

TECHNOLOGY AND TWENTY FIRST CENTURY LEGAL SERVICES

Paper presented as part of a panel on:

Innovation as a tool for development - are we killing legal employment?

What is the place of technology in the legal profession, and are our regulatory and ethical structures equipped to cope with advance in artificial intelligence? What do these advances mean for the career paths of twenty - first century lawyers?

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INTRODUCTION : A CRITICAL LOOK AT SOME CONCEPTS FROM THE QUESTIONS

Innovation and Technology:

To start this discussion, one should probably examine the specific terms in which the questions for us as panelists have been framed for us to address. In particular should we not question the assumptions that may be explicit or implicit in that frame?

For example, the title suggests that innovation is a tool. Is it?

Innovation is the *process* of doing new things or doing things differently. For many it is synonymous with technology, though in lawyering and legal services, technology is one tool through which the process of innovation is enabled.

This discussion in fact focuses on the role of technology. It is probably more apt therefore, to talk about technology as the tool, and innovation as the process it enables or partially enables.

Reframed to consider technology as the tool, this discussion will naturally be led to a consideration of who or what is the defining or controlling mind that is wielding the tool. This paper will suggest that as “legal” technology becomes more sophisticated, the innovations it enables move the provision of legal services from the province of a lawyer centric, labour intensive guild, to an interdisciplinary, technology focused and process enabled marketplace. By virtue in part of technologies, lawyers alone will no longer be in control of the legal services market, or be leaders in driving changes in it. Consumer expectations, entrepreneurs, and other professionals will.

However, even accepting that lawyers will likely have to share with others the shaping of how legal services are provided in the future, it is nonetheless important for legal professions not to simply become reactive to change, but to strategize on how to maintain a role and contribute to the the most effectively technology enabled provision of legal services.

One further observation about the concept of technology as innovation should be noted. There is no doubt that technology is an important driver of change and will reshape the careers of lawyers of the future. But it is not the only change imperative. There are many others. These include the globalization of legal

markets, the expectations of consumers of legal services that they should be able to get more legal services for less, the fact of a huge unserved market for legal services, that is unserved largely because of the inability of potential consumers to afford them, and liberalization of legal markets both in terms of the nature of the organizations that are providing legal services, and the nature of the people or professionals that are providing them. The impact of each of these innovations on lawyers and legal careers are the subject of numerous discussions discrete to each of them, and are beyond the scope of this discussion. However, it is important to keep in mind that technology as an innovation exists in this ecosystem of “innovation” in which each of these intersects and interacts with and influences the other. A truly holistic analysis of the legal career of the future would have to look at all of these.

Legal employment – Moving to a “client centred” perspective

It is also important to examine the assumption behind some of the words in the title relating to employment and career paths. The title asks whether we are “killing legal employment”. The sub-text asks what advances in technology mean for the career paths of twenty first century lawyers. Is the implicit assumption that legal employment (which we might equate with employment in the provision of legal services) is solely and exclusively the province of lawyers?

The way that this has been framed could easily be seen as a discussion about how lawyers sustain, or regain a “monopoly” in the provision of legal services. As professionals in the twenty first century, should we really be having a discussion framed in these terms? It tilts toward a dangerous sense of entitlement that can not be sustained, particularly with the innovations just noted – a discussion that only serves to isolate, and perhaps alienate us from an effective role in a dynamic legal market. As the Canadian Bar Association Futures Initiative study stated in 2014:

The purpose of law is not to keep lawyers employed. Rather, lawyers should survive in this changing environment because they bring value that no one else can.....¹

It was probably always the case, but more than ever as “access to justice” and related “access to legal services” issues become critical social problems, it is important to approach this discussion not from the perspective of preserving

¹ Canadian Bar Association, Futures: Transforming the Delivery of Legal Services in Canada (Ottawa: Canadian Bar Association, August, 2014).

lawyer jobs, but from the perspective of how legal services can be provided to maximize their individual and social utility. Put simply - we need to stop thinking about this only from the lawyers' perspective and from concerns about the dearth or death of legal employment and to start asking - what is in the best interests of our clients? ²

Historically, this question may have been answered that the best interests of our clients was always served by having lawyers provide all legal services. That is probably not the answer today. Technology is part of how that answer is evolving.

Taking for a moment this broader perspective, what is “killing legal jobs” today and for the foreseeable future is a function of the inability of lawyers to add value, or at least to add value to clients at a price that is economic. Traditionally, lawyers add value as professional specialists assisting those they serve to anticipate, address, and resolve legal issues in the best interests of those they serve. Historically they have been the dominant interface between non-lawyers and the law. They bring trust to those they advise through professional ethics and obligations to protect the rule of law and the administration of justice.

The economic models through which legal services are supplied however, have now rendered them so costly that those who would otherwise benefit from them are left unable to afford them, or to seriously question the worth of the value that they add relative to their price. The “cost” problem is real, and pervasive. ³:

To remain relevant and avoid this “death” of legal jobs, employment in the provision of legal services in the twenty first century needs to pay attention to this cost problem broadly, and to consider how to use technology to address this.

There is almost inevitably, from a “client centred perspective” a huge role for technology to help address the effective provision of legal services - to

² See a discussion on this “new mindset” in Susskind, R.E. and Susskind, D, The Future of the Professions (Oxford: Oxford University Press, 2015), pp. 37 – 43.

³ See: Hatfield, Gillian K., Rules for a Flat World, (New York: Oxford University Press, 2017, pp. 178-185; and Mercer, Malcolm M., “Cost Disease, the practice of law and access to justice”, Blog post October 15, 2017 found at <https://malcolmmercer.ca/2017/10/15/cost-disease-the-practice-of-law-and-access-to-justice/>, and Yoon, A. H., “The Post Modern Lawyer: Technology and the Democratization of Legal Representation, (2018) 66 UTLJ 456.

maximize the ability of the “client” to have access to the service the client needs.. It is, time for lawyers to recognize and be open to discussion about this.

It is important to recognize that this is not a new discussion. The questions framing this discussion emphasize and perhaps equate technology with artificial intelligence. But, technology is not limited to artificial intelligence. The concept of a legal professional and the services that that professional can or must provide has historically evolved in response to technology. Writers in this area document, for example, how the advent of the printing press, the construction of law libraries, early use of computers, word processing and fax machines .have wrought changes in how we see ourselves as professionals - both what we as lawyers do and how we do it. ⁴ The advent of current technology, and particularly artificial intelligence can be seen, from that perspective, as simply part of an evolutionary process. How do we effectively shape that evolution?

THE PLACE OF TECHNOLOGY IN THE LEGAL PROFESSION:

The current place of technology in the legal profession :

Partly, it is to respond to the next question that frames this discussion. - **What is the place of technology in the legal profession?**

We start by considering that question literally. What is the current role of technology.. Most of us have already integrated recent and evolving technology into our practices. We have moved through fax machines and early word processing to communication by e mail, and in and on social media platforms. We are using electronic tools to do legal research - so much so that many of us are abandoning or at least being caused to wonder about the future of bricks and mortar law libraries with hard copy print material. So, it isn't that we don't embrace or use technology. We do.

The challenge of new technology:

Most of the technologies that lawyers have adopted tend to be those that automate existing practice- taking out routine work, make it easier and cheaper for the professional to focus on and add value in the more complex knowledge and skills where the professional's training and experience are arguably most required. These are what have been called “sustaining” technology - sustaining

⁴ For example, see: Susskind and Susskind, *supra*, footnote 2.

and enhancing existing processes and practices.⁵ They are distinguished from “disruptive” technologies, which can radically alter or eliminate processes or practices. The former (sustaining or enabling) practices are easier arguably easier for legal professionals to adopt. Because they don’t genuinely undermine the status quo these technologies are seen as less risky. Because they probably benefit the legal professional and the professional practice, they can be seen as beneficial to the legal professional, and probably in many instances, to the client or consumer of legal services, who might be receiving the service more efficiently, possibly at a lower cost.

The problem for us now is that the development of new technology is fast outpacing our ability to integrate it.⁶ This is in part because the number of new and available technologies in the legal space increases exponentially each year. In part as well it is because of the culture of legal professions which tend to be risk averse and in particular unwilling to embrace the potential failure associated with attempting innovation. By virtue of our education and professional cultures, we are normally risk averse. We will only implement what is proven on the basis of a high level of analysis and review to be successful. This creates a tension between the rate of adoption of new technology by less risk averse legal service consumers hungry for low cost legal information, advice and support and the slower rate of adoption of new technology by legal service providers - a tension or gap that has the potential to increase exponentially as new technologies come onstream. Legal service providers will find that gap filled by competing outside providers who are willing to risk embracing and employing that new technology. This will disrupt the practice of law for all of us.

⁵ Susskind, R; Tomorrow’s Lawyers, *supra* – footnote 5, at p. 43 See also: Veith, C., Bandlow, M., Harnish, M, Wenzler, H., Hartung, M. Hartung, D. How Legal Technology Will Change the Business of Law, Boston Consulting Group and Bucerius Law School, 2016 found online at: http://www.bucerius-education.de/fileadmin/content/pdf/studies_publications/Legal_Tech_Report_2016.pdf which labels them “enabling technology”.

⁶ Janis, B: “How Technology is Changing the Practice of Law”, American Bar Association – Solo, Small Firm, and General Practice Division, GP Solo Magazine, May/June, 2014 – found online at https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2014/may_june/how_technology_changing_practice_law/ and Susskind, R, Tomorrow’s Lawyers – An Introduction to Your Future, (Oxford: Oxford University Press, 2017).

There are many examples to technologies that are already doing this. E - discovery is now becoming commonplace. Traditionally discovery was highly labour intensive requiring huge amounts of legal time to read and analyze for relevance. Now, because most legal documents original in electronic format, the process can be conducted in a fraction of the time and with greater accuracy through automated basic key word searches, and more recently the use of natural language processing to assess relevance. As a result, the discovery process is frequently outsourced to e-discovery firms that use this technology, and lawyers spend less than five percent of their time on basic document review.

The computerized production of legal documents by “document assembly systems” that generate high quality documents after straightforward responses to questions of users is an example. Contracts and wills for example, are being generated by these systems. These help lawyers. But they are also being embraced directly by lay users .

“Expert systems” also offer predictive tools to assess the merits of a case, the risks involved, and the relative likelihood of success or potential outcomes. Historically, the challenge here is the unstructured nature of legal data. Legal decisions, for example are highly individualized to the decision maker, with little consistency in organizational structure, use of language, and writing style. This can make it difficult to identify patterns within and across decisions with traditional key word searches. Now, with machine learning and access to “big data” on certain types of decision, technology can generate predictive algorithms that will predict how courts will decide legal questions. ⁷(

Legal information and legal “help” is now available on line. The public can access legislation and case law on line at no cost in many jurisdictions.⁸ Commercially available online legal services such as LegalZoom and Rocket Lawyer are heavily capitalized and have a huge following. As a quick look at the Legal Tech Startups list on LawSitesBlog.com will reveal, hundreds of

⁷ Yoon, A.H., “The Post Modern Lawyer :Technology and the Democratization of Legal Representation, *supra*, footnote 3; and Alarie, B., Niblett, A. and Yoon, A.H., “How Artificial Intelligence Will Affect the Practice of Law”, (2018), 68 UTLJ 106.

⁸ Some Commonwealth examples include Australia – see <http://www.austlii.edu.au/> : and Canada – see <https://www.canlii.org/en/>

technology “start ups” are emerging to offer access to legal information and advice for a variety of legal matters.

Technology is being used in the service of dispute resolution. Recognizing that “court” is not so much a place as a “service”⁹, the question is how technology can add value to that service. The answers appear in many jurisdictions as a “virtual” court, already partially “constructed” in applications that allow remote participation in some hearings by video link. Further along the technology spectrum, we observe the advent of online dispute resolution solutions which use algorithms, legal expert systems, and artificial intelligence to guide disputants in what are normally considered “low level” disputes through various stages of disputes including diagnosis of the problem, negotiation, mediation, arbitration, and adjudication. Examples of these include, in Canada, the Online Dispute Resolution and Civil Claims Tribunals systems in provincial courts in British Columbia,¹⁰ the Quebec Plateforme d’ Aide au Reglement des Litiges en ligne (PARle) for “low intensity” disputes between consumers and retailers, and similar systems under consideration in Ontario, Canada and in the United Kingdom. It is interesting to note that the public facing information about the British Columbia systems actively discourages the use of lawyers to assist the parties.

In summary, technology already has a significant role in the legal profession. It is a role that is challenging the profession, and in some situations, already limits or marginalizes its role in the provision of legal services.

What should be technology’s place?

But the response to the question of the role of technology in the legal profession is incomplete if we only look at the current role. Is the question also intended to ask “***What should be the place of technology in the legal profession?***”

This perhaps more interesting question takes us from the status quo into the future. It is speculative - at best a very uncertain future, as new and more sophisticated technologies emerge daily. As was discussed above, it is difficult to imagine that the legal profession will be in full control of the answer to this

⁹ See: Susskind R., and Susskind, D., The Future of the Professions, *supra*, footnote 2, at p. 70.

¹⁰ British Columbia also uses online dispute resolution in residential tenancy disputes

question. But it can help shape that answer. While a full discussion of this is beyond the scope of this paper, there are a couple of ideas that need to be considered – and considered particularly invoking client centric perspective.

One is that technology is and will continue to provide and enable enhanced access to legal services. The public will continue to use this access to get legal advice and legal information directly from a technology service. The economic model of providing legal services through technology is quite different than the model for providing those services from and through professionals.¹¹. Normally, this means the technology services are provided at much lower cost.

The public will want to continue to have this access. If we are being truly professional and client centred, and are truly committed to access to justice and access to legal services it is time to embrace and work with the idea noted above that the provision of legal services is no longer the sole purview of lawyers or legal professionals. “Clients” will get legal information, support, and advice from a variety of sources.

The second is a related point. For the services for which people continue to seek lawyers, about which there is a bit more discussion below, one role of technology in the legal profession could and should be to reduce the cost of those services. There are many possibilities for this. An elaboration of all of them is not possible here. Some have already been pointed out in the automation of routine tasks that should make the costs of providing a service more affordable. There are other examples. The use of technology should and could enable disaggregation of legal services, allowing legal professionals to provide discrete sub-sets of certain services , and facilitating the current push toward “unbundled” service. Collaboration tools will allow lawyers to share office supports, research and even service provision by outsourced professionals and professional supports, again reducing costs. They will offer opportunities and to work with other legal service providers including paraprofessionals who might provide some services at less cost and to work with other professionals and support services in service offerings that integrate legal services with other professional and support services to provide holistic answers to problems. Predictive technology will enable lawyers and clients to

¹¹ Mercer, M., *supra*, footnote 3; Yoon, A.H., *supra*, footnote 3, Hadfield, G. K., *supra*, footnote 3

arrive more quickly at discussions about the pivotal components of a legal issue, potential outcomes, and realistic expectations for achieving them.¹²

It is well known, and often cited that there are vast untapped markets for legal services. Canadian studies have suggested that there are very few legal issues about which the public consults lawyers. It is estimated that Canadians seek legal advice for only 11.7% of potentially justiciable events.¹³ An Australian study found that only 51 per cent of respondents would seek legal advice for a legal problem¹⁴. Beyond this, Gillian Hatfield discusses in her book Rules for a Flat World¹⁵, the fact that four billion people survive on the equivalent in purchasing power of less than eight dollars a day, having little or no access to basic legal tools such as reliable rules of property, contract, and labour, and that the United Nations Sustainable Development Goals added “access to justice” to its list in 2015. It is impossible for potential legal service providers to these people to add value to them in an economic model, and in a legal system that requires great wealth to sustain.

Technology is not the only answer or a complete answer to service provision in these markets. But at very least, the consideration of the role of technology in the legal profession needs to start with the objective of providing legal services at low cost which clients in these markets are able to afford, and then explore how technology and related processes may assist in achieving this. Particularly considering the size of these markets, and the social interest in having legal services available to them, this huge challenge should generate some huge opportunities.

THE CHALLENGE FOR REGULATORY AND ETHICAL STRUCTURES

Are our regulatory and ethical structures equipped to cope with advances in artificial intelligence?

¹² See discussions on all of this in Susskind, R., and Susskind, D., The Future of the Professions, *supra*, footnote 2. For an interesting narrative overview of what a practice of the future might look like if it embraces some of these ideas, see: Kowalski, M., Avoiding Extinction: Reimagining Legal Services for the 21st Century, (Bloomington: Universe, 2012).

¹³ Canadian Bar Association, *supra*, footnote 1.

¹⁴ Australia Law and Justice Foundation, “Legal Australia Wide Survey- Legal Need in Australia”, 2012 – at [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

¹⁵ Hatfield, G.K. *supra*, footnote 3, p.281. She notes that

While it is gratifying to see that many of our regulatory and advocacy organizations are now beginning to consider the impact of technology on the practice of law¹⁶, there is little doubt that they are not currently equipped to cope with advances in artificial intelligence.

Current challenges –does the model work now?

Even without the introduction of technology as a consideration, the appropriateness of our regulatory and ethical structures to the modern legal world was and is questionable. Our current regulatory models are largely creatures of eighteenth and nineteenth century guild structures. Although some of us have updated these to a limited extent, many of us are still educating, admitting and regulating lawyers based on these models. To a large extent, those models assume that we can educate and qualify an individual to undertake all “lawyering” tasks, and license lawyers as competent to do them. That might have been appropriate for 19th century lawyering work, under which law students often apprenticed or articulated for up to seven years, with or without some additional higher education, and then opened offices to do everything from conveyancing and wills to murder trials- in what were inherently “simpler” times.

As the twentieth century evolved, both substantive law and legal processes became much more complex. Even without the advent of modern technology the assumptions that underpinned our education and regulatory design were under strain - their relevance and service to twentieth and now twenty first century legal professions becoming highly dubious. Some considerations on this include:

- Whether as the practice of law becomes increasingly complex and specialized, it is appropriate to assume that a lawyer can be educated to be, competent and remain competent to practice in all areas of the law.
- Whether, as law is practiced in many different organizational contexts, including firms and large private and public organizations, it is appropriate to assume and require that individuals be the sole focus of regulation, or

¹⁶ See: Canadian Bar Association, *supra*, footnote 1 as an example. More recently, the Law Society of Ontario has struck a Technology Task Force, and the Law Society of British Columbia has struck a “Futures” Task Force. The Law Society of England and Wales has recently struck a task force on “Algorithms in the Justice System” that is raising and studying a number of legal, regulatory, and ethical issues in this area.

whether there are regulatory and ethical issues emerging from the practice of law in organizations that should be recognized by regulating these organizations as well.

- Whether, as other service providers appear to offer some legal services, they ought to be “permitted” to do so, and if so, under what conditions. Included within this are considerations about whether they should be subject to the same regulatory and ethical constraints as lawyers, and if so, how this is to be accomplished.

Adding technology to the challenges:

The twenty first century layers a new consideration of technology into these already pressing existing considerations. It is probably the case that, as has been discussed, much relevant technology to date has been of the “sustaining” variety, meant to automate tasks that are undertaken in the provision of legal services, rather than render substantial changes to the way those services are provided. To the extent that this is so, it does not materially add to the regulatory and ethical issues that are already facing the legal profession.

More sophisticated technology, including in particular, “artificial intelligence”¹⁷ presents new challenges. The nature of AI, including the way it is developed and informed, the complexity of its “learning” processes and the solutions it generates and its ability to transcend borders all present new and relatively uncharted challenges to ethical and regulatory thinking.

Geographic challenge:

For example, most of our regulatory structures assume law is practiced in a “place”. They are location based, to exercise jurisdiction over the providers of legal service in a particular geo-political region. We are now in an era of increasing globalization. Already lawyers and law firms are responding to that by organizing across geopolitical lines. Legal services from lawyers, on one issue can come from a multitude of different points, located across the country and around the world. Technology greatly facilitates this.

¹⁷ Albert Yoon, *supra*, footnote 3 suggests that there is no common definition of “artificial intelligence”, and that the term is used broadly to incorporate “artificial intelligence” as a tool to automate human tasks, and “intelligence augmentation” under which there is a symbiotic relationship between humans and technology in which the tasks are performed “better”. We will use the broad definition here, incorporating both ideas.

As we look at legal services provided through technology, including on line legal advice, and now “artificial intelligence” applications providing service, regulating or controlling the provision of legal service by reference to an individual providing it from a specific geographic place of origin is impossible. To date, practical considerations lead us to simply ignore this..¹⁸ It is worth considering however, particularly as we come together as an international organization, how and whether a more global perspective to regulation could be developed.

Accountability challenge:

Similarly, most of these structures assume that there is an individual responsible for providing the legal service. That individual can be held accountable for problems with the service. But who is “accountable” for the services provided by an artificial intelligence solution? These solutions are normally the product of the involvement of multiple persons or entities - at very least the creator of the algorithm, the supplier of the originating data, the person operating the artificial intelligence. It is safe to assume that not all of these will be legal professionals under the regulatory and ethical watch of professional regulators. It is entirely possible as well, as noted above, that not all of these will be in the same geopolitical jurisdiction. The construction of a regulatory and ethical framework in this context will involve thinking beyond and looking to cooperation across single professional and geographic contexts.

For the moment, legal regulators seem to be assuming, perhaps because no other assumption is practically possible, that it is the legal professional who must continue to be accountable. Many are considering or have adopted the imposition of ethical obligations on the legal professional to maintain a facility with the technology the professional is using, and to understand its benefits and risks - in effect to exercise some informed, independent judgment in its use. This raises the question however of the extent to which lawyers are or will be required to understand the workings of the algorithms of AI programmes, and how they will acquire the skills and competencies to meet that requirement.

¹⁸ Pinnington, D. “Perspectives on the Future of Law – How the Professional Should Respond to Major Disruptions”, (Toronto, LAWPRO Magazine, February 2018) – also online <http://www.slaw.ca/2018/02/26/perspectives-on-the-future-of-law-how-the-professional-should-respond-to-major-disruptions/>

Service based challenges:

A related challenge arises when the question of who is involved in providing the legal services and the nature of the services provided is considered. Our current regulatory and ethical models assume this to be lawyers, or legal service providers accredited and overseen by a recognized regulatory authority. One rationale for this is public protection. The practice of law by unauthorized persons is thought to put a vulnerable public at risk. In many instances it does. Many legal matters require a careful and nuanced understanding of the facts and the law in order to ensure that the “client” obtains an optimum outcome. Accredited legal providers have this understanding and typically work very hard to avoid mistakes and strategies that would compromise their client. This is obviously important when the consequences to the client are significant in financial or human terms.

It may not be quite so important where the consequences are less severe. There are, for example artificial intelligence technology based solutions that provide assistance to someone who is defending a parking ticket. The DoNotPay chatbot is an example of an artificial intelligence solution. It has helped to overturn some hundred of thousands of London and New York parking tickets involving millions.¹⁹ In the public interest of greater access to justice, using artificial intelligence enabled new types of services that can be provided at significantly lower costs may make sense. This should lead to a consideration of what services need to be regulated, and whether as we advance into an artificial intelligence world, considerations of proportionality should guide our regulatory and ethical thinking.

New ethical challenges:

In considering that perspective, it will be important to consider as well some of the “new”, and potentially problematic ethical introduced by the use of artificial intelligence. Writers on the use of artificial intelligence in social contexts warn of the potential of inherent bias in the “answers” supplied by AI solutions. The framing of the problem to be solved, and the collection and preparation of data

¹⁹ Pinnington, D.” Artificial Intelligence: What is AI and Will it Really Replace Lawyers”, (Toronto: LAWPRO Magazine, February 2018) . Online at: <http://www.slaw.ca/2018/03/12/artificial-intelligence-what-is-ai-and-will-it-really-replace-lawyers/>

that is supplied to the AI solution, as well as the way that the solution processes that data all present opportunities for the introduction of certain biases, which will be reflected in the outcome or answer to the problem.²⁰ These can be hard to detect and challenge. Human thought processes leading to an answer can be challenged by asking the human to deconstruct that process to demonstrate how the answer was obtained. It is less feasible to have a machine do that. It is interesting to note however, that the new European Union General Data Protection Regulation (Articles 13-15) creates a right to an explanation of an algorithmic decision, apparently in the belief that artificial intelligence need not be impenetrable, or could have as one of its evolutionary requirements, transparency in its “decision” processes

TWENTY FIRST CENTURY LEGAL CAREERS:

What do these mean for the career paths of 21st Century Lawyers:

The implications of technology on the careers of lawyers are the subject of books and articles too numerous to mention here. There are a few basic observations however, that guide discussions about this.

Lawyers as we know them will still exist:

One is that lawyers will not disappear. Artificial intelligence can and will increasingly be able to do some of the things that lawyers do, and in some cases, do it better. But for now it is difficult to conceive of an AI enabled entity making submissions in court, for example or using knowledge and empathy to counsel clients through difficult decisions.

New, technology enabled, opportunities:

Another is that technology opens up a number of new, future roles for lawyers. as lawyers consider how to continue to add value in a technology enabled world. These roles are described in various ways by legal futurists, but they include roles as knowledge engineers who build online advice and service systems, and populate them with legal knowledge, legal process analysts, legal

²⁰ Thompson, C. Coders: The Making of a New Tribe, and the Re-making of the World, (New York, Penguin Press, 2019) is an anthropological discussion of the effect of the culture of those who code for artificial intelligence on what solutions are generated and on public policy writ large.

support system managers, and legal project managers, online dispute resolution “e” - arbitrators, neutrals and mediators, legal risk managers, and legal management consultants.²¹

Technology enabled globalization and information sharing opens up the necessity of and possibility for some twenty first Century lawyers to become experts and competent across the laws and legal cultures of multiple jurisdictions, and in many areas, across traditional and post colonial legal systems.

There are three important considerations in taking advantage of these opportunities. One is that they will involve education in and acquisition of new skills, that include an understanding of and facility with new technology and process innovation. There is some nascent recognition of this in legal education, but it will require much more development.

A second is the question of whether we are really looking at the advent of multiple legal professions. Some of these new roles will advance specialization to a degree to which it is probably not possible to say that there is one “legal profession”, assuming that that is even true now, for which we all train, and become competent. There may be more than one “twenty first century lawyer”.

The third is that it will inevitably require working across professional lines - with a recognition of the necessity of the role and contribution of other professionals in technology and technology related fields - a degree of cooperation and integration that will require ceding some professional authority and independence in a way that has hitherto not been necessary.

Changing nature of work: Some consequences:

It seems inevitable as well that some of the work lawyers currently do will disappear - to be done by artificial intelligence solutions, or to be outsourced to less costly service providers - an outsourcing that is, of course, facilitated by technology. To date, this has been largely rote, repetitive work document work, and advice on matters the potential consequences of which are less onerous. To the extent that this “frees up” lawyers to do more sophisticated, challenging and interesting work, it has a benefit to the lawyer, as well, presumably to the client who would benefit from less costly routine service.

²¹ Susskind, R. *Tomorrow's Lawyers*, *supra* footnote 5, at Chapter 11. See also Canadian Bar Association, *supra* footnote 1.

But, there are some caveats to these beneficial aspects of the advent of technology to do some of this work. One is that there are lawyers whose livelihoods have hitherto depended in whole, or in part on doing work of this nature. They are at risk here.

Another is that the kind of work that is being displaced by technology - document work and advice and representation on less consequential matters has been traditionally the work used to provide practical legal training to those entering the profession. This presents a real challenge as opportunities for practical legal training diminish with the advent of technology, and a need to consider how to replace it.

It will also mean that the legal services that are “reserved” to lawyers will have to be considered, and reconsidered. Technology can or soon will be able to provide some of those services, more effectively, and at less cost. It will also assist other legal service providers including para-professionals to provide some of these services, again at a cost that is likely less than the services of a lawyer. Access to legal services will be an important consideration here, as we consider whether we really need twenty first century lawyers to continue to provide these services at all – or, perhaps whether, as just noted, we are looking at multiple types of legal professional .

Finally, technology will drive twenty first century lawyers to work in new organizational configuration. Some of the current “disruptive” technology is being driven by large investments of capital.²² These kind of investments are not normally possible or likely in traditional law firm, and law partnership arrangements, because of the financing structure and incentives on which these operate. Almost inevitably therefore, the entities providing legal services will have to be freed from restrictions on business models, to allow legal services to be provided in alternate business structures, including corporations, multi disciplinary partnerships, and across professional lines with other service providers, where risk can be absorbed, and risk capital can be generated. It is unlikely the the “law firm” of the last century will remain the dominant model for providing legal services, and careers for lawyers of this century.

²² Susskind, R. and Susskind, D. The Future of the Professions, *supra*, footnote 2. Note for example that Rocket Lawyer is reported to have raised forty three million U.S. dollars in capital to support its growth and expansion.
<http://www.slaw.ca/2018/03/12/artificial-intelligence-what-is-ai-and-will-it-really-replace-lawyers/>

CONCLUSION : THE DEATH OF LEGAL EMPLOYMENT

Finally, we are asked , “**Are we killing legal employment?**” No, we are not. But we are changing it radically. We have seen that we as lawyers, are not going to be the sole drivers of that change. To remain in the game, we will need to catch up to where technology is already taking us . That involves rethinking regulatory and ethical constraints on what we do, and reconsidering how we educate and train ourselves for the future. It involves coming out of our comfort zones, and changing our professional cultures to allow ourselves to embrace risk and to work with new “players”. Most importantly it involves recognizing that the central concern isn’t or shouldn’t be legal employment. The real lens that our professionalism demands should be client centered. It should ask how we can most effectively add value in partnership with technology to provide greater access to legal services in a world that currently is very underserved.

Bill Gates is frequently quoted as saying:

We always overestimate the change that will occur in the next two years, and underestimate the change that will occur in the next ten. Don’t let yourself be lulled into inaction.

Let us not be “lulled”.