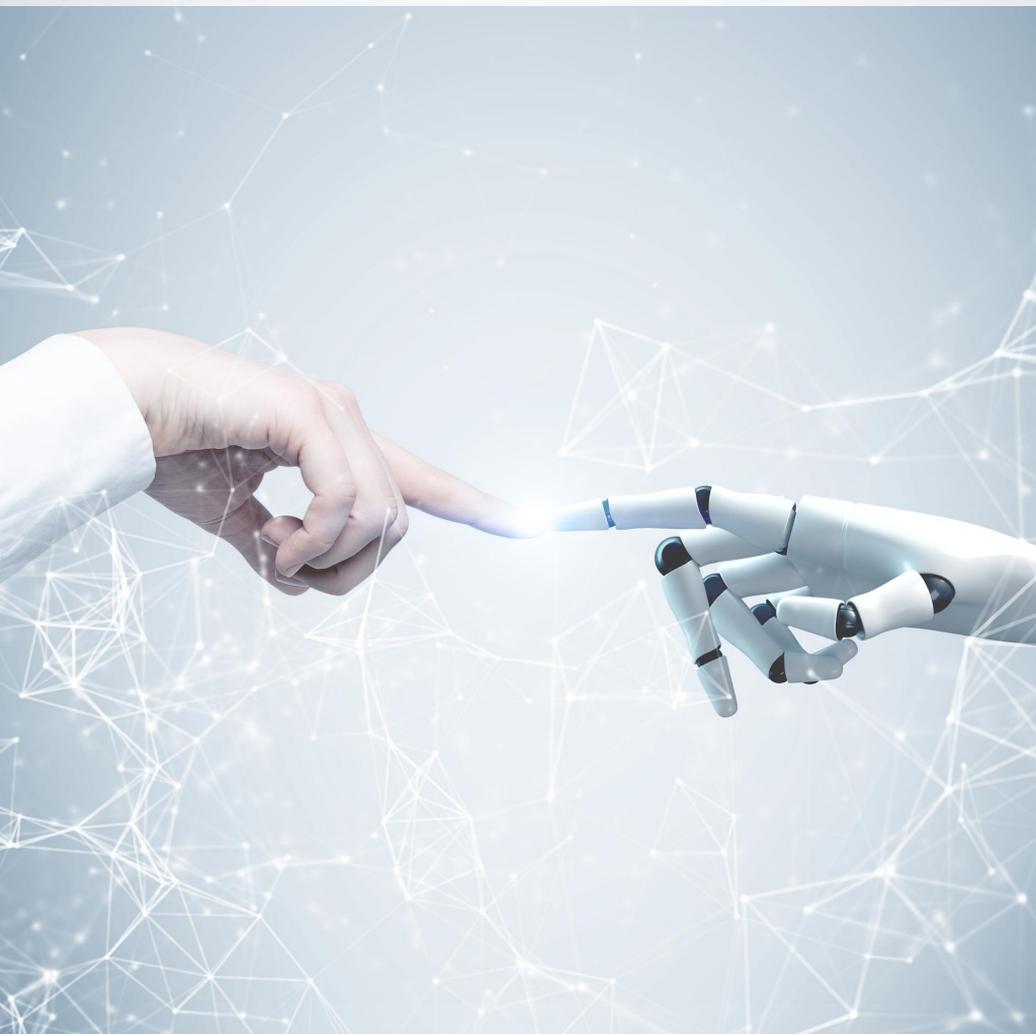


LRD COLLOQUIUM 2020 RESEARCH PAPER SERIES



LEGAL RESEARCH AND DEVELOPMENT DEPARTMENT

THE LAW SOCIETY OF SINGAPORE

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](#).

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Panel 1

The Role of Lawyers in the Age of Disruption

A New Kind of Lawyer For A Different Kind of Time

Claire Tan

A NEW KIND OF LAWYER FOR A DIFFERENT KIND OF TIME

Claire Tan*

The past decade has witnessed a wave of technology transformations across various industries, including the legal industry. This paper will first explore the technological disruption occurring across the various industries, reflect the viewpoints of both the disruptor and the disrupted and analyse the legal challenges faced by both groups. It will explore how the changing needs of clients as a result of disruptions in their own industry require lawyers, as their legal advisors, to evolve alongside them in terms of how they approach and resolve the increasingly unique legal challenges faced by their clients.

This paper will then proceed to analyse the disruptions faced by the legal industry, with the emergence of legal technology firms and alternative legal services providers ('NewLaw providers'). It will explore the perceptions of lawyers towards these NewLaw providers, whether these NewLaw providers are threats or allies and accordingly, how lawyers should react to the disruption by reviewing their work processes and legal offerings.

Upon analysing the disruptions faced by clients and lawyers respectively, this paper suggests that a 'new age' lawyer must possess three key skills, namely, commercial awareness, a flexible mindset and people-skills, in order to be a competent legal advisor to clients in this age of disruption. The paper shall conclude that the legal industry will continue to transform in the coming decade and lawyers should embrace this transformation and take active steps to remain competitive.

I. INTRODUCTION

Technological disruption, brought about by the advancement in artificial intelligence ('AI') across different fields, has been identified as one of the three key challenges threatening the future of human civilisation, alongside nuclear war and ecological collapse.¹ For the impact of technological disruption to be compared to a nuclear war may seem drastic. However, it is undeniable that technology has permeated almost every aspect of our daily lives, from our smartphones with facial recognition technology to our smart homes with

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¹ Yuval Noah Harari, *21 Lessons for the 21st Century* (first published 2018, Vintage 2019).

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systems, such as the Internet of Things. As a result of the technological disruption, several traditional sectors have been forced to rethink their 'tried and tested' ways of doing business, including the legal industry.

This paper will first explore the technological disruptions occurring across the wider economy, reflecting the viewpoints of both the disruptor and the disrupted and analysing the legal challenges faced by both groups. It will explore how the changing needs of clients as a result of disruptions in their own industries require lawyers, as their legal advisors, to evolve alongside them in terms of how they approach and resolve the increasingly unique legal challenges faced by their clients.

This paper will then proceed to analyse the disruption faced by the legal industry, with the emergence of NewLaw providers.² It will explore the perceptions of lawyers towards these NewLaw providers, whether these NewLaw providers are threats or allies, and accordingly, how lawyers should react to the disruption by reviewing their work processes and legal offerings.

Upon analysing the disruption faced by clients and lawyers respectively, this paper suggests that the 'new age' lawyer must possess three key skills, namely, commercial awareness, a flexible mindset and people-skills, in order to become a competent legal advisor to clients in this age of disruption. The paper shall conclude that the legal industry will continue to transform in the coming decade and lawyers should embrace this transformation and take active steps to remain competitive.

II. DISRUPTION OF (AND BY) CLIENTS

In this age of disruption, every organisation is either a disruptor or gets disrupted. The 'disrupted' are typically established mid- to large-sized organisations and are incumbents with a long-standing track record in their industry. The 'disruptors' are usually new entrants to the industry, such as start-ups, that effectively leverage technology to redeliver

² For ease of reference, this paper shall refer to both legal technology firms and alternative legal services providers as 'NewLaw providers'.

traditional service offerings provided by incumbents in an innovative and cost-effective manner. Both the disrupted and the disruptor face unique legal challenges as they navigate existing regulations (or lack thereof) in order to fine-tune their business processes.

On the one hand, the disruptors, often with a business model that is new to the market, face challenges in determining the applicability of existing regulations to their businesses and service offerings, due to a lack of guidance by regulators as they attempt to catch up with the rapid technological advancement in the industry. Disruptors may also struggle to keep up with new laws that are issued when regulators identify a growing risk in the industry. Upon the issuance of the new laws, these disruptors, many of which are start-ups with limited presence in the market, often face difficulties in determining:

- (i) how to comply with the new law;
- (ii) whether their service offering is permitted under the new law; and if not,
- (iii) how to resolve the conflict.

The Payment Services Act 2019 ('PSA'), passed by Singapore's parliament on 14 January 2019,³ is an example of legislation passed to regulate new service offerings by disruptors in the financial services industry. A key objective of the new PSA, amongst others, is to clarify the scope and applicability of existing regulations on payments companies, by recognising new activities under the services that the Monetary Authority of Singapore currently regulate.⁴ This is in response to the increasing popularity of new service offerings presented by innovative payments companies that have emerged in the financial services industry over the past decade, such as the purchase and sale of digital payment tokens, which are now regulated under a new regulatory framework in the PSA.⁵ The new legislation has led to fear and worry from companies which were previously unregulated, and who now struggle to clarify whether their service offerings fall within the regulatory ambit of the PSA.

³ Payment Services Act 2019 (No 2 of 2019).

⁴ Ong Ye Kung, "Payment Services Bill" – Second Reading Speech' (Singapore, 14 January 2019) <www.mas.gov.sg/news/speeches/2019/payment-services-bill> accessed 25 April 2020.

⁵ *ibid.*

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In such instances, lawyers have to step up and work alongside these disruptors to guide them through the new regulatory framework and explain how it might affect them. This would not only require lawyers to have a good understanding of the new legislation and conscientiously keep up with each consultation and revision that the regulator publishes in the lead up to the coming into force of the legislation, but to also work closely with the client to understand their business model and service offerings in detail, in order to provide a reliable opinion on the application of the legislation to the client.

On the other hand, the disrupted, faced with stiff competition from the disruptors, would be prompted to review their existing service offerings, often by looking at digitalising certain parts of their business in order to increase cost savings and compete with the disruptors on price and efficiency. In doing so, the disrupted would often face challenges internally, and hence look to their legal advisors to help them navigate existing regulatory frameworks and potential technology-related risks, such as those from a data privacy and cybersecurity perspective.

For example, the digitalisation of the traditional banking industry has been widely debated over the past few years, following the emergence of competing FinTech firms which provide traditional services typically offered by banks at a cheaper rate, while at the same time, providing customers with a fuss-free experience. Global banks, while acknowledging the need to innovate and digitalise to remain competitive, have identified regulatory challenges as one of the key challenges impeding the digitalisation of the banking industry, which operates within a strict regulatory framework in many jurisdictions.⁶ A key proponent of such innovation is Deutsche Bank, which in its white paper on the impact of regulation on the transformation of the banking industry, emphasised that banks must be prepared to disrupt its own business through 'cultural change, bank-wide adoption of new technologies and IT infrastructures and defined rules for how data is governed and made secure'. At the same time, Deutsche Bank also acknowledged that there remains key regulatory obstacles to the adoption of new

⁶ Luz Fernández Espinosa, 'Regulation and People, The Main Challenges For the Digitization of the Financial Industry' (BBVA, 28 November 2016) <www.bbva.com/en/regulation-people-main-challenges-digitization-financial-industry/> accessed 2 May 2020.

technology in the banking industry, such as in the areas of open application programming interfaces ('APIs'), cloud computing, blockchain and AI.⁷

As the disrupted look to innovate and digitalise to avoid being left behind, lawyers must be prepared to assist the disrupted with the legal challenges they might face during their digitalisation process, such as familiarising themselves with technology-related laws which are likely to present an obstacle to their digitalisation efforts, including laws on data protection, the use of AI and blockchain, cyber security and cloud. Lawyers may also be required to help the disrupted balance their digitalisation strategy with their legal obligations under existing legal frameworks to which they are subject, and may also be required to take on the role as a commercial advisor. It is hence vital that lawyers adopt a commercial mindset and learn the importance of balancing legal risks with business needs, instead of solely focusing on the law.

III. DISRUPTION OF THE LEGAL INDUSTRY

At the opening of the legal year in 2019, Chief Justice Sundaresh Menon identified technology as one of the three significant forces reshaping the legal landscape, acknowledging that alternative services offered by emerging NewLaw providers are changing the face of legal work today.⁸ Such sentiment is echoed by lawyers across the globe, with PwC's Law Firms' Survey 2019 reflecting that 80 percent of the top ten global law firms view technological change as the most significant challenge facing the legal profession over the next two to three years.⁹

It is undeniable that the legal industry has been significantly impacted by technological disruption in the past decade. Lawyers can no longer ignore these NewLaw providers that are beginning to establish themselves as credible providers of alternative legal

⁷ Deutsche Bank AG, 'Regulation Driving Banking Transformation' (*Deutsche Bank AG*, October 2018) <https://cib.db.com/docs_new/GTB_Digital_Whitepaper.pdf> accessed 4 May 2020.

⁸ Sundaresh Menon, 'Response by Chief Justice Sundaresh Menon' (Opening of the Legal Year 2019, Singapore, 7 January 2019) <www-lsc.gov-sg-admin.cwp.sg/docs/default-source/oly-speeches/oly-2019---response-by-chief-justice.pdf> accessed 28 April 2020.

⁹ PricewaterhouseCoopers LLP, 'PwC Law Firms' Survey 2019' (*PricewaterhouseCoopers LLP*, 2019) <www.pwc.co.uk/industries/law-firms/pwc-law-firms-survey-report-2019.pdf> accessed 2 May 2020.

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services, and must hence reassess their roles and change their ways of doing business in order to stay competitive in this age of disruption. The views of lawyers towards these NewLaw providers are reflected in The Law Society of Singapore's Legal Industry Technology Study Report.¹⁰ The study revealed that 27 percent of decision makers view legal technology as an opportunity, 5 percent see it as a threat, while the remaining 68 percent of decision makers view legal technology as both an opportunity and a threat.¹¹

The fears of lawyers who view these NewLaw providers as a threat are not unfounded, as research estimates that 23 percent of the work done by lawyers can be automated by existing technology.¹² In fact, in-house counsels are already considering these NewLaw providers as alternatives to traditional law firms. This has been highlighted in the Legal Industry Technology Study Report, with 45 percent of the in-house counsels surveyed considering alternatives to traditional law firms, of which 67 percent of them are looking at in-house technology as an alternative.¹³

On the flip side of the coin, lawyers who view these NewLaw providers as allies are drawn to the technology offered by these providers, which could help them streamline their business processes and increase efficiency, leading to cost savings. The benefits provided by collaborating with these NewLaw providers are well documented. The 2019 Future Ready Lawyer Survey published by Wolters Kluwer, which collated insights from 700 lawyers from law firms, corporate legal departments and business services firms alike, revealed that 68 percent of technology 'leading' organisations (organisations which are leveraging technology effectively) reported an increase in the firm's profitability from the previous year, as compared to 52 percent of 'transitioning' organisations (organisations which are somewhat leveraging technology) and 38 percent of 'trailing' organisations

¹⁰ The Law Society of Singapore, 'Legal Industry Technology Study Report' (*The Law Society of Singapore*, 2018) <www.lpi.lawsociety.org.sg/legal-industry-technology-study-report/> accessed 30 April 2020.

¹¹ *ibid.*

¹² Abigail Hess, 'Experts Say 23% of Lawyers' Work Can Be Automated—Law Schools Are Trying To Stay Ahead of the Curve' (*CNBC*, 18 February 2020) <www.cnbc.com/2020/02/06/technology-is-changing-the-legal-profession-and-law-schools.html> accessed 3 May 2020.

¹³ The Law Society of Singapore (n 10).

(identified as organisations which are not leveraging technology) achieving the same results.¹⁴

Collaboration between lawyers and these NewLaw providers is also strongly encouraged by legal associations such as the Law Society of Singapore and the Singapore Academy of Law ('SAL'), which have consistently promoted the adoption of legal technology services by law firms in Singapore through several initiatives.

The Legal Technology Vision, which is a five-year plan put together by SAL in consultation with key industry leaders to respond to the disruption in the legal industry, calls for practicing lawyers and in-house counsel to be a part of the disruption and leverage technology effectively to enhance their practice.¹⁵ The vision encourages cooperation and collaboration between legal technology start-ups, lawyers, subject matter experts, the public sector, other industry stakeholders and potential customers in order to reap the benefits of the disruption.

The Future Law Innovation Programme ('FLIP') was launched by SAL in January 2018 under the five-year plan outlined in the Legal Technology Vision, and aims to bring together 'lawyers, technopreneurs, investors, academics and regulators' and encourage the adoption of technology in law firms.¹⁶ SAL, through FLIP, also launched the Legal Innovation Lab @ Collision 8, a co-working space for law firms to streamline their work processes and boost productivity, in collaboration with legal technology start-ups.¹⁷

¹⁴ Wolters Kluwer, '2019 Wolters Kluwer Future Ready Lawyer Survey Report' (*Wolters Kluwer*, 29 March 2019) <<https://wolterskluwer.com/binaries/content/assets/wk/pdf/news/lr/wk-future-fit-lawyer-lr-032019.pdf>> accessed 3 May 2020.

¹⁵ Singapore Academy of Law, *Legal Technology Vision* (Singapore Academy of Law 2017).

¹⁶ Noemi, 'SAL Launches Future Law Innovation Programme, Signs MOU With IMDA and SMU' (*Future Law Innovation Programme*, 10 January 2018) <www.flip.org.sg/post/sal-launches-future-law-innovation-programme-signs-mou-with-imda-and-smu> accessed 1 May 2020.

¹⁷ Cheryl Tee, 'FLIP the Innovation Switch For Legal Sector' *The Straits Times* (Singapore, 10 January 2018) <www.straitstimes.com/singapore/flip-the-innovation-switch-for-legal-sector> accessed 30 April 2020.

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Buoyed by these initiatives, law firms in Singapore have also been receptive to collaborating with these NewLaw providers, with Singapore recognised as ‘a shining example of collaboration among legal industry stakeholders and beyond’.¹⁸

Clifford Chance has recently announced a collaboration with Alpha LegalTech, a Singapore-based legal technology start-up, to launch a precision text comparison tool named CompareNow. In its press release, Clifford Chance highlighted the key benefits brought about by the tool, observed from its pilot of CompareNow prior to the tool’s launch. These benefits include the simplification of workflow, a 75 percent average saving in time when comparing text in emails, and a 41 percent average saving in time when comparing text in longer documents.¹⁹

A unit of Rajah & Tann, Rajah & Tann Technologies, went one step further by acquiring Legal Comet,²⁰ an e-discovery start-up with AI-driven solutions that allow lawyers to sieve and extract specific data from bundles of documents. The acquisition of Legal Comet²¹ helped Rajah & Tann become one of the first law firms in Asia to launch a full service e-discovery practice and the first in Asia to launch a certification programme for e-discovery management for both lawyers and non-lawyers, which is a prime example of how law firms can work with legal technology start-ups to diversify its offerings and strengthen its foothold in the industry.²²

¹⁸ Mark A Cohen, ‘The Legal Industry is Starting to Collaborate -- Why Now and Why It Matters’ (*Forbes*, 22 July 2019) <www.forbes.com/sites/markcohen1/2019/07/22/the-legal-industry-is-starting-to-collaborate-why-now-and-why-it-matters/#3b01d886343d> accessed 25 April 2020.

¹⁹ Kai-Niklas Schneider and Laura Collins Scott, ‘Clifford Chance Partners With Singapore Start Up Alpha LegalTech To Launch CompareNow in Asia Pacific’ (*Clifford Chance*, 26 March 2020) <www.cliffordchance.com/news/news/2020/03/clifford-chance-partners-with-singapore-start-up-alpha-legaltech.html> accessed 30 April 2020.

²⁰ Rajah & Tann Asia, ‘Rajah & Tann Technologies Acquires LegalComet’ (*Rajah & Tann Asia*, 7 November 2018) <www.rajahtannasia.com/news/news/rajah-tann-technologies-acquires-legalcomet> accessed 29 April 2020.

²¹ *ibid.*

²² Rajah & Tann Asia, ‘Rajah & Tann Technologies and SAL Ventures Launch First E-discovery Certification in Asia’ (*Rajah & Tann Asia*, 16 November 2018) <www.rajahtannasia.com/news/news/media-release-rajah-tann-technologies-and-sal-ventures-launch-first-e-discovery-certification-in-asia> accessed 29 April 2020.

The examples of successful collaboration between law firms and NewLaw providers above illustrate that both groups can co-exist within the same ecosystem, and leverage each other's strengths to present a more cost-efficient legal offering to clients.

It is important for lawyers to recognise that the majority of these NewLaw providers are not in direct competition with lawyers. In fact, a sizeable group of these NewLaw providers serve to assist lawyers with their internal processes and deliver legal services more efficiently. The Tech-celerate for Law scheme, launched by the Law Society of Singapore to encourage the adoption of legal technologies by Singapore Law Practices through the provision of funding support, identifies seven such categories of legal technology solutions which can help to improve law firms' internal processes.²³ These are, namely: practice management systems; document management systems; online legal research systems; document assembly software; document review software; eDiscovery software; and automated client engagement solutions.²⁴

Furthermore, when we examine the service offerings extended by NewLaw providers in the market that arguably offer similar services to lawyers, it is clear that these providers do not, and will not, entirely replace the role of lawyers. For example, there are some NewLaw providers that offer standard form contract templates for purchase online, such as privacy policies and employment agreements, and position themselves to assist organisations with their legal affairs for a fraction of the cost charged by traditional law firms. Such template contracts offered at low prices are likely to appeal to start-ups and smaller companies looking to protect themselves from basic legal risks, but do not have the finances to engage the services of a law firm. However, these standard templates may not suit the needs of large organisations which have more complex structures and internal processes. These large organisations are likely to still require the assistance of lawyers who understand their business to customise and draft their contracts in detail and in accordance with compliance processes, policies and business needs. Certain organisations and business leaders may also not trust off-the-shelf contracts purchased

²³ The Law Society of Singapore, 'Tech-celerate For Law' (*The Law Society of Singapore*) <www.lpi.lawsociety.org.sg/tech-celerate-for-law/> accessed 30 April 2020.

²⁴ *ibid.*

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online and would prefer to engage a law firm to assist them with their legal matters, however major or minor. This ultimately rests on the risk appetite and legal exposure of each client, which differs across sizes and industries.

Hence, even though these NewLaw providers may divert some business away from lawyers, the services that these NewLaw providers offer are, more often than not, routine and low-value, and do not replace the need for lawyers entirely.

Lawyers can differentiate themselves and their service offerings by moving away from low-value, run-of-the-mill work, and focusing on high-value and complex work that cannot be replaced by these NewLaw providers. In order to effectively co-exist with these NewLaw providers, lawyers need to ask themselves – What can I bring to the table that a machine, an AI software or an online resource cannot? At the same time, lawyers can leverage the benefits brought about by these NewLaw providers by implementing suitable technology in their law firms in order to streamline processes and achieve cost savings which can be passed on to the clients, and at the same time, focus on building up a practice that distinguishes themselves from the services provided by these NewLaw providers. Together, law firms and NewLaw providers can provide clients with a value-added service at a lower cost.

IV. A NEW KIND OF LAWYER

Having explored the effects of technological disruption on clients and the legal industry, this paper suggests three essential attributes that ‘new age’ lawyers must adopt in this age of disruption, in order to act as effective legal advisors to their clients facing unique legal challenges and remain competitive by providing value-added services.

First, lawyers must possess commercial awareness, by keeping up to date with key issues (legal and non-legal) which affect their clients. In this age of disruption, the distinction between a ‘good’ and a ‘bad’ lawyer is no longer dependent on how well a lawyer knows and understands the law. Lawyers are, more than ever, required to assume an increasingly commercial role, and must have a firm understanding of the client’s

business model and technology infrastructure in order to effectively address the accompanying technology-related legal risks and challenges.

It is no longer sufficient for lawyers to only possess knowledge specific to their practice areas. Technological disruption has resulted in the intermingling and crossing over of several practice areas, and lawyers must be widely read to engage in discussions about key issues outside of their practice area in order to be well-positioned to assist their clients in navigating their regulatory challenges. As the world becomes more digitalised and companies increasingly use data to drive their businesses, every commercial lawyer should familiarise themselves with regulations and discussions on the common challenges faced by companies looking to digitalise their operations, such as the use of personal data, data localisation and the ethical use of AI.

Second, lawyers must move away from the strict letter of the law and adopt a flexible mindset when advising their clients. Lawyers should avoid presenting clients with a 'cookie-cutter' solution and avoid legal risk by refusing to validate a business model or service offering on the basis of legal uncertainty under existing regulations.

Adopting a flexible mindset is especially important when advising disruptors, which often provide innovative service offerings that are not yet regulated under the law. Instead of shutting down propositions because the law is silent or unclear on certain aspects, lawyers should look at exploring ways to get around the uncertainties, which may involve going one step further and engaging with the regulators, on behalf of the client, to clarify the scope of regulation, or helping the client to de-risk the business in order to fall within the ambit of the regulation.

Lastly, a 'new age' lawyer must possess good people-skills. The ability to build a strong rapport with clients and foster a close relationship has always been a distinguishing trait of a good lawyer. However, having good people-skills is now that much more important in this age of disruption. The ability to connect is a key differentiator between human beings and machines. It is a trait that sets lawyers apart from automated software and platforms offered by the NewLaw providers.

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Possessing good people-skills also underpins the above two traits on commercial awareness and adopting a flexible mindset, which potentially require close interaction with key personnel in the client's business in order to fully grasp its servicing offerings, or engaging with regulators to clarify aspects of legislation and its applicability to the client.

V. CONCLUSION

The legal industry will undergo a radical transformation in the coming decade. Instead of looking at transformation as a threat, lawyers should adopt a mindset change and see this transformation as an opportunity to improve themselves as legal advisors by engaging in active collaboration and communication with key stakeholders. As clients require a different set of skills from their legal advisors in order to deal with the unique legal challenges brought about by technological disruption, lawyers should take active steps to reinvent themselves and their practice, such as by:

- (i) selecting the right type of technology to complement their practice;
- (ii) staying up to date with the latest technological advancement and legal trends, making a conscientious effort to understand their clients' businesses in order to better analyse the accompanying legal risks; and
- (iii) adopting a flexible and innovative mindset and being open to new ways of working and resolving problems.

At the end of the day, the interests of clients should remain as lawyers' top priority. The different stakeholders in the legal ecosystem must work together to reap maximum benefits and uphold the prestige of the legal profession.

