An End to Lawyers? Implications of AI for the Legal Profession

Speech delivered by Morry Bailes, President of the Law Council of Australia at the Australian Defence Seminar, Australian Defence College, Canberra.

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Thank you to the organisers for inviting the Law Council of Australia to participate in these discussions.

I acknowledge the traditional custodians of the land we are meeting on as part of the world's oldest continuing cultures and pay respects to their Elders past, present and future.

The topic I have been asked to speak on relates to how other professions intend to handle new Artificial Intelligence – that is, AI - technology. The provocative question posed is whether AI will bring an end to lawyers.

The implications for the legal profession of technological change, including AI is a topic that I have been asked to cover in a number of different forums throughout my tenure as Law Council President, though none quite so ominous perhaps as a seminar on *Artificial Intelligence, Robotics and the Future of War*.

But I believe that my message will be consistent, regardless of the context.

I recently convened a Law Council summit on the future of legal profession, which brought together leaders of the profession, academics, members of the judiciary, legal practitioners, regulators and technology innovators. We looked at issues that will be significant in shaping the future of the profession, through the lenses of: the experience of consumers of legal services; the characteristics of the profession itself; and the ethical and regulatory environment that surrounds the profession, the practice of law and the provision of legal services.

Technological innovation was recognised as a significant driver of change across all three of these lenses, although it was not seen as the only significant driver.

What I was looking for from our summit were insights into the key policy questions the Law Council, as the national peak body for the legal profession, needs to address to help shape and facilitate (and manage the risks arising from) the transformations that are now happening in the practice of law and provision of legal services.

We know a lot has been said by futurists and other commentators about 'big trends' facing the legal profession in the years to come that will fundamentally change the profession and the way law is practised. The number of these 'trends' varies from commentator to commentator – sometimes three, sometimes nine and sometimes ten 'ground-breaking' trends are said to be evident. Also, sweeping statements abound – "digital transformation is revolutionising every industry – product and service industries alike"; "relentless disruption"; "the legal profession is undergoing a paradigm shift"; and "legal hyper-change becomes the rule, not the exception".

Of course these kinds of statements are just not particularly helpful. Something we very quickly realised is that we have to step back from the hype of commentators and futurists that surrounds new technology and take a deeper look at what is really happening.

Consumer perspective

From the consumer perspective it is said that community expectations are changing as a result of the digital revolution. If people can book appointments with the doctor or hairdresser on-line 24/7, if they can transact electronically with product and service providers, and if they can have documents and reminders sent directly to their electronic devices, why shouldn't they be able do the same when it comes to accessing legal

services? The picture painted is that people are becoming more familiar with, and expect, mobile and flexible services, designed around the way they work and live.

Yet the reality is there is still a significant digital divide in Australia. The Australian Digital Inclusion Index 2017 reported that in general Australians with low levels of income, education, and employment are significantly less digitally included – and the gap between low and high income households has widened, as has the gap between older and younger Australians. Also, particular geographic communities experiencing digital exclusion.

These findings suggest that when looking at how technology might improve access to legal services, and access to justice more broadly, we cannot presume all consumers will have the same technology experience. There is a disparity amongst the community about access, affordability and digital ability.

From our perspective, there will still be a place for the traditional "bricks and mortar" personalised legal services model, especially among those members of the community experiencing digital exclusion.

Artificial intelligence

We recognised that the term *Artificial Intelligence* is not especially helpful to us when thinking about the impact technology-based legal tools will have on legal services consumers and the legal profession.

The Australian Human Rights Commission released an Issues Paper in July this year on *Human Rights and Technology*, which pointed out there is no universally accepted definition of AI. Instead, AI is a convenient expression that refers to a computerised form of processing information that more closely resembles human thought than previous computers were ever capable of. That is, AI describes 'the range of technologies exhibiting some characteristics of human intelligence'.

However, a distinction needs to be made between "narrow AI" and "artificial general intelligence":

- 'Narrow AI' refers to today's AI systems, which are capable of specific, relatively simple tasks – such as searching the internet or navigating a vehicle.

- 'Artificial general intelligence' on the other hand, is largely theoretical today. It would involve a form of AI that can accomplish sophisticated cognitive tasks on a breadth and variety similar to humans. It is difficult to determine when, if ever, artificial general intelligence will exist, but predictions tend to be between 2030-2100.

The Commission's Paper went on to note that AI applications that are being integrated into daily life today are examples of narrow AI. These include applications and tools such as chatbots, natural language processing tools that allow us to book taxis and make appointments, and tools that guide the user through decision-making trees and making choices when filling in forms.

There are many technology-based products and services that can be used by consumers without the involvement of a legal practitioner that are examples of narrow AI. These include web-accessed products that use interview technology to guide the user through the process of preparing relatively straight-forward legal documents such as wills, or documents to create and manage partnerships, trusts and companies.

Other examples include legal chat services, guided legal information tools based on common questions and answers, and tools that assist a self-represented person who intends to plead guilty to a charge to prepare a document to assist the court in its sentencing decision.

Law practices can and do also use these kinds of tools. Law practices are also increasingly utilising "back-office" technology products to assist in file and document management, identification and management of conflicts of interest between clients and in data analytics to examine large volumes of documents and emails as part of the discovery process in litigation.

While these technology-tools can improve efficiency and reduce the cost of legal services, we need to keep in mind the limitations and risks of relying too heavily narrow AI based tools.

Limitations, risks and challenges

One of the limitations is that, in general, the community's knowledge of the law and the legal process is variable – while people are aware that they have obligations, rights and protections under the law, they may not know the intricacies sufficiently well enough to traverse the labyrinth of legal principles required to advocate for the protection of their rights. The current crop of technology-based tools can assist in straight-forward tasks but is not capable of dealing with the complexity and nuances of the law and its application to the unique and complex circumstances of individuals. So the 'usefulness' of a particular technology-based tool is very much specific to the individual.

Another way of putting this is that we need to keep in mind that the practice of law is essentially a human practice. Providing legal advice and legal services is not a transactional process that can be completely, if ever, automated through technology.

As a former Chief Justice of Queensland noted, the relationship between the lawyer and client is not like the relationship of supplier to consumer or vendor to purchaser.

It is a relationship in which the lawyer needs to understand and appreciate the particular circumstances, perspectives and objectives of the client, and the client accepts that the lawyer will apply knowledge and skills to ethically guide the client's matter through the legal process and system.

Firms all around the world have improved the way they conduct legal research by using systems like 'Ross'. Developed by IBM, it is a tool that allows legal practitioners to use natural language and ask questions, rather than use keywords.

Ross then provides citations and suggests topical readings from a variety of sources.

These types of systems are designed to simulate human thinking, but not creative or independent thought.

Both of these qualities are essential for the legal profession and legal practice.

Artificial intelligence is incapable of developing creative legal arguments that are needed in both contentious and non-contentious matters. Its ability of interpreting data is also extremely limited.

Although 'robots' might come up with a shortlist of relevant precedents, statutes and regulations, they lack the ability to make a persuasive argument that takes the context into

account, the individual circumstances of a client and most importantly the human experience.

From making the argument to a lender to reconsider repossessing a home of a client who is facing financial hardship, to acting on behalf of a state in an international commercial court, expert argument is required to show the complete picture. Without this, decision makers and the judiciary will be unable to dispense justice effectively.

No algorithm exists to replace lawyers and the work they do.

Regulating the use of technology

From a regulatory perspective, we recognise that regulation of the legal profession and the provision of legal services has, generally speaking, evolved in response to problems after they have emerged.

One of our key challenges as a profession is to work toward shaping a regulatory and ethical framework that is not simply reactive, but which fosters and accommodates innovation, so that the benefits of developing and deploying new technology-based tools, as well of new ways for lawyers to work, organise and provide legal services, are encouraged and realised.

In looking at regulatory responses to the growth of technology and new ways of working in the legal services industry we must ensure that we do not 'regulate-away' the benefits for consumers, courts and the profession, nor should we stifle innovation and competition.

If we are too conservative, we run a risk of devising overly protective and controlling regulatory measures.

On the other hand, regulation of the legal profession and the provision of legal services serves the public interest and protection of consumers by ensuring quality, of both the knowledge and skills of legal practitioners, and the services they provide.

Maintaining quality therefore means turning our attention to particular risks and challenges with technology-based legal products and services. For example:

- how might we ensure that technology-based tools and services are the product of the application of highly specialised legal knowledge and skill by their creators?

- to what extent might legal practitioners be held responsible and accountable for the legal correctness of the technology-based products they use;

- how might we ensure that a technology-based tool, particularly one that is designed for consumers to use without the concurrent advice of a legal practitioner, is actually fit for purpose;

- how might we ensure that technology-based tools remain current given that the law is constantly developing;

- should a consumer be indemnified (and if so, how) if a technology-based product fails to deliver a legally correct and valid outcome;

- how do we ensure that technology-based tools and new ways of working in law appropriately protect client confidentiality, avoid conflicts of interest, and meet other ethical duties;

- how do we ensure that lawyers using technology-based tools have a sufficient understanding of what such tools do, how they work and, hence, what their limitations are? While this might not require lawyers to be able to write or read computer code, it does require a degree of technological literacy.

Will AI bring about the end of the legal profession?

Returning now to original question – will AI bring about the end of the lawyers, my answer is an unequivocal "no".

Technology-based legal tools – and other drivers – are bringing about positive change in the profession, the practice of law and the value proposition for consumers.

A partner of one of Australia's largest law firms noted that most, if not all, large law firm partnerships are not only cognisant of the need to embrace innovative practices, but to demonstrate leadership in the development of technologies and strategies to improve outcomes for clients and solicitors. For instance, large Australian law firms have in recent years:

- embraced artificial intelligence and virtual workspaces to improve the efficiency of legal services;

- partnered with research institutions to establish research centres focused on technology and law;

- established research and development teams within firms to oversee and develop innovative practices and technologies to meet client challenges;

- created legal practices to support start-up companies;

- launched new technologies for legal practice;

- offered training to lawyers in computer coding; and

- partnered in such activities as 'hackathons', where students and lawyers work together to develop innovative responses to complex legal problems.

So the bottom line for the profession is that technological change is a positive. It provides opportunities to improve the quality and reduce the cost of legal services, it provides opportunities for law practices to expand the range and connectedness of services; it provides new ways for legal practitioners to work and organise themselves, it provides new ways to interact with clients and it provides opportunities for consumers to undertake straightforward legal transactions themselves without always needing to resort to a legal professional.

Our challenge as a profession is to embrace the benefits of technological innovation and change while also recognising and accommodating the limitations and risks.

We need to ensure we do not get carried away by the hype that surrounds Artificial Intelligence but approach it with our eyes wide open.

I'll finish by relating a very interesting article by Rodney Brooks, published in the November/December 2017 issue of the MIT Technology Review entitled "The Seven Deadly Sins of AI Predictions". The sins, as I paraphrase them, are:

- Overestimating the capabilities of a new technology when first introduced and underestimating its longer term capabilities once mature.

- Imagining magic – if we don't understand enough about imagined future technologies we run the risk of not knowing their limitations.

- Performance versus competence – we can easily be misled by the capability of current technology to perform routine tasks or answer simple questions into believing the technology can replicate the complexities of human thought and understanding.

- Suitcase words – words can have a variety of meanings. When we apply the word "learning", for example, to machine-based learning we can erroneously assume that this "learning" process is the same as the rapid, sponge-like human learning process.

- Exponentials – the belief that machine-based deep learning will regularly and continuously improve in capability without limitation.

- Hollywood scenarios – the belief that a technology will suddenly come along and change the world, when the reality is that technological and societal change is a gradual, interactive and adaptive process.

- Speed of deployment – an erroneous belief that the world is already digital. While software can be rapidly changed and deployed, the same cannot be said for the physical infrastructure and equipment software operates, which takes considerable time and capital cost to be modified or replaced.

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