Legal Technology: Dispelling the Myths

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In recent years I have delivered many presentations on legal technology with a focus on embracing disruptive technology. There is always a mixed response; some excited by what new technology allows the user to achieve while others are more skeptical. Regardless of which side of the fence you come down on, there are a number of misconceptions around legal technology that I regularly come across that I wish to dispel for the common good.

1. Disruption Should be Avoided

Everyone has been told about disruptive technology; told that they must adopt it and that it can revolutionise the way they work. But just like when I was told not to be disruptive in class as a child, this term seems to carry negative connotations for legal professionals. This is not the case and should be looked at from a different perspective. Whilst the intention is to disrupt the way we currently work, the objective is to positively enhance the methods we use to complete a task to deliver a more efficient outcome. So why does it have to be disruptive?

In 1995, Harvard Business School professor Clayton M. Christensen separated technology into two categories: sustaining and disruptive. Sustaining technologies provide incremental improvements to established technologies whereas disruptive technologies challenge these established technologies, or the businesses that use them, and allow usually smaller businesses to compete on the same playing field. By this definition, not all legal technology is disruptive. Many improvements made to legal technology could be described as sustaining.

Reviewing a matter is such a significant part of building a case, it is only natural that change to this process is having a substantial impact on the practice of law. The move to reviewing a case electronically was a soft introduction to disruptive technology. The more recent advances allow sole-practitioners and small firms to take on matters that were previously reserved for top-tier firms, introducing real disruption to the field.

This disruption is not necessarily negative, but an inherent part of modern society, including law, and a mechanism to achieve competitive advantage.

Disruptive legal technology is really about change, positive change. It allows lawyers to achieve the same outcomes in less time, with fewer resources, for their clients. This ultimately saves clients' money and becomes an influencing factor clients consider when deciding whether or not to litigate.

2. Technology will Replace the Lawyer

There is some sentiment amongst practitioners that technology appears to be taking work away from lawyers. We have certainly seen the internet and social media enable consumers to share their legal knowledge, advice and experiences with large audiences. The online dispute resolution offering that eBay has implemented through its "preferred dispute resolution provider", SquareTrade, automates the dispute resolution process between buyers and sellers. Whilst SquareTrade is not a law firm with lawyers, there are many entities like this across various aspects of

legal service that are changing the way disputes are resolved.

It is important to take a step back and understand the driver of these changes. It is not the technology, or the technologists, who have developed these platforms; the end users have come to expect that alternative solutions will become available to them. The smart phone and other mobile devices, combined with ever increasing internet speeds and storage options, have made access to information and services easier than ever before. People and businesses are becoming more tech savvy which is increasing the overall trust and familiarity with technology.

Will technology replace the lawyer? No doubt there has already been an impact, but technology will never fully replace the role of the lawyer. No matter how advanced artificial intelligence becomes, it is far from replicating and understanding the emotional context of human interaction. Even the advanced computer-learning technologies we are working with today are completely ineffective at delivering positive outcomes without the right "teacher". Advancements in eDiscovery such as predictive coding, or assisted review, work by learning from subjective decisions made by a lawyer. This logic is then applied to a larger document set. A lawyer is required to validate the decisions it is making to ensure they are accurate and correct. The technology is essentially a mechanism to efficiently propagate the knowledge of the lawyer to a large volume of documents. The technology can only gain this knowledge once taught and guided by a lawyer.

3. Technology is Only for Big Data

We often hear of lawyers from smaller practices dismissing the need for technology because "we don't do big matters". Whilst it is true that functionality such as predictive coding lends itself to big data sets, the volume of data in a matter is not the only factor that should determine the appropriate use of technology.

There are a number of points to consider when determining whether technology should be adopted or not:

(a) **In what form do the documents originate?** When dealing with discovery, the Courts usually highlight volume and the format of the native document as points to consider when determining suitable methods for document management. If a document acquired for discovery is electronic, the document will only be original in electronic form. In electronic form, a document carries unique information which is lost as soon as it is sent to print.

(b) **Is version control a challenge?** Almost all aspects of legal technology address issues around version control. Managing multiple hardcopy versions of a document set, or even just ensuring that numerous individuals are referring to the same version of a document, can be difficult unless there is one consistent source for the documents which all can access to ensure consistency.

(c) **Who needs access and where are they located?** Even with a small set of documents, members of a team, a client or counsel can be separated by distance; this management of duplicate document sets again becomes challenging. Most electronic platforms will facilitate some form of online access allowing for seamless collaboration between remote teams.

(d) **Is document retention putting pressure on your firm?** Increasingly we are seeing law firms struggle with the volumes of hardcopy documents they are required to maintain after a matter has closed. Small document sets accumulate with a large volume of matters. Electronic storage does not take up physical space and additional copies of an electronic document set are simple and quick to create.

The price of managing a matter is dictated by its size. Large matters will attract higher fees and small matters will not. Even when we look at corporate entities, their document management methods are often not determined by the volume of documents related to a project, but whether the business has been made to work electronically. Methods are therefore consistent and efficient. Many jurisdictions suggest that volume can determine whether a matter is run electronically, but as more Courtrooms and registries upgrade and convert their facilities, it will become difficult to justify why hardcopy methods should still be acceptable practice.

The legal field, like many other industries, is currently undergoing a transition phase. Technology is being more broadly adopted and it is largely the end users, the clients, who are driving this change. Firms who are adjusting to this demand are adopting these disruptive technologies and delivering more efficient solutions for their clients. If left too late, adoption of disruptive technology will no longer provide competitive advantage but instead will be a matter of catching up.