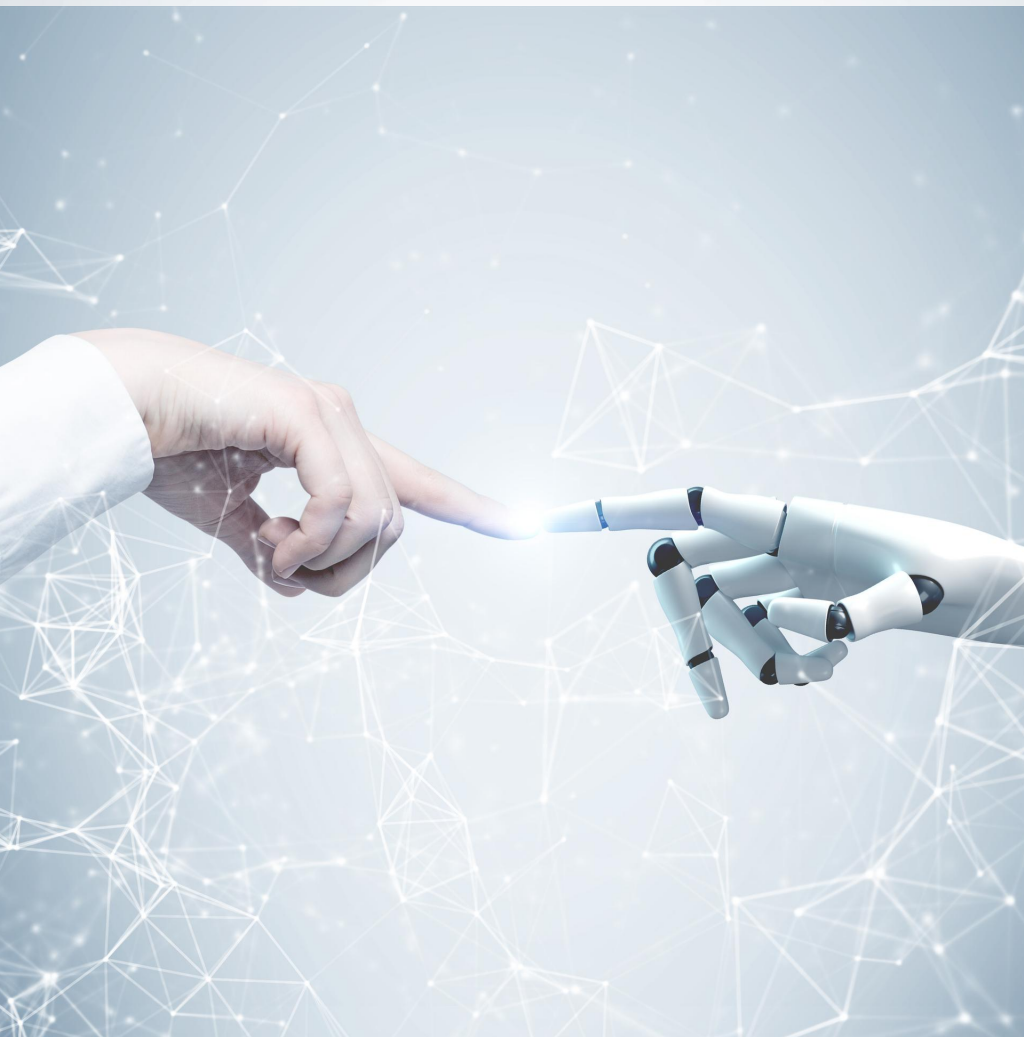


LRD COLLOQUIUM 2020 RESEARCH PAPER SERIES



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

Design Thinking: Perspectives, Postures and Processes for the Future of the Legal Industry

Yu Kexin

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

Yu Kexin*

Design thinking can be a useful toolkit for lawyers to be the drivers – rather than the victims – of change in the industry. It encourages innovation by focusing on the ‘value’ to be achieved, i.e. the needs of end users. Lawyers are free to determine the ‘what’ and ‘how’ of meeting that goal. Unconstrained by established practices and bias to the status quo, they can think more ambitiously, drawing on their creativity and working collaboratively with others to find solutions to challenges. Design thinking principles are scalable and can be applied by stakeholders, including courts and regulators, to bring about industry wide transformation. This has specific relevance to Singapore which can use design thinking to bolster its position as a legal innovation hub.

I. INTRODUCTION

*‘Start preparing now. We as a profession have about five years to reinvent ourselves from being world-class legal advisers to world-class legal technologists’.*¹ Richard Susskind, leading author on the future of legal services², said this at the Law Society of England and Wales’ annual conference in 2016. We are soon approaching the end of that 5-year timeline, but the profession has not changed significantly. Lawyers acknowledge that they have to adapt to technology and innovate to remain relevant. Yet, at the same time, they are unsure of how to respond to what is simultaneously an opportunity to grow and a threat to their livelihood.³

The call for lawyers to reinvent their role⁴ begs the fundamental question: *how* are lawyers to reinvent? Digging deeper, what will this look like within the *legal sector*?

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¹ John Hyde, ‘Susskind: You Have Five Years to Reinvent the Legal Profession’ (*Law Gazette UK*, 27 April 2016) <www.lawgazette.co.uk/law/susskind-you-have-five-years-to-reinvent-the-legal%20profession/5054990.article> accessed 4 May 2020.

² Richard Susskind, *Online Courts and The Future of Justice* (Oxford University Press 2019).

³ Law Society of Singapore, ‘Legal Technology in Singapore 2018 Survey of Legal Practitioners’ (*Law Society of Singapore*, 14 March 2019) 2 <https://issuu.com/blackbox4/docs/lawsociety_legaltech_summary_report> accessed 4 May 2020; in that survey, 68% of decision makers viewed legal technology as an opportunity and a threat at the same time.

⁴ For example Azman Jaafar and Erwan Barre, ‘Commentary: Becoming Future-Ready, Inside the Quiet Revolution of Singapore’s Legal Sector’ (*Channel News Asia*, 18 March 2019) <www.channelnewsasia.com/news/commentary/singapore-legal-sector-future-disrupted-by-technology-

Lawyers have the capacity to be innovative as they are constantly finding solutions to legal and business conundrums. But the legal industry has inherent characteristics that are resistant to change. Structurally, the industry is strictly regulated to ensure high standards of professional conduct. It is not forgiving of the 'trial and error' commonly associated with innovative processes. Culturally, the legal profession tends to be insular, cautious of 'non-law' participants,⁵ and risk-averse.⁶ These are not prime conditions for industry-wide transformation.

It may benefit the legal industry to apply the principles of 'design thinking'. Developed within the design industry, it refers to a process of innovation with a user-centric focus. Designers have used it to formulate creative solutions to problems. The iPod,⁷ Airbnb⁸ and Uber Eats⁹ are some examples. Design thinking involves the following processes: (1) *hear* and understand the needs of the end-user; (2) *create* solutions to meet those needs within existing constraints; (3) *deliver* the best solution by testing a prototype, and then *loop back* through the stages, to refine the solution. This toolkit for problem-solving has been applied in sectors such as finance and healthcare with great success,¹⁰ and is slowly gaining traction in the legal industry.¹¹ Lawyers struggling to reinvent could benefit from the innovation mindset and practical problem-solving process design thinking provides.

11348354> accessed 4 May 2020; Denisa Luchian, 'The 60 Second Interview: Legal Services Need to Reinvent Themselves' (*The Lawyer*, 13 October 2017) <www.thelawyer.com/60-second-interview-legal-services-need-reinvent/> accessed 4 May 2020.

⁵ Mark Cohen, 'Goodbye Guild – Law's Changing Culture' (*Forbes*, 3 July 2017) <www.forbes.com/sites/markcohen/2017/07/03/goodbye-guild-laws-changing-culture/#49e3097970e8> accessed 4 May 2020.

⁶ Jathan Janove, 'Can Risk-Averse Lawyers Learn to Embrace Change? An Interview with Dr. Larry Richard (Ogletree Deakins, 12 January 2016) <<https://ogletree.com/insights/can-risk-averse-lawyers-learn-to-embrace-change-an-interview-with-dr-larry-richard/>> accessed 4 May 2020; Dr Larry Richard is a former trial lawyer and trained psychologist.

⁷ Stefan H. Thomke and Barbara Feinberg, 'Design Thinking and Innovation at Apple' (May 2012) Harvard Business School Case 609-066.

⁸ First Round Review, 'How Design Thinking Transformed Airbnb from a Failing Startup to a Billion Dollar Business' (*First Round Review*) <<https://firstround.com/review/How-design-thinking-transformed-Airbnb-from-failing-startup-to-billion-dollar-business/>> accessed 4 May 2020.

⁹ Paul Clayton Smith, 'How We Design on the UberEATS Team' (*Medium*, 7 June 2017) <<https://medium.com/uber-design/how-we-design-on-the-ubereats-team-ff7c41fffb76>> accessed 4 May 2020.

¹⁰ Tim Brown and Jocelyn Wyatt, 'Design Thinking for Social Innovation' (2010) 8(1) *Stanford Social Innovation Review* 30; For example, Stanford Hospital has used design thinking to improve patient experience in the emergency department; Sarah Wykes, 'Design Thinking As a Way to Improve Patient Experience' (*Stanford News Centre*, 3 June 2016) <<https://med.stanford.edu/news/all-news/2016/06/design-thinking-as-a-way-to-improve-patient-experience.html>> accessed 4 May 2020.

¹¹ For example, Marshall Lichty, 'Design Thinking for Layers' (*Lawyerist*, 18 October 2019) <<https://lawyerist.com/blog/design-thinking-for-lawyers/>> accessed 4 May 2020; Nisha Rajoo, 'Law by Design: What the Legal Profession Can Learn from Design Thinking' (*Singapore Law Gazette*, December 2019) <<https://lawgazette.com.sg/practice/practice-matters/law-by-design-thinking/>> accessed 4 May 2020.

This paper will weigh in on the conversation about the 'how' of reinvention, by introducing design thinking as a possible framework. Section II gives an overview of the challenges the legal sector is currently facing. In particular, there is external pressure to innovate due to market changes and technological developments. In tension with this, there is internal resistance to change because of structural and cultural factors. Section III explains the key principles of design thinking and explores how it can help lawyers to overcome the above challenges. First, lawyers can be encouraged to take on an innovative perspective and client facing posture. Second, scalable processes can be provided for stakeholders, including regulators, to adopt. Finally, Section IV will examine the potential applications of design thinking to legal innovation in Singapore, to prime her to be a world class legal hub in the 21st century.

II. CHALLENGES ON ALL SIDES: EXTERNAL PRESSURES AND INTERNAL RESISTANCE

A feasible proposal on the 'how' of reinvention must meet the multi-faceted challenges lawyers are facing.

Technology is a big part of the challenge. It is a form of external pressure forcing lawyers to change the way legal services are delivered. Clients accustomed to using technology to save time and costs in their own businesses, expect the same from their lawyers.¹² Document automation,¹³ client self-help portals¹⁴ and tech-assisted due diligence¹⁵ are now the new normal. Meanwhile, artificial intelligence holds out the prospect that

¹² Michele DeStefano and Guenther Dobrauz, *New Suits: Appetite for Disruption in the Legal World* (Stämpfli Verlag AG Bern 2019) 86; David J Parnell, 'The Legal Institute For Forward Thinking: Legal Trends, Observations And Predictions For 2018' (*Forbes*, 8 January 2018) <www.forbes.com/sites/davidparnell/2018/01/08/legal-institute-forward-thinking-trends-observations-and-predictions/#7c8f8e659333> accessed 4 May 2020.

¹³ For example, see the Lawyerist's list of document management and automation software Lawyerist, 'Document Management and Automation' (*Lawyerist*, 4 February 2020) <<https://lawyerist.com/reviews/document-management-automation/>> accessed 4 May 2020.

¹⁴ Legal Futures, 'Implementing Self-Service Technology for Your Clients With a Web Portal' (*Legal Futures*, 4 December 2019) <www.legalfutures.co.uk/associate-news/implementing-self-service-technology-for-your-clients-with-a-web-portal> accessed 4 May 2020.

¹⁵ The Economist, 'Diligence Disrupted: Law firms Climb Aboard the AI Wagon' (*The Economist*, 12 July 2018) <www.economist.com/business/2018/07/12/law-firms-climb-aboard-the-ai-wagon> accessed 4 May 2020.

swathes of legal work such as contract drafting,¹⁶ research¹⁷ and even case risk assessment,¹⁸ may become automated in the future. Lawyers will have to learn how to harness these technologies, and provide value-added services to their clients.

Another source of external pressure is the ‘more-for-less’ challenge.¹⁹ As a result of the global financial crisis, clients have reduced their legal budgets, and yet, expect more results from lawyers.²⁰ They are no longer agreeable to paying legal fees based on the input or time incurred for legal work, and are instead focusing on the output or value generated by lawyers.²¹ On top of traditional legal services, clients are looking for lawyers who will collaborate and innovate with them.²² The profession will thus have to find ways to meet this challenge, which could involve the ‘decomposition’ of legal services into various tasks, with each part being outsourced to the cheapest provider (who may not be a lawyer).²³ Lawyers will then focus on the high-value and high-touch aspects of their work. Billing and cost structures traditionally based on the billable hour may also need to be changed.

Despite such pressures, the legal industry has characteristics that form high ‘barriers to change’. Structurally, the legal profession is made up of diverse stakeholders working closely together in interconnected systems. Legal professionals, ministries, courts, and universities will be involved in changes to the way legal services are provided – and their conflicting objectives may slow down the process. Culturally, the legal industry is self-regulated and tends to be lawyer centric. This has contributed to it being wary of ‘non-

¹⁶ Robot lawyer LISA creates legally binding agreements and acts impartially for both sides in helping parties reach a middle ground; Robot Lawyer Lisa (*Robot Lawyer LISA*, 2019) <<https://robotlawyerlisa.com/>> accessed 4 May 2020.

¹⁷ ROSS is a legal research platform which utilises artificial intelligence; Ross Intelligence, ‘The Intelligent Legal Research Choice’ (*ROSS Intelligence*, 2020) <<https://rossintelligence.com/>> accessed 4 May 2020.

¹⁸ Legal by Lex Machina uses legal analytics and machine learning to (amongst other things) reveal data about prior litigation, such as trends in past decisions and intelligence on opposing counsel; Lex Machina, ‘Law Firms’ (*Lex Machina*, 2020) <<https://lexmachina.com/law-firms/>> accessed 4 May 2020.

¹⁹ Richard Susskind, *Tomorrow’s Lawyers* (2nd edn, OUP 2017) 4.

²⁰ Susskind (n 19) 4-5; Rob Ameerun, ‘Interview with Susskind about New Edition of “The End of Lawyers”?’ (*Legal IT Professionals*, 13 September 2010) <www.legalitprofessionals.com/legal-it-columns/2028-interview-with-susskind-about-new-edition-of-qthe-end-of-lwayersq> accessed 4 May 2020.

²¹ Georgetown Law, ‘2017 Report on the State of the Legal Market’ (*Thomson Reuters*, 2017) 9-10 <<https://static.legalsolutions.thomsonreuters.com/static/pdf/peer-monitor/S042201-Final.pdf>> accessed 5 May 2020.

²² Michele Destefano, *Legal Upheaval A Guide to Creativity, Collaboration and Innovation in Law* (Kindle edition, American Bar Association 2018) loc 1021.

²³ Susskind (n 19) 32-34.

law' entrants, such as entrepreneurs.²⁴ The profession also tends to have a cautious culture,²⁵ which could be attributed to a heavy reliance on precedent.²⁶ Unlike other sectors (such as business or finance) where players strive to be the first mover with innovation, lawyers tend to be more responsive, effecting changes only when they see others doing the same.²⁷

The combination of the above factors means that the legal milieu is not conducive to innovation.²⁸ This may explain why lawyers lag behind professionals in other sectors in digital innovation.²⁹ In contrast, non-traditional legal service providers recognise the gap. Unconstrained by traditional methods,³⁰ they may offer cutting edge legal services and change the market, ahead of many lawyers.³¹ This is a pity as lawyers have the capacity to innovate. In their day-to-day work, they formulate unique strategies for litigation proceedings, and invent contractual frameworks to meet complex business needs.

As can be seen, lawyers need to tap on their existing creativity to respond to unprecedented market and technological changes in the industry. They need to be proactive about innovation and stake their claim to relevance in the legal industry of the future. The next section lays out how the principles of design thinking will further this cause.

²⁴ Cohen (n 5).

²⁵ Cohen (n 5).

²⁶ Mark Szabo, 'Design Thinking in Legal Practice Management' (29 September 2010) 21(23) Design Management Review 44; Destefano (n 22) loc 1545.

²⁷ Susan Ursel, 'Building Better Law: How Design Thinking Can Help Us Be Better Lawyers, Meet New Challenges and Create The Future Of Law' (2017) 34 Windsor Yearbook of Access to Justice 28, 32.

²⁸ Ursel (n 27) 51.

²⁹ Mark A Cohen, 'Law is Lagging Digital Transformation – Why It Matters' (*Forbes*, 20 December 2018) <www.forbes.com/sites/markcohen1/2018/12/20/law-is-lagging-digital-transformation-why-it-matters/#4ccc93cf515c> accessed 4 May 2020.

³⁰ Susskind (n 19) 8-9.

³¹ *ibid* 59; Cohen (n 5).

III. DESIGN THINKING AS A TOOLKIT³² FOR INVENTING THE FUTURE OF THE LEGAL INDUSTRY

A. *Key principles of design thinking*

The process of design thinking involves a team going through three main stages for a project: (1) inspiration or hearing; (2) ideation or creating; and (3) implementation or delivering.³³ These processes aim to cultivate a mindset to constantly innovate so as to meet the needs of end-users.

Inspiration. At this first stage, the project team undertakes the essential exercise of discovering what the end-user's needs are.³⁴ Through this exercise, they will be able to identify the root of the problem or opportunity. Practically, this involves observing the end-user within the environment where the problem/opportunity occurs.³⁵ It can be done in a number of ways. For example, Stanford Law School's Legal Design Lab brings their students through a 'Service Safari' where they personally walk through a litigant's experience within the court system.³⁶ Another option is for the team to conduct detailed interviews with end-users.³⁷ The objective at this stage is for the project team to cultivate empathy with the end-users,³⁸ and to come to a deep, personal understanding of their needs.

Ideation. After gathering information and understanding the problem, the project team enters into a '*process of synthesis*' where they distil what they have seen, heard and experienced into insights and ideas.³⁹ The team generates possible solutions based on their insights, taking into account practical constraints such as costs. This stage typically involves brainstorming sessions by the multi-disciplinary project team.⁴⁰ Collaboration

³² *ibid.*

³³ Tschimmel (n 32) 5-8.

³⁴ Tim Brown (n 10) 30.

³⁵ Tschimmel (n 32) 6.

³⁶ Margaret Hagan, 'Justice Innovation with Law School Design Labs' (*American Bar Association*, 15 June 2018) <www.americanbar.org/groups/legal_services/publications/dialogue/volume/21/spring-2018/iolta-design-labs/> accessed 4 May 2020.

³⁷ *ibid.*

³⁸ Rikke Friis Dam and Yu Siang Teo, 'Design Thinking: Getting Started with Empathy' (*Interaction Design Foundation*, 2019) <www.interaction-design.org/literature/article/design-thinking-getting-started-with-empathy> accessed 4 May 2020.

³⁹ Tim Brown (n 10) 30.

⁴⁰ Tschimmel (n 32) 6.

between team members with different backgrounds allows for different perspectives on the problem, and encourages the generation of creative ideas.⁴¹

Implementation. The project team picks the best solution from the pool of ideas and develops a concrete action plan for prototyping and testing. The aim is not to come up with a finished prototype, and it is sufficient to have a '*quick, cheap and dirty*' work in progress.⁴² The focus is on having the prototype go out to end-users quickly, so it can be modified according to their iterative experience with the product or service.⁴³

The above steps are not linear. The design thinking process envisions a project 'looping back' through the steps, to redefine the problem or refine the solution, as necessary.⁴⁴ This looping back encourages constant innovation based on end-users' feedback.

The next sections show how lawyers and the legal industry may benefit from the mindset and process of design thinking.

B. Design thinking for lawyers

In the same way that design thinking has pushed designers to innovate, there is potential for design thinking to assist lawyers to become the drivers – rather than victims – of change in their industry. There are three main reasons.

First, design thinking cultivates an '*innovation mindset*',⁴⁵ encouraging lawyers to take on fresh perspectives towards challenges. Design thinking employs abductive reasoning, which is not typically used by lawyers. They usually turn to the following basic reasoning patterns: (1) deductive reasoning, where the 'what' and the 'how' are known, and we reason from there to reach a 'result'; and (2) inductive reasoning, where the 'what' and the 'result' are known, and we reason from those premises to understand the 'how'.⁴⁶ For example, lawyers reason deductively when applying precedents to the facts of a

⁴¹ *ibid* 4.

⁴² Tim Brown (n 10) 43.

⁴³ Jeanne Liedtka, 'Why Design Thinking Works' (*Harvard Business Review*, September-October 2018) <<https://hbr.org/2018/09/why-design-thinking-works>> accessed 4 May 2020.

⁴⁴ Ursel (n 27) 42; Rikke Friis Dam (n 38).

⁴⁵ Ursel (n 27) 31.

⁴⁶ Kees Dorst, 'The Core of 'Design Thinking' and Its Application' (2011) 32(6) *Design Studies* 521, 523-524.

case, to argue for gradual changes to the common law (the 'result'). Inductive reasoning is used when they distil a general rule (the 'how') from the facts and holdings of various cases, to give advice. In contrast, for abductive reasoning, the 'what' and 'how' are unknown, and the 'result' cannot be defined. We are only presented with the attainment of a certain 'value', *i.e.* the needs of the end-user. The task is to figure out the 'what' and 'how' of reaching that aspiration.⁴⁷

Design thinking thus encourages innovation by requiring lawyers to start at the end (the 'value'), to assess what legal services should be delivered and in what way. By forcing lawyers to work 'backwards',⁴⁸ the process gets around human bias to the status quo and attachments to behavioural norms, which hinder innovation.⁴⁹ This will assist lawyers to break out of their 'legal mindset', where the focus is on certainty and reliability.⁵⁰ They will then be able to draw on the creative and inventive techniques used in their work,⁵¹ such as when dealing with complex litigation or corporate deals with uncertain variables.⁵²

The Avis Budget Group has successfully applied design thinking principles to re-think the workflow of its external counsel. Its legal department started from the point of having zero budget for legal services, and then considered what was crucial for operations. Through the exercise, the group decided it only required seven external firms (there were originally hundreds). Each external firm would be assigned a specific subject matter expertise and would supervise that subject matter even if it concerned developments outside their geography. This new structure allowed the group to achieve consistent messaging on each subject matter and reduce repetitive work. The change in perspective ultimately led to seven-figure savings for the legal department within the same year of implementation.⁵³

⁴⁷ Dorst (n 46) 523-524.

⁴⁸ Jennifer Brown, 'Law by Design' (*Canadian Lawyer*, 26 September 2016) <www.canadianlawyermag.com/news/general/law-by-design/270270> accessed 4 May 2020, quoting Alexander Gavis, Senior Vice President and Deputy General Counsel at Fidelity Investments.

⁴⁹ Liedtka (n 43).

⁵⁰ Szabo (n 26) 44.

⁵¹ Destefano (n 22) loc 1558.

⁵² Ursel (n 27) 42.

⁵³ Jennifer Brown (n 48).

Second, design thinking requires lawyers to take on a posture of facing towards the client, rather than looking inward at themselves. As explained above, the process is anchored in the hearing or inspiration stage, where the project team seeks to understand and empathise with the end-user.⁵⁴ This makes commercial sense as the experiences of end-users will determine what is truly innovative.⁵⁵

However, attitudes to innovation have largely been lawyer-centric: to look at the role of lawyers as it has been in the past⁵⁶ and to see how it can be adapted to cohere with new technology. This approach does not properly consider the needs of end-users. The issue is exacerbated by the significant disconnect between lawyers and clients – which is what prompted clients to look to non-traditional legal service providers in the first place.⁵⁷ Looking inwards is thus part of the problem, not the solution. Design thinking would correct this posture to be client or user facing, for lawyers to aim towards the right ‘value’ in the process of reinvention. For example, applications of design thinking at Winston and Strawn LLP have led to the international law firm placing an emphasis on their clients, and directly involving their clients in projects on pricing and case assessment.⁵⁸

A user-centric approach is also consistent with the legal industry’s aim to serve the needs of society. The law concerns the experiences of people who use the system and whose lives are impacted by it in very real ways.⁵⁹ It does not exist to keep lawyers in business. Instead, lawyers are to support society’s needs of the law⁶⁰ – and this remains true even as they are confronted with threats to their livelihood. Design thinking can thus ensure purpose-driven change by directing lawyers’ attention to society’s true needs.

Third, design thinking provides lawyers with a structured process to follow. The concept of innovation is amorphous. Many may be deterred by the impression that it is the result

⁵⁴ See ‘Inspiration’, at page 6.

⁵⁵ Mark A Cohen, ‘Innovation Is Law’s New Game, But Wicked Problems Remain’ (*Forbes*, 21 May 2018) <www.forbes.com/sites/markcohen1/2018/05/21/innovation-is-laws-new-game-but-wicked-problems-remain/#5b7265473890> accessed 4 May 2020.

⁵⁶ Susskind (n 19) xix.

⁵⁷ Lexis Nexis, ‘Amplifying the Voice of the Client in Law Firms’ (Lexis Nexis, 11 April 2017) 9 <www.lexisnexis.co.uk/pdf/3799_LN_VOTC_Online.pdf> accessed 4 May 2020.

⁵⁸ Jennifer Brown (n 48), quoting David Cunningham, Chief Information Officer at Winston and Strawn LLP.

⁵⁹ Margaret Hagan, ‘Law by Design’ (*Law By Design*) <www.lawbydesign.co/> accessed 4 May 2020.

⁶⁰ Susskind (n 19) 195.

of a genius light bulb moment. Design thinking demystifies innovation by breaking the process down into simple stages. It moves a project along the journey from problem, to insight, to idea and then to a tangible solution,⁶¹ and acts as the doorway to innovation.⁶²

For example, to respond to the 'more for less' challenge, lawyers can start with setting up a project team to understand their clients' specific needs. Such as, for which legal services, in what situations, and to what extent, their clients require 'more for less'. With this understanding, they can generate ideas to customise legal service delivery to best meet those needs. Different project teams may need to be formed to address the needs of different business sectors. Client representatives should participate to give feedback and contribute to the brainstorming process. The project team will then choose the best solution and test it out on a file or transaction, followed by immediate feedback from the client. The solution may then be refined, and close communications should be maintained as the project 'loops back' through the various stages. With the guidance of this clear path for the project, lawyers are free to think more ambitiously about how to solve problems.⁶³

Design thinking thus empowers lawyers to chart the course of the future themselves. It starts them off with a vision and guides them to discover where it leads,⁶⁴ within the safety of a structured framework. The empathy, creativity and problem solving skills that lawyers will become accustomed to in the process, are also precisely the skills that are unlikely to be replaced by technology. This will put lawyers in good stead for the future.

C. *Design thinking for the legal industry*

Design thinking has wider applications for the legal industry as its flexible framework can be applied by different stakeholders. There have already been instances of law firms, courts, and pro-bono associations utilising design thinking to solve specific problems.⁶⁵

⁶¹ Phil McKinney, 'Innovation by Design: What Is It & Why Does It Matter?' (30 March 2017) <<https://philmmckinney.com/innovation-by-design-what-is-it-why-does-it-matter/>> accessed 4 May 2020.

⁶² Ursel (n 27) 32.

⁶³ Hagan (n 59).

⁶⁴ Szabo (n 26) 44.

⁶⁵ For example, 'Navocado' is an interactive system to provide pro bono lawyers with quick information on legal procedure they may be unfamiliar with, which was developed through design thinking; Navocado, 'Navocado Helps You Navigate The Legal System' (*Navocado*) <<https://navocado.org/>> accessed 4 May 2020.

Design thinking could be applied by courts to great effect as it is where people have the most direct involvement with the law. The user-centric approach can help to make court processes more navigable, especially for litigants in person. The Stanford Legal Design Lab has taken steps in this direction. It has created an automated court messaging system called 'Wise Messenger' to improve court attendance rates. The system takes information from existing case management systems and generates a customised text message flow for the client, including reminders of deadlines and self-help information (such as tips on upcoming obligations).⁶⁶

Further, law schools are introducing programmes based on design thinking to equip students with skills for innovation. For example, the Stanford Legal Design Lab partners their students with stakeholders such as the judiciary and legal aid groups. Students are brought through the cycle of the design process to identify opportunities for change, generate ideas, develop prototypes, and test them in live environments.⁶⁷

In addition, the collaborative and multi-disciplinary nature of design thinking⁶⁸ creates space for regulators to participate in its process. The experiences of innovators such as Airbnb and Uber show that regulatory struggles can lead to wasted time and costs.⁶⁹ The same tension between regulators and innovators is likely to arise (and apply with greater force) to innovation in the highly regulated legal sector.⁷⁰

Regulators can consider participating in the design thinking process from the outset, which will benefit both regulators and innovators.⁷¹ Through the inspiration/hearing stage, regulators can better understand the needs of end-users, which will inform their view on the most appropriate method of regulation. At the ideation stage, innovators will be made aware of regulatory concerns and can take this into consideration when generating ideas (rather than only after the product/service hits the market). Moreover, regulators can design innovative regulatory safeguards for the implementation of ideas.⁷²

⁶⁶ Justice Innovation, 'Wise Messenger: Text Message Reminders' (*Stanford Legal Design Lab*) <<http://justiceinnovation.law.stanford.edu/projects/messenger/>> accessed 4 May 2020.

⁶⁷ Legal Design Lab (*Stanford Legal Design Lab*, 2018) <www.legaltechdesign.com/> accessed 4 May 2020.

⁶⁸ See 'Ideation', page 6.

⁶⁹ Alice Armitage, Andrew K Cordova, and Rebecca Siegel 'Design Thinking: The Answer to the Impasse Between Innovation and Regulation' [2017] 2 Geo L Tech Rev 3, 5-6.

⁷⁰ See for example the experience of LegalZoom; Cohen, 'Innovation is Law's New Game' (n 55).

⁷¹ Armitage (n 69) 62.

⁷² Armitage (n 69) 51, 57.

For example, they may consider using a regulatory sandbox to let innovators experiment without fear of liability, and with appropriate safeguards put in place.⁷³ After the best solution is prototyped and tested, regulators will be able to give feedback on the prototype, and receive feedback on their regulations. They can then refine the regulatory framework based on evidence and data. Such a process of innovation where all relevant stakeholders are involved could reduce regulatory struggles and save related time and costs. This will be to the ultimate benefit of end-users and society in general.⁷⁴

The above illustrates how an industry-wide shift to the “innovation mindset” could minimize ‘*blocking and tackling*’ within the sector,⁷⁵ and create a new legal culture where stakeholders (including regulators) are more welcoming of innovation.⁷⁶ This is not to say that design thinking is a panacea for all the challenges that the legal industry is facing, and certain modifications may need to be made to the process.⁷⁷ But, it is an accessible starting point for innovation and re-invention.⁷⁸

IV. TAKING LEGAL INNOVATION TO THE NEXT LEVEL IN SINGAPORE

Singapore is no stranger to legal technology and innovation. The Singapore Academy of Law (“SAL”) launched LawNet, an online platform for legal research,⁷⁹ just as the internet was becoming publicly available. Singapore was also the first state in South East Asia to liberalise the legal profession by permitting foreign lawyers to practice Singapore law in joint ventures with local firms.⁸⁰

⁷³ Margaret Hagan, ‘Regulatory Sandboxes for Legal Services Innovation’ (*Medium*, 9 November 2019) <<https://medium.com/legal-design-and-innovation/regulatory-sandboxes-for-legal-services-innovation-7438bb9b658e>> accessed 4 May 2020.

⁷⁴ Armitage (n 69) 62.

⁷⁵ Mark A Cohen, ‘Legal Change: Why Drip, Not Disruption?’ (*Forbes*, 26 April 2018) <www.forbes.com/sites/markcohen1/2018/04/26/legal-change-why-drip-not-disruption/#157d5b2e1fbf> accessed 4 May 2020.

⁷⁶ Hagan (n 59).

⁷⁷ For example, prototype solutions may need to be in a relatively more ready form as compared to other industries, as the legal industry may not be so open to sheer experimentation; Ursel (n 27) 33.

⁷⁸ Ursel (n 27) 32.

⁷⁹ Future Law Innovation Programme, ‘2019 State of Legal Innovation in the Asia Pacific Report’ (*Future Law Innovation Programme*, 9 April 2019) 118 <www.flip.org.sg/post/state-of-legal-innovation-in-asia-pacific-report> accessed 4 May 2020.

⁸⁰ Yasmin Lambert, ‘Early Reforms Recast Singapore as Hub for Legal Services’ *Financial Times* (London, 27 June 2019) <www.ft.com/content/3d9129f0-8e93-11e9-a1c1-51bf8f989972> accessed 4 May 2020.

In line with the government's vision of a Smart Nation,⁸¹ Singapore is now aiming to be a regional legal innovation hub.⁸² Initiatives include SAL's Future Law Innovation Program ("FLIP") to encourage the invention of legal technology,⁸³ and The Law Society of Singapore's Tech-celerate for Law fund, which supports Singapore law practices' implementation of legal technology such as practice management systems or eDiscovery software.⁸⁴

Design thinking can bolster these efforts at legal innovation in three ways.

First, as noted in the 2019 Report on the State of Legal Innovation in the Asia Pacific, legal innovation in Singapore has largely been driven by a top-down approach.⁸⁵ The main players are the SAL, judiciary, and the Law Society of Singapore. There are some examples of innovation by law firms, such as Rajah & Tann Technologies, which provides technology services to clients alongside Rajah & Tann's existing legal services.⁸⁶ However, we have not seen a significant push from lawyers on the ground to innovate. There is untapped potential here as lawyers are alive to opportunities from their interactions with end-users and legal processes on a day-to-day basis. Moreover, they are decision makers who can implement changes quickly, with direct impact on the market. Cultivating an 'innovation mindset' amongst lawyers through design thinking would encourage them to be pro-active, and participate in the "*ecosystem to accelerate the creation and adoption of legal technology*".⁸⁷

Second, the focus of innovation has been on technology rather than business models or service delivery.⁸⁸ However, technology impacts a firm's operations including its workflow, client management, as well as billing and cost systems. Technological

⁸¹ Smart Nation Singapore, 'Transforming Singapore Through Technology' (*Smart Nation Singapore*, 23 April 2020) <www.smartnation.gov.sg/why-Smart-Nation/transforming-singapore> accessed 4 May 2020.

⁸² Future Law Innovation Programme (n 79) 138-139.

⁸³ Future Law Innovation Programme, 'About' (*Singapore Academy of Law*, 2017) <<https://www.flip.org.sg/about>> accessed 4 May 2020.

⁸⁴ The Law Society of Singapore, 'Tech-celerate for Law' (*The Law Society of Singapore*) <www.lpi.lawsociety.org.sg/tech-celerate-for-law/> accessed 4 May 2020.

⁸⁵ Future Law Innovation Programme (n 79) 127.

⁸⁶ Future Law Innovation Programme (n 79) 125; Vanilla Law LLC has created a document assembly software (Vanilla Law Docs) which allows clients to create a first draft of a document to save time and costs; Future Law Innovation Programme (n 79) 119.

⁸⁷ Mr K Shanmugam (Minister of Law), 'Parliament Speech' (Committee of Supply Debate, 3 March 2017) Parliament 13 session 1 vol 94.

⁸⁸ Although there have been examples of this, see FLIP (n 79) 125-126.

developments will thus need to be accompanied by innovation in these other aspects. Design thinking's holistic perspective towards innovation can assist. As explained above, the focus is on meeting the needs of the end-user, regardless of the 'what' or 'how' of achieving the 'value'. If technology is necessary, the innovation required to implement technology will be considered in formulating the solution. Further, in a multi-disciplinary project team, legal technologists will be able to receive feedback from lawyers before their products hit the market, allowing them to improve usability and uptake. The team could also discover quick and effective solutions without the need for costly technology.⁸⁹

Further, regulators can partake in the process to design regulation that fuels innovative efforts. For example, the Monetary Authority of Singapore's ('MAS') FinTech Regulatory Sandbox permits financial institutions to experiment with financial products in a live environment. Specific regulatory requirements are relaxed to facilitate experimentation, and appropriate safeguards are put in place to contain consequences of failure.⁹⁰ Regulators may consider doing the same for innovative legal products and services. In fact, Singapore may be particularly well-suited for this, with regulators already pushing for change in the legal sector.

Third, the idea of the law as a design project could extend innovative efforts beyond meeting current challenges, towards building better law.⁹¹ The challenges in the legal industry can be viewed collectively as a 'wicked problem' where there are diverse stakeholders with sometimes conflicting values, interacting in interconnected systems.⁹² Design thinking works well here because the abductive reasoning it employs is suitable for open and complex problems.⁹³ It helps lawyers get 'unstuck'⁹⁴ when dealing with perennial problems, such as access to justice, by opening up new perspectives and ideas.

⁸⁹ Hagan (n 59).

⁹⁰ Monetary Authority of Singapore, 'Overview of Regulatory Sandbox' <www.mas.gov.sg/development/fintech/regulatory-sandbox> accessed 4 May 2020.

⁹¹ Ussel (n 27).

⁹² Richard Buchanan, 'Wicked Problems in Design Thinking' (1992) *Design Issues* vol 8 no 2, 5; Sundarsh Menon, 'Deep Thinking: The Future of the Legal Profession In An Age of Technology' (Gala Dinner Address at the 29th Inter-Pacific Bar Association Annual Meeting and Conference, 25 April 2019) 29 <[www.supremecourt.gov.sg/docs/default-source/default-document-library/deep-thinking---the-future-of-the-legal-profession-in-an-age-of-technology-\(250419---final\).pdf](http://www.supremecourt.gov.sg/docs/default-source/default-document-library/deep-thinking---the-future-of-the-legal-profession-in-an-age-of-technology-(250419---final).pdf)> accessed 4 May 2020.

⁹³ Dorst (n 46) 522, 524.

⁹⁴ Ussel (n 27) 34, Buchanan (n 92) 21.

Design thinking could go further to create a satisfying and meaningful experience⁹⁵ with the law. For example, Margaret Hagan, a fellow at Stanford Law School who directs Stanford's Legal Design Lab, envisions complex legal information being communicated in clearer and more usable ways.⁹⁶ A team at the Legal Design Lab is thus exploring the use of visual design to better convey legal information to the public. With that in mind, there is much potential for design thinking to be an 'innovation engine' for Singapore, facilitating the constant pursuit of better ways of providing legal services.

V. CONCLUSION: DESIGN, THINK, AND DO

Design thinking is a good starting point to answering the question of how lawyers are to innovate and reinvent themselves in the face of challenges. While discussion is useful, clients are looking for authentic innovation and lawyers will need to walk the talk.⁹⁷ One practical step would be to start small: try making gradual changes in your law firm or client relationships, assess the results, and refine the solution.⁹⁸ Or form a project team comprising representatives from knowledge management and finance, as well as partners and associates. The multi-disciplinary team can sit down with clients in a particular sector to find out what they need and brainstorm solutions with them.

Most importantly, lawyers need to begin the work of innovation and re-invention now. While it may take time and effort to seriously think about changes in the market, and to test out solutions (which may fail), this is necessary to prepare for the future. In the words of the Honourable Chief Justice of Singapore, Sundaresh Menon,

'...if we do not shirk from taking the necessary and perhaps even painful steps to adapt to...changes...we might give ourselves a chance of safeguarding a future in which we can continue to play an important role in the delivery of a vital public service'.⁹⁹

⁹⁵ Tim Brown, 'Design Thinking' (2008) Harvard Business Review 84, 92.

⁹⁶ Hagan (n 59).

⁹⁷ Destefano (n 22) loc 1799.

⁹⁸ Lichty (n 11).

⁹⁹ Menon (n 92) para 4.

