

# CONSTRUCTIONS OF REFLECTIVE PRACTICE IN DISPUTE RESOLUTION

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## ABSTRACT

Alternative (or Appropriate) Dispute Resolution is increasingly recognised as a core area of legal practice. Reflective practice is a component of the sixth threshold learning outcome for the Australian Bachelor of Laws degree: 'self-management'. This paper reports on an empirical investigation of reflective practice as constructed by a sample of family dispute resolution practitioners. The results demonstrate a clear association of reflective practice with experiential learning or 'learning from experience'. The results also reveal considerable reflective practice wisdom associated with related practice issues including: acknowledging diversity, employing flexibility in practice, dealing with uncertainty, self-awareness and self-care. The results have implications for furthering our understanding of reflective practice in law and dispute resolution

## I INTRODUCTION

Alternative (or Appropriate) Dispute Resolution (ADR) is increasingly recognised as a core area of legal practice. Reflective practice has arguably become an implicit if not explicit, standard of professional practice across disciplines since the seminal work of Donald Schön.<sup>1</sup> It is a component of the sixth threshold learning outcome for the Australian Bachelor of Laws degree (TLO 6).<sup>2</sup> Reflective practice has for some time already been an essential requirement in the theory and practice of education generally, and is now clearly acknowledged in law and legal dispute resolution.<sup>3</sup>

What is 'reflective practice' and why is it relevant to legal dispute resolution? This paper reports on an exploratory pilot study of the concept of reflective practice as constructed by a sample of family dispute resolution practitioners (FDRP's). The study employed empirical qualitative methods to gather data about how FDRP's understand and engage in reflective practice. The study's results indicate that practitioners in the sample had a limited awareness and understanding of academic work on reflective practice, suggesting a possibly limited appreciation of its theoretical underpinnings.

However the study's results also demonstrate practitioners' clear association of the concept of reflective practice with experiential learning or 'learning from experience'. The results also reveal considerable practice wisdom associated with the idea of reflective practice and related issues, including: acknowledging diversity and employing flexibility in practice, dealing with uncertainty, self-awareness and self-care. The results have implications for furthering our

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- 1 Donald A Schön, *The reflective practitioner* (Basic Books, 1983); Donald A Schön, *Educating the reflective practitioner* (Jossey-Bass, 1987); Donald A Schön, 'The crisis of professional knowledge and the pursuit of an epistemology of practice' (1992) 6(1) *Journal of Interprofessional Care* 49.
- 2 Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: BACHELOR OF LAWS, Learning and Teaching Academic Standards Statement December 2010' (Australian Learning and Teaching Council, 11 February 2011) [http://www.utas.edu.au/\\_\\_data/assets/pdf\\_file/0007/456829/altc\\_standards\\_LAW.pdf](http://www.utas.edu.au/__data/assets/pdf_file/0007/456829/altc_standards_LAW.pdf).
- 3 See, eg, Judith McNamara and Rachael Field, 'Designing for reflective practice in legal education', (2007) 2(1) *Journal of Learning Design* 66; Judith Macfarlane, 'Mediating Ethically: The limits of codes of conduct and the potential of a reflective practice model' (2002) 40 *Osgoode Hall Law Journal* 49.

understanding of reflective practice in law and dispute resolution. They also affirm existing argument that greater emphasis could and should be placed upon incorporating reflective practice in designing the law degree curriculum.<sup>4</sup>

This article is in six parts. The section to follow contains a review of reflective practice literature and explores scholarly accounts of its relevance to legal dispute resolution (with a focus on mediation practice). The third part explains the research design for the pilot study project and reports on the ontological framework of investigation, the data selection methods, collection and analysis, and the study's limitations. The fourth part presents the study's results. The fifth part discusses the results with implications for professional education, before discussion is concluded.

## II LITERATURE REVIEW

TLO 6 addresses self-management, providing that graduates of the Australian Bachelor of Laws degree will be able to: '(a) learn and work independently, and (b) *reflect on* and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development'.<sup>5</sup>

The introduction of reflective practice as a graduate attribute for law follows other disciplines as a requirement for professional preparation. Reflective practice has become a cornerstone of pedagogy in disciplines including: education; health and social care sciences; and management and organisational theory.<sup>6</sup> Reflective practice has become a central concept in depicting professionalism and competence<sup>7</sup> and is integral to continuing professional education.<sup>8</sup> Reflective practice has also been ascribed a range of meanings.<sup>9</sup> In essence, it describes the cyclical interaction of learning and experience employed in professional practice, as identified in the seminal work of Schon.<sup>10</sup>

Schon's early work is an investigation of the question: 'How is professional knowing like and unlike the kinds of knowledge presented in academic textbooks, scientific papers, and learned journals?'<sup>11</sup> Schon's work is an explicit critique of positivism as an epistemology of practice and a corresponding critique of technical rationality.<sup>12</sup> Schon questioned the prevailing view that theories learned at university could be applied, without more, to a given problem in practice with a predictable, desired result. He enjoined scholars to: 'search, instead, for an epistemology of practice implicit in the artistic, intuitive processes which some practitioners do bring to situations of uncertainty, instability, uniqueness, and value conflict.'<sup>13</sup>

According to Schon, the 'high ground' of a technical knowledge base offers helpful insights, but not a conclusive course of action when dealing with the 'swampy lowlands of practice'.<sup>14</sup> As Thompson and Pascal affirm, practice 'is more a matter of art or craft than science – drawing on

4 McNamara and Field, above n 2; Rachael Field and James Duffy, 'Better to light a single candle than to curse the darkness: promoting law student well-being through a first year law subject' (2012) 12(1) *Queensland University of Technology Law and Justice Journal* 133.

5 Kift, Israel and Field, above n 2, (emphasis added).

6 Sioban Nelson, 'The lost path to emancipatory practice; towards a history of reflective practice in nursing' (2012) 13 *Nursing Philosophy* 202, 203; Elizabeth Smith, 'Teaching critical reflection' (2011) 16(2) *Teaching in Higher Education* 211, 211; Neil Thompson and Jan Pascal, 'Developing critically reflective practice' (2012) 13(2) *Reflective Practice: International and Multidisciplinary Perspectives* 311, 312.

7 Nelson, above n 6, 203; Smith above n 6, 211; Thompson and Pascal, above n 6, 311-12.

8 Smith above n 6, 212.

9 Smith, above n 6, 212.

10 Schon, *The reflective practitioner*, above n 1, 54-68.

11 Schon, *The reflective practitioner*, above n 1, viii.

12 Schon, *The reflective practitioner*, above n 1, 31, 40.

13 Schon, *The reflective practitioner*, above n 1, 49.

14 Schon, *The reflective practitioner*, above n 1, viii.

formal knowledge as and when appropriate, but not being wedded to a scientific ‘technical fix’ approach to practice.<sup>15</sup> Schon describes reflective practice as an ‘act of professional artistry’<sup>16</sup> in which practice wisdom, or knowledge based on experience, has a central role in directing action. Drawing on Schon’s work, Gould argues that ‘practice wisdom depends upon highly developed intuition which may be difficult to articulate but can be demonstrated through practice.’<sup>17</sup>

Schon proposes two categories of reflective practice: ‘reflection-on-action’ and ‘reflection-in-action’.<sup>18</sup> The first involves a review of what has happened in the past, and the second involves appraisal occurring in the course of activity. The central purpose in both categories is to better understand what is happening or has happened, in order to direct and or improve performance. Reflection-on-action consists of reviewing past actions with the opportunity of appraisal and evaluation in order to identify possible areas to improve performance. In reflection-in-action, use is made of direct feedback to influence and respond to a current situation. Here the use of tacit knowledge is acknowledged as practitioners ‘think on their feet’. Schon’s typology aims to depict the actual experience of professionals in practice, probing the ‘mystique of practical competence’<sup>19</sup> whilst critiquing assumptions of technical rationality.

Schon’s typology has been critiqued and extended to include ‘reflection-on-future-action’. According to Wilson, Schon’s typology is flawed by its failure to consider reflection before action or, in other words, planning for the future.<sup>20</sup> Wilson argues that reflecting on the future is another means of improving performance and a natural human condition. He defines reflection-on-future-action as ‘the act or process of reflecting desirable and possible futures with the purpose of evaluating them as well as considering strategies intended to achieve the objective(s).’<sup>21</sup> Similarly, Thompson and Pascal advocate inclusion of a ‘reflection-for-action’ concept which they define as: a process of planning and thinking ahead to draw on knowledge and experience.<sup>22</sup>

While critique of Schon’s typology has extended temporal constructions of reflective practice from the past and in the moment to future planning, the integrity of Schon’s thesis remains namely that: professionals continue to learn by experience, rather than mechanically and routinely applying what they have learned at university. In a similar vein, Payne distinguishes between ‘explanatory theory’ and ‘practice theory’ in social work.<sup>23</sup> Payne contrasts theories developed through academic research with the practice wisdom professionals acquire as they try to make sense of what they do, how they do it and who they do it with. This approach is consistent with the early work of Schon and Argyris, in which the authors proposed that professional competence is based on the ability to develop theories of what to do in new situations.<sup>24</sup>

Hardy has emphasised this aspect of reflective practice in her investigation of the use of role-plays in teaching mediation. Examining reflective learning, Hardy argues that instead of ‘demonstrating the “one correct way” to do things, the teacher can demonstrate how to *discover* an appropriate way to do such a thing.’<sup>25</sup> Referencing Brockbank and McGill’s scholarship

15 Thompson and Pascal, above n 6, 313.

16 Schon, *The reflective practitioner*, above n 1, viii.

17 Nick Gould, ‘Introduction: Social work education and the “crisis of the professions” in Nick Gould and Imogen Taylor (eds), *Reflective Learning for Social Work* (Arena, 1996) 1.

18 Schon, *The reflective practitioner*, above n 1, 54-68.

19 Schon, *The reflective practitioner*, above n 1, vii.

20 John Wilson, ‘Reflecting on the future: a chronological consideration of reflective practice’ (2008) 9(2) *Reflective Practice: International and Multidisciplinary Perspectives* 177, 177.

21 *Ibid*, 180.

22 Thompson and Pascal, above n 6, 22.

23 Malcolm Payne, ‘Social work theories and reflective practice’ in Robert Adams, Lena. Dominelli and Malcom Payne (eds), *Social Work: Themes, Issues and Critical Debates* (Macmillan, 1998).

24 Chris Argyris and Donald A Schon, *Theory in Practice: Increasing Professional Effectiveness* (Jossey-Bass, 1974).

25 Samantha Hardy, ‘Teaching Mediation as Reflective Practice (2009) 21(3) *Negotiation Journal* 385, 393 (emphasis added).

on reflective learning,<sup>26</sup> Hardy applies their concept of meta-reflection to teaching mediation, which consists of reflecting about reflection, or reflection-on-reflection.<sup>27</sup> She notes that meta-reflection is not confined to reflection in or on action but may occur at any time. She provides illustrative examples. If, for example, I was to reflect that I was worried when mediating, I might reflect on that reflection by asking myself why I was worried and how that impacted on my subsequent actions.

The concept of reflective practice has been further extended to constructions of *critical* reflection of which two views are identifiable. According to one view, critical reflection is akin to critical thinking. Ramsden argues that fostering critical thinking is a core aim of tertiary education.<sup>28</sup> Critical thinking has been defined from a variety of perspectives, including philosophy, psychology and education.<sup>29</sup> Many of these definitions are inclusive of a range of cognitive skills. In education, Willingham offers the following definition:

[S]eeing both sides of an issue, being open to new evidence that disconfirms your ideas, reasoning dispassionately, demanding that claims be backed by evidence, deducing and inferring conclusions from available facts, solving problems, and so forth.<sup>30</sup>

In its ordinary meaning, critical thinking denotes an attitude of sceptical enquiry that questions the underlying assumptions guiding thinking and behaviour. According to an extension of this view, critical reflection encompasses critique of the underlying values directing practice. Where these values remain hidden they may direct practice and impact clients in unintended and perhaps detrimental ways. In the context of mediation practice, MacFarlane argues that reflective practice:

Focuses on teasing out the values and assumptions behind the choices often made intuitively by mediation practitioners when they face ethical dilemmas in the course of their practice and the values they imply. These values can then be debated, critiqued and diversified across different frames of action.<sup>31</sup>

A second view places critical reflection within the tradition of critical theory. Critical theory pointedly challenges positivism's objectivist epistemology, emphasising instead the value-determined nature of inquiry. Critical theory looks to deconstruct relationships of power with an emancipatory aim.<sup>32</sup> Writing from this perspective, Fook and Gardner describe critical reflection as:

more than simply thinking about experience. It involves a deeper look at the premises on which thinking, actions and emotions are based. It is critical when connections are made between these assumptions and the social world as a basis for changed actions.<sup>33</sup>

Fook and Gardner propose a model of critical reflection that structures the review of a critical incident. They identify a critical incident as one of significance for the practitioner in raising issues of practice. The model employs reflection to deconstruct assumptions about what happened and why, followed by reconstruction of the incident with strategies for the future.<sup>34</sup>

26 Anne Brockbank Ian McGill. 2007. *Facilitating Reflective Learning in Higher Education*, (The Society for Research in Higher Education, 2<sup>nd</sup> ed, 2007).

27 Hardy, above n 25, 389-90.

28 Paul Ramsden, *Learning To Teach in Higher Education* (Routledge, 1992); and see Kelley Burton and Judith McNamara, 'Assessing reflection skills in Law using criterion-referenced assessment' (2009) 19(1) *Legal Education Review* 171.

29 Jan Fook and Fiona Gardner, *Practising Critical Reflection: A Resources Handbook* (McGraw -Hill Oxford University Press, 2007) 13.

30 Daniel T Willingham, 'Critical thinking: why is it so hard to teach?' (2007) *American Educator* 8, 8.

31 Macfarlane, above n 3, 54

32 Patti Lather, 'Research as praxis' (1986) 56 (3) *Harvard Educational Review* 257, 259-60.

33 Fook and Gardner, above n 29, 14.

34 Ibid.

Reflective practice is well recognised in ADR, and specifically in mediation as: an integral part of practice and as a solution, at least in part, to theoretical conundrums including the claimed neutrality of the mediator. Boule defines reflective practice as a ‘tool for the improvement of practice and a way to learn by experience.’<sup>35</sup> It is referenced as a core skill in Brandon and Robertson’s generalist approach to conflict resolution,<sup>36</sup> and in Winslade and Monk’s exposition of their model of narrative mediation.<sup>37</sup> The most comprehensive consideration of reflective practice appears in Lang and Taylor’s work: *The Making of a Mediator: Developing Artistry in Practice*.<sup>38</sup> Drawing on the work of Schon, Lang and Taylor argue that artistry lies at the intersection of skillful interactive abilities in a mediation session and thoughtful reflection after and during a session.

Reflective practice has been argued as an important foil to claims of mediator neutrality.<sup>39</sup> Based upon a study of community mediation, Mulcahy has argued that neutrality should be replaced by an ethic of partiality supported by reflexive practice.<sup>40</sup> Bagshaw has argued that mediators cannot be neutral and that reflective or reflexive practice is a necessary approach to limit the intrusion of mediators’ personal standpoints.<sup>41</sup> Astor has argued that reflexive practice is one of a number of principles that can be employed to enable mediators to ‘do neutrality’.<sup>42</sup> Reflective practice has also been argued as an important concept for ethical practice in mediation<sup>43</sup> and for culturally sensitive and appropriate practice.<sup>44</sup>

With the notable exception of Lang and Taylor’s work, reflective practice in mediation derives much from Schon’s work, but remains theoretically underdeveloped for mediation practice per se.<sup>45</sup> This position is held in common with other disciplines.<sup>46</sup> It has prompted Thompson and Pascal to note that it has become a ‘buzzword’ attached to practices that are oversimplified or only vaguely representative of what is purported by the practice.<sup>47</sup> Notably, while reflective practice is referred to and relied upon, only limited explanation of what it entails is offered in the mediation literature. Furthermore, the terms reflective and reflexive practice are not distinguished and nor are their differing characteristics explained. Reflexivity is a concept used in research methods to direct attention to the influence of the researcher on the subject matter and process of research.<sup>48</sup> It can be distinguished from reflection or critical reflection in

35 Laurence Boule, *Mediation – Skills and Techniques* (Butterworths Skills Series, Butterworths, 2001).

36 Mieke Brandon and Leight Robertson, *Conflict and Dispute Resolution* (2007, Oxford University Press).

37 John Winslade and Gerald Monk, *Narrative Mediation: A New Approach to Conflict Resolution* (Jossey-Bass, 2000).

38 Michael D Lang and Alison Taylor, *The Making of a Mediator: Developing Artistry in Practice* (Jossey-Bass, 2000).

39 Subjected to over a decade of critique, the requirement of neutrality has been omitted in the most recent version of the Australian National Mediator Accreditation System (NMAS) 2015, <http://www.msb.org.au/sites/default/files/documents/NMAS%201%20July%202015.pdf>

40 Linda Mulcahy, ‘The Possibilities and Desirability of Mediator Neutrality – Towards an Ethic of Partiality?’ (2001) 10(4) *Social and Legal Studies* 505.

41 Dale Bagshaw, ‘Self-reflexivity and the Reflective Question: Broadening Perspectives in Mediation’ (2005) *The Arbitrator and Mediator* 1.

42 Hilary Astor, ‘Mediator Neutrality: Making Sense of Theory and Practice’ (2007) 16 *Social and Legal Studies* 221.

43 See, eg, Samantha Hardy and Olivia Rundle, ‘Applying the inclusive model of ethical decision making to mediation’ (2012) 19 *James Cook Law Review* 70; Macfarlane, above n 3.

44 See, eg, Susan Armstrong, ‘Developing Culturally Reflexive Practice in Family Dispute Resolution’ (2011) 22 *Australasian Dispute Resolution Journal* 30.

45 See Hardy, above n 25, 386.

46 Thompson and Pascal, above n 6, 315.

47 Ibid.

48 See Frederick Steier, ‘Research as Self-reflexivity, Self-reflexivity as Social Process’ in Frederick Steier (ed) *Research as Reflexivity* (Sage, 1991).

providing a focus on uncovering the personal situatedness of the practitioner in order to limit, direct or at least acknowledge the impact of that influence. As Fook and Askeland propose:<sup>49</sup>

Reflexivity can simply be defined as an ability to recognize our own influence – and the influence of our social and cultural contexts on research, the type of knowledge we create, and the way we create it. In this sense, then, it is about factoring ourselves as players into the situations we practice.

The study was designed to probe mediation practitioners' understanding of reflective practice given its stated importance in the literature. In particular, the study aimed to discover if participants distinguished reflective and reflexive practice and how they understood these concepts.

### III RESEARCH DESIGN

Review of the literature establishes that reflective practice is recognised in mediation as an important theoretical concept and orientation in practice. It is clear that existing understanding of reflective practice in mediation relies upon Schon's seminal work. At the same time, that understanding remains underdeveloped with limited critical discourse amongst scholars and limited empirical investigation of understanding in practice. With this in mind, the author undertook an exploratory study of the meaning ascribed to reflective practice by a sample of family dispute resolution practitioners (FDRP's).<sup>50</sup>

The research question posed was: 'what do FDRP's understand by 'reflective/ reflexive practice'? As noted above, a focus of the study was to probe if and how practitioners distinguished reflective from reflexive practice.<sup>51</sup> The ontological framework for the study was social constructionism.<sup>52</sup> This framework is consistent with the intent of the study to explore meaning creation. The frame of the study was exploratory, with the aim of exploring what meanings practitioners created rather than testing their understanding. The research reported here was initially envisaged as a pilot study from which data would be used to construct a survey for a larger and wider population. However, while themes in the construction of reflective practice were discernible from the data, discrete meanings suitable for use in a survey were not. The themes elicited have implications for future research and continuing practice education. The sample of FDRP's was drawn from a Family Relationship Centre<sup>53</sup> and a Family Mediation Service,<sup>54</sup> both of which are government funded and auspiced by a well-established community service provider.

Five practitioners participated in the study. Three participants were women and three were men. All five participants have qualifications in the social sciences and social care or counseling as well as FDRP accreditation. The participants' years of experience as mediators ranged between one and seven years with an average of five years. Practitioners were invited to participate in the study by invitation extended to all practitioners at the respective services.

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49 Jan Fook and Gurid Aga Askeland, 'The 'critical' in critical reflection' in Susan White, Jan Fook, and Fiona Gardner (eds), *Critical reflection in health and social care* (McGraw-Hill Education, 2006) 45.

50 Family Dispute Resolution Practitioners practice as mediators accredited under the *Family Law Act* 1975 (Cth).

51 Ethics approval for the study was provided by the Human Research Ethics Committee (HREC) of the Federal Government funded FDR service and the HREC of the University of the Sunshine Coast.

52 'All knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context.' per Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Allen and Unwin, 1998) 42 (emphasis omitted).

53 Dealing with matters in relation to children under the *Family Law Act* 1975(Cth).

54 Dealing with property and spousal matters under the *Family Law Act* 1975 (Cth).

The data was collected using face-to-face, in-depth interviews with an average length of 60 minutes. Interviews were chosen to enable the researcher to probe the nuances of meaning and ‘rich description’ characteristic of this qualitative method.<sup>55</sup> The interviews were semi-structured using questions probing the participants’ understanding of the meaning of reflective and reflexive practice and how they translated those meanings into practice. The interviews were recorded and the recordings transcribed for analysis. The data was analysed for themes in the participants’ construction of reflective practice using a grounded theory approach.<sup>56</sup> The data was examined for both similarities to, and differences from, constructions in the literature. A grounded theory approach enables interpretation and understanding to be grounded in and developed from the data, rather than by the testing of hypotheses.

#### IV RESULTS

Overall, participants demonstrated an understanding of reflective practice as learning from experience. The categories of reflection-on-action and reflection-in-action developed by Schon were not explicitly identified by participants. Participants demonstrated an awareness of the concept of reflective practice but not a consistent approach to its meaning or application, and no reference to the existing literature. However, the majority of participants identified their own reflective practice as consistent with Schon’s category of reflection-on-action. Four of the five participants identified their practice in the following ways:

‘Reflective practice is when we look back on something we have done and reflect on what maybe we could have done differently or what we did well.’

‘For me being a reflective practitioner is about looking at my actions after the event.’

‘Reflective I would suggest is examining something that occurred in the past and then looking at it from different viewpoints; then I guess analysing the effectiveness of what we were doing at that time.’

‘Reflection ... is looking at how you work with clients and being able to look after a mediation or even during a mediation – but after the mediation primarily – coming out and being able to look how you worked with that client; if there is anything you could have done differently.’

As suggestive of Schon’s category of reflection-in-action, four out of the five participants made some reference to reflexive practice as a process ‘in the moment’. Response examples include the following:

‘My understanding of reflexive practice is being able to identify what’s in front of you and you have to respond to that...It’s reflective because you’re actually looking for what’s there now in the moment.’

‘It sounds like it’s a reflex action. So for me it’s probably about what we’re doing in the moment. It’s about mindfulness and being more aware.’

‘For me, the word reflexive represents a different process (from reflection) which is where I reflect-in-action more than on-action. When I’m in a reflexive practice, I might be in with a client and I’ll be looking at the immediacy of my interaction with the client and my responses to the client at the time. I might be looking at why I might be having those reactions or be thinking those things that I’m thinking. I might be thinking of the client in context and reflecting on their context that they’re in...I think reflexive involves a far more intimate and emotive state as well, because it is very present. It’s very present action.’

55 See Alan Bryman, *Social Research Methods* (Oxford University Press, 2001).

56 See Barney G Glaser and Anselm L Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine, 1967).

Notably, the third participant quoted above extends the idea of responding ‘in the moment’ to consideration of personal situatedness and client context as factors in determining practice choices. A number of themes in the construction of reflective practice are discernible from the data. These are: accommodating diversity and flexibility in practice, dealing with uncertainty, modelling an informed practice for parties, the importance of self-awareness as practitioners, and addressing issues of self-care. Diversity of practice was associated with reflection and assessment of the best model of mediation to use, including aspects of different models. As one participant described:

‘There’s no model that we’re forced to use. Obviously there’s a process and sticking within that process is an expectation of individual meetings. But there’s different ways of doing it. Sometimes for people you might use a facilitated model where you really just stick to that process. Other times, I guess, for myself I know I’ll probably use more of a therapeutic model quite a bit if I feel that’s appropriate for parents.’

Reflexivity was associated with flexible adjustment to the parties’ needs as the process unfolds:

‘My understanding of reflexive is just being really – I guess flexible during the process. So whether it’s during your initial meetings or during the mediation process, being able to make adjustments to the way that you work with people, language – the way you talk to them. The processes you use, being able to adjust that to accommodate the client.’

Reflective practice was seen as a way to develop expertise in the face of the uncertainties of practice:

‘I find that if you try and plan a mediation ahead too much there’s always a curved ball. It’s never going to go just as you think. [Reflective practice is] just being able to adjust the work but also coming out and thinking about how it went and how you might be able to make some adjustments in the future.’

Reflection was also identified as something to be encouraged in clients, as a means of gaining insight and effecting behavioural change. In this context, the aim of mediation was identified as more than reaching agreement between the parties, identified as a short term outcome, and extended to changes:

‘in the way they might view the relationship with the other person or some new skills perhaps, new understanding and insight then that is what will assist them in the long term.’

Similarly, reflective practice was identified as essential in the relationship between practitioner and clients in furthering the ‘self-determination’ of clients. One participant described a process of reflective questioning by asking:

‘What’s going on in this space between myself and the clients? Is the client getting heard or am I deciding for the client? Am I making judgements on what the clients are saying and doing based out of the place I work from or my socialisation or opinions or my position in life? ... My role is not to make decisions for a person, it’s not to judge or to be partial or to discriminate or to give advice.’

Self-awareness was a recurrent theme in participants’ understanding of reflective practice:

‘Everybody has views, everybody has buttons, everybody has processes. I think all we can hope for is to temper that the best way possible and that’s where the reflective and reflexive processes come in handy because it gives you a chance to have a look at what you’re doing and check in with yourself. Whereas reflective is about checking in with others as well, you know, more than checking in with yourself.’

‘I imagine like any profession that deals with people, there are going to be personal issues that coincide with what you’re dealing with. I think after awhile what you tend to do is you’re able to park it and then you’re able to be professional and then deconstruct it when you need to.’



Participants identified a number of avenues through which reflection could occur. These were reflection-in-action when working with a colleague in co-mediation; and debriefing with a co-mediator after the mediation session, as an established step in the process. Participants noted that co-mediation was not always possible and that they relied on reflection-on-action through formal supervision, informal peer supervision and personal reflections achieved, for example, by journaling. One participant noted that these opportunities were important mechanisms for self-care: ‘...when stuff comes up...and it’s getting me down...’.

## V DISCUSSION

Although results of this study reveal that the practitioners interviewed were not familiar with the academic literature examining reflective practice, they nevertheless demonstrated some understanding of the concept as it appears in the literature. It was evident that the participants associated the concept with learning from experience and adjusting to new situations. They identified it clearly with reviewing their experience and performance after mediation sessions, which Schon describes as reflection-on-action. Participants also acknowledged the need to reflect-in-action but identified this more readily either with reflexivity or self-awareness rather than explicitly with Schon’s category. Participants either had no comprehension of reflexivity or identified it with reflection-in-action.

The fact that participants were not aware of the relevant literature is illustrative of a disconnect between academic investigation and actual practice. It also signals the importance of working with practitioners to gather data and develop conceptual understanding that is grounded in their actual experience. The results have two important implications. The first is that responses from participants provide justification for employing reflective practice. The themes elicited from the data represent the reasons participants adopted reflective practice, whether or not their understanding of that practice corresponded with the literature. Hence accommodating diversity and flexibility in practice, dealing with uncertainty, modelling an informed practice for parties, the importance of self-awareness as practitioners, and addressing issues of self-care are all good reasons for adopting reflective practice.

The second implication is that a greater sophistication of understanding could be developed that is grounded in practice and accessible to practitioners in order to improve their practice. Reflection on the past, in the present or of the future will vary according to the focus of what is reflected upon. In an effort to improve practice, reflection may focus upon improving a seemingly objective process of the application of knowledge and skills to given practice situations. We would expect that reflection to include a critical focus, to include critical thinking, in which academic theory and practice wisdom is consistently subjected to scrutiny, and advanced by sceptical enquiry in the face of new situations. Extending critical reflection more widely and deeply,<sup>57</sup> would focus attention on the values and assumptions behind particular approaches to practices and uncover issues of power between parties and between the mediator and parties. Reflexivity would point to the standpoint of the mediator herself, to her view of herself in society, her individual beliefs and values and emotional responses. Finally, meta-reflection opens a space and opportunity to take a step back from given mediation sessions and to connect the experience with broader considerations of: personal growth, professional growth, the issues raised by mediations, and the impact upon broader issues of practice. Meta-reflection also opens a space to connect the impact of practice with broader issues of social change.

## VI CONCLUSION

This paper reports on a pilot study of a small sample of FDRP’s and their understanding of reflective practice. The results were not intended to be generalisable but were aimed instead to

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57 See Thompson and Pascal, above n 6, 321.

illicit categories of meaning creation for further investigation. The results indicate that training of FDRP's needs to give greater attention to the complexity and subtly of reflective practice in order to guide its intentional and effective use. The study draws together the literature on reflective practice and applies it to an example of non-adversarial justice. In doing so, it advances the knowledge base for utilising reflective practice in law.