



THE PROFESSIONAL ETHICS OF CHRISTIAN LAWYERS

A Thesis submitted by

Katie Ann Murray, LLB (Hons)

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Abstract

This thesis explores how Christian lawyers in Australia negotiate the two ethical worlds to which they are subject: the ‘ethical world’ of legal practice, and the ‘ethical world’ of the Christian faith.

It begins by considering the body of normative literature (both secular and faith-based) about the ethical world of lawyers. Some of the main themes of this literature include:

- The nature of the role of lawyer, and the moral justifications for that role;
- The lawyer-client relationship and in particular, how tensions between the client’s proposed instructions and the lawyer’s personal values ought be resolved;
- The sources from which a lawyer ought seek ethical guidance in the resolution of a legal dispute;
- The conduct of legal practice more broadly.

The thesis continues by classifying the faith-based literature into four ‘models’ or approaches to faith-based ethical decision-making in legal practice. The models focus on literature written from the perspective of the Christian faith, but literature written from the perspective of other faiths has been referenced where there are comparisons.

The thesis then explores the views of a group of Christian lawyers in both metropolitan and regional areas in Australia about the key themes of the normative literature. These views were expounded during semi-structured interviews with the participants. Conclusions are then drawn about whether there are parallels between the themes and models of the normative literature, and the views and approaches of the lawyers interviewed.

Certification of Thesis

This thesis is entirely the work of Katie Ann Murray except where otherwise acknowledged. The work is original and has not previously been submitted for any other award, except where acknowledged.

Student and supervisors signatures of endorsement are held at USQ.

Professor Reid Mortensen

Principal Supervisor

Professor Michael Robertson

Associate Supervisor

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List of Publications

Publications by the Candidate Relevant to the Thesis

Murray, Katie, 'Reconciling Law and Morality in a Secular Legal System: Christian and Jewish Approaches to Lawyers' Ethics' (2015) 41(3) *Monash University Law Review* 696.

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Chapter 1 : Introduction

1.1 Background

The aim of this thesis is to examine and assess how lawyers of the Christian faith navigate the ethical worlds of Christian faith and legal practice and, in particular, how they view their personal values as influencing or not influencing their ethical decision-making in legal practice. The thesis builds on both the normative literature about what factors *should* influence lawyers' ethical deliberations, and existing 'real life' empirical studies of how different groups of lawyers view the 'ethical worlds' within which they practise, as affecting or not affecting their professional decisions (the 'ethical world' studies, as described below).

1.1.1 Background to the normative literature on lawyers' ethical decision-making

There is a growing body of normative literature¹ about the ethical deliberation of lawyers. This literature focuses on questions such as the nature of the lawyer's role; the moral justifications for the role; how lawyers should relate to their clients; and whether and how a lawyer's own personal values or broader concepts such as 'justice' should influence the lawyer's ethical decision-making in legal practice. The literature recognises that lawyers have a broad discretion in which to make ethical decisions, within the boundaries of the professional conduct rules.²

¹ See, eg, Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press of Harvard University Press, 1993); David Luban, *Lawyers and Justice: an Ethical Study* (Princeton University Press, 1988); Gerald J Postema, 'Moral Responsibility in Professional Ethics' (1980) 55 *New York University Law Review* 63; Joseph G Allegritti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press, 1996); Michael P Schutt, *Redeeming Law: Christian Calling and the Legal Profession* (InterVarsity Press, 2007); Monroe H Freedman, 'Personal Responsibility in a Professional System' (1977) 27 *Catholic University Law Review* 191; Monroe H Freedman, *Lawyers' Ethics in an Adversary System* (The Bobbs-Merrill Company, Inc., 1975); Stephen L Pepper, 'The Lawyer's Amoral Role: A Defense, a Problem, and Some Possibilities' (1986) *American Bar Foundation Research Journal* 613; Thomas L Shaffer, *On Being a Christian and a Lawyer* (Brigham Young University Press, 1981); William H Simon, *The Practice of Justice: A Theory of Lawyers' Ethics* (Harvard University Press, 1998); Carrie Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 1 *Berkeley Women's Law Journal* 39; Carrie Menkel-Meadow, 'Portia Redux: Another Look at Gender, Feminism and Legal Ethics' (1994-1995) 2 *Virginia Journal of Social Policy & The Law* 75; and more recently, Tim Dare, *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, 2009); Daniel Markovits, *A Modern Legal Ethics: Adversary Advocacy in a Democratic Age* (Princeton University Press, 2003) and W Bradley Wendel, *Lawyers and Fidelity to Law* (Princeton University Press, 2011) (as identified in Alice Woolley, 'If Philosophical Legal Ethics is the Answer, What is the Question?' (2010) 60 *University of Toronto Law Journal* 983).

² Geoffrey C Hazard Jr, 'Ethical Opportunity in the Practice of Law' (1990) 27 *San Diego Law Review* 127, 135; Michael Robertson and Kieran Tranter, 'Grounding Legal Ethics Learning in Social Scientific Studies of Lawyers at Work' (2006) 9 *Legal Ethics* 211, 224.

Chapter 1: Introduction

In 2004, Christine Parker³ examined the growing body of predominantly secular⁴ normative literature on lawyers' ethical decision-making, and identified four distinct approaches within that literature, namely:

1. *Adversarial advocate*, in which the lawyer's role in an adversarial, liberal legal system justifies setting aside all values external to the interests and instructions of the client in making ethical decisions.⁵
2. *Responsible lawyer*, in which the lawyer owes a 'higher' duty to justice and the legal system, and must take those values into account in making ethical decisions.⁶ The name of this approach does not necessarily suggest that other approaches are not responsible. It reflects the theory of William Simon,⁷ which is indebted to the principles-oriented jurisprudence of Ronald Dworkin.⁸
3. *Moral Activist*, in which the lawyer's ethical deliberations are shaped by 'social and political conceptions of justice, moral philosophy and promotion of substantive justice'.⁹
4. *Ethics of care*, in which the lawyer takes into account broader values, including 'responsibilities to people, communities and relationships',¹⁰ in making ethical decisions.¹¹

These approaches are not exhaustive, and other approaches have also been identified.¹²

³ Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30 *Monash University Law Review* 49; See also Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 12.

⁴ One of the theorists, Thomas L Shaffer, whom Parker classifies under an 'Ethics of Care' approach, writes from a Christian perspective: Parker, 'A Critical Morality', above n 3, 69; Parker and Evans, above n 3, 44.

⁵ With some exceptions, for example Monroe Freedman who allows the lawyer to make a moral choice when deciding whether to accept instructions to act in the first place, but not once those instructions have been accepted: Parker, 'A Critical Morality', above n 3, 56; Freedman, 'Personal Responsibility', above n 1, 204.

⁶ *Ibid.*

⁷ Simon, *The Practice of Justice*, above n 1; William H Simon, 'Ethics, Professionalism, and Meaningful Work' (1997-1998) 26 *Hofstra Law Review* 445.

⁸ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1978); Ronald Dworkin, *Law's Empire* (Hart Publishing Limited, 1998). Simon expressly states his reliance on Dworkin in *The Practice of Justice*, above n 1, 247 (and see also 39, 82, 91, 126, and 243-4).

⁹ Parker, 'A Critical Morality', above n 3, 56.

¹⁰ *Ibid.*

¹¹ One of the theorists whom Parker classifies as fitting within this approach is Thomas L Shaffer. As noted above, Shaffer writes from a Christian perspective, and his work will be considered further in the analysis of faith-based approaches to lawyers' ethical deliberations in Chapter Two of this thesis.

¹² For example, the virtue ethics approach exemplified by Anthony Kronman in *The Lost Lawyer*, above n 1, and see also Parker and Evans, above n 3, 9-10.

Chapter 1: Introduction

In addition to the approaches identified by Parker, a significant amount of literature (both scholarly and popular) has been written from a Christian perspective, dealing with how lawyers of the Christian faith ought to reconcile their professional role with the ethical norms of their faith, and thus navigate between the ethical worlds of Christian faith and legal practice.¹³

This thesis will examine the faith-based literature on lawyers' ethical decision-making, and will add to the approaches identified by Parker, by identifying four faith-based approaches within the religious literature. Although the thesis focuses on Christian lawyers, literature written from the perspective of other faiths (or religious perspectives generally)¹⁴ will also be referenced, including where there are comparisons. The approaches that can be identified within the religious literature are:

1. The Servant Lawyer, who recognises a broad similarity between the lawyer's professional role and faith-based moral values, which in turn justify a Christian lawyer engaging in legal practice and adopting professional ethical norms in doing so.
2. The Lawyer of Character, who identifies consistency between faith-based and professional character qualities (or virtues) such as wisdom and integrity and recognises the capacity to develop and apply these qualities in both personal and professional roles.
3. The Lawyer of Integrity, who recognises legal practice as akin to a religious calling, and for whom only actions consistent with the lawyer's own personal values can be morally justified in legal practice.
4. The Prophetic Lawyer, who actively pursues faith-based values through her professional role.

The normative literature, and these four models of faith-based legal practice, will be further explored and elucidated in Chapter Two (Lawyers' Ethical Decision-Making). The key themes from the normative literature have also been used to develop the research questions for the project, which are set out in [section 1.2.1](#) below.

¹³ See references in Chapter Two, n 13.

¹⁴ See references in Chapter Two, n 14.

1.1.2 Background to existing empirical studies of lawyers' ethical deliberations

In addition to the body of normative literature which focuses on the factors that should or should not influence lawyers in their ethical decision-making in legal practice, the 'real-life' ethical deliberation of lawyers has been the focus of empirical research in 'ethical world' studies of lawyers in the United States,¹⁵ Canada,¹⁶ and Australia.¹⁷ These studies have looked at how the 'ethical world' within which particular groups of lawyers conduct their practice of law affects their ethical deliberations.

To date, the groups of lawyers whose ethical world has been examined include lawyers practising in large law firms;¹⁸ sole practitioners and small law firm lawyers;¹⁹ immigration lawyers;²⁰ young lawyers;²¹ lawyers in private practice;²² criminal defence lawyers;²³ Chicago lawyers;²⁴ family lawyers²⁵ and country lawyers.²⁶

¹⁵ See, eg, Kimberley Kirkland, 'Ethics in Large Law Firms: The Principle of Pragmatism' (2004-2005) 35 *University of Memphis Law Review* 631; Leslie C Levin, 'Guardians at the Gate: The Backgrounds, Career Paths, and Professional Development of Private US Immigration Lawyers' (2009) 34(2) *Law and Social Inquiry* 399; Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001-2002) 70 *Fordham Law Review* 847; Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004-2005) 41 *Houston Law Review* 309; Robert W Gordon, 'The Ethical Worlds of Large-Firm Litigators: Preliminary Observations' (1998-1999) 67 *Fordham Law Review* 709; Rand Jack and Dana Crowley Jack, *Moral Vision and Professional Decisions: the Changing Values of Women and Men Lawyers*, (Cambridge University Press, 1989); Donald D Landon, 'Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice' (1985) 4 *American Bar Foundation Research Journal* 81; Donald D Landon, *Country Lawyers: The Impact of Context on Professional Practice* (Praeger Publishers, 1990); Lynn Mather, Craig A McEwen and Richard J Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press, 2001); Robert Granfield and Thomas Koenig, "'It's Hard to be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice' (2002-2003) 105 *West Virginia Law Review* 495, 497; John P Heinz and Edward O Laumann, 'The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies' (1977-1978) 76 *Michigan Law Review* 1111.

¹⁶ Jean E Wallace and Fiona M Kay, 'The Professionalism of Practising Law: A Comparison Across Work Contexts' (2008) 29 *Journal of Organisational Behaviour* 1021.

¹⁷ Lillian Corbin, 'How Firm Are Lawyers' Perceptions of Professionalism' (2005) 8 *Legal Ethics* 265; Abbe Smith, 'Defending the Unpopular Down-Under' (2006) 30 *Melbourne University Law Review* 495.

¹⁸ See, eg, Kirkland, above n 15; Gordon, above n 15.

¹⁹ Levin, 'Preliminary Reflections', above n 15; Levin, 'Solo and Small Law Firm Practitioners', above n 15.

²⁰ Levin, 'Guardians at the Gate', above n 15.

²¹ Granfield and Koenig, above n 15, 497.

²² Corbin, above n 17.

²³ Smith, above n 17.

²⁴ Heinz and Laumann, above n 15.

²⁵ Mather, McEwen and Maiman, above n 15.

²⁶ Landon, 'Clients, Colleagues, and Community', above n 15; Landon, *Country Lawyers*, above n 15.

The ‘ethical world’ factors which have been examined have included firm size and culture (the ‘ethical world’ of the large law firm);²⁷ office settings and the availability of mentors (the ‘ethical world’ of the solo and small law firm practitioner);²⁸ and the lawyer’s containing community (the ‘ethical world’ of the rural²⁹ or Chicago³⁰ lawyer, or of lawyers practising family law).³¹ In a sense, these studies have sought to explore how the lawyers describe the ethical world within which they practise, and how they see this context as affecting or not affecting their ethical deliberations.

Each of the ethical world studies has used a qualitative, semi-structured interview methodology, involving interviews of approximately sixty to ninety minutes duration,³² with between 16 and 278 lawyers.³³ The methodology of the existing studies is set out in more detail in Chapter Three.

1.1.3 The contribution that will be made by this thesis

This thesis builds on and adds to both the normative literature about what factors *should* influence lawyers’ ethical deliberations, and empirical studies of *how* and *why* different factors influence those decisions. It does this firstly by examining and identifying the key themes of the faith-based normative literature and then by using the qualitative, semi-structured interview methodology of the ‘ethical world’ studies to explore those key themes with a group of 25 Christian lawyers in three States within Australia. The thesis goes further than the existing empirical studies in that, rather than asking Christian lawyers to describe the ethical world within which they practise and

²⁷ Kirkland, above n 15; Gordon, above n 15.

²⁸ Levin, ‘Preliminary Reflections’, above n 15; Levin, ‘Solo and Small Law Firm Practitioners’, above n 15.

²⁹ Landon, ‘Clients, Colleagues, and Community’, above n 15; Landon, *Country Lawyers*, above n 15.

³⁰ Heinz and Laumann, above n 15.

³¹ Mather, McEwan and Maiman, above n 15, who argue that ‘divorce lawyers understand and make choices at work through *communities of practice* – groups of lawyers with whom practitioners interact and to whom they compare themselves and look for common expectations and standards’ (at 6).

³² 75 minutes (Levin, ‘Guardians at the Gate’, above n 15); 1.5 to 3 hours (Kirkland, above n 15, Landon, *Country Lawyers*, above n 15); 1.5 – 2 hours (Levin, ‘Preliminary Reflections’, above n 15); 1.5 to over 3 hours or an average of 90 minutes (Mather, McEwan, Maiman, above n 15).

³³ The studies included 16 interviews with both graduates with more than two years’ practice experience and with more experienced practitioners (Corbin, above n 17); interviews with 71 immigration lawyers (Levin, ‘Guardians at the Gate’, above n 15); interviews with 22 lawyers practising in 10 large law firms (Kirkland, above n 15); 201 rural lawyers and 77 urban lawyers (Landon, ‘Clients, Colleagues, and Community’, above n 15; Landon, *Country Lawyers*, above n 15); 36 male and female lawyers practising in a county of 120,000 people in the state of Washington and 163 divorce lawyers practising in Maine and New Hampshire (Mather, Maiman and McEwan, above n 15); and interviews with 41 attorneys in sole practice or in small law firms (Levin, ‘Preliminary Reflections’, above n 15).

how they see that world as influencing or not influencing their ethical deliberations, it recognises that Christian lawyers in effect inhabit two diverse and potentially competing ethical worlds,³⁴ each of which contain their own set of identifiable moral and ethical norms (the ethical worlds of Christian faith and legal practice). Therefore, the thesis explores not only the ethical world of the Christian lawyer, but how Christian lawyers identify, reflect on and navigate the potentially competing ethical worlds of faith and legal practice.³⁵

Despite the growing body of normative literature on how Christian lawyers ought to navigate the potentially conflicting worlds of faith and legal practice,³⁶ the ‘real life’

³⁴ The faith-based normative literature, in addressing the different ways that a lawyer of faith might reconcile her personal and professional roles, inherently recognises the possibility that the ethical norms of faith and legal practice might differ or compete. Patrick Quirk writes, for example, that ‘Catholic lawyers are called to rely upon a comprehensive set of principles of moral theology (Christian morality) which precede and inform their personal exercise of the practical art of “legal ethics”’ and that, ‘[i]n relatively rare cases a choice must be made between a rule of professional conduct and a moral teaching of the Church’: Patrick Quirk, ‘Marriage, Divorce and the Catholic Lawyer’ (2002) 14(2) *Bond Law Review* 414, 419. One of the only examples of a barrister having been disciplined for breaching the (professional) Cab Rank Rule (as found by Flood and Hviid in their 2013 inquiry into the current meaning and purpose of the Cab Rank Rule) was of a practising Christian who experienced a conflict between his professional and personal obligations in refusing to represent an immigrant seeking to remain in the UK ‘on the basis of his sexual relationship with his male partner’: John Flood and Morten Hviid, ‘The Cab Rank Rule: Its Meaning and Purpose in the New Legal Services Market’ (Research Paper No 13-01, University of Westminster, 22 January 2013), 40. Other examples of competing ethical norms addressed within the literature include Christian lawyers acting for ‘guilty’ clients and Catholic lawyers undertaking divorce proceedings, seeking judicial permission for an abortion or participating in capital litigation. See, eg, Art C Cody, ‘The King’s Good Servants: Catholics as Participants in Capital Litigation’ (2005) 44 *Journal of Catholic Legal Studies* 283; Teresa Stanton Collett, ‘Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil’ (1997-1998) 66 *Fordham Law Review* 1339; Larry Cunningham, ‘Can a Catholic Lawyer Represent a Minor Seeking a Judicial Bypass for an Abortion? A Moral and Canon Law Analysis’ (2005) 44 *Journal of Catholic Legal Studies* 379; Reid Mortensen, ‘Agency, Autonomy and a Theology for Legal Practice’ (2002) 14(2) *Bond Law Review* 391; Thomas L Shaffer, ‘Serving the Guilty’ 26 (1980) *Loyola Law Review* 71, 83-84; Thomas L. Shaffer, ‘Should a Christian lawyer serve the guilty’ (1988-1989) 23 *Georgia Law Review* 1021, 1025 and John W Stanford, ‘The Christian Lawyer: Defending Apparently Guilty Defendants and Using Courtroom Strategies and Tactics’ (2003-2004) 16 *Regent University Law Review* 275. Lutheran theology also recognises a ‘two kingdoms’ approach, in which the ethical ‘kingdoms’ of church and state (or religious and professional ethics) are regarded as being appropriately separate. See, eg, H Richard Niebuhr, *Christ and Culture* (1951) 42-43, 149, 164, 171, 174 as cited in Heather Douglas, ‘Assimilation, Lutheranism and the 1950s Justice of Kriewaldt’ (2004) 8 *Australian Journal of Legal History* 285, 291; Thomas L Shaffer, ‘The Legal Ethics of the Two Kingdoms’ (1983) 17 *Valparaiso University Law Review* 1, and see also the discussion of some fundamentalist evangelical religious groups in James Barr, *Fundamentalism* (SCM Press, 1997) (as addressed in Chapter Two, below).

³⁵ Whether or not participants themselves identified tensions between their Christian faith and legal practice is one of the questions that was explored during this study.

³⁶ See the sources referred to in Chapter Two, n 13. Prominent Jewish theorist Russell Pearce also notes the growth of the Religious Lawyering Movement in the 1990s, explaining:

A renewed interest in religion across society as a whole is one reason. Related to that, lawyers, like others, are engaged in a search for meaning in their work. In the past, many lawyers would have found this meaning in professionalism, but during today’s crisis of professionalism, lawyers are unable to find

ethical deliberations of religious lawyers, and Christian lawyers in Australia in particular, have not been closely examined to date.³⁷ This study will therefore make

a satisfactory way to reconcile their personal aspirations with what they consider to be the harsh realities of the marketplace.

Russell G Pearce, 'Faith and the Lawyer's Practice' (2001) 75 *St John's Law Review* 277, 278, and see also Russell G Pearce and Amelia J Uelmen, 'Religious Lawyering in a Liberal Democracy: a Challenge and an Invitation' (2004-2005) 55 *Case Western Reserve Law Review* 127 and Russell G Pearce and Amelia J Uelmen, 'Religious Lawyering's Second Wave' (2005-2006) 21 *Journal of Law and Religion* 269, in which the authors note the dramatic expansion and increasing contribution of the religious lawyering movement to legal ethics scholarship. Pearce and Uelmen also predict that scholarship around this movement 'will increasingly move beyond the question of *whether* lawyers bring religious values to bear on their work, toward the difficult issues of *how* this should be done' (at 270).

³⁷ Although some of the normative literature refers to popular figures, literary characters and famous lawyers in its analysis of how religious lawyers might negotiate between faith and legal practice (see, eg, Joseph Allegetti, 'In a Dark Wood: Dante as a Spiritual Guide for Lawyers' (2004-2005) 17 *St Thomas Law Review* 875; Joseph Allegetti, 'Shooting Elephants, Serving Clients: an Essay on George Orwell and the Lawyer-Client Relationship' (1993-1994) 27 *Creighton Law Review* 1; Joseph Allegetti, "'The Client Comes First, Unless He's Crooked": Legal and Professional Ethics in Raymond Chandler's *The Big Sleep*' (2010-2011) 44 *Creighton Law Review* 581; Milner S Ball, *Called by Stories: Biblical Sagas and their Challenge for Law* (Duke University Press, 2000); Russell G Pearce, 'Jewish Lawyering in a Multicultural Society: A Midrash on Levinson' (1992-1993) 14 *Cardozo Law Review* 1613; Marc Galanter, 'A Vocation for Law? American Jewish Lawyers and their Antecedents' (1998-1999) 26 *Fordham Urban Law Journal* 1125; Alan W Perry, 'Javert or Bebb' in Thomas E Baker & Timothy W Floyd (eds), *Can a Good Christian be a Good Lawyer? Homilies, Witnesses & Reflections* (University of Notre Dame Press, 1998) 110; John F Romano, 'Mine Eyes Have Seen the Glory: Sir Thomas Browne and the Lawyer's Quest for God' (2005) 44 *Journal of Catholic Legal Studies* 233; Jack L Sammons, 'On Being a Good Christian and a Good Lawyer: God, Man, Law, Lawyering, Sandy Koufax, Roger Maris, Orel Hershisier, Looking at the Catcher, and Corked Bats in the Kingdom (with a Brief Guest Appearance by Ty Cobb)' (1996) 27 *Texas Tech Law Review* 1319; Michael P Schutt, 'Oliver Wendell Holmes and the Decline of the American Lawyer: Social Engineering, Religion, and the Search for Professional Identity' (1998-1999) 30 *Rutgers Law Journal* 143; Thomas L Shaffer, 'Business Lawyers, Baseball Players, and the Hebrew Prophets' (2007-2008) 42 *Valparaiso University Law Review* 1063; Thomas L Shaffer, 'More's Skill' (2000) 9 *Widener Journal of Public Law* 295; Thomas L Shaffer, 'The Moral Theology of Atticus Finch' (1981) 42 *University of Pittsburg Law Review* 181; Thomas L Shaffer, 'Towering Figures, Enigmas, and Responsive Communities in American Legal Ethics' (1999) 51(2) *Maine Law Review* 229), there is little research about the views of practising lawyers themselves. In formulating three models of spirituality for lawyer's work, Charles R DiSalvo and William L Droel interviewed 'scores' of lawyers, but the methodology of the project and the numbers and backgrounds of the lawyers is not clear: DiSalvo and Droel, 'Reflections on the Contents of the Lawyer's Work: Three Models of Spirituality – and Our Struggle with Them' in Thomas E Baker & Timothy W Floyd (eds), *Can a Good Christian be a Good Lawyer? Homilies, Witnesses & Reflections*' (University of Notre Dame Press, 1998) 127, 128. In their work on identifying models of Jewish lawyering (Russell G Pearce, 'The Jewish Lawyer's Question' (1996) 27 *Texas Tech Law Review* 1259 and Sanford Levinson, 'Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity' (1992-1993) 14 *Cardozo Law Review* 1577), Levinson and Pearce also acknowledge that questions exist about how practising lawyers themselves view these issues, including questions about 'whether there are systematic differences between Jewish and non-Jewish lawyers' (Levinson, 1604), and 'whether at least some Jewish lawyers will feel themselves, because of their adherence to Jewish law, legally obligated to behave in a certain way about which American law is formally indifferent' (Levinson, 1604). Although this study focuses on the ethical deliberations of Christian rather than Jewish lawyers, comments such as these in the religious lawyering literature serve to highlight the need for empirical research about these issues. Amanda Whiting has also published some of her research on the training, appointment and supervision of Islamic Lawyers in Malaysia. See Amanda Whiting, 'The Training, Appointment, and Supervision of Islamic Lawyers in the Federal Territories of Malaysia' (2012) 1 *Pacific Rim Law & Policy Journal* 133.

an original contribution to the literature in this area by adapting the qualitative, semi-structured interview methodology used in the existing empirical studies, to explore the key themes set out in the body of faith-based normative literature about lawyers' ethical deliberations.

Further, the thesis will contribute to the normative literature and add to the largely secular approaches identified by Parker, by developing a typology of faith-based approaches to lawyers' ethics. Whilst the models are not intended to be proscriptive or exhaustive, it is hoped that the models might also be of practical value by providing reference points for 'individual [Christians] who seek to reconcile their [Christianity] with their professional role as lawyers'.³⁸

1.2 Research questions and definitions

1.2.1 The research questions

The key themes from the normative literature on lawyers' ethical decision-making (which will be explored and developed in Chapter Two) are reflected in the research questions for the thesis, which are:

1. What are the views of Christian lawyers about the nature of the lawyer's role and the moral justifications for that role?
2. How do the personal values of Christian lawyers influence their ethical decision-making in legal practice, including in the following key areas:
 - a. The area of law in which a Christian lawyer practises;
 - b. The lawyer-client relationship, and in particular:
 - i. How do the personal values of a Christian lawyer influence the decision whether to accept instructions from a particular client or in a particular matter?
 - ii. How can the relationship between a Christian lawyer and his client be described?
 - iii. Does a Christian lawyer raise relevant moral considerations with her clients?

³⁸ This is an adaptation of Jewish theorist Russell Pearce's description of why the identification of different models of Jewish lawyering is important: Russell G Pearce, 'Jewish Lawyering in a Multicultural Society: A Midrash on Levinson' (1992-1993) 14 *Cardozo Law Review* 1613, 1614.

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- iv. Does a Christian lawyer discuss his personal values and beliefs with his clients?
 - v. How does a Christian lawyer resolve any potential tensions between her personal values and beliefs and the instructions given to her by a client?
 - vi. In the event of a conflict between the personal values and beliefs of a Christian lawyer and a client's instructions, how is the conflict resolved?
- c. The conduct of legal practice, and in particular:
- i. In circumstances in which the ethically correct (in a broader sense) course of action is uncertain, to which sources does a Christian lawyer look for guidance?
 - ii. How does a Christian lawyer take into account the interests of the other parties, the other lawyer and third parties in the resolution of a legal dispute?
 - iii. How do the personal values of a Christian lawyer influence decisions about how to approach the resolution of a legal dispute?
- d. The charging of professional fees, and in particular; how do the personal values of a Christian lawyer influence the charging of professional fees?
3. How are the views of a Christian lawyer about these issues influenced by the culture of the firm in which the Christian lawyer practises?

As explored further in Chapter Two, the normative literature about lawyers' ethical decision-making essentially starts by considering the nature of the lawyer's role and the moral justifications for that role. For example, a liberal view of the lawyer's role would suggest that the lawyer's role is to facilitate individual autonomy by providing clients with access to law and legal institutions, in order that they might fully pursue their chosen rights and entitlements within the bounds of the law. To that end, the lawyer acts morally by providing the client with unfettered access to law, which sometimes requires the lawyer to act in ways that might otherwise be considered

‘immoral’, were it not for the broader philosophical justification of the lawyer’s role.³⁹ For example, the lawyer’s role might require a lawyer to keep a client’s secret, even in situations where this might cause hurt or harm to others.⁴⁰ However, this ‘moral harm’ is justified in a broader sense because confidentiality is part of the lawyer’s role and, in particular, part of the duties owed by lawyers to their clients, and these duties are in turn justified by the lawyer’s role in facilitating individual autonomy in a liberal legal and political system.⁴¹ Conversely, the faith-based literature suggests that liberal or ‘system-based’ justifications are insufficient for religious lawyers,⁴² instead justifying the lawyer’s role with reference to faith-based values such as service⁴³ or the idea of law as a vocation or calling.⁴⁴

The justification for the lawyer’s role in turn affects how the lawyer ought to relate to her clients (including in the event of a conflict between her client’s instructions and her own personal values).⁴⁵ It also affects how she ought to approach the resolution of a legal dispute, including whether and to what extent she ought to take into account the interests of others who might be affected by a legal dispute, such as the other party or relevant third parties.⁴⁶ For example, if the lawyer’s role is to facilitate individual autonomy by providing unfettered access to law, then the lawyer ought to give effect to her client’s instructions regardless of personal moral qualms or the potential effect

³⁹ See generally Freedman, ‘Personal Responsibility’, above n 1; Pepper, ‘The Lawyer’s Amoral Role’, above n 1; Dare, *The Counsel of Rogues?*, above n 1, and see also the discussion of the Adversarial Advocacy model in Parker and Evans, above n 3, 22-25. The liberal view is not the only perspective on the lawyer’s role within the secular literature. See, eg, the Responsible Lawyer, Moral Activist and Ethics of Care frameworks described in Parker, ‘A Critical Morality’, above n 3, 56, 60-74 and Parker and Evans, above n 3, 31-50.

⁴⁰ See, eg, the ‘Lake Pleasant’ scenario described by Luban, and referred to in Dare, *The Counsel of Rogues?*, above n 1, 39.

⁴¹ Freedman, for example, argues that the lawyer must maintain the client’s confidences, even if the client commits perjury, whilst Luban argues that confidentiality is required because of the ‘overprotection’ of a weaker party against the resources of the State: see Monroe H Freedman, ‘Lawyer-Client Confidentiality: Rethinking the Trilemma’ (2014-2015) 43 *Hostra Law Review* 1025, 1025 and Tim Dare’s explanation of Luban’s analysis in Dare, *The Counsel of Rogues?*, above n 1, 39.

⁴² See, eg Thomas L Shaffer, ‘The Practice of Law as Moral Discourse’ (1979-1980) 55 *Notre Dame Lawyer* 231, 238-239 and see also Thomas L Shaffer and Mary M Shaffer, *American Lawyers and Their Communities* (University of Notre Dame Press) 206.

⁴³ See, eg, Thomas J Paprocki, ‘Ethics in the everyday practice of law’ 35(2) *Catholic Lawyer* 169, 169 and Azizah Y. al-Hibri et al, ‘Panel Discussion: Does Professionalism Leave Room for Religious Commitment?’ (1998-1999) 26 *Fordham Urban Law Journal* 875, 883.

⁴⁴ See, eg, Timothy W Floyd, ‘The Practice of Law as a Vocation or Calling’ (1997-1998) 66 *Fordham Law Review* 1405, 1413-1415; Schutt, *Redeeming Law*, above n 1, 95.

⁴⁵ See, eg, Shaffer, *On Being a Christian and a Lawyer*, above n 1, 26, 28; Mortensen, ‘A Theology for Legal Practice’, above n 34, 411.

⁴⁶ See, eg, Thomas W Porter, ‘The Spirit and the Law’ (1998-1999) 26 *Fordham Urban Law Journal* 1155, 1164; Allegratti, *The Lawyer’s Calling*, above n 1, 93; Schutt, *Redeeming Law*, above n 1, 246.

on third parties.⁴⁷ If however, the lawyer's role is broader and involves some element of religious service or calling, then this may in turn have implications for the lawyer-client relationship or the way in which the lawyer approaches the resolution of a legal dispute.

Each of these themes is explored in greater detail in the faith-based normative literature and in the literature review for this thesis (Chapter Two). The faith-based literature also addresses the charging of professional fees in the context of whether and how faith ought to impact the lawyer's conduct of legal practice.⁴⁸ Further, Kimberley Kirkland's work on the ethical world of large law firm lawyers found that firm culture had a significant impact on the ethical norms adopted by lawyers working in large law firms, despite participants in Kirkland's study having been drawn from a range of different ages and backgrounds.⁴⁹ Mather, McEwan and Maiman also found that the communities of practice of family lawyers contributed to the ethical frameworks within which those lawyers practised.⁵⁰ To that end, participants in this study were also asked to reflect on how the cultures of the firms within which they practised contributed to their responses to questions about the nature of the lawyer's role, the lawyer-client relationship, and legal practice more generally.

1.2.2 Definition - Christian lawyers

The sub-group of lawyers whose 'ethical world' has been explored in this thesis is that of Christian lawyers. Although this group is perhaps broader than some of the groups which have previously been the subject of similar research,⁵¹ Christian lawyers are recognised in the literature as forming an identifiable community.⁵² Moreover, the

⁴⁷ As explained by Parker and Evans, above n 3, 22-25.

⁴⁸ See, eg, Schutt, *Redeeming Law*, above n 1, 136, 210-211, 213. Shaffer also suggests that lawyers should reflect on faith-based principles in their deliberations about charging professional fees, in particular guidelines on accumulation and distribution that are provided by religious tradition: Thomas L Shaffer, 'Jews, Christians, Lawyers, and Money' (2000-2001) 25 *Vermont Law Review* 452, 470.

⁴⁹ Kirkland, above n 15, 661, suggesting that despite differences in background between participants, the 'in-depth interviews revealed remarkable consistency in these lawyers' experiences of work in large law firms'.

⁵⁰ Mather, McEwan and Maiman, above n 15, who argue that 'divorce lawyers understand and make choices at work through *communities of practice* – groups of lawyers with whom practitioners interact and to whom they compare themselves and look for common expectations and standards' (at 6).

⁵¹ See the sources referred to in footnote 15, above.

⁵² Prominent Christian theorist Thomas L Shaffer, for example, recognises that Christian lawyers are part of a faith-based community, suggesting that (a) the community in which a religious lawyer is raised influences the development by that lawyer of values which the lawyer later brings to bear on legal practice; and (b) that lawyers should seek guidance from, and judge the law and legal

participants in the previous studies were drawn from diverse backgrounds, with the common denominator between them being, for example, their practice in a rural area, or in a large law-firm.⁵³ In this thesis, although the participants have also been drawn from a range of different backgrounds, areas of practice, Christian denominations, levels of experience and firm size, the commonality between them which makes them a member of an identifiable group is that they share a common belief in the key tenet of the Christian faith, namely belief in Jesus Christ as the son of God.

For the purpose of this study, therefore, a Christian lawyer is a lawyer who claims belief in Jesus Christ as the son of God, and who considers that that belief underlies ethics or canons of conduct that shape the person's conduct in some or all roles in life.⁵⁴

As with Webley and Duff's empirical research about women's reasons for leaving the legal profession in the United Kingdom,⁵⁵ the research does not purport to represent the views of all Christian lawyers as a 'class',⁵⁶ but rather aims to explore the themes that emerge from the views of the Christian lawyers interviewed, in the light of the key themes and questions that emerge from the normative literature about the extent to which lawyers' personal values ought to influence their ethical decision-making in legal practice.

institutions according to the values of, that community: see, eg, Thomas L Shaffer and Mary M Shaffer, *American Lawyers*, above n 42, 39. Similarly, Jewish lawyers are also recognised as a distinct group within the normative literature, including Jewish lawyers who may be Jewish by faith or by ethnic background: see, eg, Pearce, 'The Jewish Lawyer's Question', above n 37, 1260 and Levinson, 'Identifying the Jewish Lawyer', above n 37, 1577. The distinction between 'Jewishness' as an ethnicity and as a religion is also reflected in anti-discrimination law, in which 'Jews' receive protection as a 'race'. See eg, *Executive Council of Australian Jewry v Scully* (1998) 51 ALD 108; *Phillips v Aboriginal Legal Service* (1993) 1 EOC 92-502. Like Christianity, Judaism includes different branches or denominations which nevertheless share a belief in a central tenet of faith.

⁵³ In her study of large law firms, Kirkland reports that 16 of the interviewees were men, six were women, two were Asian-American, one African-American, and the remainder Caucasian-Americans: Kirkland, above n 15, 660.

⁵⁴ This definition is based on the legal definition of 'religion' in the joint judgment of Mason ACJ and Brennan J in *Church of the New Faith v Commissioner of Pay-roll Tax (Vic)* (1983) 154 CLR 120 ('the *Scientology* case'), but adapted to refer to the key tenet of the Christian faith, as set out in the Apostles Creed (namely, belief in Jesus Christ as the son of God). In the *Scientology* case, Mason ACJ and Brennan J held that, '...for the purposes of the law, the criteria for religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief...' (at 137).

⁵⁵ Lisa Webley and Liz Duff, 'Women Solicitors as a Barometer for Problems within the Legal Profession – Time to Put Values before Profits?' (2007) 34(3) *Journal of Law and Society* 374.

⁵⁶ Webley and Duff note that their research 'did not seek to be representative of all women solicitors' views and we understand that our participants cannot represent women as "a class": Webley and Duff, above n 55, 384.

1.2.3 Definition - Personal values

As noted above, some of the factors potentially influencing the ethical deliberations of particular sub-groups of lawyers that have been studied to date have included the law-firm environment;⁵⁷ office settings and the availability of mentors;⁵⁸ lawyers' backgrounds, career paths and professional development;⁵⁹ lawyers' understandings of professionalism;⁶⁰ legal ethics teaching at law school⁶¹ and the lawyer's containing community.⁶²

This thesis will expand on the factors considered in previous 'ethical world' studies by exploring how the personal values of Christian lawyers affect their ethical deliberations in legal practice. Although it is recognised that an individual's personal values may be influenced by a number of factors (including for example, background, culture, education and political beliefs),⁶³ effort has been made in this thesis to rely on values which flow from the beliefs or canons of conduct which underlie the faith of lawyers who identify as Christian. For example, the invitation to participate in the project specifically referred to the opportunity to reflect on the intersection of Christian faith and legal practice in a confidential setting, and many of the participants specifically sought to reflect on the distinction between personal preference and faith-influenced values when responding to the interview questions.

For instance, one participant, when asked whether personal values had influenced her decision to practise in a particular area of law, said that:

I guess in hindsight probably some of my early decisions about what I wasn't willing to do was impacted by my faith, in terms of I didn't – I knew I didn't want to do criminal law, and I found it very difficult in the early years of practice when I was exposed to some of that, to... have to advocate for people that I either – not necessarily knew, but strongly suspected, were telling me untruths, and probably did need to face

⁵⁷ Kirkland, above n 15; Gordon, above n 15; Wallace and Kay, above n 16.

⁵⁸ Levin, 'Preliminary Reflections', above n 15.

⁵⁹ Levin, 'Guardians at the Gate', above n 15.

⁶⁰ Corbin, above n 17.

⁶¹ Granfield and Koenig, above n 15.

⁶² Landon, 'Clients, Colleagues, and Community', above n 15; Landon, *Country Lawyers*, above n 15; Mather, McEwen and Maiman, above n 15.

⁶³ See, eg, Milton Rokeach, *The Nature of Human Values* (The Free Press, 1975) 5, 11. Rokeach defines a value as 'an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an opposite or converse mode of conduct or end-state of existence'.

the law and take responsibility for what they'd done, and of course having people not do that, I guess is contrary to my personal beliefs, so that was something that yeah, where I guess it's my personal morals and values which of course are influenced by my faith. So that, yes. Specifically family law? Not really, but I guess it does run parallel to what's important to me, which is people and relationships. And that probably does stem from my Christian faith. So was it a conscious decision? No. Does it fit nicely? Yes.

Similarly, another participant drew a distinction between faith-based values and personal preferences or ability in terms of choice of area of practice in reflecting that:

There are many areas of law that I wouldn't feel comfortable practising in, but it wouldn't be a faith-based issue... I think most of the time my reasons for not practising in a particular area would be either: I really didn't have interest, or I didn't have ability.

1.3 Structure of the thesis

The thesis is divided into seven chapters. Chapter One sets out the background to the research and the contribution that will be made by the research, and introduces the research questions.

Chapter Two examines the faith-based normative literature on lawyers' ethical decision-making, and identifies four different models of faith-based legal practice within that literature. It also explains the background and justifications for the research questions.

Chapter Three examines the methodology of the existing ethical world studies, the literature on designing and evaluating qualitative research, and sets out the methodology used for this project.

Chapter Four explores and analyses participants' responses to the first research question, namely the nature of the lawyer's role and the moral justifications for that role. It also explores whether and how participants viewed their personal values as influencing or not influencing their decision to practise in a particular area of law.

Chapter Five explores questions about the nature of the relationship between a Christian lawyer and her client, including whether and how personal values influence

the decision to accept instructions; whether to raise relevant moral considerations with a client; and how to resolve any tensions between a client's instructions and the lawyer's personal values.

Chapter Six analyses whether and how a Christian lawyer's personal values influence ethical decisions in the conduct of legal practice more broadly, including questions about how to approach the resolution of a legal dispute; whether and how to take into account the interests of other parties; and the charging of professional fees. Chapter Six also explores how the culture of the firm within which a Christian lawyer practises, affects her response to the issues raised in the thesis.

Chapter Seven summarises the earlier conclusions about how Christian lawyers navigate the ethical worlds of faith and legal practice, and reflects on some possible directions for future research.

1.4 Summary

This Chapter has introduced the aims of and background to the research; the normative literature within which the research is grounded, and the methodology of the 'ethical world' studies. It has also introduced the research questions and definitions for the project, and sets out the structure of the thesis.

The next Chapter will examine the body of faith-based normative literature about lawyers' ethical decision-making, and explain the background to and justifications for the research questions. The next Chapter will also contribute to a typology of faith-based approaches to lawyers' ethical deliberations by identifying four different models of faith-based legal practice.

Chapter 2 : **Lawyers' Ethical** **Decision-Making**

2.1 Introduction

This thesis is grounded in, and explores the key themes of, the normative literature about lawyers' ethical decision-making. This Chapter will examine that literature (focusing on literature written from faith-based perspectives), and will identify four models of faith-based legal practice within that literature. The key themes of the literature (which are reflected in the Research Questions) will also be identified.

2.2 Background to lawyers' ethical decision-making

It is recognised that lawyers make a broad range of ethical decisions in legal practice. These range from 'smaller' decisions such as the tone of a letter¹ to 'larger' decisions such as whether to accept instructions to act for a particular client, and decisions about the scope of the lawyer-client relationship.

Although some of these decisions are restricted or guided by the body of formal professional conduct rules,² it is recognised that these rules cannot cover the broad range of ethical decisions that are made daily by lawyers in practice and that the rules consequently leave a large space within which lawyers exercise a broad discretion to make ethical decisions.³ It is these ethical decisions, made within the space bounded by the body of formal rules, which are the focus of this thesis.

Since the publication of Richard Wasserstrom's seminal article, 'Lawyers as Professionals: Some Moral Issues' on lawyers' ethics in the 1970s,⁴ the factors (both internal and external to the lawyer) that should influence her ethical decisions have been the focus of increasing scholarship. This growing body of literature recognises that lawyers' ethical decision-making may be influenced by a number of different factors, including, for example:

¹ Michael Robertson and Kieran Tranter, 'Grounding Legal Ethics Learning in Social Scientific Studies of Lawyers at Work' (2006) 9 *Legal Ethics* 211, 224.

² In Queensland, these are the *Legal Profession Act 2007* (Qld), the *Legal Profession Regulation 2007* (Qld), the *Legal Profession (Solicitors) Rule 2012* (Qld), and the *Legal Profession (Barristers) Rule 2011* (Qld).

³ Geoffrey C Hazard Jr, 'Ethical Opportunity in the Practice of Law' (1990) 27 *San Diego Law Review* 127, 135; Robertson and Tranter, above n 1.

⁴ Richard Wasserstrom, 'Lawyers as Professionals: Some Moral Issues' (1975) 5 *Human Rights* 1.

Chapter 2: Lawyers' ethical decision-making

- A lawyer's view of the lawyer's role, and, in particular, whether, and to what extent, the lawyer's professional role requires him to separate his personal values from that role;⁵
- A lawyer's gender⁶ and personal values, the latter of which may have developed from or been influenced by such factors as the lawyer's religious beliefs, political ideals,⁷ and cultural and educational background;
- The culture and size of the firm in which the lawyer practises;⁸
- The lawyer's legal education;⁹ and
- Office settings and the availability of mentors.¹⁰

In addition to these factors, which have also given rise to empirical studies of the extent to which certain groups of lawyers view some of these factors as influencing or not influencing their ethical deliberations in practice,¹¹ the normative literature generally addresses two main questions:

⁵ This is a key theme of much of the normative literature about lawyers' ethical decision-making.

⁶ See Carrie Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 39(1) *Berkeley Women's Law Journal* 39; Carrie Menkel-Meadow, 'Portia Redux: Another Look at Gender, Feminism, and Legal Ethics' (1994-1995) 2 *Virginia Journal of Social Policy & The Law* 75; Elizabeth Gacenga, 'Stein's Ethic of Care: an Alternative Perspective to Reflections on Women Lawyering' in Francesca Bartlett, Reid Mortensen and Kieran Tranter (eds), *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2011).

⁷ David Luban, *Lawyers and Justice: an Ethical Study* (Princeton University Press, 1988).

⁸ See, eg, Kimberley Kirkland, 'Ethics in Large Law Firms: The Principle of Pragmatism' (2004-2005) 35 *University of Memphis Law Review* 631; Robert W Gordon, 'The Ethical Worlds of Large-Firm Litigators: Preliminary Observations' (1998-1999) 67 *Fordham Law Review* 709; Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001-2002) 70 *Fordham Law Review* 847; Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004-2005) 41 *Houston Law Review* 309.

⁹ See, eg, Leslie C Levin, 'Guardians at the Gate: The Backgrounds, Career Paths, and Professional Development of Private US Immigration Lawyers (2009) 34(2) *Law and Social Inquiry* 399.

¹⁰ See, eg, Levin, 'Preliminary Reflections', above n 8; Levin, 'Solo and Small Law Firm Practitioners', above n 8.

¹¹ See, eg, Robert Granfield and Thomas Koenig, "'It's Hard to be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice' (2002-2003) 105 *West Virginia Law Review* 495; John P Heinz and Edward O Laumann, 'The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies' (1977-1978) 76 *Michigan Law Review* 1111; Rand Jack and Dana Crowley Jack, *Moral Vision and Professional Decisions: the Changing Values of Women and Men Lawyers* (Cambridge University Press, 1989); Donald D. Landon, *Country Lawyers: the Impact of Context on Professional Practice* (Praeger Publishers, 1990); Donald D Landon, 'Clients, Colleagues, and Community: the Shaping of Zealous Advocacy in Country Law Practice' (1985) *American Bar Foundation Research Journal* 81; Jean E Wallace and Fiona M Kay, 'The Professionalism of Practising Law: a Comparison Across Work Contexts' (2008) 29 *Journal of Organisational Behaviour* 1021; Lillian Corbin, 'How Firm Are Lawyers' Perceptions of Professionalism' (2005) 8 *Legal Ethics* 265; Lynn Mather, Craig A McEwen and Richard J Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press, 2001). These studies will be explored in more detail in Chapter Three.

Chapter 2: Lawyers' ethical decision-making

1. What is the nature of, and moral justifications for, the lawyer's role?
2. Should, and to what extent should a lawyer have regard to factors such as her own personal values, political beliefs, or the broader interests of 'justice' when making ethical decisions in the everyday practice of law?

The second question focuses particularly on areas of practice such as the lawyer-client relationship and the conduct of legal practice more generally, including questions about:

- Whether and to what extent should a lawyer's personal values influence the decision whether to accept instructions, and what happens in the event of a conflict between those values and the instructions given by a client; and,
- Whether and to what extent should a lawyer's personal values influence how a legal dispute is resolved, including whether to take into account the interests of the other parties, the other lawyer and any relevant third parties who might be affected by the outcome of a legal dispute?

In addition to a large body of secular literature addressing these key themes,¹² there is a growing body of literature which looks at these themes from religious perspectives,

¹² See, eg, Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press of Harvard University Press, 1993); Anthony T Kronman, 'Living in the Law' (1987) 54 *University of Chicago Law Review* 835; Luban, *Lawyers and Justice*, above n 7; David Luban, 'Freedom and Constraint in Legal Ethics: Some Mid-course Corrections to *Lawyers and Justice*' (1990) 49 *Maryland Law Review* 424; Gerald J Postema, 'Moral Responsibility in Professional Ethics' (1980) 55 *New York University Law Review* 63; Monroe H Freedman, 'Personal Responsibility in a Professional System' (1977-1978) 27 *Catholic University Law Review* 191; Monroe H Freedman, 'How Lawyers Act in the Interests of Justice' (2001-2002) 70 *Fordham Law Review* 1717; Monroe H Freedman, *Lawyers' Ethics in an Adversary System* (The Bobbs-Merrill Company, Inc, 1975); Monroe H Freedman, 'Professionalism in the American Adversary System' (1992) 41 *Emory Law Journal* 467; Monroe H Freedman, 'The Lawyer's Moral Obligation of Justification' (1995-1998) 66 *Fordham Law Review* 1299; Monroe H Freedman, 'The Trouble with Postmodern Zeal' (1996-1997) 38 *William & Mary Law Review* 63; Menkel-Meadow, 'Portia in a Different Voice', above n 6; Menkel-Meadow, 'Portia Redux', above n 6; Stephen L Pepper, 'The Lawyer's Amoral Role: A Defense, a Problem, and Some Possibilities' (1986) *American Bar Foundation Research Journal* 613; Stephen L Pepper, 'Lawyers' Ethics in the Gap Between Law and Justice' (1999) 40 *South Texas Law Review* 181; Stephen L Pepper, 'A Rejoinder to Professors Kaufman and Luban' (1986) *American Bar Foundation Research Journal* 657; William H Simon, *The Practice of Justice: a Theory of Lawyers' Ethics* (Harvard University Press, 1998); William H Simon, 'Ethics, Professionalism, and Meaningful Work' (1997-1998) 26 *Hofstra Law Review* 445; and more recently, Tim Dare, *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, 2009); Tim Dare, 'Mere-Zeal, Hyper-Zeal and the Ethical Obligations of Lawyers' (2004) 7 *Legal Ethics* 24; Tim Dare, 'Virtue Ethics and Legal Ethics' (1998) 28 *Victoria University of Wellington Law Review* 41; Daniel Markovits, *A Modern Legal Ethics: Adversary Advocacy in a Democratic Age* (Princeton University Press, 2003) and W Bradley Wendel, *Lawyers and Fidelity to Law* (Princeton University Press, 2011) (as identified in Alice Woolley, 'If

including from the perspective of the Christian faith.¹³ It is this literature that will be the focus of this thesis. Although the thesis focuses on the ethical deliberations of

Philosophical Legal Ethics is the Answer, What is the Question?' (2010) 60 *University of Toronto Law Journal* 983).

¹³ See, eg, Joseph G Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press, 1996); Joseph Allegretti, 'A Lawyer's Miscellany: Scriptural Resources for Christian Lawyers' (1998-1999) 26 *Fordham Urban Law Journal* 1183; Joseph G Allegretti, 'Can Legal Ethics be Christian?' in Michael W McConnell, Robert F Cochran Jr, Angela C Carmella (eds), *Christian Perspectives on Legal Thought* (Yale University Press, 2001); Joseph Allegretti, 'Christ and the Code: the Dilemma of the Christian Attorney' (1991) 34 *Catholic Lawyer* 131; Joseph Allegretti, 'Clients, Courts, and Calling: Rethinking the Practice of Law' (2004-2005) 32 *Pepperdine Law Review* 395; Joseph Allegretti, 'Have Briefcase Will Travel: an Essay on the Lawyer as Hired Gun' (1990-1991) 24 *Creighton Law Review* 747; Joseph G Allegretti, 'In a Dark Wood: Dante as a Spiritual Guide for Lawyers' (2004-2005) 17 *St Thomas Law Review* 875; Joseph Allegretti, "'In All This Love Will be the Best Guide": John Calvin on the Christian's Resort to the Secular Legal System' (1991-1992) 9 *Journal of Law and Religion* 1; Joseph Allegretti, 'Lawyers, Clients, and Covenant: a Religious Perspective on Legal Practice and Ethics' (1997-1998) 66 *Fordham Law Review* 1102; Joseph Allegretti, 'Neither Curse Nor Idol: Towards a Spirituality of Work for Lawyers' (1996) 27 *Texas Tech Law Review* 963; Joseph Allegretti, 'Rights, Roles, Relationships: The Wisdom of Solomon and the Ethics of Lawyers' (1991-1992) 25 *Creighton Law Review* 1119; Joseph G Allegretti, 'The Lawyer's Calling Revisited: Second Look or Second Thoughts' (2001) 75 *St John's Law Review* 267; Joseph Allegretti, 'The Role of a Lawyer's Morals and Religion When Counselling Clients in Bioethics' (2002-2003) 30 *Fordham Urban Law Journal* 9; Joseph Allegretti, 'The Unity of Law and Religion: A Response to Ackroyd and Vining' (2001-2002) 53 *Mercer Law Review* 1065; Joseph Allegretti, 'Shooting Elephants, Serving Clients: an Essay on George Orwell and the Lawyer-Client Relationship' (1993-1994) 27 *Creighton Law Review* 1; Joseph Allegretti, "'The Client Comes First, Unless He's Crooked": Legal and Professional Ethics in Raymond Chandler's *The Big Sleep*' (2010-2011) 44 *Creighton Law Review* 581; John E Acuff, 'The Wrong Question' (2004-2005) 32 *Pepperdine Law Review* 545; Charles R Ajalat, 'Practice, Church, Life, and Society' (1996) 27 *Texas Tech Law Review* 933; Douglas A Allen, 'A Spiritual Look at Choosing a Legal Career' (1996) 27 *Texas Tech Law Review* 977; William Bentley Ball, 'On Hoping to Be, Being, and Having Been' in Thomas E Baker & Timothy W Floyd (eds), *Can a Good Christian be a Good Lawyer? 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In order to narrow and focus on the key themes of the faith-based literature, a typology of faith-based approaches to lawyers' ethical-deliberations has been developed. It is suggested that a number of different approaches to ethical decision-making can be identified in the faith-based literature, and that these approaches can be grouped or classified into the following models for negotiating the ethical worlds of faith and legal practice:

1. The Servant Lawyer, who recognises a broad similarity between the lawyer's professional role and faith-based moral values, in accordance with which a Christian lawyer is morally justified in engaging in legal practice and adopting professional ethical norms in doing so.
2. The Lawyer of Character, who identifies consistency between faith-based and professional character qualities (or virtues) such as wisdom and integrity and recognises the capacity to develop and apply these qualities in both personal and professional roles.

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3. The Lawyer of Integrity, who recognises legal practice as akin to a religious calling, and for whom only actions consistent with the lawyer's own personal values can be morally justified in legal practice.
4. The Prophetic Lawyer, who actively pursues faith-based values through her professional role.

In this thesis the different approaches have been framed in terms of how they identify or respond to the sometimes competing ethical norms of faith and legal practice: in essence, how they respond to the question of how a Christian lawyer ought to navigate the ethical worlds of faith and legal practice. This reflects the methodology used in this thesis (as described in Chapter 3) and in the existing 'ethical world' studies,¹⁵ which look at how different groups of lawyers see the 'ethical worlds' within which they practise, as influencing their ethical deliberations in legal practice. In the case of Christian lawyers, it is recognised that Christian lawyers in effect traverse two potentially competing ethical worlds (the ethical worlds of faith and legal practice), each of which has its own set of ethical norms or values.¹⁶ Rather than simply describing the ethical world of Christian lawyers, this thesis therefore explores how Christian lawyers navigate the potentially competing ethical worlds of faith and legal practice, and how they see their personal values as influencing or not influencing their ethical decisions in legal practice.

It should also be noted that these models are not intended to be exhaustive or prescriptive, and that the models have simply been used to highlight the key themes of the faith-based normative literature. The extent to which Christian lawyers display or reflect on different aspects of the models, if at all, will be explored in later chapters.

2.3 The separation of worlds

One possible model for faith-based legal practice is to recognise that the ethical world of the Christian faith may be different from or conflict with the ethical world of the legal profession, and to separate the two. Such a model would suggest that it is possible

¹⁵ For example, Kirkland, above n 8; Levin, 'Guardians at the Gate', above n 9; Levin, 'Preliminary Reflections', above n 8; Levin, 'Solo and Small Law Firm Practitioners', above n 8; Gordon, above n 8; Jack and Jack, above n 11; Landon, 'Clients, Colleagues, and Community', above n 11; Landon, *Country Lawyers*, above n 11; Mather, McEwen and Maiman, above n 11; Granfield and Koenig, above n 11; Heinz and Laumann, above n 11; Wallace and Kay, above n 11; Corbin, above n 11.

¹⁶ See comments and sources referred to in Chapter One, n 34.

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for a Christian lawyer to inhabit the ethical world of the legal profession when engaged in the practice of law, and to inhabit a faith-based ethical world outside this time. When engaged in the practice of law, the lawyer would be subject to the ethical norms of the professional world, and may seek to separate or put aside the ethical norms of the faith-based world. Prominent Christian theorist Joseph P Allegretti, for example, suggests a model for faith-based legal practice which he calls 'Christ in Tension with the Code':

Christians inhabit two worlds, a private realm in which they relate to God as individuals and are bound by the teachings and example of Christ, and a public sphere where they live and work and must make accommodations to the sinfulness of the human condition. Christ and culture are in conflict, yet each must be obeyed. The Christian inhabits two worlds, subject to two inconsistent moralities.¹⁷

This approach would be comparable with Parker's 'Adversarial Advocate' model, in which the lawyer's role in an adversarial, liberal legal system justifies setting aside all values external to the interests and instructions of the client in making ethical decisions, in order to give effect to the individual autonomy of the client by providing unfettered access to the law and legal institutions.¹⁸

However, whilst the separation of roles is recognised as one of the ways in which a Christian lawyer in practice might choose to reconcile her personal and professional values¹⁹ and is compatible with a theological perspective that regards the ethical worlds of church and state as being appropriately separate,²⁰ it may to some extent be an inadequate model for reconciling religious and professional values. Some theorists argue, for example, that a model requiring the separation of faith and legal practice

¹⁷ Allegretti, *The Lawyer's Calling*, above n 13, 17.

¹⁸ With some exceptions, for example Monroe Freedman who allows the lawyer to make a moral choice when deciding whether to accept instructions to act in the first place, but not once those instructions have been accepted: Christine Parker, 'A Critical Morality for lawyers: four approaches to lawyers' ethics' (2004) 30 *Monash University Law Review* 49, 56.

¹⁹ One of the theorists who has recognised separation as a possible way that Christian lawyers reconcile their personal values and professional role in practice is Parker herself, suggesting that some lawyers may seek to reconcile any conflict between professional role and personal values by acting piously in their personal lives, but keeping their personal values relatively separate at work. In her paper 'Christian Ethics in Legal Practice: Connecting Faith and Practice', Parker sets out four main ways in which Christian lawyers may try to reconcile the sometimes competing interests of professional role and personal values. The first of these, Parker describes as a 'separation model'. See Christine Parker, 'Christian Ethics in Legal Practice: Connecting Faith and Practice' in Christine Parker and Gordon Preece (eds) *Theology and Law: Partners or Protagonists* (ATF Press, 2005) 23, 27.

²⁰ For example a Lutheran 'Two-Kingdoms' approach as described by Shaffer in 'The Legal Ethics of the Two Kingdoms', above n 13, 12.

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fails to recognise that the Christian or Jewish lawyer's obligation to God transcends the different roles that she may hold,²¹ and in effect requires her to deny rather than reconcile her identity as a Christian with her identity as a lawyer. For the lawyer of faith, some theorists argue that this separation or compartmentalisation of roles is artificial,²² and 'results in a sort of schizophrenia',²³ and that a comprehensive model for faith-based legal practice must allow the lawyer to act with integrity in both personal and professional roles.²⁴

The view that the ethical worlds of faith and practice ought to be separated is not common amongst theorists writing from a faith-based perspective. Allegretti, for example, whilst recognising separation as a way in which a Christian lawyer might seek to reconcile personal and professional roles in practice, nevertheless rejects this model in favour of a more integrated approach.²⁵ Most theorists also seem to recognise that there will be a point at which an action required to be undertaken in the professional role will be 'religiously impossible';²⁶ the lawyer will be unable to separate the ethical norms of the faith-based world, and will need to put her personal

²¹ Mortensen, 'Theology for Legal Practice', above n 13, 406, 408. Allegretti, *The Lawyer's Calling*, above n 13, 22-23

²² Schutt, *Redeeming Law*, above n 13, 77.

²³ *Ibid.*

²⁴ *Ibid.* 92-93. From a Catholic perspective, Larry Cunningham notes that 'Catholic teaching holds that it is not possible to separate one's existence into different identities – Catholic and lawyer, for example – allotting different moral rules and standards to each role': Cunningham, above n 13, 379.

²⁵ See, eg, Allegretti, *The Lawyer's Calling*, above n 13, 22-23. From a Jewish perspective, and although Pearce notes that there may be a subgroup of Jewish lawyers who 'would reject any connection between Jewishness and lawyering', both Levinson and Pearce note that the 'standard image' of the adversarial advocate is in fact 'criticised, if not indeed condemned, by classical Jewish thought', making it potentially difficult for Jewish lawyers to see to reconcile the different ethical norms of legal practice within Jewish and secular legal systems. See Pearce, 'Jewish Lawyering in a Multicultural Society', above n 14, 1626; Levinson, above n 14, 1597 and Pearce, 'The Jewish Lawyer's Question', above n 14, 1265.

²⁶ The phrase 'religiously impossible' is used by Stern in 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness', above n 14, 1371. From a Jewish perspective, Stern suggests that a lawyer must separate her religious values from her professional role, but concedes that some clients or matters will be 'religiously impossible' for the lawyer to act for or in, and the lawyer should either refuse to accept instructions or withdraw from acting for the benefit of the client. Parker suggests that even a lawyer who favours the 'separation model', would still draw the line at behaviour that is 'actively immoral', and DiSalvo and Droel, that lawyers working under their first model (*my client as my employer*) would draw the line at immoral tactics in the course of representation: Parker, 'Christian Ethics in Legal Practice', above n 19, 27; DiSalvo and Droel, above n 13, 130. And see also Cunningham, above n 13, who suggests that 'Canonically and morally, a Catholic lawyer should not represent a minor who seeks a judicial bypass [for an abortion]' and that a Catholic Lawyer who does so may be subject to excommunication from her Church and must either refuse instructions to act or withdraw from acting in such cases (at 408-409). Religious (including Catholic) prosecutors may also experience a potential conflict in jurisdictions which may require them to seek the application of the death penalty – see, eg, Cody, above n 13, 283.

values before her professional role. Even Monroe Freedman, whom Parker classifies within an 'Adversarial Advocacy' model,²⁷ but who is also of Jewish faith, allows a lawyer to exercise moral choice in whether to accept instructions to act in the first place, but says that once those instructions have been accepted, the lawyer must represent the client to the best of her ability, regardless of any personal moral qualms.²⁸ In this way, the lawyer is effectively able to make a decision, at the start of a representation, whether she will be able to separate the ethical worlds of faith and practice, and, if not, to decline the representation at the outset.

2.4 The Servant Lawyer

The Servant Lawyer recognises the lawyer's professional role and many professional values as being broadly consistent with Christian (and Jewish) religious tradition, such that there is no significant conflict between the ethical worlds of faith and legal practice. The Christian lawyer is therefore morally justified in engaging in legal practice and adopting professional ethical norms in doing so. As DiSalvo and Droel have identified:

many lawyers believe that the legal system is a complex, finely tuned, deliberately designed machine that produces justice by applying objectively fair rules to all parties. As a consequence of this theory, individual lawyers understand that they serve the greater good by staying within their respective roles. It is not a breach of their morality to represent civil or criminal clients whose positions or actions, in other settings, would violate their Christian beliefs.²⁹

In other words, the lawyer's role is justified by faith-based values, but the way the Christian lawyer conducts her practice is framed by professional rather than religious ethical norms. Whilst the overall outcome (the adoption of professional ethical norms in priority to faith-based ethical values) is similar to a separation model, the Servant Lawyer differs from a separation model in that it seeks to provide a *religious* justification for setting aside faith-based ethical norms when engaged in the professional role.

²⁷ A liberal theory of lawyers' ethics which suggests that the role of the lawyer in an adversarial system is to advance the interests of the client, regardless of any personal moral qualms. See eg, Freedman, 'Personal Responsibility in a Professional System', above n 12, 204.

²⁸ Ibid.

²⁹ DiSalvo and Droel, above n 13, 129-130.

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The rationales for the religious justification of the professional role of lawyer vary, but include, for example:

- Similarities between professional and faith-based ideals of service,³⁰ including the Christian and Jewish emphasis on serving the poor,³¹ and professional ideals of pro bono service.
- The idea that a religious lawyer acts consistently with faith-based values by carrying out the professional role that she has been given in the world.³²
- Similarities between religious values and the values of modern secular culture.³³ Allegretti, for example, and whose preferred model for legal practice I have placed within the Lawyer of Integrity model, notes that some Christian lawyers may reconcile the ethical worlds of faith and legal practice through a model which he calls 'Christ in Harmony with the Code', in which 'there is no

³⁰ Enman, for example, suggests that the practice of law may be a form of ministry, particularly through a commitment to 'establish and maintain laws that are in accord with the biblical understandings of fairness and concern for all people, especially those who are the most vulnerable in society': Enman, above n 13, 107. Floyd also notes consistencies between professional and faith-based goals of service: Azizah Y al-Hibri et al, 'Panel Discussion: Does professionalism leave room for religious commitment?' (1998-1999) 26 *Fordham Urban Law Journal* 875, 883 (Timothy Floyd). In Australia, this view has also been echoed by former Chief Justice, the Hon Sir Gerard Brennan, who notes that those who 'need the lawyer's skills and knowledge but are unable to obtain them have a moral claim on the services of the profession' and that lawyers have a unique opportunity to exercise Christian charity by providing these services: Sir Gerard Brennan, 'Law, Values and Charity' (2002) 76 *Australian Law Journal* 492, 498. From a Jewish perspective, Pearce identifies that, within the religious lawyering academy, there is a school of thought suggesting that religious lawyering can co-exist with professional ethics. Pearce suggests that those in this school argue that (1) 'religious values reinforce professional values'; (2) 'religion and professionalism both develop virtue and character'; and (3) 'nothing in legal ethics prevents lawyers from drawing on religious values': Pearce, 'Faith and the Lawyer's Practice', above n 14, 279..

³¹ Pearce, 'The Jewish Lawyer's Question', above n 14, 1269. Pearce's sixth model of Jewish lawyering, 'Jewish Social Justice Lawyers' consists of Jewish lawyers who are inspired by their faith to advocate for social justice goals on behalf of both Jewish and non-Jewish causes: Pearce, 'Jewish Lawyering in a Multicultural Society', above n 14, 1619. Although the pursuit of social justice goals might also fit within the prophetic model, the pursuit of such goals on behalf of both Jewish and non-Jewish people suggests that, rather than being motivated to change law and legal institutions to reflect faith-based values, these lawyers have been able to justify their professional role with reference to faith-based values. That is, the lawyer's role in promoting social justice may be justified by faith-based values, and is therefore broadly consistent (or at least, not in conflict with) the lawyer's identification as a person of Jewish (or Christian) faith.

³² Jack Sammons, for example, suggests that, in a fallen world, religious lawyers ought do the best they can in the role they have, and from that perspective, Christian faith and professional role are broadly consistent, and there is '...nothing at all wrong with looking deep within the rhetorical tradition of the practice of law for moral guidance on how I should best live my life as lawyer': Al-Hibri et al, above n 30, 881 (Jack L Sammons).

³³ Allegretti, *The Lawyer's Calling*, above n 13, 14 - from a Christian perspective. From a Jewish perspective, Pearce identifies a version of Judaism that 'identifies the religious with the public' and 'involves "going out into the world", but in doing so identifies American values, including the professional project, as being identical with Jewish values'. Pearce, 'The Jewish Lawyer's Question', above n 14, 1265. Pearce himself suggests that 'the conduct of the Jewish lawyer in upholding the rule of law and in serving the poor could be quite consistent with professional ideals' (at 1269).

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perceived tension between the gospel and the world. Christian values are thought to be identical with the highest aspirations of secular culture'.³⁴ Although Allegretti notes some advantages of this model (for example that it allows the lawyer to focus on her duty to her client without having to balance other considerations),³⁵ he concludes that it ultimately 'does not do justice to the richness of the Christian message, the demands of the gospel, or the challenges and opportunities open to the Christian lawyer'.³⁶

- The view that the principles and values of Western legal democracy (reflected in the lawyer's role) reflect moral imperatives from the Christian tradition.³⁷ Di Salvo and Droel, for example, argue that lawyers who choose to adopt their first model of faith-based legal practice, '*my client as my employer*', have 'made a positive moral judgment about the system', which in turn justifies those lawyers adopting professional ethical norms, including doing 'the best job possible through the competencies expected of a lawyer: through research and mastery of the law, thorough investigation of the facts, careful and persuasive writing'.³⁸

The view that the lawyer's professional role is broadly consistent with religious tradition is also echoed by writers from other faith perspectives. Pearce, for example, suggests three possible perspectives on modern Jewish legal ethics. The first, a view of modern Jewish ethics requiring 'pure ritualism',³⁹ might be compatible with the separation of the ethical worlds of faith and legal practice. The second fits within the Servant Lawyer model, in suggesting that professional values are compatible with Jewish values.⁴⁰ In his final analysis, however, Pearce does not endorse either perspective, preferring a view of Jewish legal ethics more consistent with the Lawyer of Integrity.⁴¹

³⁴ Allegretti, *The Lawyer's Calling*, above n 13, 14.

³⁵ Ibid 15.

³⁶ Ibid 17.

³⁷ Freedman, 'Legal Ethics from a Jewish Perspective', above n 14, 1131 and see also Haire, above n 13, 8, who also notes the influence of Christian values on Western Culture.

³⁸ DiSalvo and Droel, above n 13, 128, 130

³⁹ Pearce, 'The Jewish Lawyer's Question', above n 14, 1265.

⁴⁰ Ibid.

⁴¹ Ibid 1268. Pearce specifically rejects the separation of roles and notes that, 'as a Jewish lawyer, I would direct my heart toward God in every moment of my legal practice. This task requires study and prayer, but it also requires conduct'.

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- A lawyer's sense of identification with a religious community, which may motivate him to act for that community but otherwise have no effect on the way he goes about practising law. Levinson, for example, identifies that Jewish lawyers (who may be Jewish by religion or by ethnic background)⁴² in particular may feel a strong sense of identification with the Jewish community and may be motivated to act for that community,⁴³ but their lawyering may not be any different if they were acting for non-Jewish clients.⁴⁴ Similarly, a Christian lawyer might be motivated by her faith to act for Christian causes or clients, but approach that representation according to professional ethical norms.

Whilst this model recognises a consistency between the ethical worlds of faith and legal practice in terms of the moral justification for the lawyer's professional role, conflicts of values may still arise at a practical level. The focus of this model is on reconciling personal and professional values at a broader philosophical level (so that the Servant Lawyer may view her professional role as being generally consistent with her identity as a Christian), rather than on reconciling conflicts of values that may arise at the coal face of legal practice. Indeed, the moral justification of the lawyer's role (which in turn justifies the Servant Lawyer adopting professional ethical norms when engaged in legal practice) may at times require her to act in ways that might otherwise offend against her own religious moral values.⁴⁵

⁴² Ibid 1260 and see also Levinson, above n 14, 1577. As noted in Chapter One, n 54, the distinction between 'Jewishness' as an ethnicity and as a religion is also reflected in anti-discrimination law, in which 'Jews' receive protection as a 'race'. See, eg, *Executive Council of Australian Jewry v Scully* (1998) 51 ALD 108; *Phillips v Aboriginal Legal Service* (1993) 1 EOC 92-502.

⁴³ Levinson, above n 14, 1590-1. Levinson describes this model as 'Jewish Lawyering as an Expression of Social and Political Solidarity'.

⁴⁴ Ibid, 1591. See also Pearce, 'The Jewish Lawyer's Question', above n 14, 1264: '[t]hese ethnic Jewish identifications may influence the causes Jewish lawyers adopt, but do not otherwise influence how a lawyer engages in practice'.

⁴⁵ As an example, British barrister Mark Mullins was disciplined by the Bar Council in 2006 for having refused to accept a brief to act for 'Mr J', an immigrant seeking to remain in the UK 'on the basis of his sexual relationship with his male partner'. This is the only example of a barrister having been disciplined for breaching the Cab Rank Rule found by Flood and Hviid in their 2013 inquiry into the current meaning and purpose of the Cab Rank Rule: John Flood and Morten Hviid, 'The Cab Rank Rule: Its Meaning and Purpose in the New Legal Services Market' (Research Paper No 13-01, University of Westminster, 22 January 2013), 40. The disciplinary report itself is no longer available, but a summary of the case is available at James Mills, 'Barrister Who Refused to Represent Gay Client Reprimanded', *Daily Mail* (online), 26 July 2006 <http://www.dailymail.co.uk/news/article-397625/Barrister-refused-represent-gay-client-reprimanded.html>. Mr Mullins, a practising Christian, saw a conflict between his professional role and his own moral values and refused to act further. Conversely, when conflicts arise at the coalface of legal practice, the Servant Lawyer is able to rely

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The Servant Lawyer is similar to Parker's Adversarial Advocate⁴⁶ in that both models justify the lawyer adopting professional ethical norms and largely remaining morally neutral when engaged in legal practice. However, whereas the Servant Lawyer model seeks to provide a religious justification for remaining morally neutral, the Adversarial Advocate is justified by liberal philosophy, namely the importance of giving effect to the client's individual autonomy by providing access to law without moral judgment.⁴⁷

Interestingly, Freedman (whose liberal theory of lawyers' ethics underpins the Adversarial Advocate model) argues that the separation of law and morality⁴⁸ in legal practice is justified by both liberal philosophy and religious tradition, on the basis of a shared recognition of the importance of autonomy.⁴⁹ However, as Mortensen identifies, although both liberal and Christian traditions share a level of support for individual autonomy,⁵⁰ the Christian's autonomy is ultimately bounded by her obligation to God.⁵¹ This difference is reflected in the faith-based literature, which, whilst recognising that one of the ways that a Christian lawyer might reconcile competing obligations to the ethical worlds of faith and legal practice is by remaining morally neutral when engaged in the professional role, nevertheless (and as noted above) recognises that there may be a point at which an action required to be undertaken in the professional role will be 'religiously impossible';⁵² the Servant

on the idea that her role as a lawyer is broadly justified from the perspective of her church, and this in turn justifies her acting for clients and in matters that might otherwise offend against her own values.

⁴⁶ See Parker, 'A Critical Morality', above n 18, 57-60; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 22-29. The Adversarial Advocate is thought to give effect to the client's autonomy by following client instructions (within the bounds of the law), and bears no personal moral responsibility for the outcome.

⁴⁷ See, eg, Pepper, 'The Lawyer's Amoral Ethical Role', above n 12, 617; Freedman, 'Personal Responsibility', above n 12, 200, 203; Freedman, 'In Praise of Overzealous Representation', above n 14.

⁴⁸ In terms of the lawyer being required to set aside personal values when engaged in the practice of law.

⁴⁹ Monroe Freedman, 'Legal Ethics from a Jewish Perspective', above n 14, 1131, 1133-1134, with an appeal to Jewish tradition which Freedman argues values compassion for one's fellow man, individual autonomy, and equal protection under law. And see also Monroe Freedman, 'Personal Responsibility' above n 12, 191 in which Freedman refers to the importance placed on human dignity in the Catholic tradition in the *Pacem in Terris*, Encyclical Letter of Pope John XXIII, para 34 (April 11, 1963), and argues that, in order to provide clients with human dignity, a lawyer must provide her client with autonomy, performing her professional role without moral judgment. Freedman also points to biblical role models (including Moses and Abraham) that he says demonstrated zealous partnership without moral judgment, an observation that is also consistent with Freedman's secular theory of lawyers' ethics. Freedman, 'Legal Ethics from a Jewish Perspective', above n 14, 1134.

⁵⁰ But disagree as to the source of that autonomy. Mortensen, 'A Theology for Legal Practice', above n 13, 404.

⁵¹ *Ibid* 403.

⁵² Stern, above n 26.

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Lawyer will be unable to remain morally neutral, and will need to choose faith over her professional role. Therefore, although this model may have some parallels with Parker's secular Adversarial Advocate in suggesting that the professional role should take precedence over the lawyer's personal values, it differs from these theories in that there is still a line which a Christian lawyer will not or should not cross.⁵³

Mortensen also argues that a Christian philosophy of lawyers' ethics must recognise the autonomy of the lawyer in addition to that of the client, which may require that the lawyer be allowed some moral input into the professional role.⁵⁴ To that end, Mortensen recognises that the lawyer ought to be able to discuss moral concerns with the client, albeit cautiously and sensitively.⁵⁵

It is important to also note that a distinction may be able to be drawn between the representation itself, and the way in which it is carried out. Although Parker does not define what kind of behaviour might be classed as 'actively immoral'⁵⁶ and therefore avoided by the Servant Lawyer (presumably because moral judgment may be a matter for the individual lawyer), DiSalvo and Droel seem to suggest that a lawyer might abide by professional ethical norms such as the cab rank rule, for example, by still accepting instructions to act in a matter which might offend against those values, but might draw the line at the way those instructions are carried out. This distinction may also be relevant for other models, including the Lawyer of Integrity, who identifies similarities between faith-based and professional character qualities (or virtues) and seeks to exercise and develop these character traits through legal practice.

Prominent Jewish ethicist Russell Pearce raises the possibility that the Servant Lawyer model may be more favoured by Jewish lawyers than their Christian counterparts, suggesting that, in his experience, 'Jewish lawyers are even more uncomfortable than Christian lawyers with the possibility that their legal practice might have a religious dimension'⁵⁷ and that 'Jewish lawyers find appealing the concept of professional role which excludes or drastically limits the influence of religious identity on professional

⁵³ Unlike Freedman, Parker and DiSalvo and Droel's models seem to suggest that a Christian lawyer might need to cease to act during the course of a representation, whereas Freedman says that once the lawyer has accepted instructions, she must act in the client's best interests regardless of moral qualms.

⁵⁴ Mortensen, 'A Theology for Legal Practice', above n 13, 404.

⁵⁵ Ibid 407-8.

⁵⁶ In particular, whether this refers to the ends or the means of the representation.

⁵⁷ Pearce, 'The Jewish Lawyer's Question', above n 14, 1260.

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conduct'.⁵⁸ As this is a claim of actual belief and practice, it may be a question for future research. In his third model of Jewish legal practice, 'Judaism Enters the Legal Workplace (But Leaves the Internal Norms of Legal Practice Untouched)', Levinson similarly leaves room for a Jewish lawyer to place greater emphasis on the 'external' aspects of his religious beliefs in legal practice (for example by refusing to work on the Sabbath or other religiously important occasions), but otherwise suggests that the Jewish lawyer would approach legal practice in accordance with the ethical norms of the professional context.⁵⁹

Another feature of the Servant Lawyer model is that it may be practice specific; and may therefore be favoured by lawyers acting in certain areas of the law where potential conflicts between personal values and professional role are more likely to arise, such as criminal law. For example, Muslim theorist Sadiq Reza argues that the unique role of the public defender within the American legal system means that it would be unethical for a public defender of the Muslim faith to temper or alter his undertaking of that role due to his religious beliefs (although those beliefs might provide inspiration for undertaking the role). Moreover, Reza argues that 'religion' may not provide clear guidance for specific ethical issues in legal practice, and its role might therefore be limited to 'individual inspiration, or motivation to work to change the professional code or the criminal justice system itself'.⁶⁰ Except to the extent that faith may provide motivation for engaging in the lawyer's role, this parallels Freedman's secular argument that the nature of the American (and indeed, Australian) adversarial systems (in which the lawyers for each party put forward their respective client's case as best they can, and a neutral and objective judge decides between the two) requires that each party be represented by an 'amoral' lawyer whose representation will not be tempered by personal moral qualms, leading to an imbalance in the system.⁶¹ Levine, on the other hand, argues that the role of criminal prosecutors who assist society by putting away criminals⁶² and doing justice,⁶³ and the role of the criminal defence lawyer

⁵⁸ Ibid 1261. Pearce suggests that one reason that Jewish lawyers may find the separation of roles appealing is because it avoids group identification and may therefore protect Jewish lawyers from being discriminated against because of their ethnicity or faith (at 1262).

⁵⁹ Levinson, above n 14, 1594.

⁶⁰ Reza, above n 14, 1053.

⁶¹ Freedman, 'Personal Responsibility', above n 12; Abbe Smith, 'Defending the Unpopular Down-Under' (2006) 30 *Melbourne University Law Review* 495.

⁶² Levine, 'The Broad Life of the Jewish Lawyer', above n 14, 1206.

⁶³ Ibid 1207.

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whose role in 'counselling, comforting and guiding those who are in many ways often among the most vulnerable in society' are 'consistent with religious imperatives to assist the needy and downtrodden'.⁶⁴ However, Levine draws the line at hostile tactics, which he suggests go against faith-based values.⁶⁵

In summary, the Servant Lawyer model addresses the key themes identified in the literature as follows:

Table 2.1: Summary of the Servant Lawyer model

Lawyer's role and moral justifications for role (RQ1)	The lawyer-client relationship (RQ2(b))	The conduct of legal practice (RQ2(c))	The charging of professional fees (RQ2(d))
The religious justification for the lawyer's role in turn justifies the lawyer adopting professional ethical norms when engaged in legal practice.	The lawyer-client relationship is conducted according to professional ethical norms. The Servant Lawyer would usually follow the client's instructions, unless those instructions become 'religiously impossible'. ⁶⁶	Legal practice is conducted according to professional ethical norms. Even zealous advocacy may be justified, unless the Servant Lawyer regards this as 'religiously impossible'. ⁶⁷	No distinguishing features. Professional fees are likely to be charged in accordance with professional ethical norms.

2.5 The Lawyer of Character

The Lawyer of Character recognises that a lawyer's religious beliefs are an intrinsic part of who she is and that these beliefs and values will therefore inherently influence her professional practice. Rather than recognising a consistency between religious and professional justifications for the lawyer's role itself, the Lawyer of Character recognises a consistency between professional and religious character qualities (or 'virtues'), such as honesty, integrity and wisdom. The Lawyer of Character is thus able to reconcile the ethical worlds of faith and legal practice by bringing her good

⁶⁴ Levine, 'Reflections on the Practice of Law as a Religious Calling', above n 14, 416.

⁶⁵ Levine, 'A Look at American Legal Practice', above n 14, 19.

⁶⁶ Stern, above n 26.

⁶⁷ Ibid.

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character, emphasised by and developed through religious adherence and practice, to bear on her everyday work, and by further strengthening her character through legal practice.

The focus of the Lawyer of Character model is less about whether the lawyer's professional role is consistent with faith-based values, and more about how a Christian lawyer undertakes that role. This is similar to the Lawyer of Integrity and the Prophetic Lawyer models, but the Lawyer of Character perhaps does not go as far as these latter models (which may require a re-conception of how a Christian lawyer approaches legal practice and the clients she acts for). The Lawyer of Character is focused on bringing the character and virtues emphasised in the ethical world of her faith to bear on her professional role, without radically changing how she would ordinarily act within that role. Rather than deliberately reflecting on faith-based values in making ethical decisions, or endeavouring to proactively influence or change the client for the better (as with the Lawyer of Integrity), the Lawyer of Character is focused on being a person of good character, and that character directing and guiding her ethical deliberations.

This approach is reflected in the writings of Christian ethicist Timothy Floyd, who suggests similarities between the religious and professional emphasis on character and virtue and moreover, that the practice of law can therefore be a calling in which religious lawyers are encouraged to develop and build virtue and good character.⁶⁸ Similarly Uelmen, who suggests that large-law firm environments in particular may not encourage lawyers to bring their personal religious values into the workplace,⁶⁹ nevertheless suggests that there is room for a lawyer practising in such an environment to exercise faith-inspired virtues such as 'honesty, personal integrity and a sense of humanity in the day-to-day tasks of research, gathering and analysing facts and

⁶⁸ Floyd, 'The Practice of Law as a Vocation or Calling', above n 13, 1413-1415. As noted earlier, Pearce also identifies that, within the religious lawyering academy, there is a school of thought suggesting that religious lawyering can co-exist with professional ethics. Pearce suggests that those in this school argue that (1) 'religious values reinforce professional values'; (2) 'religion and professionalism both develop virtue and character'; and (3) 'nothing in legal ethics prevents lawyers from drawing on religious values': Pearce, 'Faith and the Lawyer's Practice', above n 14, 279.

⁶⁹ Uelmen suggests that this is because large law firms have a 'public square' etiquette which discourages lawyers from pursuing their personal beliefs in the workplace and also because work in a large law-firm is more likely to be piecemeal, with consequently less matter-control and client-involvement for individual lawyers: Uelmen, 'Can a Religious Person Be a Big Firm Litigator?', above n 13, 1072-1073.

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drafting pleadings and briefs'.⁷⁰ Burgess echoes this view for Christian corporate lawyers, who he says might be able to influence corporate culture by

advocat[ing] Christian ethical approaches to corporate clients in their decision-and-policy-making, knowing that these principles have a long history of making positive contributions to society, that they are part of a coherent overall moral code (as set out in the Bible), *and*, most importantly, that they can help to enhance both the internal and external corporate community's assessments of the 'corporate culture' of that corporation.⁷¹

Some of the character qualities which have been identified as having parallels across both professional and religious spheres include:⁷²

- Civility.⁷³
- Practical wisdom, or the ability to deliberate well.⁷⁴
- The ability to make mistakes and to learn from them.⁷⁵
- An openness to reconsider one's own values or morals and to learn from others within the community.⁷⁶
- A willingness to acknowledge one's heritage and community and to remind that community what its values are⁷⁷ (including the community of the profession).⁷⁸
- The ability to treat each person with dignity.⁷⁹
- Tolerance.⁸⁰
- Integrity.⁸¹

⁷⁰ Ibid 1105; a similar view is put forward by Jack L Sammons (an Anglican theorist) who suggests that the virtue of character is common to both professional and personal spheres and that it is therefore not a matter of a lawyer seeking to keep these spheres separate or trying to bring her Christianity into the practice of law, but rather a matter of developing and exercising good character in both personal and professional roles: Sammons, 'On Being a Good Christian and a Good Lawyer', above n 13, 1319 and see also Miller, above n 13, who suggests that 'character is the highest attribute of the lawyer' (at 315).

⁷¹ Burgess, above n 13, 24.

⁷² Thomas L Shaffer and Mary M Shaffer, *American Lawyers*, above n 13, 39, 84. See also Shaffer, 'The Moral Theology of Atticus Finch', above n 13, Shaffer, 'Lawyers as Prophets', above n 13.

⁷³ Thomas L Shaffer and Mary M Shaffer, *American Lawyers*, above n 13, 43.

⁷⁴ Ibid 44.

⁷⁵ Ibid 37-38.

⁷⁶ Ibid 45-46.

⁷⁷ Ibid 56-57, 78.

⁷⁸ Ibid 57.

⁷⁹ Ibid 70.

⁸⁰ Ibid 75.

⁸¹ Ibid 75, 78.

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- Honesty, courage and the ability to tell the truth.⁸²
- Sympathy, including care.⁸³

This model has some parallels with secular 'virtue ethics' approaches such as that of Anthony Kronman, whose 'Lawyer-Statesman' framework emphasises character and the development of *phronesis*, or practical wisdom.⁸⁴ For both frameworks, legal institutions are accepted as being what they are, and guidance for ethical decision-making is primarily sought from legal institutions and rules.⁸⁵ However, the individual in her personal life and through the professional role is focused on becoming a person of good character, and brings this character to bear in carrying out the professional role.⁸⁶

The shared emphasis on virtue in both secular and religious approaches to lawyers' ethics reflects the influence of Aristotelian philosophy on virtue ethics theories,⁸⁷ as well as on Christian legal philosophy, through Christian philosophers such as Thomas Aquinas and Richard Hooker.⁸⁸ Interestingly, the emphasis on faith affecting character which is then brought to bear on professional role is not a dominant feature of the scholarship on Jewish approaches to lawyers' ethics. Levinson writes that in his classification of approaches to Jewish lawyering, he deliberately did not include an approach in which the lawyer would seek to practise law in accordance with Jewish values, due to the difficulty of identifying specific or exclusively Jewish values.⁸⁹ Again, and whilst the Christian literature does not identify the values and virtues listed above as being exclusively Christian, this may also reflect the greater influence of Aristotelian philosophy on Christian legal philosophy.

⁸² Shaffer and Shaffer emphasise the lawyer's ability to call the law, legal institutions and the community to account if they do not meet with community values, and to identify and be honest about mistakes: Thomas L Shaffer and Mary M Shaffer, *American Lawyers*, above n 13, 75 - 78.

⁸³ Mortensen, 'The Lawyer as Parent', above n 13, 6.

⁸⁴ Kronman, *The Lost Lawyer*, above n 12, 111-17; Parker and Evans, above n 46, 9-10.

⁸⁵ See also Simon, *The Practice of Justice*, above n 12, 9-11, 138-169 who argues that lawyers ought to make a 'contextual' judgment about the substance of the law, and act accordingly; Parker and Evans classify this approach to ethical decision-making as 'Responsible lawyering': Parker and Evans, above n 46, 36.

⁸⁶ Kronman, *The Lost Lawyer*, above n 12, 11-17; Parker and Evans, above n 46, 9-10.

⁸⁷ Parker and Evans, above n 46, 9.

⁸⁸ See, eg, the explanation of Christian natural law in Suri Ratnapala, *Jurisprudence* (Cambridge University Press, 2nd ed, 2013) 149-159 and see also Joseph J Kotva Jr, *The Christian Case for Virtue Ethics* (Georgetown University Press, 1997).

⁸⁹ Levinson, above n 14, 1584.

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The Lawyer of Character also reflects a level of theological comfort with the separation of the roles of church (individual morality) and state (government, business, law etc.). Barr suggests, for example, that in some fundamentalist evangelical religious groups, societal and religious values are interpreted as being much the same thing,⁹⁰ and the role of the church is directed at maintaining individual morality rather than examining or reforming social or political institutions.⁹¹ Barr suggests that in these groups,

[t]he dedicated Christian through his personal involvement in industry, in business and so on will then bring his witness to bear upon all sorts of relations in which he lives and works: this is much better than that the church as church should involve itself in saying what should or should not be done in the complicated and ever-changing social scene.⁹²

That is, save for character qualities which traverse both law and morality, the spheres of influence of the ethical worlds of church and state are regarded as being appropriately separate, and the individual Christian's faith is focused on her own morality. She performs her role in the world without bringing her faith to bear on social or political institutions, but her faith may unintentionally influence the work she does or the people she comes across. For the Lawyer of Character, this would seem to mean that she would approach her professional role without intentionally reflecting on its morality, but with an acceptance that her sense of ethics or good character might organically influence her approach to that work.

Interestingly, one of the features of this model is that the Lawyer of Character's character is not only relevant to her work as lawyer, but to her interactions with colleagues within her practice environment. This may particularly be the case in large law firms, for the reasons outlined by Uelman, above. Burgess, for example, also notes that Christian corporate lawyers might seek to bring virtues such as compassion, care, patience, forgiveness, honesty and integrity to their interactions with all those with whom they come into contact in undertaking their professional role, not just in terms of their relationship with clients.⁹³

⁹⁰ James Barr, *Fundamentalism* (SCM Press Ltd, 2nd ed, 1981) 110.

⁹¹ *Ibid* 115.

⁹² *Ibid* 113.

⁹³ Burgess, above n 13, 22.

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In terms of ethical decision-making at the coal face, much depends on the individual lawyer's personal judgment about how the qualities of good character are to be weighed and balanced in different scenarios.

The key themes identified in the literature are addressed by the Lawyer of Character model as follows:

Table 2.2: Summary of the Lawyer of Character model

Lawyer's role and moral justifications for role (RQ1)	The lawyer-client relationship (RQ2(b))	The conduct of legal practice (RQ2(c))	The charging of professional fees (RQ2(d))
The Lawyer of Character is able to act consistently with faith-based ethical values by bringing her good character to bear on the professional role	The Lawyer of Character focuses on bringing her good character to her interactions with the client, and may emphasise character qualities such as wisdom, honesty, sympathy and care.	Again, the Lawyer of Character focuses on bringing her good character to the conduct of legal practice. As with the lawyer-client relationship, the Lawyer of Character may also consider character qualities such as integrity and honesty when making decisions about the conduct of legal practice	The Lawyer of Character would also apply character qualities such as integrity, honesty and wisdom to the charging of professional fees.

2.6 The Lawyer of Integrity

The Lawyer of Integrity⁹⁴ rests on a model that recognises that a Christian lawyer may seek the convergence of the ethical worlds of faith and legal practice by bringing her personal values to bear on the professional role, changing the way the lawyer would ordinarily act within that role.

Under this model, the lawyer's role is thought to be morally justified for a Christian by comparing it with a calling or a vocation. That is, the lawyer is called to her role, and in turn sees that her professional role is not something that should or can be

⁹⁴ Schutt describes his model for legal practice as 'The Integrated Lawyer': Schutt, *Redeeming Law*, above n 13, 93 and see also Allegretti, *The Lawyer's Calling*, above n 13, 22.

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separated from her identity as a Christian. Shaffer, for example, suggests that a Christian lawyer:

is a person who has come to suggest (or to hear the suggestion) that one of the many things a Jew or a Christian can do in the world is to qualify for the legal profession. She then goes out, from the religious community and with encouragement from the religious community, to learn and practice law.⁹⁵

Rather than seeking to separate the ethical norms of faith and legal practice, the Lawyer of Integrity intentionally brings her identity and values as a Christian to her professional practice, and seeks to practise in a way that is consistent with the ethical norms of her faith. Allegretti, for example, suggests that one of the implications of conceptualising the practice of law as a calling is that a Christian lawyer will perform the same tasks as non-Christian lawyers, but that '[h]er work has a different, wider frame of meaning. It has a different orientation. Her personal religious commitments and values are no longer irrelevant to her work, but are inextricably entwined with her image of herself as a lawyer and as a person.'⁹⁶

The idea that a religious lawyer should seek to integrate her personal and professional lives by practising law in a way that is consistent with faith-based values is a view commonly held by theorists writing from a faith-based perspective,⁹⁷ who also argue that because the Lawyer of Integrity approaches legal practice as a Christian (first and foremost) who has been called to practise as a lawyer, the Lawyer of Integrity remains morally accountable for actions undertaken in the professional role,⁹⁸ and must

⁹⁵ Shaffer, 'The Biblical Prophets as Lawyers for the Poor', above n 13, 198.

⁹⁶ Allegretti, *The Lawyer's Calling*, above n 13, 33. Moreover, Allegretti suggests that the role of a Christian lawyer is to 'bring his religious values into the workplace, with the hope and trust that God will work through him to revitalise and transform his life as a lawyer, his profession, and ultimately the wider community as well' (at 21). Schutt also argues that law is a vocation or calling, even if a lawyer may not initially recognise it as such. As part of this calling, Schutt encourages lawyers to 'apply the Word of God to our work, whether legal study, drafting wills or contracts, the merger of corporate giants, or the defense of an accused': Schutt, *Redeeming Law*, above n 13, 95.

⁹⁷ Schutt, *Redeeming Law*, above n 13, 254 and see also Gantt, 'Integration as Integrity', above n 13, 248; Stanford, above n 13, 283-284; Levine, 'A Look at American Legal Practice', above n 14, 23-27; Levine, 'Reflections on the Practice of Law as a Religious Calling', above n 14, 416-417; Balian, above n 13, 339. Stanford (writing from an evangelical perspective) suggests that a religious lawyer ought pray about his work, and to seek God's direction about ethical decisions in legal practice, whilst Levine (writing from a Jewish perspective) also suggests that it may be appropriate for a lawyer to be guided in making ethical decisions about procedural matters by his religious and personal values.

⁹⁸ See, eg, Shaffer, 'The Legal Ethics of the Two Kingdoms', above n 13, 35; Schutt, *Redeeming Law*, above n 13, 226-227 and Allegretti, *The Lawyer's Calling*, above n 13, 10. Mortensen argues that autonomy, often used to justify the secular standard conception of lawyers' ethics, must also

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consider whether her actions in legal practice are morally justifiable from the perspective of her faith.⁹⁹ This means that the influence of Christian ethical norms on the Lawyer of Integrity's approach to legal practice may be more pronounced than it is for the Servant Lawyer or the Lawyer of Character, with the adoption of faith-based ethical norms having distinct implications for legal practice; including in such areas as the lawyer-client relationship, conflicts between personal values and professional role, the charging of professional fees and the resolution of a legal dispute. Further, and because a number of the dominant Christian legal philosophers¹⁰⁰ favour the integration of faith and professional role, the implications of this model for different issues in legal practice (such as the lawyer-client relationship or the charging of professional fees) have been elucidated in more depth by the theorists than some of the other models identified in this thesis.¹⁰¹

In addition to remaining morally accountable for actions undertaken in the professional role, the Lawyer of Integrity is unable to rely on the justifications traditionally provided for the lawyer's role, such as the nature¹⁰² or complexity¹⁰³ of the adversary system to avoid moral responsibility for her professional choices. Shaffer, for example, argues that these justifications rely on the morality of the adversary system, which Christian lawyers should not simply accept on face value. Instead, Shaffer advocates the need for Christian lawyers to look critically at the law and at legal institutions within the context of the values and norms of their faith, in order to determine whether their professional role and any actions undertaken in fulfilling that role, are also morally justified from a faith-based perspective.¹⁰⁴ This

recognise the autonomy of the lawyer to make moral choices about her work: Mortensen, 'A Theology for Legal Practice', above n 13, 404.

⁹⁹ Christian theorist Michael P Schutt, for example, argues that whether and which considerations to raise with clients, which tactics are appropriate, or whether to take on a case in the first place are all ethical decisions which are to be made in accordance with the lawyer's personal and faith-based canons of conduct: Schutt, *Redeeming Law*, above n 13.

¹⁰⁰ Particularly Shaffer, Allegretti and Schutt.

¹⁰¹ Which may, like the Servant Lawyer, identify a religious justification for practising law in accordance with professional values, or identify a consistency between faith-based and professional values (as for the Lawyer of Character).

¹⁰² See, eg, Monroe H Freedman and Abbe Smith, *Understanding Lawyers' Ethics* (LexisNexis, 3rd ed, 2004) 13-43.

¹⁰³ This is the model put forward by Pepper in 'The Lawyer's Amoral Ethical Role', above n 12, 623-624.

¹⁰⁴ Shaffer writes, for example, that:

The moral justification for serving the system is that the system is a source of goodness. But generalised, principled fealty to the system is fealty to power, which assumes that power is the way to goodness. The assumption that power is the way to goodness is not truthful; it depends on a delusion

does not mean that the Lawyer of Integrity will necessarily reject roles or actions that are traditionally based on the lawyer's role in an adversarial legal system (such as criminal defence), but rather that she will assess the justifications for that role according to faith-based rather than professional ethical norms.

2.6.1 Zealous Advocacy and the Lawyer of Integrity

For the Lawyer of Integrity, the concept of the role of lawyer differs considerably from the secular view of the lawyer as adversarial or zealous advocate.¹⁰⁵ Although Allegretti initially notes some advantages of a zealous or adversarial mentality, in that litigants need 'a champion who will fight for his client without trying to impose his own values on the client',¹⁰⁶ he concludes that it is not an appropriate model for Christian lawyers as it contributes to poor tactics; may lead to public distrust of lawyers; and may also lead to lawyers compartmentalising their personal and professional lives.¹⁰⁷ Theorists still place importance on the role of the lawyer as advocate, but this is someone who 'tells the client's story' to both court and other parties, rather than the amoral advocate of the secular literature.¹⁰⁸

about people – clients and lawyers – and a delusion as well about society and its history, about government, and about the nature of world kingdoms.

Shaffer, 'The Practice of Law as Moral Discourse', above n 13, 238.

¹⁰⁵ Effectively, an advocate who will put his client's interest's first, and do all he can to further these interests within the bounds of the law. The 'zealousness' of the representation, and the related principle of moral non-accountability (in which the lawyer bears no moral responsibility for the overall outcome or means used to achieve that outcome), is thought to be justified by the nature of the adversary system, which requires that each party have access to an 'amoral' lawyer to put forward her client's best case. See Parker, 'A Critical Morality', above n 18, 49 and Parker and Evans, above n 46, 22-25 for a description of the Adversarial Advocate approach to lawyer's and see generally, Tim Dare, *The Counsel of Rogues?*, above n 12; Freedman, 'Personal Responsibility', above n 12; Pepper, 'The Lawyer's Amoral Ethical Role' above n 12; and ethics. David Luban, whom Parker classifies as a moral activist, advocates zealous partisanship in defence of 'the man-in-trouble' against the State or against powerful institutions, but 'constrained partisanship' in circumstances in which the parties are more evenly matched. See Luban, *Lawyers and Justice*, above n 12, 65.

¹⁰⁶ Allegretti, *The Lawyer's Calling*, above n 13, 66.

¹⁰⁷ Ibid 67. This concern is shared by Schutt, who argues that the separation of personal values and professional role results in a 'sort of schizophrenia' which may have contributed to the current 'identity crisis for lawyers': Schutt, *Redeeming Law*, above n 13, 77, 78.

¹⁰⁸ Rather than advocacy aimed at 'winning', or focused on conveying arguments solely in favour of the client, Schaffer argues that advocacy should be aimed at bringing together those involved in a legal matter, and may also be aimed at achieving social justice and community: Shaffer, *On Being a Christian and a Lawyer*, above n 13, 127. This view is shared by Thomas Porter, who argues:

There is no more important role than standing up for another person and advocating his story. This involves being a good listener, demonstrating to the client that he and his story have been truly heard and telling the story truthfully and fully in a manner that is persuasive. By doing these three things, the advocate demonstrates to the client that he or she has recognised the harm that the client has experienced and empowers the client to believe that something can be done to rectify the wrong, correct the harm or resolve the conflict. Being an advocate also involves standing in the midst of the conflict and taking the slings and arrows of abuse from the other side.

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Whilst 'zealous' tactics are not necessarily impermissible, any actions taken by the Lawyer of Integrity to achieve the client's ends must also be justified by faith-based values, and importance is placed on giving consideration to the interests of other parties,¹⁰⁹ and whether the means used are necessary to achieve the substance of the client's aims when making decisions about how to advocate on behalf of a client. Allegretti argues that:

A lawyer does his job well when he helps the decision-maker arrive at the truth: when he makes arguments forcefully, challenges his opponent's assertions, introduces evidence the other side has ignored, probes the stories of witnesses to test their memory and credibility. On the other hand, a lawyer dishonors his role when he suppresses evidence, misrepresents the facts, or tries to wear down the other side by frivolous delaying tactics. A lawyer should not take advantage of procedural rules that were designed to further the truth in order to frustrate their purpose.¹¹⁰

This does not necessarily mean that 'zealous' tactics are never justified for the Christian Lawyer. Stanford, for example, suggests that when acting for someone accused of a criminal offence, the lawyer ought to use all available (and legally permissible) tactics, providing that the lawyer faithfully reflects on the representation and tactics before engaging in them. Stanford justifies this view using biblical illustrations, and also because of the 'serious position' and implications for the client in a criminal law matter. He argues that:

a Christian lawyer not only may, but sometimes must, use deceptive tactics when pursuing a righteous cause and faced with a person or persons who do not deserve the truth. We also must be willing to make the argument permitted by the evidence regardless of personal belief.¹¹¹

The key message under this model however, is that any tactics used by the Lawyer of Integrity must be morally justifiable according to her own personal moral framework.

Porter, 'The Spirit and the Law', above n 13, 1163.

¹⁰⁹ Allegretti argues that the tactics that will be applied in the course of a matter should be mutually agreed between lawyer and client, but the lawyer should be 'committed to pursuing the legal rights of her clients in a way that will preserve relationships and minimise the harm to others': Allegretti, *The Lawyer's Calling*, above n 13, 100.

¹¹⁰ Allegretti, *The Lawyer's Calling*, above n 13, 78-79. This view is shared by Melissa Weldon, who suggests that lawyers may need to consider the effect of their tactics on others, suggesting that 'the best tactics are those that are non-confrontational and honest, tactics that allow everyone to retain their dignity': Weldon, above n 13, 1171.

¹¹¹ Stanford, above n 13, 299.

'System' type justifications are largely irrelevant, and professional conduct rules are thought to be of limited guidance.¹¹² Even if a particular tactic is permissible under the relevant conduct rules, Schutt argues that a Christian lawyer ought to make a deliberative and reflective decision whether such strategy is appropriate, given the lawyer's personal values and beliefs,¹¹³ and argues that 'we must admit that ethical rules alone are insufficient to define our obligations to our communities, clients, and God'.¹¹⁴

2.6.2 The lawyer-client relationship

The Lawyer of Integrity also thinks differently about the nature of her relationship with her client. The relationship is not purely professional; created and limited by the scope of the retainer, but broader; necessitating care for the client beyond the terms of the client agreement.¹¹⁵ Allegretti argues that lawyer and client are in a covenant relationship which, unlike a traditional client agreement, has no fixed boundaries or end date, given that the interaction between lawyer and client may have long-term effects on each of them.¹¹⁶

Exercising care for the client in the context of this broader relationship may involve, for example, raising relevant non-legal considerations with a client; thinking about the client's needs from a broader perspective (including physical, emotional and financial

¹¹² Allegretti, 'Lawyers, Clients and Covenant', above n 13, 1107-1108; Schutt, *Redeeming Law*, above n 13, 256; For example, Shaffer argues that whether to continue to represent a client who has a 'guilty purpose' should be a decision for the individual lawyer to make (rather than being governed by professional conduct rules): Shaffer, *On Being a Christian and a Lawyer*, above n 13, 104. Allegretti argues that:

While codes can establish legal minimums, they cannot speak to the heart of the individual lawyer...Codes cannot identify the circumstances where zealous partisanship should give way to reconciliation. They cannot give a lawyer guidance on when and how to balance a client's legitimate interests against the harm that will be done to others. They cannot tell a lawyer whether a particular tactic that *may* be employed *should* be employed. They cannot help a lawyer decide whom to accept as a client and whom, given his deepest personal values, he should decline to represent. And they cannot provide guidance for the lawyer who is grappling with questions that the code itself ignores – questions such as the goals of lawyering, the lawyer's accountability for his actions, and the relationship between faith and work.

Allegretti, *The Lawyer's Calling*, above n 13, 110.

¹¹³ Schutt, *Redeeming Law*, above n 13, 254.

¹¹⁴ Ibid 256. In *The Case of the Unwanted Will*, Shaffer similarly argues that 'the most *irresponsible* thing' would be to follow the conduct rules, which would require that the lawyer cease to represent either party and insist that both husband and wife receive independent legal advice. Further, Shaffer argues, 'if that is the command of our professional ethics, or even the easiest available "solution" to the case from our regulatory rules, then our ethics and our rules are corrupting': Shaffer, 'The Legal Ethics of Radical Individualism', above n 13, 982.

¹¹⁵ See, eg, Shaffer, *Faith and the Professions*, above n 13, 259; Allegretti, *The Lawyer's Calling*, above n 13, 44-46; Schutt, *Redeeming Law*, above n 13, 228.

¹¹⁶ Allegretti, *The Lawyer's Calling*, above n 13, 49.

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needs); considering how the legal issue may affect relevant third parties; and the importance of restoring and maintaining relationships.¹¹⁷ Cantwell, for example, notes the opportunities that lawyers may have to raise these 'bigger picture' considerations with clients because of the unique nature of the lawyer-client relationship:

There is the possibility to bring the client to a new level of viewing her situation, to identify alternatives before the client in this particular instance, and to help her explore possible strategies. This is a meaningful opportunity to help the client escape the gridlock of stress, to see the bigger picture and to move with positive energy in new ways.¹¹⁸

The lawyer-client relationship may also have a 'personal development' or 'moral growth' component, with Shaffer in particular placing emphasis on the client (and lawyer) becoming 'better' as a result of their interactions with each other.¹¹⁹

Advocating the importance of 'moral growth' as a component of the lawyer-client relationship and encouraging the lawyer to raise broader considerations with her client (which might include 'moral' considerations such as the potential impact of a client's actions on third parties), naturally conflict with a traditional liberal conception of the lawyer's role, which suggests that moral decisions belong with the client and, further,

¹¹⁷ See, eg, Schutt, *Redeeming Law*, above n 13, 246-247, Allegretti, *The Lawyer's Calling*, above n 13, 69, 105.

¹¹⁸ Cantwell, 'The Relevance of Religion to a Lawyer's Work', above n 13, 1334. Cantwell notes that, although large law-firm lawyers may not have the same opportunities to work with clients as their smaller firm or sole practitioner counterparts, they may still be able to influence their co-workers, staff and supervisors (at 1337). Schutt similarly argues that legal practice ought to be approached in light of the second great commandment, 'Love your neighbour as yourself' and that, in the context of the lawyer-client relationship, this means seeking good for the client. He argues:

In the law, we see God working through human hands to heal, protect, reconcile, feed and encourage. God is at work, loving our neighbours through our law practice. He meets the needs of our clients through us. Do they need his mercy? His compassion? His wisdom? Must they be punished, vindicated, or reconciled one to another? Do they need assistance in leaving an inheritance for their children or taking dominion over the things God has entrusted to them?

That is, the lawyer ought to reflect on how she might be able to be of positive benefit to the client through her professional role, not simply by carrying out the client's instructions, but perhaps by reflecting on the client's needs more broadly or by looking at the client's matter from an overall perspective: Schutt, *Redeeming Law*, above n 13, 110-111, 114.

¹¹⁹ Shaffer sets out three principles that he says clients should gain from the lawyer-client relationship. These include autonomy (but this is autonomy to choose 'good', for example reconciliation, rather than the unrestricted autonomy emphasised by secular liberal theorists such as Pepper); rectitude (the idea that, although the lawyer may hope that his or her client will make the 'right' decision, he should not exercise his power or stature as a lawyer to influence the client); and virtue. That is, Shaffer hopes that in the unfolding of the interactions between lawyer and client, the client will become more virtuous, not only making the right decision in that particular situation, but also becoming 'the sort of person who makes right choices'. Moreover, Shaffer's goal for the client is that he become 'better than he would have been if I had not stumbled into his life' as a result of positive interactions between lawyer and client: Shaffer, *Faith and the Professions*, above n 13, 69-70.

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that the lawyer ought not interfere with the client's individual autonomy by imposing her own views about non-legal (including moral) considerations that she might consider relevant.¹²⁰ The theorists whose work is placed within this framework acknowledge the potential for paternalism or the lawyer's values to in essence override those of the client to a certain extent. Allegretti specifically acknowledges the possibility that the lawyer-client relationship may be unequal (leading to a power imbalance between lawyer and client), including because a client may be in a vulnerable position vis a vis their lawyer.¹²¹ To counteract this potential inequality, Allegretti argues that, rather than telling the client what to do, the lawyer should encourage moral reflection by the client himself, by 'asking the client what he *should do*'.¹²² Allegretti encourages this approach by both lawyers who represent individuals, and those who act for companies, arguing that, by raising any moral doubts, the lawyer treats the client as an equal, and that this is in turn likely to strengthen the lawyer-client relationship.¹²³

Shaffer also may avoid assertions about the potential for the lawyer to impose her personal viewpoint about extra-legal matters on the client by placing importance on values which come from a community,¹²⁴ rather than the lawyer's personal viewpoint

¹²⁰ The liberal conception has been referred to as the 'standard conception' or 'dominant view' of the lawyer's ethical role (Tim Dare, *The Counsel of Rogues*, above n 12; Simon, *The Practice of Justice*, above n 12) and Parker and Evans identify the Adversarial Advocate model (reflecting the liberal conception) as being the 'Traditional Conception of Legal Ethics' and the 'predominant conception of what lawyers' role and ethics ought to be in most common law countries including Australia' (Parker and Evans, above n 46, 22). It should be noted, however, that the liberal conception is not the only secular conception of the lawyer's ethical role. See, eg, the discussion of the Responsible Lawyering, Moral Activism and Ethics of Care frameworks in Parker, 'A Critical Morality', above n 18 and Parker and Evans, above n 46, 31-50.

¹²¹ This may arise, for example, because the lawyer may have an expertise which the client does not have and use a special language which the client may not understand and therefore the client may not be in a position to evaluate the lawyer's work. Further, lawyers are members of a profession and may therefore become elitist, viewing the client with an element of paternalism in providing advice. This potential vulnerability is also noted by Pearce and Uelmen in 'Religious Lawyering in a Liberal Democracy', above n 14, 155.

¹²² Allegretti, *The Lawyer's Calling*, above n 13, 53.

¹²³ Ibid 56, 57, suggesting that 'the lawyer can often become a voice for the corporate conscience' and is 'able to bring a certain objectivity and independent moral vision to the issues'.

¹²⁴ Shaffer places importance on community throughout his work. First, he suggests that the community in which a lawyer is raised influences the development by that lawyer of values which the lawyer later brings to bear on legal practice: Thomas L. Shaffer with Mary M. Shaffer, *American Lawyers*, above n 13, 127. Second, he proposes that a lawyer should seek guidance from her faith-community about the morality of legal practice in general, but also about specific ethical or moral dilemmas which may arise within the context of legal practice. The community is to provide the lawyer with discernment and guidance about ethical issues, which the lawyer then also brings to bear on legal practice: see, eg, Shaffer, 'Legal Ethics and Jurisprudence from within Religious Congregations', above n 13; Shaffer, 'Essay on Religious Legal Ethics', above n 13, 397. For Shaffer, this faith community is not necessarily a particular church or denomination, but may consist of a

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(although the same criticisms may arise where the client does not come from or share the same values as the lawyer's containing community). Schutt also emphasises the need to seek the client's overall good, but admonishes the Christian lawyer to favour humility, focus on serving the client and avoiding pride.¹²⁵ One of the key features of Schutt's model for legal practice is that it is very individualistic, with Schutt often emphasising the need for the lawyer to engage in specific individual reflection about each client and task, writing that:

We do, of course, need to be aware of the reasons the client has come to us. Yet it seems wrong to ignore the plain needs of those seeking our counsel. A simple encouragement to seek moral, psychological, or spiritual advice is sometimes all that is necessary... Whether particular religious, moral, or other nonlegal considerations – Scripture passages, specific prayer with the client, direct admonition – should be raised in a given situation requires wisdom and prayer.¹²⁶

2.6.3 Conflicts between personal values and professional role

Whilst theorists recognise the need to exercise caution when raising relevant non-legal considerations with clients (so as not to impose the lawyer's own values on the client), questions may also arise about what happens in the event of a conflict between a client's instructions and the Lawyer of Integrity's own personal values. Arguably, conflicts between personal values and professional role are more likely to occur under this model because the Lawyer of Integrity remains morally accountable for actions undertaken in the professional role and must act consistently in both personal and professional roles.

In cases of conflict, and rather than withdrawing, Shaffer suggests that lawyer and client are instead to engage in a 'moral conversation', in which both are free to share their own perspectives and rationales about any moral issues that may be relevant to a

small group, or of a group of Christian lawyers who meet together to pray. Clearly, the concept of a lawyer seeking ethical guidance from an external faith-community about issues which may involve confidential or legally-privileged information may breach professional conduct rules, but it may be possible for Christian lawyers within the same firm to seek ethical guidance from each other. Rule 9 of the Australian Solicitors Conduct Rules states, for example, that a solicitor must not disclose confidential information to anyone outside his or her firm (or counsel engaged by the firm), except in certain limited circumstances such as for the purpose of obtaining ethical advice or to prevent imminent serious physical harm or the probable commission of a serious criminal offence.

¹²⁵ Schutt, *Redeeming Law*, above n 13, 218-219, 223.

¹²⁶ *Ibid* 256.

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legal matter and try to reach agreement.¹²⁷ If agreement cannot be reached, then the lawyer is justified in refusing to accept instructions or withdrawing from acting further.¹²⁸ Consistent with the emphasis on personal growth for both lawyer and client under this model, Shaffer argues that engaging in 'moral conversation' and seeking to understand each other's position may be of personal benefit to both parties even if they continue to disagree (in which case the lawyer may then withdraw from acting further).¹²⁹

Mortensen, in assessing a Christian lawyer's response to being asked to give effect to a divorce which she doubts is morally justified, supports Shaffer's 'moral conversation' to an extent.¹³⁰ However, he notes that this conversation is a 'hazardous exercise', and that the lawyer's autonomy to give voice to her own values must be balanced with humility and 'the need for reluctance, and even caution, in exercising moral judgment' given the lawyer's 'bounded knowledge and moral incapacities'.¹³¹

Mortensen argues that the liberal justification of individual autonomy (sometimes used to justify the Adversarial Advocate model) gives rise to a 'paradox' in which the client's autonomy is recognised but the lawyer's is not, and that a Christian theology of autonomy would overcome this paradox by recognising rather than denying the lawyer's autonomy in the professional role.¹³² Although this would enable the lawyer to raise relevant moral misgivings with a client, Mortensen cautions against 'preaching, self-righteousness and Pharisaism'¹³³ and notes that the decision to decline a retainer 'should only be carefully and reluctantly made'.¹³⁴ Allegretti also supports the idea of a moral conversation, but emphasises the importance of treating the client as an equal and with compassion and recognises that, instead of the client changing

¹²⁷ Shaffer acknowledges that this moral conversation needs '(1) time, space and environment for reflection; (2) full information; and (3) collaboration': Shaffer, *On Being a Christian and a Lawyer*, above n 13, 26. Clearly this might involve some re-conceptualisation in a time-cost billing environment.

¹²⁸ Schutt, *Redeeming Law*, above n 13, 251.

¹²⁹ Shaffer, *On Being a Christian and a Lawyer*, above n 13, Chapter 3. Shaffer writes (at page 28):
Moral discourse in professional relationships does not require that either party consciously change; it is possible for two people to discuss an issue of conscience, and to discuss it deeply, even though neither of them comes to change his mind. One who meets the other in a deep way, who meets the One in the other, is changed by such a meeting, but this change need not include a conscious change of mind.

¹³⁰ Mortensen, 'A Theology for Legal Practice' above n 13, 411.

¹³¹ *Ibid* 407.

¹³² *Ibid* 403, 404.

¹³³ *Ibid* 410.

¹³⁴ *Ibid* 412.

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his position, it may be that the lawyer is persuaded by the client that his proposed course of action is the right one.¹³⁵

As with the Servant Lawyer, theorists accept that, in the event that lawyer and client are unable to agree on a particular course of action, then the Lawyer of Integrity is also morally justified in withdrawing from acting further, in particular because the Lawyer of Integrity remains morally accountable for actions undertaken in the professional role and is therefore unable to act in a way that conflicts with the ethical norms of her faith. Deciding when to withdraw because of a conflict with a lawyer's personal values is a question for the individual lawyer. However, Collett provides an analytical tool for determining when a lawyer (specifically a Catholic lawyer) ought to withdraw due to a conflict with faith-based values.¹³⁶ Collett draws a distinction between two scenarios. The first is where the client's intentions and objects are 'immoral' and the lawyer must share in these in order to act for the client. The second is where the client's intentions and objects are 'immoral' but the lawyer need not cooperate with these in order to act for the client. Collett concludes that, in either situation, the lawyer must determine 'whether his or her actions have sufficient purpose other than to facilitate the sinful intention or object. If there is not sufficient purpose, the lawyer should refuse the representation since it would require the lawyer to impermissibly cooperate materially with the sin of the client'.¹³⁷

Schutt also does not advocate withdrawing at the outset, suggesting that a lawyer of faith should conscientiously and deliberately reflect about every matter that "'just shows up" on our doorsteps',¹³⁸ but also acknowledging that a Christian lawyer might 'boldly decline cases that violate our conscience'¹³⁹ and refuse to engage in litigation if 'the motivation for bringing the suit or the goals of litigation are contrary to what we discern as permissible in Scripture'.¹⁴⁰

¹³⁵ Allegretti, *The Lawyer's Calling*, above n 13, 46.

¹³⁶ Collett, 'Speak No Evil' above n 13, 1339.

¹³⁷ *Ibid* 1381.

¹³⁸ Schutt, *Redeeming Law*, above n 13, 112.

¹³⁹ *Ibid*.

¹⁴⁰ *Ibid* 251.

2.6.4 Conflicts – particular scenarios

Shaffer and others have also specifically given consideration to what actions the Lawyer of Integrity is morally justified in taking in the 'classic' conflict scenarios: criminal defence representation where the lawyer knows or suspects the client's guilt; and the representation of a client who has or intends to commit perjury.¹⁴¹

Rather than withdrawing out of disapproval for the client's actions, and with reference to faith-based ethical norms, theorists argue that the Lawyer of Integrity is in a unique position to advocate for the client within the system,¹⁴² to demonstrate compassion,¹⁴³ and to counsel the client against committing perjury.¹⁴⁴ Shaffer goes further by arguing that, if the client does commit perjury, the lawyer must remain faithful to the client by continuing to act and not revealing the client's perjury to the Court without her consent. However, this is to be balanced with the lawyer's duty to the Court by not referring to the false evidence in summing up.¹⁴⁵ Allegretti disagrees, arguing that the

¹⁴¹ The lawyer's actions in this area are also governed by relevant professional conduct rules, and any ethical discretion in this jurisdiction is removed by Rule 20 of the Australian Solicitors Conduct Rules, which restricts the kind of defence that may be provided for a client who confesses guilt, and state that a solicitor who is aware that a client or witness has or intends to commit perjury must withdraw from acting further, but may not inform the Court without the client's consent.

¹⁴² In *The Lawyer's Calling*, above n 13, 77, Allegretti argues that:

The defense lawyer can speak for the defendant – not necessarily in the courtroom, not even most importantly there – but within the bureaucratic morass of the legal system, where no one else has the defendant's interests truly at heart. The defense lawyer's job is to force the system to acknowledge that the defendant is not just a social misfit, or a statistic, or a criminal, but a human being with hopes and dreams and fears. A human being who, like any of us, stands in need of repentance and redemption.

¹⁴³ Shaffer refers to biblical examples of Christ's willingness to associate with the less well-regarded in His society (including Christ's defence of the woman caught in adultery (John 8:1-11), Christ's forgiveness and companionship towards the thief on the cross (Luke 23:32-43), and Christ's compassion towards the less well-regarded in society at the time, such as lepers and tax-collectors (Matthew 8:1-4; Mark 1:40-45; Luke 5:12-16 (Jesus heals a man with leprosy); Luke 19:1-10 (Zacchaeus the Tax Collector); Mark 2:13-17 (Jesus eats with sinners and tax collectors)), and on that basis argues that a Christian lawyer should not refuse to represent a guilty person merely because of the heinousness of her actions. Rather, Shaffer suggests that:

If we take the Gospel stories as moral models, Jesus says to us, his followers, that we should turn to the repulsive, to those our communities tell us, for good reason, to avoid. The lesson says to separate the condition of being guilty from the condition of being repulsive. The Gospel gives no warrant for turning away from repulsive people, even though there are sound moral, social and legal reasons for doing so.

See Shaffer, 'Serving the Guilty', above n 13, 83-84 and Shaffer, 'Should a Christian lawyer serve the guilty', above n 13, 1025.

¹⁴⁴ Noting that, until the client has actually given false evidence, there remains an opportunity to convince her not to do so.

¹⁴⁵ Shaffer, 'Serving the Guilty', above n 13, 93-94, 101. This is a similar argument to that of liberal theorist Monroe Freedman, who argues that the lawyer ought to continue to act in these circumstances, because withdrawing from acting further will indicate to the court in any event that something untoward has occurred: Freedman, *Lawyers' Ethics in an Adversary System*, above n 12, 1-8.

lawyer must try to convince the client to admit the lie, and may 'have to reveal the falsehood' if the client will not do so.¹⁴⁶

Again, and whilst these theorists do not identify any moral conflict for a Christian lawyer representing a guilty client or a client accused of committing a heinous crime, the potential for conflict and what actions the lawyer is justified in taking in defence of her client are all matters which must be assessed with reference to faith-based rather than solely professional ethical norms.

2.6.5 The importance of Alternative Dispute Resolution

The importance of reconciliation is another of the key themes of the Lawyer of Integrity model, with theorists such as Porter suggesting that, in addition to advocacy, the lawyer's role should be focused on the healing and resolution of conflict, and the maintenance and restoration of relationships (including as one way that the Lawyer of Integrity might act consistently with faith-based ethical norms in carrying out her professional role). This might involve, for example, seeking to understand the point of view of the other party, considering creative options for resolution and training clients in problem-solving.¹⁴⁷

In order to achieve reconciliation and avoid harm, the use of alternative dispute resolution methods ('ADR') to resolve disputes is encouraged under this model. The use of ADR is thought to be justified by faith-based principles which discourage Christians from engaging in litigation;¹⁴⁸ recognition of the possible benefits of ADR which include costs and time savings; and the potential to preserve or restore relationships between disputants.¹⁴⁹ It is also recognised that Christian lawyers may seek to explore non-traditional methods of ADR, including Christian conciliation,

¹⁴⁶ Allegretti, *The Lawyer's Calling*, above n 13, 80.

¹⁴⁷ Porter, 'The Spirit and the Law', above n 13, 1164.

¹⁴⁸ Echoed by Allegretti, who recognises some benefits of litigation, for example that it may be the best means to achieve justice for the needy, but argues that litigation should not be entered into lightly, and particularly by Christians, who 'should not go to court unless they have serious and important reasons for doing so': Allegretti, *The Lawyer's Calling*, above n 13, 89-90.

¹⁴⁹ Allegretti, *The Lawyer's Calling*, above n 13, 93. See also Porter, 'The Spirit and the Law', above n 13, 1161; Schutt, *Redeeming Law*, above n 13, 246.

particularly where both parties share the lawyer's faith and are willing to participate in this kind of process).¹⁵⁰

2.6.6 Professional fees

Although the Lawyer of Integrity may not necessarily be actively engaged in pro bono work (this is more likely to be the Prophetic Lawyer), it is likely that she will also reflect on her charging of professional fees in the light of her personal values. Although Schutt does not provide detailed guidance about the charging of professional fees (apart from reminding lawyers to be generous with, and good stewards of the provision they have received),¹⁵¹ he does suggest that a Christian lawyer ought make decisions about this issue in the light of that lawyer's personal faith,¹⁵² and warns the Christian lawyer against work becoming 'the primary factor in our personal identity and even social status'.¹⁵³ Schutt also suggests that conceptualising law as a calling and as an opportunity to serve one's neighbour may help the Christian lawyer to keep the financial implications of legal practice in perspective.¹⁵⁴ This is perhaps an area that has been less canvassed within the literature, with theorists noting faith-based ethical norms about money, but not necessarily exploring how these might be applied to the context of lawyers' professional fees.

2.6.7 Summary

Because of its emphasis on care beyond the scope of the client agreement and the dominance of faith-based ethical norms, this model requires the greatest re-conception of the lawyer's traditional role. As Schutt argues, seeking to integrate the ethical worlds of faith and legal practice:

[m]ight embolden us to treat clients as if they have souls and their problems as if they are not simply legal puzzles to be solved but moral and spiritual issues that need to be addressed in community. It may mean that we commit to certain financial boundaries

¹⁵⁰ Both Schutt and Allegretti note the biblical exhortation to Christians to resolve their disputes within the church and using biblical principles: Schutt, *Redeeming Law*, above n 13, 246-249; Allegretti, *The Lawyer's Calling*, above n 13, 93-95.

¹⁵¹ Schutt, *Redeeming Law*, above n 13, 210-211, 213.

¹⁵² *Ibid* 136, 210-211, 213. Shaffer also suggests that lawyers should reflect on faith-based principles in their deliberations about charging professional fees, in particular guidelines on accumulation and distribution that are provided by religious tradition: Shaffer, 'Jews, Christians, Lawyers, and Money', above n 13, 470.

¹⁵³ Schutt, *Redeeming Law*, above n 13, 59.

¹⁵⁴ *Ibid* 226-227. See also Allegretti, *The Lawyer's Calling*, above n 13, 34.

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or particular ways of organising our law practices. It might mean that we pray with our clients and our secretaries, or that we take a public stand on legal or political issues about which we have some expertise.¹⁵⁵

The model is criticised by some theorists, including those writing from a faith-based perspective, who note difficulties with a religious lawyer's professional role being influenced by her personal values to the extent suggested by the ethic of integrity.¹⁵⁶ Jenkins, for example, argues that clients may prefer a 'competent' rather than 'caring' lawyer, and that aspects of this model such as the extended relationship between lawyer and client may be more appropriate for certain areas of practice such as family law.¹⁵⁷

Interestingly, whilst the ethic of integrity features prominently in the Christian literature on lawyers' ethics, it is not generally reflected in the Jewish literature, and Pearce posits that a Jewish lawyer may feel uncomfortable incorporating religious values into the professional role.¹⁵⁸ There may be a number of reasons for the greater prominence of the Lawyer of Integrity in the Christian literature, including the influence of Christianity on the development of Western legal and political systems,¹⁵⁹ perhaps leading to normalisation of the co-existence of church and state, even within the person of the lawyer. In contrast, Pearce and Levinson note a dichotomy between the lawyer's role in Jewish religious courts and the traditional advocate of the Western legal system.¹⁶⁰

¹⁵⁵ Schutt, *Redeeming Law*, above n 13, 109.

¹⁵⁶ Stern, for example, notes a number of difficulties with the lawyer's professional role being influenced by religious values. Namely, that lawyers may not be qualified to provide religious as opposed to legal guidance; that clients come to see lawyers for legal advice and not religious guidance; and that, in focusing on 'religious principle' the lawyer may not put the client's interests first. These concerns are also voiced by other theorists. However, Stern does not require that professional obligation be put before personal values in the event of a conflict between the two, recognising that if an action required by the lawyer's professional role is 'religiously impossible', the religious lawyer may refuse to act or withdraw: Stern, above n 14, 1371.

¹⁵⁷ Jenkins, above n 13, 1168.

¹⁵⁸ Pearce, 'The Jewish Lawyer's Question', above n 14, 1261. Pearce suggests that one reason that Jewish lawyers may find the separation of roles appealing is because it avoids group identification and may therefore protect Jewish lawyers from being discriminated against because of their ethnicity or faith (at 1262).

¹⁵⁹ See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983) for a comprehensive discussion.

¹⁶⁰ Levinson, above n 14, 1597 and Pearce, 'The Jewish Lawyer's Question', above n 14, 1265.

It may be possible that a lawyer practising within this model will share his personal beliefs with his client from time to time, but will not intentionally and deliberately use his professional relationship with the client as a vehicle for proselytising.¹⁶¹

2.7 The Prophetic Lawyer

The prophetic model¹⁶² goes beyond the Lawyer of Integrity model by suggesting that a Christian lawyer should seek to bring the ethical values from her faith-based world into the ethical world of legal practice in order to change the law, legal institutions and clients for the better. The Prophetic Lawyer is able to do this by acting for clients and organisations who share her values (including Christian or Jewish institutions and individuals),¹⁶³ engaging in law or social reform explicitly or through the matters she takes on; or by engaging in pro bono work.

In Parker's third model of faith-based legal practice (Social Reformer), she suggests that one of the ways that a Christian lawyer might seek to reconcile her personal values with her professional role is by seeking to reform legal institutions to align with faith-based values; working for Christian organisations; engaging in evangelism through legal practice; or acting for Christian institutions and individuals.¹⁶⁴ Similarly, in their second model (God as employer), Di Salvo and Droel suggest that a 'small number' of lawyers seek more closely to reconcile their faith with their professional role by acting for particular causes, performing pro bono work or working for legal aid.¹⁶⁵

There is less about this model in the literature because, as Cochrane points out, 'poverty law, representation of religious organisations, and religious freedom

¹⁶¹ Shaffer says 'I, who am a Christian, would say that my hope for my client is that he respond to the redemption which God has accomplished for him. And if that is my hope, then it is my duty, no doubt, to say something about it'. However, the majority of Shaffer's writing focuses on deliberations about the morality of the client's proposed course of action, rather than using the lawyer-client relationship as a vehicle for proselytising. See Shaffer, *On Being a Christian and a Lawyer*, above n 13, 27.

¹⁶² Both Shaffer and Allegretti deal with the concept of the lawyer as prophet. See Allegretti, *The Lawyer's Calling*, above n 13, 51-63; Shaffer, 'The Biblical Prophets as Lawyers for the Poor', above n 13; Shaffer, 'Business Lawyers, Baseball Players, and the Hebrew Prophets', above n 13; Shaffer, 'Lawyers and the Biblical Prophets', above n 13; Shaffer, 'Lawyers as Prophets', above n 13.

¹⁶³ See Pearce, 'The Jewish Lawyer's Question', above n 14, 1263. Parker, 'Christian Ethics in Legal Practice', above n 13, 23-34. Others, including Jewish theorist Marc Stern, suggest that religiously motivated legal and political reform is inappropriate. See Stern, above n 14, 1373.

¹⁶⁴ Parker, 'Christian Ethics in Legal Practice', above n 13, 27.

¹⁶⁵ Di Salvo and Droel, above n 13, 131.

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litigation naturally connect to religious faith',¹⁶⁶ and some therefore make a deliberate choice to focus instead on the intersection between faith and professional role for those lawyers for whom the connection between faith and legal practice is less explicit.¹⁶⁷ In Australia, the majority of lawyers are not engaged in working for religious organisations or clients who necessarily share their faith,¹⁶⁸ but must find a way to reconcile their faith with 'what ordinary lawyers do in ordinary law offices on ordinary Wednesday afternoons'.¹⁶⁹ This may be another reason why the literature tends to focus on the intersection between faith and the demands of 'ordinary' legal practice. Evans also suggests that lawyers of his acquaintance are generally reluctant to identify a faith-action connection to their legal practice.¹⁷⁰

Although the Prophetic Lawyer has much in common with the Lawyer of Integrity in terms of the integration of the ethical worlds of faith and legal practice (and the rejection of the separation of roles that may result from Adversarial Advocacy), one of the key differences is that the Lawyer of Integrity is 'salt and light where [she] is found'.¹⁷¹ That is, the Lawyer of Integrity is reflectively to do the best that she can in her day-to-day practice, but without actively seeking to change law or legal institutions or to act for particular clients or causes. In contrast, and whilst the Prophetic Lawyer also retains moral responsibility for actions undertaken in the professional role, she discharges this responsibility by intentionally seeking to change the ethical world of law and legal practice for the better, actively pursuing faith-based values through the professional role.¹⁷²

¹⁶⁶ Cochran, 'Introduction: Can the Ordinary Practice of Law be a Religious Calling?', above n 13, 374.

¹⁶⁷ *Ibid.*

¹⁶⁸ According to the 2014 Law Society National Profile Final Report, 70.2% of practising solicitors worked in private practice, 15.8% as corporate solicitors and 9.6% with government. These statistics are not broken down further, and of course, some of the 15.8% working as corporate solicitors may work for religious organisations, and some of the 70.2% working in private practice may represent Christian or Jewish clients or causes: Law Society of New South Wales, '2014 Law Society National Profile' (Final Report, April 2015). Acting only for clients who share the lawyer's faith might also breach anti-discrimination legislation.

¹⁶⁹ Cochran, 'Introduction: Can the Ordinary Practice of Law be a Religious Calling?', above n 13, 374.

¹⁷⁰ Evans, 'Encouraging Lawyer's Values in a Faith Conscious World', above n 13, 6.

¹⁷¹ Schutt, *Redeeming Law*, above n 13, 202-203.

¹⁷² Shaffer suggests that Christian lawyers should not simply accept the 'morality' or 'goodness' or the existing legal system, but should rather look critically at this using the prism of their personal value system and the values of their community. See Shaffer, 'The Practice of Law as Moral Discourse', above n 13, 238-239; Thomas L. Shaffer and Mary M. Shaffer, *American Lawyers*, above n 13, 39, 84. However Shaffer does not go so far as to suggest that the primary role of Christian

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The Prophetic Lawyer may be found working for legal aid or a community legal centre, or acting for particular clients and causes which reflect the lawyer's personal values. Outside her day-to-day legal practice she may become involved in church committees or advising the church about law reform.¹⁷³ DiSalvo and Droel say that

the spirituality of work for such a lawyer will mean vigorously seeking out those clients who are short-changed by the system. It will still mean that aspiring towards greater competency is a basic element of the lawyer's spirituality of work. At the core, however, these lawyers have a very personal regard for integrity and for taking personal responsibility for the consequences of their work.¹⁷⁴

This model may also include those who act for specifically religious organisations, or Jewish lawyers practising in Jewish Courts.¹⁷⁵

Giba-Matthews endorses the prophetic model from a Catholic perspective, suggesting that a Catholic lawyer may not be in a position to separate her dual role as a representative of both church and state when it comes to pro bono work, due to the importance placed by the Roman Catholic Church on showing concern for the poor.¹⁷⁶ This may lead to an increased commitment to pro bono lawyering.¹⁷⁷ From a Jewish perspective, the view that a lawyer ought to use her role to further justice and support those who are disadvantaged is shared by a number of Jewish theorists. Schorr states, 'I view it as a mandate to myself to use my work as a lawyer to better the circumstances of those currently denied justice, fairness and the opportunity to pursue well-being'.¹⁷⁸

lawyers is to actively seek to change the system. Rather, under his preferred model for faith-based legal practice, the Christian lawyer is able to give effect to her personal values through everyday legal practice; in particular, through the way that she relates to her clients.

¹⁷³ See Parker, 'Christian Ethics in Legal Practice', above n 13, 29-30. In so doing, however, the lawyer effectively brings his professional skills to his personal role, rather than vice versa.

¹⁷⁴ DiSalvo & Droel, above n 13, 132.

¹⁷⁵ Levinson, above n 14, 1596.

¹⁷⁶ Giba-Matthews, 'A Catholic Lawyer and the Church's Social Teaching', above n 13, 1543-1544. Starr similarly notes the biblical imperative to 'stand up for the rights of the orphan, the widow, and the alien': Starr, 'Christian Service in the Practice of Law', above n 13, 453. See also Cunningham, above n 13, 403, noting that 'Catholic Lawyers have a special duty to aid the poor and others who need access to justice'.

¹⁷⁷ Starr suggests that Christian lawyers in large law firms have a particular obligation to undertake pro bono work and that 'it would be odd for the Christian lawyer not to have a cup filled to overflowing with non-remunerative matters': Starr, 'Christian Service in the Practice of Law', above n 13, 456.

¹⁷⁸ Rabbi Gerald Wolpe et al, 'Panel Discussion: Responses to the Keynote Address' (1998-1999) 26 *Fordham Urban Law Journal* 841, 848 (Nanette H Schorr). This view is shared by Pearce, who writes 'the conduct of the Jewish lawyer in upholding the rule of law and in serving the poor could be quite consistent with professional ideals': Pearce, 'The Jewish Lawyer's Question', above n 14, 1269. Levine similarly argues that pro bono work, protecting the rights of the needy, and working to ensure

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Similarly, and from a Muslim perspective, al-Hibri argues that a Muslim attorney should be 'committed in her practice to advancing the cause of justice in society',¹⁷⁹ and would find it difficult to separate the ethical worlds of faith and legal practice due to Qur'anic injunctions prohibiting 'unjust or evil behaviour' and advocating justice and the need to 'help orphans and the weak receive their due'.¹⁸⁰

The Prophetic Lawyer is also encouraged to be actively involved in law and social reform, becoming involved in lobbying, and acting for and advising clients and organisations that fit with the lawyer's own reform agenda. The view that a religious lawyer should not simply accept the law and legal institutions as they are, but should examine them in the light of faith-based values, is advocated by a number of religious ethicists.¹⁸¹ Whilst Shaffer's main body of work has been classified within an integration model, he too places importance on Christian lawyers not simply accepting legal institutions as they are, but examining them in the light of faith-based values. Moreover, in his later work, Shaffer suggests that another aspect of the lawyer's role is to act as a biblical prophet, holding the law and legal institutions to account for injustices and seeking change,¹⁸² advocating that

today's prophetic legal ethics should emphasise angry reproach. Angry reproach first, of our wimpy religious congregations; then anger at the organised legal profession; then anger and reproach at what the government does to the most vulnerable among us.¹⁸³

In practice, this model is more likely to be combined with other models, particularly for those lawyers who work in secular legal practice environments. For example, the Servant Lawyer, whilst remaining morally neutral in her day-to-day legal practice, may nevertheless give expression to the ethical values of her church by engaging in

justice for the downtrodden and disadvantaged are consistent with a faith-based conception of lawyering: Levine, 'A look at American Legal Practice', above n 14, 21.

¹⁷⁹ Al-Hibri, 'Faith and the Attorney-Client Relationship', above n 14, 1136.

¹⁸⁰ Ibid.

¹⁸¹ Particularly in Shaffer's later work. See, eg, Shaffer, 'Lawyers as Prophets', above n 13. See also Allegretti, *The Lawyer's Calling*, above n 13, Chapter 4: 'Prophetic Ministry', and al-Hibri, 'Faith and the Attorney-Client Relationship', above n 14, 1136. From a Jewish perspective, Pearce suggests that 'the conduct of the Jewish lawyer in upholding the rule of law and in serving the poor could be quite consistent with professional ideals': Pearce, 'The Jewish Lawyer's Question', above n 14, 1269.

¹⁸² Shaffer, 'Lawyers as Prophets', above n 13, and see also Shaffer, 'The Biblical Prophets as Lawyers for the Poor', above n 13 and Romano, above n 13, who notes the shortcomings of the justice system.

¹⁸³ Shaffer, 'The Biblical Prophets', above n 13, 32.

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pro-bono work, becoming involved in a church committee or serving on the governing body of an organisation which reflects those values.

In summary, the key themes identified in the literature are addressed by the Prophetic Lawyer model as follows:

Table 2.3: Summary of the Prophetic Lawyer model

Lawyer's role and moral justifications for role (RQ1)	The lawyer-client relationship (RQ2(b))	The conduct of legal practice (RQ2(c))	The charging of professional fees (RQ2(d))
The Prophetic Lawyer gives effect to faith-based ethical values in the lawyer's role by engaging in pro bono work, law reform, and/or acting for clients and organisations whose aims reflect her faith-based values.	The Prophetic Lawyer seeks to act for clients and organisations which reflect her own values (and by doing so, to actively pursue faith-based ethical values through the lawyer's professional role).	As with the Lawyer of Integrity, the Prophetic Lawyer must act consistently with faith-based ethical norms when engaged in the professional role. The Prophetic Lawyer may seek to actively pursue her own values through the conduct of legal practice, for example by acting for particular causes or engaging in law reform.	The Prophetic Lawyer may give effect to faith-based social justice values by engaging in pro bono work for those in need.

2.8 Conclusion

This Chapter has examined the key themes set out in the faith-based normative literature about the nature of the lawyers' role and the moral justifications for that role. Those key themes are reflected in the Research Questions for this project, and include whether and how the lawyer's personal values ought to influence the lawyer-client relationship, the charging of professional fees, and the conduct of legal practice more broadly. Four distinct models for faith-based legal practice have been identified within the literature, each of which respond to the sometimes competing ethical norms of faith and legal practice, and suggest different ways that a Christian lawyer might go about navigating between the competing ethical worlds of faith and legal practice.

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The next Chapter will examine the empirical studies of the 'ethical worlds' within which different groups of lawyers frame their legal practice, and will set out the methodology used for this project.

Chapter 3 : Methodology

3.1 Introduction

In examining how lawyers of the Christian faith navigate the ethical worlds of Christian faith and legal practice, this thesis builds on both the normative literature about what factors ought or ought not to influence lawyers' ethical deliberations, and empirical studies about the influence of 'ethical worlds' on the 'real life' ethical deliberations of different groups of lawyers.

The previous chapter examined the key themes of the normative literature and explained how these are reflected in the Research Questions for this project. This chapter will outline the existing empirical studies of lawyers' ethical deliberations, and explain how this methodology has been adapted in this study to explore the ethical deliberations of a group of Christian lawyers in Australia.

This chapter will also set out the methodology used in this thesis, including the Research Questions, demographic details of participants, how the participants were identified, and the interview protocol. It will also explain the steps that were taken to maintain the validity and reliability of the data (including how the data was analysed), and any limiting factors.

3.2 The methodology used in existing empirical studies of lawyers' ethical deliberations

The methodology used in this thesis adapts the qualitative methodology of semi-structured interviews used in the 'ethical world' studies¹ to explore how Christian

¹ See, eg, Kimberley Kirkland, 'Ethics in Large Law Firms: The Principle of Pragmatism' (2004-2005) 35 *University of Memphis Law Review* 631; Leslie C Levin, 'Guardians at the Gate: The Backgrounds, Career Paths, and Professional Development of Private US Immigration Lawyers' (2009) 34(2) *Law and Social Inquiry* 399; Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001-2002) 70 *Fordham Law Review* 847; Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004-2005) 41 *Houston Law Review* 309; Robert W Gordon, 'The Ethical Worlds of Large-Firm Litigators: Preliminary Observations' (1998-1999) 67 *Fordham Law Review* 709; Rand Jack and Dana Crowley Jack, *Moral Vision and Professional Decisions: the Changing Values of Women and Men Lawyers*, (Cambridge University Press, 1989); Donald D Landon, 'Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice' (1985) 4 *American Bar Foundation Research Journal* 81; Donald D Landon, *Country Lawyers: The Impact of Context on Professional Practice* (Praeger Publishers, 1990). Jean E Wallace and Fiona M Kay, 'The Professionalism of Practising Law: A Comparison Across Work Contexts' (2008) 29 *Journal of Organisational Behaviour* 1021; Lillian Corbin, 'How Firm Are Lawyers' Perceptions of Professionalism' (2005) 8 *Legal Ethics* 265; Lynn Mather, Craig A McEwen and Richard J Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press, 2001); Robert Granfield and Thomas Koenig, "'It's Hard to be a Human Being and a Lawyer": Young Attorneys and the Confrontation with Ethical

lawyers negotiate the ethical worlds of faith and legal practice, and how they see their personal values as influencing or not influencing their ethical deliberations.

In addition to the body of normative literature which focuses on the factors that should or should not influence lawyers in their ethical decision-making in legal practice (as described in Chapter Two), the ‘real-life’ ethical deliberation of lawyers has been the focus of empirical research in ‘ethical world’ studies of lawyers in the United States,² Canada,³ and Australia.⁴ These studies have looked at how the ‘ethical world’ within which particular groups of lawyers conduct their practice of law affects their ethical deliberations. To date, the groups of lawyers whose ethical world has been examined include lawyers practising in large law firms;⁵ sole practitioners and small law firm lawyers;⁶ immigration lawyers;⁷ young lawyers;⁸ criminal defence lawyers;⁹ lawyers in private practice;¹⁰ Chicago lawyers;¹¹ family lawyers¹² and country lawyers.¹³

The ‘ethical world’ factors which have been examined have included firm size and culture (the ‘ethical world’ of the large law firm);¹⁴ office settings and the availability of mentors (the ‘ethical world’ of the solo and small law firm practitioner);¹⁵ and the lawyer’s containing community (the ‘ethical world’ of the rural¹⁶ or Chicago¹⁷ lawyer,

Ambiguity in Legal Practice’ (2002-2003) 105 *West Virginia Law Review* 495; John P Heinz and Edward O Laumann, ‘The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies’ (1977-1978) 76 *Michigan Law Review* 1111; Abbe Smith, ‘Defending the Unpopular Down-Under’ (2006) 30 *Melbourne University Law Review* 495.

² Kirkland, above n 1; Levin, ‘Guardians at the Gate’, above n 1; Levin, ‘Preliminary Reflections’, above n 1; Levin, ‘Solo and Small Law Firm Practitioners’, above n 1; Gordon, above n 1; Granfield and Koenig, above n 1; Heinz and Laumann, above n 1; Jack and Crowley Jack, above n 1; Landon, ‘Clients, Colleagues, and Community’, above n 1; Landon, *Country Lawyers*, above n 1; Mather, McEwen and Maiman, above n 1.

³ Wallace and Kay, above n 1.

⁴ Corbin, above n 1; Smith, above n 1.

⁵ Kirkland, above n 1; Gordon, above n 1.

⁶ Levin, ‘Preliminary Reflections’, above n 1; Levin, ‘Solo and Small Law Firm Practitioners’, above n 1.

⁷ Levin, ‘Guardians at the Gate’, above n 1.

⁸ Granfield and Koenig, above n 1; Adrian Evans and Josephine Palermo, ‘Australian Law Students’ Perceptions of their Values: Interim Results in the First Year – 2001 – of a Three-Year Empirical Assessment’ (2002) 5 *Legal Ethics* 103.

⁹ Smith, above n 1.

¹⁰ Corbin, above n 1.

¹¹ Heinz and Laumann, above n 1.

¹² Mather, McEwen and Maiman, above n 1.

¹³ Landon, ‘Clients, Colleagues, and Community’, above n 1; Landon, *Country Lawyers*, above n 1.

¹⁴ Kirkland, above n 1; Gordon, above n 1.

¹⁵ Levin, ‘Preliminary Reflections’, above n 1; Levin, ‘Solo and Small Law Firm Practitioners’, above n 1.

¹⁶ Landon, ‘Clients, Colleagues, and Community’, above n 1; Landon, *Country Lawyers*, above n 1.

¹⁷ Heinz and Laumann, above n 1.

or of lawyers practising family law).¹⁸ In a sense, these studies have sought to explore how lawyers describe the ethical world within which they practise, and how they see this context as affecting or not affecting their ethical deliberations. To date, the ‘ethical world’ of the Christian lawyer in Australia has not been closely examined. The methodology used in this project recognises that Christian lawyers effectively inhabit two potentially competing ethical worlds (those of faith and legal practice), and therefore adapts the existing methodology not only to explore these ethical worlds, but to examine how participants navigate or reconcile the ethical norms of these different worlds.¹⁹

3.2.1 Exploring lawyers’ ethical decision-making

As Adrian Evans has noted,²⁰ assessing lawyers’ ethics and the factors that influence lawyers’ ethical deliberations can be ‘notoriously difficult’.²¹ Consequently, in Evans’ project, which aims to develop a means of assessing lawyers’ inherent preferences for different models of ethical decision-making, he proposes the use of a combination of qualitative and quantitative methodologies (including interviews),²² suggesting that this combination may provide more reliable data about which model lawyers prefer.²³

Unlike Evans’ study, the aim of this thesis is not to assess the *veracity* of what lawyers say about their ethical deliberations or their inherent preference for a particular ethical

¹⁸ Mather, McEwan and Maiman, above n 1, who argue that ‘divorce lawyers understand and make choices at work through *communities of practice* – groups of lawyers with whom practitioners interact and to whom they compare themselves and look for common expectations and standards’ (at 6).

¹⁹ See comments and references in Chapter 1, n 34.

¹⁹ Whether or not participants themselves identified tensions between their Christian faith and legal practice is one of the questions that was explored during this study.

²⁰ Adrian Evans, *Assessing Lawyers’ Ethics* (Cambridge University Press, 2011) 188. See also Adrian Evans and Helen Forgasz, ‘Framing Lawyers’ Choices: Factor Analysis of a Psychological Scale to Self-Assess Lawyers’ Ethical Preferences’ 2013 (16) *Legal Ethics* 134, in which the authors propose a scale-based methodology for assessing a lawyer’s preferred ‘type’ or model for ethical decision-making in legal practice.

²¹ Referring to Kim Economides and Justine Rogers, ‘Preparatory Ethics Training for Future Solicitors’, Section 3: The Challenge of Ethical Assessment, The Law Society of England and Wales, February 2009, unpublished.

²² Evans, above n 20, 212.

²³ Despite favouring a combination of quantitative and qualitative methodologies, Evans does note that interviews are an important means of exploring ethical issues in greater depth (Evans, above n 20, 190), stating:

The qualitative format of interviews permits peers to use an intuitive or gestalt process to assess nuance, sophistication and awareness of complexity and to do so with arguably more subtlety than is possible in deriving a single number. The use of interviews in assessing ethics is entirely appropriate for this reason; but a numerical assessment process complements and strengthens an interview result, it does not replace it.

Evans, above n 20, 209-210.

model. Rather, it aims to develop a typology of faith-based approaches to ethical decision-making in legal practice, and to explore the key themes of this normative literature with a group of practising Christian lawyers. The aim is also not to assess or measure preference for a particular model, but rather to explore what Christian lawyers themselves say about how they negotiate the ethical worlds of faith and legal practice, and how their personal values affect their ethical deliberations. Whilst any parallels between the key themes of the normative literature and the responses of the participants themselves will be highlighted, the thesis also does not aim to prove that the personal values of Christian lawyers influence their ethical deliberations in a particular way. That is, it will explore the narratives of the participants rather than test the veracity of those narratives. This is consistent with studies that have recognised the value of narrative in adding to our understanding of the ethical worlds within which lawyers practise.²⁴ Further, and whilst qualitative research is recognised as not necessarily providing ‘the mirror reflection of the social world that positivists strive for’,²⁵ researchers such as Miller and Glassner argue that it can nevertheless ‘provide access to the meanings people attribute to their experiences and social worlds’ and provide ‘knowledge of the social world beyond the interaction [of the interview]’.²⁶ Similarly in this study, it is the participants’ perceptions and reflections on the ethical worlds of faith and legal practice that are sought to be explored, rather than whether these perceptions and reflections necessarily reflect the reality of those worlds or the ways in which the participants navigate between them (other than perceived reality).²⁷

It should also be noted that the thesis focuses on the responses of *Christian* lawyers to these issues, and does not seek to evaluate any differences between these approaches and those of non-Christian lawyers, nor does it argue that the ethics of Christian

²⁴ See, eg, Granfield and Koenig, above n 1, 504, 506.

²⁵ Jody Miller and Barry Glassner, ‘The “inside” and the “outside” Finding realities in interviews’ in David Silverman (ed), *Qualitative Research: Theory, Method and Practice* (Sage Publications Ltd, 2nd ed, 2004) 125, 126.

²⁶ Miller and Glassner, above n 25, 126-127.

²⁷ Miller and Glassner note that qualitative research (and in particular, in-depth interviewing) is about perception rather than reality, but is still a way of getting ‘closer to people’s lived experience’: Miller and Glassner, above n 25, 129. See also Adrian Holliday, *Doing and Writing Qualitative Research* (Sage Publications, 2007) 7. Holliday notes that ‘people’s reasons for responding in the ways they do to questionnaires and interviews can be both far from what the researcher expects and mysterious’, reflecting on a participant who later told Holliday that ‘what she had told [the researcher] bore little relation to reality, but that she had not wished to disappoint him by telling him that she could not answer most of the questions’ (at 4).

lawyers are necessarily any different from those of non-Christian lawyers.²⁸ This is consistent with the ‘ethical world’ studies, which also generally did not seek to compare or contrast with other groups.²⁹

3.2.2 The methodology used in the existing ‘ethical world’ studies

The use of a qualitative methodology to obtain ‘rich data’ about how Christian lawyers see their personal values as influencing or not influencing their ethical deliberations is suggested by both the ‘ethical world’ studies,³⁰ and the literature on research techniques.³¹ Rubin and Rubin, for example, suggest that qualitative interviewing is appropriate where the themes explored are complex and there is a need for participants to be able to explain their answers, provide examples or describe their experiences,³² or where the goal is to learn more about a problem.³³

Each of the ‘ethical world’ studies undertaken to date has used a semi-structured interviewing technique to explore the views of participants about how the factors under consideration in the project have influenced or not influenced their ethical

²⁸ Pearce, for example, emphasises that ‘non-Jews could arrive at many of the same practices as Jewish lawyers from different (or shared) roots’: Russell G Pearce, ‘Jewish Lawyering in a Multicultural Society: A Midrash on Levinson’ (1992-1993) 14 *Cardozo Law Review* 1613, 1625 and see also See Russell G Pearce and Amelia J Uelmen, ‘Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation’ (2004-2005) 55 *Case Western Reserve Law Review* 127, 152. Some participants in the study also emphasised that their Christian faith did not give them a monopoly on ethical behaviour in legal practice.

²⁹ It is also consistent with the nature of qualitative research more broadly, which generally seeks to explore themes in the data collected, rather than comparing and contrasting different sets of data. See, eg, Holliday, above n 27, 5.

³⁰ See the sources referred to in footnote 1, above.

³¹ Miles and Huberman note, for example, that ‘another feature of qualitative data is their *richness* and *holism*, with strong potential for revealing complexity; such data provide “thick descriptions” that are vivid, nested in a real context, and have a ring of truth that has strong impact on the reader’, and further (referencing van Manen, 1977) that:

Qualitative data, with their emphasis on people’s ‘lived experience’, are fundamentally well suited for locating the *meanings* people place on the events, processes, and structures of their lives: their ‘perceptions, assumptions, prejudgments, presuppositions’ and for connecting these meanings to the *social world* around them.

Michael Huberman and Matthew B. Miles, *The Qualitative Researcher’s Companion* (Sage Publications, 2002) 10. See also Miller and Glassner, above n 25, 131, who note the value of interviews in describing aspects of social worlds.

³² See Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Sage Publications, 2005) 2-3.

³³ Rubin and Rubin, above n 32, 7. See also David Silverman and Amir Marvasti, *Doing Qualitative Research: A Comprehensive Guide* (Sage Publications, 2008) 14. In their work on women lawyers in the United Kingdom, Lisa Webley and Liz Duff similarly used a qualitative methodology (focus groups) to explore the reasons *why* women lawyers were leaving the profession: Lisa Webley and Liz Duff, ‘Women Solicitors as a Barometer for Problems within the Legal Profession – Time to Put Values before Profits?’ (2007) 34(3) *Journal of Law and Society* 374.

deliberations.³⁴ For example, and using Robert Jackall's work on the influence of managers in large corporations and the role of bureaucracy in shaping managers' moral consciousness³⁵ as a model in her study of the influence of firm culture on lawyers working in large-law firms, Kimberley Kirkland conducted semi-structured interviews with lawyers working in large law firms, to find out how they viewed the culture of their firm as influencing or not influencing their ethical deliberations.³⁶ Kirkland reports that,

In conducting these interviews, I tried to understand how these large-firm lawyers viewed and experienced their work. I asked them about their interactions with colleagues within the firm, as well as with clients and adversaries. I asked who succeeds in their firms and why. I also asked them how they make decisions. In response, they told me stories, a number of which are recounted here. The social, cognitive and evaluative rules large-firm lawyers develop and live by emerge from these stories. It is these rules that, I argue, are likely shaping lawyers' ethical consciousness.³⁷

Similarly, in her study of the ethical world of solo and small firm practitioners, Leslie Levin also used semi-structured interviews to explore³⁸ the ethical decision-making of those practitioners, stating that:

In order to better understand their conception of their ethical world, I asked about the ethical problems they encountered in practice, the steps they took to avoid these problems, and their actual ethical decision-making.³⁹

Miller and Glassner argue that, whilst in-depth interviewing may not provide a positivist, 'mirror reflection' of a particular social world⁴⁰ (in that interviews are

³⁴ See, eg, Kirkland, above n 1; Levin, 'Guardians at the Gate', above n 1; Levin, 'Preliminary Reflections', above n 1; Gordon, above n 1; Jack and Crowley Jack, above n 1; Landon, 'Clients, Colleagues and Community', above n 1; Landon, *Country Lawyers*, above n 1; Wallace and Kay, above n 1; Corbin, above n 1; Heinz and Laumann, above n 1; Levin, 'Solo and Small Law Firm Practitioners', above n 1.

³⁵ Robert Jackall, *Moral Mazes, the World of Corporate Managers*, (1988) in Kirkland, above n 1, 634 and 640.

³⁶ Kirkland, above n 1, 660.

³⁷ Ibid 662.

³⁸ Levin, 'Solo and Small Law Firm Practitioners', above n 1, 316, and see also Levin, 'Preliminary Reflections', above n 1.

³⁹ Levin, 'Solo and Small Law Firm Practitioners', above n 1, 317, and see also Levin, 'Preliminary Reflections', above n 1.

⁴⁰ Miller and Glassner, above n 25, 126-127.

necessarily a window into a particular time and place and are subject to nuances such as context, and the social and cultural constructs and perceptions of both interviewer and participants),⁴¹ qualitative interviewing is nevertheless capable of providing knowledge about a particular social world, and is also an important ‘means for exploring the points of view of our research subjects, while granting these points of view the culturally honoured status of reality’.⁴² That is, qualitative interviewing is a means of getting ‘closer to people’s lived experience’,⁴³ and it is that lived experience and those points of view of the Christian lawyers interviewed, that are explored in this thesis.

In addition to Kirkland’s study of large law firm lawyers⁴⁴ and Levin’s study of solo and small firm practitioners,⁴⁵ other studies which have used or advocated a qualitative, semi-structured interviewing technique to explore and expound the ethical worlds of lawyers include:

- Mather, McEwen and Maiman’s study of the ethical world and communities of practice of divorce lawyers⁴⁶ and Levin’s study of the communities of practice of immigration lawyers;⁴⁷
- Robert Gordon’s study of lawyers in large law-firms;⁴⁸
- Corbin’s study of the understandings of ‘professionalism’ of individual legal practitioners in private practice;⁴⁹
- Landon’s study of rural lawyers;⁵⁰ and
- Chambliss and Wilkin’s proposal, in their work on the ethics of large-law firms, to use in-depth interviews with law firm managers and partners who

⁴¹ See, eg, Miller and Glassner, above n 25, 127-128; James A Holstein and Jaber F Gubrium, ‘The Active Interview’ in David Silverman (ed), *Qualitative Research: Theory, Method and Practice* (Sage Publications, 2nd ed, 2004) 140, 145; Holliday, above n 27, 34, 181.

⁴² Miller and Glassner, above n 25, 127.

⁴³ Ibid 129.

⁴⁴ Kirkland, above n 1.

⁴⁵ Levin, Preliminary Reflections, above n 1; Levin, ‘Solo and Small Law Firm Practitioners’, above n 1.

⁴⁶ Mather, McEwen and Maiman, above n 1.

⁴⁷ Levin, ‘Guardians at the Gate’, above n 1.

⁴⁸ Gordon, above n 1.

⁴⁹ Corbin, above n 1.

⁵⁰ Landon, ‘Clients, Colleagues, and Community’, above n 1; Landon, *Country Lawyers*, above n 1.

serve on ethics committees, in order to obtain ‘thick descriptions’ of ethical infrastructure.⁵¹

The number of participants interviewed in the existing studies ranges from 16 interviews with both graduates with more than two years’ practice experience and with more experienced practitioners (Corbin)⁵² to interviews with 71 immigration lawyers (Levin).⁵³ Other studies have included interviews with 22 lawyers practising in 10 large law firms;⁵⁴ 201 rural lawyers and 77 urban lawyers (Landon);⁵⁵ 36 male and female lawyers practising in a county of 120,000 people in the state of Washington;⁵⁶ 163 divorce lawyers practising in Maine and New Hampshire;⁵⁷ and interviews with 41 attorneys in sole practice or in small law firms.⁵⁸ The larger studies⁵⁹ received external funding or involved more than one researcher.⁶⁰ Miles and Huberman note that ‘qualitative researchers usually work with *small* samples of people, nested in their context and studied in depth’.⁶¹ Similarly, in their work on women lawyers in the United Kingdom, Webley and Duff noted that, whilst the views of the relatively small number of women lawyers who participated in their focus groups could never be said to represent the views of women lawyers as ‘a class’, they were nevertheless important and valid in providing some perspectives about why women lawyers were leaving the legal profession.⁶²

⁵¹ Elizabeth Chambliss and David B Wilkins, ‘Promoting Effective Ethical Infrastructure in Large Law Firms: a Call for Research and Reporting’ (2001-2002) 30 *Hofstra Law Review* 691, 705.

⁵² Corbin, above n 1.

⁵³ Levin, ‘Guardians at the Gate’, above n 1.

⁵⁴ Kirkland, above n 1.

⁵⁵ Landon, ‘Clients, Colleagues, and Community’, above n 1; Landon, *Country Lawyers*, above n 1, 83.

⁵⁶ Jack and Crowley Jack, above n 1, xii.

⁵⁷ Mather, McEwen and Maiman, above n 1, viii.

⁵⁸ Levin, ‘Preliminary Reflections’, above n 1; Levin, ‘Solo and Small Law Firm Practitioners’, above n 1.

⁵⁹ Landon, above n 1 (rural lawyers); Gordon, above n 1 (lawyers practising in large law firms); Mather, McEwen and Maiman, above n 1 (divorce lawyers).

⁶⁰ Landon’s study, for example, was funded by the American Bar Association. Landon, ‘Clients, Colleagues and Community’, above n 1, 81.

⁶¹ Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage Publications, 2nd ed, 1994) 27 and see also Holliday, above n 27, 5, who notes that qualitative research is ‘open-ended’ and aims to ‘look deeply into behaviour within specific social settings rather than at broad populations’.

⁶² Webley and Duff, above n 33, 384.

The duration of the interviews in the existing studies ranges from 75 minutes⁶³ to between 1.5 and 3 hours.⁶⁴

3.2.3 Validity and reliability in qualitative research

As noted above, qualitative research is focused on exploring participants' perceptions of a particular social world at a particular time and in a particular context,⁶⁵ and may therefore be less open to replication than quantitative research.⁶⁶ Qualitative research is also focused on the interpretation and identification of themes that often emerge during the research, rather than being strictly pre-planned, and is less focused on 'proof' than quantitative research.⁶⁷

Establishing validity and reliability in the unique context of qualitative research therefore, may involve:

- 'show[ing the] workings' of the research; for example why a particular social setting has been chosen for research, why and how the research was undertaken, how the themes of the research were identified, and the thoroughness of the fieldwork.⁶⁸
- The use of recording and transcription to avoid subjectivity in recalling the contents of an interview.⁶⁹
- The use of software to assist in the analysis of data, which may not only enhance the ease of analysis, but also maintain objectivity in selecting themes and extracts from textual data.⁷⁰

⁶³ Levin, 'Guardians at the Gate' above n 20, 405.

⁶⁴ 1.5 to 3 hours – Kirkland, above n 1; Landon, 'Clients, Colleagues and Community', above n 1; 1.5 to 2 hours – Levin, 'Preliminary Reflections, above n 1 ; 1.5 to over 3 hours or an average of 90 minutes - Mather, McEwen, Maiman, above n 1.

⁶⁵ Rather than providing a 'mirror image' of a particular social world – see Miller and Glassner, above n 25, 126.

⁶⁶ Holstein and Gubrium, above n 41, 145 note, for example:

One cannot expect answers on one occasion to replicate those on another because they emerge from different circumstances of production. Similarly, the validity of answers derives not from their correspondence to meanings held within the respondent, but from their ability to convey situated experiential realities in terms that are locally comprehensible.

⁶⁷ Holliday, above n 27, 6, 7.

⁶⁸ Ibid 8, 9. See also Silverman and Marvasti, above n 33, 258, who note the importance of being clear about the procedures used to obtain the data.

⁶⁹ Silverman and Marvasti, above n 33, 227.

⁷⁰ Ibid 235, 236.

- Providing balanced examples in writing-up the analysis – for example by including examples which do not support the thesis, or explaining why conflicting examples have not been included.⁷¹
- Avoiding anecdotalism.⁷²
- Being transparent and honest in writing up the methodology.⁷³

Overall, Maxwell notes five types of validity for qualitative research.⁷⁴ The first, ‘descriptive validity’, asks whether the account is factually accurate, and the second, ‘theoretical validity’, asks whether the explanation, description or interpretation of the account is accurate.⁷⁵ In this project, effort has been made to clearly explain the methodology of the research, and to identify and note any limitations of the research, including contexts and factors which may have influenced participants’ responses.⁷⁶ Descriptive validity has also been maintained through recording and transcribing the interviews, and by having the transcripts reviewed and approved by the participants. Further, NVivo, a software tool for analysing qualitative data, has been used to analyse the transcripts. Moreover, and unlike (nevertheless valid) studies which are largely unstructured, and where themes emerge from conversations over time, the research questions for this study were drawn from the body of normative literature about lawyers’ ethical deliberations, and used to develop a set of semi-structured questions which guided the interviews for this project. The literature from which the key themes and research questions emerge is set out in Chapter Two, and the research questions and semi-structured interview questions are set out in [sections 3.3](#) and [3.4.12](#) below.

The third form of validity recognised by Maxwell, generalisability, concerns the ‘extent to which one can extend the account of a particular situation or population to

⁷¹ Ibid 258-260.

⁷² Ibid 258.

⁷³ Ibid 378.

⁷⁴ Joseph A Maxwell, ‘Understanding and Validity in Qualitative Research’ in Michael Huberman and Matthew B Miles (eds), *The Qualitative Researcher’s Companion* (Sage Publications Inc, 2002).

⁷⁵ Ibid 37, 45 and 51.

⁷⁶ Miller and Glassner note that interviewees may respond to the researcher ‘based on who we are – in their lives, as well as the social categories to which we belong, such as age, gender, class and race’, and further:

Particularly as a result of social distances, interviewees may not trust us, they may not understand our questions, or they may purposely mislead us in their responses. Likewise, given a lack of membership in their primary groups, we may not know enough about the phenomenon under study to ask the right questions.

Miller and Glassner, above n 25, 127-128. Whilst these characteristics are a fact that cannot be avoided, effort can be made to identify and note these.

other persons, times or settings than those directly studied'.⁷⁷ Although Maxwell notes that qualitative research is not usually designed to be extended to other settings, he suggests that in an interview situation, generalisability is realised by understanding the relationship between interviewer and participant, how this affects the interview, and how the 'informant's actions and views could differ in other situations'.⁷⁸ In writing up the methodology and analysis for this project therefore, effort has been made to explain the context within which the interviews took place and to identify and explain how any contextual factors were taken into account in the research design and implementation.

The fourth form of validity, evaluative validity, Maxwell notes as being less important to qualitative research, suggesting that 'many researchers make no claim to evaluate the things they study'.⁷⁹ Similarly, in this study, effort has not been made to evaluate the participants' responses, but rather to explore those responses and to highlight any similarities to or differences from the key themes of the normative literature. As Miller and Glassner identify, participants' perceptions about a social world have a cultural status in and of themselves, and are valuable in exploring how participants see a particular theme or context.⁸⁰ That is, the aim of this study is to explore how participants see themselves as navigating the ethical worlds of faith and legal practice rather than evaluating the veracity of those responses.

Moreover, in writing-up the research, effort has been made to include conflicting examples, or examples which do not support the overall analysis. Quotations drawn from the transcripts have also been used extensively so that the data which has been used to support the analysis and findings is more transparent. Further, the interview questions and the concepts on which participants were asked to reflect tended to invite narrative or explanatory responses, and, where appropriate, these have been set out in the thesis in order to avoid the inadvertent loss of some of the richness of the explanation or reflection, or to avoid possible misinterpretation in summarising more extensive explanations.

⁷⁷ Maxwell, above n 74, 52.

⁷⁸ Ibid 55.

⁷⁹ Ibid 55.

⁸⁰ Rather than being used to generate proof that those perceptions are true: Miller and Glassner, above n 25, 126-130.

3.3 Research Questions

As noted earlier, the key themes from the normative literature on lawyers' ethical decision-making (set out in Chapter Two) are reflected in the research questions for the thesis, which are:

1. What are the views of Christian lawyers about the nature of the lawyer's role and the moral justifications for that role?
2. How do the personal values of Christian lawyers influence their ethical decision-making in legal practice, including in the following key areas:
 - a. The area of law in which a Christian lawyer practises;
 - b. The lawyer-client relationship, and in particular:
 - i. How do the personal values of a Christian lawyer influence the decision whether to accept instructions from a particular client or in a particular matter?
 - ii. How can the relationship between a Christian lawyer and his client be described?
 - iii. Does a Christian lawyer raise relevant moral considerations with her clients?
 - iv. Does a Christian lawyer discuss his personal values and beliefs with his clients?
 - v. How does a Christian lawyer resolve any potential tensions between her personal values and beliefs and the instructions given to her by a client?
 - vi. In the event of a conflict between the personal values and beliefs of a Christian lawyer and a client's instructions, how is the conflict resolved?
 - c. The conduct of legal practice, and in particular:
 - i. In circumstances in which the ethically correct (in a broader sense) course of action is uncertain, to which sources does a Christian lawyer look for guidance?
 - ii. How does a Christian lawyer take into account the interests of the other parties, the other lawyer and third parties in the resolution of a legal dispute?

- iii. How do the personal values of a Christian lawyer influence decisions about how to approach the resolution of a legal dispute?
 - d. The charging of professional fees, and in particular; how do the personal values of a Christian lawyer influence the charging of professional fees?
 3. How are the views of a Christian lawyer about these issues influenced by the culture of the firm in which the Christian lawyer practises?

3.4 The methodology used in this study

This thesis draws on semi-structured interviews of approximately one to one and a half hours' duration conducted with 25 Christian lawyers in Australia. The research was approved by the University of Southern Queensland's Human Research Ethics Committee (Approval No. H13REA059). The Participant Information Sheet and Invitation to Participate that were approved by the Committee and sent to participants are attached as **Appendix 1: Letter of invitation to participate in research** and **Appendix 2: Participant Information Sheet**.

3.4.1 The participants

Each lawyer who participated in the project self-identified as a Christian lawyer by agreeing to participate in a project about Christian lawyers, and was also asked a question to identify their denomination of faith at the commencement of the interview.

A number of the participants (approximately 12 lawyers) responded to an invitation to participate that had been sent out through a voluntary association for Christian lawyers or were invited to participate through their connection to such an association.⁸¹

Further, the Participant Information Sheet that was sent to all participants prior to the interview informed participants that their participation would involve 'being interviewed by the principal researcher about how you negotiate between the "ethical worlds" of faith and the legal profession, and if and how your personal values affect

⁸¹ The invitation to participate in the research was circulated by both the Christian Law Society of Queensland, and the Christian Legal Society of Victoria.

the way you approach legal practice'. The Participant Information Sheet further informed participants that:

It is hoped that this research will benefit participants by giving them the opportunity to reflect on the intersection between their Christian faith and legal practice in a confidential setting. It is further hoped that the research, which explores how Christian lawyers navigate between the 'ethical worlds' of faith and legal practice, will also be of benefit to the wider community as a contribution to the existing literature about lawyers in practice, and Christian lawyers in particular.

The remainder of participants were identified via the personal networks of the researcher and the principal supervisor or through other participants.⁸² Unlike other studies of lawyers which have been able to more easily identify and contact practitioners by area of law or location (for example),⁸³ it is not easy to identify and approach a 'Christian lawyer' other than through the methods used in this study. In addition to the approach through the voluntary associations for Christian Lawyers, the identification of participants via personal networks and existing participants is consistent with the approach used by Kirkland in her 2005 study of lawyers practising in large law firms. Kirkland reports that

The lawyers I interviewed were not chosen at random. Instead, I used personal connections to gain access to large-firm lawyers. I asked friends, colleagues, and former colleagues to suggest large-firm lawyers with whom I could speak. Some of these lawyers made initial calls to lawyers they knew and asked whether I could contact them. Others gave me the name of a lawyer and told me to use their names when I introduced myself and my project. Some of the lawyers I interviewed introduced me to still other lawyers.⁸⁴

⁸² Silverman notes that using existing relationships and contacts is not uncommon in qualitative research, and Holliday that qualitative research is often 'opportunistic' as it is generally more difficult to plan, meaning that researchers need to make the most of presented opportunities. See Silverman and Marvasti, above n 33, 50, Holliday, above n 27, 22.

⁸³ In her study of solo and small law firm practitioners, for example, Levin was able to obtain a list of lawyers registered with the New York Office of Court Administration, forward correspondence to a random sample of those lawyers, and follow up with telephone contact: Levin, 'Preliminary Reflections', above n 1, 856. Gordon and Landon in their studies of large-law firm and rural lawyers respectively, were similarly able to target their research towards lawyers practising in large law firms in two large cities (Gordon, above n 1, 709) and lawyers practising in 116 communities in rural Missouri (Landon, *Country Lawyers*, above n 1). The lack of ability to identify and target specifically Christian lawyers meant that the geographic boundaries of this study have been expanded beyond Queensland.

⁸⁴ Kirkland, above n 1, 660.

Before agreeing to participate in an interview, all participants were provided with a copy of the Participant Information Sheet and Consent Forms. Where possible, these were emailed to participants prior to the interviews so that they had the opportunity to reflect on the research and to ask any questions. An additional hardcopy of the Participant Information Sheet and Consent forms was made available to participants at the time of the interview, and they were informed in those documents and again at the time of the interview of their right to withdraw at any time. They were given a further opportunity to withdraw or reflect on their data and participation when provided with a copy of the transcript of the interview and requested to approve its contents.

Although sensitive and personal in nature, the research was thought to be of low risk to participants given that the researcher and participants signed a confidentiality protocol, and that participants were sent a copy of the transcript of the interview and given the opportunity to review and approve this, or to withdraw their participation. The greatest risk to participants was the imposition on their time, but to alleviate this risk, participants were warned of the time commitment in the Participant Information Sheet, and the interviews scheduled at a time and location convenient to participants.

Although it had initially been hoped to restrict the geographic location of the study to regional and metropolitan locations in Queensland or in both Queensland and Victoria, three (3) participants were located in New South Wales. Given the relative homogeneity of legal practice in Australia and that the key factor under consideration in the study is the participants' Christianity, it is not thought that the geographic location of the participants will negatively impact the reliability of the data.⁸⁵ Holliday argues that whilst research can be bounded by factors such as time, place or culture, and can seek a rich variety of viewpoints from within those boundaries, it is important that the research is logistically and conceptually manageable, and that there is access

⁸⁵ Other studies on groups of lawyers have generally not restricted participants by geographic location, except where location forms part of the reasons for the research. In her study of lawyers practising in large law firms, for example, Kirkland interviewed 22 lawyers practising in 10 large law firms 'located in large cities on the east and west coasts, and in the south'. Kirkland, above n 1, 660. Levin did restrict her study of solo and small law firm lawyers to 'four of the boroughs of New York City and four nearby suburban counties', because this coincided with the geographic area used in an earlier study: Levin, 'Preliminary Reflections', above n 1, 856. Landon similarly restricted his study of rural lawyers to Missouri, but interviewed 'lawyers practising in 116 communities within 94 counties of rural Missouri': Landon, 'Clients, Colleagues and Community', above n 1, 83.

to data.⁸⁶ In order to give participants who wished to participate in the study the opportunity to do so, it became necessary to extend the borders of this study beyond Queensland and Victoria, but it is not thought that this would affect the participants' essential identities as lawyers and Christians. Moreover, increasing the boundary of the study beyond Queensland helps to maintain anonymity, particularly for those participants whose area of practice might be quite specialised or for whom there might be other identifying factors.

3.4.2 Demographic details of participants

The participants for the study were drawn from a range of different ages, levels of experience, firm size and areas of practice, with the commonality between them being their identification as a Christian lawyer.

Drawing participants from a range of different backgrounds is consistent with the existing 'ethical world' studies. For example, Kirkland's study of large law firms draw on interviews with lawyers from large law firms in different locations and of different sizes, and included lawyers with different roles and responsibilities and of different races and genders.⁸⁷ Kirkland found that the differences in the background of the lawyers she interviewed helped to reveal consistency in those lawyers' experience of work, strengthening her thesis that the ethical norms of the law-firm environment tended to override the personal ethical norms of the individual lawyers.⁸⁸ Similarly, Levin's 2004-2005 study of solo and small-firm lawyers⁸⁹ included lawyers of different backgrounds, ages and genders, with the common denominator being the type of firm in which they practised. Levin's interviewees were randomly-chosen from a list of registered lawyers practising in the New York City metropolitan area⁹⁰ and were also not a representative sample.⁹¹

⁸⁶ Holliday, above n 27, 34.

⁸⁷ Kirkland, above n 1, 660.

⁸⁸ Ibid 661, 638.

⁸⁹ Levin, 'Solo and Small Law Firm Practitioners', above n 1.

⁹⁰ Ibid 318.

⁹¹ Ibid 319.

Qualitative researchers similarly note that the aim of qualitative research is often to obtain a number of different perspectives, rather than to interview a representative sample.⁹²

3.4.3 Age of participants

Participants for the study were drawn from a range of different age-groups, as follows:

Table 3.1: Age of participants

20-30 years	30-40 years	40-50 years	50-60 years	60+ years
5	8	3	6	3

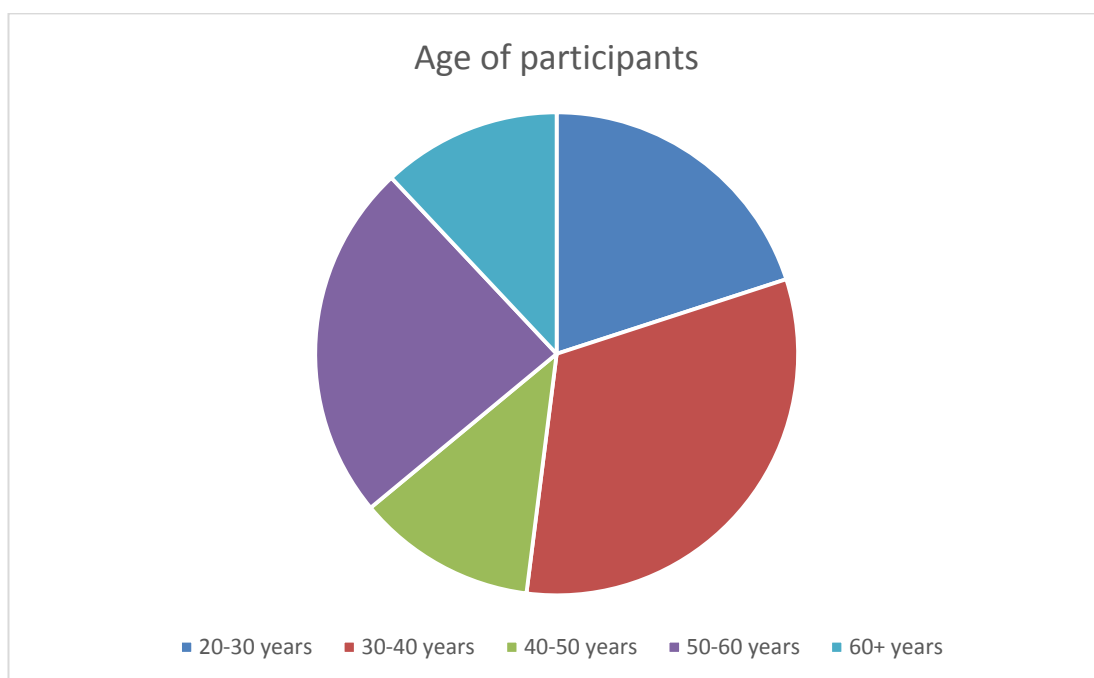


Figure 3.1: Age of participants

As can be seen from the comparison below, with the exception of perhaps the 40 to 50 age bracket, the age demographics of the participant group is reasonably consistent with the national average.⁹³

⁹² Holliday, above n 27, 34. Webley and Duff, above n 33, 383.

⁹³ As drawn from the 2014 Law Society National Profile Final Report, prepared by Urbis for the Law Society of New South Wales and released April 2015 (at page 7) and reflected in table 3.2.

Table 3.2: Comparison of participant age with national average

Participant Age	Percentage	National average
20-29	20%	18.3%
30-39	32%	30.8%
40-49	12%	21.9%
50-59	24%	17%
60+	12%	11.7%

3.4.4 Gender of participants

The participants for the study were overwhelmingly male – 17 out of 25 lawyers or 68 per cent of participants.⁹⁴ This compares with a national average within the legal profession (in 2011) of 51.5 per cent male and 48.5 per cent female.⁹⁵ Only one female solicitor responded to the initial email invitations (sent by the voluntary organisations for Christian lawyers) to participate, but did not agree to be interviewed. The disproportionate lack of women in the study may be due to a number of factors, including:

- Whilst women represent more than 60 per cent of law graduates⁹⁶ and almost half of the profession (48.5%),⁹⁷ they are disproportionately missing from the higher echelons of the profession, and therefore may, as employees, have less control and autonomy over their own time⁹⁸ and consequent ability to participate in research;
- Women may be more likely to work part-time⁹⁹ and therefore have less time available to participate in research;

⁹⁴ Interestingly, in her 2005 study of lawyers practising in large law-firms, Kirkland also interviewed a preponderance of male lawyers (72.7 per cent). Kirkland, above n 1, 660.

⁹⁵ Law Society of New South Wales, '2014 Law Society National Profile' (Final Report, April 2015) 3.

⁹⁶ As reported by Margaret Thornton in 'Hypercompetitiveness or a Balanced Life? Gendered Discourses in the Globalisation of Australian Law Firms' (2014) 17(2) *Legal Ethics* 153, 153.

⁹⁷ Law Society of New South Wales, '2014 Law Society National Profile' (Final Report, April 2015), 3.

⁹⁸ Thornton, above n 96, 153.

⁹⁹ Or, at least, to advocate for flexible work practices. See, eg, Thornton, above n 96, 155, referring to Victorian Women Lawyers, *A 360 Review: Flexible Work Practices: Confronting Myths and Realities in the Legal Profession Firms* (2002). Thornton also refers to *The Australian's* annual survey of the flexible work arrangements of top firms, noting that 'approximately 10 per cent of fee earners in the 13 firms in *The Australian* survey worked part time. Of this 10 per cent, only 16 per cent were male –

- Under the terms of the ethics approval for the project, participants who were employed solicitors were required to obtain the consent of their supervising principal, partner or legal practitioner director to participate in the research. Women, who may already face a ‘dominant discourse’ of ‘hypermasculinity’ and competition within the legal profession,¹⁰⁰ may be reluctant to sacrifice otherwise productive billing time or, if an employed solicitor, to identify themselves to a supervisor as both female and Christian (which may also connote non-masculine values such as care).¹⁰¹

Interestingly, and whilst this is not a study of gender, some of these issues seem to be borne out amongst the female participants in this study. For example, two of the female participants were no longer practising, one worked part-time, two were principals or directors, and three were employed solicitors of less than five years’ experience. In contrast, the male participants were overwhelmingly principals or partners or held other positions of relative autonomy. Those employed female solicitors who did participate in the study each noted the supportive nature of their firm environment (including toward their Christian values and some form of work-life balance), meaning that they perhaps felt more comfortable identifying as both female and Christian; for example:

Sometimes I feel like I’m not even working in a firm because they’re all like a big family...everyone looks out for each other.

I think for me it’s very...rewarding, to be in that kind of environment, and to be more free in general conversation to mention ‘oh, I’ve been to church on the weekend’ or anything, and not feel like you’ll be persecuted or something. Which I know...in other firms might not be the case... I think as well, the freedom to share what’s on your mind, and what are your beliefs, and I think that’s been very good for me personally...and to observe other lawyers who are Christians and how their faith affects being a lawyer or the way that they choose to live their life. And I think the

mainly men nearing retirement’ (at 160). This means that, of the 10 per cent working part-time, an overwhelming 84% were female.

¹⁰⁰ Thornton, above n 96, 165, 174.

¹⁰¹ See the discussions of the feminist (Menkel-Meadow) and Christian (Shaffer) ethics of care in Christine Parker and Adrian Evans, *Inside Lawyers’ Ethics* (2nd ed, Cambridge, 2014) 43-44 and see also Webley and Duff, above n 33, 384, 285, who suggest that many of their women lawyer participants noted the ‘culturally masculinist office’ of law firms and perceived masculine traits as being more highly valued within legal practice.

other thing that I would say about our culture is that...there's a value placed on having a life outside of the law, and there is...so people aren't chained to their desks... There's...almost an expectation that people will go home to their families and have dinner, and ... do things outside of the work that we have to do.

3.4.5 Level of post-admission experience

The level of post-admission experience of the lawyers interviewed also reflects a spread of experience across the profession:

Table 3.3: Level of post-admission experience

0-5 years	5-10 years	10-20 years	20-30 years	30+ years
5	6	3	6	5

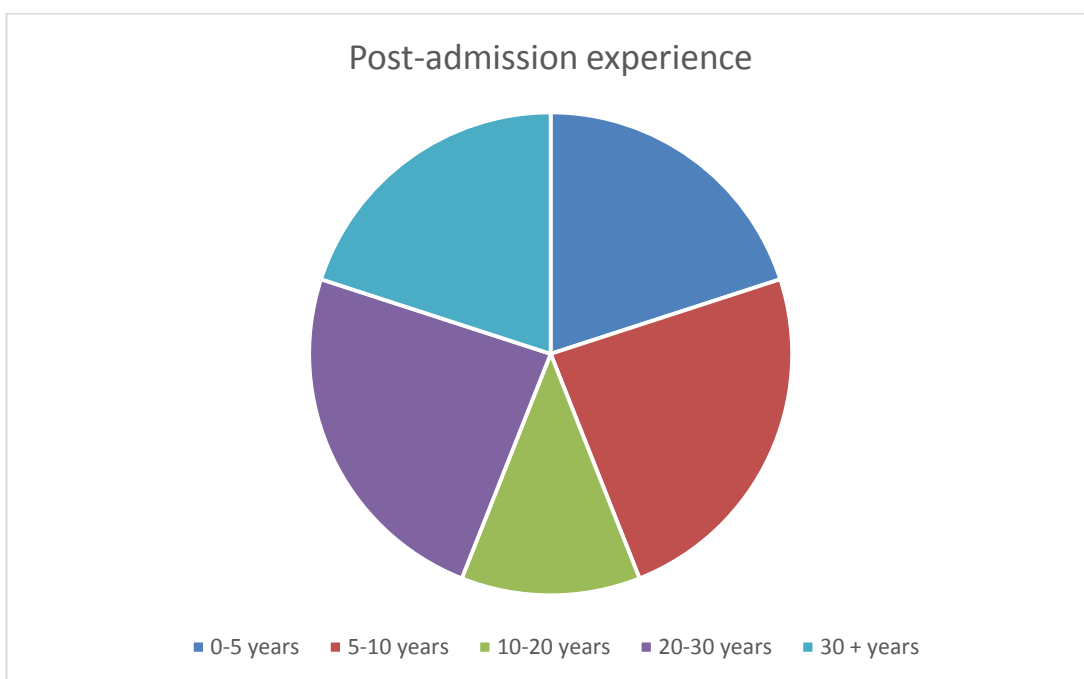


Figure 3.2: Level of post-admission experience

3.4.6 Position in firm

The participants came from a range of different practice experiences and positions (see table 3.4 below). Those participants who were no longer employed within a firm had previously spent some time in practice, and were able to reflect on their experiences of that time.

Table 3.4: Position in firm

Graduate	Employed solicitor	Partner/Legal Practitioner Director	Other ¹⁰²
1	6	13 ¹⁰³	5



Figure 3.3: Position in firm

Kirkland similarly interviewed participants with a range of different roles in her 2005 study of large law-firms. These included ‘junior and senior associates, salaried non-partnership track lawyers, non-equity, and equity partners...they included a team leader, several practice group leaders, a department head for a large metropolitan office, a firm-wide department head, and a former managing partner’.¹⁰⁴ Kirkland also interviewed ‘a third year law student who had been a summer associate at a large law firm during the summer of 2003’.¹⁰⁵ As Holliday notes, qualitative research is less about obtaining a representative sample and more about obtaining a variety of relevant, interconnected data, from a range of different viewpoints and perspectives.¹⁰⁶

¹⁰² This included not currently practising, practising as a barrister, in-house counsel and government.

¹⁰³ Of these, five were the sole partner, director or principal of their firm.

¹⁰⁴ Kirkland, above n 1, 660.

¹⁰⁵ Ibid.

¹⁰⁶ Holliday, above n 27, 34. Holliday further notes that qualitative researchers often have to make the most of the opportunities that are presented to them (at 22).

It is interesting that the majority of those who agreed to participate in the project were in positions of relative autonomy within their own firms or in the other areas in which they worked. This may be reflective of a number of factors, including time pressures,¹⁰⁷ or the way in which participants were recruited. It would also be interesting to know whether the requirement for employed solicitors to obtain consent to participate in the research may have dissuaded some employed solicitors from participating. Whilst female employed solicitors in particular may have been reluctant to identify to supervisors as both female and Christian,¹⁰⁸ this consideration might also have been relevant to male Christian lawyers. That is, for lawyers of either gender, being identified with perceived ‘Christian’ values such as care¹⁰⁹ might also conflict with what Webley and Duff describe as the ‘culturally masculinist office’ of law firms in which perceived ‘masculine’ traits such as the character traits of an entrepreneur are valued.¹¹⁰ A number of the employed solicitors who agreed to participate in this project described working within a firm that was supportive of their Christian values, presumably making them more comfortable in requesting permission to participate in the research. The data obtained for the purpose of this project is insufficient to draw a conclusion about this, but a question might possibly be raised about this for future research.

3.4.7 Size of firm

Levin’s classification of solo and small firms (no more than five lawyers)¹¹¹ and Lamb, Littrich and Murray’s classification of ‘top-tier’ or ‘global’ legal firms¹¹² (effectively large law firms) were used to divide the firms in which the participants practised into small, medium or large (with medium being larger than small but not a ‘top-tier’ or ‘global’ law firm).

¹⁰⁷ Many participants noted billing pressures as a source of potential ethical conflict – see Chapter Six.

¹⁰⁸ See the discussions in [section 3.4.4](#) above.

¹⁰⁹ Parker and Evans note, for example, that ‘Legal ethicist Thomas Shaffer also developed the language of an ‘ethics of care’ to describe his deeply humanist, relationship and faith-based application of ethics to legal practice’: Parker and Evans, above n 101, 44.

¹¹⁰ Webley and Duff, above n 33, 384, 285.

¹¹¹ Levin, ‘Solo and Small Law Firm Practitioners’, above n 1, 319.

¹¹² Ainslie Lamb, John Littrich and Karina Murray, *Lawyers in Australia* (The Federation Press, 3rd ed, 2015) 71-72.

Table 3.5: Size of firm

Small	Medium	Large	Other
9 (36%)	9 (36%)	2 (8%)	5 (20%)

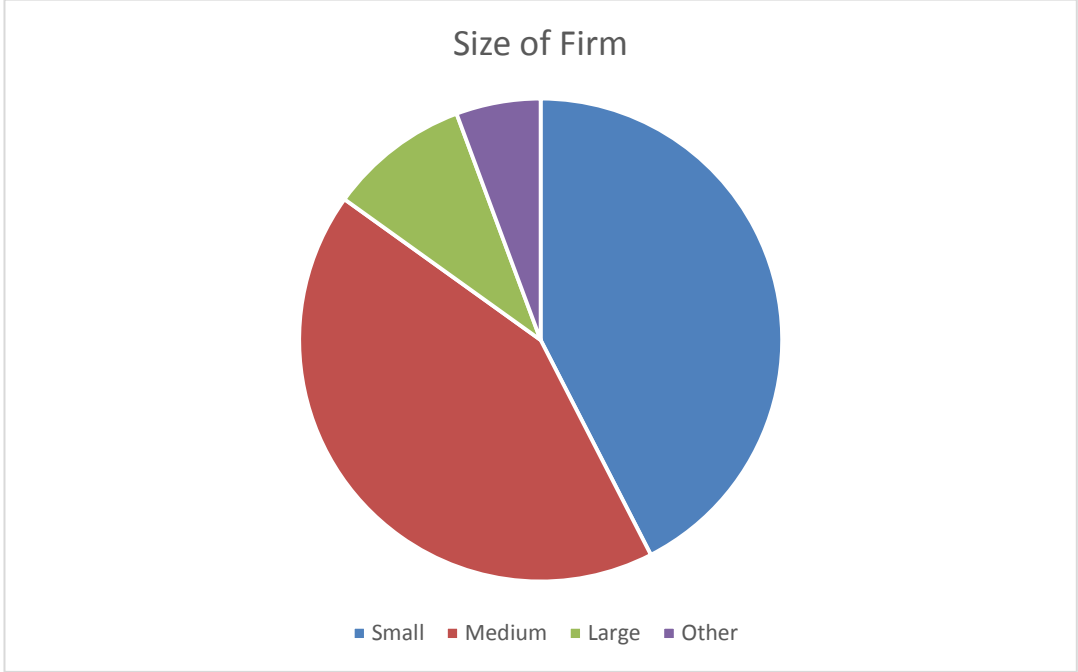


Figure 3.4: Firm size

Assuming that the large law firms have 40 or more partners, then the number of small firms within the Australian legal profession is approximately 17.3%, medium approximately 6%, and large approximately 0.6%.¹¹³

3.4.8 Location of practice

The majority of participants (20 lawyers) practised in metropolitan areas, whilst five were located in regional areas in Queensland and New South Wales.

3.4.9 Areas of Practice

The participants were drawn from a wide range of practice areas and were asked to reflect on why they had chosen their particular area(s) of practice, and whether there were any areas of law that they would not feel comfortable practising in because of

¹¹³ The Australian statistics are broken up into firms of between two to four partners (17.3%), five to ten partners (4.1%), 11 to 20 partners (1.3%), 21-39 partners (0.6%) and 40 or more partners (0.6%): The Law Society of New South Wales, ‘2014 Law Society National Profile’ (Final Report, April 2015) 18.

their personal values. The areas within which participants practised (and the number of participants practising in each area) are set out in the table below. The table is set out by area of law because many participants practised in more than one area and have been placed against more than one area in the table below (therefore the number of participants according to areas of practice totals more than 25 participants).

Table 3.6: Areas of practice

Area of law	Number of participants practising in this area
Administrative law	1
Banking and finance	2
Consumer Law (including trade practices)	1
Corporate and commercial law (including corporate governance and taxation)	15
Criminal law	1
Family law	4
General legal	1
Insolvency	2
Insurance law	1
Litigation and dispute resolution (including mediation)	2
Migration law	1
Personal injury and negligence	2
Property (including conveyancing and resources)	8
Succession (including structuring, wills and estates)	7

3.4.10 Denomination

The participants were also drawn from a range of Christian denominations. To ensure that the interviews covered a ‘broad church’ of Christian denominations (but without

increasing the number of participants to an unmanageable level),¹¹⁴ the denominations of the lawyers interviewed were grouped into the four categories of Christian denominations identified by Gary D Bouma and Beverly R Dixon,¹¹⁵ and participants were interviewed from each of the four denominational categories. The categories identified by Bouma and Dixon are: (1) Catholic; (2) Anglican; (3) ‘PMU’ or Presbyterian, Methodist, Uniting; and (4) ‘RWP’ or ‘Right-Wing Protestant’, including Baptist, Lutheran, Church of Christ, Pentecostal, Assemblies of God (Australian Christian Churches) and Other Christian. The term ‘Right-Wing’ is not used by Bouma and Dixon in a pejorative sense; rather, it refers to the conservative theology common to these denominations.¹¹⁶

The denominational identification of the participants is reflected in the following table:

Table 3.7: Denominational identification of participants

Anglican	Catholic	PMU	RWP	Non-denominational
3	4	3	11 ¹¹⁷	4 ¹¹⁸

Although effort was made to interview lawyers from each of the four categories of Christian denominations identified by Bouma and Dixon, the number of lawyers interviewed from each category was not statistically representative of the percentage

¹¹⁴ Holliday notes that importance of qualitative data being logistically and conceptually manageable. Holliday, above n 27, 34.

¹¹⁵ Gary D. Bouma and Beverly R. Dixon, *The Religious Factor in Australian Life* (MARC Australia, 1986) iv. Bouma and Dixon divided or grouped different Christian denominations into four categories based on theological similarity or difference, namely (1) Catholic; (2) Anglican; (3) ‘PMU’ (or Presbyterian, Methodist, Uniting); and (4) ‘RWP’ (or Right-wing Protestant, including Baptist, Lutheran, Church of Christ, Pentecostal, Assemblies of God (Australian Christian Churches) and Other Christian).

¹¹⁶ Bouma and Dixon, above n 115, 4. Bouma and Dixon specifically note that ‘conservative religious groups are not necessarily conservative politically’ (at vi). Rather, the RWP group as having ‘the highest rate of church attendance, prayer and belief in a personal God’ (at 5).

¹¹⁷ Including one participant who identified as ‘protestant’. Australian Lutheranism is characteristically conservative as compared with German, Scandinavian and some American Lutheranism. For example, the American Lutheran Churches, Scandinavian and German Lutherans allow the ordination of women, whereas, whilst the issue was considered at the 2015 General Convention of the Lutheran Synod, the necessary majority was not reached: Maria Erling, ‘The Americanization of American Lutheranism: Democratization of Authority and the Ordination of Women, Part 1’ (2011) 11(6) *Journal of Lutheran Ethics* [1], [6] [https://www.elca.org/JLE/Articles/186; Lutheran Church of Australia, Ordination: We’re Listening \(2016\) <https://www.oql.lca.org.au](https://www.elca.org/JLE/Articles/186; Lutheran Church of Australia, Ordination: We’re Listening (2016) <https://www.oql.lca.org.au).

¹¹⁸ Including Ecumenical, Non-denominational, Community Church, China Church.

of Christians identified as belonging to each denominational category within Australia.

The following table shows the percentage of participants who identified with each denominational category in the study, compared with the percentage of church attenders¹¹⁹ (approximately 15% of Australians) who identified with each denomination in the 2009 National Church Life Survey.¹²⁰ Comparative data has also been included for the percentage of the Australian population who firstly identified as Christian,¹²¹ and secondly identified with each denominational category in the 2011 Australian census.¹²²

Table 3.8: Comparison of denominational category of participants with national figures

Anglican		
Participants	National Church Life Survey (2009)	2011 Census
12% (3 participants)	10%	28%
Catholic		
Participants	National Church Life Survey (2009)	2011 Census
16% (4 participants)	50%	41.3%
PMU (Presbyterian, Methodist, Uniting)		
Participants	National Church Life Survey (2009)	2011 Census¹²³
12% (3 participants)	17%	12.7%
RWP (Right-wing Protestant)		
Participants	National Church Life Survey (2009)	2011 Census¹²⁴
44% (11 participants)	23%	14%

¹¹⁹ Defined as those who attended church at least once per month. Ruth Powell et al, *Enriching Church Life: A Guide to Results from National Church Life Surveys for Local Churches* (Mirrabooka Press & NCLS Research, 2nd ed, 2012) 71.

¹²⁰ This is the most recent data that has been published from the National Church Life Survey data.

¹²¹ 61.1% of the population in 2011. See Australian Bureau of Statistics, *Cultural Diversity in Australia* (16 April 2013) Australian Bureau of Statistics

<<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/2071.0main+features902012-2013>>.

¹²² <http://www.abs.gov.au/ausstats/abs@.nsf/lookup/2071.0main+features902012-2013>>.

¹²³ The census data includes Uniting, Presbyterian and Reformed in this figure.

¹²⁴ Excluding Eastern Orthodox, which made up 4% of those identifying as ‘Christian’ in the 2011 census. Bouma and Dixon also excluded Greek Orthodox from their study, noting that ‘it did not make sense’ to combine that denomination with any of the other categories: Bouma and Dixon, above n 115, 5.

It is interesting that, whilst approximately 50% of Australian church-attenders¹²⁵ (and a similar percentage of the ‘Christian’¹²⁶ population as a whole) identify as Catholic, only four participants (15.4%) were of the Catholic faith. Conversely, and whilst the percentage of the church-going and broader Australian population who might be included in Bouma and Dixon’s categorisation of ‘Right-wing Protestant’ belief is somewhere between 14 per cent (Australian population) and 23 per cent (Church attenders), the majority of participants in this project (44%) belonged to denominations which might be classified within this category. Unfortunately, little can be made of the possible reasons for this, given that the participants were not drawn from a random sample but were instead invited to participate through the associations for Christian lawyers or other connections (as described above).

Although the lack of a representative sample may be a limitation of the thesis, it is consistent with the existing ‘ethical world’ studies, which also did not seek to interview a representative sample of participants.¹²⁷ Further, and whilst the participants in this project do not constitute a representative sample of either legal practitioners or Christian denominational affiliation, effort was made to interview a range of practitioners, in order to be in a position to highlight any consistency in the way that the personal values of Christian lawyers influence their ethical deliberations. The number of participants in this project was sufficient to obtain a range of different views from lawyers from a range of different practice and denominational backgrounds. Rubin and Rubin suggest that in semi-structured interviewing, a large number of interviewees is unnecessary; rather the number should be sufficient to set out a number of different points of view.¹²⁸

3.4.11 The Interviews

The interviews took place predominantly over a period of two (2) years in 2013 and 2014 (one interview took place in early 2015). Most of the interviews were

¹²⁵ As at 2009 – see Powell et al, above n 119.

¹²⁶ There is a significant difference between the percentage who identified as ‘Christian’ in the 2011 Australian Census (61.1%), and those who attended church regularly (at least once per month) in the 2009 National Church Life Survey (15%).

¹²⁷ See eg Kirkland, above n 1, 661.

¹²⁸ Rubin and Rubin, above n 32, 68. See also Holliday, above n 27, 34, Silverman and Marvasti, above n 33, 14.

conducted in person (one interview took place by telephone) and ranged from 1.5 to 3 hours in duration.

The majority of the interviews were held at the participants' offices. Two interviews took place in the researcher's office, two in the relevant participant's home, and three interviews took place in cafes or restaurants, at the request of the participants. One took place by teleconference. All but one of the interviews was recorded using a digital recording device. The interview that was not recorded took place in a restaurant at the request of the participant, and detailed notes were taken during the interview rather than risk the corruption of an audio recording due to noise interference.¹²⁹

Pursuant to the ethics approval for the project, participants were provided with an approved Information Sheet for participants and consent form(s) as applicable prior to the interview (see Appendix A), and additional hard copies were made available at the interview. Some participants had already looked over and signed these prior to the time scheduled for the interview; others executed the paperwork at the time of the interview. The participant who was interviewed by teleconference returned the forms electronically prior to the interview. In a number of cases participants had also been informed about the research by telephone, briefly explaining the research and answering any queries they might have had. Employed solicitors were also asked to obtain the consent of their supervising partner, principal or legal practitioner director in order to participate in the study.

Prior to the interview commencing, participants were given the opportunity to ask questions about the project, and were reminded that they should not disclose information during the interviews that was confidential, subject to legal professional privilege or which might amount to a breach of anti-discrimination legislation or of the rules and principles of professional conduct. Participants were asked to consent to the interviews being recorded, and reminded that they would be sent a copy of the transcript for their review and approval, following the interview. Any limitations as to time were also identified.

¹²⁹ Loud music playing in the background helped to reduce the risk of the interview being overheard, but would have distorted the recording.

Following brief introductions, at the commencement of the interviews, participants were asked to provide background information. This included, for example, age, gender, educational background, career development, area of practice and size of firm (these details are reflected in the tables above). Participants were also asked whether any of these details were likely to identify them – in some instances practitioners' areas of practice were quite specific, but were able to be described in more general terms so as to maintain anonymity.

3.4.12 The interview protocol

The interviews focused on the broad questions and themes set out in the following interview protocol. These questions were developed based on the research questions for the project, which were themselves based on the key themes that emerge from the normative literature on the ethical deliberations of Christian lawyers (as described in Chapter Two). The development of a number of broad, open-ended questions is consistent with Rubin and Rubin's view that, in preparing for a semi-structured interview, the interviewer should prepare a number of main questions, probes and follow-ups.¹³⁰ However, the interview should then be free-flowing, and

[a]sking everyone the same questions makes little sense in qualitative interviewing. An interview is a window on a time and a social world that is experienced one person at a time, one incident at a time.¹³¹

Whilst some qualitative researchers suggest that interview questions and themes can emerge during what can start out as a general conversation about a particular topic, in this case it was important to address the themes emerging from the literature, and the development of focus questions prior to the interview helped to facilitate consistency and avoid subjectivity.

The broad questions corresponding to each Research Question were:

¹³⁰ Rubin and Rubin, above n 32, 13.

¹³¹ Ibid 14.

Table 3.9: Interview protocol

<p>RQ 1: What are the views of Christian lawyers about the nature of the lawyer’s role and the moral justifications for that role?</p>
<p><i>How would you describe the lawyer’s role?</i></p>
<p><i>Is there anything special or different about the role of a lawyer who is also a Christian?</i></p>
<p><i>Do you see or have you experienced any conflict (or potential conflict) between your role as a lawyer and your faith? Why or why not?</i></p>
<p>RQ 2: How do the personal values of Christian lawyers influence their ethical decision-making in legal practice, including in the following key areas:</p>
<p>a. The area of law in which a Christian lawyer practises</p>
<p><i>In which area or areas of law do you practise?</i></p>
<p><i>Why did you choose to practise in that area or those areas?</i></p>
<p><i>Was your decision to practise in that area or those areas influenced in any way by your Christian faith?</i></p>
<p><i>Do you see or have you experienced any conflict (or potential conflict) between your practice of this area of law and your faith? Why or why not?</i></p>
<p><i>Are there any areas of law in which you would not feel comfortable practising (because of your Christian faith)? Why or why not?</i></p>
<p>b. The lawyer-client relationship, and in particular:</p>
<p>i. How do the personal values of Christian lawyers influence the decision whether to accept instructions from a particular client or in a particular matter?</p>

<i>Do you have the discretion to decide whether to accept instructions?</i>
<i>How do you make that decision? What factors influence your decision?</i>
<i>Does your faith influence whether to accept instructions from a particular client or in a particular matter (if at all)?</i>
<ul style="list-style-type: none"> ii. How can the relationship between a Christian lawyer and his client be described? iii. Do Christian lawyers raise relevant moral considerations with their clients? iv. Do Christian lawyers discuss their personal values and beliefs with their clients? v. How does a Christian lawyer resolve any potential tensions between her personal values and beliefs and the instructions given to her by a client? vi. In the event of a conflict between the personal values and beliefs of a Christian lawyer and a client's instructions, how is the conflict resolved?
<i>Why do you think that your clients choose you as their lawyer? What aspects do you think that they value the most about having you as their lawyer?</i>
<i>What skills or attributes do you think are most important for lawyers?</i>
<i>How important do you think the lawyer-client relationship is? Why?</i>
<i>Does your Christian faith affect how you relate to your clients? If yes, then how?</i>
<i>Have you ever experienced a situation in which your personal values conflicted with your client's instructions? What did you do in that situation?</i>
<i>If you have non-legal concerns about a client's situation, do you raise these with your clients? How do you raise these with your clients?</i>

<p><i>Are all or any of your clients aware that you are a Christian? Why or why not? How?</i></p>
<p><i>Do you discuss your personal faith with your clients? Does this happen with each client or only in certain circumstances? What are these circumstances?</i></p>
<p><i>Do you have clients who come to you because you are a Christian?</i></p>
<p>c. The conduct of legal practice, and in particular:</p>
<p>i. In circumstances in which the ethically correct (in a broader sense) course of action is uncertain, to which sources does a Christian lawyer look for guidance?</p>
<p><i>What sorts of considerations affect how you approach the conduct of legal practice? (eg, if a client comes to you with a problem, how do you decide what advice to give the client about how that problem might be resolved)? [This example was changed as necessary depending on the lawyer's area of practice]</i></p>
<p><i>What if you're unsure what to do in a particular situation? Who or what do you turn to?</i></p>
<p>ii. How do Christian lawyers take into account the interests of the other parties, the other lawyers and third parties in the resolution of a legal dispute?</p> <p>iii. How do the personal values of Christian lawyers influence decisions about how to approach the resolution of a legal dispute?</p>
<p><i>There are many parties that may be affected by a legal dispute (your client, you, the other parties, their lawyers, and potentially third parties who may be affected by the dispute).</i></p>
<p><i>Do you think that the concerns of, or potential effect on these parties are relevant?</i></p>
<p><i>How do you reconcile or prioritise these competing interests (and why)?</i></p>

<i>Do you use alternative dispute resolution methods in your practice? What influences your decision to use these methods?</i>
d. The charging of professional fees, and in particular; how do the personal values of Christian lawyers influence their charging of professional fees?
<i>Do you have any discretion to waive or reduce your professional fees?</i>
<i>If so, then in what circumstances would you waive or reduce your professional fees?</i>
<i>Do you engage in any pro-bono work?</i>
RQ3 How are the views of Christian lawyers about these issues influenced by the culture of the firm in which the Christian lawyer practises?
<i>How does the culture or policies of your firm affect any of the above issues?</i>

During the interviews, effort was made to cover each of these broad questions and themes in order to ensure that each participant was asked a question about key areas such as the lawyer-client relationship and the nature of the lawyer’s role. However, the researcher was also free to explore particular areas or participants’ responses in more detail during the course of the interview. Silverman notes that qualitative interviews do not need to be highly structured if there is no comparison between different groups.¹³²

3.4.13 Transcription and analysis

Following the interviews the recordings (or notes) were transcribed by the researcher and sent to the participants for confirmation. One participant did not return the transcript in time, and that data has therefore been excluded. In addition to confirming the transcripts, participants were able to make changes to clarify, remove or add to anything they had said, and some chose to do so.

¹³² Silverman and Marvasti, above n 33, 144.

One of the conditions for the research was that the identity of participants would remain confidential. In order to maintain anonymity, the responses of individual participants were de-identified, and some details have been omitted or generalised to the extent that was necessary to ensure that the responses of participants cannot be linked to particular individuals. Pauses and natural expressions of speech and verbal conversation ('um', 'you know', 'like' etc) have also been edited as indicated by '...'. Where more than three words have been omitted, this is marked by '(...)'.

Following transcription and verification of the transcripts by the participants, the transcripts were entered into the NVivo software program (software that can be used to analyse qualitative data) and coded against 'nodes' that reflected the research questions for the project. As noted above, the use of software to assist in the analysis of the transcripts can help to enhance the reliability and validity of the data. Once coded against the different 'nodes', the data was further broken down into themes and subthemes 'by hand' into tables so that more subtle themes could be seen in the data.

3.4.14 Limitations of the Study

Given that the focus of the study is on Christian lawyers, it naturally drew participants who are engaged or who have been engaged in legal practice. It has not drawn persons of the Christian faith (if any) who may have considered practising law but have not done so or who have later withdrawn from practice because of a perceived conflict between the lawyer's professional role and their own personal values. It might be thought that those lawyers who chose to participate in this study have, at some level, been able to reconcile their personal values with their professional role, although of course the way in which they have done this is one of the areas that participants were asked about in the interviews. It is also possible that participants currently engaged in legal practice may have naturally been more reluctant to identify any conflict between their personal values and their professional role.

This study was also described to participants as a study which looked at 'the Professional Ethics of Christian Lawyers'. As with Parker and Le Mire's study of in-house counsel,¹³³ it is possible that a study on ethics may have attracted lawyers who

¹³³ Suzanne Le Mire and Christine Parker, 'Keeping it In-House: Ethics in the Relationship Between Large Law Firm Lawyers and their Corporate Clients Through the Eyes of In-House Counsel' (2008) 11(2) *Legal Ethics* 201, 206.

might naturally be more interested in these issues (indeed, some participants acknowledged being aware of or previously having looked at, the literature on lawyers' ethics from a Christian perspective). Conversely, participants may have been more likely to give a more positive expression to their answers and less likely to identify significant ethical conflicts, given that they were participating in a study on 'ethics'. Further, participants were reminded prior to participating that they should not breach confidentiality nor disclose anything that might amount to a breach of professional conduct rules or relevant anti-discrimination legislation.¹³⁴

Another limitation or qualification is that the majority of (if not all) participants were aware that the researcher also identifies as a Christian lawyer who previously engaged in legal practice. From one perspective this may have made it more likely that the participants gave honest answers (than if they were interviewed by someone apathetic or antagonistic towards their faith, for example). From another, it may have made participants more likely to want to give the 'right answer' (even though most participants were told that the research was looking for their honest opinion rather than a particular answer, and that the researcher was not seeking to pursue any particular argument through the thesis).¹³⁵ The literature on qualitative research acknowledges that this kind of research is always influenced by the characteristics of the researcher and that this cannot be avoided, but should be noted. As Holliday suggests, 'In everyday life we have always to remember that how people are to us has a lot to do with how we are with them. They react to the complex baggage that we bring with us; and we also see them in terms of this baggage'.¹³⁶

The literature on whether the researcher should come from the same group as the participants studied is mixed. On the one hand, Miller and Glassner acknowledge that:

¹³⁴ Pursuant to the terms of the Ethics Approval for the project.

¹³⁵ Miles and Huberman note that researchers 'have their own understandings, their own convictions, their own conceptual orientations; they too, are members of a particular culture at a specific historical moment': Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis*, (Sage Publications, 2nd ed, 1994) 8, and see also AN Oppenheim, *Qualitative Design, Interviewing and Attitude Measurement* (Continuum, New Edition, 1966, 1992) 65, 66:

At the same time the interviewer is either limited or helped by his or her own sex, apparent age and background, skin colour, accent etc. When taken seriously, interviewing is a task of daunting complexity', and 'in order to do their job, both kinds of interviewer must 'switch off' their own personality and attitudes (this can be very exhausting) and try to be unaffected by circumstances, by their attitude to the topic or the respondent, or by personal involvement.

¹³⁶ Holliday, above n 27, 181.

The issue of how interviewees respond to us based on who we are – in their lives, as well as the social categories to which we belong, such as age, gender, class, and race – is a practical concern as well as an epistemological or theoretical one. The issue may be exacerbated, for example, when we study groups with whom we do not share membership. Particularly as a result of social distances, interviewees may not trust us, they may not understand our questions, or they may purposely mislead us in their responses. Likewise, given a lack of membership in their primary groups, we may not know enough about the phenomenon under study to ask the right questions.¹³⁷

On the other hand, Miller and Glassner argue that a researcher who does not come from the same background as the participants may mean that fewer assumptions are made because of a perception of shared knowledge, and greater explanations of a particular phenomenon may be sought and provided.¹³⁸

The researcher's identity as a current Lecturer in legal ethics and as a former practitioner in the area of family law should also be noted as a potential limitation, in that participants may have been more reluctant to identify a potential conflict for a Christian lawyer practising in family law, or a breach of professional conduct rules (which, in any event, participants were warned not to discuss, pursuant to the terms of the ethics approval for the project).

Whilst the characteristics of the interviewer which may affect the participants' responses (age, gender, class, ethnicity etc) can never be removed and are an acknowledged part of qualitative research,¹³⁹ effort was made in this project to reassure participants that the researcher was not looking for particular answers. Some participants were initially unsure whether they were giving the 'right' answer, or a 'helpful' answer, and some were initially unsure whether to participate at all (particularly newly-admitted practitioners, who felt that they had insufficient practical experience to be able to add value to the project). In these instances the researcher was able to reassure participants that a range of different views was being sought, from a range of different participants, and that only an honest perspective was being sought.

¹³⁷ Miller and Glassner, above n 25, 127-128.

¹³⁸ Ibid 132.

¹³⁹ Holliday, above n 27, 181.

3.5 Conclusion

This chapter has examined the methodology used in the empirical studies of lawyers' ethical decision-making, together with the literature on undertaking and establishing reliability and validity in qualitative research. This chapter has also outlined the qualitative, semi-structured interviewing methodology used for this thesis, including the Research Questions, methods of recruiting participants, the demographic details of participants, interview protocol and the limitations of the study.

The following chapter will begin to explore the participants' responses to the research questions, focusing particularly on questions about the nature of the lawyer's role, the moral justifications for that role, and whether and how participants' personal values influenced their decision to practise or not practise in particular areas of law.

Chapter 4 : The Christian Lawyer's Role

4.1 Introduction

This chapter will explore the views of Christian lawyers about the nature of the lawyer's role and the moral justifications for that role (RQ1). It will also examine whether Christian lawyers themselves identify potential conflicts between faith and the lawyer's role more broadly, or in particular areas of legal practice.¹ Later chapters will examine how the personal values of Christian lawyers influence the lawyer-client relationship and the conduct of legal practice.

This chapter will also explore how the personal values of Christian lawyers influence their decision to practise (or not to practise) in a particular area of law (RQ2(a)). It became clear in the interviews that whether and how Christian lawyers see any tensions between faith and the lawyer's role and what they see as the justifications for the lawyer's role are also linked with their views about particular areas of practice, and vice versa. Therefore, the responses of participants to questions about how their personal values influenced their decision to practise (or not to practise) in particular areas of law will also be examined in this Chapter.

4.2 The lawyer's role and moral justifications for role in the normative literature

The normative literature about how lawyers should relate to their clients and resolve tensions between, for example, a client's instructions and the lawyer's own personal values, largely stems from how the lawyer's role is conceived and justified. For example, a liberal view of the lawyer's role (in which the lawyer helps to facilitate individual autonomy by providing unfettered access to the law and legal system) essentially requires that the lawyer put aside personal moral qualms in acting for the client (in order to be able to provide that unfettered access), and conversely, suggests

¹ See comments and references in Chapter One, n 34. Theorists such as Christine Parker and Marc Stern recognise that, at a minimum, Christian and Jewish lawyers may draw a line at actions that are 'actively immoral' or 'religiously impossible': Christine Parker, 'Christian Ethics in Legal Practice: Connecting Faith and Practice' in Christine Parker and Gordon Preece (eds) *Theology and Law: Partners or Protagonists* (ATF Press, 2005) 23, 27; Marc D Stern in 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness' (1996) 27 *Texas Tech Law Review* 1363, 1371.

that the lawyer is morally justified in doing so because of the moral and philosophical importance of facilitating individual autonomy within a secular liberal legal system.²

The moral justification of the lawyer's role is also important from a faith-based perspective. Each of the models described in Chapter Two places importance on the nature of the lawyer's role, and whether that role can be justified for someone who is both a Christian and a lawyer (as a preliminary question). A further question is whether, if a Christian is morally justified in engaging in legal practice, she is then justified in adopting professional ethical norms in so doing, or whether she must only engage in actions or act for clients and in matters that do not conflict with her personal values as influenced by the ethical norms of her faith. As noted in Chapter Two, the potential tensions between faith and legal practice can be quite nuanced; for example some theorists suggest that a Christian lawyer might act for clients or causes that go against her own personal values, but draw the line in terms of how those representations are carried out (by avoiding overly 'zealous' tactics, for example).³

The different views about the nature of the lawyer's role and the moral justifications for that role as set out in the faith-based normative literature were reviewed in Chapter Two, but can be summarised as follows, using the four models for faith-based legal practice identified in Chapter Two:

² See, eg, the discussions of the Adversarial Advocate model in Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30 *Monash University Law Review* 49, 56 and in Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 22-25. This is not the only view of the lawyer's role, but is one example of how the conception of the lawyer's role and the moral justifications for that role are seen to give effect to particular actions in legal practice – in this case, setting aside broader moral considerations in favour of giving effect to the client's autonomy.

³ Parker, for example, suggests that even lawyers who seek to reconcile any tensions between professional role and personal values by acting piously in their personal lives, but keeping their personal values relatively separate at work, would still draw the line at behaviour that is 'actively immoral'. Similarly, DiSalvo and Droel suggest that lawyers working under their first model (*my client as my employer*) would draw the line at immoral tactics in the course of representation. See Parker, 'Christian Ethics in Legal Practice', above n 1, 27 and Charles R DiSalvo and William L Droel, 'Reflections on the Contents of the Lawyer's Work: Three Models of Spirituality – and Our Struggle with Them' in Thomas E Baker & Timothy W Floyd (eds), *Can a Good Christian be a Good Lawyer? Homilies, Witnesses & Reflections* (University of Notre Dame Press, 1998) 127, 130. From a Jewish perspective, Levine notes that whilst the role of the Criminal Defence lawyer might be broadly consistent with religious tradition, the use of hostile tactics within that role might contravene faith-based values: Samuel J Levine, 'A Look at American Legal Practice Through a Perspective of Jewish Law, Ethics, and Tradition: a Conceptual Overview' (2006) 20 *Notre Dame Journal of Legal Ethics & Public Policy* 11, 19.

Table 4.1: Summary of justifications for the lawyer's role

Faith-based Model	Role and Justification for Role
<i>The Servant Lawyer</i>	The lawyer's role is regarded as being broadly justified from a religious perspective. The ethical worlds of faith and legal practice are regarded as being broadly consistent, and the religious justification of the lawyer's role in turn justifies the lawyer in adopting professional ethical norms when engaged in legal practice. However, there may be a point at which an action required to be undertaken in the professional role becomes 'religiously impossible', ⁴ at which time the lawyer may be unable to set-aside her personal moral values.
<i>The Lawyer of Character</i>	There is no significant conflict between faith and legal practice, given that 'church' and 'state' are regarded as having different purviews and roles within society (the church – private morality, and the state – public life, business, law etc). The Lawyer of Character is, however, able to identify a consistency between personal and professional character qualities or 'virtues' and is able to act consistently with faith-based ethical values by bringing her good character to bear on the professional role.
<i>The Lawyer of Integrity</i>	The lawyer's role is akin to a religious calling or vocation, and the Christian lawyer must act consistently with her own personal values when engaged in legal practice. Actions undertaken in the professional role can only be morally justified if these are also consistent with the lawyer's own personal values.
<i>The Prophetic Lawyer</i>	The Prophetic Lawyer seeks to actively pursue personal values through her legal practice in order to change the law, legal institutions and clients for the better. To this end, the role is also regarded as akin to a religious calling.

Implicit (or sometimes explicit) in questions about the nature of the lawyer's role and the moral justifications for that role, is the question whether there is ever any conflict between the lawyer's professional role and her personal values.⁵ In practice, this

⁴ This is the phrase used by Jewish theorist Marc D Stern: Stern, above n 1, 1371.

⁵ Some examples of potential conflicts addressed within the literature include Christian lawyers acting for 'guilty' clients and Catholic lawyers undertaking divorce proceedings, seeking judicial permission for an abortion or participating in capital litigation: Art C Cody, 'The King's Good Servants: Catholics as Participants in Capital Litigation' (2005) 44 *Journal of Catholic Legal Studies* 283; Teresa Stanton Collett, 'Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil' (1997-1998) 66 *Fordham Law Review* 1339; Larry Cunningham, 'Can a Catholic Lawyer Represent a Minor Seeking a Judicial Bypass for an Abortion? A Moral and Canon Law Analysis' (2005) 44 *Journal of Catholic Legal Studies* 379; Patrick Quirk, 'Marriage, Divorce, and the Catholic Lawyer' (2002) 14(2) *Bond University Law Review* 414; Reid Mortensen, 'Agency, Autonomy and a Theology for Legal Practice' (2002) 14(2) *Bond Law Review* 391; Thomas L Shaffer, 'Serving the Guilty' (1980) 26 *Loyola Law Review* 71; Thomas L Shaffer, 'Should a Christian Lawyer Serve the Guilty' (1988)-1989) 23 *Georgia Law Review* 1021 and John W Stanford, 'The Christian Lawyer: Defending Apparently Guilty Defendants and Using Courtroom Strategies and Tactics' (2003-2004) 16 *Regent University Law Review* 275.

conflict might arise at two levels: the first, a moral or philosophical level which looks at the lawyer's role more broadly, and the second: a practical, 'coal-face' level, which looks at whether and how tensions arise in issues of everyday legal practice. As noted in Chapter Two, whilst the majority of theorists do not suggest that any area of practice is 'out of bounds' for a Christian lawyer,⁶ the responses of participants would suggest that different ethical considerations and justifications may be relevant depending on the chosen area of practice. It is the justifications for the lawyer's professional role and potential tensions between faith-based obligations and professional ethical norms at a broader philosophical level that will be explored in this chapter. Later chapters will examine specific tensions and conflicts that may arise in legal practice, including whether and how the personal values of Christian lawyers influence their decision to accept instructions to act for certain clients or in particular matters.

4.3 How do Christian lawyers describe the lawyer's role?

The first section of the semi-structured interview protocol asked the participants to describe the lawyer's role, and then to identify whether they thought that that role was any different for someone who was both a Christian and a lawyer. Participants were then asked whether they saw any conflict between their professional role generally, and their personal values. The protocol did not ask participants to specifically identify what they saw as their moral justification for engaging in the lawyer's role, as this may have made the initial stages of the interview confrontational, and led to participants feeling as though they needed to approach the remainder of the interview from the perspective of justifying their faith or decision to engage in legal practice. It may also have led participants to be less likely to identify any more specific tensions in answer to later questions. Instead, it was thought that the participants' views about the moral justification for the lawyer's role would be reflected in the way that they described the lawyer's role, and whether they identified any difference in that role for someone who is both a Christian and a lawyer.

⁶ Although theorists such as Stern suggest that some actions will be 'religiously impossible' and Cunningham, that a Catholic lawyer might risk excommunication from the Church by acting for a minor seeking a judicial bypass for an abortion. Stern, above n 1; Cunningham, above n 5, 408-409.

4.3.1 The influence of professional ethical norms on view of role

When asked whether they saw any difference in the lawyer's role for someone who is both a Christian and a lawyer, participants said that the role should not be any different.⁷ They tended to focus on the lawyer's role as a representative of her client and an officer of the court when asked to describe the nature of the role. The influence of professional ethical norms on Christian lawyers' views about the nature of the lawyer's role could also be seen in the language initially chosen to describe that role. Participants used descriptions such as 'acting in the best interests of your client', 'acting in the best interests of the Court' and 'being an advocate for the Court'; 'working in your client's interests' and 'serving the Court'; and 'help[ing] the system run well' to identify the main characteristics of the lawyer's role. Participants also acknowledged lawyers' ethical obligations, for example by recognising the importance of 'complying with the law', acting 'within the bounds of the law', and 'within the boundary of, at all times, as a primary requirement, serving the Court and doing the right thing in that respect'.

4.3.2 The lawyer's role as an advocate for her client

The importance of the lawyer's role in assisting, advising and advocating for clients was a strong theme throughout the participants' responses (including when describing the lawyer-client relationship, as set out in Chapter Five). Participants described the role as being, for example, 'primarily...to serve the needs of the client'; to 'provide advice to the client in relation to their legal rights, responsibilities and options'; to 'step into the [client]'s shoes to the best of your ability, and as you're allowed by the system of courts and the law' and to 'advocate for their position'. One participant said that:

I see the role of a lawyer...in a system where we do have complicated sets of rules, and so it takes a certain level of knowledge and expertise to know the rules and to use the rules well, the role of the lawyer is to help people who don't know those rules, who aren't lawyers...pursue what they want successfully, and to provide advice about

⁷ Participants said, for example, 'Well I honestly don't think it [the lawyer's role] should be [different]'; 'No, there shouldn't be [any difference]'; and that 'the lawyer's role is to...obtain the best results for his client, within the...obligations...the lawyer's first obligation is to the Court...and I don't see that that is...it should actually differ whether the person is a Christian or not'.

Chapter 4: The Christian Lawyer's Role

what might or might not be a good idea in terms of...the law, but also in terms of a practical outcome.

The emphasis on client representation and assistance being a key part of the lawyer's role may also be reflective of a liberal philosophical justification in terms of the lawyer's role being to facilitate individual autonomy for her client by assisting the client to access her rights and entitlements within the bounds of the law.⁸ However, there was some evidence that participants saw their obligations to clients as going beyond solely legal advocacy and advice, or had a tendency to approach client representation from a broader perspective than simply advising a client about their legal rights and obligations and then carrying out instructions. Some suggested that they would take into account broader considerations in providing advice, for example:

People need to understand not only what their options are from a legal perspective, but also what effect will taking this option have on the ultimate outcome that I'm seeking (...) will it cost me something emotionally as well as financially, will it...take more but be better in the long run?

If you're a really good lawyer you...need to be able to answer not only just the straight legal questions, but also how will this answer or this solution help your...the person

⁸ Pepper, for example, compares the law to 'a very large and very complicated machine (with lots of whirring gears and spinning data tapes)' that requires someone (a lawyer) 'who has the correct wrenches, meters, and more esoteric tools, and knows how and where to use them'. See Stephen L. Pepper, 'The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities' (1986) *American Bar Foundation Research Journal* 613, 623, 624 and the discussion of the Adversarial Advocate model in Parker and Evans, above n 2, 22-25. Parker and Evans describe this model as 'the predominant conception of what lawyers' role and ethics ought to be in most common law countries including Australia' (at 22). The importance of assisting clients to achieve their proposed ends within the bounds of the legal system was also reflected participants' comments such as:

A lawyer's role is also to...help people...abide by the laws and avoid getting into trouble later on, by setting up good designs for things that they want to do at certain times, like buying a house or...starting a family or wanting to give something to someone else; running a business. Virtually every area of life is regulated by our government in some way and our laws in some way, and when you want to do something...particularly if it's significant or it's worth a lot of money...there's often legal rights or legal issues involved...and a lawyer can help you...know what those are, and...use that knowledge to do - to get the outcomes that you were wanting to get all along, rather than be frustrated by rules that you didn't know about or options that you didn't know existed.

And

[I]t was about understanding the client's needs; interpreting the law for them in a way that was easy for them to understand; helping them to make decisions about what to do, given their commercial position and given the law.

Another participant suggested that, as a commercial lawyer, the lawyer is 'placed in a position of trust and so...the lawyer's role would be to facilitate...the client's commercial needs, and to guide them through the legal processes that would (...) help them maximise their business'.

you're talking to; whether it's the client, whether it's the government, or anyone. How will it help them do whatever it is they're wanting to do.

Other participants referred to the need to 'really support and guide [clients] through the process'; to '[look] after your clients' and to 'go the extra mile at times when you really don't want to, and you're tired or...to make sure things are right, to get them fixed up, and all that sort of thing'.⁹

Seeking to 'go the extra mile' for clients and 'helping them to make decisions' or understand the law is consistent with a number of the faith-based models of legal practice. In particular, the Servant Lawyer recognises similarities between professional and faith-based ideals of service as one of the justifications for the Christian lawyer's professional role, whilst the Lawyer of Integrity sees the lawyer-client relationship as an integral part of that role. Moreover, for the Lawyer of Integrity the lawyer-client relationship is not purely professional, but necessitates care for the client beyond the terms of the client agreement. The nature of the lawyer-client relationship, including the extent to which Christian lawyers discuss moral considerations with their clients will be explored further in Chapter Five.

4.3.3 The lawyer's role as an officer of the court

Participants' responses also reflected acknowledgment of the lawyer's role as an officer of the court, and of the professional ethical boundaries that apply to lawyers. A number of participants noted that their legal representation would be bounded by their professional and legal obligations to their client and the court, suggesting that:

[Y]our role as a lawyer is to represent your client to the best of your ability within your area of expertise, in accordance with the general ethical and legal framework that applies to you, and the scope of your retainer.

Other participants referred to the importance of, for example, 'serving the Court and doing the right thing in that respect',¹⁰ 'comply[ing] with the law and your

⁹ This participant continued by saying, 'I think that's it, if you look after your client well, then you've done the right thing'. Another participant indicated that 'I think the lawyer's role is to be an advocate for their client, for their position, and to help...the client to get the best outcome in the situation that they're presented with'.

¹⁰ This participant continued:

The primary role would be to serve the Court, and to comply with whatever you have to do or not do in relation to that. Sitting underneath that, but sort of scooping up everything else, is working in your

responsibilities to the Court’;¹¹ and advocating for the client ‘as you’re allowed by the system of courts and the law’.¹² This perhaps reflects the influence of professional ethics training on participants’ views about the lawyer’s role, but is not incompatible with the faith-based models, which do not suggest that the lawyer should cross outside the boundaries set out by the law in providing advice, but rather that the lawyer may be held to a higher level of accountability in undertaking her professional role.

In addition to recognising the lawyer’s role as an officer of the court and the corresponding professional ethical obligations, one of the ways that participants saw their personal values as influencing their professional role was in fact to provide additional impetus for acting ‘ethically’ in carrying out the lawyer’s role.¹³ Whilst emphasising that their non-Christian colleagues were no less likely to be ethical (that is, that Christian lawyers do not have a monopoly on ethical practice),¹⁴ participants said that their faith made them more sensitive to the need to act ethically, suggesting that, ‘I think as a Christian, I guess, you’re a bit more...it’s sort of drilled into you a bit more’, and

I...broadly speaking, don’t see that my faith causes me to do my job any differently to how I would if I wasn’t a Christian. I suppose – trying to imagine myself in a

client’s interests. So my role is to represent my client to the best of my ability, but within the boundary of, at all times, as a primary requirement, serving the Court and doing the right thing in that respect.

¹¹ Further:

The lawyer’s role? Well I think there are two elements to that. So first of all, you have to ... look after the interests of your client, and also you have to ... be acting in the best interests of your client, but at the same time be acting in the best interests of the Court. So you have to still be complying with the law. So your role is to at all times act in the interests of your client and help them out there and follow their instructions, but at the same time you have to comply with the law and your responsibilities to the Court too...as a lawyer. So that’s the role of the lawyer to help the public but at the same time being an advocate for the Court.

¹² Another participant said that ‘the lawyers role is to...obtain the best results for his client, within the...obligations...the lawyer’s first obligation is to the Court...and I don’t see that that is...it should actually differ whether the person is a Christian or not’.

¹³ What this means will be explored further in Chapters Five and Six.

¹⁴ As one participant noted, ‘I have lawyers who are my friends and they’re not Christians, but their values are just the same as mine, and they still act in the best interests of their clients whilst complying with the law and not doing anything sort of dodgy’. Others, that acting as a Christian in the workplace would not necessarily mean ‘that my sense of ethics would be any...would be significantly different from any other lawyer who...operated in a professional manner’, and that ‘[h]aving said that, the majority of non-Christian lawyers are very ethical, and follow the rules just as carefully and “religiously” (you might even say) as I do’. This is also not a study which sought to compare the responses of Christian and non-Christian lawyers, nor to assess the veracity of participants’ responses or ethical proclivities.

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hypothetical different life situation – I suppose I might be less concerned about ‘following the rules’ if I wasn't a Christian, more dismissive of that.

One participant also described faith as providing an added sensitivity to ‘fairness’ or justice’ when undertaking the lawyer's role, saying that:

[M]aybe I feel we've got an innate sense of fairness, or a ...or that moral conscience ticks louder for a Christian maybe, and that if you see an injustice you go ‘wooaah’. Without any direct correlation to your Christian faith. I think it's the way we're probably...trained, or we've studied Scripture over the years and...So I think it probably just ticks that little bit louder where you go, ‘ok, I don't think this...this is fair, or this is moral’.

Again, the latter comment may go beyond mere compliance with professional ethical obligations in referring to an innate sense of ‘fairness’ or ‘justice’. What happens when ‘fairness’ or the lawyer's sense of justice conflict with the client's instructions and whether and how this should influence how the lawyer approaches the resolution of a legal dispute or the advice provided to a client are key themes of the faith-based normative literature, and will be explored further in Chapters Five (The Lawyer-Client Relationship) and Six (The Conduct of Legal Practice).

4.4 Moral justifications for the lawyer's role

Having described the lawyer's role, participants were then asked to reflect on whether they saw any conflict between their faith and legal practice more broadly. Many participants initially struggled to identify any overt sources of potential moral conflict, saying things like:

- ‘I can't say it's come up. Something where I...don't feel troubled by that, I suppose. It's so rare that personal concerns conflict with my duty to the Court and to the client. I'm not sure if it's something that would come up a great deal’.
- ‘No...I can't think...of an example of that [and later] ‘Not one, I can't think of a single example’.
- ‘I guess I don't really notice any major conflicts’.

- 'I'm sort of trying to see how it could arise'.¹⁵

Others reflected that, whilst they perceived that tensions might be more likely to arise in other areas, their own area(s) of practice largely failed to throw up any major sources of conflict. For example:

- 'I don't...typically in what I'm being asked to do, there isn't a problem...and that may just be because of the area that I'm actually practising in'.
- 'I was not in an area...I can see plenty of places where the law does raise serious ethical issues, but I'm not sure I was...maybe I was blind to it, but I'm not sure I was dancing on the edges of many big ethical issues'.
- 'I don't work in that area where I have to make a decision like that'.¹⁶
- 'Because I work in commercial and property and not criminal or something like that, I guess I don't really notice any major conflicts'.¹⁷
- '[A]s I said before, because of my areas of law, there's not a great number of things that will come up that involve people asking me to do something that I find profoundly unethical...And if they do, there's usually a good legal reason for me to explain why it's a bad idea'.

The views of Christian lawyers about particular areas of legal practice will be explored in more detail under [heading 4.5](#) below. Whilst these responses are not unusual (in that Christians who practise law might be expected to have – at some level – already reconciled any potential conflict between faith and legal practice), it became clear that, whilst the Christian lawyers interviewed for this study did not perceive there to be significant tensions between their personal values and the lawyer's role generally, this

¹⁵ Others said, for example, 'I don't see that there are any particular ethical issues that arise as a Christian', and:

I find it sad, that there are still PhDs being done on whether it's possible to be a Christian and a lawyer at the same time. I feel that question was settled a very long time ago...I'm not suggesting that it's invalid or useless research; what I'm saying is that I find it sad that people don't accept it as given. Either people don't understand that...there are so many Christian lawyers. As you start getting into the profession and start getting to know people and being part of networks, you realise just how many there are! The profession is infested with Christian lawyers!

¹⁶ The participant continued:

[I]n the commercial sort of work that I do, I don't feel that there is a conflict or anything that I would look on as a conflict between the way I think I should do something and the way that it may be done, just because of a) it's a good client, or b) there's a lot of money in it, or; 'I can get referrals off this and I've got to do something this way rather than this way...because if I do it this way, it may be a little bit underhanded, but I'm going to keep a client and get some new referrals'. I don't work in that area where I have to make a decision like that, so no.

¹⁷ Further, 'I don't come across a situation where I have to decide... "do I do what the client wants or do I do what's right?"', because generally...I don't have to make those sorts of decisions'.

did not necessarily result from a view that the ethical worlds of faith and legal practice are appropriately separate, or that faith has nothing to do with legal practice (which might be consistent with a pure separation model).¹⁸ Indeed, whilst they did not identify an overt conflict between faith and the professional role, participants nevertheless identified the need to act consistently with personal values when undertaking their professional role. This was reflected in later comments such as:

- ‘[I]f I did something that was contrary to my faith, it reflects badly on my faith. People could confuse me and my faith. I know I’ll always slip from what I would like to be, but I think I should at least be trying’.
- ‘[Y]ou would have to...I guess weigh up where you stand on that, and if you can stand...clear before God in that situation, as well’.
- ‘[F]or me, my attitude now [in terms of acting in a matter that potentially conflicted with personal values] would be, “Well look, I’m uncomfortable with it, I don’t want to really sit down and torture myself for all the moral reasons why I could do it and all the rest of it; I’m uncomfortable with it, there’s plenty of blokes who’ll do it with comfort...and you don’t have to do everything that comes your way”’.
- ‘[Y]ou’re a Christian first and then your vocation as a lawyer [and later] I think faith in God means that you are held to...a higher level of... “responsibility”, in a way, because (...) you’re answering not just to the law and to the court, but also to God’.

Comments such as these indicate that, whilst these lawyers did not identify a fundamental conflict between their faith and their professional role, they nevertheless recognised a need to act consistently with faith-based values in all areas of life,

¹⁸ One participant, whilst recognising the potential for conflict between faith and professional role, suggested that this would not be any different from the potential for conflict in all areas of life, suggesting that:

I think that there certainly is [a conflict between legal practice and faith or personal values], but there’s a fundamental conflict between my Christian faith and when I walk in the street. There can be billboards, magazines, a whole raft of things bombarding me, and to select the Christian faith out and in a particular context (say law), and say, is there a problem here? ... There’s a problem everywhere. It’s about living our faith in the context of a world that’s not necessarily compatible with it, and you would expect those tensions to arise in some places more pointedly than others, but I don’t think we should be quarantining our jobs out; particularly, and saying ‘here’s a really difficult area of integrating faith and life’. I think just being a Christian in this world is not necessarily an easy thing, and I think that we...would be too quick sometimes to say *this* is the hard place, *this* is the easy, when in fact the whole or our life is called to be obedient, whether I’m watching television (or whether I should be watching television), or whether I’m practising law.

including in their professional role. The reasons why participants identified the ability to act consistently in personal and professional roles included:

1. The identification of consistency between personal values and professional ethical norms;
2. The importance of the lawyer's role, including from a faith-based perspective;
3. The need for Christians to participate in public life, including the legal system; and
4. The ability to bring personal values to bear on the professional role.

4.4.1 Consistency between faith-based and professional ethical values

In reflecting on the nature of the lawyer's role, some participants noted consistency between personal values and professional ethical standards, or reflected that the kinds of conflicts that might arise between their own personal values and the actions they might be asked to undertake in the professional role were already prohibited under professional ethical conduct rules. This perceived consistency between personal values and professional ethical norms was also one of the reasons that participants gave for why they did not experience an overt conflict between their faith and their professional role in the broader sense. Alternatively, it might be suggested that some of the responses equated moral conflicts with professional ethical conflicts, or tended to think of potential conflicts in terms of conflicts with professional rather than necessarily faith-based ethical norms.

Examples of participants identifying similarities between faith-based and professional ethical norms included:

In lots of ways I think that the rules of your professional engagement are very clear; they draw on, I think... biblical philosophies, and you can see great parallels and lines in our values as I mentioned to you, in the way that you operate, not judging etc. And...being truthful...the biblical commandments, and so on and so on.

It's not as if there's a tension there; it's always...it's very simple, and a lot of ethics (and I hate to say this to you as someone who's doing their PhD in ethics), but Scriptures, ethics, boils down nine times out of ten to really thinking through what it means to serve and what it means to act in the other person's best interests, and what it means to treat others the way you would want to be treated in that context. And that

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resolves a huge number of issues. And sure, we've got phenomenally complex rules on top of that, but most of them still distil to the golden rule.

[V]alues such as honesty and accountability and trying to act with integrity; I don't know to what degree they are solely Christian values, but the law also, I think, at least at an articulated level, says that they're important for all lawyers, no matter what your background is. And so clearly as a profession, the law articulates the importance of acting with honesty and integrity, and all of those incredibly important values, so there's probably...synthesis between what the law as a profession expresses that it demands of its practitioners, and what Christian faith...requires of its adherents too.¹⁹

[P]art of it is that we're fortunate that our laws are fairly based from Christianity in the beginning, so it's kind of been set up to a certain extent where it matches what you would expect, and...given the just nature of Christianity, and correspondingly most of our laws...at least the intention behind it is a just intention and things like the good neighbour principle and all that sort of stuff is very closely aligned to Christianity anyway.²⁰

The identification by participants of similarities between professional and faith-based character qualities such as honesty and integrity, as well as recognition of the influence of Christian values on the development of the Australian legal system is consistent with both the Servant Lawyer model (which identifies a religious justification for adopting professional ethical norms including because of similarities between faith-based values and the values reflected in western democratic legal systems)²¹ and the Lawyer of Character model (which identifies consistency between faith-based and

¹⁹ Another participant said that there should not be any difference in the lawyer's role for someone who is both a Christian and a lawyer,

because part of the role of being a lawyer is based on ethics and integrity, and that I guess fits the Christian lawyer, so perhaps it would be easier for someone that's got a faith and has that Christian walk and that foundation to do it I guess, maybe more naturally, than someone who doesn't, but otherwise there shouldn't be any distinction.

²⁰ The influence of Christian values on the development of legal principles was also acknowledged by another participant, who said:

We've become more detached from it in the last century, but a lot of it, as well all know, a lot of the old English decisions were very...they just took it [Christian values] for granted. And you've got those wonderful *Donohue v Stevenson*, 'who is my neighbour?'; you can't get much better than that, really, Christian or non-Christian, it's still a good question (...) And it's broader than just my family, or just the people that I like (...) it sort of goes into a place which is about respect and responsibility for people we don't necessarily like or have that much to do with, but who we really still owe a duty to.

²¹ Including perceptions about the influence of Christian and Jewish values on values reflected in Western democratic legal systems. See, eg, Monroe H Freedman, 'Legal Ethics from a Jewish Perspective' (1996) 27 *Texas Tech Law Review* 1131; James Haire, 'Is Professional Life Totally Incompatible with a Life of Faith?' (1995) 10 (August) *Murmurings* 7, 8.

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professional values or virtues, and places moral value on the lawyer's ability to develop and enhance her good character through both personal and professional roles).

Some practitioners, in reflecting on whether they identified any ethical conflicts between faith and legal practice, also thought that the kinds of actions that they would likely feel personally uncomfortable engaging in during the course of their legal practice, were already prohibited under relevant professional conduct rules in any event. For example:

I can't conceive of...the classic people put to you, 'well what if your client tells you to do something and it's wrong or you know from'...you just can't. The classic in a civil litigation context is discovered documents. I mean, you tell your client that they must discover all documents, and if they told you that they destroyed documents or had them and wouldn't hand them over, you'd cease acting. Now that hasn't changed, I'd do that when I was not a Christian, and every lawyer in this firm would be expected to do the same thing, so it's not a...those sort of black and white issues are quite clear. Our obligation's to the Court, and firms, whether they're Christian or secular, are going to uphold those ethical obligations.

I guess I'm thinking now about...a client wants you to make submissions to a Judge which put a particular slant on things which reflect the client's story but which are effectively untrue. So the client wants you to lie...Now...you don't do that, simple as that. There's no temptation to. And so you say 'no', and then if the client...insists that that's what they're looking for, you say, 'well sorry, thanks very much, I'm not doing work for you and off you go' [and later] There's obviously a clear if not a perfect alignment between...your personal values informed as they are by your faith background and the professional rules.

Whilst these responses suggest that Christian lawyers identify consistencies between their personal values and their professional role, they may also indicate the influence of professional ethical training on how lawyers conceptualise or think about conflicts – that is, focusing on conflicts in terms of conflicts with professional ethical norms²² rather than identifying actions which, whilst professionally permissible, might nevertheless compete with faith-based ethical values.²³ More nuanced tensions,

²² Including as reflected in professional conduct rules such as the Australian Solicitors Conduct Rules, which require solicitors to 'be honest and courteous in all dealings in the course of legal practice' (Rule 4.1.2) and include a specific prohibition against misleading the court (Rule 19.1).

²³ Each of these examples represents a conflict with the lawyer's professional obligations.

including how personal values influence the lawyer-client relationship and decisions about the resolution of a legal dispute, will be explored further in Chapters Five and Six.

4.4.2 The importance of the lawyer's professional role

In addition to recognising consistencies between personal values and professional ethical norms, participants also recognised the importance of the lawyer's professional role within society and the legal system as providing another justification for Christians and others to engage in legal practice. Participants identified, for example:

- The need for members of the public to be able to have trust and confidence in their lawyer.²⁴
- The ability to contribute to the system of justice and to assist clients to navigate that system.²⁵
- The ability to provide balance and to assist the Court to make a just decision in an adversarial legal system. As one participant noted, 'I see a real purity in what I do...Everything I do is about what the Court's doing...My job is about, "the Court's got to deal with this situation, how's it going to do that?"; "Well, we need someone on each side". So I don't know, maybe that's artificial, but that's how I feel about it'.
- The ability to give effect to social justice goals through the lawyer's professional role.²⁶

²⁴ 'I think law is often seen as having a poor professional image. There's a lot of jokes about lawyers. But I think people find it important to be able to have confidence in their lawyer and trust their lawyer. So I think it's important for people to have that opportunity, and so I think that's part of your responsibility as a lawyer... while you hopefully you can generate confidence, you also warrant the trustworthiness and the trust that people place in you'.

²⁵ '[A] lawyer is one of the many parts of a system of justice, where the rule of law is involved. That is; a society governed by a set of knowable rules which are applied consistently, rather than made by whoever's in charge as they see fit and can change from time to time. Where people can have a reasonable degree of certainty about what will happen to them if they do particular things, and the lawyer's role within that system... is to... help the system run well by helping people who aren't lawyers to understand and navigate a system that can often be very difficult, confusing... and emotionally challenging...'

²⁶ '[I]n terms of the role of the advocate (that is, the person that represents clients), then what... initially attracted me about the law was the opportunity to do that in a way which made society better. So... social justice was really important to me. When I was young, and still is. But it really was the thing that made me want to do law. And so therefore, acting for people in a way which... can make their lives better, and... acting for people in a way which may make the system better, the justice system and the legal system better... they were really important things for me'. Another participant reflected:

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- The ability to contribute to the Rule of Law and to facilitate a means of resolving disputes. One participant, reflecting on her practice as a litigator, suggested that:

I worked for clients who were really quite angry with the other side (...) for them to be able to take out their frustrations in a civilised manner, was to me very obvious that if we didn't have this sort of system, they'd be engaging hit men, and really dreadful things. And it made me proud to be part of something which let...was a way for society to deal with its anger, frustrations and its disputes.

Clearly, one of the reasons why participants felt that they were morally justified in engaging in legal practice was because of the lawyer's unique role in an adversarial legal system. This may also have influenced participants' views about whether they experienced any tensions or conflict in accepting instructions to act for particular clients, and was reflected in comments such as:

I don't experience it as a conflict between belief systems...because the law very neatly permits lawyers to represent anyone...on the basis that everybody ought to have their say before the courts. And so...you are serving the justice system first (...) And so when you come to representing people, and you appreciate your first duty is to the Court and therefore to the system of justice...I think it allows you to...suspend any discomfort you may have, in acting for a client who...may be pursuing nefarious goals. So...so I don't experience it as a conflict between systems...between belief systems.

I think it's [the adversarial system] a good system, but even if you disagree it's a good system, it's the system that's in place at this point in time, and it doesn't work if we have the power of the State on one side against this entirely unassisted individual on the other. That wouldn't result in justice. Justice is best achieved when both sides have strong representation so that the Court can then decide how to deal with the particular issue that's arisen.

The view that the lawyer's role is morally justified because of the part played by the lawyer in an adversarial system and in the legal system as a whole is reflected in both

[I]t was never a question to me of, 'can a Christian be a lawyer?'. I always knew the question was yes, the answer was yes. Because – I'd met so many other people doing all kinds of jobs...who also happened to be Christians. And to me, I've – my parents have always strongly believed in social justice and raised us with an eye for that sort of thing, so...the idea that...here was a...at least ostensibly, justice-oriented profession, and the idea that that would be somehow incompatible with being a Christian was ludicrous to me.

the faith-based and secular normative literature. Freedman, for example, also argues that his secular liberal view of the lawyer's amoral role (justified by the need, within an adversarial system, for each party to be represented by a morally neutral lawyer) can be justified from a faith-based perspective, because of the Christian emphasis on autonomy as a human dignity, and because of the Jewish and Christian principles reflected in the Western legal tradition.²⁷ Conversely, Shaffer argues that a Christian lawyer cannot rely on role or system-type justifications when engaged in the professional role, but must consider all of her actions in the light of faith-based ethical norms.²⁸

4.4.3 The need for Christians to be in and of the world

In addition to recognising the importance of the lawyer's professional role, a number of participants rejected the view that the ethical worlds of faith and legal practice ought to be regarded as appropriately separate. That is, they rejected the view that Christians either ought not to engage in legal practice because of a potential conflict between faith and secular legal institutions, or that faith should have nothing to do with legal practice. Instead, they recognised the need for Christians to be engaged in many different areas of society, arguing against Christians 'living a monastic or reclusive existence', and instead recognising that 'as Christians we live in society, and there's lots of non-Christian aspects to society. And to some degree what we should be doing is behaving in a way that reflects our Christian faith, not slipping into behaviour that doesn't reflect it. So I figure we move in society'. This view was echoed in comments such as '[t]he world is *full* of business, and business is a good thing. And Christians need to be in that; doing it, and influencing it, and being there. And not avoiding it, and not leaving it alone, because man, if we do that, it could potentially go very wrong. We need to be the salt in that place'.

Law was also regarded as playing 'an essential part of human interaction', meaning that rather than stepping back from engaging in legal practice, Christian lawyers were

²⁷ Freedman argues that Jewish tradition values compassion for one's fellow man, individual autonomy, and equal protection under law, whilst the (Catholic) emphasis on human dignity may be synonymous with autonomy. See Freedman, 'Legal Ethics from a Jewish Perspective', above n 21, 1133-1134 and Monroe H Freedman, 'Personal Responsibility in a Professional System' (1977-1978) 27 *Catholic University Law Review* 191, 204.

²⁸ See, eg, Thomas L Shaffer, 'The Practice of Law as Moral Discourse' (1979-1980) 55 *Notre Dame Law Review* 231, 238-239 and see also Thomas L Shaffer and Mary M Shaffer, *American Lawyers and Their Communities* (University of Notre Dame Press) 206.

recognised as being able to have a positive influence on society in the way that they undertook their professional role. As one participant said, 'I think it's unfortunate if Christians think that they should cut themselves off from a particular occupation like that, when actually how do you...how do you influence behaviour if you're not actually in the sphere to influence behaviour?'

Again, this is reflective of a rejection of the strict separation of personal and professional roles and also suggests that Christian lawyers may seek to bring a faith-based perspective to the public sphere of legal practice.

4.4.4 The ability to bring faith-based values to bear on legal practice

In addition to participants who recognised the importance of Christian lawyers bringing a faith-based perspective to the public sphere of legal practice, for some lawyers, faith was also recognised as providing an overarching moral framework which necessarily influenced them in all aspects of their lives.²⁹ Participants described faith as 'a colouring'³⁰ and noted that faith 'should permeate everything we do' and would 'certainly have an impact on the way that we interact with people in the office, and the partners and the clients'.³¹ Others suggested that 'I would take my Christianity into all parts of my life';³² that 'in the end...it's very hard to divorce...the Christian

²⁹ 'It's important I think to just be mindful of how we can...lift this sort of...bring our values into the working place, and I don't say that lightly, because I think that in a lot of working places or cultures it's very hard to do that'.

³⁰ 'I don't really approach each day thinking, "I'm a Christian, therefore I've got to approach the law this way". It's just...I suppose it's a colouring, that I've got. I work to a certain set of ethics, outside of being a solicitor. I work to a...a moral code, which is outside of the law and therefore the way I treat my clients and the way I treat other people fit within those and what I believe as a Christian...I just don't...doesn't make it easier and doesn't make it harder. It's just the way...it's the flavouring I suppose, in the way that I deal with things'.

³¹ Another participant identified the importance of consistency in personal and professional roles, and that faith-based ethical values ought to influence all areas of life, including the professional role. Yet another, that 'no matter what area you work in, you should work at being informed by your sense of Christian ethics, and you should be looking to...within that workplace to change any practices that aren't the way that Jesus would operate in that area'.

³² 'I would take my Christianity into all part of my life, and that would certainly include [inaudible] and working as a lawyer. My being a Christian lawyer meant that any of my relationships (and that would include relationships with the people that I worked with, and the people that I worked for), would be about...expressing my worldview through those relationships in the way that one's worldview and one's likes and dislikes comes through in any relationship - in conversations, in...the way that you understand the world'.

aspect of you from the lawyer aspect'; and that faith and legal practice are not 'something that has to be put together; it's something that arises out of who we are'.³³

These participants recognised their faith as, in essence, an integral part of who they are and therefore unable to be separated from their identity as lawyers. Moreover, participants said that they were able to use their personal values to bring a broader perspective to their legal practice, without necessarily changing the fundamental nature of the lawyer's role.³⁴ One participant, using the analogy of a Christian motorist, argued that, whilst outsiders looking in might not notice any difference in the nature of the role:

[I]f you were a Christian, then you would still do your job as a driver in exactly the same way, but it's just that you would bring your values to the task as well, which means, for example, if you're a good driver well then you would drive within the road rules and within the general societal expectations of what they would expect a good driver to do, but if you're a Christian, perhaps you might have an extra degree of courtesy or understanding of those people upon the road.... You probably might be a bit more cognisant of some of the advisory road signs... you might travel at different times so as to minimise the inconvenience of others... There might be a whole bunch of other factors that you would take into account because of your beliefs. And... that doesn't mean that you... those people outside looking at the way the person's driving would not necessarily notice any particular difference between that driver and another, perhaps. Perhaps they might notice that they would be a bit more courteous in the way that they drive, but it might not look much different.

Others identified the ability to 'lend a bigger view of the situation rather than the day to day dotting of the 'i's and crossing of the 't's and the mundane processes that... perhaps can follow in the role' and to 'bring a new depth and ability to (...) appreciate humanity' and to acknowledge 'the dignity of every person that comes through the

³³ 'I think that [a suggestion of combining faith and legal practice] suggests there's two fundamentally different things that have to be put together, whereas I think that we are called of God to express our faith from when we rise up to when we go to bed, and through our sleep as well. And I think that if we are expressing our faith in the context of brushing our teeth and going to Church on Sundays we also express our faith in the conduct of legal practice. So it's not as if it's something that has to be put together; it's something that arises out of who we are'.

³⁴ For example, 'I think that no matter what area you work in, you should work at being informed by your sense of Christian ethics' and, 'So your question was, is there a distinctly Christian way of being a lawyer? (...) [Y]es, I think there is: certainly in the way we live, but not always in the substance of our work'.

door'.³⁵ Another identified the opportunity to practise law 'in a way which made society better', including by 'acting for people in a way which...can make their lives better, and...acting for people in a way which may make the system better, the justice system and the legal system better'.³⁶ By recognising the ability to bring values such as courtesy, dignity and a desire for justice to their professional role, participants recognised the ability to practise in a way that is consistent with their own values,³⁷ but without necessarily changing the fundamental nature of the lawyer's role. The extent to which participants saw these values as influencing their relationship with clients and engagement with others affected by a legal dispute will be explored further in Chapters Five and Six.

The capacity to bring character qualities such as courtesy and respect to the professional role is one of the justifications for faith-based legal practice recognised by the Lawyer of Character model, in which the Lawyer of Character is able to identify consistency between faith-based and professional ethical values such as honesty and integrity, and to develop and bring those character qualities (or virtues) to bear on both personal and professional roles. Further, the ability to exercise care beyond the scope of the client agreement (for both client and potentially others who may be affected by a legal matter) by taking a broader view of the lawyer's role and the client's legal matter is also advocated by the Lawyer of Integrity and by the Prophetic Lawyer, who seeks to pursue positive systemic reform through her legal practice. Comments such as these also suggest that, whilst Christian lawyers may not initially think about faith and legal practice in terms of competing obligations between the two or a distinctly different role for someone who is both a Christian and a lawyer, they nevertheless may

³⁵ 'I think a lot of lawyers can be very transactional about their engagement with people, and very cynical and very money focused. I think being a Christian changes that; it brings a new depth and ability to...the key thing with being a lawyer of course is objectivity. So you can't embroil yourself in your client's situation or concerns to the level that you lose your objectivity, but you can...you bring a new ability to appreciate humanity and the beauty of humanity, and the weaknesses of humanity in a sense (...)...So a lawyer does that with dignity, I think (...). I think that a Christian lawyer has a resource they can draw upon, which gives...it acknowledges the dignity of every person that comes through the door'.

³⁶ Another participant identified that it 'might sound a bit of a cliché, but I like to think that I can make a bit of a difference to people, just being able to help them through a sticky area, a tough area...tough time of their life'.

³⁷ 'I think that the Bible certainly gives principles for the way that we should live our lives, so we are to be transformed by the renewing of our minds to do all things to the glory of God, and that should permeate everything we do. There is also more specific teaching like being honest and being truthful and ethical, and acting with integrity, and being consistent and that would certainly have an impact on the way that we interact with people in the office, and the partners and the clients. Importantly, these are primarily moral or ethical principles about the way we conduct ourselves'.

see faith as inspiring their legal practice, and identify the ability to act consistently in personal and professional roles by bringing their faith-inspired virtues to bear on the professional role, including in the way that they relate to their clients.

It is also interesting that, whilst participants identified the ability to bring their own values to bear on their professional role, this tended to be in the sense of seeking to make a positive impact, rather than in the sense of identifying competing obligations or seeking to impose their own values on others. Whilst recognising the capacity to bring their personal values to bear on legal practice, participants acknowledged that there was a limit to how they could do this, and that they still needed to work within the boundaries of the law, suggesting, for example, that 'inevitably there are things you would like to say...but you rule a line in front of them, that you don't...because you don't feel that you...you have a right as a lawyer to cross into a personal dimension', and 'you certainly have to make sure that you aren't being judgmental or imposing your personal views...My job is to apply the law, and the law says that this is what people are entitled to, then that's what I have to work with'. Another participant suggested that Christian lawyers are able to bring a positive influence through the way in which they interact with people, but without necessarily being 'overt'. The dichotomy between being able to bring personal values to bear on legal practice and avoiding overtly imposing these on clients, including whether and how Christian lawyers discuss their own values with their clients, will be explored further in Chapter Five. However, participants' responses seem to indicate that one of the reasons why Christian lawyers do not identify overt tensions between their faith and their legal practice may be because, at some level, they identify the capacity to be more than 'a mere mouthpiece' for the client, but rather to bring a broader range of skills and values to their professional role.

4.4.5 Tensions between professional role and personal identity

One of the unexpected findings in the study was that, in reflecting on how their personal values influenced their view of their professional role, some participants focused not necessarily on how their faith might affect their work, but rather raised concerns that their professional role had the potential to negatively impact on their identity as a Christian outside of their professional role. Indeed, rather than identifying inherent 'moral' tensions for a Christian lawyer engaging in legal practice, some

participants indicated that they saw work-life balance and the inherent demands of legal practice as potentially more significant issues – in effect, the risk of their identity as a lawyer ‘taking over’ their identity as a Christian, rather than vice versa. This is an area that is largely uncanvassed in the normative literature,³⁸ which tends to focus on the potential for a Christian lawyer’s faith to impact how she might undertake her professional role, rather than the impact that her professional role might have on her faith.

Participants identified, for example, that tensions might arise because of ‘supervisors expecting you to work hours which would make you forget your responsibilities to your family or friends or...just general work life balance’ or ‘a conflict in terms of what you see as most important...and what your actual identity is’. This reflected a perception of the time-consuming demands of legal practice, as well as the idea that the ‘traditional rewards’ of a career in law – money, prestige or status, might have the potential to detract from a participant’s identity as a Christian.³⁹ One participant described having been headhunted by a major firm, and, whilst she identified that the role was alluring in terms of ‘they were offering a lot of money, what was a very...prestigious to do that, and very flattering to be asked’, but that, ‘whilst it would be have been easy to rationalise it in terms of, “this is very good for my career”, and “I’m learning all of this stuff”’, the requirement of long hours would have conflicted with the relationships that were important to her outside of work. In the end those relationships were more important than the extrinsic motivators of legal practice.⁴⁰

³⁸ Except to the extent that the literature reflects on the charging of professional fees, which is discussed further in Chapter Six.

³⁹ One participant said, ‘I think my faith would be more about...not being attached to a lot of the crap that the world wants us to listen to. (...) [T]his is what success looks like, if you’re a lawyer. This is what you must aim for. If you don’t have this; if you haven’t made partner; if you don’t earn this much money; if you don’t have this many gold stars after your name, then you’re rubbish. Well that’s nonsense. And being aware of the nonsense stuff (...) [T]hat’s where I found my faith to be such a rock of real...what’s real in this world, what’s true in this world, and what’s rubbish’. Another participant said:

[I]t’s an easy thing to say, ‘yes, someone who’s a Christian or who has adopted Christian values...thinks that they’re more *selfless* than *selfish*, and that...’, but who’s really to know; that’s such a hard judgment to make (...) the law rewards people who are selfish and self-interested, and so I think the law no doubt is attractive to...those of us who...for whom the pursuit of wealth and luxury, and these things are important. So the law offers that, but I think it also offers opportunities for those of us who...are interested in making the world socially a better place too, and more explicitly perhaps.

⁴⁰ Other participants also acknowledged the importance of work-life balance, including one who said: I think a Christian lawyer...doesn’t have to be married, but if they are,...their family’s important...And that means that they have a healthier work-life balance relationship than other people....A Christian lawyer’s work should not be the reason why they get divorced...I don’t think I would find that consistent with Christian values...And it is possible to live that way.

Another participant, reflecting on practice in a large law-firm, said:

Others also identified what they saw as the traditional motivators of legal practice (money, status and value/identity as a result of being a 'lawyer') as potentially competing with personal values such as an internal, faith-based sense of worth and identity, the importance of serving others and maintaining work-life balance including by maintaining relationships.⁴¹ As one participant said, 'It's interesting, I want to separate my life so that my work life doesn't invade my personal life, but I want my personal mores to be part of my professional life. So I want a disassociation in one direction, and I want an association in the other direction'.⁴²

In addition to recognising possible tensions between faith-based and professional identity, and the potentially time-consuming demands of legal practice, some participants recognised faith as an important source of support for dealing with the inherent stressors of legal practice (that is, as a source of internal, personal support).⁴³

Participants suggested that, for example:

In situations like [difficult family law/child protection scenarios] I found my faith was useful because then I'd just...I'd go home and just offer that up to God, and say...'this is far bigger than me'.

[T]hat is where my Christian faith sustains me the most in my practice of the law (...)
At the end of the day, that no matter what happens, God's got it in his control. And (...)
(...) if I've given some dud advice or...forgotten something, then the worst that can

[T]hey were good people that worked there, but it was just the environment...private practice environment is...it made you feel guilty if you were walking out the door at 6 o'clock at night...nothing's ever said; it's just this culture...and big firms in particular, like in that...in that 18 months I was there I had to bill 7 hours a day, and just...just relentless day after day [and later] It sat uncomfortably with my values and what kind of husband and father I wanted to be.

⁴¹ '[I]dentity is shaped so much by our profession and what we do, rather than by who we are. Whereas Christianity tells us that who we are determines what we do. So I'm a Christian, I'm going to give you this solution. Whereas I'm a lawyer, I'm going to sue you'. A further participant also indicated that one of the main areas of conflict experienced in legal practice is maintaining work-life balance, including between the faith-based emphasis on service to clients and maintaining work-life balance. The same participant also suggested that faith reduces the tendency to treat work or money as idols. Another reflected that:

[P]robably the only conflict I've had personally is to do with this question of...is it more consistent with what God wants, and my values, and how I understand his values operate in this particular circumstance – would it be more consistent with those values to keep working, to go home, to keep working, to rest, to do something else. And yeah, I often find that a very difficult decision to make.

⁴² The same participant said:

At previous churches, I was always keen that people didn't know I was a lawyer. When I joined my current church, unluckily I'd already acted for a couple of key people, and the word quickly got around that I was a lawyer. I didn't want people to know. And so I've had to deal with the fact that people at church now realise that I'm a lawyer. But I'm reluctant to act for them. I think your Christian life should pervade your working life, but I don't think your working life has to pervade the other parts of your life.

⁴³ Including by providing motivation to continue in the role and reducing anxiety.

happen is that I lose my career, or lose my job. Well it's ok. I'll be ok. It'll suck, I'll hate it. But that is the sustaining force behind being able to cope with a legal career, in that I know that God's going to take care of...I'm going to be ok, I'm going to be ok.

In this sense participants also recognised that faith can be consistent with legal practice in terms of providing a personal source of support, motivation and guidance, without outwardly changing the way that a lawyer would ordinarily undertake her professional role.

4.5 The influence of personal values on chosen areas of practice

As noted above, some participants identified that one of the reasons that they did not experience any conflict between faith and legal practice was because of their own area(s) of legal practice (that is, that some areas of legal practice were less likely to lead to potential tensions than others). As described in Chapter Two, the faith-based normative literature does not identify that any areas of practice are necessarily out of bounds for a Christian lawyer, but some theorists suggest that a Christian lawyer must also consider whether her actions in legal practice (including her chosen area of law) are morally justified from a faith-based perspective, rather than simply accepting these as part of the lawyer's role.⁴⁴

In this study, participants were asked questions about why they had chosen their current area of practice; whether they experienced any conflicts between their personal values and their own particular area of practice; and whether they perceived any conflict between their personal values and any other areas of practice (apart from their own area of practice).

Participants' initial responses indicated that their personal values had had very little impact on why they had been drawn towards or away from particular areas of legal practice. Indeed, the responses were much more pragmatic, and perhaps reflect the commercial realities of legal practice for those commencing a legal career. In

⁴⁴ See, eg, Thomas L Shaffer, 'The Legal Ethics of the Two Kingdoms', (1983) 17 *Valparaiso University Law Review* 1, 35; Michael P Schutt, *Redeeming Law: Christian Calling and the Legal Profession* (InterVarsity Press, 2007) 226-227; 254; 256 and Allegretti, *The Lawyer's Calling*, above n 6, 10.

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answering questions about why they had chosen particular areas of practice, participants said things like:

- 'That [commercial and property law] was just what was available. Because I started out as a paralegal, and then the position which was open was in property, and so I've just been in this area'.
- 'I guess for me, I kind of fell into it [insolvency and property] because I'd done my traineeship and I had...getting to the end, and it was more according to what the firm needed at that point in time'.
- 'To be honest, not wanting to deal with the GST when it was coming in' (#24).
- '[J]ust the way it evolved over a period of time with...where I worked and the client base and that sort of stuff. It has evolved over time'.
- Employment opportunities.
- 'After I graduated I got two offers for graduate positions, and I accepted one of them, and that was a commercial firm, so that's how my career started'.
- '[I]t was really just the way practice evolved. I started life in a smaller firm, got put into commercial litigation and that was it'.
- 'I kind of fell into criminal law in the sense that I was working in another area for two years, which is fine, but I wasn't getting the advocacy I wanted, because that's what I enjoy the most, and the kind of work I really wanted to do. So I spoke to some people and got some advice, and was told that if I wanted advocacy then criminal law's the best place to do it, and I went for it in that respect. But it wasn't some sort of long plan since I was knee-high; it's what appears to be the role most likely to get me the kind of work that I wanted to do'.
- 'I wouldn't say that I thought very clearly about the areas that I was going to practise in. I didn't know enough about the law, so I looked around...I did articles in a commercial firm, and I found that I liked and was quite good at business stuff'.
- 'I was thrown into it'.

One participant did however, reflect on having intentionally pursued a career in law and sought to work for organisations such as legal aid and community legal centres because of a strong sense of the importance of social justice, recounting that, 'social

justice was really important to me when I was young, and still is'. This had influenced the participant to undertake roles that 'were at the intersection between...how the law affected individuals, and how the system operated more broadly...in a systemic sense'. This latter response is reflective of the Prophetic Lawyer, who seeks to actively pursue faith-based values (such as justice for the poor and disadvantaged) through her professional role.

Whilst not necessarily identifying that their personal values had consciously influenced their decision to practise or not to practise in particular areas of law, participants' responses did reveal that they placed importance on being able to practise with integrity in their chosen area of practice, and that their chosen area of practice also had some impact on whether they experienced any tensions between their personal values and their professional role (as described above).

4.5.1 The importance of integrity in choice of area of practice

Although participants' responses differed as to whether particular areas of law were or were not consistent with personal values (and some practitioners identified discomfort with particular areas due to personality traits rather than faith-based personal values), generally participants did seek to practise in an area of law that they identified as being consistent with their own values. As one participant said, 'the type of law I'm doing isn't a correlation of my Christian faith, but it sits comfortably with my Christian faith'.⁴⁵ Another practitioner, whilst identifying that, 'most of the time my reasons for not practising in a particular area would be either, I really didn't have interest, or I didn't have ability' and that there isn't 'any area in which a Christian lawyer wouldn't be able to practise' or 'any particular area of law which is anti-Christian', nevertheless rejected a strict separation of faith and professional role by recognising the importance of consistency, suggesting that 'some areas would obviously be more difficult to walk the line and that would be up to each individual to decide whether they could do it or not'. The specific areas that participants reflected on (in terms of whether these areas were consistent with faith-based values) included family law, criminal law, litigation and commercial law.

⁴⁵ Another participant said, 'the trajectory, the work that I've done in the law, has, that has been, that's sat more comfortably with me, to be able to be in that position'.

Interestingly, 'role' or 'system'-type justifications came through more strongly when participants reflected on criminal law practice, and there was also a view amongst some participants that Christian lawyers might be more likely to experience a conflict of values when practising in family law, because of a perception that lawyers would be more likely to be asked to pursue unreasonable or unjust claims in that area. In contrast, areas such as commercial law and litigation were viewed as being more 'balanced' or 'business-like', and less likely to lead to a potential moral tensions for a Christian lawyer.

4.5.2 Family Law

The views of this group of Christian lawyers about family law as an area of practice differed. A number of participants identified that they would feel uncomfortable practising in family law because of a view that it might require them to engage in actions that would be inconsistent with their own values, or because of a sense that it would be inconsistent for them to uphold the institution of marriage in their own personal life, and yet engage in family law practice in their professional role (again reflecting the importance of integrity in personal and professional roles).⁴⁶ As one practitioner identified:

You might have a different view, but that [family law] would be a difficult area for me to practise in as a Christian. I would not say it's wrong to practise in that area, but I'd need to think it through very carefully. I can't think of any other areas that are problematic in and of themselves, but there might be obviously good and bad ways of going about different areas of the law, depending on the attitude and motivation of the client.⁴⁷

Other practitioners said that they would feel uncomfortable practising in family law because of concerns about the gravity of the possible outcomes for clients and others⁴⁸

⁴⁶ One participant said, for example, 'Family law is...it's a very difficult one. I think I uphold this institution of marriage, for me personally, the institution of marriage is very precious, so I find it very difficult to deal with it'. Another, that:

One of the issues that I'm sure some lawyers do suffer from is if they do believe that you make a commitment that's spiritually binding, whatever the law may view, then for some it probably is hard to facilitate divorces, in other words, so surely you'll find some people who feel...

⁴⁷ This view was shared by a second participant, who also identified a conflict between faith and family law practice.

⁴⁸ For example:

[W]ith commercial law practice, yeah you can do a contract or a lease and it will affect your client in a way, but with family I just feel like the implications are much more - you could be taking children

or because of a personal discomfort with the area (without necessarily recognising a religious objection).⁴⁹

In some instances, the reasons why participants felt that family law might require them to engage in actions with which they felt morally uncomfortable, were due to the perception amongst some participants that family law practice might require them to carry out 'unjust' actions, such as representing a more powerful party against a weaker one, or pursuing an entrenched or unreasonable position in order to hurt or 'get back at' the other party, rather than to assist the client to achieve more objective legal rights or entitlements.⁵⁰ As one participant said, 'there's some fights that shouldn't be taken up as a Christian'. The sense of being required to pursue unjust entitlements or to act in an unreasonable manner is also reflected in comments such as:

- '[F]amily law might be an issue, I could see. I think just because you've got clients who would have... the example I used of a person who might take a case where you wouldn't... emotions get involved and they might take a bloody minded position... If you're acting for, for example a wife, and the husband's squirrelling away assets, then you're justified in... trying to get a just outcome for them. But if you're acting for a husband who's doing the squirreling and taking advantage of tax positions then that sort of thing might be hard... [and later] I could foresee that being a moral issue, but not a breach of any ethics, but a moral issue in terms of, "do I really want to work for... a

away from their parents, you could be doing that sort of stuff and I probably couldn't just deal with that emotionally, I guess.

⁴⁹ For example:

I don't feel that [a religious objection to family law practice]... maybe I should, but I don't. I'm happy to say, 'look, I'm the lawyer, I'm here to accept instructions from clients, and I'll do... what you want me to do'. But then I've made a decision I never wanted to do family law, so that might have... I think it was a subtle... selection away from any feeling of being involved... But not really; I think that's just not where I wanted to practise my skills.

Another participant said of the decision to no longer take on family law files that:

It was just all the hurt and all the rest of it. I mean there's never any winners and it's just... all sad. I think most of the time even the amicable ones... so that's the reason that... But the old guys [the participant's former partners] had a bit of a religious thing about it, but I never did.

Another suggested that 'family law could get quite emotional and quite draining, and I've seen and heard stories of the things that family lawyers go through'. Another indicated:

I don't know if it's my personality, but I found I got too... I couldn't isolate myself from the client, and I found that I would get too closely aligned to the client I was dealing with, and I remember the last one I did I was working with a friend; I ended up saying to him, 'I'm too close to this, you need to get someone who's more objective', and I haven't done family since.

⁵⁰ One practitioner said, for example, that there would be more likely to be a conflict between 'what I think I should do with what the client wants me to do' in the area of family law, and that '[f]rom the cases I've run in family law, some of them are a bit sticky, and I'm personally glad I don't face those dilemmas'.

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powerful person who seems to be trying to take advantage of a less powerful person”’.

- ‘[I]t’s extremely hard to get justice either for the children or for the parents in the family law jurisdiction. I don’t believe the Family Law Act is based on Christian principle; I believe it’s based on what society’s able to handle...so it’s reflective much more of society than of Christian principle [and later] [S]ome parents litigate about matters they shouldn’t be litigating about, so the legislation provides a venue for people that just shouldn’t be there. So not only is it hard to get justice; you get people beating each other over the head for the wrong reason [such as where one parent is late to spend time with the children]’.

Other participants saw no issue for a Christian lawyer practising in family law. These responses ranged from the view that the Church’s teachings on divorce do not extend to precluding a Christian lawyer from facilitating a divorce; to the argument that Christian lawyers have a real opportunity to support their clients and the broader society in this area, including by focusing on people and relationships in the way that they go about undertaking their professional role. These views are reflected in comments such as:

- ‘[I]deally couples would stay together and they wouldn’t need a divorce lawyer, but if they need a divorce lawyer then they may as well come to a Christian one who’s a good divorce lawyer, and I may as well get a monetary gain from what I do’.
- ‘[A] lot of Christians feel that...a Christian can’t be a family lawyer because it involves helping people with divorce. I feel exactly the opposite, there should be as many Christian divorce lawyers as possible, because it’s going to happen and it’s a horrible process, and you need someone who’s compassionate, helpful and on the side of the angels to help you through it’.
- ‘When you come to the actual divorce in the court, all the law is doing is recognising what has happened in reality. And we need a more biblical understanding; when God says “I hate divorce”, he hates the breaking apart, the tearing apart of people. He doesn’t hate the walk to the court when it’s all

over'.⁵¹ This participant also identified the opportunities for Christian lawyers to 'try and support people into fixing relational problems rather than...just focusing on the family law matter per se'.

- '[A]s a Catholic the Church says that something like a divorce should be upsetting to me, but it's not. My religion doesn't come into play on that, and I think that's because...I just don't think people should be together because an institution tells them to if they're unhappy and their children are unhappy'.
- 'Criminal stuff, family stuff, I applaud lawyers that go into those places. If people don't go there, good people don't go there; I actually think Christians should absolutely go into those areas and I love it when they do, many of them are drawn to it'.

The ability to care for clients and to bring a broader perspective to a difficult area of legal practice were reasons echoed by participants in both their views about the moral justifications for the lawyer's role, and in their reasons for why Christian lawyers were justified in engaging in particular areas of legal practice. Again, this tended to be a broader perspective in terms of caring for clients and relationships, and seeking to act in a fair and just way, rather than seeking to exercise moral judgment with respect to divorce itself. That is, a number of the Christian lawyers interviewed in this study identified the ability to act consistently with their own values in how they related to their clients and in their approach to legal practice, rather than (in this example), bringing a critical moral perspective to the state of the law or to the client's actions in seeking a divorce.

4.5.3 The importance of relationships, service and care

The capacity to help people and to exercise values such as service, care and relationship through the lawyer's professional role was the reason that many participants gave for why they were drawn to particular areas of practice, including but not limited to family law. In reflecting on different areas of practice, participants said things like:

⁵¹ Another participant said:

[G]etting a divorce is really two people separating, sorting out their property, emotional conflicts...in a set way. And it doesn't mean that because they're getting a divorce and you're participating in that, that doesn't mean you're saying, 'well go and get remarried', which is sort of the...well from a Catholic point of view is always the problem.

- 'I just feel that [if I were to practise in immigration law] I'm helping people more directly than being a commercial lawyer'.
- 'I still enjoy working with people (...) I didn't really want to venture into family law, but I thought that employment law would still keep you in touch with people and...still be...making a difference for the clients'.
- '[A]t the end of the day I am very much a people person, so numbers and figures don't really impress me, whereas people and relationships do'.
- The importance of having contact with ordinary people.
- '[I]t's [succession law] a chance to work with people, and I don't spend most of the time thinking about people dying or anything like that, but I do spend a lot of time with people who are trying to make important decisions. Most of my clients are healthy, but they're trying to make important decisions for the future, and I like the problem-solving part of it, and the sense that you're helping people'.
- '[Y]ou can assist people in avoiding unintended consequences of things that are coming at them'.
- 'I'm fairly gregarious, I guess. I do enjoy relationships, I do enjoying building relationships with people...and long-term relationships as well; I enjoy that aspect'.
- 'I think I am more attracted to the areas of law that have a human element to it'.
- '[Y]ou could feel you were making a bit of a difference'.

The capacity to serve and care for clients is recognised by each of the faith-based models identified in Chapter Two. Where some of the models differ is in terms of how this plays out in day-to-day practice, including whether and to what extent the lawyer's advice should include relevant non-legal considerations (including the potential impact on third parties who may be affected by a legal matter), and what happens when there is a conflict between the client's instructions and the lawyer's own personal values. These issues will be explored further in Chapters Five and Six.

4.5.4 Criminal Law

In contrast to family law practice, the justification for engaging in legal practice with reference to the lawyer's professional role, or to the nature of the adversarial system

came through more strongly when practitioners reflected on whether they would feel comfortable practising in criminal law. Whilst there was a perception amongst some participants that family law might involve an imbalance of resources or pursuing unjust claims, many participants identified the importance of the lawyer's role in an adversarial system in responding to why they felt that defending someone accused of a crime would not conflict with their own personal values or Christian ethics more broadly. Participants said, for example, that:

- 'I have no problem about...in the criminal area of acting for anyone, because I think they're entitled to their day, even if they've admitted it and plead guilty, to put why they should not be well and truly incarcerated and the key thrown away or whatever, to explain what got them where they are or whatever. Everyone's entitled to have that, and that's part of the lawyer's role'.
- 'I do believe in the adversarial system, that it's designed to bring out the truth, and both sides can, potentially, act with integrity and truthfulness (...) Clearly, if you're asked to do something that's wrong such as a lie, that would be contrary. Can you represent a guilty person? I think you can, on a guilty plea, if you know that the client is guilty'.⁵²
- 'You're going to have suspicions, but I mean, beyond...our legal system's important, beyond reasonable doubt is important, and that's going to be very hard if you've got victims of physical violence, for example, and you've got strong suspicions, but at the end of the day the system has to work, and we have to...be active participants in the system. [and later] At the end of the day the system's got to have those hurdles, and people are still entitled to be acquitted if the prosecution doesn't get there, as hard as that might be'.⁵³
- 'I see [the role of a criminal defence lawyer] as helping the Court to deal with the situation, and I see that as being a very productive role in that sense, and a role that, despite what some people might say, it really does help the community to sort out, "well we need to punish people, and we need to deal with all these different things, how do we do that?". So maybe that's an

⁵² Whilst acknowledging the difficulty of: 'if someone has committed a crime, and you had to divorce your own personal judgment about the person, it would certainly be difficult to represent that person in a criminal trial'.

⁵³ The same participant said that 'I think the public perception is that clients can walk in and say, "I did it", but you'll go to Court and say "I didn't", which of course doesn't happen and hopefully every non-Christian lawyer would say "no" to that as well as every Christian lawyer'.

artificial thing to help me sleep at night, but I see a real purity in what I do in that respect. Because it's all about the Court (...) My job is about "the Court's got to deal with this situation, how's it going to do that? Well, we need someone on each side"⁵⁴.

- '[A]cting for known criminals...the law I think has thought about this a lot. These are people who, they do...standard stuff really. I haven't been involved enough to say anything other than the standard stuff, which is that... "everybody needs a mouthpiece"... "lawyers are obliged to say nothing which is untrue, that they know to be untrue, not to lie to the court, but to...to say what's reasonable on behalf of their clients", most of whom...My run-ins with criminals have been due to prison visits, mostly; people who've been convicted, and my experience of those people is that they're actually very vulnerable – not well educated, have terrible family backgrounds, and...there but for the grace of God go lots of people, and they've made some poor decisions...these are certainly not people for whom we just throw away hope and recourse to the courts'.

Whilst the faith-based normative literature also suggests that Christian lawyers are morally justified in representing those accused of a criminal offence,⁵⁵ it does this predominantly with reference to biblical principles such as forgiveness and compassion,⁵⁶ rather than with reference to the defence lawyer's role within an adversarial legal system.⁵⁷ Christian theorists such as Shaffer argue that Christian lawyers must not simply accept the morality of the system, but should critically

⁵⁴ That same participant said:

At the end of the day my job is to defend people, or to act for them on sentence. I don't see a conflict there. I don't see that defending someone who's accused of doing something awful, but says they didn't do it; I don't see any conflict there, for sure. In terms of acting for them on sentence, I'm assisting the Court in deciding what sentence they should receive. So I don't see that doing the work I do condones any of those things; I don't see that it's some sort of endorsement of those actions. I do see myself as helping the Court either to decide; are they guilty or not guilty, and then if they are guilty or if they plead guilty, helping the Court decide what penalty they should get. And simply saying, 'well, they've done action X that's really bad, but consider A, B and C', I don't see that that puts me in any sort of ethical conflict...any sort of religious conflict, I should say, that I need to worry about.

⁵⁵ See the discussion in Chapter Two.

⁵⁶ See, eg, Allegretti, *The Lawyer's Calling*, above n 6, 77; Shaffer, 'Serving the Guilty', above n 6, 83-84 and Shaffer, *Should a Christian Lawyer Serve the Guilty?*, above n 6, 1025.

⁵⁷ Although Allegretti argues that:

[t]he defense lawyer can speak for the defendant – not necessarily in the courtroom, not even most importantly there – but within the bureaucratic morass of the legal system, where no one else has the defendant's interests truly at heart. The defense lawyer's job is to force the system to acknowledge that the defendant is not just a social misfit, or a statistic, or a criminal, but a human being with hopes and dreams and fears. A human being who, like any of us, stands in need of repentance and redemption.

See Allegretti, *The Lawyer's Calling*, above n 6, 77.

examine the system in light of faith-based ethical norms. To the extent that participants referred to role or system-based justifications for Christian lawyers engaging in criminal law, this may indicate a stronger influence of professional ethical norms on views about the nature of the lawyer's role than is reflected in the normative literature.⁵⁸

As with family law, participants also identified the opportunity to 'make a difference' to their criminal law clients through their legal practice, for example:

[A]s hard as it would be, everybody's entitled to representation, and you would hope you would have some positive influence on the person...in terms of turning their life around, if they were able to beat the charges because they weren't guilty beyond a reasonable doubt or even afterwards, that you'd have some positive impact.

[U]sually with criminal matters when people do things there's almost invariably reasons. If you can get in early and you can get them to plead early enough, you can get psych reports, you can get explanations, you can get all the stuff together and put a genuine explanation to the Court as to how this person got themselves into the circumstances they got themselves into.

4.5.5 Commercial law and Litigation

It is interesting that, whilst some participants identified concerns that family law practice might require them to pursue unreasonable claims or act for a more well-resourced party against a weaker party, there was a sense that areas of practice such as commercial law, property law and civil litigation were largely devoid of potential moral conflicts, or perhaps that clients were less likely to pursue unjust entitlements

⁵⁸ Although one participant also identified the criminal defence lawyer's role as being based on biblical principle, suggesting:

I think that the concept of criminal law is based on a biblical principle which is, 'by the mouth of two or three witnesses shall the matter be established'. So the presumption of innocence and the need to have solid evidence before convicting someone are biblical principles, in my view. I think that the system we have is a reflection of those principles, even though obviously it's not always perfect. But giving all accused people the right to a fair trial, and requiring the prosecution to prove its case and not the accused, I think these are biblical principles.

Whilst this study does not aim to compare different groups of lawyers, it is interesting that, in her study of criminal defence lawyers in Australia, Abbe Smith also noted that the cab rank rule seemed to have had 'a significant influence on the ethos of Australian legal practice', in particular suggesting a stronger emphasis on the lawyer's role as an officer of the court and a 'sense of professional duty' for Australian versus American lawyers: Abbe Smith, 'Defending the Unpopular Down-Under' (2006) 30 *Melbourne University Law Review* 495, 547.

and more likely to make commercial decisions about the possibility of resolution in these areas.

Participants who practised in these areas said things like:

- 'I found it [commercial law] fascinating at the time, but I really don't think that what I was doing was raising much in the way of moral issues. It was business...mostly it was business-to-business'.
- '[F]amily lawyers might say, "you commercial lawyers do all sorts of crazy deals, and you get them out of tax structures and that sort of thing". But again I'd say, "that's what the tax law provides, so just trying to work within it and get the full result for the client" (...) I don't think I can think of any one situation where I've had to say, "look, this is wrong" in a business sense'.
- 'The type of sectors I work in, I tend to attract pretty ethical people. Which is great, yes. So yes, I think it is my area of law. I'm sure that family law practitioners and criminal law practitioners have much more difficulty'.⁵⁹

Some participants also described civil litigation as 'one big company suing another big company for lots of money'⁶⁰ and suggested that this area of practice:

Doesn't tend to be very personal, so it tends to be corporate issues, disputes over sale of land, disputes over leases, they don't...there's a lot of resolution commercially because people are in that business of getting on, and they don't want to waste time with lawyers about disputes, they want to do the next deal.

Whilst there was some evidence that Christian lawyers would prefer a system focused on resolution rather than litigation (this will be explored further in Chapter Six),⁶¹

⁵⁹ Another identified that it was possible to be a 'conviction player' in commercial practice, but not in other areas, suggesting:

[M]y sense of it is that, I can get by in the commercial world being able to be like that, but in other areas of practice, I think it would not work at all. So I don't think I'm very good at that, so I just play it absolutely straight, I don't muck around with it at all, and I find that I'm a happier practitioner because of that.

⁶⁰ '[O]ne big company suing another big company for lots of money. So it was easy to disassociate yourself, and you could pick up some bad guys on the way through so that was good'.

⁶¹ '[L]itigation is something I don't particularly...like...because of that...that whole adversarial system does not sit...is not designed to seek reconciliation or designed to seek peace (...) having said that, I still very much believe that if you are acting for a client then you have to act to the best of your ability, and that means using...pulling out a few tricks at the end of the day to get the result'.

participants also recognised litigation as sometimes being morally justified in order to assist clients to achieve their just entitlements. As one participant said:

I think a Christian lawyer can be a litigator without any difficulty. People have need for redress. People need to know where they stand. Their businesses could be under threat of going under, and they need someone to negotiate on their behalf.

Although participants recognised litigation as also being morally justified for a Christian lawyer, later statements revealed that participants did see being asked to act in an unnecessarily aggressive manner when resolving a legal dispute as a source of potential tension. This issue will be explored further in the context of how the personal values of Christian lawyers influence decisions about the conduct of legal practice (Chapter Six).

4.5.6 Areas of practice generally

Whilst participants had different reasons for experiencing or not experiencing moral tensions within different practice areas, the responses seem to indicate that Christian lawyers are more likely to experience a potential moral conflict where they are asked to do something that they see as unjust or unreasonable (including causing unjustifiable harm to others), and less likely to experience moral conflict where they view the parties as being evenly-matched, making 'commercial' decisions or pursuing just entitlements; or where they identify themselves as playing an important and justifiable role within the system.⁶² These themes will be further explored in Chapter Six, which looks at questions about the resolution of a legal matter or dispute.

4.6 Conclusion

This chapter has explored the views of Christian lawyers about the nature of the lawyer's role and the moral justifications for that role. In examining the responses of participants in this project, it has argued that the following themes can be identified in

⁶² The extent to which 'zealous' tactics are morally justified is the subject of discussion in both the secular and faith-based literature. Luban, for example, draws a distinction between the kinds of tactics that can be morally justified in a 'criminal defence paradigm' (where the parties are unevenly matched and the lawyer required to defend a weaker party against the power of the State or a more well-resourced civil opponent), whilst Dare distinguishes 'mere-zeal' and 'hyper-zeal'. Dare suggests that 'mere-zeal' is focused on achieving the client's legal entitlements, whilst 'hyper-zeal' is to 'pursue any advantage obtainable for the clients through the law'. See David Luban, *Lawyers and Justice: an Ethical Study* (Princeton University Press, 1988) 156-157; Tim Dare, *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, 2009) 7.

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how Christian lawyers may navigate the potentially competing ethical worlds of faith and legal practice in the context of the lawyer's role generally:

1. By identifying similarities between faith-based values and professional ethical norms;
2. By recognising the importance of the lawyer's role; and,
3. By recognising the ability to and importance of bringing personal values to bear on legal practice without necessarily changing the fundamental features of that role such as the lawyer's duty to her client and obligations as an officer of the court.

An unexpected finding was that, rather than experiencing overt conflict between their faith and the lawyer's role when engaged in legal practice, some practitioners were instead concerned about the effect that their identity as a lawyer and professional norms such as time-costing might have on their identity and values as a Christian.

This chapter also explored whether and how the personal values of Christian lawyers influence their decision to practise or not practise in particular areas of law. Whilst the responses of participants were mixed, they did identify the potential for conflict largely where participants were asked to go further than pursuing just entitlements, as well as the possible influence of professional ethical norms in the context of criminal defence practice.

The next chapter will explore whether and how personal values influence the lawyer-client relationship; in particular whether and how Christian lawyers share their personal values with clients, and what happens in the event of tensions between the lawyer's personal values and the client's instructions.

Chapter 5 : The Lawyer-Client Relationship

5.1 Introduction

This chapter will examine how the personal values of Christian lawyers influence their relationships with their clients (RQ2(b)), including whether and how these values influence the decision to accept instructions; whether Christian lawyers raise relevant non-legal considerations or share their beliefs with their clients; and what happens in the event of tensions or conflict between the lawyer's personal values and the client's instructions.

The normative literature suggests that one of the main ways in which a faith-based view of the lawyer's role and the moral justifications for that role might affect the ethical deliberations of Christian lawyers is in terms of the Christian lawyer's relationship with her client. Whereas from a secular liberal perspective,¹ the lawyer is justified in taking an amoral stance with respect to the client and the client's instructions,² the faith-based literature goes further in suggesting that there may be some actions that will be 'religiously impossible'³ for the Christian lawyer, and potentially, that the Christian lawyer must also assess whether all actions undertaken as part of the professional role can also be morally justified from a faith-based perspective.⁴

¹ Parker and Evans identify this view of the lawyer's role as being the 'predominant conception of what lawyers' role and ethics ought to be in most common law countries including Australia': Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 22. It should be noted that there are also other secular perspectives, which advocate that the lawyer should take factors in addition to the client's instructions into account when making ethical decisions in legal practice, including, for example, the interests of other parties, the spirit and purpose of the law or broader political values: see the discussion of the Responsible Lawyering, Ethics of Care and Moral Activism frameworks in Parker and Evans, 31-49 and see also Carrie Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 1 *Berkeley Women's Law Journal* 39; David Luban, *Lawyers and Justice: an Ethical Study* (Princeton University Press, 1988) and William H Simon, *The Practice of Justice: a Theory of Lawyers' Ethics* (Harvard University Press, 1988).

² See, eg, the discussions of the Adversarial Advocate model in Parker and Evans, *Inside Lawyers' Ethics*, above n 1, 22-25 and Christine Parker, 'A Critical Morality for lawyers: four approaches to lawyers' ethics' (2004) 30 *Monash University Law Review* 49, 56.

³ Marc D Stern, 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness' (1996) 27 *Texas Tech Law Review* 1363, 1371 and see also Christine Parker, 'Christian Ethics in Legal Practice: Connecting Faith and Practice' in Christine Parker and Gordon Preece (eds) *Theology and Law: Partners or Protagonists* (ATF Press, 2005) 23, 27.

⁴ See the discussion of the Lawyer of Integrity and Prophetic Lawyer models in Chapter Two and particularly Thomas L Shaffer, 'The Legal Ethics of the Two Kingdoms' (1983) 17 *Valparaiso University Law Review* 1, 35; Michael P Schutt, *Redeeming law: Christian Calling the Legal Profession* (InterVarsity Press, 2007) 226-227 and Joseph G Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press, 1996) 10.

Chapter 5: The Lawyer-Client Relationship

As noted in Chapter Two, the faith-based normative literature suggests that the secular liberal perspective provides an insufficient justification for Christian lawyers, who in essence cannot separate their identity as Christians from their role as lawyers and must, at some level, reconcile their professional ethical role with faith-based values.⁵ For the Servant Lawyer, this reconciliation occurs at a broad, philosophical level, in which the faith-based justification for the lawyer's role also justifies the Servant Lawyer adopting professional ethical norms when engaged in legal practice. In terms of the lawyer-client relationship, this may mean that there is nothing different or distinct about the relationship between the Servant Lawyer and her client, given that the Servant Lawyer adopts professional ethical norms, including norms which govern the lawyer-client relationship. However, even this model recognises that there may be a point at which an action required to be undertaken in the professional role becomes 'religiously impossible',⁶ in which case the Servant Lawyer may nevertheless face a conflict between her personal values and her professional role (albeit at the 'coal-face' rather than at the philosophical level) and may need to refuse to accept instructions or withdraw from acting further.

The other faith-based models go further in describing a more distinctive faith-based lawyer-client relationship. The Lawyer of Character, for example, is able to bring faith-based virtues such as courage and sympathy (including care) to her relationship with clients, whilst the Prophetic Lawyer deliberately seeks to act for clients and in matters which reflect her own personal values, as well as perhaps providing opportunities to pursue faith-based law reform.

The greatest distinction is reflected by the Lawyer of Integrity, who views her role as lawyer as akin to a religious calling, and goes about relating to and caring for her clients in a manner reflective of such calling. As well as ensuring that all of her actions in legal practice are consistent with her personal values, the Lawyer of Integrity takes a distinct approach to acting for her client, which may mean taking a broader view of the client's matter, including considering relevant non-legal issues such as the client's financial or emotional needs, the potential impact on the client's relationships, or on others who may be affected by a legal dispute. The Lawyer of Integrity also takes a

⁵ See the discussion in section 2.3 of Chapter Two.

⁶ Stern, above n 3.

holistic view in seeking instructions and providing advice to her client, which may at times involve a ‘moral conversation’⁷ about the client’s proposed actions. In addition to relevant ‘moral’ considerations (such as the potential impact on the client’s relationships), this moral conversation may also involve discussion about whether the client’s instructions potentially require the Lawyer of Integrity to act in a way that is inconsistent with her own personal values. In that sense the conversation stems not only from the Lawyer of Integrity’s calling to care for the client in a broader sense,⁸ but also from the Lawyer of Integrity’s own desire to only act in a way that is consistent with her own personal values.⁹

5.2 How do Christian lawyers describe the lawyer-client relationship? (RQ2(b)(i))

The interviews revealed a number of distinct themes about the way in which the Christian lawyers who participated in this study viewed their relationship with their clients:

1. The Christian lawyers interviewed valued their relationship with their clients (including as a source of future referrals), and also viewed the development of relationship as being important to their clients.
2. Faith provided a source of motivation to care for and serve their clients, which is also reflective of the reasons some participants gave for why they had chosen to practise in certain areas of law.
3. The qualities that this group of Christian lawyers used to describe the lawyer-client relationship included respect, honesty, empathy, trust, compassion, humility, generosity and service.
4. Some clients will specifically seek to instruct a Christian lawyer, but this does not necessarily result in a different lawyer-client relationship.

⁷ This is particularly suggested by Shaffer. See Thomas L Shaffer, *On Being a Christian and a Lawyer* (Brigham Young University Press, 1981) 26, 28.

⁸ See the discussions in Chapter Two and see also Thomas L Shaffer, *Faith and the Professions* (Brigham Young University Press, 1987) 259; Allegretti, above n 4, 44-46; Schutt, above n 4, 228.

⁹ And her own autonomy: Reid Mortensen, ‘Agency, Autonomy and a Theology for Legal Practice’ (2002) 14(2) *Bond Law Review* 391, 403, 404.

5.2.1 The importance of relationship

Participants emphasised the importance of relationship with their clients,¹⁰ with some describing long-standing client relationships that had developed over many years. As one participant said, ‘over 90% [of my clients] I would walk over broken glass for them, and they would for me too...and that’s a very happy place to be in with your clients; you’ve got that sort of regard for your clients and vice versa’.

Some participants said that developing a relationship was important to their clients as well as themselves, and that this relationship also led to potential referrals, with clients sometimes placing more value on the relationship than the lawyer’s skill or knowledge when providing instructions or referrals. This is reflected in comments such as:

- ‘[M]y clients are all relational connections, so...I don’t have clients coming to me saying, “I heard you’re the best lawyer in doing this”...I don’t believe that’s how...some business is made through that, but (...) I think most business is made through, “I know you, therefore I will give you the business”’.
- ‘Without clients we don’t have a practice...it is about relationship’.
- ‘[M]y whole business is relationship-built. Always has been. I’ve done very little advertising, and I always calculate that about 95% of my work comes from referrals’.
- ‘[P]eople don’t come to you because you’ve got an ad on the bus...they come to you on the basis of referrals because they think they can establish a relationship of trust, and that is sort of over a long period that you can build that sort of goodwill’.¹¹
- ‘Usually when I’m asked, when I tell my trainees what the lawyer boils down to...it is about a relationship of trust that is built over many years’.

¹⁰ ‘I’ve noticed that law has lots to do with relationships and trust, so if you build up that relationship then clients will continue to retain you’.

¹¹ The same participant continued:

I don’t think you can really determine who your client base ends up being, any more than you can make it rain, in a professional practice situation...people don’t come to you because you’ve got an ad on the bus...they come to you on the basis of referrals because they think they can establish a relationship of trust, and that is sort of over a long period that you can built that sort of goodwill...so...But going out as I say and trying to make it rain is just...well it’s futile either because of the economy or because of who you are and who the people are that you want to serve. So I’ve never acted...I’ve never got on well with developers, so I’ve never got much development work...But I get on well with mums and dads and older people and that kind of thing.

- ‘I’ve noticed that law has lots to do with relationships and trust, so if you build up that relationship then clients will continue to retain you’.

5.2.2 Trust, service, care and other values in the lawyer-client relationship

In reflecting on how they had gone about establishing positive relationships with their clients, as well as in describing the lawyer-client relationship, participants referred to a number of values which they felt were important in the context of the lawyer-client relationship. These included care,¹² trust,¹³ loyalty,¹⁴ compassion and empathy,¹⁵

¹² This was reflected in comments such as ‘[o]ver 90% I would walk over broken glass for them’ and ‘I care a lot about [my clients]; whether it’s a small conveyance or a first home owner or something a bit larger like...a several million dollar project, I still get quite attached and I put a lot of time in and if a client asks a question I normally respond within 10 minutes if I can’.

¹³ Reflected in comments such as ‘They come to you on the basis of referrals because they think they can establish a relationship of trust’; ‘I’ve got long-term clients that really just trust me...implicitly’; ‘Law has lots to do with relationships and trust’; and:

Clients want someone they can trust, in a lawyer. That’s the primary thing they want. They want to know that the person they’re paying generally a lot of money to, is going to do everything they can to get them the right result. Now there’s any number of reasons people choose certain lawyers; whether it’s a recommendation, whether it’s price, whether it’s just first up on Google, whether it’s any number of things. So it’s difficult to know exactly why they choose them, but I think above and beyond, above everything else I should say, clients want to be listened to and they want someone they can trust. I think that’s what it comes down to.

¹⁴ ‘[T]he first thing is obviously the duty of confidentiality, and of course the duty of loyalty [later]I think for me, that relationship, very simply, just in terms of fiduciary obligations, those two obligations enshrine, very quickly and readily what a lawyer does’.

¹⁵ The importance of displaying compassion and empathy was reflected in comments such as: ‘[I]f I’m truly living out my faith and being Christ-like, then I am going to be more compassionate and empathise with them’; Christian lawyers are more humble, accepting and compassionate; ‘You have to try and set out the facts of their position, but with empathy’; and:

To what degree that I place importance in being respectful of the personal story of...the client, is informed by my Christian background, I don’t know...but...I think it is to some degree (...).It’s...for me important to...try and be empathetic towards the experience of whoever it is that’s sitting across the desk from me, or whoever it is I’m acting for, no matter what their life circumstances...so...the non-judgmental Jesus, is...something that I...aspire to, as well, and so...I guess having...seeking to understand the story of a client...without being judgmental, is something that...I try to do.

I think that I represent them to the best of my ability and to my capacity. On a personal level you don’t want to go beyond what your own personal boundaries are. And then I think on a faith level, it’s always bigger than you...you didn’t create the circumstance for those people, you didn’t create their childhood, but God understands them, and you’re just one person on their journey...to assist them. And their journey just happens to come across an area which you know a bit about, and so you can help them in that regard.

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kindness and dignity,¹⁶ respect,¹⁷ generosity and hospitality,¹⁸ and service.¹⁹

These values were generally identified as being consistent with professional requirements,²⁰ but also as sometimes requiring more time and care than might be professionally necessary. That is, values such as respect and loyalty were identified as part of what it means to be a professional, but Christian values might necessitate going beyond mere professionalism. For example, participants reflected on having taken extra time to make sure that their clients were ‘comfortable with every aspect of the transaction’, and said that:

It’s a balance, I suppose, but I always tend to think that you err on the side of listening rather than being too short and saying ‘sorry, I can’t help you’. I remember early on in my career this elderly lady come to see me about what she thought was a legal problem, and she was beautifully dressed for an older person. She had long white gloves on, she had a hat, a bag, and she just looked lovely, but about...probably 20 years, dressed sort of 20 years’ time, in a sense. But she was a lovely lady, very with it, but hadn’t obviously changed her dress for a long time, as in her style. And when I remember the question, the answer was ‘no’, and that was it. And I thought to myself, this dear lady has come in...especially, all dressed up, and I couldn’t...just feel like I couldn’t say, ‘well that’s it, goodbye, see you later’, so I just remember exploring it a bit more with her (...) I just felt that I needed to be gentle and give her a bit of time. Otherwise I felt that she’d feel embarrassed that she just didn’t ring me. I told her the answer was ‘no’, and she went. So it was a bit of a combination of acting in that way that just respected her, and didn’t demean her or even subtly belittle her.

The same participant went on to reflect that:

¹⁶ ‘It’s a balance, I suppose, but I always tend to think that you err on the side of listening rather than being too short and saying “sorry, I can’t help you”’; ‘[M]y values inform that, the way I approach work and particularly the dignity I give people, making sure I do respond to their question, that’s...it’s not just a Christian thing, it’s very good sound practice’; ‘[F]or me it is important to...see my client as a human being...with human needs’ rather than seeing ‘a dispute as an intellectual exercise...as an intellectual problem that requires a solution. Of course it is that, but...I do see the...human beings at the centre of whatever the dispute is, and so developing a relationship with somebody...’; ‘I treat my clients as people – but I don’t think Christians have a monopoly on treating people well’.

¹⁷ ‘[Y]ou’d want to treat them with respect, but I think everybody’s entitled to that...not simply because of my faith’; ‘I like treating people as people rather than just as number-crunching and six-minute time billing’.

¹⁸ ‘I hoped that our clients felt that...even if they didn’t know it (and most people don’t), that you were able to offer them some generosity; hospitality...’.

¹⁹ ‘That’s what professionalism is all about. It’s saying, “how can I really serve this person?”’.

²⁰ ‘It’s not just a Christian thing, it’s very sound practice’; ‘That’s what professionalism is all about’.

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[S]o that's a dimension ... of faith, that would get played out in your dealings with clients, because...I could legitimately, as a lawyer, say to that lady, 'here's my answer, and it's short and sweet, that's it'. 'So look, thanks for coming in. I've got some more work that I've got to get onto now, so thank you, pay at the door', or whatever. And that would have been professional, and ethical, if a little bit humanly abrupt or tight or whatever. But I think the effort to be Christian in your conduct of expressing love and...dwelling in love...for that person...often requires a lot more of you than the professional obligations...And I think that's probably as good an example as I could give you where it does make a difference to the way that you conduct yourself.²¹

Participants also spoke about recognising the importance of each transaction (including to the client), suggesting that 'I don't think it matters so much whether you're doing a conveyance or whether you're doing an extradition to Venezuela or from Venezuela. I think every file is important in God's eyes, every person is critical, and you have no idea of the impact' and that:

[P]eople have a problem, people do go to lawyers for a reason...I am here to serve them and walk with them through that difficult period. So when I walk into a room, I'm not walking into a room thinking, 'I've got to win a client here', I walk into a room thinking, 'how can I serve the people that are here?'.²²

Some participants also saw consistency between faith-based values such as respect, empathy and avoiding personal judgment, and the emphasis in professional rules on:

'[Y]ou take your instructions; you're not allowed to judge your client, you take their instructions, you act as well as you can in their best interests' [later] If you start judging your clients on what they've been charged with or whatever, then you can't do your job and you shouldn't be practising law in those domains where there's a

²¹ Another participant reflected that:

[S]ome of my clients just want to talk; they just want to talk something through, which may not be a legal problem at all (...)It may have a flavouring of a legal issue, and whether they use that as an excuse, I don't know. And sometimes it's just a matter of talking through an issue, and they say, 'thank you very much', and you may see them again, you may not. If they're a good client, they'll come back to you for other things, and it's not worth doing up a bill for \$30 or whatever, so you don't charge.

²² Another said,

I don't know if it's my faith or just who I am as a person...I don't think I've ever made a – deliberately made a client feel like they're stupid...I always try – I try very hard to...meet the client where they're at. Whether that's level of education or level of knowledge...Sometimes I'll do more work on a file...than is strictly necessary, because I'm worried about something that I know is an issue because I'm a lawyer, but the client doesn't seem to think it is, but I'm worried about them as a person. And so I'll do the work anyway. I won't charge them for it, but I'll do the work anyway to make sure that they're ok.

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chance to look horrified or what have you. You've got to just be matter of fact about it.

The extent to which participants recognised the capacity to bring values such as kindness, dignity and care to their relationship with their clients is consistent with one of justifications for Christians to engage in the lawyer's professional role offered by the Lawyer of Character model, which suggests that one of the ways that a Christian lawyer might reconcile her potentially competing ethical obligations to church and state is by recognising similarities between professional and religious values or 'virtues', and seeking to develop and apply these virtues in both personal and professional roles. Moreover, the extent to which participants recognised faith-based obligations to clients as going beyond professional ethical norms or duties is also consistent with the Lawyer of Integrity model, in which the lawyer is recognised as owing obligations to her client beyond the scope of the client agreement.

Whilst noting the importance of relationship, however, some participants also expressed caution that developing too close a relationship with clients might result in later conflicts between that relationship and professional ethical norms such as rules requiring the avoidance of conflicts of interest.²³ Participants noted that a close relationship with clients had the potential to result in conflict both where the lawyer is later asked to act in a transaction involving a former client with whom the lawyer had developed a close relationship,²⁴ or where the client's interests potentially conflict with those of the lawyer, for example where the client may be entitled to bring an action in negligence against the lawyer but might potentially be reluctant to do so because of a sense of closeness or obligation to her lawyer.²⁵ This may reflect

²³ For example, rules 10, 11 and 12 of the Australian Solicitors Conduct Rules, although participants did not identify particular rules in their responses.

²⁴ '[I]f I've got an existing client; I've set them up, I know them inside out, I know their weaknesses, I know their CEO, I know what he's strong on and what he's not. And then I have a new client or an existing client that says, "we're now doing a deal with that client, can you represent us?" Well I've got all my confidential obligations, and I know they've got a weakness in that area. So I can't actually negotiate, because I know the buttons to push, with them'.

²⁵ '[T]here's always an issue, they could always sue you if stuff went wrong; you needed to let them have the freedom to do that, because that's their right, and if we mess up, they needed to be able to have the recourse to professional indemnity policies and so forth, and I never wanted people to feel uncomfortable about that'.

concerns, set out in the literature, that some faith-based models (such as the Lawyer of Integrity) may require a re-thinking of the lawyer's professional role.²⁶

5.2.3 Do lawyers perceive that some clients deliberately seek to instruct a Christian lawyer and does this make a difference to the relationship?

Although the participants did not only act for Christian clients, some said that other Christians might deliberately seek to instruct a Christian lawyer including because of a perception of shared values or trustworthiness. As one participant said:

A lot of our clients aren't Christians...they don't really care whether we are or not. But I think...a lot of clients come to us and say, 'we've chosen your firm because you're a Christian firm', 'we heard about your firm on a Christian radio station', 'we', for example, 'trust you more'. They would assume that we're...that we have the same values as them and that we'll act in their best interests.²⁷

When acting for clients who shared the same faith, however, participants said that their approach and advice would not change, and that they would 'treat them the same as I treat any other client, to the best of my ability, at a reasonable price'.²⁸ Some

²⁶ See, eg, Stern, above n 3, 1363; James M Jenkins, 'What does religion have to do with legal ethics? A response to Professor Allegretti' (1998) 66(4) *Fordham Law Journal* 1167, 1168.

²⁷ Others said:

Some do from past experience, some do from Church...Because of the fact that a lot of my clients are old clients from years ago, all of them just come to you because you give them a good deal, and they like the way I work. But some do; some have specifically come to me because they'd heard that I was a Christian solicitor. Not that the work they wanted me to do involved any...form of...problem, shall we say. It was all fairly straightforward commercial work, but they just wanted...I think they felt as though they could trust me. And it's nice to know that...well, a lot of those clients still keep coming back, or refer other people.

[F]rom time to time clients will want a Christian lawyer. But that's...of all my clients, one in 50, one in a 100. It's not common at all but it does happen occasionally.

[O]ur firm is one that upholds Christian values, but it's not something that we explicitly put on our website or anything like that. But I think that the types of clients that come to us would have...known someone in the firm or that has that background. So again, there's no discrimination or anything in terms of the clients that we take on and...there's other clients out there who would have no clue at all, and that's fine...it's not something that we advertise that we are...and...I think in a way there's no need to, because the quality of the work that we produce should speak for itself.

Some come to me because I'm a Christian, because I've advertised on Christian radio; I advertise in a couple of Christian papers, advertising stuff. So some will come specifically because of that; others have, on various occasions, asked.

²⁸ Others said, 'my legal advice is the same whether they're a Christian or whether they're a Muslim or an Atheist, or a - whatever' and that they would not deliberately speak to Christian clients about a 'Christian approach' - 'No...no more than anyone else. No...I think my faith is a seamless thing, so now and then I'll say things that are in the Bible but without referencing chapter and verse, and they don't know, but they're timeless truths'. Another participant said that the only difference would be a shared understanding of certain values, suggesting that 'it's not the case that...religious clients get better treatment or different treatment. It's just that we - because of who we are, we understand where they're coming from', and:

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participants even expressed caution about being asked to act for other Christians, for example that:

[T]here are some clients who specifically seek out other Christian lawyers, and actually in my view that is a bit mixed. I don't think that's necessarily the best way to do it, but on the other hand I think again, it's a relational basis, so 'you've got a connection with me because we're both Christians?'. Ok, that's fine. But sometimes...we get emails from people saying 'Oh I need a Christian lawyer because...this ex-wife of mine is not fairly following God's word and I am, so I need God's people on my side and she doesn't'. I think...that's a bit silly.²⁹

Whilst participants said that shared faith would not cause them to treat Christian clients any differently to other clients, they said that occasionally some Christian clients might expect them to depart from professional ethical norms surrounding the giving of advice and charging of fees, reflecting that:

I did have one lady who thought that I wouldn't charge her because we were both Christians (...). She came as a referral from one of the ministers at church, and when I sent her a bill, he was the one who approached me and said, 'she didn't think you would charge her because you were both Christians'.

And:

I remember someone from my church wanting a guarantee. He'd lent money to one of his kids, and he's saying, 'oh it's urgent', 'settlement's on Monday', and this is after church on Sunday, and I said, 'we've got to read the document', and he said, 'no, I haven't got enough time, I've got to be somewhere else'. And I said, 'well come back tonight and we'll read the document'. Then when he read the document he wasn't guaranteeing the \$100,000.00 he thought he was, he was guaranteeing the entire loan. And I said, 'are you comfortable guaranteeing the entire loan?', and he said, 'oh they wouldn't enforce it against me', and I said, 'of course they would,

they feel comfortable that they're with someone that understands...their context, without having to go through it, and in some cases justify things that make sense in the faith world but things that don't make sense purely through a business lens or a legal lens. So we understand that faith things are important to people of faith in a way that's not immediately obvious or...logical, to a person who doesn't have faith. And so we find that...we also get religious clients who aren't Christians, because we understand that faith element...better...even if it's a different faith.

²⁹ The same participant went on to say:

I wouldn't say that just because you're a Christian that people are seeking you out as a Christian is necessarily a good thing. That whole word "Christian" again is also very broad, so you have to understand that we're all from different backgrounds and we can't just generalise. So I know Christian real estate agents who are always trying to sell you something...I'm not saying that...I'm not judging them, that's a different situation, so that's not for me, but yeah.

you're hugely at risk here'. And I could have got him to sign that document if I didn't make him stop and read, and I would have been liable, but also I would have misled him. He'd been misled by the bank, and I didn't want to be a party to that misleading. And I think in some ways he blamed me, because he had to go back to the bank and settlement got delayed until he could get a proper guarantee signed and it was probably my fault for the penalties his child had to pay for a late settlement. His view was if I'd just signed it surely it would have been ok.³⁰

The extent to which Christian lawyers share their beliefs with clients, including Christian clients, will be explored under [heading 5.5](#), below.

5.3 How do the personal values of a Christian lawyer influence the decision whether to accept instructions from a particular client or in a particular matter? (RQ2(b)(ii))

Consistent with participants' initial responses to questions about whether they experienced any conflict between their faith and their professional role more broadly, participants initially said that they rarely experienced any conflict with their personal values in deciding whether or not to accept instructions to act for certain clients or in particular matters. One participant said:

I'm scanning through...so many cases I've been involved in, so many people I've acted for, and...there would never...I think I can fairly confidently say there would never have been a situation where I felt there was a conflict between...acting for somebody and...my faith....³¹

³⁰ Another participant said:

I hate this sort of Church car park advice...people always catch you in the Church carpark and they want some legal advice...but you give it...and you know that you're probably getting half the story, you're probably getting ...you can't make file notes, but, by and large I do it, because it's not harvesting to the edge of the field and it's leaving something for the poor, and that's how I would apply it.

³¹ Others said:

Not necessarily personal values...there are some clients that you will warm to and some that you won't...but that doesn't mean that they shouldn't be entitled to be represented to the best of your ability.

I've heard horror stories for example, about banks kicking people out of their homes and lawyers facilitating that behaviour because that's part of their role. But I never really had that sort of blatantly evil, nasty approach or was required to implement those types of instructions.

I can take or not take any case I want for any reason I want. Having said that, my decisions about cases I take or don't take are not about the ethics of it. I don't worry about what my client's meant to have done or a particularly unpleasant scenario. I do...for business reasons, look at clients and say, 'you're going to be more trouble than you're worth'; 'you're a complaint waiting to happen'; 'you're clearly going to be a problem'...in that sense I do, but not for ethical reasons.

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As noted in Chapter Four, there were no areas of law that were unanimously perceived as being ‘out of bounds’ for a Christian lawyer, including areas such as criminal defence, with a number of participants recognising the lawyer’s role in advocating for the accused and assisting the court in this area.

For one participant, setting aside ‘personal discomfort’ in accepting instructions to act was regarded as a hallmark of professionalism, whilst another recognised a biblical justification for accepting instructions without moral judgment.³² Another was cognisant of obligations to his firm meaning that he could not act impetuously in turning away work without serious ethical concerns.³³

Although participants said that they would generally not refuse to accept instructions because of a conflict with their personal values, there was evidence that there were nevertheless some actions that Christian lawyers might find ‘religiously impossible’.³⁴ These included being asked to set up an abortion clinic, acting for someone in the sex³⁵

[L]ook, it doesn’t really arise, fortunately. I mean, it’s easy to say, ‘I’ll choose who I act for’, but...in a firm our size you’re going to have some large corporate clients. If you said you’re not acting for them, well it could potentially cause a ruckus, unless there’s been unethical behaviour and you’re entitled to it.

I actually don’t think that way. I think I will take anything. I never say ‘no’ to a job, but I suppose if there was a situation (which I haven’t come across yet), but if there is a situation or a client that I’m not comfortable with, then I’d try to set up the parameters or set up conditions that it has to be with this person telling me the truth, and that sort of thing.

The personal discomfort that you have sometimes in acting for, particular clients is another matter entirely...and that might be informed by all sorts of different things...personal revulsion at what somebody may have done, or...so...you don’t particularly want to be drawn into...someone else’s narrative, but...it’s one of the hallmarks...I think it’s partly what it means to be a professional...that you have to manage that as best you can.

³² ‘I think the verse that...there’s a couple of different ones, they all say the same sort of thing about entertaining angels unawares, and about Christ possibly being in the widowed and the fatherless’.

³³ ‘Look it doesn’t really arise, fortunately. I mean, it’s easy to say, ‘I’ll choose who I act for’, but...in a firm our size you’re going to have some large corporate clients. If you said you’re not acting for them, well it could potentially cause a ruckus, unless there’s been unethical behaviour and you’re entitled to it’.

³⁴ This is the description used by Stern, above n 3.

³⁵ Sex work is decriminalised in New South Wales and licensed in Queensland and Victoria. See *Prostitution Act 1999 (Qld)*; *Sex Work Act 1994 (Vic)* and Australian Sex Workers Association, *Save Decriminalisation for Sex Worker Health and Safety NSW* (10 August 2013) Scarlet Alliance <<http://scarletalliance.org.au/laws/nsw>>.

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or organised crime industries, same-sex marriage³⁶ and acting for someone accused of child sexual abuse.³⁷ Participants said, for example, that:

I won't act for people for whom I have an ethical objection to. I do agree they've got the right to have legal services, but I avoid acting for them. For example I've avoided organised crime clients; I don't want to act for people in that area. I've avoided acting for people who are in the sex industry. I've avoided acting for people who I think are trying to commit a fraud on someone. I think it'd bounce back on me if I did, I think it would adversely affect me in the long run.

Whilst participants recognised the right to legal representation and services (even for someone accused of a potentially heinous offence)³⁸ and emphasised the importance of not judging the client,³⁹ there was a point at which they could not facilitate certain ends whilst maintaining their own integrity, reflecting that they could not 'overstep a line that you feel comfortable with'; would 'draw the line at working for a business which is specifically built on something immoral', and could not become 'actively engaged in something that is running against your values'. One participant said that, 'it's not against values to stand up and allow someone their right of being heard, but it runs against the values where your participation brings about the occurrences which you say fall below your values'. In that sense participants were able to recognise a

³⁶ This view was not shared by all participants. Although one participant said that he would refer potential clients away 'in a same-sex marriage situation and that sort of thing', another reflected that 'you certainly have to make sure that you aren't being judgmental or imposing your personal views, and I guess in the areas of things like same-sex marriage is probably one that certainly springs to mind as being perhaps contrary to personal beliefs, but you can't impose that. My job is to apply the law, and the law says that this is what people are entitled to do, then that's what I have to work with'.

³⁷ This discomfort occurred not only from a faith perspective, but also conflicted with the participant's identity as a parent:

I've lost my ability that I had in my first years of practice, I've lost my ability to wash that off... And perhaps it was because I was younger, I don't know, and I didn't have three children then I only had one. I'm not sure, but I...if I'm reading a transcript or if I'm reading a departmental file, I find it...my face goes all hot and I think, 'I don't want to have to read this'. And so, because it goes against what I'm trying to do myself as a parent, protect my own children. But it also goes against that Christian side of me, and I think if there's people who can represent people like this without any conflict morally, then they need to be the person to do it.

³⁸ 'I have no problem about...in the criminal area of acting for anyone, because I think they're entitled to their day, even if they've admitted it and plead guilty, to put why they should not be well and truly incarcerated or the key thrown away or whatever, or to explain what got them where they are or whatever. Everyone's entitled to have that, and that's part of the lawyer's role. So it's not that...'; 'I know everyone deserves to have legal representation. But I feel that I can be more myself if I stick to the work that I feel is ethical'.

³⁹ 'If they're not Christians, that could involve a level of judgment, and I'm not called to judge people'; 'You certainly have to make sure that you aren't been judgmental or imposing your personal views'.

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higher justification for acting for someone accused of a criminal offence,⁴⁰ but experienced a fundamental conflict when asked to facilitate actions which directly conflicted with their own values and identity as a Christian. It was in these instances that participants would simply refer clients elsewhere.⁴¹

Although these examples might be perceived as lawyers exercising moral judgment about their clients, participants saw the examples as being about their own integrity, rather than about their client per se. As one participant explained it,

[T]here's a problem in that some ways I view myself as just a representative of Christ. So if I did something that was contrary to my faith, it reflects badly on my faith. People could confuse me and my faith. I know I'll always slip from what I would like to be, but I think I should at least be trying. If people see I'm trying, I think that tells them something. I readily accept that I'll never be perfect, but as long as I'm trying, I think people will have a regard for that.

Whilst even the most liberal of the faith-based models (the Servant Lawyer) recognises that there might be a point at which actions required to be undertaken in the professional role may become 'religiously impossible'⁴² for a Christian lawyer, these examples are perhaps most reflective of Mortensen's argument that, whilst both secular and faith-based philosophies of lawyers' ethics recognise the importance of autonomy, a Christian theology must recognise the lawyer's autonomy in addition to that of her client.⁴³ Interestingly, in these situations participants said that they would not engage in a 'moral conversation' with the client (as Shaffer and others might suggest),⁴⁴ before referring the client elsewhere, suggesting that, 'I don't think you

⁴⁰ Based either on the lawyer's role within the system, biblical principles, or both, as discussed in Chapter Four.

⁴¹ 'I just refer them away to someone who would do it, basically'; '[I]t will happen, someone will eventually do it. So you could say, "well someone's going to do it, why not I?" But there's a couple of answers to that too. "Someone else is going to do it so why shouldn't I?" Well the answer is, well it won't conflict with their values; it conflicts with yours. The only reason you're going to do it is to put some dollars in the bank; it's not a proper and sufficient reason. I think that argument, "someone's going to do it therefore why shouldn't I" hasn't got much going for it'; 'For me, my attitude now would be, "Well look, I'm uncomfortable with it, I don't want to really sit down and torture myself for all the moral reasons why I could do it and all the rest of it; I'm uncomfortable with it, there's plenty of blokes who'll do it with comfort... and you don't have to do everything that comes your way"; 'I think if there's people who can represent people like this without any conflict morally, then they need to be the person to do it. And I feel that if I was to take that on then I'd be doing the client an injustice, because I'd be constantly judging them on the basis of the allegations'.

⁴² Stern, above n 3.

⁴³ Mortensen, 'A Theology for Legal Practice', above n 9.

⁴⁴ Shaffer, *On Being a Christian and a Lawyer*, above n 7.

can [try to talk the client out of it]. I don't think you're entitled to do that. I think... they have a thing they want to do, and they're legally entitled to do it; I don't think it's for the role of lawyer to talk someone out of something that they're legally entitled to do'.

Conversely, one participant reflected that, having initially refused instructions to act for a brothel owner, upon becoming aware that she wished to set up a trust to help others avoid 'the same life that she'[d] had', said that 'suddenly that just changed the perspective completely', and further, 'she was a good client to act for. She explained about her life; she was a drug addict, she got into prostitution via a drug addiction, and she's helped start a charity that is designed to help people. Suddenly, I had no compunction whatsoever, I thought it was a very worthwhile project'. This example may again illustrate a practitioner making a moral judgment about the end itself, rather than the client per se.

There was no evidence that participants would deliberately set out to act only for clients and in matters that specifically reflected their own personal values, as might be consistent with the Prophetic Lawyer model.

5.4 How does a Christian lawyer resolve any potential tensions or conflicts between her personal values and beliefs and the instructions given to her by a client? (RQ2(b)(v)(vi))

With the exception of those areas in which participants felt that they could not carry out a client's instructions and maintain their own integrity (the 'religiously impossible'⁴⁵ scenarios), many participants said that they did not experience a conflict between their own personal values and accepting instructions to act for certain clients or in particular matters.

However, this did not mean that participants did not experience tensions in the course of acting for certain clients. In summary, these tensions might be described as:

1. Tensions involving the lawyer-client relationship;
2. Tensions where clients wanted their lawyer to facilitate something illegal or unethical;

⁴⁵ Stern, above n 3.

3. Tensions in acting for overly aggressive or unreasonable clients.

5.4.1 Illegal or unethical instructions

One of the areas in which participants experienced a conflict between their personal values and a client's instructions was where those instructions required the participant to do something which they viewed as illegal or unethical (in a professional sense). Participants said, for example, that conflicts would arise:

[I]f... they were to tell me something which would mean that I could no longer continue to act for them, or if they wanted me to...do something which was outside the law or my obligations to the Court.

Others described being asked to backdate documents;⁴⁶ to continue acting in situations involving a potential conflict of interest;⁴⁷ to put forward information which they knew to be untrue;⁴⁸ or to ignore their disclosure obligations.⁴⁹

In declining to carry out illegal or unethical instructions, participants were able to identify consistency between their own personal values and their obligations as a legal practitioner. As one participant said, 'People sort of come in and go, "well I really

⁴⁶ 'Because I do a lot of documentation, of trusts and super funds and the like, there's been a fair bit of pressure and there probably always will be to backdate documents and to pretend, and basically to fraudulently create documents. And I find the accounting profession in particular is often very keen to backdate documents. Sometimes I'm just seen I think as an annoying person who won't do it. Whereas I'll do a document saying, "this trust started two years ago", and date it today, and assert that there was an undocumented trust for the past two years. But I won't date it two years ago as if it was created two years ago. And the accountants always ask, "what if we get found out?", and I said, "well this way if you get found out you've got nothing to hide, you will have actually said what has actually happened". Whereas if you've backdated it and you're found to have backdated it the penalties would be much worse. So I try and convince people to do that instead. I'm surprised how much pressure there has been and probably still will be on creating false documents, which was a surprise'.

⁴⁷ '[C]lients come in to see you and they appear to be of one mind and you discover they're not at all. Sometimes you can find a way to help them resolve their differences and achieve a result that they are both happy with. Occasionally, there is simply no way for resolution. And so I have to say, "I'm sitting in the middle here and I can only advise you as a pair, and point out your different objectives and I'm constrained in what service I can provide to each of you"'

⁴⁸ 'I won't put anything untruthful forward, or I won't put anything immoral forward. And again, thankfully I'm in a position where I don't have to do that, but talking with other lawyers of course; I've had other lawyers say that clients have instructed them... "say this", and they know it's not truthful, they know it's actually...because they've been through the evidence in this very long court case, and there's no grounds to assert that. And you get some very difficult clients out there. And you're then in a position where you're documenting to your client, "I have advised you (a), (b), and (c), and you haven't instructed me to progress". And so I've never been in that position, which is good'.

⁴⁹ '[F]or me, if a client is not being honest; if they're not making proper disclosure; if they disclose information to me that I'm compelled to share or that's going to be...influential, and they then tell me that I'm not to share that, I will terminate a retainer. Clearly there's other practitioners that are happy to act so long as they're getting paid'.

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want you to do x". And this is just...it's unethical, it's illegal. It's generally pretty easy to say, "well sorry, I'm not the man for that" and... "forget that for a joke".

Other conflicts were more nuanced, particularly where there might be some uncertainty about the state of the law in certain areas, such as whether a client is lawfully entitled to a particular tax concession or entitlement. Here, participants related that they did not experience any qualms pursuing legitimate tax concessions for their clients, but felt uncomfortable 'getting involved with schemes or whatever'.⁵⁰ In such cases, and rather than either refusing to act or pursuing uncertain entitlements to the limits of the law, one participant reflected that he would instead prepare 'advice and documents as if the tax office might see it', and further:

I think basically it's on the premise that if the tax office found out about it and said, 'this is not a settled area of law and we're going to litigate it', well that doesn't worry me so much as long as I've told the client that it's not a settled area of law. But if the tax office found out about it and would immediately impose a penalty, then I don't like anything that only survives because no-one knows about it. So I figure that can come back to bite you, and secondly, it doesn't sit comfortably with me, I don't like it, and so I won't do it. I don't know why it's so important, but if I'm not comfortable with it I don't want to do it.

Another participant said that he would:

[Try] to be careful, not to buy into a particular outcome or objective. And sometimes of course your client will want you to do that, they'll want you to become a partner. If not expressly, at least implicitly, in what they want to do. And so...I really step back and seek to be objective about...a particular scheme. 'Well, if that particular scheme is pursued, then the consequences will be a, b, c and d, because the regulations say so'. [later] I would ...neither take a view...that it's a positive thing to do and that I will facilitate it as best I can...the outcome that they want to achieve, nor take the view that...give them advice that...it's something they shouldn't do because it's unethical...So no, I take neither of those options. It's...it's to carefully...advise about

⁵⁰ '[I]f there's a legitimate tax concession, my client should get it, if it's available to them. And I've had some lawyers say, "well I don't agree with that tax position", therefore... "my client shouldn't get it". I don't have any qualms; if it's a legitimate tax concession I think they should get it. But getting involved with schemes or whatever, doesn't sit comfortably with me'.

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what the effects of the law...what the law says and what the likely consequences might be.⁵¹

It is worth noting that these participants seemed to identify their professional obligations as requiring them to provide balanced advice about the state of the law, rather than seeking to pursue their client's entitlements to the limits of the law. Whilst participants identified these conflicts as potentially requiring them to act in a way with which they felt personally uncomfortable (and identified these examples in the context of reflecting on possible conflicts between their personal values and a client's instructions), they also talked about the conflicts in a professional sense, with one participant suggesting that providing balanced advice was, in essence, 'falling back into the professional role as much as anything else'. Another participant described experiencing personal discomfort in assisting clients to achieve a particular tax status or outcome in borderline cases, but said that this discomfort arose because of a 'gut feeling' that the client was not 'strictly eligible for that tax outcome in the spirit of the law'.⁵² In some cases therefore, participants might be seen to experience personal tensions in being asked to depart from what they identified as their professional obligations. To what extent this view of the professional role is influenced by faith-based values is unclear. For example, the description of the lawyer's role as requiring the provision of balanced advice may also be consistent with secular 'Responsible Lawyering' approaches, which suggest that the lawyer's role is to identify the law

⁵¹ This participant was reflecting on being asked to provide advice about 'a scheme to avoid particular government regulation, for example', and said that 'the scenarios that cause me, I guess most discomfort, are where you're acting for a client, and the...client is seeking a particular end, and...the client...thinks that in order to achieve that end...you can be...as a lawyer you can be persistent. And...whether...giving advice about ... a scheme to avoid government regulation for example. And so...how do you give...do you give advice in order to assist somebody to avoid regulation, or do you...give them the advice about...what the effect of the regulation is?'. Another participant said that, 'I have withdrawn from matters because I had an ethical...or refused to take on matters because I had moral quandaries over what was effectively lawful'.

⁵² '[S]ometimes I have dealt with cases where I have felt that though it is legally possible to argue that the client is [eligible for a particular tax status] and meets the criteria...and where the regulator in the end has agreed with us that they meet the criteria, I have felt that that is not the true character of what these people are doing. Not to suggest that they're being frauds, or wishing to defraud the public or anything like that, but it's more what they're doing is worthy and good, but they're not strictly eligible for that tax outcome in the spirit of the law. It has been...my gut feeling I guess – even though I've been able to argue that they are. And there is usually an arguable case, because if it's not arguable, we don't. And so I've found that uncomfortable'.

according to its spirit and purposes rather than ‘zealously’ pursuing the client’s entitlements to the limit of the law.⁵³

From a faith-based perspective, however, the examples may also mirror Shaffer’s exhortation to Christian lawyers to assess whether actions undertaken in the professional role are consistent with faith-based values,⁵⁴ except that these practitioners identified assessing their actions in the light of professional rather than faith-based ethical obligations.⁵⁵ The comments would also seem to support participants’ earlier comments about their personal values and identity requiring them to be seen to also act ‘ethically’ in their professional role.⁵⁶

5.4.2 Tensions involving the lawyer-client relationship

Another source of tension for participants was where they felt unable to establish a productive relationship with their client. Tensions in this area included clients whom participants felt were not being honest, or clients who refused to listen to the lawyer’s advice (or to allow the lawyer free scope in providing that advice). These tensions reflect both the importance of the lawyer-client relationship to this group of Christian lawyers as well as, to an extent, the lawyer’s own autonomy.

Participants said, for example, that they would ‘find it very difficult to continue to work for a client where I felt that...they weren’t actually trying to maintain integrity and seeing that as actually important’, or where they ‘felt as though the client wasn’t being...either honest with me about what other family members had done, or they weren’t being honest about what they wanted’.⁵⁷ These were not necessarily examples where clients wanted their lawyer to breach their ethical obligations (for example

⁵³ The Responsible Lawyering model suggests that a responsible lawyer will interpret any ‘grey areas’ in order to ‘contribute to the effectiveness and enforcement of the substantive law’ and will not ‘unhesitatingly use loopholes, procedural rules or barely arguable points to frustrate the substance and spirit of the law’. See Parker and Evans, above n 2, 35 and see also William H Simon, *The practice of justice: a theory of lawyers’ ethics* (Harvard University Press, 1998) and W Bradley Wendel, *Lawyers and Fidelity to Law* (Princeton University Press, 2011).

⁵⁴ Shaffer, ‘The Legal Ethics of the Two Kingdoms’, above n 4.

⁵⁵ ‘Professional’ in the broader sense – the participants had not been asked to act unethically in the sense of breaching legal requirements or professional conduct rules.

⁵⁶ See the discussions in Chapter Four.

⁵⁷ ‘I can remember a couple of cases when I was doing contested estate work, and someone had died, and I just felt as though the client wasn’t being...either honest with me about what other family members had done, or they weren’t being honest about what they wanted. Yes, so there were...there have been instances in the past where I’ve felt... “oh gee, if I do it this way it’s not going to...I don’t feel comfortable with it”. But I haven’t dealt in that work for a while, so I haven’t had that experience for quite a while’.

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disclosure obligations), but rather where the lawyer felt unable to establish a productive working relationship because of a lack of honesty or integrity on the part of the client.⁵⁸ Others referred to certain clients as potentially causing a business risk, suggesting that, ‘I do...for business reasons, look at clients and say, “you’re going to be more trouble than you’re worth”; “you’re a complaint waiting to happen”; “you’re clearly going to be a problem”’.

Whilst in other areas participants spoke about the importance of client autonomy, they nevertheless felt that it was important, in the context of the lawyer-client relationship, that clients would listen to their advice, and that they would be given scope to provide that advice. Some of the examples that participants gave about when they had experienced tensions in the context of the lawyer-client relationship included clients who said ‘well I pay you so you do what I say’,⁵⁹ and clients who sought some advantage by retaining a lawyer, but without being willing to listen to their advice or to work with them towards an outcome. One participant recounted having said to the client, ‘well look, if you’re not going to take my advice, why don’t you get someone who’s going to tell you what you – stuff that you want to hear, and that could work out well’, recalling that:

[W]hat he told me is that he was dinkum, and was wanting someone who would stand up to him, and keep him on the straight and narrow. But when he wasn’t doing what I was suggesting, I was thinking that it was a waste of time.

Another described concerns about ‘people that aren’t looking to find a resolution; that aren’t going to take my advice; they’re not looking for just outcomes’, going on to say that ‘people who have that mindset when they come in aren’t a fit for the practice, so I exercise my entitlement to say “no thanks”’.

These examples might also raise questions about the extent to which Christian lawyers expect to be able to discuss relevant non-legal (including ‘moral’) considerations with

⁵⁸ Another said that ‘I never say “no” to a job, but I suppose if there was a situation which I haven’t come across yet, but if there is a situation or a client that I’m not comfortable with, then I’d try to set up the parameters or set up conditions that it has to be with this person telling me the truth, and that sort of thing...’.

⁵⁹ ‘Two or three times in my career of 27 years...I’ve sacked clients. And I’ve sacked them when they’ve attempted to rule me with money, has been the general...And so they say “well I pay you so you do what I say”, and I say, “no, I quit”...so that’s not a conflict; it’s just drawing a line and saying, “well I won’t do it”’.

their clients (or expect clients to take these into account), and what happens in the event of a conflict between those considerations and the client's instructions. This will be explored in [section 5.4.4](#) below. In the meantime, the examples do suggest that Christian lawyers may at least expect some free reign or autonomy in providing advice, and also seek to establish a good working relationship with their clients, in the sense that they are not just a 'mouthpiece for hire'. This may also tie in with the examples set out above, in which participants sought to provide 'balanced' advice to their clients, rather than advice directed primarily to achieving or justifying the client's chosen ends.⁶⁰

Moreover, the examples suggest that a faith-based view of the lawyer's role might require some scope for the lawyer to bring her values to and exercise some autonomy within the role, and also allow lawyer and client to work together, rather than the lawyer's role being solely to facilitate the client's instructions per se.⁶¹

5.4.3 Overly aggressive or unreasonable clients

Another area in which participants described experiencing a tension between the instructions provided by a client and their own personal values was where they perceived those instructions as requiring them to pursue an unnecessarily aggressive approach. As explored further in Chapter Six, many participants did see their personal values as influencing their approach to the resolution of a legal matter or dispute, and concerns about being required to take an unnecessarily aggressive approach were also raised in that context.

Participants described, for example, feeling uncomfortable with clients who sought an excessively aggressive or confrontational approach:

- 'Certainly you get clients from time to time that...want you to write correspondence that's more aggressive than what you consider appropriate,

⁶⁰ Including the participant who said, for example, that:

The scenarios that cause me, I guess most discomfort, are where you're acting for a client, and the...client is seeking a particular end, and...the client...thinks that in order to achieve that end...you can be...as a lawyer you can be persistent. And...whether...giving advice about what might...a scheme to avoid particular government regulation for example. And so...how do you give...do you give advice in order to assist somebody to avoid regulation, or do you...give them the advice about...what the effect of the regulation is?

⁶¹ Within the normative literature, this is also suggested by Mortensen, 'A Theology for Legal Practice', above n 9.

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necessary and well, I just won't put my name to it. Things that they want or expect you to impose on the other party...'.⁶²

- 'I can't think of anything that was in direct conflict with my values, but there might be, as I said, ways that people approach things which I wasn't comfortable with, or would be more aggressive or confrontational'.

Another participant recounted refusing to act for a client because 'we [didn't] like the way they behave with our staff; how they treat people; some clients would be very...rude, or disrespectful (particularly with junior staff) or occasionally bordering on sexual molestation, you might say, and we did refuse to act for a very, very big client in [location], just said (politely, but without making a fuss), "perhaps we're not the firm for you"'.⁶³

In circumstances such as these, participants' responses ranged from discussing their concerns with the client⁶² to refusing to act or refusing to carry out the overtly aggressive instructions.⁶³ Whether or not participants would refuse to act or carry out the instructions seemed to depend on the extent of the conflict, with one participant saying that '[t]here are numerous times when on a very minor sort of scale, you feel uncomfortable with the way someone's approaching something, but that's probably more to do with the fact that you wouldn't do it that way than that there's something inherently wrong with the way they're doing it'. Another participant recognised the potential impracticalities of refusing to act, suggesting that:

Let's say I had a major corporate client, and the person who instructs me from that client is an aggressive rude so and so, and likely to be aggressive and rude to the other side. What am I going to do about that?...I may choose to go to...each major corporate has a relationship partner, who's likely to be [from another group]. I could go to the partner and say, 'I'd like somebody else to be allocated to the matter', and the senior partner of the firm might say 'bad luck'...That sort of scenario hasn't arisen, but it's...potentially it's a problem, because you don't just get to pick and choose.

⁶² 'Generally in those circumstances I would give my advice (or the advice settled by the partner), and then ultimately it would be up to the client which way they want to proceed. They would be free to accept or reject the advice'; 'On some of those occasions I suggested that the client should adopt a less confrontational approach, but ultimately I think it was the client's decision how to proceed'.

⁶³ 'I just won't put my name to it'.

These comments may suggest that the extent to which a participant is able to make autonomous decisions within their own firm may also influence how they respond to being asked to take an approach with which they feel uncomfortable. These considerations will be explored further in Chapter Six.

5.4.4 How are tensions or conflict resolved?

Whether and how tensions or conflict between the lawyer's personal values and the instructions provided by a client were resolved seemed to depend on the extent of the conflict. For example, where participants identified that the instructions required them to participate in something that fundamentally conflicted with their identity and personal values as a Christian (such as being asked to set up an abortion clinic or brothel), then they may have seen these instructions as 'religiously impossible'⁶⁴ and refused to participate. As noted above, participants were cognisant that there 'probably would be situations where I would refuse to take instructions and get struck off and whatever'.⁶⁵

In lesser conflicts, whether or not participants would carry out the client's instructions often depended on the situation.⁶⁶ Whilst participants recognised the right to refuse to accept particular instructions,⁶⁷ they also recognised the importance of not judging their client (both from a faith perspective and as a professional obligation),⁶⁸

⁶⁴ Stern, above n 3.

⁶⁵ Another participant said:

I think because I've never really been in a situation where my values have had to be compromised because of my work I can't really say that, because I haven't had to go against my values, but I think when I say that, I think about hypothetically if someone came to me and said, 'you have to do this, it's legal, but it's not good for the other side but your client needs you to do it', then fine. But if it's something that's sort of grey whether it's legal or not and it's also not good for the other side then I'd definitely say no. That's where my morals would kick in and I'd have to find a new job.

⁶⁶ 'I think that your job is to represent the client. Unless the client is trying to do something that you have a strong ethical objection to, then I think you should be trying to help the client do what they want'.

⁶⁷ '[I]f somebody asked you to do something that's clearly not in their best interests, but they say "well, notwithstanding that I want you to do it", we still have the right as lawyers to say "well, look, in all conscience I can't accept those instructions so I'm sorry but I'll have to retire acting for you". So you see you can never be forced to do something that you find morally...or not so much morally (because I don't think people ask you, "look, I want you to arrange a contract with a killer to knock off my aunt..."). You don't get those things, but you do have that right to say, "look, this is just not in your interests, and I'm not going near it with you"'.⁶⁸

⁶⁸ '[T]he rules do protect you because they say, "well, you take your instructions; you're not allowed to judge your client, you take their instructions, you act as well as you can in their best interests"; 'I was empathetic to their situation because we can only do what...we can only do what we're given at the time, and we can only make decisions on the basis of what we know, and how mature we are, and so that was sort of my...I guess a little bit of my faith coming in there...not trying to judge them, and be a bit empathetic to their situation'.

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obligations to their firm and to the Court,⁶⁹ and the importance of maintaining their own integrity.⁷⁰ Participants acknowledged that these would often be difficult decisions to make, and would involve balancing their own values with the interests of the client, reflecting that:

[O]n one extreme you've got the whole hired gun sort of scenario where you say, 'look, I'm just here to do a job and as long as it's within the parameters of the law I'll just charge you lots of money and I can go and retire' (...) But I think that...if it's so obvious...and if it strikes your conscience, that...and the only way that you could do that would be if you started to think about your role as a Christian in any workplace, whether it be the law or anything else (...). I have had conversations with the clients to sort of question and say, 'are you sure that's ok'... 'you're doing this, and this is the situation and you're doing that'...but...I think there's got to be a balance, and you don't want to impose your values on other people, but at the same time you don't want to jeopardise your integrity.

I've had clients who I've thought, 'gee, that's sounding a bit mean-spirited'. So...where do you draw the line? You don't say, 'well they don't have my values, I'm not going to act for them', 'well I need to go and join a Christian Law practice that only had Christian clients', and I don't know if any of those exist. So it can become very grey. As I say, maybe I rationalise it by thinking maybe I can influence that person in the way that I deal with the matter, to me that's a better way to deal with it.

People...come in and go, 'well I really want you to do x'. And this is just...it's unethical, it's illegal. It's generally pretty easy to say, 'well, sorry, I'm not the man for that', and...forget that for a joke. But every now and then you get to a stage where someone says, 'well I really want you to do that', and it's really not unethical, but I feel uncomfortable in doing it. And if that's the case, depending on how far uncomfortable I feel about it; if it's something that, it's a pretty legitimate call, and it's not one that I would have made but it's ok. In that instance I would say, '...yeah, look, ok. I'll be able to do that'. In some circumstances I'd say, 'look, I can't be your best representative in the circumstances. I can't be your best advocate in the

⁶⁹ 'I think the main thing is my values don't have a lot of standing as opposed to what...the clients want and my firm wants and what the Court wants'.

⁷⁰ 'I think there's got to be a balance, and you don't want to impose your values on other people, but at the same time you don't want to jeopardise your integrity (...) you don't want to do anything that jeopardises your integrity or you feel like is jeopardising your integrity'.

circumstance...what you're suggesting is not illegal or immoral...there's other people in this firm who can do this job really well for you, or someone else'.

These responses also suggest that, in weighing these considerations, Christian lawyers may discuss their concerns with their clients. The extent to which Christian lawyers raise relevant moral considerations with their clients will be discussed below. It is also interesting that one participant saw it as being in the client's interests for her lawyer to withdraw from acting rather than to carry out instructions with which the lawyer felt uncomfortable, in order that the client could instead engage a lawyer who would feel comfortable with the instructions. Whilst that would mean that the client is effectively denied representation from this particular practitioner, it may mean that the client is able to establish a more productive relationship with another lawyer, and is again reflective of the importance of personal autonomy and integrity to this group of Christian lawyers.

5.5 Does a Christian lawyer raise relevant moral considerations with her clients? (RQ2(b)(iii))

Although some participants recognised that the lawyer's role did not extend to trying to talk a client out of their proposed actions,⁷¹ participants overwhelmingly suggested that they would raise relevant non-legal (including 'moral') considerations with their clients, and many viewed this as being part of the lawyer's role, or as 'adding value' to the advice provided to their client.

This was not only the case in 'relational' areas of legal practice such as family or succession law, but was also the case for participants practising in corporate or commercial areas, in which participants often described their clients as seeking 'commercial' rather than strictly legal advice.

It should be noted, however, that this advice rarely focused on potential 'immorality' per se, but would be more likely to be focused on ethical considerations such as how to resolve a legal dispute, ethical issues involved in negotiation, considering the public perception of particular actions or other 'commercial considerations'. It seemed that

⁷¹ 'I don't think it's for the role of lawyer to talk someone out of something that they're legally entitled to do'; 'I tend to accept it as not my job to tell people how to think. I think it's really important that it's my job to help people to do what they want, so I don't try to talk people out of what they've decided they want to do'.

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where participants experienced a fundamental conflict between faith and legal practice (such as being asked to set up an abortion clinic or brothel), then they viewed it as appropriate to refuse to act rather than try to talk the client out of what they had decided to do, or to engage in a ‘moral conversation’ in that sense. For other lesser tensions (as described above), participants felt more comfortable discussing their concerns with the client, but also saw it as part of their professional role more generally to raise non-legal considerations with their clients even where these did not really result from personal tensions between the lawyer’s values and the client’s instructions. For example, participants engaged in areas of practice such as family law and succession law described raising with their clients the potential impact of proposed actions on the clients’ own relationships (particularly with other family members) and seeking to ensure that clients received appropriate emotional and financial support,⁷² but saw this as consistent with both their own personal values and the lawyer’s role, rather than as arising from personal discomfort over what the client proposed to do. The extent to which Christian lawyers have regard to the interests of other parties in approaching the resolution of a legal dispute will be discussed further in Chapter Six.

Many participants suggested that their clients valued or expected the provision of broader advice, and that they viewed this as a means of serving their clients through their professional role. Participants said, for example, that:

I think solicitors who don’t try and talk their clients out of stupid things do them a great disservice. I don’t think...it’s one thing, and again a junior practitioner might not have quite the skill or capacity or the wisdom to know what are the right matters...But I wouldn’t think there would be too many clients of mine...I would think most of the clients who would retain me would be looking for me for more than just ‘[name]...fill in these clauses’. They’re asking me for advice on the transactions, and I don’t go out of my way to go beyond the scope of my brief, but the scope of the brief usually includes something more than just fill in the blanks. Because you don’t add value...you’re not playing your role in society if you’re just filling in the blanks.

One instance I had a client who said, ‘I want to do this’ and I said, ‘do you think that’s really a wise thing because of this and this and this’. And he said, ‘forget all that, I

⁷² ‘I take a holistic approach that I make sure that, not only are they getting the legal advice that they need, but I’ll refer them and make sure they’re getting their financial advice and support; that they have the emotional and psychological support that they need. I’ll direct them into other networks to make sure that all of that’s happening for them’.

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want to do it'. And I said, 'imagine the front page of the [newspaper] saying "x bank does this", is that a good look?' He went, 'ok, don't do that'. Now that was a really useful thing to do that, I think. And later on in life he sort of said that was really pivotal; that was a very important conversation for him. And he became a very close client with me for many, many years. And he spent a lot of money with me, because he felt that was a very useful moral compass for him, if you understand what I mean. He said, 'I know you've got my back. If I'm about to do something pretty suss, you'll sort of say, "oh, have you thought about that?"' So he found that a sort of important adjunct he hadn't found elsewhere.

I've had clients who really appreciate that I don't just tell them, 'here are options one, two, four, five'...have said... 'here are options one through five; given what you've told me about the nature of your organisation...what you've said to me you want is most compatible with option one, but given these other goals that you have...and the nature of the work that you're doing, I don't think you'd be able to do the nature of this work that you want to be doing, and get option one; I just don't think that's going to work for you. So you can decide whether you want option one with work, but I think that's going to be a choice for you'. Because...I've applied my knowledge of the organisation to the advice and made it...and they've said, 'this is awesome' ... 'this is great'. 'You've told us; you've given us a really good place to work with so that we actually know what we want to do, you haven't just given us options one through five like other people have'.⁷³

I think there often are [broader considerations], particularly with publicity. Looking at the thing in the whole, in the round; employee relationships; how businesses are going to understand; how staff in the business are going to understand some decisions, absolutely. Absolutely. The law does not operate in a vacuum at all. And so they might get legal advice which says, 'yes, you can sack all of your people', but I mean, is that a good idea? I wonder about that... or, 'yes, you can make all of your staff give you all of their rights for ever and ever and give them nothing ever, the law would allow you to do that'. But don't you have as part of your constitution that you want to be a fair employer and a good employer? I'd like to draw your attention to those things as well, and you might want to think about that. And they were always...most clients

⁷³ This participant also said that

People are rarely satisfied with you just telling them that there's five options, they'll want to know why – why you think one is better, so I think if you're a really good lawyer, you...need to be able to answer not only just the straight legal questions, but also how will this answer or this solution help you – the person you're talking to; whether it's the client, whether it's the government, or anyone. How will it help them do whatever it is they're wanting to do...within the bounds of the law.

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were very grateful. Some of them might say, ‘thank you, I will manage that bigger picture’; a lot of in-house people would say, ‘I’ve got that bigger picture and I’ll manage that; thanks for your gratuitous advice’, but a lot - I think most, would go ‘yeah, that’s a fair point’.⁷⁴

The provision of broader advice was also viewed as an important part of an in-house lawyer’s role, with one participant reflecting that, ‘I think often a lawyer’s role in an in-house context is that moral conscience. We call it the “integrity test”, does that pass the integrity test. And many times I would say that; even more than I’d say, “is something lawful?” (...) So...for me it’s sort of like a moral conscience, and a...strictly legal role as well’.

As reflected above, one of the considerations that a Christian lawyer might raise with her client included not necessarily the lawyer’s own values, but whether or not the proposed actions were consistent with the client’s own values. As one participant said,

If I know the client such that I know that there are things which are as important, or more important to the client than just legal compliance – so reputational issues or values that the client itself has, which it wants to uphold...and I can see that there might be a conflict between their values or their interest and what they can really do, then I might say, ‘do you really want to do this, given that...’; ‘Do you understand that it involves this effect, and the other issues which you’ve indicated to me, that you’ve indicated to me that these things are also important?’.... ‘it’s up to you’ [and

⁷⁴ Again, the same participant said that the giving of broader advice:

[M]akes you a better lawyer. I think good lawyers do that. They don’t just go ‘oh, I’m...ask me the question that you want to ask me’, like ‘computer says no-computer says yes’. Take a much broader... ‘What’s the context here? How is this going to work? What’s happening with this? How is this, where is this ending up?’.

Other participants said, for example, that:

On some things clients would hope for or expect more of a commercial ‘gut-feel’ or ‘smell’ test than black letter legal knowledge. If something didn’t seem like a good idea to you from a commercial point of view, I guess they’d expect you to raise that. Not just implementing a legal transaction, but providing some sort of commercial feeler. But also there’d be things where I would say things based on personal values. They were different from what I perceived the client to be doing.

I think the correct answer to that is, yes, we can only advise on legal issues. But the commercial answer, as I understand it (...) is that, in order to win work you’re also wanting to add value, so you’re not just giving legal advice but you try and deliver your legal advice in a commercial manner; you’re addressing the risks that they would want to see (...) So that you can be seen to add value to that client’s business, and to be thought of as a key relationship for them.

[O]ften enough I’ll give extra-legal advice, I’ll give advice which is other than purely legal. And...I do that because...the client’s looking for more than simply legal advice...Maybe something as simple as, a client’s looking for some business, some thinking about a business or maybe looking for a referral to...maybe have some things going on in their personal life and they’re looking to know who might be able to assist them in that area. So...you do that, as well. So no, I don’t take a narrow...the approach to the law isn’t narrow; this is all I do. It’s certainly...wider than that too.

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later] So I guess I think part of my job in being a good lawyer is reflecting back to the client the implications, legally, and more broadly, of what they're actually asking, and saying, 'are you sure?'.⁷⁵

In this sense participants saw their role as helping the client to clarify their own decisions, rather than as resolving tensions with their own values by raising relevant non-legal or 'moral' considerations. Further, whilst participants viewed raising broader considerations with their clients as an important part of their role, they nevertheless acknowledged that the ultimate decision was a matter for the client, reflecting that 'I'm not there to tell them whether or not to make the commercial decision',⁷⁶ and 'well ultimately it's up to them how they would approach it'.

Although the giving of extra-legal advice did not necessarily result from tensions between a client's instructions and the lawyer's own values, participants saw the ability to add value to their clients by raising relevant non-legal considerations with them as consistent with their own values, and as another way of bringing their own values (in the sense of helping clients or bringing a positive perspective) to bear on legal practice. In this way participants were also able to reconcile broader tensions between faith and legal practice by recognising the ability to raise relevant

⁷⁵ Others said that:

If you have a good relationship then you're more likely to know more about what your client wants and needs. So if you have a good relationship then you know what they need versus what they want. So they might tell you something that they want, but if you know more about them you can say, 'well this is what you want, but this is what you actually need'. And sort of have a little bit more of the background information; maybe the reasons behind what they're asking what they need and then you give them more value; your services will have more value because you can give them more than what they say they want, and...they trust you as well.

Another said:

Some legal issues that people present with it's a question of... 'here's what the law says'. Other times people present with an issue that they think they know what they want or what the outcome should be, but it's not, so it's a question of digging around, getting some more information from them about what's really important, what is it they're trying to achieve rather than simply implementing what they've come in saying, 'this is what I need'... And at all times for me, it's about finding the right solution for them, or giving them as many options. For me it's about empowering clients with the knowledge that they need to make an informed decision.

⁷⁶ The same participant also said:

Do I give a preference for one option or the other? I'll certainly... I can think of a couple of instances where I'd identified an option, said 'well this is available to you, but is it ethical?' and I actually did raise that. I would say, 'look, the ethical considerations on this are separate from the legal ones'. And the kinds of clients I usually work with don't want to go down a path that has got questions of ethics.

And:

My duty of loyalty is to my client. But there's ways of balancing these things, you see. So if I ever thought, 'well this is really unreasonable on your part, you just can't ask that of someone', then I'll put that to the client, and I'll raise it as an option. I'll say 'look, this is a potential... you can put that on the table, but I have some concerns that Courts in this instance will strike that out as unreasonable', or... 'it's unconscionable conduct for you to do that'. So I'll put a query over it and I'll let the client decide (...). My duty of loyalty actually expands to that, to say 'look, you're just not going to get this... you're not going to be able to sell this'.

considerations with their clients, potentially giving effect to their own autonomy in the way that they raised these with their clients, rather than simply carrying out a legal role. As one practitioner said,

the other 99.5% of people, do really rotten things...because they live an unexamined life, and they've made a whole bunch of different decisions which, had they known at the time what was going to happen because of it, or what it would mean to people, they would never have made those decisions. And there's a really good advertisement for Energex, and it says, 'if you could only look up right now you would never do what you're about to do'. And they show this person about to...sort of put up one of those lifts, forklifts, or whatever, and it goes up to some sort of electrical wire thing, and you see their duplicate running towards them saying 'stop! Don't do that! You're about to die!' And my sense of it is that, if your practice can be such that you stop good people doing bad things, being able to hold a mirror to it and say 'well have you thought about that?' and can ultimately say, 'well yes, it's legal, you can do that but why don't you get someone else to do it because I don't feel comfortable with it'. You know, the average person who may not really live an unexamined life, they may not be a Christian, they may not even think too much about ethics, that could actually help them a bit, and you might stop them from making the ultimate career-limiting move.⁷⁷

For the most part, the extra-legal advice that participants gave was around broader ethical considerations such as risk or publicity.⁷⁸ Occasionally participants might raise specifically faith-inspired considerations, depending, for example, on the nature of their relationship with the client:

You make it clear when you talk to the client, 'well there's a range of options available to you under the law'. Then 'only you can make the choice'. And if they ask you the question...and many of your clients that you've acted for, for a whole bunch of years,

⁷⁷ The same practitioner identified being able to 'bring your values' to 'assist people in avoiding the unintended consequences of things that are coming at them, rather than dealing inefficiently with bad things that have happened to them', and further, that 'It doesn't mean that it's necessarily more fulfilling from a financial perspective, but it generally, it really helps me, me being a conviction player, to be in a position to see a higher noble goal of seeking to align organisations to a strategic and wider objective that has...they call it "the good of Australia" and some other bits and pieces'.

⁷⁸ For example: 'I said, "imagine the front page of the [newspaper] saying 'x bank does this', is that a good look?". He went, "ok, don't do that" and:

The law does not operate in a vacuum at all. And so they might get legal advice which says, 'Yes, you can sack all of your people', but I mean, is that a good idea? I wonder about that... or 'Yes, you can make all of your staff give you all of their rights for ever and give them nothing ever, the law would allow you to do that'. But don't you have as part of your constitution that you want to be a fair employer and a good employer? I'd like to draw your attention to those things as well and you might want to think about that'.

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sort of say, ‘well [name], when you give advice, I’d like to know what you’d do’. So that’s sort of an implied part of the retainer. Then you’d say, and I’d say, ‘well, within the ambit of the law what you can do is (a)’. And the vast majority of times I’d say, ‘well, you know if I were you I’d do (a), because it makes more sense; there’s nothing obvious against it’. But sometimes it’s something else, and I’d feel uncomfortable *not* pointing out something that’s available to people at all, but if someone pressed,...or if I felt that it was appropriate, I would say, ‘there’s another option too, that’s consistent with a Christian worldview, but it’s up to you to choose it’.

Other participants expressed caution in providing explicitly ‘Christian’ advice or being seen to impose their own values on clients,⁷⁹ with the same participant reflecting that:

[O]n a number of occasions (and they’ve been spectacularly important), a client has asked me to give a personal ethical view for them, when they weren’t Christians. And I’ve given advice that has been way, way, way, beyond the legal stuff, way beyond it. And in some instances that’s turned out to be spectacularly harmful for the relationship (...) So sometimes that’s a really negative thing, but for the majority of cases it was incredibly positive...in many instances...the turning point of a person becoming a client to becoming a friend.

The provision of extra-legal advice is consistent with the Lawyer of Integrity model, which advocates lawyers taking a broader view of their client’s needs. The extent to which participants might be seen to engage in a ‘moral conversation’ with their clients is also consistent with that model, except that the conversation is often framed in the literature as a response to tensions between a client’s instructions and the lawyer’s own personal values. For these lawyers, although personal values may have given rise to the impetus to assist their clients, the conversations seemed to spring from

⁷⁹ Others expressed caution – ‘I think inevitably there are things you would like to do and like to say...but you rule a line in front of them, that you don’t...because you don’t feel that you...have a right as a lawyer to cross into a personal dimension’; ‘I do speak to them about certain things...but...where I take it is up to the point where I say, “look, do you think that’s right given this and this”, and that person might say, “look, just do it, yeah look I know, but let’s just do it”. That’s up to the point where I take it, I don’t...to me I’ve done it, I’m not going to say, “look, you shouldn’t do this”, because...I don’t think it’s appropriate in any situation whether it’s work or family or counselling where you say you should do something, and you should not do something. I generally...I would generally react negatively if somebody tells me what I should or should not do’; ‘[Y]ou have to be really careful, because even if you have known them for three years and you’ve talked to them in a frank manner before, if you get into the habit of doing that, there’s nothing to say that eventually they won’t be happy with that...with your behaviour and...just because you’ve gotten away with it or done it before doesn’t mean you can do it next time’. The same participant identified fearing ‘a complaint to the Legal Services Commission or a complaint to my superior or something’ as a result of providing frank advice.

considerations relevant to the client's matter, rather than the lawyer's own personal values. The ability to reconcile personal and professional roles by bringing personal values to bear on the lawyer's role is also consistent with the Lawyer of Character model, in which the Christian lawyer is able to recognise consistency between faith-based and professional values, and to have regard to these values in her practice. Clearly, participants recognised the ability to engage in ethical conversations with their clients, and few saw the lawyer's role as being to simply give effect to the client's instructions, without more.

5.6 Does a Christian lawyer discuss her personal values and beliefs with her clients? (RQ(2)(b)(iv))

Participants suggested that they did not see the lawyer-client relationship as an opportunity to proselytise.⁸⁰ This may be consistent with the caution expressed by participants about providing explicitly 'Christian' advice to their clients. However, there was evidence that Christian lawyers do share their personal beliefs with clients from time to time. As one participant said, 'I don't broadcast it, it's not on the business sign. It comes up from time to time'.⁸¹ Some said that their clients were aware of their Christian beliefs,⁸² either because of their identity outside of work, or as a result of informal conversation,⁸³ but that they did not deliberately set out to share their beliefs with their clients.⁸⁴

⁸⁰ '[W]e wouldn't consider evangelism through specific – through...what people ordinarily call evangelism. We wouldn't think of that as a natural or appropriate part of our work'; '[I]t's not about imposing my religion on other people. People should believe what they want to believe. That I guess refers to the fact that...at the end of the day I'm probably more focused on the law, the lawyer aspects and doing my job rather than putting my values to my job and sort of affecting clients'; 'It didn't come up. Our interaction was on a commercial level, about a particular transaction, getting the deal done. There was rarely an opportunity to have discussions of a personal nature'.

⁸¹ 'I don't broadcast it, it's not on the business sign. It comes up from time to time. Some people know I go to Church, some people...it comes up from time to time but it's not something I broadcast, certainly...it's not that...I have no problem with people knowing, it's just that I think there's seldom a time when, "hey, so...by the way"...this that, and the other. "What did you do on the weekend?" "Well I went to Church" and whatnot. But...it's not something that comes up very often at all'.

⁸² 'Most of my clients know I'm a Christian, and sometimes they'll ask me'.

⁸³ 'It probably comes up in conversation about "what did you do on the weekend"-type conversation. That's probably more where it comes about is just that sort of small talk'; '[I]f it comes up in conversation. Church was a big part of my life; I would certainly talk about that. I was interested in the sort of...in theology and in stuff I was interested in. But if it wasn't interesting to my clients I wouldn't bore them with it'.

⁸⁴ 'I'm relatively cautious in doing that'; 'I won't say I've never ever said to a client, "well why don't you find a Church?", but it's not something that would come up often, probably...'; '[I]f there's an opening and it's not appropriate; not going to make them uncomfortable, then I'd certainly be bold enough to throw it out there. Do I evangelise to all my clients? No'; 'I pick my moments, and I don't

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In particular, participants were reluctant to share their personal beliefs with their clients because of a perception that this was not an appropriate part of the lawyer client relationship, including because of the potential power imbalance between lawyer and client or because this might undermine a sense of trust between lawyer and client. Participants said, for example:

- ‘[I]t’s just not something that is conducive to the lawyer-client relationship to be (...) “proactively” evangelising to them. That really isn’t what they’ve got me there for, and it’s not helpful to the relationship generally...there’s always an exception to every rule, but that’s not something I would usually say’.⁸⁵
- ‘I wouldn’t say that’s professional (...) You’ve got to be very sensitive about that, and I regard that my role is as a professional person, not as a religious counsellor or a spiritual guide. However much people might need the guidance and maybe not that I necessarily could be their guide, but I could point them in the right direction. But you can’t do that; you just have to accept that, “I’ve got a job to do”’.
- ‘You’re in an enormous position of power, and it’s very easy to abuse that power. And so it would only be as and when appropriate...as appropriate I would share. But you’d hope that they would pick it up, that there’s something about the way [name] cares for them which would come through’.
- ‘I think on a professional level, I think you’re opening yourself up there for something. If they’re saying, “well it’s in God’s hands”, I think you have to say, “no, it’s not in God’s hands, it’s in the hands of the court, and that person will make a decision on the basis of the facts before them”’.
- ‘[Y]ou’ve got to be careful, I mean there’s a professional way to describe that but sometimes you really want to tell them more, and so on, but look, there have been occasions when little things have come up, and I’ve encouraged

deliberately evangelise, and I don’t offend. If people want to talk to me about God or my faith, I’m very happy to talk about it’; ‘Not really, but I’m not frightened to bring it up if it’s there’; ‘Occasionally. It’s not something I push. A lot of my clients know I go to Church, but I don’t push something like that on them’.

⁸⁵ The same participant said that:

Look, if it comes up, I’ll happily chat about it. Yeah, if they want to talk about faith, I’ll talk their ear off, that’s fine, and if it’s relevant to what’s going on, because I understand how Churches work, or because I...recognise or I’ve seen how some Pastors can be, or whatever it might be, then sure, but I don’t feel that I can maintain this trust thing we mentioned earlier, if there’s some blurring of the lines in that respect. But...it does come up and people know, and questions have been asked and whatever else.

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people to pray about the problem. That was stepping over the line, but I sort of felt that I was given an entrée...’.

Some participants also felt that it would be better to ‘demonstrate the values rather than necessarily tell [clients] about it’ or ‘ramming their faith down people’s throats’.

Whether participants did share their personal beliefs with clients from time to time often depended on the nature of their relationship with their client. Participants said that they would share their faith with their clients ‘only when I know them well enough... I think it’s only when I know them well enough that I’m either going to talk about Christian values, or drop into conversation faith or Church on the weekend’ and ‘if it was appropriate. If we had a sort of relationship in which that sort of conversation was an appropriate one’.⁸⁶

Conversations about faith tended to more naturally arise in areas of law such as succession, where participants said that they would occasionally respond to client

⁸⁶ The same participant said:

I do believe that you have to listen to people and have a relationship with them in order to expect them to listen to you or have any kind of interest in what your...personal faith is. And I’d rather be asked than sort of shove it down people’s throats, I guess. Because shoving it down people’s throats doesn’t work, actually. I don’t like people shoving their views down my throat, I really don’t.

Others, that:

Most of my clients now where I’m at are long-term clients, six-year clients sort of stuff. So certainly if I’m away with a client, at a conference or doing stuff together, and just talking general talk and it comes up, pretty much...I’ll just introduce the fact that I’m a Christian or something, so it does happen. Or, as you know, you just say ‘oh I’m going to Church on Sunday’ or whatever, or ‘this happened’. So yes, so my clients...most of my clients do know I’m a Christian. Which is good, because it infuses my...and they’ll suss you out, they’ll sort of say ‘same-sex marriage’, and want to hear your comment on that and all the rest of it. So they’ll sound you out for where you’re at on those kinds of issues.

Seldom with clients. I don’t think...not explicitly...that may come through, I guess... as you’re developing a relationship with the client...because it is a relationship and the quality of that relationship may have been informed from time to time, by...talking about; saying to your client why it is that it doesn’t matter what they’re saying to you...

I have a personal relationship with most of my clients even though they’re business clients. I always try to find out more about them, because it’s always about the person, it’s not about a machine or a company or corporation or institution and so I’ve had lots of...the opportunity to pray for lots of clients over the years, and I can’t say that I’ve lead any clients to the Lord, but I have heard of clients who then...visited churches or went for different ministry opportunities to explore those things more.

[T]hat tends to happen in a long-term client relationship where you’ve got to know each other, and it’s appropriate to reveal more about yourself as a person as well as – rather than just your role as a lawyer...because you’ve got to know them better and they’re getting to know you better.

[I]t would depend upon the nature of the relationship I had with the client. And I guess that having been in practice for almost 30 years, I’ve acted for a lot of clients for a long time, and...my faith is not a secret...so...people sort of know that about me, and if I’m unsure, if I feel...sometimes I realise people are only wanting a vendor relationship, and it would probably be...they would be really offended if I sort of suggested anything else other than that.

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questions or comments about an afterlife by asking clients about their own personal values. For example:

Sometimes people will say...a few things, maybe to the extent of...‘well, I hope I get cremated because I’m going to hell anyway’. And I might take the opportunity to say, ‘well...well why would you think that? Don’t you have a belief, or...’, and then they might just say ‘well...what do you believe?’.

Not at every meeting. But if I have a client who’s talking about their difficulty with grieving or something that is troubling them, I try and be sensitive to what the client’s situation is. Often I find even if they are aware that I’m a Christian they’ll often say, ‘well how can you be a Christian when people die?’ or something similar. So I’ll have that discussion.

Whilst participants recognised that the nature of their role (including the importance of trust between lawyer and client) or the potential power imbalance between lawyer and client meant that it was not always appropriate to share their beliefs with clients, many felt comfortable doing so outside the lawyer-client relationship, including with other business contacts,⁸⁷ at seminars or with colleagues within their own firm.⁸⁸ One participant suggested that, with respect to professional contacts outside of work (including potential clients or sources of referrals) he had ‘made a decision a few years ago that I want to make certain that people realise I’m a Christian. I don’t want to shove it down their throat, but somewhere I’ll weave in some aspect of my faith somewhere in a presentation’.⁸⁹ This may suggest that role-perceptions constitute a deterrent for Christian lawyers in sharing their faith with their clients, or that Christian lawyers recognise different ethical considerations as applying to the lawyer-client

⁸⁷ ‘[I]n my line, where I do a lot of marketing, I have a lot of opportunities to meet business people who perhaps will not be able to hear that different message, so I try to make sure that I can...I do look for those opportunities’.

⁸⁸ ‘The firm was aware of it, and most of my colleagues were. Not that I went around broadcasting it, but I think I just got a reputation as a particular person. One guy said to me once, “so I hear you’re pretty religious”, just out of the blue’; ‘But with colleagues, yes, yeah. Colleagues, from time to time’; ‘With staff, for sure’.

⁸⁹ ‘I made a decision a few years ago that I want to make certain that people realise I’m a Christian. I don’t want to shove it down their throat, but somewhere I’ll weave in some aspect of my faith somewhere in a presentation. I got a shock once when someone who’d been to a few presentations didn’t realise I was a Christian. I thought it would be obvious, and then I thought, “well I must be behaving in a way that’s not making it obvious”, so I decided to be quite express about it’.

relationship, which may sometimes outweigh the religious imperative to share one's beliefs with others.⁹⁰

5.7 Conclusion

This chapter has examined the nature of the relationship between a Christian lawyer and her client, including how a Christian lawyer's personal values influence her decision whether to accept instructions to act for a particular client or in certain matters. It has argued that, whilst the Christian lawyers in this study recognised the importance of the lawyer's role and professional and faith-based imperatives against imposing personal judgment, there are certain instructions that a Christian lawyer may find 'religiously impossible',⁹¹ particularly where she views them as inconsistent with her integrity and identity as a Christian.

Further, the responses of participants in this study indicate that Christian lawyers are likely to discuss relevant non-legal (including moral) considerations with their clients, but see this as a means of 'adding value' to their clients, rather than necessarily arising because of tensions between a client's instructions and their own values. Both in raising moral considerations and in resolving any tensions that may arise between personal values and a client's instructions, Christian lawyers may recognise their own autonomy in going beyond the mere facilitation of a client's instructions, but also recognise the difficulty in balancing their own integrity with the requirements of their professional role. The ability to support and assist their clients (including by raising non-legal considerations) is also one of the justifications that this group of Christian lawyers recognised for their professional role, and as being consistent with both personal and professional values.

The next chapter will explore how the personal values of Christian lawyers influence their conduct of legal practice, including the resolution of a legal dispute and the charging of professional fees. It will also examine the influence of firm culture on participants' responses to the questions raised in this thesis.

⁹⁰ See, eg, Shaffer, *On Being a Christian and a Lawyer*, above n 7, 27.

⁹¹ The phrase used by Stern, above n 3.

Chapter 6 : The Conduct of Legal Practice

6.1 Introduction

This chapter will explore whether and how a Christian lawyer's personal values influence her conduct in legal practice, including decisions about the resolution of a legal dispute and the charging of professional fees.

Recognising that a lawyer's ethical decisions in the practice of law have the potential to impact not only her client, but also other parties who might be affected by a legal matter, another focus of the faith-based normative literature on lawyers' ethical decision-making is whether and how a lawyer's personal values ought to influence her conduct in the course of legal practice more generally, including in the resolution of a legal dispute (RQ2(c)).

The literature addresses four main questions about the conduct of legal practice more broadly, including:

1. In circumstances in which the ethically correct (in a broader sense) course of action is uncertain, to which sources should a Christian lawyer look for guidance? (RQ(2)(c)(i))
2. Should a Christian lawyer take into account the interests of other parties (including the other lawyer and third parties) in the resolution of a legal dispute, and if so, then how, and how should these interests be balanced with those of the client? (RQ2(c)(ii))
3. Should the personal values of a Christian lawyer influence her decisions about how to approach the resolution of a legal dispute, and if so, then how? (RQ2(c)(iii))
4. Should the personal values of a Christian lawyer influence her charging of professional fees, and if so, then how? (RQ2(c)(iv))

Again, the responses to these questions relate back to fundamental questions about the nature of the lawyer's role, and the moral justifications for that role. That is, if the lawyer's role is to provide her client with unfettered access to the legal system by carrying out her client's instructions without regard to, for example, the interests of other parties who might be affected by those instructions (as advocated by secular

liberal models),¹ then the lawyer's focus ought to be on carrying out her client's instructions within the bounds of the law, and concerns about fairness, justice, the impact on others or her own personal values, for example, ought not to influence her ethical deliberations.² Freedman, for example, argues that moral decisions about whether proposed actions are 'just' or ethical in a broader sense (including whether they are 'fair' to other parties), belong to the client, and therefore the lawyer's sole focus should be on whether the proposed actions are lawful.³

Clearly, this has the potential to create conflict where the lawyer perceives that the client's proposed actions are unjust, or have the potential to detrimentally (and perhaps disproportionately) impact other parties who might be affected by a legal dispute (such as, for example, a child who might be unfairly disinherited from a parent's will).⁴ Of course, whether proposed actions are 'unfair' or 'unjust' necessarily involve elements of moral judgment, which again suggests questions about whether this judgment should be made by the client, the lawyer, or both. There may also be a potential conflict where the lawyer is required to engage in zealous advocacy in pursuit of a cause over which she has personal moral qualms, or where she perceives such advocacy as being unjustified, or as causing undue damage on other parties.⁵

¹ This is not the only view of the lawyer's role, but is one example of how the conception of the lawyer's role and the moral justifications for that role are seen to give effect to particular actions in legal practice.

² See, eg, the discussion of the Adversarial Advocate model in Christine Parker, 'A Critical Morality for lawyers: four approaches to lawyers' ethics' (2004) 30 *Monash University Law Review* 49, 56 and see also Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 22-25.

³ Freedman, whom Parker classifies within the 'Adversarial Advocacy' model, but who is also of Jewish faith, argues that even tactical decisions about which witnesses to call belong to the client, stating that:

the attorney acts both professionally and morally in assisting clients to maximise their autonomy, that is, by counselling clients candidly and fully regarding the client's legal rights and moral responsibilities as the lawyer perceives them, and by assisting clients to carry out their lawful decisions. Further, the attorney acts unprofessionally and immorally by depriving clients of their autonomy, that is, by denying them information regarding their legal rights, by otherwise pre-empting their moral decisions, or by depriving them of the ability to carry out their lawful decisions.

Monroe H Freedman, 'Personal Responsibility in a Professional System' (1977-1978) 27 *Catholic University Law Review* 191, 202-203; 204. In contrast, the National Barristers' Rules provide that a barrister must not 'act as the mere mouthpiece of the client' but 'must exercise the forensic judgments called for during the case independently' and will not have breached her duty to the client by so doing (see, eg, Bar Association of Queensland, *Barristers' Conduct Rules* (at 23 December 2011) rr 41-42).

⁴ This is one of the examples used by Shaffer in his seminal work, *On Being a Christian and a Lawyer*. See Thomas L Shaffer, *On Being a Christian and a Lawyer* (Brigham Young University Press, 1981) 3.

⁵ Whether and why zealous advocacy can be morally justified is one of the key themes of both the secular and religious normative literature. See, eg, Tim Dare, 'Mere-Zeal, Hyper-Zeal and the Ethical Obligations of Lawyers' (2004) 7 *Legal Ethics* 24; Monroe H Freedman, 'In Praise of Overzealous Representation – Lying to Judges, Deceiving Third Parties, and Other Ethical Conduct' (2005-2006)

As outlined in Chapter Two, the faith-based normative literature rejects a complete separation of faith and professional role (in which moral considerations have little or no impact on legal practice), and suggests that, at some level, the Christian lawyer's professional role must also be justified from the perspective of her faith. For the Servant Lawyer, this justification is based on a broader religious justification of the lawyer's professional role, pursuant to which the lawyer is justified in adopting professional ethical norms when engaged in legal practice. However, even this most 'liberal' of faith-based models recognises that there may be a point at which an action required to be undertaken in the professional role may conflict with the lawyer's faith-based personal values to such an extent that it becomes 'religiously impossible',⁶ at which point the lawyer may withdraw from acting further. With the exception of the 'religiously impossible', the Servant Lawyer would generally adopt professional ethical norms regarding the resolution of a legal dispute, the interests of third parties, and the charging of professional fees, such that her day-to-day practice might not appear to be significantly different as a result of her faith. For example, in deciding how 'adversarial' or 'zealous' to be in correspondence with another party's lawyers,⁷ the Servant Lawyer would generally have regard only to her client's instructions, as well as to any professional conduct rules regulating the tone of communications between lawyers.⁸

The other faith-based models go further in describing a more distinct approach to the conduct of legal practice, including with regard to the interests of third parties and the charging of professional fees. The Lawyer of Character, for example, might consider

34 *Hofstra Law Review* 771; Monroe H Freedman, *Lawyers' Ethics in an Adversary System* (The Bobbs-Merrill Company, Inc, 1975); Monroe H Freedman, 'The Trouble with Postmodern Zeal' (1996-1997) 38 *William & Mary Law Review* 63; David Luban, *Lawyers and justice: an ethical study* (Princeton University Press, 1988) (particularly 155-157); L Timothy Perrin, 'Lawyer as Peacemaker: A Christian Response to Rambo Litigation' (2004-2005) 32 *Pepperdine Law Review* 519; Thomas L Shaffer, 'The Unique, Novel, and Unsound Adversary Ethic' (1998) 41 *Vanderbilt Law Review* 697; John W Stanford, 'The Christian Lawyer: Defending Apparently Guilty Defendants and Using Courtroom Strategies and Tactics' (2003-2004) 16 *Regent University Law Review* 275; Marc D Stern, 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness' (1996) 27 *Texas Tech Law Review* 1363.

⁶ The phrase used by Marc D Stern in 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness' (1996) 27 *Texas Tech Law Review* 1363, 1371. This was also discussed in Chapter Five in the context of the lawyer-client relationship.

⁷ The choice of adjective is one of the ethical choices described by Robertson and Tranter in Michael Robertson and Kieran Tranter, 'Grounding Legal Ethics Learning in Social Scientific Studies of Lawyers at Work' (2006) 9 *Legal Ethics* 211, 224.

⁸ For example, Rule 4.1.2 of the *Australian Solicitors' Conduct Rules* (2012) which requires that solicitors be 'honest and courteous in all dealings in the course of legal practice'.

faith-based virtues such as tolerance, civility, sympathy and respect for the dignity of the opposing party when making decisions about how to approach the resolution of a legal dispute, and is able to exercise ‘practical wisdom’ (or the ability to deliberate well)⁹ in seeking to achieve the best possible resolution for the client. The Prophetic Lawyer, whilst not necessarily approaching the resolution of a legal dispute in a distinct way, seeks to achieve faith-based ends through the pursuit and resolution of a legal matter, and is also likely to reduce fees or undertake pro bono work in furtherance of faith-based values.

As with the lawyer-client relationship (Chapter Four), the Lawyer of Integrity model goes furthest in describing a distinctly faith-based approach to the resolution of a legal dispute and the charging of professional fees. This model suggests that all actions undertaken by the Lawyer of Integrity must be justified with reference to her faith and, whilst this might not necessarily proscribe zealous advocacy on behalf of a client, requires that the ‘zealousness’ of actions undertaken in pursuit of the client’s interests must also be reflected on and justified from a faith-based moral perspective.¹⁰ The Lawyer of Integrity also values relationship, with theorists such as Shaffer placing emphasis on an approach to legal practice and the resolution of a legal dispute that will take account of and preserve the client’s relationships (including with the other party and relevant third parties) where possible, such as through a mediated resolution or other forms of alternative dispute resolution.¹¹ Shaffer’s ‘moral conversation’¹² would also involve discussion with the client about the most appropriate (including in a moral sense) approach to the client’s matter, taking into account relevant non-legal considerations, such as financial and emotional impacts and the interests of others who might be affected by the outcome (and perhaps also involving discussion about the lawyer’s own personal qualms, where relevant).¹³ Whilst not mandating a particular approach to the charging of professional fees, the Lawyer of Integrity model also cautions lawyers to reflect on their professional fees in the light of faith-based moral

⁹ See, eg, Thomas L Shaffer (with Mary M Shaffer), *American Lawyers and their Communities: Ethics in the Legal Profession* (University of Notre Dame Press, 1991) 44.

¹⁰ See, eg, Michael P Schutt, *Redeeming law: Christian Calling the Legal Profession* (InterVarsity Press, 2007) 256; Stanford, above n 5, 299.

¹¹ See, eg, Thomas W Porter Jr, ‘The Spirit and the Law’ (1999) 26 (4) *Fordham Urban Law Journal* 1155, 1161, 1164; Schutt, above n 10, 246; Joseph G Allegritti, *The Lawyer’s Calling: Christian Faith and Legal Practice* (Paulist Press, 1996) 89-90.

¹² See, eg, Shaffer, *On Being a Christian and a Lawyer*, above n 4, 121.

¹³ The extent to which Christian lawyers raise relevant non-legal considerations with their clients was discussed in Chapter Five.

values such as stewardship, service and a faith-rather-than-money-or-possession-based identity.¹⁴

This chapter will look at each of these issues (sources of ethical guidance, whether and how a Christian lawyer takes into account the interests of other parties, the resolution of a legal dispute and the charging of professional fees) in turn, and will also look at the impact of firm culture on participants' responses to the questions raised in this thesis. As noted in chapter three, in her study of lawyers working in large law firms, Kimberley Kirkland found that the different backgrounds of these lawyers helped to highlight the influence of firm culture on the development of the ethical norms within which the lawyers practised.¹⁵ Similarly, in this study, it is expected that issues such as the extent to which participants are able to make decisions about matters such as client engagement or the charging of professional fees within their firms, may have also influenced their responses to questions raised in this thesis.

6.2 What sources of ethical guidance does a Christian lawyer turn to? (RQ2(c)(i))

Participants' responses to questions about their direction in circumstances in which the ethically correct (in a broader sense) course of action is uncertain, revealed that there are four main sources of ethical guidance for Christian lawyers:

1. Guidance from within the firm (such as colleagues or supervisors);
2. Guidance from within a faith-based or broader professional community;
3. Examination of the law; and
4. Personal reflection.

¹⁴ See, eg, Schutt, above n 10, 210-211; 213; 226-227; Thomas L Shaffer, 'Jews, Christians, Lawyers, and Money (2000-2001) 25 *Vermont Law Review* 451, 470; Allegretti, above n 11, 34.

¹⁵ Kimberley Kirkland, 'Ethics in Large Law Firms: The Principle of Pragmatism' (2004-2005) 35 *University of Memphis Law Review* 631, 661, 638.

Predominantly, participants suggested that they would seek initial ethical guidance from professional sources, including supervisors,¹⁶ colleagues,¹⁷ other lawyers,¹⁸ and formal sources such as ethical support services provided by professional organisations.¹⁹ Interestingly, participants did not refer to specific rules of professional conduct in their responses, although this may have been expected, given that participants were reflecting on general sources of guidance rather than particular circumstances or scenarios.

Some participants described feeling comfortable not only discussing professional ethical considerations with others in their firm, but also faith-based ethical considerations or their own personal moral concerns.²⁰ Largely, this arose where others within the firm shared the participant's faith. The extent to which firm culture affected participants' responses to questions about the lawyer-client relationship and ethical decisions about the conduct of legal practice more broadly will be explored further in [section 6.6](#).

¹⁶ 'I go to my director and I actually say to him, "this clause is a bit unfair"... "what should I do, what do you think about that?" And he'll either say, "yeah...that's a good point that you're raising, let's change it a bit", or he'll just say, "well they should get good representation"; 'The partner I work for is first point of call, always. He's just two doors down'; 'I would speak to the partner about his view, because...it's not just... me, it's also the firm, and (...) ultimately if I decide to do something, well he's responsible as well for those actions, so it's probably nice to actually include him on those considerations. And...if it was particularly concerning he would probably take over at that point and actually speak to the person as well'; 'I went to my boss and said, "I can't handle this"'

¹⁷ 'Firstly to my partners'; 'Definitely I would consult other people, within my firm'; 'In practice it would have been the partner or the colleagues, and the main consideration would be "what's the best outcome for the client"'; 'We have [area of law] meetings once a week. We sit down as a team of 11 and just shoot the breeze about what's going on. Stuff gets brought up there... "I've got this situation", this that and the other, whatever. So that does come up, and that's a way I turn to'.

¹⁸ 'I'm on the Criminal Law Committee, so I...there's a mailing list, and I know a bunch of other criminal lawyers. That's a less common course'.

¹⁹ 'Secondly, in the UK, when I had to requalify over there we were sent to do Ethics, and they just said, "if you get really stuck..." – they just drilled into you – "...Ring Reddich, this is the number". Reddich was the place where the Law Society had its ethical department and you would ring them up and you would give a no-names scenario to the Law Society and they would say, "you need to do this...". I never had to do that but I do remember having to tell other people, "Ring Reddich"; 'If you need to, I mean there's...people that you can...seek advice from through the Law Society, on a sort of "no names" type of basis'; '[location] Law Society are very helpful with those kind of things, [name omitted] is very good'; 'If I'm not sure about something, particularly if I'm not sure what my legal obligation is to do – what my legal obligation is or what the boundaries of what I can do are, legally, I – probably I'll talk to the [location] Law Society ethics consultants and look at their material online to see if I can resolve my query that way'.

²⁰ '[B]ecause I am quite junior as well - I would definitely go to my...the senior associate who's in my firm for that discussion, and then if we're needing a second opinion I would go to the partner about it, and go from there, I think. I think that's the first step to take. The next is...as an overarching thing, considering, "does that conflict with the values that I hold personally?" And...if it does, then potentially have a conversation about that with the partner or others who are above me'.

Again, whilst recognising their professional ethical obligations, a number of participants also said that they would reflect on situations in light of their own personal values, suggesting that, for example:

[T]he step would probably be to look at the professional conduct rules first, as a first step. And then...and then I think it's at that point after that then the faith comes into play, as you're like, 'ok...perhaps the rules as prescribed by...the law, tell me that technically that I could do it or I could find a loophole', and then it's, 'ok, if I can find a loophole should I, as a Christian, or should I as someone who has values higher than...just what is prescribed, in a sense, then make the decision to do that, as prescribed by the law or as allowed by the law?'...So I think it's in that kind of level; I think you take the professional conduct and the faith, that overarching thing that guides you.²¹

Personal prayer, reflection and confidential support from a faith-community²² were also recognised as providing avenues of ethical support and guidance, with participants commenting, for example, that 'As a Christian you're encouraged to pray, to reflect. That almost goes against the sort of busy society where you're doing everything almost frantically. I think sometimes when you've got a dispute, sometimes the best thing is to reflect on it',²³ and 'Well, I'm a Christian first. I say...I have a bit of a prayer, or a bit of a mantra...when I am faced with a difficult matter, I will say, "God clear my head, give me..." I pray for clarity, that's...I pray for just a clear mind, and not to be fearful of the complexity of the issue in front of me'.²⁴ One participant also recognised the importance of networks of Christian lawyers, suggesting that:

²¹ Another participant said '[L]ook, could I?...It's fascinating. Could I have situations where I'm not acting in a Christian way and I just put them out of my mind and do my job, I don't know'.

²² '[D]efinitely I would consult other people, within my firm. And then if there's something...if I feel not quite settled I think pray about it, and...perhaps talk in very general terms without disclosing any confidential information to...my inner circle, or something like that, who could...give some Godly advice or wisdom as to...how to deal with that situation?'. Another participant also indicated that he would turn to his community of believers, mentors and people he looks up to, where the appropriate course of action is uncertain, and that he would seek advice from Christian sources before seeking advice from a non-Christian lawyer, because of the difference in value systems.

²³ This participant went on to say that

To me, often prayer is a reflective process, because you pray about the things you're concerned about, there's a chance to bring things to God that are weighing on your mind or whatever. So I think in some senses, even though that goes against the 6-minute unit mentality, there's a lot in that that actually is beneficial workwise to that process. The chance to reflect.

²⁴ Another participant said,

[E]ven just thinking...oh, I've got this decision, I don't know which way to go, what should I do? Oh yes, let's consult the textbook written over there by [name] or [name] or whoever it is as a first point, but perhaps the first point would be; let's just pray about this. And I'm not saying don't go...I don't expect God to create revelation for you every time and get you out of trouble, but there are some things

I think with the lawyers especially...getting together in a community is very important because of that whole...the pressures I guess we face, or the issues of ethics and what have you...they're common to the industry. So I think it makes a lot of sense, and it makes a...there's a lot of merit to being involved in a Christian lawyer community or Christian community that's in the same sort of industry or role as you, who understands what you're going through, and you develop those sorts of relationships throughout your whole career (...) Before thinking of this subject I thought...it was difficult to spread your time between church and work, and connect groups and law groups and other ministry groups, but now I'm just very passionate about making sure there is no separation, that...there is a Church, that we approach Church differently, and that this community of Christian lawyers can be, and should be, and is a Church.

Whilst seeking advice from a faith-based community (which might be broader than a network of Christian lawyers) is also advocated by Shaffer in his communitarian philosophy of lawyers' ethics,²⁵ the responses of participants in this project would suggest that, whilst Christian lawyers may reflect on their personal values when making ethical decisions in their professional role, they are overall more likely to seek ethical advice from supervisors and colleagues within their own firm²⁶ rather than an external faith community.²⁷ Again, the responses also indicate that Christian lawyers see their faith as relevant to their legal practice, in that participants described reflecting on their proposed actions in the light of their personal values, and saw their faith as a source of strength when making ethical decisions. This is also reflective of the rejection of a strict separation of faith and legal practice and suggests that, at some level, Christian lawyers do seek to reconcile faith and professional role when making ethical decisions in legal practice.

6.3 To what extent do Christian lawyers take into account the interests of other parties in resolving a legal matter? (RQ2(c)(ii))

The responses of participants to questions about whether and how they took into account the interests of other parties (including the other lawyer and third parties

that we do at work, and I think that prayerful consideration is something that...I certainly have been lacking of at times. And I try to create a habit where I can come in and start my day with prayer, but to be honest it hasn't worked all that often. The moment I switch on that laptop...it goes 'bing bing bing', and I jump straight on it'.

²⁵ See, eg, Shaffer and Shaffer, *American Lawyers and their Communities*, above n 9, 131.

²⁶ Who may or may not share the same faith.

²⁷ 'There are Christian lawyers that I know who I could ask question of; I can't say it's come up'.

who might be affected by a legal matter) revealed that, whilst maintaining relationships is important to Christian lawyers, they are also cognisant of their overall obligations to their clients, and of the importance of client autonomy. Whilst recognising their responsibility to their client, participants also gave consideration, to some extent, to:

1. The way that they related to the lawyer(s) representing the other party;
2. The possible impact of the client's matter on the other party and relevant third parties.

This seemed to be motivated by a number of factors, including personal concerns about the potential impact of the matter on other parties, as well as a perception that it was important to the client's interests to consider other parties, either because this might have a positive impact on the resolution of a legal dispute, or might avoid unduly impacting important relationships that the client may have had.

6.3.1 The interests of the lawyer for the other side

Participants said that their personal values influenced the way that they related with the lawyer(s) representing the other party in terms of treating the other lawyer with courtesy and respect,²⁸ and not taking undue advantage of an opponent's mistake. As one participant said, '[F]or me it's important to be respectful to others...and that means...everyone I come into contact with, because I...see everybody as having stories that are worthy...human stories that are deserving of respect, and who am I to think otherwise. And so I think that means that...generally, I am respectful in the views of my opponents'. Another participant described going out of her way to correct a mistake made by the other side (with client consent), suggesting that:

[W]e've done that before, so where the other side has done something wrong we have to...we've told them about it... 'you want to look at this', and...it might be small, like

²⁸ '[Y]ou've always got to treat people with respect. Well, except when they need to be disrespectfully spoken to, but that would be within the scope of your instructions then. But by and large, you try and be gracious towards people'; 'I think ultimately...in every case you need to be treating everyone who's a party to the negotiations with courtesy and those sorts of values...and it's generally helpful to assume the best interpretation of particular behaviour which is probably...that probably comes from a faith-based sort of thing'; 'I treat them [colleagues] fairly, I like to be treated fairly...I don't socialise with a lot of colleagues. Just on a straight business basis. Some are easy to deal with, some are mongrels. But I just try and say, "well look, I treat you the way I'd like to be treated myself". And most of the time they reciprocate. Some don't – their bad luck'.

in a settlement or something they may have calculated their figures completely wrong and their client would not be well off, we would tell them. Even though it's in our client's best interests to get that extra sum of money or something like that, we would go to our client and of course get their instructions first, so always recommend that...the client does the right thing, and instructs us to tell the other side that we need to tell them they've got it wrong. Or for example say if the other side need us to go out of our way to make something happen for the other side's client we will generally do that, and I feel that's something more Christian than legal. Because a lot of people don't do that. And we generally do that for every single file. It's not something that we need to do. Or sometimes we wouldn't charge either, for extra work. So even though it hasn't been our fault, we just do that anyway to get both parties in a better position. And I think again that's...from our Christian values. You don't always get something in return...and I find that other law firms won't go out of their way to help us out if we need something.²⁹

It is worth noting that, in this example, displaying courtesy and grace to other lawyers is seen as not only motivated by Christian values, but also in the best interests of the client overall, in terms of facilitating the desired outcome for both parties. As described below, it may be possible to draw a distinction between the account taken of the interests of other parties (including other lawyers) in areas of law where the aim is to reach an agreement or give effect to a transaction sought by the client and the other party (such as conveyancing or a commercial transaction, for example), and more adversarial areas of legal practice such as criminal law. However, even in an adversarial area of legal practice such as criminal law, being courteous with other

²⁹ This was also reflected by another participant, who said that her values influenced her to in situations where people have...made...just a mistake, and also to offer that grace in situations applicable as well...The hard line says that we can't admit...that people make mistakes, and...of course...with client instructions of course, and not...going out of our way, but...to...I guess to acknowledge that no-one's perfect...And I think as well...I've had situations...where other people have given me favour, and in terms of perhaps they could have come down really harsh, but decided not to, and to remember those situations as well, and use your discretion after consulting supervisors and all the rest.

Another participant reflected that,

I've got a conveyancing matter that's just been terminated. I was acting for the seller. The buyers...didn't do the right thing. They were a bit underhanded about what they did. In the end it terminated, they terminated it. Had a talk to my client about it, and he said, 'I'm not going to push it'. But I could have been...if he'd said, 'hey look, this isn't fair', I could have been...high-handed? I suppose is one way of putting it, with the other solicitor, saying... 'your client didn't do the right thing; no, we're not going to authorise release of the deposit money'. But I'd had dealings with this bloke before...he's a little bit older than me, he's honest, he's easy to deal with, and we just...between him, me and my client we just finalised it without causing...we could have caused a fuss, and he knows we could have caused a fuss. But my client was reasonable. Said, 'oh well, I'll put it back on the market'.

practitioners was also seen as having a positive effect on the resolution of a matter. For example, one participant described criminal defence practice as:

50% knowing the law, 50% knowing the system, and in knowing the system; knowing the Magistrates, knowing the Prosecutor, having a yarn to court staff. ‘Getting shit done’ is a huge part of the job, a lot of people never get the hang of. I hear a lot of stories from someone I know who’s a Prosecutor, and some lawyers are horrible to her. No favours, none whatsoever. You go into court, say hi to the court staff, hi to the Prosecutor, just ‘people skills’ your way through it. That’s the system, that’s how it works. People have the authority to make your life very easy or very, very hard, and if you work the system in that respect, and keep people on-side...your job is a thousand times easier.³⁰

The extent to which participants placed value on demonstrating qualities such as courtesy and respect to other practitioners is consistent with the Lawyer of Character, who recognises consistency between faith-based and professional ‘virtues’ such as courtesy and respect, and is able to reconcile her personal values with her professional role by giving effect to those values in the way that she approaches her legal practice. The emphasis on maintaining positive working relationships may also be consistent with the Lawyer of Integrity model, which places importance on caring for other parties, which may include the other lawyer. It is interesting that some participants saw a productive working relationship with the other side as being of overall benefit to their client, rather than seeking to approach the relationship from an adversarial standpoint, in order to assert their client’s legal rights and responsibilities. This is also consistent with what some practitioners said about how they approached the resolution of a legal dispute, with achieving a positive resolution sometimes being regarded as of more benefit to the client than aggressively pursuing rights and entitlements regardless of broader considerations such as financial and emotional costs (see [section 6.4](#) below).

³⁰ The same participant went on to say,

I often say that the defence lawyer gets to set the tone. So if the defence lawyer’s a dick, then everyone hates each other. If the defence lawyer is reasonable and polite, 95% of the time it’s reflected straight back at you, everyone gets on swimmingly. I don’t know why that is, but it’s just a fact. Most Prosecutors are very happy to play nice with you if you play nice with them. And that’s been my very long experience, I think.

And that

I like to think I’m a nice person regardless, but if I wasn’t a nice person I’d fake it. That’s what you have to do. So it’s just respect for other people. And maybe that’s informed by my faith, but I think I’d fake it if I wasn’t a nice person, for sure.

Consistent with the responses of some participants who said that faith affected their approach to legal practice by providing them with incentive to avoid becoming caught up in the ‘status’ and ‘rewards’ of legal practice,³¹ one practitioner also felt that his faith allowed him to respond more calmly to aggression from other lawyers, reflecting that:

I’ve got a major matter that’s been going on for years, so I can compare how I used to handle it, and compared to how I do now. The lawyer on the other side is very, very difficult, and makes all sorts of rubbishy assertions (...) It’s a big \$15 million matter and the barristers get up in arms about the lawyer’s letters and want to write back, and I’m the one who’s placating the barrister saying, ‘let’s just get on with it, who cares?’. Because I know that our next letter’s going to lead to another one from him, and... we used to say, ‘well, we’ve got to put it on the record it’s rubbish, these assertions’. So I say, ‘well let’s get all these letters and do it in a bland way’ [and later], [P]eople make allegations. I mean, to me, being a lawyer, my reputation has always been the most important thing to me, and so when somebody asserts that you’ve done something unethical and you haven’t, because they’re just misguided about it. In the old days you’d be completely up in arms. That’s not to say I wouldn’t, if it’s something important to say the facts are wrong, but I’d certainly do it in a way, if I have to respond, I’d do it in a way that would just keep calm and relaxed, and I wouldn’t pick up a phone and yell at them.

The discomfort with responding to allegations in an unnecessarily aggressive manner is also consistent with some perspectives on the resolution of a legal dispute, as outlined below.

6.3.2 The interests of the other party and relevant third parties

Whilst some participants said that they would consider the potential impact of their actions on the other party and on third parties who might be affected by the outcome of a legal transaction or dispute, the extent to which they would give effect to those considerations would ultimately be subject to their obligation to their client, and to client instructions. As one practitioner said, ‘you would...think about some of those

³¹ As described in Chapter Four.

things [3rd parties etc], but at the end of the day...it's...the interests of your client rather than the opposition or some third party'.³²

Although thinking about the potential impact of a legal matter on others might be consistent with the lawyer's own values,³³ some participants also saw raising these considerations as part of their role in advising their clients, and as being of possible benefit to their clients. For example, the interests of the other party were sometimes seen as a relevant consideration when advising clients about the resolution of a legal dispute, because having regard to the other party's position might facilitate a better resolution. That is, practitioners recognised the time and costs involved in litigation, meaning that it would sometimes be in the client's best interests to consider whether resolution might be able to be reached with the other party,³⁴ as well as considering,

³² Another practitioner said,

I really believe I can only properly act for my client, so yeah, I just look at that. And it's really up to the other lawyer to look after the other party. I really believe in that, because unless you...there's always two sides to every story, and you don't know the other facts and all the rest of it. I guess, a consequence of it is; if you act fairly and ethically for your client then the other party won't be mistreated, but that's not my focus. My focus is just looking after the person I've been given to serve.

See also:

I think that I would think about the other side...and...and how they respond. But it would not necessarily be a priority...I would consider what the effect would be, but I think there's that sense of loyalty as well, to your own client. That...they are the ones who have asked you to be their advocate, so we have to...do the right thing by them, I think...so...as much as I think...we should consider...have a thought about the other side, but we also have to, I guess, be just in the way that we're conducting ourselves for our client. So it would be a consideration, I think, but it wouldn't be the main priority.

³³ One practitioner, describing raising with her client the possible impact on family relationships affected by a dispute about a will, reflected:

Now, is that outside of what a lawyer would normally do or should do? Probably. Is it influenced by my faith? Yes, in that my faith is, I guess, what really influences the passion that I have for people and relationships. So, in a round-about way, do I kind of go 'gee, I really want to talk to them about...making sure that this little dispute over mum's estate doesn't mean that suddenly we're never going to talk to our sister again' because... 'from a faith perspective that wouldn't be right'. No! But does it influence at a subconscious level? It would have to. It's part of who I am.

Another reflected:

I know a lot of...even with [some of the Christian lawyers that I know], some family law practitioners have gone into family law with that end in mind; that they can witness and try to bring a more peaceful resolution to people through that practice. So they actually look at it as a ministry to try to bring healing to people. To their clients and others.

³⁴ 'What I'll do, I certainly start with protecting my client's interests and advancing their position from a legal entitlement perspective. Then when they start looking at what this might look like for a resolution that we can come up with outside strictly what the law might impose, then obviously we're looking at the competing interests. Because we're looking at, "what is your position", "this is their position", then we do the "this is what the court might do", which is generally somewhere in between, and then talk about basically, how we might be able to avoid going through the litigation quagmire, and actually come up with a resolution that certainly isn't...throwing in the towel and giving everything to the other person, but takes into account everybody's views, needs, rights and entitlements; within the framework of what the law would say. So if we're looking for something that's outside of what the law would give them, well there's no point doing that. But we always – I always need to discuss with them the other party's interests and where that fits with their legal entitlements as well, because that's the only way you can really give advice and empower them to decide where and at what point they should be looking to settle'.

for example, the impact of legal actions on any future relationship that the parties might have (including commercial relationships).³⁵

Ultimately, however, participants recognised their role as being to assist their client to achieve their rights and entitlements, reflecting that, ‘there’s nothing wrong with the client progressing its interests to the full extent that it can’, ‘my duty of loyalty is to my client’, and that, if they felt uncomfortable about whether a client was acting reasonably, then the appropriate course of action would be to speak to the client about their concerns rather than tempering a representation,³⁶ suggesting that:

[In the context of including an unreasonable clause in an agreement] If I ever thought, ‘well this is really unreasonable on your part, you just can’t ask that of someone’, then

³⁵ This was particularly the case where the lawyer was acting for a client seeking to enter into an agreement or commercial arrangement with the other party:

The primary consideration would have been my client’s interests and achieving those, and I guess the other interests would really be subservient. So...what’s ultimately going to lead to the better outcome for my client; that probably would have been the main consideration. So not wanting to be too unreasonable because it wouldn’t get a deal through. [later] Sensible practitioners would be prepared to negotiate an outcome, and that (even if your client has to give way on some points) is ultimately in the best interests of both parties.

³⁶ ‘Say a client has control over management rights in a particular development, and then the property manager’s a dud, and so the question for the client is whether or not they enforce all of their termination rights and boot this person out. And they come to me and ask, “[name], what can we do to get rid of this person?” Well I...this is the best way to explain this...I have to document every possible termination right that they’ve got. I’d be fraudulent if I don’t. They’ll sue me if I don’t identify everything that I can. So if I go back and tell them, “this case is obviously...”, if I go back and tell them, “you don’t have a termination right”, and then another lawyer says they do, then if this person, for example, is such a dud that someone slips on a water main and is a paraplegic for life, that property manager is sued; my client is sued; they’ll sue me because I didn’t pick up on the fact. That’s just life. So my job is to identify every termination right. And then if you look at that particular example that...from a moral point of view, the owners are getting a lesser level of service because this guy’s a dud, and really, should be ousted. Contractual and agencies exist for that pure purpose. It’s a policy consideration, people should be getting the best level of service they can. So long as there is a lawful termination right, they should be able to exercise it. There’s nothing...bleeding heart issues don’t come to life in that...It’s just, “this is a lawful entitlement”’.

Another participant reflected,

I had a client who was in a commercial operation, an alliance arrangement with another person...the client...came to me and was needing to get advice about what they needed to do given the circumstances that had appeared. Legally, they were entitled to terminate the relationship and move on. As it turned out, if they did do so they’d probably be able to get a whole bunch of windfall options that would probably help them a bit more...I suggested to them...I gave them the advice...I said, ‘well yes, you can terminate to do that’. I knew that there were...that the circumstances were such that the other person was a bit...for a range of issues beyond their control...they weren’t at their best. Query whether they would ever be at their best. Perhaps it was a personality fault, and that this could be going on for some time, or...but I knew that there were circumstances around that would mitigate them against being at their best at the particular point in time that my client was making the judgment. So I said, ‘well look, you’re entitled to terminate, you can terminate, there’s a big benefit’. And I said, ‘but...just keep in mind that perhaps...if you persevere a bit, this could all come good’. And he said, ‘well what would you do?’ And I said, ‘well on balance I’d probably persevere a bit (...) it’s in your economic interests to cut and run now rather than risk it to go further. But on the other hand perhaps the person needs a break and this could be just what they need to bring it over...and if you could do both you can be doubly ahead. So there’s a bit of a judgment call’. And he said, ‘...I’ll cut and run’. And I said, ‘ok, I can understand why you took that view. Probably not what I would have done but that’s fine, I’m happy to go ahead with that’. And he did, and that worked out ok.

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I'll put that to the client, and I'll raise it as an option. I'll say, 'look this is a potential...you can put that on the table, but I have some concerns that Courts in this instance will strike that out as unreasonable', or... it's unconscionable conduct for you to do that'. So I'll put a query over it and let the client decide. And then there's also the market (...) So there are ways for a lawyer to...if they're not comfortable with how far they're going to go...to actually introduce some reasons why they might not do that. So there is some...it's not coaching of the client, but it's...proofing the client's assumptions. And people will listen to you as a commercial practitioner who knows what works and what doesn't work in the marketplace.

In the context of criminal law practice, the interests of the client and society were more broadly recognised as requiring the lawyer to put their client's interests above the interests of the other party (including victims and witnesses), with one participant stating that:

[T]he whole system depends on me vigorously advancing my client's interests to the best of my ability. So that is my role, and it's not my place to...panic about someone else's feelings about the matter. I mean I don't go out to be an awful person. But there's no...there's nothing good that comes of me compromising my ethics...my ethic to assist my client and assist the Court. No one gains out of me suddenly panicking about the fact that this is going to make someone else sad...it's an adversarial system. My...the legal system as a whole and the community flowing from that are best assisted when I'm doing everything I can to advance my client's interests to the best of my ability.

Where participants were most likely to think about and raise the interests of the other party or third parties who might be affected by a legal matter was in more 'relational' areas of law, including family and succession law. This was particularly the case where participants saw the client's relationships as having the potential to be negatively impacted by a legal matter. Participants said, for example, that 'I don't go, "well this is what I think you should do", but I will talk to them about...morally, what do they think is the right thing to do by children – that they want to include, exclude whatever, say, from the will...and I certainly do encourage not taking action that will unnecessarily sever things like family ties',³⁷ and:

³⁷ The same participant went on to say that, 'I've got to say, I've had certainly – even very recently – several clients who've taken that on board, and then we've been able to get a resolution by taking

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One of the pressures often that parents are under is particular kids wanting a bigger slice of the pie, and wanting to justify it. And one of the things I often talk to clients about is the fact that the kids will still have relationships, good or bad relationships, with each other after the parents are gone. And I talk about their legacy as parents, sometimes your legacy can be to actually destroy a family (...) It's not an uncommon thing for me to talk about the legacy and bitterness if people within a family are treated unfairly...that can be a lifetime resentment within the family, all those sorts of issues.

Another practitioner, describing his approach to acting for a daughter who had been left out of her parents' will and sought to make a claim against the estate, indicated that he had taken an approach which sought to maintain, where possible, the client's relationship with her siblings, saying that, instead of simply instituting proceedings, he had discussed and adopted a more conciliatory approach with his client,³⁸ reflecting that:

I think it's important in those situations...to look past the law and see the effect it's going to have. I always think you owe that. I'm not too sure why I think that, but I think...just going for the law and forgetting about the effect and all that is just...I think lawyers should rise...are better than that.

Instead of the client achieving her fair share of the estate but becoming 'ostracised from her family and everyone hates her and all that', the participant said that, by adopting an approach which sought to maintain (where possible) family relationships,

probably a far less aggressive approach than what they wanted to, but they have actually been able to maintain, retain, or re-establish some family relationships, and they've actually come back and thanked me, for the advice that I've given them'.

Another participant saw that exploring the client's relationships in the area of succession law was part of the professional role, reflecting that:

In a will situation, someone comes and has a family, whether they get along with that family or not. I need to know about all the family, and what they're like; what their relationship with my client is...how they're getting on in life; do they have a disability; are they in need of money, because that will directly affect my advice to my client about what they're proposing to do in the will. So if a person was proposing not to give any money to their client with a disability, for example, because they wanted to give it all to a second spouse. In some circumstances, frankly, it's understandable, because the second spouse is in financially a much more precarious position than the child with a disability, should the client die...Whether I think it's manifestly...bizarre – what they're planning to do in the circumstances of what everybody's financial needs are in the relationship structure...if family provision proceedings are relevant...so if they've failed to provide for someone in the will and that person has a right under the relevant legislation to come along and challenge it later, then I'll strongly counsel my client...that – 'are you aware that this could happen, are you prepared to take that risk?', and if so, 'you need to be aware that this might happen, and your intention to your spouse might be frustrated because all this money is going to be spent on fighting your child with a disability'. And furthermore, if they're having their money managed by the public trustee, you can guarantee that there's going to be a fight because the trustee will say it's not fair.

³⁸ Which necessitated instituting proceedings in order to preserve the client's rights under the relevant limitation period, but also writing to the family suggesting that the client 'would like to negotiate a settlement, and the last thing she wanted to do was lose her family'.

the client not only achieved her fair share of the estate, but ‘things are not too bad in the family after all that’, suggesting that ‘I think that’s what you’ve got to keep your eye on, that sort of stuff’.

However, whilst participants would raise relevant relational considerations with their clients, they again reflected that they would ultimately follow their client’s instructions; describing their role as being to raise the possible impact of proposed actions on other parties with their clients, but ultimately not to impose their own personal moral views. As one practitioner said:

If my client wants to favour a particular child or whatever, well that’s their right. I might think it is better that they divide it equally between their kids, but I think they’ve got a right to make their own decisions and I think that’s my job. If my client wants to inflict harm on someone, well that’s totally different, but if my client wants to give a greater financial benefit to one family member, well that’s their right, as far as I’m concerned. I don’t see that I’ve got any higher moral position that says that my view should take precedence over their views.³⁹

6.4 The resolution of a legal dispute (RQ2(c)(iii))

The value placed by Christian lawyers on relationship and on taking a broader view of the lawyer’s role was also evident in participants’ responses about how their personal values influenced ethical decisions about the resolution of a legal dispute. The specific issues discussed by participants included:

1. The appropriateness of ‘zealous’ advocacy; and
2. Options for and factors involved in resolving a legal dispute.

³⁹ Another participant said,

For example, I think in a conveyancing matter about a year ago where the other side said, ‘oh, can we have an extension without penalty’ (and our client is entitled to a penalty if settlement is delayed and it’s not their fault) and in those situations...in that particular situation go back to the client and say, ‘this is the situation, you are within your rights’...but then the client came back and said ‘oh...that’s fine, I’m happy to waive the penalties’. And so...there’s that grace that is extended there. But it basically comes down to what are the client’s instructions...but it can...I guess if clients are being unreasonable with their requests as well, just to raise it with them...At the end of the day it is their decision, but...I think our responsibility is also to...if clients are being...ridiculous with what they’re asking, or even not complying with what...is a reasonable request by the other side, then it would be something that we would...we would have to raise with them. Because I think it comes down to (...) not just being (...) a ‘hired gun’, but you have to use your brains as well, with the situation and give advice accordingly.

6.4.1 The appropriateness of zealous advocacy

Many participants reflected that an area of ethical complexity in legal practice was about how ‘zealously’ to progress their client’s interests, especially where this might involve acting aggressively towards the other side.⁴⁰ This perspective is also consistent with participants’ responses about the areas of potential conflict between faith and professional role. As one practitioner said,

[I]f it’s something that really, I’m not willing to send out on my letterhead, then I’ll just refuse to, and say, ‘look...if that’s how you want to conduct this then you might need to either find alternate representation or represent yourself’, if you like. If it’s something that...we certainly have practitioners in town that send really aggressive correspondence, and the client might question... ‘are we being weak by not doing...like for like, “an eye for an eye” kind of stuff’. So...that might require me to talk to them about...not lowering ourselves to their standards. It might be about... ‘if this matter were to go to court, how you’d like to present before the judge’ – as to whether...it’s beneficial to their ultimate case to be aggressive. We certainly – I’m no one’s doormat, so I will send a firm but fair response, but I’m certainly not going to get down to play in the mud just because other people do.

Whilst participants might ultimately follow their client’s instructions in terms of taking an ‘aggressive tone’ with the other side,⁴¹ their responses revealed that the appropriateness of particular actions would often be something that they would discuss with their clients,⁴² and that the kinds of factors that would influence their ethical deliberations in this area would include:

- Whether a more assertive approach might be necessary in order to achieve a just outcome;⁴³

⁴⁰ ‘I think someone who works in litigation, could have...would have a harder job than I do. Because I don’t...I don’t have to be pushy, aggressive, to try to get...the best deal for my client. So in a way I’ve got...I suppose a lot of respect for some of those blokes, that they can manage to still be...act reasonably to the other side [later] I don’t have to try to impress my clients by saying, “Look, I got you 55% of the pool instead of the 45% they were offering, and I did it because I’m more of a mongrel than the other side”’.

⁴¹ ‘I could say that I’m less inclined to take that approach, but I can’t be honest and say I would never do that. At the end of the day if it’s subject to a client’s instructions, if it’s ethically based, if you’re going to act for a client and they want an aggressive tone taken, then you probably will’.

⁴² ‘If it’s from the outset, I might talk to clients about...a strategy whereby you attract more flies to honey than vinegar. So...let’s start, yes, with a firm approach, but being amicable and open and resolution focused’.

⁴³ ‘If we have to litigate we litigate, and I have no reservation in litigating aggressively where that needs to happen in order to get a just outcome’; ‘Definitely I’ve come across some situations where

- Whether a particular tone might be more likely to resolve or inflame a dispute (again, this was also recognised as being not only a ‘moral’ consideration, but also a ‘commercial’ consideration by some practitioners);⁴⁴
- The need to set aside the lawyer’s own personal interests such as personal ego or personality conflicts with other practitioners.⁴⁵ This consideration is consistent with what some practitioners said about faith providing them with an alternative source of identity to traditional legal status characteristics such as position, power or money (as described in Chapter Four);

the other side is in the wrong, and they’re...you just have to actually fight to get the outcome – the just outcome for your client’; ‘Your focus has always got to be on your client, and doing the best you can for your client. Sometimes doing the best for your client may involve being aggressive with the other side’; ‘I...have used the court to get compulsory mediation in the family jurisdiction, just because I know that you can correspond for 12 months, and the other party will throw the letters in the bin, so it’s better just to issue to get to that process’.

⁴⁴ ‘I think I’m far less inclined to do it [take an aggressive tone] because I’m more concerned with “what are my audience going to say”, and “is this inflaming a matter unnecessarily and why are we doing it”, so I might spend more time in saying to the client, “is this really what you want to do”, and that tends to be, I always look at my audience and say, “well if we do x they’ll do y, and we’re less likely to settle it and they’ll want to take the bat and ball and go home”. So I would certainly spend more time discouraging a client from doing it, but again that probably is...aligns with the commercial...a softer approach is more likely to settle it. Client might say, “No, no, you’re being way too soft, I want to take a heavy approach”’.

⁴⁵ For example:

I would say, based on the same idea; let people, let them have their ego moments if it’s not worrying your client. Because the minute you start having an ego competition with another lawyer, your client gets lost. It’s the personalities who take over. And often in that, it becomes an obstacle to solving the problem down here, which is what you’re there about. And I’ve seen that happen plenty of times too. Just people dig their heels in... ‘he’s a mongrel. I’m going to straighten him up...’ And it’s just silly. And they’ve lost the plot. It’s not what the law...you’re there to look after your client, not to look after your ego.

I think a lot of it involves the giving...taking the best interpretation of whatever behaviour’s going on, and not...not seeing it as your role to bring justice to...a particular grievance...letting things slide that are irritating...[later] you don’t need to do the ego stuff to the same extent, because that’s not who you are. You don’t...you don’t have to prove to them that you’re the brightest or the...(...) that’s not to say that it’s not important that you actually are good at what you’re doing, because that is important, but to be seen by others as being...the best negotiator actually isn’t...that’s not the important thing. So I’d say it’s got a lot to do with not needing to prove yourself, because you’re...it’s different...a totally different standard that you’re living to, and it doesn’t matter how successful you are, doesn’t matter. Whereas I think for most lawyers that’s very important, and it’s very important how other lawyers perceive them to be, and whether they perceive them to be very busy, and...that sort of stuff is...you don’t have to deal with that level of insecurity I guess, that you see a lot of the people...well, at least that’s how it appears, that that’s why they’re doing and acting in a particular way is because they’re actually insecure in their identity.

[S]omebody, a lawyer, would write something silly, attacking what I’d done or something, and in the old days I might have written back a very sarcastic response, saying... ‘might I suggest that you stop wasting your time on frivolous complaints and instead concentrate on...the matters at hand’, and now I just take a far more direct approach, probably ignore it completely and stick to the matters at issue. You start writing sarcastic responses back, and before you know it you get lawyers who love to write letters, and again, it’s not in the client’s interests. So yeah, I’ve found it’s just...you have a more direct approach and you just literally do turn the other cheek and get on with it.

- The importance of treating other practitioners as they themselves would wish to be treated;⁴⁶ and
- An emphasis on putting the client's position succinctly and truthfully, and relying on the 'balancing' of interests provided by the legal system.⁴⁷

Whilst participants did not suggest that they would never take an aggressive tone or pursue their client's interests 'zealously', their responses did indicate that they were likely to weigh up whether particular actions could be justified, taking into account the factors described above. Although these factors are not necessarily or even exclusively 'Christian', they do indicate that the Christian lawyers interviewed for this study were likely to approach a legal dispute from a broader perspective than simply doing all that they can to achieve a client's right and entitlements.

6.4.2 Options for and factors involved in the resolution of a legal dispute (including the use of Alternative Dispute Resolution)

As discussed in Chapter Five, some participants recognised consistency between raising relevant non-legal (including moral) considerations with their clients, and 'adding value' to the legal service and advice provided. In the context of the resolution of a legal dispute, this might include raising considerations such as the financial and emotional costs involved in a dispute, and the possibility of a negotiated settlement.⁴⁸

As one practitioner said:

⁴⁶ 'I treat them [colleagues] fairly, I like to be treated fairly...I don't socialise with a lot of colleagues. Just on a straight business basis. Some are easy to deal with, some are mongrels. But I just try and say, "well look, I treat you the way I'd like to be treated myself". And most of the time they reciprocate. Some don't – their bad luck'. 'I think in negotiations clearly a sense I think, is also in a sense a part of what a Christian lawyer is, is making sure that you are respectful of the other side, not denigrating people. I've seen a lot of that in other lawyers, and other lawyers do it to other lawyers, and I think it actually says a lot more about where they're at, than what they're trying to do about the other, and over time that really does show'.

⁴⁷ 'As a lawyer, I know that I only see one side...and I'm confident that if I...put that side properly and well, that...out of the balance the other side will put their side, so I don't...I honestly don't try and judge it, I just try and put my side well. They say a good settlement is one that both parties are reasonably unsatisfied with, and that's because neither party gets their way completely...So I sort of trust the system there'. Another practitioner said of overly zealous advocacy: 'It's not good. It's not professional in my opinion. You've just got to play it down the line'.

⁴⁸ '[L]awyers are about also...about finding solutions for people, aren't they. I mean, it's very much finding solutions. You've got a problem, we find a solution. So it doesn't take too much common sense to say, "well, if you're going to find a solution...just don't find a legal one, find a legal and human one, because it's..." I mean the positivists of course would say that you don't have to worry about the human side, it's a lot of rubbish, I mean it's there, boom, finished (...) I was brought up with, "it doesn't matter, it's what the law says and forget about the morality, law's got nothing to do

[Y]ou've got to act in your client's interests. And...you need to...advance your client's interests as well. But...in discussing...with your client what the range of options...the range of alternative outcomes might be, seeking some sort of a resolution without pushing on to a Court adjudicated resolution, is a real option, and for all sorts of sensible reasons that's something that I always explore with clients. Again, all sort of practical reasons for why...that sort of outcome is a good one.

Even in largely 'business-like' areas of practice,⁴⁹ the consideration of 'commercial factors' such as cost and negative impact on core business was regarded as being of value to clients,⁵⁰ and consistent with the lawyer's professional role even from a secular perspective.⁵¹ Alternatively, 'commercial considerations' were sometimes regarded as providing a more palatable way of raising relevant moral considerations with a corporate client.⁵²

Overall, participants recognised that whether to take an aggressive approach and how to go about resolving a legal matter was a matter for ethical consideration and judgment, including in consultation with the client.⁵³ Participants' responses

with morality". And I think it's the silliest statement of all time. The law is all about morality, it reflects the morality in society. And if there's no morality in the law well it's pretty ordinary'.

⁴⁹ Less likely to raise relational considerations such as family and succession law.

⁵⁰ 'One of the reasons why I've got a solid base of clients that keep coming back to me, is that attitude of servanthood. I do say to clients frequently, "how can I serve you in this?" Putting the question to myself in front of them, "so what is it that I can...so I look at your problem, what can I do to serve you?"; "And these are the options"; "And look, this is your lawful..." – for example, "this is your lawful termination right, but if you want to enforce that it's probably about \$150,000.00 in legals to take it through the local court, or you could sit down and try to work your way through this". And so I will...and part of that is just understanding that clients don't want to take that \$150,000.00 option unless they have to. So it's then service in that sense. It's not my interest in getting \$150,000.00 in legals out of them, it's my interest in trying to get a resolution that's going to suit them. Service isn't... "progress them towards litigation", it's serving a good outcome. So certainly my value system helps in that'.

⁵¹ '[T]he majority of clients are going to have commercial imperatives that if you're focused on that, they're going to think you're a good lawyer, because you understand their business, you're focused on commercial and you're not focused on...the pleasure you get out of some legal point [later] and look, the reality is...you've got clients who've got potential to be repeat business. You do a good job commercially, and yes, you put an end to the first matter, but you get them (...) So it is still good for business to resolve matters because at the end of the day people will think you're good at what you do, you'll get more work'.

⁵² For example:

I mean, you might wrestle with the conscience somewhat to say, 'gee this is an aggressive approach', you might have a longer harder go next time to try and convince them, you might work on them, you might try and get them to see it. But again, if it doesn't align with their commercial values, their commercial imperative, it's going to be harder. You might take the risk of appealing to their moral side and it might backfire horrendously [and later] You might do it in a way that plays up the risks, costs, expense of litigation to try and steer them down a path of 'aren't you better to get on with your core business, and there's a chance to resolve this'. So to try and find the positives...I think it would be rare to talk to them about, 'look morally, should you be doing this'.

⁵³ Reflected in comments such as:

suggested that they viewed the lawyer's role in this area as not only to pursue their clients' interests, but to do so in a way that took into account a wider range of considerations, and that also involved raising with clients the 'reality' of them obtaining their proposed outcome, along with the possible costs and consequences of doing so. One practitioner described his focus as:

Your focus has always got to be on your client, and doing the best you can for your client. Sometimes doing the best for your client may involve being aggressive with the other side. Sometimes doing the best you can for a client is telling them, 'you're not going to get what you want, because...', and then explaining the situation....Doing the best you can for the client doesn't always mean going to court; it's trying to solve their problem for them so that they can get out of it without a great deal of expense...and be able to continue their business.⁵⁴

In the end, however, most participants recognised that they would ultimately need to follow their client's instructions, even if this led to pursuing claims that the practitioner might have initially felt comfortable with. As one participant said,

[Y]ou've got to be careful not to judge people. I mean, you might find you're acting for a very wealthy individual and they're suing somebody who might be less wealthy. Well see, they might have a justified claim, might be an arguable claim, well that's

So as an example, I once acted for a trustee in bankruptcy, who was trustee for someone who had not paid their electricity bill and had been made bankrupt, and the trustee wanted to apply to court for an order to sell their property. I suggested to the client to give the bankrupt person time to come back with a proposal to pay off the outstanding debt, and to avoid having their property sold. I gave that advice or that opinion and it was rejected, the client basically said, 'no, just go ahead with the application for the order' [later] It's a difference of approach. I gave my advice, but it was ultimately up to the client as to which way they want to proceed.

In [a dispute about a debt owed where one of the options would be to seek to put the other party into bankruptcy] we would probably explore the whole situation with them [the client] and see if there are any other options before bankrupting them. So there's usually...we'd give the client all the different options that they could pursue, and then it's up to them, I think, in terms of what steps they want to take. And...I think...not become jaded, but I've come to terms with the fact that there are people who...haven't paid, and one of the ways that you can...that you can realise assets I guess, and get some returns for your client, is through the avenue of bankruptcy.

⁵⁴ Another practitioner, reflecting on some family law disputes, echoed this view, stating, there's all sorts of stuff that...parents come and have a gripe about and they expect that you can fix, and you have to say, 'there's no court order that I can get you, that's going to solve that issue'...it's a parenting issue or it's an adjustment issue for the child, or parenting styles where we've got no influence over the other parent. We might be able to get an order to send them to a parenting class, however, if they don't embrace that and they're only going through the motions, and they've got a very narrow view of...how a child should be disciplined, or whatever it might be, no court order's going to give you that. So there's certainly times that you've got to give that advice to a client, that 'look, I can take your money, and we can go off to court and we can ask the judge to...look at that issue, but even if they give you an order that says counselling or an order that says parenting course, is it really going to change anything, and do you really want to spend...\$30,000.00 and the next 8 months of your life for that outcome?' Or do you step outside of the law, and go and look for practical outcomes through therapy; something else that needs to happen.

for the Court to determine. Should they...the fact that I wouldn't litigate doesn't mean I can judge them. So you need to be careful not to make personal calls when they're clearly ethical matters.

One of the main ways that participants' personal values seemed to influence the factors that they might consider in resolving a legal dispute was in recognising the perceived value in achieving resolution of a dispute from a personal perspective. Participants referred to clients being 'consumed by bitterness' or pursuing a 'personal vendetta' versus 'forgiveness' and 'moving on', suggesting that the emotional and relational costs involved in a legal dispute might also be one of the considerations that they might raise with their clients in making decisions about how far to go in pursuing the client's legal rights and entitlements. Participants said, for example that:

[T]here's a family at my church, and he is a director and a shareholder in a company, and the other directors have been increasing their payments to reduce any dividend payments that he will receive. That is, they have been increasing their director's fees so there's nothing left to distribute. So they've asked me for a bit of informal advice, 'what would you do?' And I said, 'there are oppression remedies and legal remedies you could take. But also, I think that if you get bitter about this and start pursuing this to the bitter end, you're not going to be the winner'. I think that's a thing I wouldn't have felt comfortable saying to my clients early on in my career, but I think I would feel confident to say it now. I think back and there was at least one situation, a shareholder's dispute, and a guy was squeezed out of the company that he co-founded, and was consumed by bitterness and wanted to keep pursuing the issue, and I think that it would have been really helpful for him to hear that said to him. I think looking back, that's the sort of thing I would be keen to say – getting legal redress for your wrongs isn't the only thing that's important.⁵⁵

⁵⁵ Other participants said:

I'm a commercial lawyer in the sense that I'm a front end lawyer, always try to get it to settle without going to court, and I just tell them that...as every lawyer would say, 'paying lawyers is a lose-lose situation'. But at the same time you get situations where clients can't help taking it to court, and it's not about the legal fees, it's not about that, it's about principles, and it's a license to print money, I think. But...that doesn't mean I stop encouraging them. I still, I always say, 'look, you're going to pay this much in legal fees, you might as well just settle. If they can agree to this, you won't be happy but neither will they, and you can move on' What I think I...perhaps that's why I'm not such a good litigation lawyer, because I don't go as hard as other lawyers will, but at the same time I'm always trying to say to the client, 'look...you've got this personal vendetta, it's causing you stress, it's affecting your life, move on, pay the money and move on, or take the money and move on', but...I try to concentrate more on the personal side of things to try and get them to settle. Because ultimately it's a human issue. I often think that the legal issues are often just a symptom of something that's deeper, and anyone that's looking for justice in the legal system is deluded. It's not a good system to look for justice or reconciliation or some sort of peace, or...some sort of resolution.

Whilst some participants identified considerations such as ‘forgiveness’ and ‘moving on’ as explicitly Christian values,⁵⁶ the ability to resolve a dispute and continue with ‘core business’ was also seen as important from a commercial or secular perspective. In this way participants were also to identify consistency between their own faith-based values and the kind of considerations that they might raise with their clients from a professional perspective. As one participant said:

I mean you don’t necessarily tell them, ‘well it would be good for you to resolve this and go away and live your life’, but you’re thinking that when you’re explaining to them, ‘look economically it would be better and you’ve got other things to do with your time, and this isn’t your core business’. So you’re trying to indirectly get them to a point of moving on from a dispute and resolving it, which...I mean invariably settlement occurs and there’s a handshake occurring, so there’s an element of resolution and relationship when people resolve a commercial matter.

Consistent with the importance placed by the Christian lawyers in this study on resolution and considering the broader effect of legal actions including from financial and emotional perspectives, there was evidence that many participants would raise Alternative Dispute Resolution methods (‘ADR’) with their clients as an alternative to

[L]ots of times I’ve wanted to give...and I...tend to go a little bit that way sometimes, by saying, ‘well look, is it really going to affect your lifestyle whether you prove your point with this person or not?’ So you can try to have your Christian values coming out, but that idea of ‘does it really matter’... ‘he wants to do this, he wants to do that’. You follow that, and in a way it’s an echo of that because you say, ‘look, at the end of the day is it really worth it for you, does it really matter how...?’ Because people get very, very passionate about rights. Sometimes, to the detriment of their peace of mind, because I always warn them about headspace, how many years the litigation might drag on for, those sorts of things...

I have said to people, when there’s been disputes over wills, ‘could I say this to you? Try and settle this within the family, because once you start the litigation, it will go on for generations; always remember that old Uncle Jack sued because someone...Aunty so and so lost out, and it gets handed on, kids get it handed on’.

⁵⁶ ‘[A] lawyer has to sign off on pleadings, so you can’t bring a claim unless you certify, essentially give an undertaking to the court that there’s a proper basis for it. So every claim you bring is going to have a basis. Whether *you* would bring the claim, whether you think the person’s just wasting money and causing grief to another person, well some lawyers might say, “as a Christian I don’t want to act for a person like that”; I guess I haven’t taken that approach...the approach I take is, and I think I would have done this before I was a Christian, is you would encourage them to resolve the matter. So all pieces of litigation are going to get to mediation, and probably that’s the difference, I would probably be more encouraging as a Christian to encourage the person to find a middle ground. And I would probably put it in the context of moving on with their life, which...in a Christian context is forgiveness. So I think I actually see it as a chance to show Christian values, to a client who you might think shouldn’t have started this court case in the first case, clearly ethical to do it, clearly appropriate that you act, but you then actually get the chance to influence, rather than get on your high horse and say, “I don’t want to act for this person”, you get a chance to show your Christian values to them, whether...in extreme cases you might tell them it’s your Christian values, or you might just demonstrate it to them’.

engaging in litigation. This was not recognised as being necessarily or even exclusively motivated by personal values however,⁵⁷ with a number of participants recognising this as consistent with professional ethical norms, and possibly even a mandatory part of the court process⁵⁸ or a contractually-mandated requirement.⁵⁹ From a commercial perspective, ADR was recognised as providing practical costs and time benefits which made it an option that participants might raise with their clients quite apart from any personal or faith-based motivation.⁶⁰

Whilst the use of ADR was not necessarily inspired only by personal values, here again, participants were able to recognise consistency between professional and commercial considerations surrounding the use of ADR in the Australian legal system, and faith-based principles, with some participants reflecting that:

- ‘I’m very mindful of the saying “to try and sort things out” and “don’t take your brother to Court or he can take the shirt off your back”, and I think that’s good. I think many times I’ve seen people recklessly enter into things and get caught, so yes, so I’m more vigilant than ever about keeping things out of

⁵⁷ ‘You might say, “well have you thought about this”...and...is it...so you’d look to the context of what they’re wanting to achieve, and...whether it would be more appropriate for them to adopt conciliation or something like that rather than get into...an adversarial legal situation...but you do that, I think...having a background as a Christian but not necessarily...you do that because you think that that would achieve the best result’; ‘It wasn’t a Christian peacemaker idea so much as you can resolve the issue without going through the expense and hassle and the heartache of litigation. It is a lot cheaper and simpler to attempt to resolve the matter through ADR rather than going to Court. It does align nicely with Christian ideas of not necessarily prolonging litigation, where possible. That wasn’t the explicit motivation though’.

⁵⁸ Others said: ‘it’s actually a practice direction in [location] that you have to try and settle family proceedings through mediation’; ‘It’s part of the process of litigation these days, you have to go to mediation before the courts will generally allow you to have a hearing’; ‘The court practice these days is to try to...force you into mediation’.

⁵⁹ ‘Most contracts will have some sort of alternative dispute resolution steps ahead of it, but I think that’s typically because clients realise that it costs a lot of money and takes a lot of time to go to court. I don’t know that it’s because anyone really feels like it’s a nicer or friendlier way, or... There is a certain level of... “it helps to keep a relationship intact”, if there’s ongoing commercial benefit to that, but it will always be looked at through the prism of what’s commercially best for us to be doing. So...people have embraced alternative dispute resolution but I think that’s more because it’s cheaper and faster and more confidential really, than for any other reason’.

⁶⁰ ‘In discussing...with your client what the range of options...the range of alternative outcomes might be, seeking some sort of a resolution without pushing on to a Court adjudicated resolution, is a real option, and for all sorts of sensible reasons that’s something that I always explore with clients. Again, all sorts of practical reasons why...that sort of an outcome is a good one’; ‘A lot of solicitors try to work that way to keep their clients...to keep their clients’ businesses viable, for want of a better term. You go to Court, it costs a lot of money, the client’s out of the workplace, a lot of time, a long time for a matter that might go on for two years...so a lot of solicitors mediate a commercial...they talk their client into it...well, not so much talk their client into it, but say, “you’ve got this choice, or you’ve got this choice. This choice you may win big, you may lose big. This way, ok, you won’t get what you want, but you can live with it”’.

court, and the longer my career goes the less likely I am to litigate, and instead try to mitigate or mediate’.

- ‘I think it’s [negotiation] always more productive, and the Bible...when it comes to individual church members and other church members I think the Bible says not to take your brother to court, that kind of thing. So I think definitely, I would definitely consider alternative dispute resolution before...issuing proceedings...’.
- ‘[I]t gets better outcomes; you end up with happier clients; you have those opportunities to maybe preserve relationships...you don’t end up with people that are as bitter and twisted who get defeated by the system, who are then psychologically, emotionally and financially in a huge deficit because of the whole litigation process. It’s not a great system’.⁶¹
- ‘[A] good commercial lawyer would do the same, Christian or not, because commercially it tends to make sense, but the commercial settlement aligns with forgiveness and “turning the other cheek” and those things, so there’s sort of an alignment about resolving this, and commercial litigation’s moved on in the last 20 years away from running things to trial. So the whole process actually lends itself well to Christian values, to try to resolve things, to try and keep matters out of court’.

Whilst ADR was recognised as reflecting both professional (commercial) and faith-based values and thus a legitimate option for approaching the resolution of a legal dispute,⁶² participants also realised the need to nevertheless pursue a just outcome

⁶¹ The same participant reflected that ADR might provide greater scope for dealing with the emotional and relational considerations that might be relevant, especially in family and succession law, suggesting that:

Even though the clients are...they think they want their day in court; you’ve got to say to them... ‘what are you actually expecting?’ Because...a lot of them want their story to be heard, so you’ve got to give realistic advice that you don’t just get to go and tell your story. You’ve still got to work within the framework: These are the issues that the court wants to hear about; this is the stuff that we can put in your evidence...I get that you’re feeling hurt and betrayed and all of those things, all the emotional stuff, but they’re not factors that...are going to be taken into account under the Family Law Act, under the Succession Act. Realistically under any of it...There’s a whole lot of emotional stuff that they think if they can get their day in court they’re going to have this opportunity to be heard, that someone’s actually going to make a judgment that in some way validates how they’re feeling, so to give them some really clear advice that that’s not going to happen; ‘you’re not going to get a judge that...a judgment that says... ‘woe is you, poor wife; I can see that your husband was a scoundrel and a philanderer, and therefore I’m going to give you...everything that you want and then some’. The sign outside the Court says ‘Courts of Law’, it doesn’t say ‘Court of Justice’. So...the most equitable results for the most part that we can achieve for the most part in the areas that I practise in are going to be through alternative dispute resolution.

⁶² ‘It’s actually a really neat fit with commercial objectives, most people want to resolve matters, it just so happens that I’ve got two motives, one’s a commercial one, the other’s to do God’s work by

(rather than resolving a matter for the sake of achieving resolution),⁶³ and of the need for both parties to approach a negotiation with a genuine desire for resolution (rather than just ‘going through the motions’).⁶⁴

One concern that participants also raised when it came to seeking to resolve a dispute in perhaps a less assertive manner, was about how this might affect the lawyer-client relationship, in particular if their clients were to perceive them as unnecessarily ‘weak’. One practitioner reflected that ‘...my approach has never been the sledge hammer approach, and there are some clients that want a sledge hammer lawyer, and that might have...I suspect there have been times in the past, I can think of one client who...transferred the file away because clearly I wasn’t jumping up and down enough, and being aggressive enough. Now that was a time when I wasn’t a Christian. So I think it’s...a lot of things. People align themselves with the sort of lawyer they want...and I guess I just hope that I can convey to them the upside of my approach’. Another said that

[t]here are many clients that I have I’m sure there’s a positive sort of view they’re wanting to put forward, and they may select me for those sorts of roles, knowing that I’d give it the best shot; and they would also have lawyers that don’t have that, they’ve got a reputation as being a bit sharper, that they would use for that purpose. I suspect at the end of the day, from a financial perspective you’re probably better off to be a bit tougher, than my reputation...but that’s fine. I am what I am; I’m very happy with that’.⁶⁵

These comments highlight the tension, for the Christian lawyers in this study, between giving effect to the client’s instructions, and taking into account broader considerations, as discussed above.

encouraging people to rebuild relationships. So there’s actually complete alignment with the solutions that you’re looking for’.

⁶³ ‘It’s not always a better solution. Because...those outcomes deliver a particular type of justice...and sometimes it’s a negotiated outcome, rather than one that...reflects...a just outcome...Because sometimes, one party will treat another unfairly, for all sorts of different reasons. And...sometimes ADR can...in my experience can produce outcomes which reflect that...but not necessarily’.

⁶⁴ ‘Presently to seek to resolve matters in...the most timely and cost-effective way. But that presupposes that everybody approaches the...matter in a genuinely...with a genuine desire to resolve things, and that’s not necessarily the case’.

⁶⁵ Conversely, another participant said that faith meant that ‘I’m not part of the club, that I’m just absolutely fearless (...) most times I’m just absolutely relentlessly fearless about how I put my client’s position. I’ve noticed a lot of lawyers are concerned about what the other lawyer things...and their standing and their position. But I’m sort of the renegade, in that I don’t care’.

6.5 The charging of professional fees (RQ2(c)(iv))

Another way in which the personal values of Christian lawyers may affect their conduct in legal practice is in the charging of professional fees. In this study, many participants recognised their entitlement to charge a reasonable fee as being justified according to both faith-based and professional ethical norms, suggesting that, for example:

- ‘There’s the biblical “every man is worth his hire” I think is one concept, so I’m probably...especially when people can afford it (and some of my clients are very wealthy), I expect to be paid well for looking after their interests’.
- ‘I try not to discount. Certainly you get the occasional client that...if you’ve got so far with them on the journey, and then finances become a problem, you make certain commercial decisions in relation to what you can and can’t waive or carry. At the end of the day though, I do run a business, and where I have to, I refer clients elsewhere, whether that’s to firms that do spec, or community based or whatever it might be’.
- ‘[I]f they’ve got the dough and they’re doing something, well I charge them, and I charge them what I think’s a fair fee, and it may be more than what other solicitors do. Particularly, I mean, I think there’s a thing about conveyancing now, it’s very cut throat and all of that. Well, I just won’t get in to it. I look at it and I say, “well, my fee on this’ll be \$1200 or \$1500, and if you want to go down the road you’ll get someone to do it for you for \$850, but the lawyer won’t be doing it, it’ll be somebody in the office” [later] I’d rather be doing things because people value me, rather than value my price. Because you’re selling yourself short when you’re selling yourself for a price, in a sense. I mean...in a legal sense I suppose everybody’s got their price...but my price is what I think it’s worth, not what the marketplace out there’s doing...’.
- ‘Honestly I don’t think [faith] has much to do with it at all. Honestly, I’m sure you’d go around town and check my reputation and they’d say he’s probably pretty expensive’.
- ‘I don’t make money a condition, so I don’t say, “well look, you’ve got to put \$5,000.00 in my trust account or I won’t act”...except the last three traffic matters I haven’t been paid, so I’m not going to do traffic matters now unless

they're an existing client or unless I get money, 'cause it's a prudent sort of business thing. If the cause is...a lady came in the other day who clearly had no funds and wanted to fight about \$4,000.00 or something...a family situation, and I just set out what the costs were and said basically, "you can't afford to fight about it". That sort of situation is like a person coming into [a department store] and wanting to buy a really expensive pair of trousers and only having half the money. You just can't buy them'.

6.5.1 Factors influencing the charging of professional fees

In reflecting on the justifications for charging a reasonable professional fee, practitioners recognised obligations owed to their firm,⁶⁶ to employees and to their own families.⁶⁷ As one practitioner said, 'I don't let money control it at the end of the day, but I'm running a business, and I have to be prudent with my resources and how I spend...I have to be a good steward of my time and the staff that work here...I can't run off on pro bono tangents that basically send the practice broke...there's a balance there'.

Whilst recognising their entitlement to charge a reasonable professional fee, there was evidence that participants would reduce their fees on occasion, taking into account factors such as:

⁶⁶ 'If I did [reduce fees] it would have to have been behind my partner's back, such as by not recording time that was spent. Billing decisions were really the partner's decisions, but I did have some ability to influence the outcome. For example, on some occasions if I thought it was unreasonable or excessive I wouldn't record my time, which I shouldn't have been doing from the point of view of the firm as they had very high billing expectations. But from the point of view of the client, I thought it was the right thing to do'; 'I guess my faith compels me to work harder to try and make something work for a client who has less resources. That's something I struggle with, because that can sometimes get in the way of me being profitable for my business, which is not ideal, in any kind of way'.

⁶⁷ 'Certainly there's files that...sometimes you have to turn away, that you certainly say... "if I didn't have to run a business; if I didn't have staff to pay...absolutely I'd do it". "If I won lotto tomorrow, that's the matter I'd see through to the end". Other practitioners said,

I don't think there's anything wrong, on a faith level, with putting your own family first...putting your family's needs first and making sure there's enough money in the bank and all that sort of thing...if you're a sole practitioner, for example...it's important to ensure that there's enough money for you and your family, and in terms of my faith...I think, 'well I've created this family out of love and my faith, and so it needs to be my priority and I don't think Jesus minds that I do that'...

A Christian lawyer has to run a business, otherwise they're not effective to do what they're doing. For some people it is a calling and so in that respect you'd be disrespectful to the calling on your life if you weren't running a...a business that can keep its head above water and pay your employees.

- The client's ability to pay and the amount of the fees in the context of the claim as a whole or the area of work involved;⁶⁸
- The extent of the advice provided or work performed and the amount of the benefit to the client;⁶⁹
- Whether fees had exceeded initial expectations or estimates;⁷⁰
- Whether it was necessary to reduce fees in order to achieve a just result for the client;⁷¹

⁶⁸ Participants said:

I think professionally you've got to modify your fees depending on what the client can afford and how big the estate is and the issues and so on, so there's always that usual sort of stuff that goes on.

There are a whole range of factors. It depends on the sort of work that's being done...people's ability to pay...and whether or not the person has been getting a fair go from wherever.

[C]onveyancing's different...but in areas like wills...I mean I'd rather someone have a will than not have a will because they can't afford it. So I look at someone's circumstances and say, 'well yes, they can afford to pay me' or 'no, they can't'. And if they can't afford to pay it, well the fee would be reduced. If they really can't afford to pay it...I've done quite a few that I haven't charged.

Feeling sorry for someone, sometimes. Wanting to assist someone who you think deserves it. When it's actually not that inconvenient for you to do it. So I might say, 'well look, if I put it on the same day as another matter then it'll work out as one', then that is very much something that I have a surprising amount of leeway on, and within reason, no-one really worries about it too much.

⁶⁹ For example:

[Name of partner] would always consider...looking at bills and that sort of stuff, would consider whether the amount that's being charged, he believes it to be fair and reasonable for the work that's been done, but typically you would charge the full amount for the commercial matters.

The main consideration was that the clients were being charged excessive rates, and also I had a very high hourly rate early on. The firm was very aggressive in increasing the hourly rates, so I thought that the clients weren't getting proper value for the amount of work that had been put in [this practitioner would reduce fees by not recording time].

I've always looked at my bills as what I'd be happy to pay for what I've done. What I would be happy to pay, for the service I've received.

I've [suggested to my director that we reduce our usual fee] where the client hasn't really had much benefit. So one recent one was I did a fair bit of work for a contract and it didn't go through but it wasn't our client's fault or anything like that, and the client's not a big wealthy company or anything like that, they're homeowners trying to get a house so I was happy to write off my time, because they could have amounted to \$500.00 bill but really I only did...an hour's work and I couldn't justify charging all of that.

[T]here'll be some times when you kind of go, 'it just doesn't feel right', I guess, to financially benefit from people's situations. And I certainly have plenty of people that come in for our first consult that's normally the fixed fee, that...if it's only a short consult or realistically...I can't help them or whatever; I don't charge fees.

⁷⁰ 'In terms of reducing fees...for say work for a company...that would happen sometimes, where...for whatever reason it's gone on for longer than it probably should have and it's going to cause...issues for that particular person getting it through, getting sign-off on it'.

⁷¹ One participant recounted:

I had a matter a couple of years ago where this poor old gentleman, and he was a poor old gentleman, he was about 71...he attempted it a couple of years before through Legal Aid to get help, but had been refused. His only...married for a few...two or three years late in life and this was his wife's second marriage. She got him to fix up this house, sold off this house, used the remaining proceeds of the house to buy a place at [location] and was basically living really well off, and this guy didn't have a bean. He only had a small claim because he only had some small financial contribution, which is probably why Legal Aid knocked him back, because there wasn't enough money in it for Legal Aid, which is hard to believe but true. And in the end I think...he got about \$20,000.00 out of it. I halved my fees, which would have been about \$16,000.00, so he got \$12,000.00, and I did that just because halving basically covered (without any profit) my basic cost and...it was a just result for him to get

- Existing relationships⁷² or the possibility of future work;⁷³
- Embarrassment or sensitivity about the amount charged;⁷⁴ and
- Whether the work fits within the firm's expertise and may result in a broader benefit for the client or community.⁷⁵

These factors were not necessarily regarded as being exclusively motivated by faith, although they may have been consistent with participants' personal values. Some participants described the reduction of fees in particular circumstances as a professional requirement, or recognised some of the factors set out above as being part of professional considerations when determining how much to charge.⁷⁶ Naturally, the extent to which practitioners reduce or waive fees was also restricted by firm protocols,⁷⁷ and the extent to which participants had the flexibility to make decisions within their own firms. Whether and how firm culture influenced participants' responses to the questions raised in this project will be explored further in [section 6.6](#).

something. And the reason it cost so much was because I had to do an extension of time hearing because he was out of time by the time he came to see me.

⁷² 'We would often do personal things for various people who are part of the company'.

⁷³ 'When the client is related to somebody that we know, and they've passed on referrals and stuff...if the client's a good friend of the director or something like that then we'd do something like that'.

⁷⁴ '[Y]ou become desensitised to the amount of money that you're charging, because you're so used to just sending out a retainer for \$1,000, \$2,000, \$5,000, that you don't realise that that's actually quite a large amount of money for someone...And you're meant to be helping other people, but at the same time you're charging them a lot of money. Are you really helping them; is this really necessary to charge this much money?'; 'Embarrassment as to what CBD hourly rates are'.

⁷⁵ '[T]he factor that usually sways us is not just the "do they have enough money?", but if it's something where...we can actually add value, as lawyers...So if we're going to take on this case, is our expertise within the firm and in our role as lawyers actually going to help this person? Or are they better off seeking resolution somewhere else...from the public trustee who won't charge for a will, or by going – preparing a...tribunal application themselves without the help of a lawyer, something like that; whether that would be a better use of their time and money and our time and money. So there's that, and also particularly in the case with organisations, is the organisation doing something that's worthwhile supporting; that we would like to be a part of, by kind of working with them on fees, as a social contribution'.

⁷⁶ 'I think that just comes back to what is fair, and what is reasonable, that sort of thing. Again that sort of professional duty to be fair and reasonable in all the circumstances of the case as to what you charge'. 'I think there are things where professionally, you just don't charge'.

⁷⁷ '[A]t the end of the day we've got fee budgets and we're judged by our performance, so you've got limits to which you can reduce fees...cause you've got to justify your existence, so...I'm more inclined in fact to try and find a smaller...if it's a smaller matter for a less well-heeled client, I think I'm doing a better job for them by trying to find a suburban or a good smaller solicitor who can charge them less. I mean I can...I can reduce my fees to 10, 15, 20%, but you can't go much beyond that, and that still produces high hourly rates (...) So yes, yes there's discretion, yes you exercise it, but...at the end of the day, I won't have longevity in this place if I keep giving away...doing jobs at 25%'; 'I certainly can't run around taking pro-bono clients for fun, but showing a bit of leniency to someone's not going to get me in trouble, I don't think'; '[G]enerally I won't promise a client...alternative fee arrangements unless I've cleared them with a supervisor first, because I know that I don't have the authority to do that. But I do know that our practice has a policy of, in certain cases, being willing to be flexible on how fees are arranged in particular ways, and I can tell someone about those arrangements and then say, "but I'll have to check with my supervisor"'.

However, in the context of professional fees, a number of practitioners identified the benefit of autonomy in allowing them to make their own decisions about reducing fees or not charging in certain circumstances. Those practitioners said, for example that:

- ‘[T]he modern approach is; at the end of the week you fill in the form and you say, “well I’ve got six clients this week, the estimated cost we’re going to get out of them is so and so”, and it goes in to the practice manager or someone and away it goes. And I think...I mean I can understand that that’s an efficient way to run a modern office and worry about your overheads and that sort of thing, but I think the purpose of the law gets lost in that, and what it’s all about’.
- ‘I’ve never worked in a big firm where I’ve had to do this and this and this all the time: (a) to satisfy a client; (b) to satisfy the managing director. And I like working that way. It gives me flexibility, and I don’t feel as though I’ve got to overcharge a client – not overcharge, but charge the maximum rate, just because I’ve got to meet billable hours’.
- ‘We run a half price practice for parents who have children with mental illnesses or intellectual disabilities, so we do all that work at half price. Don’t publicise it much, so we’re not trying to get a huge amount of that work, we just do that quietly, and halve the fees on that work. But we don’t have it on our website, for example, we don’t advertise it as such, it’s just something that we do personally. My co-principal will also identify his own particular pro bono type stuff that he wants to do. So we both would tend to want to be able to do a measure of pro bono work’.

Where participants described their own personal values as particularly affecting their charging of professional fees (whilst still meeting obligations to their firms) was in terms of being generous with their time; both with clients, and with others who might seek their advice. In particular, practitioners described personal values as influencing them to take the time to listen to their clients (without necessarily charging them),⁷⁸ as

⁷⁸ ‘I had a young woman in here recently and she...lovely young thing, and she was going to buy a franchise to train dogs. She’s a country girl, and the franchise was about \$50,000.00. I said to her, “you probably know more about dogs than the bloke who’s got the franchise”. I said... “You’ve been with dogs all your life”, and I said “you’re good with them”. And she said, “Yeah, yeah, I’ve trained sheep dogs”, and I said, “don’t be paying \$50,000.00 for a franchise, just go and do it”. So I spent about an hour with her and at the end of it she said, “how much do I owe you?”, and I said, “forget about it”. I said... “Just a pleasure to talk to you”. And of course it all comes back to you, because a month later

well as leaving some time available to provide advice and direction to those who might not otherwise be able to afford their fees. One practitioner, having described how he had taken extra time to listen to and provide advice to a client, suggested:

[T]hat's a dimension I think of faith, that would get played out in your dealings with clients, because...I could legitimately, as a lawyer, say to that lady, 'here's my answer, and it's short and sweet, that's it. So look, thanks for coming in. I've got some more work that I've got to get onto now, so thank you, pay at the door', or whatever. And that would have been professional, and ethical, if a little bit humanly abrupt or tight or whatever. But I think the effort to be Christian in your conduct of expressing love, and...dwelling in love...for that person...required...often requires a lot more of you than the professional obligations are. And I think that's probably as good an example as I could give you where it does make a difference to the way that you conduct yourself.

Another suggested that lawyers might be able to strategically give of their time to support people by:

[L]eaving time aside all the time. Try and give bits and pieces away to people. The phone rings, and you can take a 10 or 15 minute phone call, and often give a person that can't afford the legal fees, a whole lot of guidance as to how to go forward. You can phone the Family Court, you can get the forms, you can do this, 'look there are certain legal centres that can help you', 'look the key issues here are...' This might be a separation under one roof; 'you need to be particularly careful about this and that and the other'. And so you can give a lot of information in a 10, 15, 20 minute, half-hour phone call. You don't have to go...if you're a family law practitioner you don't have to suddenly become a practitioner in personal injuries and give a whole lot of advice to people in that space. But within your own paddock you don't harvest to the margins, you always try and leave some stuff for the poor.⁷⁹

she comes back in here and says, "Husband and I are buying a little place, would you act for us?" So what comes around goes around, and I never worry too much'.

⁷⁹ Other practitioners said, for example:

I regularly spend... I used to have a referral source, so I do a lot of retail dispute work, and I tend to act for the large shopping centre landlords, but I started getting referred from the [name of organisation] for small tenants, and a lot of them couldn't afford...and so I'd spend half an hour on the phone with them for nothing, and I'd actually map out a way for them to do it on their own, or help with strategy. So you can help people out in that context, put them on to another lawyer or give them half an hour of your time and say, 'look, here's how you lodge an application for mediation, you don't need a lawyer, here's the section of the Act'... 'would you be better with a lawyer, yes, but...the reality is even if reduced fees it'll cost you \$3,000.00 to have a lawyer at mediation and your dispute's only about \$7,000.00', and...those sorts of things, so you end up spending time with people.

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Whilst most participants largely used time-costed methods of billing to render professional fees within their own practices, one practitioner had given significant thought to engaging in an alternative method of charging, and in part, had decided to set up his own firm in order to give effect to faith-based values in the charging of professional fees, reflecting that:

One of the reasons I've come out on my own is because of the way I see law firms charging out on a time basis, and I find that to be very...I won't say unethical, but it's not...to me it was more...it represented more, and from a spiritual point of view it represented selling your time, whereas making your time available to the Lord was to me much better than a monetary unit. And from an economic point of view it didn't justify...I couldn't justify it either. So...I've gone out and I've tried to make change through that sort of thing. I'm not charging on a time basis unless the client...insists on it. So I would much prefer to come to an agreement... [a fixed fee or value billing system].

The same participant also reflected that time-based methods of billing had the potential to impact on work-life balance, and the kinds of negative status characteristics that were described in Chapter Four. In determining how much to charge, the practitioner reflected that:

[I]t's very hard to say what is fair and what is not, but I guess it comes down to, well what do I need?... So I get \$30,000.00 fees, or now that I've got my own firm it's easier to say that. No that's not true. Let's say I was working, well what would I be working towards? What do lawyers work towards, they work towards making budget. So let's say you make your budget. Well then what? You can exceed your budget. Great, and then what? So you get a bonus, wow that's great, but then what? And then you put your billables up and they give you more work, because you've got more time than you need, obviously. And your reward for doing great work is to do more work,

I find it challenging when people get on the phone and it becomes clear to me that it's going to be a half hour conversation before I can get off the phone, and they'll never pay me for it... but the questions they're asking make it clear that they're so woefully ill-informed about what they're hoping to do, that I feel compelled to give them basic information about...some of the glaring horrors that they're going to delve into, and say – and I try and end those conversations after about 15 or 20 minutes and say, 'ok, well this is what I told you, and if you wanted to go further you can ask us to do x y or z and just need to pay for that. You could also try...', and...I mention further information points. Because I can't give them advice per se...if they're not my client, but I can give them information, particularly information that's commonly known but they don't happen to know yet, general information about... 'how does probate work?', for example. 'What is probate?' Or, 'is it hard to get...[this particular tax outcome]; where can I go for more information about that?' And I can tell them... 'you can try reading the information available on this website' or 'you can try calling these people and they can give more information'.

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and so no, I can't, couldn't justify that. And so I always come back to the question, 'well why did I set up my own firm, what did I really want to do with my time, what did I want to do with this?' So then I concentrated on that.

Further, and consistent with participants who said that they saw their personal values as influencing their view of the lawyer's professional role by motivating them to seek to be 'strictly ethical' when engaging in legal practice,⁸⁰ some participants said that their values influenced them not necessarily to reduce fees, but to be scrupulous in ensuring that they did not charge more than what they were entitled to charge. One participant said, for example, that

the reality is, in time recording in law firms, I mean I think less in mid-tier, but there is no doubt there is pressure on lawyers to bill, and it's very easy for one unit to become two units and those sorts of things. Now...was I ever of that mindset? Virtually never, but now it's never [later] What used to have an element of grey because everybody did it, is now absolutely black and white.

Practitioners who had responsibility for supervising other lawyers also said that they would take more care in ensuring that they emphasised the need for ethical behaviour in billing to those under their supervision, suggesting, for example, that, 'if you ever came across a situation of a lawyer who seems to be recording time that's not there, then you'd sit down with them and say, "look this is really important, and we need to be absolutely accountable and accurate for what we do"', and moreover, that:

I think we should stick to our promises to our clients, stick to our estimates, which I always do, and look...we've never taken advantage of a particular situation to bill more than we should. And I think it's really important, and every time I talk to a junior about the fact that their charging isn't up or how they should be billing more, I try...and the challenge that was given to me by the Law Society, when I started ethics there...I remember sitting in on an ethics thing and it really sunk home to me; a person asked a question 'how much time do you spend telling your people about getting more chargeables and billing more, and do you spend exactly the same amount of time telling them to make sure that they don't overservice and overbill and all that sort of stuff?'. And I thought...that's good, 'cause I don't, I spend bugger all time doing that, and that applies to me if that's the case. So now I make a point that every time I'm

⁸⁰ See the discussion in Chapter Four.

on...I almost make them stop the clock, to make sure that we stress it equally.

Practitioners also described taking steps to try to reduce costs for clients,⁸¹ or to find alternative representation for clients who could not afford to pay their usual or discounted fees.⁸²

6.5.2 Pro Bono work

The impetus to engage in pro bono work was seen as another area of similarity between faith-based and professional ethical norms in the context of the charging of professional fees.⁸³ One participant described her firm's decision to engage in pro bono work as: 'part of it is faith-based; I think part of it is just our general responsibility as a legal practice to give back as well. Which potentially...you could say is motivated from a faith-based...understanding of the world'. Another suggested that:

⁸¹ Participants said:

Certainly we do everything we can, in general, to keep costs down. So we use agents to attend Court for \$200 rather than going out there ourselves for \$1,000. We certainly don't run up the clock, in terms of doing work just to get hours on the clock to get billed. We do things like try to avoid charges being laid, which is what I was doing this morning, rather than going 'if this goes to trial it'll be a goldmine'. And we often do ourselves out of enormous amounts of money because we do that.

I think a Christian lawyer – so far as it's consistent with running a practice that can pay its bills – will try really hard to make their services available to people who come to them and can't afford their usual fees...Try to come to some arrangement where...you could alter your usual service...to be less costly, or offer some form of payment plan or something like that. Or, if it's not possible, do whatever you can to see if you can help the person find someone else to help them...I believe it's the Christian lawyer's role to be actively helpful rather than, 'no, I can't help you'; that's the end of the transaction'.

⁸² '[A]t the end of the day we've got fee budgets and we're judged by our performance, so you've got limits to which you can reduce fees...cause you've got to justify your existence, so...I'm more inclined in fact to try and find a smaller...if it's a smaller matter for a less well-heeled client, I think I'm doing a better job for them by trying to find a suburban or a good smaller solicitor who can charge them less. I mean I can...I can reduce my fees to 10, 15, 20%, but you can't go much beyond that, and that still produces high hourly rates'.

⁸³ For example:

I think probably [faith has influenced me] by orienting me towards...representing underdogs, so I think that I have an orientation towards that, and so I do...and that means...doing pro bono work as well, and all of those sorts of things.

I think we're lucky to be where we are, so...as in lucky to have had the opportunity to study, to get a job, to keep your job, to sort of have the life that you have, so you do pro bono to help out, and you're a member of society who has more knowledge than others so you should share that knowledge with others so they can protect their rights and things like that.

I think lawyers should be doing...should be doing pro bono work, provided that it's not putting their own family or their own relationships or their own profitability at a huge risk.

I think that the vast majority of people who are people of faith, tend to, if they possibly can do, to do lots and lots of pro bono work (...) for me personally, I find doing pro bono work an incredible Christian ministry, an incredible privilege to be doing that, and...a humbling experience, and I personally get a lot out of it from the people that I was intending to help.

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[A]s a profession, the law also says that lawyers, irrespective of their faith background, have a responsibility to the underprivileged...and so as a profession that is articulated often, and so...just because you're doing pro bono work doesn't mean you're doing it because...you're a Christian. That's something that as a profession, value is placed on. Because lawyers are often in a position of privilege in a community, and when you're in a position of privilege then you ought to give back to those who aren't in a position of privilege.

Outside of the Christian faith, pro bono was recognised as being important to many practitioners (not only Christian lawyers), including particularly younger lawyers who were sometimes described as having strong social justice ideals. This was reflected in comments such as:

I think increasingly firms are conscious of the fact that both for employee engagement (it's a tedious word but it's a very real thing), employee engagement and for clients as well; that firms have responsibilities, corporate social responsibility, CSR departments...They're getting a bit more focused, more real about stuff. Much more so. And I think most of them have got a genuine – do have a genuine aspect to them which helps, particularly young lawyers coming through, going 'You know what? Actually we're about more than just making tonnes of money for the partners to pay off big mortgages and harbour views. There are other things'.⁸⁴

In addition to participating in pro bono schemes provided by their own firm and what might perhaps be described as 'ad hoc' pro bono work within their own practices (such as by reducing fees or providing no-cost advice), some participants had given specific thought to how they might strategically apply their legal skills in order to have the most impact. For example, some participants described utilising their legal skills to assist organisations such as church or community groups,⁸⁵ rather than individual clients. As one practitioner said, 'I might do freebies for community organisations and

⁸⁴ Another participant said that 'It's fascinating that [younger graduates coming through] they really all have a desire, I think just about every single one of them, to do some sort of pro bono, public work. And if you actually don't offer it to them as a firm, they're likely to go and work full-time in that community area'.

⁸⁵ 'I don't know whether this is part of your work or not, but where I think...people's values come in, is not just in the legal work that they do, and things like that, but it's...the other work you do or the time that you put into the community, to utilise your legal skills, and things like that'. 'On behalf of my employer, no. But yes, I do pro bono work all over the place. It seems that everybody's...and I've tried to cut back, actually. Sporting clubs, musical organisations, church groups...charities, ... community foundations and things like this...and I've had to pull back a bit, because as much as I want to help everybody, there's got to be a line drawn sometimes'.

that sort of thing rather than individuals. Where it's a bit easier I suppose to make that judgment call, because how do you pick between your clients? How do you seriously pick who is more deserving than others, and who really can't tap into other financial resources'. Some participants were also engaged in providing strategic advice or submissions about law reform, recognising that this might be of broader benefit to not only their own clients, but might also result in reforms in areas that they were concerned or passionate about. One practitioner reflected that:

Pro bono I actually don't do that much of these days. As in classic pro bono; 'client walks in off the street, can't fund it themselves, wants a lawyer to do it'. I'm very strategic in terms of what I do with my time. I say this to every client that approaches me; where I apply my traditional time is in things like drafting policy submissions on [area of law] or drafting...making submissions in terms of [area of law] that will affect churches, and that sort of stuff. So where I'm applying my time above work it's very strategic. So I don't tend to...I've done it in the past, but I don't tend to take on, open a client file as a pro bono file. I've done a fair bit of pro bono work when I was in [area of law], and that was just...through the years I've moved to a more strategic place, to say, 'this is where I'm going to have the most bang for buck'. So I'll do a submission for [name of organisation] on [area of law]. Some of it dovetails back into work. Because if you have a win for a client then that's part of what a [area of law] practitioner does, making submissions to government and so on. But a lot of it is because of the focus that we...I have taken on, yes. So my actual pure pro bono in that sense is really negligible these days; it certainly extends to friends that just need a hand and what-not, but most of my stuff is more at the policy level now, yes.

Another said:

I would very much be aware of the role of Government to step into those places where you felt that the bargaining positions [between big business and consumers] were absolutely becoming poor, and that is that there is a real place for regulation and government there, and in many respects sitting on committees and lobbying governments for better...I would certainly have been involved in that kind of stuff.⁸⁶

⁸⁶ Another participant described making a 'significant contribution to the coming of the Kingdom of God in Australia', describing this as 'about the changing of laws, the structuring of legislation, it's about amendments to the Tax Act, it's about responding to the ACNC (the Australian Charities and Not-for-Profits Commission)'...

Another, that:

'I'd been dying to do pro bono since I was a law student. I did a lot of work in community legal centres. The needs are great. I think particularly I'd love to get involved in...legal work with the legal

The extent to which participants were involved in law reform activities (including those reflecting their own personal values or religious interests) is consistent with the Prophetic Lawyer, who seeks to pursue faith-based values through her professional role by acting for particular clients and organisations, and by undertaking law reform activities. One participant also described having been drawn to work in community legal services as having been ‘enormously’ motivated by faith, reflecting that:

I went to Catholic Schools when I grew up, my father was a devout Catholic, many of...my mother was from a Catholic family as well, so many of my family were, many of the teachers who taught me at school were too. And so I grew up in that environment, and...I think that to some degree...the Social Justice Jesus, for want of a better description...the Jesus of the Bible stories who...didn't accept what the Pharisees and the lawyers said...who worked against that, who represented the poor...against some of those legal systems, is the Jesus that I was attracted to, and a message that resonated with me.

Again, whilst participants recognised the value of pro bono work and community engagement, their ability to engage in this was also limited by practical factors such as time and availability.⁸⁷

centres. I'm quietly passionate about it. Within my work and my work hours, our practice is more focused on structural reform, than particular cases...Although - so if we think a particular case will be an exemplar which might bring about some structural reform, then we'll probably take it on pro bono. So a good example would be in a case where we think the taxation office is being unhelpful in a way that is not actually consistent with the law, we'll help people bring a test case for free. So that...if an approach is overturned, it will benefit thousands of people. I guess the idea is what...how can we best target our help?.

⁸⁷ ‘For me, something I’m trying to work out at the moment is how a Christian lawyer is faithful to the work in doing a competent job and getting the tasks done...to a satisfactory level, and also...giving time to their family. I think that can be done, but the part that I’m not satisfied I’ve understood yet is how one participates in the broader community outside your role as a lawyer, because I don’t think it’s right that if you’re a lawyer or some other kind of professional you get to say, “oh, I’m too busy being important to run the youth group, to be on the prayer team, to volunteer at the local lifeline”, or to do something else – something in the local community that’s not connected to your skills as a lawyer. Because...if all the professional people are taken out of the equation...that’s not a true diversity of experience that young people or other people are being exposed to, and I think our communities are poorer for that. So I haven’t managed to think that out, because everyone I’ve met so far, including my amazing boss, tells me that, yes, it’s normal to be completely exhausted at the end of the day if you’re doing your job right as a lawyer...and any energy you’ve got left belongs to your family...And so – because the work is important and because you do it with all these values in mind, it’s really important to get it right. So yeah...it’s going to be hard for you to be involved in your community in a meaningful way beyond maybe one board appointment. And I find that profoundly unsatisfactory, growing up as I did with this focus on justice for the ordinary person. And I think justice for the ordinary person is bigger than just...legal help or assistance...It’s to do with structural injustices and a rich community life. I find it frustrating that I haven’t figured out how we can participate in that part of justice and community as lawyers, as well as applying the law’.

6.6 Firm culture (RQ3)

The literature on lawyers' ethics recognises that firm culture and the ethical norms of the workplace have a strong impact on lawyers' ethical deliberations.⁸⁸ Consistent with these findings, participants in this study also recognised the impact of firm culture on their own ethical deliberations, both in a positive sense (in terms of a supportive culture), and the possible impact of corporate pressure to behave unethically, especially with regards to billing. Participants also recognised the importance of autonomy, with some suggesting that they had made deliberate choices⁸⁹ to pursue careers and workplaces which were a better fit with their own values.

6.6.1 Pressure to behave unethically

Participants' responses to the questions raised in this project revealed that they were also aware of the potential impact of firm culture on their ethical deliberations. They particularly recognised a distinct link between corporate pressure to reach billing targets, and poor ethical decision-making. This was reflected in comments such as:

- 'I think that when people are in jobs under pressure, then it can become a problem. I've seen it myself with other lawyers who are...under pressure to overbill a client or be unethical in the way they treat a client. There can be a fair bit of corporate pressure to behave unethically'.
- 'I think one of the biggest factors for a lot of people and the pressure that a lot of people are under to engage in unethical behaviour comes about because they have to reach particular billing targets...and I think that will cause people to engage in...either padding out work or effectively...lying about what they've had to do so that they can meet unrealistic billing targets and that sort of stuff...'
- 'I would have trouble in the large firms, I think, from some of the stories I hear. Some might be better than others, but as a rule there's a lot of pressure on

⁸⁸ See, eg, Kimberley Kirkland, 'Ethics in Large Law Firms: The Principle of Pragmatism' (2004-2005) 35 *University of Memphis Law Review* 631, 661, suggesting that despite differences in background between participants, the 'in-depth interviews revealed remarkable consistency in these lawyers' experiences of work in large law firms'.

⁸⁹ 'I was fairly deliberate about seeking out where I would work, as I said...in my first couple of years. I really didn't want to work in a big firm, because of what I had learned about big firms. I just knew that it probably wasn't going to be a good fit for me, or the big firm I ended up working for'.

billing and those things, and people can make terrible decisions when they're under pressure'.

- 'Other pressures would come from the firm itself especially the pressure to bill and meet targets, such as loading the time-sheet or billing for work not performed'.
- '[A] lot of firms wouldn't support you through that [balancing reduced fees with business requirements], I suppose. And a lot would not be happy with you getting anything other than absolutely as much as possible out of the clients, and if they want you to over-service, you over-service them. And if they want work that you know is pointless but will make a lot of money, and they want it, then you do it'.

Another participant reflected that:

I've been fortunate... there was probably no real pressure to ever ... cut corners ... There was a different pressure which placed challenges on my ethics, for instance probably the 7 hours time-sheeting a day really challenging my honesty and my... Christian values when it came time to report time, day after day, and...I felt that. If I knew there was a file that could handle another hour or two that I hadn't done on it...you've got to get your 7 hours. And sadly there were a couple of times where I did fall foul to it, and...it...was more that pressure. It was more the time-sheeting, 'productiveness' pressure, whether either there wasn't work there or the work you were doing was of such little value that you couldn't bill it. And probably the times when I fell foul of it wasn't...I wasn't making stuff up, I just knew that I wasn't adding value. I'd be flicking through files trying to find documents that I was going to disclose; weighing up disclosing, not disclosing, and I just took my time because I needed the hours. It was probably more that....

Participants were aware of these pressures either because they had heard stories from colleagues, or had experienced these pressures themselves in previous workplaces (rather than being subject to similar pressures in their own current workplaces).

6.6.2 Finding a good cultural fit

In addition to identifying the ethical challenges that might be faced in different workplace environments, participants' responses also revealed that they strongly valued firm cultures which supported what they saw as 'ethical' behaviour; provided

sources of mentoring; or which allowed participants scope to give effect to their own values, including through supporting work-life balance,⁹⁰ open conversations,⁹¹ or less rigid billing practices. As one participant said:

We're not a mega firm and we've got a good culture, but I would struggle in a culture...I mean, I hear stories of law firms where partners send out a weekly report to each lawyer saying, 'you were under budget on Tuesday, Thursday, Friday'. Now I've never been in that culture and I would struggle. So I'm fortunate in the culture. So it's not just the profession, it's the firm I'm in has a good very strong respect for people, and the irony is even though it was before I became a Christian I moved here for cultural reasons, very strong reputation, very low staff turnover, and everybody you talk to knew somebody they said had a great experience at [name of firm] .

Some participants had deliberately sought or appreciated opportunities to work with other Christians, because, for example, this allowed them to learn from others, or to have open conversations, including about their faith and personal values.⁹² Christian values were seen as influencing environments that were more supportive of staff, and less likely to encourage negative competition to meet billing targets.⁹³ Participants said, for example, that:

[W]orking in my particular law firm I don't have that problem so much [pressure to compete for work; meet budgets, 'look out for your own interests' rather than 'treat others as you want to be treated'] because everyone is a Christian so everyone has that value. So if someone does something wrong, someone else will have their back, or if someone's having trouble meeting their budget we'll help each other out. So I can see

⁹⁰ '[T]here's a value placed on having a life outside of law ... so people aren't chained to their desks... There's... almost an expectation that people will go home to their families and have dinner, and... do things outside of the work that we have to do...'

⁹¹ '[O]ne of the things that I value here is because you do hear the stories of... people who... really cannot approach... senior associates or partners and all the rest and find it very difficult to communicate with that, but thankfully... communication-wise generally... quite open at our firm, so I'm very grateful for that'; 'I have a very open relationship – open and frank relationship with my supervisor. I'm lucky in that respect; 'I'll talk to other lawyers about it, I'll talk to the principal solicitor about it, but that's all well and good in theory, but the principal solicitors I've ever worked for wouldn't have ever been interested in having an in-depth feeling about how I'd been affected by a case... Not necessarily because most of them were male, but more so because it's a commercial environment and they'd be losing money if they were sitting there and listening to me'.

⁹² 'I'm very grateful for that, and I know that's not the case in many firms. I've got friends from uni who are working in firms where that's definitely not the case, and having... backlash as a result of certain things they ask, and all the rest. So I think my situation's quite unique in that... not saying there's not other firms that have open door policies and effective ones as well, but I know it's not the norm'.

⁹³ 'Sometimes I feel like I'm not even working in a firm because they're all like a big family... everyone looks out for each other (...) if something goes wrong you can talk to everybody'.

how that's a problem and it might come up every now and then, but it's not as much as it would in another law firm.

[N]ot all of our staff members are Christians, but they are aware of the firm's...values, and Christian faith is not imposed on any staff member or anything like that [later] So I think for me it's very...rewarding, to be in that kind of environment, and to be free in general conversation to mention 'oh I've been to church on the weekend' or anything, and not feel like you'll be persecuted or something. Which I know...in other firms might not be the case. So I think as well, the freedom to share what's on your mind, and what are your beliefs, and I think that's been very good for me personally...and to observe other lawyers who are Christians and how their faith affects being a lawyer and the way that they choose to live their life.

However, faith was not a prerequisite to establishing a supportive work place culture, and a supportive and 'ethical' workplace culture was identified as important and possible even if this was not motivated by Christian values and others in the firm did not share the same faith.⁹⁴

When participants described why they felt supported by their own workplace culture, environments that were described as involving 'respect for people', 'open communication', 'strictly ethical', honesty,⁹⁵ 'strong values' and 'working cooperatively and respectfully'⁹⁶ were emphasised as being important to Christian lawyers, regardless of whether others within the firm shared their faith. Conversely, cultures that emphasised 'pressure to behave unethically', 'unrealistic billing targets', 'pressure to bill and meet targets', 'pressures on billing', 'a policy or attitude of 'get as much money as you can at all costs',⁹⁷ over-servicing, 'money-making',

⁹⁴ '[W]e say, "well that's not actually good use of your money...I can go to Court for every single mention for your matter, and that's going to cost you X. Or we can do it this way for Y and it's just as good, I promise you". That is financially detrimental to the firm, but that's something I think would be expected of us. And then there certainly is a support of decisions made that are in the very short term, not financially the best ones, when it's appropriate to do so. But there certainly is that culture, despite my boss, my direct boss being not Christian at all, of doing that'.

⁹⁵ 'No-one here tells lies. You just build a culture'.

⁹⁶ 'Working as a team means we're working cooperatively, respectfully...in a loving and supportive manner. That's sort of like being part of the church community really'.

⁹⁷ 'I think if you're a criminal lawyer, unless you have a heart of stone, you're going to find clients you feel sorry for, and wouldn't mind giving a hand to, and within reason, we are supportive in doing that. At the end of the day as we've said, my boss has said, "we are a business, if money doesn't come in, money doesn't go out to you". So there's a balance there. We have budgets...we have to accomplish certain numbers by certain times, or we're expected to accomplish, certainly, for certain times. There's a balance there, but there certainly isn't a policy or an attitude of "get as much money as you can at all costs", quite the opposite'.

Chapter 6: The Conduct of Legal Practice

‘competition’, ‘bottom-line’ thinking, ‘cutting corners’ and ‘politics’ were seen as creating possible conflicts for Christian lawyers. That is, where this group of Christian lawyers experienced tensions within their workplaces was not in terms of being asked to act for clients or in matters which directly conflicted with faith-based ethical values, for example, but rather in terms of being under pressure to compete with others, or to place billing and monetary considerations above all other considerations. Whilst (as noted above) participants recognised the lawyer’s entitlement to earn a reasonable fee, it was where this fee might require them to cut corners or engage in unethical billing practices that led to potential conflict. One participant reflected that:

That’s what I’ve realised more than anything else; it’s the culture of an organisation, of the law firm, or of a business, that sets the tone [later] And a strong culture led by even non-Christians, but with great values and great morals, will always be easy for a lawyer. It will be easy for a lawyer to do their job, discharge their duties, honourably and faithfully. It’s going to be easier for them to do that. If you’ve got a culture though, that’s like I said – is a very ‘sales-y’ driven culture or...the bottom line is always the most important thing. Of course the bottom line is always important, but *always* the most important, that’s when lawyers... ‘doesn’t matter what’s going to happen’, ‘we’re going to screw them over’, ‘we’re going to take them to court’, ‘we’re going to offer them something terribly unreasonable so that they settle’, ‘we’re going to cut corners’, ‘we’re not going to fill in forms’, ‘we’re not going to do risk assessments’; we’re not going to do...all these things that we’re cutting corners for an outcome, that’s when life gets really hard being a lawyer.

As noted in earlier chapters, in making ethical decisions in legal practice, many participants recognised obligations to their own firms as one factor which they would need to take into account in making those decisions. Many participants in this project were in positions of relative autonomy within their own firms, and noted autonomy as having a positive effect on whether they experienced tensions between faith and their professional role when making ethical decisions. Participants said, for example, that ‘[being a] sole practitioner’s easy. You get to choose your clients and if you’re going to starve, you decide to starve and that’s fine’, and ‘It’s fairly easy for me, because as an established practitioner it’s much easier than if you’re an employee that the firm’s putting pressure on you’. Those practitioners who had chosen career pathways that led to positions of autonomy (such as by starting their own firms, for example), recognised

that they were also able to make decisions about whether to act for clients and in matters without having to defend those decisions against budgetary pressures.⁹⁸

6.6.3 Relationships with colleagues

Whilst the normative literature tends to focus on whether and how values ought to influence Christian lawyers' relationships with their clients, participants also described their values as affecting how they related with colleagues within their own firms. Some described their values as having 'probably a bigger impact'⁹⁹ on their relationships with colleagues within the workplace, rather than necessarily on their relationship with clients or other lawyers outside their own firms. In particular, participants saw their faith as inspiring them to take the time to mentor other lawyers,¹⁰⁰ treat others with respect, grace and civility,¹⁰¹ go out of their way to support

⁹⁸ As described above, whilst practitioners recognised obligations to staff, partners and their own families when it came to charging fees, those practitioners who valued the ability to say no to clients or matters recognised that sometimes the fees that they would earn from those matters would not necessarily make up for whatever conflict had caused them to say no to them in the first place. For example, one practitioner said that 'one of the things that often creates difficulty for us is that we often act in conjunction with accountants and financial advisers or other lawyers, if it turns out that they are shonky or keep cutting corners or whatever, we then see to run into problems or we spend all our time trying to fix those problems. It just doesn't seem worth the effort, because we spend most of the time trying to overcome unnecessary problems, and feel the client's the victim in all that. So we make a conscious effort to try to work with people who are reputable'. Others said that 'I do what I want to do, and it's good. You don't have to take thing on if you don't want to' and 'I think the issue of having your own firm...there's lots of disadvantages, but one of the big advantages is freedom...One of the reasons I started the firm was my partner and I at the time didn't want to be part of a large merged structure. So we wanted some say in how we practised and what we did'; 'It does give me a bit more flexibility...I don't have to worry about...I still record everything I do, but I don't have to do six hour, six billable hours a day. And if someone can't afford to pay, I don't ask them to pay'.

⁹⁹ '[P]robably a bigger impact. Is how I relate in the workplace. I mean I've...trying to think of examples. I mean, I think I generally see that that's an area really, is influencing younger lawyers...I...as does occur a bit, I used to swear in the workplace occasionally, and now I don't at all. You try and influence others, and...I've got a role with mentoring younger lawyers, and so the approach I take is one that...I hope rubs off on them, and I'm far, far more ready to tell them about my faith, and everybody in my [area] group knows I'm a Christian, so there's a real opportunity to influence younger lawyers'.

¹⁰⁰ '[G]iving time to juniors; not always being...about your own work, but recognising that they have to learn and spending time with them; being able to recognise, most difficult of all, when people are perhaps not suited for the law or not suited for the firm. Being able to sack people; let people go when it's really not going to work for them, and you were going to see that they were on a path that was not going to make them happy. Well you felt that you could see that...being able to look after them through that process in a humane way'.

¹⁰¹ For example:

With secretaries, just not being a jerk about getting your work done; it's just a common human respect thing, I think. And maybe that's informed by faith, I don't know. But it's certainly how I go about things.

I think there's a responsibility to be gracious, I think, is something that should define lawyers. And that means gracious with others and gracious with yourself, and to demonstrate you can be gracious with both others and yourself, without ever compromising the standards that we've all got to meet. So if

others, and sometimes provide a sounding board (including for non-work related issues).¹⁰²

Participants were also more likely to discuss their faith with colleagues than with clients. Whilst there was a greater reluctance to discuss faith with clients (due, for example, to recognition of the particular ethical norms of that relationship, including power imbalances),¹⁰³ many participants would discuss their faith with colleagues within their workplaces, either deliberately or in casual conversations.¹⁰⁴ Participants were also aware of demonstrating their personal values within their workplaces,

someone does make a mistake, it's clear they need to get back on their feet again and keep punching, but over time there is that grace applied. So yes, I think in that sense it certainly does change the way I deal with my staff in particular, yes.

I think that one of the dimensions that you might find is, not only does a person's... aspirations to Christian ideals... play out in relation to the client, but it plays out in the internal relationships within a firm [later] [W]e have a very strong expectation... demand on our people here that we always talk civilly with each other. You can be blunt and straight, and clear, and unhappy, but you don't demean the person.

I think my Christian faith has more of an impact, not in the work that I do for people above me, but the work that I do with people around me and below me. So with my peers it can be competitive, but I try and be not so competitive. Or if there's praise I try and share the praise, or if there's blame I try and take my fair portion of the blame. And similarly with the secretaries and the support staff I think it's good practice for everyone generally, but as a Christian I try and make sure that I form personal relationships with each of them and not just... treat them as support staff similar to a stapler or a telephone service.

¹⁰² '[T]here's other times when people are going through difficult personal problems. And they'll know. You don't need to say anything. Sometimes when, as Christians we feel like we've got to say something, people know. People know when you're a Christian. They just sense it. And I think... it's probably got around a little bit, but I think people – they know when they talk to me; they know I'm a Christian. And... that gives people security, and I've had so many people come and unload their problems on me over the years and... like I said, they're great opportunities to not necessarily be overt, like "you've got to do this", "God wants you to do that", it's more.. yeah, they come to me. There's a sense of trust. A sense of trust, I think. As a Christian lawyer, you're an additional sense of trust, and they feel that they know it, that they're in a – hopefully – a safe environment and helpful environment, and a listening environment'; 'I also get phonecalls from practitioners; "I've got a personal issue, I can't talk to anyone about it, but I know that I would value what you have to say"'

¹⁰³ As discussed in Chapter Five.

¹⁰⁴ 'Being a principal of a firm has made a huge difference in that. Being able to share and be a bit more open about my faith, I guess, within my workplace'; 'I have had opportunities to pray with colleagues and pray for colleagues when they're sick'; 'Certainly talking to colleagues about my faith... yeah, that's been lovely'; 'I have a number of friends from Law School, who are not Christians, who I've been witnessing to. I think actually most of my witnessing is to colleagues rather than clients. I'm pretty public with my Christianity in the profession, so people know me as a Christian lawyer. As a Christian lawyer, people follow what you're up to, and there are opportunities to demonstrate our Christian concern, Christian faith, and so there is a very strong witness to follow practitioners [later] I see them as a ministry field in its own right, that particular ministry to people'; 'Colleagues, from time to time'; 'With the group of graduates we're all in the same cohort; very much on the same level. We go to Friday night drinks after hours (which is hosted here at the firm), we hang out socially, and there's very much kind of a friendship among the Grad group, in addition to the professional working relationship. So, in that social capacity, there's often opportunities to tell people... "I can't hang around too long tonight because I'm going to the youth group at the Church where I'm a leader", or to say, "what am I doing on the weekend; I'm going to Church on Sunday night", and to share my Christian faith that way'.

including, for example, by ‘avoiding dirty jokes’, ‘filthy language’,¹⁰⁵ ‘gossip’,¹⁰⁶ or other behaviours that might be seen to conflict with faith-based ethical values.

6.7 Conclusion

This chapter has explored the effect of personal values on Christian lawyers’ conduct of legal practice more broadly, including sources of ethical guidance; the resolution of a legal dispute and the charging of professional fees. It was also examined the influence of firm culture on participants’ responses to the issues raised in this thesis.

Whilst participants primarily sought ethical guidance from professional sources, there was evidence that they would also consider whether professional ethical decisions were consistent with their own personal values. When resolving a legal dispute, participants did not see themselves as purely a ‘zealous advocate’ for their clients, but felt uncomfortable taking actions which they identified as being unnecessarily aggressive. Again, participants would discuss broader considerations involved in the resolution of a legal matter (including the interests of the other party and relevant third parties) with their client, but often saw this as being in the best interests of the client rather than necessarily arising from tensions with their own personal values. That is, participants saw the impact of a legal matter on the client’s relationships (for example), as being a relevant consideration, and sought to minimise (where possible) negative impacts for the client in this area. This is particularly consistent with the Lawyer of Integrity model, which suggests that a Christian lawyer ought to see the client’s legal matter as part of a network of relationships and broader considerations rather than focusing solely on the client’s legal entitlements.

Participants also saw their personal values as influencing them to act with respect and courtesy towards the lawyer(s) representing the other party. This is consistent with the Lawyer of Character model in particular, which recognises that one of the ways in which a Christian lawyer is able to act consistently in both personal and professional

¹⁰⁵ ‘Trying not to be involved in dirty jokes and things like that. While being a normal person (i.e. not pretending to be superior or “holier than thou”), I would avoid filthy language and that sort of stuff. Also acting with honesty and integrity with other lawyers. I do think that your witness “in the small things”, your conduct generally, is very important’.

¹⁰⁶ ‘Most of my work I’ve spent in bigger offices, and one of the things you often find is that gossip is really cruel. And it’s so easy to join in that gossip, and sometimes it takes an effort to pull back and think of the impact’.

roles is by bringing values such as courtesy and respect to her relationships in legal practice.

In terms of the charging of professional fees, whilst participants recognised an entitlement to charge a reasonable fee, they saw their values as influencing them to depart from professional ethical norms such as time-based billing on occasion. Participants also brought their values to bear on the determination of a 'reasonable fee', but often saw these values as being consistent with professional considerations. That is, participants did not identify professional ethical norms as advocating an unreflective billing culture, but rather, that both personal and professional values would require that they reflect on whether a bill was 'reasonable' in the circumstances. Participants also identified pro bono work as being consistent with personal and professional values, and some sought to target this work to achieve maximum impact in this area.

Firm culture was described as being highly influential as to whether participants experienced a conflict between faith and legal practice. Whilst an ethical environment was not limited to 'Christian firms', participants identified that firm cultures which emphasised an inflexible billing culture were more likely to cause tensions for both Christian and non-Christian lawyers. Another way in which the Christian lawyers interviewed for this study were able to reconcile their personal values with their professional role was by recognising the ability to bring their values to bear on the way that they interacted with colleagues within the workplace, including by undertaking mentoring roles and seeking to have a positive effect on firm culture.

The next chapter will summarise the conclusions reached in the thesis, and will outline some possible directions for future research.

Chapter 7 : Conclusion

7.1 Introduction

The final chapter of this thesis will summarise the earlier conclusions about how the Christian lawyers interviewed for this study navigate the ethical worlds of faith and legal practice and, in particular, how the personal values of Christian lawyers influence their view of the lawyer's role and the moral justifications for that role (RQ1); the area(s) of law within which a Christian lawyer practises (RQ2(a)); the lawyer-client relationship (RQ2(b)); and the conduct of legal practice more broadly (including the charging of professional fees) (RQ2(c)(d)). This chapter will also highlight how firm culture may influence the responses of Christian lawyers to these issues (RQ3).

7.2 The Christian lawyer's role and the moral justifications for that role (RQ1)

As noted in Chapters Two and Four, the faith-based normative literature suggests that, at some level, a Christian lawyer will be unable to separate her personal values from her professional role and will seek to reconcile the two. Even the Servant Lawyer model, which provides a religious justification for adopting professional ethical norms when engaged in legal practice, recognises that there will be a point at which actions required to be undertaken in that role may be 'religiously impossible';¹ the Christian lawyer will be unable to remain morally neutral, and will need to choose faith over her professional role. The other models suggest that a Christian lawyer may be able to reconcile the ethical worlds of faith and legal practice by:

- Recognising consistency between faith-based and professional character qualities or virtues (such as dignity, honesty and integrity) and seeking to apply these qualities in both personal and professional roles (the Lawyer of Character model);
- Seeing the lawyer's role as a vocation or calling, and seeking to act consistently with faith-based ethical norms when engaged in legal practice (the Lawyer of Integrity model); and

¹ Marc D Stern, 'The Attorney as Advocate and Adherent: Conflicting Obligations of Zealousness' (1996) 27 *Texas Tech Law Review* 1363, 1371 and see also comments and references in Chapter Two, n 26.

- Pursuing faith-based values (including social justice goals) through legal practice, including by acting for particular clients or organisations and engaging in pro bono work or law reform activities (the Prophetic Lawyer model).

Each of these models are not exclusive or exhaustive, and, as described in this study, Christian lawyers in practice may display different aspects of the models at different times or in different areas of their work.

As suggested by the faith-based literature, this project has highlighted that the Christian lawyers interviewed for this study did not see their faith as something to be separated from their professional role, but saw the lawyer's role as being morally justified, including for a Christian lawyer. Indeed, one of the interesting outcomes of this project is that many participants initially struggled to identify any overt conflicts between their faith and their professional role.²

The kinds of justifications that participants recognised for the Christian lawyer's role included:

- The ability to help and serve clients through the professional role (this was a strong theme throughout participants' responses). Participants also identified the ability to serve the court and the broader community through the lawyer's role as being consistent with both faith-based and professional ethical norms.
- Consistencies between the ethical requirements expected of lawyers and faith-based values such as honesty, fairness and justice. This extended to some

² To an extent this may be expected, given that the project drew from Christian lawyers who were (or had been) engaged in legal practice, and who were prepared to engage in discussions about faith and legal practice. The project did not draw Christians who may have decided not to engage in legal practice because of a perceived conflict between religious and professional values or Christian lawyers who were not prepared to reflect on the relationship between their faith and legal practice. To an extent, participants who chose to participate in a study about how they navigated between the ethical worlds of faith and legal practice might be expected to have thought about the kinds of issues that were raised in this study, and to have thought these issues important enough to give of their time to participate in the study. Those lawyers might therefore be more likely to identify a connection between faith and legal practice than others who may have chosen not to participate in the study. Further, the participants in this study were drawn from a pool of lawyers who openly identified as 'Christian' – either through their membership of professional organisations for Christian lawyers or to friends, colleagues and other lawyers. The project did not draw participants who might identify as members of the Christian faith, but who do not do so openly in the context of their legal practice.

participants reflecting that the kinds of actions with which they might feel personally uncomfortable, were already prohibited under professional conduct rules, such that there was no significant tension between their personal values and their professional role.

- Acknowledgement of the influence of Christianity on the development of the Australian legal system, as well as recognition of the ability to influence behaviour and benefit society more broadly by engaging in the professional role (including by bringing a critical moral perspective to that role).

The extent to which participants identified religious justifications for the lawyer's role (such as by recognising the influence of Christianity on the development of the Western legal tradition or the ability to serve the court and community through the lawyer's role) is particularly consistent with the Servant Lawyer model, which recognises a religious justification for Christian lawyers adopting professional ethical norms. However, as was seen in the context of the lawyer-client relationship and the conduct of legal practice more broadly, Christian lawyers may go beyond this model by taking a broader view of the client's matter and the resolution of a legal dispute, or by seeking to bring a broader perspective to the lawyer's role.³

The responses of participants also highlighted an interesting dichotomy between the secular liberal and faith-based accounts in particular.⁴ Whilst the lawyer's role in serving her client's interests is regarded as an important justification for that role in both secular liberal and faith-based accounts, where these accounts differ is in terms of what is required in order to serve those interests. That is, secular liberal accounts largely suggest that the client's interests are only served if the lawyer puts aside other considerations in order to give effect to the client's autonomy,⁵ whereas the perception of the Christian lawyers interviewed was that they would not be serving their clients' best interests *unless* they at least raised broader considerations (where relevant) with

³ As described in Chapters Five and Six and below.

⁴ Whilst the liberal perspective is not the only non-faith-based view of the lawyer's role, it is often described as the 'standard' or 'dominant' view of the lawyers role: Tim Dare, *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, 2009); William H Simon, *The Practice of Justice: a Theory of Lawyers' Ethics* (Harvard University Press, 1998) 2; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd ed, Cambridge, 2014) 22, who identify Parker's Adversarial Advocate model (reflecting the liberal conception) as the 'predominant conception of what lawyers' role and ethics ought to be in most common law countries including Australia'.

⁵ See comments and references in Chapter One, n 5.

their clients. Moreover, participants did not see religious and professional ethical norms as necessarily ‘different’ or that religious ethical norms required them to depart from a ‘professional’ conception of the lawyer’s role. Rather, they seemed to perceive professional and faith-based ethical norms as compatible, and as equally involving the lawyer taking a broader view of the client’s matter and the issues and interests involved in the resolution of that matter than might be suggested by secular liberal theories.⁶ It would be interesting to conduct research with other groups of lawyers in Australia to determine whether this is a common view of the lawyer’s role within that jurisdiction.⁷

In terms of the other models for faith-based legal practice, the extent to which participants identified consistencies between faith-based and professional values such as honesty and integrity is particularly consistent with the Lawyer of Character model, and the strong emphasis on service to clients as one of the justifications for the lawyer’s role is suggestive of the Lawyer of Integrity model (which sees service to and care of clients as arising from the conception of legal practice as a vocation or calling).

Of note is that only a minority of participants identified the pursuit of social justice goals or faith-based law reform as one of the justifications for the lawyer’s role. This may suggest that the Prophetic Lawyer model is less reflective of the views of Christian lawyers more broadly, although it should also be acknowledged that the study drew participants who were engaged in general legal practice (or related areas) rather than in the kinds of roles that one might expect a Prophetic Lawyer to pursue (such as working for Legal Aid or Community Legal Centres, for example).⁸ As will

⁶ Which, whilst suggesting that the lawyer ought to fully inform the client of her legal rights and obligations, strongly caution that the lawyer ought not allow broader moral considerations (as perceived by the lawyer) to interfere with her representation of the client. See, for example, Monroe H Freedman, ‘Personal Responsibility in a Professional System’ (1977-1978) 27 *Catholic University Law Review* 191, 204; Stephen L Pepper, ‘The Lawyer’s Amoral Role: A Defense, a Problem, and Some Possibilities’ (1986) *American Bar Foundation Research Journal* 613, 616-617.

⁷ It should be noted that the view that the lawyer’s role involves raising broader considerations than simply carrying out the client’s instructions or facilitating access to the legal system is shared by other, largely non-faith-based, conceptions of the lawyer’s role: see, eg, the discussions of the Responsible Lawyering, Ethics of Care, Moral Activism and Virtue Ethics frameworks in Parker and Evans, above n 4, 31-50.

⁸ Although at least one participant had previously worked in this area. Lawyers working for Legal Aid or Community Legal Centres also represent a minority of Australian legal practitioners overall. According to the 2014 Law Society National Profile Final Report, 70.2% of practising solicitors worked in private practice, 15.8% as corporate solicitors and 9.6% with government: Law Society of New South Wales, ‘2014 Law Society National Profile’ (Final Report, April 2015).

be noted below, participants also tended to pursue these kinds of goals through their day-to-day legal practice, rather than as the sole focus of their professional role.

The influence of professional ethical norms on participants' views of the lawyer's role could also be seen in the descriptions used by participants to describe that role, which emphasised the lawyer's role as an officer of the court and representative for the client. In some areas (such as criminal law), participants also saw the lawyer's role as being justified in part because of the nature of the adversarial system.⁹ Whilst the faith-based theories do not suggest that criminal law practice is precluded for a Christian lawyer, theorists such as Shaffer suggest that Christian lawyers should not rely on moral justifications provided by the system, but should examine these in the light of faith-based ethical norms.¹⁰ Although participants also identified faith-based justifications for criminal defence practice, their views may reflect a stronger role-based justification than is suggested by the faith-based literature, in the context of criminal law practice.

One of the unexpected findings of the study was that, rather than identifying an overt conflict between faith and legal practice, a number of participants were instead concerned about the influence that their professional role might have on their identity as Christians (rather than the influence that their faith might have on ethical decisions in their professional role). Participants identified, for example, their professional role as having the potential to cause conflicts in their personal life, including in the areas of work-life balance, maintaining important relationships and avoiding becoming caught up in the perceived 'traditional rewards' of legal practice, such as wealth and status. Some participants had made deliberate choices to engage with firms whose cultures would provide them with more opportunities to spend time with their families, or were a better fit with their own values. Faith also provided an important source of

⁹ Consistent with Freedman's secular philosophy of lawyers' ethics. See, eg, Freedman, 'Personal Responsibility', above n 6, 204; Monroe H Freedman, *Lawyers' Ethics in an Adversary System* (The Bobbs-Merrill Company, Inc, 1975); Monroe H Freedman, 'Professionalism in the American Adversary System' (1992) 41 *Emory Law Journal* 467.

¹⁰ Shaffer and others go on to justify criminal law practice with reference to biblical principles such as compassion. See, eg, Joseph G Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press, 1996) 77; Thomas L Shaffer, 'Serving the Guilty' 26 (1980) *Loyola Law Review* 71, 83-84; Thomas L. Shaffer, 'Should a Christian lawyer serve the guilty' (1988-1989) 23 *Georgia Law Review* 1021, 1025.

personal support,¹¹ without necessarily being something that would be raised with clients.

7.3 The areas of law within which a Christian lawyer practises

(RQ2(a))

Whilst participants had found themselves practising in particular area(s) of law for mostly pragmatic reasons, they largely felt comfortable that their own areas of practice did not result in particular conflicts for Christian lawyers, although there were sometimes different views about whether potential moral conflicts might exist for Christian lawyers engaging in certain areas of law such as family law.

It is interesting that family law was generally identified as the area of law most likely to cause potential moral tensions for Christian lawyers. Although participants recognised the criminal defence lawyer's role as providing an important source of balance within the legal system and as assisting the court to determine guilt or sentence,¹² there was some concern that family lawyers might be more likely to be asked to pursue unreasonable claims or to act unreasonably towards the other party. Whilst this was perceived as an area of potential tension for Christian lawyers engaging in family law, parties in areas such as commercial law (including litigation) were conversely regarded as being more evenly-matched, rational, or more likely to be persuaded by commercial considerations, such that these areas were seen as more 'business-like' and less likely to raise potential moral conflicts. This tied in with one area of possible moral tension for the Christian lawyers in this study, namely being asked to act in an unnecessarily aggressive manner in pursuing the client's rights or entitlements.¹³

One of the reasons that participants did give for engaging in family law practice (as well as other areas) was the ability to help and support clients, and in that way to bring

¹¹ This is also recognised in the literature – see, eg, Michael A. Scaperlanda, 'Lawyering in the Little Way of St. Therese of Lisieux with complete abandonment and love' (2007) 46 *Journal of Catholic Legal Studies* 43; Jacqueline Nolan-Haley, 'Finding Interior Peace in the Ordinary Practice of Law: Wisdom from the Spiritual Tradition of St. Teresa of Avila' (2007) 46 *Journal of Catholic Legal Studies* 29; Gregory A. Kalscheur, 'Ignatian Spirituality and the Life of the Lawyer: Finding God in All Things – Even in the Ordinary Practice of the Law' (2007) 46 *Journal of Catholic Legal Studies* 7; Michael P Schutt, *Redeeming Law: Christian Calling and the Legal Profession* (InterVarsity Press, 2007) 134; 172-175.

¹² As well as being justified according to biblical principles.

¹³ This will be discussed further in the context of the conduct of legal practice, below.

their personal values to bear on legal practice. The value of service and relationship was one of the key reasons why participants said that they were also drawn to other areas of legal practice. This is consistent with the emphasis placed by this group of Christian lawyers on having a positive relationship with their clients,¹⁴ as well as seeing the ability to assist their clients as one of the justifications for the Christian lawyer's professional role.

It is also worth noting that the normative literature (both faith-based and secular) tends to raise scenarios such as being asked to represent a guilty or untruthful client as an area of possible moral tension.¹⁵ In reality, these issues seemed less likely to cause concern for this group of lawyers, either because they were already prohibited under professional conduct rules (lying for a client),¹⁶ or because participants were able to identify broader faith-based or professional justifications for representing the accused. Further, in the context of family law practice, the main concern raised by the normative literature relates to a Christian lawyer being asked to facilitate something which may be proscribed by her church (divorce).¹⁷ Whilst some participants said that facilitating a divorce in their professional role might be inconsistent with the importance placed by them on marriage in their personal lives, this was seen as less likely to be the primary source of conflict than the literature might suggest. Rather, some participants recognised the marital breakdown as being separate to the process of divorce, meaning that they themselves were not morally responsible for that breakdown, but were instead able to make a positive contribution to resolving the distribution of property and arrangements for children that resulted from that breakdown (or alternatively, that the participants as lawyers bore no moral responsibility for the breakdown or formal

¹⁴ Discussed below.

¹⁵ See, eg Shaffer, 'Serving the Guilty', above n 10; Shaffer, 'Should a Christian Lawyer Serve the Guilty', above n 10; John W Stanford, 'The Christian Lawyer: Defending Apparently Guilty Defendants and Using Courtroom Strategies and Tactics' (2003-2004) 16 *Regent University Law Review* 275; Michael J Broyde, 'Practicing Criminal Law: A Jewish Law Analysis of Being a Prosecutor or Defense Attorney' (1997-1998) 66 *Fordham Law Review* 1141; Sadiq Reza, 'Religion and the Public Defender' (1998-1999) 26 *Fordham Urban Law Journal* 1051. There are, of course, some other potential 'headline' moral conflicts reflected in the faith-based literature. See, eg: Art C Cody, 'The King's Good Servants: Catholics as Participants in Capital Litigation' (2005) 44 *Journal of Catholic Legal Studies* 283; Larry Cunningham, 'Can a Catholic Lawyer Represent a Minor Seeking a Judicial Bypass for an Abortion? A Moral and Canon Law Analysis' (2005) 44 *Journal of Catholic Legal Studies* 379; Patrick Quirk, 'Marriage, Divorce and the Catholic Lawyer' (2002) 14(2) *Bond Law Review* 414; Reid Mortensen, 'Agency, Autonomy and a Theology for Legal Practice' (2002) 14 (2) *Bond Law Review* 391.

¹⁶ See, eg, Rule 20 of the *Australian Solicitors' Conduct Rules*.

¹⁷ See, eg: Quirk, above n 15 ; Mortensen, 'A Theology for Legal Practice', above n 15.

division of the parties' relationship per se, but may have borne responsibility for the way that they facilitated the legal resolution of the parties' affairs).¹⁸ This tied in with participants seeing unnecessary aggression or unreasonableness in their professional role as more likely to cause them concern, perhaps because they identified this as making a negative rather than a positive contribution to the overall outcome, or because they saw themselves as being responsible for their conduct in resolving a family law dispute, rather than bearing moral responsibility for the actual divorce per se.

7.4 The lawyer-client relationship (RQ2(b))

As noted above, one of the justifications seen by this group of Christian lawyers for the lawyer's professional role was the ability to support their clients through that role. In describing the lawyer-client relationship, participants emphasised qualities such as care, trust, loyalty, compassion and empathy, kindness, dignity, generosity, hospitality and service. Some of these values (such as loyalty) were recognised as being professional values as well as faith-based qualities. In this way participants were able to identify similarities between the kinds of qualities that were important to them in the way that they related to their clients, and the kinds of values that might be expected of them as lawyers. This is particularly consistent with the Lawyer of Character model, which recognises consistencies between faith based and professional character qualities (or virtues), and places emphasis on the Christian lawyer's ability to develop and give effect to those values in both personal and professional roles.

However, whilst participants identified consistency between their own values and the qualities that they might bring to the professional role, participants also saw values such as generosity and care as requiring them to go beyond merely professional requirements, including by taking extra time to communicate with their clients, and by taking a broader view of the client's matter and needs. This extended to raising relevant non-legal (including moral) considerations with their clients.

¹⁸ In contrast, Quirk notes, for example, that 'according to the Catholic Catechism a *civil* divorce is not *per se* a moral offence (CCC2383)'. See Quirk, above n 15, 418. Quirk suggests that, whilst facilitating a civil divorce is not necessarily proscribed, Catholic lawyers must engage in careful reflection about their legal practice, and, whilst they are 'not expected to be moral theologians... nevertheless must take responsibility for both their professional as well as personal life' (423).

Generally, participants did not identify experiencing regular conflicts between their own personal values and the instructions provided to them by a client. They also recognised an imperative not to impose their own personal judgment on their clients as being consistent with both personal and professional values. Despite this, there was evidence that there were some actions that participants might consider ‘religiously impossible’,¹⁹ such as being asked to set up a brothel or abortion clinic.²⁰ Although participants were able to recognise a higher justification for acting for a client accused of a criminal offence (including because of the nature of the lawyer’s role within an adversarial justice system, but also with reference to faith-based values), the responses to this study suggest that personal integrity is important to Christian lawyers, and they may be unwilling to act where they see particular actions as fundamentally inconsistent with their identity as Christians, and are unable to recognise any way of resolving or justifying that inconsistency. Again, this suggests that Christian lawyers do not see faith as something to be separated from their professional role, but rather that, at some level, they seek to reconcile their professional role with their faith more broadly, and experience a conflict where that role would require them to do something which meant that they could not maintain their integrity as both a lawyer and a Christian.

This perspective is also consistent with the faith-based literature. Whilst the Servant Lawyer (the most ‘liberal’ of the faith-based models), recognises a religious justification for adopting professional ethical norms, it nevertheless recognises that there may be a point at which actions required to be undertaken in the professional role may be ‘religiously impossible’,²¹ the lawyer will be unable to remain morally neutral, and will be required to choose faith over professional role. Conversely, the Lawyer of Integrity model suggests that all actions undertaken by a Christian lawyer in her professional role must be morally justified from the perspective of her faith, which is also consistent with the idea that there may be some actions which a Christian lawyer may not perform. Interestingly, whilst the Lawyer of Integrity model would suggest that a Christian lawyer ought to engage in a ‘moral conversation’ with the

¹⁹ Stern, above n 1.

²⁰ The normative literature similarly identifies that a Catholic Lawyer who seeks a judicial bypass for an abortion may be subject to excommunication from her Church, and that religious (including Catholic) prosecutors may also experience a potential conflict in jurisdictions which may require them to seek the application of the death penalty – see Cunningham, above n 15; Cody, above n 15.

²¹ Stern, above n 1.

client prior to refusing to act (in which the lawyer would discuss her moral concerns with the client),²² the participants in this study largely suggested that it was not up to them to judge the client or to talk them out of something they had decided to do, but rather, that they would simply decline to accept instructions. Although this effectively means that there are some clients who may be refused assistance from a Christian lawyer,²³ it is consistent with Mortensen's argument that a Christian theory of autonomy must recognise the lawyer's autonomy in addition to that of the client.²⁴

Another way that participants were able to resolve potential tensions between their personal values and the instructions given to them by a client, was to identify consistency between the requirements of both professional and religious ethical norms. That is, participants identified potential personal conflicts as including being asked to lie or do something unethical (for example to backdate documents or breach their disclosure obligations), but noted that these actions would be precluded by professional ethical norms in any event. In this sense participants might be seen to equate professional conflicts with personal conflicts, but were nevertheless able to identify consistencies between what would be required of them as a lawyer and as a Christian in these areas. Moreover, one of the ways that participants described their faith as influencing their view of the lawyer's role was in making them more cognisant of the need to comply with their ethical obligations as lawyers. As this is a claim of actual practice, it may be a question for future research.²⁵

The other main source of tension in the Christian lawyer's relationship with her client (as identified by the participants in this study) is where the lawyer and her client are unable to establish a productive relationship. Participants described, for example, experiencing tensions in the lawyer-client relationship where their client would not listen to their advice, sought to take advantage of their reputation, or wanted them to pursue a particular end with which the lawyer felt personally or professionally uncomfortable. The responses of participants in this project suggest that Christian

²² See the work of Thomas L Shaffer in particular.

²³ Although the conflict experienced may have been with the instructions (eg. setting up a brothel), rather than with the client themselves. Some participants also said that they had undertaken these instructions in the past, but would feel uncomfortable doing so in future.

²⁴ Mortensen, 'A Theology for Legal Practice', above n 15, 404.

²⁵ Participants emphasised that they were no more 'ethical' than their non-Christian counterparts. Further, this was not a study which aimed to compare the responses of Christian and non-Christian lawyers.

lawyers do not see themselves as ‘mere mouthpieces’ for their clients, but expect to participate in the decision-making process surrounding a legal matter, at least to the extent of providing unfettered advice and having the client give due regard to this. Indeed, the ability to provide objective advice was often seen as part of the lawyer’s *professional* role, and not necessarily motivated by personal values (although perhaps consistent with these). One of the examples that participants spoke about was being asked to provide advice in an uncertain area of law, and whether they ought to structure that advice in order to support the client’s preferred outcome, or to provide more balanced or cautious advice (‘as if the tax office might see it’). This is also one of the issues raised in the secular normative literature,²⁶ suggesting that this issue does not only arise from the intersection of faith and legal practice. Overall, however, the examples suggest that Christian lawyers may see their professional role as being to provide a more objective assessment of the state of the law, rather than to ‘zealously’ pursue any possible entitlements within the bounds of the law.²⁷

Participants also saw the lawyer’s role as being to provide broader advice to their clients, including raising relevant non-legal considerations. To an extent, participants expected to be allowed to raise these considerations as part of their own role in a matter, but also viewed the provision of broader advice as being part of the lawyer’s role and as ‘adding value’ to the service provided to their clients. This arose not only in areas of law such as family or succession law (where relational considerations might be particularly relevant), but was also seen as important in areas involving ‘sophisticated’ clients such as commercial law.

Interestingly, participants not only saw broader advice as being part of the lawyer’s role, but also as being important to and valued by their clients. Indeed, in some examples the provision of broader advice was perceived to have led to a closer relationship with the client, and to future work (including from referrals). The impression suggested is that clients do not only want an advocate, but rather a lawyer who will take a holistic view of the client’s situation and advise accordingly. There is

²⁶ See, in particular, William H Simon, *The Practice of Justice: A Theory of Lawyers’ Ethics* (Harvard University Press, 1998); W Bradley Wendel, *Lawyers and Fidelity to Law* (Princeton University Press, 2011).

²⁷ This may also be consistent with what some participants said about faith inspiring them to act ‘ethically’, if ethical practice is identified to mean providing balanced advice rather than manipulating the law to achieve the client’s ends.

no way to verify this perception, but the views of clients about these issues may also be an area for future research.

In terms of the faith-based literature, the Lawyer of Character model would suggest that a Christian lawyer might bring broader values (such as sympathy or integrity) to the giving of advice, and the Lawyer of Integrity model that she might take a broader view of her client's matter, including by engaging in a 'moral conversation' about relevant non-legal issues. What is noteworthy from the interviews for this project, however, is that the raising of non-legal considerations was not usually framed by participants as a response to a potential conflict with their own personal values, but rather as a means of serving their clients. That is, participants saw the lawyer's role as being first and foremost as to serve her client, and for them this also meant raising broader considerations (such that broader considerations are seen as being inspired by service and care, rather than as a response to tension).

Whilst the raising of non-legal (including moral) considerations was inspired by service and care, there were nevertheless occasions in which the client might choose to ignore those considerations or take a different path. In most cases participants recognised that, having raised the considerations and provided their advice, it was ultimately up to the client to choose how to proceed. Participants viewed their role as being to raise relevant considerations with their clients (including, for example, concerns that an overly aggressive stance might make it more difficult to achieve resolution with the other party), but not to impose their personal views on others. Whilst this may have something in common with Shaffer's 'moral conversation',²⁸ participants did not necessarily see these kinds of discussions as being directed towards resolving their own personal moral concerns.

Although the occasions on which participants would refuse to carry out instructions were rare, these were largely where those instructions might require the lawyer to act in a way which would conflict irreconcilably with her personal or professional integrity. As noted above, this is consistent within even the most liberal of the faith-based models, which recognises that there may be a point at which the lawyer will be unable to carry-out instructions. What was particularly evident is that the Christian lawyers interviewed for this study were involved in making ethical judgments on a

²⁸ See the discussion of the Lawyer of Integrity model in Chapter Two above.

daily basis, but seemed to make those judgments taking into account not only their own values or interests, but also the perceived interests of the client, perhaps the community or society more broadly, and, on some occasions, the interests of other parties. That is, those ethical decisions and moral conversations were not binary, involving only the lawyer's personal values and the client's instructions, but took into account a broader range of considerations than might have been initially anticipated.

Occasionally the provision of broader advice might include a faith component, but otherwise participants expressed caution about raising their personal beliefs with their clients due to concerns that this might have a negative impact on the lawyer-client relationship, or that it would be inappropriate to do so, including because of the potential power imbalance between lawyer and client. Generally, participants would only raise personal values if the circumstances led to this,²⁹ or if they had the kind of relationship with their client where that might be appropriate. Clients might nevertheless be aware of their lawyer's faith, either through sources other than the lawyer-client relationship, or because it might be mentioned in casual conversation including as a response to a 'what did you do on the weekend?'-type question. Whilst participants largely did not deliberately set out to proselytise to their clients, they also did not deliberately hide their faith from clients. Participants were more comfortable or likely to mention their faith to colleagues outside the lawyer-client relationship, suggesting that Christian lawyers may perceive that there are role-based considerations governing the lawyer-client relationship that may outweigh the religious imperative to share one's faith.

Whilst some Christian clients might deliberately seek to instruct a lawyer who shared their faith or values, participants indicated that the relationship between a Christian lawyer and Christian client would not necessarily be distinct, although, where relevant, a shared understanding of certain values might assist them in providing advice (including by raising non-legal considerations that might be relevant to the client's matter). Conversely, participants identified that Christian clients might sometimes expect them to depart from professional ethical norms by providing ad hoc or gratuitous advice. Again there was a sense that, whilst Christian lawyers might bring

²⁹ Such as in response to a conversation about death or dying in the context of succession law.

their values to their professional role, they did not necessarily want to be known as ‘lawyers’ in a faith environment.

7.5 The conduct of legal practice (RQ2(c)(d))

The responses of participants about how their personal values affected their conduct in the course of legal practice more broadly, suggest that Christian lawyers primarily seek advice from professional sources (such as supervisors or others within their firm) when making ethical decisions in legal practice. However, personal reflection and guidance from a faith-based community were also seen as relevant sources of personal support for difficult ethical decisions. This is more consistent with the Servant Lawyer model (which recognises a faith-based justification for adopting professional ethical norms) than the Lawyer of Integrity, which suggests that a Christian lawyer should assess all actions undertaken in the professional role in view of faith-based ethical norms.

In terms of their dealings with other lawyers, participants indicated that their faith influenced them to treat their opponents with courtesy and respect. At times, this extended to overlooking or even fixing an opponent’s error, particularly in matters where the parties were seeking to undertake some form of transaction or agreement together (and subject to the client’s instructions). Interestingly, even in more adversarial areas of practice such as criminal law, treating others with courtesy and respect was seen as a way to ‘get the job done’. That is, the client’s desired outcome was more likely to be achieved if the lawyers were able to maintain a productive working relationship, and an excessively adversarial stance was sometimes seen as being counter-productive to the client’s interests.

The application of values such as courtesy and respect to relationships with other lawyers is suggestive of the Lawyer of Character model, in which these values are recognised as consistently important in both personal and professional roles (although the examples given suggest that the perceived interests of the client may form a greater motivation than is reflected in the literature, which tends to deal with values as a means of reconciling faith and professional role). Moreover, faith was seen as motivating the setting aside of personal ego, which might respond negatively to perceived slights

from the other side, or be tempted to pursue unnecessary points for personal gain or aggrandisement.

Whilst the lawyer's primary duty was recognised as being to her client, there was evidence that a Christian lawyer would raise the interests of the other party and relevant third parties with her client, both where consideration of those interests might be important to the resolution of a dispute, and where it might be possible to resolve a dispute in a way that would be more likely to preserve or restore the client's relationships. Although these kinds of considerations were recognised as being important to raise with clients (and consistent with a faith-based emphasis on relationship),³⁰ participants also said that it was not up to them to impose their own values on their clients: that is, they would raise these as relevant considerations, but it would ultimately be up to the client to decide how to proceed. Interestingly, some participants saw this as part of the lawyer's professional role, and not necessarily motivated by faith-based personal values (albeit perhaps consistent with these). In terms of the interests of other parties, criminal law was recognised as being an area in which the lawyer's role meant that he or she could not have regard to the interests of others. That is, there were broader justifications for the criminal lawyer's role (both faith-based and professional) which overrode any harm that might be caused to others.

Another issue that this group of Christian lawyers would discuss with their clients was the most appropriate way to go about the resolution of a legal dispute. This reflected not only the lawyer's concerns about possibly having to act in an unnecessarily aggressive manner, but also the client's perceived interests in achieving the resolution of a dispute in a cost and time-effective manner. Again, this was reflected as being relevant not only to 'mum and dad' clients in areas such as family and succession law, but also to corporate and commercial clients. Although participants suggested that they would generally follow their client's instructions even if this meant taking a more assertive stance, the examples given suggest that Christian lawyers seek to make ethical decisions surrounding a legal dispute taking into account a broad range of factors, including but not limited to the client's interests, time and cost considerations, and possible impacts on relationships. Participants also spoke about more suggestively

³⁰ See, eg, Schutt, *Redeeming Law*, above n 11, 246-247; Allegretti, *The Lawyer's Calling*, above n 10, 69.

faith-based considerations, such as the importance of ‘avoiding bitterness’ and ‘moving on’. This is particularly consistent with the Lawyer of Integrity model, which suggests that lawyers may have unique opportunities to assist their clients by seeing the client’s legal matter in a wider context, and by raising broader considerations with their clients.³¹

Another way that participants were able to reconcile personal and professional values in this area was by recognising consistency between the professional emphasis on Alternative Dispute Resolution as a precursor to litigation, and the faith-based emphasis on maintaining relationship and avoiding litigation.³²

7.6 The charging of professional fees

Whilst participants recognised the entitlement to charge a reasonable fee (including because of obligations to their firm, staff and families), they suggested that they would reduce fees from time to time, having regard to a range of factors that might be used to determine whether charging a fee in the circumstances would be reasonable. Here again, the requirement of charging only what might be ‘reasonable’ was seen as consistent according to both faith-based and professional ethical norms – that is, participants saw the assessment of a reasonable fee as part of the lawyer’s professional role and not only as motivated by faith-based values³³ (although again, personal integrity was seen as influencing participants to be ‘scrupulous’ in the ethical charging of fees).

Pro bono work was also seen as consistent with both personal and professional values, although participants largely engaged in this within their own practices, rather than seeking to only act for clients or causes that reflected their own values (as might be suggested by the Prophetic Lawyer model). One way that participants were able to

³¹ Within the normative literature see, eg, the discussions in Peggy T. Cantwell, ‘The Relevance of Religion to a Lawyer’s Work’ (1998) 66(4) *Fordham Law Review* 1333, 1334 and Schutt, above n 30, 110-111, 114.

³² Although some participants also noted the potential drawbacks of ADR where the other party was unwilling to genuinely participate, or where proceeding to litigation was necessary in order to secure the client’s entitlements. For the faith-based emphasis on maintaining relationship and avoiding litigation, see, eg, Allegretti, above n 10, 89-90; Thomas W Porter Jr, ‘The Spirit and the Law’ (1998-1999) 26 *Fordham Urban Law Journal* 1155, 1161, Schutt, above n 11, 246.

³³ Section 319 of the *Legal Profession Act 2007* (Qld), for example, provides that legal costs are recoverable (a) under the terms of a costs agreement between the parties; (b) under the applicable scale of costs; or (c) ‘according to the fair and reasonable value of the legal services provided’. A costs agreement may also be set aside under s318 if it is not ‘fair and reasonable’.

give effect to the desire to assist those who could not otherwise afford their assistance was to leave some time aside in the course of their everyday practices to provide gratuitous advice and assistance, as well as going the extra mile to advise and care for their own clients. Some participants also sought to target their pro bono or community work towards faith-based law reform or where they saw this work as having the most potential to have the greatest impact, rather than engaging in ‘ad hoc’ pro bono work. This suggests that the emphasis on social justice and faith-based law reform as reflected in the Prophetic Lawyer model is nevertheless relevant to Christian lawyers, but that this may be more likely to be combined with other models in practice.³⁴

Of note is that billing practices were seen as being a potential area of ethical conflict, not only for Christian lawyers but for lawyers in general. Many participants reflected that firm environments which emphasised billing above other considerations were more likely to lead to ethical conflicts and poor ethical decisions, and sought sufficient autonomy to make what they saw as ethical or reasonable decisions around the charging of fees (not only according to their own values, but also professionally). It would be interesting to find out to what extent these concerns may be reflected across the Australian legal profession more broadly.

The faith-based literature, whilst not being proscriptive about the charging of legal fees, nevertheless identifies the importance of reflecting on the charging of fees in the light of faith-based ethical norms,³⁵ and also notes the Christian (and particularly Catholic) lawyer’s obligation to support the poor and disadvantaged.³⁶

7.7 The influence of firm culture (RQ3)

More than clients who might ask a lawyer to do something which conflicted with her own personal or professional values, firm culture was seen as having perhaps a greater potential to cause ethical conflicts for a Christian lawyer. These conflicts particularly arose where a firm environment was seen to emphasise billing and money above other

³⁴ This may also reflect the nature of the participants who were interviewed – all of whom were engaged in roles outside the pro bono or community legal sectors.

³⁵ Schutt, above n 11, 210-211, 213. Thomas L. Shaffer, ‘Jews, Christians, Lawyers, and Money (2000-2001) 25 *Vermont Law Review* 451, 470.

³⁶ F Giba-Matthews, ‘A Catholic Lawyer and the Church’s Social Teaching’, (1998) 66(4) *Fordham Law Review* 1541, 1543-1544; Kenneth W Starr, ‘Christian Service in the Practice of Law’ (2004-2005) 32 *Pepperdine Law Review* 451, 453; Cunningham, above n 15, 403.

considerations, or to leave no room for a lawyer to give effect to her own autonomy, either personally or professionally.

This did not mean that a Christian lawyer could only feel ethically comfortable working for or with other Christians, however (although some participants were doing so, and appreciated the opportunity to learn from others who shared their faith or to have open conversations about their own values in the context of their legal practice). Of note is that environments which emphasised competition, money or billing were seen as having the potential to cause ethical difficulties for lawyers regardless of faith, whilst environments that emphasised respect, honesty, cooperation and ethical decision-making were seen to be places of ethical comfort for Christian lawyers (regardless of whether these were motivated by Christian values or not). Again, it would be interesting to find out whether these perspectives are also shared by other groups of practising lawyers.

Although firm culture is not particularly canvassed in the faith-based literature,³⁷ the responses of participants in this project reveal the importance of finding a good cultural fit, even if this is not specifically inspired by faith-based values, and again suggest the importance placed by this group of Christian lawyers on having the scope to act with integrity in both personal and professional roles.

In addition to ethical decisions involving clients, participants were also able to bring their personal values to their relationships with colleagues within their work environments, and to seek to establish more supportive firm cultures, for example by engaging in mentoring or support of other lawyers, and by not engaging in conflicting behaviours such as competition, dishonesty or gossip. This is also consistent with some perspectives set out in the literature, which recognise that Christian lawyers may be able to bring their values to their relationship with colleagues even if they lack autonomy or work in environments which discourage reference to specifically faith-based values.³⁸

³⁷ Although the ethical world studies note its influence on lawyers' ethical understandings. See comments and references in Chapter Three, n 1.

³⁸ Uelmen, for example, suggests that this is one way that lawyers practising in large law firms (in particular) may seek to reconcile personal and professional values: Amelia J Uelmen, 'Can a Religious Person Be a Big Firm Litigator?' (1999) 26 *Fordham Urban Law Journal* 1069, 1072-1073 and see also Bruce Burgess, "Higher Law", Corporations, and Christian Lawyers' in William

7.8 Overall conclusion and directions for future research

The strongest indication from this research is that Christian lawyers do not see themselves as legal automatons,³⁹ but seek to be actively engaged in ethical decisions around the conduct of legal practice, including by raising relevant non-legal considerations with their clients, and by discussing the most appropriate way to go about resolving a legal matter or dispute.

Whilst the Christian lawyers who participated in this study recognised their primary duty as being to their clients (and indeed, the ability to help clients through the legal role was recognised as one of the key justifications for Christian lawyers engaging in legal practice), they did not see this duty as requiring them to simply carry out the client's instructions. Rather, participants in this study identified acting in the best interests of their client as leading them to take a broader and more holistic view of the client and the client's legal matter.

Although this approach is consistent with the Lawyer of Integrity model (which is the predominant theory of faith-based legal practice), it is interesting that, in many respects, the Christian lawyers interviewed for this study saw the raising of a wider range of considerations (including having regard to relevant relationships) as a *professional* and not-necessarily faith-based requirement, even to the extent of suggesting that this view of the lawyer's role may be consistent with client expectations.

In terms of their own values, the responses of participants suggest that Christian lawyers do seek to act with integrity in both personal and professional roles. However, this group of lawyers usually identified the professional role as allowing them to do this, including because they saw issues such as the charging of reasonable fees, the raising of broader considerations, respect for colleagues and pro bono work as part of, rather than conflicting with, the lawyer's professional role. That is, participants identified these issues as being consistent with both personal values and professional role. However, there was also evidence that Christian lawyers may experience a

Dembski and Thomas Shirmacher (eds), *Tough-Minded Christianity: Honouring the Legacy of John Warwick Montgomery* (B&H Publishing Group, 2008) 1, 24.

³⁹ And possibly not religious automatons, seeking also to make ethical judgments about the extent to which religious prohibitions or ethical norms applied to their professional actions, particularly in the area of family law and divorce.

conflict between faith and legal practice where they are asked to do something which they believe conflicts with their identity as a Christian, such as to give effect to an ‘immoral purpose’ (such as setting up an abortion clinic or brothel), or to act in an unnecessarily aggressive manner. Whilst Christian lawyers are not precluded from acting adversarially, they may seek to ethically justify this according to a range of considerations, as outlined in [section 4.4.1](#).

This is consistent with the argument, set out in the faith-based normative literature, that Christian lawyers cannot separate faith from professional role but, at some level, seek to reconcile the lawyer’s professional role with faith-based values.⁴⁰ One of the ways that the Christian lawyers in this study were able to do this was by seeing the lawyer’s professional role as something that they were able to bring their broader values to, including by recognising consistencies between faith-based and professional ethical norms, the ability to bring character qualities such as respect and honesty to their professional role, the ability to care for their clients by taking into account a broader range of considerations, and the ability to give effect to faith-based and professional values surrounding the charging of fees. All of these factors are consistent with the range of justifications offered by the faith-based literature, except that, in practice, these were less likely to be perceived as resulting from conflict between faith and role, and more as being an inherent part of the lawyer’s role.

One of the issues that remains is how to balance the Christian lawyer’s recognised autonomy to take part in ethical decision-making by raising broader considerations and to refuse to carry out instructions that conflict with her own integrity,⁴¹ and the interests of the client in obtaining legal representation and making her own decisions. This will always be a key point of difference between the traditional conception of the lawyer’s role in a secular liberal legal system and the faith-based models, in that even the most liberal of the faith-based models recognises the Christian lawyer’s right to refuse to carry out instructions where those instructions conflict fundamentally with her identity as a Christian. As Ostler notes, ‘the Christian lawyer is distinct not because she has neatly reconciled competing agendas, but because she *has not*. What makes her different is the continuation of the internal struggle to reconcile conflicting moral

⁴⁰ See the discussions in sections 2.3 and 2.4 of Chapter Two.

⁴¹ Recognised in particular by both the Lawyer of Integrity and the Servant Lawyer models.

demands'.⁴² Although the faith-based models for legal practice provide ways for a Christian lawyer to think about how to reconcile these competing demands, the tension between the Christian or Jewish lawyer's obligation to God and her role as a lawyer within a secular liberal legal system⁴³ may always remain.

Another issue suggested by this study is that criminal law may be an area where there is a combination of faith and role-based considerations which mean that this area of practice may have slightly different ethical considerations to other areas. For example, it may be inappropriate for a criminal lawyer to have regard for the interests of the victim, whereas in family law, it might be seen as more appropriate for the lawyer to act in a way that minimises unnecessary or unreasonable harm to the other party.

Further, this research suggests that, rather than moral conflicts arising from a client's instructions, tensions may be more likely to arise from the culture of legal practice more broadly: including from perceived professional ethical norms which emphasise time-costing, competition and status. The responses indicate that Christian lawyers are less likely to experience conflicts in environments which allow them to maintain their relationships and identity outside of work, take a more flexible and balanced approach to work-life balance and billing, and to give effect to their values by engaging in supportive relationships with colleagues. Conversely, environments which emphasise competition, long hours and unreflective or unreasonable billing are more likely to cause ethical tensions for Christian lawyers.

Many of these tensions and considerations were not explicitly regarded as faith-based, but as causing ethical tensions for lawyers more broadly. To this end, it would be interesting to undertake research with a similar cohort of non-Christian lawyers, to see whether similar issues arise. Moreover, to the extent that this group of Christian lawyers saw a broader view of the lawyer's role as being an expectation of their clients, it would also be interesting to conduct client-based research around some of the different conceptions of the lawyer's role, to determine whether these also resonate from a client perspective.⁴⁴

⁴² Mark Ostler, 'The Lawyer's Humble Walk' (2004-2005) 32 *Pepperdine Law Review* 483, 486 and see also Mortensen, 'A Theology for Legal Practice', above n 15, 407.

⁴³ Mortensen, 'A Theology for Legal Practice', above n 15, 404-406.

⁴⁴ The in-house counsel interviewed by Le Mire and Parker, for example, noted the importance of relationship (including an understanding of the organisation's values and policies), 'cultural fit' and

Due to the nature of qualitative research, the results and examples set out in this thesis necessarily reflect the views of this particular group of Christian lawyers at the time they were interviewed.⁴⁵ The data may of course be influenced by factors such as the extent to which participants were in positions of autonomy within their own firms, and therefore able to give effect to views which suggested a more holistic view of the lawyer's role. It would be worthwhile repeating the study with other or larger groups of Christian lawyers to see whether similar themes are evident.

Overall, the research suggests that the ability to bring character qualities such as dignity, integrity and respect to the lawyer's professional role (as reflected in the Lawyer of Character model) and to give effect to faith-based values by caring for the client and taking a broader view of the client's legal matter (as suggested by the Lawyer of Integrity model) are of greatest relevance for Christian lawyers who seek to reconcile faith-based values with their professional role. The Prophetic Lawyer model, whilst relevant, is more likely to be combined with other models in practice, with this group of Christian lawyers largely engaging in law reform and social justice-type activities in the context of their day-to-day legal practice. The Servant Lawyer model seems to be less relevant, although the Christian lawyers interviewed recognised consistencies between faith-based and professional justifications for the lawyer's role. However, they departed from the Servant Lawyer model by taking a broader view of the lawyer's role and legal practice.

A 'Christian view' of legal practice might also have implications for firm culture and the day-to-day conduct of legal practice, with the research suggesting that Christian lawyers value work-life balance, a certain amount of autonomy in the advice that they provide to their clients and the scope of the lawyer-client relationship, and the freedom to engage in some flexibility surrounding the charging of professional fees.

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ethical behaviour in their interactions with external legal providers. Suzanne Le Mire and Christine Parker, 'Keeping it In-House: Ethics in the Relationship between Large Law Firm Lawyers and their Corporate Clients through the Eyes of In-House Counsel' (2008) 11(2) *Legal Ethics* 201, 211-212.

⁴⁵ Jody Miller and Barry Glassner, 'The "inside" and the "outside" Finding realities in interviews' in David Silverman (ed), *Qualitative Research: Theory, Method and Practice* (Sage Publications Ltd, 2nd ed, 2004) 125, 126-127, 129; Adrian Holliday, *Doing and Writing Qualitative Research* (Sage Publications, 2007) 7.

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APPENDICES

Appendix 1: Letter of invitation to participate in research

Mrs Katie Murray
PhD Candidate
PHONE +61 7 4631 1909
MOB 0421 861 356
EMAIL katie.murray@usq.edu.au

<Date>

Dear Sir/Madam

Re: INVITATION TO PARTICIPATE IN RESEARCH

I would like to invite you to participate in a research project about how Christian lawyers negotiate between the ‘ethical worlds’ of faith and the legal profession.

Aims and benefits of participation in the project

Much has been written about how the personal values of Christian lawyers should or should not affect their ethical decision-making in legal practice, and it is hoped that this project will contribute to the existing body of scholarship by exploring the key themes of the theoretical literature with practitioners themselves. It is also hoped that the research will benefit participants by giving them the opportunity to reflect on the intersection between their Christian faith and legal practice in a confidential setting.

What does participation involve?

As set out in the *attached* Participant Information Sheet, participation in the project will involve being interviewed by the principal researcher (Mrs Katie Murray) about how you negotiate between the ‘ethical worlds’ of faith and the legal profession, and if and how your personal values affect the way you approach legal practice.

Maintaining the confidentiality of participants

The audio of the interview will be recorded, and you will be sent a transcript of the interview so that you can verify the accuracy of its contents and change or add to your responses.

The audio recording of the interview and subsequent transcript will be kept confidential, and data obtained from the interviews will be ‘de-identified’ before it is presented so that your responses cannot be personally identified.

The research has been approved, and will be monitored by, the University of Southern Queensland's Human Research Ethics Committee. If you have any questions or concerns about the research at any time, you can raise these with the Ethics Officer using the contact details set out on the attached Participant Information Sheet.

Participation is entirely voluntary, and, your decision whether to take part or not to take part in the project will not affect any relationship you may have with the University of Southern Queensland or the [Name of Association].

Further information about the project

Further information about the project is set out in the attached Participant Information Sheet.

If you are interested in participating in the project, or have any questions about it, please contact the principal researcher:

Mrs Katie Murray
School of Law, Faculty of Business and Law
University of Southern Queensland
West Street, Toowoomba 4350
Ph: +61 7 4631 1909
Email: katie.murray@usq.edu.au

Yours sincerely

Katie Murray
PhD Candidate
University of Southern Queensland

Appendix 2: Participant Information Sheet



University of Southern Queensland

The University of Southern Queensland
Participant Information Sheet

HREC Approval Number: H13REA059

Full Project Title: The Professional Ethics of Christian Lawyers

Principal Researcher: Katie Murray

Other Researcher(s): Prof Reid Mortensen (principal supervisor), Prof Mike Robertson (associate supervisor)

I would like to invite you to take part in this research project about how Christian lawyers negotiate between the ‘ethical worlds’ of faith and the legal profession.

1. Procedures

Participation in this project will involve being interviewed by the principal researcher about how you negotiate between the ‘ethical worlds’ of faith and the legal profession, and if and how your personal values affect the way you approach legal practice.

The interview will be of approximately 90 minutes in duration. The audio of the interview will be recorded. After the interview you will be sent a transcript of the interview so that you can verify the accuracy of its contents and change or add to your responses.

The audio recording of the interview and subsequent transcript will be kept confidential, and data obtained from the interviews will be de-identified before it is presented so that your responses cannot be personally identified. Both you and the researcher will sign a confidentiality protocol before the interviews are commenced.

Please note however, that although your responses will be confidential and your data de-identified before it is presented, you must not disclose information during the interviews that is confidential, or subject to legal professional privilege. You also must not disclose information that might amount to a breach of anti-discrimination legislation, or of the rules and principles of professional conduct. If unsure, you may wish to seek independent legal advice or guidance from the Queensland Law Society Ethics Centre.

It is hoped that this research will benefit participants by giving them the opportunity to reflect on the intersection between their Christian faith and legal practice in a confidential setting. It is further hoped that this research, which explores how Christian lawyers negotiate between

the 'ethical worlds' of faith and legal practice, will also be of benefit to the wider community as a contribution to the existing literature about lawyers in practice, and Christian lawyers in particular.

The research has been approved, and will be monitored by, the University of Southern Queensland's Human Research Ethics Committee. If you have any questions or concerns about the research at any time, you can raise these with the Ethics Officer using the contact details set out below.

2. Voluntary Participation

Participation is entirely voluntary. **If you do not wish to take part you are not obliged to.** If you decide to take part and later change your mind, you are free to withdraw from the project at any stage. Any information already obtained from you will be destroyed, whilst it remains in identifiable form. Once the data has been de-identified, however, then it will not be possible to withdraw the data.

To minimise any risk to you, you will be sent the transcript of the interview once it has been completed, and given the opportunity to verify or clarify it.

If you are an employed solicitor, then your supervising principal, partner or legal practitioner director will be asked to consent to your participation in the project.

Your decision whether to take part or not to take part in this project, or to take part and then withdraw, will not affect any *relationship you may have with* the University of Southern Queensland or the [Name of Association].

Please notify the researcher if you decide to withdraw from this project at any stage.

Should you have any queries regarding the progress or conduct of this research, you can contact the principal researcher:

Katie Murray

School of Law and Justice, Faculty of Business, Education, Law and Arts

University of Southern Queensland

West Street, Toowoomba 4350

Ph: +61 7 4631 1909

Email: katie.murray@usq.edu.au

If you have any ethical concerns with how the research is being conducted or any queries about your rights as a participant please feel free to contact the University of Southern Queensland Ethics Officer on the following details.

Ethics and Research Integrity Officer
Office of Research and Higher Degrees
University of Southern Queensland

West Street, Toowoomba 4350

Ph: +61 7 4631 2690

Email: ethics@usq.edu.au