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# Measuring the pedagogical shift:

Small-scale review of the New Zealand Diploma in Legal Executive Studies  
(NZDipLEX)

A thesis  
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of the requirements for the degree  
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## ABSTRACT

This research focuses on the fully online New Zealand Diploma in Legal Executive Studies (DipLEX) at Toi Ohomai Institute of Technology (TOIT) that was first delivered in 2017. The development of an online program was enabled by the review of qualifications that changed the ownership of the qualification from industry bodies to a national framework. The online program has proven to be successful from an institutional perspective. Nevertheless, it has faced some criticism from the very industry bodies that took part in the initial review process that made the decision to remove industry control. Given this criticism and the review of vocational education and training (RoVE) it is timely to reflect on the qualification and its outcomes for graduates and its relationship to industry. The overarching purpose of this qualitative small-scale study is to evaluate the DipLEX to understand the benefits, if any, that have accrued from the use of constructivist approaches, including communities of learning and problem-based learning in the online environment; to explore the applicability of content and teaching techniques to the employment of legal executives; to determine the transferability of the skills and knowledge in the new DipLEX to legal practice, particularly in the short term (e.g., the first six months of employment); and to identify strengths and weaknesses of the DipLEX. To achieve these aims, interviews were held with five graduates and three employer representatives. The findings from these interviews included a range of sub-themes that stemmed from the overarching topics of learning and transition to work and in employment. For the graduates, sub-themes included thoughts on the benefits and challenges of online learning, the benefits of applied learning and the graduates' views on assessment structures, the role of the diploma in their job search, and initial employment and progression experiences. For the employers' representatives' the sub-themes included thoughts on the value of the diploma in law firms, the employers' lack of understanding about the diploma, their wish list for the learning they would like to see included the diploma program and their views about online learning. Further sub-themes included the employers' observations on firm-based practices within the profession of legal executives, including their recruitment, initial employment experiences, including the importance of professional development and career progression. Based on these findings discoveries of note were made in relation to (1) online

learning, (2) disconnections between education and industry and (3) gender dynamics that provided a basis for recommendations to improve the experiences of students in the online DipLEX program. Despite extensive consultation and reviews, this research demonstrates an enduring gap between education providers and industry. This disconnect needs to be addressed as per the vision of Te Pūkenga. In particular, that the structure of law firms includes gendered practices that hinder recruitment and career progression need to be discussed with the students. Finally, this research demonstrates that online learning can be effective, particularly when strong relationships with teachers are maintained and communities of learning are facilitated.

## PREFACE

I have enjoyed two distinct professional careers throughout my working life: first as a registered nurse and then as a lawyer. I was fortunate enough, during my professional nursing education, to have experienced a variety of practical training in preparation for this professional role. I first completed a two-year Diploma in Nursing that was hospital based. The curriculum involved alternating two weeks of theory and two weeks of hospital practice. This Diploma prepared its graduates to hit the ground running as novice practitioners and my experience was just that. I still had a lot to learn, but I essentially knew what it was going to be like working as a nurse. Next, I attended university to obtain my Bachelor of Science (Nursing). This program was heavily weighted toward academic work and had a smaller component of practice. Later in life, I attended university to obtain my Bachelor of Laws. Again, this was highly academic work with very few practical components. However, there was a requirement to attend a post-degree legal practice course that taught the basics of the skills required to function in a law practice. This program allowed successful candidates to become practicing lawyers by way of admission to the profession through the High Court of New Zealand. It is fair to say that my personal experiences in tertiary education, both vocational and university based, have had an influence on my teaching practices and research interests.

I entered the tertiary teaching workforce for the first time in 1996 as part of a teaching team delivering the first year of a new Bachelor of Nursing program. I was a victim of the legislative aspects of employment law and policy in tertiary education at that time, when fixed-term contracts were being increasingly used to hire staff. I left my nursing educator role for more secure work and did not re-enter tertiary education until many years later after completing a law degree, entering legal practice and having a family. This is where my online teaching and learning experiences started.

My interest in online learning has not been a journey of choice but one of necessity imposed by my employer under the constraints of the tertiary education system. I re-entered tertiary education in 2013 to teach in a legal studies program called the New Zealand Law Society Legal Executive Diploma (NZLS LEX Diploma) at the local polytechnic, known at the time

as the Bay of Plenty Polytechnic (BOPP). In a push to increase enrollments, there was a drive to offer all the legal studies programs online at the BOPP. In 2013 the NZLS LEX Diploma was in a transitional period in which face-to-face delivery (F2F) was being supplemented with the gradual offering of courses online. By 2016 the increasing online enrollments overshadowed the traditional F2F enrollments and a decision was made to only offer the NZLS LEX Diploma online. Alongside this decision there was a national review of the NZLS qualification which resulted in the creation of a new qualification and the phasing out of the NZLS LEX Diploma. The new qualification was called the New Zealand Diploma in Legal Executive Studies (NZ DipLEX), and after consultation with the legal industry the BOPP stepped up the development of this program after the ownership and control by the NZLS was removed. The re-development of the new Diploma and my desire to continue to provide a quality experience for my students within the constraints of the online environment has fueled my interest in online learning ever since. Despite the aspects of F2F learning that are sorely missed, I have chosen to embrace online learning as a mode of delivery, but still continue to question my teaching practice and reflect on its effectiveness.

Embracing both the F2F and online teaching methods simultaneously until 2016 was an interesting experience of clashing pedagogies, developmental hiccups and excessive workloads. All of us in the teaching team found ourselves developing online resources at pace, often finishing them shortly before teaching was to take place. The immense pressure of adapting F2F resources for online delivery was not an easy task but nevertheless we muddled through the process in the hope that quality and student experience would not be compromised. It has now been more than eight years in the journey of online teaching and is therefore time to take stock of the reasons why we do our jobs as both tertiary and vocational education teachers. My aspiration is to teach students the knowledge and skills of a legal executive that will help them gain employment, transition smoothly into practice and become ethical professionals. This research aims to gain some insight into my aspirations for the program but also to evaluate the level of our development and teaching efforts in the NZ DipLEX in achieving these goals.

## ACKNOWLEDGMENTS

There are a number of people whom I need to acknowledge that have supported me through this thesis journey.

I first need to mention the late Dr Paul Harris, who sparked my interest in Labor Studies in my very early stages of my Social Science study. My current supervisor knew and worked closely with him over her academic career and his legacy lives on in everyone who knew him. I am forever grateful to him for that.

My current supervisor really is a gem. Dr Gemma Percy has guided me through this journey with patience, compassion and understanding for my circumstances. Although I have struggled with the unknown in this journey, she has supported me with her friendship, her time, her experience and her valuable insights into the research process. She has given me strength, confidence and support throughout. I will be forever grateful for this.

One of my saviors in this project was Dayna East. She is a fellow master's student, on her research journey like me. She kindly stepped in to do some of my graduate interviews at the eleventh hour when the person originally scheduled to do them pulled out. To take on this extra work for me, on top of her own study, has reminded me how unselfish and giving people can be.

The other savior in this project was my dedicated transcriber, Lehandra Wade. She entered my research journey after I realized how impossible it would be for me to transcribe all the interviews and also write up my thesis to meet the submission deadline. I am grateful for the important part she has played in my success as without her I would not have been able to finish on time.

Likewise, I would like to thank my proofer, Rosie Campbell, for her patience and attention to detail when helping me sharpen up the document when I could no longer be objective about it. Proofing is an important part of the submission of a thesis, and also a difficult part, one which will I admit is not one of my strengths.

I would like to thank Toi Ohomai Institute of Technology, my employer, for their support throughout, and in particular the Research Committee, who provided funding for a conference I attended in Sydney, Australia, to present the beginnings of my research findings. This was an

important exercise to flesh out the topic and to have a fully grounded position when I started writing the thesis. In addition to this I would like to personally thank Cath Fraser and Heather Hamerton, who encouraged me to attend a writing workshop to help me restart my thesis after most of my progress was disrupted due to the Covid-19 lockdowns.

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Without the love and support from all these people, my journey would have been a lonely one. I wish to share my success with everyone and acknowledge that each and every one of them has played an important part in the completion of this thesis. This shared success gives so much more meaning to this experience; well beyond the parchment it is written on.

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## LIST OF ABBREVIATIONS AND ACRONYMS

AML	Anti-Money Laundering
BOPP	Bay of Plenty Polytechnic
CTU	Council of Trade Unions
ERA	Employment Relations Act 2000
EA	Education Act 1989
EER	External Evaluation and Review
F2F	Face-to-Face Teaching
ILO	International Labor Organization
ITA	Industry Training Act 1992
ITO	Industry Training Organization
LIM	Land Information Memorandum
LMS	Learning Management Systems
NZ DipLEX	New Zealand Diploma in Legal Executive Studies
NZLS	New Zealand Law Society
NZILE	New Zealand Institute of Legal Executives
NZQA	New Zealand Qualifications Authority
NZQF	New Zealand Qualifications Framework
PBL	Problem-Based Learning
RoVE	Review of Vocational Education
TEAC	Tertiary Education Advisory Commission
TEC	Tertiary Education Commission
TEL	Technology-Enhanced Learning
TEO	Tertiary Education Organization
TES	Tertiary Education Strategy
TOIT	Toi Ohomai Institute of Technology
TRoQ	Targeted Review of Qualifications
VET	Vocational Education and Training
VLE	Virtual Learning Environments

## LIST OF FIGURES

Figure 1: Checklist of Criteria for Analysis of Qualitative Data

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## CHAPTER 1: INTRODUCTION

The overall purpose of this chapter is to introduce the scope and focus of this research project. The chapter begins with a broad overview of the focus and then presents background information of why the research has been undertaken. Then the topic of the research is introduced along with a discussion around the central purpose of the study. The structure of the thesis will then be outlined as the concluding point of the chapter.

In the New Zealand context, even pre-Covid-19, tertiary educational institutes have embraced online learning and recognized that online delivery can be a cost-effective solution to overcoming existing barriers to participation experienced by some groups of society. More specifically, due to the challenges currently facing the vocational education and training sector (VET) in New Zealand, such as provider sustainability and the worldwide Covid-19 pandemic, online learning has become an inevitable pedagogical shift and, in some respects, a necessary step to enable the continuation of certain programs of study in the changing world we find ourselves in (Bahia & Murphy, 2014; Hartnett, 2020; Steele, 2014; Tertiary Education Commission, 2019). What that means is that online learning in New Zealand will not be going away anytime soon. In fact, it is highly likely that there will be pressure to increase the number of programs that can be offered online in the tertiary education sector, and more specifically in the VET space. While this is not a bad thing, those experienced in online teaching know very well that the research shows that course completion and program retention rates are generally lower than those seen in the traditional F2F programs.

In the context of Aotearoa/New Zealand, there has been very little research done into the education and training of Legal Executives. The New Zealand Institute of Legal Executives provides regular survey data on salaries and working conditions to its members via their website ([nzile.org.nz/nzile-member.php](http://nzile.org.nz/nzile-member.php)), but this data focuses on legal executives who are already employed and have already completed their legal executive education and training. The

absence of such research warrants an evaluation of the current NZ DipLEX Studies developed by Toi Ohomai Institute of Technology and delivered fully online.

This qualitative research is a small-scale study that explores the experiences of the graduates during their study and further on into their employment. It also aims to capture the experiences of the employers with transitioning graduates to gain a better understanding of how effective the online Diploma is in providing the foundation of knowledge and skills needed to function as a legal executive in practice.

## **RESEARCH SIGNIFICANCE**

The explosion of online programs internationally and the increasing use of a variety of teaching technologies has filtered through all levels of education, but the extent varies from institution to institution and faculty to faculty. At Toi Ohomai the Legal Studies programs, including the NZ DipLEX Studies, are being delivered in a fully online environment using teaching technologies to bring flexibility to student learning. In contrast, it is well known that some law faculties continue to use predominantly lectures and PowerPoint presentations for their delivery. Their hesitation in or rejection of using alternative teaching methods and incorporating information and communication technologies (ICT) that support a more active learning approach creates pedagogical questions for tertiary teaching in legal education (Kirley, 2015). As far back as 1999, Chetwin and Edgar (1999) suggested a more active approach to legal education by encouraging law faculties in Australia and New Zealand to embrace new technologies and incorporate them into their teaching strategies. More recently, Stephen (2017) suggests that successful online environments can provide a law student with the ability to focus on collaborative, meaningful context-based learning that provides a pathway to an engaging learning experience that is key to their success. The online environment has developed into an appropriate platform for teaching the NZ DipLEX Studies as a result of the clever use of ICT. Underpinned with a constructivist pedagogical approach, this environment has given our students and teachers multiple ways to foster the important connections in the learning environment that ensures students have an enriched and engaging learning experience.

## RESEARCH FOCUS

Bayerlein et al. (2021) assert that higher education, in conjunction with employers and professional associations, is key to the development of a skilled workforce ready for the challenges of the future. This thesis is broadly aligned with this statement as its focus is concerned with delivery and development of online tertiary qualifications in the vocational education and training sector (VET) and its relationship with industry bodies in the context of government policy, educational philosophy and the relationship and effect this has on labor markets.

In the context of higher education and VET, there is a strong emphasis on developing and delivering online learning programs (Bahia & Murphy, 2014; Hartnett, 2010). The shift to online learning has been driven in Aotearoa/New Zealand by the need to be internationally and domestically competitive in terms of student enrollments and to provide the flexibility that some employers need to ensure workers can access formal learning opportunities (Hartnett, 2010; Steele, 2014). However, while online pedagogical practice has a lot to offer in terms of flexibility, it also can present challenges for teachers and students, particularly when the development of online programs is reactive to market demands rather than good pedagogical practice. From a policy perspective, this market-driven approach is directly related to the pressures in the tertiary education sector placed on it by the neo-liberal ideologies of the 1990. The key principles of this ideology include the limited role of government, individual freedom of choice and the primacy of the market. Each of these principles has driven government policy and the tertiary sector into an environment that facilitates a competitive market environment as opposed to one that encourages collaboration for the public good (Batters, 2010).

The consequences of the neo-liberal policies and competitiveness within tertiary education initiated a number of reforms within the sector that remain in existence today. The New Zealand Qualifications Authority (NZQA) was established as a Crown entity in 1989 to be responsible for administering educational assessment and qualifications for secondary schools and non-university tertiary training or VET. In 1991 a single unified system of qualifications was

introduced and subsequently named the New Zealand Qualifications Framework (NZQF). The intention of this national framework was to ensure that the usefulness, relevance and value of qualifications was directly linked to the workforce and skill needs of individuals, groups of learners, employers, industries and communities. The policies and processes around the newly established NZQF required each qualification listed to be developed collaboratively with a wide range of stakeholders from both education and industry (NZQA, n.d.).

There have been many changes that have taken place since the development of the NZQF but the targeted review of qualifications (TroQ) that commenced in 2008 has been the most significant. The review was initiated in response to concerns raised by industries, employees and unions about the relevance of the existing vocational qualifications and the overabundance of qualifications that appeared within the market-driven environment of VET education. This review found that the qualification system was difficult to understand, was not user-friendly and contained a large number of similar qualifications that made identifying career pathways difficult. The TroQ review simplified the system by reducing 4,610 qualifications down to 1,200 and its new processes now prevented the duplication and proliferation of qualifications (NZQA, 2009, 2016, n.d.).

It is in this wider context that the focus of this research lies: understanding the complex web of relationships that exist between educators, industry bodies and government policy, and how it can affect the development of a qualification such as the NZ DipLEX Studies and the employment experiences of its graduates within the labor market.

## **PURPOSE OF STUDY**

The background of this research is presented as a narrative on how a qualification redesign process, fraught with tension between industry bodies and a government-driven demand for change, was able to provide a context where good online pedagogical practice could be leveraged to create a positive result for students and teachers. As confirmation of the current delivery of the Diploma, this research seeks to further evaluate the program by looking beyond the educational provider to see how the Diploma learnings are translating into legal practice.

More specifically, this research seeks to understand the benefits, if any, that have accrued as a result of the development and delivery of the new NZ DipLEX Studies program. It also seeks to identify both the strengths and weaknesses of the program in order to ensure there is an appropriate alignment with the student and employer needs and expectations. There is already anecdotal evidence that the students' and employers' expectations are positive about the program, so this research seeks to find further details that may support or refute these informal findings and to confirm what is working, what is not and how we can improve the online delivery of the Diploma. There is also anecdotal evidence and continual institution-led quantitative surveys that support the effectiveness of the teaching team in the delivery of the program that may also further support or refute these findings. The honeymoon phase of the first five years of delivery has seen a sustained level of enrollments, but this is really only a quantitative look at the success of the program.

This qualitative research seeks to delve beyond solely the numbers and to also take a forensic look at the teaching, learning and outcomes of the NZ DipLEX Studies. This delves beyond the numbers will also look to confirm the literature around the use of a constructivist design for online learning and how it has translated into an effective pedagogical design that encourages collaboration amongst learners. With these specific purposes set out, this research seeks to generally improve the current program and support the existing efficacy of online legal studies programs.

## **RESEARCH AIM**

The overarching purpose of this research is to evaluate the NZ DipLEX Studies using a small-scale investigation of graduate and employer perspectives. More specifically, my research aims to:

1. understand the benefits, if any, that have accrued from the use of constructivist approaches, including communities of learning and problem-based learning in the online environment;
2. explore the applicability of content and teaching techniques to the employment of legal executives;

3. determine the transferability of the skills and knowledge in the new NZ DipLEX to legal practice, particularly in the short term (e.g., the first six months of employment); and
4. identify strengths and weaknesses of the NZ DipLEX Studies.

These qualitative research aims will be explored using the theoretical framework of “social constructionism” that will focus on understanding the experiences of the graduates and employers by talking with them by way of interviews that will be recorded, read, re-read and reflected upon. The analysis of the findings will then be framed by way of an autoethnographic approach where the use of autobiographical experiences and insights are woven within the writings of the thesis.

## **THESIS STRUCTURE**

This thesis contains eight chapters. This first chapter includes an introduction to the research by way of an overview of its background, scope and focus, research aims and significance.

Chapter Two sets the context of the research by giving an overview of the history of the NZ DipLEX, including the policy and industry influences that existed within the tertiary environment at the time. My personal experiences will be woven into the contextual chapter to give the reader a clearer understanding of the research being presented in this thesis.

Chapter Three reviews the literature related to online learning. Specifically, it looks at the key benefits and limitations. The limitations are expanded into inequality of outcomes, industry perceptions and the resistance to online legal education. Next, the chapter reviews the literature on the use of constructivism as a pedagogical approach that aligns with delivery of online programs. Finally, this chapter looks at the general topic of transition to the workplace to provide a framework of evaluation for the findings.

Chapter Four addresses the methodology and methods that were used in this research based on a social constructionist paradigm. This chapter includes descriptions of the participants and of how data was collected and thematically analyzed.

Chapters Five and Six present an analysis of the findings that emerged from the interviews with the graduates of the NZ DipLEX Studies (Chapter Five) and the employer/employee representatives (Chapter Six). Each of the findings' chapters are arranged in themes and sub-themes with the use of selected quotes from the interviews to establish and substantiate the development of each.

Chapter Seven analyses and discusses the key findings from chapters five and six, linking them to the literature discussed in chapter three. Some new literature to support the unexpected findings is used to develop the discussion and support these findings.

The final chapter outlines the conclusions that have arisen from the findings and offers recommendations that may improve the online delivery of the NZ DipLEX and the key relationships that exist between both industry and employer law firms. The strengths and limitations of this research will also be summarized along with recommendations of further research.

## CHAPTER TWO: CONTEXT

The purpose of this chapter is to describe the redevelopment process of the Legal Executive Diploma to give a better understanding of the background to, and illuminate the overall focus and aim of, the research. To do this, the chapter draws on internal policy documents, academic literature, wider policy documents and my personal experiences within the law profession and the redevelopment of the diploma (autobiographical).

The chapter is organized into three sections. The first section presents an overview of available research on legal executive education. This section also includes a discussion of university legal education. The value of this discussion is to explore commonalities between the qualifications (Law degree and Legal Executive Diploma) and to help interpret and reflect on my experiences as a law student and teacher of legal executive studies.

The second section of this chapter presents an historical overview of the New Zealand legal executive qualification and its development over time. The purpose of this section is to show how the relationships between the educational providers and industry bodies evolved over time including the creation of the New Zealand Institute of Legal Executives (NZILE).

The third section explains the New Zealand qualification management system governed by the New Zealand Qualifications Authority (NZQA). The purpose of this section is to provide an explanation of the policies and quality management processes involved with VET qualifications. A focus of this discussion is around the quality review process known as the Tertiary Review of Qualifications (TRoQ). The TroQ process is central to grasping the changes that have taken place within the legal executive qualification. Pre-existing tensions between the industry and the educational providers emerged during the review process that continued after Toi Ohomai redeveloped the Diploma and moved delivery to fully online. My personal reflections on these tensions and the shift to a fully online Diploma are included in this section. In particular I highlight the conscious adoption of constructivist practices in the redevelopment of the Diploma. The chapter concludes with a summary of the issues relevant to establishing the wider context of this research.

## LEGAL EXECUTIVE RESEARCH

It is noteworthy that very little research has been done on the education or transition to work experiences of legal executives in New Zealand. The only research located included Churchill (2002), who researched the experiences of the 2002 graduates of the Legal Executive Certificate in 2002, a study supported by New Zealand Law Society (NZLS). At that time the NZLS owned and administered the qualification (various educational institutes delivered the certificate program). The small-scale findings were based on a questionnaire completed by a sample of 68 graduates. Churchill analyzed the graduates' profiles, employment and salary bands, satisfaction with the program and the effectiveness of the teaching, content and assessments. The findings varied overall and were inconclusive in relation to overall graduate satisfaction with learning and employment expectations.

While Churchill focused on students, his findings and arguments reflect some of my experiences as a teacher and program coordinator of the NZLS Legal Executive Diploma between 2013 and the redevelopment that started in 2016. At this time the program structure, content and assessments were controlled by the NZLS and there was very little opportunity for the students or teachers of the Diploma to have a voice that could influence change in the program. A perfect example was the debate around the use of NZLS exams and the grueling, unfair schedule of sitting six exams in three days. Churchill (2002) identified the student's perspective on the unfairly tight exam schedule, but the NZLS made the economics of running the exam a priority over fairness to the students. Also, an interesting comparison with Churchill's findings are my experiences talking with past graduates of the NZLS Diploma and their job-seeking and employment experiences. Both my experiences and Churchill's findings indicated that some graduates were disappointed and disillusioned by the lack of job opportunities and skills gained during their study. While Churchill did not criticize the NZLS directly, he did express his belief that the students' voices were "deserving of a wider audience" (p. 4). The other debate that continued during my experience teaching and coordinating the NZLS Diploma was the educational providers' desire to either remove the NZLS exams or add internal assessments to the assessment matrix. The educational providers, even as experts in tertiary education delivery and pedagogy, could not convince the NZLS to

change their views on assessments. It is fair to conclude that having worked with the NZLS during this time highlights some of the frustration experienced by myself, our teaching team and the other educational providers in advocating for the student voice and greater pedagogical control over the program of study (Martell-Stark & Piercy, 2018). These tensions continued, without redress, throughout the life of the NZLS qualification until the 2017 NZQA TRoQ review resulted in the development of a new qualification now referred to as the NZ DipLEX Studies thus removing control from the NZLS (Martell-Stark & Piercy, 2018).

Despite the lack of legal executive research in New Zealand, there are international examples of research focused on legal affiliates, known as paralegals (Dahlborg, 1997; Harris, 1996; Ingleby & Gibby, 2016; Morris, 2012; Pistone, 2020). For the purpose of this research, the term paralegal is analogous to the term legal executive. Two examples of note include commentary on North American systems. Harris (1996) compared the development of paralegal education in the United States and Australia to advocate for the kind of development the paralegal role has experienced in the United States. Harris argued that the lack of development in Australia stems from lack of support from both the legal profession and academia for the role to have more prominence. Harris's research demonstrates the power relations and tensions extend beyond industry regulatory bodies to include the role of educational providers.

In Ontario, Canada, successful consultation between the legal industry and legal educators has resulted in the implementation of a regulatory framework for paralegals in conjunction with the Law Society of Upper Canada. The regulation of the paralegal profession has opened the doors for paralegals to become sole practitioners with a license to practice in their own right. One of the main driving factors for the regulation of paralegals in Canada was to enhance public access to justice and to ensure protection for those receiving legal advice from non-lawyers (Morris, 2012). The regulation of the profession put the spotlight on paralegal education. Significantly, Morris found that the lack of pre-requisites for acceptance into a program of study, inattention to basic language skills, inattention to substantive legal knowledge and overall lack of practical skills were problems for both graduates and industry bodies. Another criticism was that the educational institutes seemed to be "teaching to the

test” as opposed to teaching for preparation toward practice (Morris, 2012). This criticism of teaching to the test could be described as “teaching to pass the exam” in the New Zealand context. This criticism therefore was analogous to that raised by the educational institutes as part the 2017 NZQA review process of the NZLS Legal Executive Diploma.

The minimal research done on legal executive education is dwarfed by the numerous research papers written about different aspects of general legal education such as pedagogy, the use of technology and program structures (Chetwin & Edgar, 1999; Daly, 2002; Gerken, 2021; Ingleby & Gibby, 2016; Kirley, 2015; Matasar & Shiels, 1994; Pistone, 2015, 2020). These refer mostly to the education of law practitioners at the university degree level but nevertheless some of the problems, pedagogical practices and trends apply to the experiences of legal affiliates who invariably work closely in the same legal services areas. For example, the research by Fraser et al. in 2013 on the transition of law students into practice highlights how legal faculties are being urged to include more practical course components in response to industry feedback about the shortcomings of graduates. Pistone (2015) gives another example by strongly advising legal educators that the era of indifference about learning technologies in legal education is over. More recently, Pistone (2020) has encouraged legal educators to embrace new innovative technologies and be proactive in responding to the technological changes in legal practice. The most interesting aspects of Pistone’s 2020 discussion around advancing technologies in legal education and practice was the potential to expand the role of paralegals in order to improve access to justice within communities. A detailed account of the pedagogical practices in legal education is beyond the scope of this thesis but nevertheless, the history and influences in the development of university legal studies pedagogy parallel some of the challenges faced in the development of legal executive education in New Zealand and provide valuable insights into legal education across all levels of study.

## **HISTORY OF LEGAL EXECUTIVE QUALIFICATIONS IN NEW ZEALAND**

The development of qualifications for legal executives can be traced back to the mid- to late 1960s. Two qualifications were developed: the *Legal Executives Certificate of the New Zealand Law Society* and the longer *Technicians Certification Authority’s New Zealand*

*Certificate in Law*. There was a lot of tension between the institutions offering these two qualifications in the early 1970s that was eventually resolved in favor of the shorter qualification, which had been facilitated and initially delivered through the Auckland District Law Society (Auckland was and is a major economic hub and is the largest city in New Zealand). Over time most of the provision was transferred to the Technical Correspondence Institute (now called the Open Polytechnic of New Zealand). However, the Auckland District Law Society eventually transferred the administration of the qualification to the New Zealand Law Society in Wellington in the late 1980s. Then in 1991, a syllabus review was conducted, and changes were made within the qualification. After the appointment of a course director, Dr Cordelia Thomas, in 1995 these reviews were conducted annually with the NZLS and the educational providers. A further review headed by the New Zealand Qualifications Authority was conducted in 2010 that resulted in an altered title from a certificate to a diploma, moving the qualification to level 6 on the New Zealand Qualification Framework (NZQF) (Hunt, 2016). The title of the qualification at this time changed to the New Zealand Law Society Legal Executive Diploma (NZLS LEX Diploma) and remained that way until the completion of the latest NZQA review discontinued this qualification. The new qualification developed in 2016 was called the New Zealand Diploma in Legal Executive Studies (NZ DipLEX Studies). It is important to note that the New Zealand Law Society owned the Legal Executive Diploma for well over 20 years before the qualification was redeveloped through the TRoQ process discussed in the following section. During that time the Diploma had not significantly changed in content, delivery or assessment structure except for keeping up with the legislative changes that frequently occur over the course of a year embedded through the annual reviews.

In tandem with the qualification development over the years, a professional body was set up in 1975 called the New Zealand Institute of Legal Executives (NZILE). This professional association provides a registration brand and promotes collegiality amongst its members who can identify themselves as Registered Legal Executives (Hunt, 2016). The main benefit provided is a strong network for its members and its promotion of registration as a form of professional development, quality control and collegiality through their close relationship with the NZLS.

The NZILE, although a separate entity in its own right, has a highly dependent relationship with the NZLS as these two professions work very closely together in practice. The NZILE also somewhat depends on the NZLS for their continuing legal education requirements and sponsorship of their biannual conferences for which, from my experience, the majority of speakers are expert lawyers in their fields.

In terms of industry practices amongst legal executives, there is a visible tension between those who identify as legal executives (who may or may not have the diploma) and those who choose to become registered legal executives (who need to have the diploma to become registered). These tensions are exacerbated by the lack of legal requirement to be a registered legal executive. Staff are incentivized to register because the status provides some scope to perform certain tasks recognized in legislation (Oaths and Declarations Amendment Act 2001; Protection of Personal and Property Rights Amendment Act 2007), however, these tasks are minimal in terms of a legal executive's broader duties (NZILE, n.d.). By reaching "fellow" status under the NZILE registration brand, those working in a law firm can sign statutory declarations. However, staff classed as registered legal executives are unable to do this until after eight years of practice. Given the length of time required to reach fellow status, the incentive to become registered is a less attractive option. In addition to holding the Diploma, registration applicants must be doing at least 70% legal executive work if their role includes other aspects of legal work such as personal assistant, practice manager or trust accounting. Given that many legal executives begin as legal secretaries and other affiliate roles, this requirement also may act as a disincentive to register. There are opportunities to be a "support" member of the NZILE when you don't meet these criteria so participation in the professional body is encouraged during the career progression towards working as a legal executive. While it is understandable that the brand of a registered legal executive needs to be protected from those who are not members, from my perspective, it is the qualification that creates a pathway into registration. The pathway or progression within the role as a registered legal executive should then be guided by a set of consistent skills, knowledge and experiences developed in the workplace over time within a particular practice area. Therefore, because there is no legal requirement to be registered and new graduates are essentially excluded from

becoming registered after completing the qualification, the professional body does not have the power or organizational influence to bring the changes needed to become a fully recognized and regulated profession.

## **REVIEW OF QUALIFICATIONS**

Toi Ohomai Institute of Technology is a subsidiary of Te Pūkenga and is one of the largest tertiary education providers in the Bay of Plenty and South Waikato regions, with more than 12,000 students studying online and across more than 25 delivery sites (Steele, 2014; Toi Ohomai Institute of Technology, 2021). It plays a significant role in the ongoing development of New Zealand's economy and society by meeting the education and employment needs in the region and beyond (Toi Ohomai, 2021). An institute of technology or polytechnic is responsible for delivering "technical, vocational and professional education." They also promote research, particularly applied and technological research, to aid the development of innovative educational practices and improvements around delivery (New Zealand Qualification Authority, n.d.).

Institutions of Technology and Polytechnics (ITPs) such as Toi Ohomai deliver qualifications that are accredited by the New Zealand Qualifications Authority (NZQA), which is a crown entity that also administers the NZQF. This framework records qualifications across ten levels. Levels one to four are at certificate level while levels five and six are at diploma level. Level seven and above are at degree level and include a range of diplomas and certificates. Level eight is for honor's degrees, level nine for master's and level ten is for a doctorate/PhD (NZQA, 2010). Qualification design is mostly based on criterion-referenced assessment whereby the framework details the provision of learning outcomes. These learning outcomes are described in terms of the knowledge, skills and attributes that graduates must demonstrate upon completion of a listed qualification. NZQA also provides a quality assurance process for these qualifications through different internal and external review processes that involve relevant stakeholders from tertiary providers and industry representatives. Once a qualification is listed on the NZQF, ITPs and other tertiary organizations can develop programs that are

pitched at the appropriate level on the framework and incorporate the specified learning outcomes that are (re)developed as part of the review process (NZQA, 2016).

The management of the NZQA qualifications involves two types of mandatory review processes. These are regular reviews of individual tertiary organizations and reviews of all the qualifications listed on the framework. First, the tertiary organizations are reviewed by NZQA through an external evaluation and review (EER), which is a systematic process of enquiry to determine independent judgments about performance and capability surrounding educational performance and self-assessment (NZQA, 2021). EER reviews result in NZQA identifying whether they are “highly confident”, “confident”, “not yet confident” or “not confident” with the organization's performance. The second review is a Targeted Review of Qualification (TRoQ). The TRoQ review process is administered and facilitated by NZQA and includes the participation of all relevant stakeholders such as education providers and industry bodies. This review process commenced in 2008 in response to concerns raised by employers, employees and unions about the relevance of vocational qualifications and the difficulty in understanding the qualification system (NZQA, 2009). This review resulted in changes that streamlined and simplified the qualification system and developed new requirements for the listing and review of qualifications in order to reduce duplication and proliferation (NZQA, 2010).

### **TROQ REVIEW OF NZLS LEGAL EXECUTIVE DIPLOMA**

NZQA commenced the TRoQ review of all level 6 diplomas in 2010. The NZLS Legal Executive Diploma was part of this review. The review process took a total of four years commencing in 2013. As part of the process all the stakeholders were brought together, including the primary deliverers of the Diploma, New Zealand Law Society, New Zealand Institute of Legal Executives and other ITPs involved in the delivery of the Diploma program. Information and evidence were exchanged amongst the group about the history of the qualification, the current status, student demand and sector endorsement of the qualification to determine the future direction and changes needed.

The TRoQ review process progressed slowly, and it was evident over the four years that there were a number of pedagogical and educational issues raised with the industry bodies. The

most consistent issue raised was the industry insistence on the use of exams as a form of summative assessment to gain the qualification. The exams were set, administered, assessed and moderated by the NZLS. The persistent use of exams was incentivized by the way the NZLS financially benefited from having legal executive students to administer. Students enrolled in the Diploma at an educational provider paid their tuition but also had to make an additional payment to the NZLS to register as legal executive students. There were additional compulsory fees to sit each of the six final exams in order to obtain the qualification. NZLS also sold photocopies of past exam papers for students to use as a study resource to prepare for the exams. These additional payments to the NZLS often caused students financial hardship. In addition to this, the scheduling of exams over a short period of time and outside the institutions' normal scheduling created a lot of practical difficulties for the students. Other areas of tension noted beyond the exam issues were that both the NZLS and the NZILE were resistant to the student-led demand for options to engage in full-time study and the providers' preference to engage in online delivery. To describe what it was like to work under these constraints I have coined the term *pedagogical straight-jacket* (Martell-Stark & Piercy, 2018).

The TRoQ review findings around the NZLS LEX Diploma did not warrant an overall removal of a legal executive qualification on the framework but instead determined that a new national qualification was necessary to align more with the demands (NZQA, 2009). The discontinuance of the NZLS owned LEX Diploma resulted in the removal of many years of industry ownership and control of the qualification. It also fundamentally changed the ability of the educational institutions to develop and deliver qualifications based on modern pedagogical design. More importantly, it improved both students' and teachers' educational experiences by removing the "pedagogical straight-jacket" and putting the learners' needs first. The new qualification was developed and listed on the NZQA framework in August 2016 as the New Zealand Diploma in Legal Executive Studies (NZ DipLEX Studies). Once on the NZQA framework, providers could develop the program of study and apply to NZQA for accreditation.

## REDEVELOPMENT OF THE DIPLOMA USING A CONSTRUCTIVIST APPROACH

Toi Ohomai Institute of Technology was the first provider to obtain accreditation to deliver the NZ DipLEX Studies in 2017. As such, the qualification redevelopment included changes such as moving away from the use of exams, greater provision of papers to facilitate full-time study, and a shift to a program that was better able to be delivered fully online. As program coordinator and academic staff member at Toi Ohomai, I was directly involved in the process of developing the program for accreditation and delivery. The process of creating a new program of study began many months before NZQA listed the new qualification and involved a collaborative team effort between content experts, online instructional design experts, academic advisors and curriculum developers. I coordinated meetings with the legal executive teaching staff to discuss the development and content of each new course. Each course was an evolution of ideas that were shaped over time using both the experience and knowledge of the academic staff members and the expertise of the academic advisors. The importance of the alignment of the newly developed graduate profile with the teaching approach, learning objectives and assessment development was crucial to ensuring an effective program would be developed and delivered.

My experience and interest in the (re)development process at that time encouraged me to explore the theoretical aspects of curriculum/course design. This process ensured that the new Diploma courses were designed to achieve the program outcomes and aligned with a pedagogy that was appropriate for student learning in the online environment. Constructive Alignment (Biggs & Tang, 2011) was used in the development of each of the courses within the program of study. This basic model ensured that the learning outcomes were formulated first, then the assessments regime was designed and then finally the teaching and student activities were developed and aimed at achieving these outcomes. There were templates used for each of these areas of development that ensured the graduate outcomes, learning outcomes and other curricular objectives were visible during the process. This alignment of the main aspects of curriculum design can be seen to take advantage of the tendency of students to learn what they think they will be assessed on (Biggs & Tang, 2011). More specifically, it was what the *student does*, rather than the teacher (Tyler, 1949) that was central to the

development of the online activities. The constructive alignment and student-centered approach to learning used in the development of the Diploma was further underpinned by a broader pedagogical approach known as *constructivism*. Constructivist theories of learning state that learners mentally construct their own knowledge through cognitive processes that result from social relationships or interactions (Young & Collin, 2004).

The other key aspect of constructivism that underpinned the development of the NZ DipLEX Studies Diploma was the importance of collaborative learning in the online environment. As a result, certain strategies and techniques were used for learning. For example, problem-based learning (PBL) was used extensively in the redevelopment to bring real legal problems to the forefront to enable the students to talk through the issues and solve the problems together. PBL is a teaching technique based on constructivism that produces a richer learning environment and improves outcomes in terms of the learners' knowledge, skills and attitudes (Wood, 2008).

Another example of an approach used for encouraging collaborative learning that also aligns with constructivism is the use of information and communication technologies (ICT). Learning with technology is more than making activities digital; it is about using these technologies to create meaningful ways for the students to interact with each other and share their knowledge and ideas (Yelland, 2006). One of the key elements to create collaboration amongst the teacher and students in the Diploma was the use of synchronous technologies. Synchronous technologies, such as Adobe Connect, have become popular in recent years due to the criticism of online education that was lacking in synchronous interactions, social and teaching presence, encouragement, feedback and correction (Wang et al., 2012). Synchronous video web conferencing has the ability to effectively integrate the students at a distance into a traditional classroom (Wang et al., 2012; Stewart et al., 2011). Adobe Connect was the predominant synchronous web conferencing software used for the delivery of the online NZ DipLEX Studies since 2017.

The use of synchronous technology in online learning was a conscious choice to provide students with opportunities to interact with each other and to do so in a way that can develop important interpersonal skills that are transferable to a professional environment. It was also to

facilitate the creation of communities of learning. Our decisions were informed by the research indicating that the overall experience of using synchronous technologies allows for the kind of interaction and collaboration that occurs in face-to-face teaching in an online environment. Constructivism and the constructive alignment of curriculum represents our commitment to creating not just an online qualification but one that is student-centered and focused on the workplace.

It is important to note that the underlying tensions between the NZLS and NZILE continued as we developed the DipLEX. In particular, the resistance to full-time study and online education was signaled by the NZLS public endorsement, through an MOA (memorandum of understanding) of the Open Polytechnic's program of study, an endorsement not provided to the Toi Ohomai program. Furthermore, in the statement set out on their website under the heading "Legal Executive Diploma", the NZLS detailed their close working relationship with the Open Polytechnic (TOPNZ) on matters relating to maintaining the standards of quality in teaching and moderation (NZLS, 2020). A further example of resistance was in a 2017 press release in which the NZLS publicly endorsed the Open Polytechnic qualification, which was aligned with the older structure of the diploma (New Zealand Law Society, 2018). This press release has since been removed from the NZLS website and replaced by a further message about their endorsement of the TOPNZ qualification. They have now included Toi Ohomai as one of the providers of the qualification but there is no statement of endorsement mentioned (NZLS, 2020).

The NZILE have also set out recommendations about "becoming a legal executive" on their website. They have clearly identified the two main providers of the qualification with no reference to a preferred or endorsed program. In their website FAQs they give an overview of the original legal executive qualification and then stress that employers today seek experience as well as a qualification in their search for legal executives. They highly recommend that students studying to become a legal executive also work in a law-related area at the same time (NZILE, n.d.). In an ideal world this would make perfect sense but there are students who wish to complete their diploma full-time or are unable to study and work at the same time. Also, there may not be the opportunities available for legal employment for all students for this

to be a possibility. Furthermore, despite their involvement in the TRoQ review, both the NZLS and the NZILE have claimed that they were not consulted well enough in the qualification review and redevelopment process. This was evidenced in minutes taken from a meeting with NZILE where they expressed a lack of trust in the overall TroQ process that had taken place that resulted in the creation of the new qualification. As a result, initial barriers were raised for students taking the Toi Ohomai redeveloped qualification, such as reluctance on the part of the NZILE to register the first set of graduates as legal executives. Over time the NZILE has allowed Toi Ohomai graduates to become registered legal executives without difficulty, but, anecdotally, they have made the process more onerous for some graduates.

## **SUMMARY OF CHAPTER TWO**

In the neo-liberal reforms of the 1990s, the need for the New Zealand vocational education and training system to be employer-led had the unfortunate consequence of sidelining educators. The drive to ensure qualifications were accessible and relevant to industry demand were more important than pedagogical design. This history of the development of the Legal Executive Diploma and the subsequent review of the qualification illustrates that these industry bodies have been so deeply invested in the development and implementation of this qualification that they have been resistant in giving back pedagogical control of the qualification to the tertiary providers. Until the conclusion of the TRoQ review of the NZLS Legal Executive Diploma, these power relations have placed teachers and students at odds with these industry bodies' views on the education of legal executives. This chapter has provided context around this research project that was informed by my experiences and observations throughout the development and subsequent delivery of the NZ DipLEX Studies. This process became one of the driving forces for this research. The crucial observation that I have taken from this experience is that the development of modern teaching practices that meet learners' needs are not always aligned with an industry's desire to engage in gatekeeping exercises. Online learning and its acceptance by the legal profession is a case in point. Despite the tensions that exist historically and at the present time, Toi Ohomai continues to successfully deliver the NZ DipLEX Studies fully online to both full-time and part-time students.

## CHAPTER THREE: REVIEW OF THE LITERATURE

With widespread access to the internet and evolving information and communication technologies (ICT), online education or e-learning has become somewhat of a revolution in higher education. It has enabled tertiary education providers to reach students locally, nationally and internationally, expanding educational opportunities to a broader scope of people due to its flexibility (Gedera, 2014; Martell-Stark & Piercy, 2018; Steele, 2014).

As a result, the face of teaching and learning has significantly changed with the explosion of online educational programs. Students are increasingly given the choice to study and learn solely in an online environment from home rather than attend the traditional face-to-face classroom on campus. Worldwide tertiary organizations have been increasingly extended their provision of fully online programs since well before the advent of the Covid-19 pandemic (Erickson & Noonan, 2010; Rovai & Downey, 2010; Bahia & Murphy, 2014; Hartnett, 2010; Steele, 2014). However, the Covid-19 lockdowns have pushed all educational institutions into online learning, accelerating these changes (Manzoor & Bart, 2021).

This chapter includes three sections. The first section begins with an overview of key terms used in online learning. Next, the benefits and limitations of this delivery method are discussed including flexibility, isolation, and inequality. This section concludes with a discussion on employer perceptions of online learning and resistance to online legal education. The second section looks briefly at the research around the education of legal executives in New Zealand and abroad.

The third section examines research on the use of constructivist pedagogical approach, with a focus on Problem-Based Learning (PBL) as a means of ensuring learning is more applicable to the workplace. The concept of *transition* is then discussed along with its inherent connection to both education and industry. As part of this review, the education and transition practices of both legal executives and law practitioners in New Zealand and abroad will be covered.

## **ONLINE EDUCATION**

Alongside the growth of online learning has been a great deal of research on the benefits and disadvantages of this pedagogical shift. In order to examine this research, this section begins by defining key terms before moving on to consider a key benefit claimed to result from distance and online learning: greater flexibility.

### ***KEY TERMS***

Literature around online learning often uses terms such as ICT, digital technologies, e-learning, digital study and online learning when referring to the use of technology for learning. Each term often carries different meanings and contexts (Safford & Stinton, 2016). ICT is an umbrella term used to describe a variety of technologies used in the teaching and learning process (Ismael et al., 2021). A more comprehensive definition of ICT is provided by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in a 2009 technical paper about measuring ICT in education. UNESCO defines ICT in this 2009 paper as:

...a diverse set of technological tools and resources used to transmit, store, create, share or exchange information. These technological tools and resources include computers, the Internet (websites, blogs and emails), live broadcasting technologies (radio, television and webcasting), recorded broadcasting technologies (podcasting, audio and video players, and storage devices) and telephony (fixed or mobile, satellite, vision/videoconferencing, etc.). (p. 120)

The technical paper also expresses UNESCO's belief that under the right conditions, ICT can have a huge impact on the expansion of learning opportunities for more diverse groups of people, beyond cultural, financial and other societal barriers that exist. With the flexibility afforded through the use of ICT, learning opportunities outside the confines of traditional teaching institutions or geographical boundaries have become a reality. With the importance of ICT in education clearly stated, the focused development of teaching and learning in the online environment and the reform of conventional delivery systems is required to enhance the

quality of learning achievements, facilitate state-of-the-art skill formation, sustain lifelong learning and improve educational management (UNESCO Institute of Statistics, 2009).

Online learning is an integral part of the broad definition of ICT discussed above. In the context of this research, online education or e-learning can be broadly defined as a form of distance learning where teaching and learning takes place solely through the internet (Casey, 2008; Simonson et al., 2003; Westera & Sloep, 2001). Naidu (2006) also provides a broad definition of online learning by describing it as an “intentional use of networked information and communication technology in teaching and learning” (p.1). To extend these definitions, Gedera (2014) describes online learning or e-learning as the use of ICT for asynchronous and synchronous communications for the main purposes of teaching and learning.

The shift to online learning has seen a variety of educational applications or styles of online learning used in practice. For example, online education programs can be delivered as fully online programs, as a blend of online and face-to-face programs and with the use of web-based technology when facilitating face-to-face teaching (Allen & Seaman, 2013). Online education uses the internet as the main portal of communication for teaching and learning. Within that portal there are a number of technologies available to facilitate the communications used in teaching. Some of these technologies have been developed specifically for learning but many others have been adapted and exploited for learning in the online environment. The use of such technologies is often collectively referred to as “technology-enhanced learning” or TEL (Salmon, 2011). TEL is used to implement meaningful educational experiences that facilitate students' learning by encouraging engagement, collaboration and productivity (Lytras et al., 2020).

These technologies can be divided up into two main types that are commonly categorized as either asynchronous or synchronous. Synchronous is defined as simultaneous communications in real time but from any place, using tools such as video, chat and breakout rooms (Wang et al., 2012). Asynchronous technologies are referring to self-paced communications that occur at any time or place through web-based tools such as emails, forums, blogs or wikis (Gedera, 2014). Most educational institutions use web-based platforms that incorporate the use of multiple asynchronous tools within one system. These were

originally known as Computer-Mediated Conferencing (CMC) but are now referred to as Virtual Learning Environments (VLE) or Learning Management Systems (LMS).

Regardless of the terminology used to describe these types of learning technologies, they are set up and used to support and encourage learners to collaborate with each other (Salmon, 2011).

Collaboration within an asynchronous environment involves typed online discussions that can occur over a period of hours or even days and occur intermittently, at any time and at irregular intervals (Forbes, 2012). Collaboration within a synchronous environment involves attending a virtual classroom where teachers and learners interact with each other in real time with both audio and video capabilities. There are a number of commercially available synchronous software packages (Adobe Connect, Zoom, Skype) that are used in conjunction with the asynchronous LMS to encourage collaboration. There are also a number of asynchronous LMS that are either commercially available (Blackboard) or available on an open-source platform such as Moodle and Google Classroom (Salmon, 2011; Gedera, 2014; Martell-Stark & Piercy, 2018; Steel, 2014).

Synchronous software packages are also referred to as web conferencing platforms. These platforms have different formats of synchronous delivery. Wang and Hsu (2008) describe these as an instructor with multiple students from one location, an instructor with multiple students from multiple locations and finally multiple students from multiple locations, without an instructor. Synchronous web conferencing platforms can offer desktop or wireless device users the opportunity to communicate in real time through the use of audio, video, text, presentation display and breakout rooms that actively encourage interactions in the absence of gathering together in the same physical space (Gedera, 2014).

Wang et al. (2012) argue that synchronous technologies have become popular in recent years due to the criticism of online education that was lacking in synchronous interactions, social and teaching presence, encouragement, feedback and correction. Their research specifically explored the use of Adobe Connect with the view of finding out how the synchronous web conferencing approach was addressing these issues from the perspectives of the learner and the teacher. They found that synchronous technologies such as Adobe Connect

can effectively address these issues. It has also been suggested that the use of synchronous video web conferencing has the ability to effectively integrate students at a distance into a traditional classroom (Stewart et al., 2011). The benefits that synchronous technologies offer the learners can be described as affordances within the online environment. The meaning of this term will be explored in the next paragraph.

When analyzing the complexities of online learning and the experiences of students in this environment, it is important to look at the relationships between students, teachers and the technology interfaces provided by ICT. With that, the term *affordances* is used to describe both the subjective and objective aspects of the players within the environment to give a framework of analysis that looks at the interplay of such interactions (Dings, 2021; Gibson, 1977; Masoudi et al., 2019). The assumptions attached to the affordances in online learning recognizes that technologies can be used in different ways according to the users' skills, intentions and goals. Also noteworthy is that affordances can be both negative and positive, can bear multiplicity and can be underutilized within the individual experience (Masoudi et al., 2019). With that, the next part of the literature review begins with a discussion on one of the key affordances that has contributed to the development of online learning: flexibility.

## ***FLEXIBILITY***

The rapid growth of online learning, particularly in the 1990s, has had a widespread effect of removing barriers to participation in higher education and providing opportunities for educational institutes to expand their delivery options (O'Neil et al., 2004). One of the key affordances that has contributed to this rapid growth is the flexibility that online learning can offer. Many students choose online courses/programs in the hope that they can combine their studies with other responsibilities in their life. For example, time-poor students are looking for flexibility that will enable them to continue going to work, to care for children and maintain a healthy life/work balance during their study (Stone et al., 2019). Social groups such as those living in remote areas, those with family commitments and those with disabilities all have the ability to access online learning opportunities that otherwise would not have been feasible.

The flexibility of online learning has also afforded access and participation to another social group of learners: mature students. The significant growth of mature student enrollments in online courses has also contributed to its popularity. One of the main reasons for this is the need to acquire updated knowledge and skills to meet the labor market demands created by evolving working environments and technological advances in business (Baum & McPherson, 2019; O'Neil et al., 2004). There is also a growing need for higher levels of skills and qualifications as a result of the changing culture where a single job for life is no longer the norm (O'Neil et al., 2004). This shift in the type of students learning online shows that working and studying at the same time is an increasingly popular way for employers to upskill their workforce and employees to progress within their job or profession through professional development opportunities.

As discussed above, the flexibility that online learning offers is one of the key affordances that has allowed greater access to educational opportunities for a wider breadth of people. This greater access contributes to a more equitable society by enabling more diverse people to invest in their own personal development. As a consequence, these people are able to create a better life for themselves and their families (O'Neil et al., 2004). The flow-on effect of greater access to education provides the societal benefits that are intrinsically tied to current international and national policy trends that view education as the engine of social mobility and economic growth (O'Neil et al., 2004). As a result, the role that education plays in promoting equality and social justice has been strengthened by the explosion of online learning opportunities. The narrowing gaps in educational opportunities and outcomes across demographic groups provide widespread benefits to societies at all levels. Therefore, online education and the flexibility it offers is a key element found at the forefront of the evolution towards a fair and just society (Baum & McPherson, 2019; Smith, 2018).

### ***LIMITATIONS OF ONLINE LEARNING***

Despite the prophesied benefits of online learning, a variety of limitations have been identified. Some staunch critics of online learning believe the current wave of technology-enhanced learning is fraught with pedagogically unsound replications of the worst aspects of

teaching and learning from the traditional classroom (Morris & Taub-Pervizpour, 2018; Silver, 2018). Other critics add to this, arguing that online education delivers individualistic and disjointed learning opportunities that do not work for learners. These pedagogical problems may stem from the view that online learning only provides a superficial learning experience that has limited active learner participation through the content repository of the internet (O'Neil et al., 2004). It is argued that these limitations contribute to the generally low course completion and program retention rates in comparison to the traditional face-to-face courses (Baum & McPherson, 2019; Devine & Gordon, 2020; Allen & Seaman, 2013). The key limitations identified in the literature of isolation, inequality of outcomes, and employer perceptions are discussed below.

### **Isolation**

One of the most challenging aspects of online learning is the feeling of isolation. Students are more likely to experience isolation and alienation in online programs because of their physical separation from other students, their teachers and the traditional onsite campus services (Oyarzun et al., 2017; Palloff et al., 2001; Rovai, 2002; Rovai & Downey, 2010; Westera & Sloep, 2001). Not only are there feelings of physical isolation but also social, cognitive and technical isolation. The lack of socio-cognitive exchanges with their peers and teachers can result in students feeling that they don't "fit in" socially or intellectually. Consequently, students' motivation can be hampered and the risk of withdrawal is increased (Rovai & Downey, 2010; Baum & McPherson, 2019; Stoytcheva, 2021).

Safford and Stinton (2016) discuss further effects of isolation for the online learner. They discuss how online students can experience frustration, anxiety, confusion and distress when using technology. These experiences are more acute at the start of a new program of study. Learners in these circumstances must assimilate new course content, learn how to navigate through the learning management systems and use unfamiliar computer technology within the first few weeks of their course. Again, the effects of isolation and the frustrations in using technology become a key factor in poor retention of online students. The "cognitive overload" experienced by online students is aggravated by feelings of isolation that have a

direct impact on the student experience and the eventual outcome of their studies (Tyler-Smith, 2006, p. 82). For some students the isolation and lack of technical support will often mean a complete withdrawal from their programs of study and lingering feelings of inadequacies in relation to the use of computer technology (Croft et al., 2010; Erlich et al., 2005; Safford & Stinton 2016; ). Online students experiencing increasing feelings of inadequacy or self-doubt are also more likely to blame themselves for their struggles, adding to the overall alienation that feelings of isolation create for these learners (Baum & McPherson, 2019).

### **Inequality of Outcomes**

While online learning advocates emphasize the benefit of greater access to learning, there remain concerns about the difference in outcomes that occur within certain student groups that struggle in fully online courses (Jaggers, 2014). It therefore cannot be assumed that easy access will automatically reduce the inequalities in educational opportunities. The literature even suggests that online learning may be forming a de-facto equity pathway for the disadvantaged to access tertiary education (Cupitt & Glosan, 2015). There is much work to be done in supporting online learners during their study and institutional support is one of the key factors. In keeping with the spirit of equitable access to learning, it is also important to ensure equitable outcomes for all learners, no matter what their socioeconomic or cultural backgrounds entail (Jaggers, 2014). For example, online learning has identified both performance and success gaps across racial and ethnic groups. Research done in the United States found younger students, African Americans, Latinos, males and part-time students were less successful in online courses in comparison to traditional courses (Johnson & Mejia, 2014; Jaggers, 2014). Another angle to this argument of inequality of outcomes is that students with weak academic backgrounds entering the online space seem to struggle more with the loss of personal contact with their peers and teachers (Baum & McPherson, 2019). Significantly, Smith-Jaggers (2014) found that even though their enrolled online students were highly advantaged and academically capable, these learners still tended to have lower achievement, retention and completion rates in comparison to the traditional classroom.

It is widely acknowledged that all online students are challenged with trying to balance multiple commitments in addition to their study, more so than students who attend face-to-face (Clay et al., 2009; Finnegan et al., 2009, Lee & Choi, 2011; Minaar, 2013). Online learners often find it difficult to combine the competing demands of academic study, home responsibilities and employment within the unstructured online learning environment. Consequently, educators need to be more realistic about the amount of time online learners can spend working on their studies. It is also important to consider the increasingly diverse backgrounds and circumstances of learners that can enable or curtail participation in online learning (Safford & Stinton, 2016). Adult learners also need special consideration as online learners to ensure success. It is often assumed that adult learners have adequate ICT skills, but often enough many have only ever studied in the traditional classroom and some even before computers became a household item (Stafford & Stinton, 2016). While access to online learning has expanded the diversity of learners enrolled in online programs of study, this does not guarantee equitable outcomes for all. Educational institutes must recognize and manage the existence of inequality of outcomes through targeted support and course design that explicitly considers the complex and varied realities of the learners' working environments and personal circumstances (Baum & McPherson, 2019; Kirkwood, 2000). If online learning wishes to revolutionize tertiary education, then the socioeconomic gaps in outcomes and achievement must be identified and targeted. These gaps must be narrowed, or, more boldly, closed, to create a more equitable society that shows improved social well-being and economic prosperity for marginalized and disadvantaged groups.

### ***EMPLOYER PERCEPTIONS***

While the success in an online program is something to be celebrated, ultimately it is the acceptance of online qualifications within the labor market that will determine the graduates' perceived value of their academic achievements. Employers will decide what value an online qualification has for the employability of staff and determine whether graduates demonstrate the necessary skills and knowledge required to become part of the workforce or professional practice area. Historically, online education has been perceived with suspicion by

employers (Allen & Seaman, 2013; Baum & McPherson, 2019; Tabatabaei et al., 2014; ). A research project spanning over ten years, examining barriers to online education in the United States, highlighted how academic leaders reported sustained concerns about the potential lack of acceptance of online education by employers as an important barrier to the growth of online education (Allen & Seaman, 2013).

Employers seem to focus on the negative perceptions of online education, thus creating a view that online credentials are inferior to those from traditional face-to-face classrooms (Baum & McPherson, 2019; Tabatabaei et al., 2014). Negative perceptions stem from the view that online education lacks interaction, and, in particular, lacks face-to-face communication between the students and faculty members (Baum & McPherson, 2019). Despite this, online education is becoming more acceptable; however, it appears to be more acceptable for lower-level as opposed to upper-level employment positions (Baum & McPherson, 2019; Tabatabaei, et al., 2014). For example, Tabatabaei et al. (2014) found that accounting employers believed that candidates with the traditional education were more suitable for employment than those with an online qualification.

While the credibility of online education may or may not be linked to the field of study and level of qualification, there is evidence that some employers and industries may be more resistant than others to accept the entry of an employee who has an online qualification. The acceptance of online qualifications is important because industry bodies and employers have an influence on the policies and curriculum development of online programs. Therefore, critical analysis and constructive debates continue to be necessary to ensure the limitations of online education are minimized. These debates are necessary to ensure the employer perceptions of online qualifications improve and educational institutes continue to provide quality educational experiences for its learners. The relationship between education providers and employers is key to improving educational and employment outcomes that serve our business and community needs (Baum & McPherson, 2019; Tabatabaei et al., 2014).

## ***RESISTANCE TO ONLINE LEGAL EDUCATION LEARNING***

It is important to note that alongside employers, specific academic disciplines also have sustained concerns about the suitability of online learning. The legal profession is a notable one that is significant to the context of this study. This is particularly important given the absence of research specifically focusing on the online education of legal executives. Education for legal professionals can be classed as education designed to prepare individuals to enter the profession as a barrister and solicitor. The concept of teaching law to others beyond this elite group of people has not received significant support in the legal education systems but nevertheless, the interests and needs of people learning the law have broadened, particularly with the growth of the paralegal/legal executive education in some countries (Harris, 1996). It is assumed that the education of legal executives fits within the ambit of legal education as an affiliate or support for lawyers who understand and can perform the practicalities of the various legal processes that occur in the profession. Given the significant role the various law societies play in influencing legal education policy and practice, it can be assumed the literature exploring online resistance can be aligned to the delivery of educational programs for legal executives or paralegals.

The legal profession has been notably cautious with the use of distance learning and online education as a portal of entry into the profession. Law faculties have also been resistant to these broader pedagogical changes and the use of ICT in teaching delivery (Stephen, 2017). One basis for this resistance is a view that the Socratic method of legal instruction that includes live, intense question-and-answer sessions between the student and teacher cannot be replicated online. (Butler, 2007; Kirley, 2015). While there is acceptance that online learning is useful, it is less effective for the delivery of the Socratic method of instruction used in traditional legal education (Leibowitz, 2000). This resistance to changing pedagogical practices in legal education has also been influenced by powerful legal societies and organizations that control and regulate both the legal profession and legal education within their own countries and jurisdictions (Leibowitz, 2000; Martell-Stark & Piercy, 2018; Stephen, 2017).

Higher education is steeped in tradition. However, if educators continue to adhere to traditional methods of teaching and learning they will increasingly become out of step with the

modern developments that ICT can offer (Butler, 2007). For instance, Chetwin and Edgar (1999) and Stephen (2017) argue that legal education in the new millennium must also embrace ICT, otherwise there is a danger of the discipline becoming isolated within higher education. Furthermore, as students' learning styles increasingly shift towards the use and dependency on computers and technology, legal education pedagogy will be driven to change (O'Neil et al., 2004).

In addition to the push in legal education to modernize teaching and learning practices, changes have taken and continue to take place within legal practice, in that it is seeing an increased use of technology to improve efficiency, collaboration and mobility of staff (Pistone, 2015). These changes may help ease the resistance to learning law in an online environment by recognizing the importance of having proficient technological skills developed by participating in programs of study utilizing ICT. Given the growing emphasis on ICT, it is vital that innovative teaching techniques including online learning be explored for legal education in order to fulfil the overall goal of creating graduates that can meet the future labor market demands within the legal profession (Hartnett, 2010; Olssen, 2001; Steele, 2014).

Another more recent factor that will no doubt have an influence on the acceptance of online legal education across higher education institutions is the worldwide Covid-19 pandemic. Gerken (2021) argues that the forced changes in law school pedagogy during the pandemic will have lasting effects on legal education. The pandemic-instituted lockdowns have forced legal educators into collective discussions about teaching and learning. These teaching conversations include how to structure class discussions, how to adapt to different learning styles and how to convey information and encourage engagement using new technological approaches. While it is not envisioned that all law schools will embark on fully online programs of study only, it is certainly possible that the resistance to online learning will be lessened within legal education, practice and policy development areas. However, legal educators have continued to emphasize that their core method of teaching law involves the interactive "magic" found in the classroom that is assumed to be missed when teaching and learning is fully online (Gerken, 2021).

## **THE CHAMPION OF ONLINE LEARNING: CONSTRUCTIVISM**

Despite the resistance and limitations identified in the literature about online learning, there has been a growing body of research that is supportive of a broad pedagogical approach that is proving successful in addressing the limitations of online learning. Constructivism is a pedagogical approach that engages, motivates and encourages students to work collaboratively within their learning space. The constructivist approach to curricular and program development is particularly suited for the online environment. The accompanying shift in focus from “topics that need to be covered” to “what and how the students are to learn” is a powerful and successful method for both online and face-to-face teaching. Constructivism and the practical approach of alignment is a principle of curriculum theory that states the assessment activities need to be connected to the intended learnings. The aligned curriculum model ensures that the outcomes are formulated first, then the assessment regime is designed and then finally the teaching and student activities are developed and aimed at achieving these outcomes (Biggs & Tang, 2011). The following section will review the literature on the Constructivist pedagogy used in the development of the NZ DipLEX Studies online programs of study.

### ***DEFINITION***

The term constructivism was not formally recognized until 1977 but constructivist thought processes and concepts are evidenced in the works of numerous philosophers and educationalists from ancient times (Pelech, 2010). An early example can be seen in the works and teachings of Socrates. The Socratic method of negotiating meaning through discussion with the aim of creating a shared understanding encourages students to actively learn (Reid-Martinez & Grooms, 2018). Currently the basic principles of constructivism have been associated with Vygotsky’s (1978) learning theories and more recently with Bruner’s (1990). Significantly, the constructivist view in education has taken on such dominance in educational literature to the point that it could be described as a paradigm shift (Hamat & Embi, 2010; Herod, 2003). Constructivism’s rise in dominance is due in part to how the approach has

assisted educationalists in adapting to the constant and rapid flux of information and knowledge caused by technology changes and globalization (Reid-Marinez & Grooms, 2018).

Constructivism learning theory is generally defined as active construction of new knowledge based on the learner's prior experience (Koohang et al., 2009). As such, constructivism views reality as internally constructed by a person as opposed to the fixed and external nature of reality viewed by positivists (Hamat & Embi, 2010; Reid-Marinez & Grooms, 2018). From a constructivist perspective, knowledge can no longer be viewed as a fixed object. Therefore, constructivist pedagogies are based on learners co-creating an understanding of various concepts by collaborating with their peers, teachers and information networks. Critical to this process is the continuous interaction between these participants in the teaching and learning cycle, each mutually and indiscriminately influencing each other. The relationships created by these continuous interactions may also serve to create communities of learning that extend the pedagogy and active learning outside the classroom, be it virtual or physical (Reid-Martinez & Grooms, 2018).

### ***CONSTRUCTIVISM AND ONLINE LEARNING***

The collaborative nature that underpins the constructivist pedagogical approach is a challenge to replicate in the online learning environment (Reid-Martinez and Grooms, 2018). Online students tend to engage less, both with their peers and teachers, and do not interact and discuss their learning with others outside the virtual classroom. Despite this, constructivist theory as the basis for a pedagogical approach for online learning has been touted as a powerful and successful method for curriculum design and development (Biggs & Tang, 2011; Reid-Martinez & Grooms, 2018; Tyler, 1949). This is because its application can increase engagement through its emphasis on creating a collaborative learning environment, thus avoiding the expected tendencies of online learners (Reid-Martinez & Grooms, 2018).

The constructivist approach can encourage and foster collaboration, which subsequently creates a community of learning that enhances the experiences of all participants (Martell-Stark, 2017). Such approaches can improve learner engagement, and, more importantly, by exposing students to problem-based learning techniques, students are better prepared for the

kinds of organizational shifts that are likely to occur in the legal profession given the consequences of automation (Gedera, 2014; Martell-Stark & Piercy, 2018; Wood, 2008).

Ku et al. (2013) discuss the concept of online collaboration as access to multilevel interactions, resource sharing and higher-order thinking activities. In terms of students' attitudes about the benefit of collaborative learning, the research by Ku et al. supports the fact that students favor online collaborative learning and see it as resulting in greater learning. Also, a consideration for improvements in this area of practice is the different levels of group dynamics in online collaboration. These levels include participation, communication, collaboration, trust and cohesion (Greenlee & Karanxha, 2010). By assessing each level within the current program of study, areas of strengths and weaknesses can be identified and targeted for improvements.

Stoytcheva (2021) recommends the following to support/promote collaborative learning: collaborative activities and tasks, intensive proactive and reactive teaching, providing support throughout the program, regular synchronous chats and video conferencing, making collaboration and participation part of evaluation, the use of multi-media learning content combined with video lessons and video instructions, appropriate technological means, and choice of platform allowing collaborative work. Through these activities the online learning community will gradually increase its commitment and responsibility towards the group. This will develop efficient and creative exchange of opinions, as well as supporting discussions, decision-making and coordination of ideas, which will be used to achieve the group's common goal and construction of common structured knowledge

Saldanha et al. (2021) also provide some practical suggestions to build connections and communities of learning from their experiences of adapting group work practices in the online environment. They suggest using a variety of activities during synchronous learning such as breakout rooms, the use of interactive online tools, guest presentations and the development of peer-to-peer support groups for students. The creation of meaningful connections through communities of learning will improve the outcomes for students by combating the feelings of isolation that are an inevitable consequence of online learning (Baum & McPherson, 2019).

Considering all the factors supporting constructivist learning theory, this approach has consistently been documented as an appropriate match for the design of effective online learning programs (Harmon & Koohang, 2005; Hung, 2001; Koohang et al., 2009, Reid-Martinez & Grooms, 2018). The advent of new types of collaborative technologies, such as web conferencing platforms and real-time communication tools, have only strengthened the use of constructivist approaches in the online learning environment (Wanget al., 2012).

### ***PROBLEM-BASED LEARNING***

One technique of the constructivist approach that is applicable to a wide variety of education settings is problem-based learning (PBL) (Ismael et al., 2021; Vittrup & Davey, 2010). PBL is widespread and has been successfully applied in many countries around the world including Australia and New Zealand (Berezovska et al., 2021). The relevant literature discusses some confusion surrounding the meaning and use of the term PBL and other related concepts such as scenario-based learning (SBL) but for the purposes of this research these terms (and other variants) are considered one and the same. Both PBL and SBL can be broadly described as techniques that make up a continuum of teaching methods used for learning (Taylor & Mifflin, 2008). More specifically defined, PBL is the use of problems, scenarios and/or case studies to stimulate and focus learning (Albanese & Mitchell, 1993; Whitcombe & Clouston, 2016).

PBL was originally developed in the late 1960s and has been an influential innovative technique originally used in medical education (Wood, 2008). PBL was developed in response to the need to facilitate the transfer of knowledge, develop learning attitudes and apply a student-centered approach to learning (Berezovska et al., 2021). Since then, the technique has been used in various secondary and tertiary educational settings (Ismael et al., 2021) and is more recently described as one of the most important higher education trends over the last two decades (Berezovska et al., 2021). PBL is designed to reflect the highly ambiguous, contextual nature of professional practice by giving learners a more authentic, real-life experience of workplace problem solving. The use of PBL also gives learners opportunities to practice critical thinking, problem-solving, collaboration and communications skills, which are essential to support the smooth transition to professional practice after formal education is completed. (Mehall, 2021).

## ***PBL TECHNIQUE***

Wood (2008) states that PBL is “theoretically grounded in adult learning theory and constructivism and is predicted to produce a better learning environment and improved outcomes in terms of graduate knowledge skills and attitudes” (p. 971). Ismal et al. (2021) also state that PBL is ideal for achieving educational outcomes because it emphasizes communication, collaboration, critical thinking and creativity in learning; also referred to as “the 4 C’s” necessary for 21<sup>st</sup> century learning. Vittrup and Davey (2010) also believe that PBL enhances the learning outcomes of education because it promotes higher thinking skills at the same time as combining theory with practice.

The technique can be defined as a question-based instructional method that supports active learning and promotes collaboration and communication among students (Berezovska et al., 2021). Wood (2008) describes PBL as essentially a small group teaching method that combines the learning of knowledge with the development of generic skills. Ismal et al. (2021) add to this, stating that the teacher’s role is that of a moderator or facilitator, and describe PBL as “learning by doing” with a focus on connecting content to real-life situations so students can reflect and collaborate as part of working through the problem-solving thought process.

Not only does PBL provide the students with a positive learning experience, it assists them in successfully transitioning into a professional working environment, depending on the discipline they are studying (Berezovska et al., 2021). Despite the benefits of PBL there are some critics who believe there are so many variants of PBL curriculum and staffing strategies that it is impossible to evaluate the extent to which PBL is able to narrow the gap between educational delivery and the relevant working environment (Eraut, 2009).

Berezovska et al. (2021) state that technology can be used for PBL, facilitating a constructivist learning environment that demonstrates student development of pre-professional competencies, knowledge transfer, satisfaction, motivation, self-awareness, self-efficiency and collaboration skills, all of which help them integrate institutional learning into the workplace.

According to Grimes (2015), PBL is not universally adopted or fully integrated across or within the curriculum of UK law schools. He suggests that some legal educators do use this approach on individual modules or as part of a programs in the UK, but comprehensive adoption of Law programs shaped around PBL are few and far between. Ingleby and Gibby (2016) explored the pedagogical benefits of a curriculum for paralegals that used PBL. Their study showed that PBL has been used to help students develop a deeper understanding of legal practice at the same time as developing both practical and academic skills. These skills include the development of flexible knowledge, problem-solving skills, self-directed learning skills, collaboration skills and intrinsic motivation skills (Ingleby & Gibby, 2016).

### ***PROBLEM-BASED ELEARNING***

A further sub-set of PBL has emerged in the literature in relation to online learning. Problem-based eLearning (PBeL) or scenario-based eLearning (SBeL) are known concepts and have research has been done with regard to their effectiveness (Siddiquiet al., 2008; Thalheimer, 2017). Both of these concepts relate to the use of PBL within the online environment. Traditionally, PBL uses text-based material in the classroom, but this method has been successfully translated into online eLearning modules as a result of the development of modern software technology (Mehall, 2021). Siddiqui et al. (2008) found that PBeL/SBeL can afford high-quality, learner-centred experiences to enhance student learning. Tambunan et al. (2017) found that the use of PBeL/SBeL was effective in improving the motivation of both teachers and learners. Mehall (2021) also found that highly contextual, real-world scenarios can be used effectively for PBeL/SBeL, assuming that they are well designed. Another research project by Mio, Venturn-Medina & Joao (2019) looked at the use of SBeL with engineering students. The engineering profession was putting pressure on educators to have graduates that better demonstrated practical experience of real industrial environments and that could apply theoretical knowledge to real industrial problems. It was found that the use of active learning methods such as PBeL/SBeL can help to bridge the gap between education and professional knowledge by giving students exposure to workplace realities that will ultimately assist their transition to the workplace (Mio et al., 2019). While this study refers to engineering students

only, the effectiveness of PBeL/SBeL in this context can be translated across a number of professional education programs.

### ***TRANSITION TO THE WORKPLACE***

The concept of transition within the context of this research refers to the movement of graduate students from their program of study to professional practice. While graduation signifies successful completion of a higher qualification, the journey from student to professional can be fraught with difficulties if the educational providers do not produce work-ready graduates and employers do not provide adequate support for novices in the workplace (Clipper & Cherry, 2015; Farrell, 2016; Wood & Breyer, 2017). A failure in either of these aspects of professional education and workplace training can often lead entry-level practitioners to exit the profession. Experiences of these failures have prompted educational research focusing on how to improve this transitional period for various professionals including teachers (Farrell, 2016), engineers (Hawse, 2017), nurses (Clipper & Cherry, 2015) and lawyers (Binsfeld, 2019; Fraser et al., 2013).

Despite attempts to improve the transition experiences of graduates across a number of professions, difficulties persist (Hawse, 2017). Eraut (2009) believes that the transfer from different settings is a complex learning process that has been profoundly neglected because of a lack of understanding of the nature and amount of learning involved, and the existence of a cultural gap between formal education and workplaces. Eraut suggests that vocational and professional education courses provide five main types of knowledge that cover foundations, concepts and theories relating to the profession. These include theoretical knowledge, methodological knowledge, practical skills and techniques, generic skills and general knowledge about the occupation. These knowledge areas exist in most programs, but the practical skills and techniques that resemble real-life problems as used in PBL provide experiential learning that will assist in the transition to work. Problem-solving skills are being touted as one of the most important skills needed for graduates, and research into PBL supports the effectiveness of this approach in teaching 21<sup>st</sup> century skills such as critical thinking, creativity, innovation and communication. It is these skills that will prepare graduates for the workforce in their chosen

profession and minimize transitional period difficulties (Ismal et al., 2021). As part of this preparation, higher education needs to also provide students with a greater understanding of the transitional period in their chosen fields (Hawse, 2017).

In addition to the role of education providers, Hays and Clements (2012) discuss how the workplace also plays a significant role in the transformational learning process of the transitional period. They describe opportunities that exist for education and industry to work together to more directly influence learning during the transitional period in the graduate's first professional employment experience. It must also be noted that working collaboratively in this period is an opportunity for both education providers and industries, but it is acknowledged that there will be numerous aspects of the workplace that formal education will not be able to prepare their graduates for (Katz, 1993).

### **SUMMARY OF CHAPTER THREE**

This chapter has presented a review of the literature on the topic of this research. It was comprised of four sections. The first section was a review of online learning and its key benefits and limitations. The flexibility of online learning was discussed as the key component of its popularity but such limitations including isolation, inequality of outcomes and labor market acceptance are challenges that need consideration when developing online programs. The second section reviewed the reasons for resistance to online learning in general and then more specifically within legal education. Next, the third section reviewed the pedagogical approach known as constructivism, which has become a popular theory used in the development of online programs. Following the discussion on constructivism, PBL was explored as a practical teaching technique that aligns with the constructivist framework and provides insight into the realities of practice during formal learning. Finally, the fourth section defined and explored the concept of transition and its inherent connection to both education and industry.

## **CHAPTER FOUR: RESEARCH DESIGN AND METHODOLOGY**

This chapter will present the philosophical approach that underpins and frames my research questions. The chapter begins with a description of the research questions central to the study. Next, the theoretical framework is presented by way of a discussion on the chosen research paradigm, methodology and methods that were used to inform the research design. Background information about the conception of the research inquiry is woven throughout this discussion. The research process is then described in detail from start to finish, including a summary of the participants' characteristics. Also included in this chapter is an explanation of the validity and reliability of the research design in conjunction with an overview of the ethical considerations and processes that were undertaken through the University of Waikato and Toi Ohomai Institute of Technology.

### **RESEARCH QUESTIONS**

The overarching purpose of this research is to evaluate the NZ DipLEX Studies using a small-scale investigation of graduate and employer perspectives. More specifically, this research aims to:

1. understand the benefits, if any, that have accrued from the use of constructivist approaches, including communities of learning and problem-based learning in the online environment;
2. explore the applicability of content and teaching techniques to the employment of legal executives;
3. determine the transferability of the skills and knowledge in the new NZ DipLEX to legal practice, particularly in the short term (e.g., the first six months of employment); and
4. identify strengths and weaknesses of the NZ DipLEX Studies.

## **QUALITATIVE APPROACH**

Qualitative research methods have grown considerably and have specific relevance to the study of social sciences (Clarke & Braun, 2013). Qualitative research as a method of inquiry is able to capture the complexity and richness of social situations by exploring the subjective realities of individuals and groups. The consideration of reflexivity and contextualization is present within the qualitative approach. What is important to note is that the subjective nature of the qualitative research approach creates an enriched ability to make sense of patterns of meaning from the data collected (Clarke & Braun, 2013). As educational research predominantly focuses on social environments it is therefore well suited to the qualitative methods that are underpinned by this philosophy (Howe & Eisenhart, 1990).

## ***PARADIGMS AND RESEARCH***

A paradigm can be defined as a shared viewpoint that is informed by philosophical assumptions about the nature of the beliefs and values of a particular discipline. This shared viewpoint becomes a guide to those interested in solving problems within their discipline. More specifically it gives researchers in social science a structure for their inquiry into the nature of social reality. This guidance leads researchers to ask certain questions and to use relevant approaches in the design of their research (Kawulich, 2012).

The philosophical assumptions about the nature of social reality within a paradigmatic world view led to questions about the nature of reality (ontology), ways of knowing (epistemology) and what we believe to be true (axiology). By asking these questions the researcher puts together the building blocks of the theoretical framework that will inform the choice of research approach, data collection, data analysis, ethics and validity/reliability of the framework. The convergence of all these questions, assumptions, viewpoints and frameworks creates a mutually inclusive research process that ultimately informs how the research will proceed. This is collectively known as the research methodology (Kawulich, 2012).

My natural tendencies to listen and value people's perspectives, combined with a passion for understanding the subjective realities of individuals, naturally lead my research story away from any form of empirical or objective data collection. I believe the truth of

someone's reality cannot be determined fully by the use of statistics or observations but by an understanding of the subjective experience and constructed understanding of the individual or group. This viewpoint has largely developed from my experiences working in the health sector and from graduate studies that examined the perceived dichotomy between the medical and nursing professions (Treiber & Jones, 2015).

### ***SOCIAL CONSTRUCTIONISM PARADIGM: THEORETICAL FRAMEWORK***

Social constructionism is a research approach that focuses on understanding the world as others experience it. This theoretical framework emphasizes that the social and psychological worlds are constructed through interaction and social processes and that knowledge is the product of social practices and institutions or the interaction between social groups (Young & Collin, 2004). Social constructionism differs from the positivist approach that emphasizes objectivity. It puts value on subjective experiences instead of dismissing their validity. In addition, social constructionism as a paradigm uses philosophical assumptions that emerge from ontology, epistemology, axiology and methodologies that see value in the role of the researcher in the overall process (Kawulich, 2012). This further contrasts with positivism that emphasizes the importance of the researcher maintaining distance from the research process.

Ontology deals with the question of what reality is. From the perspective of constructionism, reality is personal, mind dependent and socially constructed. Reality is therefore limited in any given situation and cannot be generalized into any commonality except to those individual or group-shared realities. This too is in direct contrast to the positivist's assumption that a tangible external reality exists. (Kawulich, 2012).

Constructivism, a closely related theory within social constructionism, believes that knowledge is subjective because by nature, it is socially constructed. The truth and legitimacy of this knowledge lies with the human experience and the generation of ideas that are context dependent, culturally bound and historically dependent (Kawulich, 2012; Young & Collin, 2004).

To follow the constructivist's views of knowledge and reality, the axiological influences see knowledge as subjective and reality as mind constructed and mind dependent. Therefore,

any social inquiry research in turn will be value-bound and value-laden. What this means is that subjective experiences are informed and influenced by the values of both participant and researcher. Therefore, it is important to recognize my values and how they have influenced and informed the chosen paradigm, topic, methods, analysis and interpretation of the findings to address interference with the neutrality of the findings (Kawulich, 2012).

The application of methods from a constructivist perspective often requires the researcher to gather the data themselves. The research often takes place in a natural setting where the participants work or live with the purpose of understanding the human experience. This collection of data in the natural setting involves the establishment of rapport and trust with the participants in order to capture the meaning and essence of their responses. From the constructivist approach the analysis of the findings by the researcher must describe themselves, their values, their ideological biases, their relationship with the participants and their closeness to the research topic (Kawulich, 2012).

## **RESEARCH METHODS**

Constructivism fits within the realm of qualitative research and its associated research design and methods (Kawulich, 2012). The following paragraphs will give an outline of the approach and methods used in this research inquiry.

Ethnographic research identifies and understands the way that individuals or groups of people work and live. This involves an analysis of social realities by way of observations, analysis and interview methods to gather data (Cresswell, 1998). A particular style of ethnography was used that combines the analysis of the researcher's personal experiences alongside interviews with the two target groups of program graduates and employers of those graduates. The use of autobiographical insights that are woven within the understanding and analysis of the research findings is referred to as autoethnography (Adams et al., 2021; Ellis et al., 2011). The *auto* prefix has the common meaning of *self* as seen in a written autobiography, but in qualitative research refers to the inclusion of personal experiences and reflections of the researchers as part of the presentation of data (Flick, 2014). Autoethnography is both a process and a product that aims to describe and analyze personal experiences in order

to understand cultural experiences (Ellis et al., 2011). In this description and analysis, the auto-ethnographer looks into the past, attends the present and looks towards a more humane and just future while weaving through the complexities of personal experience (micro), relationships issues (meso), and structural social problems (macro) (Adams et al., 2021).

This approach of autoethnography along with interviews was designed to systematically collect, interpret and analyze the data to create a clearer picture and understanding of the complex nature of the research topic.

The use of in-depth key informant interviews was the main source of data collection. The interviews were semi-structured to allow the participants to expand on their views of educational and employment experiences. In research, the popularity of using semi-structured interviews stems from the belief that participants are more able to openly express their viewpoints in comparison to a structured interview where a set of fixed questions are used. The structured interview also minimizes the ability of the researcher to ask probing questions and therefore limits the amount of information collected (Flick, 2014).

The nature of the semi-structured interviewing used can be described as qualitative interviewing that had a responsive style (Rubin & Rubin, 2011). Rubin and Rubin describe the style of responsive interviewing as a process that emphasizes the importance of building rapport and trust between the interviewer and interviewee that “leads to a more give-and-take within the conversation” (p. 208). They also describe the style as being a flexible tone of questioning that is friendly and without confrontation, thus leading the questioning to evolve in response to what the interviewees have said. This ultimately leads to the development of new questions that are designed to tap into the experiences and knowledge of the interviewee. A list of predetermined topics was compiled before the data collection began and was used as a planning guide for the interviews (see Appendix A: Ethics Application for guide). The list of topics was not strictly adhered to and therefore allowed the researcher freedom to take a line of general questioning down a more detailed track to get a clearer or deeper understanding of the participants' experiences. These interviews were viewed as a co-construction of what happened in the conversation between the researcher and the participant (Brinkman, 2015).

An ethics application was submitted to the Human Research Ethics Committee at the University of Waikato on 29 September 2018 and approval was given by letter dated 15 November 2018 (Appendix B). Toi Ohomai Institute of Technology Research Committee was notified and sent a copy of the application and approval on 15 November 2018. There were two amendment requests sent to the University of Waikato. Approval was given on 3 December 2019 for a change to the interviewer involved in the project (Appendix C) and further amendments were given approval on 16 April 2020 (Appendix C). As part of the requested amendment to engage a transcriber, a confidentiality agreement was also submitted for approval (Appendix C).

### ***PARTICIPANTS: RECRUITMENT AND SELECTION PROCESS***

The selection criteria used for the participants of this research were:

- 1) *Group 1 (Graduates)*: any Toi Ohomai NZ DipLEX graduates from the 2017 or 2018 cohorts that had been working in a legal environment for at least 6 months; and
- 2) *Group 2 (Employers)*: any law firm who had employed a Toi Ohomai NZ DipLEX graduate from the same 2017 or 2018 cohort.

Group 1 participants were identified from a number of sources. The first document used to identify potential participants was an informal spreadsheet kept by the NZ DipLEX program with the names of graduates and their employers. This spreadsheet is kept up to date through voluntary communications and notifications by past graduates to teaching staff about their employment status. This was the primary source for recruitment because it was easy to find the graduates' current email address on each of the law firms' websites. A second source used was the 2017 and 2018 Toi Ohomai graduation programs. The third source was the Toi Ohomai student management system known as EBS. Academic staff have access to this database and are able to generate graduate lists for all programs at any particular point in time. These lists are generated before each graduation and stored in files from year to year for the purpose of accurate record-keeping. These lists were obtained from the program manager and used to confirm the identity of graduates that met the selection criteria for the

study. The EBS database also provided access to addresses, emails and contact phone numbers of each of the graduates if the researcher was unable to contact them from the spreadsheet discussed above.

Group 2 participants were also identified from the previously mentioned informal spreadsheet kept by the NZ DipLEX program. The spreadsheet included the names of the graduates' employers. Contact details for these employees were obtained from their respective law firm websites. One member of Group 2 was not known while two members of Group 2 were known to the researcher as employees responsible for the recruitment and employment of both legal executives and legal administration staff. The researcher was often contacted by these employees when there was a job vacancy that suited a legal executive graduate. It was determined that those who employed legal executives were better suited to participate in this research rather than lawyers or other legal executives that worked directly with the graduate participants.

At the recruitment stage of this research, emails were sent to all the graduates from 2017 and 2018 and to all the law firms listed on the NZ DipLEX spreadsheet. Responses came back as either yes or no with various explanations of why they could or could not participate in the study. Participants who said yes were next contacted by phone and given a brief overview of the intended project. For those who then agreed to participate after the phone conversation, an email was sent out with further information and direction to read the attached Information Sheet (Appendix A), Consent form (Appendix A) and Interview Topics (Appendix A) to ensure that participants were fully informed about the research and process. I also chose to post a hard copy of the email and its attachments to the participants who did not initially respond to this email for reinforcement and confirmation of their participation. Those participants who agreed to be interviewed signed the consent forms and emailed them back, at which point they were stored in an appropriate file in Google Drive, and the dates and times for the interviews were arranged. In some cases, the participant agreed to be interviewed but the consent form was not signed until the actual interview took place. This was the case with the employer interviews that were conducted at their respective places of employment. A further

opportunity was given to all participants to ask any questions about the project before commencing the interview regardless of the mode of interview.

As part of the recruitment process it was important to ensure that participants from Group 1 and Group 2 did not come from the same law firms, to avoid the impact of workplace power relations on the participants' accounts as well as reduce the capacity for confidentiality issues. For example, learning about the involvement of either party could have had a negative effect on the openness/frankness of the responses to the interview questions, especially if the graduates knew their employer was also participating. It could have also had a negative effect on the employment relationship. The employer or the graduate participants could have identified employment relations problem areas during the interviews that may have resulted in uncomfortable situations or create unnecessary concerns for either party. Purposeful selection ensured that no participants from Group 1 were working at any of the Group 2 law firms.

## ***THE INTERVIEWS***

Individual interviews were held with each of the five members of Group 1 (Graduates) and the three members of Group 2 (Employers) between 9 January 2020 and 20 March 2020. An approved research assistant conducted each of the graduate interviews and the lead researcher conducted each of the employer interviews. This was because there were ethical issues to be considered relating to the pre-existing relationships between the lead researcher and the participants. The lead researcher had taught all of the graduate participants in the past in at least one or two of the courses in the program. Therefore, it was determined that power relations from pre-existing student-teacher relationships needed to be negated through the use of a research assistant.

The interviews took both coordination and planning by the lead researcher. This included scheduling, attending, recording, storing and transcribing. The Group 2 interviews took place at locations chosen by the participants for their convenience, lasted from 30 to 60 minutes and were recorded by Dictaphone. The Group 1 interviews were done remotely by way of the synchronous virtual meeting platform Zoom and recorded by a mobile phone.

Immediately before the interviews the researchers reviewed the Information Sheet with the interviewees and asked if there were any questions before proceeding. It was made clear that the recordings and transcripts would be stored securely, and strict confidentiality would be adhered to. The participants were then reminded that a copy of the interview transcript could be provided at their request once the project was completed. On completion of the interviews the audio recordings were immediately transferred to a specific “audio” file set up in Google Drive by the lead researcher.

The interviews were transcribed by an approved third party after a formal request to amend the ethics application was submitted. The approved transcriber also signed an approved confidentiality agreement as part of the ethics amendment application. Google Drive permissions to access these audio files were then given to the approved person for transcribing. Once the interviews were all transcribed, the resulting text documents were then moved to the dedicated “transcription” file, also on Google Drive. The participants of both Group 1 and Group 2 were asked during the interviews if they would like to proofread their transcript but all declined.

## ***PARTICIPANT DESCRIPTIONS***

It is an important ethical consideration to maintain the privacy and confidentiality of participants in the information and reports generated from any research project (Cresswell, 1998; Flick, 2014). In this study all participants' names were anonymized and identified by a pseudonym in all documentation. Pseudonyms were also used for the law firms attached to Group 2 employer representative participants. All the participants in Group 1 and Group 2 were women between the ages of 20 and 40. Group 1 identified as either European or Māori or both. Two were from the fully online transition qualification, one was from the face-to-face cohort only and the other one started in the face-to-face cohort but then transitioned to the fully online transition qualification. Group 2 all identified as European. Their ages were not recorded but a fair estimation would be that all three fit into the category of being over 30 years old. The following are detailed descriptions of the participants, first those in Group 1 and then those in Group 2.

**Group 1: Graduates*****A: Aria***

Aria identifies herself as Māori and is 33 years old. Aria completed the fully online program in mid-2019. She is from a small regional city and had been unemployed for nine years before deciding to take up study again. She had started her university law degree some time ago but could not finish due to family commitments and travel requirements. The online learning was ideal for her circumstances and gave her the flexibility to re-train. Aria gained employment before graduation but not as a legal executive. She is working in a legal support role for a lawyer in litigation practice on a six-month contract that had recently been renewed at the time of the interviews. Aria still aspires to complete her university law degree, but family commitments take priority.

***B: Raiha***

Raiha identifies as both European and Māori and is 21 years old. She graduated from the fully online NZ DipLEX program in July 2018. Raiha worked in non-law positions (such as retail) after graduation until a legal job came up in her region because she needed to earn money for her family. This meant that while she was offered work experience in a law firm, she was unable to take up the opportunity as it was an unpaid role. 15 months after graduation (October 2019) Raiha finally started working in a legal role in a court setting. Her role initially was a temporary legal administration role then progressed to more responsibilities. At time of her interview, Raiha remained in employment under a fixed-term contract with the hope of becoming permanent. Raiha has plans to find a legal executive job if the contract was not renewed. Raiha aspires to be a police officer in the future.

***C: Lina***

Lina identifies as a German national. She completed the Diploma in 2017 as a mature international student at the age of 38. Lina was part of a cohort that completed papers split into online delivery and face-to-face classes as part of the transition to a fully online

program. Lina came to the program with work and tertiary study experience unrelated to law. Lina was highly motivated because the Diploma provided her with an opportunity to integrate into New Zealand society and gain employment for immigration purposes. She was successful in obtaining employment before graduation in a large full-service law firm. Lina progressed quickly in her role and became a registered legal executive with the support of her employer after being in the role for 12 months.

***D: Clare***

Clare identifies as a New Zealand European and is 25 years old. She initially started her study as a face-to-face student but then switched halfway through to the fully online program. She completed the Diploma in December 2017 and started work at a law firm in January 2018 as receptionist. Clare found it hard to find employment as a legal executive and felt lucky to get this initial role. She had to move from a small regional area to a small metropolitan city to find this employment opportunity. She started working as a legal executive in October 2018 but recently changed firms. Clare is working in the property and commercial conveyancing team at the law firm and is a registered legal executive. She is currently completing her law degree part time in hope of becoming a lawyer in the near future.

***E: Emma***

Emma identifies as a New Zealand European and is 28 years old. Emma completed the Diploma at the end of 2017 as part of the face-to-face cohort. Emma gained employment before graduation at a large firm in a metropolitan city. Her experience was a gradual induction into the role of a legal executive. Emma currently works in the property team as a registered legal executive and plans to complete a law degree part time and eventually practice law as a solicitor.

**Group 2: Employers**

For the sake of brevity these participants are referred to as employers, but strictly speaking only Asunta falls into this category as Bella and Anna have managerial roles and employ on behalf of the firms in which they work.

***Bella (Law Firm: Salterio)***

Bella works at a full-service multi-sited law firm within New Zealand consisting of 90 support staff, 48 lawyers and nine partners. The practice is urban and has regional offices. Bella's role is Administration Manager. She is responsible for financials and recruitment of support staff like legal secretaries, legal executives, and accounting staff and is involved with the progression of these staff to higher positions. Bella has worked for this firm for 5-10 years.

***Anna (Law Firm: Ricci)***

Anna works at a full-service multi-sited large law firm located in multiple regions throughout New Zealand with 50 lawyers, 10 partners and support staff. Anna's role is Human Resource Manager. Anna is responsible for interviewing and hiring, and she also advises on the progression of staff into higher roles and manages the professional development of staff. Anna typically works with legal administration staff such as legal secretaries and legal executives but is also involved with the hiring process of all staff including lawyers.

***Asunta (Law Firm: Romano)***

Asunta is the director and practicing lawyer at a small law firm in a large metropolitan city within New Zealand. The firm has two directors who also work in the business as lawyers/consultants. There typically are one to two legal executives in the firm to help support the work of both lawyers. Asunta hires legal support staff and often works closely with legal executives to improve productivity.

## DATA ANALYSIS

Analysis of qualitative data from the set of transcribed interviews was done by way of thematic analysis and was also informed by personal memories of the researcher that were approached autoethnographically. Thematic analysis (TA) was first developed by Holten (1973) but over time it has become a widely accepted, distinctive method used in social science research. TA systematically identifies, analyses and reports patterns and themes. The advantage of TA is that, as a method, its flexibility allows the researcher to answer almost any type of research question, analyze any type of data and approach the data from either the top down (focusing on what is in the data) or the bottom up (focusing on data used to explore theoretical ideas) (Clarke & Braun, 2013; Holten, 1973). Both these styles of TA were used in the analysis process of the recorded interviews.

First, the audio recordings of each interview group (Group 1 (Graduates) and Group 2 (Employers)) were listened to, one after the other. Next, each audio recording was listened to a second time, but directly after each recording, the relevant transcripts were read. This complete process of reading the transcripts directly after listening to the interview recording was done twice for both groups. A further reading of each transcript in each group was done with a view of looking for both general themes (top down) and statements of application that support the constructivist approach to learning and its effectiveness (bottom up). The interview statements were initially identified in each transcript by underlining them with a blue pen. Next, all the underlined statements were reviewed one by one, and a general theme was named and written on the side margin, next to the statement. A record of each general theme was kept on a separate list for Group 1 and Group 2. Group 1's list of themes was sorted, analyzed and organized into two central themes with various subthemes. Group 2's list of themes was then also sorted, analyzed and organized into two central themes with various subthemes. The subthemes from both groups were identified from the patterns that emerged from the main list of themes initially identified. Once the lists were completed, a visual diagram of themes and subthemes was produced for Group 1 and Group 2. These diagrams were used for reference purposes. The findings from the two groups of interviews will be presented in Chapter Five (Graduates) and Chapter Six (Employers) respectively.

The reliability and validity measurements of quantitative research are not easily transferable to qualitative research; in fact, any comparison is immediately fraught with obvious difficulties. The aim of quantitative research is to be able to generate the same results across a variety of similar studies at the same time as eliminating any influence the researcher may have on those results. On the other hand, qualitative research recognizes the inevitability of the researchers' influences and actively seeks out engagement of the researcher with participants throughout the entire research process (Clarke & Braun, 2013). As a result of these difficulties there are no universal criteria that have been established to evaluate the quality of qualitative research except academic guidance provided from the community of researchers who have implicit knowledge about what makes up good quality research using this approach (Clarke & Braun, 2013). This implicit knowledge is summarized in a 15-point checklist of criteria (see Figure 1) first published in a paper by Clarke and Braun (2006). This checklist was republished in a comprehensive textbook by the same authors in 2013.

**Figure 1**

*A 15-point checklist of criteria for good thematic analysis*

Process	No.	Criteria
Transcription	1	The data have been transcribed to an appropriate level of detail, and the transcripts have been checked against the tapes for 'accuracy'.
Coding	2	Each data item has been given equal attention in the coding process.
	3	Themes have not been generated from a few vivid examples (an anecdotal approach), but instead the coding process has been thorough, inclusive and comprehensive.
	4	All relevant extracts for all each theme have been collated.
Analysis	5	Themes have been checked against each other and back to the original data set.
	6	Themes are internally coherent, consistent, and distinctive.
	7	Data have been analysed – interpreted, made sense of – rather than just paraphrased or described.
	8	Analysis and data match each other – the extracts illustrate the analytic claims.
	9	Analysis tells a convincing and well-organized story about the data and topic.
Overall	10	A good balance between analytic narrative and illustrative extracts is provided.
	11	Enough time has been allocated to complete all phases of the analysis adequately, without rushing a phase or giving it a once-over-lightly.
Written report	12	The assumptions about, and specific approach to, thematic analysis are clearly explicated.
	13	There is a good fit between what you claim you do, and what you show you have done – ie, described method and reported analysis are consistent.
	14	The language and concepts used in the report are consistent with the epistemological position of the analysis.
	15	The researcher is positioned as <i>active</i> in the research process; themes do not just 'emerge'.

*Note:* Source Braun & Clarke, 2006, p. 96.

One of the techniques that Clarke and Braun (2013) suggest using to ensure the credibility of data in qualitative research is *triangulation*. Triangulation refers to a process whereby two or more methods or sources of data are used to examine the research topic with the aim of getting close to the “truth” of the social phenomena being studied. The triangulation process was used in this study to increase the credibility and trustworthiness of the data collected. Collection of information was taken from two main data sources, notably the Toi Ohomai graduates of the NZ DipLEX program and those law firms that employed these graduates. Another layer of triangulation can be seen in the cross analysis of the results from the two main stakeholders’ groups (graduates and employers) with the prescribed graduate outcomes set by NZQA within the NZQF. To triangulate the data further, research could be done from the perspective of the Toi Ohomai teachers who taught in the NZ DipLEX program in 2017 and 2018.

## **ETHICAL CONSIDERATIONS**

Ethical considerations are an important part of the research process, especially when data is being collected from human subjects. Ethical standards exist to regulate our relationships with participants, research practices, academic communities and the wider world in which research is conducted. The core principles of ethics include respect, competence, responsibility and integrity, but most standards commonly applied in research fall under the principle of respect. These common standards include privacy and confidentiality, informed consent and self-determination (Clarke & Braun, 2013). Ethical considerations must also be addressed in keeping with the value-bound nature of the constructivist views. Ethics play an important part in any research project but in particular this paradigm requires the researcher to address these issues throughout the study (Kawulich, 2012).

## ***PRIVACY AND CONFIDENTIALITY***

At the commencement of the project, it was not intended that additional parties beyond the approved research team would be given access to any of the files. It became obvious after the data collection was completed that a further research assistant would be required to assist with transcribing the audio files. A further amendment to the ethics application was required and an application was made. Approval was given for this amendment to allow a further research assistant to transcribe the audio files into word documents. A suitable person was interviewed and formally engaged at that time. As part of the engagement process the approved confidentiality agreement (Appendix C) was signed by both the transcriber and lead researcher and electronic access to the audio files through sharing in Google drive.

## ***SELF-DETERMINATION***

Self-determination is an important concept to consider in the research process. It refers to a person's ability to make choices during the entire research process, from participation to publication. The rights of the participants should extend not only to their ability to withdraw but also to the ability to change or add comments to their interview transcript or to request that certain information is excluded from print (Clarke & Braun, 2013).

The voluntary nature of the research was highlighted throughout the research process beginning with the initial communications. All potential participants were encouraged to contact the lead researcher at any time before, during or after the interviews. It was made clear that participants would be able to withdraw from the project at any time and no reasons needed to be provided. The participants were again reminded before the interview commenced that participation in the study was voluntary. This gave them a further opportunity to make the choice of whether to participate. At the time of the interview, participants were given the choice to view the completed transcripts and make any changes required. When the participants were contacted all of them declined. A summary of the report was offered to all participants once completed. No further publications have arisen outside of the thesis itself to warrant notifying the participants. The participants will be notified if these circumstances arise

in the future. The participants were aware that all other intellectual and property rights will reside with the researcher.

## **SUMMARY OF CHAPTER FOUR**

To summarize, this chapter began with a description of the research questions on which this study is centered. Next, the theoretical framework was presented by way of a discussion on the chosen research paradigm, methodology and methods that were used to inform the research design. Background information about the conception of the research questions was also presented in this discussion. This research was guided by a constructivist methodological approach that is suited to qualitative inquiries. The validity and reliability of the research design were also discussed. The research process was then described in detail from start to finish, including a summary of the participants' background information, recruitment, selection and interview process. Semi-structured interviews were used as the method of data collection. The transcribed interviews were then analyzed by way of thematic analysis. Also included in this chapter was an explanation of various ethical consideration including the processes that were undertaken through the University of Waikato and Toi Ohomai Institute of Technology. The next two chapters present the findings from the interviews. Chapter Five presents the findings of the Graduate interviews and Chapter Six presents the findings from the Employer interviews.

## CHAPTER FIVE: GRADUATE INTERVIEW FINDINGS

This chapter presents findings of the graduate interviews that were conducted as part of this research project. The use of verbatim quotations is intended to capture and respect the authenticity of the graduates' voices and perspectives. The findings from the graduate interviews are grouped by themes. Each theme is organized into sub-themes that are further categorized in topics within each sub-theme. The two overarching themes are "learning" and "transition", which split the chapter into two main parts.

The learning theme includes three sub-themes that relate to the graduates' diploma learning experiences. The first sub-theme is online learning and covers topics including the graduate's experiences of benefits and challenges, with a focus on flexibility and creating connections in the online environment. The second sub-theme presents the students' experiences and views on the benefits of applied learning. The third and final sub-theme presents misconceptions about assessment types and learning.

The transition theme includes four sub-themes presented as topics. The first sub-theme looks at the graduate's job-seeking experiences. The second sub-theme looks at the graduates' perceived valuation of the diploma at recruitment and again, post-employment. The third sub-theme presents the graduates' initial employment experiences and covers the topics of supervision, stress and pressure in the workplace. The fourth sub-theme explores the graduates' workplace progression experiences.

### **THEME: LEARNING**

In the interviews, the graduates shared reflections and insights about the challenges of online learning, how they managed to overcome these challenges, their learning highlights and the program's assessment structures.

## **ONLINE LEARNING BENEFITS AND CHALLENGES**

### **Flexibility**

Flexibility in online learning enables a better work–life balance for those who choose to study on top of their other roles and responsibilities, “especially for parents and mature students ... it gives you that opportunity to still be able to maintain some form of work [and the ability to earn] ... [and] your respective commitments that you have to your family” (Aria). Clare added:

I liked that I could work full time, and yeah, there was a week’s worth of work, but if you had a couple of days off you could do it all then. You don’t have to wait for the classes ... you just do it all at once.

Raiha neatly summed up the benefits of flexibility for her: If you can actually handle your time management stuff properly, it’s really good because you can just pretty much do it [study] on the *side of your life*” [emphasis added]. However, Lina, who attended the face-to-face class, did not experience the flexibility the online cohort did. She stated, “Nothing in school comes easy to me ... I really have to work for that ... for me, it [the diploma] was a full-time job.

Despite Raiha’s account of the benefits of flexibility, her experiences reflected the misconception that online learning is easy because of its flexibility: “I guess I thought it would be easy and cool, like I can just do it whenever I want.” But once she started her online learning, Raiha quickly realized that flexibility was a challenge: “the [flexibility] kind of became a bad thing because then you would get behind and stuff and you would have everything in your house to just distract you.” Aria also discussed how flexibility made it especially important to have structure while studying online but shared how hard it could be to achieve. “Maintain your workload, maintain some form of structure in your studying ... even the most organized people most likely failed a lot in that.”

In relation to flexibility, Raiha identified that motivation was key to online success and acknowledged that this did not come easily. “So, I had to re-sit my second semester online as well, I got there, I scraped through ... I guess online learning isn’t for everyone, it took a lot of

motivation.” Part of Raiha’s struggle with motivation was not only related to flexibility, but also the loss of structure provided by face-to-face teaching:

Like, there’s a TV, and you can just go and do other stuff, but whereas in a classroom it’s structured, and you have to go to class, and you have to sit there and listen and take everything in, whereas I kind of just got distracted watching a computer screen.

### **Connections**

The graduates participating in this study identified that the biggest challenge in the online learning environment was the overall lack of “humanness”. Humanness within the context of this research can be described as personal interactions between both students and teachers, as well as between students and their peers. These interactions, or lack thereof, impacted on the graduates’ feelings of “connection” within the learning environment. Raiha described her learning experience in the online environment:

Through the computer, you don’t have the face-to-face, well, you do, but it’s through a computer, not like a real human kind of thing ..... Just the lack of humanness, I guess. Like because it’s cool, like when you’re in a classroom for the day or whatever, you can ... you make those classroom friends and talk about it and stuff.

She followed on to summarize the key negative aspect of online learning for her: “I think that’s always just that online — the online bit is good and bad, but I think as a negative, it could have been that lack of *human people*” [emphasis added]. Clare also identified the lack of physical contact as a challenge in creating connections. She said, “Just the lack of contact.... and not having other people to study with.”

While Emma did not study in the fully online program, she commented that she struggled with online learning because of the lack of human interaction:

I think like I said, being in the classroom with other people and being able to bounce things off other people and have general discussions around topics [is

beneficial to learning]. I think online I'd struggle with that because you don't necessarily see everyone else that you're talking to.

Feelings of isolation were a common experience amongst the graduates. Clare stressed that feelings of isolation were magnified when people could not meet up with anyone, no matter where they were living:

You know, you're all around the country, and there's nobody near you, so it's not even, 'Oh we'll just go to the library and figure this out', you sort of have to figure it out on your own. But in terms of other students, I didn't really ever meet any of them ... because there wasn't anybody that was at my level and in my town.

Raiha and Aria lived in rural areas, so their feelings of isolation were amplified. Raiha explained:

I kind of had one friend ... I kind of kept to myself through the whole thing. I lived in [X rural place], so it wasn't really a place where there were lots of people doing it that I could meet up with.

Aria shared her thoughts: "I rarely made any sort of connections ... it's honestly because we [are] in [X rural place]".

Aria also commented on the loss of opportunity to build relationships with peers:

Okay, so for online I would say, when you have to do pair projects where you have to use another classmate, because you're not seeing them on a consistent basis in class or in person, you tend to not build those strong relationships like you would do in a real-life situation, not online, I guess. Sometimes there would be a breakdown in communication, or you both wouldn't be able to give your ideas or clearly explain it over online.

Aria also described how isolation and the lack of connections had an impact on the deeper learning that was required to do assessments:

I think when it got to the nitty-gritty stuff that became quite complex, especially when you're doing your tests that you do or assignments at the end ... that can be quite hard because again, since your tutorials are online and your information is there, and you know it is up to the student to keep on top of that, but sometimes, when you come to do that assignment or testing, it's just the wording of the question can be lost on you. And I think sometimes those errors wouldn't happen when you can have that discussion in real time where you sort of drag over [discuss], and you're talking and you're in class and you're laughing, and you get to find out all of those tricky worded questions, how to break them out [down], to understand what the question is asking].

Real-time (synchronous) online learning can provide an environment that helps tackle the feelings of isolation for online students. However, the participants in this study expressed some challenges to its effectiveness in tackling feelings of isolation and creating useful connections. Raiha shared:

When you're in the online bit [tutorial], it kind of gets a bit isolating, sort of, because you don't know what everyone else is doing and they could be at work or whatever, and you kind of just want to yarn to someone about an assignment or something but you kind of can't.

Clare described her frustrations during the synchronous tutorials:

There's certainly challenges because you only get to meet in a meeting room that's online, once a week with those people and there's like 40 people that are logged on, so it's a little bit hard when you've got a question and sometimes you just don't have time [to ask].

Clare shared one strategy that helped her overcome some of these feelings early on in her study:

The one thing I did get to do was I got to catch up with some people who had already graduated, the polytech[nic] put me in touch with some people who had

graduated a couple of years before me who were working at a law firm. So, I got to meet them, and they told me a little bit about it and that was right at the beginning, so that was helpful.

As shown by previous responses from graduates in this chapter discussed, the graduates who studied fully online struggled to build relationships and make important connections with their peers. However, they learned to mitigate this challenge by focusing on connecting with their teacher. It was evident that the graduates viewed the connections with their teacher as especially crucial to their success in the online environment. Raiha noted, “Because you see them every week and you pretty much ... if you have lots of questions, you can always just email them or ring them, like [that is] enough to build a relationship.” Aria shared:

They [teachers/tutor] helped immensely ... if you have a great relationship or great rapport with your tutor ... you’re more likely to voice your opinion even if it is wrong ... because you’re there to learn and they are there to help ... Yeah, they [teachers/tutors] were probably one of the *most valuable things* [as part of the diploma] [emphasis added].

Raiha also stressed the importance of a caring approach to teaching for her confidence:

Good because it made you feel like the lecturer [teacher/tutor] actually wanted you to succeed and stuff and they weren’t just like, ‘Oh this my job, this is what I have to do’, they actually like, took their time with us and, if like we had a question at a funny hour, they would like always help and stuff, and just like [be] there for you.

Clare also talked about the value of teacher relationships during study and beyond:

.... I could have extra help ... and [the teacher] has been a reference for me for getting the job that I have now, which is really fantastic .... [The teacher] was open to having legal discussions in general, which I think legal executives miss out on...the tutor relationship was very helpful to me.

### **Benefits of Applied Learning**

Graduates shared the benefits of applied learning experiences during the diploma. They described how these skills were key in their transition to work.

Aria shared an overview of the general applied learning skills gained as part of the diploma:

Being able to learn in work ... I think self-awareness ...[being] able ... to *self-reflect* ... letting me have at least a *toolkit of ways to figure out problems* .... If you can give them [students] a foundation that's strong enough ..... 'If I don't know this.... I can find out what I need to know.' Their [teachers] teachings were just *preparing you with a solid base*, and it was probably the best thing that I left with [my emphasis].

Clare shared her applied learning experience:

One thing was I really struggled with the wills and trusts paper, I just found it really, really boring, so it was good when the person, the tutor we had actually related it to real-life examples .... I guess it relates back to saying this is the effect things will have in real life .... So, that was really good because I struggled with that paper but that made it make a lot more sense [sic].

### **Professional Practice Learning: Client Interview Simulations**

Client interview simulations were an applied learning technique that was used as part of the diploma to develop professional communication skills. The graduates shared their experiences and reflections from this part of the learning. For example, Raiha said:

Probably the one I've taken away the most is there's a professional practice paper [simulated client interviewing], and that was how to interact with your clients and stuff and other lawyers. And that's probably the biggest one I've come away with, with working with judges and lawyers and stuff. So, I feel like that gave me a good idea on how to act.

Even though it was a challenging learning experience for her, in hindsight, Lina also valued the client interview simulations:

The thing I hated the most, which probably helped me the most...was that stupid interview we had, where [the teacher] had to video record us while we interviewed a client. We really dreaded that task and I really didn't like it ... but ... and I really, actually did not want to see the video and see myself how I talk and how I behave, you know what I mean, how I sound and what stupid errors I make. I didn't like that task but of course we did it and it was really good in the end to see it, and I even ... I did watch it several times [laughter].

Aria mentioned:

Probably the high-priority one for that, is when I did an interview with [the professional practice teacher] ..... She made us do a work interview, or interview people [simulated clients] ..... One of my biggest wins was actually in my interview [job interview]. I went in there so prepared like I did when we did our assignment on this ... then, I actually did a roleplay with my cousin, who sat down and pretended to be the interviewer and I pretended to be me.... but would I have done that in real life if I hadn't done a class on it? Probably not ... but yeah, actually, I'll put that as my high.

### **Misconceptions: Internal Assessments Versus Exams**

The redevelopment of the diploma saw the end of the NZLS exams and the introduction of internal assessments as the sole method of assessment. Research on assessment techniques demonstrate that the learning process and students are better served through the use of internal assessments, rather than exams. The ability of internal assessment tasks to draw upon the required skills and knowledge relevant to students' future professional roles is key to the tasks' effectiveness as applied learning activities. However, graduates' perceptions about exams versus internal assessments highlighted the fact that misconceptions still exist about the usefulness and place of exams in professional learning programs.

For example, Raiha's misconception about learning and exam assessments is clear in the views expressed below:

I kind of think that exams might be better, not that I would want to do exams, but because I feel like it's such an important job to have that .... We had our kind of tests that we had to do, but I don't know if it challenged us enough ... they're [exams] a little bit more serious, and kind of ... instead of assignments — like we had a whole term to do an assignment. I feel like I might have learnt more doing an exam because I would have like, studied harder and worked more because I would have been like, 'Oh, I only have two hours to do this exam and I've got to get it right' ... I feel like with an exam, you don't necessarily know what the exam is going to say, so you study everything and hope that something that you learned is going to be in that exam.

Clare had similar views to Raiha about the usefulness of exams. Clare's reflections also highlighted the misconceptions about learning and exam assessments that have been socially constructed and embedded in society. Clare's description of internal assessments and how learning takes place was actually aligned with the limitation of exams as an assessment method:

I just always have [preferred exams], but yeah, I think that the idea of bringing all your knowledge together at once and using it in an exam style is better, because it means you have to remember it all for all of the paper, as opposed to assignments, where you go, 'Oh I need to learn this for the assignment', but then you let it all go. And it's like, that's not actually helpful, you want to be able to learn all of it and actually apply it all at once.

In contrast, Emma's description of her learning aligned more with the literature (see Chapter three):

Personally, I think I'm better with assignments ... You can have more time to ... go through it a little bit more thoroughly ... there's ... less pressure, I suppose. Like when you come to an exam, your kind of just cramming and trying to

remember everything, and it's a lot more stress and I just tend to sort of get in there, and go blank, whether I've studied for one week, or three months or whatever ... So, [I] would say that you learn more from your assessments and tests in comparison to [exams. I felt like I retained a lot more information than I would have [if I'd] done exams.

Aria also presented a view of learning aligned with contemporary literature (see Chapter three):

I think assignments were a lot better because you get, usually you get more time on it. You get to learn about it, you get to see the cause, the effect and the outcome of it. With exams, it's like you are just basically tested on knowledge, and you are not taking one section and being really in depth with it ... you become more adept, and once you learn something like that, that's critical knowledge in depth, you tend to remember the steps a lot more, as opposed to testing yourself, [preparing] yourself for exams where you try to catch where you think they're going to hit.

Lina shared her reflections about internal assessments versus exams:

In the style of the law society [NZLS], having like three days in a row, having six subjects and three hours each subject, so you have six hours one day ... Uh, no. I would have failed, really. Because after three hours you are done, your brain is fried, and then you go into the next session for another three hours..... The assignments are way better ... [assignments are] more real because in real life also, nobody wants you to find the answer and type up a huge document with 20 pages just out of your head, you don't do that. So, no, I think it's more according to real life, to real work.

## TRANSITIONING TO EMPLOYMENT

The theme of transitioning to employment encapsulates the challenges the graduates experienced when they sought employment and during their initial employment experiences in a legal environment.

### ***JOB-SEEKING EXPERIENCES***

This section presents the findings of the employment seeking experiences of the NZ DipLEX graduates. Experiences of finding employment varied amongst the graduates. Some (Emma, Lina and Aria) gained jobs before they finished, while others (Clare and Raiha) had real difficulties in finding any type of legal work at all, highlighting some of the barriers to employment that exist.

Raiha's experiences and difficulty in finding work highlighted a number of barriers that existed for her. Raiha was unable to get any legal-related employment for the first 14 months after graduation. Raiha explained:

The main thing was I had *no experience* [emphasis added], and that's why they wouldn't take me. They'd be like, 'Yeah, you have a qualification but no experience' ... I think that it's quite hard to get in to, um ... going from study into work into what you want to do, I think it is quite hard.

Another barrier mentioned by Raiha was location:

So, um, in [regional town X] nobody wants legal executives. I tried a lot, I was trying for about six months, trying to get a job. I got two ... work experience offers, but I didn't take them because at the time I needed a job ... I needed the money.

She added:

[There are] jobs going all the time [in larger cities]. I guess it's the area as well, and I probably would have had more luck if I was in Auckland or something, but then I don't want to live in Auckland, I like living here.

Clare also had some difficulty in finding work initially, but she still gained employment one month after graduating. Lack of experience was also a factor in the employment-seeking process for Clare. She eventually gained employment, but not as a legal executive:

It was difficult, I don't think you are made aware of how difficult it can be to get a job as a legal executive especially if *you haven't been working in a law firm* [emphasis added] whilst you're doing your study. Because you sort of think, 'I'm graduated now, I can get a role as a legal exec', and I didn't, and I was lucky to get the receptionist role at the law firm that I got.

Clare reported that other legal executive graduates also had difficulties gaining legal executive roles:

A lot of people I know either didn't get roles in law firms or hadn't registered as a legal exec yet [70% of legal executive work is required for registration]; they're still in a legal secretary or PA [personal assistant] role trying to work their way up [in New Zealand].

Clare suggested a reason why firms might be reluctant to hire graduates:

And so, law firms are like, 'Oh, if I take this person [legal executive graduate], I'm going to have to do a lot of training, I'm going to have to spend a lot of money and time on them'. Firms just aren't willing to do that. It's the same with graduate law students, there's a lot of graduates coming out that just can't get jobs because law firms have to spend too much money and time on them for them to potentially just go somewhere else.

For some students, finding employment was not difficult at all. Emma and Lina both gained employment at large law firms before finishing their studies. Aria also managed to get a position in a government department while still studying. She explained:

Before I finished my diploma, I got an email from someone in ... [could not remember who] ... maybe Student Services, saying that there was this job

vacancy, a temp job in [X government department]. I applied for it, and then I got it. That was about it, the transition wasn't hard, at all. Not for me.

## ***PERCEIVED VALUE OF DIPLOMA***

### **On Recruitment**

It was clear from the graduates that they valued the qualification and believed it had a positive impact on their employment opportunities. For example, Aria, Lina and Raiha all expressed views on how the diploma had a positive impact on their employment opportunities.

Raiha explained:

Yeah, so it definitely helped me get this job. I feel like if I didn't have that diploma, which obviously meant I had legal knowledge, I don't think I would have got this job..... I took this job knowing it was a contract job that this could be my experience, like I had no [none] 'til now.

Lina explained, "[The qualification] definitely played a role to get the job at all, yes. So, because my previous education was a different education, that's why I did the legal executive diploma because it gives you so many opportunities". Aria was a bit more reserved and less conclusive about the connection than Raiha and Lina: "[the] diploma most likely was the reason that I got the position I have anyway now, that I had some form of legal basis to work on".

Raiha shared her view that there were limits to how the value of the diploma could be captured:

I think when it comes to transitioning [finding a job], at the end of the day, there are some factors that are out of Toi Ohomai's hands. There's got to be jobs in that area, legal jobs for you to apply [for]. You should be able to [go] forth and make your own decisions, and opportunities arise from that. But if you don't and you sort of still have that same mentality that you did walking into [the course], then I don't know if things are going to change for you.

### **Post-Employment**

Despite most of the graduates expressing that the diploma was key in gaining employment, Clare also shared the realization that learning to become a legal executive did not end at graduation. Clare said, “I think ... we’re not ready to go; when you graduate, you think you know all this stuff but actually, in terms of sitting down and doing it, you don’t know how”. Clare elaborated:

I think that it [the diploma] prepared me well for an office environment, but I don’t think in terms of actually doing the work it prepared me particularly well, because when I did get taught how to do my job, I was sort of being taught from scratch as though I didn’t know anything.

Clare’s experience of “not knowing anything” in her initial employment was similar to Lina’s. Lina’s employer took the view that she was a “blank slate” despite her having a diploma qualification. Lina stated, “They told me I don’t have any knowledge at all, and they didn’t expect me to know anything, and they gave me 18 months to get good at my job. It didn’t quite take me that long.”

Emma shared a comment that reflected a higher level of confidence in her diploma-based learning:

I wouldn’t say I felt confident to go in and hit the ground running and be able to do everything, but I definitely had a general understanding of how things should work, and enough to kind of work things out for myself almost.

Like Emma, Aria also saw the value of the diploma. Aria stated, “[The diploma] does everything it’s supposed to, which is, your diploma is only supposed to be your starting step, really, in law”.

### **INITIAL EMPLOYMENT EXPERIENCES**

Under the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules* 2008, rule 11.3, it is a legislative requirement for lawyers in practice to “ensure that the conduct of the practice and the conduct of employees is at all time competently supervised and

managed". Some of the graduates in this study were fully supported with structured supervision while others struggled with minimal or no supervision at all.

### **SUPERVISION**

Clare's experiences in her first job were particularly challenging because of a lack of supervision:

They were a firm that was split between two different towns ... and I was sort of left to myself in the [x city] office. I didn't have any supervision; I didn't actually have anyone to ask and I wasn't really sure what I was doing. Because although I was a graduated legal exec, in terms of actual day-to-day transactional work, I didn't know a huge amount, and not having any supervision or guidance, or being taught anything made it very tricky and a little bit frightening to be honest.

Clare did get supervision in her second job, and it helped her to make connections with the learning she gained through the diploma:

I have to say in my new job [the second law firm], when I was taught how to practically do everything, all of the knowledge sort of flooded back in ... I definitely think that getting the right firm and the right support helps you use all the knowledge; otherwise, it's sort of like, 'I can't think, I don't know what I'm doing'.

Clare described how she was still hesitant to ask for help in her new job, but proper supervision soon clarified this for her:

Initially, I was just like, 'I just have to keep going and doing it myself', and then, my friend [colleague working in the law firm] went, 'Hey, you're doing extra hours, what's going on?' And I'm just like, 'I'm so busy', and they said, 'Don't feel like it's all on you, you need to stick your hand up and say I need some help with this', and now that I know that I can do that, it's been really, really good.

Emma also had some challenges in the area of supervision because of how busy the firm was at the time she was hired. Emma said, “I started right before Christmas, so everyone was really busy and kind of didn’t have the time to teach me anything too in-depth, because they were just like, ‘I just need to get it done’”.

To deal with this, Emma did not hesitate to ask for help:

To start with, I definitely asked a lot of questions or wanted to make sure there was someone that could help me out or check everything I did thoroughly because I wasn’t ... I didn’t want to make a mistake, more than anything else [laughter].

Lina shared how she adjusted well to working in a law firm, and as a result, had a very positive transition to employment experience. Lina stressed the importance of support from the law firm in making the transition easy:

Transition was easy, but it was easily made because of the people here because they want you to be successful, and they want you to, you know, they want to help you. If you have a good firm and they try to make it work, and you try to make it work, then it will always be easy, or at least okay. That’s the really cool thing about the work here, we work together and we try, if there is a problem, we try to solve it together.

Raiha’s employment experience and transition into work was much more structured than most of the other graduates because she was hired into a specific court administrative role. Raiha had constant supervision and structured “in-work training” that followed a scaffolding approach to learning, which provided her with a positive experience:

It’s been pretty hard, like going into a full-fledged [role] ... like mainly with the court taking ... but we just started this technical coach thing, so I had a set, designated person that helped me and taught me everything ... bit by bit, instead of just smashing me like, ‘this is court taking.’ It was, we started off, and I’d just sit in court and watch and then I would do little things .... It slowly built me up like that, and that was really good.

## **STRESS AND PRESSURE**

The graduates shared a number of reflections on the stress and pressure they experienced during their initial employment experiences. This stress and pressure did not seem something they were prepared for.

Aria was surprised at the level of stress in the workplace:

I didn't understand how mentally stressful [it was], [the] pressure, [the] time frames [involved], [and what was] expected of this role. It's a lot more in-depth than what I thought it would be. Like legal isn't a job where it's stressful on your body in terms of physically, but mentally, [it is] ... [laughter].

Clare also shared her simple explanation of what the stress and pressure were like for her. She said, "[It is] all very time pressured, and it can be very stressful at times because you've got to have a lot of balls in the air".

## **PROGRESSION**

Clare expressed some frustration with the ability to gain skills in the workplace and to progress within the role:

It's difficult because there's not as many opportunities as you think there would be, and you think that you're going to be working at this level up here, but actually the opportunities that are available to you are right down here, and it takes a long time to get to those higher opportunities.

However, in her second role, the firm was really busy, so she ended up progressing faster than she thought she would:

I was really lucky because when I came to this job [second law firm after graduation], the work I was going to be doing just amped up massively, and I got the opportunity, and I just had to rise to the occasion and get it done. But

ordinarily, if I hadn't had this particular role, I would still be very new into it and still have a really low level of responsibility.

Exposure to the hierarchy in the workplace were also noted by Raiha and Emma. Emma made specific reference to junior lawyers and noted that there seemed to be a "pecking order" between them and new legal executives:

I just think it took a long time for a lot of people to give me decent work in the firm that I'm in ... because it's quite a high pace and sort of busy, and some of the work is quite complex. Well, it's actually not quite the same with the junior lawyers. They get a little bit more work than the brand-new legal execs, but I think that's fairly standard.

Raiha also noted that law graduates were taking on similar work to her in order to get experience. This sense of competition with law graduates made her question her ability to progress in the legal executive role. She stated, "Like, there's people with law degrees that work here, and I'm like, 'Oh, if you have a law degree and you're working here, what hope do I have [to progress] with my little [legal executive] diploma?'"

## **SUMMARY OF CHAPTER FIVE**

In conclusion, the graduates' experiences of the NZ DipLEX online program highlight a number of challenges they faced not only during their program of study, but also in their employment experiences after graduation. Despite these challenges, the graduates have adopted strategies that have led to their success in gaining the qualification and employment in legal practices. The online environment certainly provided the graduates with opportunities they would not normally, have but with that, their learning experiences were very different than those of the traditional classroom. The employment experiences the graduates shared provide us with an overall picture of what it was like to be a "newbie" legal executive. In most cases, the graduates were hired as junior legal administrators who were told that the firm had the intention of training them to eventually take on a full legal executive role. However, their ability to progress in their roles was dependent on the firm, their ability to learn on the job and

the opportunities they were given during the transition. A source of frustration emerged from the graduates because their expectations were often mis-matched with the reality of the initial employment experience. The next chapter will present my findings from the employer interviews and present their perspectives on the education and training of the legal executives, and the employment of new graduates.

## **CHAPTER SIX: EMPLOYER INTERVIEW FINDINGS**

This chapter presents findings from the employer interviews with two managers and one partner at large and small firms, respectively. Please see Chapter 4: Methodology for a full description of each participant. For clarity, please note that I refer to the participants as employers, but technically, only one of them, who is a partner at a law firm, is actually an employer. The other two are human resource managers and employees of a law firm. The use of verbatim quotations is intended to capture and accurately represent the authenticity of the employers' perspectives as per the participants' voices.

The findings from the three interviews are grouped into themes and sub-themes. The two overarching themes include insights and commentary that relate specifically to the diploma and to the process of transition, first into employment and then, in relation to career progression. These two areas of discussion split the chapter into two parts referred to respectively as "diploma" and "transitions". The diploma part of the chapter is organized into the following sub-themes: value of the diploma, lack of knowledge of diploma, employer wish list for diploma content, and views on learning practices and processes used as part of the diploma program. The transition theme is organized into three sub-themes that describe the participants' views on recruitment, initial employment of graduates and how career pathways available to those affiliated with the legal profession operate.

### **DIPLOMA**

The findings in this section describe the participants' views, preferences and understanding of the legal executive qualification (the NZ DipLEX).

#### ***VALUE OF THE DIPLOMA***

The value of a qualification is ultimately determined by the role it plays in the labor market. This section begins by sharing the participants' views on the extent to which possession of a diploma influences recruitment decisions. The following section then describes how the

diploma is used by those already employed by law firms, and the role possession of the qualification plays in career progression.

Significantly, the participants indicated mixed and somewhat contradictory views on the role of qualifications in recruitment decisions. For example, Bella (law firm: Salterio) and Asunta (law firm: Romano) shared the view that the diploma was important but not compulsory to gain employment at a law firm. Asunta said, “[It is not compulsory] for someone [to have] the qualification [DipLEX]”. Bella agreed:

No [the diploma is not compulsory]. It’s probably only been in recent years that we’ve really started to make that more of a priority. Partly because if they’ve made the decision to do that study, we’re hopeful that means they are actually committed to the industry, as opposed to coming in and just wanting a job. So often they will be part-way through their study when they come in and won’t have completed it, and that’s absolutely fine.

However, Bella also observed that there had been an increasing number of new employees hired were already doing the diploma:

We’re probably bringing in more people that are part-way through [the diploma] than we’ve ever had, but we actively encourage any PA [personal assistant] to be doing their papers. We’ve got some that haven’t but it’s definitely becoming [more common].

### **Post-employment and registration**

Despite the observation that the diploma was not necessary or compulsory for hiring, Bella from law firm Salterio also stated that the diploma would become needed for career progression. She said, “Pretty much now, they [aspiring employees] don’t get to go into a legal executive role unless they can be registered, so they’ve got to have their qualifications”. In contrast, Anna from Ricci law firm said it was up to individuals, implying that registration might not have been needed to progress within legal affiliate roles. She said, “We’ve got quite a few

legal executives that are registered; we support them, but again, it is up to the individual — there’s no pressure on us for them to do that [become registered with the NZILE]”.

### **Use of the term “legal executive”**

Asunta was also unsure about the use of the term “legal executive”. She described her experiences and highlighted how the term seemed to be used loosely in practice:

A firm that we know had a junior staff member emailing through as a legal executive, and I said, ‘Oh great, congratulations, did you become a legal executive?’ And she said, ‘No, I’m not actually a legal executive, I’m just using that term’. I wouldn’t think you’d be able to do that, but yeah, as long as you don’t say they’re registered and as long as you don’t hold them out as having the qualification ..., But then we did it with somebody, who was the receptionist; we said we could train you up to do all the things that you can do anyway, so we’ll call you a legal executive now, and we’ll give you a pay rise and all that sort of thing.

## ***LACK OF UNDERSTANDING OF THE DIPLOMA***

The views expressed by the participants demonstrated a lack understanding about various aspects of the diploma, perhaps reinforcing the mixed views about the value of the diploma in recruitment. However, the participants were very interested in learning more about the delivery and contents of the diploma, and shared what they thought needed to be included as part of the diploma. Their perceptions are organized into five sub-sections that present commentary on their level of understanding around the delivery and content of the diploma.

### **Delivery and content**

Bella indicated that her firm’s view was to offer support to employees enrolled in the diploma program. As part of that discussion, it emerged that Bella was unaware that the diploma offered online tutorials to support student learning. “If they asked, we’d certainly be

open to trying to make it happen [to attend virtual classes]. It would depend on the time of day, but yeah, I didn't even know that was available to them," she said.

Bella, from law firm Salterio, expressed her lack of understanding of the skills expected in graduates. She stated, "That would actually be interesting at some point to know what things we could expect them [graduates] to be able to do, because I don't know that that's always been the case".

Bella was also not aware that the diploma was a pathway into a conveyancing qualification<sup>1</sup>. She queried, "How many people are doing that [the diploma in Conveyancing]? I don't know if we've got anybody that's done that ... but we would support it, definitely".

Asunta suggested that legal executives were not bound to the same professional standards as lawyers, but then she contradicted herself by saying they should be bound. Asunta's confusion about the professional standards required of legal executives reflects a lack of awareness of the role of the legal executive in practice:

But [legal executive graduates] haven't probably done as intense [a] training as someone who's been to law school in terms of ethics and client care. And you're also, as far as I'm aware, not held to as strict a standard as lawyers in terms of client care. I don't necessarily think that legal execs should be held to as strict a standard, but I think they should.

Asunta of law firm Romano stated that the diploma qualification was not compulsory on hiring and hinted that it was not even necessary. She showed a preference for practical on-the-job training to learn the role:

[It is not compulsory] for someone [to have] the qualification [DipLEX] ..... The issue with the person that we had was we said, 'You can call yourself a legal executive and we'll train you in all the things'; she said, 'But I want to do the course', and we said, 'Well, we don't want you to do the course because it will

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<sup>1</sup> In 2006 with the passing of the Lawyers and Conveyancer Act, the profession of Conveyancing was legitimized within the New Zealand Legal system. Qualification development occurred after that and has been offered exclusively by Toi Ohomai. The first year of the NZ DipLEX Studies is part of the Conveyancing Diploma.

take you two years, and we don't want to spend two years of you working part-time trying to learn the role practically but also studying at the same time.

### ***EMPLOYER WISH LIST***

All the employer interviewees had suggestions, based on their experiences with new graduates, on the skills and knowledge they would like graduate legal executives to have learned. Unbeknown to the employers, these skills were mostly taught as part of the diploma, but the employers' views were that graduates did not demonstrate these skills in practice. All three employer participants (Bella, Anna and Asunta) indicated different aspects of practice that they felt should be taught as part of the diploma.

Bella from Salterio suggested that it would be good for graduates to have more practical skills:

We would love to see a lot of practical stuff done, I don't know how much of that is happening ... being able to do a sales and purchase agreement ... draft a settlement statement, calculate rates ... being able to read a title and what's on it, and identify in a sale and purchase agreement any issues. I'd be able to read a LIM [Land Information Memorandum] and sort out potential issues. I guess, even draft a will ... even draft powers of attorney, obviously basic ones.

Asunta of Romano gave an example of how one of the graduates was able to apply her knowledge of the sale and purchase agreement practically:

Yeah, it's quite interesting actually, with the agreement for the sale and purchase, that jogged my memory. [The graduate] was, when doing conveyancing, she was more able to say, 'This situation has arisen, I should refer back to the fine print of the agreement [for] how to deal with that'. As opposed to just being like, 'I don't know what to do', or, 'This is just a standard transaction', she was more able to say, 'I think there's something in the fine print about that'. It would often be that we would go through it together, like she would be like, 'Is that what this means?' Or, 'Practically, is that how this works?'

But I think it was the knowledge ... that it was there ... and differentiating between different situations.

An area of the diploma that Asunta suggested needed more practical learning was the area of trusts. She shared her experience with one of the graduates:

I would say trusts, interestingly, trusts are probably the thing she didn't understand, because she didn't understand the concept of always going back to the trust deed, always checking if the trustees have the power to do that, and that type of thing. Which is where if she made mistakes that were ... not like spelling mistakes, that's where she would make it, with trusts.

Like Asunta, Bella of Salterio law firm also identified a particular area of practice that required more practical learning. Bella made some helpful comments and suggestions:

I think the trust accounts system is huge .... There [are] really only three [trust accounting software packages] in this area that firms would be using. If there was any way for them to get exposure to that .... Do you have some sample systems they can use and see transactions coming in and out?

Asunta from Romano also suggested that trust accounting was important:

I think just the general idea of what a trust account would be ... not the idea, but training on what is a trust account, would be quite good, especially if you're doing things like conveyancing, you are giving instructions to transfer funds and do things like that. And I think you need to understand what a trust account is, why it's so important, how a client ledger works, things like that.

Asunta of Romano law firm shared a trust accounting experience she had with a graduate:

I felt like she got a bit confused [about trust accounting].....I feel like statements and things, based on the trust account, were things we had to go over quite a bit, and I do find now with younger staff members or new staff members, is something that .... I suppose the trust account is a concept they do find hard to

grasp, and the client ledger ... because you don't ever really talk about or see things like that unless you're doing accounting.

Asunta talked more about the importance of practical skills directly related to client care: She said:

So, I think the skills and knowledge that graduate legal execs need are, I think, probably a more practical understanding of clients. I think learning, I suppose, about trusts and conveyancing and how that works is great, but when you're a legal executive, especially in a smaller firm, you're more likely to be dealing with clients straight away .... But [that's] the ability to look at the bigger picture, I suppose, and be able to ask questions and be able to pull information out of clients as well.

Anna from Ricci law firm talked about the benefits of applied learning that her summer clerks experienced. She also stressed how important this type of learning was for legal executives:

It's amazing, we had four summer clerks this last summer, and each one of them said to me that they all felt like they learned more with us in our summer clerk program, which is three months, than the past year they'd spent at university .... I guess that background knowledge that they [legal executive graduates] get from the diploma is really good and helpful, but practically, you're not going to do it until you're there doing it.

Bella highlighted the potential benefits of using applied learning techniques as part of the diploma. She suggested that it would improve the graduates' understanding of legal language and processes, with more opportunity to apply knowledge in practical situations:

Do they get the chance to manage a conveyancing file from the get go? Do you have some practice files that they can work through? Even at the basic level, at least understanding the steps that happen in a transaction, and the meaning of

unconditional deadlines and all that kind of stuff. Sometimes, it feels like they don't really understand the jargon.

Asunta supported the value of an applied learning approach by suggesting that legal executives should have the opportunity to observe legal practice during their study, as law students do:

[I] think it would probably make the transition a lot easier if they [legal executives] could have more practical training [during their study]. We have a group of law students that come around every year, like fourth- or fifth-year law students ... there's this sort of initiative in [named city] and they go to different firms, or they go to trade, or they go to Crown law ... and you just sit around and talk to them for an hour about what it's actually like, and then that same initiative also I think organizes for you to go in and shadow someone and see what they do.

Asunta added:

Like if you make a mistake, it's a little mistake, it's innocent, but it could be massive, the implications of it could be massive. I think it's like understanding those things and how a law firm runs would be really good for people who don't have that experience.

Anna from Ricci law firm made a different suggestion about practical learning as part of the Diploma. Because legal executives use practice management databases every day, Anna suggested that the topic should be covered in the diploma teachings, but to what extent, she was not sure:

I guess one thing that would be helpful, and I don't know whether or not you do cover this ... and again, it's difficult because each firm or practice uses a different system, but you know, using Infinity or legal database systems, I guess. Some training around those, potentially. That would be probably quite helpful, because that ... is where the training, once they're here, probably happens.... So,

initially in induction, there's an induction video that kind of goes through what they need to know. But otherwise, it's really learned as you go, and then if someone sits down with them and shows them, 'This is how you set up a new client, this is how you open a new matter, this is how you do a transaction request', all those kinds of things .... But, again, I don't know how you'd pick ... one system and teach everyone how to use that.

Anna of Ricci talked about another important area that graduates needed to study as part of the diploma: the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML) legislation and the required processes are a new, integral part of legal practice that graduates should be aware of. Anna suggested that learning the basic and practical processes of AML compliance should be a minimum for the diploma:

I guess with AML, that's been quite big, and we obviously provide training for all the new employees on that. But again, having someone come in that doesn't know what AML is ... it's not a massive deal because we teach them, and we just ensure they get that training.

## **LEARNING**

### **View of online learning**

Bella (of Salterio law firm) shared her thoughts about the flexibility of the online diploma in comparison to face-to-face classes. She stated, "From our point of view, it's fantastic because we don't have people out during the day [to attend class]".

Asunta, the employee of Romano law firm, also commented on how online learning worked quite well because of its flexibility. "I think it worked quite well for her [a graduate].... She could do it at work ... [and] she didn't.... have to go off somewhere else and do it," Asunta stated.

Asunta then remembered the same staff member at Romano telling her about specifics of the online delivery experience:

I do recall her sometimes thinking it was really helpful and sometimes thinking it was really annoying ... it was like a group chat type of situation [online synchronous tutorials], and I think it was more, she was there to learn, and lots of people were ... talking about a lot of things that just weren't the study and clogging up the chat.

In contrast, Bella from Salterio was supportive of workplace learning to supplement formal learning. She iterated, "We're probably bringing in more people that are part-way through [the diploma] than we've ever had, but we actively encourage any PA [personal assistant] to be doing their papers".

### **Benefits of learning while working**

Bella, employed by Law Firm Salterio, also supported an applied learning approach. She believed this allowed student to make instant connections between theory and practice:

We firmly believe that it's better to do your training [the diploma] while you're employed in the industry. Those who do [do] their study while they're employed in the industry will tell you, it is a lot better and a lot easier.

Romano employee Asunta also supported Bella in the view that it is better to study and work at the same time so knowledge can be applied. She said:

I think it's probably good to do it [the diploma] online if you work in a firm because then you have people around you that you can talk to about the thing straight away, which you might not otherwise do.

Asunta strengthened her opinion about the benefits of applied learning. She stated, "I don't think you should necessarily stop people from doing the course [with no law firm experience] ... [although] they're making it a lot harder for themselves without working in a law firm [and studying at the same time]". Asunta then gave an example of how applied learning benefits overall learning:

I feel like she [the working graduate] ... didn't know what was going on [before completing the diploma]. There were so many things to learn about, and it was very much me showing her how to do everything, whereas afterwards, we could kind of have conversations together about things as opposed to just me trying to teach her.

Bella's support of the benefits of applied learning was evident in the successes her legal executive employees, who were studying and working at the same time, obtained. She said, "We've actually [got] four [legal executives] ... who have already done their legal exec papers and are now doing law papers".

## **TRANSITION TO EMPLOYMENT**

### ***RECRUITMENT***

Recruitment is the first sub-theme presented under the transition theme. This section presents the findings that relate to the participants' expectations when recruiting legal administration staff who had graduated with the NZ DipLEX.

#### **Expectations**

Bella responded to a general question about the recruitment process and the expectations of diploma graduates:

We almost never hire a graduate to go straight into a legal exec position, they're typically coming in here in entry-level roles. Often, they will be the office junior, occasionally they will already be legal secretaries studying their papers ... because we know that we are going to have to train them. It's a big ask of anybody to come out after 12 months of training and go into a full-time reporting legal exec role.

Anna from Ricci law firm expressed her views on the expectations of legal executive graduates by comparing them to newly graduated lawyers from university:

We definitely don't have the expectation that graduates are going to be able to come in and operate as a legal exec from day dot. It's like lawyers, they've spent four years at law school, and they do profs, and they're still useless [laughter] .... So, we definitely don't have an expectation that they're going to know everything straight away.

Bella shared a similar position:

We'd love, in an ideal world, to be able to hand them a title and a sale-and-purchase agreement and say, 'Here, make that happen', but that's well beyond what they're [graduates] coming out with .... We know that we are going to have to train them. It's a big ask of anybody to come out after 12 months of training [diploma] and go into a full-time reporting legal exec role.

Law firm Ricci's recruitment process was guided by the needs of the firm as some roles required law firm experience that often-new graduates did not have. Anna described how new graduates were hired into their firm:

Well, I guess first of all, it really depends on what level of legal executive we are looking to hire for. If we're hiring a legal executive,... we need someone to just come in and pick up and run with it from day dot. Which is not possible for graduates that have never been in a law firm or had that experience before, so when we're looking at hiring legal exec graduates, generally we hire them into legal secretary positions with the view of them being able to progress within the firm and move into a legal executive role eventually.

Asunta, employed by the Romano law firm, shared how the size of the firm related to firm capacity to actually train graduates or new hires for prolonged periods of time:

The difference between big firms and small firms, is you [the graduate] would get to work on the client files and have a charge-out rate straight away in a small firm, but also is therefore expected to perform or take on responsibility straight away.

On this basis, Asunta argued that it was much more important for small law firms to look for applicants with experience:

We had been trying to hire a legal executive, and all the people who applied who said, 'I don't have any experience in a law firm and I'd like to do the course', or 'I've just done the course but I don't have any experience and didn't have a lot of life experience' ... we were sort of like, not really interested because of this example that we had. We thought for a small firm it can be a bit of a waste of time because just having the qualification on its own, unless they're incredibly onto it ... because you think well, you don't really know how to do that many things anyway, and what you've learnt is not necessarily applicable to our firm. Like you might have learnt it in a different way so you have to relearn it anyway.

Despite Asunta's views, she mentioned being pleasantly surprised by a new graduate she employed. "She had an understanding, which actually really surprised me because she'd never worked in law, she'd worked in [another area] about getting information out of a client."

In comparison to Asunta, Bella, employed by Salterio, commented about the challenges of hiring more mature graduates, all the while reinforcing the fact that undertaking the diploma while young was also a risk:

I'm astounded at the number of adult, mature graduates that are coming out .... It poses a problem for us because of how we bring them in, because for them to come into a junior-level role, it's junior-level money, and you know very well that they're chomping at the bit to get out, and that can be quite challenging, keeping them happy to stay at that seat for as long as it takes. Equally, I hate seeing kids going straight from school and doing it [the diploma].

### **Recruitment wish list**

Anna from Ricci explained what the firm was looking for when hiring new graduates:

Really, what I'm looking for when I'm looking at legal exec graduates is previous experience, like what their previous work experience is, and then essentially, their grades, so the grades they obtained during their legal exec diploma. I guess during the interviewing process, asking questions to ensure that they've, I guess, understood a little bit about what they've learned.

Anna added that the most important thing was "being able to use technology probably. That's probably the main thing [laughter]. You know, if you can use a computer, if you can use Microsoft, you can use Word ... then, you're already halfway there."

When comparing two different applicants with diplomas, Asunta (of Romano law firm) stated that practical life experience was most important:

We had somebody apply for a job the other day who had done a legal executive course [the diploma], but she was probably 55[years old], and she had a lot of life experience, so she got all of those practical things without having worked in a law. [But] with the one who hadn't worked in a law firm ... it was just like no practical knowledge about anything. And I think that's the difference between the lady we just interviewed, who had a whole lot of life experience in different areas. She had a whole lot of practical knowledge that fit perfectly with the study that she had done, whereas if you're young and doing the course, you don't have a whole lot of life experience, so you don't understand in a professional context how to build relationships with people, and you're actually responsible for people's money, and they're putting a lot of trust and confidence in you.

Asunta elaborated on why practical experience mattered:

The thing that springs to mind is if they're [graduates] talking to clients, understanding that every single word is important ... certainly at the start, [X graduate] didn't understand that at all ... that every single word can be interpreted in a different way to how you're reading it or how you're thinking it's going to be interpreted.

She reinforced her view, arguing, “I noticed a massive difference with someone [a graduate] who had been working in a law firm and then decided to do the qualification, as opposed to somebody who hadn’t worked in a law firm [and then did the qualification]”.

Bella, employed by Salterio, gave a summary of what their firm looked for in hiring a graduate:

Good English, good math’s, they’re very basic requirements. Probably not really, I mean obviously we’re always looking for the A+ students, but ... no, nothing else apart from that. But, got to have good interpersonal skills, because if they can’t interact well at a junior level, they’re never going to be able to interact well at client level We look for people with outstanding grades, who have got good social interaction skills.

Bella also emphasized the importance of motivation and the willingness to start at the bottom:

If they’re coming in as an office junior, then they will [have] to do work on reception, but we want to know that they’ve got the desire and the ability to start moving up the ladder when the time comes.... Having the knowledge of general trust law, general estate administration and general conveyancing is really good, too because then that’s things that firms don’t have to teach, things like, ‘What is a settlement statement? What is a will?’ Things like that, it’s great to have practical knowledge as well. Yeah.

### ***INITIAL EMPLOYMENT OBSERVATIONS***

This section presents the employers’ perspectives based on initial employment experiences with the diploma graduates. Overall, the three women participants expressed concerns that graduates often lacked preparation and had unrealistic expectations of how entry into the profession worked.

### **Gap between theory and practice**

Bella and Asunta highlighted how the gap between the learning for a qualification and practicing in a law firm was difficult to bridge for both law and legal executive students. Bella of Salterio said:

I don't think they have any concept until they get in here, how much learning they have still got to do. I'm not sure that any lawyer [new graduate] knows in all honesty ... I think the problem [with new legal executive graduates] is [what] we had with graduate lawyers as well, who have never worked in a law firm: you do this qualification, you're like, 'Great, I've got this qualification, I can do all these things'. And then you get into the job and find out, actually practically, it's quite different. And it's a bit disheartening because you think, 'I've got this qualification, it's so great', but then you've got all this other stuff to learn.

The Romano interviewee, Asunta, explained that part of her strategy to manage the gap between learning and practice for law students was to give very honest talks about the day-to-day running of firms. She argued that this could be good for legal executive students, too:

We just say look, it's actually really stressful, like this [is] what my average day looks like, these are the sort of hours we work, this is the sort of pressure we have, this is the structure within our firm, this is how we work together and work differently, and maybe something like that would be good, to actually get into those environments. Because I think, down here, our workplaces seem to be pretty open to that sort of thing, or to students anyway, so I don't see why they wouldn't do it with legal execs in training as well .... Because otherwise, that would be pretty scary, just turning up and not really knowing what it's ... like; you'd be confident because you'd done study, but the first day, or the first couple of weeks, might be a bit disheartening because it might be different to what you think.

The Ricci interviewee, Anna, also elaborated on the benefits of explaining law firm realities to students before they graduated:

If you're setting some type of expectation ... when they're finishing their study, that you might not get into a legal executive role straight away, or the role might not look exactly how you think it's going to look straight away. Like any role, you kind of have to start somewhere, and it will take time for you to build your legal exec career.

### **Lack of preparation**

Asunta, from Law Firm Romano, shared her observations of one graduate's initial employment:

The ... [graduate] we had who had not worked in a law firm before and had just done the course [diploma] ... I feel like they had no skills at all. And they had no understanding of, I suppose the pace of a law firm, or the standards required in terms of if you make a mistake, it can be quite costly for the client; a very small, innocent mistake can be very costly for a client. And no perception of how a law firm works in terms of, you record your time, you bill your client for your time, they pay the bills.

Bella, the Salterio interviewee, gave an example of a graduate who felt they lacked preparation for the role:

If I use [X name of graduate] as an example. So, she was an office junior for, probably, I don't know, six months, she moved into a PA role. The feedback she gave us when she moved from a junior PA to a more senior PA was [that] she felt hugely underprepared when she went in, and she felt like there should have been a lot more training before she even took the junior PA seat.

### **Differences between small and larger firms**

Bella then shared an example of a graduate who had not realized how little preparation assistance she had within in a small law firm till she came to a large law firm:

And then you get people like [X graduate], who went into a role at a very, really advanced level, considering the training she'd had, and was thrown in the deep end, and quickly came to realize when she came here how little supervision she'd had, and how much more she needed to know. And that is the risk of them going into those [small firm] roles.

Asunta, from Romano law firm, talked more specifically about job training at small law firms. In particular, she recognized that there were more opportunities for learning experiences in a small law firm:

It's kind of just like this situation [learning opportunity with client] has arisen, do you want to come and sit in on this meeting and see how you could explain this to a client, and then how we would structure what they're wanting to do, that type of thing .... That's the beauty of working in a small law firm, you [the graduate] end up getting to do more things than if you were in a more specialized area. Where you start out making the tea for the senior solicitor type thing.

### **Small firm contingent progression**

The Romano interviewee, Asunta, provided a contrasting view on progression: the nature of small firms meant that it was less structured and depended on the employee's attitude and willingness to learn:

Yeah, and I think just understanding that it was not going to be easy, that there was a lot to learn, that a law firm is quite stressful. She [the graduate], particularly for our firm, was really keen to have her own client base so she wasn't keen on just doing someone else's work. She wanted her own work, she wanted her own clients, which was perfect for us .....She [the graduate] was able to interview, start those interviews within, say, the first six months she was working here .... She was very nervous ....but it was good in a way because you understood that she understood the implications of what she was doing and

how important it was, and she actually moved from the role of doing things in the background, to her I am front-facing a client, I'm actually the one giving advice now, or explaining something.

Asunta further clarifies:

Yes, that would be maybe the difference between a small firm and a big firm, is that in a small firm, it wouldn't be that 'You're the legal executive and you support the lawyer', it would be 'You're the legal executive, so you're building up your own practice'. It would very much not be, 'You are supporting the lawyer', it would be you and the lawyer work[ing] together in a team and help[ing] each other, but not on ... I mean ideally in our firm, it would not be on the same files.

### **Dealing with graduate expectations**

Anna outlined how there were two different types of new recruits — one with high expectations of career progression, and others who were more willing to see that they had a lot to learn:

I feel like there's a mix, like for some, there's an expectation that they should be able to be called a legal exec because they've got the diploma ... [but] they wouldn't necessarily be able to pick up a file and go. I think there is an expectation, or they certainly like to progress quite quickly if they're not. But then, others have no expectations at all, and they understand that there's a lot they still need to learn, practically, and they're fine with it. So, it's kind of like managing that, getting that balance right, I guess.

### **Need to manage expectations**

Anna explained that part of how she managed conflict was to make it clear during interviews that career progression was gradual in large law firms:

I guess giving them a really realistic expectation in the interviews. Although they've got their diploma, they might not necessarily be a legal executive straight away, like they won't necessarily be looking after clients or files, or handling transactions by themselves from day one.

## ***WORKPLACE LEARNING AND PROFESSIONAL DEVELOPMENT***

### **Induction training**

Anna (from Ricci law firm) talked about the induction program for all new staff members, including graduate legal executives:

So, for new staff, their first week ... I normally spend half of the day with a new employee inducting them .... We've got induction training videos that all new employees watch, and they go through different trainings with different people around the firm ... but we tend to space that out over the first couple of weeks .... It's not a massive deal because we teach them, and we just ensure they get that training [AML and confidentiality].

Anna explained how induction was just a start to the kind of learning that graduates needed:

So, initially in induction, there's an induction video that kind of goes through what they need to know. But otherwise, it's really learned as you go, and then if someone sits down with them and shows them, 'This is how you set up a new client, this is how you open a new matter, this is how you do a transaction request', all those kinds of things..... But, again, I don't know how you'd pick, you know, pick one system and teach everyone how to use that.

Anna also outlined the process for engaging in professional development once in the workplace:

We have little trainings called bite-size trainings, where different people present on different topics right throughout the year. So, if anyone ever needs to attend

something, they can just go along to that, or if someone was like, 'Right, I'm going to start recording some time, I'll need some training on that', I'll just organize for that training to take place.

Salterio interviewee Asunta talked about the importance of training all staff to use in-house systems:

Any person coming in here from anywhere, into any role, has a solid two days' training on our systems. And that's just to use Infinity, Outlook, and then that carries on from there because they've got to learn how to use the templates and macros, all that sort of customized stuff that we have. There is no way you [Toi Ohomai] could teach them any of that, short of them having a basic understanding of what Infinity might be like, and every firm will use it differently anyway.

### **Professional development**

Bella also emphasized the importance of ongoing professional development:

We know that we are going to have to train them. It's a big ask of anybody to come out after 12 months' training and go into a full-time reporting legal executive role .... It is all on the job ... once they start getting into that semi-legal exec role, they are encouraged to be doing CPD [continuing professional development] hours .... We start to encourage them to do that.

### **Informal professional development**

Asunta also outlined an example of a more informal training process by sharing how she trained graduates in client interviewing:

So, you take them in, like you said, there's a bit of a process there. You take them into an interview that you're doing, and then they learn from there, is that the way that it would work so you know that they're safe? ... So basically, we

would sort of go through and say, 'Okay, so you'd sort of do prep before the meeting to say this is what this client's coming in about, this is what we're going to do in the meeting', and then it might be, 'This client's coming in and we're explaining this'. So, you've read the documents, so then listen to how I explain it to the client in this really simple way that they understand that is still legally correct. Just getting them to, I suppose, listen and learn in that way, and then just asking them when they feel confident to go on and do it themselves. And then monitoring that with clients, sitting in on interviews to start with, so it switches from me running the interview and them sitting, to me sitting and them running the interview. Then they feel confident to go in themselves, [and] we feel confident that they know what they're doing.

Ricci interviewee Anna also acknowledged how experienced staff played a big part in the training of new graduates. She stated, "Our legal executives and legal secretaries are great at training the graduates ... when they come on board".

## ***WORKPLACE PROGRESSION***

This section presents findings that relate to the participants' views on the graduates' progression in the workplace. The participants had a wide range of views on workplace progression. They shared formal and informal progression processes. As part of this discussion, the participants reinforced the mismatch between the graduates' expectations and the realities of entry into legal practice.

### **Limitations to progression**

Anna, from Ricci law firm, shared an experience working in a law firm described as a cap on her ability to progress given the aspect of firm practice she specialized in. She suggested that the different pathways and progression, particularly salary progression, should be made clear to graduates before entering practice:

I had no idea that my [career] progression and financial progression was going to be capped at some stage, compared with what some of the people in commercial and property were going to be able to achieve ... I mean, it's the reality of the role, it's the reality of the business, I do think it is a bit of a disservice not to front-foot that with graduates, or students.

Anna elaborated on the different fields:

The majority of our legal execs are within our commercial and property teams. We have one legal executive in our litigation team who is heavily involved in debtor management, and she performs a very specialized kind of role. But otherwise, litigation ... family ... just has legal secretaries, so we don't tend to hire legal execs for those teams, but the majority sit in property and commercial, and that is where our ... and estates I guess ... that's where our very senior, top-performing legal execs sit. I think you're more limited in practice areas where there is going to be less opportunity for you to charge time, in terms of financial progression as well.

Anna expanded on how being on her litigation team limited a graduate's ability to progress to a legal executive role:

We've got a legal exec graduate in our litigation team, and she's a legal secretary in that team. She won't be operating at a legal exec level, I mean, unless she specialized in a particular area or became really skilled at drafting particular letters when she could charge her time ... then she's always going to be at that level unless she moves into a different team.

Anna hired two graduates from the diploma program. She provided an overview of their progression to becoming legal executives:

We had two graduates start with us in legal secretary positions. They progressed from that legal secretary role, or their title changed to legal exec, and they started charging for a couple of hours ... [It took] a year timeframe ... but it's not

guaranteed, and it's not the same for all of them because it really does depend on what the needs of the team are. We can't have everyone charging time all the time, we do need secretarial support, too, that can do the admin tasks.

Anna also referred to progression limitations that stemmed from how the firm was able to provide positions for graduates to progress through:

I'm sure it probably is [difficult]. We only hire as and when needed, and I'm sure there are lots more graduates probably than there are positions. The legal exec role or job, there doesn't tend to be a lot of movement in it. You know, if there's a senior legal exec in a good role, they usually stay there for a long time, so there's not a lot of movement or firm hopping going on.

Anna also highlighted the tension that is created by supporting staff to complete the diploma and go for promotion, in that it could lead to new vacancies in the harder-to-fill or retain legal secretary role:

When we have young people come through taking on admin roles, or legal secretary roles, then wanting to [do] the diploma, or you know, progress ... which is awesome, but it just makes it harder to keep people in legal secretary roles, we need legal secretaries too [laughter].

### **Speed of progression**

Anna shared how long the progression took, and some of the variables that existed:

And there's no set time frame for that progression [through the bands], it really is up to the individual in terms of what they want to achieve, and it probably also depends on what team they're in and how quickly they're able to progress within that team. Because it's always the senior legal secretaries, the legal execs that are training the graduates that are coming through. So, depending on the work that's coming in and what's being able to be delegated, and the learning that's able to take place, kind of yeah ... has a flow-on effect.

Bella, the Salterio interviewee, described the “unknowns” about progressing to a legal executive role in her firm:

In terms of how long it takes, that’s like a piece of string. Some have come in as office juniors and [have] been juniors for six weeks before they’ve had the chance to move into a junior PA [personal assistant] role. More typically, it’s between three to six months, and then, they generally go into a junior PA role and start training under another senior PA. In terms of when they get that step, then to go into a full legal executive role, that’s unknown, but it’s unlikely it would ever happen before ... probably four years because the step from a junior PA to a senior PA is huge, and takes several years before they’re starting to even work at senior level enough that we’d be wanting to move them up to a higher role.

Bella continued to explain the progression once the employee started to do some legal executive work in their role:

What would happen is that as a senior PA [personal assistant], they start to take on more responsibility [as] a legal executive. So, we do have some positions that we call LE/LA roles [legal executive/legal assistant] that could be part legal exec, part legal assistant. So typically, in those roles, we would be expecting them to do maybe two to three hours a day of chargeable time, and that will gradually progress, and their fee budget starts to match that as that increases.

In attempting to be more specific, Bella shared a typical progression timeline:

If they came in with absolutely no legal experience, and haven't been a legal PA [personal assistant], I would think it would be a minimum of five years. Because they’ve got to be a good two years in before we’d consider them anything close to senior. From there to going to LE [legal executive], that’s a transition of, depending [on] who they work for, depends how much responsibility their author wants to give them as to whether they start working on more and more stuff.

### **Formal processes for progression**

Bella added more detail about the progression structure, once the employee reached legal executive status, in her firm:

Within the legal executive structure here, we've just recently introduced what we call our career matrix for that level, so you start off as a junior legal executive, legal executive, and then you can be a senior legal executive. We've just altered it so the senior legal exec level will now ... I think the requirement is they have to be a fellow with the Institute [registered legal executive with the NZILE] ... which takes eight years.

Anna, employed by Ricci, also described a formal structure for progression of legal executives in her firm:

I have created four bands, essentially, for our legal executives. So, the first band is junior legal exec, maybe charging two hours a day, and then band two is maybe more of an intermediate legal exec, maybe charging four, four-and-a-half hours a day. From there, we kind of move up into bands three and four, where a senior legal exec that has secretarial support and then senior legal execs that are essentially managing their own practice. Very senior, and have secretarial support as well, so, I guess that's kind of the progression.

## **SUMMARY OF CHAPTER SIX**

The participants' views illuminated the disconnect that exists between the educational providers and industry. First, there was a lack of understanding and knowledge about what was taught as part of the diploma. The employer participants even showed confusion about what the term legal executive meant, and about the standard of ethical care required of them in legal practice. Secondly, the participants also did not place a high value on the qualification, with most saying it was not compulsory or necessary. In line with this view, employers seemed reluctant to hire a graduate directly into a legal executive role, and some indicated that our

graduates were not coming out with the skills required to enter at the legal secretary level. The participants did acknowledge that there was still significant on-the-job training required for new staff that educational providers would not be expected to teach.

Despite contradictory observations on the diploma, the employers did express a real interest in knowing more about the qualification, and in particular, the pathways to other qualifications such as the Diploma in Conveyancing. Overall, the employers felt that the online program was of benefit to their staff for the convenience and flexibility it offered. They also stressed how important it was to be working in a law firm at the same time as studying, and they felt students were making it harder on themselves if they were not doing both at the same time.

In contrast to view that the qualification was not compulsory or necessary, employers then stated it was required if an employee wished to progress to a legal executive role. This contradictory view highlighted how legal practices prefer to provide our graduates with the work necessary to progress into a legal executive role, practical experience that educational providers are unable to offer. The participants did describe challenges they had with graduates, whose expectations were mismatched with the realities of working in a law firm, and they suggested ways to minimize this, e.g., by educating the students about pathways and limits within certain practice areas. Two of the participants argued that this issue could be addressed by informing the graduates about entry into the profession and expectations around progression to a legal executive role before qualification completion. The next chapter will present a discussion on the overall findings of both Chapters Five and Six.

## CHAPTER SEVEN: DISCUSSION

This chapter analyses the findings from the interviews previously reported in Chapters Five and Six, with reference to the research aims of (1) evaluating the online NZ DipLEX program and (2) investigating how learning is translated into legal practice. The two overarching themes identified from the graduate interviews described in Chapter Five were learning and transition to employment. The learning theme included thoughts on the benefits and challenges of online learning, the benefits of applied learning and the graduates' views on assessment structures. The transition theme focused on their experiences in finding employment, the role of the diploma in their job search, and initial employment and progression experiences. Chapter Six presented the employers' perspectives in two similar overarching themes: (1) diploma and (2) transitions to and in employment. The diploma theme included the employers' representatives' thoughts on the value of the diploma in law firms. The theme also included a discussion that indicated the employers' lack of understanding about the diploma, their wish list for the learning they would like to see included the diploma program and their views about online learning. The transition to employment theme yielded three sub-themes that included the employers' observations on firm-based practices within the profession of legal executives, including their recruitment. The transition theme also covered initial employment experiences, including the importance of professional development. Career progression between roles was the third sub-theme.

This chapter includes three key discussion topics gleaned from these findings. These topics do not cover all of the findings, but instead, have been selected to delve into the meaning, importance and relevance of specific research findings to help frame recommendations for the diploma program and the legal executive profession. The analysis of these topics is framed by my overall research aims, stated above, and draws on my personal experiences, which are reported throughout Chapters One, Two and Three, as well as the relevant literature. The first topic is online learning — this includes three sub-topics: (1) the myth of flexibility, also implying the ease of online learning and equitable access; (2) the core

finding that support from the teacher is the most important relationship for students; and (3) the absence of sustained and supportive peer-based collaboration.

The second topic explores the disconnect between education and industry. The two sub-topics in this area are (1) perceived value of the diploma and (2) employers' views on learning to be a legal executive.

The third and final topic for analysis looks at the implications arising from these findings with regard to wider gender inequalities; gender dynamics may have an impact on the education, employment and progression of a diploma graduate. The three sub-topics include (1) women's access to education, (2) pay equity and (3) the status of legal executives as a profession.

## **ONLINE LEARNING**

### ***THE MYTH OF FLEXIBILITY***

Flexibility is a key benefit of online learning that removes barriers to study for those who would traditionally be unable to attend a physical campus (Baum & McPherson, 2019; Smith, 2018; Stone et al., 2019; Veletsianos et al., 2021). The benefits of flexible online learning were reflected in the graduates' accounts. However, the flexibility of online learning was also a challenge, particularly for Raiha. Raiha reflected on her experiences and admitted she was initially drawn into the misconception that the flexibility of online learning would make learning easy. Fielding (2016) has argued that the "utopian" discourse around flexibility may play a part in the elements of online education that result in low retention rates, low pass rates, low grades and disappointing experiences. For example, flexibility precludes the positioning of the coursework at any scheduled or particular time, whether it be in a public sphere of work or in the private sphere of a home. Each student has to fit their study into his or her actual lived experience. This means a continual negotiation between parts of their lives as the person decides what times are reserved for their online coursework, and what times in their lives are reserved for work, socializing, family and other commitments. Fielding (2016) has suggested that opportunities for students to document the inevitable negotiations of space and time should be built into online courses as students integrate their study into their individual,

complicated lives (also see St Clair, 2015). Providing activities to get students to confront questions about how an online course fit into their lives helps locate the course in a virtual “hallway” that provides students space for negotiating the course’s role in their lives (Fielding, 2016). With this approach, students can share their struggles and frustrations with managing the flexibility of online learning, and they can give each other suggestions on how best to organise their study around their lives (Fielding, 2016).

Greater preparation for online learning is another strategy that could be put in place. In my experience, students are often enrolled with minimal understanding of what online learning is, and little preparation for developing the skills required to manage the challenges of flexibility, such as time management skills. Veletsianos et al. (2021) has stated that even though time management skills should be considered essential for the online learner, they are rarely part of course designs or learning outcomes. The importance of time management for online learning is further supported by findings that students with underdeveloped time management skills run the risk of being identified as lacking ability, motivation and interest in their study, when this is not the case (Veletsianos et al., 2021). Another area of importance for online students is the development of consistent study habits. Du et al. (2022) found that those online students who relied on established and scheduled patterns of study through self-managed commitments were much more successful than those who evidenced high variability in timing and location of study.

Research and international practice have indicated that a measured approach to screening, preparing and guiding students through online learning flexibility challenges is needed. For example, North American community colleges use a screening and preparatory course that can be a prerequisite to entry (Community College of Baltimore County, 2022; Minnesota State CAREERwise, 2022; North Shore Community College, 2021).

It is important from an equity perspective that educational providers recognize that standard policies and procedures cannot be applied universally to the online student cohort and must be adapted to allow for greater flexibility (Stone et al., 2019). With the majority of online students being mature, in paid employment, with caring responsibilities for children and/or elderly parents, and living regionally or rurally, online students are significantly different

from the traditional on-campus cohort (Hewson, 2018; O'Shea et al., 2015). Therefore, online students' circumstances and demographics need to be taken into consideration when developing, reviewing and amending educational policies, practices and procedures. The application of policies designed for traditional on-campus students, without adaptation for the online learner and their unique circumstances, can produce inequitable outcomes (Stone et al., 2019).

My research, alongside the literature presented in chapter three, suggests there is a critical need for institutions to consider the online student's lived experiences in relation to flexibility in the development of coursework and activities to ensure student success and a positive online experience. Part of this need involves preparation of the student for online learning and a recognition of the unique challenges that flexibility creates for online students (Fielding, 2016; Stone et al., 2019).

### ***THE TEACHER IS THE KEY IN THE ONLINE ENVIRONMENT***

The graduates' perceptions of the key role the teacher plays in online learning aligns with the literature (LaPointe & Reisetter, 2008; Lewis, 2014; McPherson & Nunes, 2013; Salmon, 2005, 2012). For example, Aria stated that the teachers were among her most valuable assets during her diploma studies, and both Raiha and Clare shared similar views. The relationship is important because students are more likely to persist with their online study if there is a connection with the tertiary organization, and in particular, with their teacher (Lewis, 2014; Tinto, 2006).

One of the key aspects of the NZ DipLEX program that brings teachers and students together are the weekly synchronous tutorials. Salmon (2000) has noted that synchronous conferencing is an effective way to offer students a feeling of immediate contact with their teachers. However, some of the graduates described difficulties when participating in the synchronous tutorials. First, Clare expressed some dissatisfaction with online tutorials, and at times, she found them to be counterproductive because of the large class sizes and the limited time available for interactions. Next, Raiha stated that at times, she found the online tutorials

to be a bit isolating because she was hesitant to talk with others who may have been at work or other places where they could not talk.

Asunta, one of the employer participants, also recalled a graduate who shared positive and negative experiences with online synchronous tutorials. Asunta said the graduate found them to be really helpful, but sometimes, the tutorials were really annoying when other students clogged up the chat with things unrelated to the study topic. According to Anderson et al. (2006), teachers need to plan thoroughly for an effective and inclusive synchronous learning experience, and they must pay particular attention to aspects such as short timeframes to cover material and the need to solicit the cohort's active participation during the time available. Given the key role online teachers have, and given that synchronous tutorials are one of the main mechanisms used to connect with the teacher, these tutorials should remain an important part of the NZ DipLEX program. These findings may provide some guidance in fine-tuning the use, purpose and the effectiveness of synchronous tutorials to ensure students are able to make important connections with the teacher in the online environment.

### ***LACK OF DEVELOPMENT OF COMMUNITIES OF LEARNING***

It was a surprise to me that relationships with peers were not an important aspect of the graduates' learning experiences. As outlined in Chapters One and Three, conscious efforts have been made to create collaborative communities through both the course and assessment design of the diploma (Martell-Stark, 2017). The pedagogical design was based on arguments that peer-based learning is an important part of taking a constructivist approach (Biggs & Tang, 2011; Reid-Martinez & Grooms, 2018; Tyler, 1949). Pedagogical design was also based on research that strongly supports the idea that students favor online collaboration and peer-to-peer interactions (Greenlee & Karanxha, 2010; Ku et al., 2013; Martell-Stark, 2017). The literature states that online courses based on collaborative design achieve a much better result, and that the drop-out rate is much lower (Karsenti et al., 2008; Kenney & Newcombe, 2011; Quintin et al., 2005; Simeone et al., 2007; Stoytcheva, 2021). However, none of the participants reported on the creation of sustained, peer-based relationships beyond the confines of a specific activity or assessment. While this was an unexpected finding given the pedagogical

design, my experience and the literature do suggest that collaboration is a challenge in the online learning environment, and often, students value student-to-teacher over student-to-student interactions. The view of learning as a social act that includes active engagement in discussion through collaboration becomes problematic for online teachers and program developers if there is a lack of collaboration and relationship-building between peers (Lapointe & Reisetter, 2008).

One potential reason for the lack of peer-based collaboration could stem from the effects of isolation on the online learners (Stoytcheva, 2021). Isolation increases students' feelings of inadequacy and self-doubt, and these feelings can have an impact on the student's ability and desire to collaborate with their peers (Baum & McPherson, 2019). The negative effects of isolation on a student's ability and desire to collaborate may be one of the major reasons why peer-to-peer collaboration was not valued by the graduates participating in this research.

The key point is that despite the deliberate, careful curriculum approach and design of the online diploma, the advantages that come with forming communities of learning and collaboration between peers were not realized by the participants. The findings therefore indicate that current practices designed to support peer-based learning need to be enhanced. In moving forward with diploma development, the complex demands placed on students when participating in online learning programs need to be considered at all levels of curriculum and program development (Fielding, 2016). Providers of online programs need to find more effective ways of encouraging collaborative learning at the same time as reducing tendencies to overload online students with multiple weekly activities that are impossible to do. This may improve retention, motivation and success in online learning (Stoytcheva, 2021). The NZ DipLEX program at Toi Ohomai should look more closely at the level of collaborative online learning that is taking place and determine if students are able to communicate and collaborate freely and easily to reach the learning levels required. If better collaborative learning is achieved, then the negative effects that occur with learning in isolation will be minimized.

## **THE DISCONNECT BETWEEN EDUCATION AND INDUSTRY**

Within the context of New Zealand tertiary education, the Review of Vocational Education (RoVE) and the development of Te Pūkenga have set imperatives for removing the gap that exists between education and industry (see Chapter three). High-level recognition in the vocational education sector has made the collaboration of education providers, industry and professional bodies a key driving force for change. At a more practical level, if these key players are able to work together to co-design and align curricula in the face of changing workplace requirements, a sense of cohesion will be created that can improve students', employees' and employers' experiences (Ministry of Education, 2022). While this ideal has been accentuated in plans for the future of vocational education, as outlined in chapters two and three, this collaboration does not always come easily within the context of some qualifications.

Despite the consultation process used to develop the NZ DipLEX under the NZQA TRoQ review process, employer participants in this study knew little about the diploma. For example, Bella (a Salterio interviewee) was unaware of the acumen she could expect in a graduate, and she was also surprised to learn that there was a pathway for legal executive graduates into the Diploma of Conveyancing. More surprisingly, Asunta (representing Romano law firm) was unaware that ethical standards were taught as part of the diploma. Bella, in offering a reason why firms might not be aware of the skills taught as part of the NZ DipLEX, said that evidence of the diploma was not used by employers to anticipate what skills an applicant had, but was used instead as an indication of the person's commitment to the legal industry. These findings may indicate that law firm employers, and those who are tasked to hire legal administration staff within those firms, are not familiar with the diploma's course structure and content. This lack of knowledge indicates that a disconnect exists between education and industry.

### ***DIPLOMA INCONSISTENTLY VALUED***

Another disconnect is the way the diploma was inconsistently valued. For example, graduates Aria, Lina and Raiha all strongly agreed that obtaining the diploma definitely played a role in getting their jobs at law firms. These three valued the diploma as a means to gain employment, but most graduates felt they were not adequately prepared for even an entry-

level legal secretarial position, let alone a legal executive role. Emma stated that she was not ready to “hit the ground running” and needed a lot of support at first, but she indicated that the diploma was fit for purpose and was the “starting step” into law she expected. Clare also agreed that she was not “ready to go” and felt she did not “know anything” when she started work at a law firm, but this was a disappointment to her as she expected more from the qualification.

From an employer’s perspective, value inconsistencies were embedded into firm practices. For instance, Bella and Asunta said the qualification was important, but then, they indicated it was not compulsory to gain employment. Asunta even hinted that the qualification was not needed at all because she could provide all the training needed to develop a legal executive. The employers’ overall preference to train legal executives on the job may well have contributed to their inconsistent valuations of the diploma qualification. Bella and Anna both stated that they never hired graduates directly into legal executive roles, but started them off in entry-level positions, such as a legal secretary. The training they offered took place over time, with a view to progress graduates into a legal executive role. Anna stated that when she hired for a legal executive position, the new employee had to function as a legal executive immediately, which is not the case for most diploma graduates. Asunta’s need to train staff as quickly as possible into the legal executive role to meet the needs of the firm took precedence over any single staff member’s desire to study and work part-time.

The inconsistent views about and valuations of the diploma were also illustrated by the confusion one employer displayed about the use of the term “legal executive”. The term “registered legal executive” is reserved to those who meet NZILE membership requirements (New Zealand Institute of Legal Executives, n.d.), but my findings suggest that the term legal executive is loosely used within legal practice. While the NZILE clearly defines their membership criteria, the legal industry as a whole does not follow a standard for the various legal administration roles, nor have they put in place a standard pathway to advance into various roles that may lead to work as a legal executive.

I believe this lack of uniformity within the legal profession is also a contributing factor to the disconnect between industry and education because the views about NZILE registration of

employees holding the diploma were also inconsistent. Bella confirmed that to progress to more senior roles, her firm required an employee to become a registered legal executive with the NZILE. But Anna stated that registration was not compulsory in her firm, and that it was the individual's choice.

I believe that the lack of a requirement to have the diploma or to be registered with the NZILE to work as a legal executive contribute to inconsistent valuations of the NZ DipLEX. I believe that employers' perceptions are partly based on the unchanged structures and hiring practices of law firms, and partly on the historical context under which the qualification was developed. I also believe these perceptions are affected by the fact that, within the New Zealand context, the job of a legal executive has not achieved the full status of being "professional". This suggests these findings need to be considered further with the view of better understanding the needs of employers and industry bodies. This understanding will go a long way towards a better alignment of the diploma with the needs of law firms and the legal profession. It will also facilitate and nurture the development of important relationships with professional organizations such as the NZILE and the NZLS. However, developing such relationships will require a genuine collaborative effort within the sector and between its key stakeholders, who should have an interest in legal executive education as a way to build these relationships.

## ***EMPLOYERS' VIEWS ON LEARNING***

### **Realistic Expectations of Graduates to be Made Clearer**

Another area of disconnect suggested by the employer participants revolved around the challenges in dealing with the employment expectations of graduates. Employer participants thought that some diploma graduates had pre-conceived and unrealistic ideas of what working in a law firm was like. Anna noted that some graduates expected to progress quickly in their role and be called a legal executive straight away. Bella also shared her view that keeping mature graduates happy in lower-paid junior-level roles was difficult when they were keen to take on more responsibility. Bella commented that graduates who had studied in the NZ DipLEX straight after high school, with little to no work or life experience, were not a good fit for her

firm. Bella argued that graduates wanting to be promoted or be called a legal executive straight away did not have any concept of how much learning was still required to practice at the level of a legal executive. More generally, Bella also noted that graduates did not have a realistic understanding of how a law firm worked in practice. One solution used by the employer participants to manage these unrealistic expectations was to make clear during interviews with prospective employees that career progression in larger firms was a gradual process.

Suggestions were also made regarding the diploma. Asunta indicated that workplace visits by students during their study could be encouraged, while Anna said it was important to make students aware that different areas of law offer different opportunities and have different restrictions on career progression.

These findings suggest that improvements to the diploma program are needed to better facilitate graduates' transition to work. These improvements should be aimed at better informing students that:

- learning after the diploma continues,
- legal practice is different than learning about the law,
- progression to a legal executive role is gradual,
- the speed of progression depends on the size of the firm,
- progression can depend on the availability of workplace learning opportunities, and
- there are limits in some areas of practice that could affect a graduate's ability to progress to a legal executive role.

## **GENDER DYNAMICS**

There are a number of things that make the issue of "gender dynamics" an important part of our discussion. In broad terms, the societal importance of workplace gender equality and the consequences of inequality are well established and endorsed by van der Linden (2019). It is also well established that gender dynamics in organizations can contribute to inequality. The use of a gender lens can provide guidance in the interpretation and analysis of gender issues in the labor market (Acker, 2006, 2009, 2010).

### ***ACCESS TO EDUCATION IMPROVED***

The flexibility of online learning has removed barriers to participation in tertiary education that affect traditional face-to-face classes. This has allowed women to retrain while still maintaining their lives and family commitments (Stone et al., 2019). Access to online tertiary study allows more women to progress and improve their lives, and this contributes to improving gender equity issues faced by women in the world of work. My experiences teaching predominantly female diploma students, and the fact that all the graduate participants in this study were female, indicate that at a very basic level, online learning has improved women's access to tertiary education.

Raiha, Clare and Aria expressed their views on how online learning gave them a unique opportunity to gain a qualification while still being able to maintain other roles and responsibilities including work and family commitments. While their experiences were not without challenges, all NZ DipLEX graduates succeeded in obtaining the qualification and achieved their career goals. As a result of the barriers online education has removed for women, graduates have been given a greater opportunity to improve the lives of their families, and this can only have an overall positive affect on society as a whole.

### ***PAY EQUITY***

While New Zealand has established itself as a progressive country in terms of women's rights, progress on gender equality has reached a plateau, and inequalities that still exist are masked. For example, female-dominant professions or roles within the labor market tend to be lower paid than those dominated by men (Holdsworth, 2021). The feminization of the workforce has created inequities within these roles' wage structures.

The NZILE does regular studies on their members regarding salary and working conditions. This may be an attempt to keep an eye on any inequalities that may exist, but the studies do not take into consideration the largely unmonitored workforce of legal administration staff and non-registered legal executives. A broader look at the wage structures of legal administration staff may expose vulnerabilities and hidden gender inequalities, in respect to legal executives and other auxiliary legal administration staff, that exist in the law

firms. The aim of this research was not to explore specific wage structures, but I suggest that historical law firm practices place a lesser value on “female”-orientated skills, and that this attitude contributed to the low wages offered to graduates at the beginning of their employment. The subject of equitable wages for legal secretaries and legal executives within law firms across New Zealand is not within the scope of this research, but further research to expose any inequalities in the system and improve wage structures for this valuable part of the legal workforce may be of benefit.

### ***FEMINISATION OF THE PROFESSION***

Despite the original New Zealand legal executive qualification being created for young men studying law part-time, and the founding members of the NZILE being predominantly men, the developing legal executive workforce has been largely dominated by women, which makes the issue of gender dynamics important (Hunt, 2014). As suggested by Dahlborg (1997), it is important to explore the gender dynamics in legal executive practice to avoid the mistakes made in other female-dominated professions. In ignoring the impacts of feminization, such professions have struggled to obtain the status they deserve (Dahlborg, 1997).

My experiences working as a registered nurse, lawyer and tertiary teacher have shaped my understanding and views on the influences of power structures within organizations and professions, and their relationships to gender. In particular, being part of two professions traditionally dominated by a female workforce — nursing and teaching — gives me the ability to recognize and reflect on wider issues of gender. As a lawyer, I have also experienced being a woman in a traditionally male-dominated profession. For me, the striking parallels that exist in the development of the “ancillary workforce” for both the medical and legal professions are fascinating. The struggles of women to become legitimate within the shadows of the established professions of doctors and lawyers have been challenging for these segments of the labor market due to the existence of a patriarchal base of power and control (Dahlborg, 1997).

In New Zealand, the role of the legal executive was originally developed to meet the needs of practicing lawyers, fueled by the desire to be more efficient. Lawyers needed to free up time for the more challenging and rewarding aspects of their roles (Dahlborg, 1997; NZLS,

2014). According to the NZQA diploma qualification details, practice as a legal executive is clearly defined as an ancillary support role for lawyers because there is a requirement to practice under the supervision of a lawyer (NZQA, n.d.). Despite this, the NZILE has stated that experienced legal executives can achieve a high degree of autonomy and independence in practice (NZILE, n.d.). Nevertheless, they cannot practice in their own right, nor can they give legal advice under the law that regulates both lawyers and conveyancing practitioners.<sup>2</sup>

The graduates' experience of career progression was mixed, signaling the potential impact of gender dynamics. For example, Clare and Emma shared their frustrations about the lack of opportunities and the effect of this lack on their ability to progress. Emma's comment that opportunities given to her as a brand-new legal executive were often lost to junior lawyers in the firm is worth noting. Raiha also noted that junior lawyers were taking on similar work and that this created a sense of competition within the workplace, which caused frustration about her ability to progress. Even though females make up over 60% of law graduates in New Zealand (NZLS, 2021), equal opportunities in the workplace for brand-new legal executives to gain the skills to progress are limited. The allocation of work experience within law firms may also be a law firm practice that has historical gender issues in play.

The findings of this study illustrate that gender dynamics do influence the education and employment experiences of legal executives in New Zealand. Gender issues in the context of law firms need to be brought to the forefront of practice, not only to minimize undervaluing or depreciating the legal executive's role, but to also to expose inequities that may exist. This will ensure that actions and solutions that will aid the advancement of women and the legal executive profession can develop.

### ***IDENTITY ISSUES WITHIN THE PRACTICE***

The discussion on gender dynamics is designed to use my findings to bring forth an awareness of the existence of these issues in order to better prepare graduates for the realities of legal practice and the gender issues that are present. Furthermore, Dahlborg (1997) has

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<sup>2</sup> Lawyers and Conveyancers Act 2006

argued that to challenge these underlying gender issues in practice, there needs to be a consistent professional identity through organizing, promoting and lobbying the role of legal executives as a full-fledged profession. Therefore, for legal executives to advance their status and identity within legal practice, it may be worthwhile taking a more unified approach that impacts on firm-based practices, i.e., by defining the levels of legal administration staff and legal executive roles within legal firms through collaborative efforts between education and industry

The collaborative development of consistent national guidelines for wages, working conditions and standardized progression may provide fairer recognition of the role legal executives play within the New Zealand legal system. A national registration structure may also help differentiate the specific role legal executives play in legal practice in comparison to general or auxiliary legal administration staff. This would go a long way to reducing the effects of the patriarchal structures that fuel gender inequality in female-dominated roles in the workplace. By taking the opportunity to better define and frame the professional identity of legal executives, opportunities may arise for greater status and greater autonomy that may see the role recognized as a full-fledged profession (Dahlborg, 1997).

Herein lies an opportunity available to the NZILE to work collaboratively with an alternate segment of the legal profession that deals exclusively with the transfer of ownership of real estate. The conveyancing profession has been successful in establishing themselves as an autonomous profession that gives legal advice in this area of legal practice (New Zealand Society of Conveyancers, 2022). Their fight to become a full-fledged profession was not easy due to resistance from the NZLS; nevertheless, conveyancers are legally able to practice in their own right in an area previously reserved for lawyers only. Ironically, my personal experience is that a high percentage of registered legal executives practice in conveyancing within their law firm, and arguably, they do the bulk of the conveyancing work for lawyers. However, their autonomy is clouded by the need to be supervised by a lawyer and the inability to legally practice in their own right. If the NZILE joined forces with the NZSC, then perhaps, these two organizations could form a united front to further establish the identity and role of legal executives within this area of legal practice. This may give legal executives the credibility to

argue for a more legitimate, autonomous role in legal practice, and reward them financially based on their experience and expertise. Currently, “registered” legal executives have minimal statutory independence in legal practice. Their duties include taking statutory declarations and witnessing enduring powers of attorney (NZILE, n.d.). These points are only suggestions to be explored, but they may help strengthen the professional identity and role of legal executives and assist with tackling gender equalities that may exist in this female-dominated workforce.

## **SUMMARY OF CHAPTER SEVEN**

The intent of this chapter was to analyze my findings from employer and graduate interviews, which were conducted for the purpose of evaluating the online NZ DipLEX program, and to investigate how learning translates into legal practice. This chapter was presented as three key discussion topics supported by sub-topics and framed by the research objectives, my personal experiences and the relevant literature. The three discussion topics were (1) online learning, (2) disconnections between education and industry and (3) gender dynamics. This discussion provides a basis for a range of recommendations that may improve the experiences of students in the online DipLEX program and may address the disconnect between industry and education. I have also commented on the inequities that stem from employers’ inconsistent valuations, due to firm-level practices, of the diploma. These practices speak to the history of the diploma, but more importantly, to gender inequalities that, while they are beyond the scope of this research to remedy, are important to note. The following chapter outlines these recommendations and provides a conclusion to this thesis.

## **CHAPTER EIGHT: CONCLUSION**

The overall objective of this research was to do a small-scale evaluation of the NZ DipLEX at Toi Ohomai Institute of Technology by interviewing graduates and employers, focusing primarily on the Diploma online learning and employment experiences. In particular, the focus of the evaluation was on determining the value of our online approach and investigating the extent to which graduates are meeting the needs and expectations of their employers. While the generalizability of this research is limited due to the small scale and subjective nature of the findings, the results are both valid and relevant to understanding the broader labor market context and improving the delivery of the NZ DipLEX Studies and online legal studies programs in general.

This final chapter begins by outlining the significance of this research and discusses to what extent the purpose of this research has been achieved. Next, a number of recommendations are made for online learning and more specifically for the NZ DipLEX Studies program at Toi Ohomai. These recommendations extend beyond the tertiary context to the workplace and to the wider concept of the professional identity of legal executives. This will be followed by a discussion on the limitations of this research and potential future research directions.

### **RESEARCH SIGNIFICANCE**

In addition to informing teaching practice at Toi Ohomai, this research fills a gap in the literature caused by the lack of studies on the effectiveness and suitability of online legal executive education and its relationship to industry needs in New Zealand and internationally. Second, the continued tension between some educational providers and industry bodies highlighted in this research remains, and it is important that it is challenged (see Chapter Two: Context). Third, the writing of this thesis has occurred amongst the backdrop of the current changes within the vocational education and training sector, thus increasing the relevance of the findings. For example, the need to resolve the tensions between providers and industry bodies has been intensified by the advent of RoVE, which requires employers and educators be

brought together to ensure that New Zealand's workforce is fit for the labor market demands of today and into the future (Tertiary Education Commission, 2021). The development and incorporation of Te Pūkenga on 1 April 2020 has added a renewed imperative to nurture relationships between industry and education provider. The findings and discussion provide dialogue and insight into understanding why such tensions exist between the industry and education bodies and what can be done to create more collaborative working relationships. These findings may lead to an open discussion and an opportunity for the integration of work and education in the legal studies space to remedy the disconnect and to support the advancement of the professional identity of legal executives in New Zealand.

Fourth, the findings have presented voices that have largely gone unheard throughout the history of the legal executive qualification reviews, in particular the voices of students. Their voices presented a picture of the unexplored online learning and transition experiences of Diploma graduates as a way to link the relevance of Diploma learning with the expectations of the legal industry. The voice of industry was also presented by exploring the employers' perceptions of the value of the Diploma, their expectations of graduates during transition and progressions within the law firm structures. My voice as a teacher was also presented through the use of autoethnography.

## **RESEARCH AIMS**

The overarching purpose of this research was to evaluate the NZ DipLEX Studies using a small-scale investigation of graduate and employer perspectives. More, specifically, my research aimed to:

1. understand the benefits, if any, that have accrued from the use of constructivist approaches, including communities of learning in the online environment;
2. explore the applicability of content and teaching techniques to the employment of legal executives;
3. determine the transferability of the skills and knowledge in the new NZ DipLEX to legal practice, particularly in the short term (e.g., the first six months of employment); and
4. identify strengths and weaknesses of the NZ DipLEX Studies.

This research has overall been successful in achieving the goal of evaluating the fully online NZ DipLEX Studies beyond informal anecdotes and enrollment statistics. The Diploma has continued to enjoy a popularity that has provided a steady flow of enrollments for Toi Ohomai Institute of Technology since its first delivery in 2017. But, like any program of study, it is important for the teachers, developers and managers to critically reflect on their practices and pedagogical approaches to ensure that the desired outcomes are being achieved for our graduates and their industry employers. It is easy to ignore or forget about what happens to our graduates once they leave formal vocational education and enter the workforce. This study gives a voice to these graduates and their employers in an evaluation that goes beyond the walls of the institute and into the realms of legal practice and the realities of the labor market for our graduates.

While online learning has provided more opportunities for learners, it also carries with it a number of challenges that need to be effectively managed within the program of study at both the pre- and post-enrollment stages. These challenges revolve around the unstructured nature of online learning and the feelings of isolation that are commonly experienced by learners.

The overall effectiveness of the constructivist approach used in the development of the online Diploma is confirmed within these findings, but there is a concern that collaborative learning and the development of communities of learning are not occurring to the level expected. The reason for this unexpected finding was discovered but there are certainly opportunities to make changes within the program of study to address these issues and improve the level of collaborative peer-to-peer interactions by way of innovative teaching strategies.

The disconnect between education and industry was evident in these findings. This has had an effect on the experiences of the graduates and their employers in terms of mis-matched expectations and perceptions around the value of the Diploma. The relationships between Toi Ohomai and legal industry bodies have not been given the attention needed to release the historical tensions that exist, but this may be a moot point in the advent of Te Pūkenga. In

another sense, the tensions that still exist may put in jeopardy all the hard work around the development of the NZ DipLEX . Therefore, it may be more important that Toi Ohomai start building its relationships with industry bodies such as the NZLS, NZILE and OPNZ. Te Pukenga’s vision of VET education involves the imperative of bringing both education and industry together to better meet the needs of our labor markets and communities. These relationships will be crucial to inform programs of study in the VET sector, such as the NZ DipLEX Studies.

## RECOMMENDATIONS

As a contribution to the development of online legal studies programs and in particular the NZ DipLEX Studies the following recommendations are made:

1. *Policy and procedures:* There should be equal application of policies that have been designed for traditional on-campus students without adaptation for the online learner and the unique circumstances they bring to the learning environment can produce inequitable outcomes (Stone et al., 2019). Current academic and other institutional policies and procedures should be reviewed to highlight any inequities that may disproportionately affect online students. It would be prudent for educational institutes to view new and existing policies through the lens of the online student and adapt them to enable equal outcomes by way of greater flexibility (for example, greater flexibility from teachers and coordinators in response to requests for extensions or deferrals). It is essential that the review of these policies and procedures involve experienced online teachers.
2. *Student preparation for flexibility and isolation:* More targeted preparation and guidance is needed both pre- and post-enrollment for all online courses to help students manage the challenges of flexibility and isolation. This preparation and guidance will help the students reduce anxiety and negotiate their life commitments to ensure their continued engagement and success in the program (Fielding, 2016; St Clair, 2015).
3. *Time-management skills:* Time-management skills should be considered essential skills for the online learner and support in this area should be given to students throughout

their online studies, but particularly at the commencement. This may be provided as a separate learning module or incorporated within an introductory course.

4. *Synchronous learning*: Some evidence/research-based fine-tuning may be required around the use of synchronous tutorials to ensure the students are able to make important connections with the teacher in the online environment. Teachers need to thoroughly plan for an effective and inclusive synchronous learning experience and pay particular attention to aspects such as the short timeframe to cover material and the need to solicit active participation of the cohort during this time. Given the importance of the teacher in these findings, synchronous tutorials as a main mechanism of connection remain an important part of the NZ DipLEX Studies program (Anderson et al., 2006).
5. *Educate students about transitioning into the workplace*: Potential students of this qualification need to be made aware that the qualification is at the entry level into a legal administration role, with a view that employers will provide in-work training to develop the necessary skills to work as a legal executive.
6. *Gender Awareness*: Legal executive students need to be made aware of the gender dynamics that exist in female-dominated professions and existence of power imbalances in legal practice as a result. This knowledge will give a sense of awareness of these issues and perhaps overtime effect changes to help legal executives unite in purpose for the betterment of this part of the labor market.
7. *Education Providers Connecting to industry*: In order bridge the gap between industry and education it will be important for providers of the NZ Dip LEX to liaise with industry stakeholders in a more meaningful way. There needs to be a re-education of employers about the NZ DipLEX program and the pathway it creates to the Diploma of Conveyancing. This could be approached by way of marketing campaigns and the development of needs assessments that are focused on the legal profession, legal administration staff and the role of the legal executive. This will help increase the profile of the Diploma, foster relationships with the legal industry and better inform course developers about the knowledge and skills employers are looking for.

8. *Fostering industry relationships to affect Policy:* There needs to be an active approach to improve and maintain industry relationships at both the local and national level. Key contacts and influencers from the NZILE, NZLS, NZSOC, NZQA and within the network of the Te Pūkenga providers need to be approached to initiate discussion about the Diploma. In particular, the NZLS and OPNZ need to be contacted to determine what aspects of the Toi Ohomai Diploma could be adapted to gain an endorsement from the NZLS. This could be seen as the first steps of collaboration within the newly formed Te Pūkenga vocational education network.
9. *Work experience during the Diploma:* One way to meet the needs of both graduates and their employers would be to facilitate a work placement or have a more formal work-integrated learning component (Bayerlein et al., 2021) to the Diploma. This will enhance the students' learning during the diploma and assist graduates to effectively transition to work, providing a more positive overall experience.
10. *Professional identity:* Looking to the future of legal executives in New Zealand, it may be time to advance their professional identity by helping unify those who work in legal administration and as legal executives across New Zealand. With a standardized model of progression through levels of skills and an aligned program of study, this female-dominated workforce may be able to find a united front in terms of working conditions, pay, progression and the recognition they deserve as key players within the legal profession. Perhaps it is time to explore the expansion of the role of the legal executive and the regulation of the profession or to begin discussions with the NZSOC to merge their structures. An expanded autonomous role through regulation of legal executive practice may be something that can contribute to effectively and efficiently expanding the access to justice as seen with Nurse Practitioners.

## **LIMITATIONS**

### ***LIMITATIONS OF QUALITATIVE RESEARCH***

It is difficult to make generalizations using qualitative data as the richness comes from the individual's experience and the creation of themes to present the participants' stories. This

research approach and the fact the sample size was small also makes generalizations of this data difficult. With the support of some quantitative data the value of this research may have been enhanced, such as if a mixed-method approach had been used. However, the rich descriptions from Group 1 (Graduates) and Group 2 (Employers) will enable legal studies teachers, students, graduates, law firm employers and industry bodies to draw conclusions that may resonate from their own experiences in education, practice or employment.

### ***LIMITATIONS OF THE RESEARCHER***

I am a teacher at present and practiced law a number of years ago. I have never worked as a legal executive, nor did I ever have a legal executive to support my work as a lawyer. While I generally know the role of a lawyer, I have little practical knowledge of the role of a legal executive except for the knowledge gained in my teaching role and through networking with legal executives and lawyers. This may have some limitations to the presentation of this research. A researcher who has practical experience of being a legal executive may be able to offer more insight into this analysis.

### ***RESEARCH BIAS***

While there are a number of approaches to minimizing research bias, autoethnography intentionally situates the researcher within the writing and openly declares their values and interests to be shaped by the research. One of my biases declared within the writing was my interest in evaluating the NZ DipLEX Studies program to counter the NZLS decision not to endorse the Toi Ohomai Diploma. I have acknowledged this and was careful not to interpret the findings in a way that would only support this premise. This background gives the reader detailed information to help identify potential areas of bias. From a more practical point of view, there were aspects of the research process and methods that could cause bias in the findings. Researcher bias was avoided by having a research assistant conduct the Group 1 (Graduate) interviews, as the lead researcher had taught them during their study. I, as the lead researcher, did conduct the interviews for Group 2 (Employers). While I declared that two of the Group 2 participants were known to me, this previous relationship may have had an effect

on the data collected and could be seen as a limitation due to interview bias. There is also a possibility of response bias, where the interviewee tries to give the answers that they think may be correct (Enago Academy, 2022).

### ***SCOPE OF PARTICIPANTS***

The recruitment of both Group 1 (Graduates) and Group 2 (Employers) was halted by the emerging Covid-19 pandemic in early 2020. Those that had already consented and fit the selection criteria by this point became the full list with no further opportunity to increase the number of participants.

Group 1 was a mix of those who studied online, face-to-face or by a mix of both. Upon reflecting on the composition of these groups, Group 1 could have been more homogenic and Group 2 could have included those senior/supervising legal executives or lawyers that worked closely every day with graduates during transition. This may have improved the breadth of the results and so could be considered a limitation.

Finally, it must be acknowledged that the views of those teachers in the Toi Ohomai NZ DipLEX Studies program have not been part of these findings. The findings would have been better triangulated with the inclusion of the teachers' perceptions and experiences within the Diploma. This is particularly relevant given my emphasis that the teacher's voice is often missing in the reviews and research on legal affiliate education.

### **CONCLUDING COMMENTS AND DIRECTIONS FOR FURTHER RESEARCH**

As identified, there is further work needed to understand how to encourage and sustain collaboration and the development of communities of learning within the Toi Ohomai NZ DipLEX Studies program. It is suggested that further research on Toi Ohomai student perceptions of online learning be conducted, with a sole focus on the extent of peer interactions and its effect on retention, success, motivation and isolation. For example, why students do not participate in synchronous tutorials, why peer-to-peer collaboration is not

valued by some students, and why student participation in synchronous tutorials declines over time are all questions that need to be considered.

Further research on the employment patterns and transition experiences of NZ DipLEX Studies graduates will be important to build on these findings, and also to develop a national baseline on how well the Diploma is tracking in terms of aligning with the needs of industry and preparing students for the changing labor market demands within legal practice. Looking to the future of legal executive education and the labor market of legal administration staff and legal executives, it may be worthwhile researching the case for regulation of the legal executive workforce in New Zealand to meet the growing pressures on our legal system.

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## **APPENDICES**

**APPENDIX A: ETHICS APPLICATION**

**APPENDIX B: LETTER OF APPROVAL**

**APPENDIX C: ETHICS AMENDMENTS**



Private Bag 3105  
Human Research Ethics Committee  
(Faculty/School Name in Maori)  
(Faculty/School Name in English)

Hamilton 3240  
Phone:  
E-mail:



**Before applying for approval applicants must familiarise themselves with the Ethical Conduct in Human Research and Related Activities Regulations in the University Calendar**  
**<http://calendar.waikato.ac.nz/assessment/ethicalConduct.htmf>**

Use this application if your research project involves the collection, use, and/or reuse of human data. This form is to be completed by staff and students doing research **prior to** the collection of any data from human participants.

Upon completion of this form please submit to/or email to your Faculty/School Human Research Ethics Committee [HREC]. Health Research and Health, Sport & Human Performance applications should be submitted to the central HREC ([humanresearch@waikato.ac.nz](mailto:humanresearch@waikato.ac.nz)).



**A positive answer to one or more of the questions below indicates the need for review by the HRC accredited Human Research Ethics Committee. Health Applications should be submitted by email to [humanethics@waikato.ac.nz](mailto:humanethics@waikato.ac.nz).**

- Are you investigating a topic that concerns health, disability or well-being?
- Are you using an instrument intended to assess health, disability or well-being?
- Is referral to a health service provider a potential outcome of participation?
- Are participants being recruited in their capacity as DHB employees?
- Is the researcher intending to collect tissue samples (e.g. bloods, saliva, urine) from healthy individuals?
- Is the researcher intending to utilize interventions related to exercise and nutrition?

**Submit this application form when the checklist and the Application Cover Sheet is complete and has been signed.**



Private Bag 3105  
 Human Research Ethics Committee  
 (Faculty/School Name In Maori)  
 (Faculty/School Name In English)

Hamilton 3240  
 Phone:  
 E-mail:



THE UNIVERSITY OF  
**WAI(ATO)**  
 Te Whare Wananga o Waikato

<b>Name of Principal Investigator:</b>	<b>Cynthia Martell-Stark</b>
School / Faculty / Institute :	Faculty of Arts and Social Science
Email address:	<b>cynthia.martell-stark@toiohoma.ac.nz</b>
Phone number:	02102296223
Office:	<b>07 557 8529</b>
Student ID (if applicable):	<b>9905003</b>
Proposed start date of field research / data collection:	<b>November 2018</b>
This is an application for approval of: (please tick as many as apply)	<input checked="" type="checkbox"/> Staff research project involving human participants <u><b>Master's degree research</b></u> <input type="checkbox"/> PhD research <input type="checkbox"/> Other
Name of degree/ paper (if applicable):	<b>Masters of Social Science (Labor Studies)</b>
Supervisor's name (if applicable):	<b>Dr. Gemma Piercy</b>
Supervisor's approval (signature):	
Funding source s:	<b>nil</b>
Project sponsors (e.g. equipment sponsors):	<b>nil</b>
Associated Applications (record the associated application code and title):	<b>Toi Ohomai Research Ethics Committee Application</b>

**YES** I request approval for this research or related activity and attach all relevant documentation necessary for evaluation under the Ethical Conduct in Human Research and Related Activities Regulations.

<http://calendar.waikato.ac.nz/assessment/ethicalConduct.html>

**VS** I have read and complied with the University's Ethical Conduct in Human Research and Related Activities Regulations.

**Principal Investigator's signature:**

**Date:**

\_\_\_\_\_  
 29/9/18

Please provide us with basic information about your project.

1. Project Title:

**Measuring the pedagogical shift: small scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

2. Briefly state the **research topic, research questions** and/or **research objectives**.

The overarching purpose of this research project is to help understand the gap that can exist between what students learn in tertiary study and the needs of stakeholder employers. More specifically, the project aims to determine the transferability of the skills and knowledge in the new NZDipLEX to legal practice, particularly in the short term (e.g., the first six months of employment). In casual language, the intent is to find out if graduates of this program can hit the ground running once employed. Discussions with employers and recent graduates will take place to determine the benefits and applicability of content and teaching techniques and the applicability to **skills** required in a legal practice for employment as a legal executive. In particular the research seeks to understand the benefits, *if any*, that have accrued from the use of constructivist approaches, including communities of learning and problem-based learning in the online environment. It also seeks to identify both the *strengths and weaknesses* of the program in order to ensure there is a 'real' alignment with the student and employer needs and expectations.

3. What research activities are you planning to undertake?

- Autoethnographic reflections will be developed and drawn on throughout the research process incorporating a reflexive approach into the research design.
- Group 1: semi-structured interviews of 3-5 NZDipLEX graduates who have been working for at least 6 months in a legal environment. Each interview will be approximately 30-60 minutes long however this will be flexible in order to meet the needs of the participant.
- Group 2: semi-structured interviews of 3-5 Law Firm Employers who currently employ a NZDipLEX graduate. Each interview will be approximately 30-60 minutes long however this will be flexible in order to meet the needs of the participant.
- All participants will be given an Information sheet (appendix 1) and a set of Interview topics (appendix 2) in advance via email or in person so that they are well informed and have time to think about the questions prior to the interview. This will also give the participants the option to remove any questions they do not wish to answer or discuss.
- All Interviews will be recorded, transcribed and analysed as discussed below.

4. To justify your project, provide a summary of the research, its methods, anticipated benefits, value and/or its contribution to the field.

## BACKGROUND INFORMATION

The New Zealand Law Society and the New Zealand Institute of Legal Executives have been resistant to the move away from examinations and have long been resistant to fully online learning for legal executive students. The insistence of adherence to traditional methods of teaching and learning and restrictive rules that guide legal education has stifled educators wanting to break away from the shackles of these 'passive learning' techniques. This pattern of resistance has been found in legal societies elsewhere, such as the United States and Australia (Stephen, 2017; Butler, 2007). However, this resistance is out of step with changing pedagogical practices in the tertiary sector and changing workplace practices in law firms. Therefore, it is important to deal with this resistance effectively and one way of doing so is to be evidence based. This graduate study is small scale; however, it is the first steps towards building an evidenced based approach to demonstrating the efficacy of online teaching in legal studies that employ constructivist approaches.

Constructivism, as a pedagogical approach, has proven to be very beneficial for learning in the contemporary tertiary environment (Biggs & Tang, 2011). The term Constructive comes from the Constructivist theory that states learners construct their own knowledge from their activities in and out of the classroom. The term 'alignment' is the principle of curriculum theory that states the assessment activities need to be connected to the intended learning. This combined approach that directs teaching away from 'topics that need to be covered' to 'what and how the students are to learn' is a powerful and successful method in the development of educational programs. This basic approach to align the curriculum ensures that the outcomes are formulated first, then the assessments regime is designed and finally the teaching and student activities are developed and aimed at achieving these outcomes. It is what the *student does, not the teacher* (Tyler, 1949). that is central to the development of all the related activities within each course. This alignment can also be seen to take advantage of the tendency of students to learn what they think they will be assessed on (Biggs & Tang, 2011). Scenario and problem-based learning is also an important part of the constructive approach pedagogically. Problem-based learning is "theoretically grounded in adult learning theory and constructivism and is predicted to produce a better learning environment and improved outcomes in terms of graduate knowledge skills and attitudes" (Wood, 2008). The development of the new NZDipLEX was conceived on this pedagogical approach to teaching, learning and assessment in a fully online environment.

The explosion of online programs internationally and the increasing use of a variety of teaching technologies has filtered through all levels of education but the extent varies from institution to institution and faculty to faculty. At Toi Ohomai the Legal Studies programs, including the NZDipLEX, are being delivered in a fully online environment using teaching technologies to bring flexibility to student learning. In contrast, it is well known that some law faculties continue to use predominantly lectures and PowerPoint presentations for their delivery. Their hesitation or rejection of using alternative teaching methods and incorporating information and communication technologies (ICT) that support a more active learning approach creates pedagogical questions for tertiary teaching in legal education (Kirley, 2015). As far back as 1999, Edgar and Chetwin (1999) suggested a more active approach to legal education by encouraging law faculties in Australia and New Zealand to embrace new technologies and incorporate them into their teaching strategies. More recently, Stephen (2017) suggests that successful online environments can provide a law student with the ability to focus on collaborative, meaningful context-based learning that provides a pathway to an engaging learning experience that is key to their success. The online environment has developed into an appropriate platform for teaching the NZDipLEX as a result of the clever use of ICT. Underpinned with a constructivist pedagogical approach, this environment has given our students and teachers multiple ways to foster the important connections in the learning environment that ensures students have an enriched and engaging learning experience.

While there is an expectation or hope that the results will be positive, there is also a possibility that the research will elicit negative aspects about the program from the experiences of both the students and employers. The research seeks to understand the benefits, *if any*, that have

accrued as a result of the development and delivery of the new program. It also seeks to identify both the *strengths and weaknesses* of the program in order to ensure there is a 'real' alignment with the student and employer needs and expectations. There is already anecdotal evidence that the students and employers' expectations are positive about the program so this research seeks to find further details that may support or refute these informal findings and to confirm what is working, what is not and how we can improve the online delivery of the diploma. If anything, the honeymoon phase of the first delivery that has seen an explosion of enrollments is only a quantitative look at the success of the program. This qualitative research seeks to delve beyond the 'numbers' and take a forensic look at the teaching, learning and outcomes in order to improve the current program and support the existing efficacy of online legal studies program.

This research aims to explore the qualitative evidence and determine the effectiveness of the online delivery and the constructivist approaches in the NZDipLEX at Toi Ohomai by exploring the experiences of graduates and employers with a focus on the adaptation of the graduates to the legal environments once employed. Perhaps this research may also create discussions amongst legal faculties within New Zealand that would involve the consideration of the development of a fully online LLB Degree program that embraces a constructivist pedagogical approach for their learners who are increasingly demanding more flexible learning options.

### Research Design

#### **This research will include the following methods:**

- Autoethnography and in-depth key informant interviews (graduates and employers) (main research instrument will be a list of interview topics - see appendix 3).
- Data will be collected through interviews as well as autobiographical reflections and writing.
- The interviews and notes will be recorded, partially transcribed and thematically analyzed to collect the qualitative data to assess the alignment of the graduate outcomes with the experience of graduates and employers.
- Group 1 participants will be past-legal executive students who have graduated at Toi Ohomai Institute of Technology with the New Zealand Diploma in Legal Executive Studies. Group 1 graduate participants will be recruited by accessing the graduate list from Toi Ohomai and sending a letter of correspondence with background information, a request to participate and a consent form (see appendix 2). The Group 1 graduate interviews will be conducted by a research assistant (from University of Waikato who has teaching evaluation experience) who will have interview topics provided to them. These interviews will be done face to face and recorded but if this is not possible it can be done through a synchronous method or a live chat application.
- Group 2 will be law firm employers who have or currently employ Toi Ohomai graduates. Group 2 Employer participants will be recruited by accessing the graduate list from Toi Ohomai with current employers listed and sending a letter of correspondence with background information, a request to participate and a consent form (see appendix 2). The Group 2 employer interviews will be conducted by the researcher and recorded but if this is not possible it can be done through a synchronous method or a live chat application. In recruiting and selecting the graduate and employer participants it is not allowable that both are from the same legal firm. This will be indicated on the letter of correspondence for to all participants.

- the information collected will be stored in a password accessible device/computer and the files will be kept in a password protected folder. Hard copy material will be kept in a lockable filing cabinet/drawer.
- This project will result in an unpublished thesis but will also include published documents that include refereed journal articles (peer reviewed) that are quality assured and conference papers that may not be refereed.
- Feedback into teaching will include reinforcement of the effectiveness of the current pedagogical approaches to online legal studies and validation of this approach in the New Zealand Diploma in Legal Executive Studies.
- Other outcomes may include the identification of current strengths and weaknesses in the content and teaching methods from the perspective of the employers and working graduates.
- This project will strengthen the alignment and relevance of the qualification to industry and produce graduates that adapt quickly and successfully during the transition from tertiary study to employment.
- The project results will provide further evidence in support of compliance with the graduate outcomes set in the approved NZQA program documentation.

Relevance to Toi Ohomai/University of Waikato:

- Support the growing evidence base that online legal education is an effective delivery method based on modern pedagogical approaches.
- The LLB undergraduate degree at the University of Waikato could benefit from this flexible approach to learning to extend their student base beyond the limits of the physical classroom.
- Increase the growing profile of Toi Ohomai in respect to the delivery of online legal studies programs and more specifically the New Zealand Diploma in Legal Executive Studies.
- The DipLEX has seen an increase in student numbers since the first delivery of the new Diploma in 2017. The largest provider (Open Polytechnic) of this Diploma has historically produced 3 to 5 times as many graduates as our legacy institute so there is significant market share that can be tapped into if this program continues to gain in popularity with the students and industry alike.
- This project may prompt discussions and a gradual acceptance of our innovative approach to teaching and learning that has historically met resistance from both the New Zealand Law Society and the New Zealand Institute of Legal Executives.
- The results of this research will benefit our students and Toi Ohomai by improving relationships with these influential groups (such as the New Zealand Law Society and New Zealand Institute of Legal Executives) within the very industry our

graduates will be working in. This will ensure we are delivering a program that is relevant to industry needs at the same time as being able to deliver a progressive pedagogical, innovative and relevant program of study.

- Benefits will also include a renewed contact with previous student graduates of the qualification to maintain and strengthen the alumni network and their successes.
- Improving and developing existing and new relationships with industry, legal professional bodies and other tertiary providers both within New Zealand and internationally.
- A short report will be provided to the NZLS/NZILE and to the research graduate participants. If deemed relevant the findings may also be made available to employer participants.
- It is intended to submit a paper to the Australian Vocational Education and Training Research Association conference in 2019. If accepted it will give exposure to Toi Ohomai at an international level with respect to our growing expertise in the online delivery of legal programs of study.

### Please tell us about your research team.

5. List all members of the research team and briefly describe their roles within the research project:

Conduct the Interviews with Group 1: Graduate students: Dayna East, University of Waikato, Masters Student in Social Policy.

Conduct interviews with Group 2: Employers: Cynthia Martell-Stark, Senior Academic Staff member, Faculty of Business and Legal Studies, Toi Ohomai Institute of Technology

While there is no way to completely remove the researcher staff member (myself) from this research, I have tried to minimize the impact of this bias by engaging a researcher to interview the students. There would be a much higher risk of bias if I was to interview the students as opposed to the employer. I believe there is a negligible risk that bias will be an issue when I am doing the employer participant interviews. There has been significant time since having contact with these employers and some of them I would not have met at all.

There may be a small risk that my name and participation may make the students feel obliged to participate. In 99% of the cases I have not had any contact with the potential student participants or employers in almost a year which will significantly reduce this risk. I think that the 12 month period of no contact would minimize and perhaps remove the possibility that graduates or employers would feel compelled or obliged to participate in this research as a result of my participation.

Also, the consent form and information sheets have made it clear that participation is voluntary and that the participants may refuse to answer any questions, terminate the interview or withdraw their consent if they wish. This will give them the upfront understanding and ability to withdraw. The fact that they don't have to provide reasons for their withdraw will also minimize or negate any feelings of obligation to the researcher that they may have if they later wish to withdrawal. I think it is important for both groups of participants to be aware that I am the lead researcher. To withhold this information would have its own ethical consequences that perhaps may be more of a problem than any obligation to participate that may be created.

6. Outline your qualifications to undertake this research. Include such things as prior experience, training in relevant research methods, and/or personal knowledge of the subject.

- Diploma in Nursing (Victoria General Hospital, Canada)
- Bachelor of Science (Nursing) Distinction (Dalhousie University, Canada)
- LLB(Hons) (University of Waikato)
- Enrolled Barrister and Solicitor of the High Court of New Zealand
- Post Graduate Certificate in Tertiary Teaching (University of Waikato)
- Have done past papers at masters/graduate levels on Research Design and Methodology (Massey), Educational philosophy (Massey), Research in Education (Waikato, PGCert) and Labor studies (Waikato).

7. What, if any, discipline-specific codes of ethics or professional standards will guide your research?

Part of my teaching responsibilities include facilitating the learning of the ethical/professional standards as set out in the Lawyers and Conveyancers Act 2006 and the Conduct Client Care Rules for Lawyers and Conveyancing practitioners. There is a high standard of ethics and awareness of ethical issues required to work in the legal profession. I have practiced as a lawyer in the past and now teach students these principles. I believe that this knowledge and experience will provide a strong basis to ensure this research is conducted in a professional and ethical manner.

**Please provide the following information about your participants:**

8. Broadly, who will they be? (Indicate the population, not the names of participants)

- Group 1: 3-5 Graduate Students of the Toi Ohomai NZ DipLEX who are currently employed in a legal environment.
- Group 2: 3-5 Employers of Toi Ohomai Graduates of the NZ DipLEX

9. How many participants will there be? Provide an estimate if you are unsure of exact numbers.

Maximum total participants= 10

10. How will you recruit participants? Summarise your process.

Recruitment of Group 1: Graduates and Group 2: Employers will be done from the Toi Ohomai 2017 NZDipLEX graduate lists which will also provide details of their employment status/employers.

How will you inform them about the project and their part in it? Summarise your process.

I will inform them about the project overview with an initial phone conversation. If interested, participants will receive a follow up email that will include the project information sheet and consent form. Once the consent forms are returned to the researcher then a date and time for the interviews will be set and a list of topics to be discussed will be provided. The interviews will then take place at a mutually agreed time and place that provides a level of privacy and neutrality. This will ensure that participants feel comfortable and safe to discuss the questions topics.

The graduate lists are available in the graduation program for 2017 and have been publicly available at the graduation ceremony. Also, Toi Ohomai has a student data base that identifies the graduates in any one year and their results. This data base is known as EBS and academic staff have access and are able to generate graduate lists for all programs. Both addresses, emails and contact phone numbers are available on this data base if I am unable to contact them through their employer.

It must also be noted that most law firms have websites that identify basic information about who is working at the law firms and what roles they have. As this information is publicly available the use of the Toi Ohomai data bases will only be accessed as a last resort to recruit participants. The use of the Toi Ohomai data base information could raise issues around privacy if it is used for other purpose beyond what it has been collected for. It must also be noted that once this ethics application is approved then another application to the Toi Ohomai Research Ethics Committee will be lodged to ensure these past students are being treated respectfully and ethically in the proposed research. This will provide a further check on the ethics relating to this research project.

There is also an informal recorded database for tracking graduates that will be accessed to determine which employers could be asked to participate in the research. This information is collected informally and voluntarily from contact that the teachers have with their students before and after graduation. The contact details for the law firms can be obtained through searching the law firm's website or other online sources. This is information that is publicly available.

**See Information Sheets Attached (Appendix 1)**

**See Consent forms Attached (Appendix 2)**

Are the participants vulnerable? NO

11. Will you select participants on the basis of their ethnicity, iwi, culture, gender, sexuality, religion, ethical belief or disability? NO

12. Do you have any type of relationship with your participants already (e.g. employer/employee, supervisor/worker, personal relationship)? Consider potential ethical issues associated with your pre-existing relationship. How will you address these issues in your project?

There are two issues that need to be identified here. First, I have taught, most if not all of the graduates in the program so there have been a past student-teacher relationship. This is being dealt with through engaging another researcher to do the interviews with Group 1: Graduates.

Secondly, in my past role as Program Coordinator, employers would contact me when they were looking to employ new staff. I would usually advertise employment opportunities to our students to assist them in the recruitment process. There have been a number of successful applicants from our program that have received placements upon graduation as a result of this.

My current role as senior academic staff member does not require me to work or contact these employers as the coordinator role has been removed and replaced with a management position.

My experience working with some of these employers during the consultation and development of the new Diploma will have a positive effect on the recruitment process of Group 2; Employers. Some will already know my involvement in the development of the new Diploma and my keen interest in ensuring the teachings in the Diploma are relevant to practice. One potential conflicting interest has been identified amongst the participant groups. It is important that the Group 2: Employer participant and the Group 1: Graduate participant are not from the same legal environment. This could have an effect on the openness/frankness of the responses to the interview questions, especially if they know their employer is also participating. If both participants are from the same law firm this may also have a negative effect on the employment relationship. The employer or the graduate may identify problem areas in the employment relationship that if identified in research findings may result in uncomfortable situations or create unnecessary concerns for either party. This restriction on participants not working in the same law firm will be made clear on both Information sheets. This conflict will be easily avoided through the selection process using the Toi Ohomai Graduate list and information. Purposeful selection of the participants will ensure that Group 1: Graduates and Group 2: Employers are not working in the same legal firm.

13. Will participants receive any form of compensation or incentive for participation? NO

There will be an offer of sharing the project results upon completion of the research but no other compensation or incentive will be offered.



**Please provide the following information about consent processes**

14. How will you gain informed consent from your participants?

Recruitment Stage:

Written Consent required: In the recruitment stage participants will first be contacted by phone and given a brief overview of the project. If they show an initial interest in participating, they will then be given an Information Sheet and the Consent form for consideration by email. They will be invited to participate by returning the Consent form back to the lead researcher after signing the consent form. Potential participants will be encouraged to contact the lead researcher at anytime

before consent is given to ask any questions for clarification. Contact details of the lead researcher will be provided at that time.

Interview Stage:

Immediately before the interviews the researchers will go over the Information sheet again and confirm their consent to participate even though written consent would have already been obtained in most cases. The significance of informed consent will be outlined along with the strict adherence to confidentiality and anonymity during the process. It will be made clear that all information collected will be stored securely. At that time the participants will be reminded that a copy of the interview transcript can be provided to allow them to check or modify their information up until two weeks after the interview is completed.

**See Attached copy of the Consent Form. (Appendix 2)**

**What steps will you take to ensure that their participation is voluntary at all times?**

15. With the exception of participants who are anonymous to the researcher, participants have the right to withdraw entirely or in part from the research. Please provide the following information:

This information will be provided on the Information Sheet: Participants can withdraw from the project at any time during the research without reason by communicating this to the lead researcher. Their rights extend not only to their ability to withdraw but also to the ability to change or add comments to their interview transcript up to two weeks after the interview is completed. Participants will also have the option to request that certain information is excluded from print. Otherwise other intellectual and property rights will reside with me as the researcher.

16. Data collection activities may be planned for off-campus locations. Please list all off-campus location where you will engage in data collection.

Data collection activities and interview locations are unknown at this time but will be decided by mutual agreement between the researchers and the participants once consent to participate has been obtained. It is anticipated that most interviews will take place in the Bay of Plenty Region.

17. Do you need consent or permission from any organisation, community representative, or anyone other than the individual participants?

NO. The only other permission required is the ethical approval of Toi Ohomai Institute of Technology Research committee as the subjects of the research are past students of Toi Ohomai. The lead researcher's employer is also Toi Ohomai so this permission will be assumed with ethics committee approval. Toi Ohomai Research Committee approval will be submitted after approval is given from Waikato University.

**Please tell us about what you will be asking your participants to do.**

18. What will participants be doing?

The participants will take part in one 30-60 minutes interview that will have structured topics/questions but there is also the flexibility to ask questions beyond the structure as they naturally arise. Questions should be used to open up the discussion with the participants to explore their perceptions and experiences. Interviews will be recorded in the media that the participant chooses which could be a face-to-face interview in person, a synchronous online interview or an online live chat room without any audio-visual capabilities.

**See Attached DRAFT Interview Topics (Appendix 3)**

19. How will participants benefit from their involvement in the research?

Employer Benefits:

Local industries have an interest in how our graduate's function in the workplace soon after they have finished their formal qualifications. They would like to be more aware of what specific skills the graduates have so when they are looking at employing new staff, they will have confidence in the quality of the graduates they employ. They also have an interest in knowing if the NEW qualification is producing quality graduates in comparison to the previous New Zealand Law Society Qualifications in order to give them confidence when employing new staff in these legal support roles.

Graduate Benefits:

There are probably not a lot of tangible benefits for graduates by participating in this study. Their willingness will be based on the knowledge that they were part of the very first graduating class of the new Diploma in New Zealand. The students were aware of these facts during the program and it was informally mentioned that there could be a need for participants in research in the future as a result. I think the students will be very proud of their success in the new Legal Executive program at Toi Ohomai and will be pleased to help the program become even better for future students. I suspect that they will also be willing in some way to assist the teachers of the program who provided them with the knowledge and support they needed to succeed. The only limiting factor will be their ability to take time out from their busy schedules.

20. Could participants be harmed in your research?

NO. See management of participants selection to avoid any graduate/employer conflict or potential damage to the employer or employee relationship. This has been addressed by ensuring that those in Group 1 and Group 2 are not working in the same law firm. This is will be covered in the information sheet and at the initial interview so participants are clear of these facts and be assured that they will be the only participant at their place of work. It is also stressed to participants that not only will their names remain anonymous but also the names of their employers. This is another way that the project process will give assurance to the participants that there will no harm to themselves, their role, their relationships nor their law firm employer.

21. How will you analyze the data that you collect from your participants?

A thematic analysis will be done from the transcriptions from each of the interviews. The themes and subthemes will be derived from reading the transcripts, field notes, discussion notes and reflections. This analysis will be done in conjunction with the supervisor and the resulting

discussion will also be analysed and recorded in the report as part of the underpinning methodological approach used.

22. Will your research involve comparing one group to another?

NO. No comparison will be done with the interview results/data analysis between the two groups of participants. The comparison will be with the thematic analysis data and the graduate outcomes in the NZQA program document to determine whether these are achieved or not.

23. Does your research involve any deception of participants? **NO**

24. Will the true identity of the researcher(s) be concealed from participants at any time during the researcher? NO (Such research is called 'covert research'.)

Te Whare Wananga o Waikato, the University of Waikato, through its official *Charter*, has an explicit commitment to partnership with Maori, to kaupapa and tikanga Maori, and to the interests of New Zealand-born and Island-born Pacific people. Through the *Ethical Conduct and Human Research and Related Activities Regulations*, researchers are required to respect the **cultural, social and language preferences and sensitivities** of participants. When applying for ethical approval, researchers should demonstrate an awareness of social and cultural difference, consult advisors regarding the appropriate conduct of their research, and present the outcome of consultation in their ethics application. Two resources that are particularly relevant to research at the University of Waikato are *Te Ara Tika - Guidelines for Maori Research Ethics* and the *Pacific Health Research Guidelines*.

25. Does the research project have particular relevance or potential implications for Maori, or for other social and cultural groups? NO

Do you have at least one cultural advisor for this project? Please provide their name(s) and specific role(s).  
**NO**

26. Describe how you will show respect and sensitivity towards participants (e.g., having support persons present during interviews, having an interpreter if you are not fluent in the language, being vouched for by elders, using appropriate gestures, dressing inoffensively, or participating in cultural ceremonies or rituals).

Participants will be given informed consent at the recruiting stage and given ample time to ask any questions about the purpose, process or their participation at any stage. Respect for the participants will be ensured by allowing flexibility in time and place of the scheduled interviews. It will be made clear that participants will be able to withdraw from the project at any time if they wish and no reasons need to be provided. This information will be provided in the information sheet give to all participants.

27. How will the identities of participants (and their communities and/or organizations where relevant) be represented in the research?

During the interview process participants will be invited to choose a pseudonym which will be used to represent them in the research as individuals and if and when needed, further pseudonyms will be developed for the law firm context.

28. Is it important to maintain the confidentiality of participants (and their communities/organizations where relevant) in the research reporting? YES

If **YES**, how will you preserve confidentiality?

All participants names will be anonymized and only identified by a pseudonym in all documentation used throughout the research process.

29. In addition to the lead researcher, who else will see information provided by the participants? Will any of the shared information be linked to the participants' names, or will it be anonymized before sharing?

It is not intended that additional parties will see information provided by the participants beyond the researchers and academic supervisor listed in this application. In anticipation of this situation arising there is a confidentiality agreement available to use to put in place protection for the participants and the data collected.

See *Attached Confidentiality Agreement (Appendix 7)*

30. How and where will the data be stored and protected **during** the research project?

Data will be stored in a password accessible device/computer and the files will be kept in a password protected folder. Hard copy material will be kept in a lockable filing cabinet/drawer.

31. List all the anticipated research outputs for the project (e.g., thesis, conference papers, journal articles, other sorts of presentation, book, media release, pedagogic materials).

Thesis (unpublished or published)  
Conference paper  
Journal Article

32. What provision is there to provide participants with information about the outcomes of the research?

A summary of the report will be provided to the participants at the completion of the research project. Participants will also be contacted when the research is used in further publications.

33. Research data must be stored for a minimum of 5 years after the completion of a research project.

Data will be stored in a password accessible device/computer and the files will be kept in a password protected folder.

Supervisor will store any hard copy materials from the research data on behalf of the Master's student in this research project.

#### 34. Ownership of Human Research Data

It is usual to state that participants own the data that they provide, and that the researcher will use the data for the specified purposes, with the consent of participants. Please explain any variation from this arrangement.

NO variation of the ownership as stated above.

#### 35. Copyright

The researcher's ownership of scholarly publications and other forms of research outputs is governed by the University of Waikato's Intellectual Property Rights Policy. Crucially the policy states in Clause 8 that, "*the University recognizes and endorses the traditional academic freedom of staff to publish research and scholarly documents and to produce creative and artistic works without restriction; the University does not assert ownership of copyright of such works (e.g., books, journal articles, conference papers, art works and musical recordings) unless specified in clauses 12- 18 of [the] policy.*"

Clause 9 states that, "*When dealing with intellectual property that includes Mātauranga Māori, and in the context of the WA/262 claim report, the principles of Te Tiriti o Waitangi will be applied by the University*". Please indicate if intellectual property is subject to the principles of Te Tiriti o Waitangi.

NO variation of the copyright policy.

#### 36. Other legal or ethical issues: N/ A

### **References**

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**Measuring the Pedagogical shift: Small Scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

**INFORMATION SHEET**

As a valued member of the extended law community of Toi Ohomai, I would like to invite you to participate in a research project focused on the re-development of the Legal Executive Diploma. I have approached you because I would like to gather information on the experiences and perceptions of recent graduates and employers in relation to these program changes and extent to which the skills specified in the graduate profile set by NZQA have been able to be transferred and realized in the workplace.

Information will be gathered from the graduate students by way of a 30-60 minute interview with Dayna East. I will also gather information from selected employer participants by way of a 30-60 minutes interview.

You have been recruited purposively to ensure that the graduates and employers who consent to participate in this study will not be working in the same legal firm. This will enable you to discuss your experiences without any constraints or fear of consequences.

The completed work in the form of a thesis will be placed in the University Library and an electronic copy will be placed on the internet that will be available for other users. I am also intending to publish a journal article and a conference paper on the results of this research. Your interview transcript will not be seen by any other people other than Gemma Piercy (research supervisor, University of Waikato), Dayna East (research team member, University of Waikato Social Policy Masters student) and myself.

Unless you explicitly agree, your name will not be used in the interview transcripts, thesis, journal or conference papers so you can remain anonymous. The name of the organization you work for will also be anonymous, and will not be referred to in any way in the thesis, journal article or conference publication. As part of the interview process, if you wish to remain anonymous, you will be asked to create a pseudonym for yourself and your law firm.

I will carefully store the audio-recordings of the interviews in a safe place for 5 years and will only be available to me. After that period of time the audio-recordings will be destroyed. If you wish, I am able to send a copy of the transcript from the interview. You can check, correct or remove any information from the interview transcript. At the end of my research, I can provide you with a summary of the research results.

If you agree to take part in this interview, you have the following rights:

- To remain anonymous, including your place of employment

- To ask any further questions about the interview or research project that occurs to you, either before, during or after the interview process or at any other time that may arise
- To refuse to answer any particular questions and to terminate the interview at any time without reason
- To request a copy of the audio-recordings and check, correct or remove any information from the interview
- To withdraw your consent within two weeks after the interview taking place by contacting me.

If you would like any further information about this research project please feel free to contact me to discuss your participation.

If you would like to participate, please sign the attached consent form and email it back to me at your soonest possible convenience.

#### **Research Team**

Lead Researcher— **Cynthia Martell-Stark** (cynthia.martell-stark@toiohomai.ac.nz)  
(see additional contact details below)

Research team member - **Dayna East** (d.east@hotmail.com)

Supervisor- **Gemma Piercy** (gemma@waikato.ac.nz)

Direct Line +64 7 557 8529

Freephone 0800 86 46 46

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**Research Topic:**

**Measuring the Pedagogical shift: Small Scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

**DRAFT ONLY: INTERVIEW TOPICS**

**TOPIC 1**

Group 1 Graduates: Ask the interviewee about themselves and their background, when they began work, what role they are in, what they are doing in that role and how they are enjoying it.

Group 2: Employers: Ask the interviewee about themselves and their background, how long they have worked in their role, what role they are in, what they are doing in that role, do they employ new staff, if so, background on what they look for when hiring a graduate legal executive or other legal support staff.

**TOPIC 2**

Group 1 Graduates: Ask the interviewee about their experiences in the NZDipLEX, what was positive and what was negative. What helped them learn and what did not. What learning was useful and what was not?

Group 2: Employers: Ask the interviewee about how many legal executives work in their firm? Based on your experience employing the graduates of the NZDipLEX, how would you describe their adaptation to their role in your firms. What stood out as a strength? What stood out as a weakness? What, if any, differences have you seen in these graduates compared to past graduates of the previous NZLS Diploma?

**TOPIC 3**

Group 1 Graduates: Ask the interviewee about the content of what was learned and relevance to what you are doing now. What was the most useful information you learned that helped you transition into practice? What was not helpful? What would you liked to have learned or learned more of?

Group 2: Employers: Ask the interviewee about

**TOPIC 4**

Group 1 Graduates: Ask the interviewee about what was the transition from being a student legal executive to working in a law firm like? Was it difficult or easy? Why? What would have made the transition easier?

Group 2: Employers: Ask the interviewee about

**Researcher's contact details:**

Cynthia Martell-Stark  
cynthia.martell-stark@toiohomai.ac.nz  
07557 8529

**Researcher's contact details:**

Dayna East  
d.east@hotmail.com

**Research Supervisor**

Dr Gemma Piercy  
gemma@waikato.ac.nz  
07 838 4466 ext: 9360

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# Appendix 3

THE UNIVERSITY OF  
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*Te Whare Ufinanga o J#Jikato*

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**Research Topic:**

**Measuring the Pedagogical shift: Small Scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

**CONSENT FORM**

<b>Please complete the following checklist. Tick [ ] the appropriate box for each point.</b>	<b>YES</b>	<b>NO</b>
I agree to participate in an interview as specified in the Information Sheet		
I have read and understood the Information Sheet which explains the research topic and the rights I have during the process		
I have been given the opportunity to ask any questions relating to my participation in the interview		
I agree to this interview being audio-recorded		
I understand I can withdraw from this research project within two weeks of the interview taking place by contacting Cynthia		
I agree that the interview may be used in the thesis, journal article and conference paper		
I wish to remain anonymous		
I wish to see a copy of the interview transcript		
I wish to receive the web address of the completed thesis, journal article and/or conference paper (my email address is: _____ )		

"I consent to be interviewed for this research on the above conditions"

**Signed: Interviewee** \_\_\_\_\_ **Date:** \_\_\_\_\_

"I agree to abide by the above conditions"

**Signed: Interviewer** \_\_\_\_\_ **Date:** \_\_\_\_\_

Any questions about the ethical conduct of this project may be made to the University's Faculty of Arts and Social Science's Human Research Ethics Committee (University of Waikato, Private Bag 3105, Hamilton 3240, or [fass-ethics@waikato.ac.nz](mailto:fass-ethics@waikato.ac.nz))

**Researcher's contact details:**

Cynthia Martell-Stark  
[cynthia.martell-stark@toiohoma.ac.nz](mailto:cynthia.martell-stark@toiohoma.ac.nz)  
07557 8529

**Research Supervisor**

Dr Gemma Piercy  
[gemma@waikato.ac.nz](mailto:gemma@waikato.ac.nz)  
07 838 4466 ext: 9360

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THE UNIVERSITY OF  
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Cynthia Martell-Stark  
Gemma Piercy

Labor Studies

15 November 2018

Dear Cynthia,

**Re: FS2018-31 Measuring the pedagogical shift: Small scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

Thank you for submitting your revised application to the FASS Human Research Ethics Committee. We have reviewed the final version of your application and the Committee is now pleased to offer formal approval for your research activities, including the following:

- interviews with NZDipLEX graduates who have been working for at least six months in a legal environment.
- interviews with staff from law firms that currently employ a NZDipLEX graduate.

We encourage you to contact the committee should issues arise during your data collection, or should you wish to add further research activities or make changes to your project as it unfolds. We wish you all the best with your research. Thank you for engaging with the process of ethical review.

Regards,

A handwritten signature in blue ink, appearing to read 'C. McLeay'.

Colin McLeay, Chair  
*Faculty of Arts and Social Sciences Human Research Ethics Committee.*



Cynthia Martell-Stark  
Gemma Piercy

Social Science

3 December 2019

Dear Cynthia

Re: **FS2018-31: Measuring the pedagogical shift: small scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX)**

Thank you for your letter dated 6 November 2019, requesting approval for amendments to your application FASS2018-31. Since your only proposed change relates to who will be conducting interviews, and since the new interviewer appears to be suitably qualified and experienced, approval for this amendment is now granted by the D-ALPSS Human Research Ethics Committee.

The committee encourages you to continue to work closely with your supervisor as your research develops, and to contact the committee again if there are further changes to your research project.

Kind regards,

A handwritten signature in black ink, appearing to read 'N Cooper'.

Nathan Cooper, Chair  
*Division of Arts, Law, Psychology & Social Sciences Human Research Ethics Committee*



Cynthia Martell-Stark

Thursday, 16 April 2020

Dear Cynthia

**Re: FS2018-31: Measuring the pedagogical shift: small scale review of the New Zealand Diploma in Legal Executive Studies (NZDipLEX).**

Further to my letter dated 16 March, thank you for providing the additional information I requested therein. In particular, thank you for providing the committee with a copy of the confidentiality agreement you intend to use for transcription services. I note also that you have indicated that the person who you intend to use for transcription services has been made fully aware that income earned from these services needs to be notified to 'Work and Income' for the purposes of their current benefit, and that payments to them will come from your personal funds.

On behalf of the committee I can now grant approval for all of the amendment requests you have made pertaining to this research project (listed in your email dated 9 March 2020, and reproduced below for reference):

1) Original parameter:

Ensuring that the employee participants and the employer participants do not work in the same law firm to ensure no harm to themselves, their role, their relationships nor their law firm employer.

2) Proposed change:

There are two graduate participants that work in the same law firm as two of the employer interviewees. I intend to interview both employers and both graduate participants despite them working in the same firm. The request is for this to apply to this firm only.

3) Justification:

The employer has given expressed permission to allow these graduates to participate along with the employer participants

The employer participants do not work directly with the graduate participants nor do they manage these graduates in any way

There is enough separation of the graduate roles and the employer roles that harm is avoided

The law firm is a medium sized firm where teams work independently of each other

This is justification for this situation only and this law firm, these graduates and these employer participants only.

There is an additional request for guidance in terms of my plan for transcribing these interviews. It has come to light, due to time constraints, that I will need help in transcribing these interviews. I am intending to engage one or more students to assist with the transcribing by providing them with the audio files to be typed. I intend to get them to sign a confidentiality agreement before engaging them for their services. I will also be paying these students for this service.

Please contact this committee if your research methods or scope change further. All good wishes with the completion of your project.

Kind regards,

A handwritten signature in black ink, appearing to read 'Nathan Cooper', written in a cursive style.

Nathan Cooper, Chair  
*Division of Arts, Law, Psychology & Social Sciences Human Research Ethics Committee*

## CONFIDENTIALITY AGREEMENT

University of Waikato Masters Student Research Project:  
Transcribing of Audio files

### PARTIES:

- A. **Cynthia Martell-Stark**: Master's student at the University of Waikato engaging in research as part of a thesis (**Researcher**); and
- B. **Lehandra Wade**: graduate of Toi Ohomai Business Administration Level 3 and 4 (**Transcriber**).

### BACKGROUND:

1. The **Researcher** wishes to engage the **Transcriber** to assist in a research project.
2. The project involves collecting data through semi-structured interviews.
3. The interviews have been recorded on an external device and these audio files are saved on Google Drive in folders.
4. It is necessary to give the **Transcriber** access to the Google drive folders where the audio files are stored and also to enable storage of the transcribed word documents.
5. The contents of the audio files and transcribed word documents are considered *Confidential Information* and must be protected.
6. This agreement is necessary to comply with the ethical standards required for research on human participants.

### THE PARTIES AGREE:

#### Definition:

7. *Confidential Information* means (i) all information and materials provided or given access to the **Transcriber** in relation to the research project and ii) this includes information in any form whatsoever and is not limited to audio files, hard copy documents, electronic files and verbal communications.
8. All information disclosed or given access to in the process of transcribing the interviews shall be deemed confidential whether or not it is identified as such at the time of access or disclosure.
9. The term *Confidential Information* does not include:
  - a. information which the parties agree in writing to exclude from the terms of this Agreement;
  - b. information which at the date of this Agreement is in the public domain or subsequently enters the public domain without fault on the part of the **Transcriber**;
  - c. information that is received in good faith by the **Transcriber** from a third party, which party is lawfully in possession of the same and had the right to disclose that information;
  - d. information which is required to be disclosed to a governmental agency or otherwise by law;
  - e. information which the **Transcriber** can prove was independently generated.

**Obligations:**

10. In respect of the *Confidential Information* the **Transcriber** shall:
  - a. keep all *Confidential Information* in the **Transcriber's** sole possession and control at all times
  - b. treat all Information as *strictly* confidential regardless of when and how it has been disclosed;
  - c. not use any *Confidential Information* in any way except for the purpose of transcribing the audio files into word documents;
  - d. refrain from making or having made any duplication (in any form whatsoever) of the *Confidential Information* except insofar as is necessary for the purpose of the research as directed by the **Researcher**.
  - e. not disclose *Confidential Information* to any third party in any way or form before, during or after the transcribing of the audio files.
  - f. not use any of the *Confidential Information* in any way which would conflict with or be harmful to the participants in the research project or the research team;
  
11. If the **Transcriber** becomes aware of the possession, use or knowledge of the *Confidential Information* by any unauthorised party, then the **Transcriber** must:
  - a. immediately inform the **Researcher**; and
  - b. at the **Researcher's** request and expense, provide all assistance in relation to the unauthorised possession, use or knowledge as the **Researcher** requires, unless such unauthorised possession, use or knowledge is the fault of the **Transcriber**, in which case such assistance shall be at the **Transcriber's** expense.
  
12. The burden of proof of showing that any *Confidential Information* is not subject to the obligations of confidentiality in this Agreement will rest on the **Transcriber**.
  
13. If required, the **Transcriber** will promptly return or destroy or erase, or procure the destruction or erasure of, any or all of the *Confidential Information*, at the **Researcher's** request.

**Term**

14. The **Transcriber's** obligations under this contract will continue in full force and effect from first access to the *Confidential information* and then indefinitely after the final interview transcription has been completed. At this time access to the information will cease and all permissions will be revoked via Google drive. The obligation to maintain confidentiality of any knowledge obtained during the process of transcribing continues indefinitely.

**SCHEDULE**

**Signed by Cynthia Martell-Stark, University  
of Waikato Master's Student**

**Signed by Lehandra Wade, Transcriber:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_