

will be the norm. In fact, this person could be a non-lawyer, and might not even be a person: The advice could be coming from a website or computer program. It is unlikely that this person, website or program will be admitted to a bar, subject to regulation or ethics rules, or have malpractice or similar insurance in the same way as your parents' lawyer.

There are some fairly obvious differences in these two scenarios, and when you consider them more deeply, they raise some interesting and profound questions about what legal services are, who delivers them, and how they will be delivered and regulated. But before we talk about the future, we should start with some reflection on where we came from – the time when your parents' lawyer was in his prime.

Looking back

Looking back, it would appear that the latter part of the 20th century was the golden era of the traditional law firm. Aside from a few big but temporary bumps, the economy grew steadily for several decades. Lawyers were the only game in town for legal advice and services as they were the only ones with access to the required knowledge and tools. In almost all areas of law and for firms of every size and type, from the biggest firms on Bay Street to the smaller firms and sole practitioners in smaller and rural communities, this created a steady supply of new clients and a growing demand for the services which only lawyers could provide.

Leveraging the billable hour (which increased year after year with few, if any, complaints from clients) and large numbers of hard-working articling students and associates, most firms were profitable and being a lawyer meant you were reasonably or very well off financially. In general, life was very good for lawyers and law firms.

The present

But as we start the second decade of the 21st century, this idyllic existence seems to be coming to an abrupt end. By many measures, the legal system is not functioning as it should. It has become very complex. Going to court is incredibly time consuming and expensive. Self-represented parties are struggling to handle their own matters and are described as bogging down the court system. There is a large legal services gap, even for the middle class. Many people are unable to afford or access the legal services they need. Some are going outside the judicial system for dispute resolution.

There is also a shrinking demand for traditional legal services. Clients (and in particular, corporate clients) are paying a lot closer attention to their legal costs. They have come to recognize that the billable hour rewards the wrong behaviour and does nothing to encourage greater efficiency. Clients want greater predictability and value for their legal spends. They are doing cost/benefit and risk analyses, undertaking RFPs and are demanding more affordable legal services and alternative fee arrangements (e.g., flat or fixed fees, blended rates, phased fees, fees with a collar¹, value fees, etc.). Many corporate clients are doing more work in-house. These things are creating pricing pressures

and are decreasing the profitability of law firms. Reduced demand for traditional legal services (typically billed by the hour) also means there is less demand for articling students and a tendency towards over-supply of lawyers (while paradoxically at the same time, many rural and smaller communities don't have enough lawyers). Competition between law firms is increasing for both getting clients and keeping good lawyers.

For a variety of reasons there is also a breakdown in traditional law firm structures. With fewer articling students and associates, firms are becoming top-heavy and the pyramid model is no longer working financially or for work-flow structures as demanded by corporate clients, who often do not want to pay for multiple lawyers on a file and certainly do not want to pay to train associates. When you consider outsourcing, some are suggesting firms will move to the "starfish" model, with few permanent lawyers and staff, but a range of outsourced suppliers, independent contractors and temporary employees who come and go as the work demands². Some firms are experiencing succession planning issues as fewer lawyers are moving up the ranks and willing to take on equity partner and leadership roles.

Changes on the horizon

The picture looking forward from the present doesn't look much better – we certainly aren't going to go back to the idyllic era of your parents' lawyer. Needless to say, many of the issues and changes mentioned in the previous section will drive change. But there are other major drivers of change that are starting to have some impact now and will become more significant in coming years. They include:

- **Globalization:** Both corporate and individual clients (who might themselves be from outside Ontario) are more likely to have matters involving non-Ontario law and parties.
- **Demographics:** The profession is aging and there are large numbers of lawyers approaching retirement age. This is a significant issue in many smaller and rural communities because younger lawyers are not starting up new practices in these communities.
- **Technology:** The internet and other technologies are having a disruptive impact, allowing many new ways for lawyers and clients to communicate and collaborate and opening the door for new types of legal service offerings.
- **Self-help and DIY tools:** The internet has given individual or consumer clients access to virtually all the legal information and resources that only lawyers could access just a few decades ago.
- **Legal process outsourcing:** Firms are exploring new ways to cut costs, including outsourcing legal work (e.g., research, document drafting and review, e-discovery, etc.) and non-legal work

¹ An agreed-upon fee is established with a collar, typically 10 per cent. Should the value of fees be above or below the collar, the law firm and client agree on a percentage of the overage/underage to be credited or paid. The percentage is normally 50 per cent. This type of fee arrangement allows the firm and client to share fee upsides or downsides with each other.

² Thomas S. Clay in "Trends and Uncertainties in the Legal Profession: Law Firms in Transition" a presentation to North Carolina State Bar Association Cary, NC September 10, 2010.

(back-office support and services) to entities that are both onshore and offshore. There can be significant savings here. For example, hourly rates for legal work in India are typically 25 per cent or less than the rates for comparable work here.

- **New entrants:** There are various types of alternative non-traditional “legal service” providers, almost all of which offer services at lower costs than traditional law firms.

These pressures and changes will shape the legal system your child’s lawyer will live and work in. With these changes will come some interesting questions and challenges regarding who should offer legal services and how they should be regulated. Let’s look at these pressures, questions and challenges in more detail.

Who will provide legal services?

Our current legal system is predicated on lawyers – and more recently paralegals – delivering “legal services” (the definition of this term is discussed in the next section). Can Ontario lawyers maintain a monopoly on professional legal services? The answer is probably not. In fact, some would argue the monopoly ended when paralegals were given regulated status to provide legal services.

As mentioned above, access to justice is a problem for many members of the public and there is a massive and growing legal services gap. Lawyers and the legal system do not seem to be changing or evolving to address this gap adequately. This effectively opens the door for non-lawyers to fulfil this unmet need for legal services. Ontario was very progressive in regulating and licencing paralegals. British Columbia is considering the same issue and notaries already do much of the residential real estate conveyancing work in B.C.

Non-lawyers are stepping up to provide legal services in other jurisdictions, too. Washington State has created an education and professional framework for Limited Licence Legal Technicians (“LLLTs”). LLLTs will have more training and responsibility than the paralegals in that state, but will not appear in court or negotiate on behalf of clients. California and several other U.S. states are looking into doing something similar for immigration consultants.

Computer programs and websites are already providing various types of legal services and it appears they will become a much larger part of the legal services market in coming years. In both paper and electronic form, “DIY” will kits are widely available. The online segment seems poised for very significant growth as there are many start-ups targeting the legal services market, some with capital backing from venture capitalists and major corporations like Google®.

Sites like LegalZoom® and RocketLawyer™ have become major legal services players, selling standard forms and documents that are customized for a client. Some sites offer pre-fab work product that is ready for client use “as is.” There are many sites with self-help information and many Q&A sites (e.g., Quora®) where you can directly ask a lawyer questions. You can talk to a lawyer in real time and be billed by the minute on your credit card on Ingenio™. Other sites offer

Can computers give competent legal advice?



Without a thought we rely on a GPS to take us across town or to another province. Planes takeoff, fly, and land by themselves. Self-driving cars are here. Think of all the decisions that have to be made to make these things happen. Many of those decisions are made on the fly and in response to changing circumstances. Are these things more complicated than legal advice? Likely not.

Many lawyers will tell you that every matter they handle is unique. While no doubt some legal matters are truly unique, if you look at a large number of matters you will see patterns repeated time and time again. These patterns can be used to build intelligent systems that can give legal advice or create documents tailored to many different clients’ specific circumstances. There might be several hundred or more questions in the decision tree behind a system to create a “basic” will. A more complicated matter could have thousands of questions. Visit the neotalogic.com site for demos of these types of systems.

One could argue that computers could do a better job than lawyers because well-built intelligent legal systems that know all relevant law and will ask every relevant question about the client’s needs and circumstances will give properly tailored advice every single time.

Technology can also do a better job at some of the tedious work lawyers do. There are studies that indicate software systems can do a better job of reviewing documents for relevance or privilege than trained associates can.

lawyers the opportunity to bid on matters or work that potential clients have posted. Cybersettle® is a consumer settlement and payment site that has, without lawyer involvement, facilitated the settlement of almost \$2 billion in claim-based transactions for insurance companies, Fortune 500 corporations, and municipalities.

The services offered by these types of sites are usually significantly cheaper than comparable services offered by lawyers, and in some cases are free. They have transformed many common types of personal or consumer legal work into low price, low margin and high volume commodity legal services. Many of these sites are monetized, at least in part, by being a source of referrals for lawyers (this raises ethics issues in many jurisdictions), and in some cases non-lawyers, that own or participate on them.

Most of the websites offering legal forms at the present time are doing basic document automation on common documents like wills, incorporation forms and basic court pleadings. However, work is being done to build intelligent document and advice generation systems that will have artificial intelligence. These systems will be able to handle very complex matters. But, can computers give competent legal advice? See the sidebar, above, for the answer to this question.

So it looks like we will have non-lawyers and computers becoming a much larger part of the legal services market. Will lawyers still provide legal services? Yes, they will still have a part, albeit probably a shrinking part. This is discussed in more detail in the last section of this article.

For the rest of article we will call anyone or anything that provides legal services a “legal service provider.” What do legal services providers do? They provide legal services.

What are “legal services”?

Perhaps the more relevant question here is “What is the practice of law?” Coming up with a definition of the practice of law has proven to be very difficult. Many have tried, and many have failed, including an American Bar Association Commission. For the purposes of this article we won’t attempt to come up with the definitive definition of the practice of law. Let’s just say that the practice of law includes giving legal advice. We also won’t attempt to define what “the giving

of legal advice” is other than to say it is what lawyers have traditionally done. The key point to note is that the practice of law or the giving of legal advice is important as either triggers inclusion in the legal services regulatory regime.

But, what about the services offered by some of the newer forms of legal service providers? Is a legal forms site that helps you complete a document giving you legal advice? How about an answer to a query you posted on a legal Q&A site? Or when a problem with your online purchase is resolved with an online dispute resolution process? Is a software program that creates a document tailored to your facts giving you legal advice? In many cases these websites and online tools are doing work that is the same or very similar to what lawyers do. However, if you take a look at the terms of service on online legal services sites you will find they all explicitly say they are not practising law or providing legal advice. It almost seems as if incremental unauthorized practice of law (known as UPL) is chipping away at the foundations of the legal profession. This leads to the next question we will consider.

Future “law firm” models

So what will the law firm of the future look like? There are a number of possibilities, some that will be similar to or evolve from existing types of firms, others that will be entirely new. These are the types of firms we will probably see 10 to 15 years from now:



- 1. Global full service:** Following a consolidation of some of the major national firms, there will be a few international mega-firms in this group. This is what has happened in the accounting profession. These firms will be multi-national and have tens of thousands of lawyers. They will handle very complex matters and will provide legal and other professional services (such as accounting) that have not been viewed in the past as legal services.
- 2. Global niche:** This is a new category of firm that will focus on niche areas but be able to deal with niche issues on a global and international basis. They will also be multi-national, but they will be small in size.
- 3. Local/national full service:** The existing regional and national firms that embrace change and adapt to the changes that the profession is seeing will count themselves in this group. They will have moved away from the billable hour, will be doing more commodity work, and will be doing everything they can to be working better, cheaper and faster for their clients.
- 4. Local niche or boutique:** Some of these firms already exist, but there will be more of them. In many cases they will be breakaways from current larger firms and they will be fairly small in size. Clients will seek them out and pay a premium because they are the best at what they do.
- 5. Solo and small general practice firms:** These firms will still be around, but given the demographics of the bar they will be fewer in number, especially in smaller communities and rural areas.
- 6. Legal process outsourcers (LPOs):** Law firms and corporate legal departments are sending more and more work outside to companies that specialize in particular tasks (e.g., legal research and analysis, document drafting and review for due diligence and litigation, e-discovery, patent and IP work, contracts) and non-legal work (clerical work, back-office support and services). Much of this work was traditionally done by teams of lawyers at the larger firms. This is one of the fastest growing segments of the legal services market.
- 7. Virtual firms:** This is a new category. We are at the start of a huge expansion in lawyers providing legal services without founding their practice in one or more specific bricks and mortar locations. The firm may have multiple lawyers, all working together and/or with clients via shared technology. When meetings are needed they will use technology like Skype, visit the client’s premises or meet in a facility rented for this specific meeting. In a variation of this arrangement, in some cases lawyers from different firms will come together and use “virtual deal rooms” to work on a single matter.
- 8. Alternative business structures or ABS:** This is another new category. Lawyers and/or non-lawyers will own and operate these firms. They will initially focus on low-price/high-volume commodity work, but they will start work on higher value matters. The advent of Ontario paralegals as independent business owners providing legal services related to traffic tickets, landlord and tenant hearings and small claims court cases (to name just a few areas) presages the likely tsunami of services to come from the expansion of this model.

Should legal service providers be regulated?

By stating that they are not practising law or providing legal advice, these legal service providers shrewdly aim to take themselves out of the current legal services regulatory scheme and nicely avoid all the education, admission, ethics and insurance obligations that lawyers must fulfill.

You can better understand the impact of this if you go back to the “before” and “after” scenarios outlined at the start of this article. Your parents had some guarantee as to the quality of the legal services they got, and some recourse if there was a problem. If the legal services your child gets come from a legal service provider that is outside the regulatory framework, it is quite possible they will have no guarantees as to the quality of the legal services they will get and little or no recourse if there is a problem. For the sake of consumer protection, this suggests that all legal service providers should be regulated.

For this reason, ultimately regulators may look to regulate all legal services providers – not just lawyers. This “entity regulation” has started to happen in some jurisdictions. The alternative business structures (“ABS”) approach in the United Kingdom is one example of this. See the adjacent ABS sidebar for more details on what ABSs are.

When considering the regulation of legal service providers, two other related questions come up. First, should legal service providers be on the hook if they make a mistake? As a matter of consumer protection, the obvious answer to this question is “yes.” There can be very significant legal, financial and/or personal consequences if there is a problem with the legal services provided to a client. Buying legal services is different from buying running shoes on Amazon™ or trinkets on eBay®. The terms of service on almost all online legal service provider sites have very broad waivers of liability. At best there is a money-back guarantee. This would not properly compensate a client that has been seriously harmed by erroneous legal services (e.g., a will purchased for \$30).

Alternative business structures (“ABS”)

The current regulatory approach to permitted business structures and financing rules for law firms or other entities delivering legal services varies greatly by jurisdiction. The continuum ranges from jurisdictions restricting the delivery of legal services to traditional practice structures, where external ownership of law firms and external capital are prohibited, to jurisdictions that have expanded the range of structures through which legal services may be delivered by permitting new forms of law firm ownership and financing.

Alternative business structures or “ABS” is a term that can apply to any form of non-traditional law firm business structure as well as alternative means to deliver services. It may include, for example:

- Alternative ownership structures, such as non-lawyer investment in or ownership of law firms, including equity financing;
- Firms offering legal services together with other professionals or non-professionals; and
- Firms offering an expanded range of products and services, such as do-it-yourself legal forms.

Australia was an early adopter of ABS regulation. Since 2000, legal practices in New South Wales have been permitted to incorporate under ordinary company law without any restrictions on who may own shares or what type of business may be conducted. In 2007, Australia was the first jurisdiction in the world to permit the public listing of a law firm.

England and Wales are experiencing rapid change in how legal services are regulated and provided to the public. Following the Clementi Report, which recommended major reforms to the regulation of legal services in England and Wales, the *Legal Services Act 2007* (“LSA”) was enacted. Under the LSA, the objectives of the regulation of legal services have been broadened. In addition to improving access to justice, the regulation of legal services is also founded on objectives such as protecting and promoting consumer interests and competition. The LSA expressly permits the provision of legal services through ABSs in furtherance of these objectives. More than 230 ABSs have successfully become licenced to provide legal services in England and Wales under the LSA, and a further 250 applications are in the pipeline.

The majority of ABSs look a lot like ordinary law firms. Firms of various sizes, including sole practitioners and smaller firms, are themselves or own ABSs in which non-lawyer staff have become equity partners and in which family members, including spouses, have become part owners. It would appear the motives here are profit sharing and/or income splitting. One very large firm was granted five separate ABS licences. Australian mega firm Slater and Gordon purchased a large firm and converted it into an ABS. Some ABS firms offer legal services together with related professional services (e.g., architecture) or expert consulting services (e.g., human resource management).

“Grocery store law” has arrived thanks to Co-operative Legal Services (“CLS”), part of the Co-Op Group, the UK’s largest mutual business. Its businesses include, among others, a national chain of food stores, banking, insurance, pharmacy, and funeral services. The Co-Op Group operates over 5,000 retail outlets, and employs over 106,000 people. As an ABS, CLS currently provides fixed fee legal services in conveyancing, family, wills and probate, personal injury, and employment law by phone, online and in-person at many of its stores.

While it is too early to see if the LSA’s objectives are being met, none of the dire predictions opponents of ABSs made have come to pass. Some say that ABSs under the LSA have opened the door to innovation, but others say they are still too restrictive. The Law Society of Upper Canada has a working group of Benchers studying the ABS phenomenon.



The second question is whether legal service providers should have “malpractice” or similar insurance. As insurance is mandatory in every province and territory in Canada, we probably take it for granted. In the United States only one state (Oregon) has mandatory malpractice insurance. There is a wide variation in other countries around the world (see this *LAWPRO Magazine* article: “Errors & Omissions: Mandatory professional liability insurance and a mandatory provider: A global perspective”). This is also a matter of consumer protection. If there is a problem – it means the client is assured some financial recourse. It can also help lawyers avoid dire personal financial circumstances in the event they make an error.

Jurisdiction matters

In most every jurisdiction, including Canada, legal services regulation is very much based on jurisdiction – you must comply with the regulatory regime in the jurisdiction where you are providing legal services. In Canada we have mobility rules which allow lawyers to practice across the country. A similar regime is in place in Europe, but this is not

typical of most jurisdictions in the rest of the world. Mobility is difficult if not impossible in most other jurisdictions, including the United States, although there are signs that this is starting to change in some places. For example, discussions are ongoing about legal services falling under GATT, the General Agreement on Trade and Tariffs.

However, the current regulatory model doesn’t work well in the world of your child’s lawyer. This is because your child’s lawyer could easily be a non-lawyer or computer, and may be outside of Ontario. Practically speaking, this puts such legal service providers beyond the reach of any Ontario regulation, education, ethics rules and insurance requirements.

And it gets even more complicated when you deal with matters involving multiple jurisdictions. Which jurisdiction is relevant if an Ontario resident purchases a lease document for a Florida condo from an online forms site owned by an Irish company (not a law firm) with servers in Germany?

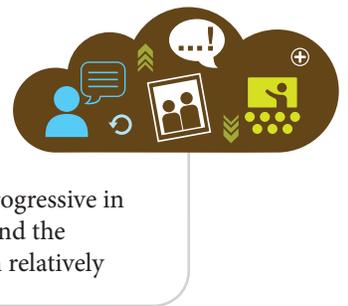
Dealing with the complications that the “different jurisdictions” issue raises will have to be sorted out by legal service regulators. Presumably they will look to a jurisdiction where the matter has some physical or virtual nexus. And we may ultimately need some kind of international regulator or enforcer – like an Interpol for legal services providers.

Facing the challenges and opportunities

Big changes – positive and negative – have happened to the profession in the past. We have gone through economic cycles and seen both emerging and disappearing areas of law. Court rules and procedures have changed. There was the consolidation and growth of big firms and the general movement from general practitioners to specialists. Technology has – and will continue to – change the profession and the delivery of legal services in many, and sometimes very disruptive, ways.

No one can really predict for sure how fast change will come to the legal profession, nor with any certainty, the exact changes that will occur. There are many uncertainties. What will the global economy look like? Which purchase and delivery models will develop for legal services? What type of regulatory and compliance environment will exist? To what extent will non-lawyer legal service competition move upstream into areas traditionally served by lawyers? Will the legal profession face deregulation?

The one thing that is certain is that significant changes are coming to the profession in future years and decades. They will occur at different times and in different ways in different jurisdictions. While we are very progressive in Ontario in some ways (e.g., mobility and the regulation of paralegals), we have seen relatively



little impact from some of the other big changes that have occurred or are occurring elsewhere (e.g., legal process outsourcing, which has taken off in the U.S. and Europe). Considered from a global perspective, Ontario is a small and relatively isolated jurisdiction which may delay some of the changes coming our way. Our comparatively healthy economy and isolation protected us from the financial stresses and changes U.S. law firms and their clients experienced in the downturn that happened there. But when change catches up to us, it will come quickly.

It will not be easy for many to face these changes. The *status quo* is coming unstuck. Based on a review of what has happened elsewhere, some lawyers will lose their jobs. Entire practice groups will become unprofitable and will have to be abandoned, and some law firms will fail. Not all law school graduates will be able to get jobs. Institutions and businesses associated with the legal industry that fail to evolve will also face hard times. For lawyer associations, CPD providers and publishers that may mean offering memberships or services to non-lawyers. Our systems of adjudication (whether courts or administrative tribunals) need to adapt and change as well. They need to be simpler, more accessible, easier to navigate and faster. Adding more self-help options could help those without lawyers.

Lawyers tend to be slow to change and it seems many lawyers don't see or won't acknowledge the changes that are coming. Some think they are different or they say that their matters are "unique" and require the services of a lawyer. Lawyers should not fool themselves: The basic market forces of supply, demand and pricing apply to them. There is an oversupply of traditional and high (some say over) priced legal services. The client demand for lower-priced legal services is being filled by the new types of non-lawyer legal services providers.

Lawyers and law firms need to recognize that changes to the legal services market are occurring and embrace them. People will always need lawyers, or something like them, for some types of matters. For "bet the company" work there will always be a solid and lucrative demand for services, but it is a very small part of the legal services market. In the middle comes relatively sophisticated or higher value work that is not rocket science but needs a firm that has specialized and competent people. This too is a market that won't disappear, but it is not a huge one. At the bottom is the largest part of the market – the commodity work we have discussed above: people buying houses, preparing wills, settling estates, resisting eviction or prosecution, and so on.

Many people can't afford the legal services or get the help they need in our current system. These unmet legal needs are an opportunity that lawyers and law firms must recognize. Lawyers need to innovate and think like business people and entrepreneurs – this is what their non-lawyer competitors are doing. That will mean looking at offering new services. It almost certainly means using technology to work better, faster, cheaper, and in new ways. To compete with legal service providers who are offering commodity services, lawyers must offer more affordable services. Options include going head-to-head by retrenching to offer commodity services to clients as well or by exploring alternative fee arrangements to make existing services more affordable.

Another option is to put more effort into showing clients the value-add that having a lawyer brings to legal services. This involves thinking beyond just doing one matter for a client and thinking about what the client's longer term needs are. In other words, when a new client walks in, don't think of just doing an incorporation that will pay a few hundred dollars in fees. This is commodity work. Think about what a new business person will need for the short- and long-term growth and success of his or her business. What information could be provided to the client to help them deal with issues they may come across? What related work can be recommended to them? Think beyond one matter – aim to become the business lawyer for the client's new company. This is where the longer term and more lucrative fees are. A client won't get service like this from a \$50 incorporation done on a forms site.

As a closing thought, we turn to a comment Richard Susskind made in his book, *The Future of Lawyers?* He suggests lawyers need to move from being reactive legal problem solvers (the ambulance at the bottom of the cliff) to proactive legal risk management advisors (the fence at the top of the cliff).

Consider how prepared you and your firm are to face the changes that are coming to the legal profession. No doubt you have some work to do. Take proactive steps to face these challenges and the opportunities they present. ■

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Resources

- *Law21 blog* by Jordan Furlong (law21.ca)
- *Legal Futures blog* (legalfutures.co.uk/blog)
- *Reinvent Law Laboratory* (reinventlaw.com)
- *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, by Ray Worthy Campbell in *New York Journal of Business and Law*, Fall 2012, Vol. 9 No. 1
- *Sea Change: Inside the Changing Legal Marketplace*, a video of a presentation to the Colorado Bar Association by Mark E. Lassiter (vimeo.com/74653671)
- *The Future of Lawyers?* By Richard Susskind, published 2010 by Oxford University Press. 352pp.
- *Tomorrow's Lawyers: An Introduction to Your Future* by Richard Susskind, published 2012 by Oxford University Press. 224pp.