

It's no secret that legal services are currently undergoing rapid technological advancement, and that they have been for some time now. In the 1990s, new technologies took the form of making the law available online, and for free, with the first "LIIs" (Legal Information Institute, e.g. CanLII)¹. The 2000s saw the widespread digitization of communication, with substantive e-mails and informal memoranda taking the place of more traditional, more formal memoranda². More recently, the Law Society of Ontario has taken note as well, and at the November 29, 2019, LSO Convocation, the Technology Task Force presented its 'Update Report'. This article will take a brief look at 5 key takeaways from the report, and what they mean for any lawyer's practice.

The 5 Key Takeaways

1. "Emerging legal technologies are re-shaping the work environments in which legal services are delivered, both in terms of the people and skill sets involved and the structures through which they organize themselves." (p.6).

The LSO notes (p.7) that clients increasingly expect their lawyers and paralegals to be comfortable employing the latest technology. LSO's Technology Task Force suggests that the advent of new technologies will permit lawyers to adopt new, stronger economic models and provide clients with greater transparency. Indeed, in light of the constant downward pressure on prices for legal services, seeking out technological solutions and opportunities to automate tasks or functions "have begun to appear as imperatives". And, in any event, lawyers and paralegals rely on cutting edge technology and artificial intelligence tools every day, albeit unconsciously. The rapid growth of technology in the legal sector is simply a natural expansion of those capabilities.

2. "Tools that improve the quality and speed of legal research and document review, or that predict case outcomes with greater accuracy and consistency, can help legal professionals enhance their practice by enabling them to do more and better work in the same amount of time." (p.11).

Canadians only seek professional legal assistance for 11.7% of their justiciable problems (p.6). That means 88.3% of the potential market is underserved, or not served at all. By using and relying on technology-based tools lawyers directly contribute to their development. In turn, as the tools develop and grow, they allow more lawyers to serve more clients. Indeed, because the tools create efficiencies, they even allow lawyers to also increase the quality of service they provide to their existing clients. Lawyers no longer have to eat the cost of research that's sorely needed, but outside the client's budget. To quote the LSO Technology Task Force, "By harnessing advanced analytical capabilities, legal tech tools can also help build a case more rigorously, guide parties in negotiations more effectively, and strengthen the quality of legal reasoning, advocacy, and decision-making". (p. 11)

3. "Ontario is on the cutting edge of AI development in the legal sector." (p.11).

As more lawyers adopt and implement AI in their practices, supporting our homegrown solutions will broaden the local legal market, and generate access to justice both in Ontario, and across the globe. The Legal Innovation Zone is Canada's first-ever legal technology incubator³ and it has produced some great companies. We're one of those companies - Alexsei. We employ cutting edge AI algorithms and tools, and combine those with our experienced lawyers to provide affordable and high-quality answers to legal questions in

memo format.

4. “[W]hile discussions around legal tech’s implications for the duty of competence often presume its inferiority to human legal professionals, the duty can also be engaged by the converse presumption. As predictive tools become more reliable, and as licensees in turn come to rely more heavily on AI applications, there may also be increasing calls to require consultation with AI tools as part of a licensee’s competent practice.” (p.21).

As the LSO points out, many American jurisdictions have adopted rules requiring “technological competence” for lawyers (p.20). Ontario’s Rule 3.1-1(k) does not specify technological competence, but is broadly drafted. Nevertheless, as the Technology Task Force points out, Canadian law societies will have to consider whether adoption of a standalone duty of “technological competence” is appropriate. The FLSC⁴ had already added new commentary paragraphs prompting legal professionals to consider using technology. The Courts have already chimed in: in *Cass v. 1410088 Ontario Inc.*⁵ the Court noted that:

“There was no need for outsider or third party research. If artificial intelligence sources were employed, no doubt counsel’s preparation time would have been significantly reduced.”

Similarly, in *Drummond v. The Cadillac Fairview Corp Ltd*⁶ the Court described computer-assisted legal research as a necessity for the contemporary practice of law, “with further advances in artificial intelligence to be anticipated and to be encouraged.”

5. “It is clear that the Law Society should do more to foster innovation and adoption of emerging tech tools that aim to support lawyers and paralegals. These technologies will undoubtedly change the ways that

legal professionals provide services, as well as the ways that they work together and organize themselves. The Law Society must be responsive to these changes, in order to ensure that its licensees continue to provide legal services in a competent and accessible manner” (p.37).

Clients increasingly expect greater integration of technologies, and in an increasingly crowded legal market, lawyers and paralegals increasingly seek an edge over competitors. Fear is a crucial barrier to adoption, with licensees concerned about their professional responsibilities, and the potentially lost effort in trying something new that doesn't work out. The Technology Task Force summed it up with an appropriate quote: “Licensees are careful by nature, and they take their obligations seriously. The Law Society needs to give them the permission to innovate.” The Task Force presented a number of tools to be considered to enable this (p.38). They include some things we've already discussed above, like a requirement for technological competence, but also other options such as requiring or incentivizing the use of legal tech via changes to professional liability insurances. What's exceedingly clear is that change is coming.

Conclusion

To quote the LSO Technology Task Force, “For as long as there have been lawyers and paralegals, there have been new technologies continually arriving to assist and transform the delivery of legal services. Legal research databases, personal computers, email, practice management software, smartphones, and many other technologies have all arrived with a mix of enthusiasm and concern over their implications for the future of legal services.” The profession has survived the concerns over databases, computers, e-mails, and other technologies now used as a matter of course in practice. Those technologies have enabled lawyers to serve more clients, more thoroughly. Newer legal technologies pose unique

challenges, but client demands for convenience, speed, and transparency will inevitably force the integration of newer technologies into legal practice. Indeed, the Courts have already said as much.⁷

The next generation of tools is upon us, and the Law Society is paying attention. We've been warned that technological competence may eventually be mandated. Although fear is a barrier to adoption, and often for good reason, not all tools are built alike. Alexsei keeps lawyers in the loop, to make sure you're getting great research results. We implement cutting edge emergent technologies and supercharge them with fully-insured, fully-licensed humans. Alexsei is a homegrown solution, which is easy to use and understand. Getting up and running costs virtually no time. Thorough responses to complex questions are returned within 24 hours in a traditional memo format to give you peace of mind. Clients will thank you for saving them money, and you'll thank yourself for saving yourself overhead, time, and effort. Alexsei lets you improve the speed, cost, and quality of your legal research. Alexsei lets you do more work on more cases, in the same amount of time.

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footnotes

1. https://www.nyulawglobal.org/globalex/Legal_Information_Institutes.html
2. <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1798&context=facpub>
3. <https://thelogic.co/news/the-big-read/how-canadas-law-firms-are-embracing-innovation-on-their-own-terms/>
4. Federation of Law Societies of Canada
5. 2018 ONSC 6959
6. 2018 ONSC 5350
7. *Supra*, notes 5 + 6.

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