

A Kodak moment for the legal profession - by Kenneth Tung

To someone who has worked in both an industry-leading multinational and an erstwhile prestigious law firm – each of whose franchise has all but vanished – the disruptive changes taking place in the legal services industry are obvious. But they may not be so apparent to many.



When Professor Richard Susskind suggested a few decades ago that in future, lawyers would be practising law by email, his predictions proved highly controversial. Thirty years later, however, and the dialogue has moved on to topics such as the ‘new normal’, the reinvention of law, alternative business structures in the United Kingdom, new legal practices sprouting up in Silicon Alley and Australia and other ideas to restructure the legal services industry and value net.

Fewer and fewer people still believe that the issues facing the profession in the post-financial crisis world are only temporary. However, many lawyers still hope that these are still in the realm of the theoretical and will not affect their own practices – at least, not until after retirement. Some may also take comfort in outsourcing the more commoditised parts of their business through cutting-edge IT solutions such as predictive coding and managing partnership in-take and profit sharing expectations. But if we are to take a page from the experience of business process outsourcing, others will see this as another example of a race to the bottom and another round of value destruction.

So what are we to do? One may well ask. Let’s first take a look at three themes.

Human versus machine

Last year was the year when artificial intelligence crossed a significant milestone in learning through demonstration in image and word recognition. IBM’s Watson is also targeting service industries such as healthcare and law, after it made its debut by beating – by their combined scores – the top two *Jeopardy* champions. As we speak, humans are helping artificial intelligence to learn – to identify issues, build a structure of solutions and figure out how to solve problems. Today, there is much debate over the relative strengths of natural and artificial intelligence. For example, machines are better at analysing data to spot patterns, while humans are better at figuring out what this data-turned-information portends. However, in many ways machines are already surpassing what people can do by themselves – whether that be predicting US Supreme Court decisions or picking out smoking-gun documents with more efficiency.

As David Autor, the MIT labour economist, suggests, "the era we're in is one in which the scope of tasks that can be automated is increasing rapidly, and in areas we used to think were our best skills, things that require thinking."

Crowdsourcing and ‘Uber law’

Although the auto and hospitality industries may have most to fear from the likes of Uber, Zipcar and Airbnb, similar examples are increasingly common in the legal profession – not least the rise of the contractor lawyer.

Where humans still have advantages over machines, we are learning to harness those in volume. The common law system has recognised this for hundreds of years in the concept of a jury of peers. Today, Kaggle competitions unite some of the world’s best minds to solve knotty problems for business and the public. Individuals with diverse expertise are increasingly coming together to solve complex or small problems on platforms that look little like today’s legal service institutions. And social media will speed up collaboration without necessarily requiring lawyers to ‘do lunch’ before every task.

Meanwhile, younger generations are increasingly seeking to contribute to the world as well as making a living. Anything that enables them to practise and try their hands at plying their trade will be fair game.

This trend is already evident in the public interest legal sector.

Traders versus industrialists

It is often suggested that the common lawyer mentality is that of a trader: once we close one transaction (the ‘transaction’ being the delivery of services, rather than the closing of a client matter), we move on to the next. The fact that the average client thinks that lawyers do deals and dispute resolutions and not much else may reinforce this perception.

But rather than trading in hours, lawyers should be industrialists: people who build and continuously improve systems, and sometimes even reinvent the value net, rather than just selling hours. In other words, not all hours are created equal: some underlying work is becoming a commodity in today’s flatter, more commercial, more value-driven world.

Lest that some innovative traders take issue with the description of their dynamic businesses as simple, the illustration here still focuses on value in the supply chain. However, the trader’s life often appears more fluid and may be mistaken for that of a banker, as the immediate focus mainly involves working capital. The industrialist also needs to pay attention to other assets and a longer value chain than simply working capital and middlemen. When the ship gets bigger, one needs a team and more effective practices to move it.

Increasingly, those practices involve prevention or – even better – contribution to business strategy, rather than the usual remedy-based approach to operations. This harks back to the basic notion that the profession needs to rethink its role from that of an ambulance at the bottom of a cliff (remedial practice) to helping people to manage risks on top of the cliff. While the practice at the bottom of the cliff can be very profitable, clients and consumers should be reminded to avoid practices that are detrimental in the longer run.

To practise preventive law, we must first work with relevant data. Some of our colleagues may not consider this part of the job description of the legal function, but it is down to us to embrace it or watch someone else do so in the course of taking our profession to the next level. In today’s big data era, this is not an option, but a necessity.

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Previously, Mr Tung served as the chief legal counsel of Geely Holding and before that as general counsel for Greater China or Asia at PepsiCo, Goodyear, Honeywell and Kodak, where he handled a wide variety of issues and projects and drove efficiency projects and practices. In 1994 he came to China as a lawyer with Coudert Brothers and worked on major projects such as the Shanghai General Motors joint venture.

Born in Hong Kong to Shanghainese parents, Mr Tung obtained his bachelor’s and JD degrees from Columbia University and practised in New York City before moving to China.

Mr Tung will be participating on the panel of a session entitled “The future of legal services” at the ILO Corporate Counsel Congress in New York on June 11.

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