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The importance of effective supervision

Introduction

In this chapter, we address the central role of effective supervision in enabling law students to make the most of the learning opportunities presented by clinic-based experiences.¹ Clinical methods will not achieve their potential without effective supervision tailored to each student and to the particular objectives set for the clinical experience. Supervision also needs to address the legal and related needs of the clients served by the clinic, ensuring their interests are safeguarded and advanced. External placement arrangements raise particular supervision issues in terms of balancing the needs of the host organisation, its clients and the participating students.

A range of difficulties is likely to be generated by inadequate student supervision. Without clear guidance and support, students will struggle to appreciate the complexities and practicalities of the environment in which they are working. Clients may suffer, with students failing to gather key information and address all of the legal issues. Students may also suffer if they are dealing with particularly challenging matters. Students will not

¹ This chapter draws extensively on research undertaken by Jeff Giddings as part of his PhD study, 'Influential Factors in the Sustainability of Clinical Legal Education Programs'. See also Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (2013) Justice Press (cited hereafter as Giddings (2013)). It also draws on the Effective Law Student Supervision Project: see www.griffith.edu.au/criminology-law/effective-law-student-supervision-project and perma.cc/G2JQ-RB4P.

be able to learn so readily as they would from the example of an effective supervisor, and may adopt poor practices without recognising the need to change their approach. Without clear and supportive supervision, students may not benefit from receiving feedback and are unlikely to develop reflective practices. The confidence that builds from being effectively supported and appropriately challenged is critical to clinic students.

While the clinical legal education literature emphasises the importance of effective supervision, there is a need to further deepen the shared understanding of what supervision practices support the achievement of particular learning objectives. Our *Best Practices* research revealed a genuine interest among both in-house and external supervisors for practical insights about how to make their supervision efforts as constructive as possible for all involved. The project also revealed that supervision arrangements are often underdeveloped, relying on untested assumptions about the effectiveness of legal practice supervision models in clinic contexts.²

Supervision appears to be the issue most in need of close attention. Those involved in clinical programs acknowledged the limits of their knowledge of how to make the most effective use of clinic-based student learning. The recognition of the importance of quality supervision needs to be matched by a greater focus on what that means and how it can be fostered. Quality controls of supervision are limited.

Our research identified differences in the ways externship programs are constructed with ‘what we might think of as the essential features of the clinical method—supervision, responsibility and reflection’ being ‘present to different degrees, and at times ... absent’.³ Student supervisors describe ‘varying understanding of teaching concepts such as problem based learning, scaffolding for student learning and student responsibility and autonomy’, and all supervisors said that ‘the client or service needs will trump student or pedagogical needs’.⁴ We found that:

2 *Identifying Current Practices in Clinical Legal Education Regional Report: Queensland and Northern New South Wales*, 26–27, at perma.cc/257Z-6EMR.

3 *Identifying Current Practices in Clinical Legal Education: Regional Report: New South Wales and Australian Capital Territory*, 33, at perma.cc/FU7X-5TNV.

4 *Identifying Current Practices in Clinical Legal Education: Regional Report: Western Australia and Northern Territory*, 16, at perma.cc/4EDN-5SZG.

a significant area where most law schools seem to have a clear quality deficit concerns training of clinical supervisors, in either live client or externship/placement contexts. As far as we can tell, there is currently no requirement for such supervisors to hold a higher education certificate or equivalent.⁵

Our survey of 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. With the student and other workloads that some supervisors are expected to carry, it is unrealistic to expect in-depth supervision tailored to each student. If programs rely on external supervisors, then the law school needs to prioritise preparing and resourcing them effectively. This is especially so when the supervisor is involved in the student assessment process. While most programs provide supervisors with written guidelines, it was acknowledged in the survey responses that a deeper form of ongoing engagement and professional development is required for supervisors to understand and promote consistent practices.⁶ We found that '[t]here was a clear desire for supervisors to have access to their own supervision and support' and that 'such supervision should include training in education theories and skills as well as ongoing professional development in their area of law. There also seemed to be a desire for more opportunities to discuss and to workshop supervision and clinical practice generally'.⁷

Further, our survey revealed innovative practices involving senior in-house clinic students mentoring junior students involved in a preliminary placement. Law schools involved in external placement programs identified the need for administrative support to enable placements to work effectively. However, there appears to be limited law school recognition of the resource implications for community organisations of supervising students. Building strong relationships with the organisations that are hosting students is recognised as important to the ongoing functioning of placement programs. Our research confirmed

5 *Identifying Current Practices in Clinical Legal Education: Regional Report: Victoria and Tasmania*, 28, at perma.cc/J562-X6GU.

6 *Identifying Current Practices in Clinical Legal Education: Regional Report: New South Wales and Australian Capital Territory*, at perma.cc/FU7X-5TNV, 19, 24–36; and *Identifying Current Practices in Clinical Legal Education: Regional Report: South Australia*, 26, at website cited at perma.cc/3VFN-3BWK.

7 *Identifying Current Practices in Clinical Legal Education: Regional Report: Western Australia and Northern Territory*, 18, at perma.cc/4EDN-5SZG.

that it will be important for the partners to develop realistic expectations of what can be achieved through such partnerships and the need to adequately support and resource such collaborations.⁸ It also emphasised the benefits of strong relationships in supporting student learning in externship programs.⁹

The supervision terrain is uneven by reason of the diversity of clinical arrangements in place—different models, different objectives, different students and different sites. Online supervision can add further variation to the mix. Clinical supervision involves responsibility for client work being shared to some degree with the student for the purpose of student learning. Chavkin emphasises that the process involves supervision rather than direction: ‘Students need to invest in the quality of their decisions and this process is facilitated by having supervisors help students reflect on their experiences and not by displacing students as the lawyers for their clients.’¹⁰ This clearly distinguishes the clinic setting from other legal practices where supervisors delegate work to less senior lawyers and paralegals, largely because of pressure of business and to maximise fee generation. The legal work required by a client can almost always be done more quickly and more effectively by an experienced lawyer than by a student.¹¹

In their review of the substantial literature on supervision in health-related disciplines, Kilminster and Jolly describe clinical supervision as a ‘complex activity, occurring in a variety of settings, [with] various definitions, functions and modes of delivery’.¹² The literature on legal professional supervision is relatively underdeveloped, focusing on risk management with limited attention paid to other aspects. Greater attention should be

8 *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 24, at perma.cc/257Z-6EMR.

9 *Identifying Current Practices in Clinical Legal Education, Regional Report: Victoria and Tasmania*, 25, which refers to the benefits of strong relationships in supporting student learning in externship programs, at perma.cc/J562-X6GU.

10 David Chavkin, ‘Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)’ (2009) 22(3) *Pacific McGeorge Global Business and Development Law Journal* 3, 17.

11 See David Chavkin, ‘Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton’ (2003) 10 *Clinical Law Review* 245, 257–58.

12 For a comprehensive cross-disciplinary review of the clinical supervision literature, see SM Kilminster and BC Jolly, ‘Effective Supervision in Clinical Practice Settings: A Literature Review’ (2000) 34 *Medical Education* 827, 828. Despite supervision practices in medicine being considerably further developed than in law, Kilminster and Jolly contend that there are no adequate theoretical accounts of supervision in medicine. Their review included databases covering medicine, health care, nursing, education, social work and psychology.

paid to practices that will assist in fostering awareness of ethical and client-focused practices, fostering resilience, enhancing quality and promoting work practices that are sustainable in the long term.

This chapter considers the changing dynamics of supervision in law firms and the key supervision issues facing clinical programs. The chapter also considers the potential for clinical programs to foster ‘reciprocal professional development’, which addresses the reciprocal nature of supervision arrangements and the potential for clinic students to learn from the experience of others.¹³ If clinical programs are to consolidate their foothold in the legal academy, then they need to articulate the benefits supervisors can draw from their work with students. This is particularly so for external placement arrangements, discussed in Chapter 3. Students involved in external placements can also benefit from group sessions that allow them to share and make sense of their respective experiences, identifying common experiences and points of difference. Having considered the professional and educational contexts in which clinical supervision takes place, we then provide practical guidance and support for supervisors, students and those responsible for clinical programs to make their efforts as constructive as possible. We set out both principles and practices designed to foster best practices in clinical supervision.

Supporting and challenging students through supervision

Effective clinical supervision is not a straightforward process. It relies on an elusive set of skills from both education and legal practice. The nature and style of supervision required depends on the students involved, what they have already learnt, and what they are expected to learn from the particular experiences in question. If the learning objectives for a clinic are general in nature, and relate to the students’ developing an understanding of the dynamics of law-related processes and workplaces, then the

13 The concept of reciprocal professional development is being examined as part of an Australian Office for Learning and Teaching National Teaching Fellowship, awarded to Jeff Giddings to assist Australian legal education providers to make informed choices about the design and delivery of experiential learning opportunities, and to enhance the supervision of law students in practice contexts by focusing on the dynamic that enables both students and their practitioner teachers to benefit from the collaborative nature of practice-based learning. See www.olt.gov.au/olt-national-teaching-fellow-jeffrey-giddings and www.griffith.edu.au/criminology-law/effective-law-student-supervision-project.

supervision the student receives will be particularly important. Without effective supervision, the richness of real client clinic environments in particular is unlikely to be harnessed effectively. Students may well fail to appreciate what they are experiencing unless their supervisor guides and fosters such appreciation. Students also require feedback about their performances, both in terms of ‘what conduct is inappropriate (and requires avoidance) and what conduct is acceptable (and deserves repeating)’.¹⁴ Stuckey and others refer to the theory of ‘frustrated non-reward’—that the lack of reward where reward is expected has an ‘adverse effect much like punishment’—and suggest that this ‘places a heavy burden on the clinician to give effective feedback and to reinforce good performance’.¹⁵ The expertise, roles and priorities of the supervisor are likely to vary considerably among different clinical models.

Developing an environment in which students feel both suitably supported and challenged is a key aspect of the work of supervisors. Barry refers to the risks involved in clinical supervision as including the:

risk of destroying confidence in the very attempt of building it. The risk of allowing creative tension to dissolve into hostility. The risk of permitting clinic precepts of social justice, commitment and professionalism to deconstruct into alienation, intolerance and mediocre performance.¹⁶

Developing such an environment is also what makes clinical teaching more expensive than lecture- and seminar-based teaching methods. Efforts by law schools to cut the cost of providing clinical experiences have often focused on limiting direct supervision and having each supervisor responsible for greater numbers of students. Others have involved increased reliance on placements in external organisations with supervisors whose principal responsibility is not student learning. While the move to external placements raises supervision challenges, it also presents law schools with opportunities to offer students a broader range of placement options and the ability to engage with the practising profession, providing professional development for external supervisors.¹⁷

14 Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (2007) Clinical Legal Education Association, 175.

15 Roy Stuckey and others, cited at footnote 14.

16 Margaret Martin Barry, ‘Clinical Supervision: Walking That Fine Line’ (1995) 2(1) *Clinical Law Review* 137, 138.

17 See Chapter 3 of this book for discussion of external placements.

It is important to consider how law students can most constructively share and learn from their respective placement experiences through the classroom component of their studies. As is the case in other forms of experiential education, clinicians take a purposeful approach to teaching students how to learn from their experience. Issues related to the training of external supervisors need to be addressed along with the roles that can best be played by mentoring and coaching arrangements. Clinical supervisors can make an important contribution by preparing students to approach supervision in a constructive manner. Ryan Cole and Wortham have helpfully provided guidance to students on how they can learn from supervision.¹⁸ They note the need for clinical legal education students to develop their ability to ‘be a good supervisee’: anticipating supervisor questions, understanding when to seek clarification and recognising when to exercise greater autonomy.

Supervision in legal workplaces

Supervision arrangements and practices in legal workplaces can influence clinic student supervision in a range of ways. We noted in Chapter 2 that there is growing reliance on external supervisors working with students. Legal practitioners tend to begin supervising students with little in the way of training and guidance and are often guided in their approach by their own experiences of workplace supervision.

Given the importance of supervision in modern legal practice, it is surprising that the literature on legal professional supervision more generally is underdeveloped, focusing on risk management dimensions.¹⁹ While risk management is a key consideration, other important supervision dimensions include:

- enhancing quality—accuracy, timeliness, value for money, ethical soundness, suitability for task;
- mentoring junior staff;
- fostering awareness of ethical and client-focused practices;

¹⁸ Liz Ryan Cole and Leah Wortham, ‘Learning From Practice’ in JP Ogilvy, Leah Wortham and Lisa Lerman, *Learning From Practice* (2007) West Academic, 2nd ed, Chapter 3.

¹⁹ Jeff Giddings and Michael McNamara, ‘Preparing Future Generations of Lawyers for Legal Practice: What’s Supervision Got to Do With It?’ (2014) 37(3) *University of New South Wales Law Journal* 1225.

- identifying and supporting staff who develop a mental illness;
- fostering resilience;
- promoting work practices that are sustainable in the long term; and
- fostering critical analysis of the law and the legal system.

The structures used by law firms to manage their work and meet their professional responsibilities have always been underpinned by supervision arrangements.²⁰ Partners and senior lawyers take responsibility for the work of junior and trainee lawyers as well as paralegals. There is an ongoing expectation that law graduates will do a lot of their practical learning once they start work, yet the supervision that is crucial in supporting new and inexperienced practitioners appears to be increasingly difficult to secure.

As we noted in Chapter 2, the numbers of law schools and law students have both grown significantly since the Dawkins reforms of the late 1980s; in 1987 there were 12 law schools in Australia and in 2015 there were 40.²¹ Those law schools are graduating students in much greater numbers. There have also been dramatic changes in the professional training required of law graduates prior to admission to legal practice. Across Australia, the traditional articles of clerkship have been replaced with practical legal training (PLT) programs (offered by law schools or private providers) and workplace traineeships.²² While these PLT programs provide considerable educational advantages, the placement experiences offered to students vary considerably in terms of duration and nature and have not been effectively integrated with other program components. The opportunities for law graduates to participate in a closely supervised transition to professional practice have reduced.²³

20 Jeff Giddings and Michael McNamara, cited at footnote 19.

21 David Barker, 'An Avalanche of Law Schools, 1989–2013' (2013) 6 *Journal of the Australasian Law Teachers Association* 153; Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (2003); David Weisbrot, *Australian Lawyers* (1990) Longman Professional, Chapter 5; Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3(1) *International Journal of Clinical Legal Education* 7. The website of the Council of Australian Law Deans lists 36 member law schools: see www.cald.asn.au.

22 Allan Chay and Frances Gibson, 'Clinical Legal Education and Practical Legal Training' in Sally Kift, Michelle Sanson, Jill Cowley and Penelope Watson (eds), *Excellence and Innovation in Legal Education* (2011) LexisNexis Butterworths, Chapter 18.

23 Jeff Giddings and Michael McNamara, cited at footnote 19, 1229–31.

The emergence of national law firms and, over the past decade, the internationalisation and the digitisation of legal practice, have further challenged the traditional supervisory structures. Dramatic increases in the size of law firms have meant that supervision has become more important than ever, yet close supervision is less readily available to law graduates. Some law graduates seek to enter their chosen profession with little in the way of direct experience of legal work. These changes make clinical supervision practices increasingly important in shaping the expectations of law graduates entering the legal profession.

While experiential learning opportunities have become more prominent in some law schools, the pedagogy informing these programs requires further development. As our *Best Practices* research revealed, the models used vary considerably, as do the supervision processes.²⁴ Despite this greater prominence, many Australian law students remain unable to access clinical programs because of the high staff–student ratios required for practice-based learning. In an effort to reduce costs, some law schools have relied on unpaid external supervision. While external placements have great potential to provide students with excellent learning opportunities, this requires careful structuring in terms of the supervision arrangements and the classroom component linked to the placement.²⁵

Clinical programs and their academics involved in supervision (whether directly supervising students or managing other supervisors) can make a significant contribution by developing their understanding of how effective supervision underpins learning in the clinic, and implementing more effective practices. This can set the scene for promoting best practices in the supervision of law graduates once they leave the clinic environment.

24 *Identifying Current Practices in Clinical Legal Education: Regional Report: Western Australia and Northern Territory*, 16, states that supervisors possess ‘varying understanding of teaching concepts such as problem based learning, scaffolding for student learning and student responsibility and autonomy’, at perma.cc/4EDN-5SZG. *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 24, states: ‘Quality control of supervision is limited. Assumptions are made as to the suitability of law offices and law-related organisations to effectively supervise students.’ at perma.cc/257Z-6EMR. *Identifying Current Practices in Clinical Legal Education, Regional Report: South Australia*, 26, states: ‘It was acknowledged that not all supervisors (in externships) are interested in pedagogy or able to give appropriate feedback. There was no regular supervision training.’, at perma.cc/3VFN-3BWK.

25 Linda Smith, ‘Designing an Extern Clinical Program: or as You Sow, so Shall You Reap’ (1999) 5(2) *Clinical Law Review* 527; Jeff Giddings, ‘Two Way Traffic: The Scope for Clinics to Facilitate Law School Community Engagement’ in Patrick Keyzer, Amy Kenworthy and Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) Halstead Press, 40.

How supervision underpins learning in the clinic

Student supervision is a hallmark of clinical legal education. It should be understood as directly related to the design and implementation of objectives for a clinical course. Close supervision of students is significant in providing the scaffolding that enables novices to further develop their professional skills:

By making explicit important features of good performance through various conceptual models and representations, teachers can guide the learner in mastering complex knowledge by small steps. These devices of representation serve as scaffolds (in the language of learning theorists) to support efforts at improved performance.²⁶

Quigley refers to insights from Schön, Dewey and Brookfield in identifying that the clinic setting facilitates experiential learning because it provides structured opportunities to learn by reflecting on the experience provided.²⁷ The relationship between a student and their supervisor is central to structuring the learning process. The process can challenge students because they are required to ‘begin to practice before they know everything ... a difficult and scary process that requires honest and searching inquiry about paths taken and mistakes made’.²⁸ Reflective practice is also considered central to professional development in other disciplines, although ‘total reliance on reflection may not always be appropriate in supervision because beginners need direction’.²⁹ Quigley states: ‘Adults’ capacity for self-direction is dependent on their ability to be self-aware and to reflect on the implications of their experiences for future action.’³⁰

26 William Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) Jossey Bass, 27.

27 Fran Quigley, ‘Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics’ (1995) 2 *Clinical Law Review* 37, 50. See also the discussion in Chapter 7 of this book on reflective practice.

28 Susan Bryant and Elliot Milstein, ‘Rounds: A “Signature Pedagogy” For Clinical Education?’ (2007) 14 *Clinical Law Review* 195–215.

29 SM Kilminster and BC Jolly, cited at footnote 12, 831, referring to J Fowler and M Chevannes, ‘Evaluating the Efficacy of Reflective Practice Within the Context of Clinical Supervision’ (1998) 27(2) *Journal of Advanced Nursing* 379.

30 SM Kilminster and BC Jolly, cited at footnote 12, 831.

Effective supervision can also reveal the range of uncertainties that legal professionals must address in their work. This includes uncertainty as to what has taken place and why, whether a client's account is likely to be accepted by relevant third parties, which legal doctrines are relevant to the issues facing the client, and how those doctrines are likely to apply. Assisting students to develop the ability to deal with unstructured situations has been identified as a key objective of live client clinical courses.³¹

The Carnegie Foundation for the Advancement of Teaching's 2007 *Educating Lawyers* Report (the Carnegie Report) observed that the mark of professional expertise is 'the ability to both act and think well in uncertain situations',³² and recognised clinics as enabling the features of a practice environment to be revealed in simplified ways that can be understood by novice practitioners 'who can begin to develop their own perception and judgment'.³³ Milstein describes the contribution of clinics in developing the strategic planning skills of lawyers, involving 'making decisions about taking action or withholding action in order to maximise the likelihood of achieving the goals' of the client. 'The real-world setting of the clinic forces students to engage in the complexity of analysis that is inherent when the multiple actors who affect outcomes are identified.'³⁴ Supervisors should emphasise to students the importance of safeguarding client interests, and should talk through the processes used to provide advice that enables clients to make decisions.

The literature on clinical legal education also emphasises the suitability of practice contexts for fostering ethics-related learning:

31 Giddings (2013), 55–56.

32 Sullivan and others, cited at footnote 26, 9.

33 Sullivan and others, cited at footnote 26, 10; Elliot Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001) 51 *Journal of Legal Education* 375, 379.

34 Elliot Milstein, cited at footnote 33. See also Deborah Maranville, Mary A Lynch, Susan L Kay, Phyllis Goldfarb and Russell Engler, 'Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering' (2011) 56 *New York Law School Law Review* 517, 533, who refer to '[d]eveloping problem solving abilities' as one of the potential goals for clinical experiences.

Decades of pedagogical experimentation in clinical-legal teaching, the example of other professional schools and contemporary learning theory all point toward the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the dispositions crucial for legal professionalism.³⁵

Supervisors are central to harnessing the rich possibilities in the clinical environment, and should consider ethical issues as they arise with reference to the range of available frameworks.³⁶ Supervisors can also foster student critical analysis and awareness of a wide range of social justice issues.³⁷ While such teaching takes time, it can be immensely valuable to talk issues through with students.

Clinical supervision can highlight to students the importance of collaborative frameworks in legal practice. Students can develop their awareness of the team-based work performed by many modern lawyers and of the value of developing working relationships with mentors. For these reasons, supervisors need to demonstrate and model collaborative approaches in their work with students.

Supervision arrangements in Australian clinics

As we described in Chapter 5, a key driver in the development of the first Australian clinics was community service. As had happened elsewhere, student involvement in voluntary legal advice programs gave rise to clinical programs at Monash and La Trobe universities and at the University of New South Wales (UNSW).³⁸ There was a strong focus

35 See Sullivan and others, cited at footnote 26, 120. See also Liz Curran, Judith Dickson and Mary Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo' (2005) 8 *International Journal of Clinical Legal Education* 104; Nigel Duncan and Susan Kay, 'Addressing Lawyer Competence, Ethics and Professionalism' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2011) Oxford University Press, Chapter 12, esp. 185–87; Anna Cody, 'What does legal ethics teaching gain, if anything, from including a clinical component?' (2015) 22(1) *International Journal of Clinical Legal Education* 1.

36 For example, see Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2013) Cambridge University Press, 2nd ed.

37 See Chapter 9 of this book.

38 Jeff Giddings, Roger Burrige, Shelley Gavigan and Catherine Klein, 'The First Wave of Modern Clinical Legal Education' in Frank Bloch (ed), cited at footnote 35, Chapter 1.

on community service and, quite understandably, limited attention was given to supervision and other arrangements designed to foster student learning.³⁹

The fledgling Monash Law School clinical program drew on the experiences of the first Australian community legal centres that developed in the early 1970s. It developed a diffuse structure that generated supervision challenges. The substantial responsibility given to student volunteers and the involvement of a significant number of part-time supervisors resulted in tensions. In 1979 to 1980, the Monash University clinical program had involved 11 supervisors across three sites and faced challenges related to different approaches to supervision and a lack of shared understandings as to the extent of the responsibility expected of the predominantly part-time supervisors.⁴⁰ There was a move to a more coherent program in the 1980s with the appointment of staff focused on the clinic but then challenges arose in terms of retaining those people. The commitment to community service exemplified by the ‘no appointment needed’ structure of client sessions at Springvale Legal Service, the main Monash clinic site, fostered what Evans subsequently described as a superficial file-handling culture among students that presented major challenges for their supervisors.⁴¹

The clinical program established in the Legal Studies Department at La Trobe University in the late 1970s focused on client-service concerns in its initial years. Kevin Bell, the solicitor responsible for the La Trobe clinical program from 1981 to 1985, noted the complexity for a clinic in balancing ‘three competing policy priorities’—casework, community action and legal education—and indicated that student needs were not prominent in casework selection decisions. Bell stated:

The educational needs of the students did not figure highly in decisions made about whether a case was picked up or not. The focus was on the needs of the client, what we could do for them with the limited resources we had and whether or not a particular case was worthy of our follow up or personal attention because it had consequences beyond the immediate.⁴²

39 Giddings (2013), 343–44.

40 Giddings (2013), 174–77.

41 Giddings (2013), 193.

42 Giddings (2013), 153–54.

The clinic at UNSW emphasised direct supervision of students with supervisors attending with the student to provide advice at the first interview. Founding Kingsford Legal Centre (KLC) Director, Neil Rees, had worked most recently for Aboriginal Legal Services where there was a focus on providing the best quality of service, and where there was also considerable scepticism about student involvement in casework delivery. In hindsight, he acknowledges that he contributed to KLC's strong emphasis on service delivery, which may have come at some cost to student learning.⁴³

An interesting divide has developed among the Australian clinical programs in relation to the provision of advice to the client once the student and supervisor have determined what advice is to be provided to the client.⁴⁴ When a client is interviewed for the first time at either the UNSW or University of Newcastle clinic, the student takes instructions. Once the student and the supervisor have settled on the advice to be given, the solicitor gives advice to the client with the student present and recording that advice. Clinical programs outside New South Wales have tended to use the approach developed at Monash whereby the student, after taking the client's instructions and consulting with the supervisor, returns to the client and advises them, unaccompanied by their supervisor. All programs share a similar approach to preparing students for their involvement in interviewing clients: in the first weeks of their placement, students observe interviews conducted by their supervisor and/or former students and are then involved in intensive seminars using simulations to develop their interviewing and advising skills. Such a model allows very competent students to perform to their capacity as opposed to some artificially lower level of responsibility.

The focus on client service of Australia's early clinical programs is now shared by more recently established programs. Well-established programs have had more opportunity to develop ways in which they can use supervision and clinic design to effectively integrate service and learning

43 Giddings (2013), 217.

44 For international examinations of similar issues, see Carolyn Grose, 'Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews' (2007) 14 *Clinical Law Review* 415; and Hugh Brayne, 'Law students as practitioners: developing an undergraduate clinical programme at Northumbria University' in J Webb and C Maughan (eds), *Teaching Lawyers' Skills* (1996) Cambridge University Press, 167.

agendas. Newer programs will need to work through those issues and develop suitable supervision arrangements that foster reflective practices and harness the learning potential of clinical legal education.

Key issues in clinical supervision

In this section, we address what we have identified as key issues in the supervision of students involved in a range of clinic placements. Particular challenges arise when arrangements result in supervision resources being spread too thinly or in not maintaining sufficient focus on student learning.

Supervision ratios

The intense nature of clinic-based learning requires a limit on the number of students with whom each supervisor works. Staff–student ratios that enable the provision of close feedback on student performance appear to be an important indicator of the durability of a clinical program. Such ratios need to be set at realistic levels and then not increased significantly over time. Chavkin refers to students’ needing the opportunity to ‘regularly interact with their supervisors in a setting in which faculty members have sufficient time and energy to discuss case-related and personal issues with their students in a non-directive manner’. He argues this requires a student–supervisor ratio of no more than 8:1 where students are engaged in delivering casework services in collaboration with their supervisor and colleagues.⁴⁵

Holland’s account of the Yale clinical program refers to ‘the Spring from hell’ in 1989 with too many students to permit effective supervision. This led to changes and the adoption in 1992 of an in-house student–clinic supervisor ratio of between 8:1 and 10:1.⁴⁶ Wilson refers to student–supervisor ratios at the Catholic University of Chile having started in 1970 at 8:1 but, by 2000, having risen to 17:1 due to the popularity of

45 David Chavkin, ‘Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)’, cited at footnote 10, 17. See also the coverage of supervision ratios in Simon Rice and Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (1996) Centre for Legal Education, 62.

46 Laura Holland, ‘Invading the Ivory Tower: The History of Clinical Education at Yale Law School’ (1999) 49(4) *Journal of Legal Education* 504, 532.

the clinic and no additional clinicians being hired.⁴⁷ In 2008, du Plessis wrote of clinicians at the University of the Witwatersrand Law Clinic in Johannesburg, South Africa, each supervising between 38 and 46 students as compared to the recommended ratio of 12:1.⁴⁸ Workloads of this kind challenge both the learning of students and the longevity of supervisors.

In the 1980s, the Warwick clinical program shifted from real client to being predominantly simulation-based, in part because of supervision concerns. ‘Supervising the number of cases that became necessary to provide an adequate caseload for the increased number of students was not possible without a large increase in staff.’⁴⁹ Consistency of supervision was also an issue for the Warwick program, which had developed from a volunteer student service with supervisors taking different approaches to their work.⁵⁰

While Australia’s pioneering clinical legal educators faced some heavy supervision loads, the survey we conducted indicates that current supervision loads are more manageable. Student–supervisor ratios are generally around 6:1 or 8:1 for clinics involving engagement in client casework. In several regions, such as Queensland, Victoria and South Australia, there is a considerable consistency in supervision ratios across clinical programs. The highest ratios were recorded for clinical activities not involving direct client casework. In Victoria, the Victoria University placement program involves one academic supervisor for 30 students.⁵¹ In Queensland, one QUT virtual clinic involves 20 students for one supervisor, while the Griffith Street Law clinic has 14 students working with the one supervisor.⁵²

47 Richard Wilson, ‘Three Law School Clinics in Chile, 1970–2000: Innovation, Resistance and Conformity in the Global South’ (2002) 8 *Clinical Law Review* 515, 544.

48 See MA du Plessis, ‘University Law Clinics Meeting Particular Student and Community Needs: A South African Perspective’ (2008) 17(1) *Griffith Law Review* 121, 127, footnote 60.

49 Avrom Sherr, ‘Clinical Legal Education at Warwick and the Skills Movement: Was Clinic a Creature of its Time?’ in Geoffrey Wilson (ed), *Frontiers of Legal Scholarship* (1995) John Wiley, 108, 110.

50 Avrom Sherr, cited at footnote 49, 109.

51 *Identifying Current Practices in Clinical Legal Education: Regional Report: Victoria and Tasmania*, 6, at perma.cc/J562-X6GU.

52 *Identifying Current Practices in Clinical Legal Education: Regional Report: Queensland and Northern New South Wales*, 6, at perma.cc/257Z-6EMR.

Containing the service imperative

Clinics around the globe have faced sustained challenges in balancing the needs of students with client demands for legal services.⁵³ These challenges are significant in Australia too, and it is important for law schools that are developing clinical programs to understand the potential of using clinical methods and to learn from the experiences of existing clinics.

In one of the most effective accounts of this issue, Redlich wrote of his experiences in 1969–70 in running a ‘relatively large service-oriented clinical program’ at the University of Wisconsin, describing ‘many unsatisfactory experiences’ resulting from the variable nature of student supervision provided by the lawyers working in the host legal aid office.⁵⁴ Lack of experience left the staff attorneys unable to supervise, so that students were left to seek supervision elsewhere.⁵⁵ Some students did excellent work with effective supervision, but others ‘came and went as they wished and abandoned files were common’.⁵⁶

Redlich reports that while some students ‘enjoyed the freedom to make decisions, give advice, and, to a high degree, practice law independently, others recognized that the clients and occasionally they, too, were being imposed upon’.⁵⁷ He suggests that many problems appeared unique to that type of placement. This experience can usefully be contrasted with the positive experience at the University of Minnesota described by George Grossman, who tells how the in-house clinic avoided the downsides associated with service-oriented clinics by careful planning and by keeping the initial educational goals relatively modest. Caseloads were limited, cases were selected to suit the clinic’s purposes and close supervision was maintained. As the program became established, it gained momentum with non-clinic faculty members involving themselves in supervision in their fields of expertise.⁵⁸

53 Giddings (2013), Chapter 3, esp. 46–50.

54 Allen Redlich, ‘Perceptions of a Clinical Program’ (1970–71) 44 *Southern California Law Review* 574, 575.

55 Allen Redlich, cited at footnote 54, 593.

56 Allen Redlich, cited at footnote 54, 580.

57 Allen Redlich, cited at footnote 54, 589.

58 George Grossman, ‘Clinical Legal Education: History and Diagnosis’ (1974) 26 *Journal of Legal Education* 162, 192.

The Monash University clinical program developed out of a telephone referral service involving students taking calls from people seeking legal assistance. Once a problem was identified, the student telephoned a member of Monash academic staff for advice and referral and these details were then conveyed to the original caller. Simon Smith was one of the participating students and subsequently became Australia's first clinical legal academic. Smith refers to the students receiving 'no formal preparation or immediate professional supervision ... The academic advisers were even less regulated. The success of the telephone call for a client entirely depended on who answered the phone'.⁵⁹

Concerns arise when those advocating the importance and value of student *pro bono* schemes demonstrate a limited understanding of the importance of effective supervision and structure in enabling students to maximise their learning from clinical experiences.⁶⁰ In writing about the emergence of Pro Bono Students Australia at the University of Western Sydney, Sappideen and Cingiloglu emphasise the contributions of students in the governance and delivery of projects. They refer to a part-time student coordinator having responsibility for activities including recruitment of volunteer students, advertising, coordination, evaluation and, perhaps most significantly, supervision.⁶¹ This suggests a failure to fully appreciate the importance of close and supportive expert supervision in enabling students to draw useful insights from experience, and seems to underestimate the complexity of legal issues that arise in the context of *pro bono* legal work.

Reflecting on his experiences in developing extra-curricular student clinics at the Universities of Bristol and Strathclyde, Nicolson emphasises the validity of community service as a focus for clinical programs. Nicolson considers service-focused clinics to be more valuable in terms of both the services provided and avoidance of the problematic messages students absorb in education-focused clinics that prioritise student learning over community need.⁶² A weakness in Nicolson's argument is his apparent

59 Simon Smith, 'Clinical Legal Education: The Case of Springvale Legal Service' in David Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972–1982* (1994) Legal Service Bulletin Cooperative Ltd, 49.

60 See the coverage in Chapter 2 of this book.

61 Carolyn Sappideen and Figen Cingiloglu, 'Law Student Pro Bono: Report of the Australian Pilot' in Patrick Keyzer and others, cited at footnote 25, 21, 35–36. Endnote 139 refers to the coordinator's workload averaging out at two days per week across the semester.

62 Donald Nicolson, 'Legal Education or Community Service? The Extra-Curricular Student Law Clinic' (2006) 3 *Web Journal of Current Legal Issues* 6.

failure to recognise the importance of effective supervision in ensuring the quality of services delivered to the community and in providing students with effective frameworks for reflecting on their experiences in clinic-based work. Nicolson states that close supervision of students in education-focused clinics should reduce the risk of mistakes by students, but then refers to the lack of instances in his 12 years of involvement in voluntary student programs where mistakes had been irreparable. He has subsequently written elsewhere, referring to educational theory that indicates that ‘lessons learnt from experience are likely to be far more profound and sophisticated if accompanied by reflection on the experience through dialogue with others, especially those with relevant expertise and experience, and an exploration of the relevant academic literature’.⁶³

Student supervisors in Australian clinical programs have tended to come to their work with very little training, and Giddings’ research has revealed that clinicians had limited understanding of the complexities of student supervision before becoming clinical supervisors.⁶⁴ Legal practitioners who become involved in supervising students as part of an externship program are also likely to have received little or no preparation for student-focused supervision. Supervisors with experience of client-focused legal practice are likely to find the transition to student-focused supervision easier to make. Clinical models involving provision of advice to clients require students to assume responsibility for their actions in a much more direct way than in other forms of legal education. In such programs, students are compelled to recognise that their actions will influence the wellbeing of others, namely their clients. ‘It necessarily follows from the touchstone of “realism” that a student in role must bear responsibility for the resolution of the problem.’⁶⁵ This type of student development relies very heavily on supervision designed to support student autonomy.

63 Donald Nicolson, ‘“Education, Education, Education”: Legal, Moral, Clinical’ (2008) 42(2) *Law Teacher* 145, 170.

64 Giddings (2013), 69. Supervision skills workshops have been held as part of each of the last six Australian national clinical legal education conferences with a view to addressing this limited experience: 2000 (La Trobe), 2003 (Griffith), 2005 (Monash), 2007 (Griffith), 2009 (Murdoch), 2011 (UNSW) and 2013 (Griffith).

65 Andrew Boone, Michael Jeeves and Julie MacFarlane, ‘Clinical Anatomy: Towards a Working Definition of Clinical Legal Education’ (1987) 21 *Law Teacher* 61, 67.

Developing student autonomy

Clinical experiences direct the student into relatively uncharted waters, but do so with support structures involving preliminary preparation and close supervision. As their skills and confidence develop, the student can be provided with opportunities to take greater control over their future learning as they test for themselves the best ways to approach issues and problems. This introduces students to the norms of current legal practice but also, importantly, assists them to develop a framework for how they will approach the need for ongoing learning and development throughout their professional life.

Pioneering Australian clinicians recognised the challenges generated by student supervision. In a 1984 paper, Robyn Lansdowne and Neil Rees described their supervision of students involved in the clinical course at UNSW as involving:

[the] difficult task of leading students to believe that they must accept responsibility for the conduct of a particular case whilst at the same time ensuring that our clients are not disadvantaged in any way by student involvement. In part, we have to create an illusion of responsibility.⁶⁶

They had earlier referred to their approach to supervision as being ‘akin to placing students on a rope. The rope is gradually let out if a student is performing well. If a student fails to perform adequately we are forced to draw in the rope and explore every minor detail of a case with the student’.⁶⁷

In 1987 Simon Smith drew on more than a decade of experience supervising in the Monash clinical program to provide a very effective description of the clinician’s supervisory role:

Whilst on the one hand the teacher is endeavouring to develop a diagnostic/problem solving ability it has to be tempered with a benevolent power of instant veto. The supervising responsibility is a subtle animal. Exercised too harshly it can crush the student. Exercised too loosely then the client can suffer. In no other law subject is this the case. In other subjects the equation is simpler – ‘the student stuffs up, the student fails!’⁶⁸

66 Robyn Lansdowne and Neil Rees, ‘Kingsford Legal Centre: A Clinical Experience’, Paper to the 1984 Conference of the Australian Law Teachers Association, 10.

67 Neil Rees and Robyn Lansdowne, ‘Report to the School on Clinical Legal Education’ (6 October 1983) 35.

68 Giddings (2013), 186.

Supervision issues generated disagreement in the United States in the 1990s among the advocates of different clinical models, particularly between those endorsing externships and those supportive of in-house clinics. Divergent views have been taken of the particular benefits students derive from being supervised by a practitioner-academic rather than by an external person who, while often having lengthy practice experience, must prioritise other responsibilities and may have little experience in working supportively with students. This tension is usefully highlighted in the 1991 American Association of Law Schools Committee Report that noted: ‘There is a marked difference in how schools rated the level of extern supervision. Schools without in-house clinics tended to rate their level of extern supervision as high, while schools that had in-house clinics most frequently rated extern supervision as low.’⁶⁹

Various explanations are given for these variations, the most interesting being that they ‘represent self-serving statements on both sides, with schools having in-house clinics minimizing the supervision offered to externs, while schools without in-house clinics seek to defend externships as a viable alternative’.⁷⁰

Givelber and others question the significance of academic supervision of clinic students. On the basis of their analysis of the ‘co-op’ externships program at Northeastern University, they argue:

the nature and intensity of the work are at least as important as any aspect of supervision in explaining what distinguishes a good learning environment. This finding challenges one of the bedrock assumptions of clinical methodology—the centrality of an intensive, education-focused supervisory relationship.⁷¹

Further, they insist that there is ‘absolutely no empirical support’ for the notion that learning can occur only where a professional educator is present.⁷² They found that ‘both the characteristics of the job *and* the presence of supervision play important roles in students’ evaluations of their work experiences’.⁷³

69 American Association of Law Schools, ‘Report of the Committee on the Future of the In-House Clinic’ (1992) 42 *Journal of Legal Education* 508, 550.

70 American Association of Law Schools, cited at footnote 69, 550.

71 Daniel Givelber, Brook Baker, John McDevitt and Robyn Miliano, ‘Learning Through Work: An Empirical Study of Legal Internships’ (1995) 45(1) *Journal of Legal Education* 1, 3.

72 Daniel Givelber and others, cited at footnote 71, 47.

73 Daniel Givelber and others, cited at footnote 71, 38.

Givelber and others found that ‘busy hands correlate[d] most significantly with a high rating’ from students of their externship placement ‘as a learning experience’.⁷⁴ Their survey notes that the statistically significant negative factors included students finding it difficult to clarify the nature of the work assigned to them, mismatches of skills and responsibilities, and the failure to honour mutual expectations.⁷⁵ They suggest that good supervision is not enough and that it is also necessary for students to receive both written and oral feedback, and to be productively engaged throughout their placement, avoiding idle time.⁷⁶ Our response is that all of these characteristics should be viewed as coming within a broad definition of supervision that is applicable to those clinical experiences, whether supervised by academics or by other practitioners.

English clinical scholar Hugh Brayne has candidly outlined how he changed his approach to sitting in on student interviews with clients.⁷⁷ For his first four years as a clinical supervisor, Brayne ‘sat in on every student interview’, thinking ‘that I had a professional responsibility to do so’. Subsequently, following discussions with clinicians in the United States, he almost never sat in on student–client interviews. He became concerned to avoid usurping the student’s relationship with the client. Brayne considered that his previous approach had come from ‘a failure to separate the two goals of legal service and student learning’.⁷⁸

Brayne’s argument in favour of allowing students to conduct their interviews and provide advice without their supervisor present is persuasive. However, the best model no doubt depends on the individuals involved, that is, both the supervisor and the student. Students who demonstrate the capacity for relatively independent work will benefit from opportunities to assume greater control over the advice process. The extent of preparation of students through other developmental activities will also be significant. Students should be prepared for their work with real clients by observing and discussing interviews, advocacy activities and other client work conducted by practitioners. New clinic students can also learn from experienced students and by participating in simulated activities on which they receive feedback. It may also be useful

74 Daniel Givelber and others, cited at footnote 71, 32.

75 Daniel Givelber and others, cited at footnote 71, 41.

76 Daniel Givelber and others, cited at footnote 71, 38–39.

77 Hugh Brayne, cited at footnote 44, 172–73.

78 Hugh Brayne, cited at footnote 44, 173.

for students to conduct joint interviews together with another student. For such a model to work, students need to be taught how to effectively provide feedback to their peers.

Particular supervision issues generated by externships

While they have operated in Australia for a long time,⁷⁹ externship and placement programs (discussed in Chapter 3) have become more organised and much more prominent in the last decade. This has meant that students are participating in the work of a much more diverse set of law-related workplaces. Further, the external supervisors may have received little in the way of training and guidance in relation to their role and are often juggling a broader set of priorities. Academic requirements linked to external placement programs also vary considerably in terms of who organises the placement, the work students do, and the related classroom component.

The variability of externship arrangements means that the preparation of both supervisors and students is particularly important. Law schools need to provide external supervisors with advice on what constitutes effective supervision of students, together with frameworks to help them implement that supervision advice.

Those responsible for such a program need to ensure that the relationship between each student, their supervisor and the law school is based on shared understandings and realistic expectations around what each party will contribute. This tends to be more challenging for externship programs than for other clinical models where the law school retains greater control over the educational experience.

Externship students need to appreciate that their opportunities to assume responsibility for legal work on behalf of clients are likely to be limited. They also need to be realistic about the access they can expect to have to their supervisor. It is important that supervisors recognise they are engaged in an educational endeavour that needs to balance student learning with client service. Externship programs will be more sustainable if law schools also recognise the need to appropriately resource externship programs,

⁷⁹ Giddings (2013), 89, 208–09.

especially in terms of preparing supervisors and developing an appropriate classroom program that enables students to share experiences and make sense of their placement experiences.

The greater variability of student experience that characterises externship programs presents interesting educational opportunities for students to learn as much as they can from the experiences of their colleagues as well as from their own placement work. In effect, there are two complementary learning environments—the placement site and the classroom—and supervision practices have a key role to play in revealing insights from how each student experiences their placement. Debriefing with both students and supervisors about their externship experiences will be important.

How law schools can promote effective supervision

Both the Australian and United States *Best Practices* guides (compared in Chapter 10) provide advice on the structures and processes law schools should use to foster effective supervision of clinic students. Recognising the time-consuming nature of student supervision is an important first step in building sustainable practices. The Australian *Best Practices* provides for supervision ratios of 4:1 per clinic advice session, with a limit of two sessions per supervisor in any given semester.⁸⁰

Many of the clinicians interviewed as part of our survey identified training of supervisors as an issue needing greater attention. Training programs tailored to the structures and priorities of the program should be delivered in ways that enable those involved to develop shared understandings and practices. The Australian *Best Practices* guide specifically addresses the particular needs for effective training and support for supervisors involved in external placement programs, emphasising the need for a shared commitment to meaningful liaison between academic staff and externship agency staff.⁸¹

80 Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice and Ebony Booth, *Best Practices: Australian Clinical Legal Education* (2013) Government of Australia, Office of Learning and Teaching, Staff, Best Practice 5, at perma.cc/2J6E-ZMQX.

81 Adrian Evans and others, cited at footnote 80, Supervision Best Practice 4.

The United States *Best Practices* guide provides useful detail in relation to supervision, focusing on how supervisors can most productively provide feedback to students and how students can be prepared for receiving feedback.⁸² The framework set out in the report is particularly useful for new supervisors, and can provide a useful focus for discussion of supervision practices.

Close examination of the range of purposes of supervision will be useful in developing new ways for law students to constructively share and learn from their respective placement experiences through the classroom component of their clinical studies. As we noted above, clinicians take a purposeful approach to enabling students to learn how to learn from their experiences. Supervisors should be very clear about what the student is expected to learn from their clinical experience.⁸³ A purposeful approach also involves working closely with students to foster their structured reflection on what they have experienced.⁸⁴ Modelling reflective practices is an important way in which supervisors can assist students to understand how and why to use such processes. A purposeful approach further entails giving students multiple opportunities to incrementally develop the understandings and skills addressed by the clinical program.

Particular issues generated by online supervision

The use of online supervision models is likely to grow in the future. Such arrangements raise particular issues in terms of ensuring that messages are accurately conveyed and received along with needing to support effective student–supervisor relationships. Reliance on technology can generate technical issues and the absence of actual face-to-face contact alters the sense of presence between the parties. Supervisors should seek to avoid over-reliance on email and find other ways to engage with students.

If supervision occurs at a distance, then it can be helpful to use some form of video-conferencing to foster the inter-personal dimensions of the relationship. Gibson provides useful guidance on how to structure video-conferencing to make it an effective supervision tool. In essence, Gibson's

82 Roy Stuckey and others, cited at footnote 14, 175–77.

83 See Chapter 4 of this book.

84 See Chapter 7 of this book.

message is to concentrate on being an effective listener. She suggests using a formal structure that sees each participant speaking without interruption, then listening without interrupting, with conscious turn-taking.⁸⁵ It can also be helpful to prepare for supervision discussions by developing and sharing an agenda ahead of the meeting.

Principles to inform law school structures in support of clinical supervision

The Australian *Best Practices* includes the following principles relating to clinical supervision:⁸⁶

The supervision needs of students vary according to:

- 1.1 the objectives of the clinic and clients' needs; and
- 1.2 the experience and level of training the students already possess.

Supervision arrangements are designed to assist students to link theory and practice and work collaboratively with supervisors on addressing clients' needs. The arrangements also enable students to encounter a range of work (both areas of law and legal tasks) during their clinic experience.

Supervision is structured, with ground rules and clear learning objectives. As a system, it ensures students' right to supervision and feedback, together with support and respect for both supervisees and supervisors.

Supervisors meet with each student on a regular basis as well as having the capacity to respond to unpredictable events.

Development of a strong supervision relationship relies on supervisors as role models.

These student-focused principles are designed to provide a platform to assist law schools to appreciate the importance of effective supervision. They also emphasise the value of law schools engaging with both supervisors and students to make clinical experiences as constructive as possible.

85 Adele Gibson, 'Staying Connected: Videoconferenced Supervision for Rural Provisional Psychologists' (2007) October, *InPsych* at perma.cc/HK5Q-KED3.

86 Adrian Evans and others, cited at footnote 80, 17.

Guidance for supervisors

Supervisors face a challenging task in balancing the interests of their organisation and their duties to clients along with the interests of the students. The diversity of contexts in which student supervision takes place makes it difficult to develop universal best practices. This difficulty is reinforced by the limited time available to some supervisors to tailor their supervision to fit with program objectives and the needs of particular students.

The following guide provides a basic framework for use by supervisors, especially those who are new to working with students in a clinic context, whether in-house or as part of an external placement. It is designed both as a framework and a prompt for discussion as part of the training that should be a key part of preparing supervisors for their engagement with clinic students.

Understand the program

- Use the program objectives to frame your approach (see Chapter 4).
- Be clear about what the law school expects of you and each student (the intended learning outcomes: see Chapter 4).
- Appreciate the value of ‘learning by doing and reflecting’ (see Chapter 7).

Communicate clearly

- Listen carefully and encourage students to explain their views.
- Specific feedback is a key to supervision.
- Be candid and constructive.
- Be sure that students understand each task they are to complete.

Be sensitive

- Be sensitive to both clients and students. Most of us are more sensitive than we let on.
- Model an inclusive approach.

Be collaborative

- Be collaborative with students.
- Be collaborative with your clients.
- Be collaborative with your fellow workers.

Plan for student development

- Take an incremental approach to build student confidence and self-reliance.
- Often, 'less is more'. Rather than providing the answer, support students to understand the issues and identify the answer for themselves.
- Foster systematic student reflection.

Be accountable

- Elaborate on your views on the standard of student work.
- Corroborate your views with your colleagues.
- Keep a record of your key observations.
- Encourage students to be accountable.

Whenever possible, enjoy your involvement with students.

Preparing students to make the most of supervision

An aspect of supervision practice that warrants closer examination is how to best prepare students for their work with their clinic supervisor as constructively as possible. Law schools can assist their students to prepare for the learning and service opportunities they will encounter in the clinic.

Supervision issues that can usefully be addressed in preparing students for their relationship with their clinic supervisor include the following:

Prepare in a professional manner. Students should expect to receive clear instructions on the task at hand rather than have their supervisor provide them with answers to research issues. Students should check their work

before consulting their supervisor and anticipate and address issues the supervisor may raise. This can be usefully summarised as ‘make it easy for your supervisor to guide and support you’.

Consider the relationship from the supervisor’s perspective. Mutual respect is a key to any relationship. It is also helpful for students to appreciate that good supervision is time-consuming.

Receive feedback in a constructive manner. The United States *Best Practices* guide calls on students to ‘listen to the critique with care and an open mind’.

Be proactive. Taking a problem-solving approach is as important in the student–supervisor relationship as it is in the student–client relationship.

Take a reflective approach. Students should appraise their own performance and be honest about whether they have performed well.

Always remember the client. Students need to appreciate the central significance of their client in whatever work they do. Working with and on behalf of the client is central to professional work.

Ryan Cole and Wortham provide constructive advice to law students about how they can most productively approach the supervision process.⁸⁷ They emphasise the value of students being prepared, setting goals and clarifying each assignment. Clinical students should also make the most of the opportunity to learn from the experiences of their fellow students. Seminars, workshops and ‘case rounds’⁸⁸ all provide valuable opportunities for students to learn from their peers as well as from their supervisors. This is particularly effective for external placement programs where the opportunities to learn from peers are reinforced by the diversity of the legal work done in a wide range of placement sites.

It is also important for students and academics to make the most of the learning opportunities provided by group discussions as part of the classroom component of placement programs. This is particularly valuable for externship programs. The diversity of legal workplaces generates significant scope for reciprocal learning with students sharing insights and learning from each other’s experiences. The academic can usefully take

87 Liz Ryan Cole and Leah Wortham, cited at footnote 18, Chapter 3.

88 Susan Bryant and Elliot Milstein, cited at footnote 28.

a facilitative role to support the students to share their stories and then draw on the differences and commonalities of those stories to make sense of their respective placements.

Effective law student supervision project

A comprehensive set of resources to support the effective planning and conduct of law student supervision is available at the website for the Effective Law Student Supervision Project developed by Professor Jeff Giddings at Griffith Law School.⁸⁹ The website contains materials for students, supervisors and those responsible for managing programs that involve students learning through supervision.

Conclusion

Effective supervision is fundamental across all models of clinical legal education. It safeguards the interests of clients and provides the structure that supports and constructively challenges students. Supervisors have always played a central role in helping students to make sense of the complex environment they encounter. As a clinical legal education community, we need to further develop our collective understanding of what makes for effective supervision. This is especially so in relation to externship arrangements, where supervisors face competing priorities and often receive limited law school support and have had little training for their role.

Improving the preparation and practices of supervisors requires careful planning by those responsible for clinical programs. Law schools will benefit from engaging with the legal profession to promote involvement in student placement programs. As more law schools and other legal education institutions seek out placement opportunities for their students, challenges are bound to arise in terms of promoting effective practices. Clinics need to plan for the prospect that they will face expectations to further contribute to preparing students for professional relationships beyond law school.

⁸⁹ See www.griffith.edu.au/criminology-law/effective-law-student-supervision-project.

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