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The Role of Lawyers in the Face of Increasingly Capable Technology

Law Department Management

Skills and Professional Development



It is something of a tired cliché these days to talk of the threat of artificial intelligence (AI) replacing lawyers. There are already substantial places where increasingly intelligent technology is performing tasks that lawyers used to perform, and we should expect technology to make increasingly aggressive inroads into the practice of law in upcoming decades.

No sensible lawyer should resist this trend, and in fact, the true challenge for lawyers lies in achieving a type of collaboration with technology. Lawyers need to use technology to rapidly and efficiently solve high-volume or routine issues, freeing themselves to apply their uniquely human skills to deliver more value for clients and the community.

So, what are these uniquely human skills, and how should we be looking to deliver more value with them? I'm being told I need to collaborate — what's my contribution to the collaboration?

In this discussion, I have been somewhat undisciplined in relation to how I use terms like "artificial intelligence." A common definition of artificial intelligence relates to the use of technological systems to perform tasks normally associated with human intelligence. The definition is fuzzy and slightly circular, but the linkage back to "normally associated with humans" is very well suited to the present discussion. We're talking about technology that does things we (or people like us) used to do.

The impact of technology on the practice of law could be described as disruptive. Many established businesses seem to fear disruption and treat it as something to be avoided, as though disruption were something random and calamitous, like an asteroid collision striking the earth.

But the reality is that, at its heart, if your business is disrupted it means that someone else has found a better or cheaper way to add more value to your customers. If you want to avoid being disrupted, either as a business or in your professional career, you should be focused on delivering as much

value as possible and should keenly embrace any tool or technology that allows you to achieve this.

Much of the traditional role of lawyers has been intermediating complex information and processes for clients. The average layperson lacks the time and training to research the law themselves or execute complex processes such as a sale of business. Lawyers are trained where to look for the law and how to understand it when they find it; and have training and experience in navigating complex legal processes.

Without wanting to be disrespectful, much of the routine practice of law for the average consumer of legal services can boil down to the skillful, neat, and efficient execution of administrative processes. When seen in this way, technology can facilitate equal access to law.

Legal knowledge, processes, and logic-flows can be captured in technological systems that guide laypeople through the options available to them and the key decisions they need to make, making legal advice accessible without the need for an expensive professional human to dedicate their time. From a public policy perspective, and provided quality control concerns can be met, more people having greater access to the law at lower cost must be a good thing, and lawyers should be embracing it.

A perpetual dilemma for industries and enterprises faced with threatened disruption is the need for cannibalism of legacy revenues. Many would be familiar with the story that Kodak invented the digital camera in the 1970s but didn't invest in further developing it because it was incompatible with their lucrative film businesses.

The rest is history, to the point where a "Kodak moment" has become synonymous with an incumbent missing the opportunity to pivot into a new opportunity, therefore dooming themselves to irrelevance. Any lawyer who resists opportunities to use technology to deliver more value to clients is courting their own "Kodak moment."

So, if lawyers increasingly delegate lower-order tasks to technology in order to deliver better value for their clients, where should they be looking to offer unique human value-add? I propose the following (non-exhaustive) starting list of higher-order skills that lawyers should be looking to deploy for clients:

- Insights and opportunities
- Judgment/wisdom
- Values
- Empathy

Insights and opportunities

If you asked clients to describe what they expect from their lawyers, I doubt many would offer the words "insight" and "opportunity." However, it is one of the easiest ways to add profound value to a client and establish yourself as a trusted adviser. In the process of performing more traditional legal functions, lawyers often have an opportunity to see the client's business or affairs from a perspective that the client themselves rarely sees.

Where the lawyer is working on disputes, they will be able to see repeat issues or root-causes of problems that are causing unwanted expense, distraction, and customer dissatisfaction. Where the lawyer is working on customer contracts, they will be able to see repeat issues that are triggering customer objections, slowing sales, or causing mismanaged customer expectations. A good human

lawyer is on the look-out for these sorts of insights to help their client improve.

Similarly, through being a repeat-player on some of the most challenging parts of clients' lives, lawyers are often in the box-seat to identify opportunities to generate value for clients. A key example that comes to mind is the role that the Disney legal team played in recent decades in their IP protection strategy.

Disney is faced with the progressive expiry of copyright in large swathes of its catalogue, starting with the iconic Steamboat Willie, which brought Mickey Mouse to the world, and becomes public domain from 2024. The Disney legal team has been able to pivot the focus of IP protection from copyright into trademarks, extending the useful life of the catalogue.

Judgment/wisdom

Perhaps not surprisingly for a higher-order human skill, I struggle to precisely define judgment and wisdom. I think the relevant sense in which I am using it here is the ability to go beyond data to a synthesis of complex environmental factors that shape or constrain the courses of action that are genuinely available.

By way of example, in a large corporation dealing with consumers, it is essential that any proposed course of action is judged against a social media or talk-back radio test. The company's contractual rights may be perfectly clear, but if enforcement of those rights would be judged harshly by a substantial community when reported or discussed on Facebook, Twitter, or talk-back radio, then any quality legal advice on the subject should reflect this.

Values

In a similar vein, recent regulatory developments such as the Hayne Royal Commission and the Bergin Inquiry into Crown Casinos here in Australia, have shown that poor corporate values can result in serious adverse commercial outcomes, and highlighted that anyone responsible for brand, reputation, and risk in a company should be keenly interested in the corporation's values, and the mechanisms for ensuring actions are aligned with those values.

Among many other excellent reasons for having strong values, alignment between a company's actions and its stated values will be a critical factor in determining the degree of trust placed in the company by customers, partners, regulators, and the broader community. As with the social media or talk-back radio test, there will be courses of action that are legally available that simply do not align with the company's values. Legal advice that does not flag important values issues is inadequate legal advice.

Empathy

Intertwined with the last two skills is empathy — the ability to understand the thoughts and feelings of another human. I am aware of research on areas such as robotic interpretation of body language, and that humans are often nowhere near as good at reading another human's emotions as they would like to think. However, I would assert that it's impossible to provide quality legal advice in complex situations without empathy.

Ideally, to provide quality legal advice in complex situations you need to be able to understand as

much as you can of the circumstances, aspirations, values, risk appetite, and concerns of your client in order to provide the legal advice that they need. Obviously not all issues justify that — the answer to some simple questions may be black and white, and some problems simply don't justify the additional legal effort. But in complex situations involving competing considerations and a degree of risk, the legal solution must be responsive to the needs of the individual client sitting in front of you.

Ultimately, law is a human system. Yes, the practice of law involves data and logic-flows in ways that may not have been apparent to our legal forebears, but ultimately legal systems add the most value when they serve humans. Across the economy there is strong market demand for people with the skills, awareness, and passion to make systems work better for humans, and I personally believe the legal profession will not be an exception. I know what I'm going to be trying to contribute to this collaboration.

David Field



Chief Legal Counsel and Director, People & Finance

Canon Australia

Having started his legal career with Mallesons, working in Taiwan, David has since enjoyed a twenty plus year in-house legal career working for Telstra and now as the Chief Legal Counsel and Director, People & Finance at Canon Australia. As a keen photographer, he is one of the founders of the Laws of Creativity portrait project, exploring the role that creativity plays in the practice of law. David also serves on the board of the Minds Count Foundation.