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## Conceptualizing Reflective Practice for Legal Professionals

MICHELE LEERING\*

Cet article examine la définition et l'objet de la pratique réfléchie dans la profession juridique en relatant l'histoire de la profession. Les raisons justifiant l'amélioration de la capacité de réflexion de la profession sont explorées ainsi que les bénéfices d'incorporer la pratique réfléchie au cœur des compétences professionnelles. L'auteure résume les différents courants théoriques sur la pratique réfléchie. Elle utilise aussi des recherches sur le terrain au cours desquelles huit professeurs de différentes facultés de droit canadiennes ont été interrogés sur l'importance et la nature de la pratique réfléchie pour les étudiants, la faculté et les avocats. Leurs commentaires obtenus durant les entrevues aident à raffiner la conceptualisation de la pratique réfléchie au sein de la profession juridique. Trois composantes de la pratique réfléchie ont été identifiées la réflexion classique sur la pratique, la réflexion critique ainsi que la réflexion personnelle dans le contexte d'une réflexion plus globale qui donne à cette réflexion plus de rigueur et souligne l'importance d'agir. L'article conclut en décrivant une conceptualisation souhaitée du juriste. Le juriste est quelqu'un de conscient ce qui se reflète sur la pratique et la théorie puisqu'il est continuellement en apprentissage. Il prend aussi les actions nécessaires pour améliorer ses pratiques ce qui se reflètent collectivement sur la communauté. La pratique réfléchie devient donc une manière d'être.

This article examines the meaning, purpose, and promise of reflective practice in the context of the legal profession and at this critical juncture in the profession's history. The imperatives for enhancing the reflective capacity of the profession are explored and the benefits of endorsing reflective practice as a core professional competency are reviewed. Reporting on a portion of an action research project designed to encourage reflective practice in a Canadian law school, the author synthesizes the results of a review of reflective practice literature, largely drawn from other professions, with the results of qualitative interviews with eight professors from the law school on the importance and nature of reflective practice for students, faculty, and lawyers. Using an iterative process, their insights helped to forge an aspirational conceptualization of reflective practice specific to the legal profession. Essential components of reflective practice identified include the traditional "reflection on practice," critical reflection, self-reflection, and integrating these forms of reflection, in addition to developing the capacity to reflect in community to add rigour, all

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coupled with the necessity of leading to action. An aspirational conceptualization would be an integrated reflective practitioner who is self-aware and critically reflects on practice and theory as a self-directed lifelong learner, reflects collectively and in community and takes action to improve his or her practice. Reflective practice becomes a “way of being.”

“I think it’s actually cutting edge—it ought to be explored.”

Law professor

I AM PASSIONATE ABOUT the promise reflective practice holds for enhancing legal education pedagogy, for building professional expertise, for nurturing a strong professional commitment to access to justice and ethical action, for encouraging self-directed and life-long learning, for its potential to support interdisciplinary approaches to the practice of law, and for fostering collaborative and innovative approaches to the challenges facing the legal profession.<sup>1</sup> My passion arises from an action research project I began at a Canadian law school<sup>2</sup> while on a Fellowship and a leave of absence from my role as an Executive Director and lawyer with a not-for-profit community legal clinic.<sup>3</sup> The project’s literature review revealed that reflective practice had been embraced by many professions as an essential core competency, yet was all but ignored

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<sup>1</sup> Few would disagree that both legal education and the legal profession could benefit from reform. There have been a number of recent reports looking at the failures of legal education and proposing reforms. See *e.g.* William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007) [Carnegie Report]. Additionally, a number of research studies have identified high levels of depression, addiction, and despair among legal professionals. See *e.g.* Lawrence Krieger, “What We’re not Telling Law Students—and Lawyers—that They Really Need to Know: Some thoughts-in-action toward revitalizing the profession from its roots” (1998-1999) 13:1 J L & Health 1; Lawrence Krieger, “The Inseparability of Professionalism and Personal Satisfaction: Perspectives on values, integrity and happiness” (2004) 11:2 Clinical L Rev 425; and KM Sheldon & Lawrence Krieger, “Understanding the Negative Effects of Legal Education on Law Students: A longitudinal text of self-determination theory” (2007) 33:6 Personality and Social Psychology Bulletin 883. The profession is facing unprecedented challenges as a result of a number of developments including growing ethical conundrums, justice system reforms, an emphasis on alternative dispute resolution, paralegal regulation, declining legal aid budgets, globalization, increased use of technology, and outsourcing. Richard Susskind, for example, has written about the challenges for the future delivery of legal services: *The End of Lawyers? Rethinking the nature of legal services* (Oxford: Oxford University Press, 2008). The Law Society of Upper Canada recently sponsored public consultations on the issue of civility in the profession. In 2012 the Law Society released a report on the future of the articling period and has recommended changes that include “more systematic evaluation of articling as transitional training”: Articling Task Force, *Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario* (The Law Society of Upper Canada, 2012) at 4. For many law students, the articling period is their first opportunity to engage in a practicum to wed the theory they have learned to the practice aspects of being a legal professional. The articling period has not been structured as a reflective practicum, however, and could also benefit from the introduction of some reflective practice techniques, a discussion of which is beyond the scope of this article.

<sup>2</sup> I was sojourning at the law school after having been generously awarded a Community Leadership in Justice Fellowship for an academic term in 2009 by the Law Foundation of Ontario.

<sup>3</sup> I was also completing a Master’s degree in Adult Education and had chosen reflective practice as my primary field of self-directed study and research.

in the legal context.<sup>4</sup> Mindful of an array of challenges facing legal education and the profession, I became very curious about its potential for improving legal education, legal professionalism, and a commitment to access to justice.

Reflective practice was a term originally coined by Schön to describe how professional competence was engendered; he described it as a dialogue of “thinking and doing through which I become more ... skilful.”<sup>5</sup> A seminal writer in the field of professional education, Schön was seeking to deconstruct how professional knowledge and competence are acquired, which led him to explain how reflective practicums could help integrate theory and practice. Schön was concerned about the constricted education that most professions provided, with a narrow focus on developing technical rationality or scientific knowledge. He presented reflective practice as “an alternative to the traditional epistemology of practice.”<sup>6</sup> Professionals apply technical knowledge in the “swampy lowlands” of actual practice—described as “confusing messes”—and must progressively gain knowledge about how to deal with complexity, indeterminacy in the “zones of practice,” and value conflicts.<sup>7</sup> Reflection-in-action and reflection-on-action were posited as the means by which knowledge is created and professional expertise is developed.<sup>8</sup> Since Schön’s original exposition, the concept has undergone an intriguing and significant metamorphosis in the literature and in practice.

As noted, the concept of reflective practice has received relatively little attention in legal education or within the profession. Apart from clinical legal education and mediation,<sup>9</sup> reflective practice has also not been much discussed in American, English, or Australian legal journals. However there are notable exceptions that reveal that a growing interest in how reflective

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<sup>4</sup> Professions that have adopted reflective practice include medicine, health professions, education, nursing, social work, architecture, and theology. For a discussion of its application to the health professions and for a systematic review of the literature, see Karen Mann, Jill Gordon & Anna MacLeod, “Reflection and Reflective Practice in Health Professions Education: A Systematic Review” (2007) 14:4 *Adv in Health Sci Educ*; online: <<http://www.springerlink.com/content/a226806k3n5115n5>>.

<sup>5</sup> DA Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) at 31.

<sup>6</sup> DA Schön, *The Reflective Practitioner: How professionals think in action* (New York: Basic Books, 1983) at 345.

<sup>7</sup> Schön (1987), *supra* note 5 at 3, 18.

<sup>8</sup> A professional reflects-in-action by focusing in the present moment or situation in order to decide what action is required. Schön describes this as a “reflective conversation with the situation” that leads to “professional rigour” and develops provisional intuition or artistry. See Schön, *supra* note 6 at 268-269. Reflection-on-action helps professional uncover what was planned, what was actually done, and what happened as a result, particularly if there has been an unexpected outcome or surprise. This reflection can be multifaceted and can include reflecting on how prior experience applies to the current situation, on professional norms and roles, or on why a particular strategy was undertaken. Another interesting observation is that professionals must reflect on “knowing-in-practice” because they suffer from “parochial narrowness of vision” when their professional specialization causes them to “overlearn” (a result arising from not knowing, noticing, recognizing, or questioning one’s tacit knowledge). *Ibid* at 61, 60. Without this reflection, professional effectiveness decreases over time because repetitive experiences or actions are not re-examined. Reflection helps to surface a professional’s tacit knowledge and understanding so that assumptions are noticed, and the question of whether a particular course of action is still appropriate can be re-examined and subjected to scrutiny with peers.

<sup>9</sup> Clinical legal educators have left us a healthy legacy of articles referring to reflective practice as an important part of the experiential learning process that takes place in law school clinics. See JP Ogilvy and Karen Czapskiy, “Clinical Legal Education: An Annotated Bibliography (Revised 2005),” online: <<http://faculty.cua.edu/ogilvy/biblio05clr.htm>>. Macfarlane has written about the need for mediators to be reflective practitioners. Julie Macfarlane, “Mediating Ethically: The Limits of Codes of Conduct and the Potential of a Reflective Practice Model” (2002) 40:1 *Osgoode Hall L J* 49; and Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008).

practice can improve both the pedagogy employed by faculty (faculty members as reflective practitioners) and the development of professional expertise by students (students as reflective practitioners).<sup>10</sup> However, the dearth of attention to reflective practice in the legal context means that there has yet to be developed a conceptualization of reflective practice derived from legal practice contexts (as varied as these might be) and our aspirations for the profession.

As such, the action research project I undertook included a methodology to derive a conceptualization of reflective practice specific to law. Building first a working definition of reflective practice from the extensive literature in other disciplines, I interviewed a number of law faculty to elicit their feedback on this working conceptualization. I used this feedback in a constantly iterative manner to evolve a conceptualization of reflective practice specific to the profession of law. While the project also included an extensive literature review and the compilation of ideas and resources for legal pedagogies that will enable us to teach reflective practice, in this article I focus only on the development of a conceptualization specific to law.<sup>11</sup>

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<sup>10</sup> Donald Schön, “Educating the Reflective Practitioner” (1995) 2:1 Clinical L Rev 231. Schön’s article was based on a speech that he gave at a clinical legal educators conference and is not reflective of the more sophisticated analysis he provided in his two books, *The Reflective Practitioner* and *Educating the Reflective Practitioner*; *supra* notes 6 and 5. I have prepared a more extensive literature review that examines articles from the United States, the United Kingdom, and Australia. Of particular interest from the U.S. are Richard K Neumann Jr, “Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education” (2000) 6:2 Clinical L Rev 401; JP Ogilvy et al, eds, *Learning from Practice: A professional development text for legal externs*, 2d ed (St. Paul, Minnesota: Thomson/West, 2007); and also material contributed by John Sonsteng et al, “A Legal Education Renaissance: A Practical Approach for the Twenty-First Century” (2007) 34:1 Wm Mitchell L R 303; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Roadmap* (Denver: Clinical Legal Education Association, 2007); and Michael Hunter Schwartz, Sophie Sparrow & Gerald Hess, *Teaching Law By Design: Engaging Students from the Syllabus to the Final Exam* (North Carolina: Carolina Academic Press, 2009). Maughan, Jones and the work of the former UK Centre for Legal Education and the staff affiliated with it (Hinett), and Webb are very insightful. C Maughan, “Problem Solving Through Reflective Practice: The oxygen of expertise or just swamp gas?” (1996) Web Journal of Current Legal Issues 2, online: <<http://webjcli.ncl.ac.uk/1996/issue2/maughan2.html>>; PA Jones, “We’re All Reflective Practitioners Now: Reflection on professional education” in J Webb & C Maughan, eds, *Teaching Lawyers’ Skills* (London: Butterworths, 1996) at 291; PA Jones, “Theory and Practice in Professional Legal Education” (2000) 7:3 Int’l J of the L Profession 239; Karen Hinett, *Developing Reflective Practice in Legal Education* (Warwick: Warwick Printing Press, 2002), online:

<<http://www.ukcle.ac.uk/resources/reflection/drp.pdf>>; Julian Webb, “The ‘Ambitious Modesty’ of Harry Arthurs’ Humane Professionalism” (2006) 44:1 Osgoode Hall L J 119. Australian works of note include Mary Anne Kenny, Irene Styles & Archie Zariski, “Looking at You Looking at Me Looking at You: Learning through reflection in a law school clinic,” (2004) 11:1 Murdoch Univ Electronic J Law; Colin James, “Seeing Things As We Are: Emotional intelligence and clinical legal education” (2005) 8 Int’l J Clinical Legal Educ 123; K Mack et al, “Developing Student Self-Reflection Skills Through Interviewing and Negotiation Exercises in Legal Education” (2002) 13:2 Legal Education Review 221; Judith McNamara and Rachel Field, “Designing for Reflective Practice in Legal Education” (2007) 2:1 J Learning Design 66; and Judith McNamara and Rachel Field, “Designing Reflective Assessment for Effective Learning of Research Skills in First Year” (Paper presented at the First Year in Higher Education Conference, 30 June-2 July, 2008, Queensland University of Technology) online: <[http://www.google.ca/url?sa=t&source=web&cd=1&ved=0CBQQFjAA&url=http%3A%2F%2Fwww.fyhe.com.au%2Fpast\\_papers%2Fpapers08%2FFYHE2008%2Fcontent%2Fpdfs%2F1e.pdf&ei=J\\_4UTJLgKqmIIAef3NzeDQ&usg=AFQjCNEjymp-Rfpca-Ta9bKMfVU8c9aepg&sig2=n1d-ZZS4FknJZbEi-q4Z-w](http://www.google.ca/url?sa=t&source=web&cd=1&ved=0CBQQFjAA&url=http%3A%2F%2Fwww.fyhe.com.au%2Fpast_papers%2Fpapers08%2FFYHE2008%2Fcontent%2Fpdfs%2F1e.pdf&ei=J_4UTJLgKqmIIAef3NzeDQ&usg=AFQjCNEjymp-Rfpca-Ta9bKMfVU8c9aepg&sig2=n1d-ZZS4FknJZbEi-q4Z-w)>.

<sup>11</sup> Later articles will review the extensive literature on reflective practice in other professions and in legal education in other countries, methods to encourage reflective practice for students and faculty, the benefits and outcomes of reflective practice, and how law school might encourage pervasively reflective practice. The beginnings of a reflective practice tool kit can be found online at

Coming to a widely shared understanding of what reflective practice might mean in the context of the legal profession is a critical first step, for without defining with some clarity where it is we seek to go, we will be at sea in trying to discern how best to get there.

In what follows I first explore the imperatives for enhancing the reflective capacity of law students and for endorsing reflective practice as a necessary professional competency. Following a brief description of the methodology of the larger action research project, I focus on one key aspect of the project's findings. I outline a holistic, comprehensive, and aspirational conceptualization of "reflective practice" as it emerged from a synthesis of the voices of the law professors I interviewed and the key themes I identified in the rich literature discussing reflective practice in other professions. I then bring the discussion back to the range of concerns that have been identified in relation to legal education and the profession, offering tentative conclusions of the potential reflective practice holds in addressing these concerns.

## **I. IMPERATIVES FOR DISCUSSING REFLECTIVE PRACTICE: THE CONTEXT FOR CONCERN**

A rekindled interest in legal education over the past decade has generated a plethora of critiques and calls for new pedagogies that better integrate knowledge, skills, and values; humanize legal education and the profession; reframe law as a healing profession; and facilitate satisfying the profession's access to justice obligations. Based on my observations from my sojourn at the law school, conversations with faculty from many law schools, my attendance at legal education conferences, and the debate over the future of the articling period in Ontario, it became clear that there is a growing desire for curriculum reform and for more meaningful professional development opportunities. There may be no better time than the present to critically re-examine what core capacities we seek and require in our future legal professionals and to investigate what potential an explicit commitment to reflective practice might offer to meeting these needs.

These calls for new approaches to legal education also affirmed my own experience as a lawyer and executive director of a community legal clinic that exclusively offers poverty law services.<sup>12</sup> I had identified a need for stronger reflection skills in the staff I supervise, and as I read the literature about how adults learn, I became persuaded that habitual reflection would benefit legal practitioners at every stage of their development, from understanding better how to learn and function more effectively at law school so that our capacity to learn improves and our knowledge base increases, to encouraging self-directed learning, to enhancing learning from experience during the articling practicum and our early practice years.<sup>13</sup> It also offered news

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<http://www.gaje.org/abstract-michele/> and [http://www.gaje.org/wp-content/uploads/gravity\\_forms/12/2011/06/Working%20Conceptualization%20of%20Reflective%20Practice%20-%20Discussion%20-%20GAJE%20-%20July%2020112.doc](http://www.gaje.org/wp-content/uploads/gravity_forms/12/2011/06/Working%20Conceptualization%20of%20Reflective%20Practice%20-%20Discussion%20-%20GAJE%20-%20July%2020112.doc)

<sup>12</sup> Poverty law services are those that enable poor people and marginalized communities to advance legal interests and protections for their most fundamental needs, such as housing, food, and income security. In Ontario, community legal clinics are funded by Legal Aid Ontario to provide poverty law services. Community legal clinics are not-for-profit, community-based organizations that provide a wide range of legal services ranging from assistance, advice, and representation for individuals; to outreach, public legal education in traditional and non-traditional formats—which now include websites, webinars, social networking, and community development; to systemic advocacy, test case litigation, and other law reform activities.

<sup>13</sup> There are many important treatises on this topic, which are beyond the scope of this article to discuss but can be found in the literature review I completed for my Master's degree. A key author is Jennifer Moon, *Reflection in*

ways to think about skill acquisition as, for example, information technology transforms our conception of legal practice,<sup>14</sup> and we are called upon to be mentors, supervisors, managers, executive directors, and leaders in the course of our professional roles. It is clear that even as seasoned or expert legal professionals, we need to continually reassess and re-evaluate our professional calling and practice to provide better services, learn how to collaborate, take risks and to be prepared to innovate, and keep abreast of developments and new knowledge to increase access to justice.

Critiques of legal education have been growing for many years. The most recent report, the result of the Carnegie Foundation's in-depth study of selected American and Canadian law schools, called for a more integrated law school curriculum that would combine both formal knowledge and the experience of practice.<sup>15</sup> After describing the effect of the training in first year law school to "think like a lawyer" as encouraging a "temporary moral lobotomy" in students, the report identified building practical skills and reflecting on professional responsibility as missing pieces of legal education.<sup>16</sup> A law student quoted in the report observed that "law schools create people who are smart without a purpose."<sup>17</sup> Developing and integrating knowledge, skills, and values must all form part of legal education. The graduating law student must be able to think, perform, and conduct him- or herself as a legal professional.<sup>18</sup> To be effective, the "pedagogy to address the students' formative development must be a highly *self-conscious, reflexive one*" [emphasis added].<sup>19</sup>

The literature also provides extensive reasons to reform and humanize legal education.<sup>20</sup> American studies of law students and lawyers document high rates of stress, depression, alcoholism, and drug abuse among lawyers at three times the rate of the same socio-economic population which suggest that something is seriously amiss.<sup>21</sup> Some faculty members and others have blamed legal education pedagogy for producing these dismal outcomes.<sup>22</sup> In addition to the

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*Learning and Professional Development: Theory and Practice* (Sterling, Virginia: Kogan Page, 1999). A graphic representation of the key authors is contained in the PowerPoint presentation I delivered at a conference for which this paper was originally prepared. Please see [the slides](#) for reference.

<sup>14</sup> See the informative discussion on trends in technology and disruptive legal technologies in R Susskind, *The End of Lawyers: Rethinking the nature of legal services* (Oxford: Oxford University Press, 2008).

<sup>15</sup> WM Sullivan, et al, *supra* note 1.

<sup>16</sup> *Ibid* at 78.

<sup>17</sup> *Ibid* at 142.

<sup>18</sup> To support professional formation, the Carnegie Report recommended an "apprenticeship" focused not just on legal doctrine and analysis, but also on preparing for practice and forming professional identity. A cognitive or intellectual apprenticeship ensures that the required knowledge is taught. Practical apprenticeships provide practice-based learning using actual or simulated experiences. The ethical-social apprenticeship focuses on identity and purpose and aims to expose students to the necessary values, attitudes, and ethical sensitivities that characterize a professional. All three apprenticeships must be integrated, as "the moral development of professionals requires a holistic approach." Being able to engage in complex practice and to make judgments under conditions of uncertainty and to be skilled at learning from experience are some of the other professional capacities required. Sullivan et al, *supra* note 1.

<sup>19</sup> *Ibid* at 32.

<sup>20</sup> PJ Schlitz, "On Being an Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and Unethical Profession" (1999) 52:4 *Vanderbilt L Rev* 871; Sonsteng et al, *supra* note 10; Stuckey et al, *supra* note 10.

<sup>21</sup> Krieger (1998), *supra* note 1, Krieger (2004), *supra* note 1; Sheldon & Krieger, *supra* note 1.

<sup>22</sup> L Dresser, "Promoting Psychological Health in Law Students" (2005) 24:1-2 *L Ref Services Q* 41; S Grover, "Personal Integration and Outsider Status as Factors in Law Student Well-Being" (2008) 47:2 *Washburn L J* 419; Anne L Ijima, "Lessons Learned: Legal Education and Law Student Dysfunction" (1998) 48:4 *J Legal Educ* 524; Colin James, *supra* note 10; Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*

need to humanize legal education, there is a “much larger call to humanize the profession by recapturing the essence of professional values—peace-making, problem solving, and justice work”: legal educators are asked to help students become “reflective, cooperative practitioners.”<sup>23</sup> Similarly, Chisholm has advocated for changes to pedagogy and the law school environment to make them “less hierarchical and competitive, more relationship and care oriented, and more supportive of the intellectual diversity and psychological wellbeing of its increasingly diverse student body.”<sup>24</sup> Furthermore, a three-year study examining the negative effects of legal education and countervailing influences by Sheldon & Krieger identified the ameliorating effect of self-determination, recommending enhanced teaching practices and ensuring institutional cultures provide students with support for their autonomy and psychological needs.<sup>25</sup>

Another harbinger of the need to develop new professional competencies is the movement afoot to reframe law as a healing profession, which builds on initiatives such as the Comprehensive Law Movement and Therapeutic Jurisprudence.<sup>26</sup> These movements urge preventative approaches to legal problems and a more holistic model of care for clients’ well being. There is also a call to reform legal education and the rampant adversarialism it fosters, by encouraging a spiritual revitalization of the legal profession.<sup>27</sup> Gabel, for example, has advocated that the now-dormant Critical Legal Studies movement be re-imagined and reinvigorated by imbuing its critique with new spiritual values of community, love, and compassion.<sup>28</sup> Risken, Keeva, Halpern, Magee, and Calloway have made cogent arguments for the adoption of contemplative practices and the “practice of wisdom” to create a reflective space to enrich professional learning and practice.<sup>29</sup> Stuckey et al. have attributed the failure of the legal profession to meet its access to justice obligations, at least in part, to the shortcomings of legal

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(New York: McGraw Hill, 1999); Krieger (1998-99), *supra* note 1; MEP Seligman, PR Verkuil & TH Kang, “Why lawyers are unhappy” (2005) 19:1 Deakin L Rev 49; Schlitz (1999), *supra* note 20; and Sonsteng et al, *supra* note 10.

<sup>23</sup> BG Fines, “Fundamental Principles and Challenges of Humanizing Legal Education” (2008) 47:2 Washburn L J 313 at 321.

<sup>24</sup> A Chisholm, “Enriching and Humanizing Canadian Legal Education with Multiple and Emotional Intelligences” (2010) Canadian Legal Education Annual Review 249.

<sup>25</sup> Sheldon & Krieger, *supra* note 1.

<sup>26</sup> Marjorie A Silver, *The Affective Assistance of Counsel: Practicing Law as a Healing Profession* (Durham, North Carolina: Carolina Academic Press, 2007). See also Susan Daicoff, *Comprehensive Law Practice: Law as a Healing Profession* (Carolina Academic Press, 2011) and J. Kim Wright, *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law* (ABA Book Publishing, 2010).

<sup>27</sup> Chisholm, *supra* note 24; Keeva, *supra* note 22; David Hall, *The Spiritual Revitalization of the Legal Profession* (Lewiston, New York: The Edwin Mellon Press, 2005).

<sup>28</sup> Peter Gabel, “Critical Legal Studies as a Spiritual Practice” (2009) 36 Special Issue Pepp L Rev 515.

<sup>29</sup> L Riskin, “The Contemplative Lawyer: On the potential contributions of mindfulness meditation to law students, lawyers, and their clients” (2002) 7 Harv Negot L Rev 1; Steven W Keeva, “Practicing from the Inside Out” (2002) 7 Harv Negot L Rev 97; Charles Halpern, *Making Waves and Riding the Currents: Activism and the Practice of Wisdom* (San Francisco: Berrett-Koehler Publishers, Inc., 2008); R Magee, “The Mindful Lawyer and the Challenges of Diversity: The Benefits of Mindfulness in Differently Diverse Practice Settings” adapted from “The Mindful Law Professor and the Challenges of Diversity” an article-in-progress, online: <<http://www.contemplativemind.org/programs/law/TheMindfulLawyerandDiversity.pdf>>; and DM Calloway, *The Skillful and Joyful Lawyer: A manual on training the mind*, unpublished manuscript (University of Connecticut at Storrs, 2009).



education: law school should be instilling a commitment to access to justice in law students.<sup>30</sup> Similarly, Calmore has blamed traditional legal education pedagogy for “miseducating” students who wish to pursue social justice as their professional calling through their professional socialization.<sup>31</sup> Mosher has advocated that “legal education must ... embrace critique—of existing social, economic, political, and legal orders—pervasively ... informed by the insights of social movements” and that law school must challenge the “implicit messages of lawyering that law school imparts.”<sup>32</sup> Rhode has recommended that law school curricula include access to justice topics to counter the legal profession’s lack of awareness and information about unmet legal needs and injustice,<sup>33</sup> whereas Calmore, following Aiken’s lead, has advocated the creation of “a justice readiness” in law students as part of a re-socialization process.<sup>34</sup> And finally, Tanovich in discussing the reconstructing of role morality for the legal profession calls for a “justice-seeking ethic that seeks to give effect to the law’s ambition.”<sup>35</sup>

## II. THE RESEARCH PROJECT

I designed an action research project with the assistance of several faculty members at a Canadian law school<sup>36</sup> with a view to encouraging reflective practice in the law school context and supporting the faculty’s wide-ranging curriculum reform efforts.<sup>37</sup> I chose action research as my project methodology. Action research is not a term that is much used or understood in legal education. Unlike traditional research, action research aims to simultaneously create both understanding and change, and as a result the research findings can be immediately applied.<sup>38</sup> While supporting change in the desired direction that emerges from the research, it also creates

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<sup>30</sup> Stuckey et al, *supra* note 10.

<sup>31</sup> John O Calmore, “Chasing the Wind’: Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization” (2004) 37:4 Loy LA Rev 1167. See also P Gabel & P Harris, “Building power and breaking images” (1982-1983) 11:3 NYU Rev L & Soc Change 369 and D Kennedy, “Legal Education and the Reproduction of Hierarchy” (1982) 32:4 J Leg Ed 591, who discuss legal education as training for hierarchy, for other informative critiques of legal education. There is also more recent literature, including D Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System, A Critical Edition* (New York: New York University Press, 2004), with contributions from Paul Harrington, Peter Gabel, Angela Harris, Donna Maeda, and Janet Halley, and with a new introduction and afterword by the author.

<sup>32</sup> Janet E Mosher, “Legal Education: Nemesis or Ally of Social Movements?” (1997) 35:3&4 Osgoode Hall LJ 613 at 632.

<sup>33</sup> DL Rhode, *Access to Justice* (New York: Oxford University Press, 2004).

<sup>34</sup> Calmore, *supra* note 31 at 1178. Calmore cites HJ Aiken, “Provocateurs for Justice” (2001) 7:2 Clinical L Rev 287 at 289.

<sup>35</sup> D. M. Tanovich, “Law’s Ambition and the Reconstruction of Role Morality in Canada” (2005) 28 Dalhousie L Rev at 271.

<sup>36</sup> Special thanks are owed to the two professors who served as special advisors to the project and to the eight professors who were interviewed during the project, and for the interest and support shown by other faculty members at this law school and at a number of other law schools during the many presentations and follow-up conversations that ensued.

<sup>37</sup> During the life of the project, clear goals for the upper level curriculum reform were drafted and approved. These included “outcomes-driven,” “integrative approaches,” and “reflective approaches” to learning, and the goals explicitly mentioned the reflective practitioner model.

<sup>38</sup> R McTaggart, “Guiding Principles for Participatory Action Research” in R McTaggart, ed, *Participatory Action Research: International contexts and consequences* (Albany, New York State University of New York Press, 1997) at 25.

knowledge in action. Action research strategies must be adapted to different contexts. It is a form of participatory inquiry that poses a problem, and then fosters learning and change through a spiral of steps undertaken by the researcher (or researchers) that includes planning, acting, observing, and evaluating.<sup>39</sup> As an emergent research design, activities and strategies are continually evaluated and redesigned while the research is still in process, which allows the researcher(s) to learn constantly and to modify the research strategy based on new insights.<sup>40</sup> Like reflective practice, action research examines everything, stresses listening, encourages questioning, requires reflection, builds courage, and leads to action.<sup>41</sup>

Merriam and Simpson distinguish action research from other types of qualitative research in the social sciences:

1. The researcher serves as a facilitator for problem solving and, in some cases, as a catalyst between the research findings and those individuals most likely to benefit or take action from the findings.
2. Results of research are intended for immediate application by those engaged in the research or by those for whom the research was initiated.
3. The design of action research is formulated while the research is in progress, rather than being totally predetermined at the onset of the study.<sup>42</sup>

The action research was designed to encourage reflective practice by undertaking a number of key strategies or interventions. The first was to undertake a literature review and develop a working conceptualization for reflective practice (largely drawn from the academic literature of other professions) as a starting place for discussion with law professors. The second was to use semi-structured interviews to find out how a select group of progressive law professors viewed reflective practice, how they encouraged reflection and nurtured their students' reflective capacities, what might help to encourage reflection, and how they thought reflective practice could be promoted as a component of legal education at their law school.<sup>43</sup> The third initiative was to identify the professors' "promising practices" for fostering reflection and to encourage the sharing of these practices in an appreciative way. As a fourth strategy, I undertook a number of awareness-building activities and experimented with nurturing reflection and reflective practice with both faculty and law students.<sup>44</sup> Finally, combining what I learned about reflection and reflective practice through the action research process, including the input provided by the

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<sup>39</sup> See J McNiff & J Whitehead, *All You Need to Know About Action Research* (Thousand Oaks, CA: Sage, 2006) at 9.

<sup>40</sup> B Merriam and EL Simpson, *A Guide to Research for Educators and Trainers of Adults*, 2nd ed (Malabar, FL: Krieger Publishing Company, 2000) at 121-123.

<sup>41</sup> D Coghlan, "Insider Action Research Projects: Implications for practicing managers" (2001) 32:1 *Management Learning* 49 at 52.

<sup>42</sup> Merriam & Simpson, *supra* note 40 at 122.

<sup>43</sup> According to Merriam and Simpson, *supra* note 40 at 97-99, qualitative research is largely an inductive research strategy, and well-suited to projects in education where there is little information about lived experience. It allows for a richer, deeper, and more multifaceted understanding of the subject being studied. The qualitative interviewing was undertaken in a customary way for this type of research. A semi-structured interview format was used, transcripts were produced, and the professors were offered the transcripts for correction. The transcripts were analyzed manually and themes were drawn from the data. The analysis was then sent back to the professors to check the accuracy of my summary.

<sup>44</sup> I was given ample opportunities to do so, with the result that this aspect of the research grew and significantly increased the scope and complexity of the project. I do not report on those activities in this article.

interviews, I created a resource kit to make it easier for professors to understand and promote reflective practice for their students and in their own teaching practice.<sup>45</sup> I also made a number of recommendations for legal professionals and law schools interested in encouraging reflective practice based on what I had learned in the interviews and in the process of carrying out the action research. In this article, I only report the findings of the first two strategies outlined above.<sup>46</sup>

My research design and the structuring of interview questions in particular, were also influenced by the underlying philosophy of a type of action research called Appreciative Inquiry (AI).<sup>47</sup> The belief is that an affirmative and strengths-based approach is much more likely to result in positive organizational change and transformation, as compared to a problem-solving or deficit-based approach.<sup>48</sup> AI is considering generative, creating new energy for change through helping to shift organizational culture by encouraging appreciative mindsets, by aligning inherent motivations for change, by fostering new ideas, and by helping people to choose new actions.<sup>49</sup> Its generative potential is attributed to the value of positive emotions as set out in Frederickson's "broaden and build theory," which asserts that enlarging an individual's "thought-action repertoire" will lead to greater personal resources, which will support stronger intellectual, cognitive, physical, and emotional capacities, generating a synergy that creates upwards spirals in organizations.<sup>50</sup>

The participating law school was chosen as a large number of faculty were supporting curriculum reform and interested in improving their pedagogy, and the school had agreed to host my fellowship research. Curriculum reform efforts were already well underway when I arrived in 2009. These efforts were designed to support the development of legal professionals committed to practicing in the public interest and to increasing access to justice. The professors interviewed for the project were chosen because they had a pre-existing commitment to improving their teaching practice and to supporting curriculum reform efforts, and were in a position to

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<sup>45</sup> A partial copy of the resource kit content can be found on the website for the Global Alliance for Justice Education, online: <<http://www.gaje.org/abstract-michele>>.

<sup>46</sup> In addition to the semi-structured interviews, I also triangulated my research and included participant observation (attending lectures and meetings, for example) and document analysis (reviewing reports and curricula) to ensure I could verify what I heard in the interviews. Furthermore, although I had many informal conversations with professors in addition to the ones I formally interviewed and also discussed reflective practice with a significant number of faculty from other professional schools and law faculties in other countries, this data is not reported on as it was outside the original scope of the project.

<sup>47</sup> See DL Cooperrider, "Positive Image, Positive Action: The affirmative basis of organizing" in S Srivastara & DL Cooperrider, eds, *Appreciative Management and Leadership: The power of positive thought and action in organization* (San Francisco: Jossey-Bass Publishers, 1999) at 91; JM Watkins & R Mohr, *Appreciative Inquiry: Change at the speed of imagination* (San Francisco: Jossey-Bass Publishers, 2001). "Human systems grow in the direction that they persistently ask questions about, and this propensity is strongest and most sustainable when the means and ends of inquiry are positively correlated;" and DL Cooperrider & D Whitney, *Appreciative Inquiry: A positive revolution in change* (San Francisco: Berrett-Koehler, 2005) at 9.

<sup>48</sup> Cooperrider, *Ibid*; Watkins & R Mohr, *Ibid*.

<sup>49</sup> GR Bushe, "Appreciative Inquiry is not (Just) About the Positive" (2007) 39:4 OD Practitioner 30 at 30.

<sup>50</sup> BL Frederickson, "Positive Emotions and Upward Spirals in Organizations," in KS Cameron, JE Dutton & RE Quinn, eds, *Positive Organizational Scholarship: Foundations of a new discipline* (San Francisco: Berrett-Koehler, 2003) at 163. This theory also influenced the approach I took to recognizing and building on all the positive developments that were already occurring at the law school during my awareness-building and experimentation activities.

encourage their students to adopt a reflective practice model. I interviewed eight professors, hereinafter referred to individually as, for example, “Professor A” or “PA.”<sup>51</sup>

The interviews provided the opportunity to learn about how professors who had been identified as concerned about their pedagogy defined reflective practice in the context of the legal profession, and how they reacted to the working conceptualization I had created from a synthesis of the literature and my experience. Most of the professors had been engaged in clinical legal education or curriculum reform discussions and were identified by my faculty advisor as potentially interested in the project—because in using an AI approach, I wanted to build on the positive developments and the promising practices already happening at the law school. Using a framework for understanding the trends and themes in thinking about reflective practice I created from an extensive literature review, I have explained below what I learned from these interviews about the unique attributes of reflective practice for legal professionals.<sup>52</sup>

### III. A WORKING CONCEPTUALIZATION OF REFLECTIVE PRACTICE

To draft a working conceptualization as a conversational catalyst for my interviews, I reviewed literature about reflection and its importance to learning, and about the theory and promise of reflective practice for the professions and also specifically for the legal profession (largely from other countries). As the term is not familiar to most legal practitioners, I felt the conceptualization needed to be sufficiently comprehensive and flexible that it could be adapted to a broad range of legal practice contexts, and customizable to the individual legal professional. This working conceptualization was presented and discussed at all the interviews, but more importantly the professors shared their practical and personal insights into reflective practice. I used the feedback to continually improve the working conceptualization, to enrich and develop the symbolic representation described below in Figure 1, and ultimately to present in the concluding section two alternate and more succinct definitions as recommended by several of the professors.

Reflective practice has been described and understood in many different ways in the literature and in professional practice settings, with the result that critics have described it as an amorphous concept, a “conceptual and methodological portmanteau,”<sup>53</sup> and a term so overused it has become a buzzword “denuded of any real meaning.”<sup>54</sup> To respond to these critiques and to

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<sup>51</sup> The nature of my research required that I obtain Research Ethics Board approval. It was a condition of this approval that I keep the name of the law school and the research participants confidential. One of the eight professors did ask to remain anonymous, so I have chosen to anonymize all the professors’ names. The law school was not concerned about anonymity.

<sup>52</sup> Although this article only reports on the discussion of how the professors defined reflective practice, and provides a brief overview of the benefits and outcomes they identified, I also gathered data about how they encouraged their students to reflect, and how they viewed their own reflective practice. Furthermore, I heard their views on how law faculty could be supported and encouraged to promote law student reflection and reflective practice and to develop their own reflective practice. Ultimately I made some recommendations to the faculty based on these views in a final report on the project.

<sup>53</sup> Keith Morrison, “Developing Reflective Practice in Higher Degree Students through a Learning Journal” (1996) 21:3 *Studies in Higher Education* 317 at 317.

<sup>54</sup> Stephen D Brookfield, *Becoming a Critically Reflective Teacher* (San Francisco: Jossey-Bass, 1995) at 158.

simplify this complex concept, I have used a Venn diagram (see Figure 1, below) to distinguish the different aspects or components of reflective practice that emerged: the traditional reflection on practice, critical reflection, and self-reflection. When the interviews began, this symbol captured the proposed importance of the integration of all these aspects of reflection. A visual representation of the new space or knowledge that is created is represented by the intersection and overlapping of the three circles. As the interview dialogues began to deepen my understanding of reflective practice, the spiral was added to symbolize the need to cycle through the different forms of reflection to support their integration and to result in action, changed behaviour, and new professional expertise, and the outer circle was added to signal that it is essential to reflect in community with peers to ensure rigour.

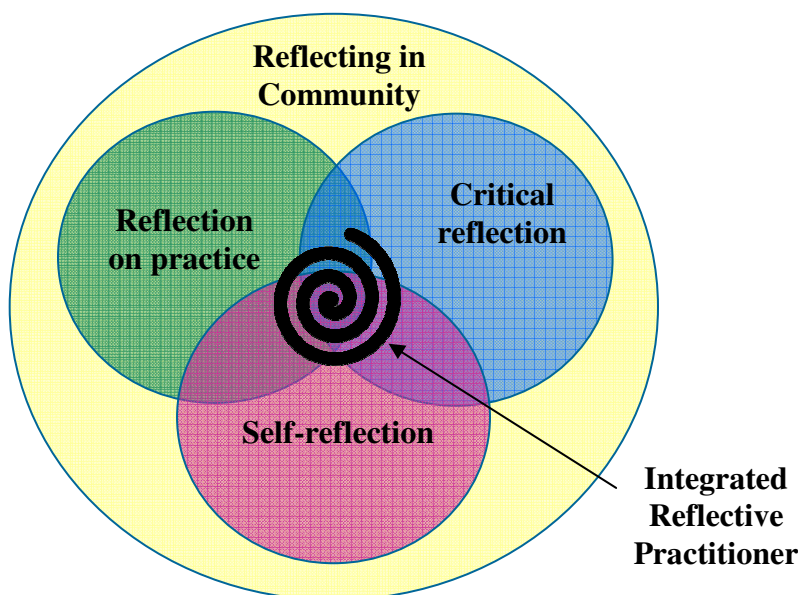


Figure 1. The Reflective Practitioner: Five components including the importance of integration.

The professors’ interviews revealed a general consensus that my working conceptualization, which included the three aspects of reflection—reflection on practice or technique (skills), critical (knowledge), and self-reflection (values)—and the emphasis on becoming an integrated reflective practitioner, captured their aspirations. Professor C (PC) affirmed the definition, noting, “we want to train students to be able to be reflective about their knowledge; we want them to be reflective about their skills, and ... to be reflective about their values.”<sup>55</sup> Professor A (PA) felt the tripartite definition would generate a good conversation and would encourage a professional to consider the types of reflection, what insights each type would be support, and its value or appropriateness for his or her professional development.<sup>56</sup> Professor B (PB) felt this

<sup>55</sup> Interview of Professor C (9 June 2009) conducted by the author.

<sup>56</sup> Interview of Professor A (21 May 2009) conducted by the author.

broader and more inclusive conceptualization would be more favourably received by faculty who might be resistant to the concept of reflective practice because they understood it to be too narrowly focused on skills development, a legacy left by how others have understood and represented Schön's original use of the term as simply confined to reflecting on skills or technical practice. Professor E (PE) was the only participant to explicitly refer to how reflective practice is viewed by other disciplines, noting that in the social work field, reflective practice is equated with the notion of *praxis*—which she described as “theory in action ... a theoretically sophisticated application of skills and knowledge. ... Praxis encompasses the notion of reflexivity.”<sup>57</sup> Praxis is a key facet of professional development. Professor D (PD) also noted that good lawyers are often reflective practitioners—“good lawyers just do it”—even though they are not aware of the term.<sup>58</sup>

#### IV. REFLECTION ON PRACTICE OR TECHNIQUE (THE TRADITIONAL VIEW—REFLECTING ON “SKILLS”)

The first aspect is based on the original “instrumental” model popularized by Schön that required continued reflection on technique or experience to develop professional expertise. It is also important for professionals to cultivate a habitual practice of learning from experience and to be continually evaluating and improving their technical skills and performance. For example, they must improve skills such as learning, problem solving, advocacy, interviewing, writing, research, and teaching. PE felt that reflective learning was one component of a reflective practice. For PB for example, the aspiration is to become either a “consciously or intuitively competent practitioner.”<sup>59</sup> He stressed the discipline of reflective practice, the need to learn from experience, and the capacity for openness:

So, reflective practice means for me the opportunity to reflect in a fairly systematic and intentional way about what has been done—what has worked, what hasn't worked, what was successful, why was it successful or not successful, and learn from that reflection, continually adjusting the practice in ways in which you will imagine and it will be made better as a result of reflection ... It's a continual seeking, a search, and it's a capacity to be open and be receptive to the idea that there are other perspectives, better ways.

According to Schön, the capacity to “reflect-in-action” and “reflect-on-action” develops professional expertise through rigorous and disciplined experiential learning, which then builds reflective judgement. Later theorists have asserted that developing capacity for “anticipatory reflection,” meaning reflection before action, is also crucial.<sup>60</sup> This reflective practice approach is synonymous with experiential, self-directed, and action learning. Reflection deepens learning

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<sup>57</sup> Interview of Professor E (16 June 2009) conducted by the author.

<sup>58</sup> Interview of Professor D (15 June 2009) conducted by the author.

<sup>59</sup> Interview of Professor B (8 June 2009) conducted by the author.

<sup>60</sup> Max Van Manen, “Reflectivity and the Pedagogical Moment: The Normativity of Pedagogical Thinking and Acting,” (1991) 23:6 *J Curriculum Studies* 507 at 512; and Jennifer A Moon, *Reflection in Learning and Professional Development: Theory & Practice* (Sterling, Virginia: Kogan Page, 1999) at 49.

from experience and increases effectiveness. At a minimum, this traditional approach helps build technical expertise by integrating knowledge and skills.

## V. A CRITICALLY REFLECTIVE PRACTICE (REFLECTING ON “KNOWLEDGE”)

Listening to the professors, it was clear that Schön’s original definition had to be enhanced by adding the second aspect of critical reflection, an observation strongly supported by the literature.<sup>61</sup> All the professors agreed that critical reflection was an essential element of reflective practice. PB noted that critique must come from a number of different perspectives. Professor H (PH) stressed being able to look at the implications of a case or a law or a change in policy on people or on the legal framework or society.<sup>62</sup> In a similar vein, PD stressed contextualizing law and talking about “law’s historic role in disempowering people and legitimizing power imbalances and structures.” Correspondingly, PF observed that one must be able to understand the larger context of an area of law, a case, or a situation. PE was of the view that all legal theory is in fact a critique of existing laws because it looks at what the law is doing, why, and how it does it. All forms of critique could be included such as—liberal critique, critical legal studies, critical race or feminist critique, poverty law scholarship, or using cross-disciplinary approaches such as law and economics, as examples. As a consequence, PB felt the emphasis on critical reflection would be very important to faculty considering whether to endorse reflective practice as a core competency:

A bigger definition of reflective practice has one reflecting not simply on the skills that one is acquiring—whether it is to think critically or analytically, or be a more effective questioner/listener/interviewer—but it’s to reflect on the role of law in society. It is to reflect on the implications that law will have on groups in society—the extent to which it can be enlisted to facilitate change for the good and sometimes not for the good.

Additional insights about how critical reflection was a crucial aspect of reflective practice emerged from the organizational development literature and the literature from other professions. Developing the skills and capacity to become critically reflective, including the need to be vigilant about unpacking assumptions and questioning our frames of reference or “mental models,” is another important aspect.<sup>63</sup> Considering this type of reflection a little more deeply, it is clear it could include ideological critique, deconstructing knowledge, consciousness-raising, unmasking power and privilege, and creating emancipatory knowledge.<sup>64</sup>

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<sup>61</sup> See, for example, writing in the fields of higher and adult education, Brookfield, *supra* note 54; Jack Mezirow and Associates, *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning* (San Francisco: Jossey Bass Publishers, 1990).

<sup>62</sup> Interview of Professor H (29 July 2009) conducted by the author.

<sup>63</sup> P Senge, *The Fifth Discipline: The art and practice of the learning organization* (New York: Doubleday, 1990).

<sup>64</sup> SD Brookfield, “The Concept of Critically Reflective Practice” in Arthur L Wilson and Elizabeth R Hayes, eds, *Handbook of Adult and Continuing Education* (San Francisco: Jossey Bass, 2000) at 33; J Fook “Beyond Reflective Practice: Reworking the ‘critical’ in critical reflection” in H Bradbury et al, eds, *Beyond Reflective Practice: New approaches to professional lifelong learning* (New York: Routledge, 2010) 37; Paulo Freire, *Pedagogy of the*

Setting aspirational goals from my perspective as a lawyer concerned about social justice with a particular set of corresponding values, a professional who is critically reflective might seek to: question the status quo; understand law as a social construct; be curious about alternative conceptions of the role of law; be aware of legal pluralism; bring interdisciplinary insights to bear on the practice of law; or engage in critical approaches, such as poverty law scholarship or feminist and critical race theory. Critical reflection supports transformative learning<sup>65</sup>: when learners who are exposed to “disorienting dilemmas” (disturbing facts, information, theory or incidents that contradict their earlier understanding) experience a shift in their perspectives.<sup>66</sup> Transformative learning can support a nascent inclination for social justice, helping law students develop a perspective on professional responsibility that includes a desire to increase access to justice. Some of the professors were sceptical about whether transformative learning would result from disorienting dilemmas:

What amazes me is how people can reflect on what is going on and still reinforce what makes them feel most comfortable about life ... I think that is because they are invested in certain economic/political/social structures. Where they are in the world is supported by them. To truly critique it would mean that they would have to step aside, give up power, authority, give up money, give up conveniences.<sup>67</sup>

Conversely, PB stated “the more opportunities that there are for self-critical reflection, the more aware people will become of social justice/access to justice issues.” PE observed that becoming a critically reflective practitioner may actually equate to becoming a social-justice oriented practitioner because she felt it was unlikely that “a value set that did not include access to justice, or included only a very impoverished version of access to justice, or social justice, could survive reflection.”

## VI. A SELF-REFLECTIVE PRACTICE (REFLECTING ON “VALUES”)

All the professors interviewed agreed that self-reflection was important and generally agreed that this aspect required much more attention at law school. For instance, PA set out a holistic definition based on continually evolving self-knowledge:

A reflective practitioner is somebody who considers who they are, where they are, what they’re doing, their position in the community, the purpose of the work they

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*Oppressed* (New York: Continuum, 2000); Elizabeth Anne Kinsella, “Reflections on Reflective Practice” (2001) 68 *Can J Occupational Therapy* 195; Mezirow (1990), *supra* note 61; and Morrison, *supra* note 53.

<sup>65</sup> Credited with developing transformative learning theory, Mezirow defined the transformative learning process as requiring a transformation of “our taken-for-granted frames of reference (meaning perspective, habits of mind, mind-sets) to make them more inclusive, discriminating, open, emotionally capable of change, and reflective so that they may generate beliefs and opinions that will prove more true or justified to guide action.” Jack Mezirow and Associates, *Learning as Transformation: Critical Perspectives on a Theory in Progress* (San Francisco: Jossey Bass, 2000) at 7-8. Transformative learners become more critically reflective on their assumptions, more involved in critically reflective discourse with others, and more prepared to take action on new understandings.

<sup>66</sup> *Ibid* at 14.

<sup>67</sup> Professor A, *supra* note 56.



are doing and how they are doing it, and takes it as an ongoing process of learning and moving forward. So that it's not that they reflect on this at one point and then say, "this is who I am and this is how I'm doing what I'm doing," but that it's a continuous iterative process.

PH noted that reflection on ethical issues and the appropriateness of one's behaviour were essential:

How do I work best, and how will I be able to be better in the future? It goes to understanding yourself ... what will you do in the future to deal with the expectations better, how will you improve, why things did not work in a particular way, for example, how you can remedy in the future.

PC remarked that reflecting on one's values also allows for the integration of ethical concerns. PF highlighted the importance of becoming conscious of oneself as a player in a situation; this includes understanding where you are personally coming from, and being able to appreciate and value other perspectives. PA shared this view, observing that "self-reflection helps the curious mind." PC stated that one must be critically reflective of one's own practices, conduct, behaviour, assumptions, and values. Similarly, PE pointed out that self-awareness and a capacity for introspection of your own motives are crucial. PD felt the ability to engage in critical self-reflection about one's professional role and experiences is an essential and learnable skill and is the key to continuous learning throughout one's career. PC drew an analogy between reflective practice and Peters & Bryant's assertion that lawyers need to develop particular "habits of mind" to increase their cultural competency by cultivating the capacity to inhabit "parallel universes."<sup>68</sup> PA optimistically noted, "I think everybody in the world should be doing self-reflection—we would all be healthier, happier, more connected, more engaged, and more generous." However, she also cautioned that encouraging self-reflection requires careful support to ensure it is healthy because "you don't want endless self-spiralling to happen—you want students to have tools to understand what self-reflection means, rather than endless naval gazing."

The literature also affirmed the importance of self-reflection.<sup>69</sup> Encouraging this personal capacity is crucial for developing a personal vision or an explicit philosophy of practice and to integrating professional knowledge, skills, and values. Self-reflection supports professional and personal integration and furthermore, developing self-awareness and a capacity for self-regulation supports ethical and moral development. Greater self-awareness has the potential to contribute to the encouragement of civility in the profession. Self-knowledge and open-mindedness, or "enlargement of mind,"<sup>70</sup> helps build intercultural competence and an ability to

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<sup>68</sup> SJ Bryant & JK Peters, "Six Practices for Connecting with Clients Across Culture: Habit Four: Working with interpreters and other mindful approaches" in MA Silver, ed, *The Affective Assistance of Counsel: Practicing law as a healing profession* (Durham, North Carolina: Carolina Academic Press, 2007) at 186.

<sup>69</sup> Gillie Bolton, *Reflective Practice: Writing & professional development*, 2nd ed (Thousand Oaks, California: Sage, 2005); C Hunt, "A Step too Far? From professional reflective practice to spirituality" in H Bradbury et al, eds, *Beyond Reflective Practice: New approaches to professional lifelong learning* (New York: Routledge, 2010) at 155; Christopher Johns, *Becoming a Reflective Practitioner* (Oxford: Blackwell Publishing, 2000); and Christopher Johns, *Engaging Reflection in Practice: A narrative approach* (Oxford: Blackwell Publishing, 2006).

<sup>70</sup> J Nedelsky, "Embodied Diversity and Challenges to the Law" (1997) 42:1 McGill L J 91 at 107.

work productively and creatively with others, and support for emotional and social intelligence. Furthermore, healthy self-reflection and self-care can foster a stable work-life balance; increase personal coping strategies; cultivate compassion; and improve emotional, mental, physical, and spiritual well-being, all of which can lead to increased self-efficacy and a commitment to act on one's beliefs. Reflecting on learning and learning needs supports self-directed learning and builds a desire for lifelong learning. To be able to reflect on one's strengths and weaknesses, to learn from constructive criticism, and to develop new approaches are also important expected outcomes of self-reflection.

## VII. THE INTEGRATED REFLECTIVE PRACTITIONER

Integrating the professional and personal self is crucial. For PG, reflective practice means,

having this internal conversation between yourself as a lawyer and yourself as a human being, and you move back and forth between those two and you really try to integrate those two things at all times, while at the same time ensuring that one doesn't totally overshadow the other.... it will show up in a number of different spheres ... in an evolving approach to practice, ... in mentorship and encouraging people.

PD understood the characteristics of an integrated reflective practitioner to include good listening skills, empathy, caring about people and their personal circumstances, and becoming a strategic thinker. Commenting on the counter-cultural approach of reflective practice in the law school context, he noted:

I think you have to have a capacity for self-doubt. You have to be sceptical of yourself and your own thinking. I think that law schools train people to be the opposite—to be overly self-confident ... I think the adversarial model of justice encourages you to take that kind of a headstrong approach. And I think that you have to work to be a reflective practitioner—you have to constantly be questioning your assumptions. Why are you doing what you are doing? Whether it's a wise move—the kind of reasoning behind it—I think that you have to be a strategic thinker.

PG preferred the term “integrated practitioner” to “reflective practitioner.” Similarly, PD liked the term “integrated reflective practitioner”; he wanted reflective practice to be more comprehensive and inclusive than the definition ascribed to Schön.<sup>71</sup> PD cautioned against a definition that did not include critical and self-reflection—a reflective practice focused only on the technical aspects of being a legal professional because “not having more can make you a horrible lawyer, in the sense that you can be an instrument of great injustice.” However, he felt that the all-inclusive definition was aspirational: it would require a Herculean legal practitioner to undertake all types of reflection simultaneously.

The need to integrate the different forms of reflection was an insight that emerged from the professors' interviews and my attempts to synthesize the various diverse approaches to

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<sup>71</sup> Schön (1983), *supra* note 6.

reflective practice that I discovered in the literature review. Explicitly naming integration as a desired aspect of reflective practice provides a way to reconcile all the competing and sometimes conflicting views of what reflective practice entails. Emphasizing integration recognizes that reflective practice is actually a developmental path to a higher level of professionalism. It is clear that developing the capacity to integrate reflection supports the learning journey to professional competence—helping the aspiring legal professional to move from novice to expert. Integrated reflective practitioners would be committed to making changes to their practice based on what is learned through all three types of reflection. Reflective practice then becomes “a way of being, an orientation,”<sup>72</sup> supporting a lifelong journey of learning, professional growth, and commitment to action.

## VIII. REFLECTING IN COMMUNITY

PE believes reflective practice is a serious and sophisticated undertaking, and reflections must be shared with other people and opened up to scrutiny in a spirit of inquiry so that it can be considered rigorous. In PE’s view—a view shared by Boud et al—one must be able to reflect in community.<sup>73</sup> Furthermore, reflection must be disciplined (PH), systematic (PG), and personally challenging to be considered true reflection (PE, PH).

## IX. OTHER IMPORTANT IDEAS ABOUT REFLECTIVE PRACTICE

PG noted that the nature and type of reflection changes over time:

What a reflective practitioner is at Year 1 is different than at Year 20 ... I’m over 20 years now as a practitioner so it is starting to show up in my conversations with law students, with junior lawyers, with peers and in those mentoring relationships and discussions back and forth about why it is important, why what we do is important and how you continue to have meaning from what you do.

For instance, PG noted that fear and adrenaline hamper the ability of the inexperienced lawyer to practice effectively. To think clearly, being able to step back from your body’s physical and emotional reactions are critical, and this requires a form of reflective practice. As noted earlier, anticipatory reflection—reflection prior to an event—is also crucial. Even with increasing skill and experience, presenting problems can become more complex and tricky, so reflection must be systematic; bringing a “beginner’s mind” is essential.

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<sup>72</sup> VL Chapman & BS Anderson, “Reflective Practice,” in LM English, ed, *International Encyclopedia of Adult Education* (New York: Palgrave MacMillan, 2005) at 545.

<sup>73</sup> David Boud, Rosemary Keogh & David Walker, eds, *Reflection: Turning experience into learning* (New York: Kogan Page Ltd., 1985); and Anne Brockbank & Ian McGill, *Facilitating Reflective Learning in Higher Education* (Buckingham, England: Society for Research into Higher Education & Open University Press, 1998).

## X. THE USEFULNESS OF THE EMERGING WORKING CONCEPTUALIZATION

PA felt that not only would the working conceptualization help to generate a conversation, it would also encourage us to think about the type of reflection we are using and to consider what value or appropriateness that particular type of reflection might hold for students' professional development. Two professors wanted a shorter definition. Conversely, PB said it was "complete—it's certainly very articulate and well-expressed," while PD felt it was "accessible" and "short, concise, and really gave me ... a clear sense of what you have in mind when you talk about reflective practice." PH wanted customized definitions for learners, legal practitioners, and educators.

## XI. USING A SYMBOL OR METAPHOR TO CAPTURE REFLECTIVE PRACTICE

Discussing what symbol or metaphor might most succinctly capture the emerging conceptualization of reflective practice proved fruitful. Although most participants appreciated how the Venn diagram captured the complex concept, PC expressed concern that not all types of reflection necessarily intersect as they do in the Venn diagram. In our ensuing discussion, I observed that this would not necessarily be inconsistent with the diagram—the practitioner might initially be reflecting in three discrete ways without integration occurring. In other words, the three circles in the Venn diagram may not intersect at all. However, if the different types of reflection do not begin to integrate, it may become problematic, because an inconsistency may develop between what one says one believes and what one does, between one's "espoused theory" and "theory-in-use."<sup>74</sup> Conversely, when integration does occur, for example, a critique or a critical stance or cross-disciplinary knowledge can lead to a change in practice, or a change in one's values through self-reflection. Or reflecting on an experience gained through one's practice of the "law as lived" can lead to critical reflection on the role of law in society, particularly if the impact is oppressive. Self-reflection can lead to a changed self-concept, which may affect the type of role that the legal professional wants to play, leading the practitioner to consider developing stronger skills in mediation or conflict resolution to improve his or her practice. Since the aim is to foster greater integration between the different aspects of reflection and the insights that result from that learning, the middle area created by the circles intersecting will continue to grow in size as the "disconnect" or gap between the professional's "espoused

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<sup>74</sup> Schön and his colleague Argyris had much to say about the importance of being able to distinguish between one's "theory-in-use" (what you do) and one's "espoused theory" (what you believe you do) to be able to engage in "double loop learning". Double-loop learning skills help to unpack the assumptions that determine what we actually do and to surface contradictions: Not being able to see the contradictions has serious implications for the effectiveness of our actions. Reflection is the skill we use to unpack these assumptions—helping to make tacit values and beliefs explicit, leading to professional and personal growth. This is actually a fundamentally important capacity of the reflective practitioner. Being able to do this is critical for developing personal and professional integrity and authenticity. C Argyris & D Schön, *Theory in Practice: Increasing professional effectiveness* (San Francisco: Jossey Bass, 1974) at 18-19.

theory” (what one believes—as surfaced or articulated by critical and/or self-reflection) and “theory-in-use” (what one does—as evidenced by practice) begins to narrow, leading to greater personal authenticity. As mentioned earlier, as a consensus about the conceptualization of the reflective practice began to coalesce in later interviews and informal discussions, it became clear that adding a spiralling motion to the Venn diagram would capture the importance of moving through each of the reflective components, synthesizing and continually deepening the quality and breadth of reflection, each aspect of reflection building on the other leading to integration.

PF and PG proposed alternative representations that were also useful. PF wanted to represent the different types of reflection in a pyramid shape—stacking one on top of the other, to capture that each type of reflection builds upon the other. PG preferred a metaphor of overlapping lenses:

If these were moveable, you could have them all line up on top of each other sort of like lenses over a light and I would have them in different colours and that might end up giving you white. Get all of the colours—which shines the most light—that would be ... my metaphor.

PG also thought that the images or symbols of hand, head, and heart could represent practical/technical reflection (skills), critical reflection (knowledge), and self-reflection (values), respectively.

## **XII. WHY IS IT A GOOD IDEA? SKILLS, COMPETENCIES, AND BENEFITS ARISING FROM REFLECTIVE PRACTICE**

While historically reflective practice had been linked to the development of professional expertise (the integration of theory and practice), the interviews suggested many more benefits to student learning, including understanding “how to learn,” fostering greater self-directed and life-long learning,<sup>75</sup> supporting experiential learning, nurturing transformative learning,<sup>76</sup> developing ethical awareness and capacity, reducing law student stress and anxiety, and enhancing cultural competency. They also pointed to the potential role of reflective practice in improving a host of skills: communication and interpersonal (including social and emotional intelligence); problem-solving, resiliency and capacity to deal with change, including in forms of legal practice and arising from the impact of technology; and leadership. Greater self-awareness and honesty, enhanced intuition, and healthier and happier students were also identified. It was thought that law faculty who are reflective practitioners were more likely to become better teachers. As discussed in more detail below, these identified benefits respond significantly to the imperatives for curriculum reform and enhancement and the challenges facing the profession described earlier. PB anticipates immeasurable improvements to the curriculum:

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<sup>75</sup> Understanding one’s own thinking and problem-solving process, known as metacognition, is understood to be another benefit way of helping students learn, particularly in learning from experience. This is also related to students become better adult learners. J Raelin, *Work-based learning: Building knowledge and action in the workplace* (New Jersey: Jossey-Bass, 2008)

<sup>76</sup> See definition of transformative learning, *supra* note 65.

It improves the curriculum by delivering a better product, a more thoughtful, reflective student, a stronger leader, a more well-balanced student, a student that has the capacity to empathize and has the capacity to respect others and engage with others and are curious about others, their problem, and what their solution might look like. These are the results ... It promises a better education, a more mindful and reflective education, a more socially-engaged education, a more outward-looking education ... it promises all of them.

PC noted that encouraging reflective practice could have a dramatic effect on the practice of law, for example, because “neutral partisanship” or the “hired gun” approach would have to be questioned which would challenge what has been understood as the predominant ethos of the profession to date. “A model of reflective practice is not compatible with a model of purely neutral partisanship ... because the reflective practitioner, I think, inevitably must see that she herself, her values, her emotions, et cetera, shape what she thinks about legal problems and solutions.” PD sees reflective practice as an antidote to the focus on doctrinal legal analysis and the emphasis on teaching students to ‘think like a lawyer’ that is so prevalent in first year:

And that’s why ... incorporating it and making it a pervasive part of legal education is important because you are still you and you come to the table with all of those values ... the reflective practitioner knows that but if the message that you get from the law school curriculum is forget what you thought and felt before, the only thing that matters is this methodology that we are teaching you, that can be pretty disheartening.

The professors also saw benefits beyond the individual, leading to an improvement in the reputation of a law school that explicitly adopts and fosters this model, to having a positive impact on the profession, and faculty becoming better teachers as they self-identify as reflective practitioners. PA and PB felt that there was nothing at law school that would not benefit from increased reflection. For instance, PA noted that communication skills, developing a theory of the case, and every other skill that a student might require would be improved by reflective practice. PB observed that although earlier in his teaching career he might have believed that only certain student competencies would be improved, now his opinion of what could improve continues to grow as each year passes and he now feels the benefits are unlimited:

From negotiation, to litigation, to appellate work, I think today that the contribution of reflective practice or the reflective practitioner’s approach is far bigger. It includes the way in which you learn contracts or property or torts, or the way in which you think about ethical issues or personal and professional responsibility issues. All of this is enhanced by reflective practice ... I can see nothing that would not be enhanced by this.

A reflective practitioner is able to more readily make explicit knowledge that is only held tacitly which means that we can manage and share our knowledge with each other more efficiently and create new knowledge more effectively.<sup>77</sup> Furthermore, as reflective practitioners

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<sup>77</sup> The burgeoning field of knowledge management theory and practice provides ample justification for the benefits of reflective practice. The focus here is on making tacit knowledge explicit, increasing the capacity to share

within our respective workplaces, we can foster a stronger organizational learning culture.<sup>78</sup> Reflective practice helps create a space individually and collectively for enhancing our learning, increasing our understanding, questioning our assumptions, transforming our perspectives, and motivating us to take action. It has been my experience that practitioners who are reflective are more likely to engage in what has been described as “generative dialogue”<sup>79</sup> or “presencing”<sup>80</sup> in preference to the advocacy style of debate that has come to characterize the legal profession. Generative dialogue has the potential to bring into being new futures and informs the theory behind social innovation lab approaches, such as the Hague Institute for the Internationalization of Law (Hiil), that are focusing on justice system innovation.<sup>81</sup> Being able to engage in this more productive level of discourse makes it easier to collaborate and to envision new possibilities and opportunities,<sup>82</sup> to engage in alternative dispute resolution or conflict transformation, and to work across disciplines.<sup>83</sup>

### XIII. A RE-WORKED CONCEPTUALIZATION OF REFLECTIVE PRACTICE

The many insights about reflective practice from the interviews suggest a reworking of the conceptualization of reflective practice for law that can be distilled into six elements. Firstly, the reflective legal practitioner learns in action, constantly improving his or her technical competence through reflection on experience and learning from his or her practice (which includes skill, technique, and expertise). Secondly, the reflective practitioner has the capacity, knowledge and desire for critical reflection (which includes critiquing forms of knowledge and questioning what we believe we know, and unpacking our assumptions), leading to the creation of new professional knowledge. This includes the critiquing of legal theory or case law, any form

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knowledge, and creating new knowledge when learning from experience. See *e.g.* G Rusanow, *Knowledge Management and the Smarter Lawyer* (New York: ALM Publishing, 2003), J Raelin & D Coghlan, “Developing Managers as Learners and Researchers: Using action learning and action research” (2006) 30:5 *Journal of Management Education* 670. This conclusion is also supported by another action research project I undertook into how knowledge is shared and created in Ontario’s community legal clinics in an unpublished report.

<sup>78</sup> Authors such as Raelin, *supra* note 75 explore the importance of reflective practice to organizational learning.

<sup>79</sup> Generative dialogue is a more elevated form of dialogue that allows new and unexpected ideas or solutions to emerge and arises from more authentic listening and reflective experience—a holding of the space. A Kahane, *Solving Tough Problems: An open way of taking, listening and creating new realities* (San Francisco: Berrett-Koehler, 2004) at 92.

<sup>80</sup> Presencing is described as “a state each of us can experience when we open not just our minds but our hearts and our wills—our impetus to act—in order to deal with what is emerging all around us as new realities.” in CO Scharmer, *Theory U: Leading from the future as it emerges* (Cambridge, MA: Society for Organizational Learning, 2007) at 29.

<sup>81</sup> For more information refer to <http://www.hiil.org/>

<sup>82</sup> Literature from the field of organizational development is particularly instructive. Kahane, *supra* note 76, and Scharmer, *supra* note 80, have explored the usefulness of the four fields of conversation that range on a spectrum from downloading and debate at one end to reflective and generative dialogue at the other end.

<sup>83</sup> I recently participated in the development of an inter-professional course for undergraduate and graduate students being offered at Queen’s University that was designed to improve the working relationships between rural professionals in medicine, nursing, teaching, law, and theology. The assumptions, based on experience and beliefs, about the roles and attitudes of lawyers surprised me. As a profession, we have a long way to travel to be seen as capable or working as equal partners with colleagues from other disciplines.

of critical thinking including ideological critique, evaluation of existing practice, unpacking assumptions and mental models, exploring alternative conceptions of the role of law or enlarged conceptions of “access to justice,” using critical theoretical frameworks including feminist or, critical race theory, cross-disciplinary lenses, amongst others. Thirdly, and importantly for the legal profession where this has not been encouraged, a reflective practitioner engages in self-reflection to build a capacity for self-awareness and self-knowledge to strengthen his or her professionalism. This implies a personal vision, a philosophy of practice, personal and professional integration, growing emotional intelligence, ongoing ethical and moral development, self-awareness, self-direction, self-regulation, and being able to articulate one’s core values. Fourthly, a reflective legal practitioner integrates all three aspects of reflection through a continuous spiralling from one aspect to another, developing additional insight, knowledge and wisdom, enhancing professional competence, and fostering authenticity. Fifthly, he or she builds the capacity to reflect in community and collectively, to ensure both rigour (through challenging his or her insights, assumptions or beliefs) and to further deepen knowledge and create new understandings through dialogue. And, finally, a reflective legal practitioner does not just reflect but also takes appropriate action based on the momentum created by that reflection.

Responding to concerns raised about the complexity of the conceptualization, put most succinctly, we might simply say:

The integrated reflective practitioner is self-aware and critically reflects on practice and theory as a self-directed lifelong learner, reflects collectively and in community, and takes action to improve his or her practice. Reflective practice becomes a “way of being.”

## XIV. CONCLUSION

Although reflective practice could never be a panacea for all that ails the legal profession or the challenges that are being faced in legal education, it is an important emerging model for developing and maintaining professional expertise, capacity, and competence. Based on the literature I had reviewed, it offers a vibrant learning strategy, a “dynamic developmental process”<sup>84</sup> with a capacity-building approach that places responsibility both on the individual learner and the legal community for ongoing professional development, engagement, and action. To quote one of the law professors I interviewed, “I think that it’s something we are going to hear more about, and I think that law faculties that evolve to adopt these kinds of tools and methods will be better law faculties.”<sup>85</sup>

Introducing the concept of reflective practice as a core competency for legal professionals and supporting the development of reflective practice from the beginning of the law school experience has the potential to contribute significantly to curriculum reform efforts, including fostering the integration of knowledge, skills, and values, while supporting the effective and efficient development of professional expertise. The benefits of encouraging reflection have universal application in all areas of law and for all types of legal practice. In my view, promoting

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<sup>84</sup> Gillie Bolton, *Reflective Practice: Writing & Professional Development*, 2d ed (Thousand Oaks, California: Sage, 2005) at 1.

<sup>85</sup> Interview of Professor B (8 June 2009) conducted by the author.



a reflective practice model also has the potential to reform and humanize legal education and the profession by fostering greater sensitivity to ethical and cultural competency issues, providing the opportunity to reframe law as a healing profession, and providing the tools to make the profession more responsive to the impact of globalization, technology, and changing societal expectations on the roles of lawyers. Furthermore, by supporting transformative learning when faced with injustice, disorienting and discomfoting situations and clients' lives, and the day-to-day reality of "law as lived," reflection can also serve as a tool to increase the legal profession's engagement in social justice and access to justice issues.<sup>86</sup>

During my fellowship, I learned there is a general consensus that the traditional curriculum of Canadian law schools has paid insufficient attention to helping students develop habits of reflection to help them learn, integrate theory and practice, build an informed and synthesized theory of professional practice, develop professional identity and expertise, and deepen awareness of social justice issues and commitment to access to justice as a matter of professional responsibility. Law faculties are seeking to engage law students in their learning in more dynamic ways. I came to understand that increasing faculty and student awareness of the important role reflection plays in helping adults to learn complex material and to develop professional identity and competence could help support changes to law school teaching practices in every area of the law and every type of potential future practice. The intention of the article was to ascertain what promise reflective practice might hold for improving legal education, and to generate new knowledge and theory about what reflective practice means in the context of the legal profession. The action research process helped me to develop a comprehensive and customizable conceptualization of reflective practice for legal professionals that continued to be modified as a result of the insights gleaned from the interviews with professors. The final conceptualization includes a stronger emphasis on the need for integration, on the need to reflect in community to ensure professional rigour, and on the importance of taking action on the insights and momentum gained from reflection.

Articulating a comprehensive and aspirational conceptualization that identifies and distinguishes the different types of reflection that are desired now provides a heuristic framework for designing and undertaking appropriate activities to develop 'reflexive muscles' and encourage in praxis—action informed by reflection. Creating an explicit vision for what we might seek to achieve will make it much easier to ensure we are taking steps in the right direction to realize this vision.<sup>87</sup>

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<sup>86</sup> Fran Quigley, "Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics" (1995) 2:1 *Clinical L Rev* 37 at 49.

<sup>87</sup> See footnote 11 to locate the mind map of methods discovered during the literature review. The interviews with professors have added to this as have subsequent discussions and investigations.