



the global voice of  
the legal profession®

# Professional Ethics and Alternative and New Law Business Structures joint committee news

Newsletter of the International Bar Association Section on Public and Professional Interest

**JANUARY 2018**



# International Bar Association Conferences 2018



1 FEBRUARY 2018 NORTON ROSE FULBRIGHT,  
3 MORE LONDON RIVERSIDE, LONDON

Women in Commercial Legal practice  
report launch

14–16 FEBRUARY 2018 PARIS INTERCONTINENTAL,  
PARIS, FRANCE

IBA/ABA International Cartel Workshop

23–24 FEBRUARY 2018 HOTEL EUROSTAR GRAND  
MARINA, BARCELONA, SPAIN

3rd Mergers and Acquisitions in the  
Technology Sector Conference

25–26 FEBRUARY 2018 HILTON PUERTO MADERO,  
BUENOS AIRES, ARGENTINA

21st Annual IBA Arbitration Day: the Rule  
of Law created by international arbitrators -  
between *pacta sunt servanda* and *bona fide*

5–6 MARCH 2018 CLARIDGE'S, LONDON, ENGLAND

23rd Annual International Wealth Transfer  
Practice Law Conference: Working globally,  
planning locally

8–9 MARCH 2018 CONRAD HONG KONG, HONG  
KONG SAR

3rd IBA Asia-based International Financial  
Law Conference

9–10 MARCH 2018 THE TAJ MAHAL PALACE,  
MUMBAI, INDIA

Mergers and Acquisitions in India:  
New Opportunities and Challenges  
in a Dynamic India

11–13 MARCH 2018 INTERCONTINENTAL LONDON  
PARK LANE, LONDON, ENGLAND

19th Annual International Conference on  
Private Investment Funds

14–16 MARCH 2018 HYATT REGENCY HOTEL  
AND INTERCONTINENTAL PRESIDENTE HOTEL,  
MEXICO CITY, MEXICO

Biennial IBA Latin American Regional Forum  
Conference: Are we ready? Disruptive  
innovation in Latin America: the role of lawyers

20 MARCH 2018 NEW DELHI, INDIA

Pre-International Competition Network Forum

21–23 MARCH 2018 LANDMARK HOTEL, LONDON,  
ENGLAND

Insurance – Into the Unknown: Challenges  
and Opportunities

9–11 APRIL 2018 INTERCONTINENTAL, LISBON,  
PORTUGAL

Biennial Conference of the Section on  
Energy, Environment, Natural Resources  
and Infrastructure Law (SEERIL)

12–13 APRIL 2018 ROYAL HORSEGUARDS HOTEL,  
LONDON, ENGLAND

8th World Women Lawyers' Conference:  
From Courtrooms to Boardrooms: The Impact  
of Women

19–20 APRIL 2018 RADISSON BLU HOTEL  
WATERFRONT, CAPE TOWN, SOUTH AFRICA

Africa: Opportunities and Challenges in  
M&A Transactions

21 APRIL 2018 THE PEACE PALACE, THE HAGUE,  
THE NETHERLANDS

War and Justice

2–4 MAY 2018 LE WESTIN, MONTREAL, CANADA

IBA Annual Employment and Discrimination  
Law Conference: Ethical Issues in  
Employment Law

3–4 MAY 2018, BUENOS AIRES, ARGENTINA

14th Annual IBA Competition Mid-Year  
Conference

6–8 MAY 2018 RODE HOED, AMSTERDAM,  
THE NETHERLANDS

24th Annual IBA Global Insolvency and  
Restructuring Conference

8–9 MAY 2018 JW MARRIOTT, WASHINGTON, DC,  
USA

34th Annual IBA/IFA Joint Conference on  
International Franchising

13–15 MAY 2018 NEW YORK, USA

29th Annual Conference on the Globalisation  
of Investment Funds

14–15 MAY 2018 LITERATURHAUS, MUNICH,  
GERMANY

4th IBA Global Entrepreneurship Conference:  
Disruption Meets Innovative Tradition

16–18 MAY 2018 SWISSÔTEL, CHICAGO, USA

IBA Annual Litigation Forum: Advocacy in the  
21st Century

16–18 MAY 2018 SHERATON GRAND, KRAKOW,  
POLAND

21st Annual IBA Transnational Crime  
Conference

23–24 MAY 2018 GRAND HOTEL, OSLO, NORWAY  
13th Annual Bar Leaders' Conference

30 MAY – 1 JUNE 2018 HILTON APOLLOLAAN,  
AMSTERDAM, THE NETHERLANDS

35th International Financial Law Conference

1–2 JUNE 2018 BOSTON, USA

6th Annual World Life Sciences Conference

5–6 JUNE 2018 THE PLAZA, NEW YORK, USA

17th Annual International Mergers &  
Acquisitions Conference

6–8 JUNE 2018 MARRIOTT HOTEL, ZURICH,  
SWITZERLAND

10th Annual Real Estate Investments  
Conference

11–12 JUNE 2018 PRINCIPE DI SAVOIA, MILAN, ITALY

29th Annual IBA Communications and  
Competition Conference

12–13 JUNE 2018 OECD, PARIS, FRANCE

16th Annual IBA Anti-Corruption Conference

14–15 JUNE 2018 PARK HYATT, VIENNA, AUSTRIA

Balkan Legal Forum 2018 – The Future of  
Law: Technology and Legal Services in South  
East Europe 2018-2028

21–22 JUNE 2018 LONDON, ENGLAND

4th Annual Investing in Africa Conference

14–15 SEPTEMBER 2018 ST REGIS HOTEL,  
FLORENCE, ITALY

22nd Annual Competition Conference

7–12 OCTOBER 2018 ROMA CONVENTION  
CENTER-LA NUVOVA, ROME, ITALY  
IBA Annual Conference 2018



OFFICIAL CORPORATE SUPPORTER



12–13 NOVEMBER 2018 PRAGUE, CZECH REPUBLIC

IBA CEE & CIS Anti-Corruption Enforcement  
and Compliance Conference

29–30 NOVEMBER 2018 CAPE TOWN, SOUTH AFRICA

African Regional Conference on the  
Environment

## IN THIS ISSUE

<b>From the Co-Chairs</b>	<b>4</b>
<b>From the Editor</b>	<b>4</b>
<b>Committee officers</b>	<b>5</b>
<b>Description of the Committees</b>	<b>7</b>
<b>Professional Ethics Committee Retreat</b>	<b>8</b>
<b>IBA Annual Conference, Sydney 8–13 October 2017, Professional Ethics Committee and Alternative and New Law Business Structures Committee sessions</b>	
The no longer brave new world	9
Is there any such thing as unauthorised practice of law in the global legal market?	11
Duties of confidentiality and the Panama Papers	13
Issues in the liability of directors	15
Searching for solutions to gender diversity issues	17
Departures and lateral hires of partners	17
<b>Articles</b>	
Some reflections on AI	20
From parchments to robots	23
Business law: empowering the team and dealmakers 'Failure to prevent' – a panacea for regulators	28

### Advertising

Should you wish to advertise in the next issue,  
please contact the IBA Advertising Department:  
[advertising@int-bar.org](mailto:advertising@int-bar.org)

Contributions to this newsletter are always  
welcome and should be sent to the  
Newsletter Officer:

Tracey Calvert  
[tcalvert@oakallsconsultancy.co.uk](mailto:tcalvert@oakallsconsultancy.co.uk)

## International Bar Association

4th Floor, 10 St Bride Street  
London EC4A 4AD, United Kingdom  
Tel: +44 (0)20 7842 0090  
Fax: +44 (0)20 7842 0091  
[www.ibanet.org](http://www.ibanet.org)

© International Bar Association 2018.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without the prior permission of the copyright holder. Application for permission should be made to the Director of Content at the IBA address.

### Terms and Conditions for submission of articles

1. Articles for inclusion should be sent to the Editor.
2. The article must be the original work of the author, must not have been previously published, and must not currently be under consideration by another journal. If it contains material which is someone else's copyright, the unrestricted permission of the copyright owner must be obtained and evidence of this submitted with the article and the material should be clearly identified and acknowledged within the text. The article shall not, to the best of the author's knowledge, contain anything which is libellous, illegal, or infringes anyone's copyright or other rights.
3. Copyright shall be assigned to the IBA and the IBA will have the exclusive right to first publication, both to reproduce and/or distribute an article (including the abstract) ourselves throughout the world in printed, electronic or any other medium, and to authorise others (including Reproduction Rights Organisations such as the Copyright Licensing Agency and the Copyright Clearance Center) to do the same. Following first publication, such publishing rights shall be non-exclusive, except that publication in another journal will require permission from and acknowledgment of the IBA. Such permission may be obtained from the Director of Content at [editor@int-bar.org](mailto:editor@int-bar.org).
4. The rights of the author will be respected, the name of the author will always be clearly associated with the article and, except for necessary editorial changes, no substantial alteration to the article will be made without consulting the author.

This newsletter is intended to provide general information regarding recent developments relating to professional ethics, multidisciplinary practices and the legal profession. The views expressed are not necessarily those of the International Bar Association.



---

## Note from the Chairs

**D**ear members,  
Both the Professional Ethics Committee (PEC) and Alternative and New Law Business Structures (ANLBS) Committee Chairs and officers wish to thank all of you who attended the 2017 IBA Annual Conference in Sydney, Australia. The success of all IBA Annual Conferences is down to the members – your attendance, participation and continued efforts are truly important and appreciated. We very much look forward to your attendance at the 2018 IBA Annual Conference scheduled for Rome, Italy in October 2018. *Accogliere*, which we are told means ‘welcome’ in Italian.

We consider the Sydney conference to have been very successful, as many panels held were either lead by or included participation from your Committees. Both Martin Kovnats, Chair of the PEC, and Steven Richman, Chair of the ANLBS Committee, wish to thank everyone who worked so very hard in preparing for and reporting on these panels. Well done!

The newsletter officers of both the PEC and ANLBS Committee have been working hard and have generated the first edition of the combined newsletter for 2018, which consists of many interesting articles, announcements and session reports from the various panels in which your Committees participated.

We would like to thank our newsletter officers, Tracey Calvert (PEC, United Kingdom) and Isobelle Watts (ANLBS Committee, Australia) for their hard work.

As we look forward to the coming year, we will avoid the temptation to list all the matters that your Committees will attend to, although we can assure you that there are projects on the table. Nonetheless, your Committees are never too busy and we want your input. We want your suggestions. We want your enthusiasm. Please reach out to your officers with suggestions as to what your Committee should consider and also to volunteer to help. As the old advertisement said: ‘We want you!’

Finally, for the first time, the PEC will be holding an open retreat before the 2018 IBA Annual Conference. More information is in the newsletter.

You can be assured that your Committees will reach out to you with additional news from time to time. Thank you for your continued support.

Martin Kovnats

*Co-Chair of the Professional Ethics Committee*

Steven Richman

*Co-Chair of the Alternative and New Law Business Structures Committee*

---

## From the Editor

**W**elcome to our first joint newsletter of the year!  
Following a very successful conference we are pleased to share with you the reports of some of our panel sessions and other topics contributed by members. Thank you to all the rapporteurs and other contributors for their articles. Thank you also to Isobelle Watts for her work and support. The quality of submissions makes an editor’s job both easy and worthwhile.

We are already making plans for the 2018 IBA Annual Conference in Rome and we are all very excited about the inaugural pre-Conference Professional Ethics Committee retreat. Details are included in the newsletter.

With best wishes for a happy and prosperous 2018.

Tracey Calvert

*Newsletter Officer  
Professional Ethics Committee*

### Tracey Calvert

Oakalls Consultancy,  
Devon

tcalvert@oakalls  
consultancy.co.uk

# Committee officers

## Professional Ethics Committee 2018

### Co-Chair

Martin Kovnats  
Aird & Berlis, Toronto  
mkovnats@airdberlis.com

### Co-Chair

Carlos Valls Martinez  
Fornesa Abogados, Barcelona  
c.valls@fornesaabogados.com

### Co-Vice-Chair

Rachel McGuckian  
Miles & Stockbridge, Rockville  
rmcguckian@milesstockbridge.com

### Co-Vice-Chair

Jeffrey Merk  
Aird & Berlis, Toronto  
jmerk@airdberlis.com

### Secretary-Treasurer

Allessandra Mourao  
Nascimento e Mourao Advogados, São Paulo  
allessandra@nascimentomourao.adv.br

## Scholarships and Latin American Regional Forum Liaison Officer

Claudio Undurraga  
Prieto Abogados, Santiago  
cundurraga@prieto.cl

### Membership Officer

Shigenobu Itoh  
Rutan & Tucker, Costa Mesa  
sitoh@rutan.com

### Website and Communications Officer

Riccardo Cajola  
Cajola & Associati, Milan  
rgc@cajola.com

### Judges' Forum Liaison Officer

Myron Steele  
Potter Anderson & Corroon, Dover  
msteele@potteranderson.com

### Projects Officer

Hugo Berkemeyer  
Berkemeyer Attorneys & Counselors, Asuncion  
hugo.tberkemeyer@berke.com.py

### Projects and Liaison Officer

Gabor Damjanovic  
Forgó Damjanovic & Partners, Budapest  
damjanovicg@fdlaw.hu

### Newsletter Officer

Tracey Calvert  
Oakalls Consultancy, Halwell  
tcalvert@oakallsconsultancy.co.uk

## Professional Ethics Committee Advisory Board members 2018

Geraldine Clarke  
Gleeson McGrath Baldwin Solicitors, Dublin  
gclarke@gmgb.ie

Thomas Kaiser-Stockmann  
tkslegal Berlin, Berlin  
thomas@tkslegal.de

Paul Monaghan  
Law Society of New South Wales, Sydney  
paul.monaghan@lawsociety.com.au

Alberto Luis Navarro Castex  
Navarro Castex Abogados, Buenos Aires  
anavarro@navarrolaw.com.ar

Carlo Pavesio  
Pavesio e Associati, Turin  
carlo.pavesio@pavesioassociati.it

Steven Richman  
Clark Hill, Princeton  
srichman@clarkhill.com

Roberto Pary  
Souza Cescon Barrieu & Flesch Advogados, São Paulo  
damjanovicg@fdlaw.hu

Richard Dudelzak  
Dudelzak & Co, Calgary  
rdudelzak@dudelzaklaw.com

Aditi Rani  
Advaya Legal, Mumbai  
aditi@advayalegal.com



## COMMITTEE OFFICERS

---

### Alternative and New Law Business Structures Committee 2017

#### Co-Chairs

Dalton Albrecht  
EY Law, Toronto  
Dalton.Albrecht@ca.ey.com

Steven Richman  
Clark Hill, Princeton  
srichman@clarkhill.com

#### Vice-Chair

Hanim Hamzah  
ZICO Law, Singapore  
hanim.hamzah@zicolaw.com

#### Secretary-Treasurer

Donald B Johnston  
Aird & Berlis, Toronto  
djohnston@airdberlis.com

#### Officer

Michael Napier CBE QC  
Michael Napier Consulting, London  
mikenapier112@btconnect.com

#### Programme Co-Officers

Karl J Veldkamp  
Karl J Veldkamp Professional Corp, Toronto  
kveldkamp@veldkamp.ca

Sönke Lund  
Monereo Meyer Marinel-Io, Barcelona  
slund@mmmm.es

#### Committee Liaison Co-Officers

Andrew E H Magnus  
Aird & Berlis, Toronto  
amagnus@airdberlis.com

Salvador Bartolome  
The Law Society of England & Wales, London

#### Projects and Policy Co-Officer

Robert Heslett  
The Law Society of England & Wales, London  
rheslett@btinternet.com

#### Communications and Website Co-Officers

Isobelle Watts  
Clayton Utz, Sydney  
iwatts@claytonutz.com

Stuart Fuller  
King & Wood Mallesons, Sydney  
stuart.fuller@au.kwm.com

---

### Alternative and New Law Business Structures Committee Advisory Board members 2017

Pieter W Tubbergen  
Schaap Advocaten Notarissen, Rotterdam  
tubbergen@schaap.eu

Shelley Dunstone  
Legal Circles, Adelaide  
shelley.dunstone@legalcircles.com

---

### Law Firm Networks Working Group 2017

#### Chair

Stephen J McGarry  
AILFN, Houston  
smcgarry@ailfn.com

---

### Online Interactive and Matching Sites Working Group 2017

#### Chair

Stuart Fuller  
King & Wood Mallesons, Sydney  
stuart.fuller@au.kwm.com

---

### BIC/SPPI Administrator 2018

Georgia Watson  
georgia.watson@int-bar.org



## DESCRIPTION OF THE COMMITTEES

### Professional Ethics Committee

Professional ethics involves an area that all lawyers must be familiar with regardless of their field of practice. The Professional Ethics Committee seeks to promote the high standards of professional conduct and ethics on a global basis.

The Committee provides a forum for all international lawyers who are interested in discussing and debating issues affecting the practice of law. In today's world, a lawyer may face conflicting duties, and the application of professional standards may be far from apparent.

The Committee focuses on developments of international significance, and seeks active collaboration with other committees and constituents in providing programmes at IBA conferences.

The Committee seeks to facilitate relevant networking, and information and experience sharing opportunities, and encompasses the social and collegial interests of both members and potential members with other regional fora, the Corporate Counsel Forum, Young Lawyers' Committee, and all Legal Practice Division committees in general.

### Alternative and New Law Business Structures Committee

The Alternative and New Law Business Structures Committee was first created as the Multidisciplinary Practices Committee, a President-appointed committee, to follow the developments of multidisciplinary practices (MDPs) in different jurisdictions. It developed recommendations for IBA Resolutions as to the requirements to be met when allowing MDPs, to ensure that the core values of the legal profession are not undermined. At present, the mechanisms for the delivery of legal services have taken new and varied forms as a result of technology and a growing pressure to provide access to justice to broader populations.

#### *Aims of the Committee*

The Committee aims to bring together legal professionals and other interested individuals from many and various jurisdictions and backgrounds to monitor, discuss and shape the developments of new and modified structures, and the rules to which they are subject around the world.

#### *Who does the Committee represent?*

Members are as varied as the backgrounds from which they come. Many are alternative and new law business structures lawyers practicing in their country, whereas others are, or would like to be, partners in alternative and new law business structures.

#### *Committee activities*

The Committee meets during the IBA Annual Conference and will post news regarding various developments in different jurisdictions on the IBA website. The Committee led two sessions at the IBA Annual Conference 2016 in Washington, DC and worked closely on other sessions with the Professional Ethics Committee and Law Firm Management Committee.



---

# Chairperson's message: Professional Ethics Committee retreat

**D**ear Committee members,  
I am filled with excitement. (ex-cite-ment: ik 'sītəmənt/; *noun*; a feeling of great enthusiasm and eagerness). In 2018, for the first time, the Professional Ethics Committee (PEC) is planning to hold an open retreat before the IBA Annual Conference. The proposed retreat will be held in Capalbio, Tuscany, Italy, and commence on the evening of Friday 5 October 2018 and end on the morning of Sunday 7 October 2018, when all attendees shall move to Rome, Italy for the 2018 IBA Annual Conference.

All the Officers and Advisory Board members of the PEC encourage you to attend. Please see the notice included in the newsletter for further details.

This is an auspicious event and we are very pleased to have such a fabulous organising committee. Let me thank: Ricardo Cajola (Italy); Tracey Calvert (United Kingdom); Rachel McGuckian (United States); Thomas Kaiser-Stockmann (Germany); Carlo Pavesio (Italy); and Carlos Valls (Spain). Their effort and thought is unsurpassed. I must single out Carlo Pavesio for a special thank you for opening his home to everyone for the Saturday brunch. Thank you, Carlo.

I look forward to seeing you later this year.

Best regards,

Martin Kovnats

*Co-Chair of the Professional Ethics Committee*

---

# First Professional Ethics Committee retreat

**S**ubsequent to its growth in membership, the Professional Ethics Committee (PEC) has decided to organise its first all-members retreat. Immediately before the IBA Annual Conference 2018 in Rome, the small medieval village Capalbio, only one and a half hours from the airport Fiumicino, will host members of the Committee. Taking place from 5 to 7 October 2018, the programme will start with a dinner on Friday evening, followed by a joint business programme on Saturday morning and a social programme in the afternoon.

As an appropriate venue, the farmhouse 'Locanda Rossa', has been chosen, which has been kindly facilitated by PEC Advisory Board member Carlo Pavesio from Pavesio e Associati in Turin. For Saturday evening, Pavesio has generously invited all participants to his private Tuscan home in Capalbio.



The retreat is open to all Committee members. As places are limited, early registration is recommended. The hotel rooms at Locanda Rossa are pre-reserved and advance payments have to be made by 31 January 2018.

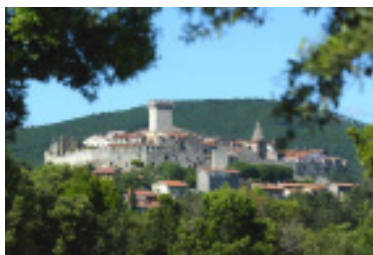
Two room types are available:

Suite: total cost for two nights for two people is €900/950.

Junior suite: total cost for two nights for two people is €800/850.

The above prices are inclusive of breakfast, lunch, dinners, drinks and local transfers.





The retreat will be a unique opportunity to learn all about the PEC, its projects and collaborations with other IBA committees, including ways to become further involved with your Committee's work.

Please do not miss this opportunity; we look forward to welcoming you to Capalbio.

All reservations must be made by 31 January 2018, by sending an email to the Locanda Rossa Resort (info@locandarossa.com), with a copy to Carlo Pavesio (carlo.pavesio@pavesioassociati.it). An advance payment (40 per cent of the total cost) must be made by 31 January 2018. The balance is due by 15 June 2018.



## CONFERENCE REPORTS

# IBA Annual Conference, Sydney

8–13 October 2017

**Derya Durlu  
Gürzumar**

Istanbul Bar  
Association, Istanbul  
deryadurlu@gmail.com

## The no longer brave new world: artificial intelligence and other new deliveries of legal services

*Report on the joint session of the Alternative and New Law Business Structures Committee, the Academic and Professional Development Committee, the Law Firm Management Committee, the Professional Ethics Committee and the Technology Law Committee at the IBA Annual Conference in Sydney*

**Tuesday 10 October 2017**

### Session Chair

Steven Richman *Clark Hill, Princeton*

### Speakers

Geraldine Clarke *Gleeson McGrath Baldwin Solicitors, Dublin*

Derya Durlu Gürzumar *Istanbul Bar Association, Istanbul*

Kinley Gyeltshen *Office of the Attorney General, Thimpu*

Ian Huddleston *Law Society of Northern Ireland, Belfast*

Fiona McLeod SC *Law Council of Australia, Canberra*

Aku Sorainen *Sorainen, Tallinn*  
Vagn Thorup *Lundgrens, Hellerup*  
Carlos Valls Martinez *Fornesa Abogados, Barcelona*

**T**he 2017 IBA Annual Conference in Sydney addressed a topical issue that has entrenched itself at the forefront of legal practice: artificial intelligence (AI). On Tuesday 10 October 2017, eight panellists, moderated under the Alternative and New Law Business Structures Committee Chair, Steven Richman of Clark Hill, discussed the interplay between AI and the provision of



legal services, predominantly from the ethical implications arising out of this cross over.

The session started with an exploration of the definition of AI and what it means in the provision of legal services. Richman pointed out the differences observed between prototypical robots that are 'programmed' to respond to questions and at the same time, demonstrate certain personality traits, and mere computer programming, such as word searches in documents. Panellists weighed in on their understanding of what AI means in the legal realm, underlining that AI essentially requires design by human intelligence, and is therefore subject to human input. Examples of AI in legal practice were given to elaborate on how AI has integrated with the legal work undertaken by law firms. ROSS Intelligence, IBM's Watson Debater and ModusP were some of these examples given. Ultimately, the panel concluded that a distinction should be drawn between programs that function by rote and those that 'learn'.

The panel moved on to discussing the central theme of the session: what are the various ethical issues AI would raise in the provision of legal services? The ethical issues that were under the spotlight during this session covered four areas:

- communication-related issues;
- competence-related issues;
- supervision-related issues; and
- privilege-related issues.

### Communication-related issues

On communication, the panellists elaborated on the level of understanding clients have (or might not have) of the AI that is used in providing legal services, and whether they are willing to pay for that service. Among the issues discussed were whether clients would directly resort to AI machines (ie, robots) for handling their legal cases (thereby resulting in a form of de-lawyering) and whether the provision of 'false' advice could cause liability issues (will the machine or the lawyer operating the machine have professional responsibility?).

### Competence-related issues

Panellists then discussed the competence issues that might arise out of operating AI in law firms. Audience members commented on the need for higher education councils and bar associations primarily to provide special courses designed to educate law students and lawyers, as technology evolves at an unprecedented pace

in the development of AI systems. Some of the questions addressed were whether the lawyer would understand not only what is being used, but the competition that is out there, and the balance between limitations surrounding the use of AI and its foreseeable benefits.

### Supervision-related issues

The panel proceeded to highlight that the use of AI in law firms requires the delicate responsibility of supervising its operation and use to deliver the advice and results clients need. This supervision could be undertaken either by the information technology (IT)/technical staff of the law firm or more senior lawyers, having had experience and knowledge of using such AI systems.

### Privilege-related issues

Finally, the panellists touched upon proprietary issues surrounding privileged information: is the information uploaded into the AI system proprietary or confidential? Audience participation furthered the debate by touching upon data privacy issues related to how the legal data in the AI system is handled. It was noted that buyers of such software programs should understand how the AI system uses and protects the data.

The panellists also discussed whether the use of AI systems in the provision of legal services is a big law firm or small law firm issue. Even though, at first sight, the use of AI systems could appear as a large law firm issue owing to the budget needed to afford these programs, AI vendors could operate on a price-per-document model rather than an enterprise licence, thereby including small law firms in the equation as well. The use of AI systems by smaller law firms would level the playing field, especially with the automation of certain tasks that would reduce the manual workforce employed by smaller law firms.

A final notable discussion from the panel revolved around the question of whether lawyers would be replaced by AI programs in the future. The answer to this question was agreed to be a definite 'no', as these programs still require human involvement, factoring in emotional, mentoring, training and client-related issues. Clients might prefer face-to-face contact; certain areas of law that require human involvement, such as litigation and alternative dispute resolution (negotiation, mediation and arbitration), exclude any software system's involvement in the legal

process; junior lawyers still need mentoring, as it teaches them valuable, real-life skills that would otherwise not be learned through artificial, computer programs.

The panel concluded with each panellist providing his or her takeaways on the future of AI in the legal world, which included the hope that the readiness of political systems

enables a more welcoming approach, especially in developing and less politically stable jurisdictions, and that more adoption of AI into the legal framework can be seen in the future, thereby incentivising the legislature to mould legal jurisprudence in line with technological advancement.

## Alternative and New Law Business Structures Committee

iwatts@claytonutz.com

# Is there any such thing as unauthorised practice of law in the global legal market?

*Report on the joint session of the Alternative and New Law Business Structures Committee and the Professional Ethics Committee at the IBA Annual Conference in Sydney*

**Monday 9 October**

### Session Chair

Dalton Albrecht *EY Law, Toronto*

### Speakers

Robert Heslett *The Law Society of England and Wales, London*

Shigenobu Itoh *Rutan & Tucker, Costa Mesa*

Donald Johnston *Aird & Berlis, Toronto*

Judith Lee *Gibson Dunn & Crutcher, Washington, DC*

Steven Richman *Clark Hill, Princeton*

Isobelle Watts *Clayton Utz, Sydney*

**T**his session explored the following five topics:

1. What is the unauthorised practice of law? What is legal 'work' in different jurisdictions?
2. The 'travelling lawyer': the physical location of lawyers and authorised practice.
3. What is the effect of new methods/structures of practice (eg, corporations, partnerships, limited liability partnerships and alternative business structures)?
4. The unauthorised practice of law in the digital world.
5. The future and the potential of international legal regulation – is it possible to have a 'World Legal Organisation (WLO)'?

Overlaying these topics were a few main themes, including the motives of regulation (eg, to protect consumers or to protect the legal profession); the extent to which regulation is enforced and the difficulties in doing so in the globalised world; and what the future will bring.

Robert Heslett, Donald Johnston and Steven Richman kicked off the session by leading the first topic. They discussed the meaning of 'unauthorised practice of law' and agreed that a person would be engaging in unauthorised practice if he or she practised law without a licence to do so. The activities that constitute unauthorised practice depend on the rules of the particular jurisdiction, as the scope of reserved legal activities differs between jurisdictions. Unauthorised practice also arises in the context of lawyers who are qualified in one jurisdiction and conduct work in another jurisdiction where they are physically present but in which they are not qualified. This point was a good segue into the second topic.

Judith Lee and Richman introduced the concept of the 'travelling lawyer' and discussed various interesting issues that this phenomenon presents. They discussed how different jurisdictions have different regulatory approaches to practitioners who are qualified outside the jurisdiction but who service clients when they are physically in the jurisdiction, for example, when the



practitioner is in transit or temporarily visiting. The utility, or lack thereof, of enforcing such regulations was also raised. Lee pointed out that the prevalence of lawyers travelling to and through different jurisdictions is likely to continue rising and that regulatory regimes will need to grapple with this.

This was followed by a discussion around how new methods and structures of practice have affected the delivery of legal services and the profession more broadly. Heslett cantered through some key developments in the United Kingdom and discussed how the UK has generally had a liberal approach to alternative legal structures. Isobelle Watts offered an Australian perspective and commented that we have witnessed significant changes in the way legal services have been delivered. She touched on some benefits (including increased competition, innovation and accessibility) and also some controversy that the developments have attracted (including fears of the commoditisation and commercialisation of the legal profession, and erosion of the rule of law). She finished by discussing a few law firms that have become publicly listed companies in Australia; this sparked some interest in members of the panel and audience – allowing law firms to float was considered a remarkable departure from the regulatory approach in other jurisdictions.

The panel turned to discussing the unauthorised practice of law in the digital world. Shigenobu Itoh noted that the landscape of legal services is changing and fleshed out two examples of disruption, namely LegalZoom and Avvo. He discussed the respective offerings of these two service providers and the legal hurdles they have encountered. Itoh spoke about the dispute between the North Carolina Bar and LegalZoom, which was ultimately settled but led to a bill being passed. The bill provides that a website offering consumers access to interactive software that generates legal documents does not constitute the practice of law, but that certain consumer protections must be built in. Itoh explained that the issue with Avvo was slightly different. Avvo is an online legal services marketplace that provides lawyer referrals and access to a legal information database, and the question was whether New Jersey attorneys could sign up to the marketplace. A joint committee opinion was issued stating that New Jersey attorneys may not participate in Avvo services as doing so is against the rule of professional conduct.

The discussion on the unauthorised practice of law in the digital world flowed into the topic of artificial intelligence, where Richman made some comments. Watts commented that the demand for online legal services is likely to keep increasing, reflective of the rise in consumption and demand of online services generally, and wondered what apps, offerings and/or devices the legal world will develop in response.

The session wrapped up with a discussion about the future and potential for international legal regulation. Lee led the charge and was relatively positive about the establishment of something that would systematise the regulation of the practice of law among jurisdictions. While the establishment of a 'WLO' (like the World Trade Organization or World Customs Organization) would be a challenge, a suite of uniform rules applying to certain practitioners and/or in certain jurisdictions was not considered to be impossible.

The session was enhanced by lively audience participation. For example, an Australian local provided some comfort to the audience by explaining that, pursuant to Australian regulations, one will not be engaging in the unauthorised practice of law when advising clients while in Australia for the IBA as practising foreign law in Australia only becomes an issue after a few months of being in the jurisdiction. At a different point during the session, there was a discussion around whether certain regulations exist to protect consumers or to protect lawyers, and how increasing competition has been a policy driver for relaxing some regulations and that this in turn has facilitated the establishment of alternative business structures.

A key takeaway from the session is that we are living in an interesting time of legal regulation and the practice of law. In an increasingly globalised world with highly mobile lawyers and rapid technological advancements, the unauthorised practice of law in a strict sense is largely unavoidable. It is interesting to consider what impact this has on clients, depending on their level of sophistication, for example, and how much it concerns them. Many of us will be keenly watching what the future holds in terms of innovation and new developments as well as the regulatory response in different jurisdictions and, perhaps, internationally.



**Zehra Betul  
Ayranci**

Fox Networks Group,  
Amsterdam  
zbayranci@gmail.com

## Duties of confidentiality and the Panama Papers

*Report on the joint session of the Closely Held and Growing Business Enterprises Committee, the Professional Ethics Committee, the Alternative and the New Law Business Structures Committee, the Anti-Corruption Committee and the Bar Issues Commission at the IBA Annual Conference in Sydney*

**Thursday 12 October 2017**

### Session Co-Chairs

Steven Richman *Clark Hill, Princeton*  
Jeffrey Merk *Aird & Berlis, Toronto*

### Speakers

Stig Bigaard *Stig Bigaard Law Firm, Copenhagen*  
Ricardo León-Santacruz *Sanchez DeVanny, Monterrey*  
Laurent Nguyen *Zico Group, Ho Chi Minh City*  
Aditi Rani *Advaya Legal, Mumbai*  
Meg Strickler *Conaway & Strickler, Atlanta*  
Pieter Tubbergen *Schaap Advocaten Notarissen, Rotterdam*

**T**his panel session focused on the duties of confidentiality of lawyers, particularly in the context of the Panama Papers. The panellists, coming from six geographical regions around the world, namely Denmark, Mexico, Vietnam, India, the United States and the Netherlands, provided insight representing both common law and civil law jurisdictions on the hacking of lawyers' data banks to disclose confidential information, under professional responsibility rules, in unauthorised circumstances. In addition to a remarkable instance that is the unauthorised disclosure from an internal source of the information from an entity related to a Panama-based law firm, the panellists gave examples from several other leading international firms that have been hacked externally. In light of the ethical considerations relating to such matters, the panellists discussed the professional responsibility of lawyers in private practice, as well as small, large, local and international law firms. Both the panellists and the audience shared their experience on the ethical considerations thereof and how lawyers and firms implement additional security measures to restrain or limit hacking.

The panellists began by discussing a lawyer's duty of confidentiality and agreed that in all jurisdictions represented in the room, such a duty is recognised. Among the issues addressed were the types of actions law firms take to protect their client's confidential information, how such actions incorporate any exceptions, if any, to lawyers' confidentiality obligations, whether local regulatory bodies or bar associations make any recommendations to protect confidential information, whether the rules of such bodies have any impact over the law firms, or any role in shaping lawyers' duty of confidentiality and exceptions thereof.

By referring to the Model Rules in the US and professional responsibility rules in other jurisdictions, the panellists emphasised the concepts of 'competency' and making 'reasonable efforts' within the scope of lawyers' confidentiality duties. The panellists argued that the concept of competency must be understood correctly, especially making the difference between small and large firms. Further, the panellists pointed out the ambiguity of what is reasonable effort and when the lawyer is deemed to have made a reasonable effort to protect confidential information against hacking threats and other unauthorised disclosure. If these two concepts are not comprehended and the requirements are not fulfilled, the lawyers must be aware that they might be sued for negligence or malpractice, as the panellists highlighted.

The panellists made a clear distinction between small and large firms with respect to the systems used in storing confidential information and actions taken against unauthorised disclosure threats, such as leakage or hacking. While a large law firm might consider using a cloud-based system and have an information technology department, or even a cyber-security



department, a small firm or a solo practice might have limited financial ability to keep up with the newest technological infrastructure and prefer traditional solutions. The panellists walked the audience through the history: from one lawyer to many, from one office in one jurisdiction to many in various jurisdictions all around the world, from letters and paper-based documentation systems to one server to the cloud. Stressing that emails are now cloud-based and accessible through lawyers' work computers as well as private smartphones, the panellists stated that such evolution and relying on someone else's capacity are natural; however, they bring serious challenges. The panellists presented examples in which the law firm's servers are in one jurisdiction while its cloud server is based in another, as well as an international law firm's various offices in different states and countries. Such cases make the control of information, taking precautions and handling a crisis very difficult as different components fall under various jurisdictions.

The panellists discussed different scenarios regarding disasters, such as fire or meltdown at an office; where clients copy in or blind copy in third parties in email chains between themselves and lawyers, and the information goes outside the firm with no control of the lawyers, and becomes vulnerable to outside hacking; and where the service provider, which provided the law firm with servers or cloud-based solutions, faces security vulnerability. The panellists also underlined that lawyers might be sued and would be liable in such cases although the service provider was targeted and would primarily face the leakage. The panellists suggested that lawyers should explicitly state in their engagement letters with clients that they are cloud-based or that they use a certain technology to store clients' information and communication, and that they take reasonable precautions; however, leakage or hacking might always be possible and, in such cases, lawyers cannot be held liable. A similar clause was suggested for inclusion in the terms and conditions and privacy policies of law firms' websites. These raise clients' awareness and encourage clients to take informed decisions. The panellists shared their firms' internal policies and best practices. This includes storing all client information in the cloud, adopting a human resources policy for the lawyers employed at the firm that computers and phones shall not carry client information because they might

get hacked, using a virtual private network and not checking emails while connected on open Wi-Fi, using crypto-PDF as a storing format, encrypting every file, having the client use his or her e-signature, using an updated internal network with the firm, and having the access to the system monitored and managed. The panellists also acknowledged critical examples on the use of social media by law firm associates and the means of communication clients choose that might be not so secure, such as sending files on WhatsApp, or via Dropbox. The principle to adopt and ask the client was agreed to be 'If this information becomes public, would you be comfortable?' Overall, the panellists underlined the importance of making realistic and reasonable effort as lawyers in order to protect clients' data and clarified that the best effort is not the same for a solo practice and an international firm of thousands of lawyers in tens of offices in different jurisdictions, and that it includes managing communication with clients themselves and setting rules in engagement letters or communications terms and conditions with the clients, as well as adopting best practices and setting the rules with law firm employees in employment contracts.

The panellists then went on with how to react in a case of crisis. The panellists agreed that being prepared and having a crisis management guideline is key. It might include pointers, such as who to respond to, speed of responsiveness and taking immediate action, such as reporting the breach to authorities, applying to court for an interim injunction, who to give access to, what to respond to, who to inform, survival, maintaining business continuity and repairing any damage. The panellists used the analogy of a hurricane: an attack is possible but lawyers do not know when it could happen, therefore they should have a 'response plan' or 'response checklist' analogous to a grocery shopping list to save them time and effort and to save the business. The panellists highlighted the importance of clients' trust in their lawyers, nurturing the relationship with clients, especially in a time of crisis, and saving the lawyers' reputation. Stressing that targets are generally multinational firms, the panellists addressed the following questions: in which jurisdiction and what should be reported to which authority and in compliance with which rules? Noting the complexity of the issue, the panellists stated that common sense, legal profession acts, bar associations' model rules, data protection



rules, and identity, background checks and due diligence are the guidelines to abide by.

The panellists further addressed the issue of whether law firms were refusing to accept new clients now more than prior to the 'Panama Papers' in fear of potential harmful public exposure to the law firm caused by cyberattacks or other circumstances involving the disclosure of confidential information, and whether political pressure has increased to prohibit lawyers from refusing to act on politically sensitive issues or 'unlikeable' clients. By giving examples, the panellists stressed the importance of identifying red flags in accepting a client, carrying out a background check, understanding the client's needs and demands, conducting due diligence and making the decision, taking into consideration how representing such a client would affect the lawyer's reputation now or in the future.

The panellists also stated cases in which the situation is not unlawful, but very difficult to handle and exercise dutiful care, such as tax planning, or accepting political figures as clients, by pointing out that reputation and image are important for a lawyer in the legal profession, towards the lawyer's current clients or for his or her future business.

The panellists also mentioned developments such as regulatory bodies, monetary institutions and clients organising exercises of crisis management with case studies to raise awareness and cyber-hygiene, and for firms to be prepared for potential cyber-security threats.

The session concluded with closing remarks from the Co-Chairs, thanking all the panellists and audience members for being part of an interesting session with such a lively and enthusiastic discussion, which lasted more than three hours.

## Alessandra Nascimento Mourão

Nascimento e Mourão,  
São Paulo  
alessandra@  
nascimentomourao  
.adv.br

# Issues in the liability of directors for loss caused to shareholders or creditors by directors' negligence or breach of duty

*Report on the joint session of the Negligence and Damages Committee and the Closely Held and Growing Business Enterprises Committee at the IBA Annual Conference in Sydney*

**Wednesday 11 October 2017**

### Session Chair

Yusuf Ali San *Yusuf O Ali & Co, Ilorin*

### Speakers

Kemsley Brennan *MinterEllison, Sydney*

Benedict Christ *VISCHER, Zurich*

Charandeep Kaur *Trilegal, New Delhi*

Hermann Knott *Andersen Tax & Legal, Cologne*

Jeffrey Merk *Aird & Berlis, Toronto*

Briefly, the following issues were discussed during the panel.

### To whom are duties owed by directors and what duties are owed?

All panellists had the opportunity to present the applicable duties of directors in their own jurisdictions, with a special note on the Australian jurisdiction by Kemsley Brennan.

Hermann Knott interestingly noted that, in Germany, the burden of proof is on directors to provide evidence of their compliance with the company's statutes.

### Issues relating to corporate law

The following questions were posed:

- In the different jurisdictions of the panellists and audience, does the relevant corporate law/company law statute serve as a source of potential liability for directors to the corporation?
- In what circumstances may the corporate law/company law statute result in director liability?
- Does corporate law/company law provide for any protections for directors that they may take to shield themselves from such potential liability?



- What actions are directors required to take to avail themselves of such corporate law/company law protections?

Charandeep Kaur indicated that a new act in India regulates corporate matters (2013) including directors' liability.

### **How has common law or the civil code developed to result in potential liability for directors to the corporation?**

Jeffery Merk indicated that, in Canada, aside from the province of Quebec, the country applies common law and very much follows Delaware (United States) laws and court decisions. Very interestingly, he also pointed out that it is not a director's duty to maximise the value of shares.

### **Are there any additional statutes or civil code provisions that serve as a source of potential liability for directors?**

Kaur brought to the audience's attention an interesting fact regarding directors' liability in India to honour bank checks payment subject to the risk of going to jail.

Benedict Christ informed the panel that, in Switzerland, directors may also find themselves personally liable for the payment of taxes.

### **Duties of directors**

How do the duties of directors (and therefore the potential liability of directors) shift in the context of different jurisdictions (eg, change of control transaction or insolvency)?

Christ indicated that, in a situation heading to insolvency, or financial distress, the board is expected to act as soon as possible or it may otherwise be considered liable.

Knott informed the panel that it has been a trend in Germany to limit managing directors' liability. At the same time, the criminal liability of employees in general has been of great interest in the country, along with the liability laws in other countries, because Germany is mainly an exporter country.

### **Protections for directors**

In addition to the specific protections provided to a director in the applicable statute or common law/civil code, what practical protections are available for directors to protect themselves from potential liability or protect their personal/family assets from director liability?

In the second part of the panel, Merk engaged the audience in a vivid debate, following which views from different jurisdictions in Europe, the Americas and the Middle East came to light.

The criminal liability of corporations is becoming an issue and has been awarded to courts in several countries, even in those where such a possibility would be acceptable.

In Brazil, a single approval of management performance and financial results in a general annual meeting of quotaholders may release managers of liability to quotaholders in *limitada* (limited liability) companies.

Directors and officers liability insurance is a most effective way of protecting directors, but its limits vary considerably from jurisdiction to jurisdiction.

Litigation funds are on the increase in Australia, as Brennan pointed out.

## Rachel McGuckian

Miles & Stockbridge,  
Rockville  
rmcguckian@  
milesstockbridge.com

# Searching for solutions to gender diversity issues: bar associations jump into the fray

*Report on the joint session of the Women Lawyers' Interest Group and the Professional Ethics Committee at the IBA Annual Conference in Sydney*

Thursday 12 October 2017

### Session Co-Chairs

Masako Banno *Okuno & Partners, Tokyo*  
Rachel McGuckian *Miles & Stockbridge, Maryland*

### Speakers

Hilarie Bass *Greenberg Traurig, Miami*  
Caroline Kirton *Dever's List, Melbourne*  
Paul Mollerup *Director of the Association of Danish Law Firms, Copenhagen*  
Olufunmi Oluyede *TRLPLAW, Lagos*

**M**asako Banno, an officer of the Women's Issues Group, and Rachel McGuckian, an officer of the Professional Ethics Committee, co-chaired the panel in Sydney. The panellists addressed issues of gender diversity and discrimination in law firms, and their own bar association's strategies and successes in increasing diversity and inclusion in firms in their home countries. Panellists Hilarie Bass, Caroline Kirton, Paul Mollerup and Olufunmi Oluyede engaged in a lively exchange of ideas and answered interesting questions from the audience.

## Tracey Calvert

Oakalls Consultancy  
Limited, Devon  
tcalvert@  
oakallsconsultancy.  
co.uk

# Departures and lateral hires of partners

*Report on the joint session of the Professional Ethics Committee, the Alternative and New Law Business Structures Committee and the Women Lawyers' Interest Group at the IBA Annual Conference in Sydney*

Wednesday 11 October 2017

### Session Co-Chairs

Steven Richman *Clark Hill, Princeton*  
Alberto Luis Navarro Castex *Navarro Castex Abogados, Buenos Aires*

### Speakers

Jennifer Bishop *Miller Thomson, Toronto*  
Ellisa Habbart *The Delaware Counsel Group, Wilmington*  
Joerg Menzer *Noerr, Bucharest*  
Roberto Nogueira de Pary *Souza Cescon Barrieu & Flesch Advogados, São Paulo*  
Clemens Schindler *Schindler Attorneys, Vienna*

*The legal world has been addressing issues related to the mobility of lawyers for many years. The area has been expanding, with many more lawyers changing firms owing to wanting a broader platform, the right-sizing of firms, the merger or other alignments*

*of firms in many jurisdictions and the insolvency or other financial distress of law firms, to name just a few reasons. The expectations of lawyers and the bodies regulating lawyers have been changing over time, and the laws relating to the duties of lawyers and their new firms have also been changing. Further, there seem to be differing expectations and rules depending on the extent of the development of the Bar and the regulatory framework of the Bar. Law firms now have multijurisdictions to consider when trying to manage expectations and changing laws in many of these jurisdictions.*

**T**his mid-week panel session was a joint collaboration between the Professional Ethics Committee and the Alternative and New Law Business Structures Committee, giving further evidence of the many common themes that pervade the work



of both Committees. The session provided a fascinating insight into the perennial problems associated both with the departure of partners and the lateral hire of partners.

The Co-Chairs and speakers represented many jurisdictions and therefore many contractual differences in terms of the partners' employment duties and retainers with clients. Notwithstanding the variety of starting points, many ethical layers were explored during the session, which were common to all present.

The Co-Chairs structured the session around some pre-planned questions, which are useful points for anyone considering the potential issues of such an event in their own business:

- What can be said from the ethics point of view about the different motivations behind lawyers' departures?
- What is the ethics around partners knowing that they will be leaving the firm and the timing of that departure?
- What are the duties owed by a partner to the firm and to clients?
- What can you disclose when you move to a new firm?
- In the absence of a notice period, how can you prevent the sudden departure of partners?
- What is the use of restrictive covenants?
- What are the issues with a lateral hire policy?
- Are firms planning for the long term?

An overriding theme was the responsibility of both law firm owners and individual partners to consider the best interests of the client when a change event, such as the departure or lateral hire of a significant member of the business, occurs. It was acknowledged that sometimes this change is not well managed by the business, or even foreseen as something that may happen. The panel agreed that there was much to be commended, both in terms of structuring and culture, through an early discussion of, and agreement about, the business' strategic motivations.

A number of themes emerged, such as: profit distribution models to incentivise employees, partner conflict acknowledgment and management and whether the firm provides individuals with an appropriate career platform were all seen as having a direct connection with the session topic. In other words, how well a departure or lateral hire is managed (or even avoided) can be directly related to how the individual has been treated. For example, a departing partner is more likely to act in an ethical

manner if he or she has been employed in a business with a strong ethical culture; similarly, the way in which a lateral hire behaves when he or she joins a firm may well be influenced by the culture that he or she has left. Regardless of whether or not notice periods and so on are required, the way in which an individual has been treated will influence the success of the transition.

Does the client retainer belong to the individual or firm? There were many jurisdictional differences about this very crucial point. Does the partner on the move have the right to move clients with him or her? Many jurisdictions have regulatory rules, and ethical codes, which supply the answer to this and it was felt that it was important that this was understood as this would also be a motivating force when thinking about the relationship with the colleague. However, regardless of this, again the panel felt it was important to demonstrate that duties to clients, and the requirement to act in a client's best interests, which is a global consideration, are borne in mind. The management of the change from the client's perspective could result in negative publicity for the firm and, more widely, the reputation of the profession and our role as trusted advisers.

Confidentiality is a professional responsibility that must be understood by all sides involved in departures and lateral hires. The issues under discussion, and largely based on jurisdictional starting points, were the following:

- Is it the individual or the firm (or both) who has responsibility for ensuring that confidentiality is not put at risk?
- What information can be discussed with and by individuals when they move firms?
- What are the practical consequences of confidentiality constraints when dealing with conflicts of interest and acting for other clients?
- What difficulties may arise if the firm or the individual has agreed not to act for a particular client's competitors or adversaries, and so on?

These are essential discussions that must be had at the appropriate time.

In some jurisdictions, it is not required or possible to compel a departing partner to serve a period of notice. In such circumstances, how do you manage the risk that a partner will announce his or her departure and leave the business on the same day, possibly taking clients with him

or her? The panel and audience discussed this and common themes emerged that focused on the need for the business to acknowledge and develop strategies to manage and mitigate the risk of such an occurrence. Suggestions that were shared included:

- the benefits of profit-sharing agreements with associates;
- the creation of career opportunities so that the individual was less inclined to look elsewhere for them;
- proper governance of the business and the partnership itself;
- the development of openness and accountability, including discussions of an individual's value to the business and clients; and
- the use of contractual terms where possible to minimise the impact of change.

In respect of this last point, in some jurisdictions, restrictive covenants are used to manage the adverse consequences of a significant individual leaving the business. Many of these covenants have proven to be unenforceable so it is useful to take legal advice from employment law specialists when drafting them.

A final source of debate was whether law firm owners are planning and building for the long-term sustainability of their business. The point was made that often the lateral hire of a senior and experienced lawyer was necessary because of the lack of such experience within the business. It was acknowledged that many law firms are not sufficiently aware of the benefits of training their employees, and giving them the environment in which they can gain experience, and this led to the need to look elsewhere. Law firm growth can be stifled by an 'eat what you kill' mentality with lateral hires providing a solution to a gap in the market with their experience and client following. This source of business is fuelling the issue of lack of law firm strategy and internal culture.

After an insightful debate, the closing conclusions were as follows:

- It is essential that law firm owners and departing partners demonstrate an ethical response to the situation.
- Ethics, culture and understanding of an individual's value to the firm are essential to the decisions that an individual will make about where they choose to practise.
- The reasons why an individual chooses to make a lateral hire must be kept in mind: what was it about his or her previous partnership that made the individual decide to leave and what values and other cultural considerations will he or she bring to the new business? Is this something that must be managed so it is not a disruptive force?
- While financial reward is one motivator, there are other considerations that a partner will take into account when making career decisions. A young lawyer who has access to ongoing training within the business, and a clear career structure, will take this into account.
- All partners must perform to a senior level, both in terms of their work and in their commitment to the business.
- The benefits of having conversations with colleagues about what it means to be a partner, and be in a partnership, are immeasurable. It's not just a numbers game – sometimes that's easy to forget.

The session concluded with the Co-Chairs thanking all the panellists and audience for being part of a very thought-provoking session.





## FEATURE ARTICLES

# Some reflections on AI, its prospects for the legal profession and professional ethics<sup>1</sup>

**Carlos Valls**

Fornesa Abogados,  
Barcelona

c.valls@  
fornesaabogados.com

**T**here are many voices that currently maintain that the so-called new technologies and, in particular, artificial intelligence (AI) and robotics, are going to change the legal profession decisively. This matter has been dealt with in different sessions at the IBA Annual Conference in the last two years.<sup>2</sup> The sessions reflect an important dose of enthusiasm and expectation of what the future can bring us, not exempt from fear of how our activity may really be affected.

AI appears to us, then, as a hope, but also as a threat to our profession. It is obvious that a contemporary attitude requires us to be open and embrace change. We must not, however, ignore its possible excesses: not everything that is new is good (newness, or novelty, should not be an ethical principle per se), progress is not linear or an end in itself and machines may not be ontologically better than humans. More than in any other discipline or analysis, we need to avoid confronting technology as a dichotomy (the doctrine of the opposites, which the ancient Greeks had already detected): it is not either good or bad, nor need we embrace it either fully or not at all. Instead, we should consider humbly what technology could contribute to our profession and navigate through its possibilities and its potential of backlash for our society, through all the benefits that it may bring, but also the political and social consequences that may come with the blanket implementation of its expected solutions.<sup>3</sup>

What technology may bring us is outside the scope of this article, as many important contributions are already in place, which suggest possibilities that are almost beyond our imagination, combining big data with machine learning, speed of analysis of large volumes of documents with robotics, and even emotions analysis or

behaviour prediction. Or not so far-fetched possibilities, as some innovative solutions are already in place and available, such as blockchain,<sup>4</sup> some of their uses already being offered commercially (eg, in simplifying the agricultural supplier chain to consumers, by providing reliability and trust to transactions and therefore enabling the elimination of intermediaries<sup>5</sup>). To project the possibilities that technology may bring us is certainly the objective of the Singularity University and its representatives all around the world,<sup>6</sup> based on Ray Kurzweil's reflections, basically put forward in his book *The Singularity is Near*.<sup>7</sup> These possibilities, turned to our profession, have been the main thrust of Richard Susskind's contribution in the area, to the point of writing a book with the provocative title on the end of lawyers, although he always clarifies that he qualified it with a question mark.<sup>8</sup>

## The specificities of the legal profession when analysing technology and innovation

Rather, what this article proposes is not losing sight of the role that our profession plays in society and whether innovation may help or deviate from the lawyers' ultimate purpose. The legal profession (in all jurisdictions) has a purpose, a role to play, which differentiates it from other professions:<sup>9</sup> we are intermediaries between citizens and government, we have an important and inevitable asymmetry of information in respect of our clients (which generates an inherent conflict of interest with them that must be managed in their favour<sup>10</sup>) and, strangely enough, we are perhaps the only profession that systematically faces an opposing party who is also (for the moment at least!) a member of the same profession.



### The concern of the cost of legal services by professionals and the concern of preserving the principles of our profession

The current concern is that we are conscious that our professional services are becoming increasingly expensive, to the point of more and more individuals and small and medium-sized enterprises (SMEs) becoming unable to afford them. This is particularly applicable in common law jurisdictions, more than in civil law systems.<sup>11</sup> It is therefore urgent in a not insignificant part of the world to address the problem of the cost of legal services, but we need to ask whether attention should be focused exclusively on technology as the means to eliminate at least part (if not all, as some argue) of our tasks, so as to facilitate more affordable services.

At the very moment that access to justice has become a very serious issue, however, the accepted principles that have sustained our profession begin to be perceived as secondary. Let's take independence, for example.

The emphasis on the role of technology as a potential solution to the current cost of legal professional services is not taking into consideration that technology may require investment, and investment could suddenly become an entry barrier. Smaller firms may not be able to afford it, and thus, a sector that has traditionally been professional intensive could suddenly become capital intensive (with an additional urge to obtain a return on the capital investment, etc). If capital were to be an important element of law firms, return of capital would pressure the behaviour of lawyers, which is not (or very marginally) present in current practice, and would incorporate tensions in the management of the inherent conflict of interest with clients. This could erode their ethical duty to avoid any external pressure and to defend their liberty in representing a client. Difficult as it may be, Geoffrey Hazard and Angelo Dondi consider independence to be key because (quoting in turn Laurie Kuslansky) 'it is imperative that someone inform the emperors that they have no clothes, i.e.,... when there is a serious problem... which must be dealt with'.<sup>12</sup>

Is the situation so critical that, in ensuring that access to justice be preserved by means of embracing fully what technology will (but does not yet) offer, it is worthwhile to question the independence principle, or indeed any other traditional ethical principle? Susskind suggests that this should be the case:

'we argue that for the purpose of resolving our fundamental problem – of making

practical expertise more widely available in society – the moral character and motivations of those involved are less important than whether the work they carry out can be relied upon.'<sup>13</sup>

It is interesting to note that only in 2004 were Hazard and Dondi maintaining almost the opposite:

'lawyers must have sufficient income to make a decent living and maintain their independence... A sufficient income for lawyers in independent practice is derived from fees. Therefore legal fees... are an unavoidable part of a constitutional scheme'.<sup>14</sup>

Just 15 years later, are Susskind, Hazard and Dondi so far apart only because of the new circumstances of fees having risen so dramatically? Are ethical principles absolute – Kantian – or only relative in view of the dilemma posed by the excessive cost of hiring a lawyer in some jurisdictions?

### Access to justice and technology

It is clear that the problem should not be focused then on what technology should do for us, but rather on how to solve the current problem of access to justice (which is, by the way, the premise over which Susskind and Susskind question all the professions in the first place,<sup>15</sup> that is, that they have become too expensive for what they deliver). Rather, other solutions should be explored to reduce costs for the delivery of legal services. In observing the great differences in fees in litigation in the United Kingdom or United States, compared with countries from the South of Europe, such as Portugal, Spain or Italy, one can perhaps deduce that in studying legal systems and, particularly, litigation norms of procedure, one may detect potential elements for discussion in the more expensive countries (eg, carrying out a cost-benefit analysis of the different legal systems, with a particular focus, inter alia, on the depth and thoroughness of the evidence rules of procedure, the different degree of power judges may have in the proceeding as opposed to that held by the parties (including the judge's additional discretion in the construction of contracts), the impact of the flexibility of the procedure in the cost, the potential of reducing costs with compulsory deadlines, etc<sup>16</sup>).

If the only focus is what technology will be able to do for the legal profession or for clients directly – and is not yet doing – we risk the perception of our current work as being imperfect, costly



and perhaps a commodity. But has this not been a characteristic of all that is human throughout history?

### Innovation with a human touch: a duty

In the search of a better world and the role of technology in our profession, we need to bear in mind that our responsibility (accountability) should not only be vis-à-vis our contemporaries but, as philosopher Hans Jonas<sup>17</sup> convincingly argues, in relation to future generations as well. Equally, we need to accept that the effects of our decisions apply not only in certain, even if more influential, jurisdictions, but also in the remaining ones as, Amartya Sen, in complementing John Rawls' *Theory*, reminds us, justice must always have an international dimension.

To sum up, as Aku Sorainen elegantly put it at the end of an AI session at the Sydney IBA Annual Conference, technology, in freeing part of our time, should in fact help us to focus further in relating and interacting with our clients, and therefore, it should be added, in deepening the lawyers' role in society. If we deviate from this ultimate purpose of technology for our sector (that of enhancing our role in society as a profession), we may then be risking making our profession irrelevant and, as a consequence, rendering us accountable to future generations.

### Notes

- 1 The author participated as a panellist in the session chaired by Steven Richman, 'The no longer brave new world: artificial intelligence and other new deliveries of legal services', held in Sydney on 10 October 2017, at the IBA Annual Conference, organised by the Alternative and New Law Business Structures (Lead), the Academic and Professional Development, the Technology Law and the Professional Ethics Committees. This article is a refined version of the script that the author prepared for the session, and some of the views stated here formed part of his interventions then.
- 2 Some examples: in 2017 (Sydney) 'I, Mediator: artificial intelligence of mediating disputes and ODR', 10 October 2017; 'The no longer brave new world: artificial intelligence and other new deliveries of legal services', 10 October 2017; 'Keynote on data, disruptive innovation and the new digital world', 11 October 2017; 'Blockchain and its implications regarding business law', 11 October 2017. In 2016 (Washington, DC), 'Artificial Intelligence: preparing lawyers for new technology in practice', 19 September 2016; 'New technology at work – robotics and how it affects the (shrinking) remaining human being at the workplace', 20 September 2016.
- 3 The Global Employment Institute of the IBA recently published (April 2017) a very interesting report titled *Artificial Intelligence and Robotics and their Impact on the Workplace*, currently available at the IBA website: [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=012A3473-007F-4519-827C-7DA56D7E3509](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=012A3473-007F-4519-827C-7DA56D7E3509), accessed 15 December 2017. It analyses the consequences in employment law and

regulations of the substitution of the workforce by machines, but surprisingly makes no reference to what this suppression may imply socially and politically, and certainly no reference to ethical implications.

- 4 An interesting session at the Sydney IBA Annual Conference was 'Blockchain and its implications regarding business law', on 11 October 2017.
- 5 *Ibid.*
- 6 I have recently seen Santiago Bilinkis in Buenos Aires (IBA Latin American M&A Regional Conference, 16 March 2017 in his session 'The future of the future') and José Luis Cordeiro in Madrid (IV Legal Management Forum, 24 October 2017, in his speech 'Robotics and artificial intelligence: the limits of the conscience'), with very similar proposals: humanity, they maintain, will face more changes in the next 20 years, including the possibility of immortality, than in the past 5,000 years. Both quoted Google's Calico as innovators leading to immortality of the human being. They are also both collaborators of the Singularity University.
- 7 Ray Kurzweil, *The Singularity is Near* (Viking – Penguin Books 2005). Kurzweil has been hired by Google 'to work on new projects involving machine learning and language processing' *The Wall Street Journal* (14 December 2012) [https://blogs.wsj.com/digits/2012/12/14/google-hires-famed-futurist-ray-kurzweil/?mod=WSJBlog&source=ema\\_il\\_rt\\_mc\\_body&fip=0](https://blogs.wsj.com/digits/2012/12/14/google-hires-famed-futurist-ray-kurzweil/?mod=WSJBlog&source=ema_il_rt_mc_body&fip=0), accessed 5 November 2017.
- 8 Richard Susskind, *The End of Lawyers?* (Oxford University Press 2008).
- 9 I develop more extensively the specificities of the legal profession in Carlos Valls, 'Against the trivialisation of our profession: thoughts on the particular nature of legal services and the ethical risks on its denaturalisation by the application of exclusively market criteria', *Professional Ethics and New Law Business Structures joint newsletter*, March 2017, pp 42-44.
- 10 Ashish Nanda, 'The essence of Professionalism: Managing Conflicts of Interest', Harvard Law School, No 9-903-120, rev 29 December 2003.
- 11 In fact, in a recent survey in Spain, price was not among the top concerns of clients in respect of requesting the services of a lawyer. The survey was presented by Christophe Chevalley, General Manager, Rocket Lawyer Europe, at the conference organised by the Council of Bars and Law Societies of Europe (CCBE) on 'Innovation and future of the legal profession' in Paris on 21 October 2016. The details of this survey are available at: <http://ccbeconference.eu/images/presentations/Presentation-Christophe-Chevalley.pdf>, accessed 15 December 2017.
- 12 Geoffrey Hazard and Angelo Dondi, *Legal Ethics. A Comparative Study* (Stanford University Press 2004), 158.
- 13 Richard Susskind and Daniel Susskind, *The Future of the Professions. How Technology will Transform the Work of Human Experts* (Oxford University Press 2015).
- 14 See n 12 above, 169.
- 15 See n 13 above.
- 16 This is a fascinating subject, the comparison between the common law and civil law systems, but the author does not know whether such a compared cost-benefit analysis of each system has been carried out.
- 17 Jonas, Hans: *Das Prinzip Verantwortung*. The author has worked with its Spanish translation: *El principio de responsabilidad. Ensayo de una ética para la civilización tecnológica* (Herder 2015) (primera edición, 4ª reimpresión). There is obviously an English translation: *The Imperative of Responsibility. In Search of an Ethics for the Technological Age* (University of Chicago Press 1985).
- 18 Amartya Sen, *The Idea of Justice* (Belknap Press of Harvard University Press 2009). Paperback version, same eds, 2011 (the one consulted by the author of this article).
- 19 See n 1 above.

**Derya Durlu  
Gürzumar**

Istanbul Bar  
Association, Istanbul  
deryadurlu@gmail.com

# From parchments to robots: the impact of artificial intelligence on legal services

## Introduction

Transformation. Innovation. Adaptability. The three most important words that have a profound resonance in today's digital-driven world are entrenched at the heart of artificial intelligence (AI).

New business structures emerge at an unprecedented speed, transforming the dynamics of product and geographical markets. Technology is increasingly dissipating the 'tradition' out of certain fields previously thought to be unscathed by such a force of change. What was 'new' yesterday becomes 'old' today with the blink of an eye because of innovation. Adaptability to fast-paced changes therefore becomes inevitable.

How does the fast-paced innovative mindset affect law and the legal profession? Can AI be regulated? Why is the desire to reformat our intelligence so appealing such that debates on whether lawyers will be replaced by robots ultimately end in controversy? Which logic will prevail behind the dais: the human or the humanoid? Can a court decision be accurately predicted or erroneously underestimated?

These and several other topical legal and practical questions underlie the topic addressed in this article: what are the ramifications of increased usage of AI for the delivery of legal services and subsequently on legal 'intelligence'?

Against this backdrop, this article will first set out the terminological landscape so that the confines of the principal question are clear. Second, the intricate relationship between AI and legal services will be examined. The article will subsequently address the ramifications of the increased use of AI for the delivery of legal services. Finally, the conclusion will provide a general assessment of the topic and offer projections as to where the increased use of AI is expected to steer the legal profession.

## Terminological landscape

### *The legal profession and the provision of legal services*

In order to understand the impact of AI on the delivery of legal services, one must first lay out the unique characteristics that shape the legal profession.

An occupation, according to Ogus, engenders the following general characteristics:

1. it requires specialised skills partially or fully acquired by intellectual training;
2. it provides a service, calling for a high degree of integrity; and
3. it involves direct or fiduciary relations with clients.

Local, national, regional and international bar associations throughout the world strive to portray the general features of a 'lawyer' in line with the foregoing depiction: lawyers require a formal (life-long) education; they are the quintessential agents 'between non-lawyers and the law', and must therefore attain a high degree of integrity, diligence and competency; and they are continuously connected with and engaged in relationships with multiple parties within the legal services market: from clients to governments, from judges to legal regulators, lawyers and those working with lawyers, they have an intertwined affiliation to the different layers of society. *Ergo*, the duties and responsibilities that lawyers undertake and perform are not only sensitive to but also require an intellectual and emotional input.

Furthermore, the manifold legal services provided to recipients might equally require an intellectual as well as emotional component: providing legal advice, litigating before courts and tribunals, conducting research, interviewing witnesses, collecting data during document production/discovery, processing numeric data, drafting petitions and awards and much more define what



legal professionals do. The medium with which these services are undertaken has been evolving from parchment to cognitive robots, bringing a colourful spectrum of debate to the table.

Whether and to what extent AI attains (or will attain) the foregoing standards and responsibilities unique to this profession can be understood once AI is defined and its contours set out.

### *Artificial intelligence: what, when and why*

AI is a term coined in the 1950s by John McCarthy, an American computer and cognitive scientist, as ‘the science and engineering of making intelligent machines, especially intelligent computer programs’. Similar definitions, though unsatisfactory when regulation methods of AI are considered, have been formulated by various scholars, dating back to 1968.

The emphasis on these definitions lies on the term’s ‘I’ letter, ‘intelligence’, which begs the following questions: what is ‘intelligence’ and how could a machine be more intelligent than a human?

According to McCarthy, ‘[i]ntelligence is the computational part of the ability to achieve goals in the world’ and there is still no solid definition that characterises ‘artificial’ intelligence without relating it to ‘human’ intelligence. AI requires design by intelligent humans, and whether it can evolve, in the sense of Darwinian evolution, is a question that remains unanswered. Hence, this concept involves various internal mechanisms that might pose complex organisational challenges when computer programs and robotics are devised.

Needless to say, the necessity and desire to explore and advance AI research primarily stems from competition in the relevant market and thus rests on economic efficiency and social welfare, two key tenets that directly correlate to the provision of legal services and lawyers’ role in society. This discussion is furthered in the following section.

### **The use of AI in the provision of legal services**

#### *General scope*

Technological advances require the constant ‘evolution’ of creativity and innovation in AI, and these subsequently affect considerations of efficiency and social welfare in legal practice. Law firms compete to be the ‘best’, a term that has many connotations for very different

audience members. This competition could ultimately drive legal practitioners to consider taking a leap of faith in the murky realm of AI in order to attain ‘efficiency, predictability and cost effectiveness’.

Currently, AI appears to have been adopted predominantly in the procedural aspect of legal services, but has also had its implementation in the substantive area of law. The following section outlines the areas where AI is – and can be – used for the provision of legal service.

#### *Areas of AI usage in legal practice*

A 2016 report drafted by the Georgetown Law Center for the Study of the Legal Profession includes an analysis of a survey conducted on 34 Peer Monitor firms that were separated as upper-tier firms and lower-tier firms in terms of their overall financial performance. According to the results reached by this survey, several key areas were found to have been pursued by top-tier firms in enforcing a technological operational change:

1. monitoring the progress of matters, resource commitments and budget status in real time on a matter basis via special software;
2. having ready access to the firm’s prior work product through an efficient and easily usable knowledge management system;
3. document review software that uses predictive coding based on a ‘seed sample’ of documents provided by firm lawyers;
4. client ‘self-help’ tools that allow clients to perform tasks directly that previously required active participation by firm lawyers;
5. use of project management software; and
6. use of e-learning systems for professional education and training.

Other areas in legal service also incorporate the use of AI:

7. e-discovery;
8. legal research;
9. document automation; and
10. appointment of arbitrators.

Certainly, one can easily expand the foregoing list in six months, one year or even five years as the usage of AI continues to generate positive economic efficiencies in the legal market: hours of word search in laborious discovery exercises can be shortened to just a few minutes; drafting a document can be as quick as three minutes; outcomes of cases can be predicted based on the available data in the case file; the tasks traditionally



undertaken by junior lawyers could become obsolete, thereby opening up a new door of more qualified intellectual experience, rather than quantified, industrious work.

Needless to say, certain other areas in legal practice, such as advising clients, negotiating and appearing in court, remain immune to the AI wave influencing how law firms conduct business.

### *Examples of AI usage in legal practice*

There are several interesting examples of AI that have been devised and/or utilised by law firms:

1. ROSS Intelligence;
2. Term Frame (Pinsent Masons): an intelligent project management system;
3. Traceable Causes (Pinsent Masons): an intelligent system that helps mitigate risk in the infrastructure sector;
4. Verifi (Linklaters): a computer program that can sift through 14 United Kingdom and European regulatory registers to check client names for banks;
5. Margin Matrix (Allen & Overy): a digital derivatives compliance system to help major banks to deal with new regulatory requirements that came into force on 1 September 2016 for the over-the-counter derivatives market;
6. Nextlaw Labs (Dentons): an intelligent system that operates outside the partnership model;
7. Riverview Law: a system offering a 'one-stop shop' for business customers through a barrister-led model;
8. Diligence Accelerator (eBravia): a technology that brings 'accuracy and efficiency' to due diligence in mergers and acquisitions;
9. Story Engine: a program by Dan Roth that was originally devised for non-law-related customers, but whose use can be implemented in fraud cases or litigation because the system is devised to read through 'unstructured data and summarize conversations, including the ideas discussed, the frequency of the communication and the mood of the speakers';
10. machine learning systems; and
11. NexLP (Next Generation Language Processing Platform).

These programs and systems appear to have come to fruition given the headlines one comes across when doing a simple Google search on the success stories of

law firms that have implemented AI in the provision of their legal services. But the more impending question that comes to mind amid these success stories is what impact will the increased use of AI have on the delivery of legal services? The answer is discussed in the next section.

### **Ramifications of increased use of AI for delivery of legal services**

AI harbours a potential for a 'paradigm shift' in how legal work is (going to be) carried out. This shift will not happen overnight, it will develop with 'incremental transformations'. These transformations will, subsequently, affect the provision of legal services.

There are several ramifications one might observe as a result of the increased use of AI in legal practice:

#### *Efficiency*

There is no doubt that AI functions expediently when compared with a lawyer or paralegal. This is particularly relevant in those areas of the practice in which a gamut of information must be processed (eg, discovery and legal research), usually by paralegals or junior lawyers. The increased use of artificial systems will come in very handy in this respect. A concern that might come to mind would be the accuracy of the AI systems; fast is better only when the result is accurate.

#### *Cost*

Speedy (and accurate) work also means a decline in lawyers' hours and hence a more affordable legal service for clients. It is true that cost concerns arise where time is devoted to less sophisticated and manual tasks. However, with the increased use of AI, data automation systems will enable lawyers to channel their focus on higher-level intellectual tasks, and clients to approach already skyrocketing legal fees with less reluctance, thereby creating increased demand for legal services in the market.

#### *(Lack of) emotion*

A notable ramification of increased use of AI is the addition of a purely mechanical actor to the equilibrium. Can an artificial system be deemed to function as desired if it cannot relate to the client and the case on an emotional level? The answer is an obvious 'no'. The reason why the legal profession is stubborn in its



adherence to tradition is because of its actors: lawyers. Lawyers not only need intelligence, but they must possess emotion, empathy and the ability to explain their reasoning in order to serve society fully. Stripping them of emotion and empathy will render them no different from what computerised programs stand for: mechanical systems. Hence, the use of AI in the provision of legal services must be carefully segregated from those areas where emotional intelligence is imperative (eg, advising clients and negotiating).

### *Prediction of legal outcomes*

AI can also be used to predict legal outcomes. The complex computer system could assess a plethora of information to determine whether a case will favour the defendant or the respondent. While AI was used to predict outcomes of United States Supreme Court cases, the algorithm's accuracy was laid out at 70 per cent. The question whether or not an accurate prediction of legal outcomes will improve the quality of legal services remains to be answered. If a diligent review of such AI usage is not conducted, these mechanic predictions could shift the paradigm in litigation and anticipation of legal outcomes (a false prediction could cost a fortune and the law firm's reputation).

### *Shifting of business structures*

The increased use of AI is resulting in a series of competitive forces emerging in the market: the market not only hosts traditional law firms, but accounting firms, legal startups and many other alternative business structures have come into play. While this increased competition will drive innovation even further, another impending question requires careful consideration of the impact AI has on the legal market: can someone come in and do to law what Amazon did to bookselling?

As can be seen, AI could introduce unprecedented legal issues on unparalleled legal concepts and scenarios, which make it even more intriguing to study the intersection between law and AI.

### **Conclusion**

This article has attempted to address the impact of AI on the provision of legal services by, first, outlining the terms used, then addressing the areas where AI has been utilised in legal practice and finally the

challenges and ramifications observed by the use thereof.

The increased use of AI has pros and cons in the provision of legal services. Owing to these ramifications, the supply and demand equilibrium within the legal market could be slowly, but steadily, changing. This change requires a sense of adaptability and flexibility, which are both essential in the newly evolving digital world.

The topic discussed above without doubt gives rise to a multitudinous number of sub-topics that are ripe and ready for consideration, but that fall outside the scope of this article:

- How big is the divide between civil law and common law jurisdictions in terms of implementing AI in legal practice?
- Which legal cultures are ready to adapt and adopt computer programs over lawyers?
- Will this divide be significant with developed, developing and underdeveloped jurisdictions?
- How can AI be regulated: can software codes be regulated over lawyers?

These and many other questions bring practitioners and academia together to form colloquia such that the future of the legal profession can be embraced and welcomed without fear of the unknown.

Regardless, it would be quite unfathomable immediately to adopt the idea of introducing AI to a law firm – or any other business structure – in a heartbeat. One must consider many other dynamics and parameters shaping and regulating the relevant legal market; from culture to tradition, from language to technological advancement, many elements of this equilibrium have profound resonance within the legal profession. Needless to say, the legal profession could be on the cusp of a transformation. Will lawyers continue to shuffle parchment back and forth? Probably. Will they be replaced (or in Shakespeare's terminology from five centuries ago, 'killed')? Not so soon.

### **Notes**

- 1 This article is an updated version of the essay that won the 2017 IBA Annual Conference Scholarship Award for the Alternative and New Law Business Structures Committee.
- 2 Anthony Ogus, *Regulation: Legal Form and Economic Theory* (Oxford University Press 1994), 216 as cited in Nuno Garoupa, 2006, *Regulation of legal and medical professions in the US and Europe: A comparative analysis*, at 2, <http://documentos.fedea.net/pubs/dt/2006/dt-2006-11.pdf>, accessed 1 November 2017.
- 3 Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (CBA Legal Futures Initiative 2014), 18, [www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf), accessed 1 November 2017.



- 4 John McCarthy, *What is Artificial Intelligence* (Stanford University 2007), [www-formal.stanford.edu/jmc/whatisai/node1.html](http://www-formal.stanford.edu/jmc/whatisai/node1.html) accessed 1 November 2017.
- 5 Charles R Dyer, University of Wisconsin Lecture Notes (2003), <http://pages.cs.wisc.edu/~dyer/cs540/notes/intro.html> accessed 1 November 2017 ('A field that focuses on developing techniques to enable computer systems to perform activities that are considered intelligent (in humans and other animals)'); Thomas Dean, James Allen and Yiannis Aloimonos, *Artificial Intelligence: Theory and Practice* (Benjamin/Cummings 1995), 1 ('the *design and study* of computer programs that behave intelligently. These programs are constructed to perform as would a human or an animal whose behavior we consider intelligent' (emphasis added)); Marvin Minsky, *Semantic Information Processing* (MIT Press 1968), v ('Artificial Intelligence is the science of making machines do things that would require intelligence if done by men').
- 6 See, n 4 above.
- 7 Lee Spector, 'Evolution of artificial intelligence' *ScienceDirect* (Elsevier 2006), 1251, <http://faculty.hampshire.edu/lspector/pubs/spector-evolution-of-AI.pdf> accessed 1 November 2017.
- 8 *Ibid.* Referring to Arthur R Jensen's article, 'Does IQ Matter?', McCarthy draws a distinction between human intelligence and artificial/computer intelligence: 'all normal humans have the same intellectual mechanisms and that differences in intelligence are related to "quantitative biochemical and physiological conditions"', which are speed, short term memory and the ability to form accurate and retrievable long term memories. AI, on the other hand, is the opposite: 'Computer programs have plenty of speed and memory but their abilities correspond to the intellectual mechanisms that program designers understand well enough to put in programs' (emphasis author's own).
- 9 Georgetown Law Center for the Study of the Legal Profession, *Report on the State of the Legal Market* (Peer Monitor 2016), 13, [www.law.georgetown.edu/news/upload/2016\\_PM\\_GT\\_Final-Report.pdf](http://www.law.georgetown.edu/news/upload/2016_PM_GT_Final-Report.pdf), accessed 1 November 2017.
- 10 *Ibid.*
- 11 Altman Weil Law Firm Survey.
- 12 Georgetown Law Center for the Study of the Legal Profession, at 13.
- 13 *Ibid.*
- 14 Abdi Shayesteh and Elnaz Zarrini, 'Man vs. Machine: Or, Lawyers vs. Legal Technology' *Law 360* (2016) [www.law360.com/articles/862058/man-vs-machine-or-lawyers-vs-legal-technology](http://www.law360.com/articles/862058/man-vs-machine-or-lawyers-vs-legal-technology), accessed 1 November 2017.
- 15 José María de la Jara, Alejandra Infantes and Daniela Palma, *Machine Arbitrator: Are We Ready?*, Kluwer Arbitration Blog (2017), <http://kluwarbitrationblog.com/2017/05/04/machine-arbitrator-are-we-ready>, accessed 1 November 2017 (the computer system that is referred to by the authors functions as the arbitrator itself, determining the most suitable dispute resolution technique).
- 16 Steve Lohr, 'A.I. Is Doing Legal Work. But It Won't Replace Lawyers, Yet' *The New York Times* (19 March 2017) [www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html?\\_r=1](http://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html?_r=1) accessed 1 November 2017.
- 17 See: [www.rossintelligence.com](http://www.rossintelligence.com) accessed 1 November 2017: an AI system that helps users to find legislation, case law and secondary sources by asking legal questions in plain English. Julie Sobowale, 'How artificial intelligence is transforming the legal profession' *ABA Journal* (2016), [www.abajournal.com/magazine/article/how\\_artificial\\_intelligence\\_is\\_transforming\\_the\\_legal\\_profession](http://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession) accessed 1 November 2017.
- 18 Pinsent Masons, *Pinsent Masons counted among the five most innovative firms in Europe* (2016) [www.pinsentmasons.com/en/media/press-releases/2016/pinsent-masons-counted-among-the-five-most-innovative-firms-in-europe](http://www.pinsentmasons.com/en/media/press-releases/2016/pinsent-masons-counted-among-the-five-most-innovative-firms-in-europe), accessed 1 November 2017.
- 19 *Ibid.*
- 20 Legal Insider, *Linklaters to Switch to Rekoop (Intapp) & road test AI options* (2016), 10, [www.legaltechnology.com/wp-content/uploads/2016/06/insider294.pdf](http://www.legaltechnology.com/wp-content/uploads/2016/06/insider294.pdf), accessed 1 November 2017.
- 21 Allen & Overy, 'Allen & Overy and Deloitte tackle OTC derivatives market challenge' (2016), [www.allenoverly.com/news/en-gb/articles/Pages/AllenOvery-and-Deloitte-tackle-OTC-derivatives-market-challenge.aspx](http://www.allenoverly.com/news/en-gb/articles/Pages/AllenOvery-and-Deloitte-tackle-OTC-derivatives-market-challenge.aspx), accessed 1 November 2017.
- 22 See: [www.nextlawlabs.com](http://www.nextlawlabs.com) accessed 1 November 2017.
- 23 See: [www.riverviewlaw.com](http://www.riverviewlaw.com) accessed 1 November 2017.
- 24 See: <https://ebrevia.com/diligence-accelerator>, accessed 1 November 2017.
- 25 See: [www.storyengine.com](http://www.storyengine.com), accessed 1 November 2017 (referenced in Sobowale (2016)).
- 26 De la Jara (2017).
- 27 [www.nexlp.com](http://www.nexlp.com) accessed 1 November 2017.
- 28 Sobowale (2016).
- 29 Jane Croft, 'Artificial intelligence disrupting the business of law' *Financial Times* (6 October 2016) [www.ft.com/content/5d96dd72-83eb-11e6-8897-2359a58ac7a5](http://www.ft.com/content/5d96dd72-83eb-11e6-8897-2359a58ac7a5) accessed 1 November 2017.
- 30 Sobowale (2016).
- 31 'Studies conclude that *the legal profession is at risk to a lower degree than other jobs in the financial sector because of the personal relationships with clients and the creativity needed to draft new legislature and contract clauses*' (emphasis author's own) *Artificial Intelligence and Robotics and Their Impact on the Workplace*, IBA Global Employment Institute, April 2017, at 35.
- 32 Sobowale (2016).
- 33 See n 28 above.
- 34 William Shakespeare, *Henry VI* (1591), Part II, Act IV, Scene II, Lines 74–77 (Jack Cade: 'Is not this a lamentable/thing, that of the skin of an innocent lamb should/be made parchment? that parchment, being scribbled/o'er, should undo a man?').
- 35 *Ibid* at Line 73 (Dick the butcher: 'The first thing we do, let's kill all the lawyers').



# Business law: empowering the team and dealmakers for above-standard advice

**Bernardo Espinosa Aranda**

Creel Abogados, SC,  
Mexico City

bernardo.espinosa@  
creelabogados.com

## Introduction

Law is a passionate profession that challenges lawyers day by day. While practising, lawyers need not always choose their clients' interests over their own interests, changing the essence of the profession considerably. This article exposes the main items that must be followed for a lawyer to compete with him/herself to render above-standard advice.

## Becoming a lawyer

Lawyers face many different schools of thought while practising their profession, but there are two main schools that have to be understood: first, law school is both a university and daily study; and second, hands-on school, which is learned only by being involved in the profession. The first provides technical knowledge with a high-level perspective of practical life, while the latter causes the development of both a 'street-smart' and 'problem-solving' character. On the one hand, both schools require something more than non-stop study and dedication to a passionate profession, and on the other hand, the profession demands something more than outstanding work. Therefore, there is no science in understanding that when both schools meet a client's needs, one person does not necessarily have sufficient expertise to cover all law practice areas, causing lawyers to team up and become stronger players within the practice.

Irrespective of whether the lawyer is practising within a law firm, a company or is a sole practitioner, each and every lawyer must abide by two main values: the values of his/her clients and profession. However, it is possible to consider that both values are based on subjective rather than objective criteria, but from the author's perspective, many of the values are now objective regulations. As an example, professional ethics and values (eg, the Foreign Corrupt Practices Act or Anti-Bribery Act) are included within countless

regulations, and clients sometimes seek stronger compliance than that requested by law. Therefore, it is reasonable to require any lawyer to comply with the values of the company to the extent that such values do not become contrary to law or his/her own values.

## Growing within a law firm

Within law firms that stimulate internal careers, inside teams that work towards a common purpose are vital. Law firms should enable young lawyers to develop leadership skills with ethical behaviour, as well as encourage horizontal and vertical work distribution among members in order to create an efficient being before clients. Such work distribution, together with responsibility allocation, generates not only internal completion that boosts internal growth, but also gives both law firms and the lawyer an opportunity to understand their strengths and weaknesses. Generating equal opportunities for young lawyers, together with the right supervision, allows them to continue mentoring under the same methods.

By generating a team, together with a growth culture, lawyers learn to work together to generate a better service. Organic growth within a law firm should not only follow the income generated by each lawyer, but should also be based on professional ethics and values, starting with the partners of the firm, but extending to lawyers, paralegals, any other individuals involved in the practice and each employee that makes a law team possible. Organic growth should not be obtained only by seniority, but by a series of guidelines that require, fundamentally, ethical practice in and outside the law firm.

## Competing among lawyers and law firms

Teaming up is not limited to internal groups for giving better advice, but extends to the

law firm acting as a sole group together with new lawyers or collaborating with other firms. Therefore, as long as technology and business continue working and growing together, lawyers and laws will have to adapt as fast as possible. Adapting is the common element that has always encouraged lawyers continuously to improve in order to create stronger and better specialists.

To this end, lawyers team up either to create law firms with more than a few fields of specialisation, or to create alliances with other law firms and lawyers. Consequently, competition among law firms and lawyers is getting so intense that what used to be an added value is the common standard within the practice, triggering lawyers to encounter day by day the limits of their specialisations. Teaming up, either in a law firm or by collaborating with other lawyers, has always been based on the needs of a market, making it hard to imagine that returning from this professional involvement to a profession of solo players is still possible.

Considering that in any law firm the key element is the lawyers, generating an internal team to offer precise advice is vital. Handling a group of lawyers specialised in a specific area of law will provide more complete advice than the advice a solo player can give, and will therefore generate better and more complete advice for clients. This is to say, internal lawyers have to work together to generate something more than just added value to the profession, and give their clients accurate advice to help them carry out their businesses.

### **The purpose of competition**

Having outlined the above, and having generated an individual who seeks the same values as those of their clients, together with the purpose of rendering a high-quality service, competition ends up creating something more than just the service, through getting involved with the client and becoming a 'strategic partner' rather than an 'outside professional' who does nothing more than the minimum. Competition, when the clients' interests are the primary interest of a lawyer, and when they are assumed by all the lawyers within a team, triggers lawyers into giving their best in each and every situation, resulting not only in something more than living the essence of the profession, but in giving advice that is over and above what is expected.