

Quarterly Update Winter 2016/17

Digital Delivery of Legal Services to People on Low Incomes

Roger Smith OBE

The
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Foundation

The Legal Education Foundation

This update is one of a series of reports commissioned by The Legal Education Foundation as a contribution to identifying the advances being made in the use of information technology to aid the provision of legal services for people on low incomes.

Information Technology and Legal Services

This update follows annual analyses of developments published by the Foundation in December 2014 and Spring 2016 supplemented by periodic updates in Winter, Summer and Spring 2015 and Summer 2016. In addition, the Foundation responded in February 2016 to the Civil Courts Structure Review – Interim Report of Lord Justice Briggs which amongst other things proposed the introduction of an online Small Claims Court. The Foundation also published a special report on the Legal Services Corporation’s 15th Annual Technology Initiative Grants Conference held in San Antonio, Texas in January 2015. These reports are supplemented by a website (www.law-tech-a2j.org) and a twitter account ([@law-tech-a2j.org](https://twitter.com/law-tech-a2j.org)). Some of the content of the website has been integrated into this current update.

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Contents

Introduction	05
<hr/>	
1 Overviews	09
General drivers for change	09
Professor Richard Susskind	14
The Commission on the future of Legal Services in the USA	15
Crowd funding, justice and technology	18
Bots are good but content is better	19
<hr/>	
2 Artificial Intelligence (AI)	22
Introduction	22
AI and Judicial predictions: early days	25
<hr/>	
3 Online Dispute Resolution (ODR)	28
Introduction	28
Transforming our Justice System	31
Sage words from Northern Ireland	34
Online courts: enough with tinkering	34
ODR and Digital Assistance: home truths and overseas inspirations	37
British Columbia's Civil Resolution Tribunal(CRT) first decision: move along, not much to see here	40
Online Dispute Resolution and <i>I, Daniel Blake</i>	41
Digital exclusion and a Small Claims Online Court	43
Small Claims and ODR:Victoria, Australia's model approach	47

Contents

4. Developments in Progress	49
Introduction	49
Illinois LegalAid.org: the house that users built	49
Ontario Community Legal Clinics and A2J guided interviews	52
Robot lawyers. An Australian foray into automated document assembly for criminal cases	55

5. The standards and Evaluation of new initiatives	58
Something is going on! the rise and rise of the hackathon and competitive pitch	58
London hackathon	60
I can see clearly now: Victoria Legal Aid's exemplary App evaluation	64

6. Technology, Legal Education and Training	67
Training lawyers online: the development and launch of Ryerson University's Law Practice Program	67
Digital and simulation in the teaching of law: emerging from the shadows	71

7. Organisation and Leadership	78
Online Dispute Resolution, Online legal service: the question of leadership	78

8. The Way Forward	82
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Introduction

This update covers the period from the end of July to the beginning of December 2016. It gives an opportunity to place contributions on the *website* established by The Legal Education Foundation within an overall

context. A further Annual Review will be published in Spring 2017 looking back over the whole year and forward to 2017. The following themes emerge from the four months under consideration. They are expanded in separate sections.

1. Overviews

The period contained the publication of a number of attempts to understand the nature of current change.

Such is the breadth and speed of change that it is worth recording the most significant overviews.

2. Artificial Intelligence (AI)

The potential importance of AI to the practice of law is becoming more apparent by the day as, indeed, is its potentially transformative effect on the economy as a whole. Articles pour out on its implications. The period saw reports from a committee advising the President of the United States on the general application of AI and a commission established by the American Bar Association looking at the effect of new technology on law which also considered AI. As yet, there may be little direct application of AI in the field of legal services for those on low incomes – for all that there is increasing use of guided legal pathways as, for example, in MyLawBC or in various use of

‘chatbots’. All of these currently lack the crucial element of AI, the capacity for self-learning by the computer programme. Nevertheless, the indirect effects of the development of AI are likely to impact on legal services for those on low incomes in various indirect ways – through, for example, a potential reduction in the number of commercial lawyers and a consequent diminishment in the pro bono assistance which is obtainable from their sector of the profession. There may well be direct impacts as well, for example in relation to how AI transforms legal research – particularly in common law, precedent-based jurisdictions.

3. Online Dispute Resolution (ODR)

ODR has advanced significantly during the months under consideration. A report on civil justice in Northern Ireland took a rather cautious view of developing an online small claims court but no such inhibition has restricted progress in England and Wales. A final report by Lord Justice Briggs in July (*Civil Courts Structure Review*) was followed by the announcement of a gung-ho response from the Ministry of Justice, supported by the Lord Chief Justice and the Senior President of Tribunals, in

September. England and Wales is driving forward to an online Small Claims Court. Meanwhile, the Civil Resolution Tribunal in British Columbia, a potential prototype that will expand its jurisdiction into small claims from 'strata disputes' next year, has heard and published its first case – albeit, and perhaps frustratingly for those concerned, one which does not really showcase its online capabilities. A major conference, *Law and Courts in an Online World*, was held in Melbourne with a host of international speakers in November – an indication of the widespread attraction of bringing ODR within the existing court structures.

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4. Developmental Progress

There is considerable steady progress on innovative programmes which have developed during the year. *MyLawBC* is now functioning. The *Rechtwijzer* is establishing itself. In England and Wales, CitizensAdvice is revamping its website so that it can become a multi-channel source

of information and, in the process, has added an innovative and interesting facility to watch the use of its website in real time. Below are additional examples from the US, Canada and Australia – Illinois Legal Aid Online, the use of A2J software in Ontario's legal clinics and Robot Lawyers in Melbourne.



5. The Standard and Evaluation of New Initiatives

The issue of the standard and methodology of new initiatives is difficult. On the one hand, there is an enormous amount of enthusiasm for the application of technology to increase access to justice. Hackathons to develop apps within short periods of time have been held in many of the major tech centres around the world from The Hague to Toronto. In addition, a wide range of developers, many of them students, are actively pursuing ideas and innovative approaches. Understandably, journalists wish to encourage them and there is a temptation for uncritical reporting

of their achievements. Just occasionally, there are examples of agencies prepared to be brutally transparent in their assessment of a new product. A good example is provided by Victoria Legal Aid in relation to an app that it helped to develop on age requirements. It is becoming clear that we need to develop standards, where appropriate on an international basis, by which we can evaluate the success of innovative products without unduly diminishing the commitment of the thousands involved in their development to give their time, energy and expertise.

6. Technology, Legal Education and Training

The application of technology to legal education is beginning to emerge as an issue. Ontario is experimenting with legal practice training which is largely online. The high cost of legal training (and the growing uncertainty of subsequent employment) is precipitating calls for ways in which qualification might be made affordable. That is

raising issues about regulation and examination (as in England and Wales where the Solicitor Regulation Authority is proposing a new Solicitors Qualifying Examination to replace expensive mandatory training requirements) and the use of technology as in the pilot at Ryerson University in Toronto.

7. Organisation and Leadership

Finally, there is the ticklish issue of strategic leadership. Technology is collapsing previously separate fields. It used to be just about possible to discuss court reform separately from other access to justice issues such as online legal information and advice prior to issue of proceedings. This no longer really makes sense. No one agency or institution entirely fits the role. A number of jurisdictions, particularly in North America, have developed Access to Justice Commissions of one kind or another, often with judicial leadership.

Independent legal aid administrators, such as Victoria Legal Aid can bring together the major players. Courts and judges can play a role – as in England and Wales where the Civil Justice Council, chaired by a judge, has sought to extend its role to access to justice more widely. In appropriate circumstances, it could be a Ministry of Justice that takes the initiative to develop holistic provision. The American Bar Association has tried to fill the gap with its newly created Centre for Innovation based in Chicago. In its opening announcement, this is clearly seeking to span the court/legal practice divide: ‘One of its first initiatives will be assisting with a court-annexed online dispute resolution pilot program in New York.’ Coherent leadership over the whole of access to justice may be practically impossible but this review is part of a process of seeking less ambitiously just to decipher and pull together what is going on at a time of breakneck speed of developments.

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1. Overviews

With the above identified as particular trends, this is a summary of major developments from July to December 2016 – beginning with an edited version of an overview

produced as a keynote speech for a conference in Ontario – and accordingly deploying a Canadian orientation.


General Drivers for Change

The world is in the grip of a revolution likely to be every bit as profound as the industrial spurt that once put Great Britain at the top of the economic tree. Like all revolutions, this has both a dark and light side. Not everyone benefits from the platform or gig economy and the “uberisation” of services. The current impact of technology compounds the previous loss of steady and respected employment in mining, steel-production and manufacturing. It is a trend which manifests variously – including in the protest phenomenon of a Trump or a Brexit. It will change economies, politics and, there can be little doubt, legal services.

In the field of legal aid, we need to be aware of the effects of these broader changes to society. Potential clientele may change – more people may come in and out of poverty, some of the new poor may well be much better educated and literate than those we have traditionally served; those left

behind may feel more disengaged than ever; physical communities may maintain less cohesion; the legal problems of those on low incomes may change as casualisation transforms the labour market and in countries like my own, private renting returns as a major housing provider. Government budgets may be hit to varying degrees by cash flowing less accountably out of the economies in which it is earned.

One of the upsides of the current maelstrom of change is its energy. Canadian legal services is as good a place to see that as anywhere. British Columbia has no less than three world-leading organisations in terms of the application of legal technology: its own Ministry of Justice that is developing the Civil Resolution Tribunal as what should be the first online small claims court to become operational; the BC Legal Services Society with its *Rechtwijzer* based MylawBC which is a vision of the kind of interactive



website that will sweep the board in the field of legal information and advice; and the Justice Education Society whose imaginative use, for example, of video avatars shows a future where the visual can be incorporated into the written in the communication of advice. Ontario provides the example of collaboration between a university, Ryerson, and the Ministry of the Attorney General in a competition for legal start-ups, a good instance of the very modern combination of the academic, political and commercial. And Ross Intelligence may now be based in California but the leading developer of IBM's artificial intelligence capacities in the field of law was started by students at the University of Toronto. In Quebec, you have the well-established example of the Cyberjustice Laboratory at the University of Montreal as a university-based originator of research into the application of technology to law. The Canadian Bar Association opened its August conference with 'The Pitch', a legal start up competition.

We need some sort of overview of the forces at work.

Out in front is the drive for profitability by the large commercial firms... They are leading the way in the deployment of AI to processing the law itself and the data which surrounds large commercial transactions.

Out in front is the drive for profitability by the large commercial firms. They led the way in the use of the cloud, case management software, outsourcing and the first wave of back office reform. They are leading the way in the deployment of AI to processing the law itself and the data which surrounds large commercial transactions. The cost of developing AI in the fields of poverty law would seem an overwhelming barrier at least for now but it will undoubtedly seep in – most likely as it is deployed by courtroom advocates in judicial hearings; in areas of law such as employment where there are diverse potential clients, some of whom are very well off; and as the cost of using the technology reduces.

Following the big commercial firms are bodies concerned to service the market of individual clients on low incomes. Practitioners wish – and need – to minimise their overheads and thereby give themselves an edge on the competition. The hunt is on for what future guru Richard Susskind called 'the latent legal market', those willing to pay something for legal services if the price were what they would regard as affordable, which is significantly less than has traditionally been the case.

The best examples of this may well come from England and Wales where the effect of new technology is being augmented by new forms



of regulation which allow the third party ownership of law firms. So, you have the arrival of venture capital to bolster models of provision which are national, web-led and sometimes deploy varying degrees of unbundling. For example, we have the establishment of Co-operative Legal Services as an offshoot of a retail and wholesale chain and Slater and Gordon, an aggressive Australian firm that is seeking to establish a national brand. Both of these have encountered financial difficulties on which apologists for traditional delivery have fallen with delight but they should not crow too early. These individual examples may fail but others will succeed.


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There are also a variety of ways in which practitioners without major capital funding can base themselves on a virtual presence and deal with clients remotely both in new organisational forms as well as the old. The extension of video communication as an alternative to conventional meeting seems potentially revolutionary if it were widely deployed. It also destroys much meaning to any posited opposition between digital and face to face legal services. A firm like

Epoch in England sells its services to legal expenses insurers and deploys the website, video, lawyers in a central location and document assembly software to produce wills for the clients of the insurers in a new way. Or video can be used within a firm or organisation in the way that New Mexico Legal Assistance held together its expert team on bankruptcy by using what used to be called the 'hub and spoke' model where a specialist team is fronted by outreach offices.

An important point here is that digital delivery is not necessarily an either-or proposition. A legal firm in England has developed a product called Siaro which asks a potential client to explain about their case in a series of guided alternatives and then provides a dashboard suggesting what has to be done by the lawyer. The result is that the time in each individual initial interview is reduced significantly. This is such a simple application of guided pathways that it will be amazing if it does not take off more widely. It can help the user to identify the core element of their problem, prepare them for the answer and save the lawyer having to go through a standard time-consuming and repetitive interview process. It represents the win-win of a better service at a reduced cost.

Coming in next is government. Its roles are many faceted. Ontario's government is backing



its commitment to legal innovation by making money available to facilitate the competition organised by Ryerson University.

At the same time, the Ministry of Justice in England and Wales is also pushing ahead with a major plan to move Small Claims Courts online, following just behind British Columbia. The Ministry is under massive pressure to make savings by way not only of on-going expenditure but also from the selling of valuable inner city court sites. The reforms have been heralded by an inquiry and report under a senior judge which accepts the need for physical assistance to litigants in person. However, the danger remains that these essential elements will be missing from the final implementation. All this government technologically-based activity is likely to encourage technology-based response. ODR will be a major driver for online legal services in response. Voluntary schemes from which opt out is allowed will, no doubt, multiply. But mandatory online determination for small claims proposed both for BC


and England and Wales and for the same reason – take up would otherwise be low and the financial savings less. Mandatory state backed determination online represents a change for ODR as it has developed. ODR traditionally has been more akin to Alternative Dispute Resolution (ADR). So, we might perhaps distinguish it as Online Dispute Determination (ODD).

The Dutch experience with its *Rechtwijzer* programme suggests that this could extend to family cases as well as small claims. Sensitively managed, this could be a real boon but insensitively managed, it could simply open up further the digital divide between the empowered and unempowered, posing a major challenge for legal services. In any event, ODD will be a driver for online legal services.

It would be surprising if service providers were immune to the enthusiasm of the new technology. All around the world, providers are experimenting with what can be done on the web. The big breakthrough is the deployment of the guided pathway as developed

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by the *Rechtwijzer* and demonstrated by MyLawBC. Once you have seen how an advice website can follow the form deployed by an airline if you want to buy a ticket then the usual static website is massively out of date. This is web information 2.0. And, together with automated document assembly, guided pathways represent the perhaps belated introduction of interactivity into provision. Any process that ends in a document can usually be automated. The scope in law is huge; and it is not just the automation: it is the ability to put the software into a visual context like the A2J software developed in the USA. We need to explore how far this can be taken.

the UK of apps for homelessness and domestic violence. In London, this dynamism has even been harvested by a community law centre in Hackney which ran a successful hackathon. Traditional borders are being crossed here. The institute in The Netherlands, HiiL that developed the *Rechtwijzer* is now self-funding. Its continuing existence depends on selling its product. HiiL leaders are scouring the world for potential clients to follow the British Columbia Legal Services Society and an initial agreement with Relate in London, England. Modria, which provides some of the background software, is an overtly commercial company on the hunt for business in a similar – but perhaps more traditional way.

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The final aspect is the drive of the entrepreneurs and businesses themselves. They are bubbling up to compete – often in highly competitive environments where everyone realises that most will fail. They are demanding to be heard in their assertion that they can do something. That is what you see at the CBA's Pitch, the Ryerson competition, the development in

The overall impact of these drivers will be a revolution in legal services every bit as powerful as that which happened around much of the developed world in the 1970s but with one major difference. That revolution was driven by funds largely provided, one way or another, by the state and made use of by commercial forces within the profession. This one is being driven much more by commercial forces and it is an open question how much the state, in the form largely of legal aid administrations, can make use of them. The potential impact of legal aid administrations is considered in an earlier post.

Professor Richard Susskind

Another overview of developments was given by one of the great gurus of the future of legal services, Professor Richard Susskind in his annual lecture to the Society of Computers and Law.

This was a typically bravura performance delivering a comprehensive review of the impact of technology on the law. This is a topic which Professor Susskind has made his own. He first lectured on it to the SCL thirty years ago. It has been the subject of a veritable slew of books ever since.


In the space of an hour, Professor Susskind took his audience over the ground – through issues relating to access to justice, ODR, 'Biglaw' and AI, legal education and the future range of legal employment.

Professor Susskind is to be commended for emphasising the importance of technology to the potential improving of access to justice. This follows a concern in his later books and was his point of entry into the topic in the lecture. It makes a refreshing change from beginning with the miracles of Watson and AI. The legal system, he argued, was too costly, too

slow, too combative and too out of step with the internet society. We needed to devote more resources to dispute avoidance and containment rather than dispute resolution. He made an apt analogy with healthcare. Decoded, I take this to mean more money on legal information, education and advice rather than on courts and lawyers.

The concern with access led to a domestic point of relevance to those in England and Wales. Professor Susskind recited his involvement in proposals for an online small claims court and he welcomed the drift of Government Policy in developing online. However, he expressed his concern that the Government was intent on moving too fast. We should start with small claims and undertake a pilot in order to study the results. We should 'build incrementally, not go for a Big Bang'. Government proposals, it may be remembered, are to do exactly the opposite. I could see a number of judges in the audience. Whether anyone from the Ministry of Justice was listening will be known soon enough.

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He pointed to the extent to which technology was transforming practice of the big commercial firms and how most of the big City firms, in particular, were developing alliances in relation to AI. The 'Big Four', the large international accountancy firms, were, in this context, to be regarded as real competitors to the established legal practices.

Finally, he lamented the failure of legal education in England and Wales. It was caught in the last century and not adapting to the shift in employment that will be created by technological change.

He contrasted the number of research centres on law and innovative technology in the US with those in the UK (zero).

We are falling behind what was needed both in terms of how we delivered training... and the roles for which we trained students.

We are falling behind what was needed both in terms of how we delivered training (failure to use simulated learning techniques to any degree) and the roles for which we trained students.

The Commission on the Future of Legal Services in the USA

A third overview came from the US. *The Commission on the Future of Legal Services*, convened by the American Bar Association (ABA), reported in August. The ABA Commission deftly deals with the limitations, on a representative body, of embracing a future about which its members may well have different views. It reports on demands to open up legal work to non-lawyers but takes no view. Similarly, it notes that multi-disciplinary partnerships and alternative business structures (ABS) are operational elsewhere and need to be taken seriously. It deploys a nice use of language to bypass judgement: 'Continued

exploration of ABS will be useful, and where ABS is allowed, evidence and data regarding the risks and benefits associated with these entities should be developed and assessed.'

The report tends to the optimistic. It reports on a national summit on innovation in legal services held at Stanford University last year. This contains a page and a half list entitled 'Summary of Potential Opportunities'. It is worth reading because it operates as a checklist of possible improvements.

The trouble, as the report notes elsewhere, is widespread resistance to innovation. The ABA committee


wants to encourage and to inspire. So, understandably, it spends little time on the downsides. Alas, it is pretty likely that AI and machine learning will decimate the number of lawyers deployed in commercial practice as it is now undertaken – even if the market in ancillary trades (e.g. ‘legal knowledge professionals’) expands. A hollowing out of the profession is possible in exactly the same way as has happened in manufacturing and elsewhere in the economy. This is a difficult topic for an ABA or a Law Society but it is the spectre that hangs over much of their membership behind all the bright talk of the new and exciting. A specific issue for those concerned with low income clients is whether they are safely harboured from the full might of this storm or whether they too will be caught within it. We shall see.

For extra-jurisdictional purposes, the most valuable part of the report is its analysis of the sources and streams of technology-based change. These methodically work their way through technology’s impact on the courts, bar associations, law schools and lawyers. The advantage of this approach is that it gives a ‘helicopter’ view of developments in a country where technology is advancing most quickly. What comes through very strongly is the way in which innovation is creating a momentum of its own. There is an interesting section on ‘legal start ups’ which reports that, as an indicator of increasing interest, 15 legal startups figured on one website (AngelList) in 2009.’ By 2016, over 400 legal startups (and perhaps as many as 1,000) were in existence.’ One driver in this movement are the law schools who are now increasingly offering courses in e-discovery, outcome prediction, legal project management, process improvement, virtual lawyering and document automation and also providing ‘incubator’ assistance.



400

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The downside of separating out different innovative elements is that the ensuring greater clarity of analysis masks the dynamism of the underlying processes and the way in which different elements merge to maximise their combined effect. For example, certainly in the UK, a major transforming force in legal services at the present time is a combination of issues which the ABA tends to separate: external funding and ownership; unbundling of services, national branding and remote service delivery. The aggregation of these different factors is allowing the emergence of firms, some trumpeting a non-legal brand (eg Co-operative Legal

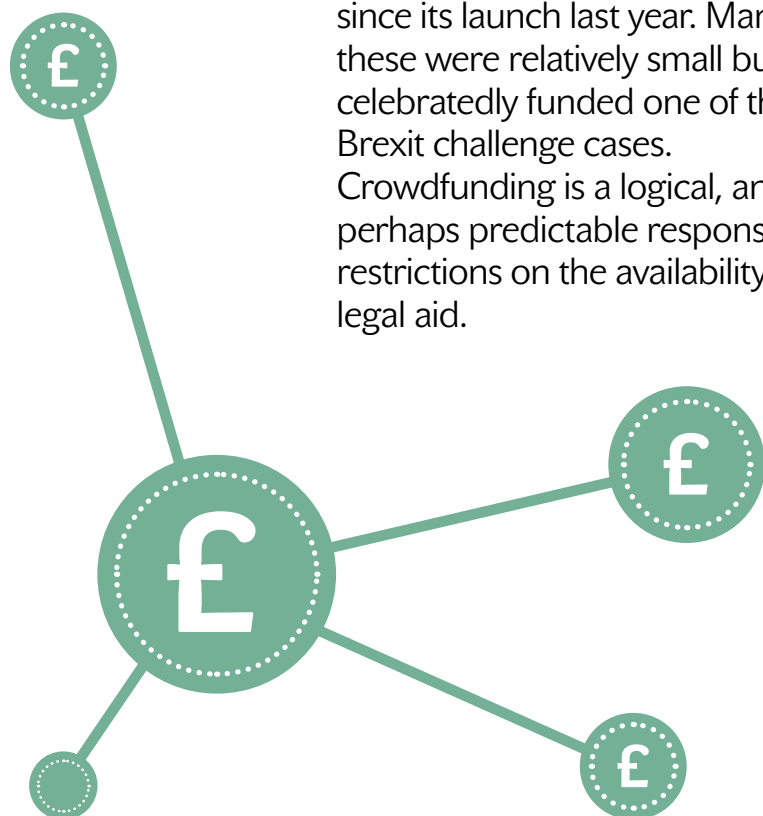
Services) which are seeking to restructure the market from a local to a national one. The large corporate firms, meanwhile, have, for the time being, stayed away from ABS structures (probably to some extent because of US hostility) but have incorporated cumulative waves of technological development, beginning with back office functions (and allowing outsourcing), moving through the digitisation of case law for research to the use of AI, machine learning and the processing of 'big data' in systems capable of predicting judicial decision-making and purposive review of massive documentation.

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Crowdfunding, Justice and Technology


One of the characteristics of much innovative use of technology is that the novelty comes in the process not the substance. Thus, champerty and maintenance have been long known in the legal system – if, from time to time, prohibited. Crowdfunding is simply a modern form with a digital twist that allows the transparent soliciting of contributions for the support of litigation. The prime crowdfunding website in England and Wales is crowdjustice.co.uk. Its CEO is Julia Salasky. Other websites in the same territory are crowdfunder.co.uk and justgiving.com. Ms Salasky reports that her operation had raised around £1.5m with average individual contributions of £35. It has supported around 85 cases since its launch last year. Many of these were relatively small but it celebratedly funded one of the Brexit challenge cases. Crowdfunding is a logical, and perhaps predictable response, to restrictions on the availability of legal aid.

The new elements introduced by technology are the ability for rapid dissemination of publicity – often assisted by social media campaigns – combined with the easy ability to aggregate small donations. Also relevant are regulatory changes, introduced to facilitate the introduction of conditional fee agreements when legal aid was abolished for personal injury cases, which consigned the barriers of champerty and maintenance to history. A further factor is the very existence of crowdfunding websites with their drive for business and growing expertise in the field. The recent growth of administrative law challenges, accelerated by the Human Rights Act, has created a background expectation of a wider range of judicial challenge with an accompanying penumbra of lawyers experienced in the field. A government whose core identity has been hung on making cuts to the finances and reach of public benefits and institutions, as a response its reduced income as



£1.5m

One crowdfunding operation raised around £1.5m with average individual contributions of £35.



a result of the global financial crisis, has offered itself as a tempting target.

If crowdfunding proves too successful, we can predict more legislative intervention as the Government seeks further to limit the scope for challenge. However, the emergence of large private litigation Funders, operating on a commercial basis and effectively as part of the betting industry, should provide some degree of wider institutional protection. In the

meantime, crowdfunding seems likely to thrive and to provide a democratised element to legal challenge which may embed it more firmly within the tools available to the lobbyist, critic and campaigner. It will be very much buttressed by modern ways of using social media. And the crowdfunding movement provides a very good example of how technology rarely operates in a vacuum. Its impact in the legal sphere, as in others, comes in tandem with other political, social and economic forces.

Bots are good but content is better

Similarly, the exciting innovation of 'chatbots' or 'bots' can obscure the fact that, ultimately, content remains king and a bot is as good as its substance – though their potential for the improvement of communication may prove enormous.

One of the most publicised developers is Joshua Browder, a 19 year old Stanford University student described by his Wikipedia page as 'a British entrepreneur and public figure'. He is best known for having invented DoNotPay, a website sometimes described as a

'chatbot' or just 'bot' that allows motorists to contest parking tickets.

Mr Browder is clearly a dab hand both at coding and marketing. His work has been widely covered in the media – specifically the *Huffington Post*, the *BBC*, *Daily Mail* and the *Guardian*. 160,000 people are said successfully to have used his website, saving around £2m and he has followed his parking venture with content that deals with homelessness, delayed flights and PPI claims.

Less hip readers may be unfamiliar with the concept of a bot. Wikipedia defines it as 'a software application that runs automated tasks (scripts) over the Internet'. Apple's Siri is a good example. You ask a question in normal language and it replies. Bots are the latest thing. According

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to the *Guardian* 18 September) senior staff at both Microsoft and Facebook see the bot as the 'new app', the next big thing. The clever thing about a bot is that it can interpret ordinary language and reply in kind so the experience of communication is more like with a human. Bots can also be integrated into a messaging service which is why Facebook likes them – you don't have to access them through an app or a website.


You can ask the DoNotPay bot a specific question within its competence or you can ask generally what it does. If you say that you want to appeal because the signage telling you that you could not park was inadequate then it prompts you for detail and encourages you to input photos. It then generates a letter of appeal. The software purports to work for the UK and New York. So far, so good. Some users will find this exactly what they want.



The deficiencies become clearer if you start to look at more prosaic (but more thorough) websites that deal with parking disputes. In England, you generally have a right of 'informal challenge' to the relevant local authority over a parking ticket. You can then, if still dissatisfied, appeal to the *Traffic Penalty Tribunal* whose Chief Adjudicator, Caroline Shepherd, has taken a lead in using online procedures. In other words, much of the process is already online with some guidance already there.

The best independent website on parking disputes in England and Wales is probably *moneysavingexpert.com*. Which, the Consumers Association, also has a *useful website*. These are linear, descriptive and lack any element of interactivity; but, they have the smell of authenticity. You feel that the writers have really dealt with cases of this type and know the issues that come up. They give major prominence to the difficulties, for example, that arise when private contractors mimic public authorities and seek non statutory compensation. Both websites cover this issue well and have good illustrations of dodgy tickets and information on how to detect them.

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These are the type of cases likely to give more difficulty than those where, to take an example covered by the bot, your car gets a ticket after you have sold it. In other words, a website – even one as potentially exciting as a bot – is as good as its substantive content.

It would be possible, on this basis, to be somewhat critical of Mr Browder's product. Start to get a bit sceptical and you might begin to ask a number of other questions. For example, just how are numbers using the website known – or, more likely, estimated. Surely, every successful user does not report back to HQ. In any event the really important figure – which must remain unknown – is how many additional parking tickets were challenged that otherwise would have been the case without the bot.

So, old timers in the advice field might shake their heads at proof that these fancy new bots won't beat good old advice from deeply experienced advisers.

However, the reason why Mr Browder is onto something is not really about the content that a university student was able to get together from a pretty cursory examination of the web. It is the method. Imagine how advice provision could be transformed if you could just chat with a bot on Facebook or any other form of social media about your problem and its possible solution. You could even think of adding this content to a general facility like Siri. That is what Mr Browder has seen. Once he or others start to upgrade the content then we would have something interesting which would really justify widespread media interest.

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2. Artificial Intelligence (AI)


Introduction

Despite the appeal of crowdfunding and chatbots, the single most important innovation in the field of legal services is undoubtedly AI – a topic on which a US committee of the National Science and Technology Council has drafted a thoughtful report, *Preparing for the Future of Artificial Intelligence*.

The report eschews fanciful speculation about the future and is largely concerned with what it terms ‘narrow AI’ ‘which addresses specific application areas such as strategic games, language translation, self-driving vehicles and image recognition’. In particular, it looks at ‘machine learning’ which it distinguishes from older ‘expert system’ approaches. Machine learning is concerned to analyse bodies of data and ‘derive a rule or procedure that explains the data or can predict future data’. The report explains how complex this basically simple process has become.

One of the most interesting findings from the use of AI – which is relevant to its deployment in fields like law – is that the most effective way of using machines in complex intellectual areas may be in tandem with humans. ‘In contrast to automation, where a machine substitutes for human work, in some cases a machine will complement human work ... Systems that aim to complement human cognitive capabilities are sometimes referred to as intelligence augmentation. In many applications, a human-machine team can be more effective than either one alone, using the strengths of one to compensate for the weaknesses of the other. One example is in chess playing, where a weaker computer can often beat a stronger computer player, if the weaker computer is given a human teammate this is true even though top computers are much stronger players than any human. Another example is in radiology. In one recent study, given images of lymph node cells, and asked to determine whether or not the cells contained cancer, an AI-based approach had a 7.5% error rate, where a human pathologist had a 3.5% error rate;

In many applications, a human-machine team can be more effective than either one alone, using the strengths of one to compensate for the weaknesses of the other.



a combined approach, using both AI and human input, lowered the error rate to 0.5%, representing an 85% reduction in error.'

This message of partnership is the one consistently put out by those like IBM and Ross Intelligence who are developing the use of AI in the field of law. Thus, AI may reduce the number of lawyers and legal workers required for a particular task but it will not eliminate the need for them. Those that remain will, however, work at a higher level.

The report gives a number of examples of the deployment of AI by government or otherwise in the public good. Government has, of course, also to regulate developments in AI such as the development of autonomous cars and pilotless drones. Jobs for lawyers – assisted by AI – should abound here. It notes also the composition of those employed in the field as an issue that Government should address: 'the lack of gender and racial diversity in


the AI workforce mirrors the lack of diversity in the technology industry and the field of computer science generally'

The deployment of AI in the justice system is considered – raising a specific point with a general relevance. Systems based on big data can be susceptible to bad data: 'In the criminal justice system, some of the biggest concerns with Big Data are the lack of data and the lack of quality data. AI needs good data. If the data is incomplete or biased, AI can exacerbate problems of bias. It is important that anyone using AI in the criminal justice context is aware of the limitations of current data. A commonly cited example at the workshops is the use of apparently biased "risk prediction" tools by some judges in criminal sentencing and bail hearings as well as by some prison officials in assignment and parole decisions, as detailed in an extensively researched ProPublica article.



85%

Using both AI and human input resulted in 85% reduction in error.




The article presented evidence suggesting that a commercial risk scoring tool used by some judges generates racially biased risk scores. A separate report from Upturn questioned the fairness and efficacy of some predictive policing tools.’ This is likely to become an increasingly important issue as tools are developed to assist in the making of difficult decisions in a justice context.

AI applications also have the potential to address global issues such as disaster preparedness and response, climate change, wildlife trafficking, the digital divide, jobs, and smart cities.

AI is, of course, inherently international: ‘International engagement is necessary to fully explore the applications of AI in health care, automation in manufacturing, and information and communication technologies (ICTs). AI applications also have the potential to address global issues such as disaster preparedness and response, climate change, wildlife trafficking, the digital divide, jobs, and smart cities. The State Department foresees privacy concerns, safety of autonomous vehicles, and AI’s impact on long-term employment trends as AI-related policy areas to watch in the international context.’

The use of AI in weapon systems is an example of its international – and not uncontroversial – deployment:

‘These technological improvements may allow for greater precision in the use of these weapon systems and safer, more humane military operations.’ Here lie some pretty major ethical issues on which the US takes a distinctive view: ‘Over the past several years, in particular, issues concerning the development of so-called “Lethal Autonomous Weapon Systems” (LAWS) have been raised by technical experts, ethicists, and others in the international community. The United States has actively participated in the ongoing international discussion on LAWS in the context of the Convention on Certain Conventional Weapons (CCW), 80 and anticipates continued robust international discussion of these potential weapon systems going forward. State Parties to the CCW are discussing technical, legal, military, ethical, and other issues involved with emerging technologies, although it is clear that there is no common understanding of LAWS. Some States have conflated LAWS with remotely piloted aircraft (military “drones”), a position which the United States opposes, as remotely-piloted craft are, by definition, directly controlled by humans just as manned aircraft are. Other States have focused on AI, robot armies, or whether “meaningful human control” – an undefined term – is exercised over life-and-death decisions. The U.S. priority has been to reiterate that all



weapon systems, autonomous or otherwise, must adhere to international humanitarian law, including the principles of distinction and proportionality. For this reason, the United States has consistently noted the importance of the weapons review process in the development and adoption of new weapon systems.’

The report concludes: ‘Government has several roles to play. It should convene conversations about important issues and help to set the agenda for public debate. It should monitor the safety and fairness of applications as they develop, and adapt regulatory frameworks to encourage innovation while protecting the public. It should

support basic research and the application of AI to public goods, as well as the development of a skilled, diverse workforce. And government should use AI itself, to serve the public faster, more effectively, and at lower cost.’ Recent reports from, for example, the ABA and the Law Society of England and Wales indicate that they accept that legal professional bodies have a similar range of roles to fulfil.

Government has several roles to play. It should convene conversations about important issues and help to set the agenda for public debate.

AI and Judicial Prediction: Early Days

A host of other news stories confirmed that AI was coming of age. Some care needs to be taken about evaluating new projects.

Bloomberg Law has launched a *Litigation Analytics tool*. This seeks to predict the behaviour and decision-making of individual judges. So, if you have a case before, for example, a Mr Justice Scalia, how is he likely to react as judged on the basis of statistical analysis of his record as against your hunch as an experienced lawyer? Well, mining data from the courts, company analysis and elsewhere, Bloomberg can predict motion

outcomes, appeal outcomes, average length of time to resolution and case types. It also tracks the individual lawyers representing clients before individual judges. Data covers all federal judges since 2007.

Bloomberg’s Darby Green told the *ABA Journal* that she believes ‘we’re at an inflection point right now. Companies and lawyers are primed to start using predictive analytics more and more. Any lawyer will tell you that prior behaviour is not a guarantee of future behaviour but it can help make you better informed as you make decisions’. In a webinar

on 1 November, Ms Green *promises* to show how to use Bloomberg's new tool to:

'Uncover relationships among law firms, companies and judges to inform litigation strategy;

- Understand a judge's behavior when ruling on certain motions;
- Better predict possible litigation outcomes through data visualization'.

Bloomberg's move has given rise to a certain amount of media observation on the emerging market for this kind of tool.


Legaltechnology.com reported that 'The launch will put Bloomberg in competition with litigation data mining company *Lex Machina*, which was acquired by LexisNexis in 2015 and through its Legal Analytics platform provides insights about judges, lawyers, parties and patents. The Silicon Valley company initially focused on IP litigation but with LexisNexis' backing is expected to significantly extend its offering and in September unveiled a Courts and Judges Comparator and Law Firm Comparator that instantly compare the court results and

performance of both law firms and courts and judges in the U.S.'

The Bloomberg analysis can certainly reveal which judges are stingy at granting motions but the real use of such a tool would be where it can replicate the experienced advocate's hunch that a particular judge might be susceptible to one particular line of argument over another. Our fictional Mr Justice Scalia might well, for example, have expressed views on how the constitution is to be interpreted which could sway how an advocate presents a case. Mining these is where the machine will come closest to rivalling the intuition and learning of an experienced advocate.

Meanwhile, back in Europe, a group of academics have had a go at *predicting decisions* of the European Court of Human Rights. They *surmised* that 'published judgments can be used to test the possibility of a text-based analysis for ex ante predictions of outcomes on the assumption that there is enough similarity between (at least) certain chunks of the text of published judgments and applications lodged with the Court and/or briefs submitted by parties with respect to pending cases.' Their analysis concerned decisions under Article 3 (torture and ill treatment), 6 (fair trial) and 8 (right to family life).

The real use of such a tool would be where it can replicate the experienced advocate's hunch that a particular judge might be susceptible to one particular line of argument over another.



The academics got a predictive correlation of around 79%. The strongest predictive element were the facts: 'we observed that the information regarding the factual background of the case as this is formulated by the Court in the relevant subsection of its judgments is the most important part obtaining on average the strongest predictive performance of the Court's decision outcome'. They realised, however, that you had to be careful. The judges sometimes were a bit casual in their statements of the law: 'The relatively lower predictive accuracy of the 'Law' subsection could also

be an indicator of the fact that legal reasons and arguments of a case have a weaker correlation with decisions made by the Court. However, this last remark should be seriously mitigated since, as we have already observed, many inadmissibility cases do not contain a separate 'Law' subsection.'

The practical message of this research for advocates would appear to be that there is considerable value in articulating the facts of any case in terms similar to successful precedents. Again, this is hardly rocket science.

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79%

3. Online Dispute Resolution (ODR)

Introduction

Lord Justice Briggs, published his *final report, Civil Courts Structure Review* in the summer which laid the ground for a Ministry of Justice statement that followed. His *interim report* attracted significant domestic and international interest. For anyone interested in developing ODR within the courts, his Reports are likely to be mandatory reading for some time to come because they deal with the major issues and have been written with an eye to implementation. They stand as a coherent approach to introducing an online process for small claims.

Lord Justice Briggs makes a strong case for what he now calls an Online Solutions Court. But there are at least four issues that require further consideration before implementation in England and Wales.

Since publication of his interim report, Lord Justice Briggs has made contact with those working in the California courts (by video); checked out the *Rechtwijzer*; and has physically gone to British Columbia to see the Civil Resolution Tribunal. So, this was a high powered judge who may be

regarded as in position of all the relevant facts. What did he make of them?

The core recommendation is that, as summarised *for the press*: 'There is a clear and pressing need to create an Online Court for claims up to £25,000 designed for the first time to give litigants effective access to justice without having to incur the disproportionate cost of using lawyers. There will be three stages: Stage 1 – a largely automated, inter-active online process for the identification of the issues and the provision of documentary evidence; Stage 2 – conciliation and case management, by case officers; Stage 3 resolution by judges. The court will use documents on screen, telephone, video or face to face meetings to meet the needs of each case.'

Lord Justice Briggs makes a strong case for what he now calls an Online Solutions Court. But there are at least four issues that require further consideration before implementation in England and Wales. These also have a wider resonance in the wider field of global discussion of ODR within

the courts: integration, compulsion, costs and the fundamental policy objective.

The issue of integration relates to how new online court processes interact with existing sources of advice. Here, Lord Justice Briggs loses a little of the sureness of touch which characterises much of the rest of his report. Realising that his proposed opening stage 1 (in which users would identify legal problems and start to encounter triaging in how they are dealt with) needs amplification, he starts positing new stages 0 and 0.5.

People used to be able to get a modicum of assistance with 'any matter of English law' from a solicitor under legal aid, originally for two hours. They now cannot.

He also uses the phrase 'public legal education' to cover somewhat uneasily what would normally be seen as the provision of information and advice by such bodies as individual advice agencies and the Citizens Advice Bureaux. Unravelling this will be crucial to the opening phase of commencing an action. Are the courts offering themselves up as dealing with individuals who have had no other assistance from any other body or do they imagine that someone will come to them primed by an advice agency? This confronts the issue of the demise of legal advice and assistance. People used to be able

to get a modicum of assistance with 'any matter of English law' from a solicitor under legal aid, originally for two hours. They now cannot.

Lord Justice Briggs realises that there will be a job here for the advice agencies. There may be pro bono assistance; there may be law students; but there will need, as he recognises, to be court-funded individual help for litigants in person. He extols the Californian court self-help provision which he took some trouble to find out about. The Ministry of Justice has to understand that that this will cost them money. Some users will come direct to the court – often because the front line agencies will fail, not be available or not approached. Lord Justice Briggs does acknowledge that the major challenge of his first stage is the 'knowledge management' required to such users who enter the system. It is worth spelling out in a bit more detail what that means. It will require not only the duplication of much of the provision by advice agencies in helping people to identify problems (a good reason for funding them directly); it will mean the sort of attention to detail and knowledge pathways that characterise the Dutch *Rechtwijzer* and are shown in its progeny; it will mean adapting forms to make them user-friendly along the lines of the a2j provision developed in the USA; and potentially such innovations as



cash cards that allow payment by users who do not have debit or credit cards. The implementation team at the Courts Service should humble itself sufficiently to accept a lead from the advice agencies on what needs to – and can – be done.

The second issue is compulsion. Lord Justice Briggs wants the online provision to be compulsory after the shortest possible time. He says that this is necessary in part because users will find it increasingly hard to find a nearby court as so many are being shut. That may be plausible but it is not acceptable. The Ministry needs to keep open courts to allow reasonable physical access until we can be sure that users have actually got the skills to use the newsystem. This is new territory. We do not know how many people can be expected, even with assistance, to use digital only provision.

This is new territory. We do not know how many people can be expected, even with assistance, to use digital only provision.


In practical terms, there should be a minimum dual running period of five to ten years. I argue that among those below a reasonable definition of poverty only half will have the requisite skills. All the practitioners say that this is wildly optimistic. We do not know. We should not gamble with what is fundamentally a constitutional right of access to justice.

The third issue is cost. The main reason to support an online court is that it will reduce court costs so that ordinary people will still use the provision. The level to which court costs have risen is, in the context of austerity, perhaps understandable: that does not make it acceptable. To the extent that some charges are now said to be designed to make a ‘profit’ is a scandal and the extent that others, such as those for employment tribunals, are designed to deter use of public provision is a constitutional monstrosity. The level of fees is crucial and must be significantly lower than those that apply at present. Otherwise, users will see no benefit and this exercise becomes a cynical ploy to allow the closure of more physical courts.

And last, but certainly not least, is how we articulate the objective of policy. What are we trying to use

technology to do? We have to be clear about this. My view is that we want to reduce

the cost for users (because it is unacceptably high and manifestly hindering access to justice); compensate for the withdrawal of lawyers that came with the cutting of legal aid; and to reinforce the notion for all citizens that there is, in an American phrase, equal justice. So, I end this post with the position from which I would actually begin looking at policy.



The specific aim should be something like halving the cost for users and doubling their number (entering stage 1 – not necessarily going beyond the conciliation of stage 2). If these – or something

like them – are not shared by the Ministry of Justice, then its ministers should tell us what alternative key performance indicators they prefer and allow us to debate them.

Transforming our Justice System

The Ministry of Justice followed Lord Briggs with its proposals for the digitalisation of court and tribunal procedures. Confusingly, it has published two documents, both of which have to be read together to understand the full scope of the proposals. There is a *Joint Vision Statement* of the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals and a document entitled *Summary of Recommendations and Consultation* although actually it contains new material. Neither of these documents is particularly impressive as a Government publication. Neither are as competent or comprehensive as the preceding reports from Lord Briggs.

The Vision Statement gets off to a particularly poor start. It begins: 'Our justice system is the envy of the world'. Interestingly, the other

document is mildly more balanced: it has our justice system as 'internationally revered as one of the finest in the world'. You might be able to justify the latter but you cannot really just proclaim the former. What is the source? Is it true that jurists in, say Germany and Scandinavia, believe that our common law system is better than their civil system? In my experience, they are more than a little critical. What is more, you used to be able to extol the English system because its drawbacks of cost and expensive oral procedures were met by high expenditure on legal aid for those who would otherwise be unable to afford them. People round the world wondered at the cost but admired the result; but that is no longer the case. The Finns and the Dutch, for example, probably have better criminal legal aid. No one could claim that our current family

People round the world wondered at the cost but admired the result; but that is no longer the case.




law provision is the envy of the world. And high levels of fees are restricting access by ordinary people to ordinary claims in tribunals and small claims courts, The claim is nothing more than complacent bunkum. It is true that London seems to have become the court venue of choice for warring and divorcing Russian billionaires. Opinions might differ on whether this was more a cause of grief than envy.

As a number of commentators have pointed out, it is little less than bizarre to promote the value of accessibility to the courts without any mention of legal aid and court fees. It verges on the dishonest and surely the drafters of the paper could not really hope to get away with such a sleight of hand. Digitalisation of the courts is to be supported because it holds the hope of bringing down court and tribunal costs to affordable levels. This seems not have occurred to the authors, or at least not a priority worth mentioning

And a final point of general concern is the lack of detail about finance. The paper proudly proclaims that there will be an extra £970m for the courts, presumably on a one-off basis. There is a reference deep in the summary paper to the alleged underuse of around half of the 400 courts still standing and the suggestion that 'many will be closed' but no detail. Presumably, the consequent sales are intended to meet the cost of the programme. In a document that trumpets the value of transparency it would be helpful to have a bit of detail on the underlying financial assumptions. Perhaps, for example, if we knew the full story, more money could be made available for legal assistance. The paper proceeds to deal separately with the impact of the programme on different parts of the court and tribunal structure. A general observation would be that there is much that is a bit too general. This is particularly so for family courts where, actually, ministers are not ready to say anything except that they are

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£970m



thinking about what to do. On crime, there is more detail – sometimes verging on the bizarre. Personally, I have no problem with a proposal that unauthorised angling be dealt with by a postal procedure similar to that which applies for parking fines. I just would not think that worthy of mention in a high level report like this.

The suggestion that fare dodging could be dealt with similarly needs a bit more examination. That is extending postal procedures to offences of dishonesty where conviction may have serious consequences eg for foreign travel. It may be that we now regard fare evasion as a breach of an implied contract rather than a crime but, if we do, then let us say so explicitly and decriminalise accordingly. There are proposals for more use of video evidence from vulnerable witnesses which experts in the field seem to agree are desirable. More liaison between magistrates and Crown Courts must be desirable but who would think that the radical proposal to merge the two has been hanging around for thirty

years but rejected because of heavy Bar opposition? Even Lord Briggs thought that he ought at least to mention this proposal even as he rejected it.

There is some discussion of the extent to which users are digitally literate enough to take advantage of digital court procedures. This is a vital issue in small claims cases which often involve ordinary people on low incomes but there are no proposals as to how to overcome this. There is the general statement that there may be more need for assistance from agencies on the ground but no analysis of how this might be done and how this might be integrated with general advice provision. On tribunals, there is the suggestion that lay members may be reduced and procedures go totally online beginning with social security appeals. Really? What about all the contested cases relating to disability and employability? These cannot just be left to convenient algorithms. People need fair decisions and they need to understand that they are fairly taken.

People need fair decisions and they need to understand that they are fairly taken.

Sage words from Northern Ireland

Northern Ireland has, by contrast, gone in a different direction with considerable more caution. Its equivalent to Lord Justice Briggs's Report was a review by Lord Justice Gillen. Gratifyingly, he agreed with suggestions for a degree of caution: In particular, we feel there is much to be said for the view expressed to us by Professor Roger Smith OBE, freelance researcher and writer, that we should monitor closely developments in the

Rechtwijzer and British Columbia systems of online dispute resolution. It is still relatively early days in its development in the family justice arena. It needs careful peer reviewing and informed critical analysis, perhaps, before we would adopt it wholesale into our family justice system, save in no fault divorce – a task which could be well researched and crystallized by the Family Justice Board.

Online Courts: enough with the tinkering

Mark Madden

Online courts are subject to a worldwide debate. Here is a contribution from Australia. There is a growing interest in Australia on how design thinking and artificial intelligence can improve access to justice and close the 'justice gap' if attendance at a recent forum at RMIT University in Melbourne in early July is anything to go by.

Aid Commissions, attracted 460 attendees and was live-streamed on the night, with 278 users tuning in from all over Australia and around the world. The forum followed an address in May at Victoria University by Professor Richard Susskind OBE which was also attended by many hundreds of people.

The *Access to Justice, Design Thinking and Artificial Intelligence* forum, included short presentations on design thinking and artificial intelligence and a demonstration of the revolutionary online dispute resolution system *Rechtwijzer 2.0*, which has been developed via a partnership including Dutch Legal Aid, HiiL Innovating Justice and Modria.

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The forum, hosted by RMIT's Centre for Innovative Justice (CIJ) in partnership with Victoria Legal Aid and National Directors of Legal



Dutch Legal Aid's former director, Peter van den Biggelaar, and the Hague's Institute for the Internationalisation of Law (Hiil) Maurits Barendrecht, who presented *Rechtwijzer 2.0*, were also guests at a number of 'roundtables' arranged by the CIJ involving key legal system

It was time to rethink and redesign the system with the user in mind and with the goal of meeting the current massive unmet legal demand.

stakeholders, including judges and magistrates, courts and tribunal administrators, State and Commonwealth departmental officials, lawyers and academics as well as members of the design community.

In setting the scene for the forum, the Director of the CIJ, Rob Hulls, a former Attorney-General of the State of Victoria, said that a 'fresh set of eyes' was needed for thinking about the future of the justice system and potential of design and technology. We needed to stop thinking about 'solutions that can 'bolt on' to our existing and overburdened and, in many cases, past its use-by date adversarial legal system. It was time to rethink and redesign the system with the user in mind and with the goal of meeting the current massive unmet legal demand. It was important to acknowledge what lawyers have

known for a long time: that the current legal system was not actually designed with the majority of its end users in mind. The result, as the CIJ's *Affordable Justice Report* identified was that there are too many people sandwiched out of legal assistance and redress. What's more, there are plenty of people out there who do not even recognise their problem as legal in nature, or do not contemplate seeking the legal system's help.

Too often policy makers get caught in a conundrum about increasing access to justice. The thinking goes that, if we improve access, we will simply increase demand on the court system, one that is already bursting at the seams. In addition, the use of technology and other innovation can be seen as a threat by some quarters of the legal profession – it's seen as doing them out of a job, and as rendering practice irrelevant. However, by using a fresh set of eyes, reimagining the system, and introducing modern technologies more people should be able to get access to justice without overburdening the system, legal skills and practice could be more effectively targeted at those issues and those cases which most need assistance.

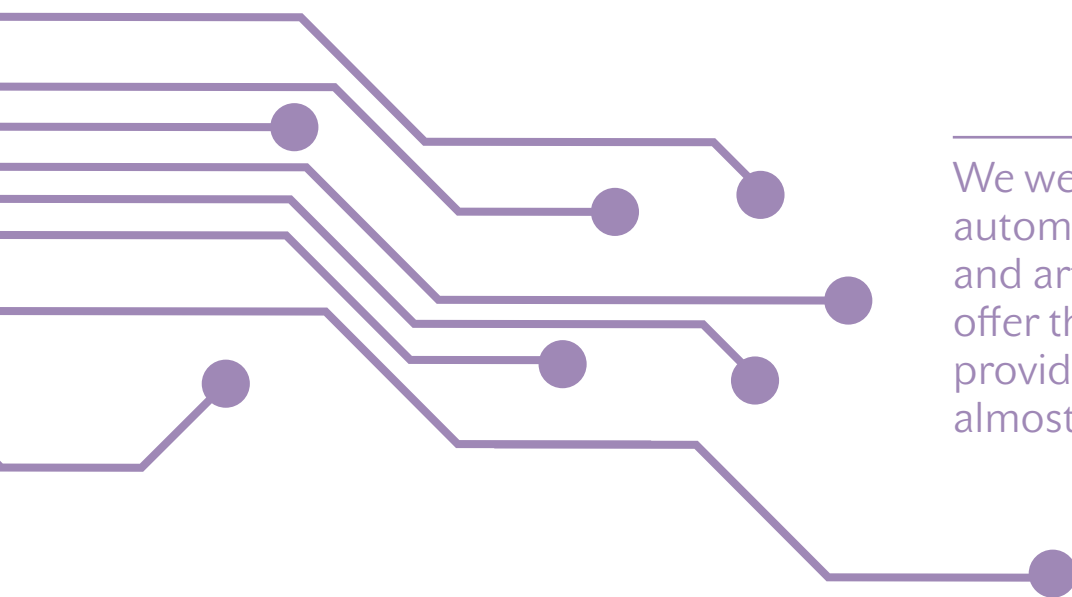
The Managing Director of Legal Aid, Bevan Warner, believes that Australia can lead the way based on its history of innovation, invention and entrepreneurship. Just as the



'Combine Harvester' revolutionised agriculture, 'Wi-Fi' has revolutionised the way we act and connect with information. He could see no reason why well educated people of good will, operating in the sixteenth largest economy in the world, with a proven record in oil and gas and mining innovation, cannot lead the world in rethinking how we use adaptive technologies to close the justice gap. It was better to borrow than to reinvent the wheel and the legal assistance sector's efforts would be assisted by making space for true collaboration across a range of disciplines. Australia had a rich tradition of *pro bono* legal assistance – lawyers who generously donate countless hours to helping disadvantaged Australians who would otherwise miss out – but the development of the new frontiers of legal assistance

services, will increasingly require new *pro bono* partners – from the tech, innovation and design community. He was not so naïve to think that any one technology will “solve” access to justice. Indeed, we may see other social problems emerge from this period of rapid technological change. We were starting to see that automated technologies and artificial intelligence offer the opportunity to provide services on an almost unimaginable scale and while we must be alert to the potential for injustice, we must also be alive to the potential for these technologies to bring the law to the very people it exists to serve.

Mark Madden Deputy Director of the Centre for Innovative Justice at RMIT University, Melbourne, Australia.



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ODR and digital assistance: home truths and overseas inspirations

One of the issues for all those developing ODR systems for small claims, as recognised both in the Ministry of Justice (MOJ)

Transforming our Justice System and the earlier *Briggs Report*, is the level of assistance to be given to users before they pay their money and enter the court system. In para 6.17 of his final report, Lord Justice Briggs said:


The solution [to online exclusion of users] lies in my view in the most intense search for, funding, development and testing of services to assist the computer-challenged, sometimes called “Assisted Digital”.

The MOJ report actually recognised that only 30% of users, on Government figures, would be ‘self-servers’ requiring no further assistance. The majority (52%) would need the digital assistance referred to by Lord Justice Briggs. 18% would be excluded in any event. Their plight is not to be forgotten but this post concerns what might be provided by way of ‘assisted digital’ and, in particular, the lessons from other jurisdictions in this area.

It might be worth beginning by considering what exists at the moment in England and Wales. The Government website (gov.uk) has outline *guidance* on making a small money claim. This takes you to a more detailed *guide* from Her Majesty’s Courts and Tribunals Service (HMTCS), the *Money Claim Online User Guide*. This is clearly laid out but very text driven and neutral in its presentation.

Outside of Government sources, help is available from a variety of NGOs. One example is of NGO assistance is provided by the *Citizens Advice website*: this is clearly set out but linear (and rather cold) in its 23 paragraphs of information unrelieved by any illustrations. In terms of practicalities, there is a link to current court fees but no discussion of the type that you would actually have before starting an action of any kind about the chances of successfully recovering your money even in the event of a positive judgement.

Only 30% of users, on Government figures, would be ‘self-servers’ requiring no further assistance



By contrast, the *advicenow.uk* website has much fuller information, broken up into a series of practical guides with quotes from litigants and illustrations. The second of these contains a whole section headed '*Is your opponent worth suing?*' The opening page of the section on the website invites feedback:

Are you willing to talk about your experience?

If you are representing yourself in court ... action and would be willing to speak to a journalist about your experience, how difficult it is, and anything you have found that has helped, please *contact us*.

This is, altogether, a rather better and more useful website.


Another good online guide, perhaps the best for money claims at least, is provided by the commercial *moneysavingexpert.com*. This breaks up its text with illustrations; provides examples and quotes from users; and feels very practical – it gives the court fees payable direct

on the website and it gives an illustration of the form that needs to be completed to issue proceedings.

So, what must be done to provide the digital assistance which the Government agrees is required by the majority of potential users?

Some indication of what needs to be considered comes from British Columbia's Civil Resolution Tribunal. Although currently limited to particular types of housing dispute, this will be extended to small claims before long and has a front end '*solution explorer*' which provides digital assistance. This is worth a look. A video on the website was discussed and embedded in *an earlier post*. The solution explorer takes you through a set of questions, for example in relation to a neighbour dispute. This gives various assistance including a 'workbook for negotiating a solution'. You can print off information at the end: a bar measures how far you are through the process at any one point.

So, what must be done to provide the digital assistance which the Government agrees is required by the majority of potential users?



British Columbia is particularly well provided for in terms of digital assistance because its Justice Education Society provides a good example of a slightly different approach. Its *website on small claims* contains a host of videos – several from judges welcoming users; some giving examples of how to handle a case and covering how to fill in the relevant forms; a five-day response chat facility; the requisite online forms and host of information.

These examples from British Columbia indicate just how international are the issues behind how small claims ODR is to be integrated into the courts. This was recognised by Lord Justice Briggs in his final Report – after he had been encouraged to visit British Columbia. It is not expressly acknowledged in the Ministry of Justice (MOJ) paper. But, there needs to be the maximum flow of information about what is being tried and what works around the world.

Jurisdictions other than England and Wales are more open to outside influence. For example, Victoria's, Australia has just held a major international conference entitled *Law and Courts in an Online World* earlier this month with a range of speakers from the UK, US, and Canada as well as Australia. England and Wales' MOJ needs rapidly to join these international streams of information

and influence. There may well be other lessons from around the world and I welcome prompting on them.

In the meantime, the British Columbia Civil Resolution Tribunal shows how a Ministry website can maintain its independence but also provide considerably more help than do our official Government equivalents. The short review above of non-Government websites in England and Wales (to which a number of other commercial and NGO websites would need to be added to make it comprehensive) suggests, in addition, that there may well be advantages in fostering a market of different providers of information. The main general advice website in England and Wales is not the best and, frankly, needs to respond positively to its competition. A further and related issue is how advice and information on procedure is linked to advice and information on substance because somehow this is going to have to be done if the whole process is moved online.

The need for 'digital assistance' or 'assisted digital' raises complex issues. We may hear more of the MOJ's projected direction of travel at a conference under the auspices of the Civil Justice Council in December. Let's hope so. And we should certainly dread any expression of a mentality that we are going it alone on this one – or any repetition of the

unsubstantiated assertion in the MOJ's consultation paper that our system is the 'envy of the world'. Any system aspiring to that

description will need to pay considerably more attention to what the world is doing and thinking.


British Columbia's Civil Resolution Tribunal's (CRT) first decision: move along, not much to see here

With all this excitement about ODR, the first decision of the CRT turned out to be a bit of a disappointment. This is one of the most world's most advanced ODR projects within a formal court and tribunal structure. As such, it has attracted much interest and analysis – not least in previous posts here and here. The tribunal offers an online determination first of 'strata disputes' of rights within apartment blocks and, to come, of small claims generally. Lord Justice Briggs visited British Columbia before producing his final Report and incorporated within it a discussion of the tribunal. The tribunal has now published its first decision, *The Owners, Strata Plan LMS 2900 v Mathew Hardie ST-2016-00297*. This is probably not the decision that its promoters would have chosen to be the first to show its wares and it is interesting to look at it a little further.

This is one of the most world's most advanced ODR projects within a formal court and tribunal structure.

The case related to complaints from four occupants of a block of apartments that they were adversely affected by Mr Hardy's smoking of tobacco and marijuana in his flat. At issue were three points – one of fact (was adequate notice served on Mr Hardy) and two of law or mixed fact and law (had he broken the strata's bylaws and, even if so, could the complaint be discriminatory on the grounds of Mr Hardy's alleged medical need to smoke Marijuana to alleviate chronic pain.) On the first, there was factual evidence of service which was accepted by the judge. On the second and third, there was medical evidence from Mr Hardy which was rejected. The judge found that Mr Hardy suffered from chronic pain such that smoking marijuana might relieve it but also that 'there is no persuasive evidence before me that smoking marijuana, rather than ingesting it in another form, is necessary to accommodate his disability.'

So, Mr Hardy had no defence for smoking the fags and he could have taken the dope in cookies. In law and across jurisdictions, I would have thought this an exemplary 58 paragraph decision.



The interesting point is that there is nothing in the determination that relates to the innovative aspect of the CRT procedure. The judgement is a conventional one given on reasoned grounds on the papers (even if digital) with the assistance of a facilitator on the service point by a physical judge on a matter where the online potential of the CRT has, effectively, been irrelevant. Equivalent conventional tribunals will have been deciding cases like this all over the world.

There are two opposing lessons that we might draw. On the one hand, when the chips are down, ODR determinations will, in practice, differ very little from conventional judicial decision-making. The process is online but not materially different: we are a long way from determination by


machine learning – judges will rule on matters of factual and legal dispute. The issue then becomes how sensitively online procedures can handle disputes of fact. On the other, the CRT has been a bit unlucky in the nature of its first decision which has not really demonstrated the potential revolutionary nature of the new online world. This case does not give us much of a clue except as a reminder that underneath all the publicity for the new system lay a bunch of owners whose ardent desire was that ‘Matt stops smoking in his unit’. Let’s hope he does. Inspiration on ODR can be found in unexpected places – including a well publicised film that is primarily concerned with social justice but has a number of potential lessons for those concerned with online justice.

Online Dispute Resolution and *I, Daniel Blake*

Some of the potential issues about ODR may be revealed by the latest award-winning film by Ken Loach. He is a well-known left-winger but his film, *I, Daniel Blake*, has points to make which should be taken seriously by policy makers of all or no political persuasion concerned with basic adjudication of social security claims.

Daniel Blake is a 59-year-old carpenter who has had a heart attack. He is advised by his medical

team that he cannot work. However, in claiming the requisite social security benefit, he becomes entangled in a legal nightmare with two major components. First, the decision on whether he is fit for work depends crucially on his score in answer to a series of discrete questions about specific functions. So, he is assessed on his capacity to undertake individual physical movements (eg can he press a button) but not on his overall ability to work. He is turned down. As a



result, in order to get benefits in the short term, he is forced into a catch 22: he must argue that he is fit for work when he isn't. Second, he needs to appeal the original decision that he is fit for work but he can only do that after he requests an anonymous (and, in the film, increasingly ominous) 'decision-maker' to undertake what is known 'a mandatory reconsideration'. This usually occurs within 10 days but there is no legal requirement as to the time it can take. This is a commonly experienced problem.

The great danger of online is that this external review of the system will be truncated and, despite the online intervention of an independent tribunal judge, the online juggernaut will proceed.

In the film, Daniel Blake dramatically (literally and metaphorically) cuts the Gordian knot over an inability to launch his appeal by spray painting it on the walls of his local social security office. This is practically effective though, presumably, technically invalid. Without entirely spoiling the film for those who have not seen it (and, if you have got this far in the post then you certainly should), by the end, an appeal hearing in a physical office with two members on the tribunal and a representative appears to be going some way to a resolution.

And what is the relevance of the events in the film to the proposal to

put tribunal decisions online? This is proposed by the Ministry of Justice's *Transforming our Justice System*: 'Tribunals will be digital by default, with easy to use and intuitive online processes put in place to help people lodge a claim more easily, but with the right levels of help in place for anyone who needs it, making sure that nobody is denied justice.' The difficulty is not actually digital exclusion. Daniel Blake has no digital skills but, interestingly, he copes with online applications through the kindness of strangers, friends and some form of local library provision – albeit with some difficulty. True, he faces benefit sanction because he can't type out his cv: he has written it in pencil. But, basically and with this one exception, he does handle the online process.

What shifts the roadblocks in his case is the presence of a tribunal appeal where his case is to be reviewed by a judge and a doctor; where he has somehow got representation; and for which someone has marshalled his medical evidence. The great danger of online is that this external review of the system will be truncated and, despite the online intervention of an independent tribunal judge, the online juggernaut will proceed.

There are practical consequences for proposed online adjudication procedures. First, online dispute resolution is only appropriate as the

final stage of an administrative process which is just and equitable up to that point. At the very least, there must be a binding time limit for mandatory reconsideration of social security cases that are appealed. Second, there must be exceptions to 'digital by default' for cases in categories such as the following:

- (a) where the claimant or the Department of Work and Pension request a physical hearing;
- (b) where the case involves disputed matters of fact; or
- (c) where the case involves contested matters of law.

Digital exclusion and a Small Claims Online Court

Interestingly, Daniel Blake manages to get assistance with digital completion of the relevant forms but the issue of digital exclusion remains. A major issue for jurisdictions, like England and Wales, which are intending to implement Online Dispute Resolution within the official court and tribunal service is the extent to which a percentage of the population will be excluded from using them. This has obvious implications. If a significant group cannot be assumed to have the necessary skills and access then either mandatory digital systems will lead to their exclusion or existing paper-based systems with appropriate accessible physical access will have to be maintained for those unable to access the bright new world.

This issue is referred to in the recent paper from the MOJ in England and Wales entitled *Transforming our Justice System*.

Quoting the Government's Digital Strategy as its source, its consultation paper gives the following appreciation of the problem: There is a range of ability and comfort in using technology across the UK. It is estimated that of the UK population who use government digital services:

- * 30% are "digital self-servers" – these are people who have the skills, access and motivation to use digital services unaided.
- * 52% can be "digital with assistance" – these are people who are able and can choose to engage digitally, but may need some help to do so. Over time, they should gain the confidence to become part of the "self-server" group.

30% are "digital self-servers" – these are people who have the skills, access and motivation to use digital services unaided.

* 18% are “digitally excluded” – these people cannot or choose not to engage digitally at all, due to difficulty in accessing IT facilities, lack of basic digital skills or confidence, or low motivation. These people will continue to need a lot of support, but the size of the group is shrinking with time as digital services become more common.

These figures are striking enough. The government is accepting that one fifth of the population ‘cannot or choose not to engage digitally at all’. The majority of the population ‘need some help’ and only just under a third are likely to fully capable.

But let’s look a bit more at the digitally excluded. Who are this 18 per cent? And is the figure reliable? Well, let’s keep to official sources. The House of Commons Science and Technology Committee produced a paper on the *Digital Skills Crisis* in June. The Committee is non-partisan and, in fact, is

chaired by a Conservative MP. This quoted rather worse figures on digital exclusion than the Ministry of Justice, even though it was relying on earlier figures (from 2013 rather than 2015):

digital exclusion remains stubbornly high with an estimated 23% (12.6 million) of the UK population lacking basic digital skills. Of these, 49% are disabled, 63% are over 75 and 60% have no formal education qualifications. A higher percentage of men have digital skills (80%) than women (74%).

These figures come from a pretty respectable source: a report on *Digital Skills* produced by Ipsos Mori for Go On UK in association with Lloyds Banking Group. It distinguished the following as ‘basic digital skills’ – managing information, communicating, transacting, creating and problem solving. The report also tracked ‘basic online skills’ which was an



18% are “digitally excluded” – these people cannot or choose not to engage digitally at all

earlier classification that has effectively been superseded but kept for comparative purposes: basically, the new term adds 'problem solving'. These are its key findings:

- 77% of the UK adult population have Basic Digital Skills with 81% having Basic Online Skills.
- This leaves 23%, or an estimated 12.6 million adults in the UK who do not have the required level of Basic Digital Skills.
- Nearly nine in ten of all adults are capable of 'managing information' and 'communicating' online.
- However there is variation across differing demographic and social groupings. The digital skills level starts to decline amongst the 45+ demographics culminating in the 65+ groups having a Basic Digital Skills level of 43%. This group have the lowest digital device ownership, the bulk of this age

group are retired, suggesting they lack the opportunity/ desire to acquire the skills.


- The Basic Digital Skills level amongst ABC1s is higher than the national average at 87%, but is significantly lower amongst the C2DE social grades (65%).
- Greater London (84%), Scotland (81%), the South East and South West (both 81%) register the highest Basic Digital Skills levels, but Wales – where internet access is lowest – displays the lowest levels (62%).

Performance by those in the bottom level of society is actually worse than this summary suggests. For those in social categories DE the level of basic digital skills falls to 57%. These categories cover 'Semi-skilled & unskilled manual occupations, Unemployed and lowest grade occupations' – C2 is for 'skilled manual occupations'.

9/10

Nearly nine in ten of all adults are capable of 'managing information' and 'communicating' online.





Another relevant finding is that 'Males are significantly more likely than females to be competent in each digital skill.' The Report found that 80% of men had basic digital skills as against only 74% of women. The real problem groups were the retired where only 47% have basic digital skills. A note of hope for the future is struck by the fact that 93% of those in school or who are students have the necessary skills. Unsurprisingly, possession of the required skills rises with income from a low of 69% of those with an income of less than £9,500 a year to 96% of those earning more than £75,000. There are geographical hotspots: Northern Ireland, the West Midlands and Wales are significantly worse than elsewhere in the country.

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The advantage of the approach accepted by the House of Commons Select Committee is that it emphasises the need for skills rather than extrapolating a capacity to use the internet from access to it. The figures also carry the implication that any move to ODD – mandatory use of online procedures – would, at this moment, be premature. 13 million adults – disproportionately poor, elderly, female and on low incomes – have insufficient digital skills. Indeed, it looks as if only 57% of those who might formerly have been entitled to legal aid (assuming rough equivalence between membership of social groups D and E with legal aid eligibility) on income grounds have the necessary basic digital skills to cope with an online small claims court. Thus, there is plenty of evidence to justify piloting an online small claims court but none to suggest that it is safe to remove or inhibit physical access to courts with traditional written procedures in the absence of an explicit policy to exclude the poor from the court process.

Small Claims and ODR: Victoria, Australia's model approach

The ripples proceed to spread out from the commitment to ODR. The Australian state of Victoria is considering entering the ring – rather more cautiously than England and Wales. The Australian state of Victoria has become the latest jurisdiction to advocate the principle of putting small claims online. It has done so in an *Access to Justice Review* which provides yet one more implicit rebuke to the approach of the MOJ of England and Wales in its *Transforming our Justice System* Vision Statement. The Victorians place their recommendations firmly within a consultative access to justice framework.

The Review's context was a national Productivity Commission Inquiry Report in 2014 into access to justice arrangements. This had a brief from the Commonwealth Government that included the assertion that 'for a well-functioning justice system, access to the system should not be dependent on capacity to pay and vulnerable litigants should not be disadvantaged'. The English paper


expressly excluded the affordability of costs. Accordingly, it did not take an approach dominated by the need to provide access to justice. It made not a single reference to escalating court fees; decreasing court usage or legal aid cuts. The Victorians, by contrast, are clear that access to justice underpins their whole justice provision: 'Access to justice is fundamental to the rule of law ... Government has a central role in providing an accessible justice system to support the rule of law ... Government also has a role in informing people about their rights and responsibilities.'

The Victorians advocate 'four key strategies':

- better information;
- more flexible and integrated services;
- making better use of technology;
- and stronger leadership, governance and linkages.

The review acknowledges that 'while the system is not broken, it is under considerable strain'.

The whole tone of the Victorian document is completely different from anything that has come out of the England and Wales MOJ for decades. For a start, the Victorians are interested in empirical research: they want to know what is happening... And they are prepared to establish a diffused and decentralised way of finding out.



The whole tone of the Victorian document is completely different from anything that has come out of the England and Wales MOJ for decades. For a start, the Victorians are interested in empirical research: they want to know what is happening – ‘there are significant gaps in data, research and evaluation ... particularly in relation to legal needs’. And they are prepared to establish a diffused and decentralised way of finding out.

Courts and tribunals which have ‘underdeveloped’ capacities to produce meaningful information about their users and role. The Review also wants to develop the Victorian Law Foundation as ‘a centre of excellence for data analysis, research and evaluation on access to justice’. (There may be nothing like being shown up by the success of the equivalent body in a neighbouring jurisdiction – in this case, New South Wales which has exactly this kind of law foundation.) A little extra funding is even envisaged. Meanwhile, Victoria Legal Aid – the kind of statutorily created legal aid administrative body abolished in England and Wales (but not Scotland) – is volunteered for the task of being the ‘primary entry point for legal information and legal assistance’.

The Victorians also want to join the world of ODR – though not quite on the basis advocated in the English document: ‘The Review recommends that the Victoria Government provide pilot funding and, subject to evaluation, ongoing funding for the development and implementation of a new online system for the resolution of small claims in Victoria’. Note the emphasis on piloting and evaluating – functions in which the England and Wales MOJ sees no purpose. Furthermore, the Review specifically considers the issue of ‘the affordability of application fees’.

Further chapters deal with legal aid, pro bono and assistant for self-represented litigants.

It may well be that the Review has subtexts not discernible to readers on the opposite side of the globe; that the issue of legal aid funding is a little fudged; and it would be surprising if there were not critics of the Review among the constituencies that it surveys. What a refreshing report to read. I recommend looking it up.

4. Developments in Progress

Introduction

The period has seen the steady advance of a number of solid projects that take implementation

of digital provision forward. Here is an example from the US.

IllinoisLegalAid.org: the house that users built *Terri Ross*

Two years ago, my employer – Illinois Legal Aid Online or ILAO – embarked on a journey to transform its products and services. ILAO’s mission is to increase access to justice through the innovative use of technology. At the time, ILAO hosted five separate websites (and two mobile apps) designed for five constituencies:

- English-speaking people in Illinois with civil legal problems
- Spanish-speaking people in Illinois with civil legal problems

- Legal professionals (lawyers, paralegals, law students, etc.) who were interested in volunteering or already volunteering on a pro bono basis
- Legal aid advocates practicing in Illinois
- Donors, potential donors and the press

While there were five URLs, the websites all relied on a single, content management system, custom built on ColdFusion. That content management system relied on the National Subject Matter Index (NSMI) as its information architecture. For those of you not familiar with this term, information architecture (IA) is the frame to the house on which your content is built. See *Wikipedia* for more detail.

The period has seen the steady advance of a number of solid projects that take implementation of digital provision forward.

The *NSMI* served the structure of our websites' content pretty well for the last 10 years, but it presented several problems:

- It was developed by committee (need I explain why that is a problem?)
- It is enormous (see above)
- It is inconsistent (see above)
- It is an internal-facing architecture only (it is not meant to be navigated by people who are not legal experts).

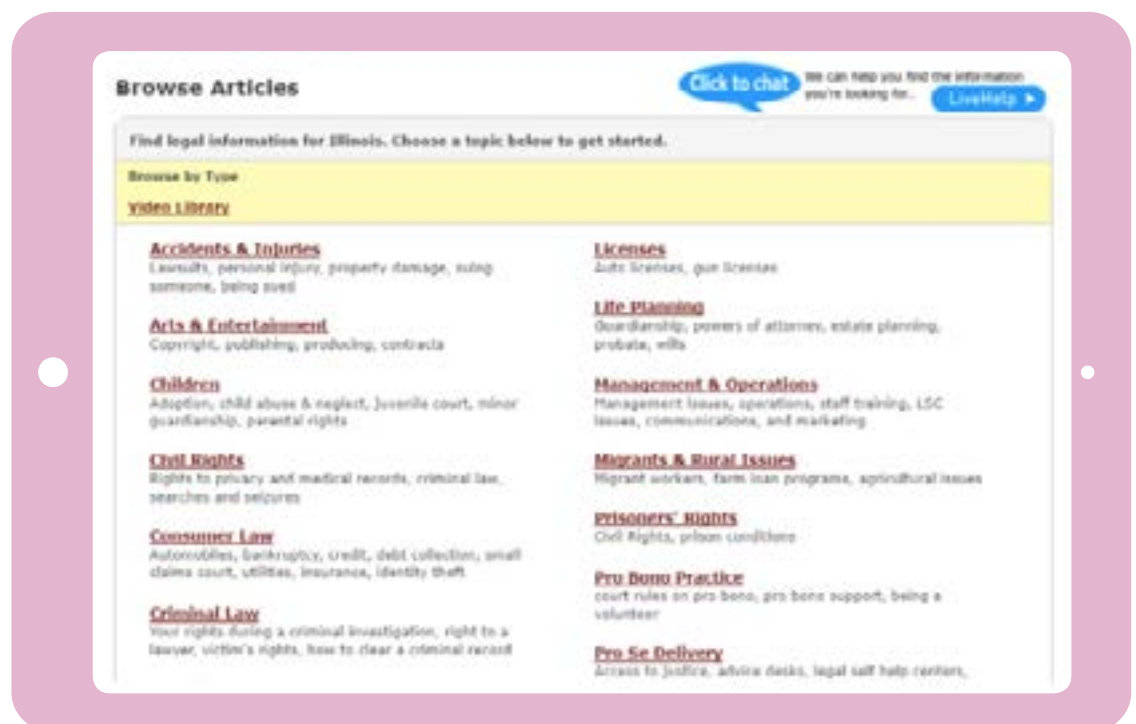
It was this last point that caused us the most angst. We wanted an IA that could be used both for content organization and content navigation. Here is how our IA looked for people browsing on the old IllinoisLegalAid.org:

The image is cropped to save you the extra wince; all told, it contains 30 'areas' of law. Highly problematic

for people drilling down to their legal issue. For example, for someone with a car repossession, where do they click? After looking at this list, maybe they may go to the search bar at the top, but probably they just grunt and go to Google. They most certainly would NOT go to 'Consumer Law' which is where this information appears.

Our old website relied too heavily on search and (obviously) paid little attention to browse. *Learn why search is not enough.* We wanted something that would equally accommodate users regardless of their website navigation preference.

So we committed ourselves to developing something new, but we tried to be smart and start with what we already knew and what others had already done. We started with our partner's existing triage rules (drafted by the thoughtful and passionate



legal aid attorneys at *LAF, Prairie State Legal Services, Land of Lincoln Legal Assistance* and *National Immigrant Justice Center*). We also borrowed some of the framework developed by the now-retired (and sorely missed) Kathleen Caldwell and used in Maine's *Find Legal Help* tool.

The trickiest part of developing this kind of framework was not working through the details at the lower levels (the discrete legal issue), but how to categorize legal issues at the highest levels. I am sorry to admit that our first attempt at top-level categories looked a lot like the above screen shot. We immediately tossed it. Then we went the other way and wound up with this:

- My family
- My home
- My business
- My money
- My rights and freedoms

We thought we were on the right track. So we mocked up a paper prototype and a user test and sent staff out into the streets of downtown Chicago to ask people where they would click to find

information about specific legal problems like eviction, divorce and bankruptcy.


Here is what we found:

- 1 'My' can be confusing, particularly in the family context. If you are looking for how to protect yourself from an abusive partner, would you click 'My family'?
- 2 Some words – like 'home' and 'business' have varying interpretations. The best example of this came from a woman who was asked where she would click to find information on child support. She answered, "Child support? That's my business."
- 3 Categories need to have similar levels of detail and weight. Otherwise, you have everyone clicking on the 'dumping ground' category of 'my rights and freedoms'.

After four or five rounds of user testing, we adopted these top-level categories for the new *IllinoisLegalAid.org*:

- Family & Safety
- House & Apartment
- Money & Debt
- Work & Business
- Health & Benefits
- School & Education
- Citizens & Immigration
- Crime & Traffic

'My' can be confusing, particularly in the family context. If you are looking for how to protect yourself from an abusive partner, would you click 'My family'?



An important note is that some legal issues appear in more than one top-level category. Examples of this are sexual assault, disability issues, utility problems, discrimination and child support. So there is not always a single path to a legal issue. Adding this level of usability to the IA makes navigation better for the end user and accommodates for the human variance in how people label their legal problems. But it also causes

some additional work for staff who are managing the content and developing the back-end tools to use it. We think it is worth it.

Please check out our new website at IllinoisLegalAid.org and let me know what questions, suggestions and comments you have.

Teri Ross is Program Director, Illinois Legal Aid Online.

Ontario Community Legal Clinics and A2J Guided Interviews

Erik Bornmann


In addition, exploration continues of the possibilities of guided pathways in the provision of advice and information. Since 2012, a partnership of 17 *community legal clinics* in Ontario has used *A2J Author* software to develop online interactive tools. Called the Clinic Interview Partnership (“Clinic IP”), we have created 10 tools to increase the capacity of Ontario’s poverty law clinics. The tools, A2J Guided Interviews, help staff, students, community agencies, and clients with:

- document assembly
- intake
- referrals

The project started at the *Community Legal Clinic – Simcoe, Haliburton, Kawartha Lakes* in 2008. In 2012, it evolved into a

partnership of legal clinics, governed by clinic managers, *Legal Aid Ontario*, and the *Association of Community Legal Clinics of Ontario*. The Simcoe clinic continues to manage the project and *Community Legal Education Ontario (CLEO)* provides assistance with public legal information (“PLI”) and plain language design. Work is carried out by a multi-disciplinary team out of *Parkdale Community Legal Services* in Toronto.

Community legal clinics *advocate for low income communities*. The A2J Guided Interviews build clinic capacity by making client interviews more efficient or by supporting volunteers, community agencies, and clients to play a role in entering data and creating documents. In part, this approach appears similar to the UK’s *Siaro* family law platform.



Our A2J Guided Interviews support a mix of users. Some are exclusively for use by clinic staff and students. Others can also be used by clients. An area of particular interest is *trusted intermediaries*. These are community agencies trusted by hard-to-reach client groups, such as people who live in rural or remote communities or who do not speak English or French.

The technology is mostly used in conjunction with person-to-person service. There are three reasons for this. First, the project is a work in progress, so the A2J Guided Interviews are missing functionality such as account profiles and save and resume. These are features available to many organizations in the United States using A2J Author with LawHelp Interactive. We must use a temporary server system and train around the limitations.

In addition, the people served by legal clinics face challenges with digital literacy and access. Using the tools with person-to-person service addresses these challenges. Finally, we believe that this will assist clinics to identify best practices for more client self-help.

At the outset, we built template tools by working with legal clinic staff and conventional practice aids, such as intake manuals. We also worked with plain language designers to embed public legal information Learn Mores, 'just-in-time' help.

These A2J Guided Interviews were then piloted at select legal clinics, generating feedback, which resulted in iterative improvement. During the pilots, 11 of the 16 general service clinics in the project used at least one of the tools to serve clients.


And projects around the world are eager to follow the guided pathway approach.

Encouragingly, 8 of the 11 clinics advise that the technology has become a regular part of their practice. Despite the technical limitations of our temporary server system, A2J Guided Interviews proved helpful to legal clinics, especially in three respects:

- preparing appeals of Ontario Disability Support Program denials, a high volume and document intensive area of practice
- supporting student volunteers to deliver clinic services
- enabling clinics to better work with trusted intermediaries to serve hard-to-reach clients

During the pilots, 11 of the 16 general service clinics in the project used at least one of the tools to serve clients.

The pilots also identified challenges. Many experienced caseworkers find guided workflow prescriptive. And some tools are too time-consuming



for internal use at a busy legal clinic. Use of document assembly tools, both at legal clinics and by clients and community agencies, is often impractical without save and resume functionality. In addition, the intake tools are not yet integrated with clinics' case management system. This means clinic staff to have to enter client data into two systems.

Success took different forms at different clinics depending on available human resources, service area, and client need.

However, where the tools have been successful, legal clinics report promising outcomes:

- time savings on intake and document generation
- earlier access to legal clinic services
- less time spent training students
- new services, assisting clients with form completion
- better client experiences

These outcomes demonstrate that A2J Guided Interviews can expand and improve community legal clinic service.

The pilots identified factors critical to using A2J Guided Interviews with person-to-person services. The quality of content matters. High quality content required more than careful design. It required iterative design by trial and error.


Syncing the technology with person-to-person service was complex. Success took different forms at different clinics depending on available human resources, service area, and client need.

Promising outcomes involved different combinations of A2J Guided Interviews and users. An urban clinic with a *law student program*, serving many people who don't speak English, had a different path to success than a rural clinic that serves remote communities in *partnership with trusted intermediaries*.

This underscored a distinction between use of the technology for client self-help and the use of A2J Guided Interviews in conjunction with person-to-person service. In the latter case, promising outcomes requires patient *change management* to win over the legal clinic caseworkers.

We saw that integration with the case management system was necessary to win over caseworkers. This promises to improve user experience by auto-populating previously-entered data into new A2J Guided Interviews while eliminating the need to enter data into two systems.

Supporting *multi-sector agency referral networks* with A2J Guided Interviews emerged as a particularly promising strategy for reaching hard-to-reach clients. By supporting referrals between agencies in a



network like an *alliance to end homelessness* or *partnerships of newcomer service providers*, legal clinics helped non-legal caseworkers identify legal problems in the course of a referral to other non-legal agencies. But this required careful consideration of client consent and data ownership.

Finally, *A2J Author's institutional support and continued improvement* appear to be a foundation for the sustainable use of the technology. It is free to government and non-profits, which helped us focus on content. While not as robust as some newer software, it has a non-technical editing interface that lets non-programmers tend to iterative changes. And surely it will improve over time to meet the emerging needs of the justice sector.

Our outcomes and observations have informed the design of a new server system for A2J Guided Interviews. This is a software wrapper for hosting the tools, which will provide necessary features for use with person-to-person services.

While Clinic IP remains a work in progress, A2J Guided Interviews promise to evolve as tools for community legal clinics. With time, the technology promises to be an enduring means of building capacity by working more closely with volunteers, community agencies, and clients.

For more information see our Final Report for the Fiscal Year 2015/16.

Erik Bornmann is a Staff Lawyer at the Community Legal Clinic – Simcoe, Haliburton, Kawartha Lakes. He can be reached at bornmane@lao.on.ca.

Robot lawyers: An Australian foray into automated document assembly for criminal cases

A further interesting development with great potential comes from a private law firm in Australia. *Robot Lawyers*, developed by a defence lawyer firm, *Doogue O'Brien George Defence Lawyers* of Melbourne, indicates some of the possibilities of automated document assembly for assistance in some criminal cases. There is nothing particular innovative about a legal self-help system of this kind. For example, the American A2J author

system has been doing this since 2005 and has generated close on 2m documents. There are various will assembly websites, both commercial and non-profit. Most development has been in relation to civil cases. This system gives an indication of how programmes might be developed directly for self-help users in some minor criminal matters where lawyers would not normally be involved.

The system is capable of compiling basic mitigation statements in a range of relatively minor criminal cases – driving, assault, drug, theft, drink/drug driving – where, presumably, the likelihood of a custodial sentence is low.

Defendant lawyers will probably be full of reservations about such an automated service and its likely inability to respond to the nuances of individual circumstances. But, this is the sort of document that you get emailed back to you after answering a short series of online questions:

Defendant lawyers will probably be full of reservations about such an automated service and its likely inability to respond to the nuances of individual circumstances

Personal Information for Roger Smith Drug Case

*My name is Roger Smith
My date of birth is 19/04/1967.
I am pleading guilty to a drug charge.*

*Employment Status
I am currently employed as a teacher full time.*

*Income Details
My weekly income / earnings are approximately \$ 1,000.00.
I estimate my remaining weekly funds after living expenses to be approximately \$ 500.00.*

*Relationship Status
I am married.
I live with my wife.
I have 1 child living with me.*


*Community Involvement
I am involved in the following community activities: I play cricket for a local club.*

Personal Circumstances and Growth Reasons for my offending include: I was under strain. From my offending, I have learned that: I should not do it again and I should certainly not be caught. I think that going to Court for this offence has changed my attitude and I believe it will be different in future, because: It has given me a shock. I will change my ways. I believe I am not a risk to commit this type of offence in the future because: I cannot afford to be caught again.

Please ask me any questions if there is further information you require from me. I have prepared this information to make it easier for the Court to decide my penalty and save time for the Court.

*Thank you for reading my document.
Roger Smith*

The example shows the strengths and weaknesses of the programme. First and foremost, it undoubtedly facilitates an organised approach to drawing up a statement mitigation



and might be of considerable assistance to someone not familiar with this kind of exercise. Second, and this is no criticism (quite the reverse – it indicates the possibilities for further development), you start to see ways in which it might be improved. For example, you could add a section with details of the offence and why it might have been committed. There are other areas where you might want more details. Third, the programme could be expanded to give a bit more information to the user and thus more help in filling in what might be relevant. Fourth, this way of organising relevant information could easily be combined with consideration by an adviser for whom it organises the client's information in a helpful way (a product like *Siaro* integrates the client's original statement into a programme that prompts the advising solicitor to what they should do).

The statement would evidently be much improved by human intervention by a criminal lawyer.

But this is the sort of case where, certainly in England and Wales, you would not get legal aid. The website handles various types of offences where this would also be the expectation – driving, assaults, drugs, theft, drug/drink driving. On being tested with various options, the system did spring into action to warn you to see a lawyer if the case strayed into more complicated or serious areas e.g. if there was a not guilty plea. In most jurisdictions, there would be a representation gap in relation to minor criminal offences and this makes this area a fertile ground for automated programmes like this or, in the traffic field in England and Wales, *roadtrafficrepresentation.com*. This allows an embellishment with an express advert missing from the Victorian model: 'Free online assessment of your case can be supplemented by optional paid for one to one telephone advice and representation in court'. On balance, the Victorian lawyers have done us all a favour in giving an indication of a potential which will undoubtedly be further developed.

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5. The Standards and Evaluation of new Initiatives

Something is going on: the rise and rise of the hackathon and competitive pitch

The Canadian Bar Association Conference in Ottawa earlier this month began with a competitive pitch by five legal start-ups. *It was described by The Financial Post as 'big, brash and loud'.* For the record, it was won by a document review system called Beagle. However, more important than the winner may be the process. The popularity of the format merits a bit of investigation.

The competitive pitch merges at a point into the hackathon where the competition element is key to the working through of a project in a limited time. There are countless examples around the world of the technique being applied to law. London-based Legal Geek are a good example and it has produced a rather good *youtube video* of its 'Law for Good' conference boasting of its approach: 'no sleep. pizza. beer. coffee. coding.'

Ten teams competed to assist Hackney Law Centre: the winner was a triage idea from a team from Freshfields, a major City firm.

There are variations on the competitive pitch/hackathon process, many of which relate to the amount of time given to the process. An example from Australia comes from the *Access to Justice through Technology Challenge* at RMIT University in Melbourne. This sets up a thirteen-week period to work on the project. Toronto's *Ryerson University's Legal Innovation Zone* is partnering with Ontario's Ministry of Justice by giving space for four months to six startups successful in an initial bid process. After further competition, three winners get to stay for an extra four months: the top two get prize money.

There is a gutsy side to this phenomenon. Some of the video commemorations are just asking for 'Chariots of Fire' as the background music. In fact, it can only be copyright restrictions which have

More important than the winner may be the process.

hindered its use so far. This is the *ABA Journal's* account of the 2015 Georgetown University's Iron Tech Lawyer Competition: 'the substance of Iron Tech Lawyer has evolved in a big way, too. Initially, students developed apps and then public-interest groups might possibly get interested in them; now, outside groups make requests ahead of time. One of the six teams, consisting of three to four students each, followed up on outreach from the U.S. Department of Justice's Civil Rights Division and prepared an app to mark the 25th anniversary of the Americans With Disabilities Act, with some consultation by DOJ staffers. The app, ADA2GO, helps people with disabilities or others working on their behalf—as well as businesses and organisations subject to the act—understand their rights or responsibilities.

Some of the apps now go well beyond legal-services triage and logic trees. The Alaskan Native Child Welfare Assistance app even helps prepare for custody hearings. Requested by the Alaska Legal Services Corporation, the app helps families or their representatives

ensure that those children removed from their homes ...'

Another long running example with an organised hinterland is HiiL's Innovating Justice award. The process of evaluation stretches out from March to December. 'We are currently at the stage of 36 semi-finalists: *Our focus* is on Africa and the MENA (Middle East and North Africa) region. In addition, we accepted general legal tech applications from Ukraine that answer to our recently launched Ukrainian Justice Needs Report. There is up to €160,000 available in acceleration funding which will be divided over the finalists (around €25,000 per innovation).'

So, what do we make of this phenomenon? There seem to be a number of things to note. First, the energy and excitement behind these events and processes is palpable. Brainstorming and competition are old techniques being given new days and reborn in the crucible of new technology. Second, the evolution noted in the Georgetown process is surely important. Service providers are beginning to reach down to the



€160,000

There is up to €160,000 available in acceleration funding which will be divided over the finalists

innovators. Third, this evolution is probably necessary in the longer term to provide some context to what could otherwise be a scattergun approach. There will be a lot of wasted time and effort but that is actually integral to the competitive format. And finally, we can see the power of technological innovation itself as one of the drivers of change. The techies are demanding to be used and are

challenging funders to innovate. Of course, an old legal services veteran of the 1970s remembers the days when the excitement came from discovering that the law can – sometimes – uphold the rights of the poor against the powerful. But, hey, you have to change. And what is the harm if that becomes the result of the introduction of a more competitive, entrepreneurial focus on the process?

London Hackathon


Washington and Melbourne are unlikely to be ahead of London for long. Indeed, *Legal Geek* came in with its own London hackathon in October. Hackathons, competitive events taking place over a limited period of time (often 24 or 48 hours) are a popular way of engaging a wide range of people in technological solutions to legal problems, often relating to access to justice. What assessment can we make of their effectiveness?

Last week gave me my first involvement as a judge of a hackathon organised by Legal Geek, an organisation intending to make 'London the best place in the world to launch a legal start up'. The results were announced at an achingly trendy former brewery – all brick walls and high windows – close to the beating heart of London's main technology hub. The vast room reverberated to rock music; the place was crowded (the judging followed a conference on legal startups); the buzz was palpable.

The work on the hackathon had taken place the previous weekend at Google's Campus London. Seven teams toiled from 6pm on Friday night for 24 hours. They got free food and drink (largely, it seemed, pizza, red bull and coffee).



Seven teams toiled from 6pm on Friday night for 24 hours



The task was summarised as being to address the issue of ‘advice deserts’. The formal brief was actually slightly different: ‘Many of those in rural communities across the UK face difficulty obtaining independent legal advice and representation and therefore access to justice. This is due to the fact there are very few law firms in these rural areas and often firms will represent the council or a conflicting party in a dispute. This problem of conflict can be solved through technology, by linking rural communities up with lawyers across the UK, not just those in their local area, independent advice provided to those in need. *Our Mission* to create robust digital solutions that will enable those across the UK, particularly those in rural communities, to access independent legal advice and services, and therefore justice in a more efficient way.’

Never has the audience been younger, more diverse and more excited over all the hours of discussion of advice deserts that I have attended, this was distinctly not the usual worthy group of NGO stalwarts.


Never has the audience been younger, more diverse and more excited over all the hours of discussion of advice deserts that I have attended, this was distinctly not the usual worthy group of NGO stalwarts.

The teams came up with a variety of solutions which basically operated along two parameters. One approach emphasised the way in which technology could put those seeking help in touch with whatever provision was available – often in the form of ‘pro bono’ assistance. The other focused on how the web could be used to draw out from the user details of the problem so that the work of an adviser could be minimised. A good example of their work can be seen in the attractive video of Team ‘AdvoAble’ [here](#).

Given that the teams only had a day to work on the project, all the results were remarkable. All the websites seemed to work technically. Their combined effect was to emphasise that, if there are no physical advice agencies present, then technology does offer a potential way of extending some form of service. So, I was impressed by what the teams had done; I was really impressed that they seem to have enjoyed doing it; and I thought that there was some potential here for a real solution.

However, I left with some confusion over hackathons as a genre – no part of which was any criticism of this particular one or its participants.

Some of my uncertainty comes from an awareness that hackathons can be viewed in very different ways. I have spent a lifetime in NGOs that have sought to address versions of the advice desert problem.




So, it was easy for me to see the process through the eyes of committed NGO advisers in the field. Some of them would say that the problems of access to justice are so intractable that you could not hope to cook up solutions over a weekend. They would point to oversimplifications – manifested in the definition of the task that had been designed to provide something workable. The problem of ‘advice deserts’ is not actually just rural isolation. In England and Wales, it is the vagaries of legal aid (many of the teams understood that financial conditions for legal aid, if you can get it, are stringent and built into their programmes ways of calculating eligibility but none dealt with the now horrifically complex rules on what subjects are in scope or out of it). Nor did – perhaps could – anyone deal with the issue of those who would be unable to use technology for one reason or another (admitted by our Government to be 18% of the population as a whole – larger for those who are poor). Additional problems come from the geographically delimited boundaries of much NGO provision. No good turning up to an advice agency in Swansea, if you live in Cardiff – you

are out of catchment. The really diehard technology sceptics would even fear the danger of minimising the complexities of the real situation and giving the impression that problems like this could be easily solved.

No one, understandably, had the time or resources actually to get to the really hard part – whether you might give substantive advice on the web which could actually be of assistance to users resolving their own problems. Nor did any of the teams address the major issue of pro bono in terms of how you manage provision and uphold quality – except one group that suggested that the Law Centres Network might manage the system and others that prodded the Law Society. The difficulty with addressing issues like these is, of course, that one moves beyond the procedural technology to the substantive content. That is not something you are going to be able to do unbriefed and over 24 hours.

On the other hand, even the most cynical would have found it refreshing to see a wide range of young people approaching access to justice as a problem that can be solved rather than something

The really diehard technology sceptics would even fear the danger of minimising the complexities of the real situation and giving the impression that problems like this could be easily solved



whose lack is to be lamented and a web-based system could provide assistance to some. Many of the presentations were, for example, very close to existing services e.g. the free legal answers programme just announced by *Illinois Legal Aid Online*.

The presence of existing products raises an issue for the hackathon model. What do we think of the process if the work of the teams is fun, exciting but undertaken in the shadow of something that already exists and which is unavoidably better? The exercise risks becoming artificial and the really bright candidates will learn that they can consult an answer sheet with a bit of internet research.

What do we think of the process if the work of the teams is fun, exciting but undertaken in the shadow of something that already exists and which is unavoidably better?

I feared for the teams that had put their heart and soul into the project but where recognition of that went little further than some nice words of appreciation. That is fine if participants understand this is the deal; are undertaking the exercise for the experience, recognition, career development and – true – the remote chance that their ideas might be taken further. But there is an underlying tension here. The

technology is new and fun and malleable: the substance is old and gritty and intractable – solutions probably need money and engagement that is all too often not forthcoming. Clearly, there is no problem with the use of hackathons or scrums or any other workshopping of approaches within a wider strategy of addressing an intractable problem. The difficulties lie in hackathons as a self-standing exercise.

For all these doubts, the final judgement on short-term hackathons seems to me, for the moment, essentially positive. Longer term approaches that work with teams over a longer period of time – for example in incubators like Toronto's Ryerson University or the Hague Institute for Innovation of Law – might have more chance of getting to a product that might actually be implementable. Ultimately, it is better to have excited groups of young people – if they can bear it – recognising, discussing and seeking to solve issues about access to justice than to leave the field to the sober despair of the initiated. At any rate for the moment, successful approaches to the use of technology in providing advice and information is a wide open field: teams might come up with something but they should recognise that the value is more likely to be in the process through which they go rather the product they present.

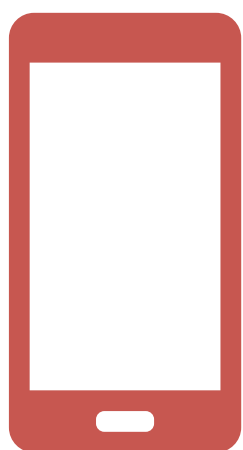
I can see clearly now: Victoria Legal Aid's exemplary app evaluation

Specific projects require specific evaluation. Victoria Legal Aid (VLA) has done us all a favour in publishing a 'warts and all' *analysis* of a tech project which did not work. The report is an honest appraisal of a project to develop an app which cost just under \$50,000 and proved a dud. So rare is such transparency that it should be prized. We can all learn inestimably more from it than the more usual relentless optimism and plausible excuses of most end of project reports.

VLA decide to build an app, *Below the Belt*, for young people aged from 12-18 covering issues relating to 'consent and age of consent, sexting and cyberbullying'. The content was nicely set out and contained things like age of consent calculators, tests, quizzes and a messaging function that allowed registered users to communicate with each other. It was scoped in 2011-12; planned and

implemented in 2012-13; went live in November 2013 and closed in September 2014. At the beginning, it clearly attracted some enthusiasm among those concerned with community legal education. It was VLA's first attempt at an app: 'there was excitement ...' The consortium behind it contained five legal aid commissions and two community legal centres. During its short life, 1095 people installed the app (which I thought might be a pretty good response rate but was short of the 5000 planned) but only 40 created accounts. Damningly, 849 of the installers uninstalled. That left a net cost per remaining install of \$42. Alas, the app was 'relatively cost inefficient'. Indeed, it was a flop.

What makes VLA's transparency about the difficulties the more remarkable is that there was an easy excuse. The app was deliberately created for the Android operating system. However, upgrades to this



1,095

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led to fragmentation and it became unusable on upgraded phones. This was recognised in advance as a potential risk but it was assumed that 'young people would use older and cheaper Android devices operating older operating systems'. Alas, the users appear to have upgraded and the app was, literally, a waste of space.

Identify the issue the client is facing; confirm if education is a solution; scope options, including [their] viability; test options and assumptions; decide on an option or decide not to proceed with any options.'


To its credit, VLA admits that difficulties lay deeper than the fragmentation of the app. Some related to the state of the emerging market for social media. On the messaging front, the app could not compete with the increasing dominance of products like WhatsApp, Instagram and Facebook over the period of gestation of the project. It also became apparent that apps have to be produced both for Android and iPhone products. In addition, the advertising budget was pitifully low compared to the commercial norm.

The evaluation calls for greater attention to what it terms the 'value proposition for the client' – or, in plainer English, the point. It argues that more attention should be given to identifying the basic purpose of the app. So, you should:

'identify the issue the client is facing; confirm if education is a solution; scope options, including [their] viability; test options and assumptions; decide on an option or decide not to proceed with any options.'

These are restatements of the classic lesson from any failed project and, indeed, many successful ones – spend more time at the beginning working out what you are doing and why; but they are as valuable to remember in relation to technology as anything else.

VLA is now asking whether an app was the best way to communicate the kind of information which was its subject in this case. The evaluation notes that most young people associate apps with entertainment not education. There may be more of an issue about how suitable the app is, as a form, for education more generally. The report notes that some of the content has been recycled in an age calculator to go on VLA's website and for a young person's programme. There is some really good stuff on bullying and sexting on the web already (for example, that from the *UK National Crime Agency*) and it is difficult perhaps to see how an app might be superior to these existing websites. However, the report is right to emphasise that we need to know from experience what works in app or on the web and what does not.



Crucial to this evaluation are the precise numbers provided by technology. They give you nowhere to hide. If this had been a booklet, the good news of distributing over 1000 copies would have been untarnished by the knowledge that 800 of them ended in the bin. You might have guessed that but you could not prove it. Now, argue that you need a twitter account and we can all see how many followers you get. Persuade a funder of the need for a website and Google Analytics means that your performance can be measured with precision. Set up a blog, you are as good as the numbers who read your last post. We can see not only the gross number of your hits but the net figures (less those who do not stay) and how long and where they spend their time. We need, internationally, to be able to make predictions with relative accuracy about how much trade we can expect from a website or an app.

This is going to affect where money should be spent. Crucially, it will assist us in the tricky judgement about how good technology really is compared with other methods of communication.

Those involved in access to justice have limited budgets. We tend to have one shot at success in a way that rarely limits commercial operations. So, the sharing of evaluations like this is really valuable both for the organisations involved and for a wider audience and at the heart of the evaluation are the numbers. Every nerve of every experienced project pitcher will scream at the prospect of publicly proclaiming detailed targets and performance against them;but, it is really essential. Under all the guff, how did you really do? Congratulations to VLA for telling us so transparently. You might almost say that the value of the project was saved by the evaluation of its failure.

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6. Technology, Legal Education and Training

Training Lawyers Online: The Development and Launch of Ryerson University's Law Practice Program


Gina Alexandris

How do you develop and deliver consistent, effective lawyer licensing training to law graduates situated across a province (and perhaps a country), incorporating large numbers of lawyers, similarly situated across a province, in subject matter expert, mentor and assessor roles? This was exactly the challenge that Ryerson University undertook in 2014 when it was awarded a contract by the Law Society of Upper Canada (LSUC) to develop and deliver the Law Practice Program (LPP), an eight-month experiential training program for licensing candidates that includes four months of 'online' learning and four months of an in-person work placement. And... it had nine months to do so before its first cohort began.

In Ontario, and the rest of the common law provinces of Canada, law graduates are required to complete articles of clerkship for ten months (this varies by province). However, for various reasons, many graduates were finding it impossible

to obtain articles as required, and the LSUC determined the need to create an additional pathway. Furthermore, the regulatory body was moving towards a competency-based system of qualification, and it directed the LPP to consider ways to develop and assess candidate skills in the areas of professionalism and ethics; research; analysis; oral and written communications; client management; and practice management.

Now in its third year, the LPP has provided nearly 700 licensing candidates the opportunity to develop and be assessed on these vital lawyering skills needed to complete their experiential training component and, as a result, provided an otherwise unavailable pathway to becoming licensed to practise law in Ontario. At the same time, the LPP has involved the participation of hundreds of practising lawyers across the province in the creation and delivery of the program, as subject matter experts, mentors and assessors.



As well, over 400 new jobs were created in the first two years that were previously unavailable within the profession for law graduates, allowing them to successfully put their skills from the training component to work in the work placement.


Just how does the training component work?

From the get-go, the LPP made it clear that this is work, not school. Using the concept of Virtual Law Firms ('VLFs'), the LPP designed a hybrid learning experience/environment by which candidates would develop the relevant lawyering skills required by the regulator through simulated files in the areas of Administrative Law; Business Law; Civil Litigation; Criminal Law; Family Law; Real Estate Law; and Wills & Estates Law (subject areas mandated by the LSUC).

400

Over 400 new jobs were created in the first two years that were previously unavailable within the profession for law graduates

First, all candidates each year are randomly divided into 'firms' of about four members, and each firm is paired with two different mentors, one for the first half of the training and the other for the second. Next, working closely with the University's Digital Education Services (DES) at the G. Raymond Chang School of Continuing Education, and using the university's Learning Management System (Blackboard in year one; Brightspace by D2L thereafter) and google apps for education, the LPP created a simulated law firm intranet site. The VLF site supports a highly authentic simulation of a real-life workplace where messages and work assignments are issued and exchanged along with resources and precedents relevant to client files at hand. In addition to precedents and additional resources, the original content that populates the VLF site includes hundreds of pre-recorded video 'meetings' with Senior Partners and guides to the foundations and steps of each practice area. Candidates engage with one another through 'water cooler' discussion boards that help create a sense of community. Candidates practice proper management of digital client files through use of a google drive. The 'Partner's inbox' is represented by a submissions area where candidates can submit their work online, for the mentor to receive, review and assess.



Through the D2L site, firms are sent messages from 'Senior Partners', 'Associates' and 'Law Clerks' in the various simulated practice files, and firms must respond to the required work assigned, either individually or as a firm.

Sometimes firms receive client 'telephone messages' that must be answered immediately. Just as in real life, the messages and work is sent throughout the 'business day' of 8am to 6pm, and the candidates are expected to be available for work Monday to Friday during those times. And just like real life, sometimes work carries over outside these timelines. Part of the learning that occurs is managing competing priorities of multiple files and multiple clients. Collaboration

To continue with the notion of a workplace environment and ensure accessibility for as many candidates as possible without having to be physically present... the LPP needed to find a way to engage all candidates and mentors remotely.

and teamwork are also important developmental themes in the LPP, and each firm sets up google files to allow file sharing and collaboration on work activities. And speaking of clients, the LPP benefits from the tremendous program available at the university through its Interpersonal Skills Teaching Centre (ISTC), whereby actors are hired

and trained to simulate clients in the majority of the LPP files. Candidates therefore have the opportunity to meet with clients for the first time in initial client meetings, and then carry on the relationship with further follow-up meetings as the files progress, including preparing clients for trial in the Civil and Criminal files.

To continue with the notion of a workplace environment and ensure accessibility for as many candidates as possible without having to be physically present (remembering that both candidates and mentors reside across the province and/or other provinces, or even countries), the LPP needed to find a way to engage all candidates and mentors remotely. It did so through webconferencing, specifically the Webex platform. Every Monday morning for four months, the LPP Executive and Senior Directors hold 'managing partners' meetings with all candidates, working through file issues of the week, taking questions and comments from the candidates in real time. Similarly, each firm meets weekly with their mentor, both to discuss file assessments and evaluations, but also for part of the firm meeting, to discuss and reflect on specific weekly themes of professionalism and practice management, taking the Rules of Professional Conduct and giving them true life. In between these weekly meetings, mentors receive

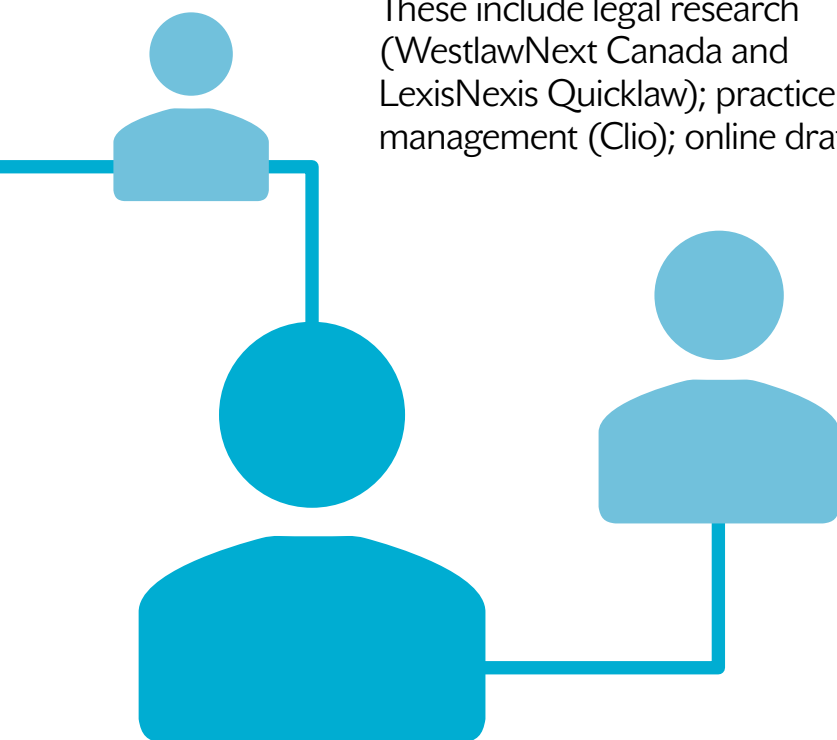


all candidate and firm assignments (approximately 120 in a four-month period, from client interview notes, to drafts of agreements or pleadings, to correspondence to clients and opposing counsel, to legal research memoranda) through Brightspace by D2L, the learning management platform, and also provide feedback and assessments online via rubrics, for immediate feedback to candidates. Firms webconference each other and meet with their 'clients' via webconference. In the third year, for example, there was approximately one client meeting per week per firm, mostly completed via webconference.

In addition to the webconference tool, the LPP has benefitted from partnerships with other legal tech service providers who have offered their platforms and services for use by candidates in the program. These include legal research (WestlawNext Canada and LexisNexis Quicklaw); practice management (Clio); online drafting

of real estate agreements of purchase and sale (LawyerDoneDeal); online contract review and drafting (Clausehound); an online negotiation training module (Stitt Feld Handy Group); and the actual online registry system used by real estate practitioners in Ontario (Teraview). And in addition to the technologies used during the training component, the work placement process benefits from including relevant technologies that allow candidates the opportunity to engage in online practice work placement interviews (Kira Talent) and receive and submit work placement opportunities online (PlacePro).

Within three years, the LPP has created a multi-teamed approach among groups across Ryerson University, in partnership with external service providers and the Ontario Bar Association, working with hundreds of members of the profession each year, to develop and deliver to hundreds of licensing candidates training that effectively develops and assesses their key lawyering skills through simulated files. All this exceptionally prepares candidates to hit the ground running, both for their subsequent



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work placement, but also as they later embark on their legal careers.

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The piece above elicited a response from Paul Maharg, one of the founders of this online approach, who set out some of the history and context.

Digital and Simulation in the Teaching of Law: Emerging from the Shadows


Paul Maharg

Gina Alexandris outlines the approaches taken by Ryerson University in its Legal Practice Program. It is an ambitious program, based on simulation methods of learning, teaching and assessment, and it brings together a focus on learning the law through doing law and communicating with clients, lawyers and others, in legal transactions. However, there are no references to prior work or research in her post, so it might be helpful to recall the recent history of digital simulation in legal education. For the sake of readability and brevity I've collected references on a public [Zotero](#) page, where you'll also find full-texts as appropriate.

So when did digital sims in legal education begin? Best place to track the heuristic is the systematic review of the literature undertaken by Maharg & Nicol (2014). There, the authors trace the history and genealogy of sims, technology and legal education in over 40 years (1970-2012), and over a dataset of 123 items (included in the chapter).

They adopt Lisa Gitelman's useful two-level model of media where 'a medium is a technology that enables communication' but which is also 'a set of associated "protocols" or social and cultural practices that have grown up around that technology' (Gitelman 2006). They also cite Jenkins' observations that a medium's content shifts according to the delivery technology (he gives the example of television displacing radio as a storytelling medium – Jenkins 2008).

We can see these movements at work in early sims. Those examples, from the 1970s & 80s, involved computer-aided instruction and embedded AI programs; in the 1990s they tended to be replaced by interactive video (eg laserdisks) and sims that made use of early video conferencing applications as well as electronic casebooks that provided interactivity as well as extensive digital resources. A significant shift in delivery platforms occurred around 2000 with the



development of more powerful desktop computing that allowed for the creation and representation of multi-user online environments such as *Second Life*, virtual offices and case management systems (SIMPLE), and other custom-made interactive environments (Cassidy 2009).


With the change in medium came a shift in educational approach. By the 2000s there is less instructivist emphasis, and more of a constructivist approach to simulation in law. Abdul Paliwala at Warwick, Maharg and colleagues at Strathclyde, the Dutch projects

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of RechtenOnline and others elsewhere all worked with varieties of role play and simulation, in online or blended programmes, which were to a greater or lesser extent immersive, and which engaged students in what was for many of them a welcome change to a diet of lectures, tutorials and exams. They also collaborated with each other in virtual firms and in a variety of online forums.

Our work at Strathclyde University really started in the mid-1990s at Glasgow Caledonian University in Glasgow where Karen Barton, Patricia McKellar and myself met and discussed ideas and practices, tried out mini-pilots.

But it was really the founding of the joint Glasgow Graduate School of Law by Glasgow University and Strathclyde University in 1999 and the merging of a single professional programme, the Diploma in Legal Practice, that shifted the needle. Faced with the necessity of choosing either a Strathclyde approach or a Glasgow approach to the programme, I took neither: with my colleagues, we began to construct our own synthetic pedagogy, and our own practices in learning, teaching and assessing (Barton and Maharg 2006). We drew upon others' ideas, acknowledging them and adapting them – the shining example of John Dewey for instance in philosophy of education, the Realist movement in legal education in the US, the progressive education movement in England, the inspirational work by Sherry Turkle on MUDs and MOOs, by Lucy Suchmann on situated learning, Will Wright on SimCity and The Sims, and many others. We learned from kindergartens and primary schools, from medical education, sports training, and the best of what law




firms were doing in professional development. Above all, ethical formation was essential: our aim was to prepare students for their future, but to assist society achieve its best future, too, through our students.

In 2006-8 we won over £200,000 to develop a simulation engine, called SIMPLE, Simulated Professional Legal Education, in which we developed a basic case management system linked to virtual firms and a map of a fictional town, Ardcalloch, which together with other functionality enabled the creation of realia for complex transactions. Following Dewey and constructivist educators, we developed the concept of transactional learning, which we defined in our internal papers and publications as comprising the following seven traits –

*active learning
through performance in
authentic transactions
involving reflection in and
on learning
deep collaborative learning,
and holistic or process learning,
with relevant professional
assessment
that includes ethical standards.
(Maharg 2007)*

Our project partners included the Departments of Architecture and Management Science at Strathclyde as well as the Law School; and the Law Schools of Warwick, University of South Wales, Northumbria and Stirling. We were thus interdisciplinary, working across jurisdictions in the UK. But we were international, too. We collaborated with the Cyberdam project in the Netherlands, constructing an international simulation between the students at the universities of Utrecht and Strathclyde. Throughout there was a commitment to Open practices – open-source code (www.simplecommunity.org), Open Educational Resources (OER – see the Simshare project, detailed at Priddle et al, 2010), and Open Research. SIMPLE's code was open source, and our publications published as far possible on open platforms.

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All this and much more was documented in our 90-page SIMPLE Project Report (Gould et al 2008), numerous presentations, publications, and analyses of the learning gains achieved by students. Karen Counsel in the University of South Wales, for instance, recorded a 10% improvement in the Torts examination results of her first year LLB students, when the only significant new factor was the replacement of an essay with a simulation (Counsell 2014, 153).

It suggested that simulation enabled students to better understand Torts as a conceptual domain, and to transfer that learning to an academic examination.


It suggested that simulation enabled students to better understand Torts as a conceptual domain, and to transfer that learning to an academic examination.

We used the sim engine to explore new understandings of how it affected learning, and how it changed our roles. We became designers of education and our roles as academics gradually turned into something strange and exciting. What about the simulations themselves – were they really ‘authentic’? What did ‘authentic’ meant in the context of transactional learning (Barton, McKellar, Maharg 2006)? Above all, we investigated how students learned in their virtual firms. The

outstanding work of Karen Barton and Fiona Westwood, for instance, analysed how student learning, trust, ethics and professionalism could fuse to help develop professional, ethical identities. Here is their learning/trust matrix, created as a result of their qualitative analysis of the reflective reports produced by students upon the experience of working in their virtual firms. Student achievement is mapped across four quadrants, measured by quality of learning and quality of trust: Barton & Westwood 2006, Learning/Trust Matrix.

In their second research article (Barton & Westwood 2011) they described in detail how they re-aligned teaching practices in key modules to ensure that more students occupied the high-learning high-trust quadrant of Learning Communities. And having produced this research they used it with students to show them the benefits of aiming to be in the top-right quadrant, and how to achieve that. The result, as they demonstrated, helped to transform our practices and student achievement.

Simulation is a marvelous way of learning law because it can be used in so many ways. Other law schools are using sims to significant effect, globally. In Hong Kong University’s Faculty of Law, Wilson Chow and Michael Ng have adapted SIMPLE as SMILE, and are achieving good results (Chow & Ng 2016). In ANU,




SIMPLE has been adapted as VOS, the Virtual Office System, and used simulation to great effect on their professional programme, the GDLP. The research that has arisen from the use of simulation is rich and comprehensive, taking in student and professional wellbeing, curriculum design, professionalism, identity and much else (Ferguson 2015; Ferguson & Seul-gi Lee 2015).

In another direction, face-to-face simulations such as that used in Simulated Client projects are also having a significant effect. Adapted from medical education, this approach to client-based learning in legal education was proved by a correlational study carried out in the Glasgow Graduate School of Law (Barton et al.) The approach has been adapted in OSCEs by the Solicitors Regulation Authority, and by many other law schools. An independent study of its use in a two-year Bar exemption programme by, *inter alia*, two of the authors of the influential US Carnegie Report, *Educating Tomorrow's Lawyers*, William Sullivan and Lloyd Bond, concluded that the exemption programme

prepared students better than those students who continued with normal JD educational paths. Using standardized simulated client interviews, students on the exemption programme outperformed lawyers admitted to practice within the last two years; and statistically, the only significant predictor of performance was participation in the programme (Gerkman et al, 2015).

How can we support student learning for such complex sims? Consider a couple of short webcasts, say 10 mins each. Imagine that the cases, legislation, ancillary documents, graphics, self-testing questions with branching feedback, commentary are available, clustered around the central figure of you, speaking to students, televisually. Time-shifting, replaying, re-thinking, reading, discussing, all at the students' pace, is possible. Students can leave questions under their own names or anonymously, which will be answered by you or a tutor, the answers available to all. Dialogue is possible there, as is coaching. So is interactivity, amongst students, between students and staff, that we simply don't have before: likes, dislikes, tags, shares, dubs, redubs, extractors, mashups, response-videos, comments on videos by students as per YouTube, splicing text with video, saving resources to exam questions, structuring, restructuring Open textbooks that

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have video embedded in them. And these resources are sited only a few clicks away from the simulation environment. All this functionality exists out there on the web. We were doing early versions of it at Strathclyde back in 2004 (see Maharg 2007, chapter 9). But we legal educators still use little of it in our courses: as William Gibson famously said, the future is already with us, it's just not very evenly distributed (Gladstone 1999).

One future for simulation is to use vast datasets in our sim design and our communications design. Kris Greaves' article (Greaves 2016) is a recent and substantial analysis of how we could use data-rich environments to enable our students to learn. For yet more evidence of big data's reach, and how it can be used for the good, see this article from *Wired*. The potential dovetailing of criminology and education is very powerful. Imagine our students studying this as a case study, prior to a simulation: Big Data + (Becoming a Man + Ethical Practice + intensive tutoring). It's pure Dewey. Or better still, imagine our students being educated to use Big Data in order to research and identify change

And we haven't even begun to discuss the immense potentials of virtual reality, augmented reality, gamification or workplace learning in the future of sim learning.

moments for themselves, and thereby helping to dismantle, conceptually, the idea of Higher Education as a common good, as our liberal cultures have it, maybe seeing it as a privileged, gamed system that actually perpetuates inequality, and *then* beginning to do something about that. And we haven't even begun to discuss the immense potentials of virtual reality, augmented reality, gamification or workplace learning in the future of sim learning.

As we can see, all the functional elements of Ryerson's LPP sims have been out there for at least 16 years, some of them probably much longer. It's not unique. And in terms of the theory behind it, there's at least a century of work on approaches to active learning that it embodies, since the publication of Dewey's *Democracy and Education*, exactly a century ago. But like all extensive use of sims in legal education, the LPP is still innovative, still disruptive, and it is so because, in Gitelman's terms, its simulation environment is both a medium and the set of social and cultural practices that grows up around the medium. It is, in the words of Lee Shulman (another author of the Carnegie Report), a *shadow* pedagogy, one that challenges the hegemony of dominant or signature pedagogies, with their embedded social and cultural practices. The simulation



curriculum of the LPP is having that effect on Canadian professional legal education, as it does everywhere. It's time for simulation to emerge from the shadows.

- a. have to monitor changing nature of market for law graduates – may be fewer classical lawyers, wider range of roles;
- b. have to counteract tendency for low diversity in technology-focused entrants;

- c. have to adjust curriculum for new needs e.g. all law grads may need understanding of AI
- d. have to ask how digital delivery may affect legal education.
- e. tech starts.

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It's time for simulation to emerge from the shadows.

7. Organisation and leadership

Online Dispute Resolution, Online Legal Services: the question of leadership

A high level panel in the last session of a London conference on access to justice addressed the question of 'strategy on a 10-year horizon'. Asked to identify the key issue, the majority of participants (who included the CEO of the Law Society and a senior judge) identified the question of who would lead developments over the next decade. That is a difficult but important point to which the answer is not obvious and, indeed, the answer may be 'no one'.

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The conference was organised by the Civil Justice Council (CJC) for England and Wales as its Fifth National Forum on – and here the title has been changed from the previous 'litigants in person' – access to justice for those without means. The CJC is the sort of body that exists in many jurisdictions. It has a statutory base, established by the *Civil Procedure Act 1997*. It has a thoroughly respectable

membership of judges, lawyers, civil servants and others and its functions include:

- (a) keeping the civil justice system under review,
- (b) considering how to make the civil justice system more accessible, fair and efficient,
- (c) advising the Lord Chancellor and the judiciary on the development of the civil justice system,
- (d) referring proposals for changes in the civil justice system to the Lord Chancellor and the Civil Procedure Rule Committee, and
- (e) making proposals for research.

It is enormously to the credit of one of the judicial members of the CJC, Sir Robin Knowles (who has a long history of engagement with the pro bono movement), that the Council has construed its remit to include civil justice within the wider context of access to justice. The engagement provides the opportunity to bring together a wide range of stakeholders in the civil justice system including advice and



information providers, lawyers, the court service and the judiciary. The national forum has become an annual day out for advisers at the coal face to meet and discuss matters of mutual interest with the judiciary and civil servants involved in the courts. At the present time, the momentum is with Her Majesty's Courts and Tribunals Service and the judiciary as both race to implement Ministry of Justice plans to sell off court stock and digitalise court procedures, particularly in relation to a proposed online small claims court.

The CJC has gone just about as far as it can do with its statutory remit. It has set up exactly what it said on its conference tin: a national forum for discussion. The CJC's focus is, however, primarily only on the courts: it is only by stretching its concern with litigants in person that it looks at the overall provision in terms of advice and information available to those who are self-represented litigants or, even more distantly, those who might be.


The obvious counterpart to the CJC would be the body charged with administering legal aid. Under 1998

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legislation this would have been the Legal Services Commission which was responsible for a community legal service that included advice, assistance and representation (although for historical reasons the Commission never actually had responsibility for national information and advice provided by organisations like the Citizens Advice Service or advice services funded by local government). The Commission had, however, a broad oversight and planning duty. Its *statutory duties* included:

- (a) The Commission shall also inform itself about the need for, and the provision of, services ... and about the quality of the services provided and, in co-operation with such authorities and other bodies and persons as it considers appropriate—
- (b) plan what can be done towards meeting that need by the performance by the Commission of its functions, and
- (c) facilitate the planning by other authorities, bodies and persons of what can be done by them to meet that need by the use of any resources available to them;

and the Commission shall notify the Lord Chancellor of what it has done under this subsection.



The Commission, however, fell foul of rivalry with officials and ministers in the Lord Chancellor's Department and was replaced by an executive agency of the Ministry of Justice, the Legal Aid Agency (LAA). The LAA has a narrow administrative brief illustrated by the fact that it played no role in the CJC's national forum.

For England and Wales, the CJC is, to its credit, really the only body that might stretch towards a leadership role. However, this raises the question of overall leadership in a field where a number of individual actors have their own agendas and, indeed, where the driving force of technology itself is amorphous, chaotic, unpredictable and necessarily leaderless. In addition, there is the difficulty of bringing together a diverse constituency which covers fields that have long been separate. In England and Wales, the courts, lawyers, legal aid funders, advice providers and mediators have traditionally operated separately and have vastly different histories.

There is no easy answer as to who should provide a lead. Ministries of Justice or their equivalents hold the

purse strings to funds for the courts and for legal aid; but, by that very fact, they have their own agendas. There is a growing movement towards Access to Justice Commissions in North America, often chaired by a judge which bring together providers and seek to leverage judicial credibility. However, these often struggle for resources.

The Canadian Forum on Civil Justice was established in response to a report of the Canadian Bar Association in 1996. It has an institutional base at York University in Toronto and a research brief: in the words of its *website* it 'strives to make the civil justice system more accessible, effective and sustainable by leading and participating in projects that place the citizen at the center of our civil justice system.' The forum has done some good work but again is not in control of any significant resources.

In the United States, the American Bar Association has established a Centre for Innovation. This was a recommendation of the report of its *Commission on the Future of Legal Services*. This should provide research on developments and a

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lead in regulatory debates. It will presumably be similar to an extent to a number of academic institutions with a brief to foster and study innovation of which The Hague Institute for the Internationalisation of Law (HIIL) is but one. HIIL is involved in a number of practical developments, notably the *Rechtwijzer*. But none of these bodies are really leaders in any sense of pulling together initiatives in the public and private sector to any great degree.

For the moment, it may be enough that the issue of strategic leadership and the realisation that technology disrupts the previously useful divisions in the justice system is recognised. Jurisdictions will struggle in their different ways to meet the evident need at least to take stock of rapid change, only part of which is – in any event – under their control. We need to keep working at bringing together what, in England and Wales, would be the NGO advice sector, private providers, legal aid and courts and tribunals. The key players will be broadly similar in other countries which the CJC’s final panel correctly identified a major issue.

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8. The Way Forward

This four-month review will be followed by an annual review of developments in 2016-17 to be published in the Spring. We will then be able further to analyse the direction of developments. Meanwhile, do use the website

law-tech-a2j.org as a way of keeping informed. If you would like to write a contribution, contact me at rsmith@rogersmith.info.

Roger Smith
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