

# EDUCATING FAMILY LAW COMPETENCIES

The Dean's Forum on Access to Justice and Dispute Resolution 2023



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## EXECUTIVE SUMMARY

The 2023 Dean’s Forum for Dispute Resolution and Access to Justice builds off previous Dean’s Forum work of improving Saskatchewan’s family education (see, e.g., [2015 topic paper](#)), family court system (see, e.g., [2016](#), [2020](#), and [2021](#) topic papers), and picks up on the national legal education conversation (e.g., the 2022 Conference on Re-envisioning Legal Education Across the Continuum in Canada). Specifically, the 2023 Dean’s Forum explores both adjudicative models of family law and the development of a competency framework for family law practitioners.

What would a family law competency framework look like? How should Saskatchewan stakeholders educate family law practitioners across the legal education continuum, understanding that practitioners must know the law and that extra-legal factors may impact the carriage of a file?

In the “Developing a Family Law Competency Framework” section, we describe a general family law competency framework to guide the development of more detailed family law competency frameworks. The general framework is based on a review of literature and interviews with 18 individuals. The general framework includes five categories of competence: Professional Practice, Non-Doctrinal Context, Doctrinal & Substantive Law, Professional Performance & Self-Management, and Professional Responsibility & Success. We emphasize the need for ongoing evaluation and vetting of competency frameworks by multiple stakeholders.

In the “Developing Competencies Across the Continuum” section, we provide a set of principles to guide the development of competencies across the legal education continuum. These principles highlight the non-linear nature of competency development, the importance of assessment to inform stakeholders, the need for contextually competency development, and the value of self-directed learning.

Finally, in the “Improving Family Law Education Along the Continuum” section we offer practical suggestions for improving family law education along the legal education continuum by developing self-reflection and self-appraisal competencies, providing contextual simulated and supervised practical experience, untethering introductory legal analysis from substantive topics, emphasizing the full range of dispute resolution methods, developing and updating procedural competence, and teaching or requiring comprehensive non-doctrinal knowledge. These suggestions are informed by the principles of competency development and the need for a whole competency approach to legal education.

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## IMPORTANT TERMS

**Attitude:** a position assumed for a specific purpose, a position regarding a fact or state, or the emotional position towards something.<sup>1</sup>

**Competency:** the knowledge, skills, and attitudes necessary to carry out one's role in a professional setting.<sup>2</sup> A *competency* may include a combination of knowledge, skills, and attitudes sub-competencies.

**Competency Framework:** a categorized inventory of competencies a practitioner requires to perform a matter on behalf of a client.

**Controlled Legal Education Continuum:** the minimum educational requirements a practitioner is mandated to complete for licensure.

**Knowledge:** a range of information about or understanding of a subject matter.<sup>3</sup>

**Legal Education Continuum:** the organized and unorganized opportunities for a pre-service practitioner or practitioner to develop legal competencies. Organized opportunities include the LSAT, law school, CPLED, articling, continuing professional development.

**Licensing:** the act of the regulator providing the practitioner with a license to provide otherwise legislatively barred legal services. A license may limit the scope of services to a particular type/area (Limited License) or be a full and unlimited license to provide legal services (Lawyer).

**Portfolio Approach:** where the [pre-service] practitioner selects and completes a variety of matters which, when compiled collectively in a portfolio, demonstrate or engage a required set of competencies.

**Practitioner:** a person who may legally provide legal services to the public. *Practitioners* may be licensed lawyers or non-lawyers (limited licensees) who provide legal services in Saskatchewan.

**Pre-Service Practitioner:** an individual who is working to achieve the minimum requirements for a license to provide legal services. *Pre-service practitioners* are

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<sup>1</sup> Merriam Webster, *sub verbo* "Attitude", online: <<https://www.merriamwebster.com/dictionary/attitude>>.

<sup>2</sup> The unpublished work of Dr. Annie Rochette, *Saskatchewan Law Foundation, H. Robert Arscott Chair (2022)* is credited. You may read Dr. Rochette's recent articles "Competencies, competency-based education and competency frameworks" and "Professional competency" on request by emailing [annie.rochette@usask.ca](mailto:annie.rochette@usask.ca).

<sup>3</sup> Merriam Webster, *sub verbo* "Knowledge", online: <<https://www.merriamwebster.com/dictionary/knowledge>>.

commonly referred to as law students, students-at-law, articling students, and for the purposes of this report includes individuals seeking admission to law school with the intention of providing legal services in the future.

**[Pre-Service] Practitioner:** refers to both pre-service practitioners and practitioners.

**Practitioner Risk:** risk to the client or public arising from the practitioner's provision of legal services. It is a broad conception of risk and is breached at the current standard where a complaint against a practitioner leads to Law Society intervention.

**Professional Competence:** the habitual use of competencies to serve an individual or community in a specific context or matter.<sup>4</sup>

**Skills:** the ability to effectively use knowledge in execution or performance of a task. Skills are general (e.g. computer skills) or specific (e.g. legal research and writing for factum writing).<sup>5</sup>

**Sub-Competency:** an identifiable competency supporting performance of another competency.

**Whole Competency Approach:** where a competency that incorporates a variety of sub-competencies in completion of a matter is taught or assessed in a contextually appropriate manner to also assess or develop the supporting sub-competencies.

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *Merriam Webster*, *sub verbo* "Skill", online: <<https://www.merriam-webster.com/dictionary/skill>>.

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## BACKGROUND

Canada's family law justice system is described as being in "a state of crisis."<sup>6</sup> Recent statistics suggest that 5.1% of Canadian adults experience one or more serious family law problems in any given 3-year period.<sup>7</sup> Family law is a fast-paced and rapidly changing area.<sup>8</sup> It is often reformed to account for social changes, better understanding of psychology and family dynamics, and the interplay between private matters and public responsibility.<sup>9</sup>

Family law practitioners must stay prepared, informed, and competent. The emotional turmoil of a family breakdown can exist alongside legal processes and lawyers have been known to "make the experience adversarial when it doesn't need to be."<sup>10</sup> In Saskatchewan, barriers to the provision of family law services, a need for expanded family law services, and the length of processing time for family law matters have been identified as local issues.<sup>11</sup>

A number of Saskatchewan stakeholders are conducting research in the area of competency and competency development. The College of Law recently held a workshop about competency development in legal education, visiting professor Dr. Annie Rochette held a competency workshop in the fall of 2022, and visiting professor Gemma Smyth will hold a competency-related workshop in the spring of 2023.

Our research builds on the competency research of local stakeholders by examining the competency development of family law practitioners. This report provides a general framework of categorized family law practitioner competencies, a set of principles for competency development, and suggestions for change along the legal education continuum. We seek to empower Saskatchewan's legal education stakeholders to better develop the competencies required for practitioners dealing with the legal, emotional, and contextual realities of family law services.

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<sup>6</sup> Olivia Stefanovich, "We're in trouble: Advocates urge Ottawa to help close the access-to-justice gap", *CBC News* (18 April 2021), online: <<https://www.cbc.ca/news/politics/access-to-justice-federal-budget-2021-requests-1.5989872>>.

<sup>7</sup> "Saskatchewan Legal Needs Assessment Paper" (2021) [unpublished, archived at the Law Society of Saskatchewan].

<sup>8</sup> Saskatchewan, Government of Saskatchewan, *Family Mediation | Early Family Dispute Resolution*, online: <<https://www.saskatchewan.ca/residents/births-deaths-marriages-and-divorces/separation-or-divorce/early-family-dispute-resolution/family-mediation>>.

<sup>9</sup> Alison Diduck, "Autonomy and Family Justice" (2016) 28:2 *Child Fam Law Q* 133-150 at 133-134.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Supra* note 7.

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## INTRODUCTION

The objective of our research was to examine the state of the *legal education continuum* and the *competencies* required of family law *practitioners*. To inform our research, we completed a review of the literature on competencies, family law practice, and models of competency education. We then conducted targeted interviews with psychology and counselling professionals, established family law practitioners, new family law practitioners, legal educators, and legal regulators.

We learned that Saskatchewan families are varied. The concept of family units, traditions, and practices differs greatly from the colonial Canadian ideals that shaped our local laws and legal structures. Each family law client has a unique cultural background, emotions, and ideals. Our interviewees advised that family law practitioners require a set of competencies in addition to the core competencies required of all practitioners. For example, the competencies of emotional intelligence, self-care, and psychological well-being, as well as the ability to engage with clients who share different backgrounds or cultural values, are especially important for family law practice.<sup>12</sup> These unique contexts require a specific set of competencies.

Family law practitioners must provide competent legal services. A competent family law practitioner implements the *skills, knowledge, and attitudes* appropriate for each family law matter. Competencies develop before, and continue to develop after, admission to the bar. Interaction with the legal education continuum directly affects the development of competencies. A family law competency framework informs the education and regulation of family law practitioners.

We first explain a general family law competency framework to guide the development of more detailed family law competency frameworks in the “Developing a Family Law Competency Framework” section. Next, we discuss principles to guide competency development across the legal education continuum in the “Developing Competencies Across the Continuum” section. Finally, we offer practical suggestions for improving family law education along the legal education continuum in the “Improving Family Law Education Along the Continuum” section.

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<sup>12</sup> Barbara Glesner Fines & Cathy Madsen, “Caring Too Little, Caring Too Much: Competence and the Family Law Attorney Symposium: Ethics of Family Representation” (2006) 75:4 UMKC Law Rev 965–998.

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## DEVELOPING A FAMILY LAW COMPETENCY FRAMEWORK

We have compiled a general family law competency framework. In this section, we describe the categories that form the competency framework and the subcategories which support the main categories. We also list descriptors of competencies in each subcategory and provide more detailed descriptions of the extra-legal competencies in Appendix A.

On our Dean's Forum Day, we will leverage the expertise of family law and justice stakeholders across Saskatchewan to: (1) build more comprehensive frameworks in three specific family law practice areas, (2) create a list of public stakeholders necessary for proper evaluation of the framework, and (3) develop a pilot project to evaluate the proper methods of developing and assessing competencies across the *controlled legal education continuum*.

A recurring theme from our consultations was that **any competency framework must be thoroughly tested, evaluated, and vetted**. We heard that limited consultations are simply not enough – that continual evaluation of the framework by multiple stakeholders, especially public stakeholders, has been a missing piece in the competency movement across the country.

While many of the competencies our research identified are important and generalizable to all lawyers, **family law practitioners may need to rely frequently on extra-legal competencies**, such as emotional intelligence. The Institute for the Advancement of the American Legal System (IAALS)'s report titled [Foundations for Practice: The Whole Lawyer and the Character Quotient](#) discusses the discrepancy between the skills most important for a family law practitioner to have and the skills taught in law school.<sup>13</sup> The IAALS interviewed approximately 24,000 lawyers to determine what the most important skills were in an effort to determine how best to “educate tomorrow’s lawyers.”<sup>14</sup> Interestingly, the report found that **extra-legal competencies were regarded as the most important skills for practitioners**, especially for new practitioners.<sup>15</sup>

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<sup>13</sup> Alli Gerkman & Logan Cornett, “Foundations for practice: The whole lawyer and the character quotient” (2016) 16–04 AccessLex Inst Res Pap.

<sup>14</sup> Sophie M Sparrow, “Teaching and Assessing Soft Skills” (2017) 67:2 J Leg Educ 553–575.

<sup>15</sup> *Ibid.*

Competent family law **practitioners require competencies beyond “what are commonly considered to be the hallmarks of quality: knowledge and skill in legal doctrine and processes.”**<sup>16</sup> Rather, practitioners “must be especially knowledgeable and skilled in other aspects of family representation such as [but not limited to] empathy, emotional intelligence, and strong listening and counselling skills if they are to competently represent their clients.”<sup>17</sup>

We considered the family law literature and interviewed 18 participants comprised of family law practitioners, educators, regulators, and family service providers. We organized our findings into five categories through a thematic analysis. These five categories serve as the start of a comprehensive family law competency framework.

This section describes those five categories and explains the subcategories associated with them. The section that follows provides a set of unified principles to inform competency development across the *legal education continuum*. The final section of the report discusses a series of suggestions to shift the *legal education continuum* in line with the unified principles.

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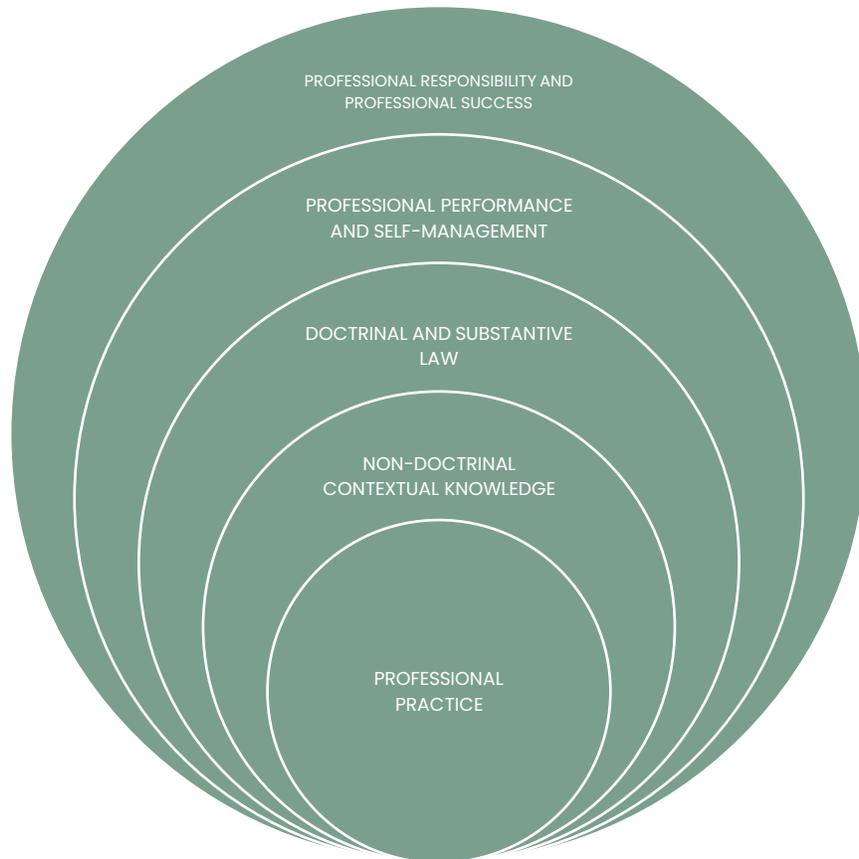
<sup>16</sup> "Competence of family law attorneys" (2008) 22:1 *American Journal of Family Law* at 58, online: <<https://link.gale.com/apps/doc/A176866661/EAIM?u=usaskmain&sid=bookmark-EAIM&xid=66e7f5ff>>.

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

## General Competency Categories of a Family Law Practitioner

Here, we present the competence categories which arose from our literature review and interviews. In the figure below, the categories are arranged by how they support one another, where the supporting category encompasses its peers.

- 1) Professional Practice
- 2) Non-Doctrinal Context
- 3) Doctrinal and Substantive Law
- 4) Professional Performance and Self-Management
- 5) Professional Responsibility and Success



In each subsection that follows, we briefly describe a competence category and point out the category's intersection with Rule 3.1-1 (the definition of a "competent lawyer") of the Law Society of Saskatchewan's [Code of Professional Conduct](#). Helpful charts indicate the category's subcategories and each subcategory lists descriptors of specific competencies identified by our research. Below the charts, the subcategories are discussed with quotes from our interviews offering support.

## 1) Professional Practice

This category encompasses the use of appropriate practices, procedures, methods, and techniques required for the provision of legal services in each client matter. The category intersects with Rule 3.1-1 (b) and (c).

Subcategories Supporting Professional Practice					
<b>Legal Research</b> <ul style="list-style-type: none"> <li>• Techniques</li> <li>• Databases</li> <li>• Discussion</li> <li>• Education</li> <li>• Consultation</li> <li>• Technology</li> </ul>	<b>Legal Writing</b> <ul style="list-style-type: none"> <li>• Technology</li> <li>• Collaboration</li> <li>• Editing</li> <li>• Grammar</li> <li>• Suggesting</li> <li>• Drafting</li> </ul>	<b>Document Drafting</b> <ul style="list-style-type: none"> <li>• Briefs</li> <li>• Memos</li> <li>• Affidavits</li> <li>• Contracts</li> <li>• Factums</li> <li>• Reports</li> <li>• Agreements</li> <li>• Corporate Docs</li> <li>• Forms</li> </ul>	<b>Legal Dispute Resolution Processes</b> <ul style="list-style-type: none"> <li>• Negotiation</li> <li>• Mediation</li> <li>• Arbitration</li> <li>• Litigation</li> <li>• Collaborative Lawyering</li> </ul>	<b>Legal Technology Tools</b> <ul style="list-style-type: none"> <li>• Proficiency with computers</li> <li>• Ability to effectively use legal software</li> </ul>	<b>Investigating Facts</b> <ul style="list-style-type: none"> <li>• Active Listening</li> <li>• Interview Techniques</li> <li>• Note Taking</li> <li>• Perspective</li> <li>• Critical Thinking</li> </ul>

**Legal Research** was identified as an important category of competence for family law practitioners. Interviewees noted that changing laws and finding proper precedents help resolve disputes quickly. Proficiency with **technology** tools was also identified as a method to support efficient and thorough legal research, **legal writing**, and **document drafting**.

**“You are not just the mouthpiece of the client; you are also the gatekeeper of the client, as to what information actually makes it to court.”**

**“[Practitioners] need a practical sense and an ability to look at situations pragmatically while asking open ended questions.”**

Our interviewees explained that the ability to **investigate facts** helps calm the sometimes antagonistic nature of family law proceedings. Sharing unnecessary information with the Court was said to be a barrier to resolving disputes. Interviewees noted that sub-competencies from the “Non-Doctrinal Contextual Knowledge” category would support objective investigation and identification of facts for dispute resolution purposes.

We also heard consistently that non-litigation-focused **dispute resolution** mechanisms should become more widely accepted amongst family law practitioners. It was suggested that some practitioners consider litigation to be the first choice, or an “ace card”, in a family law dispute.

Finally, many comments were made about remaining updated on changing court **procedures**. Interviewees identified court procedures, court forms, and court documents as an area of frustration because of the incorrect use or completion by opposing parties. Importantly, we heard that court procedures were not taught to pre-service practitioners and that practical instruction in the rules, procedures, forms, and documents required at the Court would be extremely helpful to new practitioners.

**“Use your skills in open-ended questioning to find out what is fully going on and what procedures are most effective.”**

## 2) Non-Doctrinal Context

This category encompasses the use of extra-legal knowledge and knowledge of a client's personal realities to understand the applicable law contextually and to select an appropriate dispute resolution mechanism for a client's matter. The category intersects with Rule 3.1-1 (e), (f), (h), (j), and (k).

### Subcategories Supporting Non-Doctrinal Context

Context of Law	Context of Client	Context of Access to Justice Issues	Context and Use of Legal Technology
<ul style="list-style-type: none"><li>• Colonial Law</li><li>• Indigenous Law</li><li>• Civil Law</li><li>• Other Legal</li></ul>	<ul style="list-style-type: none"><li>• Cultural Awareness</li><li>• Religion</li><li>• Values</li><li>• Psychology</li></ul>	<ul style="list-style-type: none"><li>• Affordability</li><li>• Diversion from court system</li><li>• Creative Billing</li></ul>	<ul style="list-style-type: none"><li>• Active Listening</li><li>• Interview Techniques</li><li>• Note Taking</li><li>• Perspective</li><li>• Critical Thinking</li></ul>

Awareness of non-doctrinal and contextual knowledge of the law is an important competency for family law practitioners. The legal system cannot be removed from the cultural context it is intertwined with as members of culture create the arguments, rules, and processes which form the legal system. Just as culture has changed over time, so too has the legal system and its elements. An understanding of the historical **context of the laws** can foster a deeper understanding of how modern family issues intersect with modern family law.

**“Family law started as a man-woman nucleus, but there are a lot of other family formats - grandparents who are involved, homosexual families, polyamorous relationships, how are these affected by the law?”**

The **context of the legal system** in Canada must be considered when working with diverse members of the public. The legacy of colonial law and racism within the law can impact a client's comfort in seeking out legal services and their trust in fair process. While many Indigenous nations have started to incorporate **Indigenous laws** into colonial family

law processes, there is still much work to do to fully incorporate these alternative practices into the common law.<sup>18</sup>

Beyond the general context of the legal system, clients are situated within their own specific **context**. Clients are diverse and come from various differing backgrounds,

**“What a family is can be different than the traditional, or nuclear view. Nowadays, you cannot assume a family dynamic; you need to investigate what their dynamic is.”**

impacting their understanding of family and family breakdown. Our interviewees cautioned that family law practitioners should not make assumptions about family composition because each family composition is unique. Just as family law practitioners should avoid assumptions about a client’s family composition, the practitioners should also be cognizant of a client’s **religious background** or **value system**, which can help inform the best options to pursue when resolving a case.

Our interviewees discussed the role that practical knowledge of **psychology** can play in the carriage of a family law file. General understanding of the emotional effects stemming from family breakdown can help practitioners interact with their clients throughout challenging circumstances. It can also aid in the creation of, for example, a parenting plan or creative client-centred solutions.

**“A [practitioner] who is the most competent is someone who also understands psychology and human dynamics.”**

**Access to justice issues** related to fees were identified. Family breakdown often involves splitting incomes, creating unwanted financial obligations for clients, such as spousal and child support. Legal fees, especially for lengthier matters, can be a large and unexpected concern. When our interviewees spoke of their learned ability to limit client costs, they also explained the need to be upfront and realistic with clients. By managing expectations, clients are better informed of the realistic legal journey ahead. Finally, our interviewees stressed the importance of continuing to stay up to date with **technological innovations** in the field as a method to increase efficiency in their practice and lower legal fees.

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<sup>18</sup> Mickey Djuric, “How Cowessess First Nation’s historic child welfare agreement with Canada and Saskatchewan works”, *CBC News* (9 July 2021), online: <<https://www.cbc.ca/news/canada/saskatchewan/how-cowessess-first-nation-child-welfare-agreement-works-1.6095470>>.

### 3) Doctrinal & Substantive Law

This category encompasses knowing and selecting substantive law and principles applicable to each client’s legal matter. The category intersects with Rule 3.1-1 (a), (f), (h), and (i).

#### Subcategories Supporting Doctrinal and Substantive Law

Legal Terms	Legal Theories and Principles	Identifying Issues	Substantive Law
<ul style="list-style-type: none"><li>• Acronyms</li><li>• Synonyms</li><li>• Different Contexts</li></ul>	<ul style="list-style-type: none"><li>• Identifying legal principles</li><li>• Distinguishing facts</li></ul>	<ul style="list-style-type: none"><li>• Identifying Legal Issues</li><li>• Distinguishing non-legal issues</li></ul>	<ul style="list-style-type: none"><li>• Legislation/Statute</li><li>• Case law</li><li>• Regulations</li><li>• Family specific</li><li>• Property</li><li>• Indigenous law</li><li>• National Requirement Courses</li></ul>

Learning and understanding the legal principles applicable to one’s field is a commonly recognized category of competence. Knowledge of substantive law is a foundation to build alongside the rest of the competencies identified. Acquiring substantive legal knowledge can occur in various ways.

Our interviewees shared that the pre-service legal education is generally achieving the goals of this category. For that reason, our discussion is kept short.

**“To give competent advice, you must be very well versed. You need to constantly re-educate yourself on case law and changes to the law.”**

## 4) Professional Performance & Self-Management

This category encompasses the personal habits which allow a practitioner to provide consistent, competent legal services to each client over an extended period. The category intersects with Rule 3.1-1 (e), (g), (h), (i), and (k).

### Subcategories Supporting Professional Performance and Self-Management

Self-Management Skills	Client Interaction Skills	Practice Management	Professional Collaboration
<ul style="list-style-type: none"> <li>• Setting Boundaries</li> <li>• Self-Regulation</li> <li>• Mental Health Strategies</li> <li>• Emotional Intelligence</li> <li>• Self-Reflection</li> <li>• Self-Appraisal</li> </ul>	<ul style="list-style-type: none"> <li>• Trauma-informed</li> <li>• Emotional Impacts and Behaviour</li> <li>• Cultural Competence</li> <li>• Empathy</li> </ul>	<ul style="list-style-type: none"> <li>• Time Management</li> <li>• Task Management</li> <li>• Email Management</li> <li>• Calendar Management</li> <li>• Communication Methods</li> <li>• Email   Letter   Phone   In-Person   Video</li> </ul>	<ul style="list-style-type: none"> <li>• Delegation</li> <li>• Shared Work</li> <li>• Assisting</li> <li>• Consulting</li> <li>• Board Work</li> <li>• Management</li> </ul>

Healthy habits support the delivery of competent legal services by helping a practitioner avoid emotional and psychological health issues, as well as professional burnout. Our interviewees cautioned that professional burnout could reduce empathy and aptitude, leading family law practitioners to quit practice altogether. Multiple strategies to avoid burnout were identified, indicating that a wide variety of personal and professional habits assist practitioners in the sustained delivery of competent legal services.

**“When you start to lose compassion and empathy, you need to hang up your hat.”**

**“Your client’s problems are not your problems. You are not doing yourself or your client any favours by taking on that emotional load.”**

Self-management skills include the ability to set **boundaries** with a client. Many of our interviewees discussed the emotional toll that family law has on practitioners. Strong boundaries were identified to separate the practitioner’s emotions from the client’s emotional state to maintain mental health and objectivity.

The ability to express **empathy** was considered essential. The traditional conception of empathy requires an individual to recognize and acknowledge the feelings of another person.<sup>19</sup> In contrast, radical empathy is an acknowledgement that a person's disclosure has "touched" or "impacted" the listener.<sup>20</sup> Radical empathy has also been explained as an active communication style in which knowledgeable people (like a practitioner) thoughtfully explain the reasoning and rationale behind their decisions and make an active effort to not simply share their knowledge.<sup>21</sup> The practitioner can empower their clients to share experiences in a way that engages their interests and desires.

**"You want to give your clients tools they can use so that they feel empowered to make decisions for themselves."**

Our interviewees identified a need for **objectivity** from family law practitioners. The emotional nature of the work can lead to a zealous advocacy for their client, which our interviewees cautioned can lead to a biased and inaccurate view of the matter at hand. Family law practitioners should remain objective in their assessment of facts and reflect on their biases throughout an entire case.

The importance of **self-reflection** as a foundational competency was expressed by most of our interviewees. A practitioner who embodies this practice is self-aware and critically reflects on practice and theory, reflects collectively and in community, is usually a self-directed lifelong learner, and has the tools to take action to improve their practice. Reflective practice has been described as a 'way of being'.<sup>22</sup>

**"Empathy is for the client, but trauma informed [practice] is for you and your emotional health."**

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<sup>19</sup> See Judith V Jordan & Harriet L Schwartz, "Radical empathy in teaching" (2018) 2018:153 *New Dir Teach Learn* 25–35 at page 27.

<sup>20</sup> *Ibid.*

<sup>21</sup> See Nicole Cooke et al, "It Starts at Home: Infusing Radical Empathy into Graduate Education" (2020) 3:Radical Empathy in Archival Practice (Pre-Prints) *J Crit Libr Inf Stud* 1–23 at page 11–12.

<sup>22</sup> Michele Leering, "Perils, pitfalls and possibilities: introducing reflective practice effectively in legal education", 53:4 *The Law Teacher* at 431, online: <<https://doi-org.cyber.usask.ca/10.1080/03069400.2019.1667083>>.

## 5) Professional Responsibility & Success

This category encompasses an understanding of the range of professional requirements and professional opportunities available so practitioners can choose the context of professional practice that adequately meets personal or professional goals and needs. The category intersects with Rule 3.1-1 (d), (e), (g), (h), (i), (j), and (k).

### Subcategories Supporting Professional Responsibility and Success

Professional Approach	Professional Appraisal	Regulatory Responsibilities	Professional Pathways
<ul style="list-style-type: none"><li>• Acting Ethically</li><li>• Ameliorating Access to Justice</li><li>• Innovation in Law</li><li>• Acting Professionally</li></ul>	<ul style="list-style-type: none"><li>• Goal Setting</li><li>• Professional Development</li><li>• Reflection</li></ul>	<ul style="list-style-type: none"><li>• Reporting Responsibilities</li><li>• Mentorship</li><li>• Inter-disciplinary Expertise</li></ul>	<ul style="list-style-type: none"><li>• Private Practice</li><li>• Government</li><li>• In-House</li><li>• Academic</li><li>• Regulation</li><li>• Non-Legal</li><li>• Limited License</li></ul>

We heard that a practitioner's knowledge of **ethical, regulatory**, and day-to-day requirements across the legal industry can support choice in professional aspirations. Practitioners make professional decisions through a variety of factors, including their professional skills, the match of the professional demands with their lifestyle, and the availability of professional opportunities.

Our interviewees explained that **not all practitioners expected to practice family law**, and that they wish they had been better educated about certain information before they started. Thorough knowledge of substantive family law, the ethical and regulatory requirements of working with children, and how family chambers differ from other practice areas in the legal industry are a few examples of unacquired knowledge. Specifically, they would have better prepared for the emotional and psychological impacts involved in family law work.

Knowledge of the ethical and regulatory requirements of family law practice is also **crucial to engage with interdisciplinary experts**, such as a therapist, psychologist, or financial planner. Private practice lawyers are also held to different regulatory standards than mediators, psychologists, or parenting coordinators.

Some of our interviewees discussed the need to teach about the **different professional pathways** available because of perceptions which do not align with the reality of practice. Interviewees suggested that a thorough explanation of family law to pre-service practitioners may help those “hanging their shingle” choose family law if it aligns with their professional goals and needs. They also argued that an understanding of the realities of the practice area can inform [pre-service] practitioners to avoid practicing family law if it does not align with their goals and needs.

**Family law intersects with a variety of legal areas**, including business law, immigration law, and dispute resolution, and can therefore be an exciting area for practitioners who enjoy variety of work.<sup>23</sup> While absolute knowledge of all the intersecting areas is not essential, an interest in these areas would aid in practice.

Here concludes the discussion of our general competency framework. In the next section, we explain a unified set of principles to assist the development of competencies across the legal education continuum. In the final section, we provide a series of practical suggestions for improving the legal education. We provide commentary on those suggestions and indicate how each one intersects with the principles discussed next.

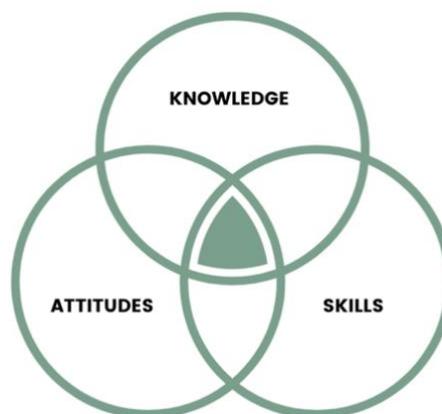
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<sup>23</sup> See generally “Substantive Intersections with Family Law” in Appendix C.

## DEVELOPING COMPETENCIES ACROSS THE CONTINUUM

In this section, we outline a set of unified principles to guide competency development across the *legal education continuum*. In the section that follows, we discuss a series of suggestions for improving the *legal education continuum* and indicate which principles each suggestion supports.

Competencies are the *knowledge, skills, and attitudes* necessary to carry out one’s role in a professional setting.<sup>24</sup> *Professional competence* is the habitual use of competencies to serve an individual or community.<sup>25</sup> A comprehensive competency framework assists a [pre-service] practitioner’s competency development.<sup>26</sup>



To provide a [pre-service] practitioner with the best opportunity to develop, maintain, or upgrade competencies, **a principled approach should be employed across the controlled legal education continuum.**<sup>27</sup> Unifying the principles applicable to the *legal education continuum* will assist regulators, educators, and supporting stakeholders to facilitate competency development throughout the entire *legal education continuum*. We have identified four principles from our research and consultations:<sup>28</sup>

PRINCIPLES OF COMPETENCY DEVELOPMENT
PRINCIPLE #1: Competence Development is not a Linear Process
PRINCIPLE #2: Assessment Informs the Regulator, Educator, and Practitioner
PRINCIPLE #3: A Whole Competency Approach Enhances Competency Development
PRINCIPLE #4: Self-Determined Learning Supports Individualized Competency Development

In each subsection that follows, we introduce and describe a principle listed above. The discussions are not comprehensive due to the scope of our research, but where possible we have provided charts and examples to support the information we share.

<sup>24</sup> See *supra* note 2.

<sup>25</sup> See *supra* note 2.

<sup>26</sup> We use [pre-service] practitioners because a competency framework assists the development of both pre-service practitioners and practitioners, though they are in different stages of their legal education journey.

<sup>27</sup> See “Examining the Legal Education Continuum” in Appendix B for a discussion of the *controlled continuum*.

<sup>28</sup> These principles are not suggested to be absolute or comprehensive.

## PRINCIPLE #1: Competence Development is not a Linear Process

Competencies acquired in one context may or may not be transferable to another. Attitudes appropriate for one context may require upgrading in another, relevant knowledge may change or be forgotten, and skills may be unacquired or become rusty over time.

For these reasons, **developing competencies and maintaining professional competence is not a linear progression along the *legal education continuum***. Each practitioner's journey through the *legal education continuum* generates different competency development opportunities because no person's legal education journey or professional practice is the same. However, minimum education standards are currently required in the form of credentials. The portion of the *legal education continuum* that is credentialed or is a minimum requirement of a credential can be described as the *controlled legal education continuum* (or *controlled curriculum*).<sup>29</sup> The *uncontrolled legal education continuum* includes competency development opportunities and education not required of all practitioners, such as volunteer opportunities, sessional lecturing, or non-required law school courses.

To reflect the non-linear nature of competency development, **a practitioner's engagement with the *legal education continuum* should be approached as a cyclical process with overlapping educational areas** as contributing factors that support learning and growth. The stages of education across the *legal education continuum* are interconnected, and the competencies acquired in one stage may influence the development of competencies in another.<sup>30</sup>

**We highlight the need for collaboration amongst stakeholders following a unified set of principles** in order to explore the overlap of responsibilities and alignment of competency development across the continuum.

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<sup>29</sup> See generally "Examining the Legal Education Continuum" in Appendix B for a more in depth discussion of the *controlled legal education continuum* and generalized credentialing.

<sup>30</sup> For example, the Law Society of Alberta's CPD requirement and the Dispute Resolution programs at USask's College of Law employ complementary approaches to competency development. Pre-service practitioners would participate in the Dispute Resolution programs first, learning to self-reflect on contextual simulations and choosing which competencies to focus on. Once regulated by the Law Society of Alberta, practitioners would self-assess and use a competency framework to create a professional profile and development plan. These approaches take advantage of the practitioner's linear progression through the legal education continuum, while recognizing that competency development is not purely linear and requires self-reflection. Practitioners developed competencies in a low-risk and supervised environment. This cycle of self-reflection, assessment, and development helps practitioners to continuously improve their competencies over time, leading to a cyclical development of skills, knowledge, and attitudes that support high-quality legal services and mitigate practitioner risk.

## PRINCIPLE #2: Assessment Informs the Regulator, Educator, and Practitioner

**Properly assessing competencies can inform regulators, educators, and practitioners themselves.** Regulators can use assessments to determine *practitioner risk*<sup>31</sup> and inform the scope of licensure. Educators can use assessments to design education plans which help [pre-service] practitioners develop the necessary competencies to be successful in their professional context. Practitioners can use assessments to identify areas of proficiency and areas for improvement.

For practitioners, assessment provides information about their knowledge, skills, and attitudes at a specific point in time. **By understanding their own competencies, practitioners can identify areas for improvement and take steps to develop or maintain their skills, knowledge, and attitudes.** Self-assessment can be a valuable tool for practitioners. With proper instruction and support practitioners can be responsible for assessing their own competencies or seeking the required support for assessment and development planning. Assessment need not be intrusive or always completed by external review. However, assessment requires guidance on the core competencies required in their professional context and how to develop or maintain those competencies.<sup>32</sup>

**A competency framework guides which competencies should be assessed and developed.** However, feedback from an assessment must provide useful information to stakeholders. For instance, USask's College of Pharmacy uses "Competency Based Achievement Descriptors" with specific criteria for determining proficiency levels. Even this simple achievement scale can provide the individual, the educator, and the regulator with information about the [pre-service] practitioner's competency development needs:

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<sup>31</sup> See generally "Examining the Legal Education Continuum" in Appendix B for a discussion of *practitioner risk*.

<sup>32</sup> For example, a timed substantive exam that assigns a grade or numerical value may be useful in assessing retained substantive knowledge at a specific point in time. If the practitioner will need to apply that knowledge in a future provision of legal services that requires writing in a time-constrained environment, the timed exam can accurately and contextually assess their retained knowledge and communication skills at a point in time. However, if the goal is to assess only retained substantive knowledge, multiple forms of assessment may be appropriate. Combining a verbal questioning, a non-time-constrained memo, and a timed exam can more accurately assess and tease out the retention of substantive knowledge at that point in time while considering the communication skills and contextual environments associated with each specific form of assessment. It is important to tailor the assessment to the specific competencies being evaluated and the goals of the assessment.

PharmD Achievement Scale	Competency Based Achievement Descriptors
E	<b>Exceeding</b> – student has achieved proficiency. In addition they have shown their understanding/skills in <b>novel situations</b> or <b>at a higher level than what is expected by the criteria.</b>
P	<b>Proficient*</b> – student has <b>consistently</b> demonstrated the criteria for achieving this competency.
G	<b>Growing</b> – student has <b>inconsistently</b> and/or <b>partially</b> demonstrated the criteria for achieving this competency. Improvement is needed related to the criteria of this competency in order to achieve proficiency.
IA	<b>Insufficient Achievement**</b> – student has <b>not demonstrated</b> the criteria for achieving this competency despite opportunity to do so.

We have created the following charts as examples of the type of information we believe the above achievement scale can provide:

Competency Assessor	Competency Developer	Individual
What is the competency to be assessed and how best to measure to isolate it from other competencies?	What is the underlying developmental need (skill, knowledge, attitude)?	Is my self-assessment accurate? What must I focus on moving forward?

Regulator	Educator/Mentor	Practitioner
E – The practitioner is low risk and may be able to assist other practitioners through mentorship or teaching.	E – Competency should be pointed out as opportunities to build on.	E – The competency may be used to support development of other competencies.
P – The practitioner risk is low and requires no intervention.	P – The practitioner requires only the support they communicate.	P – Improvement is possible, but not necessary.
G – The practitioner risk exists but supervision and support are required for the competency to be exercised.	G – The practitioner requires only specific intervention and learning opportunities.	G – Mentorship and review should be incorporated into practice, with care given to finding ways to improve.
IA – The practitioner risk is high.	IA – The practitioner requires comprehensive instruction.	IA – Planning is required to learn how to properly perform.

**We highlight the need for assessment rubrics to change for the proper assessment of competencies.** A suggested assessment criteria and achievement scale is out of the scope of our research, and we recognize that more qualified stakeholders can better address this need.

## PRINCIPLE #3: A Whole Competency Approach Enhances Competency Development

Competencies should be developed in a contextually appropriate environment. Intentional design of assessment and development is important.

A *whole competency approach*<sup>33</sup> involves recognizing the contextual nature of competencies and incorporating their sub-competencies into teaching and assessment. This approach acknowledges that **competencies are best developed in an environment contextually similar to where the competency will be required.** Perfect context cannot always be duplicated for assessment and development purposes. Therefore, the intentional design of assessment and development is imperative.

Rule 3.1-1 emphasizes the importance of a contextual application of knowledge, skills, and attitudes when teaching, assessing, and acquiring competencies across the legal education continuum. This means that the focus should be on developing competencies in a specific context rather than their transferability to other contexts.

Rule 3.1-1 of the Code of Professional Conduct specifically outlines that a competent lawyer is one “who has and applies *relevant* knowledge, skills, and attributes *in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer’s engagement* [emphasis added]”.

For the purposes of assessment and development, the rule could be rewritten to say: [*where a matter is undertaken on behalf of a client,*] *the nature and terms of the practitioner’s engagement inform which competencies are relevant and appropriate to that matter.*

*Near transfer* and *far transfer* refer to the transfer of learning from one situation to another. *Near transfer* involves applying what has been learned in one situation to a similar or identical situation. In contrast, *far transfer* involves applying what has been learned to a very different situation. In legal education, acquiring knowledge through lecture and case brief before assessment through a written exam has a *near transfer* effect to writing a time constrained memo for a partner in private practice. The same scenario may not transfer to other contexts, such as the courtroom, without additional training and experience.

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<sup>33</sup> The suggested *whole competency approach* is based off of the concepts of *near transfer* and *far transfer* in perceptual-cognitive skills training. These topics were covered in Jakaeden’s unpublished Master of Science thesis. Please contact [brea.lowenberger@usask.ca](mailto:brea.lowenberger@usask.ca) to request more information.

Traditionally, substantive knowledge and legal analysis learned in law school is scaffolded into a supervised practice environment. However, this approach neglects the contextual nature of *professional competence* when representing clients. For example, a practitioner who excels in a particular area of law in an exam format may struggle to apply that knowledge to a client matter which requires practical skills, including fact investigation, to navigate dynamic and unpredictable environments.

**A whole competency approach enables pre-service practitioners to integrate sub-competencies into the larger context of handling legal matters on behalf of clients before becoming proficient in those sub-competencies.** This approach allows legal professionals to develop skills in simulated scenarios, creating a *near transfer* effect to scenarios occurring in practice.

**A whole competency approach, such as a moot or simulated dispute resolution, is an effective way to teach the competencies required of a practitioner.** It introduces substantive knowledge in a contextual environment and focuses on a production outcome, such as a factum written after investigating facts and performing research. By understanding the whole competency, pre-service practitioners and educators can identify and measure specific sub-competencies through external or self-assessment. Isolated sub-competencies develop better when learners integrate them into the contextual whole.

**We highlight the need to tailor teaching and learning experiences to facilitate a whole competency approach** in order to develop simple competencies and complex competencies in contextual environments.

## PRINCIPLE #4: Self-Determined Learning Supports Individualized Competency Development

Developing competencies required for practice is a unique experience for each individual. **We heard from our interviews that self-determined learning may be more effective than generalized credentialing**<sup>34</sup> for all stakeholders involved. Self-determined learning prioritizes the learner's control over their learning process through autonomy, choice, and personal agency.<sup>35</sup>

The current regulatory and pre-service educational schemes operate through self-determined learning, with the exception of the National Requirement. While imposing a National Requirement may have advantages, our interviewees suggested that any requirements should align with the purpose of the *legal education continuum*.

**A *portfolio approach* is an effective way to achieve self-determined learning for competency assessment and development.** The portfolio approach allows individuals to take ownership of their learning and development. It is a tailored approach to a practitioner's specific goals and needs. It also provides a tangible record of progress and achievement, which can be used to track growth over time and demonstrate competence to others.

**The *portfolio approach* involves the [pre-service] practitioner selecting and completing a range of tasks which collectively demonstrate or engage required competencies.** Essentially, the assessment and development of competencies and sub-competencies are achieved through flexible *outcome production*.

In many ways, practitioners currently use a portfolio approach through their provision of legal services. A *portfolio approach* can assist pre-service practitioners in an individualized way rather than using a one-size-fits-all generalized credential approach.

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<sup>34</sup> See generally "Examining the Legal Education Continuum" in Appendix B for a more in depth discussion of generalized credentialing.

<sup>35</sup> Dennis E. Mithaug, "Self-Determined Learning" in Michael L. Wehmeyer, ed, *The Oxford Handbook of Positive Psychology and Disability*, (Oxford: Oxford University Press, 2013) 137, online: <<https://doi.org/10.1093/oxfordhb/9780195398786.013.013.0011>>.

Portfolios for use in pre-service education could be described as “a systematic collection of student work that represents student activities, accomplishments, and achievements over a specific period of time in one or more areas of the curriculum.”<sup>36</sup>

The medical industry has utilized a *portfolio approach* for competency development of pre-service practitioners.<sup>37</sup> The Cleveland Clinic Lerner College of Medicine designed their portfolio approach on the following principles:<sup>38</sup>

1. If reflective practice is a goal, setting aside time and providing mentors is critical to helping students reflect on evidence of their learning and professional development.
2. Distinctly separate processes and reviewers for formative portfolio (FP) and summative portfolio (SP) assessments can ensure that confidentiality of reflections of a personal nature is not compromised by the rigor and judgments required for making promotion decisions.
3. Student responsibility for selecting evidence and analysis of their learning is critical to maintaining student engagement in assessing progress.<sup>21</sup>
4. Requiring essays aimed at integrating the competencies needed for the practice of medicine, such as asking students to reflect on the various roles of the doctor, can facilitate reflection on learning.
5. Rigorous measurement standards are necessary if portfolios are to be used for summative purposes: fairness (clear instructions, equal assistance, and due process), validity (appropriate standards, evaluators capable of making sound judgments, and quality authentic evidence), and reliability (trained evaluators and adequate curricular experiences providing multiple sources of assessment)

We paraphrase the Cleveland Clinic’s explanation of their *portfolio approach*:<sup>39</sup>

**1. The faculty agreed on Graduate Attributes (competencies) that encompass core competencies required by the regulator.**

- a. By encompassing the six core competencies within the Graduate Attributes, [pre-service] practitioners are introduced to a unified competency-based education continuum in their first year of study.

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<sup>36</sup> “Using Portfolios in Program Assessment”, online: *University of Hawaii at Manoa*, online: <<https://manoa.hawaii.edu/assessment/resources/using-portfolios-in-program-assessment/>>.

<sup>37</sup> See generally Elaine Dannefer & Lindsey C Henson, “The Portfolio Approach to Competency-Based Assessment at the Cleveland Clinic Lerner College of Medicine” (2007) 82:5 *Academic Medicine* 493, online: <<https://doi.org/10.1097/acm.0b013e31803ead30>>.

<sup>38</sup> See *ibid* at 496.

<sup>39</sup> See *ibid* at 494.

- b. A personal development Graduate Attribute reflects the importance and difficulty for [pre-service] practitioners to find a balance between personal and professional life.
  - c. Two Graduate Attributes reflect professionalism and personal communication development begins early.
  - d. The remainder of the Graduate Attributes reflect the importance of acquiring specific [legal] knowledge and skills.
- 2. Assessment can fragment performance when methods are used to only target specific sub-competencies.**
- a. Professional competence requires more than just possessing a set of competencies, it “requires the ability to integrate competencies and to use judgment” in practice.
  - b. “Targeting specific sub-competencies may neglect the complexity and integrated nature of practice.”
- 3. “Reflective practice is the foundational competency”** as it supports learning from experience and enhances professional judgment through mentorship, discussion, and feedback.

Similar to the traditional nature of the legal industry, competency development could be a collaborative engagement between learner and expert. As facilitators of the portfolio approach, educators (professors and regulators) and practitioners (as sessionals and mentors) act as coaches who show the way and support learners.

**Support from stakeholders of the *legal education continuum* is required to implement a portfolio approach and provide the necessary resources for learners to take charge of their legal education.**<sup>40</sup> Establishing this support will require collaboration between stakeholders of the *legal education continuum* but will assist learners in maximizing their self-directed learning.<sup>41</sup>

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<sup>40</sup> Peter W Airasian & Lisa M Abrams, “The Theory and Practice of Portfolio and Performance Assessment” (2000) 51:5 *Journal of Teacher Education* at 398, online: <<https://doi.org/10.1177/0022487100051005007>>.

<sup>41</sup> Mayumi Hagiwara et al, “Development of the Self-Determined Learning Model of Instruction Coaching Model: Implications for Research and Practice” (2020) 55:1 *Education and Training in Autism and Developmental Disabilities* at 17, online: <<https://www.proquest.com/docview/2367739074>>.

We provide the below figure used by the Cleveland Clinic to demonstrate the principles employed in their version of pre-service portfolio education:<sup>42</sup>



**Figure 1** Graphic illustration of the portfolio approach to a competency-based assessment system at the Cleveland Clinic Lerner College of Medicine of Case Western Reserve University, Cleveland, Ohio. The foundation of the system is the evidence database, which includes formative feedback from multiple contexts and sources plus student-generated work. Evidence is collected in an electronic portfolio that is accessible by the physician advisors, who provide frequent informal feedback. At scheduled intervals, students select evidence from the database to use in preparing their formative and summative portfolios. The final competency report is equivalent to the medical student performance evaluation or dean’s letter.

**We highlight the need for self-determined learning across the legal education continuum**, specifically at the pre-service stages of legal education.

Here concludes our discussion of principles for competency development across the *legal education continuum*. In the final section below, we list and explain practical suggestions that could be implemented along the *legal education continuum* and indicate which principles each suggestion intersects with.

<sup>42</sup> See *supra* note 37 at 496.

## IMPROVING FAMILY LAW EDUCATION ALONG THE CONTINUUM

To this point in our report, we have described the general competency framework created from our research and interviews. We have listed and explained four unifying principles to support competency development across the *legal education continuum*. In this section, we list and discuss practical suggestions for change that align with the principles outlined in the previous section. We also note which principles each suggestion intersects with.

We learned through our research and consultations that minimum requirements along the *controlled continuum* should reflect that **developing competence is both the regulatory and educational goal of the controlled legal education continuum**, even within a credentialed system.<sup>43</sup> We heard that, when developing competencies, it is first helpful to identify the competencies required of a practitioner before considering where each competency or its sub-competencies are best acquired, assessed, or upgraded along the continuum.<sup>44</sup>

### **Educating for Competencies along the Legal Education Continuum**

Step 1: Identify the Parts of the Whole (Competency Framework)

Step 2: Determine the Building Blocks of the Parts

Step 3: Place the Parts and Building Blocks on a Timeline

Step 4: Determine the Best Development Environment

Step 5: Identify Stakeholder Barriers to Performing Responsibilities

Below, we have taken the liberty of beginning to envision what changes along the *legal education continuum* could look like – recognizing, of course, that these suggestions are built on a small slice of empirical research and ideas about what could be done differently. We do not advocate for an upheaval of legal education but point to **realigning the controlled continuum towards competency development of the whole practitioner**. We view this as an exercise in brainstorming about what the future of legal education could look like. We invite stakeholders to join in this exercise, too.

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<sup>43</sup> See generally “Examining the Legal Education Continuum” in Appendix B.

<sup>44</sup> See Appendix D for an example of where the current legal education continuum interacts with the general competency standards listed in Rule 3.1-1 of the Law Society of Saskatchewan’s Code of Professional Conduct.

## Overview Of Suggestions

Here, we list practical suggestions for change and note how they intersect with the four principles above. While provided in the context of a family law practitioner, these suggestions can generally apply to legal education as a whole.

To ensure the development of a competent family law practitioner, we suggest that the *legal education continuum* consider the following:

SUGGESTION	PRINCIPLE			
	#1	#2	#3	#4
A) Develop Self-Reflection and Self-Appraisal Competencies	x	x	x	x
B) Provide Contextual Simulated & Practical Experience	x	x	x	x
C) Untether Introductory Legal Analysis from Substantive Courses	x	x	x	x
D) Emphasize the Full Range of Dispute Resolution Methods	x	x	x	x
E) Develop and Update Procedural Competence	x	x	x	
F) Teach Or Require Comprehensive Non-Doctrinal Knowledge	x	x		x

PRINCIPLES OF COMPETENCY DEVELOPMENT
PRINCIPLE #1: Competence Development is not a Linear Process
PRINCIPLE #2: Assessment Informs the Regulator, Educator, and Practitioner
PRINCIPLE #3: A Whole Competency Approach Enhances Competency Development
PRINCIPLE #4: Self-Determined Learning Supports Individualized Competency Development

In each sub-section that follows, we discuss a suggestion based on information collected from our interviews and our own follow-up research. Each discussion briefly explains the suggestion before commenting on how to incorporate the suggestion into the *legal education continuum* and discussing possible options.

Where possible, we describe existing examples along the *legal education continuum*. Where required, examples are provided from a non-Saskatchewan *legal education continuum* context.

## A) Develop Self-Reflection and Self-Appraisal Competencies

The competencies of self-reflection and self-appraisal should be the foundation upon which the family law *legal education continuum* exists and the central focus through which all other competencies are taught and assessed. [Pre-service] family law practitioners require these competencies to properly assess and develop other competencies.

PRINCIPLE			
#1	#2	#3	#4
x	x	x	x

**Commentary:** *Self-reflection should be the first building block pre-service practitioners are introduced to. Supervised reflective writing with mentorship could achieve this building block. Foundational self-reflection and self-appraisal skills could be introduced early through contextual, simulated family law experiences with written and oral reflection. The importance and foundations of these skills should be introduced before substantive law topics in order to build the learner's capacity and underline the importance of the competencies. See the discussion in Principle #4 about the Cleveland Clinic's philosophy for support for this statement.*

*A pre-service practitioner's reflective writing sample would be read by a mentor then discussed between mentor and pre-service practitioner. A formative achievement scale with ongoing and individualized feedback from a trusted mentor would support continual development of reflection skills throughout pre-service competency development. This method requires substantial care and resources since mentorship should be done by trained practitioners overseen by a member of Faculty or an experienced sessional lecturer. Consider following a model similar to the College of Law's first-year Dispute Resolution Week.*

**Introductory Year:** *In order to foster appreciation and buy-in from high-achieving pre-service practitioners who are used to technical assessment of assignments, introductory self-reflection skills assessment should not be summatively assessed. However, to build and underscore its importance, regular mentorship and discussion should accompany reflective writing assignments. Summative technical writing assessment should not occur for reflective writing samples, only for production outcomes (e.g. memos, case briefs, or contracts). Summative self-appraisal assessment may occur with supporting mentorship discussion to explain the discrepancies between the self-appraisal and the external assessment.*

**Practitioners & Experienced Pre-Service Practitioners:** *Trained mentorship opportunities will succeed in developing self-reflection and self-appraisal competencies in current practitioners, who must naturally learn and reflect on their own competence in order to provide adequate mentorship. In that way, the competency development of pre-service practitioners also succeeds in developing competencies for practitioners.*

## B) Provide Contextual Simulated & Practical Experience

Pre-service family law practitioners should be introduced to the law through simulated and practical experiences. Pre-service practitioners should next be exposed to supervised practical experience through clinics, externships, or other opportunities to develop competencies in a contextual family law environment. Practitioners should upgrade competencies through short, simulated experiences where appropriate.

PRINCIPLE			
#1	#2	#3	#4
x	x	x	x

**Commentary:** *At a high level, intentional whole competency development could be achieved with a progression from short simulated contextual experience (in intensives and courses) without practical experience, to longer supervised practical experience and mentorship (in internships and intensives), to short simulated contextual experience (in workshops and courses) in between real legal services. Production outcomes could be graded by practitioners or sessionals, Legal Research and Writing professors, and/or faculty, depending on the [pre-service] practitioner's development stage and the competencies being assessed.*

**Introductory Year:** *As will be discussed in more detail in Suggestion C, the substantive knowledge required for each simulated experience could be provided directly to the learner in the form of case briefs and/or short, introductory lessons. For all longer simulated experiences, individual legal research should be encouraged and reflective/appraisal assignments required to gauge competency development.*

**Experienced Pre-Service Practitioners:** *Pre-service practitioners should develop whole competencies in a practical and contextual environment by providing supervised legal services in clinical or externship opportunities, like through the current experiences of articling, clinics, externships, or summer jobs. For those pre-service practitioners whose risk assessment is not conducive to providing supervised family law services, more complex simulated experiences should be provided.*

**Practitioners:** *In order to align with the stages of Kolb's reflective cycle,<sup>45</sup> practitioners should participate in simulated contextual experiences like those described for the introductory year or like past continuing professional development workshops held by the Law Society of Saskatchewan.<sup>46</sup> Otherwise, being a mentor or instructor may provide the best opportunity for upgrading competencies along Kolb's reflective cycle, depending on the practitioner's level of proficiency and experience.*

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<sup>45</sup> See Dr. Annie Rochette, *supra* note 2; see generally "Kolb's Learning Styles and Experiential Learning Cycle - Simply Psychology", online: <<https://www.simplypsychology.org/learning-kolb.html>>.

<sup>46</sup> See for example the Law Society of Saskatchewan Chambers Advocacy Workshop, online: <<https://www.lawsociety.sk.ca/lss-events/weekend-in-review-family-law-chambers-advocacy-workshop/>>.

## C) Untether Introductory Legal Analysis from Substantive Courses

The *legal education continuum* should continue to develop pre-service family law practitioners with competencies relating to substantive law and analysis, including the skill of analyzing case law and applying the law to real-life situations. These competencies should be introduced through contextual simulated experiences so the pre-service practitioner can integrate later developed substantive sub-competencies into the contextual whole of legal services through traditional learning methods.

PRINCIPLE			
#1	#2	#3	#4
x	x	x	x

**Commentary:** *To support the integration of sub-competencies of substantive knowledge into whole competencies of contextual practice, pre-service practitioners should be introduced to the foundational principles of case law analysis and statutory analysis through simulated experience. This method could be achieved by introducing an expanded legal research and writing course which supports the simulated contextual and practical experience described in Suggestion B. An advantage of this method is that publishing faculty members would be able to focus more closely on research interests and contributions to the academy instead of teaching and pedagogical design, while making their academic legal knowledge available to pre-service (and in-service) practitioners.*

**Option 1:** *One option would be for faculty to teach regular and optional substantive lectures for those first-year pre-service practitioners whose simulated experiences intersect with that faculty's substantive area of law. This option could also be open to experienced pre-service practitioners and practitioners to attend in order to promote upgrading knowledge competencies of substantive law.*

**Option 2:** *A more innovative option would be for substantive courses as they are currently offered to be available only after the introductory first-year of pre-service education (including those first-year substantive courses mandated by the National Requirement). Faculty could be involved in the substantive design of the first-year simulated experiences described in Suggestion B. They could offer mentorship, tutoring, or office hours to those first-year pre-service practitioners who seek them out. Experienced pre-service practitioners could choose courses in which they are interested (like current 2L and 3L students do) and would be able to integrate the substantive competencies into the whole contextual practice competencies acquired during their simulated experiences in first-year.*

## D) Emphasize the Full Range of Dispute Resolution Methods

The *legal education continuum* should ensure that family law practitioners understand the utility of all dispute resolution methods and provide contextual, simulated selection in a pre-service learning environments. Dispute resolution methods should be considered tools in a toolbox that a competent family law practitioner can employ according to the context of the family law matter at hand. Court services and litigation should remain a central pillar of the family law practitioner’s toolbox and be taught alongside, and through the same method as, “alternative” dispute resolution methods.

PRINCIPLE			
#1	#2	#3	#4
x	x	x	x

**Commentary:** Consider achieving Suggestions A-C by building out the existing first-year Dispute Resolution and Moot programs as the introductory tools through which first-year pre-service practitioners learn foundational and substantive competencies (instead of through the substantive National Requirement courses). An innovative and thorough Family Law specific method would see all National Requirement topics addressed through different simulated family dispute resolution simulations in order to provide pre-service practitioners with a wide introduction to intersecting substantive law.

**Option 1:** One option is to block simulated experiences in the first introductory semester to ensure adequate time for engagement with each simulation, then overlap simulated experiences in the second introductory semester to create a contextual practice experience where multiple matters occur at once.

**Option 2:** Another option is to offer multiple courses specific to a dispute resolution method (for example, family law court services, negotiation, mediation, collaborative law). The second option would require intentional design to avoid overloading requirements.

In either option, self-reflection/appraisal assignments and mentorship described in Suggestion A should occur before and after each simulated experience, or occur at regular intervals, and be based on the pre-service practitioner’s participation in simulated experience. Production outcomes (like drafted contracts, agreements, memos, or case briefs) should be assessed for technical proficiency by substantive experts and legal writing experts.

## E) Develop and Update Procedural Competence

The *legal education continuum* should incorporate procedural competencies into pre-service family law education and provide regular upgrade opportunities for practitioners. Procedural and its intersecting competencies will require familiarity and upgrading over time.

PRINCIPLE			
#1	#2	#3	#4
x	x	x	

**Commentary:** For practitioners providing legal services, regular updates from the Courts in the form of recorded webinars or summary technical documents would meet the procedural competency's upgrading or updating needs. Pre-service practitioners, on the other hand, should be introduced to the competencies required to find and follow the procedures of various stakeholders with which a practitioner must engage in the provision of legal services.

**Option 1:** One option would be to incorporate filing and document creation into a simulated experience like, for example, a moot. This option would provide fuller context to the simulated practical experience. A foundational court services course or unit early in an introductory pre-service practitioner's education that provides knowledge of the information required for court services would support a whole competency approach to court-based simulated experiences.

**Option 2:** An innovative option would be to require an introductory course which develops the whole competency of creating and communicating step-by-step procedural documents based on research – similar to creating condensed annotated notes (CANs) for substantive courses. In this option, guidance would be provided on the creation of procedural documents and pre-service practitioners would research the procedures (e.g. court procedures, King's Bench Rules, immigration procedures, Law Society procedures). One form of assessment could occur through regular sessions where a template document is provided and pre-service practitioners create a procedural document in a fixed period of time. Another form of assessment could occur by assigning a major project to a group of pre-service practitioners with specific guidance meant to develop both technological and collaborative competencies.

Both options provide opportunity to support the foundation competencies of self-reflection and self-appraisal. The innovative option provides opportunity to develop whole competencies involved in finding, interpreting, and communicating procedures. The innovative option could be expanded to include an evaluative component where the pre-service practitioner suggests process improvement options (for example, explaining how real family law procedures could be simplified to improve access to justice), or a learning component where pre-service practitioners reflect on the procedures in place (for example, the ethical reasons underpinning Law Society requirements or the substantive reasons informing the King's Bench Rules).

Both options, if selected procedural knowledge is shared publicly, could support other practitioner's upgraded procedural competence while addressing gaps in legal information.

## F) Teach or Require Comprehensive Non-Doctrinal Knowledge

Family law practitioners should understand various concepts and theories associated with family development, child development, culture, religion, Indigenous knowledge and histories, client emotion, psychology, and trauma. This competency may require continual updating as research and knowledge expands. The competency may be best developed initially through a comprehensive post-secondary law or non-law program.

PRINCIPLE			
#1	#2	#3	#4
x	x		x

**Pre-Service Practitioners:** *At the pre-service stage, contextual knowledge could be achieved by creating a JD/FL program administered by the College of Law. Pre-service practitioners would participate in a specially designed law degree to develop specific family law competencies (e.g. the [University of Victoria's JD/JID program](#)).*

*Another option would be an admissions category which attracts applicants with a demonstrated acquisition of knowledge through specific undergraduate degrees or demonstrated work experience. Similarly, a combined JD/undergraduate program could attract pre-service practitioners who have acquired contextual knowledge before entry into the JD program (e.g. [the University of Regina's combined Business-Law option](#)).*

*Another option would be a dual JD/graduate program (e.g. [University of Windsor's Master of Social Work/JD](#)). Pre-service practitioners would have acquired knowledge through a post-secondary undergraduate degree and would then acquire contextual knowledge supporting family law practice while developing initial legal competencies. A dual program utilizing an existing program within the University of Saskatchewan's offerings (e.g. the [Master of Arts \(Psychology\) in Culture, Health, & Human Development](#)) would complement the College of Law's current dual degree offering (i.e. the [JD/MBA](#)).*

**Practitioners:** *LLMs or other post-secondary learning opportunities specifically designed for contextual knowledge could be an option which creates a structured and comprehensive environment for practitioners to develop competencies alongside a busy practice (e.g. [Osgoode Hall's Part-Time Professional LLM](#)). A reflective component should underpin the acquisition of contextual knowledge to ensure transfer to family law practice. An alternative option would be completing self-directed research reports and reflective writing samples discussing acquired knowledge and how it applies to a practitioner's context. This alternative may better meet the time constraints and work requirements of a family law practitioner.*

Here concludes the final section. In previous sections, we introduced our topic, described the general competency framework we developed, and explained a unified set of principles for developing competencies. In this section, we discussed practical suggestions for improvement along the legal education continuum.

## CONCLUSION

Legal education has long been under scrutiny.<sup>47</sup> The *legal education continuum* in Saskatchewan should incorporate a unified set of principles across the entire continuum. As we have pointed out, within discrete sections of the *legal education continuum*, multiple stakeholders currently employ some or all of the principles we outlined. However, the *controlled continuum* can be better unified to improve the competency development of family law practitioners. Any changes to the *legal education continuum* should be intentionally designed for the benefit of the [pre-service] practitioner. Change requires collaboration between stakeholders to successfully meet the competency development needs of [pre-service] family law practitioners. We are optimistic that our local stakeholders can so succeed.

In our report, we explored the development of a general competency framework for family law practitioners and presented principles that should guide the development of competencies across the *legal education continuum*. The general framework we presented was developed from a literature review and interviews with various stakeholders. Our framework identified five competence categories necessary for the competent provision of family law services. We emphasized the need for continual evaluation and vetting by multiple stakeholders.

We also proposed practical suggestions for improving family law education along the continuum by developing self-reflection and self-appraisal competencies, providing supervised contextual simulated and practical experience, untethering introductory legal analysis from substantive topics, emphasizing the full range of dispute resolution methods, developing and updating procedural competence, and teaching or requiring comprehensive non-doctrinal knowledge. The principles of competency development that informed those suggestions include the non-linear nature of competence development, the importance of assessment to inform stakeholders, the need for a whole competency approach, and the value of self-determined learning.

Overall, we seek to provide a valuable contribution to the discourse on legal education and competency development for family law practitioners. The competency framework and principles can inform the development of legal education programs and regulatory frameworks which ensure that family law practitioners develop the necessary competencies to provide effective legal services to their clients.

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<sup>47</sup> Sparrow, *supra* note 14.

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## Appendix A: Extra-Legal Family Law Competencies

### 1. Professional Practice

<b>Investigating Facts</b>	
Competency Description	Ability to recognize, question for, critique, gather, and search for the relevant information to the matter at hand.
Sub-competencies	Active listening skills to understand the concerns of the parties, detail-oriented attitude to record the relevant facts, communication skills to ask the appropriate questions and invoke the right dialogues among the parties.
Importance	Family law is an emotionally charged area of the law. The clients' concerns are personal, and their legal matters deeply affect their personal lives. It is easy to lose sight of the matters and tell the story (facts) from one point of view. A competent family law practitioner should put on their inquisitory hat on to set aside the emotions and deal with the facts that matter the most.

<b>Legal Technology Tools</b>	
Competency Description	Ability to select, use, and collaborate using appropriate technology in the completion of legal work.
Sub-competencies	Knowledge of the current tools available, and ability to use the tool. Open attitude of improving proficiency in tools.
Importance	Technology's ability to assist legal work and reduce time or costs associated with legal services continues to increase. Even skills as simple as using an automatic table of contents or the appropriate use of comments and tracked changes in Word can shave hours of time off a project.

### 2. Non-Doctrinal Context

<b>Context of Law</b>	
Competency Description	Understanding the social, political, and economic context of a law and the legal system, its development over time, and its application to the client's contextual situation.
Sub-competencies	Familiarize yourself with the history of the law, know advancements in historic legislation and relevant case law, creative thinking to approach the legal case from different angles, collaboration and networking with others who can lend you their knowledge and experience in the law
Importance	Family cases are complex and might include other areas of the law such as civil claims, immigration, business, and indigenous law. Also, families' non-legal needs might have legal impacts. For example, the cultural and religious values of the family unit might dictate an unorthodox approach to resolve the legal dispute (such as parenting coordination programs, or child custody). It is important for family justice practitioners to keep an open mind and look at family law cases from different angles.

<b>Religion</b>	
Competency Description	Identification and understanding of the client's religious or spiritual beliefs and how those beliefs inform their needs and desired outcome of their contextual legal needs.
Sub-competencies	Willingness to educate yourself about other cultures and religions, keeping an open mind to be receptive of new ideas, being respectful towards others and understand there are similarities and differences among people, beware of personal biases and improve skills of inhibiting biases to interfere with work,
Importance	Religion could be a defining point in the identity of a family unit and can play an important role in shaping the understanding of "what family is" for the clients. Religion could be so important for people that their desired legal outcome sometimes have to accord with their religious principles. Family law practitioners must be alive to circumstances that might need to reconcile the legal needs and religious needs during the life of a family law case.

<b>Family Development</b>	
Competency Description	Identifying and understanding the composition of the client's family unit and how it developed or is understood within the client's cultural, familial, and personal context.
Sub-competencies	Being able to reserve personal biases when dealing with different family types, educating ourselves with the current development and trends in families by following social science sources and media, keeping an open mind and improving active listening skills to understand the concerns of the families
Importance	Looking back through time, it is evident that family structures have changed significantly. Not only this has been done internally, but also the wave of new economic immigrations to Canada is bringing many new family values and structures here. For example, there are families that the individuality is valued, and the traditional mother-father-child model fits them; and, there are other family units that the extended family members such as grandparents form significant interest in the family unit as well. A competent family law practitioner must be alive to the fact that not everyone is the same and the type of family unit might have significant consequences for the life of a family law case.

<b>Values</b>	
Competency Description	Understanding and identifying family values that define the roles, functions, internal/external relationships, and behaviours of the client.
Sub-competencies	Learning examples of family values and how they can apply in your field, fact finding skills to learn what family values are important to your clients, being respectful of others' family values, beware of personal biases interfering with work and values of the clients
Importance	Family values shape the structure, functions, roles, beliefs, attitudes, and ideals of family members. Fact finding and learning how these values could help or hinder a case is important for a successful resolution. Moreover, family values might be so fundamental that advocacy on them in the legal case might become essential. The best interest of a child is one of those family values that has found its way in many legal fields <sup>1</sup> .

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<sup>1</sup> See Freeman, Michael. *Family Values and Family Justice*. Collected Essays in Law. London, England: Routledge, 2020.

<b>Psychology</b>	
Competency Description	Recognizing and understanding the psychological and emotional impact of family breakdown and family, and how they present in a client's behaviour.
Sub-competencies	Understanding and familiarity with the trauma-informed practice, communication skills to address the emotional needs of the clients, ability to work with diverse backgrounds of clients (understanding, respect, and integration in practice), understanding of development psychology (especially the impacts of family matters on children's development), understanding the best interest of children in psychological aspect
Importance	Family law is emotionally taxing, and complex legal matters can increase the psychological burden of family disputes. A competent family justice practitioner who is familiar with the psychological impacts of the law (and vice versa) can alleviate the psychological difficulties of family law cases.

<b>Context and Use of Legal Technology</b>	
Competency Description	Understanding the history, development, of legal technology in the legal industry and identifying and selecting appropriate legal technology for a specific client matter.
Sub-competencies	Computer and internet literacy, digital and online research skills, writing and word processors software skills, virtual communication software skills, be mindful of the effects of technology on personal health (long hours behind desks), be mindful of access to technology for clients and other parties that might restrict access to justice
Importance	Technology has improved the administration of justice in Canada by providing faster, reliable, and less expensive access to legal services <sup>2</sup> . Virtual negotiation, mediation, and case management is a reality now. There are even news of Artificial Intelligence representing cases in the courts of law <sup>3</sup> . In this day and age, if a family law practitioner does not possess technology literacy and they ways to apply it in family justice cases, they will not be able to provide an efficient service to their clients.

<b>Cultural Awareness</b>	
Competency Description	Identical and recognition of differences and similarities between client's culture and one's own and the ability to recognize inherent biases when communicating or interacting with members of other cultural groups <sup>4</sup> .
Sub-competencies	Knowledge of specific culture, knowledge of specific history, knowledge of family trauma, self-reflection, emotional awareness, knowledge of own background.
Importance	There are many cultures around the world that are different from one another. Even inside Canada there are unique cultural values and family dynamics. By increasing cultural awareness and acknowledging there are other cultures at stake when it comes to family law, legal practitioners display their openness and respect for different cultures, religions, languages, manner of dress, and communication styles <sup>5</sup> .

<sup>2</sup> See Use of Technology in Family Justice System, Annotated Bibliography, by Jane Evans and Anna Ndegwa, the Government of Canada, 2022, [https://www.justice.gc.ca/eng/rp-pr/jr/utfjsab-utsjfbg/pdf/RSD2022\\_Use\\_of\\_Technology\\_in\\_the\\_Family\\_Justice\\_System\\_Report\\_EN.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/utfjsab-utsjfbg/pdf/RSD2022_Use_of_Technology_in_the_Family_Justice_System_Report_EN.pdf)

<sup>3</sup> See "Robot Lawyer will Use Artificial Intelligence to Represent Defendants in Court for the First Time", by Maria Pasquini, People magazine, Jan 2023, <https://people.com/human-interest/robot-lawyer-will-use-artificial-intelligence-represent-defendants-traffic-court/>

<sup>4</sup> See "What is cultural awareness? The importance of becoming culturally sensitive and Aware", Evolve Communities, Australia, <https://www.evolve.com.au/what-is-cultural-awareness/>

<sup>5</sup> See *ibid*.

### 3. Doctrinal & Substantive Law

<b>Substantive Law</b>	
Competency Description	Ability to identify and select appropriate legal principles, regulations, and processes to apply to the client's particular contextual matter.
Sub-competencies	Comprehensive understanding of the law, legal systems, and procedures, the ability to research and interpret legal documents, and communicating legal information effectively, improving critical thinking and analysis skills for legal problem-solving matters, the ability to apply legal principles to specific situations and provide solutions
Importance	A strong understanding of the law can help individuals make informed decisions, navigate legal processes effectively, and protect their rights and interests.

<b>Identifying legal issues</b>	
Competency description	Ability to recognize and understand legal aspects of a particular situation, problem, or set of facts.
Sub-competencies	A thorough understanding of legal principles, regulations, and processes. having the ability to analyze a particular situation or problem and identify the legal issues that are relevant to it. recognizing relevant laws, regulations, and court precedents, as well as potential legal liabilities, risks, and opportunities.
Importance	A strong understanding of legal issues can help individuals make informed decisions, navigate legal processes effectively, and protect their rights and interests.

### 4. Professional Performance & Self-Management

<b>Setting Boundaries</b>	
Competency Description	Ability to set and communicate boundaries between clients, professional environment, and personal lives in order to support and maintain their mental and physical health.
Sub-competencies	Learn and understand the relevant rules found in the ethics and code of conduct in your respective field for personal and professional relationships, understand proper boundaries for the workplace, communicate the boundaries clearly and respectfully with your clients and other parties, understand that crossing boundaries might have serious consequences, ask your regulatory body if unsure about a situation.
Importance	The family matters come with high emotions, and it is easy for boundaries to get blurred. Setting boundaries will help with smooth work and resolution of the work and maintains a safe and stable environment for all.

<b>Self-Regulation</b>	
Competency Description	Ability to respond to the ongoing demands of the profession from within (without external intervention) to provide flexible and efficient reactions
Sub-competencies	This could be emotional, mental, or physical self-regulation, self-control to react in a manner that is in your best interest in the interim and the long-term according to your values, control your emotions and respond to them in a healthy manner, learn and understand what boosts or curbs your motivation, learn and understand to plan, monitor, and reflect on your self-regulation practices
Importance	As adult and professional practitioners, we have a lot of discretion in what we want to do. However, with great power comes great responsibility. That is when self-regulating competency comes in play to make sure that we are responding appropriately to the stimuli we face in our work.

<b>Mental Health Strategies</b>	
Competency Description	Ability to select appropriate strategies to support sustained mental health and performance.
Sub-competencies	Learn and apply reflection skills to identify stressors, create a check-in system with a trusted person or mental health care to identify issues as early as possible, learn and use self-care mental health techniques such as exercises and balanced diet, ask for accommodations that are available to you, know your legal rights under the law such as the Saskatchewan's <i>Human Rights Codes</i> , 2018.
Importance	It is important for family law practitioners to take care of their mental health because working in this field can be emotionally demanding and stressful. Family law cases often involve complex and sensitive issues, such as divorce, child custody, and domestic violence, which can take a toll on a practitioner's emotional well-being. Additionally, family law practitioners may be exposed to secondary trauma or compassion fatigue, which can result in burnout and other mental health issues. Taking care of their mental health can help family law practitioners maintain their well-being, provide better client care, and avoid professional misconduct.

<b>Emotional Intelligence</b>	
Competency Description	Ability to understand, recognize, and manage your own and others' emotions.
Sub-competencies	Navigating social situations in a healthy way, relationship building skills, effective communication skills, be aware of your emotions and the impact it has on others, be able to regulate your emotions in a healthy way, empathize with others and understand their perspective, respond appropriately to emotional needs
Importance	Competency in emotional intelligence involves a range of skills and abilities that enable individuals to effectively navigate the complex world of human emotions and relationships. Family law clients often comes to the justice system when emotions are running high, and it has impacts on everyone around them. Therefore, it is important to be able to recognize and handle those emotions in a healthy manner.

<b>Self-Reflection</b>	
Competency Description	Ability to reflect (look back and contemplate) on experiences, thoughts, and decisions critically.
Sub-competencies	Develop critical reflection skills, ability to identify the areas that need improvement, develop strategies for personal and professional growth
Importance	We can learn from our past, and we can do that effectively if we develop competency in critical reflection. We should be able to analyze our past actions, thoughts, and decisions and learn about how to improve them for future cases. It is through true reflection that every part of the family justice system can identify the issues and work towards improving them.

<b>Self-Appraisal</b>	
Competency Description	Ability to evaluate performance and skills, and identify opportunities and methods to promote growth and improvement.
Sub-competencies	Honesty with self, reflecting on strengths and weaknesses, identifying areas of improvement, evaluate and develop your personal tools for achieving your goals, identify opportunities for growth and development,
Importance	Anybody in the continuum of family justice (law student, articling students, lawyers, judges, and other practitioners) must be honest with themselves and develop the ability to objectively evaluate their performance. This will result in increasing self-awareness and a clearer path to future achievements and efficiency in work.

<b>Emotional Impacts and Behaviour</b>	
Competency Description	Knowledge of client emotions, how they are affected, and how they present in behaviour. Ability to identify behaviour that occurs because of emotional response.
Sub-competencies	Establishing clear boundaries to respect professional demeanours, establish a level of trust and respect, remain objective and unbiased, provide emotional support through empathy, active listening to find clients' concerns, validate clients' emotions, offer guidance and reassurance when appropriate, learn to manage clients' expectations, refer your clients to outside sources for help such as therapy or support groups, encourage healthy coping mechanism (and learn them yourself) such as self-care and exercise,
Importance	No matter what role we play (lawyer or a judge for example), we have major influential power on clients. That power could be used to bring forth emotional impacts or control behaviours. By acquiring competency in this area, and use it in a healthy manner, we can provide an efficient case resolution.

## 5. Professional Responsibility & Professional Success

<b>Goal Setting</b>	
Competency Description	Ability to set clear, achievable, and relevant goals for oneself or for a team.
Sub-competencies	Understanding the importance of goal setting, defining specific and measurable goals, identifying the steps needed to achieve those goals, creating a plan for execution, the ability to monitor progress towards the goals, adjust plans as needed, and celebrate successes along the way
Importance	Goal setting competency is important because it helps you focus on your objective, design goals that are attainable, and success could be measured along the way with the flexibility of bringing change as needed.

<b>Consultation with Legal and Extralegal Professionals</b>	
Competency Description	Understanding the ethical bounds of the practitioner's expertise and the requirement to include other professionals.
Sub-competencies	Reflective practice, ability to critically examine one's strengths, weaknesses, and limits of knowledge. Ability to fully engage with client and identify what needs they want met.
Importance	Other experts can help reduce the cost of family law services and increase the quality of services. It is important for practitioners to understand where and what to look for.

<b>Knowledge of Professional Pathways</b>	
Competency Description	Awareness of various professional roles in the legal industry, the qualifications required for them, and the type of work performed.
Sub-competencies	Understanding that there are a variety of practice areas in the legal industry, expanding your worldview to seek opportunities outside of the traditional private or public practice of the law, being alive to the fact that provinces in Canada need a diversity of practice areas for access to justice.
Importance	Family law needs more practitioners as the number of cases is increasing. In addition to the traditional private/public practice, qualified practitioners could take on other roles in the legal system, such as mediator and arbitrator, to provide more avenues of dispute resolution to the family justice system. For practitioners to remain in family law practice, the practice area must align with their personal and professional needs.

## Appendix B: Examining the Legal Education Continuum

By Jakaeden Frizzell

Regulators and legal educators are beginning to think more critically about the role of competency frameworks in the acquisition and maintenance of professional competence. **A number of standards currently exist across the legal education continuum.** The existing standards (a) guide the competency requirements of practitioners or (b) assess pre-service practitioners before licensure.

<b>Standards Across the Legal Education Continuum</b>	
<b>Code of Professional Conduct.</b>	The Law Society of Saskatchewan’s <a href="#">Code of Professional Conduct</a> “creates the standards of conduct and guidance” for practicing members. <sup>1</sup>
<b>Articling Competency Framework</b>	The Law Society of Saskatchewan is currently working on an Articling Competency Framework for entry to the bar. <sup>2</sup>
<b>Practice Readiness Competency Framework</b>	CPLED has developed a <a href="#">competency framework</a> for the bar admissions and practice readiness program required of all pre-service practitioners before they become members of the Law Society.
<b>Graduate Attributes</b>	The College of Law has a list of <a href="#">Graduate Attributes</a> in addition to the minimum degree requirements.
<b>Law Degree Requirements</b>	Minimum <a href="#">degree requirements</a> include a mix of College-specific requirements and those requirements imposed by the National Requirement.
<b>Law School Admissions Requirement</b>	The <a href="#">admissions requirements</a> for USask’s College of Law include a minimum of two-years post-secondary education, an admissions statement, and an LSAT score.
<b>Cognitive Assessment</b>	The LSAT is a scored assessment of competency in three domains.

<sup>1</sup> Nationally, the Federation of Law Societies of Canada’s [Model Code of Professional Conduct](#) exists with the goal of standardizing and harmonizing conduct of lawyers across Canadian jurisdictions.

<sup>2</sup> See Law Society of Saskatchewan’s “Convocation Agenda”, February 16 & 17, 2023, online: <https://www.lawsociety.sk.ca/wp-content/uploads/2023/02/Bencher-Agenda-Feb-17-2023-Final.pdf>.

The standards, with the exception of the Code of Professional Conduct, are often discussed in relation to developing practice-ready competencies in “pre-service” (law degree applicants, law students, students-at-law) and “newly called” lawyers. **A number of non-regulators interact with, develop, and assess competencies or standards required of practitioners.**

**Pre-admission law students** learn competencies as they gather information about admissions to law school. They are cognitively assessed by writing the LSAT and the required application material.



**Law students** build competencies through law school programming and practical experiences like summer jobs and volunteer roles.



**Students-at-law** complete articles to gain professional competence in a supervised environment.



The **bar admissions program** (CPLD) teaches and assesses the minimum competencies required for admission to the profession.



**Practitioners** improve professional competence through mentorship, legal practice, collaboration, and continuing professional development.



A goal of the regulator is that all practitioners meet the competency standards of the Code of Professional Conduct. The professional competence of practicing lawyers is maintained through mandatory Continuing Professional Development (CPD) requirements and is assessed only through a complaints/discipline system.

The Law Society of Saskatchewan’s Code of Professional Conduct defines a competent lawyer as “a lawyer who **has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client**

**and the nature and terms of the lawyer's engagement."**<sup>3</sup> The definition continues to describe at a high level the range of substantive knowledge, skills, and attitudes required of practitioners. The Code of Professional Conduct recognizes that **professional competence is contextual to the matter at hand**. It is clear that practitioners provide legal services in a variety of contexts.

Therefore, **all standards should assist a [pre-service] practitioner in achieving professional competence within the context of their [future] provision of legal services**. While the standards provide guidance and criteria for the development and assessment of pre-service lawyers, they fail to consider them in the context of competency development of the whole practitioner and in the context of practitioner competencies required for the individual practitioner in their provision of legal services.

In this sections that follow, I first explain the purpose of the *controlled continuum* as a risk management tool, where risk is managed proactively through the development and maintenance competent practitioners. Next, I describe the linear credentials which form the current *controlled continuum*. Finally, I show that the *controlled continuum* does not employ a unified set of principles in its approach to developing *practitioner competence* and proactively managing *practitioner risk*.

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<sup>3</sup> See Law Society of Saskatchewan, *Code of Professional Conduct*, at Rule 3.1-1.

## The Controlled Continuum is a Risk Management Tool

**Any practitioner of legal services exhibits a threshold of *practitioner risk*.**

*Practitioner risk* is underpinned by *practitioner competence*, but *practitioner competence* is not the only factor affecting *practitioner risk*. The Law Society of Saskatchewan has identified and regulates three forms of *practitioner risk*:<sup>4</sup> (1) *practitioner ethics*, (2) *practitioner conduct*, and (3) *practitioner competence*.

The bargain between regulator and public is that a practitioner poses a low risk to the public interest. The bargain between regulator and practitioner is that the practitioner may provide otherwise barred legal services. The bargain between practitioner and public is that legal needs will be adequately and appropriately met through the provision of legal services. **The Law Society pro-actively regulates *practitioner risk* at admissions through a credentialing process.**<sup>5</sup> The ongoing *practitioner risk* is regulated proactively through minimum Continuing Professional Development requirements and the guidance of the Code of Professional Conduct. *Practitioner risk* is also regulated reactively through a complaints process.

The complaints process may proactively regulate *practitioner risk* by prescribing ways for the practitioner to develop the missing competencies that led to the complaint. However, complaints processes are not always concerned with identifying the missing competency, rather, they are often concerned with identifying the misconduct and punishing for it.<sup>6</sup> More importantly, this form of proactive regulation occurs after a breach of *practitioner risk* has occurred.

**Newly licensed practitioners, specifically, exhibit an unknown threshold of *practitioner risk*.** That unknown threshold of risk exists because the practitioner has no track record for the regulator to measure their *practitioner competence*, *practitioner conduct*, or *practitioner ethics* in a local context.<sup>7</sup> To compensate for the unknown threshold of risk, regulators require a number of minimum credentials and a

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<sup>4</sup> See generally "Complaint Process", online: *Law Society of Saskatchewan* <<https://www.lawsociety.sk.ca/for-the-public/making-a-complaint/complaints-process/>>.

<sup>5</sup> See generally the below section titled: Current Credentialed Approach to the Legal Education Continuum.

<sup>6</sup> Indeed, the Competency Committee may forward a matter to the Conduct Investigation Committee after review.

<sup>7</sup> One can see the emphasis on locality in the distinction of how the regulator differentiates the transfer admission of members from other Canadian bars compared to members of non-Canadian bars: the Canadian transferee may simply transfer after confirmation from their current regulator of their membership status, while non-Canadian lawyers are required to perform pre-service education even despite their lawyer status in a non-Canadian jurisdiction.

period of supervised practice before providing the lawyer practitioner with a license to provide legal services.

The Law Society of Saskatchewan employs three methods of risk regulation: (1) by class of membership, and (2) by limited license, (3) delegated regulation.

### **Method 1: Regulating Membership Classes of Practitioners**

*Lawyer License model: meet credentials (+ practitioner choice) → class*

The *practitioner risk* assessment at admissions relies heavily on a credentialed approach to the legal education continuum. The ongoing *practitioner risk* assessment for this method relies primarily on minimum CPD hours and a complaints/discipline process.

Classes of Membership:<sup>1</sup> **Active Member; Canadian Legal Advisor; Disqualified Member; Former Member; Inactive Member; Law Professor Member; Pro Bono Member; Retired Member; Senior Life Member; Suspended Member**

The Active Member (lawyer) class provides an unlimited scope license to provide legal services. The licensing scope for practitioners will be limited where complaints and discipline procedures have occurred. All other categories are a form of limited-scope license or a pure recognition of meeting credentials/past membership.

### **Method 2: Regulating Practitioners**

*Limited License model: competencies + public need → scope of license*

Currently, limited licensees are not members of the Law Society. Instead, the Law Society has agreed not to prosecute them for the provisions of legal services within a scope determined by the risk assessment of the practitioner. The proactive regulation exists by establishing an acceptable threshold of risk and re-evaluating that threshold.

Limited licensees are not currently regulated through a controlled legal education continuum, although education requirements are under development.

### **Method 3: Delegated Practitioner Regulation**

*Direct Supervision model: lawyer assessment → determine scope of services*

There are two forms of direct supervision. During their articling term, a student-at-law may perform all legal services as an Active Member, but only under the supervision of their Articling Principal. Articling Principals must be approved by the Law Society and do receive some oversight and training. Recently, the rules of direct supervision have changed to allow the lawyer to delegate legal services to their staff, with some restrictions. There is no training or oversight, and any Active Member may delegate work as they see fit.

In this way, the Law Society is delegating the risk assessment of the specific provision of legal services to the individual Active Member, choosing to regulate the Active Member instead of the practitioner.

All three methods proactively regulate *practitioner risk* at admissions, except for those practitioners practicing under the new direct supervision rules. Only the membership class method regulates ongoing *practitioner risk* proactively through minimum CPD hours.<sup>8</sup> All three methods of regulation are regulated reactively by complaint, including those practitioners under the new direct supervision rule (where the regulator regulates *practitioner risk* through the supervising Active Member).

## The Continuum is Currently Controlled through Credentials

Saskatchewan's controlled legal education continuum is a credentialed system. **The credentials are the minimum requirements imposed by the Law Society along the legal education continuum.** In theory, the acquisition of each credential indicates to the regulator that the individual meets the tolerance threshold of *practitioner risk*.

### **Credential 1: Post-Secondary**

A minimum of two years in full-time post-secondary studies is an admission requirement to a law degree. Undergraduate grade point averages are a measure of an applicant's academic success in the environment and area of study.

**An individual may develop competencies through methods other than those educational requirements along the *controlled continuum*.** When considering the credentialed approach as a risk management tool, **it is important to consider only those minimum requirements that all [pre-service] practitioners must meet.** Since each practitioner has different pre-law education, personality type, familial background, or professional experience, a one-size-fits-all approach with staged and discreet credentials cannot adequately develop the whole competencies of every [pre-service] practitioner.

### **Credential 2: LSAT**

The LSAT provides an objective assessment of cognitive ability in three domains and the ability to use those cognitive abilities in that discreet task under time constraints. It measures a person's ability to process information in three distinct fashions, with only the information provided, and at that point in time.

### **Credential 3: Law Degree**

Law school (as it is currently formatted) provides pre-service lawyers with [vocational] training in the current state of substantive law, and training in legal research and writing. Law schools also provide *uncontrolled* educational and other opportunities in their degree program to develop non-substantive competencies.

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<sup>8</sup> Though ongoing educational requirements are currently under development.

From a regulatory perspective, **there is no purpose in establishing minimum requirements along the legal education continuum other than to proactively regulate practitioner risk.** Otherwise, the provision of legal services could be regulated entirely through a reactive complaints process: i.e., any practitioner could provide legal services and their ethics, competence, and conduct would be addressed only if identified through complaint.

#### **Credential 4: Articling Year**

An articling term provides a track record for the regulator's assumption of risk. The risk of a pre-service practitioner is mitigated by the supervision of their principal. Pre-service practitioners (students-at-law) receive instruction, guidance, and mentorship from a practitioner. Therefore, articling serves both as a supervised assessment of the delivery of legal services and as a competency development tool for the pre-service lawyer.

However, **the legal education continuum serves many purposes for those who are not regulators.** Professors fulfill their professional goals by researching and teaching the law. Students gain an understanding of the legal field and the law whether or not they choose to become licensed. Practitioners feel a sense of belonging, form professional identity, and satisfy their curiosities even if the education does not intersect with their provision of legal services. The Academy forwards the state of the law and provides the judiciary with thoughtful direction about legal principles.

#### **Credential 5: Bar Admissions/CPLED**

CPLED provides an assessment and development of competencies in a simulated service environment.

The role of a bar admissions exam (which exists outside of the Prairie pre-service practitioner requirements) is primarily to assess substantive knowledge and understanding of legal principles.

#### **Credential 6+: Yearly Continuing Professional Development**

The Law Society of Saskatchewan requires practitioners to complete 12 hours of continuing professional development per year, two hours of which must meet the category of "ethics". There is no prescribed education or specific education required meeting the practitioner's context of legal services. As long as the form of education meets certain requirements and the hours are met, that year's credential is awarded.

It is therefore important to not only differentiate the *controlled continuum* from the *uncontrolled continuum* for the purposes of proactive regulation, but also the purpose and goals of controlling parts of the legal education continuum at all.

## The Legal Education Continuum is Proactive Regulation

Above I have explained the *controlled legal education continuum* and its credentialed nature for practitioners. Next, I point out that the *controlled continuum* does not exhibit unified principles along its credentials. I argue that the *controlled continuum's* role in proactive regulation of *practitioner risk* requires a unified approach for the benefit of all justice stakeholders and the public.

Because each credential is formatted to achieve its specific requirements at a specific time in the practitioner's journey along the *controlled continuum*, **it is questionable whether the current credentials and their sequence along the controlled legal education continuum develop practitioners to the standard of a competent practitioner outlined in the Code of Professional Conduct** (the standard which meets an acceptable threshold of practitioner risk). The credentials do not take a holistic approach to the assessment or education of the whole practitioner.

If one considers the credential of a law degree, articling, or CPD to form a necessary part of proactive *practitioner risk* regulation, one should strongly consider how the credential is achieving the goal of proactive regulation. If one considers competency to be a major form of risk regulation, one should strongly consider which competencies must be controlled for along the continuum and how.

The Law Society of Manitoba has recently introduced an alternative regulation method when a complaint is a result of competency issues linked to mental health. The Law Society of Saskatchewan has announced its intention to do the same. While it is an empathetic approach to discipline, it is again not proactively regulating risk except as a result of the risk threshold already being breached.

On the other hand, the Law Society of Alberta has recently introduced a Professional Development Profile as an individual approach to Continuing Professional Development. It is a method for each individual practitioner to identify their own *practitioner risk* areas and to create a plan for improvement, with the guidance of the Law Society on which core competencies they must maintain.

Interestingly, I have learned that the Federation of Law Societies may have in part stymied its own goal of ensuring *practitioner risk* is regulated proactively and effectively by imposing the National Requirement on law schools in 2008. The National Requirement sets a standard of topic areas to be taught in an accredited law degree.

**The minimum requirements imposed on law schools are not competency related, even if competency development exists within them.**

Law schools offer a varied curriculum within the required law degree credential, yet the portion of the *controlled continuum* associated with a law degree (the National Requirement) does not take an individual approach to competency development. Instead, it imposes general substantive knowledge and skills requirements, with no thought to individual competency development or contextual need.

Before reform of the controlled legal education continuum is considered, **overarching principles should outline how to properly approach competency development across the continuum.** The current approach is described:

<b>Pre-Service Legal Education</b>	<b>Continuing Professional Development</b>
A one-size-fits-all credentialed approach to lawyer formation. The minimum requirements of law school are geared toward teaching substantive law. Individual choice exists, but the minimum core requirements are the same for all individuals.	Self-directed, requiring only a minimum number of CPD hours which are generally met by the education of the individual's choosing. There is no standard educational quality, and no consistency across the bar.

One can see the lack of consistent principles across the controlled legal education continuum as it exists now. Pre-service, an individual is educated proactively but without an individualized approach to their competency development needs. After call, is an individualized approach to competency development that is without support and regulated reactively by complaint. In both cases, there is no principles addressing the competency development of the whole practitioner.

Here concludes this brief article. Above, I have explained the purpose of the *controlled continuum* as a risk management tool, where risk is managed proactively through the development and maintenance competent practitioners. I then described the linear credentials which form the current *controlled continuum*. Finally, I showed that the *controlled continuum* does not employ a unified set of principles in its approach to developing *practitioner competence* and proactively managing *practitioner risk*.

## Appendix C: Substantive Intersections with Family Law

**By Sam Rezazadeh**

Throughout our consultations, our interviewees discussed common areas of intersection that family lawyers face. Identifying these areas demonstrates the differing substantive and power skills<sup>1</sup> that family lawyers need. For example, business and family law intersect in the division of property. Another example is Immigration and family law, which could cross when maintaining the legal status in the country for non-Canadian partners are at stake.

### **Business Law**

When people decide to form or terminate family relationships, one of the most important topics that come to mind is the role of finances, the division of property, and other assets.

At any stage of a family relationship, a family-owned business might face challenges such as management and control of the business and the effects of family conflicts on the business. In divorce proceedings, the division of assets and estate planning for family business owners could be challenging. Should the family resort to the judicial system to rectify such challenges and conflicts, the courts may need to balance the interests of both the family and the business and consider the impact that legal decisions have on both. Furthermore, families' agreements may be subject to family law and contract law.

In our consultations with family justice lawyers, they mentioned that a competent family lawyers should educate themselves on a variety of business topics which can accompany family law. It is also essential for a family lawyer to thoroughly examine their client's profile at the intake stage to identify business matters that could have legal implications for their clients.

Family law is heavily interdisciplinary and is becoming more complex. A lawyer now deals with more complex property divisions, trusts, and businesses. A competent

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<sup>1</sup> Natalie Runyon, "Why 'Power Skills' is the new term for soft skills in the hybrid work world" (2022), Online (blog): *Thomson Reuters* < <https://www.thomsonreuters.com/en-us/posts/legal/power-skills-rebranding/>>. Power Skills refer to what is commonly known as soft skills. They are essential skills professionals need for success in today's work environment. Renaming is necessary because words have the power to influence our perspective. Shifting from 'soft' to 'power' shows the importance of having these skills. To read more, see also:

family law lawyer must also have good relationship-building skills to have a network of professionals who can aid them with the financial aspects of their client's file. These include accountants, business lawyers, tax lawyers, financial advisors, and estate planners.

## **Immigration Law**

Immigration law and family intersect with each other in several ways. A family unit might be coming from another country, or there could be a family formation between a Canadian resident and an immigrant from another country with valid immigration status inside Canada. Another example of this intersection is international adoptions that sometimes bring two states worldwide to work closely together to ensure the best interest of children and the protection of their rights and interest on two sets of immigration and family law from the respective states.

Another example is domestic violence and its effects on the immigration status of the partners. The perceived or actual threat of immigration or economic consequences might make the victims (particularly women who suffered abuse) reluctant to leave dangerous family situations<sup>2</sup>, therefore, leaving them vulnerable and at risk of much harm. The abusing partner might also face immigration consequences should they face criminal charges and their status in Canada is non-citizen (they face the risk of deportation<sup>3</sup>).

In response to the increasing number of domestic violence cases involving immigrants, the Immigration, Refugee and Citizenship Canada ("IRCC") has put special measures for the victims to protect their immigration status in Canada<sup>4</sup>. Such cases are an example of the interdisciplinary nature of family law, and lawyers should always be mindful that the case before them is not an isolated family law case. Still, it could also have other legal implications.

Moreover, immigrants to Canada face challenges regarding cultural awareness. A family relationship has different definitions, customs, and practices in other areas of the world. It is sometimes difficult to fit another culture's definition of marriage into Canadian family law definitions and rules. Different cultures might have different

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<sup>2</sup> Colleen Sheppard, "Women as wives: Immigration law and domestic violence" (2000) 1 *Queen's LJ* 26.

<sup>3</sup> Based on criminal inadmissibility pursuant to s.33 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

<sup>4</sup> Canada, Immigration, Refugees and Citizenship Canada, *Immigration Options for victims of family violence*, (Ottawa: IRCC), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/fees-permits-victims.html>>.

norms and expectations regarding the division of assets or property, spousal support, custody and access to children. The lawyers and the courts in Saskatchewan need to consider the cultural and traditional values of the parties involved in family justice cases and try to find a solution that considers these values.

Raising awareness for cultural and traditional values could happen along the legal education continuum. In law school, for example, legal educators who know these areas could incorporate them into their course syllabus or invite the experts to give a guest lecture. They could also increase the diversity of their student groups to admit more students with an immigration background. This will allow those students to transmit their cultural knowledge to their peers through interactions and relationships they make in school.

Further, at the articling level, CPLED could develop more learning materials introducing cultural awareness skills to students-at-law. The law society and the CBA could also provide opportunities for networking between lawyers with immigration backgrounds and Canadian-born lawyers so they can learn from each other. They could also include cultural awareness programs for the mandatory continuing education hours, focusing on the immigrants' legal issues in Canada and Saskatchewan.

Canada is inviting many immigrants to start a new life here. Should a family law legal dispute occur in an immigrant family (or when one of the partners is an immigrant), a competent lawyer must identify the immigration implications of that case. This will help the lawyers to be aware of possible immigration status consequences on the parties.

## Appendix D: Legal Education Continuum and Rule 3.1-1

### Legend:

**x=minimum requirement**

**0=individual's choice**

General Competencies:

*(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;*

This is a knowledge competency.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
General Legal Principles			x		x	0	0
General Legal Procedures					x	0	0
Substantive Law (practice areas)			0		x	0	0
Substantive procedures (practice areas)					x	0	0

*(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;*

This is a skills competency.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Investigating Facts	0				x	0	0

Identifying Issues	0		x	x	x	0	0
Ascertaining Client Objectives	0		0	x	x	0	0
Considering Possible Options	0		x	x	x	0	0
Developing and Advising the Client on Appr. Course of Action	0		x	x	x	0	0

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

This is a skills competency.

*i. legal research;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
			x		x	0	0

*ii. analysis;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
			x		x	0	0

*iii. application of the law to the relevant facts;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
	0		x	x	x	0	0

*iv. writing and drafting;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
	0	x	x	x	x	0	0

v. *negotiation;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
	0		0	x	x	0	0

vi. *alternative dispute resolution;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
	0		0	0	x	0	0

vii. *advocacy; and*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Advocacy	0		0	x	x	0	0

viii. *problem solving;*

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Problem Solving	x	x	x	x	x	0	0

(d) *communicating at all relevant stages of a matter in a timely and effective manner;*

This is a skills competency.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Communicating Timely	0		0	x	x	0	0
Communicating Effectively	0		x	x	x	0	0

*(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;*

This is a skills competency. There is an attitude component, and a smaller knowledge component.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Conscientiously		x	0	x	0	0	0
Diligently			0	x	0	0	0
Timely/Cost-Effective			x	x	x	0	0

*(f) applying intellectual capacity, judgment and deliberation to all functions;*

This is a skills competency. There is an attitude component.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Capacity		x	0	0	x	0	0
Judgment		x	x	x	x	0	0
Deliberation		x	x	x	x	0	0

*(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;*

This is an attitude competency. There is also a knowledge competency.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Complying in Letter			0	x	x	x	0
Complying in Spirit				x	0	0	0

*(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;*

This is an attitude competency. There is also a skills competency and a knowledge component.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Recognizing Limitations			0	0	x	0	0
Taking Steps			Opposite	Opposite	x	0	0

*(i) managing one's practice effectively;*

This is a skills competency that relies on an attitude and knowledge component.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Managing Practice			0	x	x	0	0

*(j) [voluntarily] pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and*

This is an attitude competency.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Maintaining		0	0		x	0	0
Enhancing		0	0		x	0	0

*(k) otherwise adapting to changing professional requirements, standards, techniques and practices.*

This is an attitude competency. There is a knowledge component.

	Post-Secondary	LSAT	Law School	CPLED	Articling	CPD	Self
Requirements	x	x	x	x	x	x	0
Standards	x		x	x	x	0	0
Techniques		x	x	x	0	0	0
Practices			0	x	x	0	0

## Appendix E: Interview Questions

Qualitative interviewing techniques allow for thematic questioning. We understand these interview questions to be a questioning guide and a prompt for the interviewee's reflection in advance of the interview, but that interviews will progress as lines of questioning and themes present.

### Legal Educators

- What competencies (attitudes/skills/knowledge) do you try to teach your students?
- Why do you focus on those competencies?
- How do those relate to the practice of family law?
- What areas of law regularly intersect with family issues?
- What competencies are required of students entering law school? Leaving law school? How and when should these competencies be assessed? Can they be assessed in multiple ways?

### New Lawyers/Articling Students

- What brought you to the practice of family law?
- Which skills, knowledge, or attitudes do you find most helpful to practicing law? For working with clients?
- Which skills, knowledge, or attitudes did you have to learn on the job?
- What do you wish you learned or were taught before practicing? When do you wish you learned it (for example before law school, law school, articling, CPLED)?
- What were you taught that brought increased/enhanced/improved professional competencies to your practice?

### Established Lawyers

- Which skills, knowledge, or attitudes have helped you the most in your family law practice?
- What are the most important competencies for working with family law clients?

- When mentoring new lawyers, what advice do you give them? What struggles do you see new family law lawyers engage with?
- What other issues (substantive or non-substantive) regularly intersect with family issues?
  - What non-legal issues often interact with family law?
- Are there any topics that family law lawyers must stay updated on?
  - Substantive law? Family dynamics? Culture? Religion? Court processes?

#### Family Education/Psychology Professionals

- How are competencies assessed in psychology at the university level? At the professional level?
- How does a student gain or grow the competencies for working with families?
- What continuing education is required of psychologists who work with families?
- What competencies do you think family law lawyers should have? How would this assist them?
- What should family law lawyers know about changing family dynamics and family transitions?
- Ethics in family law – how can family law lawyers minimize psychological harm to their clients?

#### Regulatory and Competency Framework Experts, Other

- What are the main risk/complaint areas for family law practitioners?
- Are there different identified groups of family law practitioners? Should competency frameworks/educational programs be tailored to each of these groups?
- Should CPD for family law practitioners be prescribed, self-directed, or a mix?
- Should family law practitioners be required to meet all competencies, or should family law practices meet all required competencies?
- What areas of the Code of Conduct could be barriers to the ideal family law practitioner? To interdisciplinary practice? To ensuring the best interest of the child? To collaborative law?
- Would a competency framework for firm regulation be different than one for family law practitioners? How so?
- Do you have a proposed guideline for when a family law lawyer should involve another [legal or non-legal] specialist (for example, social service workers, therapists, and other medical professionals)? Does the Code of Professional Conduct allow such referrals? Do the business models of law firms allow such referrals?