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On becoming a Collaborative Professional: From Paradigm Shifting to Transformative Learning through Critical Reflection and Dialogue

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I. INTRODUCTION

Collaborative law ("CL") is a dispute resolution process in which the parties and their lawyers, all active participants, work together at four-way settlement meetings. It emerged in response to the perceived inadequacies of conventional practice. In adjudication—and the negotiations that occur within that process—the opposing parties and their lawyers are adversaries. While the court remains the ultimate decision-making authority in an adversarial setting, most civil and family disputes are resolved through negotiation. Various studies report that more than ninety percent of civil actions are resolved without a trial.[1] The ostensible goal of each party is to obtain an outcome that favors him or her and replicates what a judge might award. In fact, few litigants secure results of this kind. Generally, both sides compromise their positions to settle their disputes. All too often, they experience egregious expenses, inexplicable delays, and irreparable harm to important relationships.

CL represents a process alternative for practitioners who find the collateral effects of the adversarial approach to dispute resolution unacceptable. To become a collaborative professional, a lawyer must first obtain process and skills training. The CL trainers inform the lawyers of the need to make a *paradigm shift* from an adversarial to a collaborative paradigm. *Transformative learning* describes how learners achieve a transformation of their meaning perspectives through critical reflection and dialogue. The meaning perspectives or, as I refer to them in this paper, a professional's underlying assumptions, comprise the foundation for his or

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    1. *See* Julie Macfarlane, *Experiences of Collaborative Law: Preliminary Results from the Collaborative Lawyering Research Project*, 2004 J. DISP. RESOL. 179, 182 (2004); *see also* Julie Macfarlane, *The Evolution of the New Lawyer: How Lawyers are Rethinking and Reshaping the Practice of Law*, 2008 J. DISP. RESOL. 61, 62 (2008), in which she describes "a 98% civil settlement rate."

her practice decisions and actions. Transformative learning is a model for *para-digm shifting.*

To acquire an understanding of the learning experiences of prospective colla-borative professionals, I undertook a study of a CL workshop and, in particular, the learning experiences of six of its participants over the twelve-month period following their training.[2] From the data derived from my research, I developed the *paradigm shift grid* and the *transformative learning cycle.*

In Part II, I provide a brief overview of CL and its underlying assumptions. A description of CL training and learning objectives follows in Parts III and IV. In Parts V and VI, I review the paradigm shifting and transformative learning litera-ture. I provide an overview of the study in Part VII, followed by my analysis of the data in Parts VIII and IX. In Part X, I conclude with a discussion of critical reflection and dialogue in a CL training context.

II. COLLABORATIVE LAW

Alternative Dispute Resolution ("ADR"), inaugurated by the Pound Confe-rence in 1976, preceded CL in response to what critics deemed the unacceptable aspects of the adjudicative process.[3] Alternatives to litigation emerged, as did a distinct ADR literature.[4]

In 1990, a lawyer in Minnesota, Stuart G. Webb, provided his contribution to the continuing evolution of ADR. He conceived a new way to practice family law. As Webb describes CL in his early contributions to an emergent literature, it is a process in which the lawyers for the parties to a dispute agree to work together in resolving their conflict using cooperative rather than adversarial strategies and litigation.[5] Webb informed other practitioners in his community about CL and they formed the first *practice group.*

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2. Richard W. Shields, *Collaborative Family Law Training: From Making the Paradigm Shift to Experiencing Transformative Learning* (dissertation defense held April 16, 2007, doctoral degree granted Nov. 14, 2007) (unpublished Ph.D. thesis, University of Toronto), *available at* http://www.familydisputeresolution.com/.

3. *See* Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice,*☐ address before the American Bar Association Convention (Aug. 26, 1906), reprinted in 35 F.R.D. 273 (1964); *see also* Chief Justice Warren E. Burger and Others, *Addresses Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice* (also known as the Pound Conference), 70 F.R.D. 79 (1976).

4. *See generally* STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION, NEGOTIATION, MEDIATION, AND OTHER PROCESS (Aspen Publishers 4th ed. 2003), and JULIE MACFARLANE, DISPUTE RESOLUTION: READINGS AND CASE STUDIES (Emond Montgomery 2d ed. 2003), on dispute resolution; ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Houghton Mifflin 2d ed. 1991), and ROBERT H. MNOOKIN ET AL., BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES (Belknap Press 2004), on negotiation; CHRISTOPHER MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT (Jossey-Bass 3d ed. 2003), and R. A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT (Jossey-Bass 2d ed. 2004), on mediation.

5. *See* Stuart G. Webb, Letter to the Honorable A. M. "Sandy" Keith, Justice of the Minnesota Supreme Court dated February 14, 1990 (on file with the author); Stuart G. Webb, *Collaborative Law – A Conversation: Why Aren't Those Divorce Lawyers Going to Court?* THE HENNEPIN LAW., August 1996, at 26.

CL expanded to California where it took root alongside a compatible interdisciplinary process, Collaborative Divorce ("CD").[6] Pauline H. Tesler was an early convert to collaborative practice. She emphasized an important point of departure from the conventional approach to dispute resolution. If a case does not settle, the lawyers are disqualified from any further representation of those parties.[7] The lawyer is retained solely to assist his or her client in negotiating an agreement; under no circumstances will the lawyer represent the client if the matter proceeds to court.[8]

CL builds upon the foundation of ADR and an appropriate place to commence a study of this new discipline is with the literature on conflict management and dispute resolution.[9] The earliest CL publications appeared in articles, commentaries, and papers in legal journals and law association newsletters.[10] Others followed with more comprehensive texts on collaborative processes.[11]

As in the CL literature, I distinguish between the adversarial and collaborative approaches to dispute resolution. Underlying each of these orientations is a set of assumptions, which I cluster into four sets: *conflict* assumptions, *role* assumptions, *process* assumptions, and *outcome* assumptions, as follows:

A. Conflict Assumptions

Carrie Menkel-Meadow considers the assumptions that underlie the *adversarial paradigm*.[12] In that setting, the primary concern is with the resolution of a

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6. *See* A. Rodney Nurse & Peggy Thomson, *Collaborative Divorce: A New, Interdisciplinary Approach*, 13 AM. J. FAM. L. 226 (1999). This interdisciplinary approach is also referred to as Collaborative Practice.

7. *See* Pauline H. Tesler, *Collaborative Law: What It Is and Why Family Lawyers Need To Know About It*. 13 AM. J. FAM. L. 215, 219 (1999).

8. John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 OHIO ST. L.J. 1315, 1323 (2003).

9. *See generally* THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (Harvard University Press 2007); KENNETH E. BOULDING, CONFLICT AND DEFENSE: A GENERAL THEORY (Harper 1963); MORTON DEUTSCH, THE RESOLUTION OF CONFLICT: CONSTRUCTIVE AND DESTRUCTIVE PROCESSES (Yale University Press 1977); LOUIS KRIESBERG, SOCIAL CONFLICTS (Prentice Hall College Division 2d ed. 1982); JOYCE L. HOCKER & WILLIAM W. WILMOT, INTERPERSONAL CONFLICT (Wm. C. Brown 3d ed. 1991); BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE (Jossey-Bass 2000).

10. *See* Webb, *supra* note 5; Tesler, *supra* note 7; David A. Hoffman & Rita S. Pollack, '*Collaborative Law' Looks to Avoid Litigation*, 28 MASS. LAW. WKLY. 1989 (May 8, 2000); Douglas C. Reynolds & Doris F. Tennant, *Collaborative Law—An Emerging Practice*, 45 BOSTON B.J. 1 (November/December 2001).

11. *See* PAULINE H. TESLER, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION (ABA 2001); RICHARD W. SHIELDS ET AL., COLLABORATIVE FAMILY LAW: ANOTHER WAY TO RESOLVE FAMILY DISPUTES (Thomson Carswell 2003); NANCY J. CAMERON, COLLABORATIVE PRACTICE: DEEPENING THE DIALOGUE (Continuing Legal Education Society 2004); SHEILA M. GUTTERMAN, COLLABORATIVE LAW: A NEW MODEL FOR DISPUTE RESOLUTION (Bradford Publishing Co. 2004); PAULINE H. TESLER & PEGGY THOMPSON, COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE (Collins Living 2007); STUART G. WEBB & RONALD D. OUSKY, THE COLLABORATIVE WAY TO DIVORCE: THE REVOLUTIONARY METHOD THAT RESULTS IN LESS STRESS, LOWER COSTS, AND HAPPIER KIDS - WITHOUT GOING TO COURT (Penguin Group 2006).

12. Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*. 31 UCLA L. REV. 754, 784-90 (1984).

single issue. The negotiators engage in *distributive bargaining* as they seek to distribute the subject matter of the negotiation. In the *collaborative paradigm*, there may be multiple issues amenable to *integrative bargaining,* in which nego- tiators endeavor to integrate their common goals.[13]

Promotive interdependence describes a *cooperative* situation, like CL, in which the goals of the parties are so linked that neither can attain his or her goals unless the other is likewise able to do so.[14] It contrasts with the adversarial con- flict relationship between parties whose goal attainment is not so linked. In an adversarial setting, each appears to consider him or herself *independent* of the other and able to satisfy his or her goals without regard for those of the other.

Likewise, in an adversarial setting, the parties are competitive, and their ex- changes are *zero-sum*, as the gains and losses are mutually offsetting. In the co- operative environment of a collaborative negotiation process, the exchanges are more likely to be *varying-sum,* and a gain by one is not offset by a loss of the other.[15]

B. Role Assumptions

In an adversarial process, the lawyers see their role as including *zealous re- presentation* or *zealous advocacy.*[16] The Preamble to the Model Rules of Profes- sional Conduct describes the lawyer's responsibility as an advocate, to zealously assert the client's position under the rules of the adversary system and, as a nego- tiator, to seek a result advantageous to the client but consistent with the require- ments of honest dealings with others.[17]

Tesler distinguishes the role of the litigation lawyer from that of a CL lawyer: "[T]he collaborative lawyer does something different: he or she begins the repre- sentation by listening carefully, asking searchingly, and advocating for the long view, for enlightened self-interest, and for attention to relational as well as eco- nomic issues."[18] CL lawyers discharge the obligation of zealous representation and advocacy on behalf of their clients while working cooperatively with their professional colleagues and their respective clients. They consider themselves *negotiation specialists*, who see their role as facilitating the negotiation of a mu- tually acceptable outcome.[19]

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13. *See* RICHARD A. WALTON & ROBERT B. MCKERSIE, A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS: AN ANALYSIS OF A SOCIAL INTERACTION SYSTEM (McGraw-Hill 1965).

14. *See* DEUTSCH, *supra* note 9.

15. *See generally*, DEAN G. PRUITT, NEGOTIATION BEHAVIOR (Academic Press 1982); GERALD R. WILLIAMS, LEGAL NEGOTIATION AND SETTLEMENT (West Publishing Co. 1983); Menkel-Meadow, *supra* note 12; DONALD G. GIFFORD, LEGAL NEGOTIATION THEORY AND APPLICATIONS (Thompson West 1989); MNOOKIN ET AL., *supra* note 4.

16. Tesler, *supra* note 7, at 32; *see also* Lande, *supra* note 8, at 1331-39.

17. THE MODEL RULES OF PROFESSIONAL CONDUCT, A.B.A Center for Professional Responsibility, http://www.abanet.org/cpr/mrpc/preamble.html (last visited Nov. 13, 2008).

18. *See* TESLER, *supra* note 11, at 33, 160-62.

19. *See* Roger Fisher, *What About Negotiation as a Specialty?* 69 A.B.A. J. 1220 (Sept. 1983); *see also* Gary Mendelsohn, *Lawyers as Negotiators,* 1 HARV. NEGOT. L. REV.139 (Spring 1996); William F. Coyne, Jr., *The Case for Settlement Counsel,* 14 OHIO ST. J. ON DISP. RESOL. 367 (1999).

C. Process Assumptions

In an adversarial contest, the process is lawyer-focused, as it is conducted in accordance with the rules of procedure and evidence designed by judges and lawyers.[20] The professionals direct the process. The lawyers manage the flow of information; they make the decisions on how they will proceed, and they are the principal speakers. In the courtroom, the parties may be no more than mere passive observers. It has been my experience that their participation in a negotiation may not be any more active. What the parties say and do is, in large measure, determined by their lawyers and based upon the lawyer's comfort level with the client assuming a more active process role.

CL is a *client-centered* process.[21] In the initial interview with a prospective CL client, the lawyer assists the person in making an informed choice as to the most appropriate dispute resolution process. The lawyers guide their clients in the development of appropriate communication and negotiation skills in preparation for the first settlement meeting. At the settlement meetings, the parties are not merely passive observers but active participants. They participate in the decision-making on all matters pertaining to process as well as outcome.

D. Outcome Assumptions

Finally, in an adversarial setting, the outcome is *rights-based*—the parties negotiate in the shadow of the law.[22] The lawyers advise their clients on the applicable law. Each lawyer then recommends an outcome that he or she anticipates is consistent with what a court might award. The law provides the ultimate criteria or standards of legitimacy.

While CL recognizes the law as a legitimate basis upon which to resolve a dispute, it is not necessarily the sole or even preferred option for the resolution of whatever disputes the parties present. In CL, the participants seek *interest-based* outcomes.[23] Their common goal is to negotiate a mutually acceptable agreement, which satisfies their interests to the maximum extent attainable, and may or may not be in accordance with the applicable statutory or case law.

The assumptions underlying each of the adversarial and collaborative approaches are summarized in Table 1.

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20. *See* the *Courts of Justice Act*, R.S.O. c. C.43 (as amended), and its regulations; the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (as amended); *Family Law Rules*, O. Reg. 114/99 (as amended), which govern the conduct of civil and family proceedings respectively in Ontario, Canada.

21. *See generally* DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (West 2d ed. 2004); *see also* SHIELDS ET AL., *supra* note 11.

22. *See* Robert H. Mnookin & Lewis. Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L. J. 950 (1979).

23. *See* FISHER ET AL., *supra*, note 4; TESLER, *supra* note 11; SHIELDS ET AL., *supra* note 11.

Table 1: Assumptions

Assumptions	Adversarial Approach	Collaborative Approach
Conflict	• Independence • Single issue • Distributive • Zero-sum	• Interdependence • Multiple issues • Integrative • Varying-sum
Role	• Zealous advocates • Protect client rights • Competitive	• Negotiation specialists • Understand client interests • Cooperative
Process	• Lawyer-directed • Lawyers make process decisions • Lawyers are principal speakers	• Client-centered • Clients make process decisions • Clients are active participants
Outcome	• Rights-based • Compatible with applicable law • Sole gain	• Interest-based • Satisfies party interests • Mutual gain

III. COLLABORATIVE LAW TRAINING

In developing their training programs, CL trainers had available to them the pedagogy and practices of established ADR training facilities. The Program on Negotiation ("PON") at Harvard Law School, founded in 1983, is among the first of such facilities to offer training programs of this kind.[24] It is an inter-university consortium involving faculty from a range of disciplines and professional schools, including law, business, and psychology. The PON offers both negotiation and mediation training. Frank E. A. Sander, Roger Fisher, Bruce Patton, and Robert H. Mnookin are among its trainers, and they are all contributors to the ADR and negotiation literature.[25]

The PON introductory and advanced negotiation workshops are forty hours in duration, offered over five consecutive days. Their training approach is to present a process overview to all the participants, followed by small group role-playing,

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24. *See* Program on Negotiation at Harvard Law School, http://www.pon.harvard.edu/ (last visited Nov. 13, 2008).

25. For works written by these trainers, *see* GOLDBERG ET AL., *supra* note 4; FISHER ET AL., *supra* note 4; MNOOKIN ET AL., *supra* note 4.

which provide the participants with an opportunity to apply the knowledge and skills they learned in a simulated life experience setting.

Other mediation training organizations and mediation trainers offer similar approaches in their workshops.[26] Christopher Moore and Bernard Mayer are two of the principals and trainers of CDR Associates.[27] *Mediate.com* provides a directory of other mediation training facilities and trainers who likewise provide similarly structured workshops.[28]

Chip Rose and Pauline H. Tesler were among the first generation of CL professionals to offer training to prospective CL practitioners. They began in their own state, California, and thereafter trained lawyers and other professionals across North America. In 2000, at the invitation of a CL practice group in London, Ontario, Rose presented a two-day workshop, which I attended. After my training, I participated in the organization of a CL practice group in my community. Together with my family mediation trainer and mentor, Judith P. Ryan, and another convert to CL, Victoria L. Smith, we prepared and presented our own CL training workshops to other groups of practitioners throughout the province of Ontario.

Ryan, Smith, and I relied in part on the Rose presentation as well as Ryan's own extensive experience as a family mediation trainer. Rose and Ryan approach this form of skills training in a way similar to those previously described. The focus of the two-day workshop we designed was to introduce the participants to the CL process. After we provided this training on a few occasions, we prepared a second level of training, which focused on communication and negotiation skills in a CL context. As with other dispute resolution training, these two workshops, CL Level I and CL Level II, were five days and forty hours in duration. While not officially accredited by the Ontario Collaborative Law Federation, ("OCLF"), CL Level I and CL Level II became a standard followed by other Ontario CL trainers.

In 2002, the Osgoode Professional Development program, a continuing legal education service provider in Toronto, Ontario, hosted a two-day symposium on CL. Smith and I were among the presenters, as was Julie Macfarlane. Subsequently, Macfarlane convened a meeting of CL trainers, in which Smith and I participated, held March 21-22, 2003, in Vancouver, British Columbia, as part of her research project on CL practice.[29] A second retreat proceeded in San Francisco, California, held March 12-14, 2004, and a third in Dallas, Texas, held May· 31-June 2, 2005. This group of trainers operated under the umbrella of the International Academy of Collaborative Professionals ("IACP").

The Standards Committee of the IACP prepared and circulated a draft of *Trainer and Basic Training Standards* to members before the IACP Networking Forum held October 17-19, 2003, in Vancouver, British Columbia. At a preconference institute of trainers, further recommendations were made.

On July 13, 2004, the IACP adopted its *Minimum Standards* which consist of three sets of standards: the *Minimum Standards for Collaborative Practitioners*, the "Practice Standards;" the *Minimum Standards for a Collaborative Basic*

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26. *See* CDR Associates, http://www.mediate.org/ (last visited Nov. 13, 2008).

27. *See* MOORE, *supra* note 4; MAYER, *supra* note 9.

28. *See* Mediate.com, http://www.mediate.com/ (follow "Training & Academic" hyperlink) (last visited Nov. 13, 2008).

29. *See* Macfarlane, *supra* note 1.

Training, the "Training Standards;" and the *Minimum Standards for Collaborative Trainers*, the "Trainer Standards."[30]

The Practice Standards require that a CL practitioner have at least twelve hours of basic collaborative training and at least one thirty-hour training in client-centered, facilitative conflict resolution, of the kind typically taught in mediation training. The Training Standards recite general principles as to content and presentation, which are substantially in accordance with what Ryan, Smith, and I developed for application in Ontario CL training workshops.

Finally, the Trainer Standards require that a trainer complete at least twenty-four hours of training in the collaborative process; he or she must participate in at least eight different collaborative cases, accumulating at least fifty hours of practice in the collaborative process; and he or she must have at least twenty hours of experience as a teacher, trainer, or presenter of programs, each of which at least three hours in duration, during the five years immediately prior to the training.

While the IACP has gone further than other ADR organizations in providing minimum standards for trainers, it does not require training in adult education as a prerequisite, although training of this kind is available in the United States and Canada.[31]

IV. LEARNING OBJECTIVES

CL training is a form of adult education. An important element in the design of an adult education program is the formulation of the *learning objectives*, which describe what the learners will *know*, *do*, and *feel* following the training. The *Bloom Taxonomy* is a system for classifying learning objectives.[32] It asserts that most educational objectives can be placed in one of three major *domains*, which are the *cognitive*, the *affective*, and the *psychomotor*. The objectives of the *cognitive domain* deal with "the recall or recognition of knowledge and the development of intellectual abilities and skills;" the objectives of the *affective domain* describe "changes in interest, attitudes, and values, and the development of appreciations and adequate adjustment;" and the objectives of the *psychomotor domain* pertain to "the manipulative or motor-skill area."[33]

Bloom divides the cognitive domain into six levels arranged hierarchically: *knowledge, comprehension, application, analysis, synthesis*, and *evaluation*.[34] If learners are able to recall or recognize some idea or phenomenon encountered in learning, they are learning at the first level. The learning objective at this level of the cognitive domain is *knowledge-based*. The five levels that follow knowledge

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30. *See* International Academy of Collaborative Professionals, *Standards, Ethics, and Principles*, http://www.collaborativepractice.com/ (search "Minimum Standards") (last visited Nov. 13, 2008).

31. To learn more about two such adult education programs available in Ontario, *see* St. Francis Xavier University, *Diploma in Adult Education*, http://www.stfx.ca/academic/adulted-diploma/ (last visited Nov. 13, 2008); OISE/UT, *Certificate Program in Adult Training and Development*, http://www.oise.utoronto.ca/training/ (last visited Nov. 13, 2008).

32. *See* TAXONOMY OF EDUCATIONAL OBJECTIVES: BOOK I: COGNITIVE DOMAIN (Benjamin S. Bloom, ed., Addison Wesley Publishing Co. 1956); DAVID R. KRATHWOHL ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: BOOK II: AFFECTIVE DOMAIN (Longman Publishing Group 1964).

33. *See* TAXONOMY OF EDUCATIONAL OBJECTIVES: BOOK I: COGNITIVE DOMAIN, *supra* at note 32, at 7-8.

34. *Id.* at 18.

represent the use of that knowledge in the context of the learner. They constitute the cognitive *skills-based* learning objectives.

The affective learning objectives emphasize "a feeling tone, an emotion, or a degree of acceptance or rejection."[35] Like the cognitive learning domain, the affective domain is structured hierarchically along a continuum of behaviors.

This continuum or spectrum of behaviors begins at the level at which the learner is *receiving* the stimuli and passively attending to it, continues with *responding* to the stimuli on request, *valuing* the phenomenon or activity, *conceptualizing* each value responded to, and ends with *organizing* these values into systems and, ultimately, into a single whole. Affective learning is *attitude-based*. If the knowledge-based learning objectives describe *what* the learner receives and the skills-based learning objectives describe *how* the learner will apply that knowledge, it is the *attitude-based* learning objectives that describe *why* it is important for the learner to retain and use the acquired knowledge and skills.

The cognitive learning objectives in a CL training workshop are both knowledge-based and skills-based. The nature of collaboration, the CL process model, and its stages comprise the knowledge-based learning objectives; they inform the learners as to *what* CL is, and what distinguishes it from other processes. Communication, interviewing and counseling, and negotiation represent the skills-based learning objectives; they instruct the learner as to *how* to do CL in practice, how to apply their CL knowledge in *context*.

The affective learning objective in CL training addresses the question of *why* the learner should practice CL. It is attitude-based, as it involves a change in the orientation of the learner from the way in which he or she currently does his or her work to the collaborative alternative offered by the trainer. Trainers commonly refer to this change in attitude as the *paradigm shift*.[36]

V. PARADIGM SHIFTING

Thomas Kuhn first offered a definition of the term *paradigm* in the context of the natural sciences in the first edition of his book, *The Structure of Scientific Revolutions*, published in 1962.[37] For Kuhn, paradigms are closely associated with *normal science*. He describes normal science as a scientific achievement in a field which scientists deem authoritative and which provides the foundation for further practice and research.[38] Ptolemy, Copernicus, Newton, and Einstein were responsible for scientific achievements of this kind.

Prior to the emergence of a *dominant paradigm*, no single theory is prescient. As other scientists recognize the conceptualization of a phenomenon in their field of study as authoritative, that perspective then acquires paradigmatic status. With the acceptance of the dominant paradigm, the period of normal science follows. Scientists conduct further experiments and research to solve puzzles, establish rules, and make assumptions. Their purpose is not to test the validity of the para-

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35. *See* KRATHWOHL ET AL., *supra* note 32, at 7.
36. *See* TESLER, *supra* note 11; SHIELDS ET AL., *supra* note 11; CAMERON, *supra* note 11; GUTTERMAN, *supra* note 11; TESLER & THOMPSON, *supra* note 11; WEBB & OUSKY, *supra* note 11.
37. THOMAS S. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (3d ed. 1996) (1962).
38. *Id.* at 10.

digm or even its limits.[39] Adherents accept its parameters and tenets as inviolable. The paradigm may remain dominant for many years—a century, or even a millennium.

"Discovery commences with the awareness of anomaly, i.e., with the recognition that nature has somehow violated the paradigm-induced expectations that govern normal science."[40] An *anomaly* is an occurrence that was neither expected nor predicted; it challenges the dominant paradigm.[41] With the recurrence of that anomaly and the appearance of others, the excitement and challenge of *revolutionary science* succeeds the calm and certainty of normal science. It is over the course of revolutionary science that an alternative paradigm emerges to displace the previous dominant paradigm.

The change model conceived by Kuhn has also been applied in the social sciences.[42] John Lande considers interest-based negotiation and mediation as an alternative paradigm to the adjudicative process, and the transition from the one to the other as a paradigm shift.[43] Jeffrey Stempel discusses the application of paradigm shifting to the law. He expresses concern about the zeal with which some characterize their own innovations as constituting paradigm shifts.[44] It has become "so much a part of the lexicon of the pretentious that academics regularly make excessive use of the term, such as referring to their own scholarship as 'paradigm-shifting' or looking down on the efforts of others as insufficiently revolutionary."[45]

Rose differentiates between a *macro* and a *micro* outlook to problem-solving. While practitioners may encourage their clients to think in broad terms, the parties focus on narrow issues. In his training workshops, Rose uses the metaphor of the forest and the trees. It is difficult to see the forest when you are standing too close to a tree.

The CL literature likewise considers paradigm shifting from a macro and a micro perspective. As a shift within the constellation of dispute resolution practices from adversarial to collaborative, it is macro, and Kuhn's model is applicable.[46] Kuhn describes changes within scientific communities and disciplines as

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39. *Id.* at 23-42.

40. *Id.* at 52-53.

41. *Id.* at 52-62.

42. *See generally* Douglas L. Eckberg & Lester Hill, Jr., *The Paradigm Concept and Sociology: A Critical Review*, 44 AM. SOC. REV. 925 (December 1979); MARK BLAUG, *Kuhn versus Lakatos, or Paradigms versus Research Programmes in the History of Economics*, 7 History of Political Economy 399 (Winter 1975); Sheldon Wolin, *Paradigms and Political Theories*, in PARADIGMS AND REVOLUTIONS: APPRAISALS AND APPLICATIONS OF THOMAS KUHN'S PHILOSOPHY OF SCIENCE 117 (Gary Gutting, ed., University of Notre Dame Press 1980).

43. *See generally* John Lande, *Mediation Paradigms and Professional Identities*, 4 MEDIATION Q. 19 (1984).

44. Jeffrey W. Stempel, *New Paradigm, Normal Science, or Crumbling Construct? Trends in Adjudicatory Procedure and Litigation Reform*, 59 BROOK. L. REV. 659, 696 (Fall 1993).

45. *Id.* at 696.

46. *See* CHIP ROSE, COLLABORATIVE FAMILY LAW PRACTICE (Mediation Center, Inc. 1996) (providing an outline of the "adversarial paradigm"); Pauline H. Tesler, *Collaborative Law: A New Paradigm for Divorce Lawyers*, 5 PSYCHOL. PUB. POL'Y & L. 967 (1999) (characterizing CL as a "new paradigm"); CAMERON, *supra* note 11 (same); GUTTERMAN, *supra* note 11 (describing the subject matter of the "paradigm shift"); SHIELDS ET AL., *supra* note 11; Sherri G. Slovin, *The Basics of Collaborative Family Law: A Divorce Paradigm Shift*, 18 AM. J. FAM. L. 74 (Summer 2004) (proding an overview of the basic principles and choreography of family CL); *see also* David L. Walther, *Ethical*

opposed to individual scientists. His analysis is also retrospective; it looks back on what occurred. It is premature to conclude that CL represents a macro paradigm shift while the adversarial paradigm is dominant.

Tesler approaches paradigm shifting from a micro perspective—the transition of the practitioner from the adversarial to the collaborative in his or her orientation to practice.[47] Becoming a CL lawyer is a *retooling process* that involves unlearning adversarial behaviors and learning collaborative behaviors.[48] She describes this process as *making the paradigm shift happen.*[49]

Unlike the macro paradigm shift, it is possible to ascertain if an individual has made a micro paradigm shift in the course of becoming a collaborative professional. The process begins in training; it continues in practice. Some practitioners are able to commit themselves to CL; others are not. The knowledge and skills are important. However, without some change in attitude, a practitioner may not be able to become a collaborative professional. The paradigm shift for that practitioner may not happen.

The CL literature provides some insight into the nature of paradigms and what trainers can do to facilitate a paradigm shift. However, it does not address specifically how learners actually achieve this affective, attitude-based learning objective. Transformative learning offers an appropriate analytical instrument for this purpose.

VI. TRANSFORMATIVE LEARNING

Jack Mezirow observed a particular population of adult learners in his study of women's re-entry programs in community colleges.[50] Following this research, he developed his model, which came to be known as *transformative learning.*[51]

Issues in Collaborative Law, 18 AM. J. FAM. L. 135 (2004) (pointing out the challenges of the paradigm shift of compulsory disclosure inherent in collaborative law when a central tenet of traditional, adversarial proceedings has been protecting confidentiality).

47. *See* TESLER, *supra* note 11, at 23-53.

48. *Id.* at 27-28.

49. *Id.* at 38-53.

50. JACK MEZIROW, EDUCATION FOR PERSPECTIVE TRANSFORMATION: WOMEN'S RE-ENTRY PROGRAMS IN COMMUNITY COLLEGES (Center for Adult Education 1978).

51. *See* Jack Mezirow, *Perspective Transformation*, 28 ADULT EDUC. Q. 100 (1978); Jack Mezirow, *A Critical Theory of Adult Learning and Education*, 32 ADULT EDUC. Q. 3 (1981); Jack Mezirow, *A Critical Theory of Self-directed Learning*, in SELF-DIRECTED LEARNING: FROM THEORY TO PRACTICE 17 (Stephen D. Brookfield ed., Jossey-Bass 1985); JACK MEZIROW & ASSOCIATES, FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING (Jossey-Bass 1990); JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING (Jossey-Bass 1991); Jack Mezirow, *Understanding Transformation Theory*, 44 ADULT EDUC. Q. 222 (1994); Jack Mezirow, *Contemporary Paradigms of Learning*, 46 ADULT EDUC. Q. 158 (1996); Jack Mezirow, *Transformative Learning: Theory to Practice*, in TRANSFORMATIVE LEARNING IN ACTION: INSIGHTS FROM PRACTICE 5 (Patricia Cranton ed., Jossey-Bass 1997); Jack Mezirow, *On Critical Reflection*, 48 ADULT EDUC. Q. 185 (1998); JACK MEZIROW & ASSOCIATES, LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS (Jossey-Bass 2000).

Other adult education scholars provided their own critiques of Mezirow,[52] to which he responded.[53]

Mezirow defines transformative learning as follows: "Reflective learning involves assessment or reassessment of assumptions. Reflective learning becomes transformative whenever assumptions or premises are found to be distorting, inauthentic, or otherwise invalid. Transformative learning results in new or transformed meaning schemes or, when reflection focuses on premises, transformed meaning perspectives."[54]

An understanding of Mezirow's theory requires an overview of his *learning domains*, an adaptation of the philosophy of Jürgen Habermas. Habermas describes three broad fields in which human interests generate knowledge: *technical knowledge, practical knowledge,* and *emancipatory knowledge*.[55] Mezirow associates his three learning domains with those three fields as follows: *instrumental learning, communicative learning,* and *emancipatory learning*.[56]

"The domain of instrumental learning centrally involves determining cause-effect relationships and learning through task-oriented problem solving."[57] It provides the means with which we make predictions about observable events; it is based upon empirical knowledge; and it is governed by technical rules.[58] The domain of communicative learning concerns "learning to understand what others mean and to make ourselves understood as we attempt to share ideas through speech, the written word, plays, moving pictures, television, and art."[59] It contemplates learning through interaction with others.[60]

The emancipatory interest is in part about "our assumptions about learning and the nature and use of knowledge."[61] Critical self- reflection is the means through which learners acquire emancipatory knowledge.[62] This emancipatory learning can be *transformative*. "In emancipatory learning, the learner is presented with an alternative way of interpreting feelings and patterns of action; the old meaning scheme or perspective is negated and is either replaced or reorga-

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52. *See* Susan Collard & Michael Law, *The Limits of Perspective Transformation: A Critique of Mezirow's Theory*, 39 ADULT EDUC. Q. 99 (1989); M. Carolyn Clark & Arthur L. Wilson, *Context and Rationality in Mezirow's Theory of Transformational Learning*, 41 ADULT EDUC. Q. 75 (1991).

53. *See* Jack Mezirow, *Transformation Theory and Social Action: A Response to Collard and Law*, 39 ADULT EDUC. Q. 169 (1989); Jack Mezirow, *Transformation Theory and Cultural Context: A Reply to Clark and Wilson*, 41 ADULT EDUC. Q. 188 (1991).

54. JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 5-6.

55. JÜRGEN HABERMAS, KNOWLEDGE AND HUMAN INTERESTS (Jeremy J. Shapiro trans., Beacon Press 1971); JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION (Beacon Press 1984); *see also* MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 72-73; PATRICIA CRANTON, UNDERSTANDING AND PROMOTING TRANSFORMATIVE LEARNING: A GUIDE FOR EDUCATORS OF ADULTS 44-46 (Jossey-Bass 1994).

56. *See* JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 72-73; *see also* CRANTON, *supra* note 55, at 46-48.

57. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 73.

58. *Id.* at 72-75; *see also* CRANTON, *supra* note 55, at 46.

59. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 75.

60. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 75-86; *see also* CRANTON, *supra* note 55, at 46-47.

61. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 87.

62. *Id.*

nized to incorporate new insights."[63] Emancipatory learning is almost equivalent to transformative learning.[64]

The *Bloom Taxonomy* distinguishes cognitive from affective learning. Affective learning is about changes in feeling and emotion. Mezirow's emancipatory learning involves interpreting feelings and patterns of action. It can be transformative if it induces change. A comparison of the Bloom, Mezirow, and CL learning domains appears in summary form in Table 2.

Table 2: Learning Domains

Bloom	Mezirow	Collaborative Law
Knowledge-based	**Knowledge-based**	**Knowledge-based**
• Cognitive Level 1	• Technical knowledge	• *What* is it?
• Knowledge	• Instrumental learning	• The nature of CL
		• The stages of CL
Skills-based	**Skills-based**	**Skills-based**
• Cognitive Levels 2–6	• Practical knowledge	• *How* do I do it?
• Comprehension	• Communicative learning	• Communication
• Application		• Negotiation
• Analysis		• Intervention
• Synthesis		
• Evaluation		
Attitude-based	**Attitude-based**	**Attitude-based**
• Affective Levels 1–5	• Emancipatory knowledge	• *Why* is it important?
	• Transformative learning	• Paradigm shift
• Receiving		
• Responding		
• Valuing		
• Organizing		
• Characterizing		

Mezirow describes the occurrence of transformative learning, which I interpret from my reading of his published work, as comprised of four stages: the emergence of a *disorienting dilemma*; *critical reflection* by the learner following par-

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63. *Id.* at 88.
64. CRANTON, *supra* note 55, at 48.

ticipation in some learning experience; *dialogue* with others about that learning and reflection; and *perspective transformation* with the learner committing to an alternative set of assumptions within his or her organizational, professional, or social context.

The transformative learning process begins with a *disorienting dilemma*—some event or events external to and beyond the control of the person affected. "These disorienting dilemmas of adulthood can dissociate one from long-established modes of living and bring into sharp focus questions of identity, of the meaning and direction of one's life."[65] A separation and divorce can be a disorienting dilemma, as can dissatisfaction with a professional career. A disorienting dilemma may bring to the surface grievances that have long been felt but have not previously been expressed.

Critical reflection follows the disorienting dilemma. The Socratic *dialectic* is an early form of reflective inquiry. Socrates asked questions of others to encourage them to reflect upon their own assumptions, beliefs, and values.[66] In his trial defense, Socrates proclaimed: "The unexamined life is not worth living."[67] Another philosopher, John Dewey, defines *reflective thinking* as: "*Active, persistent, and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it, and the further conclusions to which it tends*, constitutes reflective thought."[68]

Stephen D. Brookfield outlines five qualities of *critical thinking*, which closely approximates the critical reflection of transformative learning.[69] First, critical thinking is a creative and productive activity.[70] Second, it is a *process* not an *outcome*.[71] Third, it varies among persons in accordance with their contexts; for some, it is an internal process while, for others, it manifests itself in external actions.[72] Fourth, it may be triggered by positive as well as negative events.[73] Fifth, it is not confined to rational cognitive activity—emotions are central to the process.[74]

Mezirow distinguishes between reflection and critical reflection. "Reflection enables us to correct distortions in our beliefs and errors in problem solving. Critical reflection involves a critique of the presuppositions on which are beliefs have been built."[75] He describes reflection as involving "the critique of assumptions

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65. Jack Mezirow, *Perspective Transformation*, 28 ADULT EDUC. Q. 12 (1978).

66. *See* RICHARD ROBINSON, PLATO'S EARLIER DIALECTIC (2d ed. Oxford University Press 1953); GERASIMOS XENOPHON SANTAS, SOCRATES, PHILOSOPHY IN PLATO'S EARLIER DIALOGUES (Routledge & Kegan Paul 1979); KENNETH SEESKIN, DIALOGUE AND DISCOVERY: A STUDY IN SOCRATIC METHOD (State University of New York Press 1987).

67. Plato, *Socrates' Defense (Apology)*, in THE COLLECTED DIALOGUES OF PLATO INCLUDING THE LETTERS 23 (Edith Hamilton & Huntington Cairns eds., Lane Cooper et al trans., Pantheon Books 1961).

68. JOHN DEWEY, HOW WE THINK 6 (Dover Publications 1997) (1910).

69. STEPHEN D. BROOKFIELD, DEVELOPING CRITICAL THINKERS: CHALLENGING ADULTS TO EXPLORE ALTERNATIVE WAYS OF THINKING AND ACTING 5-7 (Jossey-Bass 1991).

70. *Id.* at 5.

71. *Id.* at 6.

72. *Id.*

73. *Id.* at 6-7.

74. *Id.* at 7.

75. JACK MEZIROW & ASSOCIATES, FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING (Jossey-Bass 1990), *supra* note 51, at 1.

about the content or process of problem solving."[76] Mezirow uses the terms premises and presuppositions to describe a special class of assumptions, which pertain to how individuals pose problems as opposed to how they solve them.[77]

All reflection is inherently critical; however, Mezirow uses the term, critical reflection, "as a synonym for reflection on premises as distinct from reflection on assumptions pertaining to the content or process of problem solving."[78] My understanding of Mezirow is that he distinguishes between reflection on what it is that we do and say from reflection on the underlying assumptions, which provide the foundation for what it is that we do and say. The way in which we communicate with others about our underlying assumptions leads to a consideration of the next phase in transformative learning—dialogue.

"To the Greeks *dia-logos* meant a free-flowing of meaning through a group, allowing the group to discover insights not attainable individually."[79] In dialogue, the participants access a pool of common meaning from an array of differences.

> In order to create common meaning, people must be willing to examine sometimes very contentious and complex concerns from many vantage points, and sustain the ambiguity of holding opposing views as equally valid. Additionally, one must be able to suspend one's own assumptions, as well as allow them to be explored and possibly disconfirmed by others.[80]

My interpretation of the relationship between critical reflection and dialogue in the context of transformative learning is that they are essentially two stages in the process of a learner asking questions about his or her underlying assumptions. While critical reflection is primarily internal, through dialogue the learner reaches out to others to test and validate his or her understanding of those assumptions.

Mezirow relies upon Habermas in his understanding of dialogue. "Dialogue or communicative action (spoken or written communication) occurs whenever an individual with particular aims communicates with another person in order to arrive at an understanding about the meaning of a common experience so that they may coordinate their actions in pursuing their respective aims."[81] Mezirow distinguishes discourse from dialogue, as discourse is a "special kind of dialogue in which we focus on content and attempt to justify beliefs by giving and defending reasons and by examining the evidence for and against competing viewpoints."[82] For this paper, I do not maintain that distinction. I use the term dialogue exclusively.

Through critical reflection and dialogue, learners seek *meaning* of the phenomena they encounter in training and practice. "Meaning is an interpretation; to

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76. *Id.* at 105.

77. *Id.*

78. *Id.*

79. PETER M. SENGE, THE FIFTH DISCIPLINE: THE ART AND PRACTICE OF THE LEARNING ORGANIZATION 10 (Currency Doubleday 1990).

80. Marilyn E. Laikin, *Collaborative Processes for Collaborative Organizational Design: The Role of Reflection, Dialogue and Polarity Management in Creating an Environment for Organizational Learning*, 15 ORG. DEV. J. 35, 37 (Winter 1997).

81. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 65.

82. Jack Mezirow, *Understanding Transformation Theory*, 44 ADULT EDUC. Q. 222, 225 (1994).

make meaning is to construe experience, to give it coherence."[83] Mezirow distinguishes between *meaning schemes*, "specific knowledge, beliefs, value judgments, or feelings involved in making an interpretation," and *meaning perspectives*, the "rule systems governing perception and cognition."[84]

According to Mezirow, meaning perspectives are analogous to Kuhn's paradigm.[85] They are also similar to what Peter M. Senge referred to as *mental models* in his book on learning organization.[86] Mental models are "deeply ingrained assumptions, generalizations, or even pictures or images that influence how we understand the world and how we take action."[87] A meaning perspective captures my understanding of the underlying assumptions upon which our actions and words are premised. The transformation of a meaning perspective, or *perspective transformation*, is the final phase in transformative learning.

Critical reflection and dialogue reveal the assumptions or meaning perspectives that have become *distorted*. "A distorted assumption or premise is one that leads the learner to view reality in a way that arbitrarily limits what is included, impedes differentiation, lacks permeability or openness to other ways of seeing, or does not facilitate an integration of experience."[88] Awareness of distortion opens the learner to the possibility of a perspective transformation.

Mezirow describes perspective transformation as a "praxis, a dialectic in which understanding and action interact to produce an altered state of being."[89] It involves more than simply recognizing the distortions in his or her prior assumptions and desiring to adopt an alternative set of assumptions. For perspective transformation to occur, the learner must develop a plan of action in which he or she will act upon those understandings.[90]

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83. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 34.

84. *Id.* at 5.

85. *Id.* at 46–47.

86. *See* SENGE, *supra* note 79.

87. *Id.* at 8.

88. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 118.

89. JACK MEZIROW, EDUCATION FOR PERSPECTIVE TRANSFORMATION: WOMEN'S RE-ENTRY PROGRAMS IN COMMUNITY COLLEGES, *supra* note 50, at 15.

90. *See* Jack Mezirow, *A Critical Theory of Adult Learning and Education*, 32 ADULT EDUC. Q. 3 (1981).

From the research data accumulated in his initial study, Mezirow identified the phases of a perspective transformation, which to him appear to be as follows:

1. A disorienting dilemma;
2. Self-examination with feelings of guilt or shame;
3. A critical assessment of epistemic, sociocultural, or pyschic assumptions;
4. Recognition that one's discontent and the process of transformation are shared and that others have negotiated a similar change;
5. Exploration of options for new roles, relationships, and actions;
6. Planning of a course of action;
7. Acquisition of knowledge and skills for implementing one's plans;
8. Provisional trying of new roles;
9. Building of competence and self-confidence in new roles and relationships; and
10. A reintegration into one's life on the basis of conditions dictated by one's new perspective.[91]

"Perspective transformation involves a sequence of learning activities that begins with a disorienting dilemma and concludes with a changed self-concept that enables a reintegration into one's life context on the basis of conditions dictated by a new perspective;" each learner must determine his or her course of action; there are no "invariable developmental steps."[92]

In my study, I applied the learning derived from the transformative learning literature as my interpretive framework for the collection and analysis of my research data. I used the phases of the perspective transformation observed by Mezirow in his study as a template for describing the learning experiences of my research participants.

VII. THE STUDY

For my doctoral dissertation, I sought a subject that would be of application to me in my work as an ADR and CL practitioner and trainer. Early in my continuing education, I was intrigued by reference to paradigm shifting as a precondition to becoming an ADR and CL professional. I was unfamiliar with this phenomenon prior to my encounters with it in my own personal learning context. Trainers appeared unanimous in their endorsement of this learning objective. However, neither the literature nor their workshops offered any guidance as to whether and how this goal is achieved following an ADR or CL training. The purpose of my study was to contribute to the literature by filling this gap.

I selected a qualitative research methodology, specifically the *case study*, for my research on CL training.[93] In a case study, the researcher focuses upon a par-

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91. MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51, at 168-69.
92. *Id.* at 193.
93. *See* SHARAN B. MERRIAM, QUALITATIVE RESEARCH AND CASE STUDY APPLICATIONS IN ADULT EDUCATION (Josey-Bass 1997); ROBERT E. STAKE, THE ART OF CASE STUDY RESEARCH (Sage Publi-

ticular *unit of analysis*, which for this study was a CL training workshop. To qualify as a case study, the principal research participants must be drawn exclusively from this source, although I also obtained data from other senior CL trainers and practitioners to supplement my research.

To obtain my research site, I sent a Letter of Invitation to a group of trainers, all of them members of the IACP, and professionals with whom I had become acquainted in the trainers gathering organized by Macfarlane. From that group, two trainers who had already organized a two-day CL training workshop to be held in Ontario offered to allow me to attend, observe what they did as trainers, and find my research participants.

At the commencement of the training, I introduced myself and distributed a Letter of Invitation to these learners asking them to participate in my research. Six of them agreed to participate. In addition to the two trainers who conducted the subject training, four other trainers participated. I was one of those four other trainers; a doctoral studies colleague interviewed me. To simulate a dialogue with each learner, another practitioner attended with that learner for the third of our four meetings. Finally, I interviewed a representative from each of the six CL practice groups with whom the learners associated.

I obtained my data from my observation of the CL training workshop, which was held on January 22-23, 2004, and from interviews I conducted with my study's participants. I interviewed both trainers on two occasions, the first immediately prior to the training and the second shortly thereafter. I attended both days of the training and made detailed field notes. When the large group broke off into smaller role-play groups, I sat in to observe their performance.

I met with each of the learners on four occasions in the twelve months following their training. I structured those interviews to simulate the four phases of the transformative learning model. The first meetings were held shortly after the workshop. At these meetings, I obtained detailed pre-training histories from the participants and particularly focused on what influenced their decision to attend the workshop. I was interested in ascertaining if any of them were motivated by a disorienting dilemma. At the end of this interview, I provided the learners with journals to maintain between meetings.

The second set of interviews occurred approximately three to four months after the first round of interviews. As these meetings focused on phase two of the transformative process, critical reflection, I was particularly interested in whether the learners engaged in subsequent training or study or participated in a practice group. I asked them to describe the extent to which they had reflected on their practice assumptions. For the third interviews, designed to address the dialogue phase of the transformative process, I altered the structure and setting of the meetings. I asked the six learners to invite colleagues to be dialogue partners. These meetings occurred over a period of seven to nine months after their training.

Following the anniversary of the workshop, I convened the fourth and final set of interviews. At these meetings, modeled after the perspective transformation phase of the transformative learning process, I asked the learners whether they experienced any changes in their assumptions and the ways they practiced, which

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they could attribute to their training and subsequent learning experiences. I also questioned them about their commitment, if any, to CL.

VIII. THE PARADIGM SHIFT GRID

In the CL training workshop that served as the case for my study, the trainers identified making the *paradigm shift* as essential to becoming collaborative professionals.[94] They did not define what they meant by the term *paradigm*. They described the adversarial paradigm, and inferentially, they situated the learners within that setting. My interviews with the learners revealed that the trainers' assumption that the learners were practicing within the adversarial paradigm was incorrect.[95] None of them described this setting as their starting point; they were already settlement-orientated. Several learners described a strong aversion to litigation, which most considered ineffective and inefficient. They preferred negotiation.

In my thesis and this paper, I draw a distinction between the pre-training *presumptive paradigm*, which is the paradigm we presume applies, and the pre-training *paradigm-in-practice* of a learner, the paradigm within which they actually practice. It is similar to that drawn by Chris Argyris and Donald A. Schön, who distinguished an organization's *espoused theory* from its *theory-in-use*.[96] In the way the trainers described the paradigm shift from adversarial to collaborative, they implied that the presumptive paradigm of their learners was adversarial. In fact, their paradigms-in-practice appeared to be in closer proximity to the collaborative.[97]

If the trainers had elicited from the learners how they actually practiced, either prior to or during the introductory phase of the workshop, they might have learned the paradigm-in-practice of each learner.[98] It is not inconceivable that, for one or more of the learners, there may have been a *paradigm match* between how they already practiced and what the trainers were offering, requiring no paradigm shift. Most of the learners claimed that they already held some of the underlying assumptions of CL practice prior to training, or they were at least predisposed to adopt those assumptions, in particular, the conflict and role assumptions.

The trainers facilitated a discussion on the underlying assumptions of the adversarial and collaborative approaches to practice.[99] The learners recognized the need to make important changes in their process and outcome assumptions and their practice behaviors.[100] First, they had to let go of their tight hold on *process management*. In conventional practice, the lawyers decide how the process will be conducted; they do not apply client-centered principles of practice. Second,

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94. *See* Shields, *supra* note 2, at 185-88, 274.

95. *Id.* at 231-262.

96. CHRIS ARGYRIS & DONALD A. SCHÖN, THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS (Jossey-Bass. 1974).

97. *See* Shields, *supra* note 2, at 275.

98. *See* JOHN PAUL LEDERACH, PREPARING FOR PEACE: CONFLICT TRANSFORMATION ACROSS CULTURES (Syracuse University Press 1995). Lederach distinguishes a *prescriptive* approach to training from an *elicitive* approach to training in which the trainers seek an understanding of how learners experience and manage conflict in their social contexts. *See generally id.*

99. *See* Shields, *supra* note 2, at 190-92.

100. *Id.* at 275.

they had to acquire an alternative perspective on the law and its application in *outcome determination*. Again, in conventional practice, lawyers are accustomed to relying exclusively upon the law; they do not apply the principles of interest-based negotiation.

While the trainers identified process management and outcome determination as two aspects of change, those two concepts were not the focal point of the trainers' discussion on the paradigm shift. They were embedded in the broad overview of a paradigm shift from the adversarial to the collaborative. The discussion on paradigm shifting was not sufficiently particularized regarding the dimensions of change this particular population of learners had to make to become collaborative professionals.

A micro paradigm shift focuses on the individual practitioner rather than on the entire dispute resolution system within which the individual practices, which is the focus of a macro paradigm shift. Micro paradigm shifting describes how individual learners change their underlying assumptions. In my thesis study, my interest is with the micro paradigm shift. I focus upon the changes that learners must make in their underlying assumptions and their practice behaviors to become collaborative professionals.

The trainers described the community of dispute resolution practitioners as *bipolar*.[101] From that perspective, there is a competitive model and there is a collaborative model. The trainers' approach replicated my own approach, which is supported by Tesler's analysis.[102] This model of dispute resolution situates the adversarial approach at one pole and the collaborative approach at the other. It does not describe the other possibilities for practice, which are situated along the spectrum that lies between those two poles.

In practice, some practitioners routinely commence litigation in all cases. They do not begin with negotiation, though in all likelihood, their actions will be resolved in that way. Others begin with negotiation but retain the litigation option for leverage. Still others restrict themselves exclusively to negotiation and retain litigation counsel for their clients only if absolutely necessary.

The data from my research disclosed that *process management* and *outcome determination* were the two most challenging aspects of the collaborative practice model, which required change if the learners were to become collaborative professionals. Inspired by the mediator grid created by Leonard L. Riskin,[103] I sought to illustrate each of these changes along a separate dimension. In my *paradigm shift grid*, which appears as Figure 1, the vertical dimension represents the process management spectrum and the horizontal dimension represents the outcome determination spectrum.

The polarities of the vertical process management dimension are the *lawyer-directed*, where the lawyers make process decisions, and the *client-centered*, where the clients make the process decisions. The polarities of the horizontal outcome dimension are the *rights-based*, where the law determines outcome, and the *interest-based*, where party interests determine outcome. These dimensions

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101. *Id.* at Table 4.
102. *See* TESLER, *supra* note 11, at 23-53.
103. Leonard L. Riskin, *Understandng Mediators'Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7 (Spring 1996).

and their polarities were drawn neither from the literature nor my own presuppositions, but rather from the data provided by the learners who participated in my research. The paradigm shift grid emerged from my analysis and interpretation.

The paradigm shift grid is two-dimensional. Its singular advantage over the bipolar, one-dimensional spectrum is that it is capable of more precisely describing the paradigm-in-practice of a learner before he or she embarks upon the training. Indeed, each participant in a training program could create his or her own grid by defining his or her perceived dimensions of change. It also provides a learner with a road map along which he or she must move. My description of the four lawyer practice behaviors that follows emerges from the CL literature,[104] my research data,[105] and my practice experiences.

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104. *See* TESLER, *supra* note 11; SHIELDS ET AL., *supra* note 11; CAMERON, *supra* note 11; GUTTERMAN, *supra* note 11; TESLER & THOMPSON, *supra* note 11; WEBB & OUSKY, *supra* note 11.
105. *See* Shields, *supra* note 2.

Figure 1: The Paradigm Shift Grid

Lawyer-directed

Lawyer-directed **Rights-based**	**Lawyer-directed** **Interest-based**
Rights-based	**Interest-based**
Rights-based	**Interest-based**
Client-centered **Rights-based**	**Client-centered** **Interest-based**

Client-centered
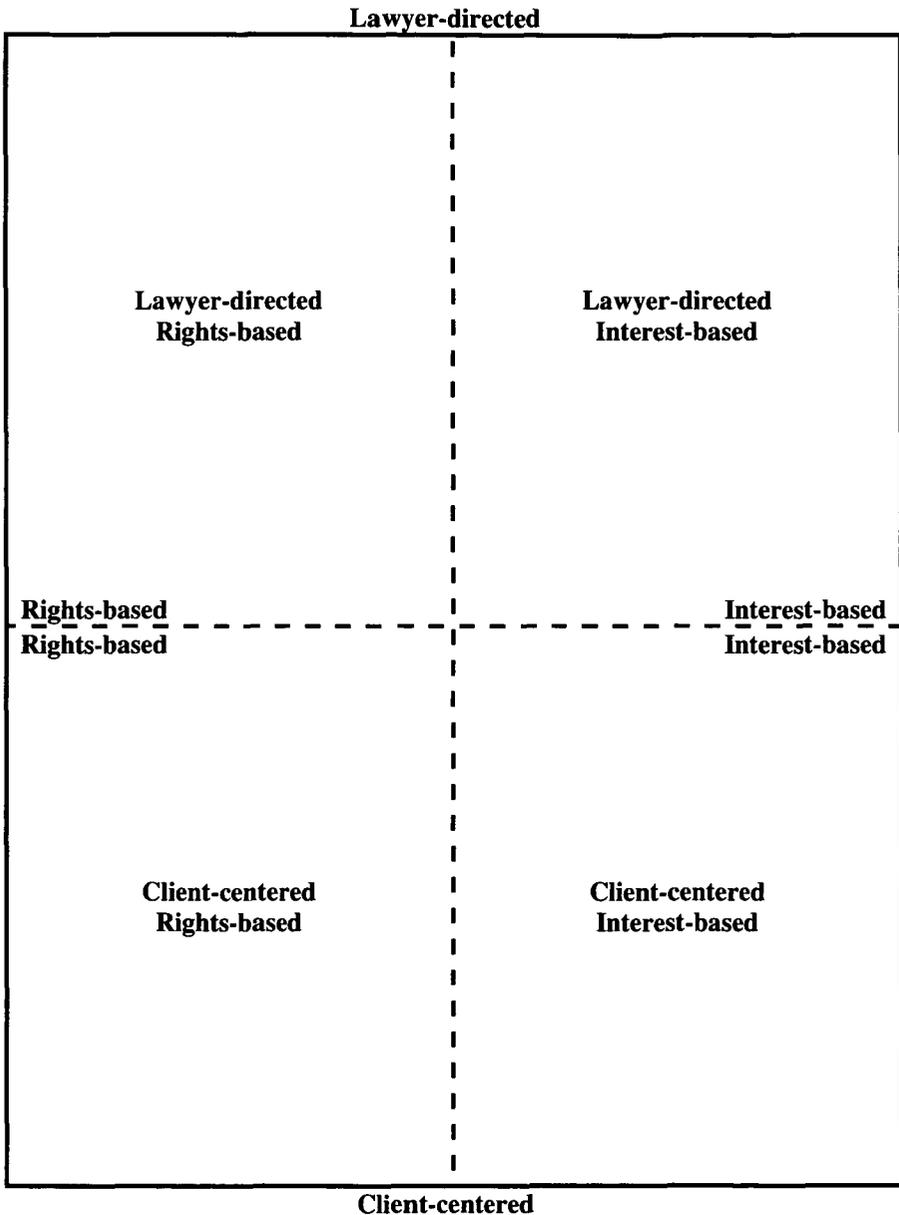
The figure is an adaptation of the figure that appeared in *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed* by Leonard L. Riskin, 1996, p. 35. Copyright 1996 by Leonard L. Riskin. Reproduced with permission of the author and the Harvard Negotiation Law Review.

A. *The Lawyer-directed Rights-based Lawyer*

The lawyer-directed rights-based lawyer manages the process. He or she designs it in consultation with the other lawyer without input from their respective clients. The lawyer speaks on behalf of the client and makes all the critical process decisions. The lawyer applies the law in determining the outcome appropriate for his or her client. In the event that an offer to settle is made that is other than what the lawyer believes a court would award, he or she recommends that the client instruct that it be rejected. If the client is still willing to accept an offer of this kind, the lawyer will likely still make the same recommendation and obtain written instructions from the client confirming the legal advice provided and rejected. These lawyers embody behaviors that are primarily adversarial.

B. *The Lawyer-directed Interest-based Lawyer*

The lawyer-directed interest-based lawyer manages the process in a way similar to that of the lawyer-directed rights-based lawyer. However, he or she exhibits a greater willingness to consult with the client within the process. The lawyer does so to ascertain the underlying needs, desires, fears, and concerns of the client. Interests are unlike the law as they are not universally prescribed but, rather, unique to that client. The outcome will not be based strictly on the applicable law as if it were the only option but, rather, upon the interests of the clients. These lawyers embody behaviors that are partially adversarial and partially collaborative.

C. *The Client-centered Rights-based Lawyer*

The client-centered rights-based lawyer involves the client in every aspect of process design and management. The client is not a passive observer but, instead, an active participant. The lawyer elicits from the client what is important for the client; the lawyer does not prescribe the process. Notwithstanding the client's active participation in the process, the appropriate outcome is still that which is dictated by the applicable law. It remains the standard of acceptability. The primacy of the law for this lawyer is the same as with the lawyer-directed rights-based lawyer. These lawyers embody behaviors that are partially adversarial and partially collaborative.

D. *The Client-centered Interest-based Lawyer*

The client-centered interest-based lawyer also prepares his or her client for direct engagement in the process. The lawyer facilitates client storytelling and agenda formation. As the outcome will be based on the interests of the parties rather than their strict legal entitlements, the lawyer probes for the client's underlying needs, desires, concerns, and fears. They brainstorm to generate creative options that satisfy those interests. Absolute compliance with the applicable law is not a prerequisite for an acceptable outcome. These lawyers embody behaviors that are primarily collaborative.

E. The Paradigm Shift

A learner may move from the upper left quadrant of the paradigm shift grid, a paradigm-in-practice more compatible with the adversarial, directly to the lower right quadrant, a paradigm-in-practice more compatible with the collaborative. Alternatively, the lawyer may move first to either of the upper right quadrant or the lower left quadrant and from there to the lower right quadrant. No precise paradigm shift can be fixed for any of these movements.

In his new grid, Riskin suggests that the mediator orientation may vary in accordance with context and setting.[106] The paradigm shift grid is likewise open to variation. Early in a CL case, a lawyer might hold tight rein over process decision-making, but once the parties acquire confidence and trust in the process, the lawyer may then allow the client to assume greater process management responsibility. Additionally, the relationship and substantive issues in dispute may influence the approach a lawyer applies to outcome determination. On parenting issues, an interest-based disposition may be acceptable, whereas with child support, the lawyer may be less willing to depart from a strict rights-based approach.

The paradigm shift grid supports my study's data analysis. As previously stated, none of the learners aligned themselves within the adversarial paradigm described at the outset of the workshop by the trainers. In fact, they were more predisposed to certain of the underlying assumptions of the collaborative paradigm, in particular that the lawyers and their clients should work together in settlement meetings to achieve a mutual gain outcome. If endorsing those beliefs was all that was required for the learners to become collaborative professionals, a paradigm shift was unnecessary as there was already a paradigm match.

The trainers did emphasize that the learners would have to *let go* of their tight grip on process management. This change in approach to practice represented a formidable challenge for most of my participants. It was paradigmatic in scope; it seemed antithetical to what they considered as the appropriate role of a lawyer in a dispute resolution process. For lawyers trained in the adversarial model—where the legislature, the courts, and the profession determine the procedure—it may seem contrary to their role and process assumptions to cede or share some of that exclusive authority with their clients.

Similarly, the invocation to consider outcomes not based entirely upon the applicable law, but rather on the interests of the parties, appeared counterintuitive. The lawyers' attachment to the law is reflected in their liability concerns, which in turn foster the need to write self-serving letters to clients who choose not to follow their legal advice. The learners expressed this anxiety in the training and in my interviews with them.

The paradigm shift grid describes *what* changes a learner must make to become a collaborative professional; it does not explain *how* they are made. It is the transformative learning experiences of the learner in training and beyond that foster or induce his or her paradigm shift within the grid.

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106. Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1 (2003).

IX. THE TRANSFORMATIVE LEARNING CYCLE

From his initial study of a transformative learning experience, Mezirow was able to identify ten stages in the transformation process.[107] As previously stated, I condensed these ten stages into four discrete phases: a disorienting dilemma, critical reflection, dialogue, and perspective transformation. This approach is likewise helpful in the analysis of the learning experiences of the learners who participated in my study. The path followed by these learners did not consistently follow the sequence enumerated by Mezirow.[108]

The data obtained from the learners revealed an array of prior life experiences that motivated them to change the ways in which they practiced, or at least to participate in training in an alternative process. Edward D. Taylor reviewed the published dissertations of other doctoral degree candidates who applied Mezirow's transformative learning theory in the contexts they chose to study.[109] I found his comments on these prior studies helpful in the analysis of my own research data.

Taylor observed that the prior learning experiences described by the learners in the studies he reviewed were more "individualistic, fluid, and recursive" than what might have been anticipated by applying Mezirow.[110] Similar to what Taylor concluded from his analysis of other transformative learning studies, the prior life experiences described by some of the research participants in my study appeared to meet the criteria of a disorienting dilemma, while others did not. The prior life experiences of my research participants, which induced them to attend a CL training workshop, were not necessarily the sudden, dramatic occurrences in their lives as a strict application of Mezirow's theory would suggest. In some instances, they were subtler and less overt. Still, those prior life experiences were sufficiently profound to motivate these learners to attend the CL training workshop. It may be more appropriate to describe these events in their lives in some other way, rather than to distort the meaning of the term, disorienting dilemma, when they do not fit the definition.

Three of the learners described considerable uneasiness with their chosen professional lives, particularly the adversarial aspect of their work. They were all very dissatisfied with the way in which they felt compelled to practice. One of them even contemplated leaving the practice of law altogether. Another described a physical illness, as did a representative of a practice group whom I interviewed as part of my research. Both of those persons sought a way to practice that was less stressful. They were the only persons I interviewed who described a prior life experience that could be characterized as a *triggering event*.

Another of the learners did not hold the same misgivings about his practice; he was motivated to attend the training to learn of a more efficient way to resolve family disputes than the adjudicative process. Still another felt that he was not

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107. *See* JACK MEZIROW, EDUCATION FOR PERSPECTIVE TRANSFORMATION: WOMEN'S RE-ENTRY PROGRAMS IN COMMUNITY COLLEGES, *supra* note 50.

108. JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51.

109. Edward D. Taylor, *Analyzing Research on Transformative Learning Theory*, in LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS (Jack Mezirow & Assocs. eds., Jossey-Bass 2000).

110. *Id.* at 292.

living up to the expectations of the profession and the public as to what a family lawyer should be doing, namely going to court. The prospect of a law practice more compatible with what he did, rather than what others thought he should be doing, influenced him to attend. While both of these learners acknowledged being settlement-oriented in their work, they did not appear to share the same distaste for adversarial practice, as did the three described above.

Among the learners who participated in this research, the data reflect considerable diversity among them in terms of the extent to which they reflected on their underlying assumptions, whether in training or in practice. The criteria for the critical reflection contemplated by Mezirow were not always or even consistently met.[111] However, their reflections were in another sense critical to the learners, if critical means important; reflection is an important contributor to their continuing education and professional development. They reflected on their case experiences, from which they derived some learning. These reflections are *reflections-in-action* described by Donald A. Schön.[112] They are practical or pragmatic rather than critical or theoretical.

In training, each of the learners reflected to some degree on his or her underlying assumptions in response to the discussion facilitated by the trainers. Five of the learners were consistent in their response to the presumptive paradigm, which was the adversarial paradigm described by the trainers. It did not accurately describe what they thought or how they practiced. They shared the view that the assumptions underlying the CL process were consistent with what they already believed. Only two of the learners understood what differentiated collaborative practice from the traditional—first, the need to let go of the tight hold on process management, and second, the necessity of recognizing that the law provides one but not the sole outcome option.

In my thesis and this paper, I use the term *reflection-in-practice* to describe the reflection that practitioners undertake in the course of their professional work. The reflections-in-practice of these learners were primarily practical. The experiences they described raised questions as to how to do collaborative work effectively and how to develop a CL practice. They tended to be *practice-based* reflections, by which I mean reflections on the way they practice, as opposed to *theory-based*, which considers why they practice the way they do. Their reflections-in-practice were not critical reflections.

Among the learners, only three recorded their reflections. Two made notes in the journals I provided. Although more practice- than theory-based, the notes were evidence of an effort by those learners to associate their practice experiences with what they learned in training. The other learner wrote a letter to a friend describing the workshop she had attended. She found that describing her learning in writing to another helped to consolidate her understanding.

The contexts in which the learners experienced critical reflection varied. All of them reflected on their process assumptions in training, as they were directed to do so by the trainers. Three learners did so as well in the course of practice. After the workshop, two attended a second level of training with the same two trainers

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111. *See* JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51.
112. DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (Basic Books 1983).

within a month of the first training, while two others did so one year later with one of the same trainers. Of these four learners, three reconsidered their underlying assumptions, while the other looked upon this further training as primarily skills-based.

Only two of the learners recognized that, to develop a CL practice, not only did they have to adopt other practice assumptions, they also needed to commit to this type of practice, thereby completing the affective learning objective. Once they had overcome that hurdle, a CL practice seemed more viable. While the other four learners understood the benefits of a CL practice, they could not look beyond the barriers to its implementation.

The two learners who appeared to best understand the practice assumptions they needed to change also seemed to benefit most from interaction with their peers. For each of them, this appreciation of dialogue began in training and persisted in practice, with at least one other lawyer with whom he or she had a continuing relationship. For one, those conversations were with a colleague of long standing, and for the other, they occurred with her law partner. These two *dialogue partners* were the same persons whom the learners invited to participate in our third interview. Their conversations were not confined to how to practice CL as, for example, how to get clients, how to prepare them for active participation, and how to negotiate with the other CL lawyer. Rather, they extended to the nature of the CL process as well—what it means to be collaborative, the appropriate role for lawyers, and the application of the law.

The learners engaged in dialogue with each other in training. For some, dialogue with peers about CL continued in the context of their participation in practice groups. They participated in dialogue with persons chosen by them in their third interviews with me. In ascertaining the impact of dialogue on their learning, I am guided by another observation of Taylor—that Mezirow gave insufficient attention to the impact of relationships with others in the process of perspective transformation.[113]

Two learners engaged in dialogue on CL beyond the basic discussions about practice experience and development. They also considered the theory of CL and its underlying assumptions. These conversations were with persons with whom they had enduring relationships of trust and confidence. The other dialogues I observed in the course of my study appeared less exploratory.

The context in which dialogue occurred influenced the content of the discussion. In training, the trainers provided the topics and set the timelines for dialogue. Accordingly, these conversations tended to be broader in scope. In practice, dialogue was more often restricted to practice development and experience. These constraints limited the impact the dialogue might otherwise have had on the learning of my research participants.

The practice group offered an appropriate context within which a dialogue on the essence of CL might have occurred. Only three of the learners regularly attended meetings, but they all found the dialogue helpful because the practitioners who attended these sessions had a common interest in CL. However, the practice groups did not emerge as centers for continuing learning about collaborative practice. The promise of serving a purpose beyond administration and practice devel-

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113. *See* Taylor, *supra* note 109, at 306-309.

opment remained unfulfilled. The focus of the dialogue that occurred within those settings was primarily practice-oriented.

To ascertain the extent to which the learners who participated in this study may have achieved a perspective transformation, I constructed chronologies of their learning and practice experiences using the sequential structure that Mezirow applied to the population of learners he observed in his original study.[114] For this paper, I limit my analysis to three of the six participants, whose learning experiences following training present a spectrum of possibilities.[115]

The first of these learners is a sole practitioner. A family member who was a CL lawyer already encouraged him to attend a CL training workshop. Because this learner was settlement-oriented and rarely took any of his cases to trial, the description of the process coalesced with his approach to practice.

Although the learner attended the CL training, he did not commit to practicing CL. Upon returning to his professional context, he resumed his practice as before. He informed few new clients about CL; he did not take the second level of training; he did not read anything more about CL; and he did not join the practice group in his community. Other than the interviews in which he participated for this study, he rarely spoke to anyone about CL. Over the course of the twelve-month period following his training, he did not have a single CL case. He was not committed to becoming a collaborative professional; in fact, he seldom thought about it. He felt no different than he had before the training.

The learning experience cycle for this learner was as follows:
1.   Speaking with a family member within his professional context
2.   Attending first level of CL training
3.   Returning to his professional context with no subsequent learning

This learner neither made a paradigm shift nor achieved a perspective transformation. He claimed that he substantially held the assumptions underlying the collaborative process prior to the training; it simply reinforced what he already believed. For him, it was a paradigm match. He did nothing to further his development toward becoming a collaborative professional. He was no more committed to CL one year after the training than he was before.

While this learner's underlying assumptions about conflict and the role of lawyers were, and likely continued to be, compatible with those of collaborative professionals, I discerned no adoption of the requisite process and outcome assumptions. Furthermore, the absence of commitment to becoming a collaborative professional precludes perspective transformation.

The second of these three learners discovered CL at a national family law conference where she attended a workshop presented by Tesler. She became envious of the type of practice Tesler described. It inspired her to attend the first OCLF conference in 2003. She also began to read a book on CL, and she joined

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114. *See* JACK MEZIROW, EDUCATION FOR PERSPECTIVE TRANSFORMATION: WOMEN'S RE-ENTRY PROGRAMS IN COMMUNITY COLLEGES, *supra* note 50; JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING, *supra* note 51.

115. *See* Shields, *supra* note 2. I gave all of my research participants pseudonyms to preserve their anonymity. The three learners whose stories I summarize in this paper were Hal, Iris, and Joan.

the practice group in her community prior to attending the CL workshop. In training, she did not entirely accept the underlying assumptions of CL. In fact, she was skeptical, particularly of the viability of collaborative problem-solving with some of her clients. She was more guarded in her acceptance of the CL process; she had to see it work in practice.

Upon returning to her professional context, she attended some practice group meetings. Although she was unable to attend them regularly, those that she did attend were helpful, particularly as she participated more in the discussions than was customary for her. As an employee of a law firm, she received no support from her employers to develop a collaborative practice. She exercised caution about CL with a wait-and-see rather than proactive attitude.

Over the course of the twelve-month period following her training, this learner also did not have a single CL case. She informed her clients about the process although she did not sell it aggressively. She continued to attend some practice group meetings. She participated in the second level of CL training one year later. It left her less enthusiastic about CL. Still, she wanted to offer CL as a process option. After one year, she was unwilling to commit to a timeline for becoming a collaborative professional exclusively. As with the first learner, she similarly did not feel any differently than before her training.

The learning experience cycle for this learner was as follows:
1. Attending a CL workshop at a national law conference
2. Attending an OCLF conference
3. Becoming a member of a CL practice group
4. Reading a book on CL
5. Attending first level of CL training
6. Returning to her professional context
7. Participating in dialogue at practice group meetings
8. Informing clients of the CL option
9. Attending second level of CL training
10. Continuing membership in CL practice group

As with the first learner, this learner made neither a paradigm shift nor a perspective transformation. Unlike with the first learner, however, there was not even a paradigm match. She did not accept the underlying assumptions of CL unequivocally. After her initial training, she appreciated the client-centered nature of the process, which is an important first step toward making a paradigm shift. However, after one year, she continued to remain skeptical about the process, and she was unwilling to commit to CL or even a timeline for becoming a collaborative professional.

The third of these three learners learned of the CL process from a collaborative lawyer in her community. She purchased and read a book on CL. Her initial reaction to this process was that it represented the way in which she already practiced. Subsequently, she had a discussion with another CL lawyer and, as a result, she decided to attend the workshop. Another factor influenced her decision to participate. In the previous year, she received a diagnosis of a physical illness, which she attributed in part to her work. She then resolved to make some changes in her work to reduce the stress she associated with her practice.

At the outset of the training, she felt much the same as she did when reading the book; the trainers simply described what she already did in practice. As the workshop progressed, she recognized that certain aspects of the process were different. It required an early commitment by the client, and the lawyer had to restrain him or herself from assuming control. She felt at ease with the client making the important decisions on matters that affected the client. However, she struggled with the responsibility of the lawyer to provide legal advice in this setting, particularly in circumstances where she felt the client might make a bad decision. Relinquishing control over the process would also constitute a significant shift for her.

Upon returning to her professional context, this learner and two of her partners, who had also attended the training, discussed how they might establish a practice group in their community. She spoke with other lawyers whom she thought might be interested in CL. One month following her initial training, she attended the second level of training offered by the same trainers.

This learner continued to wrestle with the CL model in the months after her two formal learning experiences. Letting go of the decision-making responsibility clearly concerned her. She was a cautious practitioner. She had to be certain that this aspect of CL practice was professionally acceptable before she could make a commitment to CL. She was not unlike the previous learner, who also needed to see how the process worked in practice before she could commit to it.

During my second interview with this learner, she read from the journal that I had provided to her. Unlike the two other learners described above, she recorded observations of her practice experiences in the journal, which she related to her learning. At that point, she was still not prepared to make a commitment to this process.

Within her community, this learner became actively involved in the development of a practice group which had not existed prior to her involvement. She was also a member of another practice group, which provided a forum for her to take practice problems for discussion. In her own firm, she carried on an active dialogue with both of her partners, only one of whom shared the same interest in CL. It was the other of her two partners who participated in the dialogue at the third interview. They had built a relationship of trust over the course of their professional association, which enabled them to engage in an intense dialogue when they were not of the same mind. It was apparent that they did not share the same view of CL.

After more than eight months had elapsed following her training, this learner described herself as still "on the fence." Her role as a lawyer providing legal advice to her client in a collaborative setting continued to present a problem for her. However, she believed herself to be more client-driven in her approach than before the training. Notwithstanding her efforts, she had only two CL cases in the twelve-month period following her training. She found them challenging, particularly figuring out the boundaries as to when she should assume control over the process. She attended an IACP conference; she registered for the next OCLF conference; and she remained an active participant in her two practice groups.

One year after her initial training, this learner described herself as definitely subscribing to the collaborative perspective in all of the underlying assumptions. The reservations she formerly held regarding the role of the lawyer in the process were no longer a concern. She committed herself to the collaborative process.

This leaner returned to a professional context unlike the other two learners above described. While not an employee, she was still a member of a law firm. As a partner, she had more freedom to develop the type of practice that she wanted than did the second learner. However, the freedom to practice CL was not absolute, as it was for a sole practitioner like the first learner.

The learning experience cycle for this learner was as follows:
1.   Disorienting dilemma—diagnosis of physical illness
2.   Dialogue with two colleagues who were collaborative lawyers
3.   Reading a book on CL
4.   Attending first level of CL training
5.   Returning to her professional context
6.   Dialogue with her partners and other lawyers
7.   Attending second level of CL training
8.   Returning to her professional context
9.   Recording reflections in her journal
10.   Becoming a member of her first CL practice group
11.   Forming and becoming a member of her second CL practice group
12.   Conducting two CL cases
13.   Attending IACP conference
14.   Attending meetings of both CL practice groups
15.   Dialogue with members of the practice groups and other lawyers
16.   Committing to become a collaborative professional

Unlike the two other learners considered above, this learner appeared to have made a paradigm shift and a perspective transformation. While she described herself as being primarily in accord with the underlying assumptions of the collaborative process model from the outset, she admitted to struggling with the role of the lawyer and, in particular, providing legal advice. Her shift occurred incrementally over the course of the year following her training.

From my data, I sought to create an instrument that might be useful to other trainers and their learners. Toward that end, I relied upon the *experiential learning cycle*, which Kurt Lewin conceived and David A. Kolb subsequently integrated with other learning models created by John Dewey and Jean Piaget.[116] The Diploma in Adult Education program offered by St. Francis Xavier University uses the experiential learning cycle in their learning design model.[117] I adapted the Lewin-Kolb/StFX experiential learning cycle to form my *transformative learning cycle*, which appears as Figure 2.

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116. *See* DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (FT Press 1983).
117. *See* St. Francis Xavier University, *supra* note 31.

Figure 2: The Transformative Learning Cycle
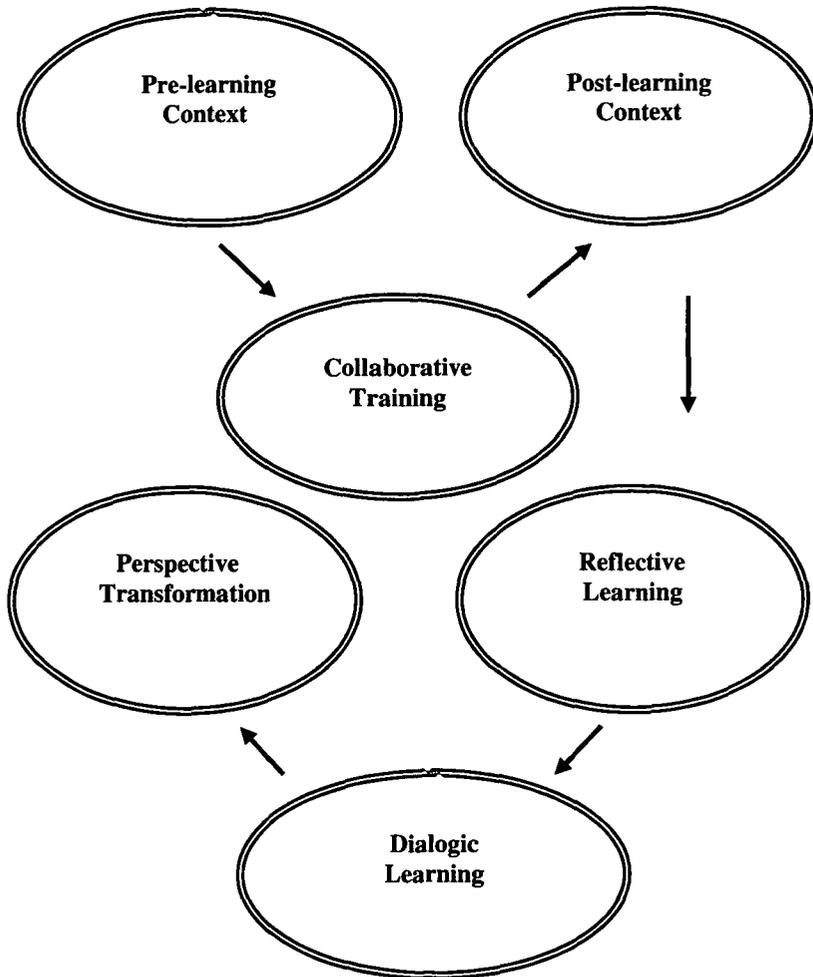
The figure is an adaptation of the figure that appeared in Experiential Learning: Experience as the Source of Learning and Development, by David A. Kolb, 1984, p. 42, copyright 1984 adapted with permission of the author Pearson Education, Inc., Upper Saddle River, NJ, and an adaptation of the figure that appeared in Diploma in Adult Education by St. Francis Xavier University, 2003, Module 4, p. 79, copyright 2003 by St. Francis Xavier University, with permission of the author.

A. Pre-learning Context

The first stage in the transformative learning cycle occurs in the pre-learning context of the learner. A disorienting dilemma may influence the practitioner's decision to make some change, or, alternatively, the practitioner may simply be dissatisfied with his or her work and open to considering other possibilities. In some instances, there may be a single triggering event. What the data reveal is that an experience or feeling within the pre-learning context of the learner motivates him or her to attend the training.

Underlying the professional context of a prospective learner is a set of assumptions upon which his or her practice is grounded; they constitute his or her paradigm-in-practice. The assumptions underlying a learner's paradigm-in-practice may or may not be congruent with the presumptive paradigm, which the trainers describe for them.

B. Collaborative Training

The collaborative training forms the second stage in the transformative learning cycle. It occupies the place in this cycle that the *concrete experience* holds in the Lewin-Kolb experiential learning cycle. The collaborative training and concrete experience fulfill a similar role in their respective cycles——inaugurating the learning cycle. If properly constructed and presented, they can stimulate the curiosity of learners and inspire them to learn more. They provide the platform for subsequent reflective and dialogic learning. Neither the training in its entirety, nor any learning experience within it, purports to answer all of their questions. The learners have only begun their pilgrimage; they are still far from their destination.

C. Post-learning Context

While some learners remain within a formal learning setting by proceeding into some other formal continuing education program, most return to their post-learning contexts following their training. For some learners, the training simply does not resonate, and they return to their practices with process knowledge and perhaps some skills that may serve them well in their work. Even if they sincerely desire to convert to a CL practice, they are extremely cautious. They take no positive steps toward effecting the change. It is as if the macro paradigm shift must be complete or well-advanced before their micro paradigm shift can begin. They remain in their post-learning contexts, unable or unwilling to move along the transformative learning cycle.

With other learners, training represents the beginning of their learning experiences. Their post-learning context activities may involve one or more of the following: forming a new practice group or becoming a member of an existing practice group; developing their CL practices; describing and recommending CL; talking with other CL lawyers; conducting their first CL cases and debriefing after; reading about CL; attending CL conferences; and participating in further CL training. They formulate a strategic plan for change.

The learning activities that occur in this stage predispose the learners to the learning that occurs in the stages that follow. Without these learning experiences,

reflective and dialogic learning seem less likely. The transformative learning cycle is neither linear nor sequential. What happens in one stage overlaps with what occurs in another.

D. Reflective Learning

As the learners undertake activities described in the preceding stage, they create opportunities for critical reflection, which is the fourth stage in the transformative learning cycle. The mere performance of those activities will not by itself generate learning. Rather, it is through reflection that experience acquires meaning. Reflection is not an innate skill. As with other practice behaviors, some preliminary training on how to reflect would likely be beneficial. While debriefing is an effective instrument, that alone may be insufficient. It could be helpful for learners if trainers incorporated reflective learning practices in their training, a subject I address in the next part of this paper.

In practice, learners can apply various techniques to facilitate their reflective learning. They could just quietly reflect on their own about the meaning of their experiences. Alternatively, they could take that activity one step further and actually record their observations and reflections in a journal. Reading supplementary literature, attending professional conferences, and participating in further training are also conducive to critical reflection.

E. Dialogic Learning

At such time as a learner reaches out to others in dialogue, he or she enters into the fifth stage of the transformative learning cycle. Frequently, the learner engages in this form of dialogue with other members of their practice community. Many practitioners only engage in these conversations when there is an element of mutual trust and confidence between the dialogue partners. The CL practice group has become a useful setting for dialogue of this kind. Practitioners form these associations with other like-minded professionals.

While dialogue on CL case experiences does comprise an important contribution in the professional development of the members of a practice group, to be transformative, this dialogue must transcend exclusive preoccupation with how to practice. Dialogic learning emerges when participants extend the purview of their conversations toward the underlying assumptions of the CL process. Their dialogue assumes this character when they ask why they are doing what they are doing. As with reflective learning, it could be helpful for learners if trainers incorporated dialogic learning practices in their training, a subject I address in the next part of this paper.

Practitioners have ample opportunities to engage in dialogic learning in the course of practice. The collaborative process model requires that the participating lawyers debrief with each other and their respective clients following each settlement meeting. The members of a practice group meet periodically both at dinner meetings and informally over brown-bag lunches. These occasions provide appropriate settings for this form of dialogue. Again, attendance at professional conferences and further training workshops present possibilities for interaction with fellow learners.

F. Perspective Transformation

Reflective and dialogic learning are the necessary preconditions for the sixth and final stage of the transformative learning cycle. These learning experiences enable learners to recognize the distortions that underlie their prior assumptions. The adoption of other meaning perspectives, which are congruent with CL and the commitment to become a collaborative professional, constitute perspective transformation and complete the transformative learning cycle.

X. CRITICAL REFLECTION AND DIALOGUE

Critical reflection and dialogue contribute to the realization of a prescriptive transformation. The learner is responsible for his or her own reflective and dialogic learning in practice. However, a trainer can introduce workshop participants to these skills in training.

Stephen D. Brookfield and Patricia Cranton describe a critical reflection exercise called *critical incidents*.[118] It begins with the trainer asking each of the learners to identify an incident that was of some significance to him or her.[119] Instructions are provided as to the kind of incidents to be selected and the details as to context and content to be included in their narratives.[120] The learner describes his or her critical incident in a one- or two-paragraph written statement.[121]

Each of the learners finds two other learners with whom to form a triad.[122] They take turns reading aloud their respective descriptions. The two listeners identify the assumptions about the experience of the narrator.[123] The assumptions analysis for each learner should initially be on two levels: "(1) What assumptions do you think inform your colleagues' choices of significant incidents—what do their choices say about their value systems? (2) What assumptions underlie the specific actions they took in the incidents described?"[124]

The learner comments on the accuracy and validity of the listeners' insights on the learner's assumptions.[125] The listeners respond to the learner's assessments.[126] The participants in the triad should also look for commonalities and differences in the assumptions they identify and describe.[127] Finally, the two lis-

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118. *See* BROOKFIELD, *supra* note 69, at 97-100; *see also* Stephen D. Brookfield, *Using Critical Incidents to Explore Learners' Assumptions*, in LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS, in JACK MEZIROW & ASSOCIATES, FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING IN MEZIROW, *supra* note 51, at 177; *see also* CRANTON, *supra* note 55, at 184-186.
119. *See* BROOKFIELD, *supra* note 69, at 97.
120. *Id.*
121. *Id.*
122. *See* Brookfield, *Using Critical Incidents to Explore Learners' Assumptions*, in LEARNING AS TRANSFORMATION: CRITICAL PERSPECTIVES ON A THEORY IN PROGRESS, *supra* note 118, at 182.
123. *Id.*
124. *Id.* at 182-83.
125. *Id.* at 183.
126. *Id.*
127. *Id.*

teners may ask for further information about the critical incidents described by each of them.[128]

"[W]hen one considers the fact that skills involved in critical reflection are not as valued, and therefore taught or practiced minimally in the action-oriented workplace, it is not surprising that these skills are generally underdeveloped among workers, regardless of personal style differences."[129] The critical incident method provides an effective instrument for learning how to critically reflect upon an actual practice experience of the learner.

Marilyn E. Laiken is a faculty member at the Ontario Institute for Studies in Education of the University of Toronto ("OISE/UT") where I undertook my doctoral degree studies. She served as my doctoral thesis supervisor. Dialogue is a subject of particular interest to Laiken, as an adult educator in the graduate degree courses she teaches and in her own academic research.[130] The implementation of effective dialogue in an organizational or professional setting is challenging. Laiken observes that: "[O]ne of the key barriers is a disinclination to engage in open dialogue that holds the potential for conflict."[131] Conflict aversion is not uncommon among even those professionals whose role is to facilitate the conflict management and dispute resolution of their clients, as with CL lawyers.

In a course I took with Laiken, she divided the class into small dialogue groups. She provided us with reading material on a subject of common interest. She directed each dialogue participant to formulate a perspective on that topic. Rather than subordinate our own views, we were to advocate them. Laiken instructed us neither to dismiss nor dispute the opinions of others. Instead, we were to ask questions for the purpose of acquiring an understanding of the perspectives of others, while seeking feedback on our own perspectives.

The non-participating members of the class formed a circle around the dialogue group, and Laiken took detailed notes. In the debriefing sessions that followed, all in attendance participated. The purpose of these dialogues was not to confirm or validate any point of view. Rather, it was about raising the level of understanding by all participants on the subject of their common interest.

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128. *Id.*

129. Marilyn E. Laiken, *Managing the Action/Reflection Polarity Through Dialogue: A Path to Transformative Learning*, presented at the Higher Education Research and Development Society of Australasia ("HERDSA") Conference, Perth, Australia, July 8, 2002.

130. *See* Marilyn E. Laikin, *Collaborative Processes for Collaborative Organizational Design: The Role of Reflection, Dialogue and Polarity Management in Creating an Environment for Organizational Learning*, 15 ORGANIZATIONAL DEV. J. 35, 37 (1997); Laiken *supra* note 129.

131. *See* Laiken, *supra* note 129, at 7.

XI. CONCLUSION

Becoming a collaborative professional requires training. In their workshops, trainers inform the participants of the need to make a paradigm shift from an adversarial to a collaborative approach to dispute resolution. The literature offers some insight into the nature of paradigms and paradigm shifting. While it describes these phenomena from both a macro and a micro perspective, trainers tend to focus upon the individual practitioner and the paradigm shift he or she must make to become a collaborative professional.

Trainers differentiate between the adversarial and collaborative paradigms; each of these dispute resolution models is grounded upon its own underlying assumptions. For my thesis and this paper, I clustered these assumptions into four sets: conflict assumptions, role assumptions, process assumptions, and outcome assumptions. To make a paradigm shift, a learner must adopt the assumptions on which the collaborative approach to dispute resolution is based.

In my case study, I began by observing a CL workshop. Six of the participants volunteered to participate in my research. Over the twelve-month period following their training, I met with each of them on four occasions. To analyze my data, I chose transformative learning as my interpretive lens. Two instruments emerged from my study: the paradigm shift grid and the transformative learning cycle.

The adversarial paradigm was not the paradigm-in-practice for my research participants. They described a practice orientation that was more collaborative than adversarial. Two aspects of the way in which they practiced required some change: process management and outcome determination. The paradigm shift grid is a visual aid which situates the learner in a particular quadrant at the outset of his or her learning and illustrates the change he or she must make to become a collaborative professional.

The transformative learning cycle describes how the learner makes this change. It begins in his or her pre-learning context; the learner has some motivational experience that induces him or her to take collaborative training. After training, the learner returns to his or her post-learning context where transformative learning will or will not occur. If the learner values this learning, he or she will form a plan of action for change. Through critical reflection and dialogue, the learner questions his or her assumptions. With the commitment to collaborative practice, the transformative learning cycle is complete.

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