

INTEGRATED REFLECTIVE PRACTICE: A CRITICAL IMPERATIVE FOR ENHANCING LEGAL EDUCATION AND PROFESSIONALISM

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Twenty-first century legal professionals need a reflective legal education that emphasizes self-assessment and self-efficacy; supports life-long learning; and builds the capacity for innovative thinking and responding creatively and constructively to “wicked problems”. “Reflective practice”—a core competency in other professions—has the potential to enhance the education of legal professionals by developing these skills. Encouraging and modelling reflective practice is best started in law school. This article aims to facilitate a dialogue about how reflective practice might be integrated into the law school curriculum and provides conceptual frameworks to help envision how reflective practice might be operationalized. Examples of reflective methods to help develop it as a competency will also be given. Reflective practice, as a disciplined form of reflective inquiry, offers the potential to enhance law student learning and, more systematically, develop professional expertise. Amongst other imperatives for enhancing legal education, various national reports call for strategic, collective and aligned action to better prepare future legal professionals to respond to growing gaps in access to justice and predictions of a disruptive and challenging future for the legal profession. Thus, this article will set out how reflective practice can nurture a positive, dynamic professional identity, cultivate resiliency, and forge a stronger sense of legal professionalism, while also supporting students to become both “justice ready” and “practice ready”.

La formation des professionnels du droit au XXI^e siècle doit reposer sur une éducation dite « réflexive » qui met l'accent sur l'autoévaluation et l'efficacité personnelle, facilite l'apprentissage continu et renforce les idées novatrices et la résolution de « vilains problèmes », de façon créative et constructive. La « pratique réflexive »—une compétence essentielle dans d'autres disciplines—offre la possibilité d'enrichir la formation des juristes qui acquièrent cette aptitude. Or, il vaut mieux encourager et mettre en œuvre la pratique réflexive dès l'entrée à la faculté de droit. Le présent article a été rédigé en vue de faciliter le dialogue sur la façon d'incorporer la pratique réflexive au curriculum,

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et de proposer un cadre conceptuel de sa mise en œuvre. L'auteure fournit également des exemples de méthodes qui permettraient son acquisition à titre de compétence. La pratique réflexive, sous forme rigoureuse de recherche par la réflexion, favoriserait l'apprentissage des étudiants en droit et leur permettrait de développer une expertise sur le plan professionnel, de façon plus systématique. Parmi d'autres impératifs visant l'amélioration de la formation en droit, différents rapports de portée nationale exhortent d'adopter de mesures collectives stratégiques et concertées pour mieux préparer les futurs juristes à réagir aux lacunes croissantes en matière d'accès à la justice et, selon certaines prévisions, à l'avenir turbulent et incertain qui les attend. L'auteure expose, ainsi, les façons dont la pratique réflexive peut cultiver une identité professionnelle positive et dynamique, favoriser la résilience et raffermir le professionnalisme, tout en préparant les étudiants dès leur entrée sur le marché du travail au système de justice et à la pratique du droit.

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Introduction

To be prepared to face a myriad of interconnected and complex challenges, twenty-first century legal professionals need a reflective legal education that emphasizes self-assessment and self-efficacy, develops metacognition, supports and diversifies life-long learning, promotes innovative and critical thinking, strengthens legal professionalism, and builds a stronger aptitude for problem-solving and tackling “wicked problems”.¹ An increased capacity for individual, critical and collective reflection—beginning in law school—could help to ensure that the legal profession is better equipped to provide responsive leadership in the face of dire predictions of a future of unrelenting and disorienting change. In this article, I explore how the capacity of law students to engage in disciplined and varied domains of reflection—based on a working conceptualization for reflective practice, customized for law, that I set out below—might be cultivated as a proactive response to current and future challenges, and as a means to foster a legal reform culture to more effectively engage with complex and interdisciplinary problems. “Reflective practice” is a rich and nuanced term that captures the essential aspects of developing professional knowledge and behaviour and consists of a broad spectrum of potential strategies to improve and deepen professional learning, especially from experience. As I elaborate further in this article, an “integrated reflective practitioner” is a professional who integrates theory and practice, critically reflects on practice (what one does), and theory (what one knows), and what one believes as a self-directed life-long learner, and then takes action based on that reflection to improve their practice. This kind of professional recognizes the power of reflecting collectively, learning from others and from other disciplines, to enhance professional services,² increase professional knowledge, ensure rigour about one’s own

¹ The Canadian Bar Association characterizes the access to justice challenge as a “wicked problem” and provides a comprehensive definition of what constitutes a wicked problem. See Canadian Bar Association, [Reaching Equal Justice Report: An Invitation to Envision and Act](#) (Ottawa: Canadian Bar Association, 2013) at 124, online: <www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/CBA_equal_justice.pdf> [CBA, *Equal Justice*]. Importantly, “[t]ackling wicked problems requires a bold approach founded on a shared recognition and understanding that there are no quick fixes and simple solutions ... [C]ollaboration and coordination will be required” (at 125). “Holistic rather than partial or linear thinking”, flexible thinking, capacity to work across borders, disciplines and organizations, a “principle-based rather than a rule-based approach” and “iterative processes involving continuous learning” are required (*ibid* at 125). Judith Welch Wegner also framed the challenges of legal education as a wicked problem, noting that legal scholarship infrequently characterizes issues as “wicked problems”, and that resolving wicked problems is challenging for the profession. See Judith Welch Wegner, “Reframing Legal Education’s ‘Wicked Problems’” (2009) 61:4 *Rutgers L Rev* 867.

² The services offered are dependent on professional context and could include teaching, research, traditional law practice or other professional paths.

reflections, and generate new insights and interdisciplinary knowledge.³ An “integrated reflective practice” becomes a “way of being”, leading to phronesis or practical wisdom,⁴ and creates a space for examining ethical concerns, including interrogating our professional responsibility to take action on access to justice issues.

Legal educators⁵ are in a powerful position to prepare students to become more reflective learners—nurturing their capacity to become more self-directed, resilient, effective, efficient, creative and collaborative—which will support them in becoming more engaged and responsive legal professionals, committed to the public interest. Critical to this endeavour, for law, is creating a conceptualization of reflective practice unique to the legal profession and students’ learning, where the professional benefits of becoming “reflective practitioners”⁶ is made clear from the first day of law school. This will help ensure that students are empowered and motivated to reflect personally, professionally, and collectively on their learning (knowledge, skills, and values) and their practice, and to take action based on insights derived from reflection.⁷

³ This is a slightly modified version of the shortened description of a reflective practitioner in Michele Leering, “Conceptualizing Reflective Practice for Legal Professionals” (2014) 23 *JL & Soc Pol’y* 82 [Leering, “Reflective Practice”]. I ascribe the “way of being” phrase to Valerie-Lee Chapman & Barbara Shaw Anderson, “Reflective Practice” in Leona M English, ed, *International Encyclopedia of Adult Education* (New York: Palgrave Macmillan, 2005) 541 at 545.

⁴ Phronesis is a term attributed to Aristotle and captures the idea of practical wisdom. For a discussion of practical wisdom in the context of legal education, including an exploration of “professional identity” and “professionalism”, see Daisy Hurst Floyd, “Practical Wisdom: Reimagining Legal Education” (2012) 10:1 *U St Thomas LJ* 195 at 201–02 [Floyd]. A leading Canadian scholar on reflective practice also links reflective practice to the development of phronesis: see Elizabeth Kinsella, “The Art of Reflective Practice in Health and Social Care: Reflections on the Legacy of Donald Schön” (2010) 11:4 *Reflective Practice: Intl & Multidisciplinary Perspectives* 565.

⁵ The term “legal educators” is used as an inclusive term to capture all the teaching professionals employed by law schools including professors; assistant, associate, and adjunct professors; clinical legal educators, teaching librarians, lecturers and instructors.

⁶ This is a term attributed to Donald Schön and his seminal work on reflective practice. Its meaning is more fully explored beginning on page 51 of this article. See Donald A Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983) [Schön, *Reflective Practitioner*]; Donald A Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) at 31 [Schön, *Educating*].

⁷ For a more in-depth exploration of other imperatives for introducing reflective practice, see Leering, “Reflective Practice”, *supra* note 3. These include the call for new approaches to legal education including the need to integrate knowledge, skills and values; to develop legal skill; to humanize legal education; to improve legal service delivery; to re-examine the current paradigm of lawyering; and, to address the growing mental health challenges faced by law students and the legal profession.

Recent national reports have called for enhancements to legal education by increasing experiential learning, and a crucial component of experiential learning is the ability to reflect and learn from experience.⁸ Experiential learning opportunities can help students envision a broader range of legal professional roles and approaches to meet the public's needs, expose students to the realities of the severe and disruptive impact that unresolved legal problems have on people's lives, and engage law students more meaningfully in access to justice issues.⁹ The national Action Committee on Access to Justice in Civil & Family Matters also called for a shift in professional consciousness to a new way of being and thinking, so as to generate a legal reform culture intent on meeting growing justice gaps and putting the needs of the public first.¹⁰ It is incumbent on legal professionals to show leadership by contributing meaningfully to innovation in our profession and the justice sector.

A strong reflective capacity can provoke innovative thinking and inspire change through critical and collective reflection—on whether the status quo is acceptable, on what works and on what is possible—which can in turn generate new insights and possibilities, challenge assumptions and mental models, and interrogate current practices.¹¹ Developing law students' capacity to critically and collectively reflect could help the profession to respond more constructively and creatively to the evolving crises in access to justice, and a myriad of other challenges, by fostering a stronger legal reform culture.¹² However, engaging in reflective inquiry can be challenging

⁸ One learns from experience through reflection, a truism first expressed by John Dewey. See John Dewey, *How We Think: A Restatement of the Relations of Reflective Thinking to the Educative Process*, 2nd ed (Boston: DC Heath & Company, 1933) [Dewey, *How We Think*].

⁹ See e.g. Action Committee on Access to Justice in Civil and Family Matters, [*Access to Civil & Family Justice: A Roadmap for Change*](#) (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013), online: <flsc.ca/wp-content/uploads/2014/10/ACCESSActionCommFinalReport2013.pdf> [Action Committee, *Roadmap for Change*]. See also CBA, *Equal Justice*, *supra* note 1; Noel Semple, "The Cost of Seeking Justice in Canada" (2016) 93:3 Can Bar Rev 639.

¹⁰ *Roadmap for Change*, *supra* note 9 at iii.

¹¹ For a more extensive discussion about how reflective practice could contribute to innovation in the justice sector see Michele Leering, "Enhancing the Legal Profession's Capacity for Innovation on Access to Justice Issues: The Promise of Reflective Practice and Action Research" (2017) Windsor YB Access Just [forthcoming, on file with author] [Leering, "Access to Justice"].

¹² Some of the challenges were outlined recently by Dean Lorne Sossin of Osgoode Hall Law School: "Legal education is in the midst of transformation because of disruptions affecting the justice system and the delivery of legal services – including digital and tech transformation; globalization; rising tuition coupled with rising student debt; and critical counter-narratives challenging the norms underlying the curriculum (e.g. TWAIL [Third World Approaches to International Law], Indigenous legal education, interdisciplinary and

for a legal culture steeped in an adversarial tradition that favours polarized debate over engaging in reflective dialogue. The capacity for future legal professionals to reflect collectively to generate new approaches has become crucially important. By supporting law students to become more explicitly and diversely reflective as early as possible, their capacity and commitment to reflect will be strengthened—helping to produce the shift in professional consciousness that is so sorely needed. Furthermore, valuing reflective practice could eventually provide the impetus for a paradigm shift in how we understand legal professionalism and professional competence.¹³

As a profession, we have often been stymied and divided in our desire to improve legal education and to better prepare legal professionals for practice.¹⁴ Could helping law students to become reflective practitioners—who thereby take greater responsibility for charting their own professional learning and ensuring necessary professional knowledge for their own “practice” aspirations—provide an opportunity to dissipate rising tensions between law schools and the Law Societies? The need to re-imagine legal

socio-legal approaches, etc.)” Lorne Sossin, “[Law School as Social Innovation](#)” (11 July 2016), *Dean Sossin’s Blog*, online: <deansblog.osgoode.yorku.ca/2016/07/law-schools-as-social-innovation/> [Sossin]. See note 17, *below*, for the challenges identified by the Canadian Bar Association.

¹³ Many students must be “taught” to become more reflective as this capacity does not come naturally to every student. An Australian guide for legal educators recommends reflective practice skills should be promoted iteratively across the law school and embedded in the curriculum. See Judith McNamara, Tina Cockburn & Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (Strawberry Hills, NSW: Australian Learning & Teaching Council, 2013), online: <www.lawteachnetwork.org/resources/gpg-reflection.pdf> [McNamara, Cockburn & Campbell, *Good Practice*]. In Australia, reflective practice is understood as critical to the formation of a positive professional identity and robust legal professionalism. See Rachael Field, James Duffy & Anna Huggins, eds, *Lawyering and Positive Professional Identities* (Chatswood, NSW: LexisNexis Butterworths, 2014) [Field, Duffy & Huggins, *Professional Identities*]. For a thoughtful exposition of professionalism and the value of practical wisdom as a legal professional attribute gained through reflection see Floyd, *supra* note 4 at 201–02.

¹⁴ There has been ongoing tension between the universities and the provincial law societies about the purpose of legal education, evidenced by the controversy over the competency standards now required by the Federation of Law Societies. See [Federation of Law Societies of Canada, National Requirement](#) (November 2015), online: <<http://docs.flsc.ca/National-Requirement-ENG.pdf>>. Although exploring these tensions is a complex topic beyond this article’s scope, it is instructive to read the 2007 study that recommended improvements to legal education. See William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Stanford: Carnegie Foundation for the Advancement of Teaching, 2007) [Carnegie Report]. See also Annie Rochette, “[Teaching and Learning in Canadian Legal Education: An Empirical Exploration](#)” (Doctorate of Civil Law, McGill University, Faculty of Law, 2011) [unpublished], online: <http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1494233713870~992&usePid1=true&usePid2=true> [Rochette, “Teaching & Learning”] (a recommendation for reform in legal education).

education as a more vibrant, engaging, relevant and rigorous learning experience has become a pedagogical imperative for law schools and legal educators. Encouraging reflective practice, emphasizing the importance of student self-direction, may also help counter perceived “weaknesses” in legal education pedagogy and curriculum by strengthening a student’s capacity for, and commitment to, professional learning. The Carnegie Foundation’s 2007 report, *Educating Lawyers: Preparation for the Practice of Law* (Carnegie Report), intensified the impetus for reforming legal education.¹⁵ Existing legal education pedagogy—although lauded for the success of its “cognitive apprenticeship” that trains law students to “think like lawyers”—is said to have failed in other important respects, notably the integration of theory and practice to develop professional competence. This is described in the Carnegie Report as the “apprenticeship for practice”, but in effect, it is part of a much larger project to produce actionable, authentic and rigorous professional knowledge, as well as the “ethical-social apprenticeship” of professional identity and purpose.¹⁶ Cultivating reflective practice will enhance students’ learning from—and integration of—these two “new” apprenticeships.

The Canadian Bar Association (CBA) also recently reviewed the multiplicity of challenges in a report, warning of “unrelenting, dynamic and transformative change.”¹⁷ In their view, for professional services to remain “relevant” and “viable” the profession must transform, become more innovative, and reimagine and reinvent legal services.¹⁸ Could a shared interest in encouraging reflective practice provide the impetus for law schools and law societies to work together more effectively to prepare

¹⁵ *Supra* note 14.

¹⁶ It is beyond the scope and intent of this article to discuss the critique in this and other reports about legal education. However, the recommendations in the Carnegie Report, *supra* note 14, were based on empirical findings from case studies undertaken in Canadian and American law schools. The report posited a theoretical framework for structuring and aligning professional legal education that included three apprenticeships: a cognitive/intellectual apprenticeship, an apprenticeship for practice, and an apprenticeship of identity & purpose (ethical-social) that would comprise a more holistic professional education. For a more recent critique of legal education, see Robin L. West, *Teaching Law: Justice, Politics, and the Demands of Professionalism* (New York: Cambridge University Press, 2014) [West].

¹⁷ [Futures: Transforming the Delivery of Legal Services in Canada](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf) (Ottawa: CBA, 2014) at 10, online: <www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf> [CBA, *Futures Report*]. The CBA’s Legal Futures Initiative was a multi-year project involved hundreds of volunteers, and CBA staff members, researchers and consultants. The purpose of this complex joint venture was to “help the Canadian legal profession remain relevant, viable and confident in the face of change” (*ibid* at 3). Four major drivers of change are identified as “globalization (including liberalization of markets, deregulation, disaggregation), technology, changing client expectations, and a growing lack of access to legal services” (*ibid* at 24).

¹⁸ *Ibid* at 3.

and support legal professionals to become more “justice ready”?¹⁹ Recently the Law Society of Alberta and the Nova Scotia Barristers’ Society endorsed reflective practice as the preferred method for satisfying continuing professional development requirements.²⁰ This development provides a creative opportunity to use “pedagogy of reflection”²¹ to align the education of future legal professionals that would begin systematically in law school. Could this help better prepare law students to take a “reflective approach” (as described by Yanneck Ostaficzuk of the Barreau du Quebec in this issue)²² to their responsibility for life-long learning and practicing in the public interest?

Considering the many imperatives for strengthening the reflective capacity of legal professionals, this article aims to present reflective practice as an important innovation in legal education that deserves further exploration, elucidation and experimentation. It offers benefits both to legal educators intent on enhancing legal education pedagogy and curriculum through their own reflective practice,²³ and to assist law students to become more effective and reflective life-long learners, while fostering their professional formation.²⁴ Some of the benefits of this approach include:

¹⁹ I use the phrase “justice ready” to capture the concern of many legal educators that law students should receive a liberal arts education that prepares them to be critically reflective about the law. See Jane H Aiken, “The Clinical Mission of Justice Readiness” (2012) 32:2 Boston College JL & Soc Just 231 at 231 [Aiken, “Justice Readiness”]: “Justice ready graduates are able to recognize injustice and appropriately evaluate the consequences of their actions in a way that mere practice readiness does not teach.” For an extended and thoughtful discussion of the justice mission of law schools see West, *supra* note 16.

²⁰ [Law Society of Alberta, *General Information*](http://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-reflective-practice/) (2010), online: <www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-reflective-practice/>; [Nova Scotia Barristers’ Society, *Assessing your CPD Plan*](http://nsbs.org/assessing-your-cpd-plan) (2014), online: <http://nsbs.org/assessing-your-cpd-plan>.

²¹ This phrase is gratefully borrowed from Tom Russell, “One Teacher Educator’s Career-Long Development of a Pedagogy of Reflection” (2014) 22 Intl Teacher Education: Promising Pedagogies (Part A) *Advances in Research on Teaching* 55 [Russell, “Pedagogy of Reflection”].

²² Yanneck Ostaficzuk & Suzanne Gagnon, “Developing Professional Excellence Through Competency Development” (2017) 95:1 *Can Bar Rev* [forthcoming, on file with author].

²³ For a discussion of the importance of reflective practice for legal educators see Rochette, “Teaching & Learning,” *supra* note 14. See also Greg Light, Roy Cox & Susanna Calkins, *Learning and Teaching in Higher Education: The Reflective Professional*, 2nd ed (Thousand Oaks, Cal: SAGE, 2009) [Light, Cox & Calkins].

²⁴ At least two law schools have already committed to moving in this direction. See Osgoode Hall Law School Curriculum Reform Working Group, *Report on the Reform of the Upper Year JD Curriculum* (February 2011) [on file with author]; Mary J Shariff et al, [Academic Innovation Committee on the Robson Hall JD Curriculum: Consultation Paper](http://law.robsonhall.com/wp-content/uploads/2015/09/Academic_Innovation_Committee_on_the_Robson_Hall_JD_Curriculum_Consultation_Paper) (March 2014) at 58, online: <law.robsonhall.com/wp-content/uploads/2015/09/Academic_

- forming the habit of self-initiated, critical assessment of one's knowledge, skills and values;
- understanding how to turn insights from reflection and assessment into concrete, actionable tasks to improve one's reflective learning and professional practice;
- being able to manage and grow from shifts in values or perceptions brought on by disorienting or disruptive learning experiences or information;
- valuing empirical research—as examples, about legal education pedagogy, people's legal needs and the effectiveness of particular legal services approaches—and using research findings to improve all forms of legal professional practice;
- centring the lived experiences of people impacted by the law, thus making the study of law and social justice efforts more tangible and real to students and practitioners;
- deepening one's understanding of what constitutes actionable professional knowledge beyond black letter law, and how to bring insights from critical legal theory to professional practice;
- challenging the assumptions and preconceived notions inherent in the law instead of taking them as given facts;
- combatting isolation and alienation experienced in study and practice that can lead to mental health concerns or unhealthy coping mechanisms (ex. depression, anxiety, substance abuse); and
- enhancing one's understanding of what constitutes ethical legal professionalism.

Reflective practice is a sophisticated professional learning concept that is not yet well understood in legal education in Canada, although it is well accepted

Innovation_Committee_Report_12_March_2014.pdf> [Shariff et al]. It is of note that almost all Canadian clinical legal education programs encourage some form of reflective practice and have done so for many years using learning journals, case rounds, and self-directed activities. See Sarah Buhler, Sarah Marsden & Gemma Smyth, *Clinical Law: Practice, Theory and Social Justice Advocacy* at 42–47 (Toronto: Emond Montgomery, 2016) [Buhler, Marsden & Smyth, *Clinical Law*].

in other professional disciplines.²⁵ Each profession has conceptualized reflective practice slightly differently and implemented it in different ways: this presents an intriguing and provocative challenge for understanding how it can be manifested in legal education.²⁶ In the remainder of this article, I will briefly review some of the historical background of the term “reflective practice” to situate it as an important and evolving concept for understanding how students develop professional expertise and learn to become professionals. After, I will draw from the findings of a preliminary research study at a Canadian law school²⁷ to set out an aspirational, working definition for reflective practice in law, including a rationale for why each type of reflection is important. This working definition provides a conceptual and pedagogical framework for introducing reflective activities to law students that could also help increase “institutional intentionality”,²⁸ and I

²⁵ Although reflective practice is often predicated on experiential learning opportunities, it is implemented much more broadly now. For examples of reflective practice in other professions, see Nona Lyons, ed, *Handbook of Reflection and Reflective Inquiry: Mapping a Way of Knowing for Professional Reflective Inquiry* (New York: Springer, 2010) [Lyons]; David Boud & David Walker, “Promoting Reflection in Professional Courses: The Challenge of Context” (1998) 23:2 *Studies in Higher Education* 191; Elizabeth Anne Kinsella, “Reflections on Reflective Practice” (2001) 68:3 *Can J Occupational Therapy* 195 [Kinsella, “Reflections On”]; Jennifer A Moon, *Reflection in Learning and Professional Development: Theory & Practice* (Sterling, Va: Kogan Page, 1999) [Moon, *Professional Development*]; Schön, *Reflective Practitioner*, *supra* note 6; Schön, *Educating*, *supra* note 6 at 31; Donald A Schön, *The Reflective Turn: Case Studies in and on Educational Practice* (New York: Teachers College Press, 1991) [Schön, *Reflective Turn*]; Karen Mann, Jill Gordon & Anna MacLeod, “Reflection and Reflective Practice in Health Professions Education: A Systematic Review” (2009) 14:4 *Advances in Health Science Education* 595 [Mann, Gordon & MacLeod].

²⁶ Note that most Canadian clinical legal educators have introduced the tenets of reflective practice to their students as experiential education offers a robust platform for learning through reflection on experience. See e.g. Buhler, Marsden & Smyth, *Clinical Law*, *supra* note 24.

²⁷ I described the imperatives for my action research project begun at a Canadian law school in 2009 in Leering, “Reflective Practice”, *supra* note 3. The research methodology included a literature review about the importance of reflection to learning. It looked at reflective practice conceptions across the professional disciplines, and also in adult and higher education where reflective practice has been accepted as a core competency for decades, and in Australian, British, and American legal education. Methods to encourage reflection were also reviewed. I used a qualitative empirical research methodology: my data collection methods included semi-structured interviews with eight law professors (purposive sampling), documentary analysis and observation. My various roles informed the conceptualization, such as my practice experience as an Executive Director/Lawyer in a community-based non-profit legal clinic, as well as informal discussions with educators from law and other disciplines, workshops, and my experience in a master’s degree in adult education that was designed using reflective practice principles.

²⁸ Having a common understanding and vision of what we are trying to achieve supports “institutional intentionality” and “instructional alignment”, which are approaches to improving education recommended by the Carnegie Report, *supra* note 14.

will highlight the beneficial impact of legal educators who engage in and model their own reflective practice. I will then provide examples of methods that could help to operationalize reflective practice and support students to iteratively develop reflective proficiency in each of the five “domains” of reflection. Using another lens to illustrate how reflective practice might systematically be implemented at law school, I will then set out five phases that roughly capture the stages of students’ journey through professional formation and provide examples of reflective activities that could enrich the first three phases—which are contemporaneous with law school—as students begin to move along the professional learning continuum, from novice to expert.

Brief Overview of the Historical Development of Reflective Practice

I was first introduced to the transformative potential that reflective practice offers for professional learning through research into theories of adult, management, professional and higher education and organizational learning.²⁹ As I learned about how reflective practice is valued and enhances professional development in other disciplines—supporting deep, rather than surface, learning³⁰ and learning from experience; developing professional expertise through integrating theory and practice; and nurturing an ethical and positive professional identity³¹—I became intrigued by what this rich learning concept could offer to legal education.³² In other disciplines, I discovered a substantial body of literature describing and defining reflective

²⁹ I began graduate studies in education to better understand how to foster new approaches to complex justice challenges faced in my work with vulnerable clients and communities and how to encourage innovative and creative thinking in the legal profession.

³⁰ Deep learning, or deeper approaches to learning, are a more effective learning strategy than surface (or superficial or strategic) learning, and deep learning does not happen without reflection, see Anne Brockbank & Ian McGill, *Facilitating Reflective Learning in Higher Education* (Buckingham, UK: Society for Research into Higher Education, 1998) [Brockbank & McGill]; Moon, *Professional Development*, *supra* note 25; Paul Ramsden, *Learning to Teach in Higher Education*, 2nd ed. (New York: RoutledgeFalmer, 2003). For a discussion of deep versus surface learning specific to law, see Karen Hinett, *Developing Reflective Practice in Legal Education*, ed by Tracey Varnava (Warwick: UK Centre for Legal Education, 2002), online: <<http://law2.wlu.edu/deptimages/Externship%20Program/developingreflectivepractice.pdf>> [Hinett].

³¹ Floyd, *supra* note 4 at 201–02 provides a useful definition: “Professional identity refers to the way that a lawyer integrates the intellectual, practical, and ethical aspects of being a lawyer and also integrates personal and professional values. A lawyer with an ethical professional identity is able to exercise practical wisdom and to live a life of satisfaction and well-being.” See also Field, Duffy & Huggins, *Professional Identities*, *supra* note 13.

³² My research identified even more benefits to reflective practice: see Leering, “Reflective Practice”, *supra* note 3 at 102–03.

practice and outlining a plethora of methods of how to encourage it.³³ Beginning in university, reflective practice is now an essential component of the education of doctors, educators, nurses, occupational therapists, pharmacists, engineers, and many other professionals. It is understood as a harbinger of professional competence, and is often an ongoing requirement of professional certification.

Reflective practice is a challenging concept to explain simply; understanding what it is and what it requires is an iterative process.³⁴ Reflective practice is akin to a “threshold concept” for understanding professional learning and formation: it opens up new “conceptual space” and transforms thinking about what makes professional learning happen (or not), which makes an enriched discourse about the development of professionalism possible.³⁵ Reflective practice goes well beyond *ad hoc* efforts to be reflective or foster a reflective nature: it requires sustained and rigorous attention to qualify as a professional learning strategy. How a professional engages in reflective practice changes as professional expertise develops, and the methods that support reflection effectively are unique to each individual, but the need to engage in reflective practice to support professional learning is life-long.

What is Reflective Practice?

Sometimes referred to as “reflective inquiry”³⁶ or “reflective professionalism,”³⁷ reflective practice has become a complex, nuanced, and sometimes contested “term of art” in theories of professional education: it functions as a heuristic framework or roadmap for understanding the process of how professional expertise is developed and professional formation evolves. It starts from the

³³ See Michele Leering, “Literature Review of Reflection and Reflective Practice across the Professions” (2017) [unpublished, on file with author] [Leering, “Literature Review”]. See e.g. Lyons, *supra* note 25; Schön, *Reflective Practitioner*, *supra* note 6; David Boud, Rosemary Keogh & David Walker, eds, *Reflection: Turning Experience into Learning* (New York: Kogan Page, 1985) at 141 [Boud, Keogh & Walker]; Mann, Gordon & MacLeod, *supra* note 25.

³⁴ Helpful theorists in other professions include Jennifer A Moon, *Learning Journals: A Handbook for Reflective Practice and Reflective Development*, 2nd ed (New York: RoutledgeFalmer, 2006) [Moon, *Learning Journals*]; Moon, *Professional Development*, *supra* note 25; Boud, Keogh & Walker, *supra* note 33. For seminal pieces of scholarship on reflective practice in law, see Julian Webb, “Where the Action is: Developing Artistry in Legal Education” (1995) 2:2/3 *Intl J Leg Prof* 187 [Webb, “Artistry”]; Hinett, *supra* note 30.

³⁵ Jan HF Meyer & Ray Land, “Threshold Concepts and Troublesome Knowledge (2): Epistemological Considerations and a Conceptual Framework for Teaching and Learning” (2005) 49:3 *Higher Education* 373 at 375; Rebecca Huxley-Binns, “Tripping Over Thresholds: A Reflection on Legal Andragogy” (2016) 50:1 *L Teacher* 1.

³⁶ Lyons, *supra* note 25.

³⁷ Light, Cox & Calkins, *supra* note 23.

premise that the act of reflection integrates technical knowledge or theory (what we need to “know”) with practice or skill (what we have to “do”) to develop professional competence. Reflective practice entered the learning lexicon in 1983 when Donald Schön published his seminal book, *The Reflective Practitioner: How Professionals Think in Action*.³⁸ However, the theoretical relationship between reflection and learning was posited much earlier by American philosopher and educationalist John Dewey’s influential work on education and democracy, and reflective thinking and inquiry.³⁹

In Schön’s view, professional schools conveyed knowledge based on a model of “technical rationality”, characterized by the belief that “professional activity consists in instrumental problem solving made rigorous by the application of scientific theory and technique.”⁴⁰ However, professionals must be able to apply their technical or theoretical knowledge in the “swampy lowlands” and “confusing messes” of actual practice.⁴¹ Initially, to begin to build a theory about how professional knowledge was created through learning and coaching, Schön analyzed empirical data from observational research in an architectural design studio. He concluded that through a form of professional “artistry”, professional knowledge is progressively gained by integrating theory and practice, thus developing an intuitive “knowing-in-action”.

Schön described reflective practice as “a dialogue of thinking and doing through which I become more ... skillful,”⁴² where professional expertise is built through a cycle of learning-by-engaging. In “reflection-in-action”, a professional reflects in the moment, leading to a tacit “knowing-in-action” that can be described as a “form of reflective conversation with the situation,”⁴³ followed by “reflection-on-action” after the action. This reflection on one’s own experience builds “professional rigour” and leads

³⁸ *Reflective Practitioner*, *supra* note 6.

³⁹ *How We Think*, *supra* note 8. Dewey advanced a sophisticated form of reflective thought/inquiry and described it as the “[a]ctive, persistent, and careful consideration of any belief or supposed form of knowledge in the light of the grounds to support it and the further conclusions to which it tends [that] constitutes reflective thought” (*ibid* at 9). For a discussion of Dewey’s work related to reflective practice see Lyons, *supra* note 25 at 8–15.

⁴⁰ *Reflective Practitioner*, *supra* note 6 at 21. Schön’s investigation was motivated by what was then commonly understood as a crisis of professionalism, not unlike the mounting critiques of legal professionalism today. As he noted: “The professions are in the midst of a crisis of confidence and legitimacy ... [t]he long-standing professional claim to a monopoly to knowledge and social control is challenged—first, because they do not live up to the values and norms which they espouse, and, second, because they are ineffective” (*ibid* at 11).

⁴¹ *Ibid* at 3.

⁴² *Educating*, *supra* note 6.

⁴³ *Reflective Practitioner*, *supra* note 6 at 241.

to reflective judgment.⁴⁴ It becomes a form of professional research—equivalent to scientific research and technical rationality—which develops professional intuition. Reflection-on-action helps to uncover what was planned, what was actually done, and what happened as a result, especially if there was 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. Professional expertise requires learning through reflection about how to deal with complexity, indeterminacy in the “zones of practice”, and value conflicts.⁴⁵ Furthermore, without reflection, professional effectiveness can decline over time when professional specialization causes “overlearning”—the direct result of not understanding, recognizing, noticing or questioning one’s tacit knowledge. Schön advocated for a new “epistemology of practice” that recognized the importance of wedding theory and practice in professional education, and endorsed reflective practicum as a component of professional education to create actionable professional knowledge.

The concept of reflective practice has undergone a significant metamorphosis since Schön first coined the term. Educational theorists subsequently asserted that “anticipatory reflection” before action is also crucial, adding a further temporal aspect.⁴⁶ Many other theorists have enriched the concept of reflective practice by adding new dimensions and complexity, such as: the affective dimension about the role of emotions in learning,⁴⁷ the critical and transformational aspects,⁴⁸ self-reflexivity,⁴⁹

⁴⁴ For empirical research findings on developing reflective judgment see Patricia M King & Karen S Kitchener, *Developing Reflective Judgment* (San Francisco: Jossey-Bass, 1994) [King & Kitchener, *Judgment*]; Karen S Kitchener & Patricia M King, “The Reflective Judgment Model: Transforming Assumptions about Knowing” in Jack Mezirow and Associates, *Fostering Critical Reflection in Adulthood: A Guide to Transformative and Emancipatory Learning* (San Francisco: Jossey-Bass, 1990) 159 [Mezirow, *Critical Reflection*].

⁴⁵ Schön, *Educating*, *supra* note 6 at 18.

⁴⁶ Max Van Manen, “Reflectivity and the Pedagogical Moment: The Normativity of Pedagogical Thinking and Acting” (1991) 23:6 *J Curriculum Studies* 507; Moon, *Professional Development*, *supra* note 25.

⁴⁷ See Boud, Keogh & Walker, *supra* note 33 at 19: “[R]eflection in the context of learning is a generic term for those intellectual and affective activities in which individuals engage to explore their experiences in order to lead to new understandings and appreciation. It may take place in isolation or in association with others”.

⁴⁸ Stephen D Brookfield, *The Skillful Teacher: On Technique, Trust, and Responsiveness in the Classroom*, 2nd ed (San Francisco: Jossey-Bass, 2006) [Brookfield, *Skillful Teacher*]; Stephen D Brookfield, “The Concept of Critically Reflective Practice” in Arthur L Wilson & Elisabeth Hayes, eds, *Handbook of Adult and Continuing Education* (San Francisco: Jossey-Bass, 2000) 22 [Brookfield, *Critically Reflective*]; Mezirow, *Critical Reflection*, *supra* note 41; Paulo Freire, *Pedagogy of the Oppressed* (New York: Continuum, 2000) [Freire].

“productive reflection”,⁵⁰ and the concept of “organizing reflection”⁵¹ that captures the importance of reflecting collectively. As educators tried to operationalize reflective practice in their respective professional disciplines, differing levels of reflection were delineated, and multiple methods and representations of reflective cycles were posited.⁵²

Benefits of Reflective Practice

Over the past thirty years, a growing body of literature has documented the benefits that can be derived from reflection.⁵³ Reflection supports higher order thinking,⁵⁴ critical thinking,⁵⁵ single- and double-loop learning,⁵⁶

⁴⁹ Gillie Bolton, *Reflective Practice: Writing and Professional Development*, 2nd ed (Thousand Oaks, Cal: SAGE, 2005) [Bolton].

⁵⁰ David Boud, Peter Cressey & Peter Docherty, eds, *Productive Reflection at Work: Learning for Changing Organizations* (New York: Routledge, 2006) [Boud, Cressey & Docherty].

⁵¹ On the importance of developing collective approaches to reflection see Michael Reynolds & Russ Vince, eds, *Organizing Reflection* (Burlington, Vt: Ashgate, 2004) [Reynolds & Vince].

⁵² Many respected learning theorists contributed to these developments, among them: David A Kolb, who advanced the experiential learning cycle (see *Experiential Learning: Experience as the Source of Learning and Development* (Englewood Cliffs, NJ: Prentice Hall, 1984)) [Kolb]; Patricia M King & Karen S Kitchener who developed the reflective judgment model based on decades of empirical research (see *supra* note 44); Evelyn M Boyd & Ann W Fales who theorized about reflective learning (see “Reflective Learning: Key to Learning from Experience” (1983) 23:2 *J Humanistic Psychology* 99); David Boud, Paul Cressey & Peter Docherty who hypothesized about learning from experience (see *supra* note 50); Stephen D Brookfield who emphasized critical reflection (see *Becoming a Critically Reflective Teacher* (San Francisco: Jossey-Bass, 1995)); Jennifer A Moon who wrote about reflection, experiential learning and professional development (see *supra* note 25); Elizabeth Anne Kinsella who theorized about “embodied reflection” (see “Embodied Reflection and the Epistemology of Reflective Practice” (2007) 41:3 *J Philosophy Education Society Great Britain* 395); and Anne Brockbank & Ian McGill who advanced reflective learning in higher education (see *supra* note 30). They all stressed reflection’s crucial role in learning, and their theoretical and empirical scholarship has contributed to a richer conceptualization of reflective practice.

⁵³ Dewey, *How We Think*, *supra* note 8. See also Kolb, *supra* note 51; Moon, *Professional Development*, *supra* note 25. See also Boud, Keogh & Walker, *supra* note 33.

⁵⁴ Higher-order thinking is a desired outcome from higher education. See Brockbank & McGill, *supra* note 30.

⁵⁵ See Stephen D Brookfield & Stephen Preskill, *Discussion as a Way of Teaching: Tools and Techniques for Democratic Classrooms*, 2nd ed (San Francisco: Jossey-Bass, 2005). Brookfield, *Skillful Teacher*, *supra* note 48.

⁵⁶ This concept was originally popularized by Chris Argyris and Donald Schön. Single-loop learning refers to learning new techniques to solve a problem within existing frameworks of understanding. Double-loop learning searches outside the existing paradigm for new solutions. See Chris Argyris & Donald Schön, *Theory in Practice: Increasing Professional Effectiveness* (San Francisco: Jossey-Bass, 1974) at 18–19 [Argyris & Schön].

transformative learning,⁵⁷ work-based learning,⁵⁸ action learning,⁵⁹ action research,⁶⁰ “systems thinking,”⁶¹ and building “learning organizations”⁶²—all of which provide additional rationales for endorsing a stronger reflective capacity for legal professionals.⁶³ Engaging in these ways of thinking and learning are critical for the future of legal education and the profession; they are predictors of resilience, a reform culture and innovation.⁶⁴ The depth of theoretical sophistication in the evolving professional education discourse in other disciplines should not be underestimated: it contrasts with the paucity of attention paid to reflective practice in legal education. On the other hand, this lacunae offers a rich opportunity for grounding future scholarship on teaching and learning in the legal profession. In the next section, I present a working conceptualization for reflective practice in law that attempts to capture aspects of the theoretical complexity in domains that are most relevant to our aspirations for legal professionalism. By presenting this conceptualization, I hope to create a dialogue about how reflective practice might be understood and operationalized in law.

Law has been slow to recognize the value of reflective practice: the result is that it has, with some notable exceptions, been undertheorized and undervalued in Canadian legal education. Historically Professors Julie Macfarlane, W Wesley Pue, Annie Rochette, and Ruth Margaret Buchanan have advocated for reflective practice. According to Macfarlane, who since

⁵⁷ Mezirow, *Critical Reflection*, *supra* note 44.

⁵⁸ Joseph A Raelin, *Work-Based Learning: Bridging Knowledge and Action in the Workplace* (San Francisco: Jossey-Bass, 2008).

⁵⁹ Action learning is an important strategy for supporting change in individual, group and organizational levels. See Michael J Marquardt et al, *Action Learning for Developing Leaders and Organizations: Principles, Strategies, and Cases* (Washington, DC: American Psychological Association, 2009).

⁶⁰ Action research is a form of qualitative research that seeks to understand a problem or an issue, while simultaneously creating improvements or change. For a discussion of how action research can enable innovation by legal professionals see Leering, “Access to Justice”, *supra* note 11.

⁶¹ Systems thinking is a term used to describe a whole systems approach to thinking about a problem, in all its complexity. See RL Flood, “The Relationship of “Systems Thinking” to Action Research” in P Reason & Hilary Bradbury, eds, *Handbook of Action Research*, 2nd ed (London, UK: SAGE, 2008) 133.

⁶² Peter Senge popularized the term “learning organisations”: see Peter M Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* (New York: Doubleday, 1990) [Senge].

⁶³ The importance of reflection, reflective practice and action research to fostering innovation in the legal profession and the justice sector is outlined more thoroughly in Leering, “Access to Justice”, *supra* note 11.

⁶⁴ *Ibid.*

1992 has written persuasively about the merits of introducing reflective practice:⁶⁵

“Reflective practice,” which comprises a responsiveness to change, flexibility, and an emphasis on professional self-growth, is increasingly talked about as an appropriate contemporary goal for educators and practitioners alike. A reflective practice model ... focuses on teaching future professionals to analyze and learn from their experiences, emphasizing self-awareness, self-critique and constant analysis and review. The next generation of lawyers cannot possibly master the ever-changing and expanding substance of legal regulation and precedent. Instead they require effective problem-solving skills and the ability to learn from their experiences.⁶⁶

Rochette & Pue noted:

[T]he “reflective practitioner” model seeks to integrate knowledge and skills. Starting from the premise that law only has meaning through its application to concrete situations and through its effects upon society, “reflective practitioner”-oriented education would emphasize that knowledge is best acquired through learning that is “dynamic, open-ended and contextual” ... [R]eflective practitioner training would emphasize reflectiveness, the exploration of feelings, self-awareness and self-appraisal. “Knowledge” under this model includes the development of responsiveness to change, flexibility and professional self-growth rather than merely on knowledge of the black letter legal rules. Such an education would encourage team work by fostering self-reflection and awareness of the learning process.⁶⁷

In an intriguing article about poverty law scholarship, Buchanan challenged Schön’s more instrumental approach to reflective practice by stressing the importance of lawyers *practicing* critical theory, and engaging in “situated theoretical practice to discern how to apply critical theories to their legal practice.” In her view, new knowledge is created in complex situations

⁶⁵ Professor Julie Macfarlane has written extensively and thoughtfully on this topic, see Julie Macfarlane, “Look Before You Leap: Knowledge and Learning in Legal Skills Education” (1992) 19:3 *JL & Soc’y* 293 [Macfarlane, “Look Before You Leap”]; Julie Macfarlane, “A Feminist Perspective on Experience-Based Learning and Curriculum Change” (1994) 26:2 *Ottawa L Rev* 357; Julie Macfarlane, “Assessing the “Reflective Practitioner”: Pedagogic Principles and Certification Needs” (1998) 5:1 *Intl J Leg Prof* 63; Julie Macfarlane, “Mediating Ethically: The Limits of Codes of Conduct and the Potential of a Reflective Practice Model” (2002) 40:1 *Osgoode Hall LJ* 49.

⁶⁶ Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2007) at 230.

⁶⁷ Annie Rochette & Wesley Pue, “Back to Basics?: University Legal Education and 21st Century Professionalism” (2001) 20 *Windsor YB Access Just* 167 at 188 [footnotes omitted] [Rochette & Pue].

encountered in practice and is the opposite of the “top-down approach to knowledge” characteristic of legal education.⁶⁸

It is surprising that so little attention has been paid to reflective practice in Canadian legal education scholarship and in the law school curriculum, because there is a growing body of theoretical and applied literature and empirical research in Australia,⁶⁹ the United Kingdom,⁷⁰ and in American experiential legal education and externship scholarship.⁷¹ Clinical legal educators have a long history of encouraging reflective practice and contributing to rich international scholarship that could inform how it could be incorporated into the more traditional legal education curriculum.⁷² In addition, the benefits of reflective practice will soon be demonstrated in a Canadian context, since it has been accepted as a framework for professional development and life-long learning by the Law Society of Alberta and the Nova Scotia Barristers’ Society.⁷³ If we follow the developmental trajectory of

⁶⁸ Ruth Margaret Buchanan, “Context, Continuity, and Difference in Poverty Law Scholarship” (1994) 48:5 U Miami L Rev 999 at 1035.

⁶⁹ Since 1994, the theoretical and practical developments in legal education pedagogy in Australia are noteworthy. Reflective practice for legal educators and law students was first advocated in the influential text by Marlene Le Brun & Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (Sydney, AU: The Law Book Company, 1994). Legal educators have called for “a revitalized style of legal education [that] goes beyond the training needs of individual practitioners and goes right to the heart of the quality and integrity of our justice system”; see Sally Kift et al, eds, *Excellence and Innovation in Legal Education* (Chatswood, NSW: LexisNexis Butterworths, 2011) at ix [Kift et al, *Excellence & Innovation*]. See also Rachael M Field “Lawyers as Reflective Professionals” in Field, Duffy & Huggins, *Professional Identities*, *supra* note 13 at 99. Rachel Spencer, “Holding Up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education” (2012) 18:2 Intl J Clinical Leg Education 181 [Spencer, “Holding Up the Mirror”].

⁷⁰ Earlier writers about reflective practice include Webb, “Artistry”, *supra* note 34; Caroline Maughan, “[Problem-Solving Through Reflective Practice: The Oxygen of Expertise or Just Swamp Gas?](#)” (1996), online: Web Journal of Current Legal Issues <www.bailii.org/uk/other/journals/WebJCLI/1996/issue2/maughan2.html>; Julian Webb & Caroline Maughan, eds, *Teaching Lawyers’ Skills* (London, UK: Butterworths, 1996) [Webb & Maughan, *Teaching Lawyers’ Skills*]. Significant advances in encouraging reflective practice were enabled by the former UK Centre for Legal Education, see for example, Hinett, *supra* note 30.

⁷¹ For early writing about the promise of reflective practice see Richard K Neumann Jr, “Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education” (2000) 6:2 Clinical L Rev 401. See also Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (New York: Clinical Legal Education Association, 2007) [Stuckey]; Leah Wortham et al, eds, *Learning from Practice: A Text for Experiential Legal Education*, 3rd ed (Saint Paul, Minn: West Academic, 2016) [Wortham et al].

⁷² For a Canadian example see Buhler, Marsden & Smyth, *Clinical Law*, *supra* note 24. See also Stuckey, *supra* note 71; [Australian Clinical Legal Education \(ACLE\), Best Practices](#) (Sydney, AU: ACLE, 2012), online: <www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf>.

⁷³ See e.g. *supra* note 20.

the other professional disciplines and implement reflective practice as a core competency and professional attribute, legal scholars and other members of the profession will eventually produce a rich and nuanced literature about reflective practice unique to our own profession. However, we are in the beginning stages of scholarly theoretical development and empirical legal education research.⁷⁴ To develop a more robust theory in law, I propose a working conceptualization for understanding reflective practice in the context of legal education and legal professionalism. As I have explained, this conceptualization is based on the findings of my action research project at a Canadian law school that included semi-structured interviews with eight legal educators.⁷⁵

As the gateway to professional learning and identity formation, law school provides the perfect opportunity to introduce, encourage, and model reflective practice. Law schools with clinical legal programs already build students' capacity for reflection, as most clinical legal educators (and some mediation and alternative dispute resolution courses) encourage reflective practice.⁷⁶ However, a systematic and integrated approach to introduce

⁷⁴ It is noteworthy that in addition to theoretical scholarship, there is a robust, and growing body of empirical research—qualitative and quantitative—examining the imperatives and pedagogical practices for implementing reflective practice in other disciplines including medicine, the allied health professions (e.g. nursing, pharmacy, occupational therapy), and teaching. See e.g. the systematic review of reflective practice in the health professions undertaken by Mann, Gordon & MacLeod, *supra* note 25.

⁷⁵ Leering, “Reflective Practice”, *supra* note 3. That article also commented on the impetus for encouraging reflective practice by reviewing critiques of legal education and the appalling statistics about the mental health and well-being of law students. The research methodology, based on an appreciative inquiry approach, is more fully described there at 92 and *supra* note 27.

⁷⁶ In fact, introducing reflective practice into legal education can be attributed to clinical legal educators. See Donald A Schön, “Educating the Reflective Legal Practitioner” (1995) 2:1 *Clinical L Rev* 231. For a recent Canadian example see Buhler, Marsden & Smyth, *Clinical Law*, *supra* note 24. See also Susan Bryant, Elliott S Milstein & Ann C Shalleck, *Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy* (Durham, NC: Carolina Academic Press, 2014); Frank S Bloch, ed, *The Global Clinical Movement: Educating Lawyers for Social Justice* (New York: Oxford University Press, 2010); Georgina Ledvinka, “Reflection and Assessment in Clinical Legal Education: Do You See What I See?” (2006) 9 *Intl J Clinical Leg Education* 29 [Ledvinka]; Spencer, *supra* note 69; Neil Gold, “Clinic is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method” (2015) 22:1 *Intl J Clinical Leg Education* 1. Courses in mediation and alternative dispute resolution often encourage reflective practice, particularly at a post-graduate level: see e.g. Michelle LeBaron & Mario Patera, “Reflective Practice in the New Millennium” in Christopher Honeyman, James Coben & Giuseppe De Palo, eds, *Rethinking Negotiation Teaching: Innovations for Context and Culture* (Saint Paul, Minn: DRI Press, 2009) 45; Kenneth H Fox, “Mirror as Prism: Reimagining Reflexive Dispute Resolution Practice in a Globalized World” (2014) 45 *Wash UJL & Pol’y* 41.

reflective practice to *all* law students could enhance legal education by providing a more robust conceptual structure for developing professional expertise and knowledge.⁷⁷ Although there is, to date, little published legal empirical scholarship documenting the practices of Canadian legal educators—except the seminal study of teaching and learning practices by Rochette⁷⁸—many exemplary legal educators already explicitly encourage reflection, particularly critical reflection: it will be important to value, learn from, and integrate their contributions.⁷⁹ Embedding reflective activities in the increasing number of course-based and voluntary opportunities for experiential education will also help to build the “reflective muscle” in law students that will improve their learning and lead to incorporating reflective practice in their ongoing professional formation.

Introducing Reflective Practice in Law School: Using the Working Conceptualization of “Integrated Reflective Practice” as a Framework

The working conceptualization for “integrated reflective practice” that emerged from my preliminary research⁸⁰ provides a useful roadmap to begin to probe how reflective practice might be more systematically introduced in legal education.⁸¹ The purpose for operationalizing this concept was to identify the types of reflection that are desired, beneficial and necessary for legal professionals and to consider where, when and how each type is best introduced in the course of professional education. In the examples I provide, reflective activities for law students can sometimes be best implemented by individual legal educators—in others, a more

⁷⁷ The law faculty at the University of Manitoba (Robson Hall) has recently endorsed reflective practice for all their law students in a new curriculum reform report: see Mary J Shariff et al, *supra* note 24. Osgoode Hall law school also endorsed a “reflective approach” in the upper year curriculum reform: see Osgoode Hall Law School Curriculum Reform Working Group, *supra* note 24.

⁷⁸ Rochette, “Teaching & Learning”, *supra* note 14. Based on her research, Rochette questioned whether current legal education pedagogy does help students to learn how to reflect critically at 190–91.

⁷⁹ See the discussion on Critically Reflective Practice, *below*. See also Michael Hunter Schwartz, Gerald F Hess & Sophie M Sparrow, *What the Best Law Teachers Do* (Cambridge, Mass: Harvard University Press, 2013) [Schwartz, Hess & Sparrow, *Law Teachers*].

⁸⁰ I describe this exploration as preliminary because it is based on empirical research at one law school in 2009. My doctoral research will explore how reflective practice is being operationalized in Canadian and Australian law schools using a multiple-case study strategy.

⁸¹ See Leering, “Reflective Practice”, *supra* note 3. For an alternative and complementary analysis of how to theorize reflective practice in legal education, particularly in an externship or clinical environment, see Timothy Casey, “Reflective Practice in Legal Education: The Stages of Reflection” (2014) 20:2 *Clinical L Rev* 317 (including a useful synthesis of theories of cognitive and moral development). See also Buhler, Marsden & Smyth, *Clinical Law*, *supra* note 24 at 42–47.

systemic approach endorsed and supported by the law school would be desirable. I set out the five types of reflection that would be beneficial to encourage, describe what each aspect of reflection encompasses, and provide a few practical examples of reflective activities or methods.⁸² The examples I provide are intended to be illustrative and generative rather than prescriptive, and to foster imaginative thinking about what is possible. Each law school will need to discuss, investigate, engage in dialogue and research which methods are the most promising practices for encouraging reflective practice in their communities. Indeed, based on my earlier empirical research, there are a significant number of legal educators who have been implicitly or tacitly encouraging the reflective capacity of their students with a variety of reflective methods. These approaches could be incorporated into a strategic and instructionally-aligned “reflective practice pedagogy”. My preliminary research identified twenty different categories of methods that could support law student reflection.⁸³ Many legal educators already employ a host of these approaches because they are good teaching strategies. Documenting these pedagogical practices would build a strong knowledge base about how to implement reflective practice effectively and would be a valuable addition to scholarship on legal education pedagogy.⁸⁴

⁸² There are a number of models for explaining the reflective cycle in other professions, and from Australian legal educators. For an explanation of two reflective frameworks for law students based on Gibb’s reflective cycle, and the work of Ryan & Ryan, see Field, Duffy & Huggins, *Professional Identities*, *supra* note 13; McNamara, Cockburn & Campbell, *Good Practice*, *supra* 13.

⁸³ These categories included pre-orientation and orientation week activities, reflective exercises, planning exercises, reflective writing, and reflective questioning strategies. Other approaches included self-awareness activities, graphic exercises, consciousness-raising and embodiment exercises, contemplative practices, debriefing exercises, aesthetic methods, action research, and mentoring programs. Added to this were critical legal theories (plus “law &” approaches, socio-legal research, and jurisprudence), experiential education opportunities, innovative teaching methods or styles, unique course offerings, assessment and evaluation methods, and group process activities.

⁸⁴ Critical reflection on pedagogy has much to offer legal educators. Examples of scholarly research to support this reflection can be found in a slowly growing body of empirical research about legal education pedagogy. See e.g. Carnegie Report, *supra* note 14; Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (New York: Oxford University Press, 2007) at 217 [Mertz]. For more recent empirical insights into effective pedagogy see Schwartz, Hess & Sparrow, *Law Teachers*, *supra* note 79. How other professional educators research the effectiveness of their existing pedagogy and new pedagogical interventions like reflective practice, particularly in medicine, suggest new possibilities for engaged and relevant legal scholarship: see e.g. Caroline Norrie et al, “Doing it Differently? A Review of the Literature on Teaching Reflective Practice Across Health and Social Care Professions” (2012) 13:4 *Reflective Practice: Intl & Multidisciplinary Perspectives* 565; Rani Kanthan & Jenna-Lynn B Senger, [“An Appraisal of Students’ Awareness of “Self-Reflection” in a First-Year Pathology Course of Undergraduate Medical/Dental Education”](#)

Regardless of whether a law school commits to integrating reflective practice systematically as a curricular innovation, individual legal educators can help “seed the ground” for reflective practice by explicitly encouraging reflection in their teaching to create learning environments that foster deep learning, and, as Rochette concluded, by modelling their own systematic reflective practice.⁸⁵ According to Tom Russell, educators visibly engaged in their own reflective practice become important role models for students, which is important because reflection does not come naturally or easily to all students (or educators!).⁸⁶ Many students require extra support to reflect effectively and will benefit from being “taught” or shown how to reflect.⁸⁷

I have assumed it is useful to ground a plan for introducing reflective activities into a pedagogical framework, hence the working conceptualization approach. On the other hand, in my work with small groups of students, I have found it easier to first introduce reflective approaches and activities, have students work with them, and then introduce the working conceptualization of reflective practice *after* they have experienced different aspects of reflection.⁸⁸ Introducing reflective practice is best facilitated through iterative and scaffolded reflective activities, where students can use their own experiences from the exercises to independently build connections with the reflective approaches presented. I turn now to the elements of the working conceptualization and provide some illustrative methods of encouraging law student reflection for each domain of reflection.

(2011) 11:67 BMC Medical Education, online: <bmcmededuc.biomedcentral.com/articles/10.1186/1472-6920-11-67>. See also Mann, Gordon & MacLeod, *supra* note 25.

⁸⁵ Rochette, “Teaching & Learning”, *supra* note 14 at 295–301. Rochette recommends a framework for reflective professionalism advanced by Light, Cox & Calkins, *supra* note 23. For a unique resource for educators interested in developing their own reflective practice see Jean Koh Peters & Mark Weisberg, *A Teacher’s Reflection Book: Exercises, Stories, Invitations* (Durham, NC: Carolina Academic Press, 2011) [Peters & Weisberg]. Other resources include McNamara, Cockburn & Campbell, *Good Practice*, *supra* 13; Hinett, *supra* note 30; Webb & Maughan, *Teaching Lawyers’ Skills*, *supra* note 70; Stuckey, *supra* note 75; Wortham et al, *supra* note 71; Peters & Weisberg, *supra* note 85.

⁸⁶ Russell, *supra* note 21. See also Michael Hunter Schwartz, Sophie Sparrow & Gerald Hess, *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam* (Durham, NC: Carolina Academic Press, 2009) at 169 extolls the benefits of reflective practice for legal educators [Schwartz, Sparrow & Hess, *Law by Design*]. See also Gerald F Hess, “Learning to Think Like a Law Teacher: Reflective Journals for Legal Educators” (2003) 38:1 Gonzaga L Rev 129; McNamara, Cockburn & Campbell, *Good Practice*, *supra* note 13.

⁸⁷ Tom Russell, “Can Reflective Practice Be Taught?” (2005) 6:2 Reflective Practice: Intl & Multidisciplinary Perspectives 199 [Russell, “Reflective Practice”]. For a discussion in law, see Spencer, “Holding Up the Mirror” *supra* note 69. See also McNamara, Cockburn & Campbell, *Good Practice*, *supra* note 13.

⁸⁸ I have offered reflective practice seminars to law students who are externs in community-based legal clinics and provided workshops to students in clinical legal education programs.

1. Reflection on practice

The reflective legal practitioner learns in action, continually improving his or her technical competence through reflection on experience and learning from practice (which includes skills, technique, and expertise).⁸⁹

The first domain of reflection is reflection on practice: it captures the essence of building skills and expertise by reflecting on how a task or responsibility is carried out. Schön's original description of reflective practice could be characterized as this type of instrumental or technical "reflection on practice" where you are reflecting on performance. Reflection on practice helps you to self-assess, understand what you know and what you do not, evaluate your effectiveness, investigate new options for practice, and articulate the lessons that you have learned. Many legal professionals intuitively and tacitly engage in this type of reflective practice without being aware of the term. However, if we want students to build professional expertise, improve practice and create professional knowledge, then we must engage them early in this essential, reflective process to build a "reflective muscle." For Albertan and Nova Scotian lawyers, this type of reflection is newly-mandated by continuing professional development requirements:

Reflective practice ... describes a more engaged method of self-assessment and reflection in assessing competence. ... [L]awyers are expected to reflect on their practice, including their skills to deliver the services required of their speciality; be critical of their knowledge, including assessing what is done well, deficiencies, areas for improvement and areas of new law or learning to acquire; and conduct self-reflection on their practice, values and aspirations. ... [L]awyers should recognize areas for learning and growth that can be built into their life-long legal learning.⁹⁰

Reflection on practice is a "baseline" for increasing professional competence whether one is a student, legal educator, or other legal professional.

Encouraging students to become more "reflective learners" in the early stages of their legal education can help prepare them for the Carnegie Report's "apprenticeship for practice". According to Anna Huggins, Sally Kift & Rachael Field, reflection contributes to a stronger sense of personal agency, and can smooth the challenging first year transition to "thinking like

⁸⁹ Leering, "Reflective Practice", *supra* note 3 at 104.

⁹⁰ *Supra* note 20. See also: "Taking a reflective practice approach ... is not only of value to lawyers who may be struggling with their practice but supports and encourages all lawyers, even those with significant seniority and high knowledge and skill levels, to improve their competence in a way that best addresses their own personal practice needs" (*ibid*).

a lawyer.”⁹¹ As Julian Webb noted, developing metacognition about learning is essential: “Experience is valuable in helping us to reflect on how we learn—particularly on how, as learners, we experience the interplay between cognition and metacognition. This is crucially important in shaping the effectiveness of learning and in influencing students’ motivations to learn.”⁹²

Methods to support reflection could include undertaking a variety of self-assessment exercises—such as learning style assessments⁹³—and developing learning contracts or learning plans as a form of personal development planning.⁹⁴ Michael Schwartz, in his text *Expert Learning for Law Students*, provides guidance on how to affect a “self-regulated learning (SRL) cycle” to help students use reflection to learn more effectively and build a stronger sense of self-efficacy.⁹⁵ Similarly, legal educators’ encouragement of systematic reflection on a student’s progress in learning discipline-specific

⁹¹ See Anna Huggins, Sally M Kift & Rachael M Field, “Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies From the Current Curriculum Toolbox” (2011) 21:2 *Leg Education Rev* 183.

⁹² Julian Webb, “The “Ambitious Modesty” of Harry Arthurs’ Humane Professionalism” (2006) 44:1 *Osgoode Hall LJ* 119 at 151 [Webb, “Modesty”]. For more on metacognition see Anthony Niedwiecki, “Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques” (2012) 40:1 *Cap UL Rev* 149; Cheryl B Preston, Penée Wood Stewart & Louise R Moulding, “Teaching “Thinking like a Lawyer”: Metacognition and Law Students” (2014) 5 *BYU L Rev* 1053.

⁹³ Some legal educators recommend Kolb’s learning style inventory, one of whom provided a link to locate credible learning style assessments: see e.g. Roderick A Macdonald & Jason MacLean, “No Toilets in Park” (2005) 50 *McGill LJ* 721 at 750, n 90 [Macdonald & MacLean]. See Michael Hunter Schwartz, *Expert Learning for Law Students* (Durham: Carolina Academic Press, 2005) at 55–56, 63–66 [Schwartz, *Expert Learning*]; Schwartz, Sparrow & Hess, *Law by Design*, *supra* note 86 at 72–73. Kolb, *supra* note 52, identified four learning styles that include abstract conceptualization, concrete experience, active experimentation and reflective observation. Schwartz, *Expert Learning*, *ibid* at 63 also recommends the student consider an assessment of whether they are visual, aural, read/write, kinesthetic or multi-modal learners. Caroline Maughan & Julian Webb, eds, *Lawyering Skills and the Legal Process*, 2nd ed (New York: Cambridge University Press, 2005) [Maughan & Webb, *Lawyering Skills*] (who recommend Honey & Mumford’s learning style inventory at 50–51 and provide general advice on how to best use and compensate for your learning style).

⁹⁴ Learning plans were first recommended by Malcolm S Knowles, *Self-Directed Learning: A Guide for Learners and Teachers* (New York: Association Press, 1975). For an early discussion in legal education see Jane H Aiken et al, “The Learning Contract in Legal Education” (1985) 44:4 *Maryland L Rev* 1047. See e.g. Nancy Costello, Dean Lawrence & Jennifer Rosa, “Taking it to the Streets: Bringing Legal Writing Problems to Life” (Michigan State University College of Law, March 2013) (a resource created for legal educators). Learning plans are similar to personal development planning which is elaborated upon, *below* at 34.

⁹⁵ Schwartz, *Expert Learning*, *supra* note 93.

skills—such as legal reasoning, legal research, legal writing, oral or written advocacy, or mootings—builds a strong foundation for life-long learning because it provides a model for acquiring new skills and knowledge after graduation while also improving the student’s current performance.

2. Critical reflection

*The critically 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 critiquing of legal theory or case law, any form of critical thinking including ideology critique ... exploring alternative conceptions of the role of law or enlarged conceptions of “access to justice”, using critical theory frameworks[.]*⁹⁶

Many reflective practice theorists after Schön stressed that critique and critical interrogation would significantly enrich reflective practice.⁹⁷ The expansion of reflective practice to include a critically reflective component is a development that aligns powerfully with the objectives of Canadian legal education, as articulated by the 1983 Arthurs Report. The Arthurs Report’s exploration of “humane professionalism”⁹⁸ and Roderick Macdonald’s “constitutive polyjurality”⁹⁹ are particularly cogent and influential Canadian visions for a critically reflective legal education. The law professors I interviewed during my preliminary research emphasized critical reflection as an essential aspect of Canadian legal education—observing that all legal theory could be understood, implicitly, as critique. These professors also noted that critique in law is rich and diverse, with varying degrees provided during law school depending on the perspective brought to a course

⁹⁶ Leering, “Reflective Practice”, *supra* note 3 at 104–05.

⁹⁷ Ideological critique, deconstruction, consciousness-raising, unmasking power and privilege, and creating emancipatory knowledge also exemplify this aspect. See Brookfield, *Critically Reflective*, *supra* note 48 at 22; Jan Fook, “Beyond Reflective Practice: Reworking the ‘Critical’ in Critical Reflection” in Helen Bradbury et al, eds, *Beyond Reflective Practice: New Approaches to Professional Lifelong Learning* (New York: Routledge, 2010) 37; Freire, *supra* note 48; Kinsella, “Reflections On”, *supra* note 25; Jack Mezirow, “How Critical Reflection Triggers Transformative Learning” in Mezirow, *Critical Reflection*, *supra* note 44, [Mezirow, “Transformative Learning”]; Keith Morrison, “Developing Reflective Practice in Higher Degree Students Through a Learning Journal” (1996) 21:3 *Studies in Higher Education* 317.

⁹⁸ The Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: Ministry of Supply and Services, 1983) (Chair: HW Arthurs) [*Arthurs Report*]. See also Webb, “Modesty”, *supra* note 92.

⁹⁹ Macdonald & MacLean, *supra* note 93.

by the legal educator.¹⁰⁰ Thus, critical reflection can also be considered foundational to enhancing one's legal reasoning.

There are already numerous existing approaches for encouraging critical reflection in Canadian law schools. Among them are the approach of invoking legal jurisprudential concepts and questions, exposing law students to legal and socio-legal scholarship including new legal realism,¹⁰¹ reviewing legal needs studies and other empirical research about the “law as lived”,¹⁰² and introducing concepts of legal pluralism. Exposure to real life situations of injustice in clinical legal education programs,¹⁰³ critical theory (like feminist, critical race, critical legal theory), and newer approaches like interrogating the existing paradigms of legal practice, all provide opportunities for critical reflection.¹⁰⁴ One of the benefits of critical reflection is that exposure to disorienting information can lead to “transformative learning” experiences and to significant shifts in “meaning perspective.”¹⁰⁵ Put another way, these experiences could potentially increase the sensitivity of law students to social justice and access to justice issues, fostering what Jane Aiken has called “justice

¹⁰⁰ Leering, “Reflective Practice”, *supra* note 3 at 96–97.

¹⁰¹ See [New Legal Realism: Empirical Law and Society](#), online: <www.newlegalrealism.org/> (for a discussion of legal realism).

¹⁰² This term captures the reality of how people actually experience law in their everyday lives. Roderick Macdonald first used this term in his work with the Law Commission of Canada as noted in Nathalie Des Rosiers, “Confidentiality, Human Relationships, and Law Reform” in Christine M Koggel, Allannah Furlong & Charles Levin, eds, *Confidential Relationships: Psychoanalytic, Ethical and Legal Contexts* (New York: Rodopi, 2003) 229.

¹⁰³ Buhler, Marsden & Smyth, *Clinical Law*, *supra* note 24 at 44.

¹⁰⁴ For examples of how to introduce these discussions see Susan Daicoff, “Law as a Healing Profession: The “Comprehensive Law Movement”” (2006) 6:1 *Pepperdine Dispute Resolution LJ* 1 [Daicoff, “Healing Profession”]; Marjorie A Silver, *The Affective Assistance of Counsel: Practicing Law as a Healing Profession* (Durham, NC: Carolina Academic Press, 2007); J Kim Wright, *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law* (Chicago, Ill: ABA Publishing, 2010); Susan L Brooks & Robert G Madden, eds, *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice* (Durham, NC: Carolina Academic Press, 2010). See also Christine Parker & Adrian Evans, *Inside Lawyers’ Ethics*, 2nd ed (New York: Cambridge University Press, 2014) [Parker & Evans].

¹⁰⁵ Transformative learning can occur when learners are exposed to “disorienting dilemmas” that they cannot reconcile with their prior experiences or beliefs. Disorienting dilemmas can be disturbing facts or information, or even theory, that contradicts a learner’s earlier understanding: see Mezirow, “Transformative Learning”, *supra* note 97 at 13–14. For a discussion of transformative learning in the context of law see 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; Kate Galloway & Peter Jones, [The Unsustainability of Legal Practice: The Case for Transformation of Legal Education and Legal Educators](#) (Paper delivered at the 10th International Conference on Transformative Learning, San Francisco, 1–4 November 2012), online: <<https://researchonline.jcu.edu.au/23631/1/23631%20Galloway%20and%20Jones%202012.pdf>>.

readiness”.¹⁰⁶ More generally, critical reflection includes being vigilant about unpacking assumptions and questioning our frames of reference or “mental models”,¹⁰⁷ thus encouraging a critical interrogation of the *content* of legal education. For example, Elizabeth Mertz’s anthropological empirical study of law school provocatively concluded that the metalinguistic structure of the language of legal education permits “professionals charged with performing legal analysis to ignore systematic inequities in society and in the administration of the legal system itself.”¹⁰⁸ The approach taken in Law and Literature courses, particularly those modelled on James Boyd White’s influential text, also promote a critically reflective analysis of legal discourses to expose modes that blind us to pervasive injustice.¹⁰⁹ As another example of encouraging critical reflection, Gillian Calder, a scholar of critical legal pedagogy, described using an aesthetic method, or embodied approach, by using Brazilian Theatre of the Oppressed techniques in Canadian law school classrooms.¹¹⁰

These above examples demonstrate that there are rich and plentiful methods to encourage critical reflection at law school through the content of law courses, how courses are taught, experiential learning opportunities, and exposing students to socio-legal scholarship. Rochette’s research on Canadian law teaching and learning revealed that most legal educators want their students to become critically reflective, but can struggle with how to do this effectively.¹¹¹ This finding suggests a fruitful area for future legal scholarship of teaching and learning.

3. Self-reflection

[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

¹⁰⁶ Aiken, “Justice Readiness”, *supra* note 19. She describes a series of reflective questions to help develop justice readiness (at 244).

¹⁰⁷ For a discussion of the constraining impact of mental models in a non-law context, see Senge, *supra* note 62.

¹⁰⁸ Mertz, *supra* note 83 at 217. See also Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy* (2007) 60:2 (2007)

¹⁰⁹ James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1973). His work gave rise to a law and literature movement and a special journal *L & Literature*, online: <www.cardozo.yu.edu/faculty-intellectual-life/journals/law-and-literature>.

¹¹⁰ Gillian Calder, “Embodied Law: Theatre of the Oppressed in the Law School Classroom” (2009) 1 *Masks: On-line J for L & Theatre* 1.

¹¹¹ See Rochette, “Teaching & Learning”, *supra* note 14 at 189–92. Although most legal educators want to encourage critical reflection, Rochette concluded that there was a disconnect between the aspirations of the legal educators and their students learning to become critically reflective (largely lectures were used). This suggests that further reflection on teaching practices that support critical reflection might be beneficial (*ibid*).

*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.*¹¹²

Noting that self-reflection has been traditionally undervalued at law school, the professors I interviewed concurred with reflective practice theorists that it was essential that it be encouraged from the first day of law school.¹¹³ Field, Duffy & Huggins note that self-reflection develops a sense of professionalism and positive professional identity,¹¹⁴ and is also essential to engaging in the Carnegie Report's "ethical-social apprenticeship" of identity and purpose. This is because professional and personal integration, as well as ethical and moral growth, are fostered by the "dynamic developmental process" of reflective practice.¹¹⁵ Schwartz endorsed self-reflection because it supports self-regulation, increases self-efficacy, and fosters self-directed learning.¹¹⁶ Self-knowledge also supports intercultural competence¹¹⁷ and emotional and social intelligence, which are all crucially important capacities for today's legal professionals.¹¹⁸ Recognizing that self-reflection touches on the affective dimension, Filippa Marullo Anzalone noted: "Learning how to practice law is ... not an entirely cognitive activity. Legal education's explicit recognition of the teaching/learning dyad as having both an emotional/passionate side as well as a cognitive/intellectual side would go a long way to encourage student learning."¹¹⁹ Anzalone noted that reflection, especially in the classroom, helps to provide balance, to integrate the whole person into the learning process, and to quell feelings of self-doubt and anxiety. Reflecting on their values and beliefs can provide law students with "an

¹¹² Leering, "Reflective Practice", *supra* note 3 at 105.

¹¹³ *Ibid* at 97.

¹¹⁴ For a discussion of these important aspects of self-reflection see Joanne Roebuck, Lisa Westcott & Dominique Thiriet, "Reflective Narratives: A Useful Learning Activity and Assessment for First Year Law Students" (2007) 41:1 L Teacher 37; Bolton, *supra* note 49; Field, Duffy & Huggins, eds, *Professional Identities*, *supra* note 13.

¹¹⁵ Bolton, *supra* note 49.

¹¹⁶ For a particularly strong discussion on the value of self-directed learning and how to encourage it see Stuckey, *supra* note 71; Schwartz, *supra* note 93.

¹¹⁷ The role of self-knowledge in building cultural competence is critical. See Sue Bryant & Jean Koh Peters, "Five Habits for Cross-Cultural Lawyering" in Kimberly Holt Barrett & William H George, eds, *Race, Culture, Psychology & Law* (Thousand Oaks, Cal: SAGE, 2005) 47.

¹¹⁸ Australian legal educator Colin James is a particularly strong spokesperson for the importance of self-reflection to developing emotional intelligence. See Colin James, "Seeing Things As We Are: Emotional Intelligence and Clinical Legal Education" (2005) 8 Intl J Clinical Leg Education 123.

¹¹⁹ Filippa Marullo Anzalone, "Education for the Law: Reflective Education for the Law" in Lyons, *supra* note 25 at 93 [Anzalone]. A fascinating series of books published by Ashgate thoroughly explore the affective dimension in legal education and the imperative

antidote to the dissociative elements of the law school experience.”¹²⁰ McNamara & Field noted that healthy self-reflection develops a law student’s capacity to learn from constructive criticism.¹²¹ Another benefit is that self-reflection can foster a stable work-life balance, increase personal coping strategies, cultivate compassion, and improve emotional, mental, physical, and spiritual well-being.¹²² If these benefits of reflective practice are realized, legal education will be more likely to produce “[p]rofessionals who are able to manage the intellectual and the emotional facets of practicing law” who “will be happier and less prone to the debilitating effects of depression and alienation that plague the legal profession.”¹²³ Given the serious mental health issues faced by lawyers and law students, strategies to encourage and value healthy reflection are becoming imperative.¹²⁴ In my view, it is important to distinguish constructive self-reflection from rumination and rationalization.

Deciding where to embed self-reflective activities would be the function of each individual law school, because it would be highly dependent on how the law school functions, how the curriculum has been developed, and other unique features of the law school. Field, Duffy & Huggins recommend law students reflect on *why* they have chosen this professional path, on their strengths and weaknesses, and to consider different roles for legal professionals. They provide a plethora of reflective questions and exercises in their text for first year law students, *Lawyering and Positive Professional Identities*, with a particular focus on identifying signature character strengths.¹²⁵ Similarly, Caroline Maughan & Julian Webb provide examples of reflective questions about personal values and how they relate to professional values.¹²⁶ Reflecting on how a student’s values map onto

for recognizing it: see Zenon Bankowski, & Maksymilian Del Mar, *The Moral Imagination and the Legal Life: Beyond Text in Legal Education* (Burlington, Vt: Ashgate, 2013); Zenon Bankowski, Maksymilian Del Mar & Paul Maharg, *The Arts and the Legal Academy: Beyond Text in Legal Education* (Burlington, Vt: Ashgate, 2013); Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century* (Burlington, Vt: Ashgate, 2007); Paul Maharg & Caroline Maughan, eds, *Affect and Legal Education: Emotion in Learning and Teaching the Law* (Burlington, Vt: Ashgate, 2011).

¹²⁰ Anzalone, *supra* note 119 at 86.

¹²¹ Judith McNamara & Rachael Field, “Designing for Reflective Practice in Legal Education” (2007) 2:1 J Learning Design 66.

¹²² See Leering, “Reflective Practice”, *supra* note 3 at 88. See also commentary and sources, *above*, in nn 23–25.

¹²³ Anzalone, *supra* note 119 at 91.

¹²⁴ For a fuller discussion of the mental health challenges faced by law students see Leering, “Reflective Practice”, *supra* note 3 at 88.

¹²⁵ Field, Duffy & Huggins, *Professional Identities*, *supra* note 13.

¹²⁶ Maughan & Webb, *Lawyering Skills*, *supra* note 93. A Canadian example would be the concept of “public interest vocationalism”: see Richard Devlin & Jocelyn Downie, “Public Interest Vocationalism: A Way Forward for Legal Education in Canada” in Fiona Westwood &

professional role values is a method of encouraging self-reflection that aligns naturally with the teaching of legal professionalism and ethics.¹²⁷ Self-assessment exercises related to considering preferences towards certain professional roles are also examples of encouraging self-reflection.¹²⁸

4. Integrative or integrated reflection

[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.¹²⁹

The fourth type of reflective capacity is the ability to integrate the insights from two or more types of reflection. This is not a linear process: it is akin to the symbol of the spiral, to represent the cyclical nature of movement from one form of reflection to another. Or imagine a Venn diagram with intersecting circles—representing reflection on practice, on knowledge (critical reflection), and self-reflection—with the area created by the intersection as “integrative”.¹³⁰ Now, as one professor described, imagine the different domains of reflection as differently coloured lenses, producing new colours as they are layered over one another, and ultimately producing white light. Another professor described reflective practice as akin to building a pyramid, with the different types of reflection as building blocks.¹³¹ Several professors commented on the danger that insights gained from the different domains of reflection do not always become integrated,¹³² creating a lost opportunity for personal integration and professional growth. For example, critical reflection could produce an insight that should—but does not—change one’s practice or trigger a reassessment of one’s values. If this

Karen Barton, *The Calling of Law: The Pivotal Role of Vocational Legal Education* (Burlington, Vt: Ashgate, 2014) 85.

¹²⁷ Interrogating paradigms of lawyering can help students discern which forms of legal practice align best with their values. For a discussion of nine different vectors of legal practice, the comprehensive law movement and the alternative theories of lawyering see Daicoff, “Healing Profession”, *supra* note 104. For a discussion of professional roles and ethical preferences see also Parker & Evans, *supra* note 104.

¹²⁸ See Daicoff, “Healing Profession”, *supra* note 104 at 16–25 (readings), 29–32 (exercise). See also Parker & Evans, *supra* note 104 at 30–54, 366–79. Their assessment exercise is based on empirical research (*ibid* at 380–88).

¹²⁹ Leering, “Reflective Practice”, *supra* note 3 at 103.

¹³⁰ For a graphic representation of integrated reflective practice, see Leering, “Reflective Practice”, *supra* note 3 at 94.

¹³¹ *Ibid* at 102.

¹³² See e.g. Leering, *ibid* at 97.

happens, it can lead to a disconnect between one's "espoused theory" and "theory in use", a troubling dilemma first described by Schön & Argyris.¹³³

Integrating reflective insights helps to strengthen professional expertise and identity, ethical understanding and behaviour, and provides a developmental path to a higher degree of professionalism. In theory, integrated reflective practitioners would be committed to making changes to their practice based on what they learn through all three types of reflection—practice, knowledge, and values. This is because integrated reflective practice encourages greater alignment between values and action—strengthening integrity and leading to authenticity, which relates to ethical practice and professionalism. Reflective practice becomes a way of being—supporting a life-long journey of learning, professional growth, and commitment to action. Anzalone provides an example of integrated reflective practice in action, appropriate to the developmental level of law students:

Reflective practice ... provides opportunities for students to examine and test beliefs and principles against what is being learned doctrinally. Reflective practice helps students vet their own beliefs and value systems against the mores and norms of the legal profession. ... Using reflection helps students contextualize their learning and remember why they wanted to become lawyers in the first place.¹³⁴

For law students, mulling over something they have done (practice) that they are dissatisfied with may lead to critical reflection on their skill or knowledge base, thus sparking a need for new knowledge to help improve their practice. Or reading critical theory may lead to interrogating an aspect of practice or a way of being (self), and integrating that reflective insight (from critical reflection) could lead to a shift in perspective (transformative learning) and a change in practice or values. Clinical legal education and experiential learning opportunities related to "access to justice" could provide ample opportunities for the disorienting and disruptive experiences needed to give rise to integrated reflection.¹³⁵ Another method for encouraging integration is reflective writing, specifically the use of reflective journals: if assignments and reflective questions are carefully crafted by the legal educator, they can become a cogent method for encouraging integrative

¹³³ For a general discussion of this phenomenon see Argyris & Schön, *supra* note 56.

¹³⁴ Anzalone, *supra* note 119 at 93.

¹³⁵ See the thoughtful exploration in Sarah Buhler, "I Am Not a Caped Crusader": Clinical Legal Education and Professional Identity Formation" (2016) 49:1 UBC L Rev 105.

reflection.¹³⁶ Requiring reflective portfolios is another example of an integrative activity.¹³⁷

5. Collective reflection

The capacity to reflect with others should be included as a crucial component of the reflective practice model for legal professionals for two reasons. First, ensuring the credibility, validity and reliability of one's reflective insights is desirable. A law professor I interviewed expressed it well: it is important to share reflective insights with other people to open the insights up for scrutiny in a spirit of inquiry and to ensure rigour.¹³⁸ Schön stressed the importance of rigour, cautioning that reflective practice is not an invitation to “woolly-headedness, a never-never land where anything goes.”¹³⁹ Secondly, and significantly, collective reflection is the method by which we learn from one another. Building the capacity for collective reflection deepens understanding and allows us to create new knowledge through dialogue.¹⁴⁰ The effective practice of collective reflection has tremendous implications for how we learn in organizations and in systems, for engaging in “systems-thinking”, and for creating an impetus and momentum for systemic change and improvement. The capacity to reflect collectively is also essential to work-based learning. “Communities of practice”¹⁴¹ and

¹³⁶ See JP Ogilvy, “The Use of Journals in Legal Education: A Tool for Reflection” (1996) 3:1 *Clinical L Rev* 55 [Ogilvy, “Use of Journals”]. See also James R Elkins, “Writing our Lives: Making Introspective Writing a Part of Legal Education” (1993) 29:1 *Willamette L Rev* 45 [Elkins]. For a useful listing of what law students can be encouraged to reflect on, see Alexander Scherr & Margaret Martin Barry, “Reflection and Writing Journals” in Wortham et al, *supra* note 71, 203. Several legal educators have begun to empirically test the efficacy of student reflective journals. See for example Simon Brooman & Sue Darwent, “A Positive View of First-Year Undergraduate Reflective Diaries: Focusing on What Students Can Do” (2012) 13:4 *Reflective Practice: Intl & Multidisciplinary Perspectives* 517 [Brooman & Darwent]; Bobbi McAdoo, “Reflective Journal Assignments in Teaching Negotiation” in Noam Ebner, James Coben & Christopher Honeyman, eds, *Assessing Our Students, Assessing Ourselves: Volume 3 in the Rethinking Negotiation Teaching Series* (Saint Paul, Minn: DRI Press, 2012) 65. For more general discussions on the usefulness of journals and how to structure reflective writing see Bolton, *supra* note 49; Moon, *Learning Journals*, *supra* note 34, Leona M English & Marie A Gillen, eds, *Promoting Journal Writing in Adult Education: New Directions for Adult and Continuing Education* (San Francisco: Jossey-Bass, 2001).

¹³⁷ Reflective portfolios are comprised of systematic reflective exercises that function as capstone projects, and are discussed at 82, *below*.

¹³⁸ Leering, “Reflective Practice”, *supra* note 3 at 100.

¹³⁹ Schön, *Reflective Turn*, *supra* note 25 at 10.

¹⁴⁰ For a greater elaboration on the power of collective reflection see Boud, Cressey & Docherty, *supra* note 50. See also Reynolds & Vince, *supra* note 51.

¹⁴¹ Communities of practice are a term popularized by Etienne Wenger in *Communities of Practice: Learning, Meaning, and Identity* (New York: Cambridge University Press, 1998). For a discussion of communities of practice in the law school classroom see

“learning organizations”¹⁴²—highly respected in the business world and extensively discussed in the organizational learning scholarship—both thrive because of their embodied, collective forms of reflection. In my view, the legal profession’s capacity to engage in productive collective inquiry will be critical for creating a culture of reform and for finding solutions to the crises in access to justice.¹⁴³ Given the complexity of the challenges faced by the profession, and the public in accessing justice, interdisciplinary and multi-disciplinary collaborations are essential; these will be strengthened by a capacity to engage in reflective and generative dialogue to produce more constructive results.¹⁴⁴ Improving our capacity to reflect collectively will increase the level of generative dialogue about possible enhancements to legal education. It offers an antidote to a professional propensity to engage in adversarial advocacy and polarized debate in ways that could be better balanced by reflective inquiry, active listening, and dialogue—all key enablers of collective reflection.

Introducing law students to the practice of reflecting collectively as early as possible is critical. Opportunities to work together in groups on projects can expose students to the benefits of team learning and the synergies that come from working with others with different skills and insights. Cristina Lockwood writes persuasively of the benefits of using a collective reflection model, specifically through creating communities of practice in the law school classroom, introducing this model in first-year legal writing and upper-level, skills-based law courses.¹⁴⁵ Calder has created a unique pedagogical moment in a constitutional law class through the collaborative drafting of a class constitution.¹⁴⁶ Pedagogical experiments using social innovation technologies are providing creative opportunities for collective

Cristina D Lockwood, “Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice” (2013) 20:1 *Clinical L Rev* 95 [Lockwood]; Paula Baron & Lillian Corbin, “Thinking like a Lawyer/Acting like a Professional: Communities of Practice As a Means of Challenging Orthodox Legal Education” (2012) 46:2 *L Teacher* 100.

¹⁴² Senge, *supra* note 62.

¹⁴³ I explore this topic more deeply in an article about the contribution that reflective practice and action research could make to fostering innovation in profession and the justice sector, see Leering, “Access to Justice”, *supra* note 11.

¹⁴⁴ Understanding what constitutes reflective and generative dialogue—the two higher “fields of conversation”—deserves further investigation by the profession. These terms capture a capacity for active listening and reflecting collectively to generate new future possibilities that are not possible when we are engaged in downloading and debate, the two lesser, constrained fields of conversation. See “Presencing: A Social Technology for Leading Profound Innovation and Change” in C Otto Scharmer, *Theory U: Leading from the Future as it Emerges* (Cambridge, Mass: Society for Organizational Learning, 2007) at 227–300 and in particular at 236, 273, 274.

¹⁴⁵ Lockwood, *supra* note 141.

¹⁴⁶ For an innovative example in Canadian legal education of collective reflection included in a substantive law class see Gillian Calder, “We the People of Constitutional Law

reflection and these methods are worthy of further exploration, such as “design thinking” and “innovation labs” currently being tried at a number of law schools.¹⁴⁷

6. Praxis: Taking action on reflection

The sixth component of reflective practice is taking action on reflective insights. “Praxis” is a term that embodies the need to actually *do* something—to take action and make changes. Kemmis defines praxis as “[informed, committed action] the most eloquent and socially significant form of human action.”¹⁴⁸ Acting on our reflective insights is the quintessential challenge for all legal professionals, thus encouraging students to move past reflection in to action will be crucial, while methods for encouraging praxis will be highly contextual and specific to each student.¹⁴⁹

In summary, the components of reflective practice that I have outlined above provide a heuristic framework for understanding the aspects of an “integrated reflective practice” that map onto aspirations for the professional education of Canadian law students, and provide a roadmap for designing reflective activities to support the different domains of reflection. In the next section (which is a work in progress) I offer a different analytical framework using a temporal dimension—hypothesizing iterative stages of the

100 Y01: Pedagogical Promise of a Classroom Constitution in First-Year Law” (2008) 2 Can Leg Education Annual Rev 39.

¹⁴⁷ Design thinking is an innovation process that has often been used for product development and is grounded in a handful of fundamental principles that includes being user-centred, open to new ways of doing things through experimentation and being very intentional in one’s work. For a discussion of design principles and an experiment at Stanford Law school see Margaret Hagan, “[Design Thinking and Law: A Perfect Match](http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/january14/design-thinking-and-law.html)” (January 2014) *Law Practice Today*, online: <www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/january14/design-thinking-and-law.html>. For a discussion of social innovation labs, the subject of growing exploration in the justice sector, see Martha F Davis, “Institutionalizing Legal Innovation: The (Re)Emergence of the Law Lab” (2015) 65:1 J Leg Educ 190; Sossin, *supra* note 12. For a general discussion of labs as a method of experiential learning, Deborah Maranville et al, eds, *Building on Best Practices: Transforming Legal Education in a Changing World* (Durham, NC: Carolina Academic Press, 2015) at 167 [Maranville et al].

¹⁴⁸ Stephen Kemmis, “Action Research and the Politics of Reflection” in Boud, Keogh & Walker, *supra* note 33 at 141.

¹⁴⁹ Medical educators who have studied what to do when medical students do not take action on new knowledge, or receive reports of problematic performance, recommend overcoming the “intention-action” gap through “effective implementation intentions”. Developing “implementation intentions” are described as a way to overcome a lack of action: see Daniel Saddawi-Konefka et al, “Changing Physician Behavior with Implementation Intentions: Closing the Gap Between Intentions and Actions” (2016) 91:9 Academic Medicine 1211.

professional learning journey—and provide examples of reflective activities that may be suitable for these phases of professional development.¹⁵⁰

Introducing Reflective Practice in Law School: Using Different Learning Phases as a Framework

In this section, I use a temporal lens for considering how reflective practice might be more systematically implemented into the education of legal professionals. I identify five “learning phases” on the legal professional’s journey from law student as “novice” to legal professional as “expert”. Depending on where the learner is situated on this journey, the appropriate scope, breadth, depth and content of reflection that can be expected will vary. The law school experience provides the first three phases; the final two phases mark the post-law school learning journey of professional formation, and are within the jurisdiction of provincial law societies, graduate schools or other institutions, depending on the practice choices being made by the legal professional. Within the analysis I set out below, I also include an example of a reflective method that might align well with the expected learning and professional formation outcomes of the first three phases of legal education. Although the last two phases are crucial learning phases that would benefit from a reflective practice approach—because learning from experience is imperative in these phases—how these phases might be restructured to value and require reflection is beyond this article’s scope. New and innovative approaches to continuing professional education for lawyers in Alberta and Nova Scotia are promising, but are still in their early stages of conceptual and practical development.¹⁵¹ This section will primarily focus on the first three phases, encountered in law school.

Phase I captures the first year of law school—including orientation week and foundational law courses—which has often been characterized as the pivotal period for inculcating the skills of “thinking like a lawyer.” This is also the most significant formative year of the Carnegie Report’s “cognitive apprenticeship”. Opportunities for experiential education and learning while in law school demarcate **Phase II** (which may overlap with both Phase I and Phase III). These opportunities could include problem-

¹⁵⁰ I describe this as a work in progress because it would be strengthened by incorporating a sophisticated analysis of the learning outcomes essential to each of these learning stages, a subject beyond this article’s scope and the current state of documentation of Canadian legal education standards. Australian law deans and legal educators have made tremendous progress in developing these indicators for Australian legal education, including specifying graduate-level attributes, threshold learning outcomes, and law discipline-specific standards. Research and initiatives have been supported by the Australian Learning and Teaching Council and the Council of Australian Law Deans. For a discussion of these initiatives see Kift et al, *Excellence & Innovation*, *supra* note 69.

¹⁵¹ *Supra* note 20.

based and project-based learning, simulations, clinical legal education and externships, volunteer or service-learning experiences, mooting, client counselling, other legal skill competitions, summer law student work, part-time legal work, work/study programs, and extra or co-curricular activities. These provide openings for undertaking the Carnegie Report's "apprenticeship for practice".

Phase III represents the second and third year of law school, where there are opportunities to study specialized legal subjects and to deepen and integrate the knowledge, skills, and values required of legal professionals. By Phase III, if the Carnegie Report recommendations are accepted, one might expect that law students would be engaged in all three apprenticeships—including the "apprenticeship of professional identity and purpose"—and that the curriculum would be designed to integrate the learning and insights from each of these apprenticeships.

Phase IV delineates the first post-law school experience, and the beginning of the current formal apprenticeship for practice, where the important task is to start to move along the learning continuum from "novice" to "expert". For law students who intend to practice as lawyers, this incorporates articles or clerkships (and in Ontario can also include alternatives to articling). For those who undertake graduate studies, teach, develop policy, draft legislation—or who follow any of the countless other available legal professional paths—these apprenticeships may look a bit different, but are still essentially a process of professional formation and continued cultivation of expertise and knowledge. Here, the crucial task is to learn systematically from experience and to begin to take action in the world as a legal professional.

In **Phase V**, the legal professional moves more fully and independently into their professional role. In the case of lawyers, this transition begins after they are licensed to practice. At this stage, the complexity and diversity of reflective practice begins to increase as the responsibilities of professional practice and employment become fully enacted. The need for work-based learning and creative and innovative thinking will begin to expand the desirable—or expected—range of professional skills and knowledge. This is the stage where reflective inquiry and reflective practice coalesce and deepen into the concept of reflective professionalism, influencing one's professional identity, building a theory of professional practice, strengthening ethical awareness, and enhancing professional responsibility and competence.

Phase I

The professors I interviewed believed it was important to value and promote reflection from the beginning of law school because it sets the tone for law students' experiences. Building on the insights from the Carnegie Report, renowned legal academic Paula Lustbader described how law schools might redesign orientation to include reflective activities that will ensure greater student engagement, help form professional identity, build self-awareness and self-efficacy, enrich the learning process, avoid gratuitous angst, and build alignment to the law school's mission. Developing a cohesive and comprehensive program of orientation activities could include introducing reflective and discernment skills to students and ways to build metacognition, designing rituals to invoke a sense of professional calling and responsibility, and by providing inspirational speakers, shadowing programs, and opportunities for service-learning or pro bono work, retreats, and field trips. Early reflective writing exercises could include creating a mission statement, one's own eulogy, or writing about what difference one hopes to make with their law degree. Other activities to support reflection could be meditation, stress reduction and relaxation techniques,¹⁵² which could also assist in managing the disorientation and disempowerment of first year.

Australian legal educators put a priority on helping students to reflect productively in the first year and see this as the key to surviving legal education and legal practice.¹⁵³ They propose a framework for introducing reflection that includes instructing the students about reflection, providing structures and protocols to help them reflect, and giving criteria and formative feedback to help students self-assess their reflections. Kift commented that "reflection is a metacognitive skill in which greater awareness of, and control over, the student's learning process is generated."¹⁵⁴

As a transition year method, law students could be supported in creating an individualized learning plan to build their self-efficacy and to begin to plan strategically for their future. Personal development planning

¹⁵² Paula Lustbader, "You Are Not in Kansas Anymore: Orientation Programs Can Help Students Fly Over the Rainbow" (2008) 47:2 Washburn LJ 327. Existing orientation programs in Canadian law schools likely already incorporate some of these elements.

¹⁵³ Judith McNamara, Rachael Field & Catherine Brown, *Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice* (Paper delivered at the First Year in Higher Education Conference, Townsville, Queensland, 29 June–1 July 2009).

¹⁵⁴ Sally Kift, "Lawyering Skills: Finding their Place in Legal Education" (1997) 8:1 Leg Education Rev 43 at 68.

for law students was advocated by the UK Centre for Legal Education.¹⁵⁵ This could include students articulating their own expectations for the end of a course or semester based on stated aims or learning outcomes, assessing what they already know or do not know—their strengths and weaknesses—and using that to create a personal development plan. An added benefit for students could be proactively identifying resources to assist with anticipated challenges, planning for contingencies, and purposefully enriching their learning with experiential activities. Since many law students are disoriented and disempowered by the first year of law school, encouraging them to identify their learning styles while devising learning strategies can help students craft more appropriate learning approaches. Writing reflective narratives and keeping learning journals are other important methods for easily building the “reflective muscle”.¹⁵⁶

Phase II

Phase II captures the essential role that experiential education and experiential learning opportunities provide for enhancing legal education, professional learning and the development of legal professionalism, and seeks to capitalize on any opportunity a law student might have to learn from their experiences.¹⁵⁷ The benefits of experiential education align with the Carnegie Report’s recommendation for more active learning

¹⁵⁵ Hinett, *supra* note 30 at 30–32. The former UK Centre for Legal Education had a working group on Personal Development Planning, see Sue Prince, *Personal Development Planning and Law* (2002), online: <www.ials.sas.ac.uk>. This process is similar to the learning plans under “Reflection on Practice”, discussed at 21, *above*.

¹⁵⁶ There is a great deal of literature about the importance of learning journals for law students. See Tracey Varnava & Julian Webb, “Key Aspects of Teaching and Learning: Enhancing Learning in Legal Education” in Heather Fry, Steve Ketteridge & Stephanie Marshall, eds, *A Handbook for Teaching and Learning in Higher Education: Enhancing Academic Practice*, 3rd ed (New York: Routledge, 2009) 363 (for a discussion on reflective narratives). See also Brooman & Darwent, *supra* note 136 (for an empirical study about the effectiveness of journals in the first year). See e.g. Ogilvy, *supra* note 136; Daniel M Schaffzin, “So Why Not an Experiential Law School ... Starting with Reflection in the First Year?” (2015) 7:1 *Elon L Rev* 383; Bolton, *supra* note 49 at 1; Judith McNamara, Rachael Field & Natalie Cuffe, *Designing Reflective Assessment for Effective Learning of Legal Research Skills in First Year* (Paper delivered at the First Year in Higher Education Conference, Hobart, Tasmania, 30 June–2 July 2008), online: <fyhe.com.au/past_papers/papers08/FYHE2008/content/pdfs/1e.pdf>. For a general discussion of learning journals for professional development see Moon, *Learning Journals*, *supra* note 34.

¹⁵⁷ Although not all law students will have the opportunity to engage in clinical legal education, there are many other opportunities to enrich their legal education with experience. However, when the experience is offered outside of the teaching context, it is not always enriched by using reflective methods to gain the most learning possible. This presents a missed opportunity in legal education today.

in context,¹⁵⁸ and the recommendations of both recent national reports on access to justice.¹⁵⁹ Reflection plays a crucial-but-undervalued role in learning from these experiences, as captured by the adage “[w]e do not learn from experience, we learn from reflecting on that experience.”¹⁶⁰ Ensuring that law students can capitalize on learning from their experiences will be an important enabler of their capacity to engage in work-based learning in the later phases.

Two important ways, among many,¹⁶¹ to think about reflective methods in Phase II are: one, helping the student develop problem-solving strategies in simulation or real life experiences (which will not be explored here);¹⁶² and two, to consider methods to strengthen the students’ capacity to learn from experience through reflection, such as various reflective writing techniques, including a reflective learning log or journal.¹⁶³ Students can also be introduced to the “experiential learning cycle”¹⁶⁴ to help them conceptualize and understand how their learning takes place, or to the

¹⁵⁸ See Carnegie Report, *supra* note 14. For developing experiential learning see Stuckey, *supra* note 71 at 165–203.

¹⁵⁹ CBA, *Equal Justice*, *supra* note 1 at 121; Action Committee, *Roadmap for Change*, *supra* note 9 at 22.

¹⁶⁰ This is the commonly used paraphrase of noted American educationalist John Dewey’s message on learning from experience in Dewey, *How We Think*, *supra* note 8.

¹⁶¹ See Stuckey, *supra* note 71; Wortham et al, *supra* note 71 at 199–214; Maranville et al, *supra* note 147.

¹⁶² The focus here is usually on anticipatory reflection for action, and for reflecting in action. See the discussion on the importance of reflection in the context of simulations in Caroline Strevens, Richard Grimes & Edward Phillips, eds, *Legal Education: Simulation in Theory and Practice* (Burlington, Vt: Ashgate Publishing, 2014) [Strevens, Grimes & Phillips]. For a useful resource on the problem-solving method see Richard Grimes, “Faking it and Making it? Using Simulation with Problem-Based Learning” in Strevens, Grimes & Phillips, *ibid.* Clinical legal educators are well placed to provide appropriate methods for enabling students to reflect productively from real life experiences. See *infra* n 168. See also Adrian Evans et al, [Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School](#) (Acton, Australia: ANU Press, 2017) 153–177, online: <<http://press.anu.edu.au/publications/australian-clinical-legal-education>>.

¹⁶³ See Ogilvy, “Use of Journals”, *supra* note 136; JP Ogilvy, “Journals” in JP Ogilvy et al, eds, *Learning from Practice: A Professional Development Text for Legal Externs*, 2nd ed (Saint Paul, Minn: Thomson/West, 2007) 199; Elkins, *supra* note 136. See generally Moon, *Learning Journals*, *supra* note 34.

¹⁶⁴ For representations of the learning cycle originally popularized by Kolb but applied to law students see Hinett, *supra* note 30 at 2; Steven Hartwell, “Six Easy Pieces: Teaching Experientially” (2004) 41:3 San Diego L Rev 1011 at 1014; Neil Kibble, “Reflection and Supervision in Clinical Legal Education: Do Work Placements Have a Role in Undergraduate Legal Education?” (1998) 5:1 Intl J Leg Profession 83; Ledvinka, *supra* note 76. It is clear that we need to develop better resources to support law students specifically with reflective practice. See e.g. Jenny Gibbons, “Oh the Irony! A Reflective Report on the Assessment of Reflective Reports on a LLB Programme” (2015) 49:2 L Teacher 176.

reflective models endorsed by the *Australian Good Practice Guide (Bachelor of Law) Reflective Practice*.¹⁶⁵ Developing coaching, mentoring, reflective questions, and debriefing opportunities would also help students process and make explicit what they have learned.¹⁶⁶

Phase III

Once foundational legal knowledge and legal reasoning skills are established, law school's second and third year provide multiple new opportunities to deepen law student reflection—particularly integrated, collective and critical reflection. Methods showing promise at this stage for integrating reflection and learning are capstone courses¹⁶⁷ and synthesizing reflective activities such as reflective learning portfolios.

Capstone experiences require students to integrate their learning acquired over the entirety of their professional education. The merit of capstone experiences is being investigated as part of Australian curriculum renewal efforts, and Kift et al have identified core principles for designing and delivering these for law students.¹⁶⁸ The purpose is to provide students with the opportunity to look back over their learning, make sense of what has been accomplished, begin to look towards their professional and personal futures, and to support the transition from being a law student to becoming a legal professional. “Capstone experiences should be intentionally designed to promote reflection on, and the integration and synthesis of whole-of-program learning by requiring student demonstration of consolidated, integrative and transferable learning.”¹⁶⁹

Reflective learning portfolios could also be considered as a type of capstone experience, which provide evidence of learning, often including

¹⁶⁵ McNamara, Cockburn & Campbell, *Good Practice*, *supra* note 13.

¹⁶⁶ Wortham et al, *supra* note 71, provides a comprehensive manual for learning from practice, developed originally for externships and designed for international use by American legal educators provides excellent materials to support reflection for learning in Phase II, including how to create a personal development planning to get the most from the experience, how to learn from observation, as well as suggesting topics appropriate for reflection in this context.

¹⁶⁷ For a discussion of capstone courses, see Sally Kift et al, *Excellence & Innovation*, *supra* note 69; Mandy Shircore et al, “From the First Year to the Final Year Experience: Embedding Reflection for Work Integrated Learning in a Holistic Curriculum Framework: A Practice Report” (2013) 4:1 Intl J First Year in Higher Education 125; Andrea Susnir Funk & Kelley M Mauerman, “Starting from the Top: Using a Capstone Course to Begin Program Assessment in Legal Education” (2012) 37 Okla City UL Rev 477.

¹⁶⁸ Kift et al, *Capstone Experiences Principles and Commentary* (Cairns, AU: James Cook University, 2013).

¹⁶⁹ *Ibid.*

a depository of records of achievement, and reflective components that evaluate progress towards learning goals. Portfolios are a systematic method for integrating learning that has become popular in legal education in Australia, the United Kingdom and, to a lesser extent, the United States.¹⁷⁰ Portfolios are extensively used in other disciplines like teaching, and more recently in medical education.¹⁷¹ A possible reflective exercise to include in a portfolio would be an articulated theory of professional practice (after examining alternative conceptions of practicing law, for example)¹⁷² or crafting an aspirational, personalized professional oath.¹⁷³

In this section I have introduced ideas for how reflection might be supported in each of the three learning phases that typify the formal period of legal education: first year, experiential education opportunities, and the final two years of law school. This temporal framework for building students' reflective capacity is more likely to benefit from a "whole of law school" approach. The analysis of which reflective methods are best suited for students' stages of professional development would be strengthened if a law school possessed, clearly expressed, and delineated learning outcomes for each of these three phases.¹⁷⁴

¹⁷⁰ For a discussion of experimental efforts to introduce portfolios into the graduate diploma in legal practice in the United Kingdom see the following summary of the UK Centre for Legal Education, *DeL Phase II Project Report* (2008) online: <http://strathprints.strath.ac.uk/30470/1/Barton_McKellar_eports.pdf>. In Australia, see Vicki Waye & Margaret Faulkner, "Embedding E-portfolios in a Law Program: Lessons from an Australian Law School" (2012) 61:4 J Leg Educ 560. See also Chris Trevitt, Anne Macduff & Aliya Steed, "[e]Portfolios for Learning *and* as Evidence of Achievement: Scoping the Academic Practice Development Agenda Ahead" (2014) 20 Internet & Higher Education 69. In the US, see Deborah Jones Merritt, "Pedagogy, Progress, and Portfolios" (2010) 25:1 Ohio St J Disp Resol 7. See generally Linda Fernsten & Jeffry Fernsten, "Portfolio Assessment and Reflection: Enhancing Learning Through Effective Practice" (2005) 6:2 Reflective Practice: Intl & Multidisciplinary Perspectives 303; Anthony J O'Sullivan et al, "Linking Assessment to Undergraduate Student Capabilities Through Portfolio Examination" (2012) 37:3 Assessment & Evaluation in Higher Education 379.

¹⁷¹ John Zubizarreta, *The Learning Portfolio: Reflective Practice for Improving Student Learning*, 2nd ed (San Francisco: Jossey-Bass, 2009). There is widespread use of portfolios in medical education and their effectiveness in supporting reflection continues to be the subject of empirical research. See e.g. Erik Driessen et al, "Portfolios in Medical Education: Why Do They Meet With Mixed Success? A Systematic Review" (2007) 41:12 Medical Education 1224.

¹⁷² See *supra* note 105. There are many other legal writers who could help inform this reflection, including Anthony T Kronman and Richard Susskind.

¹⁷³ Two of the reflective activities I require in an extern's portfolio are a theory of professional practice and a customized professional oath.

¹⁷⁴ For the benefits of a "whole-of-law-school" approach, see Richard Johnstone "Whole-of-curriculum Design in Law" in Kift et al, *Excellence & Innovation*, *supra* note 69, 1. For a commentary on instructional alignment see the Carnegie Report, *supra* note 14.

Conclusion

Introducing law students to reflective practice is a promising method for improving student learning, bridging the divide between theory and practice, and developing legal professionalism. It is a “dynamic developmental process” that could enhance legal education theory and should be further explored and experimented with because it offers benefits to both legal educators and law students. Benefits of reflective practice include, but are not limited to metacognitive and higher order thinking and transformative learning, which serve as strong rationales for embracing reflective practice as a professional attribute and core competency beginning in law school. To quote a professor I interviewed:

I think [reflective practice] is actually cutting edge, it ought to be explored. ... I think that ... law faculties that evolve to adopt these kinds of tools and methods will be better law faculties. I firmly believe that, we are a profession that is notoriously slow to change and I think that our law schools also reflect that, we tend to be small “c” conservative in that sense ... [Reflective practice] doesn't mean abandoning technical expertise that we can provide in all of the branches of law, but it means accepting greater responsibility and embracing it as part of what we are teaching, and I think that it makes for better and more interesting courses ... [Y]ou will attract a really wonderfully diverse, and interested ... group of law students, by making this intentionally part of your curriculum.¹⁷⁵

A significant imperative for introducing reflective practice is to provide what the Carnegie Report described as “a more capacious, yet more integrated, legal education.”¹⁷⁶ That is to say, we must broaden legal education's theoretical underpinnings from its signature pedagogy of the case-dialogue method to support apprenticeships of professional identity, purpose, and for practice.¹⁷⁷ However, I also ambitiously outlined other imperatives for why law schools might want to develop a “pedagogy of reflection” and reflective practice as a core professional attribute. Law schools modelling a stronger culture of reflective inquiry could eventually influence cultural reform in the legal profession. The imperatives for this include the growing lack of equal justice, the need to shift professional consciousness to better meet the justice needs of the public, to respond to changing client expectations and to generate innovative approaches. It is becoming critical to prepare future legal professionals to respond proactively to dire predictions about

¹⁷⁵ See interview of Professor PB, conducted by the author, in Michele Leering, “Encouraging Reflective Practice in a Professional School: Developing a Conceptual Model and Sharing Promising Practices to Support Law Student Reflection” (2012) at 35 [unpublished, on file with author].

¹⁷⁶ *Ibid* at 12.

¹⁷⁷ The *Carnegie Report*, *supra* note 14, identified the case-dialogue method as law's signature pedagogy (at 24).

the future relevance and role of the profession in the face of threats of globalization and disruptive technology. The fact that law schools, legal educators, and law societies may share a common interest in promoting reflective practice could galvanize a more aligned approach to professional learning and formation. Furthermore, the strong emphasis on developing reflective practice as a professional attribute that better prepares students for practice in other disciplines means that efforts to encourage it in law will allow the profession to catch up to the standard for professional learning and formation already enacted in medicine, education and health.

Given the critical role that law schools play in setting the stage for professional learning and identity formation, I have provided two conceptual frameworks to assist legal educators in introducing reflective practice. One is based on the different domains of reflection, and the other is based on sequential phases of the professional learning journey and core learning tasks with a sampling of techniques to build reflective capacity. One can imagine a progressive continuum of reflective capacity, beginning with the student as the reflective learner and inquirer, moving to being the integrated reflective practitioner as the need to integrate skills, knowledge and values becomes more profound, and culminating in living reflective professionalism. In some instances, the efforts of individual legal educators could be sufficient to introduce these methods; in others, instructional alignment would be more productive. A clear law school message that reflective practice is important for developing professional expertise and knowledge, and efforts to introduce reflective activities by legal educators could “seed the ground” and begin to create a shift in law school culture to explicitly valuing law student reflection that could provide significant future dividends both individually and collectively.

Although law schools have historically provided a solid theoretical grounding in law and the skills of legal reasoning, research, and writing (“thinking like a lawyer”), tomorrow’s legal professionals would benefit from a more holistic legal education that optimizes learning through reflection, strengthens the capacity to learn from experience, and creates a reflective professional culture. A culture of reflective inquiry permeating our legal institutions—especially for a profession committed to advancing the rule of law and creating a more just society—could contribute to healthy generative dialogue and creative and innovative thinking to ensure that the profession remains relevant and that our justice institutions become more responsive to the needs of the public. Law schools have an important role to play in being a catalyst for change.