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‘Times are a-changin’: disruptive innovation and the legal profession

IBA Legal Policy & Research Unit

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Executive summary

This report seeks to investigate Professor Christensen's 'disruptive innovation' theory as applicable to the legal profession. It provides a brief analysis of various changes occurring within the legal market, their potential consequences for both buyers and sellers of legal services, and the drivers and barriers to innovation.

Of particular interest is the evolution of legal services from the purely bespoke to the commoditised. There are three main drivers of such a change. First, the 'more-for-less' challenge, which refers to the growing number of clients demanding more efficient legal services for less money. Secondly, the gradual liberalisation of the profession, referring to the alternative business structures model. Thirdly, the vast improvements in information technology and, in particular, 'big data' and artificial intelligence, which offer significant efficiencies for the profession. Other drivers include growing competition from the 'big four' accounting firms and the spread of legal service providers using alternatives to the traditional law firm business model.

Innovations – particularly those transforming legal services into standardised or packaged services – are likely to yield significant benefits for consumers in terms of cost, quality and access to justice. They also offer substantial opportunities for those firms who are able to deliver real value to consumers. For traditional law firms seeking to become market leaders or stay atop their market they must overcome the conservative, risk-adverse culture that seems to pervade the profession, and may need to deconstruct their structure and pricing models.

Introduction

The legal profession¹ is undergoing significant disruption.² So much so, that Susskind³ predicts ‘the emergence of a legal industry that will be quite alien to the current establishment’.⁴

The Law Firms in Transition Survey,⁵ conducted earlier this year, revealed that 72.4 per cent of law firm leaders in the United States believe that the pace of change within the profession is increasing.⁶ Law firms face mounting pressure from clients to deliver more efficient services at lower cost. At the same time, they must compete with legal services providers who operate under alternative business models. These providers can leverage new technologies to create efficiencies and drive down overhead costs, which they generally then pass on to consumers. This enables providers to serve those consumers who, for cost reasons, were previously underserved or unserved by the profession.

Another key feature of many of these alternative providers has been driven by the current trend of unbundling legal work and separating those parts that can be performed in-house, by the client/related entity or outsourced to other providers.⁷ In this way, many aspects of legal work are evolving from purely ‘bespoke’ towards ‘commoditised’ services. Indeed, Susskind writes that traditional face-to-face lawyering is now ‘dormant’ and predicts that ‘the way in which lawyers work will change radically’ in the future.⁸

Commentators⁹ have described such changes as ‘disruptive innovation’, a term coined by Professor Christensen in his critically acclaimed book, *The Innovator’s Dilemma*.¹⁰ Disruptive innovation is a term that:

‘Describes a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.’¹¹

Arguably new alternative legal services providers might become the disruptive innovators of the legal market.

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- 1 The author uses the terms ‘legal profession’, ‘legal industry’ and ‘legal market’ interchangeably while recognising that there is a debate about whether there should be a distinction between these terms, and whether it is important. See eg, Laurel S Terry, ‘The Future Regulation of the Legal Profession: the Impact of Treating the Legal Profession as “Service Providers”’ [2009] *Journal of the Professional Lawyer* 189.
 - 2 Shannon L Spangler, ‘Disruptive Innovation in the Legal Services Market: Is Real Change Coming to the Business of Law, or Will the Status Quo Reign?’ (American Bar Association Annual Meeting, Boston, 7–11 August 2014), available at www.americanbar.org/content/dam/aba/administrative/litigation/materials/2014_aba_annual/written-materials/disruptive_innovation.authcheckdam.pdf. This and all other URLs herein last accessed 14 April 2016, unless otherwise specified. See also Raymond H Brescia et al, ‘Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice’ [2015] 78.2 *Alb Law Rev* 553.
 - 3 Touted as ‘the proverbial Moses for the forward-thinking, modern law firm’, David J Parnell, ‘Richard Susskind: Moses to the Modern Law Firm’ (*Forbes* 21 March 2014), available at www.forbes.com/sites/davidparnell/2014/03/21/richard-susskind-moses-to-the-modern-law-firm..
 - 4 Richard Susskind (2013) *Tomorrow’s Lawyers: An Introduction to Your Future* (Oxford University Press, 2013) xv (hereinafter referred to as ‘Tomorrow’s Lawyers’).
 - 5 The survey was conducted in March and April 2015. It polled managing partners and chairs at 320 US law firms employing 50 or more lawyers, including 47 per cent of the 350 largest law firms in the US: Thomas S Clay and Eric A Seeger, ‘Law Firms in Transition Survey’ (Altman Weil, 2015), available at www.altmanweil.com/dir_docs/resource/1c789ef2-5cff-463a-863a-2248d23882a7_document.pdf.
 - 6 Notably, 66.7 per cent of leaders thought the same in 2014: *ibid* 2.
 - 7 John S Dzienkowski, ‘The Future of Big Law: Alternative Legal Service Providers to Corporate Clients’ (2014) 82 *Fordham Law Rev* 2995, 3015.
 - 8 Susskind, n 4, p 3.
 - 9 *Ibid*. See also Ray Worthy Campbell, ‘Rethinking Regulation and Innovation in the U.S. Legal Services Market’ (2012) 9 (1) *NYU J L & Bus* 1, 11; Joan C Williams, Aaron Platt and Jessica Lee, ‘Disruptive Innovation New Models of Legal Practice’ (*University of Hastings College of Law*, 2015), available at www.uchastings.edu/news/articles/2015/06/Disruptive-Innovation-New-Models-of-Legal-Practice.pdf.
 - 10 Clayton Christensen (1997) *The Innovator’s Dilemma: When New Technologies Cause Great Firms to Fail* (Harvard Business School Press, 1997) (hereinafter referred to as ‘The Innovator’s Dilemma’).
 - 11 Clayton Christensen (2015) ‘Disruptive Innovation’ (*Clayton Christensen*, 2015), available at www.claytonchristensen.com/key-concepts, last accessed 19 October 2015.

The proliferation of start-ups and alternative legal services providers is underpinned by the gradual liberalisation of the market, which is occurring in various countries including the United Kingdom and Australia. Additionally, revolutionary technologies such as ‘big data’¹² and improvements in artificial intelligence (such as, IBM’s ‘Watson’)¹³ offer unparalleled efficiencies in the delivery of certain aspects of legal work. This environment is encouraging innovation to flourish but may spell doom for those unwilling to move forward.

Bob Dylan once wrote:¹⁴

‘If your time to you
Is worth savin’
Then you better start swimmin’
Or you’ll sink like a stone
For the times they are a-changin’.’

There is some wisdom in these lyrics for traditional law firms: reform your structure and business model or face potentially bleak consequences.

The purpose of this report is to investigate various changes occurring within the profession and the forces that might be driving, or obstructing, these changes. It also analyses the potential consequences of innovation for consumers and legal services providers, particularly law firms. It makes recommendations for law firms, namely that they commit to innovation to maintain market share or become market leaders. This report is not intended to be an exhaustive paper on this topic.

12 “Big Data may be understood as a more powerful form of data mining that relies on huge volumes of data, faster computers, and new analytic techniques to discover hidden and surprising correlations”, Ira S Rubinstein, ‘Editor’s Choice: Big Data: The End of Privacy or a New Beginning?’ *International Data Privacy Law* (2013) 3(2): 74-87 first published online 25 January 2013, doi:10.1093/idpl/ips036.

13 ‘IBM Watson is a technology platform that uses natural language processing and machine learning to reveal insights from large amounts of unstructured data.’ IBM (no date) ‘What is Watson?’ (IBM), available at www.ibm.com/smarterplanet/us/en/ibmwatson/what-is-watson.html, last accessed 20 March 2016.

14 Bob Dylan, ‘The Times They Are A-Changin’ (Copyright 1963, 1964 by Warner Bros. Inc; renewed 1991, 1992 by Special Rider Music).

Disruptive innovation

In *The Innovator's Dilemma*, Professor Christensen sought to explain 'the failure of companies to stay atop their industries when they confront certain types of market and technological change'.¹⁵ He theorised that there are two types of technical innovations: sustaining innovations and disruptive innovations.

A sustaining innovation is a technology that improves the performance of a product or service on the market. Such technologies 'can be discontinuous or radical in character, while others are of an incremental nature'.¹⁶ Companies refine their products by inventing or capitalising on new technologies, with a view to boosting their sales to the higher tiers of the market. However, '[a]s companies tend to innovate faster than their customers' needs evolve, most organizations eventually end up producing products or services that are actually too sophisticated, too expensive and too complicated for many customers in their market'.¹⁷

These circumstances create a gap in the market: catering to those customers who may be unwilling and/or unable to afford these more 'sophisticated' or 'complicated' products or services. That gap can fuel the development of innovations that transform a product or service to serve those consumers on the fringes of the market who might be overshot or underserved by the sophisticated or complicated product offerings, or non-consumers.¹⁸ This is what Professor Christensen calls 'disruptive innovation'. Such technologies (products or services) are typically 'cheaper, simpler, smaller, and, frequently, more convenient to use'.¹⁹ At this stage, disruptive technologies are not embraced by 'established firms'²⁰ because they do not initially satisfy the demands of wealthier consumers and so do not have such attractive profitability prospects.²¹ Moving into these new markets would involve those firms' resources being diverted elsewhere, rather than being used to deliver better quality products to existing customers.²² Eventually however, disruptive innovators improve their products until they reach a point at which they satisfy the needs of a majority of customers, thereby displacing incumbents.²³

15 Christensen, n 11, viiii.

16 Ibid xv.

17 Christensen, n 12; Brescia et al, n 2, p 557.

18 Ibid; see also Campbell, n 10, p 11.

19 Christensen, n 11, at xv.

20 Christensen defines established firms as 'those that had been established in the industry prior to the advent of the technology in question, practicing the prior technology' (ibid, 9).

21 Ibid, xvii; George Beaton, 'Wrestling with the Innovator's Dilemma' (*The Global Legal Post*, 23 July 2012), available at www.globallegalpost.com/management-speak/wrestling-with-the-innovators-dilemma, last accessed 29 October 2015.

22 Campbell, n 10, 15, citing Christensen, n 11, pp 19–20.

23 Christensen, n 11.

Professor Christensen summarises the pattern of industry disruption thus:

‘New competitors with new business models arrive; incumbents choose to ignore the new players or to flee to higher-margin activities; a disrupter whose product was once barely good enough achieves a level of quality acceptable to the broad middle of the market, undermining the position of longtime leaders and often causing the “flip” to a new basis of competition.’²⁴

The following discussion focuses on the theory of disruptive innovation while recognising that other definitions of ‘innovation’ have been used to explain the changes occurring within the legal profession.²⁵

24 Clayton M Christensen, Dina Wang and Derek van Bever, ‘Consulting on the Cusp of Disruption’ (*Harvard Business Review*, October 2013), p 2, available at <https://hbr.org/2013/10/consulting-on-the-cusp-of-disruption>.

25 See eg, *The Innovation in Legal Services Report* adopted a broad definition of ‘innovations’ as meaning ‘both the development of new or improved services and new or improved ways of delivering legal services’. The report stated that in this context, ‘innovation is best seen as a business (rather than technological) process which is successful only when it delivers value either to the innovating organisation and its stakeholders and/or customers’: Stephen Roper et al, ‘The Innovation in Legal Services Report’ (*Enterprise Research Centre*, July 2015), pp 6, 15, available at www.sra.org.uk/sra/how-we-work/reports/innovation-report.page.

The evolution of legal services

In *Tomorrow's Lawyers: An Introduction to Your Future*, Susskind applied Christensen's theory to the legal profession. He said that disruption is occurring within the market in a number of ways, in particular, that legal services providers are transforming legal work from purely bespoke to commoditisation,²⁶ as represented in Figure 1.

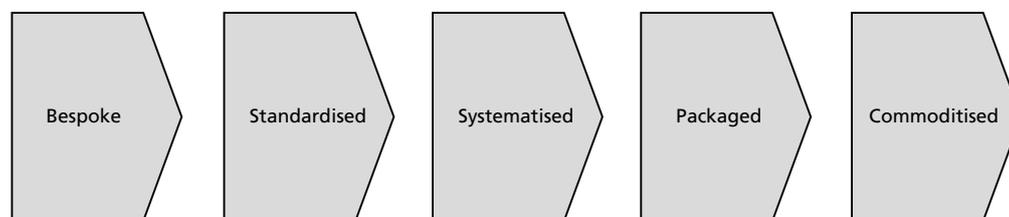


Figure 1: The evolution of legal services²⁷

'Bespoke' services refer to legal work provided in a highly personalised or customised manner. Susskind describes oral advocacy in the court room as the 'quintessential bespoke legal service'.²⁸ Another example is where a lawyer may draft a legal document for a client without some pre-existing form or standard document.²⁹

'Standardisation' is where lawyers rely on tools such as checklists or procedures that prescribe good practices, standard form documents or previous work products.³⁰

'Systemisation' involves lawyers using IT systems internally for more efficient and consistent legal work. Such systems go beyond the storage of standard form documents and, instead, encompass 'a variety of enabling technologies [that] automate legal activities'.³¹

'Packaging' involves lawyers making those IT systems available to their clients, usually over the internet. Susskind gives two examples: first, when law firms offer their clients access to their internal knowledge systems; secondly, when law firms provide access to document assembly systems so that clients can produce their own legal documents.³²

The final step is **'commoditisation'**, which refers to 'legal work that is so commonplace and routinizable that it can be made available in open-source spirit on the web'.³³

26 Other commentators agree, see eg. Peter Kalis as quoted in Michael Bleby, 'New Generation of Law Firms Sparks Life into Legal Service' (*BRW* 4 July 2013), available at <http://www.plxs.com.au/new-generation-of-law-firm-sparks-life-into-legal-industry/> last accessed 15 April 2016; Sarah Reed as quoted in Alexandra Varney, 'Firmly Outside the Box' (*Harvard Law Today*, 24 November 2014), p 3, available at <http://today.law.harvard.edu/firmly-outside-box>.

27 Richard Susskind, 'From Bespoke to Commodity' (*Legal Technology Journal*, 2006), available at www.legaltechnologyjournal.co.uk/content/view/21; see also n 4, p 25.

28 See n 4; see also John O McGinnis and Russell G Pearce, 'The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services' (2014) 82 *Fordham L Rev* 3041, 3042, 3055.

29 Susskind, ee n 28.

30 Ibid.

31 Ibid 1–2.

32 Ibid 2.

33 Ibid; Susskind, n 4, p 28; see also Killian who describes the same concept as 'legal open-sourcing', which is 'the sustained mass online collaboration in the legal field' (Kristen E Killian, 'The Long Tail and Demand Creation in the Legal Marketplace' (2015) 11 *Hastings Bus LJ* 157, 5).

Susskind argued that clients and other competitors are pushing law firms towards commoditisation. This is because legal work towards the right-hand side of the spectrum (Figure 1) tends to be offered on a fixed-fee basis, which brings greater certainty. Clients also expect efficiency gains and greater performance by advisers who are able to draw upon the organisation of procedures, knowledge and expertise across the firm.³⁴ Law firm leaders seem to be aware of this movement; the Law Firms in Transition Survey revealed that 89.4 per cent of law firm leaders think that more commoditised legal work is a permanent trend of the market moving forward.³⁵

Importantly, Susskind is not saying that certain types of legal services must fall within one of his five categories. Rather, a legal task can be broken up into its constituent parts and distributed across a number of categories. His key point is that ‘legal work can be decomposed and sourced in new and different ways’. Thus the question lawyers must ask themselves when receiving a legal task is: ‘What is the most efficient way of undertaking this work ...?’³⁶ The answer might involve outsourcing or offshoring legal work ‘not deemed within the competence or strategy of a firm’.³⁷

As Spangler points out, clients can take the same approach to their legal problems. Current innovations allow corporate general counsel to ‘disaggregate their legal needs and choose a provider that gives the best value for different components of a deal or dispute’. Their solution might involve insourcing work such as discovery compliance;³⁸ big data analytics; “value” firms’ (firms that are focused on providing value to their clients instead of billable hours); legal process outsourcing firms; content management solutions such as e technology, legal search technologies, work flow systems and automated document assembly; and organisations that assist corporate counsel to retain appropriate legal talent for specific matters.³⁹

34 Susskind, n 28.

35 Clay and Seeger, n 5, p 24.

36 Susskind, n 4, p 29.

37 Susskind, n 28.

38 Spangler, n 2, p 6; Dzienkowski, n 8, 2999.

39 Spangler, n 2, p 7.

The drivers of change

The evolution of legal services is underpinned by three main drivers of change: the ‘more-for-less’ challenge; the liberalisation of the profession; and information technology.⁴⁰

The ‘more-for-less’ challenge

The ‘more-for-less’ challenge refers to the growing number of clients who cannot afford legal services when they are delivered in the traditional, bespoke way and, not least, because of the hourly billing model.⁴¹ Corporate general counsel for large organisations, managers within small- to medium-sized businesses and individuals are increasingly demanding more efficient legal services for lower cost.⁴² Mottershead labelled this trend the ‘Uber-fication’ of the law as clients demand easy-to-use services that deliver value.^{43 44}

Some commentators theorise that it was the 2008 financial crisis and the downturn in the world’s economy that was the catalyst for this change;⁴⁵ while Susskind and Christensen argue it is greater transparency within the legal profession that is fuelling it. On this latter point, Spangler commented that the power balance between lawyers and their clients has shifted: ‘Legal services have been demystified, and legal service consumers are more knowledgeable, sophisticated and connected than ever before’.⁴⁶

Christensen claims that it was the creation of corporate general counsel 25 years ago that delivered ‘[t]he first significant blow to law’s opacity’, followed by the Am Law 100 ranking. It is a widely accepted fact that general counsel have increasingly been partners prior to going in-house and already have an idea of the extent to which legal advice has been ‘padded’ or ‘gold-plated’, and therefore know how to reduce costs.

Technology has also enabled transparency. For example, many corporate and law firm clients leverage big data applications that allow them to compare and monitor law firm rates and legal spend.⁴⁷ Law firms use these same technologies to benchmark themselves against the industry and competitively price their services.⁴⁸ There are also start-ups, such as JustiServ in Massachusetts which matches lawyers with prospective clients based on their legal needs and financial means.⁴⁹ Similarly, Lexoo an online platform based in the UK, operates as a medium between lawyers and potential clients.⁵⁰

40 Susskind, n 4, p 3.

41 Ibid 4, 24; see eg, William C Hubbard, ‘Remarks’ (American College of Trial Lawyers, 28 February 2015), available at www.americanbar.org/groups/leadership/office_of_the_president/selected-speeches-of-aba-president-william-c-hubbard/american-college-of-trial-lawyers-february-2015-.html; Killian, n 31, p 5.

42 Susskind, n 4, p 4; Spangler, n 2, p 2.

43 Terri Mottershead as quoted in Felicity Nelson, ‘Uberfication Hits Law Firms’ (*Lawyers Weekly*, 9 October 2015), available at www.lawyersweekly.com.au/news/17285-uber-fication-hits-law-firms?utm_source=lawyersweekly&utm_campaign=YoungLawyers_Bulletin21_10_2015&utm_medium=email.

44 ‘Uber is essentially an app which connects drivers with passengers directly, instead of through a centralised booking service or just hailing a car in the street.’ Michael Rundle (2014) ‘What Is Uber? And Why Do London Cabbies Hate It?’ (*The Huffington Post UK*, 11 June 2014), available at www.huffingtonpost.co.uk/2014/06/11/what-is-uber_n_5483290.html

45 Spangler, n 2, p 1; Killian, n 31, p 2; Jordan Weissmann, ‘The Death Spiral of America’s Big Law Firms’, (*The Atlantic*, 19 April 2012), available at www.theatlantic.com/business/archive/2012/04/the-death-spiral-of-americas-big-law-firms/256124/.

46 Spangler, n 2, p 3.

47 Christensen, Wang and van Bever, n 22, p 4–5; Spangler, n 2, pp 3, 6; see e.g., Sky Analytics, ‘About Us’ (Sky Analytics, no date), available at www.skyanalytics.com/page/4760/About-Us; see also the newly launched Lawcadia in Australia at www.lawcadia.com.

48 See eg, Wolters Kluwer ELM Solutions (2015) ‘TYMetrix 360°’ (*Wolters Kluwer ELM Solutions*) available at www.wkelmsolutions.com/products/T360.

49 www.justiserv.com; see n 42).

50 Lexoo (2015) ‘How It Works’ (Lexoo), available at www.lexoo.co.uk/how-it-works; see also Lawyer Quote in Australia at www.lawyerquote.com.au/about.

Susskind argues that corporate general counsel continue to be at the forefront of change.⁵¹ Similarly, Campbell says that ‘the dominance of the General Counsel’s office has created a potentially disruptive opening for non-lawyers and ‘non-solution shop’⁵² vendors to sell their products and services to the General Counsel’s office’.⁵³ Generally, they are innovating by unbundling legal work, insourcing, working creatively with a number of law firms and taking advantage of new competitors that offer less costly, more efficient services.⁵⁴

The Law Firms in Transition Survey found that 67 per cent of law firm leaders within the US believe that they are losing business to corporate counsel departments that are insourcing work, and 24 per cent perceive this as a potential threat. Another survey conducted by AdvanceLaw in 2013 revealed that 74 per cent of corporate general counsel (at 88 major companies) would prefer ‘to use a good lawyer at a non-pedigreed firm for high stakes (though not necessarily bet the company work) assuming a 30 per cent difference in overall cost’ over a ‘good lawyer at a pedigreed firm’. Moreover, only 11 per cent of corporate general counsel surveyed felt that most lawyers at pedigreed ‘white shoe’ firms were more responsive than at other firms.⁵⁵

Notably, AdvanceLaw is a company that connects corporate general counsel with law firms that ‘exhibit strong quality, expertise, efficiency, and innovation’.⁵⁶ Key to AdvanceLaw’s business model is its performance evaluation system, which aims to bring transparency to the process of law firm selection.⁵⁷

These results show, as the authors of the Law Firms in Transition Survey Report stated: ‘Clients may not be *asking* for change – but they are *showing* law firms that they can and will take alternative measures themselves to achieve greater efficiency and economy’.⁵⁸

In contrast, Brandon, a strategy director at Overture,⁵⁹ argued that corporate general counsel are ‘light years away from creating the kind of disruption the industry needs’. The reason being, ‘too many companies still recruit in-house lawyers who are as junior (cheap) as they can get away with, who are then steamrolled by their law firm suppliers’.⁶⁰ Moreover, Campbell stated that corporate general counsel can be constrained by the established resources processes and values of organisations, which may involve, for example, retaining law firms who bill by the hour.⁶¹

In any case, Susskind warns that, soon, corporate general counsel:

51 Susskind, n 4, p 75.

52 See below under title ‘New Models of Legal Practice’.

53 Campbell, n 10, p 35.

54 See n 25, 5–6; see n 7, 2998–2999.

55 Dina Wang and Firoz Dattu ‘Why Law Firm Pedigree May Be a Thing of the Past’ (*Harvard Business Review*, 11 October 2013), available at <https://hbr.org/2013/10/why-law-firm-pedigree-may-be-a-thing-of-the-past>.

56 Firoz Dattu, ‘Advancing the legal profession’ (*Lumen Legal*, 18 August 2015), available at www.lumenlegal.com/resources/legal-visionaries/advancing-the-legal-profession.

57 Ibid; AdvanceLaw (2015) ‘Home’, available at www.advancelaw.com.

58 Clay and Seeger, n 5, ii.

59 A branding, PR and design agency for businesses, focusing on the professional services field and in particular, legal services, based in London: Overture (2015) ‘About Us’ (*Overture*), available at <http://overture.london/about-us>.

60 Mark Brandon (2015) ‘Law Needs Disruption, Not Innovation’ (*The Lawyer*, 8 June 2015), available at www.thelawyer.com/analysis/behind-the-law/industry-leaders/law-needs-disruption-not-innovation/3035806.article.

61 Campbell, n 10, p 27–28.

‘Will have little choice but to overhaul their departments and working practices. The more for less pressure will built to an almost intolerable level and they will have to recalibrate if not reengineer the way they working internally and how they source external legal services’.⁶²

Liberalisation of the profession

The liberalisation of the profession refers to the process of campaigning for ‘a relaxation of the laws and regulations that govern who can offer legal services and from what types of business’.⁶³ This is distinct from the deregulation of the profession.⁶⁴

Susskind points to legislative changes in the UK that permit non-lawyers to compete in the legal market.⁶⁵ He predicts that this liberalisation will give rise to alternative business structures (ABS) that will better meet clients’ more-for-less challenge and, consequently, ‘will have a ripple effect around the world’. He argues that within ten years ‘most major jurisdictions in the West and many emerging jurisdictions too will have liberalized in the manner of England’.⁶⁶

The Innovation in Legal Services Report⁶⁷ suggested that the adoption of ABS laws has already had a positive effect on innovation in the UK. The report found that ‘[a]ll else being equal, ABS solicitors were 13–15 per cent more likely to introduce new legal services’. They are also more likely to engage in innovation in relation to strategy and organisational structure.⁶⁸ The authors deduced from these results that wider adoption of ABS status would likely increase the range of legal services available to consumers.⁶⁹

In the US, Campbell noted that there has been ‘a creeping *de facto* deregulation of legal services provided to corporate clients’ that ‘has allowed innovation to flourish’.⁷⁰ However, in the individual client part of the market, consumer class actions brought by private attorneys against innovators such as LegalZoom (discussed further herein), often alleging unauthorised practice of the law, has worked to slow entry of new services and products.⁷¹

Information technology

Susskind listed 13 innovative technologies expected to ‘disrupt and radically transform the way lawyers and courts operate’:⁷²

- automated document assembly;

62 Susskind, n 4, 75.

63 Ibid, 8.

64 Ibid, 6.

65 Ibid.

66 Ibid, 9.

67 Based on the results from a survey of 1500 organisations included Solicitors, Barristers, other legal service providers in the regulated sector (‘including patent and trade mark attorneys, notaries, legal executives, conveyancers and cost lawyers’) and other legal service providers in the unregulated sector (‘including will writers, bailiffs, arbitrators, examiners and referees’). There were 20 in-depth interviews and a telephone survey conducted in March and April 2015: Roper et al, n 26, 26, 11.

68 Roper et al, n 26, 4, 16, 73.

69 Ibid, 71.

70 Campbell, n 10, 5.

71 Ibid, 5–6. An in depth discussion of the changes in the regulation of legal profession within different jurisdictions is beyond the scope of this report.

72 Susskind, n 4, 13, 40.

- relentless connectivity (refers to technologies that allow immediate access to lawyers by their clients and colleagues);
- electronic legal marketplace (refers to online reputation systems that allow consumers to compare law firms);
- eLearning (refers to technologies transforming law firm training and law schools);
- online legal guidance;
- legal open sourcing (refers to ‘sustained online mass collaboration which is a form of commoditization’);
- closed legal communities (refers to lawyers collaborating and sharing knowledge online);
- workflow and project management (information systems);
- embedded legal knowledge (refers to laws and regulations being embedded within systems and machines, such as cars);
- online dispute resolution;
- intelligent legal search;
- big data (which refers to the enormous amount of data collected by technologies and requiring analysis); and
- artificial intelligence problem-solving.

Brandon is sceptical about the effects of technology. He claims that:

‘The technology to warp, destroy and remake the legal profession has been around for years. And yet the number of lawyers hasn’t been reduced, the cost of Big Law services has only increased and the use of so-called Big Data by law firms seems to be non-existent’.⁷³

On the other hand, these new technologies seem to be engendering an entrepreneurial spirit within the profession. For instance, in the US, pop-up innovation labs called legal ‘hackathons’ have appeared. These involve ‘attorneys, developers, designers, marketers, and entrepreneurs coming together in a room and deciding to build something that will have a positive impact on the legal industry’.⁷⁴ These legal ‘hackathons’ are contemporary innovation labs for the legal industry, and are now generating business; Rodriguez observes that several legal technology companies have launched months after legal ‘hackathons’ have taken place.⁷⁵ AngelList has also listed 997 legal start-ups, operating globally since 2011, which are worth an average of \$4.3m.⁷⁶

73 Brandon, n 61.

74 Allen Rodriguez (2015) ‘Legal Hackathons: Innovation Labs for the Legal Industry’ (*Law Technology Today*, 23 October 2015), available at www.lawtechnologytoday.org/2015/10/legal-hackathons-innovation-labs-for-the-legal-industry.

75 Ibid.

76 AngelList (2015) ‘Legal Startups’, available at <https://angel.co/legal>.

This environment is set to continue as the power of computers accelerates exponentially. According to Moore's Law,⁷⁷ the number of transistors that can be fitted onto a computer chip doubles every two years.⁷⁸ These developments in hardware capability mean improved processing power and energy efficiency at a lower cost to the end user.⁷⁹ Research has confirmed that Moore's law remains accurate and that 'a similar exponential growth occurs in the telecommunication and storage of information'.⁸⁰ On the 50th anniversary of his Law in 2015, Moore predicted it might hold true for at least another five to ten years.⁸¹

There have also been substantial computational capacity improvements through developments in software algorithms, and the increasing interconnectedness between computers and human intelligence enabled by the internet.⁸² These advances were behind the creation of Watson, the IBM cognitive computer, which competed and won the game of *Jeopardy* in 2011.⁸³ Recently, a group of University of Toronto students developed ROSS, an 'artificially intelligent attorney', built on top of Watson. It has the capability to answer legal questions by reading 'the entire body of law and return[ing] a cited answer and topical readings from legislation, case law and secondary sources'. It also monitors the law and will notify the lawyer of new decisions that might affect their case.⁸⁴

The Law Firms in Transition Survey asked law firm leaders in 2011 and in 2015, whether they could envisage a law-focused 'Watson' replacing any 'timekeeper' roles within the next five to ten years (Figure 20). The results indicated 'a growing recognition of the capabilities of artificial intelligence'.⁸⁵

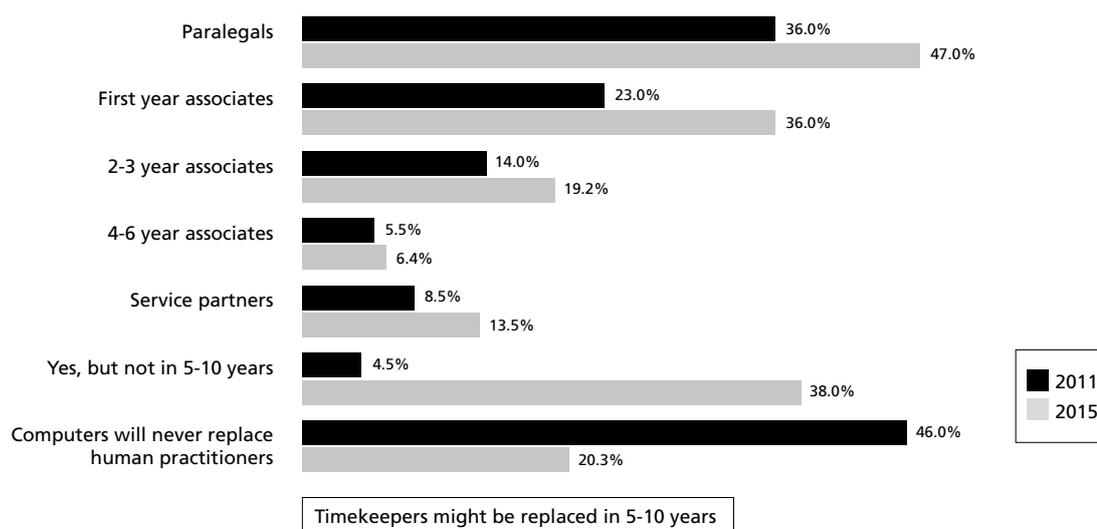


Figure 2: Artificial intelligence and the legal profession: 2011 vs 2015⁸⁶

77 Devised by Gordon Moore in 1965 and revised in 1975: Computer History Museum (2014) '1965 – "Moore's Law" Predicts the Future of Integrated Circuits', available at www.computerhistory.org/semiconductor/timeline/1965-Moore.html.

78 McGinnis and Pearce, n 29, 3043; Intel, 'Moore's Law: Fun Facts' (no date) available at <http://www.intel.co.uk/content/www/uk/en/history/history-moores-law-fun-facts-factsheet.html>.

79 Intel, '50 Years of Moore's Law' (no date) available at www.intel.com/content/www/us/en/silicon-innovations/moores-law-technology.html?wapkw=moores+law.

80 McGinnis and Pearce, n 29, 3043.

81 Damon Poeter, 'Gordon Moore Predicts Ten More Years for Moore's Law' (*PC Mag UK*, 12 May 2015) available at <http://uk.pcmag.com/chipsets-processors-products/41844/news/gordon-moore-predicts-10-more-years-for-moores-law>.

82 McGinnis and Pearce, n 29, 3045.

83 Ibid (emphasis in original).

84 Ross (no date) 'About' available at www.rossintelligence.com; Brian Jackson, 'Meet Ross, the Watson-Powered "Super Intelligent" Attorney' (*itbusiness.ca*, 23 January 2015) available at www.itbusiness.ca/news/meet-ross-the-watson-powered-super-intelligent-attorney/53376.

85 Clay and Seeger, n 5, 83.

86 Ibid.

McGinnis and Pearce highlighted five areas of the law that will dramatically change with machine technology: ‘(1) discovery; (2) legal search; (3) document generation; (4) brief and memoranda generation; and (5) prediction of case outcomes’.⁸⁷

Discovery

Arguably machine intelligence is most advanced in the area of discovery. Technologies are moving from basic keyword searches to predictive coding, which involves algorithms that predict whether a document is relevant. Many large law firms have already established e-discovery departments, and new service providers, such as Modus, are emerging.⁸⁸

Legal search

Online legal search has been used by the legal profession to improve the provision of existing services. In that way, as Campbell argues,⁸⁹ it is a sustaining innovation. For example, LexisNexis – which provides a searchable directory of online resources for lawyers and other professionals, and consolidates most of the information they need into a single database – is currently used by the majority of top- and mid-tier law firms.⁹⁰

However, online legal search has the potential to become disruptive. McGinnis and Pearce envisage two phases of future technological change in this area. The first phase, which is expected to come in the next 10 to 15 years, involves perfecting semantic search technology that ‘will allow lawyers to input natural language queries to computers, and the computers will respond semantically to those queries with directly relevant information’.⁹¹ Computers will also be able to assess the strength of precedents based upon how they are treated in subsequent case law. The second phase involves technology that is able to identify issues within a given set of facts and then suggest relevant authorities that might apply to those issues.⁹²

Ultimately, McGinnis and Pearce predict that, in time, machine intelligence will replace the legal search function of lawyers.⁹³ Judicata is a start-up in this area that uses ‘open source text analytics, search and cloud computing tools and bodies of knowledge’ to structure data and provide lawyers a smart interface to that data.⁹⁴ Another example is the Applied Cognitive Engine (ACE) programme, developed by RAVN Systems, which boasts the capability to automatically read, extract and summarise information held within documents.⁹⁵ Berwin Leighton Paisner has become the first law firm to sign up to ACE, which will be rolled out within the firm’s flagship real estate department and to other practice areas.⁹⁶

87 McGinnis and Pearce, n 29, 3046.

88 Ibid; Modus (2015) ‘Overview’, available at <http://discovermodus.com/overview>.

89 Campbell, n 10, 8–9.

90 Rany J Sader and Rebecca Younan (2014) *The Growing Use of Information Technology in the Deliverance of Legal Services in the Middle East* (Sader & Associates).

91 McGinnis and Pearce, n 29, 3049.

92 Ibid, 3050.

93 Ibid, 3048.

94 www.judicata.com, accessed 6 November 2015; Ansel Halliburton, ‘Judicata Raises \$5.8M Second Round Offer to Build Out Advanced Legal Research Systems; Keith Rabois Joins Board’ (*TechCrunch*, 2013), available at <http://techcrunch.com/2013/05/28/judicata-raises-5-8m-second-round-to-build-out-advanced-legal-research-systems-keith-rabois-joins-board>; see also, another start up in this area: Lex Machina, www.lexmachina.com/what-we-do.

95 www.ravn.co.uk/technology/applied-cognitive-engine.

96 “The only thing to fear is doing nothing” – BLP becomes first law firm to sign up to RAVN’s artificial intelligence solution’ (*Legal IT Insider*, 15 September 2015), available at www.legaltechnology.com/latest-news/the-only-thing-to-fear-is-doing-nothing-blp-becomes-first-law-firm-to-sign-up-to-ravns-artificial-intelligence-solution.

The trend for developing computer tools to improve legal research is not reserved for the Western societies. According to a report produced by the Lebanon-based Sader & Associates firm:

‘In the Middle East, legal databases and other such innovations are already available and even government initiatives to provide legal information to the public are underway.’⁹⁷

In 2013 Sader launched its new ‘Arabic Platform’ in Lebanon, which features legislation, case decisions, legal consultation and legal studies, whereas, as early as 2008, it had begun collaborating with LexisNexis to provide a Middle East database to its clients.

Asia has also progressed in terms of the various analytical tools that are being used to improve legal services, so far that it probably cannot be considered merely an emerging market in relation to the legal profession. Baker & McKenzie’s pharmaceutical and healthcare MapApp, which was developed by the firm’s branch in China, is a good example of a successful marriage between content and technology. The tool, a round-up of commercial and legal updates in the life science industries, allows the firm’s clients to access this information in real-time and on-the-go. It also has a jurisdiction filter and can push notifications to clients.⁹⁸

Document generation

Automated document assembly works by automatically generating a legal document in response to a questionnaire filled out by a consumer. LegalZoom and RocketLawyer are two providers that allow consumers to create their own legal documents online, catering primarily for small businesses and individuals.⁹⁹ Arguably, this technology is disruptive because it provides useful services to consumers unable to afford a lawyer and is therefore capable of unsettling the way legal services are commonly provided, namely through the employment of an attorney.¹⁰⁰ Although, as Brescia et al. pointed out, it ‘could just as easily serve as an example of a sustaining technology’ if lawyers use it to improve their efficiency and lessen their workloads.¹⁰¹

It is expected that, as technologies progress, automated document assembly will become far more advanced and applicable to a wider scope of legal practices, not merely basic contracts or wills. McGinnis and Pearce predict that ‘machine processing will be able to automate a form, tailor it according to the specific facts and legal arguments, and track its effect in future litigation’.¹⁰² They also believe that the automated generation of legal briefs or memoranda will improve substantially within the next 15 years, such that computers will be able to deliver ‘very useful drafts’.¹⁰³

97 Sader and Younan, n 91.

98 Information drawn from the FT *2015 Asia-Pacific Innovative Lawyers Report*. For details see: www.ft.com/reports/innovative-lawyers-asia-pacific.

99 www.legalzoom.com/about-us, last accessed 6 November 2015; www.rocketlawyer.co.uk/about-us.r1.

100 Campbell, n 10, 12.

101 Brescia et al, n 2, 573.

102 McGinnis and Pearce, n 29, 3050.

103 Ibid, 3052.

Legal analytics

Legal analytics refers to the use of algorithms to analyse vast amounts of data (otherwise known as ‘big data’)¹⁰⁴ to identify patterns and trends and make legal predictions, including the likely result of litigation.¹⁰⁵ This kind of technology is already in use for e-discovery purposes.¹⁰⁶ McGinnis and Pearce forecast that, over time, as predictive technologies provide more accurate estimates, they may reduce the value of lawyers’ assessments of matters and may encourage parties to reach a settlement more rapidly.¹⁰⁷ Moreover, Rijmenam¹⁰⁸ argues that big data, if harnessed by technologies, can contribute to the legal industry in four ways: first, by reducing costs and improving the efficiency of court processes; secondly, by driving transparency into the market; thirdly, to deliver new evidence in court; and fourthly, by improving the effectiveness of recruitment processes.¹⁰⁹

Goodman points out that while big data analytics programs will free up lawyers to undertake more challenging work, it may reduce the scope for training young lawyers who often learn by taking on straightforward, routine cases.¹¹⁰ Law firms are also reluctant to ‘digitise’ their data because of threats to privacy and security.¹¹¹ Therefore, as Goodman suggests, firms must ensure that client data is anonymised before it is analysed.¹¹²

The threat of cyber-security breaches with regard to the data procession of legally-related information, recently demonstrated by numerous examples of hacking and malicious software, has increased clients’ reluctance to provide legal professionals with their personal data. Even if it is anonymised, data analytics has the power and capability to decode the source of information. The legal services industry must improve its reflexes in the cyber-security to stay protected, but this is something beyond the scope of this report.

Notably, the public sector is also capitalising on big data. For instance, the Arts and Humanities Research Council is funding the UK’s National Archives to undertake the ‘Big Data for Law’ project, which was launched to research how legislation is developed and used.¹¹³

104 www.ibm.com/big-data/us/en.

105 Joanna Goodman, ‘Big Data: Too Much Information’ (*The Law Society Gazette*, 23 February 2015), available at www.lawgazette.co.uk/law/big-data-too-much-information/5046950.fullarticle; McGinnis and Pearce, n 29, 3052.

106 Goodman, n 106.

107 McGinnis and Pearce, n 29, 3053.

108 Founder of Datafloq, a platform connecting stakeholders within the global Big Data Market: Mark van Rijmenam, ‘How Big Data Can Improve the Practice of Law’ (*Datafloq*, 23 August 2015), available at <https://datafloq.com/read/how-big-data-can-improve-the-practice-of-law/158>.

109 Ibid.

110 Goodman, n 106.

111 van Rijmenam, n 109.

112 Goodman, n 106.

113 The National Archives, ‘Big Data for Law’, available at www.legislation.gov.uk/projects/big-data-for-law; Goodman, n 106.

New models of legal practice

Campbell suggested that alternative business models and ‘value configurations’¹¹⁴ ‘have taken centre stage [in theorist’s work] as the real enablers of disruptive innovation’.¹¹⁵ As Spangler stresses, disruptive innovation ‘is not about mere technology, but about a game-changing business model that makes new use of an existing technology or takes advantage of a technological advance’.¹¹⁶

In the same vein, Lamb states that ‘technology is a tool, not an answer’. Speaking on the demise of ‘Clearspire’, a US multidisciplinary firm ‘once hailed as a disrupter that could upend the traditional legal business model’, Lamb lamented the firm ‘focusing too much on the technology they had developed and not enough on solving specific problems of specific clients’.¹¹⁷

The ‘solution shop service’

By reference to theorists Stabell, Fjeldstad and Christensen, Campbell argues that, traditionally, law firms work as ‘solution shop businesses’. This means that consumers frequently approach lawyers with problems that are uncertain or imprecise, precluding the application of standardised off-the-shelf solutions in the first instance. The solution shop value configuration demands that the solution be tailored to the problem identified, and while ‘components that have been produced through a value chain process may be incorporated in the solution shop service’ the service itself ‘remains inherently individualized and directed at diagnosing and solving the consumer’s problem.’¹¹⁸

In other words, typically lawyers provide bespoke services to their clients because of the imprecise nature of their problems. Campbell argues that, as the solution shop addresses a job several times, ‘the contours of the problem become clearer, opening the way to standardized value chain solutions’.¹¹⁹ Where standardized solutions can safely be provided to consumers, firms using alternative business models might deliver better value at lower prices.¹²⁰

Campbell also claims that there is generally no information asymmetry between in-house counsel and the law firms they retrain. Campbell therefore warns that unless law firms become specialists in niche areas of the law to preserve some information asymmetry, the solution shop model may no longer work in the corporate setting.¹²¹

114 A process by which value is added in business: Campbell, n 10, 21–22, citing Charles B Stabell and Øystein D Fjeldstad (1998) ‘Configuring Value for Competitive Advantage: On Chains, Shops and Networks’, 19 *Strategic Mgmt J* 413, 415.

115 Ibid, 27.

116 Spangler, n 2 8.

117 Jennifer Smith, ‘Clearspire’s Technology Outlives “Virtual” Law Firm’ (6 June 2014), available at <http://blogs.wsj.com/law/2014/06/06/clearspires-technology-outlives-virtual-law-firm/>; Patrick J Lamb, ‘RIP Clearspire: Is this an ominous sign for New Law’ *ABA Journal* (11 June 2014), available at www.abajournal.com/legalrebels/article/rip_clearspire_is_this_an_ominous_sign_for_newlaw.

118 Campbell, n 10, 24.

119 Ibid, 27.

120 Ibid, 32.

121 Ibid, 34.

Alternative models

The *Disruptive Innovation New Models of Legal Practice Report* (the ‘Report’) focuses on five types of businesses using alternative business models primarily based in the US (labelling them ‘New Models’): secondment firms, law and business advice companies, law firm accordion companies, virtual law firms and companies that encompass a variety of business models (offering alternative billing practices, greater flexibility for staff and women-friendly environments).¹²²

The Report suggested that many New Models have arisen from clients’ and lawyers’ dissatisfaction with traditional law firms and the way in which they deliver legal services.¹²³ In particular, many lawyers were frustrated with law firms’ emphasis on billable hours and lack of flexible work practices, particularly for women re-entering the workforce after having children.¹²⁴

A key feature of New Models is their use of new technologies. This includes cloud-based tools which allows them ‘to create seamless communication networks among widely dispersed attorneys and to outsource everything from administrative work to office management’. Some New Models operate virtually,¹²⁵ or out of minimal physical office space. These features significantly reduce their overhead costs, which translate into considerable cost savings for their clients.¹²⁶

The Report acknowledged that many New Models actually ‘specialize in traditional bespoke work; they just organize the lawyers who deliver it in a different way’.¹²⁷ As such, these firms are probably not ‘disruptors’; Brandon suggested that some might not even be innovators:

‘Opening an office in Kettering, Cork or Quezon City is not innovative. Introducing a new client relationship management database or invoicing system is not innovative. Nor is fixed collared, capped or value billing. Nor is rebranding your banking department the Capital Instruments Risk Assessment Practice. Different staffing arrangements are hardly innovative if they’re doing the same work in the same way, just in a cheaper location.’¹²⁸

Examples of New Models

To illustrate the fact that the adoption of innovative methods addressing concerns of the legal market has developed from a domestic trend to a worldwide, identifiable pattern, it is useful to mention specific examples of corporate structures that embody the principles of disruptive innovation in one way or another.

Axiom Law is a worldwide corporation with over 1,500 employees. It provides legal and business advice and insourcing services to corporate general counsel.¹²⁹ Axiom harnesses ‘IRIS technology’ which is a ‘fully integrated, flexible and cloud based’ platform that was ‘designed to transform the end-to-end contracts process, from the portal enabled intake of support by business users, to contract drafting,

122 Williams, Platt and Lee, n 10.

123 Ibid, 2.

124 Ibid, 18.

125 See eg, www.blisslawyers.com.

126 Williams, Platt and Lee, n 10, 9.

127 Ibid, 7.

128 Brandon, 61.

129 www.axiomlaw.co.uk/what-we-do; Dzienkowski, n 8, 3008.

negotiation, and execution, to the conversion of contractual terms to structured data that can be interrogated and analyzed'.¹³⁰ Employees work remotely, onsite with clients or within Axiom's offices.¹³¹ Notably, Axiom has experienced a 1,216 per cent growth in revenues in the last ten years and was recently recognised as one of the top-ten 'game changers' of the legal profession in the last decade.¹³²

In an effort to address the more-for-less challenge and reduce overall costs for consumers many firms and start-ups have changed the ways they do business. For instance, Smithline PC, a law firm based in San Francisco, runs a 'subscription service' for its clients. For a monthly fee, Smithline handles all relevant matters for their clients.¹³³ This model brings greater predictability and strength to lawyer-client relationships. The firm also sets boundaries to ensure its employees work normal business hours with little or no weekend work and receive three weeks vacation 'completely unplugged from client demands'.¹³⁴

Similarly, Employsure charges clients an annual fee to consult on employment law issues in Australia. If clients follow that advice, they are insured for their liability and legal costs if sued under Fair Work and Work, Health and Safety legislation.¹³⁵

Summit Law Group, a law firm based in Seattle has adopted a 'Value Adjustment Line' billing approach, which 'empowers clients to adjust billing-upward or downward-within thirty days of the invoice, based on their perception of the value received'.¹³⁶

Fenwick & West LLP ('Fenwick') is a full-service law firm with offices in San Francisco, Seattle and Shanghai. In 2010 it introduced 'Flex by Fenwick' ('Flex'), based in San Francisco. Flex steps in to service Fenwick's clients when they are no longer prepared to pay big law prices for day-to-day work, and then integrates them back into Fenwick for major or more complex transactions.

Bliss Lawyers is a secondment firm that operates over a virtual platform. It has a network of more than 10,000 lawyers across the US. Lower overheads means that Bliss charges substantially lower rates than big law and typically, charge flat fees rather than billing by the hour. Also, Bliss is a certified majority women-owned business and over 65% of their engagements are women.¹³⁷

Alternative billing methods have also risen in Canada, where there is the case of a website (www.lawyersforless.com) that offers a service based on an eBay-style model of lawyers tendering bids for clients' cases.¹³⁸

As mentioned, the Asia Pacific region is also keeping up in the arena of innovative business models for the legal services industry. Asia Pacific firms are also creating networks and competing with the international players by practising local law, offering lower rates and finding new ways to raise funding. In the past year,

130 www.axiomlaw.co.uk/what-we-do/capability/iris-by-axiom.

131 www.axiomlaw.co.uk/what-were-not.

132 Financial Times, 'FT Innovative Lawyers Awards 2015' (*Financial Times*, 2 October 2015) <http://im.ft-static.com/content/images/cb7809b4-7808-11e5-a95a-27d368e1ddf7.pdf>, accessed 19 November 2015, 10.

133 Williams, Platt and Lee, n 10, 76–77.

134 *Ibid*, 77.

135 <http://employsure.com.au/what-we-offer>.

136 Williams, Platt and Lee, n 10, 79.

137 Bliss Lawyers, n 126; Williams, Platt and Lee, n 10, 32.

138 Sader and Younan, n 91.

for example, Singapore-based ZICOlaw – whose network spans the Association of Southeast Asian Nations (ASEAN) – created a legal structure that allowed it to publicly trade shares through a holding company.¹³⁹

Another example is Hong Kong-based legal start-up Dragon Law, which focuses on the provision of flat-fee legal services to other start-ups through cloud-based legal tools, with the aim to streamline their businesses. Finally, inspired by the principles of trusteeship and democracy and with a clear focus on technology, the Indian law firm Nishith Desai Associates with offices in India, Singapore, the US and Germany has a ‘happiness billing programme’ under which clients pay according to their satisfaction with the service.¹⁴⁰

Other factors

Susskind acknowledged that there are other forces driving change in the legal profession including globalisation, a shifting demography and competition threats by the big four accounting firms (Deloitte, KPMG, PricewaterhouseCoopers and Ernst & Young).¹⁴¹ The latter have invested heavily in growing their legal teams, concentrating on areas that complement their existing services and focusing on high volume, repetitive tasks (ie, those legal services that can be standardised). While these firms might insist that they are not seeking to erode law firms’ business, some commentators have argued that it is only a matter of time before they steal market share from firms, particularly mid-tier firms.¹⁴²

The *Innovation in Legal Services Report* listed other factors driving innovation, which included changing or increasing demand for new services, the intensity of competition, availability of finance for development, staff recruitment and changes in the strategy and leadership of organisations.¹⁴³

139 FT 2015 *Asia-Pacific Innovative Lawyers*, n 99.

140 Andrea Ortega Villalobos, ‘Unique Possibilities for Legal Innovation in the Asia-Pacific Region’ (*Global Legal Challenges*, 23 February 2016), www.globallegalchallenges.com/unique-possibilities-for-legal-innovation-in-the-asia-pacific-region.

141 Susskind, n 4, 3.

142 Peta Tomlinson, ‘Accountancy Firms Make the Move into Legal Services’ (*ACCA*, 1 October 2015), available at www.accaglobal.com/ng/en/member/accounting-business/practice/legal-services.html; ‘Attack of the Bean-Counters’ *The Economist* (21 March 2015), available at www.economist.com/news/business/21646741-lawyers-beware-accountants-are-coming-after-your-business-attack-bean-counters.

143 Note that only organisations developing and improving services and the way in which they are provided answered this question: Roper et al, n 26, 27–28.

Potential benefits and disadvantages of disruptive innovation

Susskind argues that, as legal services evolve away from being bespoke, prices tend to become more certain and are likely to decline, along with the time it takes to provide such services. Meanwhile service quality increases.¹⁴⁴ The *Innovation in Legal Services Report* adds weight to this prediction: it found that the major effect of innovation¹⁴⁵ within the UK's legal services market 'has been to extend service range, improve quality... attract new clients' and improve the tailoring of services'.¹⁴⁶

Susskind states that many law firms fear the commoditisation of legal services, firstly, for its potential to devalue the practice of law and secondly, because the revenue derived from such services may be low, with the long-term profit margin failing to justify such investment to partners accustomed to high incomes. He explains that an online legal service is effectively an 'information commodity' and that competitors tend to drive the sales price downwards, towards the marginal cost of reproducing and distributing such products.

However, Susskind is of the view that developing systemised or packaged legal services that stop short of commoditisation might produce substantial profits. This is because, if legal service providers deliver products that are:

'Of such value and use to clients that they are prepared to pay serious fees for its use, and there are no competitor products, then once the initial investment in the system has been made, all later sales yield funds that are unrelated to the expenditure of time and effort by lawyers'.¹⁴⁷

Interestingly, the *Law Firms in Transition Survey*, conducted annually over the last seven years, reports that there is a 'clear correlation' between those firms that have reformed in the areas of pricing, staffing and efficiency and those that are enjoying greater economic success.¹⁴⁸ However, it is not known what those innovations involved.

In any case, if the trend towards commoditisation continues, it will arguably improve access to justice for those who currently cannot afford legal services, for instance, through providers such as LegalZoom, RocketLawyer, Nolo and Riverview Law.¹⁴⁹ There are, however, concerns that using such services may not entirely meet customers' needs or may produce unintended results;¹⁵⁰ Brescia et al. states that '[t]here is little dispute that the services provided by these disruptive companies are less than what an attorney might provide'.¹⁵¹ Some commentators have nonetheless suggested that allowing consumers to draft their own legal documents is better than them not receiving legal services at all.¹⁵²

144 Susskind, n 4, 25; Susskind, n 28.

145 The Report used a particular definition of 'innovation' as explained in n 22.

146 Roper et al, n 26, 4, 6.

147 Susskind, n 28.

148 Clay and Seeger, n 5, vi, viii.

149 Susskind, n 4, 28; Brescia et al, n 2, 555; Hubbard, n 42.

150 Elder Law Answers, 'Legal DIY Web Sites Are No Match for a Pro, Consumer Reports Concludes' (28 May 2013), available at www.elderlawanswers.com/legal-diy-web-sites-are-no-match-for-a-pro-consumer-reports-concludes-9983.

151 Brescia et al, n 2, 579, 585.

152 See eg, *ibid* 579; n 207; Campbell, n 10, 12.

There are also concerns that such providers are engaging in the unauthorised practice of the law and, in the US, the threat of civil and criminal charges hangs over these for-profit websites.¹⁵³ For example, in a recent class action filed against LegalZoom, the Missouri federal court held that the service constituted unauthorised practice of the law because it went beyond providing documents to customers and:

‘Included having non-attorney employees check for completeness, spelling, grammatical errors and consistency in the documents prepared through the site, and that the software programming selected the appropriate form based on information provided by the customer’.¹⁵⁴

In June 2015, LegalZoom filed a US\$10.5m antitrust suit against the North Carolina State Bar for denying it permission to sell legal services in the state.¹⁵⁵

On the same issue, Dzienkowski notes the potential for lawyers working in virtual firms across jurisdictions to engage in the unauthorised practice of law.¹⁵⁶ Other criticisms have been that lawyers may practice without proper supervision and often will not ‘work side-by-side’, which can create relationship and communication problems.¹⁵⁷ Dzienkowski also warned that firms operating virtually and using content management systems must ensure that such technology ‘does not expose confidential client information to unreasonable risks of disclosure’.¹⁵⁸

For legal service providers such as Axiom, which employ lawyers, and outsource and insource lawyers to clients, there are risks for conflicts of interest to arise; could, as Dzienkowski points out, lawyers of Axiom ‘be outsourced or insourced to corporations that are in competition with each other in the same marketplace?’¹⁵⁹

In relation to corporate clients, Dzienkowski raises many potential other consequences of legal services providers’ alternative business models. He notes, for instance, that the practice of unbundling legal work is sometimes left to the client, depending on the particular New Model firm,¹⁶⁰ and questions whether these providers would be appropriate for smaller companies or companies without in-house general counsel who are relatively inexperienced in retaining legal services. He emphasises that clients must give informed consent to unbundling legal work and must understand the consequences of limited legal representation.¹⁶¹

Sheppard theorises that the legal services market will undergo ‘incomplete disruptive innovation’, where disruption has occurred but a disrupter has not innovated with respect to all of core functions of an industry. This has potentially adverse consequences for overall consumer welfare.¹⁶² Sheppard considers that, as disruption occurs, there is potential for consumers in the legal market to undervalue bespoke services or core functions of the profession and think them unworthy of their high prices. This drives

153 Brescia et al also discussed how non for profit face less stringent regulations in this area: *ibid*, 579–580.

154 *Ibid*, 584; *Janson v LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053, 1063 (W.D. Mo. 2011).

155 Daniel Fisher, ‘LegalZoom Sees Supreme Court Ruling as Tool To Challenge N.C. Bar’, (*Forbes*, 6 June 2015) available at www.forbes.com/sites/danielfisher/2015/06/06/legalzoom-sees-supreme-court-ruling-as-tool-to-challenge-n-c-bar.

156 Dzienkowski, n 8, 3036.

157 *Ibid*, 3026–3027.

158 *Ibid*, 3029.

159 *Ibid*, 3031.

160 Dzienkowski raised similar issues that arise in relation to the obligation of lawyers to supervise non-lawyers who assist them (*ibid* 3024–3025).

161 *Ibid*, 3027–3028.

162 Brian Sheppard, ‘Incomplete Innovation and the Premature Disruption of Legal Services’ (2015) 5 *Mich St L Rev*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2659654.

down demand and, consequently, the supply of such services may fall, or firms might continue to provide bespoke services but of lower quality or at a higher price. This may produce latent demand for these services.¹⁶³ An in-depth analysis of this economic argument is beyond the scope of this report.

¹⁶³ Ibid, 71.

Barriers to innovation

Many commentators have argued that it is the profession's conservative attitudes that prevent it from innovating. Indeed, 45 per cent of law firms surveyed by the *Law Firms in Transition Survey*, cited partner resistance as one of the reasons for their firms not doing more to change their practices.¹⁶⁴ Rodriguez argues that it is not so much lawyers as individuals but rather 'their training and traditions that are to blame', particularly the doctrine of precedent.¹⁶⁵ This is because lawyers are taught to look to the past for answers or solutions to current or future cases. Further, lawyers are also taught to mitigate risk and as such, tend to be particularly risk adverse. As Rodriguez notes: 'pursuing innovation is almost the opposite of what the industry teaches lawyers to do'.¹⁶⁶

It is likely that fears about the consequences of new technologies are stifling innovation. While many commentators have argued that technological innovations such as automated documentation have the potential to make lawyers exceedingly efficient, as Brescia et al. notes, lawyers are reluctant to adopt such systems due to high development costs and fears that documents might contain errors that could lead to a malpractice claim against them.¹⁶⁷ As aforementioned, there are also fears surrounding data security.¹⁶⁸

Another potential barrier to innovation is the traditional structure of law firms and their hourly billing practices. As Spangler states: 'Efficiency... is antithetical to the law firm business model, which is based on charging clients for time spent, rather than on results or other measures of value'.¹⁶⁹ Similarly, Susskind argues that 'hourly billing is an institutionalized disincentive to efficiency'.¹⁷⁰ Campbell notes that it is difficult for firms to move from one business model to another as they are typically constrained by their own resources, processes and values.¹⁷¹ Moreover, he argues that a firm's value is sourced in its reputation, which depends on the legal matters it handles and its employees; he suggests that if a firm performs low status work, its reputation may suffer.¹⁷²

Many law firms seem to be taking a lax attitude towards changes occurring within the market. Susskind observes that firms are not significantly changing their practices for three main reasons: they are busy serving existing clients; that they are hindered by structural matters; and that there is general reluctance to believe there are reasons to change.¹⁷³ In fact, 63 per cent of US law firm leader surveyed by the *Law Firms in Transition Survey* said that their law firms were not 'doing more' to innovate because '[c]lients aren't asking for it'. Leaders of law firms employing at least 1,000 lawyers said that they were 'not feeling enough economic pain to motivate more significant change'.¹⁷⁴

164 Clay and Seeger, n 5, iv.

165 Rodriguez, n 75.

166 Ibid.

167 Brescia et al, n 2, 572–573.

168 Goodman, n 106.

169 Spangler, n 2, 2.

170 Susskind, n 4, 16.

171 Campbell, n 10, 27–28.

172 Ibid, 17; see also Stephen L Carter, 'A "Big Law" Revolution? Not Likely' (*Bloomberg View*, 21 August 2015), available at www.bloombergvew.com/articles/2015-08-21/a-big-law-revolution-not-likely, citing Benjamin Barton.

173 Susskind, n 4, 53–54.

174 Clay and Seeger, n 5, ii.

The *Innovation in Legal Services Report* found that 80 per cent of organisations felt ‘that they have a culture and leadership which is open to new ideas’, however, ‘only around 40 per cent of organisations have put in place organisational procedures to support innovation’.¹⁷⁵

Paradoxically, regulation is frequently cited as both a driver and an impediment to innovation.¹⁷⁶ The *Innovation in Legal Services Report* found that between one fifth and one quarter of the 1,500 respondents saw legislation and regulation within the UK as being a significant obstacle to innovation. The authors point out, however, that this means 75–80 per cent of respondents did *not* perceive it to be a major constraint.¹⁷⁷ The report also found that, generally, solicitors take a more positive view of the role and effects of regulation on innovation as compared with barristers and other legal services providers.¹⁷⁸

In the US legal market, Campbell argues that state regulations limit lawyers to the solution shop model and obstruct entities from entering the market and offering services via other business models.¹⁷⁹ By way of example, Campbell points to the difficulties and ethical burdens lawyers face in offering limited scope or unbundled legal services.¹⁸⁰ McGinnis and Pearce highlight rules that prohibit non-lawyers from providing personalised legal services as, arguably, a barrier to the application of machine intelligence, which produces documents tailored to clients’ needs. However, the authors also state that the market for these services has become ‘de facto deregulated’.¹⁸¹

The *Innovation in Legal Services Report* listed other barriers to innovation, including ‘lack of the necessary finance for innovation, limited market opportunities, and lack of expertise in the business’ each mentioned by under 20 per cent of legal service providers surveyed.¹⁸² In contrast, other factors, such as ‘attitudinal barriers and lack of collaborators’, were perceived as relatively insignificant.¹⁸³

175 Roper et al, n 26, 72.

176 Ibid, 7.

177 Roper et al, n 26, 7, 52.

178 Ibid, 57–59.

179 Campbell, n 10, 29.

180 Ibid, 29, n 95.

181 McGinnis and Pearce, n 29, 3062.

182 Roper et al, n 26, 7.

183 Ibid.

What's next?

Commentators continue to make predictions about the future of the legal profession.¹⁸⁴ Many believe that big law will remain but that new innovations are segmenting the legal market.¹⁸⁵

Susskind believes that legal businesses can still be profitable, provided they consider how to undertake, and make money from, routine legal work.¹⁸⁶ He argues that mid-tier or second tier firms that undertake mid-market deals or disputes in the traditional bespoke manner are most at risk because such work is highly price-sensitive.

McGinnis and Pearce forecast that the 'machine invasion' will have mixed consequences for lawyers. They predict that, as artificial intelligence commoditises various aspects of the law and information technology brings greater transparency to the profession, lawyers previously undertaking routine legal tasks (eg, wills, house closings, standard contracts and document review) will lose their market share.¹⁸⁷

On the other hand, the McGinnis and Pearce predict that the same technology will assist two kinds of lawyers: the 'superstars' of the profession, who will use technology to extend their reach; and lawyers who change the way they work and capitalise on technologies to serve the lower ends of the market.¹⁸⁸ They also predict that 'those lawyers who are in highly specialized areas subject to rapid legal change... will be relatively unaffected, because machines will work best in more routinized and settled areas'. Lawyers who provide services where human relationships are critical are also likely to continue to play a role.¹⁸⁹ And machines cannot replace oral advocates, although, the number of disputes that reach court may be reduced with the advent of online dispute resolution technologies and emerging techniques of dispute containment and dispute avoidance.¹⁹⁰

Susskind wrote in 2005 that there were three basic options for law firms to deal with the climate for legal services:

'First there is the option to lead, i.e. to pioneer and play the role of the first mover along the path, with all the benefits and potential risks that this entails. The second option is to invest enough to be ready to respond, poised to drive rightwards in the event that a competitor does so or a new entrant jumps in at a later step. The third option is to resist any move to the right [towards commoditisation]. In the medium to long term, this third option, it seems to me, is commercially suicidal.'¹⁹¹

Law firms wishing to be market leaders face the 'daunting task' of 'identifying, developing and marketing potentially disruptive, [innovations] before they overtake sustaining' innovations.¹⁹² The problem is, as Professor Christensen aptly describes, 'markets that do not exist cannot be analysed'.¹⁹³

184 See, eg, Noam Scheiber, 'Yes, Big Law Really is Dying' (*New Republic*, 29 July 2013) available at <https://newrepublic.com/article/114065/death-big-law-firms-cant-be-ignored>; Dzienkowski, n 8; Carter, n 181.

185 Roper et al, n 26, 85; Williams, Platt and Lee, n 10, 6.

186 Parnell (n 3).

187 McGinnis and Pearce (n 26) 3054.

188 Ibid 3042.

189 McGinnis and Pearce (n 26) 3042.

190 Ibid; Susskind, 'Tomorrow's Lawyers' (n 4).

191 Susskind, 'From Bespoke to Commodity' (n 25).

192 Beaten (n 17).

193 Christensen, 'The Innovator's Dilemma' (n 10) xxi.

Spangler suggests that to encourage the behavioural change needed to drive industry disruption, law firms could experiment in three areas: ‘Structure; Attorney-client relationship and Collaboration’.¹⁹⁴

In terms of structure, Spangler recommends that law firms create separate internal units or stand-alone entities that can experiment and invest in new ideas, thus ‘providing a space where the participants can fail fast and often, while allowing the firm to manage its existing business model as it works to develop a different model for the future’.¹⁹⁵ According to Dzienkowski, ‘[i]nnovation depends upon ideas, trial and error, and corrective measures’.¹⁹⁶ Similarly, Susskind argues that law firms should have two businesses: an advisory business and a process business. The latter essentially involves disaggregating legal work.¹⁹⁷ An important aspect of this strategy is that firms continue to invest in their technology infrastructure.¹⁹⁸

The *Innovation in Legal Services Report* points to the Portuguese law organisation, Vieira de Almeida, which created a structured programme to promote innovation to employees and embed it within the organisation’s core values.¹⁹⁹ Another example is US-based Baker Donelson, which set up a subsidiary to develop and invest in new ideas, partnering with technology companies and other ventures. It sets aside US\$1.5m each year to invest in the legal ideas of its lawyers. It has also established another subsidiary to work on law-department process-streamlining, which will begin operating in January 2016.²⁰⁰

In terms of the lawyer–client relationship, Spangler recommends, in line with Susskind, that law firms seek to be more efficient. This usually involves adopting new technologies and ensuring the right person is serving in the most appropriate role. He suggests that there be greater collaboration and knowledge sharing between lawyers and clients, which can be facilitated by specialist workflow systems and social media, amongst other things. He also encourages collaboration between clients to reduce legal costs²⁰¹ and, lastly, recommends lawyers collaborate with each other as well as other experts.²⁰²

194 Spangler (n 2) 10.

195 Ibid.

196 Dzienkowski (n 7) 3039.

197 Parnell, n 3.

198 Spangler, n 2, 10.

199 Roper et al, n 23, 24.

200 Caroline Hill, ‘ILTA: Innovation and the Generation of Legal Services’ (*Legalit Insider*, 13 November 2015) available at www.legaltechnology.com/latest-news/ilta-innovation-and-the-generation-of-legal-services/.

201 Spangler, n 2, 11–13.

202 Ibid, 14.

Conclusion

It is difficult to argue that the legal profession is not undergoing significant change. The real question is whether particular innovations within the market amount to ‘disruptive innovations’ or are just indicative of a major restructure of the industry. It is also unclear as to what effects these changes might have for the consumer, law firms and other legal services providers.

Some commentators, including Reed, lament the profession for its ‘unexciting and un-impactful’ innovations, such as offshoring legal work to India or providing standard form documents online for free or at low cost.²⁰³ This might be a reasonable assessment, given that these innovations do not materially change the way law firms provide legal services.

At the same time, start-ups and alternative legal services providers are multiplying and have the potential to revolutionise the market. So too, do the big four accounting firms. These market players are not shackled by traditional law firm structures and are generally able and willing to innovate. Those providers that are able to deliver a different type of legal service will be the ones likely to succeed and produce significant benefits for consumers in terms of cost, efficiency and access to justice.

In this environment, commentators have warned law firms that they can no longer afford to practice according to the status quo.²⁰⁴ Those that choose not to compete on value are opening the door for other providers ‘to slip in and chip away at what we all once assumed were unassailable relationships between the most pedigreed law firms and their clients’.²⁰⁵

203 Sarah Reed, ‘Lawyer, Disrupt Thyself’ (*TechCrunch*, 21 March 2014) available at <http://techcrunch.com/2014/03/21/lawyer-disrupt-thyself/>; see also Michael P Downey, ‘Buck Up and (Really) Innovate’ (2014) 40 (4) *Law Practice Magazine* available at www.americanbar.org/publications/law_practice_magazine/2014/july-august/perspectives.html.

204 See eg, Susskind, n 4, 123.

205 Wang and Dattu, n 56.

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