

TOP 10

GLOBAL TRENDS IN LEGAL PRACTICE

Australian law firms need to get up to speed on global changes in the way law is being practised, writes **TAHLIA GORDON**.

THE LEGAL PROFESSION HAS BEEN NOTORIOUSLY AVERSE TO CHANGE.

Today, however, a variety of emerging trends in legal practice in the United States, Canada and United Kingdom – predicated upon innovations in technology, globalisation and changing regulatory frameworks – are shaking up the practice of law. Recognising this new paradigm, regulators around the world have established commissions, working groups and committees to examine emerging trends. Some have already hit our shores and others are yet to come.

HERE ARE 10 INNOVATIONS YOU NEED TO KNOW.

1

NON-LAWYERS PERFORMING LEGAL WORK

The “infiltration” of non-lawyers into the practice of law over the past few years has dramatically changed the legal service marketplace and eroded the long-standing belief that lawyers have a monopoly over the practice of law. The emergence of legal process outsourcing and online legal document preparation websites signalled the first wave of non-lawyers in the legal space and an indication of what was to follow. The second wave of non-lawyers in the legal space has recently seen the emergence of qualified non-lawyers, such as “licensed para-legals” in Ontario, Canada, and “limited licence legal technicians” in Washington State. These roles threaten the diminishing livelihood of lawyers as well.

According to Richard Susskind, well-known for his views on the future of the legal profession, the new legal landscape will continue to see a further unbundling of legal services and an increasing number of non-lawyers providing legal services. Susskind’s prediction, set out in his latest book *Tomorrow’s Lawyers*, sees the lawyer as more like a project manager who is responsible for overseeing a decentralised team of multi-skilled operators.

2

ROBO LAW

The lawyer’s monopoly in the practice of law has been further eroded by the emergence of “Robo Law”. According to Professors John O. McGinnis (Northwestern University) and Russell G. Pearce (Fordham University), the use of machine intelligence to provide routine services, such as discovery, legal search, document generation and brief generation, which are predominantly provided by lawyers today, will increase exponentially over the next few years.

Technology-assisted review, also known as predictive coding or computer-assisted coding, has already been adopted by law firms as an efficient and cost-effective way to manage litigation. Predictive coding programs, which can identify key strengths and weaknesses in a client’s case during early case assessment and preliminary investigations, streamline aspects of document review when responding to document requests, analyse a document received from an opposing party or a third party and prepare for depositions, expert discovery, summary judgment motions and trial, are poised to become a standard practice in e-discovery.

3

CLIENT LAWYERS

According to Jordan Furlong, the legal profession’s largest competitor is not non-lawyers, contrary to popular belief. It is clients. Today, clients (and potential clients) routinely use the Internet to identify cost-effective legal resources and ways to solve their legal needs. Information is readily available from online legal document preparation and self-help sites such as LegalZoom and RocketLawyer in the United States and the United Kingdom, and LegalVision or LawPath in Australia.

Clients are also turning to other, more generalised online services such as justanswer.com or lawanswer.com.au to ask an online lawyer a question for a fee, or lawzam.com, which allows clients to talk to lawyers online by video chat for free. In 2013, LawZam released its mobile application for iOS, allowing lawyers to stay connected and available to chat and videoconference virtually anywhere, any time.



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4

METADATA

Metadata is being used increasingly by lawyers (sometimes on the instruction of clients) to obtain hidden information that can be found embedded in electronic files, such as transactional details about a document, including author, software used, the date it was written and even edits made along the way. Metadata “scrubbing” or “mining software” is inexpensive and can also reveal tracked changes and notes on a document that could contain confidential information about a case or a client, such as their willingness to settle. Metadata may also contain elements of a document that had been deleted, perhaps because after consideration they were considered too revealing. In the adversarial world of law, one can readily see the utility of metadata. Noting the implications of the use of metadata in the practice of law, regulators around the world are encouraging law firms to better protect their clients' confidential information.

5

PAPERLESS PRACTICES

Paperless practices are becoming an increasingly attractive option for law firms as the cost of running a practice continues to rise. The availability and success of storing documents in the cloud, reduced reliance on in-house IT support, the elimination of server costs (you do not need to spend as much on office computers if your data is being stored remotely), built-in back-up management, reduced energy consumption, and the ability to access documents and information from multiple devices and locations 24/7 has prompted many law firms to move the office to the cloud. The increased use of the cloud has also seen a number of lawyers establish complete virtual law firms.

6

DATA SECURITY

Although it has taken some time and repeated warnings from the Federal Bureau of Investigations, law firms, both large and small, are beginning to act on the reality that they are prime targets for hackers. Many law firms around the world, prompted by regulatory requirements, are implementing cyber security measures to protect their clients' and their firm's confidential data from cyber attacks. With the assistance of publications such as guidelines and handbooks published by regulators, law firms are being provided with practice information about how to implement strategies to defend against cyber threats, and how to best to respond if breached.

7

SOCIAL MEDIA & BLOGGING

Law firms have not adopted social media at the pace of other service-based industries. However, over the past few years the number of law firms using social media has increased exponentially. According to the American Bar Association's (ABA) *2014 Legal Technology Survey Report*, 56 per cent of law firms in the United States use LinkedIn and 34 per cent use Facebook for their firms. While not as prominent as social media, many lawyers are also blogging as a means of advertising to attract new clients and to keep clients informed of issues relating to particular matters. Regulators, such as the ABA, have produced a wealth of resources to assist lawyers using social media and blogs competently and ethically.

8

INNOVATIVE FEE ARRANGEMENTS

The rejection of the billable hour in favour of innovative fee arrangements is becoming increasingly common as law firms listen to the desires of clients. While large law firms have offered alternative fee arrangements to clients for some years, it is the mid- and smaller-sized firms that now dominate this space. Innovative models include “peak-load pricing”, in which price is influenced by when the work is required during the calendar year. There’s also “versioning”, which gives clients a choice of the legal equivalent of first-class, business-class and economy-class service, and “subway pricing” in which the client builds its own menu and urgency premium trade-off.

9

ENTITY REGULATION

“Entity regulation”, “entity-based regulation” or “law firm regulation” – that is, the regulation of law firms in addition to individual lawyers – is emerging as a preferred regulatory model in a number of jurisdictions around the world. Australia was the first jurisdiction in the world to implement entity regulation with the requirement that incorporated legal practices adopt and maintain appropriate management systems. The United Kingdom has since followed and a number of jurisdictions within the United States and Canada are either in the process of drafting entity regulation for law firms or considering it as a viable option to the traditional mode of individual lawyer regulation. A number of tools, such as the Canadian Bar Association’s Self-Assessment Tool, have been drafted to help law firms develop frameworks to improve their management policies and procedures.

10

ALTERNATIVE BUSINESS STRUCTURES

A long-standing feature of Australia’s legal landscape, alternative business structures, are being considered by many jurisdictions in both the United States and Canada as a way to diversify the provision of legal services effectively. Heated discussions about the impact of external investment on access to justice, professionalism, and ethics and profit are a regular feature of professional associations around the world and numerous academic debates. The United Kingdom permitted alternative business structures in 2007 and it, like the rest of the world, is looking to see which jurisdiction will be the first to follow suit.



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