



# Précis Paper

## Past, Present and Future of Law

A discussion about the changes in the provision of legal services over the years including changes to the structure and operation of legal firms, the influence of business and technology on the delivery of legal services and forecasts for the future of the legal profession.

### **Discussion Includes**

- Drivers of change in legal services
- Technology and the legal profession
- Structure of legal firms
- Business and the legal profession

# Précis Paper

## Past, Present and Future of Law

1. In this edition of BenchTV, Zile Yu (Head of Innovation and Special Projects – Meridian Lawyers, Sydney) and Philippe Doyle Gray (Barrister – 8 Wentworth Chambers, Sydney) discuss the changes in the provision of legal services over the years including changes to the structure and operation of legal firms, the influence of business and technology on the delivery of legal services and forecasts for the future of the legal profession.

### Drivers of change in legal services

2. There has been an exponential rise in the demand for legal technology or new law services.
3. This has been due to a number of factors including the entrance of what were traditionally professional service firms such as the big 4 accounting firms, the entrance of various international law firms entering into the Australian legal market as well as the decline in demand for legal services since 2008.
4. All of these factors place downward pressure on legal costs and as a result law firms have seen a decline in profits since 2008.
5. Within the legal profession itself, the time taken and process involved training a solicitor in legal services is very different to what it once was.
6. Traditionally, a new solicitor was not permitted in court unless a solicitor who regularly appeared in that court was present with them.
7. The solicitor explained to the new solicitor the jurisdiction of the court, identified the judicial officer or registrar, explained the procedure, observed the new solicitor conducting a matter and consulted them afterwards.
8. This does not happen today and it may be due to how law firms are currently structured under the billable hour model.
9. Traditionally, law firms have always billed under the billable hour model however they never had the pressures or inclinations to change the system that are present now.
10. The billable hour model is not only a revenue generation system, it is also a management system for the law firms.
11. The billable hour model is now meeting its decline as clients are increasingly putting pressure on firms for more fixed fee matters.
12. If systems are developed the work of lawyerd can be systematised to a certain extent to replace some tasks undertaken by lawyers, ultimately driving costs down and commoditising the process of delivering a legal service.
13. Further, due to the vast information available to clients on the internet, clients are able to segment what their particular legal needs are and in doing so, they will typically do part of

the legal process traditionally done by lawyers themselves, thereby demanding a lower cost from lawyers.

### Technology and the legal profession

14. There has been an increasing acceptance and reliance on technology in the legal profession.
15. The legal market is a very mature market and as a result of the above factors, the legal market is beginning to enter a decline in its life cycle.
16. At the moment the vast majority of tasks which a lawyer performs cannot be replaced by technology, nevertheless technology is evolving and ultimately changing this.
17. Traditionally lawyers operated in small groups reflecting their highly individualistic nature and the individual style of their work.
18. However, the 1994 amendments to the *Legal Profession Act 1987* (NSW) brought a recognition that the profession may learn from the way businesses operate to deliver better value for clients.
19. Further, in the future, the role of disruptive technology, that is technology which will replace what lawyers and paralegals currently do, will become more prevalent.
20. The next 5-10 years will see the rise of new technologies which will completely change the delivery of legal services, such as cognitive computing, smart contracts and blockchain.
21. Cognitive computing refers to artificial intelligence, machine learning, natural language processing, speech recognition.
22. In the coming years we will see the rise in these types of programs and interfaces which will mean that humans will no longer need to program machines and will instead need to train them.
23. Currently there are various artificial intelligence programs being applied to legal research, document discovery etc, however at this stage, there is no program or interface which links the specialised uses for the technologies into one combined platform.
24. These technologies will change how lawyers deliver legal services.
25. Another technology which will impact the legal profession is blockchain technology.
26. Blockchain is the technology which underpins cryptocurrency such as bitcoin and it basically enables two parties who do not trust each other to transact.
27. In current society, if two parties do not trust each other they generally rely on a third party such as a bank or escrow institution to assist the transaction. Blockchain technology bypasses all this and serves as a third party and is done automatically within seconds of that transaction and is irreversible.
28. As a payment system there are uses for blockchain technology however as an enforcement system, the uses become much more valuable. In our current legal system if two parties enter into a contract in which one party defaults, in order to enforce such a contract, a party must rely upon the assistance of courts and professional service providers such as lawyers. These all cost time and money.

29. If two parties enter into a smart contract based on blockchain, that contract will be self-executing and there will no longer be a need to go through the court system to enforce performance of the contract.

#### Structure of legal firms

30. In the 1990s there was a change in law firms from small and individualistic to commercial or industrial size of firm.
31. This led to a fundamental change in structure, known as "the pyramid", where there is an equity partner at the top of the firm, a number of solicitors who do not require supervision below them and then a bottom level of solicitors and support staff who require supervision.
32. Traditionally, these were known as the partner, the associate and the employed solicitor.
33. This structure developed from the realisation that commoditizing legal work meant that an equity partner could make more money off the profits of the employees than by their own personal exertion.
34. As law firms have moved toward the pyramid structure, the time and dedication to training those at the 'base level' of the pyramid has disappeared.
35. Nevertheless, it is likely that with technology advancements and other demands, there will be a return to the long term historical average, which is not a 'pyramid' but a 'diamond' structure.
36. The diamond structure is made up of one partner, who is a lawyer or other professional who can practice without supervision and who is also responsible for the business aspects of the firm.
37. The bulk of the diamond is made up of what was traditionally known as associates who are professionals who can work unsupervised but who have no interest in the running of the business
38. At the bottom of the diamond, is the employed solicitor who, whilst licensed, does not have sufficient experience in practical training to be left unsupervised.
39. This means that the employed solicitor has access to a vast amount of associates who can train them until they reach the level of associate.
40. A move away from the pyramid structure in the future will mean junior lawyers will increasingly find it difficult to find a job as there is no longer the wide base and opportunities for untrained solicitors.
41. However, the jobs that will be available will be better because of more training opportunities.

#### Business and the legal profession

42. It is likely that the role of non-traditional legal jobs will change in the future.
43. It is only a matter of time before machines will be able to do a better job than humans.

44. Law firms need to recognise that there is a role for non-legally trained people who can bring skills in either legal technology or project management or in business who are able to work with lawyers and together provide exceptional service.
45. Law is an industry which has traditionally been viewed as lagging in its adoption of technology.
46. This may be due to the fact that there is currently there is no reward or even metric for the incorporation of innovation by lawyers or law firms.
47. By incorporating innovation into the KPIs of lawyers, firms will automatically reap the rewards by utilising the employee's creativity by making better systems, service and that will enable the firm to proof itself from the entrance of new competitors and the development of new technologies.
48. The most important thing for lawyers to do today is to recognise what technology can do and what it will never be able to do
49. People require other people to give to them certain things that only people can give, such as reassurance, hospitality, feelings of safety. These are human qualities that lawyers can give to clients.
50. The number one quality in the relationship between a lawyer and client is trust. Expertise on its own is insufficient, a client must feel trust.
51. In litigation, at least half of all litigants lose. Therefore, delivering a result that is satisfactory does not necessarily mean a result which makes somebody happy
52. Further, the quality that differentiates human lawyers from any machine is imagination.
53. Programs such as legal zoom provide one part of the overall delivery of legal services, that is the document creation.
54. We are heading towards a crisis point in the regulation of the legal profession.
55. This is because, historically society decided that certain occupations can be monopolies. In these monopolies, there are restrictions and barriers to entry, in the form of training and education and there are ongoing responsibilities, known as ethics.
56. The unstated assumption is that these professionals will take their fiduciary duties seriously and use their monopoly for the purposes of making society better.
57. However, when it comes to low value legal work, lawyers have failed society and providers such as legal zoom are filling a demand which exists which lawyers have failed to address.
58. The legal profession needs to decide whether they want to keep their monopoly and if so, then they must be prepared to live up to their fiduciary obligations for people who are not merely clients but servicing society as a whole.
59. In doing so, the legal profession needs to embrace the efficiencies of both business and technology in document production and other areas.
60. The fulfilment of a lawyer's fiduciary duty means challenging the ways in which we work and embracing technology
61. Lawyers need to look at ways in which documents can be standardised as part of greater procedure and legal advice can be given at greater cost

62. The legal industry needs to take on solving legal problems in the most cost-efficient way including the use of technology, which includes the development of technologies such as document automation.
63. Lawyers can provide access to justice which is more widespread and affordable whilst at the same time earning a satisfactory income, however they need to recognise the need to evolve with society.
64. A problem in the legal profession is that senior lawyers have the most power to effect change but have the least incentive to do so.
65. This is because once a lawyer retires, there is no incentive to leave the court, firm or chambers in a better way than they found it.
66. This is different to big business because senior executives in businesses generally may move to paid directorship in retirement. This means that they are therefore highly incentivised to leave their business in a good position.
67. Lawyers have a tremendous role to play in the development of legal technologies and improving upon the legal profession by bringing law into the future.

## **BIOGRAPHY**

### Zile Yu

Head of Innovation and Special Projects – Meridian Lawyers, Sydney

Zile Yu is the Head of Innovation and Special Projects at Meridian Lawyers. Zile combines his established legal background as a leading property lawyer and his fervent belief and experience as an innovation professional to revolutionise legal practice and transform the status quo. He has presented extensively on topics such as blockchain, smart contracts and artificial intelligence to lawyers and professionals and is highly passionate about legal technology innovation and cutting-edge technological applications.

Zile has developed and build legal automation platforms utilising machine learning as a hobby and led a team in the Global Legal Hackathon 2018, winning two awards, developing a prototype smart contract on blockchain technology and a new programming language created for law that simplifies and unifies legal practice. He was also listed as finalist for Real Estate and Construction in the 2018 Lawyers Weekly 30 under 30 awards.

### Philippe Doyle Gray

Barrister – 8 Wentworth Chambers, Sydney

Philippe predominantly practices in document-intensive civil litigation involving allegations of criminality, fraud or other serious misconduct. He has an interest in the application of technology in legal practice to enhance cost-effectiveness and deliver justice. Since 2013, Philippe has conducted a paperless office and courtroom. TECHSHOW is the world's premier annual legal conference dedicated to legal technology, organised by the American Bar Association. Philippe is the first – and only – Australian lawyer ever to have been accepted as a member of the teaching faculty.

## **BIBLIOGRAPHY**

### Legislation

*Legal Profession Act 1987 (NSW)*