



Lawyers, Clients and the Business of Law

**A Symposium Series presented by Griffith Socio-Legal Research Centre
and the Legal Services Commission**

Shouldering the Supervision Load

A report of the Symposium

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1.Introduction

Background

The symposium series ***Lawyers, Clients and the Business of Law*** brings regulators together with practising lawyers and legal academics to discuss ethical issues arising in the course of legal practice in Queensland. The series is jointly hosted by the Socio-Legal Research Centre (SLRC) of Griffith University and the Legal Services Commission.

On the 6th August, 45 people from legal practice, regulatory bodies and law schools attended entitled “Shouldering the Supervision Load” at the Griffith Graduate Centre at South Bank. This was the fifth seminar in the 'Lawyers, Clients and the Business of Law' series, co hosted by the SLRC and the Queensland Legal Services Commission.

The topic was chosen to provide an opportunity for a cross-section of the legal community to reflect on and discuss critical issues in supervision, with the panellists asked to present their perspectives on the topic. Participants included lawyers in private practice and from the community legal services sector, legal academics, members of the Commission’s staff, staff of the Queensland Law Society, the Queensland Public Interest Legal Clearing House and Legal Aid Queensland.

Panel presentations

The panel consisting of Mr David Durham from Lexon Insurance, Mr Andrew Lind from Corney and Lind and Professor Jeff Giddings from the SLRC addressed a range of issues related to the importance of effective supervision practices in law offices, identifying particular issues faced by sole practitioners, conveyances and Incorporated Legal Practices.

David Durham spoke of the importance of effective systems in fostering good supervision practices and the importance of supervisors taking an objective approach to their responsibilities. He also provided details on resources available to supervisors.

Andrew Lind spoke of the nature of supervision as both a heavy load and also a very valuable lever for promoting constructive work practices. He also suggested it is often more constructive to think of this responsibility as involving mentoring rather than supervising.

Professor Jeff Giddings reported on the results of a survey on supervision practices which had been sent to all symposium participants. He described supervision practices as an area of legal practice in need of systematic research. Legal professionals and academics need to consider what practices are effective and to identify what lawyers can learn from the supervision practices used by other professionals.

Structure of this report

This document draws together materials used in the symposium. The organizers developed materials for the symposium that included:-

- 1) A survey sent to participants describing 9 scenarios, and asking for feedback on the acceptability of those practices described.

The survey results are included in this report.

- 2) Three scenarios depicting problematic aspects of supervision, and the broader social context in which supervision takes place.

The three scenarios are also included in this report, as materials for discussion groups.

We also provide a copy of the slides in the PowerPoint presentations by Andrew Lind of Corney and Lind and Professor Jeff Giddings.

2. Pre-Symposium Survey

An online survey was circulated prior to the symposium to everybody who replied to our invitation that they would like to attend the event. A document showing overall results is available on the LSC website. We include here the free text answers to questions.

Top 5 tips for supervising

- Do it on an ongoing basis;
Take comments from both up and down the chain;
- 1. Give constructive criticism rather than bare reassurance;
Supervise both the work and the person's general wellbeing;
Give clear instructions
- 2. 1. Ensure you have regular face-to-face contact and interaction with the supervisee.
2. Supervision should include commenting on the positive as well as the negative aspects of the work being done.
3. Clear instructions are important.
4. Be approachable.
5. Provide supervision and support throughout a task - not just at the end.
- 3. 1. Make sure students/peers know that they can confess to serious mistakes and get help when responding to difficulties.
2. Make sure students/peers know that it is better to come to you as soon as there is a problem.
3. When assigning tasks, always focus on a person's strengths in order to build up that person's confidence and gradually feed them more difficult tasks over time - be aware that a worker/student may need help with more challenging tasks and always provide that support.
4. Adopt an open door policy and make sure you actually are available when needed.
5. Always give praise when it is due. Always deliver negative feedback in a useful way. Try to provide appropriate praise first - then follow with de-personalised critiques.
- 4. give clear instructions
check in regularly to see what supervisee's work load is like
give clear feedback
make sure supervisee understands tasks
be available for questions
- 5. Keep an open door
Do not disparage questions being asked
encourage thinking strategically and not just on the task
Attention to detail is important
express deadlines and expectations as clearly as possible
- 6. Supervision is a necessary part of learning
Do not allocate blame
Look for areas for future development
Protection of client is first priority
Everyone is subject to file reviews
- 7. Trust your staff, but verify
Monitor staff for signs of stress or other problems
- 8. Person responsible for practice (if away delegate to another and have them pass on details) to:
- open/read mail every day and allocate/distribute.

- Ensure correspondence/documents being sent to clients/filed at court etc. is read/scanned before being sent and read by all others employed not too long after dispatch.
- Encourage employees to let you know if a mistake is made (or if help is needed) as soon as they are aware of it remembering to initially focus on how do we fix/resolve this problem together and later how to avoid the situation arising again (this way it's usually easier to fix or at least minimise consequences. To work employee must not be in fear of loosing their job or being belittled but must be willing to take responsibility for their actions if they were the cause ie we're all human and make mistakes but carelessness or slackness is a whole other ballgame).
- Meet with all staff each morning before the day begins in a relaxed atmosphere (usually coffee is good) to discuss what work each has on that day and what must be done by close of business. (Gives a change to redistribute/get employee assistance to meet deadlines reducing stress levels but important done in a way that it is very clear it's not about suggesting a person is inefficient or can't cope etc.).
- Remember to regularly thank the team or individual (as the case may be) for a job well done.

9. consistency and regularity of contact
requiring confirmation when a requested action is completed
10. Give clear directions about what you expect. Don't assume anything.
Give feedback, on both good and bad work.

being aware of what is happening in the office;
checking a majority of the work;
11. coaching the supervisee rather than just telling them how to do something or doing it for them;
having a strong team and ensuring staff feel comfortable to talk about any issues with you;

Being available and approachable.
Willing to listen to what the supervisee is wanting to achieve
Interested in the supervisee
12. Willing to help and particularly advise on what the supervisee is doing.
Willing to take responsibility for mistakes of the supervisee, especially if I have not been vigilant enough to check out what has been prepared.
13. regular, open door, constructive, keep an eye on prob files

Listen and watch
Utilise both informal and formal processes
14. Communicate calmly but deal with the challenging issues
Keep on top of the paperwork
Recognise that many people are sensitive

be honest; be proactive; be collaborative; review actual performance; look at the whole person; remember that positive reinforcement works better than negative reinforcement; set the example - walk the talk
15. Open Door Policy
Making the supervisee think about it and research it themselves before giving up answers.
Constructive criticism.
16. Being supportive if giving constructive criticism.
Being firm if its obvious the supervisee hasn't taken the time to genuinely work it out themselves.

Stay positive
Ask lots of questions
17. Dont blame
Be open about what you dont know
Treat with respect

Top 5 tips for being supervised

1. Ask for feedback
 1. If you are unsure - ask!
 2. For any task, ensure you understand what is being asked of you - if you don't, double check.
2.
 3. Be capable of accepting and learning from criticism and mistakes.
 4. Be willing to have a go at any work that is presented to you.
 5. If necessary, ask what you could do better next time.
 1. Supervisors should never make workers afraid of them or bully them; good workers can be seriously damaged by such behaviour.
 2. Supervisors should recognise that there are many different ways of getting a task done effectively - there is rarely one way of doing things. A person who always thinks 'my way is the only way' probably should never be put in a position of authority over other workers or students.
 3. Supervisors should never try to set standards by choosing to focus their negative attacks on one compliant worker who will take abuse without fighting back. Bullies often think they are adopting 'robust management practices', but in my view, this is unethical behaviour and is wholly inappropriate in the legal profession, where only the highest standards of integrity should prevail.
 4. Make sure your performance reviews occur at least annually. If you schedule regular file reviews - make sure that they do, in fact, occur.
 5. Supervisors need to make sure that their feedback enables a worker to improve his/her performance. Workers who feel that the supervision experience enables them to learn and develop new skills will welcome supervision - especially when their supervisor makes it a non-threatening, informative and useful experience.

always communicate if there is a problem
do the best job you can before presenting it to your supervisor
4. get guidance on time frames and priorities
ask questions
if you are not sure, or have a problem, try to work out a way forward before asking for help
5. Ask questions about deadlines
Clarify amount of contact possible with client
think about what outcome the client wants to achieve
talk to your supervisor early if there is a problem.
6. Don't be unwilling or afraid to ask for help
Always keep a pen and paper handy to write down any tips or new tasks you are given
Speak up if you think your supervisor is going in the completely wrong direction
Are there other people in the organisation you can talk with about problems
Keep a neat and tidy workspace, and keep files in good and effective order
7. Partner/Supervisor to:
 - Be courteous and polite.
 - Ensure proper training and orientation takes place when you first commence employment
 - Ensure adequate tools/resources are available for you to be able to do the job
 - Provide feedback on a regular basis (formal and informally)
 - Be willing to listen and assist (or get assistance) if problems arise
8.
 - be open to suggestions
 - do not take advice/critique of work as personal attack
 - push for more feedback, do not just
9. listening carefully;
asking questions;
having a capacity to take on board criticism;
clear goals, responsibilities;

10. see 9 above
 - Provide your supervisor with proposals as to way(s) forward
 - Don't expect your supervisor to agree with you all the time
11. Developing the trust of your supervisor will enable you to assume greater responsibility over time
 - Deliver what you say you will
 - If in doubt, seek advice
12. be open; insist on constructive criticism; reflect on criticism that seems to be unwarranted; get the performance criteria clear; engage;
13. As above at 9!
14. See above

Five problems encountered in supervising

1. 1. Failure of the supervisee to follow up or learn from corrections.
 1. It takes time to learn how different people function and learn - so good supervision does require effort and patience on the supervisor's part.
 2. Supervisors need need to be good communicators - being an effective communicator, however, does not always come naturally to everyone. (Supervisors should be trained to ensure that they themselves have relevant skills.)
2. 3. Some people are naturally quite aggressive, hostile and resistant, so it can be quite unpleasant for a supervisor to have to deal with someone who is 'always up for a fight'.
 4. It can be difficult to find the time required to carry out supervision duties fully.
 5. Workplace bullying does not always come from the top down; it can work in reverse, and a really malicious person can make it very difficult for a supervisor to carry out their functions. Managers need to be mindful of this.
3. unclear instructions
 - failure in clear communication by both parties
 - not advising if there is a problem meeting the task
4. lack of clarity in direction
5. Needs to be systemic not ad hoc but time is an issue
6. Reluctance of staff to talk about problems
7. Initially employed solicitors adjusting to a very different management/supervision style to what they have previously been used to and believe is the norm.
8. evasive supervisees who do not admit to problems with clients until clients have called me direct
9. Poor time management by juniors - believing when they say "I haven't got to it yet, but I will"
 - finding time;
10. having difficult conversations;
 - people not wanting to be supervised;
11. Disinterested supervisors.
 - Supervisors who are not willing to take the time to read work prepared by a supervisee.
12. lack of regularity, structure, followup, confessions of supervisee
13. Unrealistic expectations
 - Cumbersome procedures

- Too many things started and not enough finished
 - Personality differences
 - Too much take and not enough give
14. giving 'bad news' constructively; engaging fully with the task when there is too much else to do;
15. Taking the time out of your own workload to effectively correct/supervise supervisee's work.
Might not know the answer myself without doing research.
16. People don't want to be supervised, at all. (Some)
People don't like someone looking over their shoulder, so a loss of autonomy.
What insurance policy?

Five problems encountered in being supervised

1. It is generally unsystematic and viewed as an administrative burden
2.
 1. The supervisor does not have the time to provide feedback
 2. Vague, imprecise or confusing instructions.
3.
 1. You may be terrified of your boss to such an extent that supervision will rarely be a constructive or useful experience.
 2. If your boss is wholly negative, aggressive, impatient and unnecessarily personal in how they supervise, you may end up thinking that it doesn't matter whether you try or not - nothing will please them. Then you may stop trying to do your best work, because it seems pointless. In this sense, supervision can have a seriously negative impact on someone.
 3. You may be so frightened of your boss that your fear takes over in all your dealings with them - and your getting tongue-tied etc. just makes you seem more of an idiot, which just confirms their entrenched negative view of you. All interactions then just become a slow, painful, downward spiral.
 4. Bad supervision experiences may make you lose your self-confidence in everything you do, and this may then also start to affect your homelife. The negative effects can last long after one changes jobs.
 5. Bad supervision experiences can colour the rest of your life.
4. unclear instructions/expectations
delays in giving feedback
5. lack of detail in what is required
6. An oppressive, intimidating and at times irrational boss/supervisor
Finding / Making the time to take stock of things
7. Lack of communication and availability of supervisor early on to assist/deal with problems/issues before they get out of hand.
8.
 - supervisors saying they will provide feedback and not following through
 - supervisors who do not take active role and insist there is open door policy, yet shows otherwise through actual action (e.g. divergence between rhetoric and practise)
9.
 - feeling restricted;
 - having to wait on supervisor;
 - worrying about performance;
 - differences in opinion;
10. supervisor too busy, lack of interest
11. Different understandings
Not enough contact

New supervisors take time to develop effective relationships

12. not knowing the rules; getting feedback only when there's a 'problem'; formulaic rather than real communication;
13. Getting a window of opportunity to go in to the supervisor.
14. The same as above.

Final comments on supervision

1. It is important for a supervisor to be organised so as to give the person enough space to learn and make mistakes rather than taking the work away and doing it themselves or giving it to someone else.
2. no.
3. We also arrange for 30 files to be reviewed externally each 6 mths to ensure independent quality control
4. It depends very much on how the employer/employee relationship works.
5. It's a tough job to get right.
Supervision role needs to be better defined.
6. Supervisors should not make assumptions about capacity of younger lawyers based on lack of 'formal' experience, as many opportunities younger lawyers have had give them excellent skills which can be laterally transferred.
7. It is fundamental to effective law firm leadership but under-rated
8. It's a learning process.
9. It is a pain either way, but it needs to be done.

3. Panel presentations

Andrew Lind and Professor Jeff Giddings presented the following slides to participants.

Supervision

Shouldering the Load

Part of a Symposium series presented by the
Griffith University Socio-Legal Research Centre
and the Legal Services Commission

6 August 2009



Supervision = Load (costs)

System development & updating

- + Proactive time from the Supervisor
- + Costly time from the Supervisor
- + Regular time from the Supervisor
- + Physical presence by the Supervisor
- = **a significant load**



Supervision = Leverage (benefits)

System development & updating

- + Younger, up to date, freshly trained minds
 - + Youthful enthusiasm and energy
 - + Sharpening of the Supervisor
 - + More hands to the pumps
- = **significant leverage**



17 December, 2010

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3

How do you view Supervision?

Load?



Leverage?



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Growing ... Load in Supervision

- **Too busy** – “I’m just too busy ...” You will be more busy when the claims start to be made.
- **Efficiency** – “It’s quicker if I do it” True ... this time ... but what about the next time and the time after that.
- **Ego** – “I learnt the hard way ... they need to” Hmm ...
- **Cost** – “It’s cheaper if I do it” Supervision is a soft cost but a real cost. This cost needs to be factored into cash flow planning.
- **Unrealistic expectations** – “They make too many mistakes” Learners need to be able to make mistakes and learn from them.
- **Budget / Billable hours** – “My firm expects me to get the same number of billable hours as supervised staff even though I am supervising” Message = supervision is not valued and will not happen
- **Client expectation** – “My client expects that I will do this work” Supervising means re-calibrating client expectation from the first meeting that your team will deliver the work.



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Growing ... Leverage in Supervision

- **Learn & change** – be ready to learn and change not just teach
- **Encourage** – genuinely and regularly
- **Independent thought** – expect your staff to value add
- **Sandwich** – encouragement ... correction ... encouragement
- **Presence** – go and speak with and sit with your staff regularly about work and life
- **Promote** – publish and speak positively about your staff
- **Better than you** – desire and expect that your staff will be better at what they do than you
- **Long term view** – remove the expectation that your staff will be billing at budget inside 12 months
- **Initiate** – the ball almost always starts in the supervisor’s court

Change the language => **Mentoring**

As iron sharpens iron, so one man sharpens another.

King Solomon (Proverbs 27:17)



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Goal ... Your staff flying

... with support and safety



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Professionalism in Supervision

Professor Jeff Giddings
Griffith Law School
Socio-Legal Research Centre

School of Law

Supervision in Law Offices

Under-rated but it needs to be done well

- How and where do we develop supervision practices?
- Identifying the supervision experiences of:
 - supervisors
 - junior practitioners
 - para-legals
 - part-time staff, including volunteers

School of Law

2

Supervision in Law Offices

Multiple dimensions of supervision

- Risk management
- Enhancing quality
- Mentoring
- Promoting well-being
- Identifying and supporting people under pressure

Supervision in Law Offices

Your responses to our survey

Thanks for contributing your insights

Supervision in Law Offices

Your responses to our survey

Tips for Supervising

- Clarity
- Accessibility – open door
- Development and wellness dimensions
- Trust and respect

Supervision in Law Offices

Your responses to our survey

Tips for Supervising

- Continuity and consistency
- Take a solution focus on mistakes
- Give credit where it is due

Supervision in Law Offices

Your responses to our survey

Problems in Supervising

- Need to train & equip supervisors
- Time
- Having difficult conversations

Supervision in Law Offices

Your responses to our survey

Tips for Being Supervised

- Listen
- Prepare
- Ask questions – details, timelines, priorities
- Develop a clear framework – frequency, expectations

Supervision in Law Offices

Your responses to our survey

Problems in Supervising

- Lack of:
 - clarity
 - trust – wont talk about problems
 - structure

Supervision in Law Offices

Your responses to our survey

Problems in Being Supervised

- Impact of:
 - oppressive supervision
 - insufficient supervision

Supervision in Law Offices

Your responses to our survey

Problems in Being Supervised

- Lack of:
 - clarity
 - detail
 - contact

Supervision in Law Offices

Your responses to our survey

- Fundamental to law firm leadership but under-rated
- A pain either way but needs to be done
- A learning process

Once again, thanks for your insights

Supervision in Law Offices

An area in need of systematic research

- Best practices in supervision
- Skilful & systematic supervision
- Insights from other disciplines?

If you have suggestions, please let us know –
J.Giddings@griffith.edu.au

Supervision in Law Offices

An area in need of systematic research

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4. Discussion in Groups

Following the presentations, participants then engaged in discussions at their tables in relation to how they would address issues raised by the following three hypothetical scenarios prepared by members of the Legal Services Commission and the SLRC and which were provided to all participants.

Materials for the discussion groups:

Scenario 1

Scenario –Briton Lawyers

Briton Lawyers is a 3 partner firm based on the North Coast. The firm employs 5 solicitors and 6 administrative staff. The firm's practice covers three main areas: property; litigation and wills/estates.

One of the firm's solicitors is Ms Smith. Smith is an energetic and outgoing 2nd year solicitor who works in the litigation division of the firm under the direct supervision of Mr Briton, one of the partners. Briton has been a lawyer for 40 years and believes in the adage that junior lawyers need to sink or swim. Briton is also known for having an abrupt manner and keeps his door closed most of the time as he is always busy.

In June 2008 Ms Smith had a case load of approximately 150 litigation files. Several of those files were quite large and complex matters which were handed to Ms Smith following the departure of one of the senior associates. Notwithstanding this workload, Ms Smith was not meeting her billing budget of 5 hours per day. In fact, she was lucky to bill 3 hours on any given day. Her office was a mess of loose paper and was constantly being followed up by the accounts clerk for not sending out bills on a regular basis.

Between June 2008 and January 2009, the receptionist began receiving complaints from clients about delays on Smith's files and that emails, correspondence and phone calls were not returned. The receptionist would pass these concerns on to Smith but the telephone calls kept coming. Mr Jones, the partner responsible for Wills/Estates, notices that Smith seems to be withdrawn and no longer as outgoing in firm activities as she once was. He puts it down to personal issues and says nothing to her or the other partners.

It was towards the end of this period that Ms Smith misses a series of important deadlines which resulted in at least three matters becoming statute barred and one struck out for want of prosecution. When clients in those matters enquired how they were proceeding Smith would say that everything was OK. In one of the dismissed matters, after constant calls from the client, Smith advised that a mediation was to be held in the firm's office on 22 March 2009. On that day the client attended...there was no mediation and Smith could not be located.

The Commission then begins receiving complaints about Smiths conduct. An investigation is commenced in respect of the firm's supervisory management systems.

Why did this happen? What is the root cause?

How could this have happened?

What alert indicators should have caused the partners to consider greater or more sophisticated supervisory arrangements for Smith?

What supervisory arrangements could the firm had in place so as to increase the prospects for detecting Smith's misconduct? If Smith was a sole practitioner, what "self supervision" systems could she put in place to identify these problems?

Scenario 2

Scenario – Lemon Lawyers

Lemon Lawyers is a 2 partner firm based in Brisbane. The firm employs no other solicitors but has 4 para-legal/administrative staff. The firm's practice focuses almost entirely on residential conveyancing. In June 2008, as part of the growth of the firm and to take advantage of a real estate boom on the Gold Coast, Lemon Lawyers hires a first year solicitor from NSW - Mr Smith - to set up and operate a branch office on the Gold Coast. Smith had never completed a Queensland conveyance.

Lemon Lawyers utilizes "Conveyancing Matters," which is a state-of-the-art computerized conveyancing/database system. Lemon Lawyers policy requires that all critical dates are to be entered into the system as it sends automated reminders of deadlines to the responsible lawyer. The system was also designed:

- (a) to allow complaint data to be entered;
- (b) to allow partners to view files electronically and to check important dates;
- (c) to allow the completion of conveyancing protocol compliant checklists. Lemon Lawyers procedure required all staff to complete the checklists before closing files.

Smith spends his first month of employment in orientation in the Brisbane office. He is taught the firm's conveyancing procedures and is introduced to the firm's computerized case management system. After the months training Smith becomes the sole employee at the Gold Coast office. Smith's duties included undertaking searches and performing all clerical duties for the Gold Coast Office. This included entering the necessary data into the computer system.

The firm's complaint procedure for the Gold Coast office was that clients were to raise any concerns directly with Smith.

Smith signed his own mail by using the firm's automatically generated electronic signature in all correspondence. The partners at Lemon Lawyers did not attend the Gold Coast office but they would have weekly video conference meetings with Smith where they would discuss performance indicators.

The firm sets Smith a settlement target of 40 files a week. If Smith out-performed this criteria he was to earn a bonus of 20% of extra fees generated that month. At the end of each month Smith was required to provide to the partners a pro-forma report which simply dealt with number of settlements and income earned.

The importance of the performance indicators was made clear to Smith in an e-mail from the managing partner after the first month of employment when Smith did not meet his performance criteria:

This is not what I want to see. The report you gave me says you settled 20 files last week. Let me make it clear, first and foremost, you must make your number. The number you have is not set for fun, it has a very important purpose. Your number is the most important way we judge how to give salary increases, performance bonuses and whether we can fund support staff for your office. Therefore, no excuses, don't call, no need to talk, just get on it and only call me with good positive news of settlements.

Following the email, Smith's workload steadily increases. With the build up in real estate sales in the area and after working hard to market the firm, by September 2008 Smith was completing 30 settlements per week. Due to the increased workload he asks for clerical assistance but was told that this was not possible. By January 2009 Smith is settling 40 files a week and by February 60 files a week. On both occasions he sought paralegal help but was told they could not be spared at that time and he would just have to deal with it until the firm could arrange for a permanent paralegal to join him. After this date, notwithstanding his workload, Smith did not access, or even attempt to access, paralegal assistance from the Brisbane office.

By June 2009 the Legal Services Commission begins to receive regular complaints about conveyancing matters handled by Mr Smith. The complaints related to non-lodgement of transfer documents, abusive language, non-return of phone calls, unpaid stamp duty, missed settlements and on one occasion, transferring the wrong property.

After some initial discussions with Smith, the Commission is unable to contact him and begins receiving frantic calls from clients with up-coming settlements who cannot get hold of Smith. The Commission calls the managing partner (Jones) who is unaware of this and travels to the Gold Coast office. There is no sight of Smith and Jones is immediately concerned by stacks of documents in the office, un-opened mail and transfer documents that were not filed. When he looked in file cabinets, he found other loose papers.

Smith is located in hospital suffering anxiety and depression. The Commission commences an investigation into the supervision of Smith by Jones. Jones responds that they supervised Smith adequately in that they:

- (a) Used a state of the art computer system which drives the conveyancing process;
- (b) They met regularly with Smith;
- (c) They provided Smith with training when he first started;
- (d) They had received no complaints about Smith from clients;
- (e) They had an open door policy by which any staff member could raise concerns with them.

Why did this happen? What is the root cause?

How could this have happened?

What alert indicators should have caused the partners to consider greater or more sophisticated supervisory arrangements for Smith?

What supervisory arrangements could the firm had in place so as to increase the prospects for detecting Smith's misconduct?

Scenario 3

Scenario – Patrick lawyer

Patrick is 55 years old and has operated as a sole practitioner since buying an existing practice in suburban Summerwood 15 years ago. It is a fairly general practice with a mix of work including family, crime, conveyancing, wills and estates and small-scale commercial. Patrick takes a very close interest in the quality of work done by his staff. He currently employs 4 non-lawyers and has occasionally brought in short-term locum lawyers. The success of his practice has been a source of significant pride for Patrick. He had hoped that one or more of his children would take up the law and be 'the next generation' for the practice. However, none of them have indicated any interest in doing so as they don't want to work as hard as their dad.

Twelve months ago, health concerns encouraged Patrick to consider ways to scale back on his work and start planning for his retirement. His blood pressure was way too high and he needed to lose 20 kilos. He brought in a new locum but things didn't work out. Work just didn't get done to Patrick's satisfaction and a hearing date for a Federal Magistrates Court application was somehow missed. Patrick's blood pressure went right up once again and he started to think about the possibility of identifying a young lawyer who could come in to the practice with the plan that they would ultimately purchase the practice.

Six months ago, Patrick was introduced to Claire, a very confident and seemingly impressive recent law graduate, by a mutual friend who knew Patrick was looking at succession plans for the practice. Claire emphasised to Patrick that she was interested in working towards purchasing the practice and wanted to take on 'as much responsibility as possible' in order to build her knowledge and skills as well as allowing her to get to know the clients. Claire had spent short stints at two city firms and worked as a locum for a firm in North Queensland.

Claire was quick to move to foster the commercial side of the practice and Patrick was pleased to see new clients being taken on. Patrick then took the opportunity to reduce his work hours, coming in when he saw the need and directing as much work as possible to Claire. He felt confident that Claire was keeping things ticking over and on that basis sought to relax as much as possible.

Had Patrick spoken to Claire's previous employers, he would have been told that she is a very engaging person but lacks the work ethic and expertise to do the work required of a busy legal practitioner. Unfortunately, her ambitions exceed her knowledge and skills. Claire is 'out of her depth' and is also neglecting the existing files as she concentrates on the new work. Filing dates have been missed and court appearances inadequately handled.

Complaints to Claire from clients and from staff were met with assurances that everything was under control and she should just be left to get on with serving her clients. She says 'I'm the lawyer here so just let me get on with it.' Claire directed all staff to refer client questions to her and not to annoy Patrick. She emphasised that

Patrick was easing out of the business and should be left to enjoy his time away from the office.

The difficulties which Claire and the practice face have now come to a head. A longstanding client of Patrick's was not prepared to put up with Claire's assurances about everything being OK and told Patrick so when they met on the golf course. When Patrick next went in to the practice and asked Claire what was going on, he was very concerned at how evasive Claire was. The more questions he asked, the more concerned he became. At the end of an hour-long discussion, Claire left saying she could no longer work in such an environment. Patrick was left to review Claire's file and soon identified problems on a range of files.

Patrick had been intending to continue to work part-time in the office for the foreseeable future. He has now had to put his early retirement plans on hold and start thinking about how he can start the process of rebuilding trust with the clients who have felt the impact of these problems.

Why did this happen? What is the root cause?

What alert indicators should have caused the Patrick to consider greater or more sophisticated supervisory arrangements for Claire?

What supervisory arrangements could the firm had in place so as to increase the prospects for detecting Claire's misconduct? What "self supervision" systems could she have put in place to identify these problems?

5 General discussion

Symposium participants were allocated to tables for the purpose of discussing the three scenarios detailed in the previous section. Each scenario described supervisory arrangements that had gone wrong in (mythical) law firms. Participants were asked to consider the scenarios with these focusing questions in mind:-

Why did this happen? How could this have happened?

What alert indicators should have caused the partners to consider greater or more sophisticated supervisory arrangements?

What supervisory arrangements could the firm have in place so as to increase the prospects for detecting misconduct? If a sole practitioner, what “self supervision” systems could be put in place to identify these problems?

Participants then joined in a general group discussion moderated by Professor Giddings about their responses to the focusing questions as well as supervisory issues more generally. A number of themes emerged from the discussions.

In considering what went wrong for the law firms, participants noted the absence of a complaint management system that would have alerted the principals to the increasing number of client complaints the firm was receiving. They also noted that the absence of the principal contributed to the problem, leaving the supervisee isolated and not coping well. In one of the offices, the firm was reliant on one individual as the main contact person and problems emerged when that person did not pass on the complaints being received. It was pointed out that a more systematic approach was needed by all three firms to ensure that the firms were not incorrectly assuming that things were working well.

Participants also considered what was needed to improve supervision in the mythical firms. Isolation was identified as a key problem in all of the scenarios, and some saw the identification of someone in the office who could take a mentoring role when needed as a potential solution to such issues. Another suggestion was for the firm to establish a buddy system. Small firms with very few personnel would find it more difficult to develop such systems, but nevertheless would need to find ways to reduce the isolation of supervisees and provide an overview of their work and mentoring support. Another key problem area identified by some participants was the undervaluing of supervision, through lack of recognition in time costing and discernible in attitudes about the limited level of skill required to supervise well.

In the discussion it emerged that these areas can be somewhat interconnected in some firms – some time costing arrangements view supervision as “empty” billing time, with time discounted for supervision. One participant described arrangements in their firm whereby groups are given a budget rather than each individual having billing targets. In that firm, the lawyers are assessed on the group’s performance and partners do not have files, they are there to supervise and, more generally, troubleshoot. Such an arrangement may not be to all firms’ tastes or capacities; however it could provide greater social connectedness particularly for new lawyers, an important consideration.

Participants also noted that lawyers who spend a good deal of time supervising may consider themselves or be considered by others as being “de-skilled” because they are no longer able to sufficiently engage in proper lawyering work. They said that the

benefits of good supervision needed greater appreciation, with supervision recognised as legitimate, skilled and valued work undertaken by lawyers. One indicator of the limited value attached to effective supervision was that only one participant had received training in supervising others. Other participants commented that they inherited supervisory arrangements that did not necessarily fit their own preferred styles. The discussion suggested the need for supervisors to reflect on what they want their style of supervision to be and for firms also to reflect on what style they want to be known for.

It was noted that there is a problem with junior solicitors undervaluing their own time, working longer hours while logging fewer so as to look more efficient. One participant noted that, on the other hand, time as a management tool can be a double-edged sword – junior solicitors may need additional supervision in order to move beyond inefficient practices. The discussion suggested that there was certainly scope for consideration of how supervision may help junior solicitors get through the early stages of learning about working in a practice and that much will depend on the culture of the firm and how it supports effective supervision.

Participants from the community legal sector had particular and different supervision issues to private law firms because many staff are volunteers. They described how their supervisory system incorporates a strategy of doing cross checks of files across centres.

Systems incorporating effective supervision allow early identification of problems with files - for the supervisee, the supervisor, the firm and for clients. Flaws may surface in a multitude of ways, for example through a client complaint, changed behaviour of the supervisee or from problems filtering through to the supervisor or the firm. Additionally, the discussions suggested that firms need to review their culture of supervision and their broader organisational culture to reflect on the value they place on supervisory work. Finally, the discussions suggested that firms of all sizes need to re-think their training of new lawyers and how their supervision practices support the early learning phase so that problems are identified rather than being hidden.

The whole group's responses to the scenarios and related issues indicated that supervision is challenging, often under-valued and that very few supervisors are trained for this important work.

Appendix: Program



Lawyers, Clients and the Business of Law

A Symposium Series presented by the Griffith Socio-Legal Research Centre and the Legal Services Commission

Shouldering the Supervision Load

Date: 6th August 2009

Time: 4pm – 7pm (registration from 3.30pm)

Place: The Function Room, Level 2, Ship Inn, Griffith University, South Bank (see map)

Program

3.30 – 4pm	Registration	
4.00 – 4.10	Welcome	John Briton, Legal Services Commissioner Professor Paula Baron, Dean, Griffith Law School
4.10 - 4.40	Panel	David Durham of Lexon Insurance Andrew Lind of Corney and Lind Professor Jeff Giddings of Griffith Law School
4.40 – 5.30	Discussion in groups	All participants.
5.30 – 6.45	Report back on group discussions	
	Discussion on implications	Moderated by Professor Jeff Giddings
6.45 – 7.00	Closing remarks	

Please join us for drinks and finger food from 7pm to 7.30pm