LRD COLLOQUIUM
19 MAY 2020
NOTES OF PROCEEDINGS

LEGAL RESEARCH AND DEVELOPMENT DEPARTMENT

THE LAW SOCIETY OF SINGAPORE

This publication summarises the proceedings of the Colloquium as interpreted by the Legal Research and Development department of The Law Society of Singapore.

A publication of the Legal Research & Development Department

The Law Society of Singapore
28 Maxwell Road #01-03
Maxwell Chambers Suites
Singapore 069120

t: +65 6538 2500
f: +65 6533 5700
www.lawsociety.org.sg

Table of Contents

About the Colloquium 03

Colloquium Panellists 04

Welcome Remarks 06

Panel 1: The Role of Lawyers in the Age of Disruption 08

Claire Tan 08
Amelia Chew, Jennifer Lim & Irene Ng (Huang Ying) 10
Yu Kexin 11
Ko Cheng De & Neil Yap 13

Panel 2: Legal Ethics & Technology 17

Gan Jhia Huei 18
Jennifer Lim & Lee Ji En 20
Josh Lee & Tristan Koh 21

Panel 3: Alternative Legal Service Providers - To Regulate or Not to Regulate? 25

Jennifer Lim & Andrew Wong 26
Nisha Francine Rajoo 27
Liza Shesterneva 28

Panel 4: Law Practices and the Future of Work 32

Nicholas Poon 33
Alvin Chen 35
Faith Sing 37

Continuing Conversations from the Colloquium 41

Part 1: Robots vs Lawyers 42
Part 2: Legal Liability of Lawyers Using AI 45

About the Colloquium

The Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges' was held as a live webinar on 19 May 2020, amidst Singapore's circuit-breaker period, and attended by over 320 members of The Law Society of Singapore. It aimed to be a platform for legal practitioners, emerging scholars, industry experts and students to contribute to developing thought leadership in topics relating to the ethical and regulatory challenges arising from technology's impact on the legal profession.

The Colloquium sought to examine two important questions. First, how should we re-examine the role of lawyers in an age of disruption, especially with increasing automation, competition and liberalisation? Second, given that professional regulation sets the parameters of lawyers' business models, practice structures and professional values, how should lawyers, law practices and potential new entrants to the legal market be regulated or re-regulated in the future of legal work?

These issues were discussed over the course of four panel sessions focusing on the following themes:

- Panel 1: **The Role of Lawyers in the Age of Disruption**
- Panel 2: **Legal Ethics & Technology**
- Panel 3: **Alternative Legal Service Providers - To Regulate or Not to Regulate?**
- Panel 4: **Law Practices and the Future of Work**

To explore these questions, 13 research papers were presented across the four panel sessions, helmed by expert moderators and commentators.

For a snapshot of the highlights of the Colloquium, please visit the LRD Research Portal for our post-event feature article here.

COLLOQUIUM PANELLISTS

Professor Simon Chesterman

Professor Goh Yihan

Ko Cheng De

Neil Yap

Yu Kexin

Claire Tan

Amelia Chew

Jennifer Lim

Irene Ng (Huang Ying)

Associate Professor Helena Whalen-Bridge

Gan Jhia Huei

Josh Lee

Tristan Koh

Lee Ji En

Nisha Francine Rajoo

Liza Shesterneva

Andrew Wong

Rachel Eng

Nicholas Poon

Alvin Chen

Faith Sing

WELCOME REMARKS (ABRIDGED)
ALVIN CHEN, DIRECTOR, LEGAL RESEARCH & DEVELOPMENT
THE LAW SOCIETY OF SINGAPORE

The title of this colloquium highlights two important themes.

First, the role of lawyers in the age of disruption. Perhaps there is no clearer exemplar of the age of disruption than where we are at today – a pandemic which has transformed the way we work, communicate and practise law.

But this is not only the age of disruption. This is also the age of automation - legal technology and artificial intelligence will not only disrupt but will also innovate. An age of increased competition from alternative legal service providers ('ALSPs'). And an age of liberalisation as lawyers and law practices evolve.

It is therefore necessary to re-examine the role of lawyers as we adapt and adjust to the new legal landscape. Are we on the verge of a brave new vista or are we standing on the edge of a precipice? Doomsday scenarios abound – the robots are coming, the end of lawyers – but are these hype or honest predictions?

The second key theme of today's colloquium is emerging regulatory challenges.

Fundamentally, professional regulation sets the parameters of our business models, our practice structures and, most importantly, our professional values. In a dissenting opinion rendered in a 1988 US Supreme Court decision on lawyer advertising, former Justice Sandra Day O'Connor said that what distinguishes a profession "is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market".[1]

At the same time, professional regulation seeks to restrict others from practising law on public policy grounds – consumer protection, competence and control of quality. Hence, the traditional conception of law as a profession – only qualified lawyers practising in law practices are permitted to practise law to assist, advise and represent their clients.

[1] *Shapero v Kentucky Bar Association* (1988) 486 US 466 at 488.

But today, the global legal marketplace has been transformed with new entrants that would have been alien to most a decade ago – Alternative Business Structures, NewLaw firms and ALSPs. Subtle parallel shifts have also taken hold in the language of the legal marketplace – from lawyers to non-lawyers, from law practices to "law companies",[2] from the practice of law to the delivery of legal services, and from clients to consumers and end-users. Access to justice is one of the driving forces behind these changes, but it is a vague term that means different things to different people. What seems clear is that access to justice does not necessarily mean access to lawyers.

We need to consider not only whether and how new entrants should be regulated, but also whether we need to re-regulate ourselves – be it the use of technology or the way we work in the future.

That is why we have organised this colloquium – for you to engage the panellists on these important issues that concern your future and the future of the legal profession.

. . . . .

[2] John Armour and Mari Sako, "AI-Enabled Business Models in Legal Services: From Traditional Law Firms to Next-Generation Law Companies?" *Journal of Professions and Organization*, Volume 7, Issue 1, March 2020, Pages 27–46.

PANEL 1: THE ROLE OF LAWYERS IN THE AGE OF DISRUPTION

Moderator:
Professor Goh Yihan – Dean, School of Law, Singapore Management University

Commentator:
Professor Simon Chesterman – Dean, Faculty of Law, National University of Singapore

Panellists
Claire Tan – Associate, PwC Legal International Pte. Ltd.

Amelia Chew – Co-Founder and Editor, LawTech.Asia

Jennifer Lim – Co-Founder and Editor, LawTech.Asia

Irene Ng (Huang Ying) – Senior Attorney (Singapore, New York), CMS Reich-Rohrwig Hainz

Yu Kexin – Sole Proprietor, Yu Law

Neil Yap – Data Science Product Manager & Legal Engineer, INTELLEX

Ko Cheng De – Associate, Rajah & Tann Singapore LLP

OVERVIEW

Disruption is unavoidable in this "new age" of the legal profession and requires a re-evaluation of the role of the legal practitioner. Panel 1 examined the ways in which disruption in its various forms - such as artificial intelligence ('AI') and online dispute resolution – may aid or hinder the role of lawyers, and consider whether and how the role of lawyers should be reinvented so that legal professionals can remain trusted advisors to their clients.

A NEW KIND OF LAWYER FOR A DIFFERENT KIND OF TIME
CLAIRE TAN I Presentation Paper I

Ms Tan outlined three key issues arising from the proliferation of technology in the legal industry: First, disruption to, and by, clients. Second, disruption to the legal industry as a whole; and third, the traits that 'new age' lawyers should possess in order to deal with the opportunities as well as challenges presented in an age of disruption, and be effective and competent legal advisors to their clients.

Ms Tan highlighted two groups that have been affected by the general phenomenon of disruption, which she categorised as the 'disrupted' and the 'disruptors'. First, the 'disrupted' referred to medium to large-sized established organisations in a particular industry. For example, in the financial services industry, the 'disrupted' organisations, faced with stiff competition, have been prompted to digitalise their businesses to compete with the disruptors (e.g. FinTech companies). The 'disruptors' would typically refer to start-ups that leverage technology to deliver traditional service offerings in an innovative and cost-effective manner. They were likely to face challenges in terms of determining the applicability of existing regulations to their service offerings, due to a lack of guidance from regulators and the promulgation of new laws when growing risks are identified in the industry. On the other hand, the 'disrupted' were likely to face internal challenges when digitalising, due to the need to navigate existing regulatory frameworks and potential technology-related risks.

In the context of the legal industry, with traditional law practices as the 'disrupted', and legal technology start-ups and alternative legal service providers (referred to as 'NewLaw providers') as the 'disruptors', Ms Tan suggested that rather than viewing such start-ups or NewLaw providers as being in direct competition with lawyers, both groups should find ways to collaborate and co-exist in the legal ecosystem by leveraging each other's strengths to provide more diversified and cost-efficient legal offerings to their clients. She also suggested three essential attributes that 'new age' lawyers need to adopt to be effective legal advisors to their clients and assist them in dealing with the unique legal challenges wrought by technological disruption: commercial awareness; a flexible mindset; and 'people' skills. These attributes required lawyers to understand their clients' business models and technological infrastructure, adopt a flexible mindset and work closely with their clients.

ANALYSING THE TRADITIONAL ROLES OF LAWYERS IN LIGHT OF TECHNOLOGY IN SINGAPORE

AMELIA CHEW, JENNIFER LIM AND IRENE NG I Presentation Paper I

It was a question that arguably weighed heavily on participants' minds - would lawyers eventually be displaced by AI? Ms Lim noted that the advent of AI and other technological developments have exerted pressures on the traditional roles of lawyers - in terms of Information Provision, Advisory and Representation. Redefining lawyers' roles in terms of solutions they provide to resolve their clients' problems could be a viable way forward for the legal profession in an age of disruption.

Categorising the legal technology tools currently in the market as either baseline automation or AI-based tools, Ms Chew took the view that baseline automation tools (e.g. document assembly software), while promoting time and cost savings that could enable lawyers to focus on higher-value work, could replace the role of lawyers as information providers as clients could utilise such tools directly.

AI-based tools, on the other hand, could enhance, rather than replace, the advisory or representative role of lawyers as advisors in terms of the quality of legal advice rendered, by extracting and synthesising insights from large inputs of data while minimising the risk of human error. Lawyers could then harness these insights and recommend a more informed course of action for their clients.

Ms Ng noted that technology has also created new roles in the legal industry, by providing alternative career pathways for lawyers. For example, an increasing number of firms have established knowledge and innovation departments that are helmed by legally-trained professionals, while lawyers also have the option of joining legal technology start-ups, where they would be able to harness knowledge in both the law and technology.

Noting that the COVID-19 pandemic had served as a catalyst for lawyers to accelerate their adoption of technology, Ms Ng concluded that lawyers would still have a role to play even in an age of disruption as legal knowledge will remain critical; the only likely difference being that legal professionals would be taking on vastly different roles in the future, including positions that have yet to be created.

DESIGN THINKING: PERSPECTIVES, POSTURES AND PROCESSES FOR THE FUTURE OF THE LEGAL INDUSTRY

YU KEXIN I Presentation Paper I

Ms Yu introduced design thinking as a framework that would encourage and enable lawyers to innovate and reinvent their roles as legal professionals to overcome the challenges that they are currently facing in the legal industry. The more insular nature of the legal profession has resulted in lawyers being less inclined to seek the views and perspectives of non-lawyers regarding the legal industry. However, design thinking positions lawyers to be inventors and forges the way forward for the legal industry to become more proactive, rather than passively reacting to changes as they occur. Design thinking utilises a user-centric framework that focuses on developing solutions with the end-user or client in mind, and emphasises collaboration with all relevant stakeholders in developing the solution.

The process of design thinking can be divided into three stages: (a) hearing; (b) creation; and (c) delivery. First, the hearing stage anchors the entire process through understanding the needs of end-users. Second, the creation stage can involve brainstorming by all stakeholders. For example, a legal technology provider seeking to develop a technology-based legal solution tool could discuss the proposed idea with a legal practitioner and obtain feedback on whether it would be viable. Third, a prototype would typically be produced at the delivery stage. Ms Yu noted that while prototyping an idea from these collaborations might not always be feasible, particularly in the context of the legal industry, work plans or frameworks could be created and then tested with the targeted end-user. As the design thinking process is non-linear, a proposed solution would be subject to refinement based on feedback.

Ms Yu concluded her presentation by outlining three ways in which design thinking could be useful for lawyers to reinvent and innovate. First, as a framework in which the only certainty in the entire process is the end-user, design thinking requires lawyers to think more creatively and move away from traditional modes of legal analysis whereby rules are derived from precedents. Second, design thinking requires lawyers to change their posture and reminds them that the legal profession exists to serve the needs of society – the innovation process should therefore be seen as a purpose-driven one. Finally, design thinking is a process that encourages lawyers to think more ambitiously about the challenges that they need to address

within a fixed process, with the opportunity to trial proposed solutions, seek feedback and refine them further.

NIMBLE COLLABORATIVE ITERATIONS: A PRACTICAL AND PROGRESSIVE APPROACH TO DEVELOPING LEGAL TECHNOLOGY TOOLS YOU WILL ACTUALLY USE

NEIL YAP AND KO CHENG DE I Presentation Paper I

Mr Ko posited that legal technology should not only be viewed as a pre-existing solution to implement, but also as a solution to a pre-existing problem. The latter could be achieved through close collaborations between legal professionals and engineers. To illustrate, both Mr Yap and Mr Ko had collaborated to address a workflow issue that Mr Ko had been facing in his legal practice, which led to the creation of a legal decisions parser that utilises simple programming and natural language processing techniques. This example demonstrated that legal technology should be considered more expansively with the potential for offering tailored and personalised solutions, rather than being regarded as simply offering a one-size-fits-all solution that could be applied across the board.

The workflow issue in question? Mr Yap explained that he had sought to find a quick and efficient way to extract the key points of decisions issued by the Personal Data Protection Commission ('PDPC') and present them in a summary spreadsheet. The legal decisions parser utilised simple Boolean logic, text-matching techniques and pattern recognition to extract and classify key information from the PDPC decisions. This was a simple solution that could be further applied to other areas of the law, and one that could be easily utilised by lawyers as it did not require a considerable degree of technical expertise or competency.

Turning the discussion to the future of law, Mr Ko took the view that the business of law would evolve, marked by a change in the composition of the traditional pyramid structure of law firms, which is typically characterised by senior partners at the top of the pyramid with junior associates at the base. While this structure would likely remain, the base would no longer comprise just junior associates alone but would be further segmented into other categories of professionals comprising legal technologists for example. While lawyers would still have a role to play in an age of disruption, the future of the legal profession would likely see an even greater role for legal technologists. Mr Ko expressed optimism that this could be a potential career path for law students after the changes to the qualification route for advocates and solicitors have been implemented in a few years' time.

DISCUSSION AND Q&A

Key themes of the discussion and Q&A included: the impact of disruption on the practice and profession of law; technological disruption as a revolution or evolution; the future role of lawyers; and the future of legal education.

THE IMPACT OF DISRUPTION ON THE PRACTICE AND PROFESSION OF LAW

Professor Chesterman highlighted a key theme arising from the panellists' presentations: how disruption (including not only technology but also the COVID-19 pandemic) would impact on both the *practice* of law and the *profession* of law.

Practice of law

The legal profession is seeing a shift from supply to demand. This is no longer an era where the lawyer is viewed as a repository of knowledge on the law, and a client would come to the law as a supplicant and seek solutions to their legal problems. Technological shifts have transformed the way individuals relate to information; it is not just about having access to information, but the use of information.

The commodification of legal services – a point raised by the panellists – suggests an increasing movement towards compliance and strategy, and away from the traditional structuring of law practices around dispute resolution and transactional work. In particular, the idea of strategy as a value-add raises the question of whether the legal industry would bifurcate into the 'Amazons' and the 'McKinseys'.

The 'Amazonification' of the legal industry would entail law practices offering legal services with low margins, produced in high volume and incorporating the use of automation. In contrast, the 'McKinsey-fication' of the legal industry would entail law practices adopting a more strategic, client-centric approach towards offering services with high margins but produced in low volume. The challenge is for lawyers and law practices to adapt to the current environment by moving up towards a strategy-focused approach.

Profession of law

The legal profession is in flux as the notion of white-shoe law firms where a lawyer would work for decades is now passé. Increasing lawyer mobility has also presented a challenge for law practices in deciding how much to invest in training for junior lawyers.

Further, the COVID-19 pandemic has transformed the way in which many organisations think about their physical presence. This could accelerate a possible trend of the 'Uberisation' of the legal industry, marked by the decentralisation of the legal practice structure where lawyers can work from anywhere. In turn, this could affect the traditional paradigm of law as a profession.

TECHNOLOGICAL DISRUPTION AS A REVOLUTION OR EVOLUTION?

On whether the three traits for the modern lawyer that Ms Tan had highlighted in her presentation – commercial awareness, flexibility and people skills – had always been needed, she noted that they were essential in today's legal industry, and even more so amidst technological disruption. These skills would allow a lawyer to offer more nuanced solutions that a machine or robot might not necessarily be able to do.

As to whether only larger or more well-resourced firms could afford to invest in legal technology and thus be successfully 'disrupted', Ms Tan highlighted that the grants provided by the Law Society of Singapore and various initiatives by the Singapore Academy of Law could assist smaller firms with integrating technology solutions into their day-to-day work processes. To differentiate themselves, smaller firms could take advantage of their unique value proposition in the market and leverage their ability to dedicate more resources when dealing with a client's needs.

THE FUTURE ROLE OF LAWYERS

An important issue is whether technology will displace the role of lawyers, or merely shape the way that they represent and advise clients. Ms Lim emphasised that lawyers needed to execute their roles more effectively using technological tools. A greater focus should be placed on the lawyer's advisory role, which would not be so easily displaced. The COVID-19 pandemic has also demonstrated the need for law practices to adopt technology on a firm-wide level.

Further, the future role of lawyers should go beyond merely adopting legal technology. Lawyers should transform the way that they solve problems and consider how to design solutions for their clients to adopt. Technology may also change the way that lawyers deliver legal services, for example, whether to use traditional contracts or smart contracts. As a result, new roles for young lawyers, such as legal technologists, may be created.

Professor Goh noted that a participant had asked whether lawyers would be made irrelevant by technology and whether the panellists were too optimistic that lawyers could co-exist with technology. The panellists generally agreed that lawyers would not be made irrelevant by technology, if they are able to adapt to the changing environment.

Ms Chew observed that there would be an inevitable shift and redefinition of the traditional role of a lawyer and that a more productive way to conceptualise this new role was through the lens of 'lawyer versus lawyer plus machine', and not 'lawyer versus machine'. Ms Lim added that the types of legal problems which lawyers are required to resolve still require a human in the loop to assist in areas such as strategy and problem solving, which would open up more ways for lawyers to practise law.

Mr Ko cautioned that while lawyers currently co-exist with technology, advances in technology may render lawyers irrelevant in the future. Hence, lawyers need to consider how to keep up with such advances. Mr Yap opined that lawyers would continue to remain relevant so long as technology did not change their main value proposition.

THE FUTURE OF LEGAL EDUCATION

A participant asked whether a law degree should be made a postgraduate qualification (as in the case of the US) to enable lawyers to be better educated in other fields. Ms Tan felt that it was not necessary for a law degree to be made a postgraduate qualification, as it would lengthen the admission process. Nevertheless, law graduates should continuously upgrade and upskill themselves, as the mindset that a law school education is sufficient to become a successful commercial lawyer is somewhat outdated. Ms Yu agreed that clients need more than just legal knowledge to address their problems. Gaining a multi-disciplinary perspective would therefore enhance law students' competitiveness when they eventually entered the workforce.

. . . . .

PANEL 2: LEGAL ETHICS & TECHNOLOGY

Moderator:
Alvin Chen - Director (Legal Research & Development), The Law Society of Singapore

Commentator:
Associate Professor Helena Whalen-Bridge - Faculty of Law, National University of Singapore

Panellists:
Gan Jhia Huei – Associate, RevLaw LLC

Jennifer Lim – Co-Founder and Editor, LawTech.Asia

Lee Ji En[3] - Deputy Chairperson, Asia-Pacific Legal Innovation and Technology Association ('ALITA'); Associate, Ascendant Legal LLC

Josh Lee – Co-Founder and Editor, LawTech.Asia

Tristan Koh – Editor, LawTech.Asia

OVERVIEW

The proliferation of technology has meant that today's lawyers can no longer afford to remain inexperienced or unaware of technology and its developments. For one, the American Bar Association has recommended an ethical duty of technological competence in its model code of conduct for lawyers. However, technology also presents a host of ethical challenges for which there are few legal guidelines or rules. For example, how should lawyers ensure that the use of technology does not compromise their ethical obligations? Should lawyers be permitted to delegate the exercise of their independent professional judgment to technology? Panel 2 considered how technology would have an impact on lawyers' ethical duties, and vice versa.

[3] Mr Lee Ji En was absent with apologies during the panel presentation and discussion owing to work exigencies on the day of the Colloquium. His joint paper with Ms Jennifer Lim was presented by Ms Lim for Panel 2.

PROFESSIONAL JUDGMENT AS A CORE ETHICAL VALUE
GAN JHIA HUEI | Presentation Paper |

Ms Gan discussed how the increasing use of AI-based tools in the legal profession would lead to the need to codify professional responsibility as a core ethical value in the Legal Profession (Professional Conduct) Rules 2015 ('PCR'). This proposal would help to address the potential problem of an excessive delegation of the exercise of a lawyer's professional judgment to an AI-based tool. She referred to the US medical malpractice case of *Skounakis v Sotillo*, where Dr. Sotillo had prescribed Skounakis weight loss medication that was recommended by an AI-based tool. Skounakis died after taking the prescribed medication, and Skounakis' estate sued Sotillo for prescribing the medicine solely on the basis of the AI-based tool, without performing a thorough medical check on the deceased. The brief facts of this case raised the issue of whether lawyers could fail to exercise professional judgment when relying on an AI-based system's recommendations.

Ms Gan suggested that the current regulatory regime under the PCR did not provide sufficient guidance on a lawyer's ethical obligations when using AI or AI-based tools in the course of their practice. In particular, the level of professional judgment that a lawyer should exercise when using AI-based tools should be proportionate to factors such as the difficulty and/or complexity of the work. Citing the analogy of a lawyer supervising a competent associate, she opined that legal AI output should not be subject to a different level of scrutiny from the work product of a competent associate.

She proposed several amendments to the PCR to provide more clarity on lawyers' professional obligations in using AI in their work: for example, Rule 4(h) PCR could be amended to explicitly require lawyers to keep themselves up to date with the benefits and risks associated with any relevant technology used in the course of their legal practice. This approach would be modelled on Comment 8 to Model Rule 1.1. of the American Bar Association's Model Rules of Professional Conduct on technological competence. Rule 32 PCR could also be amended to require legal practitioners to exercise proper supervision over non-human forms of legal assistance, for example, when an AI-based tool is utilised. This would serve to reinforce the notion that legal practitioners have a positive obligation to critically assess legal AI output and make a judgment call on whether such output can be deployed to solve a client's problem.

In conclusion, Ms Gan noted that by making the exercise of professional judgment a core value in the use of AI tools, this would underscore the importance of holistic decision-making that is essential to lawyers adequately performing their professional obligations and maintaining their professional identity.

THE EVOLUTION OF LEGAL ETHICS WITH THE ADVENT OF LEGAL TECHNOLOGY

JENNIFER LIM AND LEE JI EN I Presentation Paper I

Ms Lim noted that technology has transformed legal practice in three key ways: first, by the increase in the number of digital tools to help legal practitioners carry out their functions more effectively; second, the 'virtualisation' of legal practice (e.g. the conduct of virtual hearings); and third, the creation of new, technology-based legal solution products, such as smart contract platforms. The key question is the extent to which lawyers have a duty to adopt these technologies.

In this regard, she outlined various professional duties under the PCR that could arguably apply. For example, Rule 5 of the PCR sets out a lawyer's duty to act honestly, competently and diligently. From the general principles governing Rule 5 of the PCR, four ethical duties in relation to rendering legal advice on the use of technology could be distilled.

First, a lawyer has a duty to have the requisite knowledge of the types of legal technology available and applicable to the client's case. Second, a lawyer would also be under a duty to inform the client of the risks and costs associated with the use of technology. Next, a lawyer has a duty to act with reasonable diligence and competence in providing services to clients, which would include the competent use of technology where appropriate to do so. Finally, a lawyer has a duty to use all legal means to advance the client's interests, which would include the use of technology.

Ms Lim then turned to the types of ethical duties that might be engaged in the use of legal technology tools. For example, lawyers who utilise legal technology tools would need to ensure that their use of such tools complied with their obligation to preserve client confidentiality under Rule 6 of the PCR. This might also require the lawyer in question to employ the relevant cybersecurity and data protection measures as well to ensure compliance with this duty. She also discussed other duties that could be distilled from the PCR, for example, supervising staff who are not legally trained if they were tasked to utilise such tools, as well as understanding and assessing their ethical risks such as discrimination and a lack of transparency.

THE EPISTEMIC CHALLENGE FACING THE REGULATION OF AI

JOSH LEE AND TRISTAN KOH I Presentation Paper I

Mr Josh Lee's and Mr Koh's presentation focused on the need to develop an epistemic understanding of AI first, and then go back to first principles to address the legal and ethical issues arising from the use of AI. Mr Koh explained that neural networks – layers of nodes that are trained on data as their inputs and provide predictions based on this data as their outputs – form the architecture of AI-based deep learning systems; however, because of their lack of explainability[4] (as compared to traditional machine learning models), regulators may not be sufficiently informed about neural networks, and this raises a number of legal and ethical issues.

One pertinent legal issue is whether the developers of AI systems could argue, in the context of a negligence claim, that they should be held to a lower standard or care or that any damage caused was too remote. Imposing legal personality on the AI system (coupled with some form of insurance cover) might appear to be an attractive solution, but it was unlikely to reduce the propensity of the AI system to cause harm. From an ethical perspective, Mr Josh Lee outlined the potential for creating outcomes with unintended biases as well as a transfer of responsibility to unaccountable actors. There was also a need to ensure the accuracy, legality and fairness of the system's output, bearing in mind a lawyer's professional standards and ethical obligations.

What are some possible solutions, then? Mr Koh proposed that a culture of explainable AI be developed. This would involve explaining decisions made by AI systems to end-users and other relevant stakeholders. Interdisciplinary research on technical and normative issues with regard to how AI systems function should also be encouraged.

A second solution would be to build knowledge and talent in the intersection of law and technology. This could be achieved by conducting baseline training in technology for all legal professionals. A corps of allied legal professionals could also be established with expertise in the technical and ethical issues that might arise with the adoption of technology, for example, in terms of scrutinising the training data of an AI-based system for any bias, or a deep learning system used for litigation outcome predictions.

[4] A principle that ensures that decisions made by AI systems and the associated data driving those decisions can be explained to end-users and other stakeholders.

In conclusion, the regulation of AI ultimately warrants a holistic response, and greater interdisciplinary efforts should be invested into surmounting the epistemic challenge of regulating AI.

DISCUSSION AND Q&A

Key themes of the discussion and Q&A included: whether a duty of technological competence should be introduced for lawyers; lawyers' professional responsibility regarding AI; and the potential legal liabilities arising from the use of AI-based systems.

DUTY OF TECHNOLOGICAL COMPETENCE

The results of a snap poll of the participants saw the majority of respondents take the view that lawyers should be required to be technologically competent. At the same time, a number of respondents felt that the term 'technological competence' should be clarified. Mr Chen noted the wide possibilities contemplated by 'technological competence', such as on the one hand, merely understanding what the technology can do, and on the other hand, actually operating the technology and understanding the algorithms behind it.

Mr Josh Lee suggested that the emphasis should not be on the standard of technological competence required of lawyers; rather, the focus should be on the spirit behind the requirement of technological competence. He proposed that lawyers should continue to keep abreast of technological developments as far as possible in order to better advise clients on the various technological options available.

LAWYERS' PROFESSIONAL RESPONSIBILITY REGARDING AI

Professor Whalen-Bridge commented that Ms Gan's analogy of a lawyer supervising a competent associate provided a good starting point to understand the level of supervision lawyers should be exercising when using AI. Nevertheless, while a supervising lawyer could in theory reproduce the work of an associate, a gap may exist for certain aspects of AI that cannot be replicated by lawyers. Another possible analogy to consider was the standard of care required of a lawyer when using a subject matter expert (such as a medical expert), although this also had its own limitations because an AI system, unlike a human expert, would not currently be able to answer questions and clarify doubts.

One participant asked whether it is necessary for lawyers to exercise professional judgment if some of their functions can be delegated to an AI platform. Ms Gan opined that lawyers should have a baseline responsibility

to assess the limitations of the AI system when relying on its output. They should not delegate their responsibilities entirely to the AI system without conducting a critical assessment.

On the proposition by Ms Lim and Mr Lee Ji En that lawyers' current ethical duties under the PCR include a duty to advise clients on new technologies and to evaluate their use, Professor Whalen-Bridge opined that it appeared to be a good practice as a general principle, but imposing a broad-based duty on lawyers would raise some questions. First, as the degree of knowledge required of lawyers regarding legal technology had yet to be established, it would be difficult to determine how lawyers should evaluate the overall position or course of action regarding the use of legal technology. Second, lawyers who use legal technology would have a duty to keep client information confidential. They may have to advise their clients to agree to the vendor's terms and conditions in order to reduce costs. A broad-based duty may not take into account such nuanced decisions.

LEGAL LIABILITIES ARISING FROM THE USE OF AI-BASED SYSTEMS

Professor Whalen-Bridge noted that a question of great concern arising from Mr Josh Lee's and Mr Koh's presentation was whether imposing legal personality on deep learning AI systems could address the issue of legal liability arising from the use of such systems. This is because such an approach would shift the attention away from the parties who would be liable under the status quo if harm is caused. Instead, liability should be imposed on the relevant parties who make decisions about deploying the AI system and bringing it into contact with end-users. Additionally, although providing insurance cover can ensure compensation for harm, it cannot be a substitute for evaluating the decisions of commercial AI companies and regulators from legal and ethical perspectives.

Furthermore, a questionable argument is that AI deployers should not be held liable for any harm caused because it is too remote due to the AI system's ability to act independently. They should not put such a product on the market in the first place if they are unable to predict the AI system's decisions with sufficient accuracy.

. . . . .

PANEL 3: ALTERNATIVE LEGAL SERVICE PROVIDERS - TO REGULATE OR NOT TO REGULATE?

Moderator:
Irene Ng (Huang Ying) – Senior Attorney (Singapore, New York), CMS Reich-Rohrwig Hainz

Panellists:
Jennifer Lim – Co-Founder and Editor, LawTech.Asia

Andrew Wong – Product and Project Manager, Innovation & KM Solutions, Dentons Rodyk

Nisha Francine Rajoo – Senior Executive Officer (Legal Research & Development), The Law Society of Singapore

Liza Shesterneva – Contributor, LawTech.Asia

OVERVIEW

The emergence of new players in the legal profession – in the form of alternative legal service providers ('ALSPs') – has brought about a rethinking of the traditional legal service delivery model. While ALSPs leverage technology to offer efficient, easier access to, and more cost-effective legal assistance and solutions to consumers, they also present new regulatory challenges that have yet to be adequately addressed or even considered. Panel 3 sought to examine and where appropriate, propose new approaches to addressing these challenges to ensure that new models of legal services delivery remain rooted in the core values of the legal profession, which include protecting the public, ensuring access to justice and upholding the rule of law.

THE REGULATION OF ALTERNATIVE LEGAL SERVICE PROVIDERS IN SINGAPORE

JENNIFER LIM AND ANDREW WONG I Presentation Paper I

Mr Wong defined ALSPs, broadly speaking, as non-traditional providers of legal services that leveraged technology, and relied on multi-disciplinary teams that were able to integrate business, technology and the law. The emergence of ALSPs had been demand-driven and made possible by, for example, the increasing disaggregation of legal work.

However, regulators have been presented with various challenges due to the multi-faceted nature of ALSPs, such as the different structures in which ALSPs operate, the types of services offered, and their clients. As such, a one-size-fits-all regulatory approach would not be viable.

In determining an appropriate regulatory approach for ALSPs, three objectives should be considered: consumer protection; promoting efficiency and innovation; and market competition. Ms Lim opined that consumer protection would be the most crucial factor. The critical issue is to identify the differentiating factor which merited more intervention in regulating ALSPs beyond applying existing legal principles.

As a starting point, Mr Wong and Ms Lim noted that there were different categories of ALSPs based on, for example, the types of services that they provided. Two principles undergirding these categories were proffered in this regard.

First, the content of the ALSP's service or product, in terms of whether it constitutes legal advice or the mere provision of legal information, would be relevant. If only legal information was provided, the ALSP's service or product might not require a higher standard of regulation. The standard of advice which the ALSP held itself out to be providing to the end-user would also be a relevant consideration.

The second principle was whether the intended end-user of the ALSP's service or product was a legally trained professional, a corporation or a layperson and whether such an end-user would view the ALSP's service or product as legal advice.

ALTERNATIVE LEGAL SERVICE PROVIDERS AND THE UNAUTHORISED PRACTICE OF LAW: COMPARATIVE PERSPECTIVES
NISHA FRANCINE RAJOO I Presentation Paper I

Noting that there were difficulties with precisely defining what was meant by "the practice of law", Ms Rajoo took the view that the current restrictions on ALSPs served as a form of industry as well as professional regulation. The former referred to limiting competition in the legal market, although this inadvertently created a monopoly for legal services, which in turn increased the cost of legal services. In terms of the latter, professional regulations served to ensure quality control and consumer protection. With ongoing debates focused on the issue of whether ALSPs were a serious threat to the legal profession, Ms Rajoo posited that the bigger question at hand was whether consumers needed lawyers, or just legal services.

In reviewing the current legislative stance towards ALSPs in Singapore, Ms Rajoo highlighted Section 33 of the Legal Profession Act ('LPA') which suggested a traditionalist approach as to how the practice of law was conceived. As such, ALSPs that offered services through deploying innovative technological platforms for consumers might fall foul of the prohibitions under Section 33 LPA. Furthermore, there was no express statutory exemption for the operation of Section 33 LPA for such ALSPs. The uncertainty as to whether ALSPs would fall foul of prohibitions against the unauthorised practice of law was compounded by the fact that whether ALSPs were generally prohibited by Section 33 LPA had yet to be tested in Singapore. It was therefore necessary to look to other jurisdictions and compare their regulatory approaches to determine what approach Singapore might adopt moving forward.

A spectrum of approaches was evident in jurisdictions like Canada, the United Kingdom (UK) and the United States (US). Canada (Saskatchewan) has recently amended its existing rules and provided clarification on the definition of the practice of law and called for the self-identification of ALSPs. The UK has classified ALSPs as a 'special class' of legal service providers; however, there is a list of reserved activities that can *only* be carried out by qualified advocates and solicitors, while ALSPs can perform unreserved and therefore unregulated activities. Finally, the US has placed a strong emphasis on consumer protection and access to justice, and adopted a more stringent form of quasi-lawyer regulation of ALSPs as compared to Canada (Saskatchewan) and the UK.

THE USE OF CHATBOTS AS A WAY TO CREATE A TWO-STEP APPROACH TO PROVIDING LEGAL SERVICES: A CASE STUDY

LIZA SHESTERNEVA I Presentation Paper I

As a young lawyer, Ms Shesterneva noted that the legal industry was, and is, very traditional even though she had seen the benefits of performing digital legal research. The focus of her presentation was on the expansion of modern legal technologies, in particular, chatbots.

Ms Shesterneva referred to the American Bar Association's definition of a chatbot as a computer programme that automates a conversation or a task. An additional definition has been provided by the California Senate Bill No. 1001, which defines a bot as an automated online account where all of the actions or posts of a bot are *not the result of a person*. The point of the latter definition was to require bots to be clearly identified so as to prevent misleading social media users that the bot is a human. This definition suggests that a bot may be capable of acting as a human; the next question is whether a bot is capable of acting as a lawyer. Two sub-issues have to be considered.

First, are bots sufficiently developed to perform legal services? Ms Shesterneva opined that bots are able to help lawyers provide legal services but would be unable to deliver legal services independently of lawyers. The second question is whether bots are legally permitted to provide legal services, which turns on whether bots are considered legal persons. Viewing this issue from the unauthorised practice of law perspective, she took the view that since bots are designed by humans and cannot serve as a guiding intelligence, they cannot be deemed to be engaging in the unauthorised practice of law.

Ms Shesterneva proposed a two-step approach to promote collaboration between chatbots and lawyers: first, the use of a chatbot platform to answer general legal questions posed by users (e.g. how to get a divorce in Singapore?). If the user inputs specific details that go beyond the domain of what the bot is capable of responding to, the second step would entail directing the user to a lawyer for specific legal advice. Such a service would be accompanied by the use of a legal team responsible for the maintenance of the chatbot, as well as a clear disclaimer indicating the scope of the chatbot's service. The use of such chatbot platforms would help to promote innovation and provide a service to the public.

DISCUSSION AND Q&A

Key themes of the discussion and Q&A included: the policy considerations undergirding the regulation of ALSPs; distinguishing the provision of legal information from legal advice; and levelling the playing field for lawyers and ALSPs.

POLICY CONSIDERATIONS UNDERGIRDING THE REGULATION OF ALSPs

A snap poll on what the participants regarded to be the most important policy consideration in the regulation of ALSPs showed that the majority of respondents ranked professional values as the most important consideration, with consumer protection coming in a close second, followed by promoting access to justice (third) and increasing innovation and competition (fourth). Ms Ng invited the panellists to comment on the poll results.

Ms Lim's personal view was that the key consideration should be consumer protection rather than professional values, as the issue at hand was the regulation of an ALSP. The key question to consider was how regulators would ensure that the same standards of quality control, which the legal industry is currently subject to, apply to ALSPs who are seeking to provide similar services. A second consideration would be to ensure that ALSPs do not render negligent advice to their clients/end-users. Mr Wong pointed out the difficulty of prescribing a single standard applicable to all ALSPs given the different types of services that they provided.

Ms Rajoo and Ms Shesterneva agreed that the policy considerations of professional values and consumer protection were effectively two sides of the same coin, because one aim of regulating the legal profession is to protect consumers from the provision of negligent or incompetent legal services. In particular, Ms Rajoo highlighted that the US regulatory approach has tended to place an emphasis on professional values; the entry of ALSPs into the legal industry was therefore perceived to be potentially undermining the sanctity of lawyers' professional and ethical obligations.

DISTINGUISHING BETWEEN LEGAL INFORMATION AND LEGAL ADVICE

Ms Ng noted that there may be a fine distinction between the provision of legal information and legal advice by ALSPs. Referring to the US experience where publishers of legal self-help books (the early forms of ALSPs) had

been sued for providing legal advice, she noted that an important issue is ascertaining the key distinction between providing legal information and offering legal advice.

Mr Wong agreed that the distinction may sometimes be a grey area, but generally, legal information could be considered to be more generic and neutral. On the other hand, legal advice would be more client-specific in that the lawyer would apply the law to the facts and recommend a position for the client to adopt.

Ms Lim added that legal information would entail providing facts and options regarding the legal system in question, while legal advice would involve providing and evaluating options based on the client's specific circumstances.

A participant asked whether it was conclusive that an ALSP was not providing legal advice if its website stated that it was not providing legal advice via its product. Ms Lim's personal view was that if the ALSP's website did not hold itself out to be applying the law to the user's specific legal circumstances, but merely provided generic information about the law, such information should not constitute legal advice.

A second snap poll conducted of the participants showed that more than 80% of the respondents felt that ALSPs should be permitted to operate if they did not provide legal advice. Commenting on the poll results, Ms Rajoo highlighted that defining the ambit of giving legal advice is a nuanced issue because the specific services provided by ALSPs would need to be carefully examined as to whether they cross the line. In the absence of any explicit regulatory framework, the question is whether the best compromise would be for ALSPs to insert disclaimers on their websites that they are only providing legal information, and that members of the public should consult a lawyer if they required legal advice.

LEVELLING THE PLAYING FIELD FOR LAWYERS AND ALSPs

Ms Ng observed that lawyers are likely to incur higher compliance costs than ALSPs in delivering legal services to clients as lawyers are bound by ethical rules. A key question is whether it would be fair to impose similar regulations on ALSPs to level the playing field for both lawyers and ALSPs, especially if they provided the same legal services respectively.

Ms Lim and Mr Wong took the view that the extent of regulations that ALSPs should be subject to should depend on the type of legal service being provided. For example, ALSPs that provide e-discovery services should be subject to the same stringent standards of client confidentiality as lawyers, given that they would potentially be dealing with sensitive client information or data.

Ms Rajoo opined that allowing lawyers to compete on an equal footing with ALSPs requires not just looking at the deregulation of the market to permit the entry of ALSPs, but undertaking a holistic review of existing restrictions against lawyer advertising, fee sharing/referral fees, and non-lawyer ownership in law practices.

. . . . .

PANEL 4: LAW PRACTICES AND THE FUTURE OF WORK

Moderator:
Rachel Eng – Managing Director, Eng & Co. LLC

Panellists
Nicholas Poon - Director, Breakpoint LLC

Alvin Chen - Director (Legal Research & Development), The Law Society of Singapore

Faith Sing – Director, FSLaw LLC

OVERVIEW

What will the future of legal work look like? Are current law practice structures and infrastructure adequate to meet the challenges posed by, for example, non-lawyers who may be permitted to carry out legal work? Should virtual law practices co-exist with conventional law practices in the future? Panel 4 sought to examine whether, and the extent to which, non-traditional law practice structures and infrastructure are useful for the legal profession in an age of disruption.

LAW PRACTICES AND THE FUTURE OF WORK
NICHOLAS POON | Presentation Paper |

In an era of disruption, how can lawyers be agents of change to pave the way for greater innovation and ensure the sustainability of the legal profession for tomorrow's lawyers? Mr Poon began by observing that in the past decade, the legal profession had not significantly responded to calls to adopt technology or to innovate. The problem was not that lawyers are not capable of change. On the contrary, the COVID-19 pandemic has demonstrated that lawyers can be agents of change, as evident from their adoption of technology and shift to remote working. Mr Poon suggested that other than necessity, there are two factors that can potentially drive change within the legal profession - altruism and self-interest.

However, there are practical limitations with regard to what lawyers can achieve through altruism. In order to promote self-interest as a source of change, the legal system must incentivise systemic, long-lasting change. He emphasised that such an incentive structure is not incompatible with the notion that the legal profession is a noble one. Admittedly, the practice of law is both a profession as well as a business. The running of a law practice does not merely mean an amalgamation of lawyers providing legal services, but entails a wide range of business considerations such as operations, marketing, human resources and finance. Business owners are incentivised to grow their business because they know their successors will reap the fruits of their labour. Without such incentives, change cannot readily occur. Mr Poon highlighted two areas where law firm structures should be changed.

First, permitting non-lawyers to only collectively own up to 25% of shareholder voting rights was of particular concern, because this restriction limits non-lawyers' involvement in a law firm. If it is to be more widely accepted that non-lawyers – be they technologists, consultants, managers or salespersons – can likewise contribute to the growth of law firms, then law firms must give them a voice through the provision of management voting rights.

The second area that was ripe for review was shareholding restrictions on lawyers who do not hold a practising certificate (whether they left practice by choice or due to retirement). Such restrictions effectively signal that any benefits that a lawyer could hope to derive from his or her law firm ceases the moment he or she leaves legal practice. There is thus no incentive to invest in the future of their firms – whether in terms of investing in

technology, or even in improving the work culture or office environment more generally. This promotes a culture of 'short-termism', thus reducing the incentive to invest in the future of a law firm as lawyers are not guaranteed the full returns of their investment before they retire.

Easing these restrictions would go some way towards furthering the long-term interests of the legal profession, by giving lawyers a stake in the future of their firms by reaping what they sow even beyond their careers as practising lawyers.

RESISTANCE IS FUTILE? – THE INEXORABLE MARCH TOWARDS LIBERALISATION AND FLEXIBILITY IN THE FUTURE OF LEGAL WORK
ALVIN CHEN I Presentation Paper I

Mr Chen noted that the future of the legal profession would be marked by liberalisation and flexibility. He referred to the Organisation for Economic Co-operation and Development's ('**OECD**') Employment Outlook Report which was published in 2019, and outlined that there were real risks posed by technology, given the unpredictability of tools like AI. The report had also emphasised the need for professionals to re-skill and upskill themselves to stay competitive. In his book, *A World Without Work*, economist Dr Daniel Susskind took a less optimistic view of the future of work, noting that AI was likely to encroach into and take over the performance of certain cognitive and even affective tasks.

Would this encroachment affect the legal profession as well? Mr Chen noted that this was likely to be a question of how many of the tasks that lawyers currently perform could eventually be replaced by AI, and how fast this change was likely to occur. In Singapore's context, the Working Group on Legal and Accounting Services took the view that a lawyer's core legal skillsets would no longer be adequate in the future; as a value add, lawyers would need to become trusted business advisors by possessing deep regional knowledge and networks, as well as multi-disciplinary skillsets.

From a comparative perspective, Mr Chen suggested that the turn towards liberalisation and flexibility in the US and the UK offered learning points for Singapore.

In the US, having previously resisted all forms of non-lawyer ownership, several states have petitioned their regulators to abolish rules prohibiting fee-sharing with non-lawyers, and to permit non-lawyer ownership. These shifts have also been driven primarily by considerations of access to justice, in terms of increasing accessibility to and the affordability of legal services. In contrast, alternative business structures ('**ABSs**') in the UK have been permitted for over a decade.

Another useful comparative perspective is offered by the freelance solicitor scheme that was introduced in the UK in 2019. This scheme permits solicitors to provide legal services to clients without the need to join a law practice. However, there was strong opposition to this scheme as some had argued

that introducing freelance solicitors would create consumer confusion or a two-tier profession.

Mr Chen discussed a number of learnings gained from the brief comparative analysis. One observation from the UK experience was that multi-disciplinary practices, or MDPs, should not be seen as the only structure for the delivery of alternative legal services or a 'quick fix' solution. In particular, although ABSs were introduced in the UK over a decade ago, the take-up rate has not been as high as expected, and about 60% of ABSs were still majority-owned by lawyers. A second point is the need for regulators to be responsive to the needs of legal practitioners and explore ways for the better delivery of legal services by legal practitioners to clients, while working around potential problems despite strong opposition.

THE DISTRIBUTED LAW FIRM – A MODEL FOR SINGAPORE LAW FIRMS IN A NEXT NORMAL WORLD

FAITH SING I Presentation Paper I

Ms Sing outlined the benefits and challenges presented by the distributed, or virtual, law firm model where lawyers work remotely rather than at physical office premises. Indeed, this issue was of considerable relevance following the imposition of the circuit breaker in April 2020, when the majority of Singapore's workforce had to work remotely.

Ms Sing highlighted the advantages and disadvantages of distributed law firm model in a number of aspects.

First, working from home can boost productivity by allowing workers to have the space to think, without the distractions of being pulled into meetings or engaging in casual conversations with their colleagues. However, productivity can also be undermined if supervisors or managers have concerns about their staff actually engaging in work when there is no way to check in on them.

A second related issue is the effect on mental health. While working from home can boost one's mental health and well-being by offering individuals the opportunity to interact with family and friends, it can also take a toll on mental health as individuals will be under greater pressure to prove their productivity and performance. The absence of a clear distinction between working hours and non-working hours may also mean that individuals are unable to have downtime from work, resulting in greater stress levels.

Third, working from home has some collateral benefits. With remote working, cost savings may accrue as a result of less time spent on commuting, and on rental costs for office space. Further, distributed law firms can attract talent by being flexible and catering to the needs of talented workers who have left the workforce for various reasons.

Finally, remote working can also be beneficial to the environment as the reduction in daily commutes to the workplace could see a fall in fuel use, as well as a reduction in air-conditioning use in offices. For the longer term, a move to remote working could also see less construction and a reduced need for the maintenance of buildings which would otherwise increase carbon emissions.

In conclusion, Ms Sing opined that the Covid-19 pandemic has offered a great opportunity for law firms to consider implementing remote working arrangements for the long-term, in view of the potentially significant costs savings. In this regard, the results from a snap poll conducted before her presentation, where the majority of respondents preferred a hybrid office-remote working model, were particularly encouraging.

DISCUSSION AND Q&A

Key themes of the discussion and Q&A included: incentivising lawyers to invest in the longer term interests of their firms; assessing the Singapore legal profession's appetite for greater non-lawyer involvement in law firms; and the possibility of working from home as the 'new normal'.

ALTRUISM VS SELF-INTEREST

A participant was of the view that lawyers should be altruistic in charting the future of their law firms. Mr Poon observed that this was a laudable goal as it is important for lawyers to think about future generations as an end in itself. However, an altruistic mindset would likely take time to foster and, for change to happen in the near future, it would need to be complemented by practical incentives that the current generation of lawyers managing law firms could take up and act on.

In this regard, Mr Poon opined that so long as lawyers have an incentive which extends beyond the cessation of practice, be it voting rights or merely dividends, it would be a significant improvement to the status quo in terms of motivating future long-term investments in law firms.

MULTI-DISCIPLINARY PRACTICES

Is the Singapore legal profession ready for more non-lawyer involvement in law firms? A snap poll conducted of the participants before Mr Chen's presentation showed that almost 75% of the respondents took the view that Singapore law firms should not adopt MDP structures where non-lawyers could hold more than a 50% interest in the firm.

Mr Chen suggested that the business models of law firms would likely be a material factor in considering whether to move away from the traditionalist mindset in the legal profession i.e. law firms should only be owned by lawyers (or at least a majority of lawyers). In areas where technology or AI would encroach on lawyers' tasks, Mr Chen opined that it is more likely that law firms practising in those areas would need to change their business models to include more non-lawyers to supply the necessary technological or AI expertise.

WORK FROM HOME – THE NEW NORMAL FOR LAW FIRMS?

Ms Sing espoused the view that working from home could become the new normal for all law firms, and not merely smaller law firms, if there are substantial costs savings. The COVID-19 pandemic, which had resulted in almost all law firms having to operate their practices remotely during the circuit-breaker period, had provided a unique opportunity for lawyers to implement working from home arrangements.

A snap poll conducted of the participants before Ms Sing's presentation indicated that 86% of the respondents did not endorse working fully from home or office and preferred a split between the two. Nevertheless, the fact that 13% of the respondents preferred to work fully from home suggested that working from home may well become the new normal for at least some law firms in the future.

. . . . .

Continuing Conversations from the Colloquium

In the “Continuing Conversations from the Colloquium” series, we explore some of the key themes arising from the Colloquium based on a curation of our participants' questions.

In the first of this two-part series on “AI & Lawyers”, we consider the popular Robots vs Lawyers debate; the second part of this series examines another major theme - the legal liability of lawyers using AI.

AI AND LAWYERS (PART 1)

In the "Continuing Conversations from the Colloquium" series, we look at some of the key themes arising from the Law Society's Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges', which was held as a live webinar on 19 May 2020. One recurrent theme, as seen from participants' questions submitted during the discussions for Panels 1 and 2, was the popular Robots vs Lawyers debate. In the first of a two-part series on "AI & Lawyers", we explore some interesting issues on whether robots will take over lawyers based on a curation of our participants' questions.

This brief note is written by Alvin Chen, Director of the Legal Research & Development department at the Law Society of Singapore.

First of all, let me thank all the 326 participants of the Colloquium for taking the time to spend most of their working day on 19 May with us to explore important issues relating to the future of lawyers. Due to the tight schedule of the webinar, the panels were unable to address many of the excellent questions posed by the audience. But, we hope to address some of the common themes arising from these questions in this "*Continuing Conversations from the Colloquium*" series. The thematic issues regarding the Robots vs Lawyers debate that are explored below are based on an edited version of participants' questions. You are welcome to contribute further thoughts on these issues by writing to the Legal Research and Development department at **lrd@lawsoc.org.sg**.

Robots taking over lawyers seems to be far-fetched. Isn't artificial intelligence (AI) merely a tool for lawyers to use just like legal precedents, statutes or law textbooks?

My take: The difference between AI and other legal resources can be explained through the concept of "task encroachment" that Daniel Susskind refers to in his recent book *A World Without Work: Technology, Automation and How We Should Respond*. The central point in the Robots vs Lawyers debate is not whether we can create robots that can talk like lawyers, but whether certain tasks that lawyers now perform can be outsourced to AI. Daniel Susskind argues that our manual, cognitive and affective capabilities may be taken over by robots in the future. For example, lawyers' cognitive capabilities (e.g. in advising the client on the likely outcome of his or her court case) may, to some extent, be replaced by the predictive powers of AI software in the future. This is something that pure legal resources like legal precedents, statutes or law textbooks cannot do on their own.

"... THERE ARE GOOD REASONS TO BE CONCERNED GIVEN THAT THE LEGAL PROFESSION, IN VIEW OF ITS LACK OF TECHNICAL EXPERTISE, IS NOT IN THE DRIVER'S SEAT IN DRIVING AI ..."

If AI can take over some of the tasks currently performed by lawyers (especially junior lawyers) to an acceptable level of accuracy, how will this impact on their training in future?

My take: A recent Law.com article suggests that the possibility of "skills erosion" of junior lawyers is a real concern. For law practices are that already using AI software to perform some of the tasks traditionally done by junior lawyers, there seems to be an inevitable trade-off between achieving the speed and efficiency that clients may demand, and giving enough opportunities for junior lawyers to learn and develop their professional judgment. As the article observes, there is also a risk management aspect in that inadequate skills acquisition in the age of AI may have catastrophic consequences in the future if junior lawyers become more susceptible to errors.

If this problem becomes widespread, legal industry stakeholders, and not only law practices, should consider whether there are other avenues for junior lawyers to gain the necessary skill-sets if they are unable to do so within their law practices.

Will the use of AI in the legal profession come to a point when lawyers will be reduced to providing inputs for the superior AI software only?

My take: From a broader perspective, this is a concern that has been characterised as a "doomsday scenario". No one can say for sure if we are on an inexorable path towards a machine take-over, although some leaders and pioneers in the AI industry have sounded alarm bells that we are already on the road to the destruction of humanity. On the other hand, some commentators foresee AI and humans co-existing in a collaborative way. For example, a recent article in The Straits Times suggests that AI will not displace humans by a long way, although some jobs will necessarily be lost. This is simply because the human factor is too important to be displaced.

Lawyers are just a sub-set of this larger debate, but there are good reasons to be concerned given that the legal profession, in view of its lack of technical expertise, is not in the driver's seat in driving AI and it is unclear what outcomes we are seeking for the legal profession as a whole.

The LawGeex AI study, where AI outperformed lawyers in accurately reviewing non-disclosure agreements, has often been cited as an example of AI having the potential to surpass lawyers. But would a disproportionate amount of resources be required to generate an AI software to review more complex contracts?

My take: This is really a question for the techies, but the thrust of the question goes back to what I mentioned previously, i.e. what outcomes are we seeking for the legal profession? The assumption seems to be that if we can perform legal tasks faster and more efficiently by using AI, it will be more optimal for lawyers and clients. To some extent, that assumption may hold true for mundane legal tasks. But as we ascend the ladder, more difficult questions may need to be answered. Will more jobs be put at risk? Who should decide on the objectives that AI should be used for? How much resources will be invested in developing AI, and if such resources are disproportionate to AI's probable success rate (or benefit), why should we invest in AI in the first place?

As lawyers, we may not have the answers to all these questions, but it is timely to think more carefully about the wider implications of AI, not only on the legal profession but also beyond it.

. . . . .

AI AND LAWYERS (PART 2)

In the "Continuing Conversations from the Colloquium" series, we look at some of the key themes arising from the Law Society's Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges', which was held as a live webinar on 19 May 2020. The 'Robots vs Lawyers' debate was explored in our first article published in July 2020. In the second of our two-part series on "AI & Lawyers", we examine another major theme – Legal Liability of Lawyers Using AI – based on a curation of the participants' questions submitted during the discussions for Panel 2 on "Legal Ethics and Technology".

This brief note is written by Alvin Chen, Director of the Legal Research & Development department at the Law Society of Singapore.

For most lawyers, risk management is unlikely to be one of the more appealing conversation topics in a law practice (unless you are the risk partner). Just imagine asking a fellow colleague, "Hey, how is the KYC form coming along today?"! But throw in artificial intelligence (AI) and legal liability, and you get a game-changing mix – suddenly, managing the legal risks of AI becomes a hot topic. This was evident from the barrage of questions received from participants during the discussions for Panel 2 on "Legal Ethics and Technology" at the Colloquium:

- Should the client bear the risk of the use of AI tools (and any resulting negligence by the lawyer), especially if the client demands a quick and cost-effective solution?
- Should lawyers be held liable for the negligent design (as opposed to the negligent use) of an AI tool?
- Would it be fair for a law practice to include an assumption in its legal opinion that a particular task performed by an AI tool is error-free? Would clients accept such an assumption?
- Are lawyers obligated to give a cost-benefit analysis to clients on the pros and cons of using an AI tool?
- How should lawyers respond if clients are hesitant to consent to the use of an AI tool in rendering legal services?
- Should lawyers be held responsible if clients do not agree to use an AI tool or are not prepared to pay for its use?

"... MANAGING AI RISKS WILL BECOME INCREASINGLY IMPORTANT AS LAW PRACTICES HARNESS AI FOR THE BENEFIT OF THEIR CLIENTS."

Although the panel was unable to address all these questions due to the tight schedule of the webinar, the panellists' presentations and discussions touched on possible answers to some aspects of these questions, for example, on how the law of negligence could be applied to address AI liability issues involving lawyers. But it is clear that these complex questions merit deeper research and reflection. Some preliminary thoughts (and further questions) are set out below.

1. **Unreasonableness or unfairness of AI risk allocation**: From a contractual perspective, the allocation of liability and responsibility regarding AI risks between lawyers and clients will depend primarily on the terms of engagement and the dynamics of the lawyer-client relationship. One issue that may arise is whether such contractual allocation is fair and reasonable. In this regard, would the Singapore courts adopt the same approach taken in construing lawyers' fee agreements, namely, that clients require more protection because lawyers are considered to be in a superior position to their clients because of the nature of the lawyer-client relationship? Moreover, much uncertainty surrounds AI risks, which are still emerging and may not be completely known at the time of use of the AI tool. Under what circumstances would the lawyer's allocation of AI liability risks (and thus, costs) to the client by contract be considered unreasonable or unfair by the courts?

2. **Adequacy of explanation of AI risks**: Some of the participants' questions appear to assume that lawyers are well-equipped to explain AI risks, but is it possible to explain AI risks without a working knowledge of AI? It is unclear whether lawyers need to have a fair amount of working knowledge about machine and deep learning, and even possibly the specific type of AI algorithms involved in the AI tool. To illustrate, can a lawyer adequately explain the limitations of an AI-produced draft contract to the client without a basic appreciation of the AI algorithms involved (e.g. natural language processing)?

3. **Explaining AI risks to different types of clients**: A related point is whether a more comprehensive level of explanation on AI risks would be required for clients who are not familiar with AI. In the context of giving legal advice, the Singapore courts have observed that lawyers are held to a higher standard when explaining legal documentation to laypersons, as compared to sophisticated businessmen. Would the same principle apply to lawyers explaining AI risks to non-AI-savvy clients in the use of AI for their legal matters? If so, would lawyers therefore be held to a lower standard of care vis-à-vis AI-savvy clients?

In the wider context, a recent Law.com article ("The Liabilities of Artificial Intelligence Are Increasing") suggests that AI liability issues are beginning to be worked through the US justice system. It will, however, take time before insights on how to analyse these issues can be garnered. Meanwhile, managing AI risks will become increasingly important as law practices harness AI for the benefit of their clients. In this regard, the Law.com article provides a few general pointers for managing AI risks. It is timely for lawyers to begin exploring AI risk management to meet the novel challenges of the algorithmic age.

You are welcome to contribute further thoughts on these issues by writing to the Legal Research and Development department at lrd@lawsoc.org.sg.

. . . . .

The Law Society of Singapore
28 Maxwell Road #01-03
Maxwell Chambers Suites
Singapore 069120

t: +65 6538 2500
f: +65 6533 5700
www.lawsociety.org.sg