

PROFESSIONAL EXCELLENCE THROUGH COMPETENCY DEVELOPMENT

Yanneck Ostaficzuk and Suzanne Gagnon¹

The legal and other professional services market is an important part of the Canadian economy. For the regulatory authorities that oversee the practice of many professions, competency development constitutes a lever to ensure the quality of services and public protection. This article questions the traditional approach to continuing professional development, based on a minimum number of hours or training, and suggests new ways for regulatory authorities to implement and foster a reflective approach to competency development. Using a comparative perspective, the authors identify major trends that influence the regulatory framework of continuing professional development in the legal profession and build on adult learning principles to suggest new paths to a learning culture among lawyers. Finally, the authors showcase local initiatives, put forward by Canadian law societies, in an effort to bring a meaning to this regulated process of lifelong learning.

Le marché des services juridiques et des autres services professionnels fait partie intégrante de l'économie canadienne. Pour les organismes de réglementation qui se chargent de surveiller l'exercice de nombreuses professions, le perfectionnement des compétences sert de levier pour assurer la qualité des services et la protection du public. Le présent article remet en question l'approche traditionnelle, qui est axée sur un nombre minimal d'heures de formation continue, et propose, à l'intention des organismes de réglementation, de nouvelles façons de mettre en œuvre et de promouvoir une

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approche réflexive du perfectionnement professionnel. Au moyen d'une étude comparative, les auteurs identifient les grandes tendances qui agissent sur les cadres réglementaires de la formation continue dans la profession juridique et s'appuient sur les principes de l'apprentissage des adultes pour proposer de nouvelles voies vers une culture d'acquisition du savoir chez les juristes. En guise de conclusion, les auteurs présentent des initiatives régionales mises en œuvre par les barreaux canadiens dans le but de donner un sens à ce processus de réglementation de la formation permanente.

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This past year of a fictional lawyer's legal career has been busy.² As a member of a Canadian law society, he managed a demanding case for one of his biggest clients, a multinational challenging the application of a provincial law. This dispute required a hearing before the Supreme Court of Canada, which meant this lawyer and his legal team devoted significant resources to preparing the proceedings and submissions.

² This scenario only contains fictional data. Any resemblance to a factual situation is unintentional.

This was one of the most formative professional experiences this lawyer had. However, he had a rude awakening about the ethical duties of his profession. Pursuant to his law society's rules pertaining to continuing professional development, he received a notice of failure to complete at least 12 hours of approved activities during the past annual compliance period.

Since the regulatory framework currently in force does not include knowledge acquired on the job in the list of eligible professional development activities, this lawyer decides to attend a series of easily accessible online training sessions over the course of one weekend, even though the training topics presented are not very relevant to his professional practice.

Although the above scenario is strictly anecdotal, it is nevertheless a situation that some Canadian legal professionals have experienced. Using a comparative perspective, this article identifies major trends that influence the regulatory framework of continuing professional development in the legal profession and build on adult learning principles to suggest new paths to a learning culture among lawyers. It builds on local initiatives put forward by Canadian law societies in an effort to bring meaning to this regulated process of lifelong learning.

1. The Rise of a Culture of Continuing Professional Development among Legal Professionals in Canada

A review of the rules and regulations governing Canada's various legal professions reveals that Canadian law societies in all provinces and territories, governing over 100,000 lawyers and Quebec's 4,000 notaries, adopted mandatory continuing professional development provisions between 2008 and 2016.³ This uptick is similar to the one experienced in the United States since the mid-1970s, where 46 jurisdictions have proposed such requirements.⁴ Mandatory continuing professional development for legal professionals is also present overseas, particularly in the United Kingdom, France, Australia and New Zealand.⁵

³ "Our Members: Canada's Law Societies", *Federation of Law Societies of Canada*, online: <flsc.ca/about-us/our-members-canadas-law-societies/>.

⁴ "CLE Directory Map", *Continuing Legal Education Regulators Association*, online: <<https://www.clereg.org/directory/>>; Chris Ziegler & Justin Kuhn, *Is MCLE a Good Thing? An Inquiry into MCLE and Attorney Discipline* [unpublished] at 2, online: <https://www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf>.

⁵ For a sample of international jurisdictions with continuing professional developments requirements, see "The Map of Continuing Legal Education in Europe", *ECCLÉ—European Center for Continuing Legal Education*, online: <www.eccle.eu/>; "Continuing Professional Development (CPD)", *The University of Sydney*, online: <sydney.edu.au>.

Continuing professional development differs from the initial training required to enter the legal profession, in that it takes place as professionals pursue their careers, in accordance with the ethical standards governing the profession. A comparative study of mandatory continuing professional development regulations in force reveals that law societies in Canada use a common terminology to describe the objectives sought in adopting this ethical requirement. The maintenance and development of competencies related to the profession in order to adapt to changes and the evolving realities of the profession are the most frequently evoked reasons to support mandatory continuing professional development and are often included in descriptions of the eligibility criteria of training activities.⁶

Another commonality of the various rules and regulations in force is the conditions under which compliance with mandatory continuing professional development can be obtained. Professionals can refer to a set list of eligible training activities to complete a minimum number of hours of approved training within a given compliance period.⁷

This tendency to define compliance through minimum mandatory continuing professional development requirements is also reflected in the way that compliance with the current standards is reported. Depending on the applicable rules and regulations, the failure of professionals to fulfill the continuing education requirement is sanctioned by having their licence to practise law suspended or limited, or even being disbarred.

An analysis of the rules and regulations in force shows that their central objective is to develop professionals' competencies, in terms of knowledge of their field and hard and soft skills. Yet, although it is fictional, the scenario described in the introduction leads us to wonder whether the Canadian law societies' framework for mandatory continuing professional development helps meet the pursued objectives or has tangible impacts on the provision of legal services. Should these regulations, which are essentially based on ensuring compliance, be changed to use a reflective approach based on measuring desired outcomes? In this respect, inspiration can be drawn

edu.au/law/cpd/accreditation/mcle.shtml>; "[Continuing Professional Development](#)", *New Zealand Law Society*, online: <www.lawsociety.org.nz/for-lawyers/regulatory-requirements/continuing-professional-development>.

⁶ Professor Andy Friedman and Susannah Woodhead identified multiple purposes of CPD, ranging from the maintenance, improvement and broadening of knowledge and skills to the "development of personal qualities necessary to execute professional and technical duties." See Andy Friedman & Susannah Woodhead, [Approaches to Continuing Professional Development \(CPD\) Measurement \(Professional Associations Research Network, 2008\)](#) at 1, online: <www.ifac.org/publications-resources/approaches-continuing-professional-development-cpd-measurement-ies-7-support-> [Friedman & Woodhead].

⁷ *Ibid* at 3.

from best practices in competency development within the fields of adult learning and legal education, as well as deliberations within international regulatory authorities.

2. The Different Approaches to Continuing Professional Development

In reviewing the continuing professional development framework of Canadian and international law societies, three approaches set forth by these regulatory authorities can be identified. These approaches differ in the degree of monitoring used by the regulatory authority and influence the competency development strategies devised by the professionals and their employers.

A) The Prescriptive Approach

Frequently set forth by law societies in Canada and other parts of the world, in this approach the parameters to meet to comply with mandatory professional development requirements are set: a minimum number of hours of professional development to complete eligible professional development activities and the reporting of one's compliance with the requirements.⁸

This approach may be appropriate in situations where it is possible to identify training needs that are specific, universal and strategically important to reaching certain objectives (public trust and protection, getting up to date following a major legislative amendment, etc.). For example, the Barreau du Québec identified specific uniform training needs within the field of ethics and professionalism following a revision of the *Code of Professional Conduct of Lawyers*,⁹ which is a critical issue with respect to the duty of protecting the public. In view of this situation, the members of the Barreau du Québec were required to complete an online ethics training session by March 31, 2016.¹⁰

B) The Reflective Approach

This approach includes regulatory schemes that promote the undertaking by the professional of a structured reflection on his practice and learning needs. It derives from the notion of reflective practice, defined by Professor Donald

⁸ Friedman & Woodhead describe this as the traditional input measurement model. See *ibid* at 98.

⁹ *Code of Professional Conduct of Lawyers*, CQLR c B-1, r 3.1.

¹⁰ "[Le Code de déontologie des avocats fait peau neuve \(formation obligatoire\)](http://www.barreau.qc.ca/formation/event.jsp?noActiv=2233&noEv=6458&namePage=event.jsp&Langue=fr)", *Barreau du Québec*, online: <www.barreau.qc.ca/formation/event.jsp?noActiv=2233&noEv=6458&namePage=event.jsp&Langue=fr>.

Schön in the mid-1980's.¹¹ Based on this concept that is applicable across all professions, professional knowledge and competence may be acquired and enhanced by integrating reflection in one's professional practice, by accomplishing "reflection-in-action" and "reflection-on-action".¹²

This idea of reflection is the core component of the reflective approach to continuing professional development. Regulatory authorities that have adopted a reflective approach include a cyclical procedure that places a greater emphasis on identifying and achieving learning objectives, as well as transferring and integrating new knowledge into professional practice.¹³ This approach involves personalizing the learning process,¹⁴ in which the regulatory authority plays a supporting role by developing tools to facilitate its implementation:

Encouraging this personal capacity [of self-reflection] is crucial for developing a personal vision or an explicit philosophy of practice and to integrating professional knowledge, skills, and values. Self-reflection supports professional and personal integration and furthermore, developing self-awareness and a capacity for self-regulation supports ethical and moral development.¹⁵

Representing a trend in mandatory continuing professional development, the reflective approach will be the subject of a more thorough analysis in later sections.

C) The Autonomous Approach

Finally, with the autonomous approach, the responsibility for determining what professional development is needed and for developing and implementing strategies to meet those needs, if applicable, falls solely on professionals. In a self-regulatory perspective, support and monitoring

¹¹ In the mid-1980s, Professor Donald Schön defined the concept of reflective practice, applicable across all professions, and provided a landmark for its application in the legal education. See Donald A Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983).

¹² For an overview of the application of reflective practice to legal education, see Timothy Casey, "Reflective Practice in Legal Education: The Stages of Reflection" (2014) 20 *Clinical L Rev* 317 [Casey]; Michele Leering, "Conceptualizing Reflective Practice for Legal Professionals" (2014) 23 *J L & Soc Pol'y* 83 [Leering]; Richard K Neumann Jr, "Donald Schön, The Reflective Practitioner, and The Comparative Failures of Legal Education" (2000) 6 *Clinical L Rev* 401.

¹³ For a case study of the CPD schemes of fifteen international professional bodies, see Friedman & Woodhead, *supra* note 6 at 20–49.

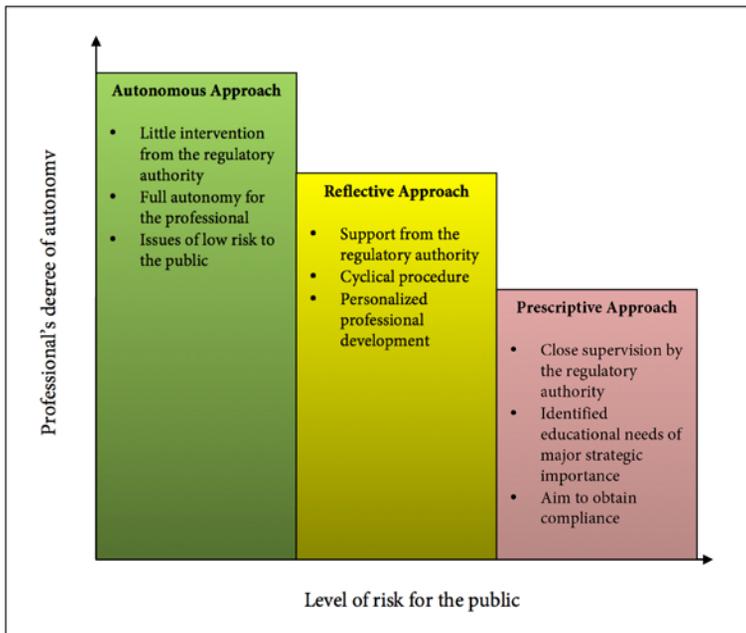
¹⁴ *Ibid* at 2.

¹⁵ Leering, *supra* note 12 at 98. Leering develops the self-reflection theme in her paper in this special issue of the Canadian Bar Review.

activities are delegated to the professionals and the organizational structures they belong to. Intervention from the regulatory authority is reduced; its role may be limited to suggesting a minimum number of hours that must be devoted to professional development and ensuring that a competency development strategy is implemented by professionals or in their workplaces within a rudimentary normative framework. This approach lends itself best to situations raising issues that are of low risk to the public (decisions that are not likely to produce negative impacts on the quality of services rendered to the public).¹⁶

Diagram 1 illustrates these three approaches to continuing professional development set forth by Canadian and international regulatory authorities.

Diagram 1: Approaches to Mandatory Continuing Professional Development



¹⁶ For an example of an approach to assessing risk, see “[Outcomes-Focused Regulation: Overview](http://www.lawsociety.org.uk/support-services/advice/practice-notes/ofr-overview/)”, *The Law Society*, online: <www.lawsociety.org.uk/support-services/advice/practice-notes/ofr-overview/>.

Generally, the various stakeholders involved in the competency development of Canadian legal professionals (employers, providers, professionals and the general public) comply with the requirements of the prescriptive approach used by most Canadian law societies, which requires, among other things, that development activities be accredited according to set criteria. However, anticipated changes in the industry, and new practices put in place by local and international regulatory authorities, favour a shift that encourages greater autonomy of the concerned stakeholders while taking into consideration the duty to protect the public which justifies some supervision by the law societies.¹⁷

3. A British revolution? The Learning-Based Approach

Jointly launched in 2011 by the organizations that regulate the professional practice of more than 160,000 practicing legal professionals in England and Wales,¹⁸ the Legal Education and Training Review (“LETR”) is the work of an independent research team that paints a picture of the current state of education and training within these regulated professions, as well as other international professional associations. In their work, they identify recent trends that may influence contemporary ideas about the standards that govern, among other things, access to legal professions and mandatory professional development.

A) Main Observations of the *LETR* Report

According to the authors of the *LETR* final report, the framework surrounding training and education of legal professionals must evolve to adapt to the changes being experienced within legal professions as a result of the influence of certain macroeconomic variables, including technological developments, globalization, demographic and social changes, increased consumerism and greater demands from consumers. In their report, they identify certain shortcomings of the current model of training and education for legal professionals in England and Wales.

¹⁷ For a description of the concerned stakeholders of CPD, see Friedman & Woodhead, *supra* note 6 at 2.

¹⁸ For a reference to regulatory authorities in England and Wales, see “[Regulated Population Statistics](http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page)”, *Solicitors Regulation Authority*, online: <www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page>; “[Practising Barrister Statistics](http://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics)”, *Bar Standards Board*, online: <www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics>; “[About CILEx](http://www.cilex.org.uk/about_cilex.aspx)”, *CILEx Chartered Institute of Legal Executives*, online: <www.cilex.org.uk/about_cilex.aspx>.

The study reveals the difficulty of ensuring that training and standards for assessment are of consistent quality.¹⁹ Furthermore, the authors of the LETR report found that the traditional idea of professional development, based on compliance with a minimum amount of training to complete,²⁰ limits eligible professional development activities; in other words, this kind of training could be an obstacle to fulfilling the pursued objectives and inhibit innovative practices within the field.²¹ In this context, the data obtained by surveying various stakeholders shows cynicism about the current framework for mandatory professional development, which is based on completing a minimum number of hours and often devoid of considerations that are central to learning, such as reflection on one's needs and assessing one's knowledge.²²

As these stakeholders note that the structures in place in the legal sector diverge from best practices in other professions, some go so far as to question the relevance of the current framework for continuing professional development.²³ Others compare it to existing structures that promote a reflective approach and incorporate a cycle of reflection, planning, execution and assessment.²⁴

According to the working group, in order for the concept of continuing professional development to help maintain high standards of competence, it must be governed by mechanisms that encourage reflection on what is learned and measure quality. This puts greater demands on regulatory authorities to play supporting roles.²⁵

B) Recommendations of the *LETR* Report

The key recommendations about mandatory continuing professional developments of professionals encourage the adoption of standards that require professionals to perform an annual reflection on their competency development needs, which includes the planning, implementation and assessment of the development activities they have completed, in addition

¹⁹ Legal Education and Training Review independent research team, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (June 2013) at para 5.88, online: <www.letr.org.uk/the-report/index.html> [*LETR* Report].

²⁰ Friedman & Woodhead, *supra* note 6 at 3.

²¹ *LETR* Report, *supra* note 19 at para 5.106.

²² *Ibid* at para 7.27.

²³ *Ibid* para 6.73.

²⁴ *Ibid* at para 2.42.

²⁵ *Ibid* at para 4.90.

to their learning.²⁶ The authors of the *LETR* report note that such a recommendation goes hand in hand with the evolution of the framework for continuing professional development within international regulatory authorities, which involves broadening the range of eligible development activities and increasing the autonomy of professionals.²⁷

Such a reflective approach could be implemented along with a minimum number of hours of professional development that must be completed. Furthermore, the *LETR* final report states the need for “regular and appropriate supervision” of the professional development activities that are offered and completed, in particular through an auditing process to ensure their alignment with the pursued learning objectives.²⁸

It should be noted that since the publication of this report, there have been significant changes in the professional development requirements that apply to legal professionals in England and Wales. First, the Solicitors Regulation Authority, the body that regulates the professional practice of more than 130,000 legal professionals and firms, recently decided to implement a new approach to continuing competence. This new approach replaces the old requirement, which was based on completing a minimum number of hours, with a process of reflection on one’s learning needs.²⁹ Second, noting this development, the Bar Standards Board is currently holding consultations on the possibility of adopting a similar reform.³⁰

C) Applicability of the Observations and Recommendations to the Professional Context in Canada

This analysis, based in particular on a comparative study of education and training conditions around the world, raises various issues that are applicable to the professional context in Canada. First, globalization of the legal services market, brought about in particular by the labour mobility agreements that many Canadian law societies have signed, begets new variables that may cause changes to the Canadian legal professional system.

Second, the notion of professional competency is at the heart of these new realities, as reflected by recently adopted national mobility agreements

²⁶ *Ibid* at 291.

²⁷ *Ibid* at para 6.94.

²⁸ *Ibid* at 291.

²⁹ “[Continuing Competence and Accreditation](http://www.sra.org.uk/solicitors/cpd-accreditation)”, *Solicitors Regulation Authority*, online: <www.sra.org.uk/solicitors/cpd-accreditation.page>.

³⁰ “[Continuing Professional Development \(CPD\) Reform](http://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/continuing-professional-development-(cpd)-reform/)”, *Bar Standards Board*, online: <[www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/continuing-professional-development-\(cpd\)-reform/](http://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/continuing-professional-development-(cpd)-reform/)>.

and national admission standards.³¹ Continuing professional development is a way for regulatory authorities to ensure the maintenance and development of appropriate professional competencies to this end. However, as the various normative frameworks governing training essentially favour compliance through adhering to prescriptive standards, they are not immune to the pressures and obstacles described in the LETR final report, nor do they guarantee results or impacts.

The response to the issues raised will reflect the specific nature of the Canadian professional system. The mandate and areas of activity of Canada's law societies are governed by framework laws in their respective jurisdictions that determine the roles and responsibilities of these regulatory authorities. Organizations that supervise and monitor the activities of professional bodies, such as the Office des professions du Québec and the Federation of Law Societies of Canada, which plays a collective coordination and representation role, are active agents that may contribute to the joint process of establishing training best practices.

4. Adopting an Integrated Vision of Competency Development

While the rate of compliance with various continuing professional development requirements shows that Canadian legal professionals are forming learning practices,³² the adoption of an integrated vision of competency development is a lever that Canadian law societies can use to direct their supervision and prevention activities.

In this regard, the various procedures governing access to the profession and its practice, as represented in Diagram 2, revolve around the central concept of professional competency, which defines the expected standards and behaviours. An integrated vision involves committing to a process that helps to achieve common objectives and requires the redirection of resources that, until now, have been devoted to measuring the hours of professional development completed, towards the development of standards and tools that will let the concept of competency take centre stage.

Continuing professional development fits into such an approach to regulating professional activities—one that is based on the desired outcomes.

³¹ “[National Initiatives](http://www.flsc.ca/national-initiatives/)”, *Federation of Law Societies of Canada*, online: <flsc.ca/national-initiatives/>.

³² For example, at the end of the compliance period that began on April 1, 2011 and ended on March 31, 2013, the rate of compliance with the continuing professional development requirements was at 99.8% among members of the *Barreau du Québec*. Mélanie Beaudoin, “[Formation Continue Obligatoire: Réforme en Vue](#)”, *Journal du Barreau* 46:10 (November 2014) 1 at 1, online: <www.barreau.qc.ca/pdf/journal/vol46/201410_v2.pdf>.

Taking inspiration from the changing standards governing the continuing development of professional competencies and promoted best practices,³³ it is possible to suggest that the reflective approach has the advantage of making each professional's mandatory continuing professional development meaningful, insofar as it is based more on the foundations of modern adult-learning theory.³⁴ This newfound meaning comes about from upholding the typical characteristics of adult learning, including self-determination, described by Rivard and Lauzier as follows:

Diagram 2: The Central Concept of Professional Competency



³³ Preadmission training, especially at the law school level, has been more advanced in applying the concept of reflective practice to the curriculum and teaching approaches. See Donald A Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (San Francisco: Jossey-Bass, 1987); Donald A Schön, “Educating the Reflective Legal Practitioner” (1995) 2:1 *Clinical L Rev* 231.

³⁴ Malcolm Shepherd Knowles, *L'apprenant adulte: vers un nouvel art de la formation* (Paris: Éditions d'Organisation, 1990) at 85 [Knowles].

[Translation]

Adult learners are generally aware of their decisions and the consequences that they may have on their lives. This level of awareness gives them a need to be seen and treated by others as individuals who are capable of self-management.³⁵

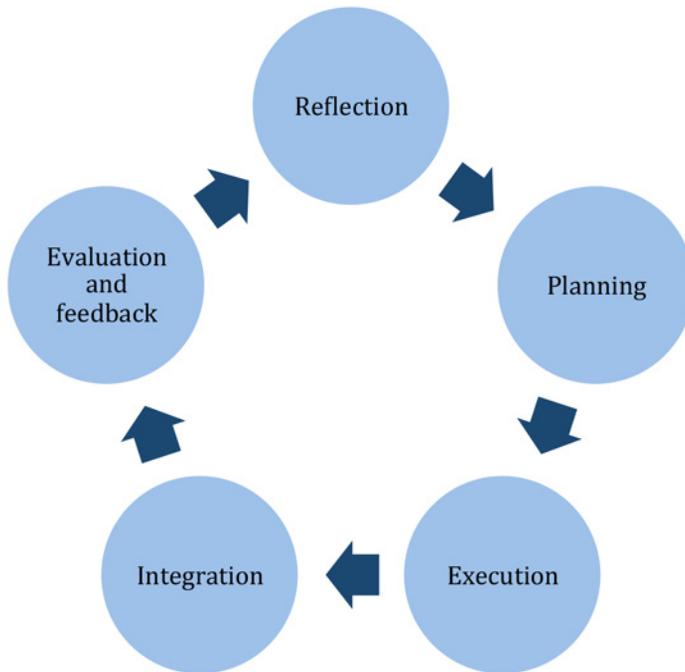
Placed at the centre of a structured competency development process, the reflective approach allows professional bodies and their members to focus on competency development objectives based on desired outcomes, rather than to attain compliance status.³⁶ In doing so, “the perceived usefulness of the training for the learner must be the starting point for any training activity” [*translation*].³⁷ To this end, the reflective approach illustrated in Diagram 3 is characterized by successive steps, forming a cycle of reflection, planning, execution, integration and evaluation.³⁸

³⁵ Patrick Rivard & Martin Lauzier, *La gestion de la formation et du développement des ressources humaines: Pour préserver et accroître le capital compétence de l'organisation*, 2nd ed (Québec: Presses de l'Université du Québec, 2013) at 57 [Rivard & Lauzier].

³⁶ Author Timothy Casey describes the goals of the broader reflective practice are “to provide the professional with a self-improvement algorithm, and to increase the capacity of the professional to exercise judgement in the professional context.” See Casey, *supra* note 12 at 321.

³⁷ Rivard & Lauzier, *supra* note 35 at 57.

³⁸ Leering describes “the need to cycle through the different forms of reflection to support their integration and to result in action, changed behaviour, and new professional expertise.” See Leering, *supra* note 12 at 94. Professor Andy Friedman and Susannah Woodhead note “the centrality of the Kolb cycle of experiential learning.” See Friedman & Woodhead, *supra* note 6 at 7.

Diagram 3: Stages of the Reflective Approach

With this in mind, a unified strategy designating areas of intervention for Canadian law societies and tools to support each step of the reflective process for the development of professional competencies could be put forth.

In this regard, the definition of minimum standards for competency development is a starting point for encouraging the adoption of learning habits.³⁹ These standards may be used in conjunction with a minimum number of hours dedicated to professional development, be they in a particular area that meets the specific needs of a given profession or part of formal professional development activities. These minimum standards do not in themselves constitute a sufficient foundation to encourage commitment to a competency development process. The lack of a causal relationship between the number of hours of training completed and the acquisition or maintenance of competencies should be reiterated, as Bouteiller states:

³⁹ These learning habits may consist of “a habitual practice of learning from experience and ... continually evaluating and improving [the] technical skills and performance.” See Leering, *supra* note 12 at 95.

[Translation]

Putting significant resources into training activities, even in extremely sophisticated and well-planned environments, is no guarantee of improvement in the skill level of the concerned employees, and even less so of a proportional increase in their productive performance.⁴⁰

While the autonomy and empowerment of professionals are conditions for success in the reflective process,⁴¹ Canadian law societies can push several levers to encourage the adoption of a reflective approach to competency development. To this end, Knowles suggests ways of stimulating professionals' will to learn:

[Translation]

However, it is not enough to passively wait for this will [to learn] to manifest on its own. It is possible to stimulate it by modelling higher performance, providing vocational counselling, performing role-play exercises and other methods.⁴²

In this respect, a competency profile specific to legal professions could be a strategic tool to develop these competencies and can "be regarded as the first step in improving a planning system in which members are asked simply to establish learning objectives."⁴³ Although a competency profile outlines the essential competencies needed to practice a profession, such a tool can also list the competencies needed for anticipated changes in the workplace and provide "a reference point from which to measure success."⁴⁴ It is therefore important to emphasize that this is a dynamic tool that must be regularly reviewed as aspects surrounding the practice of the profession evolve (client needs, trends in the provision of services, etc.). Professionals are thus able to assess their competencies and identify their gaps in comparison with the provided references. In this context, the professional bodies can provide further support by making self-assessment tools and other questionnaires available.

Canadian law societies can therefore help structure and promote their members' competency development process by encouraging them to set learning objectives based on the previously described assessment and

⁴⁰ Dominique Bouteiller, "Formation de la main-d'oeuvre : plaidoyer en faveur d'une loi du 10 %" (1996) 21:1 *Gestion* 72.

⁴¹ Knowles, *supra* note 34 at 45.

⁴² *Ibid* at 73.

⁴³ Friedman & Woodhead, *supra* note 6 at 15.

⁴⁴ *Ibid* at 57.

develop an annual development plan. Conducting this planning process will “urge the member to really think about the CPD that they are doing and engage in a way which encourage them to strive for results and indeed be fair when performing self-assessment of outcomes.”⁴⁵

It is also important to share the objective of facilitating the integration of knowledge by enhancing the learning experience. For this to happen, it may be wise to educate the different stakeholders in the training process, including legal education providers and speakers, about educational best practices.⁴⁶ Furthermore, information from the evaluation completed by participants about the learning experience can guide regulatory authorities in establishing processes for accrediting training activities.

Finally, measuring the achievement of minimum standards, development objectives and impacts on professional practice would be a pronounced departure from the idea of achieving compliance by completing a minimum number of hours.⁴⁷ By creating a digital and personalized professional development file, members of a professional body can document on and follow the progress of their development plan. Taking advantage of the technology, an electronic portfolio allows professionals to collect, to sort and to structure the evidence of the reflection and learning that have taken place.⁴⁸ Professional bodies can thus consider the possibility of implementing ways of measuring learning and tracking development plans.⁴⁹ Approaches to measuring learning impacts range from auditing members’ portfolio, self-assessment questionnaires, and formal evaluations to practice appraisal.⁵⁰ In conjunction with proficiency testing as part of professional inspections, closer supervision may also be proposed to members of the professional body during the implementation of a reflective approach to professional development.

⁴⁵ *Ibid* at 56.

⁴⁶ In the United States, the Kansas Continuing Legal Education Commission has been holding an annual “Provider Conference” and a “Speaker Development Workshop” in an attempt to establish a dialogue between the regulator and the legal education providers. See “Events,” *The Kansas Continuing Legal Education Commission*, online: <<http://www.kscle.org/provider/events.asp>>.

⁴⁷ “Input-based CPD schemes do not directly indicate whether any learning, change in behaviour on the job, or impact on the organisation has taken place or is likely to occur.” See Friedman & Woodhead, *supra* note 6 at 3.

⁴⁸ Philip C Abrami & Helen Barrett, “[Directions for Research and Development on Electronic Portfolios](#)” (2005) 31:1 *Can J Learning & Technology*, online: <cjltd.csj.ualberta.ca/index.php/cjlt/article/view/92/86>.

⁴⁹ Friedman & Woodhead, *supra* note 6 at 72.

⁵⁰ *Ibid* at 66.

Law societies can support a reflective approach to competency development in the areas of intervention summarized in Diagram 4:

Diagram 4: Areas of intervention for regulatory authorities

Define competency development standards	<ul style="list-style-type: none"> • Adopt a minimum number of hours of professional development • Broaden the range of eligible development activities
Encourage a reflective approach to competency development	<ul style="list-style-type: none"> • Design a competency profile • Distribute self-assessment and competency assessment tools
Create a structured competency development process	<ul style="list-style-type: none"> • Encourage the formulation of competency development objectives • Monitor the preparation of annual development plans by professionals
Facilitate the integration of knowledge	<ul style="list-style-type: none"> • Work with the training providers to enhance the learning experience • Encourage the transfer of skills into professional practice
Measure the achievement of minimum standards, development of objectives and impacts	<ul style="list-style-type: none"> • Create a digital and personalized professional development file • Implement procedures for measuring knowledge, development plans and impacts (on the individual, their practice, clients, etc.)

The adoption of a reflective approach to continuing professional development comes with the risk of being perceived by professionals as an additional burden. In addition to a potential lack of trust in the reporting mechanisms, legal professionals may feel that they need “extensive additional training ... to help [them] make qualitative assessments” and that “the exigencies of practice” would make it difficult to adhere to such approach.⁵¹ This context and the issues raised by the work on the *LETR*, therefore, demonstrate that the role of law societies with respect to mandatory continuing professional development must evolve if it is to support a process of thorough reflection on competency development.

5. Implementing a Reflective Approach: A Few Tools Implemented by Law Societies in Canada

It is worth giving a brief overview of the different tools implemented by some Canadian law societies. These tools, from the competency profile to the self-assessment of competency development needs, have the advantage of providing means of moving towards a reflective competency development process and are worth including in a unified strategy for this purpose.

⁵¹ Max Walters, “[Bar Council Criticises ‘Burdensome’ CPD Scheme](#)”, *The Law Society Gazette* (6 September 2016), online: <www.lawgazette.co.uk>.

A) Competency Profiles

Canadian law societies base their procedures for admission to professional practice on minimum standards for proficiency in various competencies related to practicing the profession. For this purpose, the Federation of Law Societies of Canada developed the *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries*, which contains a thorough classification of the competencies. They are divided into three main categories: substantive legal knowledge; skills, which include both core and specialized competencies; and tasks that are specific to the profession.⁵²

As stated in the briefing notes regarding the *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries*, the Federation of Law Societies of Canada's main interest in the approach rests in the highly strategic nature of such a competency profile, both in terms of nation-wide consistency in admission standards and the regulation of the professional practice.⁵³

Other similar initiatives to note include the École du Barreau du Québec's competency matrix.⁵⁴ Use of these competency profiles by Canadian law societies is, for the moment, restricted to admission to the legal profession, despite their potential application as tools to oversee members' various practices and promote the development of core competencies that are specific to their area of practice.

Elsewhere in the world, the Solicitors Regulation Authority provides a relevant example of the application of a competency profile to the development of competencies. As part of a new approach proposed by this regulatory authority, a competence statement was published in March 2015.⁵⁵ This tool serves as a reference for solicitors as they reflect on their competency development needs, in the sense that it enables them to gain proficiency in the core competencies required to provide quality legal services.

⁵² Federation of Law Societies of Canada, [National Entry to Practice Competency Profile for Lawyers and Quebec Notaries](#) (2002), online: <flsc.ca/wp-content/uploads/2014/10/admission4.pdf>.

⁵³ Federation of Law Societies of Canada, [Briefing Note: Consistency in Admission Standards](#), online: <flsc.ca/wp-content/uploads/2014/10/admission1.pdf>.

⁵⁴ "Les Compétences Développées à l'École", [École du Barreau](#), online: <www.ecoledubarreau.qc.ca/formation/les-competences-developpees-lecole/>.

⁵⁵ "Statement of Solicitor Competence", [Solicitors Regulation Authority](#), online: <www.sra.org.uk/solicitors/competence-statement.page>.

B) Competency self-assessment

Frequently encountered as part of professional inspections and practice support procedures, competency self-assessment tools enable professionals to assess their competencies against pre-established standards and indicators.⁵⁶ In conjunction with competency profiles, self-assessment tools can facilitate the reflection process and encourage understanding of professional development, in a context where the identification of gaps in the required or anticipated competencies constitutes the preliminary step of any structured training process.⁵⁷

Among the law societies offering competency self-assessment tools, the Law Society of Alberta supports a reflective and structured approach to professional development. By using the CPD Assessment Tool, members of the Law Society of Alberta can identify the professional competencies they need to improve through a series of questions about their practice.⁵⁸ Thus, it is clear that competency self-assessment, which is closely linked to the idea of a competency profile, is an opportunity to encourage the autonomy of professionals by enabling them to diagnose the professional competencies to develop. In doing so, “[r]eflecting on learning and learning needs supports self-directed learning and builds a desire for lifelong learning.”⁵⁹

C) Competency development plans

In keeping with this process, the preparation of a development plan is a way to devise a strategy for the formulation of objectives based on the competency assessment. In its rules for continuing professional development, the Law Society of Alberta encourages its members to adopt “a self-directed and life-long learning approach to continuing professional development that enhances and ensures lawyer competence” by preparing and evaluating an annual continuing education plan.⁶⁰ This is also a required component for continuing professional development within the Law Society of the

⁵⁶ Casey, *supra* note 12 at 334.

⁵⁷ Self-assessment tools “allow members to set themselves targets and then go back and assess if they have been successful in achieving them, rather than vaguely speculating if they have learnt anything useful at all.” See Friedman & Woodhead, *supra* note 6 at 71.

⁵⁸ “[CPD: Reflective Practice](http://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-reflective-practice/)”, *Law Society of Alberta*, online: <www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-reflective-practice/>.

⁵⁹ Leering, *supra* note 12 at 99.

⁶⁰ “[CPD Frequently Asked Questions](http://www.lawsociety.ab.ca/lawyers/cpd/cpd_faq.aspx#hour)”, *Law Society of Alberta*, online: <www.lawsociety.ab.ca/lawyers/cpd/cpd_faq.aspx#hour>.

Northwest Territories.⁶¹ Finally, a procedure for measuring the achievement of development objectives pursued through the execution of the competency development plan, including through the identification of the impacts on one's professional practice, facilitates the integration of competencies and ends the reflective approach cycle.

6. Conclusion: New Roles for Regulatory Authorities

Although changes in mandatory continuing professional development requirements show signs of moving toward a reflective approach based on learning outcomes, some resistance prevents a complete move away from the traditional approach that is based on completing a minimum number of hours. Among these restraints, the variety of career paths of the members of the regulated legal professions (atypical practices, specializations, etc.) may be considered by law societies as a factor that makes the adoption of a reflective approach complicated. However, it should be noted that the traditional approach, which limits educational activities and content, increases the burden on professionals with unique career paths—some of whom have to fulfill additional formalities in order for the professional development activities they have completed to be recognized.

It is also important to consider the constraints related to the internal capacity of regulatory authorities. The administrative work performed to oversee the achievement of compliance status (the numerous formalities required for the accreditation of professional development activities, quantitative analysis of member training records, etc.) is cause for reflection on the risks of bureaucratization of the processes associated with the supervision of the competency development of professionals. Like a competency management system used by organizations, the various tools presented in the previous section require “[translation] maintenance and upgrading that may sometimes be burdensome”⁶² and thus risk becoming expensively obsolete.

Considering the fast-changing socioeconomic factors that have an impact on the professional realities of many industries, an approach that is truly based on developing competencies through professional development activities may provide the impetus required for legal professions to confront this changing environment. The broader notion of reflective practice is even seen by some authors as a “core competency for legal professionals”, which would justify “supporting the development of reflective practice

⁶¹ “Continuing Professional Development (CPD)”, *Law Society of the Northwest Territories*, online: <www.lawsociety.nt.ca/lawyers/continuing-professional-development-cpd> [*Law Society of the Northwest Territories*].

⁶² Rivard & Lauzier, *supra* note 35 at 36.

from the beginning of the law school experience.”⁶³ This approach requires professional bodies to take on new roles, including encouraging the understanding of the learning process, providing support, measuring impacts on the members’ practice and on the broader goal of protecting the public, as well as updating the tools developed. Doing so may lead them to take a second look at the competencies that are essential to providing high-quality services.⁶⁴

⁶³ Leering, *supra* note 12 at 105.

⁶⁴ *LETR Report*, *supra* note 19 at para 6.145.

Table 1: Summary of continuing professional development requirements of Canadian law societies

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Law Society of British Columbia ⁶⁶ (13,608)	Rule (2009) 12 hours annually	Courses Study groups Section meetings Teaching Writing Mentoring	Application for approval by lawyers or education providers	Report of completion of CPD requirements	Suspension
Law Society of Alberta ⁶⁷ (13,732)	Rule (2008) All lawyers must create an annual CPD Plan	Courses Online interactive self-study Teaching Writing Study groups Mentoring	No accreditation process	Declare that a plan was created using the online CPD system	Failure to create, declare, retain or produce a CPD; plan may be factors taken into account during proceedings under the <i>Legal Profession Act</i>

⁶⁵ [Federation of Law Societies of Canada, MEMBERSHIP \(2013 Statistical Report\)](#), online: <docs.flsc.ca/STATS2013ReportFINAL.pdf>.

⁶⁶ See [“Continuing Professional Development”, The Law Society of British Columbia](#), online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/continuing-professional-development/>.

⁶⁷ See [“Continuing Professional Development”, Law Society of Alberta](#), online: <www.lawsociety.ab.ca/lawyers/cpd.aspx>.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Law Society of Saskatchewan ⁶⁸ (2,533)	Policy (2010) 36 hours in a three-year period	Courses Interactive self-study on-line course (with testing component) Teaching Study groups Writing	Application for accreditation by lawyers or course providers	Self-reporting of CPD activities	Disqualification from active practice
Law Society of Manitoba ⁶⁹ (4,210)	Rule (2012) 12 hours per year, or the equivalent of 1 hour per month of active practice	Courses Interactive online programs Organized education discussion groups Teaching Writing	Does not accredit providers, but has the discretion to determine that activities offered by a specific provider are not eligible activities	Self-reporting of CPD activities	Suspension

⁶⁸ See ["Continuing Professional Development", Law Society of Saskatchewan](http://www.lawsociety.sk.ca/continuing-professional-development.aspx), online: <www.lawsociety.sk.ca/continuing-professional-development.aspx>.

⁶⁹ See ["Mandatory Continuing Professional Development \(MCPD\) Information", Law Society of Manitoba](http://www.lawsociety.mb.ca/education/CPD-requirements), online: <www.lawsociety.mb.ca/education/CPD-requirements>.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Law Society of Upper Canada ⁷⁰ (46,054)	By-law (2011) 12 hours annually	Courses Teaching Acting as an Articling Principal, LPP work supervisor, mentoring or being mentored or supervising a paralegal field placement Writing and editing Study groups Section and association meetings	Partial accreditation model: only Professionalism Hours must be accredited by the Law Society	Self-reporting of CPD hours	Suspension
Barreau du Québec ⁷¹ (25,114)	By-law (2009) 30 hours in a two-year period	Courses Teaching Writing Mentoring	Accreditation of individual activities and accredited provider status	Self-reporting of CPD activities	Disbarment

⁷⁰ See [“Continuing Professional Development Requirement”, Law Society of Upper Canada](http://www.lsuc.on.ca/CPD-Requirement/), online: <www.lsuc.on.ca/CPD-Requirement/>.

⁷¹ See [“Formation Continue Obligatoire”, Barreau du Québec](http://www.barreau.qc.ca/fr/avocats/formation-continue/obligatoire/index.html), online: <www.barreau.qc.ca/fr/avocats/formation-continue/obligatoire/index.html>.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Chambre des Notaires du Québec ⁷² (4,475)	By-law (2009) 30 hours in a two-year period	Courses Preparing a course Teaching Writing Research projects Self-study	No accreditation process	Self-reporting of CPD activities	Disbarment
Law Society of New Brunswick ⁷³ (1,678)	Rule (2010) 12 hours annually	Courses Online interactive programs Teaching Writing Study groups Section and association meetings Self-study	Accreditation of individual activities	Self-reporting of CPD hours	Suspension

⁷² See [“Formation Continue Obligatoire”, *Chambre des notaires du Québec*](http://www.cnq.org/fr/formation-continue.html), online: <www.cnq.org/fr/formation-continue.html>.

⁷³ See [“Continuing Professional Development”, *Law Society of New Brunswick*](http://lawsociety-barreau.nb.ca/en/for-lawyers/continuing-professional-development/), online: <lawsociety-barreau.nb.ca/en/for-lawyers/continuing-professional-development/>.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Nova Scotia Barristers' Society ⁷⁴ (3,287)	Regulation (2012) Complete and implement an annual professional development plan	Courses Teaching Writing Section and association meetings Mentoring Self-study	No accreditation process	Declare that a plan was created and implemented	Failure may prompt an investigation under the purview of the Professional Responsibility process
Law Society of Prince Edward Island ⁷⁵ (310)	Policy (2011) 24 hours in a two-year period	Courses Teaching Study groups Writing Self-study	No accreditation process	Self-reporting of CPD hours	Subject to the sanctions as contained in the Regulations to the <i>Legal Profession Act</i>

⁷⁴ See ["Professional Development", Nova Scotia Barristers' Society](http://nsbs.org/for_lawyers/professional_development), online: <nsbs.org/for_lawyers/professional_development>.

⁷⁵ See ["Continuing Professional Development", The Law Society of Prince Edward Island](http://lawsocietypei.ca/continuing-professional-development), online: <lawsocietypei.ca/continuing-professional-development>.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Law Society of Newfoundland and Labrador ⁷⁶ (967)	Rule (2016) 15 hours annually and completion of a CPD Report & Plan	Classroom setting Reading Podcasts Recorded programs and seminars Online CPD program	No accreditation process	Self-reporting of CPD hours and Plan	Suspension
Law Society of Yukon ⁷⁷ (318)	Rule (2013) 12 hours annually	Courses Section and association meetings Study groups Teaching Writing	Does not accredit providers, but has the discretion to determine that activities offered by a specific provider are not eligible activities	Self-reporting of CPD hours	Suspension
Law Society of the Northwest Territories ⁷⁸ (627)	Rule (2011) 12 hours annually and completion of a CPD Report & Plan	Classroom setting Reading Podcasts Recorded programs and seminars Online CPD program	No accreditation process	Self-reporting of CPD hours and Plan	Suspension

⁷⁶ See “[Education](http://www.lawsociety.nf.ca/lawyers/education/)”, *The Law Society of Newfoundland & Labrador*, online: <www.lawsociety.nf.ca/lawyers/education/>.

⁷⁷ See “[Information: Law Society of Yukon Compulsory Profession Development](http://www.lawsocietyyukon.com/pdf/Information%20-%20Compulsory%20Profession%20Development.pdf)”, *Law Society of Yukon*, online: <www.lawsocietyyukon.com/pdf/Information%20-%20Compulsory%20Profession%20Development.pdf>.

⁷⁸ See *Law Society of the Northwest Territories*, *supra* note 61.

Law society (total membership) ⁶⁵	Regulatory framework (year of adoption and minimum requirements, if applicable)	Eligible CPD activities	Accreditation process	Control procedures	Sanctions
Law Society of Nunavut ⁷⁹ (219)	Policy (2013) 12 hours annually	Course Study groups Teaching Self-study Writing	No accreditation process	Self-reporting of CPD hours	Suspension

⁷⁹ See “Compulsory Professional Development”, *Law Society of Nunavut*, online: <lawsociety.nu.ca/compulsory-professional-development/>.