asked supervisees whether they feel able to disagree with their supervisor. Responses were in the form of a Likert-type scale. The result is set out in Table 7-6 below.

<table>
<thead>
<tr>
<th>Survey Question 50 – Supervisee - Do you feel able to disagree with your supervisor? Please choose from 1 (not at all) through to 6 (to a great extent)</th>
<th>Mean</th>
<th>Std. Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4.05</td>
<td>1.43</td>
</tr>
</tbody>
</table>

Generally, supervisees seem able to disagree with their supervisor. However, a substantial minority (16.3%) responded with a score of 1 or 2 indicating they were not able to disagree with their supervisor. This was also the case for the corresponding question in the 2011 version of the Survey.\(^{19}\) Practitioners completing Supervised Legal Practice appear to form a significant

\(^{19}\) See Table 7.6A in Appendix 4. The 2011 version of the question differed in that respondents were simply asked to answer “Yes” or “No.
component of that minority. Chapter VIII, which focuses specifically on the Supervised Legal Practice issues, revisits this particular aspect of the data.

In addition to Question 50, the issue of disagreement between supervisor and supervisee was covered by one of the open-ended questions that was directed at supervisees (Question 51). This asked supervisees: “If you have a disagreement with your supervisor, how is it addressed?” Across both versions of the survey, this question yielded a total of 307 qualitative-style open-ended responses. These responses are discussed below.

a) Key Theme 1 – Discussion with Supervisor

Despite the significant number of responses, the nature of these responses made it challenging to draw out any meaningful Key Themes. Generally, respondents provided briefer responses compared to the other qualitative-style questions presented in this chapter. By far, the most common response was to simply state that disagreement was dealt with by “discussion” (or similar clear but un-insightful words to that effect). Other than confirming that supervisees do generally feel able to disagree with their supervisor and this is done via discussion, it provides little insight into the actual processes of issue clarification and dispute resolution. Even still, some more detailed answers provided scope for further inference making. From these responses, the following Secondary Themes were generated:

- Analytical Discussion
- Insincere Engagement

These Secondary Themes are considered in the next two subsections.

b) Secondary Theme 1 – Analytical Discussion

One grouping of responses, together, gave an impression of an open, analytical, merit-based and dispassionate debate about legal and client matters. The following responses provided examples of this type of discussion:

“We discuss the basis for our difference in opinion and resolve the best way forward of the two approaches based on the merit of each.”

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20 55 responses from the 2013 version and 110 responses from the 2011 version.
“Analysis and discussion”

“Calmly, professionally. Discuss the scope of the problem. Agree on an outcome, whether that is a mutable or immutable position from the business’s/client’s perspective or a negotiated compromise.

“By debate, trying to convince the other of a position”

“I do not recall ever having a disagreement, plenty of spirited discussion in nutting out solutions for our clients not in relation to supervision as such.”

“We talk about our different approaches to the legal issue.”

These responses seem to typify a legalistic approach to problem solving developed in law school, which obviously carries through to legal practice.

c) Secondary Theme 2 – Inconclusive Discussion

This theme groups together another collection of responses, which indicate an approach where discussion or disagreement is allowed, on the face of it, but such discussion is not fruitful. One supervisee simply responded “They do not really listen, but try to discuss” while another was of the view that “If I have an opinion, I’m told why that opinion is misplaced.” One supervisee described disagreements as a zero-sum game where “They win, I lose.” Another still, seemed to be describing a commanding approach to disagreements by responding: “Put your point forward but in the end, this is my firm and you will do it my way.”

In addition, there were some examples, where it seems that there is not even pretence of listening. The following responses exemplify this:

“It is not addressed. Any disagreements with my supervisor are effectively left for me to sort out.”

“It’s generally not, it is just done how the supervisor wants it done.”

“Nothing will be addressed, you merely walk away”

As supervisees were generally vague on the type of disagreements they were referring to, it is not clear how to interpret these results. One interpretation is that each theme represents a different approach to handling disagreements. Alternatively, another interpretation is that each theme represents a different approach to a particular type of disagreement – those based on
legally related client matters are dealt with via analytical discussion, whereas other interpersonal disagreements are not discussed in a genuine, mutually beneficial way.

Either way these types of discussions are unlikely to be indicative of a healthy strong supervisory relationship. Rather than collaboration and reflection, based on shared expectations, this type of dispute resolution is hierarchical and analytical.
In What Ways does the Survey Data presented in this chapter align with the literature and the Survey Data presented in Chapter VII?

- Supervisor and supervisee perceptions regarding effective supervision are consistent with what the evidenced based literature (covered in Chapter V) indicates are features of effective supervision. This is subject to one notable aspect of supervision – see comment below under the heading “In What Ways Do the Results Differ” in relation to regular and structured meetings.

- The reported experience of supervisees is consistent with the findings from Chapter VI that supervision in legal practice focuses on normative aspects to the detriment of the formative and restorative aspects.

**Note:** The findings presented under this heading are based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. These findings are not supported by inferential statistics.

In What Ways Do the Results Differ?

- Regular and frequent, structured meetings are a hallmark of the effective supervision literature. However, supervisors and supervisees do not seem to fully understand the value of this supervisory activity. **Note:** This finding is based on observations from the descriptive analysis of the survey data, embellished by some qualitative data. This finding is not supported by inferential statistics.

What other Observations Are Relevant?

- Differences in supervisors’ style, level or closeness of supervision influence supervisee experience.

- Enforcing individual supervisor preferences regarding writing style appears to be a significant aspect of supervision.

- Supervisees seek more:
- Contact time with their supervisor.
- Training and Development
- Empathy and Support

- Supervisees seek less:
  - Monitoring and Control
  - Disrespect; and
  - Buck-passing.

- Supervisors handle disagreement with supervisees in an analytical, authoritative manner.

Note: The findings listed under this heading are based on the common experience of supervisees, derived from a qualitative analysis of open-ended supervisee responses. This finding is not based on any test for statistical significance.

...

The final chapter revisits the findings from this chapter, where the implications these findings will be discussed with the findings from Chapter VI (preceding) and VIII (following).
A Introduction

This chapter is the final in a series of three chapters that incorporate and analyse aspects of the Survey Data. The previous two chapters provided baseline data on perceptions about supervision and the supervisory relationship, as well as the experience of supervisees. The Survey Data presented in this chapter narrows in on the experience of one subset of supervisees: newly admitted lawyers completing Supervised Legal Practice. The term Supervised Legal Practitioner (SLPR) refers to this subset of supervisees. The final of three issues, identified at the conclusion of chapter V, guides the discussion in this chapter.

**Issue 3 - Supervised Legal Practice is a unique supervisory context where supervisees lack legal practice experience and are in need of competence based practical training as well as a range of interpersonal support mechanisms. Despite this, formative and restorative aspects of supervision are not organised on a profession-wide level. However, it is not clear the extent to which these aspects of supervision are carried out in practice on a case-by-case basis. Therefore, a deeper understanding of the common experiences of newly admitted lawyers is needed to understand the extent of the problem.**

Chapter II positioned Supervised Legal Practice in the Regulatory Framework as an unrealised stage of practical, experience based legal training. The Regulatory Framework is silent in relation to the processes involved in supervision during this stage. Chapter III, which considered the legal profession and legal practice management literature, did not uncover any clearly articulated theory or approach to supervision applicable to newly admitted lawyers. Rather, this literature revealed that the approach to supervision during this stage, whatever it may be, is characterised by a failure to cater to the training and interpersonal needs of supervisees. This failure is to such an extent that poor supervision relates to the attrition of junior lawyers and well-being related problems.

The clinical legal education literature covered in Chapter IV positioned supervision as a method for teaching practical legal skills. However, that approach has not been adopted in legal practice. This is most likely because it relies heavily on the involvement of law faculty staff. In addition, the clinical legal education literature is yet to clearly articulate effective multi-functional supervision. For guidance of this issue, the legal profession can look to the supervision literature
from other professional disciplines. This literature, which includes supervised practice guidelines from other professional disciplines, provides a useful benchmark for realising the potential of Supervised Legal Practice as a stage of practical, experience based learning. These guidelines, (summarised in Chapter V, Part D) provide a semi-structured framework for professional training based on set competencies. These competencies allow formative outcomes to mould supervised practice. In addition, these guidelines, especially in the field of psychology, contemplate that regular and frequent supervision meetings complement the actual day-to-day supervised practice. These “supervision meetings” provide a useful forum for focusing on, or honing in on, issues relevant to a particular supervisee. Specific supervision meetings are also a useful forum, generally, for the restorative aspects of supervision.

As articulated in Issue 3, SLPRs may experience supervision which is not appropriate for their level of development and which fails to clearly fulfil formative and restorative functions. Based on the negative experience of junior lawyers reported in the literature (see Chapter III Parts D & E), it is likely that SLPRs perceptions of their supervision will differ from other supervisees. This chapter will present Survey Data that provides evidence supporting these aspects of the literature.

There is no obvious answer as to how Supervised Legal Practice could fulfil its potential as a meaningful and complete final stage of practical legal training, in a way that could feasibly take place within the reality of day-to-day legal practice. It is not simply a matter of applying practices or procedures from other endeavours. Rather, it is necessary to explore the experience of SLPRs in an attempt to understand their supervisory experience. This chapter will also present and analyse aspects of the Survey Data that begins this process.

The starting point for presenting and analysing the Survey Data in this chapter is Question 66 of the 2013 survey. This question was not included in the 2011 version of the survey and was subsequently included to identify SLPRs as a distinct subset of supervisees. This question asked supervisees whether their practising certificate was subject to the Supervised Legal Practice statutory condition. The responses to Question 66 of the 2013 version are set out in Table 8-1 below.
Table 8-1 – Supervised Legal Practice

| 2013 Question 66 - If you have a current practising certificate, is your practising certificate currently subject to a condition that you must engage in supervised legal practice only? |
|---|---|
| **Yes** | 23.13% (34) |
| **No** | 72.79% (107) |
| **Unsure** | 4.08% (6) |
| **Total** | 147 |

The results to this question allow a comparison of SLPR responses with other supervisee responses. Specifically, this question allows for separate cross-tabulations identifying any different results for SLPRs.

In addition to being a useful tool for comparing and contrasting SLPRs responses, this question generates one interesting result in its own right. Although Supervised Legal Practice is a unique supervisory context grounded in the Regulatory Framework (covered in Chapter II, Part E), six (4.08%) of respondents replied that they were unsure whether their practising certificate was subject to the Supervised Legal Practice statutory condition. It is remarkable that even a small number of respondents were unsure. Four of the respondents who answered unsure also reported that they had held a practising certificate for between 1-2 years indicating that they were in fact subject to Supervised Legal Practice. However, this is not certain.\(^1\) How is it possible that supervisees could not know? Arguably, this in itself is evidence that current supervision practices do not position Supervised Legal Practice in a way that supervisees unequivocally perceive it to be a unique supervisory context. However, this argument requires further support.

This chapter will consider the unique supervisory context of Supervised Legal Practice, as it occurs in day-to-day legal practice, by presenting and analysing additional Survey Data as follows:

- **Part B – Supervisors and Supervised Legal Practice.** This part will consider the extent to which supervisors modify, or seek to modify, their supervision depending on the experience

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\(^1\) Firstly, the period of Supervised Legal Practice differs depending on the type of practical legal training completed (See Chapter II Part E) and also it may be that a supervisee has completed the period of supervised practice but not actually applied to have the condition removed from their practising certificate.
and qualifications of a supervisee and whether a supervisee is completing Supervised Legal Practice.

- **Part C** – Supervisees and Supervised Legal Practice. This part will consider the impact of experience on supervision from the perspective of supervisees. This part will also consider the extent to which SLPRs perceptions regarding supervision differ from other supervisees.

- **Part D** – SLPRs: Identifying Common Experiences. This part will report on the responses to a series of open-ended qualitative-style questions answered by SLPRs that provide insight into their experience with their supervisors.

### B Supervisors: An Overview

#### 1 The Experience Level Factor

Central to Supervised Legal Practice as a unique supervisory context is the level of experience of SLPRs. Supervised Legal Practice is the period of supervision for newly admitted lawyers who have recently completed their formal legal training but lack legal practice experience. The extent to which supervisors modify or adapt their supervision practices generally is relevant to how SLPRs will experience their supervision. Question 30 specifically asked supervisors whether the supervision they provide differs depending on supervisee’s practical experience and formal qualifications. The results are set out in Table 8-2.

| Table 8-2 – Differing Levels of Supervision – Level of Experience and Qualifications |
|---------------------------------|------------------|--------------------|
| 2013 Survey Question 30 – Supervisors - Do you provide differing levels of supervision to your supervisees depending on factors such as their levels of practical experience or formal qualifications? | Mean Statistic From 1 (not at all) through to 6 (to a great extent). |
| I provide differing levels of supervision to supervisees depending on their level of practical experience | 4.80 |
| I provide differing levels of supervision to supervisees depending on their formal qualifications | 3.32 |
Supervisors provided a very strong indication that the supervision provided varied depending on experience. The corresponding question for the 2011 version of the survey also indicated that supervisors tailor supervision depending on experience and qualifications.\(^2\)

Practical experience was more relevant to the type of supervision provided than formal qualifications. Question 31 was similar in nature to question 30, but asked supervisors to consider additional factors that may determine the level of supervision required. The results are set out below in Table 8-3.

| The supervisee’s level of practical experience | 4.29 |
| The supervisee’s knowledge of the area of law | 4.22 |
| The nature of the work being delegated to the supervisee | 4.15 |
| My observation of the supervisee’s daily work | 4.00 |
| My knowledge of the supervisee’s personal characteristics | 3.58 |
| The supervisee’s formal qualifications | 2.95 |

This result confirms the perceived importance of practical experience in determining appropriate supervision for a given supervisee. Practical experience level ranked highest and formal qualifications ranked lowest among the factors supervisors were asked to consider. The second highest rated factor was the ‘supervisee’s knowledge of the area of law’ which is closely related to experience. These results were the same for the corresponding question of the 2011 survey.\(^3\)

\(^2\) See Table 8-2A in Appendix 4. The 2011 version of the question was however worded differently. There was no breakdown between qualifications and experience. Further respondents were simply asked to provide a yes or no response.

\(^3\) See Table 8.3A in Appendix 4.
Supervision is a highly interpersonal endeavour most effective where there is a strong relationship between supervisor and supervisee, each of whom bring their own unique characteristics. However, when considering the level of supervision required, supervisors were less concerned with ‘the supervisee’s personal characteristics’. This factor was rated second lowest. While the knowledge and experience base itself is important, it is difficult to see how these matters can be isolated from the supervisees themselves. This indicates there may be missed opportunities for developing a strong supervisory relationship conducive to effective supervision, especially in relation to facilitation reflection and providing feedback.

The results in this section confirm that the level of experience is an important factor that supervisors consider in relation to the nature of the supervision given. However, how this is incorporated into a particular supervisory relationship is less certain. In particular, in contexts where experience is uniformly low (i.e. Supervised Legal Practice), it is unclear how supervisors may approach those supervisory relationships. Section 2 below considers this further.

2 Supervising SLPRs

Questions 32 and 33 were new questions, not included in the original 2011 version. The purpose of these questions was to identify supervisor respondents who supervise a SLPR and, if so, whether those supervisors consider it necessary to provide closer supervision. As with other additional questions in the 2013 version, I prepared these questions after preliminary research that uncovered the importance of SLPRs as a subset of supervisees.

Question 32 simply asked supervisors “Do you supervise any legal staff who hold a practising certificate subject to a statutory condition that they engage in supervised legal practice only?” The results are set out in Table 8-4 below.

<table>
<thead>
<tr>
<th></th>
<th>2013 Qu 32 – Do you supervise any legal staff who hold a practising certificate subject to a statutory condition that they engage in supervised legal practice only?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>27.27%</td>
</tr>
<tr>
<td>No</td>
<td>64.55%</td>
</tr>
<tr>
<td>Unsure</td>
<td>8.18%</td>
</tr>
</tbody>
</table>
Some supervisors, 8.18%, responded that they were unsure. This is a high figure given that it is a fairly clear-cut and fundamental issue when it comes to supervision. It is uncertain how supervisors could not know this. Again, this is evidence that Supervised Legal Practice is not always clearly positioned as, or understood to be, a unique supervisory context in practice.

Question 33 asked those supervisors who supervise staff completing Supervised Legal Practice if their supervision practices are different for these staff. The results are set out below in Table 8-5.

<table>
<thead>
<tr>
<th>Table 8-5 – Differences in Supervision Practices for Supervised Legal Practitioners?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Qu 33 – If you answered yes to the previous question (Qu 32) are your supervision practices for legal staff who hold that type of practising certificate similar to your supervision practices for other practising certificate holders</td>
</tr>
<tr>
<td>Responses</td>
</tr>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
<tr>
<td>Somewhat</td>
</tr>
</tbody>
</table>

Exactly 50% of respondents answered “Yes”, with 23.33% responding “No” and 26.67% responding “Somewhat”. The significant portion of “No” responses provide further evidence that Supervised Legal Practice is not always treated as being a unique supervisory context. However, this result does not clearly align with the results detailed in section 1 above, which provides evidence that experience is the most important factor for supervisors in determining the level of supervision. It is not clear why this has not transferred specifically to Supervised Legal Practice, a context characterised by a lack of experience and practical knowledge.

It is relevant to point out that the number of respondents for this question was relatively small with only 30 responses. It is not clear why this is the case. This question also contained an open-ended component, which asked supervisors: “If they differ in What Ways?” This open-ended component yielded ten 10 responses, all of which are set out in Table 8.6 below and grouped into one of following three categories:

- Category 1 – Supervised Legal Practice is positioned as a mere extension of the normative based supervision pervasive in legal practice. (Normative Focus)
• Category 2: Supervised Legal Practice is a unique supervisory context where supervisees lack legal practice experience and are in need of competence based practical training as well as a range of interpersonal support mechanisms. (Unique Supervisory Context)

• Category 3 – Lack of meaningful insight regarding how the supervision differs (Unclear)

<table>
<thead>
<tr>
<th>Table 8-6 – How Supervision Practices Differ?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 Qu 33 – Supervisors – If they differ in what ways</td>
</tr>
<tr>
<td>1. “The supervision is more controlled and direct”</td>
</tr>
<tr>
<td>2. “It depends on ability, not how many years practicing”</td>
</tr>
<tr>
<td>3. “I scrutinise them a bit more.”</td>
</tr>
<tr>
<td>4. “I treat the supervised practitioners the same way I do my paralegals - I have to authorise everything before they issue any work”</td>
</tr>
<tr>
<td>5. “More hands on, more encouragement and greater expectations of them to demonstrate their willingness and desire to learn.”</td>
</tr>
<tr>
<td>6. “... the difference lies in the level of education I might try to impart. If they are a conditional cert holder and have little experience in the relevant area, I will give them more detailed explanations about how some things are done or why I made the changes I made, etc --- I would spend a little more time supporting them than I might if they are quite experienced and I am, say, just signing off on an advice and made some minor changes (the reasons for which will be more obvious to the more experienced practitioner than they might be to the less experienced one).”</td>
</tr>
<tr>
<td>7. “Such staff require a higher level of mentoring and far less budgetary pressure.”</td>
</tr>
<tr>
<td>8. “Do to inexperience require additional supervision”</td>
</tr>
</tbody>
</table>
The responses are evenly split into the two main categories. On one hand, there is some appreciation for Supervised Legal Practice as a unique supervisory context geared at training and development via education and support. Response 6 provides an illustrative example of how a supervisor could modify their approach so that supervision becomes a forum for training and development. Responses 5 and 7 articulate how supervisors can provide additional support and fulfil a restorative function. Interestingly, none of these responses, which seem to correctly position Supervised Legal Practice as a unique supervisory context, allude to regular and frequent supervision meetings which are a hallmark of effective supervision.

On the other hand, there is also an indication that Supervised Legal Practice is sometimes only utilised as a forum for monitoring based normative supervision. Responses 4 and 10 provide worrying examples of a limited monitoring based approach to supervision centred on risk management objectives. Response 4 simply lumps SLPRs in the same category as paralegals given the same level of experience, without regard to the fact the SLPRs are supposed to be completing a final stage of practical legal training. Response 10 provides an example of risk management imperatives actually preventing the development of autonomy. Rather than using certain tasks as an opportunity for participation and development, this supervisor simply removed the SLPR from the equation.

These responses explain to a certain extent the misalignment of the responses in section 1 above (experience as a factor in the level of supervision) and this section. In particular, there is fairly undivided support for supervision to depend on level of experience. However, how this translates to different supervision practices during Supervised Legal Practice is open to interpretation by supervisors. For some, it means a different approach where supervision becomes a forum for training and development. For others, it simply means the intensity of monitoring will increase.

This part has outlined further evidence that not all supervisors understand or treat Supervised Legal Practice as a unique supervisory context. In fact, this part provides evidence that there are
two equally strong views – those who position it correctly as a unique supervisory context and those that do not move beyond the bounds of monitoring based, normative supervision. Moving on, the next section will consider Supervised Legal Practice from the perspective of SLPRs.

C Supervised Legal Practitioners ("SLPRs"): Differing Perceptions

This part will present Survey Data that provides evidence that the perceptions of SLPRs differ significantly\(^4\) from other supervisees in relation to:

- The appropriateness of their supervision.
- The focus of their supervision.
- Disagreeing with their supervisor.

1 Appropriateness of Supervision

Question 44 asked supervisees whether they feel the supervision they receive is appropriate given their experience and/or qualifications. Supervisees were asked to give separate responses, for level of experience and qualifications, on a Likert-type scale (from 1 – Not at all to 6 – Very appropriate). The results are shown in Table 8-7 below.

<table>
<thead>
<tr>
<th>2013 Survey Question 44 - Do you receive supervision that you feel is appropriate to your experience and/or qualifications?</th>
<th>Mean Statistic From 1 (not at all) through to 6 (very appropriate).</th>
</tr>
</thead>
<tbody>
<tr>
<td>I receive supervision appropriate to my level of experience</td>
<td>4.6582</td>
</tr>
<tr>
<td>I receive supervision appropriate to my qualifications</td>
<td>4.6398</td>
</tr>
</tbody>
</table>

The results for these questions indicate that generally, supervisees feel their supervision is appropriate given their experience and qualifications. The corresponding question in the 2011

\(^4\)In order to address the extent to which Supervised Legal Practice as a unique supervisory context from the perspective of SLPRs, a series of cross-tabulations were created to examine differences between the perceptions of SLPRs and other supervisees. A Kruskal-Wallis test was conducted to determine if there were noteworthy differences in responses between supervisees completing Supervised Legal Practice and supervisees not completing Supervised Legal Practice. The significance level was set at 0.1. Distributions of scores were not similar for all groups, as assessed by visual inspection of a boxplot. As such differences in medians were not investigated.
version\textsuperscript{5} yielded a consistent result. However, SLPRs are less confident their supervision is appropriate. Table 8-8, below, cross-tabulates the responses for Question 44 (immediately above) and Question 66 (which asked supervisees whether they were completing Supervised Legal Practice).

The mean scores for SLPRs, regarding level of experience, were significantly lower than other supervisees. This means that SLPRs are less likely to perceive the supervision they received as being appropriate given their level of “experience”. Regarding “qualifications”, the difference in mean scores fell slightly short of being statistically significant.

This result is consistent with the results from Part B above, which provide evidence that Supervised Legal Practice is not treated as a unique supervisory context. However, the exact reason why SLPRs are less likely to perceive their supervision as appropriate given their

\textsuperscript{5} See Table 8-7A in Appendix 4. Note however, for Question 46 of the 2011 version, respondents were simply required to answer “yes” or “no” once in relation to both experience level and qualifications.
experience is not clear from these results. The literature positions Supervised Legal Practice as an unrealised stage of practical legal training. Arguably this means that, if SLPRs are often treated the same, or substantially the same as other supervisees, it is likely that they will perceive their supervision as inappropriate because of a lack of expected training and support. The remainder of this chapter will consider additional Survey Data that explores this issue in further detail.

Question 44 allowed for open-ended comments. Two SLPR respondents provided differing comments. These comments are set out below:

“I am a junior solicitor and have an experienced supervisor to provide guidance. Supervisors are willing to give appropriate advice and supervision, however due to different staff members being out of the office or unavailable, the ability to access that advice and supervision is difficult at times.”

“Level of supervision is excessive at times for simple tasks. This excessive level of supervision results in increased costs to the client.”

This indicates that there are potentially two reasons SLPRs are less likely to perceive their supervision as appropriate. On the one hand, as expected, it may be because of a lack of access to training and support. In addition, it may be because of a perception that supervision is excessive in some instances. It is not clear, from these responses, exactly what SLPRs perceive as excessive. However, this view possibly relates to the pervasive issues of micro-management and enforcing stylistic changes identified in Chapter VII. The SLPRs profiles covered in Part D below provide an opportunity to consider this issue further.

2 Focus of Supervision

Table 8-9 cross-tabulates the responses for Question 43 and Question 66 (which asked supervisees whether they were completing Supervised Legal Practice). This table allows a comparison of how SLPRs and other supervisees perceive the focus of the supervision they receive. The results are set out in Table 8-9 below. For formatting reasons only, Table 8-9 is split into two parts - A & B.

---

6 This question, presented in Chapter VI Part C (1), asked supervisees to report on the focus of the supervision they receive.
<table>
<thead>
<tr>
<th>Is your practising certificate currently subject to a condition that you must engage in supervised legal practice only?</th>
<th>Application of legal reasoning</th>
<th>Compliance with your firm’s systems</th>
<th>How your supervisee is coping</th>
<th>Timely processing of matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Mean</td>
<td>3.32</td>
<td>2.82</td>
<td>2.09</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>34</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.34</td>
<td>1.27</td>
<td>1.14</td>
</tr>
<tr>
<td>No</td>
<td>Mean</td>
<td>3.77</td>
<td>3.38</td>
<td>2.72</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>60</td>
<td>60</td>
<td>57</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.38</td>
<td>1.18</td>
<td>1.29</td>
</tr>
<tr>
<td>Unsure</td>
<td>Mean</td>
<td>3.50</td>
<td>3.33</td>
<td>2.83</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>6</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>.55</td>
<td>1.21</td>
<td>.41</td>
</tr>
<tr>
<td>Total</td>
<td>Mean</td>
<td>3.60</td>
<td>3.19</td>
<td>2.51</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>100</td>
<td>100</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.34</td>
<td>1.23</td>
<td>1.23</td>
</tr>
<tr>
<td>Independent Samples</td>
<td>Kruskal-Wallis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>χ²(2) = 4.16</td>
<td>p = 0.12</td>
<td>χ²(2) = 4.14</td>
<td>p = 0.13</td>
</tr>
<tr>
<td></td>
<td>χ²(2) = 2.55</td>
<td>p = 0.28</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is your practising certificate currently subject to a condition that you must engage in supervised legal practice only?</th>
<th>Ethical behaviour</th>
<th>Potential risks</th>
<th>Productivity and time recording</th>
<th>Billing</th>
<th>Client relationship management and service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Mean</td>
<td>2.70</td>
<td>3.47</td>
<td>2.79</td>
<td>2.71</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>34</td>
<td>34</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.31</td>
<td>1.16</td>
<td>1.32</td>
<td>1.31</td>
</tr>
<tr>
<td>No</td>
<td>Mean</td>
<td>3.24</td>
<td>4.10</td>
<td>3.32</td>
<td>3.23</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>58</td>
<td>60</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.33</td>
<td>1.02</td>
<td>1.42</td>
<td>1.49</td>
</tr>
<tr>
<td>Unsure</td>
<td>Mean</td>
<td>3.33</td>
<td>4.00</td>
<td>3.50</td>
<td>2.83</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.21</td>
<td>.63</td>
<td>1.64</td>
<td>2.04</td>
</tr>
<tr>
<td>Total</td>
<td>Mean</td>
<td>3.06</td>
<td>3.88</td>
<td>3.15</td>
<td>3.03</td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>98</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Std. Deviation</td>
<td>1.33</td>
<td>1.09</td>
<td>1.41</td>
<td>1.47</td>
</tr>
<tr>
<td>Independent Samples</td>
<td>Kruskal-Wallis</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>χ²(2) = 3.82</td>
<td>p = 0.15</td>
<td>χ²(2) = 7.94</td>
<td>p = 0.02</td>
<td>χ²(2) = 3.83</td>
</tr>
<tr>
<td></td>
<td>χ²(2) = 2.93</td>
<td>p = 0.23</td>
<td></td>
<td></td>
<td>χ²(2) = 8.04</td>
</tr>
</tbody>
</table>
The mean rank was lower for SLPRs (compared to other supervisees) for: “How your supervisee is coping”. This means that SLPRs are less likely than other supervisees, to perceive their supervision as focussing on “how they are coping”. The p-value for this factor was 0.6 and therefore fell just outside the conventional level of statistical significance. This result aligns with the Survey Data already covered in this chapter and Chapters VI and VII, as well as the literature. In particular, SLPRs require a particular type of supervision which includes practical legal training and a range on interpersonal support mechanisms as they transition from newly admitted lawyer to autonomous practitioners. Despite this, a common view among supervisors is that Supervised Legal Practice is merely a context which requires closer normative-based supervision. In addition, the obvious forum for restorative supervision (which addresses such matters as how a supervisee is coping) is frequent and regular supervision meetings. However, these meetings are not a common feature of legal practice supervision. It is not surprising then that SLPRs perceive a deficiency in the support they receive compared to other supervisees.

In addition, the mean rank was also significantly lower for SLPRs (compared to other supervisees) for “Potential Risks” and “Client Management and service”. This indicates SLPRs are less likely than other supervisees to perceive their supervision as focusing on “Potential Risks” and “Client Management and Service”. This finding does not clearly align or misalign with the literature or other Survey Data. One the one hand, “Potential Risks” and “Client Management and Service” align with the normative function, and therefore it is surprising that SLPRs did not perceive these factors as a focus of their supervision. On the other hand, this could equally be explained in terms of SLPRs not fully understanding the purpose of the supervision they receive. While Chapter VI outlined clear evidence that supervisors focus on these “normative” matters, SLPRs are new to the legal practice environment and may not understand the reason behind certain supervision practices. This explanation is consistent with the findings from Chapter VII in relation to what supervisees want more of, which uncovered a number of themes linked by an underlying sense of removal from their supervisor and the inner workings of legal practice.

These results should also be considered in light of the fact that the mean rank across all factors was clearly lower for SLPRs than other supervisees. Arguably, this indicates SLPRs are generally more ambivalent than other supervisees in terms of the focus of the supervision they receive. With this in mind, these particular results should be treated with caution.
3 Disagreeing with Supervisor

Table 8-10 cross-tabulates the responses for Question 50 (ability to disagree with supervisor – covered in Chapter VII) and Question 66 (which asked supervisees whether they were completing Supervised Legal Practice). This table allows for a comparison of perceptions regarding whether supervisees feel able to disagree with their supervisor. The results are set out in Table 8-10 below.

<table>
<thead>
<tr>
<th>If you have a current practising certificate, is your practising certificate currently subject to a condition that you must engage in supervised legal practice only?</th>
<th>Mean (Feel Able to disagree with supervisor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>3.68</td>
</tr>
<tr>
<td>No</td>
<td>4.42</td>
</tr>
<tr>
<td>Unsure</td>
<td>3.33</td>
</tr>
<tr>
<td>Total</td>
<td>4.10</td>
</tr>
</tbody>
</table>

Independent Samples Kruskal-Wallis

χ²(2) = 9.14

p = 0.01

The mean score for SLPRs was significantly lower than other supervisees. This finding provides evidence that SLPRs felt less able to disagree with their supervisor than other supervisees did. This is an important additional finding, which aligns with the literature, and Survey Data already presented. As noted in chapter IV, Part B (2) the issue of power dynamics is a relevant issue for academic supervisors monitoring externship supervision as part of law student clinical legal education. In addition, the Survey Data presented in chapter VII provided some evidence that supervisors commonly handle disagreement with supervisees in an analytical, authoritative manner. If disagreement is handled in an analytical authoritative manner, supervisees are less likely to be confident in raising issues. It is not surprising then that SLPRs, who are newly admitted lawyers inexperienced in legal practice, may have reservations or feelings of discomfort disagreeing with their supervisor.

This also suggests important implications for the effectiveness of the supervision of SLPRs. Effective supervision relies on a strong supervisory relationship, a key aspect of which is supervisors providing a safe base for supervisees. This result provides some indirect evidence that supervisors are less likely to create that safe-base for SLPRs, which in turn impedes development of a strong supervisory relationship.
This part has provided evidence that SLPRs perceive the supervision they receive differently from other supervisees. In particular, there is evidence that SLPRs are significantly less likely to perceive the supervision they receive as being appropriate given their experience and are less likely to feel able to disagree with their supervisor. There is also some inconclusive evidence that SLPRs are more ambivalent, than other supervisees, in terms of identifying the focus of the supervision they receive. Together, this is further evidence that, on a profession-wide level, Supervised Legal Practice does not fulfil the objective of a final stage of practical legal training. This part also provided indirect evidence that the SLPRs are more likely to suffer from ineffective supervision. However, effectiveness ultimately depends on supervision practices and the strength of the supervisory relationship in particular instances. In order to explore the issue of the effectiveness of supervision for SLPRs more closely, the next part will present additional Survey Data that provides an overview or snapshot of the experience of 15 SLPRs.

D Supervised Legal Practitioners (“SLPRs”): Profiles and Analysis

So far, the Survey Data presented has examined, and presented, a composite of responses, identifying general trends, themes and differences. While this is a useful first step, the reality is that each supervisory relationship will function based on the unique characteristics of each supervisor and supervisee. The Survey Data was not collected, and does not allow, for an analysis of specific supervisory relationships (i.e. the supervisors and supervisees cannot be paired to their real-life partner). However, what is possible is to look more broadly at the experience of SLPRs by analysing their responses to a range of questions collectively. In other words, it is possible to outline a profile of some SLPRs. Fifteen SLPRs respondents were selected as follows:

- SLPRs profiles shortlisted based on completeness of responses especially in relation to two or more open-ended responses.
- Atypical responses where it was not entirely clear that a supervisee was in fact a SLPR (e.g. reported for the 2 years PC or > 2-year supervisory relationship) removed.
A narrative of profiles, including qualitative responses, for the 15 SLPRs is set out below (Section 1) followed by a meta-analysis of these profiles (Section 2).

1 SLPR Profiles

(a) SLPR #1

Demographic Snapshot

<table>
<thead>
<tr>
<th>Gender:</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type:</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type:</td>
<td>5-9 solicitors</td>
</tr>
<tr>
<td>Client Base:</td>
<td>Small and medium businesses</td>
</tr>
<tr>
<td>Time in Current Role:</td>
<td>&lt; 1 Year</td>
</tr>
</tbody>
</table>

SLPR #1 is a newly admitted practitioner still in the first half of his two year Supervised Legal Practice period. SLPR #1 reported meeting with his supervisor less than 15 minutes a week and that formal meetings only occurred if an issue arose. He reported that his peers, not his supervisor, were his most important source of support. SLPR #1 perceived the supervision he received as only focussing on “Billing” and “Productivity and Time Recording.” According to SLPR #1, he had not received any training or guidance on how to work with his supervisor.

This information itself, considered in light of the effective supervision literature covered in Chapter V Part C suggests a poor supervisory experience. In particular, there is: no forum for developing and nurturing the supervisory relationship; a narrow approach regarding the functions of supervision; and no preparation for the supervisory relationship.

In this case, these indications are correct. SLPR #1 reported information that described a truly dysfunctional supervisory relationship. He viewed his supervision as being “Not at all” appropriate given his experience and qualifications. Similarly, he responded “Not at all” in relation to whether he was able to disagree with his supervisor. In response to how disagreements are addressed, he stated: “It is not addressed. Any disagreements with my supervisor are effectively left for me to sort out.”

SLPR #1 reported a lack of positive supervisory behaviours and commented that he would like more of the following from his supervisor:
“Supervision, understanding and timely assistance. As a new practitioner there are many legal processes that I don’t understand so when I asked my supervisor a question I would expect to be given the answer and not fobbed off and ignored then having to make repeated requests in relation to the same issue.”

He similarly commented that he would like less: “Being fobbed off and ignored.” In his final scathing comment, he commented that he would give the following brief advice to a new colleague to make the supervisory relationship as productive as possible: “Expect nothing and cover your backside.”

This is of course one-side of the story and, unfortunately, the way in which the data has been collected does not allow the supervisor to respond. However, a thorough analysis of SLPR #1’s responses indicates a supervisee who has realistic expectations about the relationship and understands the potential contributions he can make. In particular, SLPR #1 seemed to understand that supervisees play a part in contributing to his effective supervision. However, he validly pointed out that: “All of these points are dependent on being able to have meetings with your supervisor.”

(b) SLPR #5

<table>
<thead>
<tr>
<th>Demographic Snapshot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender: Male</td>
</tr>
<tr>
<td>Legal Practice Type: Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type: &gt;50 solicitors</td>
</tr>
<tr>
<td>Client Base: Large organisations (e.g. corporations, government departments, trade unions)</td>
</tr>
<tr>
<td>Time in Current Role: &lt; 1 Year</td>
</tr>
</tbody>
</table>

SLPR #5 reported meeting with his supervisor between 15-29 minutes a week and that formal meetings occurred on a weekly basis. He also reported that his peers, not his supervisor, were his most important source of support. SLPR #5 perceived the supervision he received as covering a range of functions but with a greater focus on “Potential Risks”, “Productivity and Time Recording”, “Compliance with firm’s systems” and “client relationship management and service”. According to SLPR #5, he had received training or guidance on how to work with his supervisor via in-house courses and induction training.

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7 Question 57 asked supervisees to consider a number of factors which are premised on supervisees taking an active role in the supervisory process. This Question is set out in full in Appendix 2. SLPR #1 rated all these factors with the highest possible score of 1.
His response in relation to the appropriateness of his supervision was equivocal and indicated he considered it was appropriate to a limited extent. He did feel able to disagree with his supervisor to a certain extent and commented that such disagreement was resolved via “discussion”. He provided minimal responses to the open-ended questions noting only that he would like “more detailed instructions and feedback” from his supervisor.

On the one hand, there is some support in the form of basic training and preparation for the supervisory relationship. In addition, there is provision for limited but regular contact with his supervisor. However, the nature of the supervision is geared towards “normative”, not support and development.

(c) SLPR #7

Demographic Snapshot

<table>
<thead>
<tr>
<th>Gender</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type</td>
<td>&lt;5</td>
</tr>
<tr>
<td>Client Base</td>
<td>Small &amp; Medium Businesses</td>
</tr>
<tr>
<td>Time in Current Role</td>
<td>1-2 years</td>
</tr>
</tbody>
</table>

SLPR #7 reported meeting with her supervisor 30-45 minutes a week. However, this was only when an issue arose. She reported her supervisor was her most important source of support. SLPR #7 clearly viewed her supervision as focussing on “potential risks” with all other factors scoring very low. SLPR #7 reported not receiving any training or guidance on how to work with her supervisor. The contact with her supervisor and her reliance on her supervisor for support indicates some strength in the relationship. Her response regarding her ability to disagree with her supervisor suggests a lack of firm belief either way. SLPR #7 provided further insight into her supervisory relationship commenting that:

- She would like more “of the type of work that I want to be involved in and less of others”
- She would like less “responsibility in relation to particularly difficult clients who only speak with me when my supervisor is not available.”

Finally, SLPR #7 provided the following advice to new colleagues about making the supervision relationship productive: “Ask questions and don’t be afraid to discuss matters”. Interestingly, she reports a positive experience and is praiseworthy of her supervisor. Her comments do not indicate anything particularly negative about her supervisor; nonetheless, she was only
marginally supportive of the idea that her supervision was appropriate given her experience and qualifications. Overall, these factors are not a recipe for a particularly strong supervisory relationship.

(d) SLPR #8

**Demographic Snapshot**

- **Gender:** Male
- **Legal Practice Type:** Private Practice
- **Size of Legal Practice Type:** >50
- **Client Base:** Large organisations (e.g. corporations, government departments, trade unions)
- **Time in Current Role:** < 1 years

SLPR #8’s demographic snapshot is identical to that of SLPR #5. Despite these similarities, some differences emerge in other aspects of the supervisory relationship. SLPR #8 reported meeting his supervisor more than 45 minutes each week, but unlike SLPR #5, his meetings were irregular only occurring when an issue arose. Also in contrast to SLPR #5, he considered his supervisor, not his peers, to be his greatest form of support. Finally, he reported not having any training or guidance in relation to working constructively with his supervisor and unsure what further training on working with his supervisor he would like.

SLPR #8, considered “potential risks” and “compliance with firm’s systems” to be the focus of the supervision he received. SLPR #8 also felt moderately able to disagree with his supervisor and commented that disagreements were addressed “in a constructive way”. SLPR #8 seemed to be of the view that the supervision he received was moderately appropriate given his experience and qualifications. In this regard, he commented that:

> *Level of supervision (sic) is excessive at times for simple tasks. This excessive level of supervision results in increased costs to the client.***

SLPR #8’s other open-ended comments provide further insight on this point. He commented that he would like more “feedback and the opportunity to draft in my own style”. It seems then the excessive supervision may relate to what SLPR #8 perceives as being stylistic or personal changes that end up being an additional cost to the client. In a similar vein, he commented that he would like less “unnecessary amendments”.

Page 260 of 379
(e) **SLPR #10**

**Demographic Snapshot**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type</td>
<td>Government Legal Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type</td>
<td>&lt;5</td>
</tr>
<tr>
<td>Client Base</td>
<td>Government Legal Practice</td>
</tr>
<tr>
<td>Time in Current Role</td>
<td>&lt;1 Year</td>
</tr>
</tbody>
</table>

SLPR #10 is the only supervisee whose responses are covered in this section who did not report working in a private firm. She worked in a government legal practice. She reported meeting with her supervisor more than 45 minutes a week and had regularly weekly meetings. SLPR #10 was of the view that the supervision she received focussed on “potential risks”. She seemed to be of the view that her supervision was appropriate based on her experience, but only felt able to disagree with her supervisor to a limited extent. Her training on working with her supervisor was limited to “in house performance agreements and the documents associated with how to conduct those”.

SLPR #10 commented that she would like her supervisors to: “provide formal training and documented procedures. This would provide at least a starting point for building on knowledge and useful when people are out of the office.” Her advice to new colleagues was to: “Complete as much on-the-job training as possible. Complete a wide variety of tasks.”

(f) **SLPR #12**

**Demographic Snapshot**

<table>
<thead>
<tr>
<th>Gender</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type</td>
<td>5-9</td>
</tr>
<tr>
<td>Client Base</td>
<td>Individuals</td>
</tr>
<tr>
<td>Time in Current Role</td>
<td>&lt; 1 Year</td>
</tr>
</tbody>
</table>

SLPR #12 had limited contact time with her supervisor, meeting only 15-29 minutes a week and only in circumstances where an issue arose. SLPR #12 had not received any training in relation to working with her supervisor and indicated that she had a separate mentor who was her most important source of support.

Given this background to her supervisory relationship, it is unsurprising that her remaining results indicated a very unproductive supervisory relationship. SLPR #12 was very negative in terms of her supervision, perceiving that it had no substantial focus at all. SLPR #12 felt able to
disagree with her supervisor to a limited extent and commented that disagreements were addressed in the following way: “I put forward my argument as to why I disagree and he considers it.” However, of greater concern, was the following comment:

“My supervisor does not practice in my area of law, so ideally I would like a supervisor who knew my area of law and could actually provide constructive advice.”

Given this, and the fact that SLPR #12 receives more support from a third party mentor, it begs the question, what exactly does her supervisor do? Although this is, of course, one side of the story, it raises an important issue in terms of the suitability of certain persons to act as supervisors. Given that Supervised Legal Practice exists only as a general unstructured requirement, it is possible to have these circumstances where supervisors are not matched to their supervisee in terms of relevant experience.

(g) SLPR #14

Demographic Snapshot
Gender: Female
Legal Practice Type: Private Practice
Size of Legal Practice Type: 10-19
Client Base: Individuals
Time in Current Role: 1-2 years

SLPR #14 was positive in terms of the focus of her supervision which she perceived as broadly covering a number of areas including: “application of legal reasoning”, “compliance with firm’s systems”, “timely processing of matters”, “ethical behaviour”, and “potential risks”. She even was moderately positive in terms of her supervision focussing on “how she is coping” – something glaringly missing in the other profiles considered. SLPR #14 received different forms of training to prepare her for working with her supervisor (namely, personal discussion with supervisor, other colleagues, and external). Furthermore, SLPR #14 formally met with her supervisor daily and viewed her supervisor as her most important source of support. Finally, she saw value in ad-hoc meetings as well as formal planned meeting. Overall, these factors combined would appear to be a recipe for a productive supervisory relationship.

This close level of contact and the broad focuses of supervision corresponded with her perception that her supervision was largely appropriate for her experience and qualifications. Despite this generally positive supervisory structure, she still only felt able to disagree with her supervisor to a limited extent. This is interesting given that all her other responses indicated a
relatively strong relationship. Despite this, she felt no able to disagree with her supervisor than other supervisees with less healthy supervisory relationships did. Arguably, this issue goes beyond the actual supervisory relationship – the causes for which need further consideration.

Despite generally good contact time, SLPR #14 commented that she would still like: “More training on how to actually complete tasks. Or what is important to look for in particular tasks.” In a similar vein, she commented that she would like “… a list of areas (discussed between the parties) in which further training is required and a plan put in place to conduct that training.”

(h) SLPR #15

Demographic Snapshot

<table>
<thead>
<tr>
<th>Gender:</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type:</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type:</td>
<td>10-19</td>
</tr>
<tr>
<td>Client Base:</td>
<td>Individuals</td>
</tr>
<tr>
<td>Time in Current Role:</td>
<td>1-2 years</td>
</tr>
</tbody>
</table>

SLPR #15 had an identical demographic snapshot to SLPR #14 (discussed immediately above), however her supervisory experience appears to be far less positive. She met with her supervisor, 15-29 minutes a week but only if an issue arose. Her supervisor was not her most important support, rather, another senior practitioner. She perceived that her supervision focussed on productivity and time recording, billing, client relationship management and service but not on how she was coping. Her training for working constructively with her supervisor was limited to information from other colleagues. SLPR #15 found it difficult to disagree with her supervisor noting that: “A disagreement with my supervisor is approached face to face but almost always causes angst for me.”

Given these structures around the supervisory relationship, it is not surprising that she was of the view her supervision was inappropriate given her experience. Despite this, she still thought her supervision was moderately appropriate given her qualifications.

SLPR #15 wanted significantly more from her supervisor, commenting that she would like more:

- Focus on career growth and career planning within the firm for professional and support staff, including communicating
- Expectations with respect to achieving higher levels / roles within the firm.
- More time spent on development technical legal skills.
- More transparency and communication about the direction and goals of the team.
Acknowledgement of previous work experience and its application in current role.
More time on matters to get things right rather than rush through the matter.
More opportunities for in house face to face seminars (CLE) rather than DVDs.”

In terms of further training with her supervisor, she considered that the following would be helpful:

“In-house face to face seminars run by external providers in the topics of business skills, effective communication, time management and organisational skills, working with diverse groups of people, as well as legal training for specific areas of law. I think all type of training will be beneficial for all levels of staff in the firm and would assist all levels to supervise and to be supervised.”

She also commented that she would give the following advice to a colleague about making supervision productive:

“Be open to discuss options for how to manage workloads. Get to know the supervisee, their personality and their work style and adapt your supervision method to work within their strengths. Be clear about your expectations and ask the supervisee what they wish to achieve. Set career progression goals and performance targets as these motivate the supervisee.”

Overall, SLPR #15’s supervisory relationship was characterised by needing significantly more from her supervisor in terms of communication, training and support.

(i) SLPR #19
Demographic Snapshot

<table>
<thead>
<tr>
<th>Gender:</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Legal Practice Type:</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type:</td>
<td>&gt;50</td>
</tr>
<tr>
<td>Client Base:</td>
<td>Large organisations (e.g. corporations, government departments, trade unions)</td>
</tr>
<tr>
<td>Time in Current Role:</td>
<td>1-2 years</td>
</tr>
</tbody>
</table>

SLPR #19 provides an example of a generally positive supervisory experience in a large firm. He usefully noted the following variation in approach taken by other supervisors he had worked with in his firm:

“Large variation between supervisors, all of whom have good approaches, although executed very differently. One supervisor everything was done by memo. There was very little direct contact if it could be avoided (deemed most efficient). Feedback was by memo and documents in mark-up. There were regular (fortnightly) arranged
feedback sessions (both to give and receive direct feedback. Other end of spectrum is supervisor who will often have me in their office, working collaboratively on items of work. Very good for instant feedback, less efficient use of time.”

SLPR #19 usefully describes the trade-off between efficiency and collaboration. In this regard, the approach of the supervisor who was deemed more efficient is consistent with contemporary legal practice where supervision is viewed as an opportunity cost.

SLPR #19 met with his current supervisor more than 45 minutes a week but only if an issue arose. He considered that the focuses of his supervision were: “application of legal reasoning”, “timely processing of matters”, and “client relationship management and service”. He did not consider that his supervision focussed at all, on how he was coping. SLPR #19 received guidance on how to work with his supervisor constructively via personal discussions with his supervisor. Although SLPR #19 was generally positive about his supervisor, his peers were his most important source of support. Overall, these factors represent a mix of positive and negative support structures.

SLPR #19 viewed his supervision as appropriate for both his experience and qualifications. However, he stated he would like more: “Debrief at the end of matters - i.e. discussion on what could have been done better, etc”.

In this regard, although he noted the benefits of both efficient memo-based supervisory styles versus a more interpersonal collaborative approach, it seems he himself sought more of the interpersonal. SLPR #19 seemed to have a good understanding of the role both parties play in making supervision productive. In this regard, he commented that:

“It is a two way street. Sometimes your supervisor also needs management. Don’t just wait for ‘supervision’ to happen, make sure you are proactive in seeking out feedback, etc.”

Interestingly, as was the case with SLPR #14, despite a generally positive supervisory experience, he only felt moderately able to disagree with his supervisor. However, it seems that disagreements with his supervisor, when raised, were handled appropriately. On this point, he commented that:

“If there is a point I disagree on, I will raise it early with supervisor (usually to be discussed). Once they have considered the point, if they continue to disagree, I will proceed as instructed”
Again, a perception of appropriate supervision did not necessarily mean being able to disagree with his supervisor. This re-iterates the possibility that there are underlying cultural issues, where there is an imbalance in the relationship preventing certain forms of dialogue.

(j) SLPR #21

Demographic Snapshot

<table>
<thead>
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<tbody>
<tr>
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<tr>
<td>Size of Legal Practice Type</td>
<td>&gt;50</td>
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<tr>
<td>Client Base</td>
<td>Large organisations (e.g. corporations, government departments, trade unions)</td>
</tr>
<tr>
<td>Time in Current Role</td>
<td>1-2 years</td>
</tr>
</tbody>
</table>

SLPR #21 met with her supervisor twice a week but only for a total of 15-29 minutes each week. She had received training in relation to the supervisory process via in-house courses and she referred to “external” mentors. SLPR #21’s most important form of support was her peers.

SLPR #21 was negative in terms of the focus of her supervision scoring all possible factors very low. Thus, her large firm experience is quite different from SLPR #19’s positive experience, discussed immediately above. SLPR #21 did not consider her supervision as appropriate for her experience or qualifications. She felt unable to disagree with her supervisor indicating that disagreements were not meaningfully addressed. In this regard, she commented that disagreements are “usually postponed, then not discussed”.

SLPR #21 commented she would like:

- “More accessibility, more openness to talking about issues that arise, more attention to my matters so that when a question arises, they know more about the background of the matter”;
- “less clique-iness with other members of staff, more time to discuss issues, more awareness of what they asked me to do in the first place, more awareness of the time tasks take, more thought given to how tasks are delegated and supervised, more communication and keeping me ‘in the loop’ on matters I am working on”

Her response to the question asking what advice she would provide to a colleague embarking on supervision surmises her experience. She simply stated: “No idea. Still struggling with the issue myself.”
(k) SLPR #25

Demographic Snapshot

Gender: Female  
Legal Practice Type: Private Practice  
Size of Legal Practice Type: 10-19  
Client Base: Small & Medium Businesses  
Time in Current Role: 1-2 years

SLPR #25 met with her supervisor daily and spent in excess of 45 minutes per week meeting with her supervisor. She viewed her supervisor as her most important source of support and considered that the focus of her supervision was “client relationship management and service”. All other factors were given a low score. In this regard, it seems she was regularly involved in client work (as opposed to being relegated to back-office drafting and research). She prepared for the supervisory relationship via “personal discussions with her supervisor” and “through other colleagues”. Overall, this information together is a recipe for a positive supervisory relationship.

SLPR #25 considered her supervision to be largely appropriate given her experience and qualifications. Despite her responses indicating a healthy and positive supervisory relationship, she still commented that she would like:

“More time - however understandably this is an issue for all practising lawyers. I understand it is limited, and do my best to achieve as much as possible without supervision leaving the areas I am unsure of to be given input by my supervisor.”

This highlights the issue of supervisor time being at a premium, and even daily meetings may not be sufficient to meet the needs of supervisees. This reinforces the need for supervisors to develop skills in identifying and capitalising on opportunities for experiential learning in the ordinary course of daily legal practice. SLPR #25 was aware of the role supervisees play in this process commenting that supervisees should: “Prepare for your meetings so that the issues can be dealt with productively.”

A stand out point from SLPR #25’s responses was that she indicated a clear ability to disagree with her supervisor. In terms of addressing disagreements, she commented that:

“We confront it. We have worked together for a period of time where I am able to tell if something is wrong. I would much prefer to deal with any issues which cause communication difficulties”
This appears to be an exception rather than the norm. However, it indicates that this type of open relationship is possible. Even though her response stated that she had worked with her supervisor for “a period of time”, her responses indicated it could not have been substantially greater than any of the other supervisees covered in this section.

(i) SLPR #26

Demographic Snapshot

Gender: Male
Legal Practice Type: Private Practice
Size of Legal Practice Type: 10-19
Client Base: Individuals
Time in Current Role: 1-2 years

SLPR #26’s responses indicate a highly satisfied supervisee. However, his open-ended responses were only partially completed and fail to provide significant insight in relation the nature of his supervisory relationship.

SLPR #26 reported meeting with his supervisor daily and for more than 45 minutes in total each week. His preparation for the supervisory relationship was via personal discussion with his supervisor. He viewed his supervisor as his most important source of support and considered that the supervision had multiple focuses, namely: “application of legal reasoning”, “compliance with firm’s systems”, “ethical behaviour” and “potential risks”.

SLPR #26 considered that his supervision was very appropriate given his qualifications and experience and he felt able to disagree with his supervisor to a great extent. This was despite the fact that he was of the view that it was his supervisor’s view that would prevail. Arguably then the issue regarding supervisee reluctance to disagree with supervisors has little to do with wanting their opinion or view followed. SLPR #26’s only other comment was that he would like “Faster turnaround of reviewing docs”.

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(m) SLPR #29

Demographic Snapshot

<table>
<thead>
<tr>
<th>Category</th>
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</tr>
</thead>
<tbody>
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<td>Gender</td>
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<tr>
<td>Legal Practice Type</td>
<td>Private Practice</td>
</tr>
<tr>
<td>Size of Legal Practice Type</td>
<td>10-19</td>
</tr>
<tr>
<td>Client Base</td>
<td>Individuals</td>
</tr>
<tr>
<td>Time in Current Role</td>
<td>&lt; 1 Year</td>
</tr>
</tbody>
</table>

SLPR #29 met with his supervisor more than 45 minutes a week but only if an issues arose. He viewed his supervisor as his most important source of support. He had not received any preparation for the supervisory relationship and was at the beginning of the Supervised Legal Practice period. He viewed his supervision as focussing mainly on “Potential Risks”, “Ethical Behaviour” and “Client Relationship Management & service”. He did not provide a response in relation to whether his supervision was appropriate given his experience but did view it as appropriate in terms of his qualifications. In regards to the appropriateness of his supervision, he commented: “I am a junior solicitor and have an experienced supervisor to provide guidance.”

SLPR #29 indicated that he only felt able to disagree with his supervisor to a limited extent. This was despite stating: “I have a positive working relationship with my supervisor that is developing into more of a collaborative peer type situation.” Interestingly, he also seemed to have a realistic view in terms of himself noting the following advice for colleagues: “Listen, take advice on board and don't take mistakes personally, learn from them.” This again raises the anomaly of a seemingly sensible supervisee, in what is probably a positive supervisory relationship, who nonetheless does not feel comfortable in voicing disagreements.

Despite these positive comments, SLPR #29 raised some of the same themes identified in chapter VII. He commented that he would like: “more autonomy and trust in my capabilities”; and “less monitoring of my work style, to allow some freedom to develop my own methodologies.”
(n) SLPR #30

Demographic Snapshot
Gender: Female
Legal Practice Type: Private Practice
Size of Legal Practice Type: 5-9
Client Base: Individuals
Time in Current Role: < 1 Year

SLPR #30 met with her supervisor regularly, twice a week and for a total of 30-45 minutes a week. She was in the first half of her Supervised Legal Practice period and had preparation for her supervisory relationship via personal discussions with her supervisor. She considered her supervisor to be her main source of support. Generally, she was positive that her supervision was multi-focused but, in line with the norm, “how she was coping” ranked lowest. Also in line with the norm she only felt able to disagree with her supervisor to a limited extent.

SLPR #30 considered her supervision was appropriate for her qualifications but did not answer the same questions regarding her experience. Nor did she provide any further comments on this point. Her only other comment was that she would like “more assistance with time recording and more work that I could charge for.”

(o) SLPR #32

Demographic Snapshot
Gender: Male
Legal Practice Type: Private Practice
Size of Legal Practice Type: 10-19
Client Base: Small and Medium Businesses
Time in Current Role: 1-2 years

SLPR #32 met with his supervisor daily and for more than a total of 45 minutes each week. However, that is perhaps the only positive aspect of his supervisory relationship. He had not received training or guidance on dealing with his supervisor and he viewed his peers as his most important source of support. Despite the regular contact, he only viewed his supervision as moderately appropriate given his qualifications and experience. In addition, he only felt able to disagree with his supervisor to some extent. In relation to disagreements, he commented that: “It’s generally not (addressed), it is just done how the supervisor wants it done.”

Overall SLPR #32 perceived his supervisor in negative light. He considered that the overall focus of his supervision was “timely processing of matters” followed closely by: “application of legal
reasoning”, “billing” and “client relationship management and service”. He considered that “how supervisee is coping” and “ethical behaviour” did not feature in his supervisory mix.

SLPR #32 provided additional insights into his experience commenting that he would like: “more legal advice and sharing of expertise”; and “less focus on churning out quantity of work.” Although the structure of regular contact was factored into SLPR #32’s supervisory relationship, his experience was trumped by other factors. These other factors appear to be a combination of the commercial realities of a contemporary legal practice environment as well as perceived autocratic approach of his supervisor. It is not surprising that in SLPR #32’s case, he saw more value in ad-hoc supervisory encounters than formal meetings and viewed his peers as a more important source of support.

2 Analysis of SLPRs Profiles

The data underpinning the narratives in section 1 above were also analysed based on what they imply regarding the nature of the supervision received, the strength of the supervisory relationship and likelihood of the supervision being effective. Table 8-11, on the following two pages, presents a summary of these results. Following this table is a general discussion and meta-analysis of the SLPRs profiles.
<table>
<thead>
<tr>
<th>SLPRs</th>
<th>Gender</th>
<th>Stage of Supervised Legal Practice</th>
<th>Practice Type</th>
<th>Regular and Frequent Meetings</th>
<th>Perceived Dominant Function of Supervision</th>
<th>Relationship with Main Supervisor</th>
<th>Effective Supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
<td>Male</td>
<td>1st Year</td>
<td>Private Practice with 5-9 solicitors serving small and medium businesses.</td>
<td>&lt;15 minutes but only when an issue arises</td>
<td>Normative</td>
<td>Dysfunctional</td>
<td>Very Unlikely</td>
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<td>#5</td>
<td>Male</td>
<td>1st Year</td>
<td>Private Practice with &gt;50 solicitors serving large organisations.</td>
<td>Weekly for 15-29 minutes.</td>
<td>Normative</td>
<td>Weak</td>
<td>Unlikely</td>
</tr>
<tr>
<td>#7</td>
<td>Female</td>
<td>2nd Year</td>
<td>Private Practice &lt;5 solicitors serving small and medium business.</td>
<td>Approx. 30-45 minutes a week but only when an issue arises.</td>
<td>Normative</td>
<td>Marginal</td>
<td>Possible</td>
</tr>
<tr>
<td>#8</td>
<td>Male</td>
<td>1st Year</td>
<td>Private Practice with &gt;50 solicitors serving large organisations.</td>
<td>Approx. 30-45 minutes a week but only when an issue arises.</td>
<td>Normative</td>
<td>Marginal</td>
<td>Possible</td>
</tr>
<tr>
<td>#10</td>
<td>Female</td>
<td>1st Year</td>
<td>Government Legal Practice</td>
<td>Regular Weekly Meetings &gt; 45 minutes a week.</td>
<td>Normative</td>
<td>Marginal</td>
<td>Possible</td>
</tr>
<tr>
<td>#12</td>
<td>Female</td>
<td>1st Year</td>
<td>Private Practice &lt;5 solicitors serving individuals</td>
<td>Approx. 30-45 minutes a week but only when an issue arises.</td>
<td>Uncertain</td>
<td>Weak</td>
<td>Unlikely</td>
</tr>
<tr>
<td>#14</td>
<td>Female</td>
<td>2nd Year</td>
<td>Private Practice 10-19 solicitors serving individuals</td>
<td>Daily meetings</td>
<td>Multi-functional – Normative, Formative and Restorative</td>
<td>Marginal</td>
<td>Likely</td>
</tr>
<tr>
<td>#</td>
<td>Gender</td>
<td>Year</td>
<td>Practice Details</td>
<td>Schedule Details</td>
<td>Normativity</td>
<td>Weakness</td>
<td>Likelihood</td>
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<tr>
<td>#15</td>
<td>Female</td>
<td>2nd</td>
<td>Private Practice 10-19 solicitors serving individuals</td>
<td>Weekly for 15-29 minute but only if an issue arises.</td>
<td>Normative</td>
<td>Weak</td>
<td>Unlikely</td>
</tr>
<tr>
<td>#19</td>
<td>Male</td>
<td>2nd</td>
<td>Private Practice with &gt;50 solicitors serving large organisations.</td>
<td>&gt; 45 minutes a week but only if an issue arose.</td>
<td>Normative</td>
<td>Marginal</td>
<td>Possible</td>
</tr>
<tr>
<td>#21</td>
<td>Female</td>
<td>2nd</td>
<td>Private Practice with &gt;50 solicitors serving large organisations.</td>
<td>Twice a week for a total of 15-29 minutes each week</td>
<td>Uncertain</td>
<td>Weak</td>
<td>Unlikely</td>
</tr>
<tr>
<td>#25</td>
<td>Female</td>
<td>2nd</td>
<td>Private Practice 10-19 solicitors serving small and medium businesses.</td>
<td>Daily meetings</td>
<td>Uncertain</td>
<td>Strong (Rare example of a SLPR who was comfortable disagreeing with supervisor)</td>
<td>Likely</td>
</tr>
<tr>
<td>#26</td>
<td>Male</td>
<td>2nd</td>
<td>Private Practice 10-19 solicitors serving individuals</td>
<td>Daily and for more than 45 minutes in total each week</td>
<td>Multi-functional – Normative, Formative and Restorative</td>
<td>Strong (Another example of a SLPR who was comfortable disagreeing with supervisor)</td>
<td>Very likely</td>
</tr>
<tr>
<td>#29</td>
<td>Male</td>
<td>1st</td>
<td>Private Practice 10-19 solicitors serving individuals</td>
<td>Approx. 45 minutes a week but only if an issue arose.</td>
<td>Normative</td>
<td>Marginal</td>
<td>Possible</td>
</tr>
<tr>
<td>#30</td>
<td>Female</td>
<td>1st</td>
<td>Private Practice with 5-9 solicitors serving individuals</td>
<td>Twice a week and for a total of 30-45 minutes a week.</td>
<td>Multi-functional</td>
<td>Marginal</td>
<td>Likely</td>
</tr>
<tr>
<td>#32</td>
<td>Male</td>
<td>2nd</td>
<td>Private Practice 10-19 solicitors serving small and medium businesses</td>
<td>Daily and for more than 45 minutes in total each week</td>
<td>Normative</td>
<td>Weak</td>
<td>Unlikely</td>
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</tbody>
</table>
Like the legal profession itself, the experience of SLPRs seems to be characterised by diversity. There is no clear evidence, or trends, based on demographic factors (such as gender, size of firm and client type) which, on their own, seem to explain this diversity of supervisory experience. However, it is not possible to conclude this definitely given the sample size of SLPRs is only 15, and this is an observation that forms the basis of any wider inference. In fact, this is an area for further research and is discussed again in Part B(3) of Chapter 9 – “Prospects for Further Research”. Irrespective, for the purpose of this immediate qualitative analysis, there are no obvious trends or themes that can be attributed to such demographic factors.

Based on the available data, this diversity in experience appears to be better understood in terms of individual supervisory relationships. On one end of the spectrum, SLPR #1’s experience was very negative because of an ostensibly dysfunctional supervisory relationship with a lack of any meaningful supervision structures. On the other end of the spectrum, SLPR #26 provides an example of a positive and effective supervisory experience. SLPR #26’s supervision was characterised by frequent contact with his supervisor and a relationship strong enough that it allows open disagreement. These are both hallmarks of the effective supervision literature.

Lying on this spectrum is a range of other supervisory experiences. The norm appears to be a weak to moderate supervisory relationship indicating only a limited likelihood for effective supervision. Overall, the profiles align with the effective supervision literature and provide evidence that regular frequent contact and a strong relationship are the crucial indicators of whether supervision will be effective or productive of supervision in legal practice. On the flip side, a lack of formal contact between supervisor and supervisee, and a limited perception regarding the nature of purpose of supervision, are indicators of a weak supervisory relationship.

There are also some other tell-tale signs. SLPR #14’s responses indicate a relatively positive supervisory relationship structured around regular and frequent meetings. However, she still felt a need for greater training in relation to completing tasks. This indicates that even a strong supervisory relationship supported by regular contact will not somehow osmotically transfer practical know-how. These comments in the context of this supervisory relationship raise an important issue in relation to how supervisors can carry-out formative aspects of their supervisory role. In this regard, a further area for consideration is how supervisors can maximise training opportunities in day-to-day practice.
In a similar vein, SLPR #32’s experience indicates that it is difficult to reduce or simplify the supervisory process to something as simple as regular meetings. The nature and scope of those meetings are just as important. SLPR# 32 reported having regular and frequent meetings. However, these meetings were clearly geared to normative objectives. In this case, these regular meetings did not translate to a strong supervisory relationship. Regular frequent meetings are therefore necessary but not sufficient for a strong supervisory relationship. Importantly, the hallmark of effective supervision, regular and frequent meetings, is premised on a multi-functional understanding of supervision.

One important indicia of a strong supervisory relationship in legal practice appears to be the ability of a supervisee to disagree with a supervisor. Only two of the SLPRs felt clearly able to disagree with their supervisor. Arguably this is an important indicator of whether supervisors have managed to create a safe-base for their supervisee. It also seems important to the process of reflective education and formative feedback. These three factors are all relevant to developing a strong supervisory relationship.
In What Ways does the Survey Data presented in this chapter align with the literature and the Survey Data presented in Chapter VI & VII?

- There is evidence that, on a profession-wide basis, Supervised Legal Practice is not uniformly understood or treated by supervisors as a unique supervisory context, nor is it perceived as such by supervisees. **Note: This finding is based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. This finding is not supported by inferential statistics.**

In What Ways Do the Results Differ?

- None. Overall the Survey Data presented in this chapter embellishes the literature and other Survey Data. However, there are some other relevant observations.

What Other Observations Are Relevant?

- There is evidence of two prevailing views, among supervisors, regarding how SLPRs should be supervised. One prevailing view is that supervision practices are the same for SLPRs as other supervisees. For some who hold this view, there may however be increased monitoring based on a SLPRs lack of experience. For others there may be no difference in supervision practices at all. A second prevailing view is that supervising SLPRs involves training and support as well as monitoring. However, the extent to which supervisors who hold this second view actually provide this type of supervision, appears low. **Note: The finding is based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. This findings is not supported by inferential statistics.**
• Junior lawyers completing Supervised Legal Practice are significantly less likely than other supervisees:
  o To perceive the supervision that they receive as being appropriate given their level of experience; and
  o Feel able to disagree with their supervisor.

  Note: This finding is based on a test for statistical significance. However, given the sample size is relatively low (34), caution must be taken when drawing inferences from this finding.

• The experience of SLPRs is wide-ranging. There is evidence of both strong and weak supervisory relationships. For the 15 SLPRs profiles constructed in Part D above, the norm was a weak to marginal supervisory relationship, with a low likelihood that supervision is effective for those supervisees. Note: This finding is internally consistent with the qualitative data analysed in this chapter. This finding is not based on any test for statistical significance.

These findings will be revisited in the next and final chapter where they will be discussed with the findings from Chapters VI and VII. This in turn will allow the research questions to be revisited and answered. The discussion will then lead into recommendations for the legal profession and prospects for further research.
IX  DISCUSSION AND CONCLUSION

This thesis has addressed the topic of supervision in the legal profession. As covered in Chapter I, this is a very underdeveloped area of scholarship, which straddles the related fields of legal education and legal practice. Specifically, there is no pre-existing theory for understanding the nature of supervision as an activity in legal practice, nor is there any pre-existing empirical legal research that addresses the effectiveness of current supervision practices. Supervision is particularly relevant to newly admitted lawyers who, under the current system of education in Queensland (and other Australian states and territories), are required to complete a period of supervised practice which the regulatory framework defines as “Supervised Legal Practice”.

The first part of this thesis developed a framework aimed at understanding the purpose and functions of supervision as well as the factors contributing to effective supervision. Chapter II began by analysing the supervision dimensions of the Regulatory Framework where Supervised Legal Practice is an unstructured and unregulated final stage of legal training, and where there is an emphasis on discipline over development. Chapter III then argued that supervision in legal practice is conceived primarily as a tool for risk management and profitability that is focussed on monitoring, and highlighted the need for a greater emphasis on the training and development aspects of supervision. Chapters IV and V then positioned the legal practice conception of supervision against the supervision scholarship in clinical legal education and other professional disciplines, notably psychology. In these fields, supervision has a stronger theoretical foundation and evidence base.

This process identified three central issues, which were articulated at the end of Chapter V. These three issues respectively addressed: the functions of supervision; the importance of the supervisory relationship; and the nature of Supervised Legal Practice. These three issues were then used as a framework for the second part of this thesis (comprising chapters VI, VII and VIII), which presented and analysed the Survey Data. This analysis generated a number of empirically grounded findings. The purpose of this final chapter is to:

• Outline a summary of the three issues arising from the first part of this chapter together with corresponding findings from the second (data-analysis) part of this thesis, and then engage in a discussion of those findings (Part A); and
Address the Research Questions and identify constructive action in the form of recommendations for the legal profession and directions for further research (Part B).

A Summary of Findings and Discussion

1 Summary of Findings from Data Analysis

In terms of generating empirical evidence from the Survey Data, this thesis has used a mixed – methods approach which has some features of features of a convergent design type and which also contains some unique characteristics (See Chapter I Part D(2) “Methodology and Methods”). The Survey Data was presented across three chapters (VI, VII and VIII) each of which was structured around a guiding issue distilled from the conceptual framework.

Each chapter analysed quantitative and qualitative data relevant to the issue guiding that chapter. At the end of each chapter a series of findings were presented and arranged according to the extent to which they aligned with the literature canvassed in the conceptual framework. From the perspective of generating empirical evidence grounded in the Survey Data, each of those chapters represent a standalone set of findings.

The three conceptual issues and the corresponding findings from each of chapters VI, VII and VII are summarised in Table 9-1 which is set out on the following three pages. This table is simply a consolidation of the findings already presented at the end of each of the data analysis chapters. Moving beyond this consolidation of the discrete findings, section 2 below will then bring these findings together in a discussion directed at answering addressing the research question.
### Table 9-1 – Summary of Findings from Data Analysis — Part 1

<table>
<thead>
<tr>
<th>Conceptual Framework: Central Issues</th>
<th>Findings</th>
</tr>
</thead>
</table>
| **Issue 1**— With a focus on risk management and monitoring, it appears that the main objective or function of supervision in legal practice is ‘normative’ in nature. The attitudes of legal practitioners in relation to supervision and/or other factors in legal practice potentially impede fulfilment of the ‘formative’ and ‘restorative’ objectives of supervision. ("Functions of Supervision") | There is evidence that:  
1.1 Both supervisors and supervisees perceive supervision in legal practice as functioning primarily on a normative level and supervision processes, driven by supervisors, are directed first and foremost at risk management.  
1.2 Supervisors have insufficient time for supervision. Supervision practices are restricted by organisational parameters, including supervision ratios and billing targets as well as client demands. However, these organisational factors have not lead to an overburden in terms of the number of supervisees per supervisor.  
1.3 Supervisees perceive the supervision they receive as lacking in training and support, which respectively correspond with the formative and restorative functions of supervision.  
1.4 There is a discord between supervisors’ general views on supervision and the actual supervisory practices they implement. This is particularly so in relation to supervision acting as a tool for mentoring and education. These aspects are acknowledged as important but there is no evidence they are uniformly carried out.  
1.5 Even though supervisors acknowledge supervision as a forum for mentoring, it is unclear exactly how mentoring is understood by supervisors, especially in terms of the extent to which mentoring involves providing support to supervisees. In this regard, the evidence indicates that supervisors are reluctant to function on a restorative level.  
1.6 Irrespective, supervisors still take the view that the supervision they provide manages to fulfil some kind of restorative function in terms of identifying ethical behaviour and how supervisees are coping. However, supervisees do not acknowledge this fulfilment of the restorative function to the same extent as supervisors. |

**Note:** All of findings 1.1-1.6 are based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. These findings are not supported by inferential statistics.
<table>
<thead>
<tr>
<th>Conceptual Framework: Central Issues</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issue 2</strong> – A key driver of effective supervision is the strength of the relationship between supervisor and supervisee and the structures in place to support that relationship. The conduct of both supervisor and supervisees in day to day legal practice, and the experience generated by this conduct, is relevant to considering the effectiveness of supervision given and received (“Supervisory Relationship”)</td>
<td>There is evidence that:</td>
</tr>
<tr>
<td></td>
<td>2.1 Supervisor and supervisee perceptions regarding effective supervision are consistent with what the evidenced based literature indicates are features of effective supervision. This is subject to one notable exception – see finding 2.</td>
</tr>
<tr>
<td></td>
<td>2.2 Regular and frequent, structured meetings are a hallmark of the effective supervision literature. However, supervisors and supervisees do not seem to fully understand the value of this supervisory activity.</td>
</tr>
<tr>
<td></td>
<td>2.3 Differences in supervisors’ style and level or closeness of supervision impact supervisee experience.</td>
</tr>
<tr>
<td></td>
<td>2.4 Enforcing individual supervisor preferences regarding writing style is a significant aspect of supervision.</td>
</tr>
<tr>
<td></td>
<td>2.5 Supervisees seek more: Contact time with their supervisor; Training and Development; and Empathy and Support.</td>
</tr>
<tr>
<td></td>
<td>2.6 Supervisees seek less: Monitoring and Control; Disrespect; and Buck-passing.</td>
</tr>
<tr>
<td></td>
<td>2.7 Supervisors commonly handle disagreement with supervisees in an analytical, authoritative manner.</td>
</tr>
</tbody>
</table>

**Note:** Findings 2.1 and 2.2 are based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. These findings are not supported by inferential statistics.

**Note:** Findings 2.3-2.7 are based on the common experience of supervisees, derived from a qualitative analysis of open-ended supervisee responses. These findings are not based on any test for statistical significance.
Table 9-1 – Summary of Findings from Data Analysis — Part 3

<table>
<thead>
<tr>
<th>Conceptual Framework: Central Issues</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issue 3 - Supervised Legal Practice</strong> is a unique supervisory context where supervisees lack legal practice experience and are in need of competence based practical training as well as a range of interpersonal support mechanisms. Despite this, formative and restorative aspects of supervision are not organised on a profession-wide level. However, it is not clear the extent to which these aspects of supervision are carried out in practice on a case-by-case basis. Therefore, a deeper understanding of the common experiences of newly admitted lawyers is needed to ascertain the extent of the problem. (“Supervisory Context”)</td>
<td>There is evidence that:</td>
</tr>
<tr>
<td><strong>3.1</strong> On a profession-wide basis, Supervised Legal Practice is not uniformly treated by supervisors as a unique supervisory context, nor is it perceived as such by supervisees.</td>
<td></td>
</tr>
<tr>
<td><strong>3.2</strong> There are two prevailing views, among supervisors, regarding how Supervised Legal Practitioners (SLPRs) should be supervised. One prevailing view is that supervision practices are the same for SLPRs as other supervisees (i.e. they focus on monitoring which is a normative aspect of supervision). Some supervisors who hold this view merely carry out more intense monitoring, based on a SLPRs lack of experience. Other supervisors who hold this view do not alter their supervision practices at all. A second prevailing view is that supervising SLPRs involves training and support (which correspond to the formative and restorative aspects of supervision) as well as monitoring. However, the extent to which supervisors who hold this second view actually provide this type of supervision appears low.</td>
<td></td>
</tr>
<tr>
<td><strong>3.3</strong> Junior lawyers completing Supervised Legal Practice are significantly less likely than other supervisees to perceive the supervision received as appropriate given their level of experience ($X^2(2) = 6.26$, $p=0.04$).</td>
<td></td>
</tr>
<tr>
<td><strong>3.4</strong> Junior lawyers completing Supervised Legal Practice are significantly less likely than other supervisees to feel able to disagree with their supervisor ($X^2(2) = 9.14$, $p=0.01$).</td>
<td></td>
</tr>
<tr>
<td><strong>3.5</strong> The experience of SLPRs is wide-ranging. There is evidence of both strong and weak supervisory relationships. For the 15 SLPRs profiles constructed in Part D of Chapter VIII, the norm was a weak to marginal supervisory relationship, with a low likelihood that supervision is effective for those supervisees.</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Findings 3.1 and 3.2 are based on observations from the descriptive analysis of the survey data, embellished by some qualitative data arising from corresponding open-ended questions. These findings are not supported by inferential statistics.

**Note:** Findings 3.3 and 3.4 are based on Independent Samples Kruskal-Wallis. Given the sample size is relatively low (34), caution must be taken when drawing inferences from this finding.

**Note:** Finding 3.5 is internally consistent with the qualitative data analysed in Chapter VIII. This finding is not based on any test for statistical significance.
2 Discussion of Findings from Data Analysis

This discussion merges all the findings consolidated in section 1 above. While this discussion, expands beyond the empirical findings, it is not an extension of the process of generating empirical evidence. Rather, it is a process of positioning the findings in the context of the broader narrative of moving the legal profession towards effective supervision.

This is particularly the case during Supervised Legal Practice. At its core, supervision in legal practice is not supervision as is commonly understood in other professional disciplines. Rather it is a limited form of supervision better described as administrative or managerial supervision. This form of supervision, which is closely aligned with the traditional “oversight” meaning of supervision, does not function on a formative or restorative level.

In other words, perhaps more familiar to lawyers, the legal profession has interpreted supervision literally, with scant regard for its purpose. When compared to the norm in other professional disciplines, this approach is unsatisfactory for the needs of the legal profession, especially in a time of rapid change and technological development. This is particularly so for newly admitted lawyers who require further workplace training to develop into autonomous practitioners. In fact, whether a newly admitted lawyer receives the necessary training and development to become an autonomous practitioner depends on their supervisor understanding the purpose of supervision generally and, more specifically, the “mischief” of the Supervised Legal Practice condition found in legislation.

There is some evidence that supervisors understand the wider formative purposes of supervision and that supervision is, and can be, a forum for training and development. However, supervisors are stymied from achieving this wider goal due to a combination of: a lack of supervisory know-how; and a system that does not provide sufficient incentive to allocate time to training supervisees. There is some evidence that supervisors suffer from a lack of understanding regarding the nature, and fulfilment, of the restorative function of supervision. This plays out as confusion about their role as mentors and perhaps more critically, how they can support supervisees in coping with life as a legal practitioner. While supervisors seem to acknowledge “in principle” that they need to provide a support role, they appear reluctant, or unsure about how, to connect with supervisees on an interpersonal level. This profession-wide
confusion is particularly detrimental for newly qualified lawyers who enter a profession in the midst of a well-being crisis and with a track record of high attrition among junior practitioners.

This profession-wide misperception of supervision acts as an unstable foundation for building a strong supervisory relationship, which is critical to the effectiveness of supervision. Within the wider framework of the legal profession and its misaligned understanding of supervision, the interaction between individual supervisors and supervisees during day-to-day legal practice is the actual forum for supervision. These day-to-day interactions shape the supervisory relationship but are characterised by a lack of purpose. Specifically, there is evidence of a lack of perceived value of structured regular and frequent supervision meetings, which are a hallmark of effective supervision. There is also evidence that such meetings are not the norm. This is likely to act as a barrier to a strong supervisory relationship and, therefore, effective supervision. These regular and frequent meetings are a particularly appropriate forum for fulfilling the restorative function of supervision. This means that supervisors’ ability to provide appropriate support to their supervisees is partly dependent on them being able to understand and appreciate the purpose of regular and frequent supervision meetings. Furthermore, newly admitted lawyers require a safe-base from which the supervisory relationship can be built and strengthened. However, that safe-base is likely to be no more than a mirage unless supervisees have a regular and consistent means of receiving support from their supervisor.

Beyond regular and frequent meetings, there is evidence of a range of prevalent supervisory practices (driven by supervisors and directed at supervisees) which are not conducive to a strong supervisory relationship. In particular, some common supervisory practices, such as micro-managing files and enforcing individual stylistic preferences, are not supported by the effective supervision literature. This in turn is an indicator of ineffective supervision. Interestingly, these practices occur in circumstances where supervisors struggle to find time for supervision and perceive supervision as a burden.

Identifying these ineffective practices is a useful and necessary first step. However, remedying the formative shortcomings of legal practice supervision requires supervisors and supervisees to develop skills to make better use of ad-hoc informal supervision opportunities, in a way that is likely to enhance opportunities for mimetic learning. While learning from work is relevant across the career lifespan, it is particularly critical for newly admitted lawyers who are “incomplete packages”. In order to develop into autonomous practitioners, they can benefit
from role modelling, reflective education and formative feedback. All of these processes are within the domain of the supervisory relationship, and all are indicators of a strong supervisory relationship and therefore effective supervision.

Remedying the restorative and formative deficiencies in legal practice supervision is one aspect of improving supervision practices in legal practice. Another aspect relies on effectively responding to evidence that there are symptoms present, in some supervisory relationships, of not just weakened sub-optimal supervisory relationships but of plainly toxic relationships. In particular, a range of unacceptable supervisor behaviours present as a murky undercurrent in a significant number of supervisory relationships. These unacceptable behaviours include a total lack of empathy, a failure to acknowledge workload or work-life balance issues, disrespectful comments and buck-passing. In short, there is evidence that some supervisors are entirely unsuitable for the role of supervisor. These relationships appear to be an entirely different type and a proposed realignment of supervision to focus on fostering practices supporting effective supervision would miss the underlying problem in these particular cases.

The importance of effective supervision grounded in a strong supervisory relationship is most critical for newly qualified lawyers. Under the current regulatory framework, newly qualified lawyers are required to complete Supervised Legal Practice, which currently sits as an unrealised final stage of practical legal training. At this point in a lawyers’ career, the strength of the supervisory relationship will not only have an impact on the effectiveness of supervision, but on their ability to appropriately complete legal training. A sub-optimal supervisory relationship could delay, frustrate or have poor well-being outcomes for a newly admitted lawyer. A toxic supervisor at this stage could potentially be disastrous for either or both the career development and/or mental health of a newly admitted lawyer.

Despite some isolated examples of positive and effective experiences, there is evidence that there is significant scope, on a collective-professional wide level, to improve Supervised Legal Practice outcomes. This is particularly so in relation to the formative and restorative functions of supervision which depend on a strong supervisory relationship supported by regular and frequent meetings.
On a profession-wide level, it seems highly plausible that ineffective supervision is more prevalent than effective supervision. This is particularly the case during Supervised Legal Practice.

Supervised Legal Practice has the potential to be a unique supervisory context characterised by the training, development and support it provides to newly admitted lawyers. To realise this potential, the legal profession could usefully take steps to enable supervisors to:

- Provide all newly admitted lawyers completing Supervised Legal Practice with regular and frequent formal meetings with their supervisor for the purpose of supervision. The type of supervision provided in such meetings should be multi-functional but pay special attention to restorative objectives.

- Develop supervisors’ capacity to enhance opportunities for supervisees to efficiently learn how to complete legal tasks in day-to-day legal practice. This formative aspect of supervision could also be supported by organised reflective-education and formative feedback.

In relation to both formative and restorative aspects of supervision, the collective legal profession appears to be in need of an “attitude” shift, where supervisors are not only aware, but accept and embrace the fact that supervision is a deeply inter-personal endeavour reliant on a strong relationship. This involves significantly more than tokenistic acknowledgement that supervision can be a tool for mentoring.

### B Implications and Conclusion

#### 1 Addressing the Central Research Question

This thesis has been driven by the Central Research Question, which asked:

“What are the implications of the legal profession’s current conception of, and approach to, supervision during Supervised Legal Practice?”
This Central Research question prompted a number of sub-questions that have been addressed progressively throughout this thesis. The discussion is now at a stage where the following has been established:

- Supervision generally is positioned in the regulatory framework as a professional duty concerned with preventing mistakes. Supervised Legal Practice is positioned as a final stage of practical legal training. However, it is not always recognised as such. This reveals an approach that focuses on discipline not development. (Sub question 1)

- The primary roles of supervision in legal practice, during Supervised Legal Practice and more generally, appear to be managing risk and driving profitability. Training is another, albeit under fulfilled, role of Supervised Legal Practice. There is potential for supervision to fulfil a greater training role and this is particularly important given emerging and predicted trends in legal practice, where relational aspects of legal practice become more prominent. In addition, there is a potential for supervision to fulfil a support role. This is particularly important given the concerns over well-being and mental health. (Sub-question 2)

- In other professional disciplines, supervision is a multi-functional work based relationship with formative (educational), restorative (supportive), and normative (managerial) functions. Supervised practice in other disciplines is positioned as a unique supervisory context that creates a framework for a structured professional training program incorporating structured supervision as a central activity. (Sub-question 3).

- The effectiveness of supervision generally, and during Supervised Legal Practice, depends on a multi-functional approach supported by a strong supervisory relationship. There are a number of processes that support a strong supervisory relationship, all of which rely on regular and frequent supervision meetings from which the supervisor can create a safe base. (Sub-question 4).

The available evidence indicates there are a number of barriers to effective supervision in legal practice. This is particularly so during Supervised Legal Practice where supervisees are significantly more likely, than other supervisees, to perceive their supervision as inappropriate for their level of experience and significantly less likely to feel able to disagree with their supervisor. In addition, supervisees completing Supervised Legal practice are at risk have of
having weak supervisory relationships, which in turn is a strong indicator of ineffective supervision. The weight of evidence presented in this thesis is sufficient to postulate that ineffective supervision is more prevalent than effective supervision during Supervised Legal Practice. *(Sub-question 5)*.

Applying this to the central research question, the legal profession’s current conception and approach to supervision is characterised by deficiencies, and the immediate implication of this is that lawyers in their early years of practice are at a high risk of not receiving the necessary training and support needed to transition to competent, autonomous practitioners *(Central Research Question)*.

This overall finding prompts further discussion of the implications for both the legal profession and the academy. For the legal profession, this finding needs consideration in the context of the present issues and concerns outlined at the very outset of this thesis. Section 2 immediately below will revisit these issues, expand on this overall finding and provide a roadmap for constructive action to occur by way of recommendations directed at the legal profession. For the academy, this thesis has enhanced understanding of a very underdeveloped area and laid the foundations for additional research. Section 3 will outline directions for further research.

2 **Understanding the Implications: Recommendations for the Legal Profession**

This overall finding is relevant to a number of live issues facing the legal profession that were introduced in Chapter I. The Law Admissions Consultative Committee (LACC) is currently undertaking its Assuring Professional Competence Development Program amidst concerns about the competence level of entry-level lawyers. This includes, in the later stages, a determination of ‘whether a period of supervised workplace experience is required before or after admission, and whether the content of that experience needs to be more closely regulated’.¹ This is in circumstances where the nature of legal work is changing and the future of the profession depends in part on the extent to which lawyers can provide relational safety in a time of technological innovation.²

¹ Law Admissions Consultative Committee ‘Assuring Professional Competence’ (Briefing Statement, Law Council of Australia, 2016), discussed in Chapters I and II.
The process of re-thinking, re-naming, shifting the starting point, or changing the duration of, supervised practice is not new to the legal profession.\(^3\) This has been a defining characteristic of the changing legal education framework since the middle ages and there is some sense of going around in circles. The backdrop of this is that ‘schooled societies’,\(^4\) where professional training is split between educational institutions, and the workplace, are the new status quo.

This issue of whether supervised practice occurs before or after admission is irrelevant. This new status quo requires progress in terms of training and developing future lawyers, not going “back to the future” in terms of shifting supervision practices back to the pre-admission stage. To do so would entirely miss the point by failing to address the underlying issue. No matter at what point aspiring lawyers actually enter practice, they will rely on their workplace and colleagues for further training and development. It is not feasible for the process of institutionalised legal education to completely prepare future lawyers for every conceivable job, in a highly diversified practice environment that is changing rapidly. Institutionalised legal education can however develop widely used and transferrable skills. This is a reality the legal profession must face.

If this reality is accepted, it doesn’t actually matter whether supervised practice occurs before or after admission. What matters is how aspiring lawyers are prepared for supervised practice (i.e. what knowledge is imparted and what skills are developed before entering supervised practice) and whether the supervision they receive during supervised practice is effective. These are the real issues. Even though the timing of supervised practice is not the real issue, it makes practical sense to keep the current system of post-admission training. A meaningful period of supervised practice requires a significant time and resource investment for a supervisor and it seems unwise to invest this time on someone unless they have otherwise proved they are fit and proper for the purpose of admission to the legal profession. Any attempt to change the existing framework would be wasteful and an attempt to side step the real issue of effective supervision.

Recommendation 1 – The period of supervised legal practice should remain post-admission. Any reform agenda for the legal education framework now or in the future should focus on:

(a) how University legal education can best prepare aspiring lawyers for this final work-based

\(^3\) This historical development of supervised practice in the legal education framework was outlined in Chapter II.

stage of legal training; and (b) how to ensure supervision during this final work based stage is effective.

In relation to point (a), a re-think of the educational requirements for admission is necessary, in particular the relationship between the requirements of the academic stage and the PLT stage. This is because the differentiation between the two stages is increasingly blurry and lacking in justification. In addition, the mode of preparing students for future supervised practice, for example the place of clinical legal education\(^5\) in the curriculum, appears to be just as important as content-related aspects of the curriculum. This is particularly relevant in terms of deciding what level of competency can be realistically achieved in the context of formal legal education before aspiring lawyers are admitted and complete supervised practice. In other words, the discussion needs to shift its focus from the “what” and the “when” to the “how”. This is a matter for further collaboration between the academy and the profession.

In relation to point (b), the legal profession can take a number of lessons from other professions to facilitate effective supervision on a profession-wide level. At a fundamental level, there is a misunderstanding within the legal profession of the functions of supervision and the key determinants of effective supervision. A root cause of ineffective supervision is an unduly narrow focus on normative aspects and this appears to have come about in part due to the message professional associations are sending to their members.\(^6\) Professional associations, especially law societies and admissions bodies, could assist a move towards more effective supervision by acknowledging and endorsing a conception of supervision that is appropriate for supervised practice. Law Societies and admission bodies could also make future decisions based on the available evidence that places a strong supervisory relationship structured around regular and frequent meetings at the forefront of effective supervision. This could be done as part of new, improved and more comprehensive guidelines for Supervised Legal Practice\(^7\) drawing on those currently used in other professional disciplines.\(^8\)

\(^5\) Chapter IV outlined how the supervision that occurs in the clinical legal education sphere, although not transferrable to the practice environment generally, is a sophisticated tool for training and developing aspiring lawyers in practical skills.

\(^6\) This was covered in Chapter III.

\(^7\) As covered in chapter III, the Law Society of South Australia has already moved positively in this direction by publishing supervised practice guidelines that endorse the formative/training function of supervision. These guidelines cite complimentary research I completed during the course of my candidature. This research is noted in the Acknowledgements section.

\(^8\) These were covered in Chapter V.
Recommendation 2 - Professional Association (e.g. Law Societies) or admitting authorities should draft and disseminate improved Supervised Legal Practice guidelines which: (a) endorse a functional conception of supervision, encapsulated in a definition based on existing evidenced-based research; and (b) provides a practical summary of the evidenced-based factors that contribute to effective supervision.

In line with the LACC’s Assuring Professional Competence Program, these guidelines could eventually evolve to be structured around a threshold standard of competence. Beyond this, the legal profession needs to specifically address some of the processes that make supervision effective or ineffective. The findings from the data analysis chapters point to some specific concerns, which require a more focussed response than Recommendation 2 can achieve.

The failure of supervisors to carry out the acknowledged formative function of supervision occurs in a practice environment where supervision is viewed as an opportunity cost and time burden. This means that for supervision to function effectively on a formative level, supervisors need to arrange sufficient time for training their supervisees. The problem, of course, is that they do not. Supervisors need to develop skills to utilise their limited time more efficiently so that their supervision can feasibly cover formative as well as normative aspects. Specifically, supervisors may benefit from developing a skill-set that allows them to: (a) spend less time on micro-managing client files and enforcing stylistic changes to written work; and (b) spend more time on transmitting practical legal skills in the course of day-to-day legal practice. This requires developing supervisors’ capacity to enhance opportunities for supervisees to learn to complete legal tasks in day-to-day legal practice. This formative aspect of supervision could also be supported by organised reflective education and formative feedback. The issue of efficiently incorporating training into the process of supervision in a time pressured legal practice environment requires a two-fold approach.

Recommendation 3 – Professional associations should develop a supervisor-training program based on evidence-based approaches to supervision and rely on input from appropriate experts. Professional associations should seriously consider making such a training program compulsory for supervisors who supervise newly admitted lawyers completing Supervised Legal Practice.
Recommendation 4 – Professional associations and individual firms should investigate ways of providing incentives for supervisors to allocate more time to supervision or otherwise reduce the perceived burden of supervision. For example, allocation of Continuing Professional Development (CPD) points for supervisory tasks or voluntary supervision targets as have previously been set for pro bono activity.

A move towards effective supervision requires a firm acknowledgement of the restorative function of supervision in addition to the formative. This is particularly important given the mental health and well-being crisis the profession is in and the now articulated link between supervision and supervisee well-being. All newly admitted lawyers completing Supervised Legal Practice could benefit from regular and frequent formal meetings with their supervisor for the purpose of supervision. This process could be enhanced by improved Supervised Practice Guidelines (Recommendation 1) and Supervisor Training (Recommendation 3). In particular, a properly trained supervisor who understands the importance of regular and frequent meetings could utilise such meetings to pay special attention to providing the level of support supervisees need. This support may take the form of debriefing on difficult matters, emotional processing of work related issues, mentoring-related activities or discussing complex ethical issues.

Beyond improving the capacity for supervision to function on a restorative level, other interpersonal aspects of legal practice supervision warrant another approach. Firstly, there is an issue of power imbalance in the supervisory relationship where supervisees completing Supervised Legal Practice generally feel unable to raise disagreement with their supervisors, and if they do, they are often treated inappropriately in an authoritative, analytical way. It is not clear what issues supervisees commonly disagree on with their supervisor. The Survey Data did not reveal anything in this regard. However, there is some other existing evidence that this may be in relation to important ethical issues such as billing. This issue is in need of further research (see section 3 below). Secondly, there is evidence of a subset of supervisors who exhibit supervision that is not just ineffective, but toxic and tantamount to bullying. Here legal professional bodies need to take a dispute resolution and/or monitoring role.

Recommendation 5 – Professional associations need to identify ways to ensure that supervisees completing Supervised Legal Practice are empowered to raise serious issues such

9 This was established in Chapter III Part E.
10 This existing evidence was outlined in Chapter I Part B.
as unprofessional conduct directed at them by their supervisor. This could be done via setting up an independent dispute resolution process; and/or monitoring the supervisory relationship by asking supervisees to report on the supervision they receive during Supervised Legal Practice.

All of these recommendations should be considered in light of the state of existing evidence, including the empirical foundation laid by this thesis and further evidence as it is made available. In this regard, the overall findings from this thesis, which have generated these recommendations, raise a number of prospects for further research. These are discussed next.

3 Understanding the Implications: Prospects for Further Research

This thesis has laid a foundation for further research in the very under-developed area of supervision in the legal profession. This is the first comprehensive and systematic empirical research on supervised practice in the legal profession. As demonstrated by other professional disciplines, there is plenty of scope to further develop this area so that practice can be informed by evidence. Below is a discussion of prospects for further research.

(a) Other Jurisdictions

Strictly speaking, the findings and recommendations stemming from the Survey Data are only applicable to Queensland. However, there is nothing at this stage to indicate that the Queensland situation is unique. In fact, as demonstrated in Chapter II, the legal education and legal practice framework in Queensland – vis-à-vis supervision - is virtually the same across Australian jurisdictions. Furthermore, the material covered in Chapter III regarding the legal practice environment, while focussing on Queensland materials, included material from other jurisdictions as well. On balance the material covered in this thesis does not indicate that the Queensland context is markedly different to any other state or territory in Australia. In this regard, there is little reason to expect resistance to accepting these findings across Australia. However, there is certainly a need to exercise caution in applying these findings to jurisdictions where the legal education and legal practice regulatory framework is markedly different. The findings from this thesis, together with additional research could be particularly useful in England and Wales where there has been a recent shift to a more flexible approach to ‘qualifying
legal work experience under the supervision of a solicitor’.11 This part of the new framework appears to be entirely unstructured and reliant on effective supervision.

(b) Regulation of Supervision

As noted in Chapter II, this thesis has not relied on regulatory theory to understand and describe the current system of legal education and legal practice. Regulatory scholars may raise concerns about the recommendations for the profession as an attempt to regulate supervision. However, there are a number of considerations that should be taken into account in response to such claims.

Firstly, these recommendations should not be confused with the key findings and answers to the research questions. Rather, these recommendations are a proposed response to these findings and could no doubt benefit from further debate and scrutiny, including input from regulatory scholars. I suggest that any such input should focus on how best to implement these recommendations in a way that facilitates and encourages effective supervision practices. Thirdly, I wish to reiterate the pragmatic philosophy underpinning this thesis. In particular, the maxim that the:

... current meaning or instrumental or provisional truth value ... of an expression... is to be determined by the experiences or practical consequences of belief in or use of the expression in the world.12

Finally, these recommendations are not a quantum leap of any kind and are inspired by the approach long taken by other professions where the worth of such guidelines has been sensibly scrutinised13 without significant recourse to regulatory theory.

11 Solicitors Regulation Authority ‘A New Route to Qualification: The Solicitors Qualifying Exam (SQE): Summary of responses and our decision on next steps’ (April 2017), 5, covered in Chapter II Part D.
(c) Strengthening the Evidence Base

This thesis has focused on one key set of supervisees, those completing Supervised Legal Practice\textsuperscript{14}. In addition, the Survey Data identifies a range of legal practice demographics such as firm size, practice type, client-base as well as gender. The empirical base could be strengthened by identifying trends based on these demographic variables. This could be done in conjunction with further research concerned with legal professional culture (see next subsection).

Furthermore, the empirical evidence generated in this thesis does not enable strong inferences to be drawn about the prevalence of effective supervision during Supervised Legal Practice or the quality of any specific supervisory relationships. This is largely the result of the challenges associated with secondary data analysis. A useful further research endeavour would be to revisit Milne’s evidenced-based approach to supervision to develop an analytical framework for obtaining more targeted data that enables more precise isolation of the key ingredients of effective supervision.

(d) The Legal Professional Culture

The findings above call into question not only the interpersonal skills of lawyers but also their intrinsic human qualities. Empathy / emotional support / well-being, are key themes that do not specifically translate to a specific finding, other than they provide supporting evidence regarding the strength and significance of supervisory relationships. The available data, however, has not provided sufficient insight in relation to underlying factors that retard the interpersonal aspects of supervision. While organisational demands and time restraints could arguably account for part of this, there appears to be a missing link, something more fundamental. In addition to further data analysis, based on demographic variables, directed at this issue, there is also scope for further engagement with other relevant issues. For example, supervision scholarship could usefully benefit from further engagement with the well-being literature and therapeutic jurisprudence literature, both of which have started to examine the very core of legal professional culture.

\textsuperscript{14} This was the area that the Systematic Literature Search, completed at the beginning of my candidature, revealed as being identified as most in need of systematic research see discussion in Chapter I and copy of Systematic Literature Search in Appendix 1).
(e) Supervisory Ethical Leadership

This thesis, and complementary research I completed during the course of candidature, has identified how identifying and resolving ethical issues is one way that supervision has the potential to fulfil an expanded restorative function. Here the legal profession could also benefit from engaging with literature from other disciplines. Chapter V described how, for the purposes of the legal profession the business management literature was considered as less useful than the supervision literature from other professional disciplines. However, recent scholarship on ‘supervisory ethical leadership’ was earmarked as an exception, and worthy of future consideration. Now that this thesis has provided a baseline understanding of supervision in legal practice, this research ought to be revisited with the view of applying or adapting the findings to the legal practice environment. In particular, how supervision can be used as a forum to promote ethical behaviour.

(f) A Comprehensive Professional Supervision Model for the Legal Profession

As covered in Chapter V, there is a highly developed body of supervision literature in other professional disciplines. This includes a range of different models for supervision. These models have been developed for specific purposes in different professional contexts. This thesis has not adopted any particular model for the legal profession as each of the existing models has been formulated in the context of professional practice in a different discipline. While this thesis has sought to progress the legal profession’s theoretical understanding of supervision (by identifying key functions and the characteristics of effective supervision in the context of legal practice) this does not claim to be, nor is it intended to be, a comprehensive model analogous to those that exist in other professions. Given the underdevelopment of this area in legal practice, that was not a feasible outcome for this base-line research. However, with the benefit of this thesis, there is now scope for further development of a model for Supervised Legal Practice. Such a

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15 See Michael McNamara, ‘Ethical Development during Supervised Legal Practice’ (Paper Presented at Australian and New Zealand Legal Ethics Colloquium, Monash University Law Chambers, 3-4 December 2015). Available for download at <https://www.monash.edu/law/research/centres/clars/news-events/anzece5-sustainable-legal-ethics> (this conference paper is noted in the “Acknowledgements” section at the beginning of the thesis)

16 See: Michael E Brown., Linda K Trevino and David A Harrison, ‘Ethical leadership: A social learning perspective for construct development and testing’ (2005) 97(2) Organizational Behavior and Human Decision Processes 117; and David Mayer et al, ‘Encouraging Employees to Report Unethical Conduct Internally: It takes a village’ (2013) 121(1) Organizational Behavior & Human Decision Processes 89 (this research was noted in Chapter V Part A).
model could usefully draw on existing models from other professions, as well as incorporate ‘mimetic learning’ theory as applied to the legal practice environment. This model could also usefully incorporate any future findings from other future research identified in this section.

4 Final Comments

This thesis has addressed the important issue of Supervised Legal Practice. By doing so, it has begun a process of systematic research into an area that, until now, lacked any theoretical basis or empirical-evidence. This thesis has made a number of new findings that have generated five recommendations for the legal profession and identified a range of prospects for future academic research.

However, to conclude, I revisit my opening comments about how the issue of Supervised Legal Practice straddles legal education and legal practice. Chapter II described a standing tension between legal practitioners and legal academics, based on a perception of differing goals and objectives. This tension appears, to me, to be alive and well today. This is despite the fact that the legal academy includes an increasing number of educators, including myself, whose work includes transmitting practical skills and using research to inform practice.

This perceived tension may best be resolved by both sides accepting the new status quo of “schooled societies”, where the responsibility for training, developing and supporting the next generation of legal practitioners, is shared between the legal academy and legal practitioners. There simply should be no tension because this shared responsibility, assuming both parties actually share responsibility, means there is a common goal. Rising to the challenge of achieving this common goal will be best done with an increase in mutual respect and collaboration.

17 Chapter V Part C flagged the Essential Staff Development Model (ESDM) as potentially relevant to Supervised Legal Practice.
18 Billett, above n 4.
1. **Introduction and Context**

This literature search was undertaken after completion of a preliminary draft of the candidate’s confirmation paper at which stage the candidate had already completed substantial background reading and preliminary research.\(^1\) A large number of the documents (around 40%) identified in this literature search were already known to the candidate as a result of this preliminary research.

The primary purpose of this literature search was to undertake a more expansive search than was undertaken during the preliminary research to either: identify existing empirical work assessing supervision in legal practice; or confirm the general lack of work in the area.

A secondary purpose was to identify any other relevant literature which could, potentially, be incorporated into the proposed thesis; in particular literature that will assist in developing a framework for assessing supervision practices.

Given the number of articles and other documents identified during this systematic literature search, it became impractical to incorporate all of the material into the confirmation paper. The confirmation paper has, however, been supplemented by additional previously unknown articles and other documents (identified as a result of this systematic literature search) where those results assisted in placing the research question in the context of the literature and/or describing the significance of the research question (as was required for the purposes of the confirmation paper).

2. **Summary of Results of Systematic Literature Search**

*Previous Empirical Work*

The search did not identify any previous empirical work specifically designed to assess supervision practices in legal practice. The search did however identify a number of empirical studies where supervision in legal practice was specifically addressed or manifested as a relevant issue. These studies affirm the relevance, significance and for need further systematic empirical research which assesses supervision in legal practice. Each of these previous studies have been summarised in Table 4 below.

*Supervision Specific Non-Empirical Work*

The search identified a number of articles and documents specifically addressing supervision in legal practice. These articles fall into two main categories:

1) Scholarly articles considering the nature of professional conduct rules related to supervision. These articles have been summarised in Table 5 below.

2) Forming the bulk of information specifically relating to supervision are: non-scholarly articles in professional association publications; and guidelines, fact sheets and commentary published by Law Societies, Bar Associations and Legal Profession regulators across the common-law world. It seems, notions of effective supervision are grounded in ‘conventional wisdom’ and supervision is frequently considered a risk management measure and/or a tool for increasing profitability.

*Other Relevant Work*

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\(^1\) For more detail on this preliminary research, see section 3 below –‘Identifying Scope, Search Terms and Exclusion Criteria’. 

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A number of articles consider supervision in the context of other issues. Over 200 results fit this category. See Table 3 below for a summary of the findings by document type and subject category. This categorisation will enable: (a) identification of any necessary supplementary literature search (or searches); and (b) an effective thesis design. Some of the significant articles and key themes have been incorporated into the confirmation paper.

3. **Identifying Scope, Search Terms and Exclusion Criteria**

At the commencement of candidature, after completion of a research proposal, it was clear that supervision in legal practice was an issue emanating from the following interrelated areas:

1. Lawyers and the Legal Profession (including Legal Ethics and Regulation)
2. Law Students and Legal Education (in particular clinical legal education);
3. Legal Practice Management.

Prior to undertaking this literature search, the candidate undertook preliminary reading in the above areas. The focus at this stage was on major textbooks in the above areas and primary legal texts (such as legislation, professional conduct rules and disciplinary cases). Databases of specific journals, known to be relevant, to the above three areas were reviewed (for example the International Journal of the Legal Profession, Georgetown Journal of Legal Ethics and Clinical Law Review). Some general Google-based grey-literature searches were also undertaken. Finally, some texts and materials were considered based on mention from colleagues and supervisors.

This initial research enabled the candidate to consider the place of the research topic in the literature generally and develop a significant understanding of the topic generally. This preliminary research indicated that, while supervision in legal practice was a significant matter, there was no existing empirical work, of the nature contemplated by the candidate’s confirmation paper, which specifically assessed or evaluated supervision practices in legal practice. Broadly speaking, the inclusion criteria for the search was all articles and other documents which commented on the reason, nature, impact or appropriateness of supervision in legal practice.

The word supervision and references to lawyers, the legal profession and legal practice occur in a number of contexts other than supervision of legal practice. This led to difficulty designing meaningful inclusion criteria and search terms that would not inadvertently omit relevant results. This difficulty was increased because the functionality of HeinOnline (the largest academic legal database and the primary database used in this search) prevented a meaningful, time-efficient search of abstracts. Accordingly the Boolean queries, eventually used, relied on a combination of searching the title and full-text of documents.

Given then these factors, a decision was made to undertake a number of searches over three phases which were designed to identify articles and other documents related to supervision (and/or related concepts) as well as legal practitioners and/or legal education and which made at least one specific mention of supervision in the body of the text.

Given the potential multiple meanings of the word supervision and the common reference to lawyers, the legal profession and legal practice occur in a number of contexts other than supervision of legal practice. This led to difficulty designing meaningful inclusion criteria and search terms that would not inadvertently omit relevant results. This difficulty was increased because the functionality of HeinOnline (the largest academic legal database and the primary database used in this search) prevented a meaningful, time-efficient search of abstracts. Accordingly the Boolean queries, eventually used, relied on a combination of searching the title and full-text of documents.

Given then these factors, a decision was made to undertake a number of searches over three phases which were designed to identify articles and other documents related to supervision (and/or related concepts) as well as legal practitioners and/or legal education and which made at least one specific mention of supervision in the body of the text.

Given the potential multiple meanings of the word supervision and the common reference to lawyers, the legal profession and legal practice, it was expected that this would yield a high number of irrelevant results. This proved to be true; all yielded results were scanned and the vast majority of the yielded results were excluded based on the criteria listed in Table 2 below.

Phase 1 was directed specifically at articles that identified as being empirical. Phase 2 was more general and sought other documents that did not self-identify as empirical but was designed to capture other empirical documents that may not have fallen within the search terms used in Phase 1. Phase 3 was specifically aimed at guidelines, practice notes, surveys and other grey literature from Law Society/Bar Association and other law related organisation websites. Table 1 below summarises the phases, search criteria and results.

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2 See table on following page outlining exclusion criteria for a list of some common (but irrelevant for the present purpose) contexts in which supervision appears in law related academic journals.
### TABLE 1 – SUMMARY OF PHASES, SEARCH CRITERIA AND RESULTS

<table>
<thead>
<tr>
<th>Phase</th>
<th>Type of Study</th>
<th>Criteria A – Object or Setting</th>
<th>Criteria B – Process under investigation</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Studies or publications that self-identified as being empirical.</td>
<td>Mention of: Legal Practice; and/or Legal Education</td>
<td>Mention of: Supervision; and/or related concepts.</td>
<td>852 results reduced to 95 after applying exclusion criteria – see table below)</td>
</tr>
<tr>
<td>2</td>
<td>Any</td>
<td>Legal Practice; and/or Legal Education</td>
<td>Legal Practice; and/or Legal Education</td>
<td>1457 results reduced to 143 to after applying exclusion criteria – see table below)</td>
</tr>
<tr>
<td>3</td>
<td>Guidelines, practice notes, surveys and other grey literature from Law Society / Bar Associations and other law Related Organisation websites.</td>
<td></td>
<td></td>
<td>+33</td>
</tr>
</tbody>
</table>

Other Articles identified during process

Addition of other articles previously obtained

Total

Phase 1 and 2: See Annexure 1 for a list search terms used and Boolean queries by database
Phase 3: See Annexure 2 for a list of search terms and websites searched

### TABLE 2 – EXCLUSION CRITERIA

Articles which considered supervision in a different context. For example:
- Supervision outside of legal practice described in the context of employment law issues (including issues of vicarious liability and sexual harassment)
- Parole, and/or other correctional supervision;
- State supervision of a particular industry such as banking or insurance.
- Judicial supervision of trusts
- Judicial supervision in the form of case management systems
- The supervisory jurisdiction of the courts
- Parental and child custody supervision
- Supervision of school students.

Articles which considered supervision (in legal practice) but merely mentioned, in passing, that:
- supervision was undertaken;
- a particular person was a supervisor;
- supervision was a component of clinical legal education;

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3 For a discussion, see section 5 below ‘Other comments, search limitations and Further Steps’
4 Ibid
5 This is an area that is likely to be relevant to the proposed thesis. However, it was outside the scope of this systematic search as it did not relate to supervision in legal practice.
4. Organisation of Results, Synthesis and Findings

A significant aspect of this literature search was organising and synthesising the results. Search results that were not excluded based on the criteria detailed in Table 2 immediately above, were then categorised in a twostep process. The first step was to identify whether the article or document either: (a) provided an empirical insight (either quantitative or qualitative) into the reason for, nature of, or impact of supervision (or a lack of supervision) in legal practice (Category 1); or (b) provided such an insight but that insight was grounded in doctrinal work, theory, personal accounts/opinions, or perceived ideas/ generalisations about supervision in legal practice (Category 2). The second step was to categorise that article based on whether the specific purpose or over-arching nature of the article was in fact supervision (Category 1A/2A); or whether the reference to supervision arose in the context of another issue or discussion (Category 1B/2B).

A summary of the organised results by Category is outlined in Table 3 below. To satisfy the primary purpose of this search, documents that provided an empirical insight into the reason for, nature of and impact of supervision in legal practice, have been summarised: see Table 4 below. To satisfy, the secondary purpose of this search Category 2 documents have been scanned and categorised according to document type and key themes have been noted. This will assist with identifying any further searches and also determining thesis structure. Category 2A documents which are of the nature of a peer reviewed scholarly article have been summarised in Table 5 below.

5. Other Comments, search limitations and further steps.

A number of articles, not obtained as part of the systematic process were included in the final analysis. These included: (a) articles that were identified during the preliminary reading and initial research; (b) articles that were identified only because they were identified in footnotes of other articles obtained during the process. A minority of these articles consider or contemplate supervision in an abstract, theoretical or embedded way such that it is unlikely they would be identified through a systematic approach (for example some of the literature pertaining to tournament theory). Accordingly, a non-systematic reading of key themes and issues in the legal profession literature was a necessary complement to this search. However, the majority of these articles relate to either: clinical legal education in the United States (in particular student practice rules and related issues); or training programs / trainee solicitors in England & Wales. Therefore, it is quite possible that this search has not sufficiently captured all relevant information arising from those two areas. A supplementary systematic search, targeting these areas may need to be undertaken, depending on the scope and direction of the thesis following confirmation.

Perhaps most troubling, one already known ‘grey-literature’ empirical study6 was not identified during the search. This indicates the need for a further systematic search of grey-literature, more comprehensive than that undertaken in Phase 3 of this systematic search. Phase 3 of the search focussed, mainly on Law Societies and Bar Associations in Australian and the United Kingdom with some other overseas organisations included (notably the American Bar Association)7. A supplementary systematic grey literature search targeting additional organisations (in particular American State Bar Associations8 and Legal Aid organisations) is likely to be necessary and useful once candidature has been confirmed and any refinements to thesis topic and structure has been identified. Phase3 did however, identify additional, potentially relevant survey data obtained by the NALP Foundation9. However, this information was not available without significant cost. Similarly a number of websites visited have separate member sections and it is likely that some relevant material was not identified.

6 Lawyers, Young Legal Aid, ‘Supervisor ratios: ensuring quality legal aid lawyers for the future’ (2009). This study was found during the preliminary research stage via a general Google search.
7 For a full list of organisations see Annexure 2
8 A number of seemingly relevant articles, from American State Bar Association magazine/periodicals were identified via the HeinOnline searches conducted in Phases 1 & 2. However the full text was unavailable and the results have not been included in the search. These search results did not appear to be empirical in nature.
9 See NALP Foundation ‘Research’ <http://www.nalpfoundation.org/research>
<table>
<thead>
<tr>
<th>Type of Study</th>
<th>Topic / Document Type</th>
<th>Number</th>
<th>Key Findings / Themes /Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category 1 – Empirical</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1A – Specifically dealing with Supervision in Legal Practice</td>
<td></td>
<td>2</td>
<td>• See table 2 below</td>
</tr>
<tr>
<td>1B - Other legal profession / legal education empirical research with empirical insights into supervision arising</td>
<td></td>
<td>17</td>
<td>• See table 2 below</td>
</tr>
<tr>
<td><strong>Category 2 – Non-Empirical</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2A - Specifically dealing with supervision in Legal Practice</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Scholarly Peer Reviewed</td>
<td></td>
<td>6</td>
<td>• See table 3 below</td>
</tr>
</tbody>
</table>
| • Law Society / Bar Association / Other Law Related Organisations - Magazines and Periodicals | | 15 | • Together, these sources of information highlight supervision as critical issue and provide some guidance in relation to appropriate supervision. However, by and large, the guidance appears to reflect conventional wisdom or motivated by risk management, as opposed to being supported by social scientific research.  
• The most comprehensive guide to supervision is published by the Queensland Law Society.  
• Supervision is often treated as a tool of risk management or as a mechanism for increasing profitability and, generally, training/educational functions are given a secondary role.  
• This is a dearth of information in relation to the supervised legal practice period in Australia. |
| • Law Society / Bar Association / Other Regulators - Policy, Guidelines, Practice Note, Formal Opinion etc | | 16 | |
### Category 2 – Non-Empirical - Continued

<table>
<thead>
<tr>
<th>2B - Other non-specific treatment of supervision</th>
<th>Sub-categorisation</th>
</tr>
</thead>
</table>
| • Law Students and Legal Education | 108 | Clinical legal education (general and pedagogical issues) – 25  
Methods and systems of, approaches to, legal education – 24  
Supervision in clinical legal education – 19  
Transition from Law School to Legal Practice – 11  
Legal Education, Ethics & Values – 9  
Externships /Internships – 4  
Historical and Comparative Studies – 4  
Teaching additional (non-legal) skills – 4  
Training of clinical supervisors / teachers – 4  
Mentoring Law Students – 3  
Student experience and well-being – 1 |
| • Lawyers and the Legal Profession | 80 | Large Law Firms – 14  
Competence and Professional Responsibility issues – 13  
Community Legal Centres and Legal Aid -11  
Regulating Law Firm Management – 9  
Conveyancers, Paralegals and other non-lawyer staff – 8  
Globalisation of Legal Services and Outsourcing – 6  
Lawyers and Well-being / Work life balance- 6  
Discrimination against women and minority groups - 5  
Development and future of legal profession – 4  
Lawyers and Leadership – 4 |
| • Practice Management | 36 | General practice management issues – 16  
Mentoring and Coaching – 8  
Risk Management – 7  
Lawyer Performance Evaluation and Feedback – 5 |
| • Law Firm Training Programs and CPD | 24 | Training Junior Practitioners – 15  
CPD – 7  
Training Trainers -2 |
<table>
<thead>
<tr>
<th>Year</th>
<th>Population and Respondents / Data Used</th>
<th>Focus of Study</th>
<th>Supervision Aspects</th>
<th>Reported by – Citation</th>
</tr>
</thead>
</table>
| 2009  | Online survey of Queensland of Queensland lawyers who attended a supervision symposium                 | Supervision Practices – perceptions and attitudes                            | • Supervision in legal practice is in need of systematic research  
• Need to identify effective practices and learn from other professionals.                                                                                                                                                  | Legal Services Commission Queensland / Griffith University – Shoudering the Supervision Load – A report of the symposium (2009).                                                                                                  |
| 2009  | Survey of 78 UK Legal Aid case workers.                                                                 | Supervision of legal laid case workers.                                      | • Close Supervision essential for professional development of junior lawyers.  
• A ratio of 1:4 supervisor to caseworker was insufficient.                                                                                                                                                                  | Young Legal Aid Lawyers, 'Supervisor ratios: ensuring quality legal aid lawyers for the future: a report by Young Legal Aid Lawyers' (2009)                                                                                                                                 |
<p>| 2012  | Interviews with 11 newly admitted legal practitioners in A.C.T                                        | Professional identity / Transition from law graduate to legal professional     | • Appropriate supervision is crucial to development of autonomy and task competence.                                                                                                                                      | Holmes, Vivien Foley, Tony Tang, Stephen Rowe, Margie, 'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers' (2012) 15 Legal Ethics 29                                                                 |
| 2011  | Survey data from 324 individual responses from 25 law firms in Queensland                             | The pressure of billable hours on unethical behaviour                         | • Generally supervisees were unwilling to discuss ethical concerns about billing with supervisors.                                                                                                                       | Parker, Christine Ruschena, David, 'Pressures of Billable Hours: Lessons from a Survey of Billing Practices inside Law Firms, The' (2011) 9 U. St. Thomas L.J. 619                                                                                                           |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Survey Data</th>
<th>Topic</th>
<th>Key Findings</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>Survey data from 336 lawyer respondents from 15 firms in Queensland</td>
<td>Ethical infrastructures / Perceptions of ethical cultures within firms</td>
<td>• There was uncertainty in relation to: how junior lawyers should address ethical issues concerning their own supervisor; and whether supervising partners’ role included encouraging the raising of ethical issues.</td>
<td>Parker, Christine Aitken, Lyn, 'Queensland Workplace Culture Check: Learning from Reflection on Ethics inside Law Firms, The' (2011) 24 Geo. J. Legal Ethics 399</td>
</tr>
<tr>
<td>2010</td>
<td>Survey data from 614 respondents from Queensland Incorporated Legal Practices</td>
<td>Internal complaints management in Incorporated Legal Practices</td>
<td>• A significant minority of respondents reported that their firms did not have (or they didn’t know whether there firm had) clear instructions and policy statement for reporting complaints to supervisors.</td>
<td>Parker, Christine Haller, Linda, 'Inside Running: Internal Complaints Management Practice and Regulation in the Legal Profession' (2010) 36 Monash U. L. Rev. 217</td>
</tr>
<tr>
<td>2010</td>
<td>Survey data from 631 Incorporated Legal Practices in New South Wales.</td>
<td>Regulating Law Firms / Incorporated Legal Practices</td>
<td>• Supervision was one of two areas (the other being communication) which the largest number of ILPs initially assess themselves as non-compliant.</td>
<td>Parker, Christine Gordon, Tahlia Mark, Steve, 'Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales' (2010) 37 J.L. &amp; Soc’y 466</td>
</tr>
<tr>
<td>2007</td>
<td>88 Law Graduates from University of Newcastle engaged in legal practice</td>
<td>Identification of major sources of stress and dissatisfaction among lawyers and to correlate information with type of legal education received.</td>
<td>• Most lawyers stress is related to management issues including poor quality of mentoring and supervision • Legal workforce is highly mobile with failure of senior lawyers to guide or supervise juniors was second most common reason for changing jobs (after billing pressures). • Most likely to receive professional support from a colleague than a supervisor or mentor.</td>
<td>James, Colin, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Education' (2008) 18 Legal Educ. Rev. 123 Also, Lewis, Julie, 'New study links high turnover to inadequate support' (2012) 45(11) Law Society Journal 16 - Reporting on the same study by Colin James of University of Newcastle.</td>
</tr>
<tr>
<td>2004</td>
<td>&gt;5000 lawyers (who first admitted to the bar in 2000) across 18 geographic areas in the United States</td>
<td>Longitudinal study of the career development of lawyers</td>
<td>• Overall relatively high levels of satisfaction were reported. However satisfaction was lowest in the area of performance evaluation process. • Work experience was rated most helpful in the transition to practice. • Informal mentoring is central to careers of lawyers.</td>
<td>NALP Foundation / American Bar Foundation, 'After the JD: First Results of a National Study of Legal Careers' (2004)</td>
</tr>
<tr>
<td>Year</td>
<td>Source of Data</td>
<td>Focus Areas</td>
<td>Findings</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>-------------</td>
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<td></td>
</tr>
<tr>
<td>2004</td>
<td>Survey data from 847 Latino lawyers in Los Angeles</td>
<td>Professional lives of Latino lawyers in Los Angeles</td>
<td>- Survey respondents generally satisfied with relationship with supervisor but unhappy with the lack of control over the amount of work.</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>Survey data from 487 associates in Texas</td>
<td>Associate Satisfaction, Law Firm Culture and Billable hours</td>
<td>- The pressure on supervisors of billable hours is associated with a decline in mentoring and supervision. - Billing entries are not adequately supervised and supervisees were reluctant to discuss billing concerns with supervisors.</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Various data from professional indemnity insurers professional associations and disciplinary bodies</td>
<td>The use of lay conveyancers versus attorneys in real estate closings</td>
<td>- There is lack of evidence that the public are more at risk when using a lay conveyancer as opposed to having such a matter supervised by a lawyer.</td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>Interviews with 788 Chicago lawyers</td>
<td>Job Satisfaction</td>
<td>- Respondents generally were moderately satisfied with relations with supervisors. However their satisfaction in relation to supervision was less than their overall satisfaction rating.</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>Survey of 191 Texas law firms with 10 or more partners.</td>
<td>Peer Review Measures and Attitudes in Law Firms</td>
<td>- Partners are largely unsupervised by are subject to, mainly, informal peer review. - Willingness to engage in peer review depends on firm culture.</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Survey of 158 trainee solicitors in England and Wales.</td>
<td>Quality of Life</td>
<td>- A substantial minority expressed concern with training and supervision. - Disparity in, and overall quality, of training provided by supervisors indicting a need for training of supervisors. - The level of supervision reduced rapidly immediately after formal qualification as a solicitor. - Some respondents reported being left unsupervised on certain tasks.</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Description</td>
<td>Details</td>
<td></td>
<td></td>
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<tr>
<td>------</td>
<td>-------------</td>
<td>---------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Questionnaires administered to 161 Northeastern Law School students</td>
<td>How law students learn in work settings</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The findings allegedly challenge one of the bedrock assumptions of clinical methodology—the centrality of an intensive, education-focused supervisory relationship.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The amount of idle time, difficulty receiving clarification and failure to match skills with work had negative statistically significant impact on learning. While a supervisor honouring shared expectations had a positive statistically significant impact on learning.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Approximately two thirds of respondents considered their supervision to be adequate. However adequacy of supervision was rated lower than all other measures of student learning.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Supervision was reported as being more adequate in government offices, judicial internships, legal aid and public interest compared to private law firms. Small firms received the highest percentage of respondents reporting inadequate supervision. While medium and large firms had a much higher number of respondents reporting that supervision was 'mixed'.</td>
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</tbody>
</table>

| 1990 | Journal data from 66 2nd and 3rd year law students from Oklahoma City University. | Law Office Work and Professional Values |
|      | | • The majority of students provided journal data indicating supervision deficiencies. |
|      | | • Some students were unable to discuss ethical issues with supervisors while some students were instructed to engage in questionable conduct. |
|      | | • Supervisors, on the whole, were unsatisfactory role models. |


Note: (These students possessed a limited licence to practice law under Oklahoma’s student practice rules. This rules required they work under the direction and supervision of a practicing attorney.
<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
<th>Impact of clerkships on educational and professional life.</th>
<th>Problems associated with student practice</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>Survey of 431 present and former students at University of Utah College of Law who worked as law clerks</td>
<td>• Clerks considered their supervision to be adequate. This is despite the majority of clerks also reporting that: there work was not evaluated consistently; and ethical issues were not discussed regularly.</td>
<td></td>
<td>Zillman, Donald N. Gregory, Vickie R., 'Law Student Employment and Legal Education' (1986) 36 J. Legal Educ. 390</td>
</tr>
<tr>
<td>1973</td>
<td>Survey of students, supervising attorneys, program directors, law school deans, state attorneys general, state bar associations, judges and clients.</td>
<td>• Perceived education value of student practice varies directly with the time devoted to supervision; • Generally placement supervisors did not consider the overall education benefit when assigning a case to a student; • A higher degree of supervision was associated generally with better protection of client confidences; • Development of student respect of the legal profession is related to degree of supervision; • A higher degree of supervision was associated with the quality of representation.</td>
<td></td>
<td>Documentary, Supplement, 'Student Practice as a Method of Legal Instruction' (1973) 15 Wm. &amp; Mary L.Rev. 355</td>
</tr>
<tr>
<td>Article - Citation</td>
<td>Summary</td>
<td></td>
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<tr>
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<tr>
<td>Cover, Avidan Y., 'Supervisory Responsibility for the Office of Legal Counsel' (2012) 25 Geo. J. Legal Ethics 269</td>
<td>Cover argues for a new expanded supervisory rule specific to the Office of Legal Counsel (OLC) which includes an expanded definition of supervisor and a constructive knowledge component where supervisors are held liable for a supervisee’s conduct even if they were not aware of it but should have known.</td>
<td></td>
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<tr>
<td>Rachel, Reiland, 'The duty to supervise and vicarious liability: Why law firms, supervising attorneys and associates might want to take a closer look at model rules 5.1, 5.2 and 5.3' (2001) 14(4) The Georgetown Journal of Legal Ethics 1151.</td>
<td>Reiland reports on rejected changes to the Model Rules. Reliand argues that the changes would have served to “increase law firm awareness of the affirmative duty of firms to train and mentor their employees” (at p1163).</td>
<td></td>
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<tr>
<td>Keating, Robert R., 'Floggings Will Continue until Morale Improves: The Supervising Attorney and His or Her Firm, The Symposium: Ethical Obligations and Liabilities Arising from Lawyers' Professional Associations' (1997) 39 S. Tex. L. Rev. 279</td>
<td>Keating describes the importance of supervision in legal practice and outlines. Keating includes a detailed discussion of the various approaches to the regulation of supervisory conduct. Keating emphasises the benefits of supervision to all attorneys, the profession and clients, and notes that supervision should be encouraged. Keating argues that the Model Rules potentially discourage risk-averse attorneys from supervising. Keating notes the Model Rules do not impose a duty to supervise attorneys, rather acts as a form of liability when an attorney is actually supervised. Keating’s view is that that underlying assumption of the Model Rules is that “an attorney who has managed to complete the requirements for admission to the practice of law is free to establish a practice, and has no requirement for supervision” (at 308). Keating is of the view that attorneys should only be liable for their supervisory efforts where the supervision is negligent.</td>
<td></td>
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</tr>
<tr>
<td>Dzienkowski, John S., 'Legal Malpractice and the Multistate Law Firm: Supervision of Multistate Offices; Firms as Limited Liability Partnerships; and Predispute Agreements to Arbitrate Client Malpractice Claims Symposium: Ethics and the Multijurisdictional Practice of Law' (1995) 36 S. Tex. L. Rev. 967</td>
<td>Dzienkowski is contends that supervisory issues are different in large firms compared to small firms because of his belief that: lawyers in small firms shared common values; clients of small firms seek out the advice of an individual rather than the firm itself; large firms partners stick to their practice group; and large firm associates are more likely to work for more than one partner and not receive proper supervision. Dzienkowski highlights that “these problems are accentuated further when the firm is spread over many offices in many different states”(at 977)</td>
<td></td>
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<tr>
<td>Miller, Irwin D., 'Preventing Misconduct by Promoting the Ethics of Attorneys' Supervisory Duties' (1994) 70 Notre Dame L. Rev. 259</td>
<td>Miller highlights the stern warnings given by courts in relation to supervision failures and emphasizes the relationship between supervision and competency. Miller, argues against relying solely on ad hoc, reactive disciplinary proceedings to foster appropriate supervision standards noting the ‘prophylactic’ nature of the ABA Model Rule 5.1. Miller proposes publication of supervision guidelines and compliance reporting to the bar association.</td>
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ANNEXURE 1 – SEARCH TERMS USED AND BOOLEAN QUERY BY DATABASE

STAGE 1 – BOOLEAN SEARCHES DIRECTED AT IDENTIFYING EMPIRICAL RESEARCH

HeinOnline

Empirical research specifically focussing on supervision (or related areas) in legal practice

Boolean query - (title:empirical* OR title:survey* OR title:evaluat* OR title:assess* OR title:check* OR title:measur* OR title:effect* OR title:review* OR title:outcome* OR title:project* OR title:study* OR title:“what works” OR title:analy* OR title:pilot* OR title:achieve* OR title:outcome*) AND (title:”legal profession” OR title:”law firm” OR title:”law firms” OR title:”law office” OR title:”law offices” OR title:”legal practice” OR title:”legal practitioner” OR title:”legal practitioners” OR title:lawyer* OR title:attorney* OR title:solicitor* OR title:partner* OR title:barrister* OR title:counsel* OR title:”law graduate” OR title:”law graduates” OR title:”law student” OR title:”law students”) AND (title:supervis* OR title:manage* OR title:leader* OR title:coach* OR title:mentor* OR title:educat* OR title:train* OR title:develop*) AND supervis*

Search Results – 43 articles

Reduced to 9 potentially relevant articles after exclusion of a number of findings based on the criteria detailed below.

Other empirical research with a supervision element

Boolean query - (title:empirical* OR title:survey* OR title:evaluat* OR title:assess* OR title:check* OR title:measur* OR title:effect* OR title:review* OR title:outcome* OR title:project* OR title:study* OR title:“what works” OR title:analy* OR title:pilot* OR title:achieve* OR title:outcome*) AND (title:”legal profession” OR title:”law firm” OR title:”law firms” OR title:”law office” OR title:”law offices” OR title:”legal practice” OR title:”legal practitioner” OR title:”legal practitioners” OR title:lawyer* OR title:attorney* OR title:solicitor* OR title:partner* OR title:barrister* OR title:counsel* OR title:”law graduate” OR title:”law graduates” OR title:”law student” OR title:”law students”) AND supervis*

Search Results - 494 articles. From this, after exclusion of immaterial search findings, a further 64 potentially relevant articles were identified.

EBSCO

Abstract Field - (empirical* OR survey* OR evaluat* OR assess* OR check* OR measur* OR effect* OR review* OR outcome* OR project* OR study* OR “what works” OR analy* OR pilot* OR achieve* OR outcome*) AND (“legal profession” OR “law firm” OR “law firms” OR “law office” OR “law offices” OR “legal practice” OR “legal practitioner” OR “legal practitioners” OR lawyer* OR attorney* OR solicitor* OR barrister* OR “law graduate” OR “law graduates” OR “law student” OR “law students”) AND (supervis*) Limiters - Scholarly (Peer-Reviewed) Journals

Search Results - 186 results. Reduced to 15 potentially relevant additional articles after exclusion of a number of findings based on the criteria detailed below.

ProQuest

Abstract Field - (empirical* OR survey* OR evaluat* OR assess* OR check* OR measur* OR effect* OR review* OR outcome* OR project* OR study* OR “what works” OR analy* OR pilot* OR achieve* OR outcome*) AND (“legal profession” OR “law firm” OR “law firms” OR “law office” OR “law offices” OR “legal practice” OR “legal practitioner” OR “legal practitioners” OR lawyer* OR attorney* OR solicitor* OR barrister* OR “law graduate” OR “law graduates” OR “law student” OR “law students”) AND (supervis*) Limiters - Peer Reviewed
129 results. Reduced to 7 potentially relevant additional articles after exclusion of a number of findings based on the criteria detailed below.

**STAGE 2 – BOOLEAN SEARCHES DIRECTED AT IDENTIFYING EMPIRICAL AND NON-EMPIRICAL**

*HeinOnline –*

**Other articles on supervision (or related areas) in legal practice.**

Boolean Query - (title:"legal profession" OR title:"law firm" OR title:"law firms" OR title:"law office" OR title:"law offices" OR title:"legal practice" OR title:"legal practitioner" OR title:"legal practitioners" OR title:lawyer* OR title:attorney* OR title:solicitor* OR title:partner* OR title:barrister* OR title:counsel* OR title:"law graduate" OR title:"law graduates" OR title:"law student" OR title:"law students") AND (title:supervis* OR title:manage* OR title:leader* OR title:coach* OR title:mentor* OR title:educat* OR title:train* OR title:develop*) AND supervis*

Search Results – 548 articles. From this, after exclusion of immaterial search findings, a further 114 potentially relevant articles were identified.

**All articles with supervis* in title**

Boolean query - (title:supervis*)

Search Results – 867 articles. From this, after exclusion of immaterial search findings, an additional 15 potentially relevant articles were identified. This was the final HeinOnline search and the results yielded a number of results that had already been identified by the earlier searches.

**AGIS Plus Text (via Informit)**

Abstract Field - supervis* AND ("legal profession" OR "law firm" OR "law firms" OR "law office" OR "law offices" OR "legal practice" OR "legal practitioner" OR "legal practitioners" OR lawyer* OR attorney* OR solicitor* OR partner* OR barrister* OR counsel* OR "law graduate" OR "law graduates" OR "law student" OR "law students")

Search Results – 42. Reduced to 14 potentially relevant additional articles after exclusion of a number of findings based on the criteria detailed below. All these articles were from Australian legal professional publications.
ANNEXURE 2 – LIST OF LAW RELATED ORGANISATION WEBSITES SEARCHED

STAGE 3 – SEARCHES DIRECTED AT IDENTIFYING GUIDELINES, PRACTICE NOTES, SURVEYS AND OTHER GREY MATTER FROM LAW SOCIETY / BAR ASSOCIATIONS AND OTHER LAW RELATED ORGANISATIONS

Search Terms: supervision, supervised, supervise.

Type of document: guide, guidelines, assessment, audit, fact sheet, check/checklist, study, pilot, evaluation, project, review, report, opinion.

**Australian State and Territory Law Societies**

Australian Capital Territory Law Society
Law Society of New South Wales
Law Society of the Northern Territory
Queensland Law Society
Law Society of South Australia
Law Society of Tasmania
Law Institute of Victoria
Law Society of Western Australia

**Australian State and Territory Bar Associations**

Australian Capital Territory Bar Association
New South Wales Bar Association
Northern Territory Bar Association
Bar Association of Queensland Inc
South Australian Bar Association
Tasmanian Independent Bar Association
The Victorian Bar Inc
Western Australian Bar Association

**Australian Independent Legal Profession Regulator s**

Legal Services Commission, Queensland
Legal Services Commissioner, New South Wales
Legal Services Commissioner, Victoria
Legal Services Board, Victoria
Legal Practice Board of Western Australia
Legal Practitioners Conduct Board of South Australia
Legal Profession Board of Tasmania

**Australian National Legal Profession Representative Organisations**

Australian Bar Association
Law Council of Australia

**Australian Legal Education Related Organisations**

Australasian Law Teachers Association
Australasian Professional Legal Education Council
Continuing Legal Education Association of Australasia
Council of Australian Law Deans
British Legal Profession and Legal Education Related Organisations

General Council of the Bar of England and Wales
General Council of the Bar of Northern Ireland
Faculty of Advocates: The Scottish Bar
Law Society of England and Wales
Law Society of Northern Ireland
Law Society of Scotland
Legal Ombudsman (England and Wales)
Legal Services Board (England and Wales)
Solicitors Regulation Authority (England and Wales)
UK Centre for Legal Education
Legal Services Research Centre (Archived)
Legal Practice Management Association

American Legal Profession Organisations

American Bar Association
NALP Foundation
American Bar Foundation

Other Overseas Law Societies and Bar Associations

Canadian Bar Association
Federation of Law Societies of Canada
Law Society of Upper Canada
Law Society of British Columbia
New Zealand Bar Association
New Zealand Law Society
Law Society of Singapore
Hong Kong Bar Association
Law Society of Hong Kong
Law Society of Ireland
Bar Council of Ireland
The Legal Services Commission has developed a varied and ever-expanding series of online surveys which allow participating law firms to review the effectiveness of their ‘ethical infrastructure’ - the policies and procedures, customs and practices both formally stated and otherwise that nurture and sustain a workplace culture that encourages and rewards ethical behaviour and discourages, deters, detects and deals with ethically questionable behaviour.

We developed the original version of this survey in collaboration with Professor Jeff Giddings of the Socio-Legal Research Centre at Griffith University (SLRC) in 2011 and have updated this version with additional questions developed in collaboration with Michael McNamara of the Griffith University Law School.

Supervision practices is an important topic. Many complaints arise because of poor supervision or management systems that do not promote good supervision practices. Firms can use this survey to help them review their supervision practices - by reflecting on their systems and culture as they answer the questions, and by considering the results.

We focus on direct supervision where there is a direct line of responsibility between the supervisor and supervisee. This ethics check survey helps firms explore what counts as reasonable supervision through their reflection on questions about, for example, the supervision support structures in their organizations and the perceptions and practices of supervisors and supervisees.

The survey takes less than 30 minutes to complete. While we welcome the participation of individuals, we encourage the participation of firms as a whole because when significant numbers of people from each of the different levels and classifications complete the survey, the results paint a more complete picture of a firm's culture by allowing you and your firm to compare how staff at different levels within the firm answer the same questions.

CONFIDENTIALITY

The survey complies fully with the relevant national ethical standards. It is designed to preserve the anonymity all who complete the survey, both individuals and their firms. We do not collect IP addresses and we will not be able to identify your firm unless it chooses to identify itself. Law firms that undertake the survey of their own volition assign themselves a secret code known only to the firm and the people who work for it and who are completing the survey at the firm's request.

We will publish and regularly update the survey results. We comply with the national standards for the ethical conduct of surveys and we will not publish any reports that tend because of a small sample size to identify any of the individual people who completed the survey or their law firm.

We do not name law firms when we publish results even if a firm has told us their identity. We only publish non-identifiable and aggregated data for the benefit of the profession and the public. Non-identifiable and aggregated data may also be used for research in a PhD thesis by Michael McNamara.

The survey is conducted using SurveyMonkey's server which is based in the United States of America. Information you provide on this survey will be transferred to SurveyMonkey's server in the United States of America. By completing this survey, you agree to this transfer.

ACKNOWLEDGEMENT: We want to thank April Chrzanowski of Griffith University for her advice on statistics and design, and Giles Watson of the Queensland Law Society, Professor Susan Saab Fortney of Texas Tech University, David Durham of Lexon Insurance and Associate Professor Tony Foley of the Australian National University for their valued comments and suggestions on the questions in the original survey of which this is a substantial adaptation. The project team of the LSC and Griffith University takes full responsibility for the final product.
Instructions for completing the survey

You can complete this survey simply as an "interested individual" and you will get value from thinking about the questions that come up. Experience tells us however that the survey comes into its own when your firm participates as a whole – if all or most of the people at your firm complete the survey – because it often prompts useful conversation about the differences in opinion that can come up in answers to the survey questions.

Completing the survey as a firm requires everybody at the firm to use a code devised by the firm. The code allows us to publish the results for the firms as a whole whilst preserving the firm’s anonymity. We will publish both your firm’s results and the aggregate, overall results for everybody who has completed the survey on our website shortly after the closing date.

If you wish to participate as a firm, you should appoint a survey manager to oversee the process and to encourage all your staff to participate.

INSTRUCTIONS FOR EVERYONE COMPLETING THE SURVEY

You can start the survey and return to complete it at any time. You will be able to answer most of the questions simply by clicking the appropriate box, although some of the questions give you the opportunity if you wish to add a comment.

Please answer as many questions as you can. Bear in mind that the survey is not an exam or test and that there are no right or wrong answers as such.

If you need to leave the survey at any time simply click ‘exit this survey’ in the top right hand corner of the page and your answers will be saved until you return.

Please click ‘done’ when you’ve completed the survey.

INSTRUCTIONS FOR SURVEY MANAGERS AT PARTICIPATING FIRMS

The survey manager role is not difficult or time consuming but experience tells us that it is crucial to the success of the exercise and that it is best to appoint someone who has some management authority within the firm.

We urge survey managers to familiarise themselves with the following crucial but straightforward instructions:

Please decide on a 6 letter code word for your firm to enable us to publish your firm specific results without identifying your firm by name.

The code can be random letters or a whole word. The most important thing is for everyone in the firm to use exactly the same code. We recommend that you circulate the code to everyone at the firm who is participating in the survey. There is a reminder about this in Question 2 which asks them to enter a code.

Please also circulate the answers to the demographic questions toward the end of the survey that ask about your firm’s business structure and the number of people at your firm who hold practising certificates.

You may want to consider convening a staff meeting or other in-house forum to discuss your firm’s results. There are often very interesting comparisons to make about how different people within your firm answered the same questions. The results can be very useful in helping you identify any inconsistencies and gaps in how your firm deals with the issues involved in those questions.
1. Are you doing this survey as
   - [ ] A member of a participating law firm, at your firm’s request? A participating firm is a firm that has decided to undertake the survey of its own volition.
   - [ ] An interested individual on your own initiative?

2. If your firm has given you a code to use in this survey, please write it in exactly as given to you by your survey manager - (a survey manager is the person who has been nominated to devise and circulate the code to all staff if your firm has decided to participate as a whole).
   If you are replying as an "interested individual" please write "no code required"

3. Are you currently supervising others and/or being supervised by others? If you do not supervise other staff, or are not supervised by/report to somebody else (for example if you are a sole practitioner with no staff, including no administrative staff) then the questions in this survey will not be relevant for you and you will need to exit the survey here.
   While supervision covers a wide range of practices, we are focusing on direct supervision only, where there is a direct line of responsibility between the supervisor and supervisee.
   - [ ] Both - I supervise staff and I am supervised by others
   - [ ] I supervise others but am not supervised
   - [ ] I am supervised and do not supervise others
   Other (please specify)
Supervisors - Demographics

While supervision has a range of meanings, we ask about direct supervision, where there is a line of responsibility between the supervisor and individual.

4. How long have you been a supervisor?
- [ ] <1 year
- [ ] 1–2 years
- [ ] 3-4 years
- [ ] 5-6 years
- [ ] >6 years

5. How many staff in each of the following groups do you currently supervise?

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<thead>
<tr>
<th></th>
<th>1-2</th>
<th>3-4</th>
<th>5-6</th>
<th>7-9</th>
<th>10-14</th>
<th>15-20</th>
<th>&gt;20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal staff</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Administrative staff</td>
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<tr>
<td>Fee-earning staff who are not pc holders</td>
<td></td>
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<tr>
<td>Other (eg consultants or contractors)</td>
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</tbody>
</table>

6. Could you effectively supervise more staff than you currently do? Would your supervision be more effective if you supervised fewer staff? Or do you think you supervise about the right number?

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<th>The Right</th>
<th>More</th>
<th>Fewer</th>
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</thead>
<tbody>
<tr>
<td>Legal staff</td>
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<td>Administrative staff</td>
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</tr>
<tr>
<td>Other (eg consultants or contractors)</td>
<td></td>
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</tbody>
</table>

Please comment on your choice or choices
7. How accurate are the following statements in relation to the number of administrative staff working under your supervision? 1 - Not at all to 5 - Very accurate.

<table>
<thead>
<tr>
<th>Statement</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined at a firm-wide level and I have limited personal control over this number.</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>I have a set number of staff (which may vary over time) working under my supervision. This number is determined primarily by me according to how much assistance I feel I need.</td>
<td></td>
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<tr>
<td>I have a set number of staff working under my supervision. This number is determined primarily by me based on my assessment of how many people I can effectively supervise.</td>
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<tr>
<td>The number of staff working under my supervision varies constantly. I get whatever help I can from others within the firm to meet client demands.</td>
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<tr>
<td>My clients demand that I personally complete certain work and this limits the amount of work I can delegate.</td>
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<tr>
<td>Having more staff under my supervision increases my own profitability and/or productivity. I supervise the number of staff required to meet billing/financial targets.</td>
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<tr>
<td>Budgetary controls restrict the number of staff I can have working under my supervision.</td>
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<tr>
<td>I am not sure exactly why I supervise the number of staff that I do. This is just how my practice has evolved.</td>
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</table>

Please describe any other factors which explain the number of staff working under your supervision
8. How accurate are the following statements in relation to the number of fee-earning staff working under your supervision? 1 - Not at all to 5 - Very accurate.

<table>
<thead>
<tr>
<th>Statement</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

Please describe any other factors which explain the number of staff working under your supervision.

9. Do you share supervisory responsibilities for the staff referred to above with other colleagues?

- [ ] Yes
- [ ] No

If "yes" please describe how you share supervisory responsibilities.
10. What percentage of your time do you spend on supervision responsibilities?

- [ ] <10%
- [ ] 10-20%
- [ ] 20-30%
- [ ] 30-40%
- [ ] 40-50%
- [ ] 50-60%
- [ ] 60-70%
- [ ] 70-80%
- [ ] >80%
11. What do you prioritize when you schedule your duties? Do you prioritize

- [ ] Your fee-earning duties
- [ ] Your supervision duties

12. Would you describe your supervision activities as primarily

- [ ] proactive
- [ ] reactive

13. Do you measure your success in your role primarily by

- [ ] Your individual performance
- [ ] Your team's performance

14. How do you find time for your supervision responsibilities? Please tick all that apply

- [ ] My firm allocates time to me for my supervision responsibilities
- [ ] I can incorporate supervision time into the time I bill clients because I am overseeing the work of my supervisees on client matters
- [ ] I record supervision time but may reduce the time billed to the client where my supervision was of repeated tasks (such as drafts of an advice)
- [ ] Time for supervision is not structured into a daily work schedule
- [ ] It is up to me to find spare time for supervision

Other (please specify)

________________________________________________________________________
15. How did you develop your supervision practices? Please tick all that apply

- By emulating my current supervisor
- By emulating a previous supervisor
- By watching others
- By trial and error
- By following my firm's policies and procedures
- By responding to the needs or expressed preferences of my supervisees

Are there any other ways in which you developed your supervision practices?

16. Have you ever had training in supervision? Please rate the level of training you've had for your supervision duties. Please choose from 1 (not at all) to 6 (to a level sufficient to your needs)

1
2
3
4
5
6
17. If you undertake training to build your supervision skills, what sort of training do you receive? Tick all that apply

- [ ] In-house formal training provided by my firm
- [ ] In-house informal discussions generally in response to problems seen as supervision issues
- [ ] External formal training at regular intervals
- [ ] External formal training at irregular intervals when available
- [ ] I regularly read publications and attend workshops on supervision
- [ ] Reading management literature
- [ ] Other (please specify)

18. Can you identify forms of supervision training you have not received but that you think you would find helpful?

- [ ] In-house formal
- [ ] In-house informal, such as ad hoc discussions in response to problems arising
- [ ] External formal training given regularly by a dedicated service provider
- [ ] External informal, for example professional seminars on supervision related topics
- [ ] Reading management literature
- [ ] I do not need further training in supervision
- [ ] Other (please specify)

19. Compared to your other work roles, do you enjoy your supervision role

- [ ] Much less
- [ ] Less
- [ ] No difference
- [ ] More
- [ ] Much more
20. Do you primarily supervise the person or the file?

- [ ] The person
- [ ] The file
- [ ] Both equally
- [ ] Both but as an inseparable unit

21. What is it that tells you if your supervision is effective? Tick all that apply

- [ ] The outcomes of my supervisees' work
- [ ] My firm's evaluation of my supervision skills
- [ ] Feedback from management within the firm
- [ ] Feedback from clients
- [ ] Feedback from my supervisees

Other (please specify)
### Your supervision style

22. To what extent do you focus on the following in your supervision? 1 (not at all) to 5 (a great deal)

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<thead>
<tr>
<th>Topic</th>
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<tbody>
<tr>
<td>Application of legal reasoning</td>
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<td>Compliance with your firm's systems</td>
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<td>Timely processing of matters</td>
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<td>Ethical behaviour</td>
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<tr>
<td>Potential risks</td>
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<td>Productivity and time recording</td>
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<td>Billing</td>
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<tr>
<td>Client relationship management and service</td>
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<td>Other (please specify)</td>
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</table>

### 23. Do you view supervision principally as

<table>
<thead>
<tr>
<th>Status</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>A management tool</td>
<td></td>
<td></td>
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<tr>
<td>A legal responsibility</td>
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<tr>
<td>An educational tool</td>
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<tr>
<td>A mentoring tool</td>
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<tr>
<td>A means of identifying and confronting problems that arise in your supervisees’ work</td>
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<tr>
<td>Additional to your main role</td>
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</tbody>
</table>

Please comment on your main reason for viewing supervision in the above way or ways
24. If you are a supervisor who is also supervised by others, are your supervisor’s practices similar to your own?

- Yes
- No
- Somewhat
- Not applicable

If they differ, in what ways do they differ?

25. How descriptive are the following statements of the supervision that YOU provide? Please choose from 1 (not at all) to 5 (a great deal)

<table>
<thead>
<tr>
<th>Statement</th>
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<th>2</th>
<th>3</th>
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</thead>
<tbody>
<tr>
<td>I help my supervisees to develop technical skills</td>
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<tr>
<td>I provide both positive and constructive critical feedback</td>
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<tr>
<td>I work collaboratively with my supervisees</td>
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<td>I contribute to the personal growth of my supervisees</td>
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<tr>
<td>I teach my supervisees to become lawyers</td>
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<tr>
<td>I focus on solving critical issues and problems that arise for my supervisees</td>
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<tr>
<td>I teach my supervisees about being ethical</td>
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<tr>
<td>I provide emotional support to my supervisees</td>
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<tr>
<td>I maintain a professional distance from my supervisees</td>
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<tr>
<td>I demonstrate patience and flexibility with my supervisees</td>
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<tr>
<td>I demonstrate openness and honesty in my work</td>
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<tr>
<td>I demonstrate fairness in my dealings with all staff, whether they are my supervisees or not</td>
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<tr>
<td>I closely manage cases</td>
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<tr>
<td>I safeguard the interests of the client</td>
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<tr>
<td>I pass on my knowledge and experience to my supervisees</td>
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</table>
26. Research indicates that many supervisors may encounter issues that hinder their ability to provide effective supervision. Do you encounter any of the following obstacles in providing effective supervision? Please rank on a scale of 1 (rarely) to 5 (often)

<table>
<thead>
<tr>
<th>Obstacle</th>
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<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
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</thead>
<tbody>
<tr>
<td>Split supervision - where supervision responsibilities are shared with another supervisor</td>
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<tr>
<td>Lack of flexibility and options (eg to motivate or develop through role changes or work allocation)</td>
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<tr>
<td>Inadequate practice management systems (IT and others)</td>
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<tr>
<td>Having insufficient time for supervision</td>
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<tr>
<td>Having limited interest in managing or supervising others</td>
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<tr>
<td>My supervisees and I having different understandings of what supervision entails</td>
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<tr>
<td>Being faced with the consequences of my supervisees having poor experiences with previous supervisors</td>
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<tr>
<td>Having supervisees who do not communicate clearly</td>
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<tr>
<td>Having supervisees who do not follow instructions</td>
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<tr>
<td>Having supervisees who work hard but not effectively</td>
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<tr>
<td>Having supervisees who don't take sufficient responsibility</td>
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<tr>
<td>Having supervisees who are not effective team members</td>
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<tr>
<td>Having supervisees who lack respect for me and other colleagues</td>
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<tr>
<td>Having supervisees who don't understand when to seek advice</td>
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<tr>
<td>Having supervisees who don't think they need to be supervised</td>
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</table>
Supervisors - Your personal supervision systems

27. How do you supervise (tick those that apply, but only if done systematically):-

☐ I have an open door policy and staff come to see me when they have problems
☐ I review work done and allocate new work
☐ I review/check all communications
☐ I monitor how staff engage in peer file review
☐ I review central risk indicators (eg no time recorded on file, unbilled files, long hours, excessive time entries)
☐ I implement workflow systems to ensure or assist process compliance
☐ I set aside a regular time to review workloads, prioritise work and deal with problem cases
☐ I update and share information with staff in my office
☐ I identify my supervisees' training needs
☐ I monitor staff for fatigue, stress and other problems
☐ I meet the training needs of my supervisees, or ensure they are met
☐ I inspect all files at regular intervals
☐ I inspect sample client files at regular intervals
☐ I only inspect problem client files

Other (please specify)
28. As a supervisor I have responsibility for 1 (not at all) to 5 (to a large extent)

<table>
<thead>
<tr>
<th>Task</th>
<th>1</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td>Being vigilant in file management so serious mistakes are avoided</td>
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<tr>
<td>Checking my supervisees' wellbeing</td>
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<tr>
<td>Being a role model to demonstrate good practice</td>
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<tr>
<td>Ensuring that supervisees adhere to the firm's complaint management policy</td>
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<tr>
<td>Keeping an &quot;open door policy” and ensuring I am available when needed</td>
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<tr>
<td>Assigning tasks that are appropriate and meaningful to my supervisees</td>
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<tr>
<td>Assigning tasks that fit my supervisees' level of skill and experience</td>
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<tr>
<td>Ensuring that any expressions of client dissatisfaction are brought to my attention</td>
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<tr>
<td>Ensuring that supervisees know they can tell me about serious mistakes they have made</td>
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<tr>
<td>Ensuring that supervisees know that I will attempt to deal with or rectify any serious mistakes they have made</td>
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<tr>
<td>Ensuring that my supervisees know I will support their attempts to deal with or rectify any serious mistakes they have made</td>
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</table>

29. How important are these tasks when supervising others? 1 (not important) 5 (most important)

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<thead>
<tr>
<th>Task</th>
<th>1</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td>Ensuring excellent client service</td>
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<tr>
<td>Ensuring that work is being progressed to meet deadlines</td>
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<tr>
<td>Ensuring accuracy of information being communicated to clients</td>
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<tr>
<td>Ensuring all communications are polite</td>
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<td>Ensuring time recording is accurate and up to date</td>
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<tr>
<td>Ensuring costs are correct (for example, stamp duty)</td>
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30. Do you provide differing levels of supervision to your supervisees depending on factors such as their levels of practical experience or formal qualifications? Please choose from 1 (not at all) through to 6 (to a great extent).

<table>
<thead>
<tr>
<th>Factor</th>
<th>1</th>
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<th>5</th>
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</thead>
<tbody>
<tr>
<td>I provide differing levels of supervision to supervisees depending on their level of practical experience</td>
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<tr>
<td>I provide differing levels of supervision to supervisees depending on their formal qualifications</td>
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</tbody>
</table>
31. What do you take into account in determining the level of supervision required, and how important is it to take those things into account? 1 (not important) to 5 (very important)

<table>
<thead>
<tr>
<th>Factor</th>
<th>1</th>
<th>2</th>
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<th>5</th>
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<tbody>
<tr>
<td>The supervisee’s formal qualifications</td>
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<td>The supervisee’s knowledge of the area of law</td>
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<tr>
<td>The supervisee’s level of practical experience</td>
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<td>My knowledge of the supervisee’s personal characteristics</td>
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<tr>
<td>My observation of the supervisee’s daily work</td>
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<tr>
<td>The nature of the work being delegated to the supervisee</td>
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</table>

32. Do you supervise any legal staff who hold a practising certificate subject to a statutory condition that they engage in supervised legal practice only?

- Yes
- No
- Unsure

33. If you answered Yes to the previous question, are your supervision practices for legal staff who hold that type of practising certificate similar to your supervision practices for other practising certificate holders?

- Yes
- No
- Somewhat

If they differ, in what ways do they differ?
This part is for participants who are supervisees.

* 34. Please confirm your status as a supervisee and/or supervisor by checking one of the boxes in this question, so that you will be directed to the right part of the survey for you

- [ ] I am supervised by others. This option is for (a) participants who are supervisees only and (b) participants who are both supervisors and supervisees
- [ ] I supervise others but am not supervised. This option is for participants who are supervisors only.
35. How long have you been in your current role?
- <1 year
- 1-2 years
- 3-4 years
- 5-6 years
- 6-10 years
- >10 years

36. Have you been supervised by more than one person in your current employment?
- Yes
- No

37. If you answered "yes" to the previous question, has there been significant variation in approach taken by your different supervisors?
- Yes
- No

If yes, please describe the main variations

38. Who supervises your current work? Please tick all that apply
- A partner
- Associate
- Solicitor
- Paralegal
- Administrative staff
- Other (please specify)
39. Which of the following is the most important source of support in your work?

- Your supervisor
- Another senior practitioner
- Your peer/s
- A mentor
- Other (please specify)

40. Please answer the remaining questions about your supervisor in relation to the person who plays the biggest role in your supervision. How long have they been your supervisor?

- <6 months
- 6 - 12 months
- 12 - 24 months
- 24 - 36 months
- >36 months

41. How much time do you spend meeting with your supervisor each week? (in minutes)

- <15
- 15-29
- 30-45
- >45
- Other (please specify)

42. How often do you meet with your supervisor formally?

- Daily
- Monthly
- Twice a week
- Irregularly
- Weekly
- fortnightly
- Only if an issue comes up that I need advice with
43. To what extent does the supervision you receive focus on the following? Please choose from 1 (not at all) to 5 (a great deal)

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<tr>
<th>Area</th>
<th>1</th>
<th>2</th>
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<tbody>
<tr>
<td>Application of legal reasoning</td>
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<td>Compliance with your firm's systems</td>
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<td>Timely processing of matters</td>
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<td>Potential risks</td>
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<td>Productivity and time recording</td>
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<td>Billing</td>
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<td>Client relationship management and service</td>
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<td>Other (please specify)</td>
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</table>

44. Do you receive supervision that you feel is appropriate to your experience and/or qualifications?
Please choose from 1 (not at all) through to 6 (very appropriate)

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<tr>
<th>Area</th>
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<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>I receive supervision appropriate to my level of experience</td>
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<tr>
<td>I receive supervision appropriate to my qualifications</td>
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Please comment


45. How descriptive are the following statements of your supervisor?

My supervisor:

1 (Not at all)  2  3 (Somewhat)  4  5 (A great Deal)

Treats me fairly
Has a collaborative relationship with me
Maintains a professional distance from me
Helps me achieve ethical conduct and practice
Models ethical conduct and practice
Provides me with emotional support when needed
Helps me to develop my technical skills
Promotes my personal growth
Helps me to become better at what I do
Demonstrates patience and flexibility with me
Closely manages my work
Focuses on solving critical issues and problems that arise for me
Focuses mainly on the best interests of our clients
Is passing on to me his or her knowledge and experience
Requires me to take responsibility for my work

46. What would you like more of from your supervisor, and why?

47. What would you like less of from your supervisor, and why?
48. Have you received training or guidance on how to work constructively with your supervisor in any of the following ways?

- [ ] Through in house courses
- [ ] Through induction training
- [ ] Through personal discussion with my supervisor
- [ ] Through other colleagues
- [ ] Through external training courses
- [ ] Through reading helpful publications that I have found
- [ ] I have not received training or guidance
- [ ] Other (please specify)

49. What further training and guidance on working with your supervisor would you find helpful?


50. Do you feel able to disagree with your supervisor? Please choose from 1 (not at all) through to 6 (to a great extent)

- [ ] 1
- [ ] 2
- [ ] 3
- [ ] 4
- [ ] 5
- [ ] 6

51. If you have a disagreement with your supervisor, how is it addressed?


52. If you make a mistake that may have serious consequences how does your supervisor respond? (Tick all that apply)

He or she....

- rectifies the problem and avoids consequences for the client and our practice
- supports me in my attempts to rectify the problem
- turns it into a learning experience for me
- is tolerant of my making mistakes once but not a second time
- is quite unforgiving if I make serious mistakes
- would not tolerate my making mistakes and so if I do I try to rectify them myself
- quickly loses faith in my skills

Other (please specify)
## Skills for supervising and for being supervised

This section is for everybody to complete as it asks about skills essential for supervising and for being supervised.

53. How would you rate the importance of the following possible aims for supervision?

<table>
<thead>
<tr>
<th>Aims for Supervision</th>
<th>Not very</th>
<th>Very important</th>
<th>Neutral</th>
<th>Important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encouraging work practices that are sustainable in the long-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fostering resilience in employees</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enhancing quality – this could relate to accuracy, timeliness, value for money,</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ethical soundness or suitability for task</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Managing employee wellbeing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk management</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identifying and supporting staff facing personal difficulties</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mentoring junior staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring workloads</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting ethical practices</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discouraging bad workplace conduct such as bullying</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please describe if your organization has other aims for supervision

54. Where do you find the most valuable supervision occurs?

<table>
<thead>
<tr>
<th>Type of Supervision</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>In formal, structured and planned situations, such as regular meetings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In informal, ad hoc, or chance situations (eg in lunch rooms, corridors etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
55. How can supervisors ensure they are approachable?

<table>
<thead>
<tr>
<th>Option</th>
<th>Yes</th>
<th>No</th>
<th>Possibly</th>
</tr>
</thead>
<tbody>
<tr>
<td>By making it known that people can see them about any issue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By making it known that people can ask to see them at any time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Being known to give constructive feedback where possible</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Being known to deal with problems quickly</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Being known to help supervisees deal with problems themselves</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

56. How important are the following to fostering effective performance from staff?

**Supervisors should**

<table>
<thead>
<tr>
<th>Task</th>
<th>1 (unimportant)</th>
<th>2</th>
<th>3 (moderately important)</th>
<th>4</th>
<th>5 (very important)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide clear instructions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Be available when supervisees need help or direction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consider the professional development of their supervisees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Be aware of the wellness of their supervisees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foster trust and respect</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ensure continuity and consistency</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Take a solution focus on mistakes (rather than blame)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Give credit where it is due</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
57. How can supervisees contribute to their being effectively supervised?

Supervisees can make sure they

<table>
<thead>
<tr>
<th>Activity</th>
<th>1 (unimportant)</th>
<th>2</th>
<th>3 (moderately important)</th>
<th>4</th>
<th>5 (most important)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listen to advice and comments</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Prepare well for supervision meetings</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Ask questions about details, timelines, priorities</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Develop a clear framework on frequency of meetings</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Discuss expectations</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

58. What advice would you give to a new colleague about how to make the supervision relationship as productive as possible?


### Demographics for your firm

**This section is for everybody to answer**

59. What best describes the legal practice where you work?

- [ ] Private legal practice (sole practitioner)
- [ ] Community legal centre
- [ ] Private legal practice (fewer than 6 practising certificate holders)
- [ ] Statutory body (eg Legal Aid)
- [ ] In-house legal practice
- [ ] Private legal practice (7 or more practising certificate holders)
- [ ] Government legal practice
- **Other (please specify)** [ ]

60. If private legal practice, what best describes the majority of your client base?

- [ ] Individuals
- [ ] Small and medium businesses
- [ ] Large organisations eg corporations, government departments, trade unions
- **Other (please specify)** [ ]

61. How many practising certificate holders are there in your law practice as a whole? Please tick the relevant box.

- [ ] <5
- [ ] 5-9
- [ ] 10-19
- [ ] 20-49
- [ ] >50

62. Is your law practice an incorporated legal practice?

- [ ] Yes
- [ ] No
63. What best describes your role in the practice?

- Law firm partner
- Legal practitioner director (ILPs only)
- Sole practitioner
- Sole practitioner (ILP)
- Employed solicitor
- Government legal officer (with practising certificate)
- Government legal officer (without practising certificate)
- Statutory authority lawyer (with practising certificate)
- Statutory authority lawyer without practising certificate
- In house/corporate lawyer
- Trainee solicitor
- Fee-earner without practising certificate
- Conveyancing clerk
- Administrative Manager
- Legal secretary
- Volunteer to a CLC

Other (please specify)

* 64. Do you have a current practising certificate?

- Yes
- No
- No, but I have previously held a practising certificate
65. For how long have you had a practising certificate?

- 1-2 years
- 3-4 years
- 5-9 years
- 10-14 years
- 15-19 years
- over 20 years

66. If you have a current practising certificate, is your practising certificate currently subject to a condition that you must engage in supervised legal practice only?

- Yes
- No
- Unsure

67. If you are a fee-earner but not a practising certificate holder, for how long have you worked as a fee-earner?

- 1-2 years
- 2-4 years
- 5-9 years
- 10-14 years
- 15-19 years
- >20 years
- Not applicable

68. What is your gender?

- Male
- Female
APPENDIX 3 – SUMMARY OF CHANGES TO SURVEY
NEW QUESTIONS INCLUDED BASED ON FINDINGS FROM PRELIMINARY RESEARCH

1. Questions 6, 7 & 8 in 2013 survey are new questions

   The purpose of these questions is try and understand the rationale for team size and also to test the hypothesis that supervision is used as a tool to increase profitability which is determined by leverage levels.

2. Question 32 and 33 in 2013 survey are new questions

   The purpose of these question is to identify supervisor respondents who supervise restricted practising certificate holders and, if so, whether supervisors consider it necessary to more closely supervise these types of PC holders. Most supervision models and leadership theories suggest closer supervision is desirable.

3. Question 43 in 2013 survey is a new question

   This question, which is directed at supervisees, replicates Question 22 in 2013 survey (Qu 28 in 2011 survey. Question 22 was directed at supervisees. This question was included to compare responses for supervisors and supervisees, as existing research indicates there may be a disparity in results.

   Question 60

   The literature suggests that legal practitioners fall in to either individual or corporate “hemispheres””. If so, it would be interesting to compare differences in supervision practices against the two.

   New Question 66

   This is included to identify those respondents, supervisor or supervisee, who hold this type of PC. Really only supervisees should hold this type of PC. However, it may be that there may be some respondents who hold this type of PC and who supervise non-legal staff. I also suspect that some mid-level non-partner level employees in the large firms continue to hold this type of practising certificate even though they are not required to and these practitioners supervise junior practitioners.

OTHER CHANGES

1. Changes to Introduction, Confidentiality Information and Instructions.

2. Questions 1 and 2 re-worded for clarity


5. Qu 6 in 2011 (now Qu 63 in 2013 survey). Additional options included.
6. Question 11 in 2011 survey, moved to later section ‘Skills for supervising and being supervised’ in 2013 survey (now Qu 53 in 2013 survey). New option also included ‘Managing Employee Well-being’.

7. Question 12 in 2011 survey brought forward to become Qu 3 in 2013 survey. Questions also slightly re-worded for clarity. Skip logic also changed to direct participants to relevant sections of survey.

8. Question 22 in 2011 survey (now Qu 16 in 2013 survey) – Yes Now Response changed to a Likert scale.

9. Question 26 in 2011 survey (now Qu 20 in 2013 survey) – Two new response options added – “Both equally” and “Both but as an inseparable unit”.

10. Question 28 in 2011 survey (now Qu 22 in 2013 survey) – The four response options (To a great extent, To a moderate extent, To a Lesser extent, Not at all) replaced with a scale from 1-5.

11. Question 31 in 2011 survey (now Qu 25 in 2013 survey) – The three response options (Yes, No, To a limited extent) replaced with a scale from 1-5.

12. Question 32 in 2011 survey (now Qu 26 in 2013 survey) – 1-7 scale replaced with a scale from 1-5.

13. Question 34 in 2011 survey (now Qu 28 in 2013 survey) – The four response options (Not at all, To a minor extent, To a moderate extent, To a large degree) replaced with a scale from 1-5.

14. Question 36 in 2011 survey (now Qu 30 in 2013 survey) – The Yes or No response option replaced with a scale from 1-6.

15. Question 36 in 2011 survey (now Qu 31 in 2013 survey) – The four response options (Not important, Of some importance, Moderately Important, Very Important) replaced with a scale from 1-5.

16. Question 34 in 2013 is a new question only included to facilitate skip logic and ensure participants are answering the relevant sections based on their supervisory status.

17. Question 46 in 2011 survey (now Qu 44 in 2013 survey) – The Yes or No response option replaced with a scale from 1-6.

18. Question 52 in 2011 survey (now Qu 50 in 2013 survey) – The Yes or No response option replaced with a scale from 1-6.

19. Other general changes to 2011 survey –
   a. Broken the long pages down into shorter pages and put in headings that explain what the section is about and also makes it more personal.
   b. Typographical changes
## 1. 2013 Respondent Demographics

### Table RD 1 – Supervisory Status

<table>
<thead>
<tr>
<th>Supervisory Status</th>
<th>% Valid Responses&lt;sup&gt;1&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisee Only</td>
<td>47.2%</td>
</tr>
<tr>
<td>Supervisor Only</td>
<td>23.4%</td>
</tr>
<tr>
<td>Both – Supervisor and Supervisee</td>
<td>29.4%</td>
</tr>
</tbody>
</table>

### Table RD 2 – Legal Practice Type

<table>
<thead>
<tr>
<th>Legal Practice Type</th>
<th>% Valid Responses&lt;sup&gt;2&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Practice – Sole Practitioner</td>
<td>5.2%</td>
</tr>
<tr>
<td>Private Practice – &lt;6 Legal Practitioners</td>
<td>13.1%</td>
</tr>
<tr>
<td>Private Practice – &gt;7 Legal Practitioners</td>
<td>68.5%</td>
</tr>
<tr>
<td>Government Legal Practice</td>
<td>6.6%</td>
</tr>
<tr>
<td>Community Legal Centre</td>
<td>2.3%</td>
</tr>
<tr>
<td>Statutory Body (e.g. Legal Aid)</td>
<td>4.2%</td>
</tr>
</tbody>
</table>

### Table RD 3 – Majority of Client Base (Private Practice Respondents Only)

<table>
<thead>
<tr>
<th>Client Base</th>
<th>% Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>43.8%</td>
</tr>
<tr>
<td>Small and Medium Businesses</td>
<td>34.1%</td>
</tr>
<tr>
<td>Large Organisations (e.g. corporations, government)</td>
<td>22.2%</td>
</tr>
</tbody>
</table>

### Table RD 4 – Size of Legal Practice

<table>
<thead>
<tr>
<th>Legal Practice Size</th>
<th>% Valid Responses&lt;sup&gt;3&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 5 Legal Practitioners</td>
<td>15.5%</td>
</tr>
<tr>
<td>5-9 Legal Practitioners</td>
<td>22.2%</td>
</tr>
<tr>
<td>10-19 Legal Practitioners</td>
<td>34.8%</td>
</tr>
<tr>
<td>20-49 Legal Practitioners</td>
<td>3.4%</td>
</tr>
<tr>
<td>&gt;50 Legal Practitioners</td>
<td>24.2%</td>
</tr>
</tbody>
</table>

### Table RD 5 – Practice Structure

<table>
<thead>
<tr>
<th>Practice Structure</th>
<th>% Valid Responses&lt;sup&gt;4&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporated Legal Practice</td>
<td>54.1%</td>
</tr>
<tr>
<td>Other</td>
<td>45.9%</td>
</tr>
</tbody>
</table>

<sup>1</sup> All 282 of the respondents from the cleaned data set answered this question.

<sup>2</sup> 213 of the 282 of the respondents from the cleaned data set answered this question.

<sup>3</sup> 207 of the total 282 respondents from the cleaned data set answered this question.

<sup>4</sup> 205 of the 282 respondents from the cleaned data set answered this question.
### Table RD 6 – Role in Practice

<table>
<thead>
<tr>
<th>Role in Practice</th>
<th>% Valid Responses&lt;sup&gt;5&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Firm Partner</td>
<td>6.9%</td>
</tr>
<tr>
<td>ILP Director</td>
<td>9.9%</td>
</tr>
<tr>
<td>Sole Practitioner</td>
<td>5.4%</td>
</tr>
<tr>
<td>Sole Practitioner (ILP)</td>
<td>0.5%</td>
</tr>
<tr>
<td>Employed Solicitor</td>
<td>46.3%</td>
</tr>
<tr>
<td>Government Legal Officer (with practising certificate)</td>
<td>1.0%</td>
</tr>
<tr>
<td>Government Legal Officer (without practising certificate)</td>
<td>4.4%</td>
</tr>
<tr>
<td>Statutory Authority Lawyer (with practising certificate)</td>
<td>2.0%</td>
</tr>
<tr>
<td>Statutory Authority Lawyer (without practising certificate)</td>
<td>0.5%</td>
</tr>
<tr>
<td>In house / Corporate Lawyer</td>
<td>0.5%</td>
</tr>
<tr>
<td>Trainee Solicitor</td>
<td>3%</td>
</tr>
<tr>
<td>Other Fee-Earner (without practising certificate)</td>
<td>1.5%</td>
</tr>
<tr>
<td>Conveyancing Clerk</td>
<td>1.5%</td>
</tr>
<tr>
<td>Administrative Manager</td>
<td>4.4%</td>
</tr>
<tr>
<td>Legal Secretary</td>
<td>11.8%</td>
</tr>
<tr>
<td>Volunteer to CLC</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

### Table RD 7 – Practising Status

<table>
<thead>
<tr>
<th>Practising Status</th>
<th>% Valid Responses&lt;sup&gt;6&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold Practising Certificate</td>
<td>69.5%</td>
</tr>
<tr>
<td>No Practising Certificate</td>
<td>28.2%</td>
</tr>
<tr>
<td>Previously Held Practising Certificate</td>
<td>2.3%</td>
</tr>
</tbody>
</table>

### Table RD 8 – Time Held Practising Certificate

<table>
<thead>
<tr>
<th>Time Held Practising Certificate</th>
<th>% Valid Responses&lt;sup&gt;7&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 Years</td>
<td>25%</td>
</tr>
<tr>
<td>3-4 Years</td>
<td>14.9%</td>
</tr>
<tr>
<td>5-9 Years</td>
<td>18.2%</td>
</tr>
<tr>
<td>10-14 Years</td>
<td>12.2%</td>
</tr>
<tr>
<td>15-19 Years</td>
<td>10.1%</td>
</tr>
<tr>
<td>&gt;20 Years</td>
<td>19.6%</td>
</tr>
</tbody>
</table>

---

<sup>5</sup> 203 of the total 282 respondents from the cleaned data set answered this question.

<sup>6</sup> 220 of the total 282 respondents from the cleaned data set answered this question.

<sup>7</sup> Only 148 of the total 282 respondents from the cleaned data set answered this question.
2. **2011 Survey Selected Results**

**Chapter VI**

**Table 6-A - 2011 Survey Question 29 - Summary of Results**

<table>
<thead>
<tr>
<th>Mean Statistic (Out of 4) (A lower mean indicates a greater perceived focus on that particular factor)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2011 Qu 28 - Supervisors - To what extent do you focus on the following in your supervision?</td>
<td></td>
</tr>
<tr>
<td>Potential risks</td>
<td>1.3422</td>
</tr>
<tr>
<td>Ethical behaviour</td>
<td>1.3797</td>
</tr>
<tr>
<td>Timely processing of matters</td>
<td>1.4011</td>
</tr>
<tr>
<td>Client relationship management and service</td>
<td>1.4463</td>
</tr>
<tr>
<td>Application of legal reasoning</td>
<td>1.5464</td>
</tr>
<tr>
<td>How your supervisee is coping</td>
<td>1.6310</td>
</tr>
<tr>
<td>Compliance with your firm's systems</td>
<td>1.6649</td>
</tr>
<tr>
<td>Productivity and time recording</td>
<td>2.0108</td>
</tr>
<tr>
<td>Billing</td>
<td>2.2131</td>
</tr>
</tbody>
</table>

**Table 6-A - 2011 Question 29**

<table>
<thead>
<tr>
<th>Do you view supervision principally as</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>A mentoring tool</td>
<td>94.32%</td>
<td>5.68%</td>
</tr>
<tr>
<td>An educational tool</td>
<td>93.37%</td>
<td>6.63%</td>
</tr>
<tr>
<td>A means of identifying and confronting problems that arise in your supervisees’ work</td>
<td>93.21%</td>
<td>6.79%</td>
</tr>
<tr>
<td>A management tool</td>
<td>84.85%</td>
<td>15.15%</td>
</tr>
<tr>
<td>A legal responsibility</td>
<td>83.33%</td>
<td>16.67%</td>
</tr>
<tr>
<td>Additional to your main role</td>
<td>64.67%</td>
<td>35.33%</td>
</tr>
</tbody>
</table>

---

8 211 of the total 282 respondents from the cleaned data set answered this question.

9 The 2011 version of the survey used a different Likert-type scale. 1 = “To A Great Extent”; 2 = “To a Moderate Extent”; 3 = “To a Lesser Extent” and 4 = “Not at All”. Hence a lower mean corresponds to a greater emphasis on a particular factor.
The 2011 version of the survey used a different Likert-type scale. 1 = “To A Great Extent”; 2 = “To a Moderate Extent”; 3 = “To a Lesser Extent” and 4 = “Not at All”. Hence a lower mean corresponds to a greater emphasis on a particular factor.

<table>
<thead>
<tr>
<th>2011 Qu 31 - Supervisors- How descriptive are the following statements of the supervision that YOU provide?</th>
<th>Mean Statistic (Out of 4) (A lower mean indicates a greater perceived focus on that particular factor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I provide both positive and constructive critical feedback</td>
<td>1.0481</td>
</tr>
<tr>
<td>I demonstrate openness and honesty in my work</td>
<td>1.0484</td>
</tr>
<tr>
<td>I demonstrate fairness in my dealings with all staff, whether they are my supervisees or not</td>
<td>1.0703</td>
</tr>
<tr>
<td>I pass on my knowledge and experience to my supervisees</td>
<td>1.0909</td>
</tr>
<tr>
<td>I safeguard the interests of the client</td>
<td>1.1530</td>
</tr>
<tr>
<td>I help my supervisees to develop technical skills</td>
<td>1.1828</td>
</tr>
<tr>
<td>I work collaboratively with my supervisees</td>
<td>1.2460</td>
</tr>
<tr>
<td>I demonstrate patience and flexibility with my supervisees</td>
<td>1.2796</td>
</tr>
<tr>
<td>I focus on solving critical issues and problems that arise for my supervisees</td>
<td>1.3005</td>
</tr>
<tr>
<td>I teach my supervisees about being ethical</td>
<td>1.4317</td>
</tr>
<tr>
<td>I teach my supervisees to become lawyers</td>
<td>1.5889</td>
</tr>
<tr>
<td>I contribute to the personal growth of my supervisees</td>
<td>1.6196</td>
</tr>
<tr>
<td>I maintain a professional distance from my supervisees</td>
<td>1.8054</td>
</tr>
<tr>
<td>I closely manage cases</td>
<td>1.8087</td>
</tr>
<tr>
<td>I provide emotional support to my supervisees</td>
<td>1.9785</td>
</tr>
</tbody>
</table>
Table 6A - Supervisor Activities

<table>
<thead>
<tr>
<th>2011 Q33 – Supervisors – How Do You Supervise?</th>
<th>% of Respondents who indicated they do these activities systematically</th>
</tr>
</thead>
<tbody>
<tr>
<td>I have an open door policy and staff come to see me when they have problems</td>
<td>95.58%</td>
</tr>
<tr>
<td>I review work done and allocate new work</td>
<td>74.03%</td>
</tr>
<tr>
<td>I update and share information with staff in my office</td>
<td>68.51%</td>
</tr>
<tr>
<td>I review/check all communications</td>
<td>48.07%</td>
</tr>
<tr>
<td>I identify my supervisees’ training needs</td>
<td>47.51%</td>
</tr>
<tr>
<td>I monitor staff for fatigue, stress and other problems</td>
<td>44.75%</td>
</tr>
<tr>
<td>I review central risk indicators</td>
<td>38.67%</td>
</tr>
<tr>
<td>I meet the training needs of my supervisees, or ensure they are met</td>
<td>33.15%</td>
</tr>
<tr>
<td>I implement workflow systems to ensure or assist process compliance</td>
<td>32.04%</td>
</tr>
<tr>
<td>I set aside a regular time to review workloads, prioritise work and deal with problem cases</td>
<td>31.49%</td>
</tr>
<tr>
<td>I inspect all files at regular intervals</td>
<td>30.94%</td>
</tr>
<tr>
<td>I inspect sample client files at regular intervals</td>
<td>26.52%</td>
</tr>
<tr>
<td>I monitor how staff engage in peer file review</td>
<td>18.23%</td>
</tr>
<tr>
<td>I only inspect problem client files</td>
<td>10.50%</td>
</tr>
</tbody>
</table>

Table 6A – Supervisor Responsibilities

<table>
<thead>
<tr>
<th>2011 Survey Question 34 – Supervisors - As a supervisor I have responsibility for …</th>
<th>Mean Statistic (Out of 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensuring that supervisees know they can tell me about serious mistakes they have made</td>
<td>3.7500</td>
</tr>
<tr>
<td>Keeping an &quot;open door policy&quot; and ensuring I am available when needed</td>
<td>3.7278</td>
</tr>
<tr>
<td>Ensuring that my supervisees know I will support their attempts to deal with or rectify any serious mistakes they have made</td>
<td>3.7167</td>
</tr>
<tr>
<td>Being a role model to demonstrate good practice</td>
<td>3.7039</td>
</tr>
<tr>
<td>Ensuring that supervisees know that I will attempt to deal with or rectify any serious mistakes they have made</td>
<td>3.6927</td>
</tr>
<tr>
<td>Assigning tasks that fit my supervisees’ level of skill and experience</td>
<td>3.5278</td>
</tr>
<tr>
<td>Ensuring that any expressions of client dissatisfaction are brought to my attention</td>
<td>3.4804</td>
</tr>
<tr>
<td>Assigning tasks that are appropriate and meaningful to my supervisees</td>
<td>3.4333</td>
</tr>
<tr>
<td>Being vigilant in file management so serious mistakes are avoided</td>
<td>3.4213</td>
</tr>
<tr>
<td>Ensuring that supervisees adhere to the firm's complaint management policy</td>
<td>2.9832</td>
</tr>
<tr>
<td>Checking my supervisees’ wellbeing</td>
<td>2.8056</td>
</tr>
</tbody>
</table>
Table 6.8A - Supervisors According to Supervisees

2011 Survey Question 47 – How descriptive are the following statements of your supervisor? | Mean Statistic
| From 1 (Not at All) to 5 (A great deal)
---|---
Requires me to take responsibility for my work | 4.4515
Treats me fairly | 4.4192
Models ethical conduct and practice | 4.2744
Has a collaborative relationship with me | 4.1964
Focuses mainly on the best interests of our clients | 4.1606
Helps me achieve ethical conduct and practice | 4.1145
Demonstrates patience and flexibility with me | 4.0994
Is passing on to me his or her knowledge and experience | 3.9878
Helps me to become better at what I do | 3.9428
Maintains a professional distance from me | 3.9331
Focuses on solving critical issues and problems that arise for me | 3.8731
Helps me to develop my technical skills | 3.8399
Promotes my personal growth | 3.6898
Provides me with emotional support when needed | 3.4428
Closely manages my work | 3.1450

Table 6.8A - 2011 Survey Question 11 – Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>2011 Survey Question 11 – Comparison by Supervisory Status</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Both Supervisor and Supervisee</th>
<th>Supervise Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhancing quality</td>
<td>3.7241</td>
<td>3.6699</td>
<td>3.7857</td>
<td>3.7667</td>
</tr>
<tr>
<td>Risk management</td>
<td>3.6494</td>
<td>3.5659</td>
<td>3.6714</td>
<td>3.6667</td>
</tr>
<tr>
<td>Promoting ethical practices</td>
<td>3.6173</td>
<td>3.6019</td>
<td>3.7000</td>
<td>3.6949</td>
</tr>
<tr>
<td>Encouraging work practices that are sustainable in the long-term</td>
<td>3.5975</td>
<td>3.5317</td>
<td>3.5714</td>
<td>3.5167</td>
</tr>
<tr>
<td>Discouraging bad workplace conduct such as bullying</td>
<td>3.5517</td>
<td>3.6219</td>
<td>3.5926</td>
<td>3.5254</td>
</tr>
<tr>
<td>Mentoring junior staff</td>
<td>3.5432</td>
<td>3.5680</td>
<td>3.5500</td>
<td>3.5000</td>
</tr>
<tr>
<td>Monitoring workloads</td>
<td>3.4851</td>
<td>3.5340</td>
<td>3.4929</td>
<td>3.2931</td>
</tr>
<tr>
<td>Fostering resilience in employees</td>
<td>3.2376</td>
<td>3.0634</td>
<td>3.0360</td>
<td>3.0667</td>
</tr>
<tr>
<td>Identifying and supporting staff facing personal difficulties</td>
<td>3.0545</td>
<td>3.2476</td>
<td>3.2174</td>
<td>3.2500</td>
</tr>
</tbody>
</table>
### Table 6-9A – Obstacles Supervisors Encounter

2011 Qu 32 – Supervisors - Do you encounter any of the following obstacles in providing effective supervision? From 1 (rarely) to 5 (often)

<table>
<thead>
<tr>
<th>Obstacle</th>
<th>Mean Statistic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Having insufficient time for supervision</td>
<td>3.8315</td>
</tr>
<tr>
<td>Having supervisees who work hard but not effectively</td>
<td>3.2186</td>
</tr>
<tr>
<td>Having supervisees who don’t take sufficient responsibility</td>
<td>2.9891</td>
</tr>
<tr>
<td>Having supervisees who do not communicate clearly</td>
<td>2.9135</td>
</tr>
<tr>
<td>Having supervisees who do not follow instructions</td>
<td>2.8710</td>
</tr>
<tr>
<td>Lack of flexibility and options (e.g. to motivate or develop through role changes or work allocation)</td>
<td>2.7796</td>
</tr>
<tr>
<td>Split supervision - where supervision responsibilities are shared with another supervisor</td>
<td>2.7676</td>
</tr>
<tr>
<td>Having supervisees who don’t understand when to seek advice</td>
<td>2.5892</td>
</tr>
<tr>
<td>Having supervisees who don’t think they need to be supervised</td>
<td>2.5326</td>
</tr>
<tr>
<td>Having supervisees who are not effective team members</td>
<td>2.4000</td>
</tr>
<tr>
<td>Inadequate practice management systems (IT and others)</td>
<td>2.3838</td>
</tr>
<tr>
<td>Being faced with the consequences of my supervisees having poor experiences with previous supervisors</td>
<td>2.2378</td>
</tr>
<tr>
<td>My supervisees and I having different understandings of what supervision entails</td>
<td>2.1405</td>
</tr>
<tr>
<td>Having supervisees who lack respect for me and other colleagues</td>
<td>1.9514</td>
</tr>
<tr>
<td>Having limited interest in managing or supervising others</td>
<td>1.8962</td>
</tr>
</tbody>
</table>

### Table 6-10A – Supervision Ratios

2011 Qu 14 – Supervisors - How many staff in each of the following groups do you currently supervise?

<table>
<thead>
<tr>
<th>Group</th>
<th>1-2</th>
<th>3-4</th>
<th>5-6</th>
<th>7-9</th>
<th>10-14</th>
<th>15-20</th>
<th>&gt;20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal staff</td>
<td>58.82%</td>
<td>22.06%</td>
<td>6.62%</td>
<td>2.94%</td>
<td>5.88%</td>
<td>1.47%</td>
<td>2.21%</td>
</tr>
<tr>
<td>Administrative staff</td>
<td>74.17%</td>
<td>12.58%</td>
<td>6.62%</td>
<td>3.31%</td>
<td>2.65%</td>
<td>0.00%</td>
<td>0.66%</td>
</tr>
<tr>
<td>Fee-earning staff who are not pc holders</td>
<td>83.33%</td>
<td>12.12%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>1.52%</td>
<td>0.00%</td>
<td>3.03%</td>
</tr>
<tr>
<td>Other (e.g. consultants or contractors)</td>
<td>76.92%</td>
<td>15.38%</td>
<td>7.69%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
</tbody>
</table>
## Table 7-1A - 2011 Survey Question 55 - Where do you find the most valuable supervision occurs – Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>In formal, structured and planned situations, such as regular meetings</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>72.6%</td>
<td>71.7%</td>
<td>72.7%</td>
<td>72.6%</td>
</tr>
<tr>
<td>No</td>
<td>27.4%</td>
<td>28.3%</td>
<td>27.3%</td>
<td>27.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>In informal, ad hoc, or chance situations (eg in lunch rooms, corridors etc)</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>71.1%</td>
<td>62.5%</td>
<td>74.8%</td>
<td>70.8%</td>
</tr>
<tr>
<td>No</td>
<td>28.9%</td>
<td>37.5%</td>
<td>25.2%</td>
<td>29.2%</td>
</tr>
</tbody>
</table>

## Table 7-2A - 2011 Survey Question 56 - How can supervisors ensure they approachable? – Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>By making it known that people can see them about any issue</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>96.5%</td>
<td>98.1%</td>
<td>95.1%</td>
<td>97.0%</td>
</tr>
<tr>
<td>No</td>
<td>0.5%</td>
<td>1.9%</td>
<td>4.9%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Possibly</td>
<td>2.9%</td>
<td>9.3%</td>
<td>10.8%</td>
<td>12.1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By making it known that people can ask to see them at any time</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>84.4%</td>
<td>90.7%</td>
<td>84.2%</td>
<td>82.8%</td>
</tr>
<tr>
<td>No</td>
<td>4.3%</td>
<td>5.0%</td>
<td>10.8%</td>
<td>12.1%</td>
</tr>
<tr>
<td>Possibly</td>
<td>11.3%</td>
<td>4.9%</td>
<td>8.3%</td>
<td>15.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Being known to give constructive feedback where possible</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>96.5%</td>
<td>96.3%</td>
<td>98.4%</td>
<td>95.5%</td>
</tr>
<tr>
<td>No</td>
<td>0.5%</td>
<td>0.8%</td>
<td>0.8%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Possibly</td>
<td>2.9%</td>
<td>3.7%</td>
<td>0.8%</td>
<td>4.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Being known to deal with problems quickly</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>81.2%</td>
<td>87.0%</td>
<td>85.1%</td>
<td>77.2%</td>
</tr>
<tr>
<td>No</td>
<td>1.9%</td>
<td>1.7%</td>
<td>2.5%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Possibly</td>
<td>16.9%</td>
<td>13.0%</td>
<td>13.2%</td>
<td>20.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Being known to help supervisees deal with problems themselves</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>75.6%</td>
<td>83.0%</td>
<td>82.4%</td>
<td>69.5%</td>
</tr>
<tr>
<td>No</td>
<td>3.5%</td>
<td>1.9%</td>
<td>3.4%</td>
<td>4.1%</td>
</tr>
<tr>
<td>Possibly</td>
<td>20.9%</td>
<td>15.1%</td>
<td>14.3%</td>
<td>26.4%</td>
</tr>
</tbody>
</table>
Table 7-3A - 2011 Survey Question 57 – How Important are the following to fostering effective performance?

Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>Mean Scores. -A Higher mean indicates greater perceived importance</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide clear instructions</td>
<td>4.8245</td>
<td>4.7455</td>
<td>4.8629</td>
<td>4.8223</td>
</tr>
<tr>
<td>Be available when supervisees need help or direction</td>
<td>4.5067</td>
<td>4.4364</td>
<td>4.5610</td>
<td>4.4924</td>
</tr>
<tr>
<td>Consider the professional development of their supervisees</td>
<td>4.3147</td>
<td>4.1091</td>
<td>4.3333</td>
<td>4.3604</td>
</tr>
<tr>
<td>Be aware of the wellness of their supervisees</td>
<td>3.9947</td>
<td>3.7091</td>
<td>4.0244</td>
<td>4.0558</td>
</tr>
<tr>
<td>Foster trust and respect</td>
<td>4.5973</td>
<td>4.5636</td>
<td>4.6179</td>
<td>4.5939</td>
</tr>
<tr>
<td>Ensure continuity and consistency</td>
<td>4.4772</td>
<td>4.2909</td>
<td>4.5285</td>
<td>4.4974</td>
</tr>
<tr>
<td>Take a solution focus on mistakes (rather than blame)</td>
<td>4.6220</td>
<td>4.5636</td>
<td>4.6911</td>
<td>4.5949</td>
</tr>
<tr>
<td>Give credit where it is due</td>
<td>4.6000</td>
<td>4.6727</td>
<td>4.7603</td>
<td>4.4794</td>
</tr>
</tbody>
</table>

Table 7-4A - 2011 Survey Question 58 – How can supervisees contribute to being effectively supervised?

Comparison by Supervisory Status

<table>
<thead>
<tr>
<th>Mean Scores. -A Higher mean indicates greater perceived importance</th>
<th>Overall</th>
<th>Supervisor Only</th>
<th>Supervisor &amp; Supervisee</th>
<th>Supervisee Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listen to advice and comments</td>
<td>4.7686</td>
<td>4.6545</td>
<td>4.7984</td>
<td>4.7817</td>
</tr>
<tr>
<td>Prepare well for supervision meetings</td>
<td>4.3503</td>
<td>4.0909</td>
<td>4.3443</td>
<td>4.4264</td>
</tr>
<tr>
<td>Ask questions about details, timelines, priorities</td>
<td>4.5787</td>
<td>4.4182</td>
<td>4.5772</td>
<td>4.6244</td>
</tr>
<tr>
<td>Develop a clear framework on frequency of meetings</td>
<td>3.9251</td>
<td>3.6000</td>
<td>3.8689</td>
<td>4.0508</td>
</tr>
<tr>
<td>Discuss expectations</td>
<td>4.3271</td>
<td>4.1636</td>
<td>4.3058</td>
<td>4.3858</td>
</tr>
</tbody>
</table>

Table 7-6A - Disagreeing With Supervisor

2011 Survey Question 52 - Do you feel able to disagree with your supervisor?

<table>
<thead>
<tr>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
</tbody>
</table>

Chapter VIII

Table 8-2A – Differing Levels of Supervision – Level of Experience and Qualifications

| Yes | 89.20% |
| No  | 10.80% |
### Table 8-3A – Differing Levels of Supervision – Additional Factors

<table>
<thead>
<tr>
<th>2011 Survey Question 37 – Supervisors - What do you take into account in determining the level of supervision required, and how important is it to take those things into account?</th>
<th>Mean Statistic 1 (not important) to 4 (very important)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The supervisee’s level of practical experience</td>
<td>3.6685</td>
</tr>
<tr>
<td>The supervisee’s knowledge of the area of law</td>
<td>3.5029</td>
</tr>
<tr>
<td>The nature of the work being delegated to the supervisee</td>
<td>3.3876</td>
</tr>
<tr>
<td>My observation of the supervisee’s daily work</td>
<td>3.3184</td>
</tr>
<tr>
<td>My knowledge of the supervisee’s personal characteristics</td>
<td>2.9553</td>
</tr>
<tr>
<td>The supervisee’s formal qualifications</td>
<td>2.4831</td>
</tr>
</tbody>
</table>

### Table 8-7A – Appropriateness of Supervision Based on Experience & Qualifications

<table>
<thead>
<tr>
<th>2011 Qu 46 - Do you receive supervision that you feel is appropriate to your experience and/or qualifications?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>86.71%</td>
</tr>
<tr>
<td>No</td>
<td>13.29%</td>
</tr>
</tbody>
</table>
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