

New Skills for New Lawyers: Responding to Technology and Practice Developments

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The Impetus for New Skills

The legal profession is facing a convergence of forces, most notably significant advances in the capabilities of technology, economic pressures challenging existing business models and globalisation, that herald momentous change to the practice of law. In Australia the lead in seeking to understand these developments and formulate responses has been taken by the Law Society of New South Wales and its report on the Future of Law and Innovation in the Profession (FLIP).¹

The Law Society conducted a commission of inquiry which culminated in the recognition of 7 skills or areas of knowledge that were identified as essential for the successful future practice of law.² In short, this involves two main inter-related streams of knowledge: first, the ability to understand and employ technology, and second a collection of skills that result in a “practice-ready” graduate, namely:

- Practice Skills (both interpersonal skills and professional skills)
- Business Skills
- Project Management
- Internationalisation and Cross-Border Practice of Law
- Inter-disciplinary experience
- Resilience

While technology is in many ways the ‘headline act’ there are also a range of other skills that are required because of the changes technology is facilitating and the need for lawyers to focus on what is central to their role or truly provides value to the client. This article discusses and elaborates on the findings of the FLIP inquiry in relation to legal education.

Who or What is the New Lawyer?

The focus here is on the new lawyer as a legal practitioner ie a solicitor or barrister who holds a practicing certificate. It includes legal practitioners working in private practice in law firms of any size, including NewLaw or virtual law firms. It includes inhouse counsel for corporations and government lawyers. It includes legal practitioners in the not-for-profit sector such as community legal centres.

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¹ The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017).

² The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017) 78-79.

The forces of change referred to above raises for discussion whether the new lawyer includes new roles that support (or seek to replace) legal practice, such as knowledge management counsel, legal solutions architects, legal data scientists and legal project managers (together law related occupations).³ Although these roles may in the future employ many law graduates⁴ the position taken for the purposes of this article is that they are not lawyers and, as explained below, the skill set that they will require may differ from what the lawyer requires. Equally, this article proceeds on the basis that a lawyer does not include automated providers of legal information or forms, or artificial intelligence like IBM's ROSS.

For the purposes of this article the new lawyer is still a human lawyer who is admitted to practice. This is not to say that who or what is a lawyer may change in the future.⁵ Future possibilities are dealt with at the end of the article.

Technology

Technology is a tool that the practicing lawyer needs to be able to use. This ability may in turn allow the lawyer to focus on their core skills as advisor and advocate. There will be two main uses of technology. First is back office uses of technology which allow lawyers to run their own practices.⁶ Second is client service applications where some or all of the legal service provided is through technology.⁷ For example document review in corporate transactions and litigation where the lawyer will need to be aware of a range of offerings.⁸ As technology improves, more and more components of the legal service will have a technological aspect, such as legal research and risk or outcome prediction. The former is being revolutionised by expert systems and artificial intelligence that can search law sources and answer questions. The latter is informed by big data and data analytics which can predict litigation outcomes or risk of legal contraventions.⁹ It is important to note that the lawyer is still part of the legal process. However, there is also likely to be areas of

³ Jordan Furlong, *Do Law Differently – Futures for Young Lawyers* (Canadian Bar Association, 2016) 14-16; The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017) 38; Jason Tashea, "Law Architects: New legal jobs make technology part of the career path" *ABA Journal*, 1 May 2017; Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) Ch 13.

⁴ Stephanie Russell-Kraft, "Today's Law Degree Takes on a Broader Meaning", *Bloomberg Law*, 31 July 2017 (US law schools have started to refer to the "JD Advantage," which indicates a job that doesn't require a law degree but where a law degree is advantageous in the eyes of an employer.). A challenge for law schools will be the extent to which they adapt their curriculums to teach the skills required for law related occupations. This will be a curriculum with substantial non-legal content such as computer programming, statistics, math, design and project management. The dual degree format will place Australian law schools in a very good position to make this adaption, but it is likely that the two degrees will need to be more closely integrated.

⁵ Thomas Morgan, *The Vanishing American Lawyer* (Oxford University Press, 2010) 25 (opining that the term lawyer will increasingly become imprecise and obsolete with lawyers in the future resembling business consultants rather than Clarence Darrow or Atticus Finch).

⁶ See Center for the Study of the Legal Profession, Georgetown Law School and Thomson Reuters, *2017 Report on the State of the Legal Market* (2017) 15 discussing law firm changes to allow the calculation of the cost of the services they provide.

⁷ See eg ABA Model Rules of Professional Conduct, Comment on Rule 1.1 [8]: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

⁸ The approach to document review has developed from keyword searches to concept searches to predictive coding. In the area of predictive coding a number of different proprietary software programs exist.

⁹ See George Beaton and Imme Kaschner, *Remaking Law Firms* (American Bar Association, 2016) 188-198.

current practice where technology will replace the lawyer and the client come consumer will deal with the technology directly.

For the law student seeking to be a legal practitioner the aptitude needed involves a number of elements. The lawyer needs to be able to identify technology that should be employed because it is the more efficient way to proceed. It will achieve the client's objective or obligation in a cost-effective manner. To do this the lawyer must understand what the technology does. They do not need to create the technological solution, or have the skills to create it, rather they need to be able to use it. As one commentator has explained, "Lawyers do not need to know how to code any more than aspiring doctors need to know how to build lasers or fabricate surgical instruments."¹⁰ However, a student wanting to pursue a law related occupation may require much greater knowledge about technology. For example, the legal solutions architect may need computer programming (coding) to perform their role of employing technology to create the technological solution.¹¹

To be able to use the technology the lawyer also needs to comprehend the output of the technology. For example, technology assisted review for discovery in litigation requires statistical literacy and quantitative skills¹² ie the ability to understand, apply and infer from data. It will be crucial to interpreting outcome prediction software. The lawyer will also need to be able to challenge or critique the results of the technology, such as looking for biases or reliance on incomplete data.¹³ The lawyer may be able to obtain assistance in comprehending and critiquing from legal data scientists who will have advanced mathematics and statistical skills.

Law schools have already begun to assist students to acquire proficiency in these skills through "law apps" courses and "hackathons". A law apps course is an elective where teams of students are assigned to work with legal services organisations and, using software packages, build an application which will assist in access to justice. A hackathon is a short but intense collaboration between people with a variety of skills, usually including computer programmers or developers and subject matter experts, such as lawyers, which aim to solve a problem.¹⁴ In law-based hackathons the problem may be about access to justice¹⁵ or commercial legal problems.¹⁶ However, the omnipresent nature of technology means that its implications for all courses needs to be considered and where appropriate addressed.

¹⁰ Catrina Denvir, "The rise of the multi-disciplinary lawyer: a challenge for legal education", *Legal Futures*, 26 May 2017.

¹¹ See eg Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 136-137.

¹² Predictive coding is the application of machine learning to the process of discovery. It is a process which uses statistical modelling to make predictions about the relevance of documents in discovery in lieu of human review. See Thomas Davey and Michael Legg, "Predictive Coding: Machine Learning Disrupts Discovery" (2017) 32 *Law Society of NSW Journal* 82.

¹³ See eg Aylin Caliskan, Joanna Bryson and Arvind Narayanan, "Semantics de-ri-ved automatically from language corpora contain human-like biases" (2017) *Science* 183.

¹⁴ The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017) 80.

¹⁵ JusticeHack (Sydney, 18-20 July 2016) held at UNSW Law School sought to address access to justice issues for the Refugee Advice and Case Work Service (RACS).

¹⁶ BreakingLaw (Melbourne, 5-7 August 2016) held at Melbourne Law School sought to address corporate law problems.

Lawyers also need to be aware of the risks that accompany technology and the need for appropriate cyber security.¹⁷ The Australian Cyber Security Centre 2016 survey found that 86% of organisations surveyed experienced attempts to compromise the confidentiality, integrity or availability of their network data or system and 58% experienced at least one successful compromise of data and/or systems.¹⁸ The risk can be mitigated through the implementation of appropriate cyber security measures. The larger the law firm more likely that there will be designated individuals with responsibility for addressing cybersecurity. However, every lawyer needs to be aware of the risks and the protective measures that they individually need to adopt.

Practice Skills

Law schools have since at least the 1980s sought to teach key skills that are the basis of practice such as legal research, legal analysis, logical reasoning and written and oral communication.¹⁹ Although the teaching of those skills in most Australian law schools has been described as “piecemeal and fragmented”.²⁰ Law students have often taken it upon themselves through their societies and associations to hold competitions aimed at developing client interviewing, negotiation and advocacy skills. Practical Legal Training (PLT) courses have incorporated legal interviewing, advocacy, negotiation, letter-writing, legal document drafting, file and matter management.²¹ The desire for practice skills reflects both employer requests and student expectations that their law degree will translate into employment.

The new lawyer needs all the practice skills referred to above and it seems that they need them in a hurry. However, those skills develop over time through understanding the use the skill is to be put to, and by repetition and feedback. Law school essays, research memoranda, client advices, agreements, transaction documents, wills, trusts, mediation position papers, pleadings, affidavits and court submissions have different audiences and different purposes. While the skill set for one does carry over to the others to an extent, they also vary and need to be individually acquired. New lawyers also need to receive the opportunity to draft such documents with the provision of guidance and feedback so that they learn from the activity.

The education of new lawyers requires the incremental development of practice skills starting in law school, progressing through PLT and continuing into practice, followed by continuing legal education as their experience grows. The challenge is to provide these skills in incremental steps across the various stages of legal education. A wholistic view is required. Classroom hypotheticals are useful starting points but real world opportunities must follow. While clients may rail at being required to pay for work that is part of the new lawyer’s education,²² that hands-on education is necessary.

¹⁷ Julie Sobowale, “Law firms must manage cybersecurity risks”, *ABA Journal*, 1 March 2017.

¹⁸ Australian Cyber Security Centre, *2016 Australian Cyber Security Centre Survey* (2017) 31.

¹⁹ Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Department of Education, Science and Training, 2003) 133.

²⁰ *Id.*, 161.

²¹ See eg Legal Profession Uniform Admission Rules 2015, schedule 2.

²² See eg Katie Walsh and Edmund Tadros, “We won’t pay for juniors: clients threaten old law model”, *The Australian Financial Review*, 5 July 2017.

Emotional intelligence, Teamwork and Collaboration

More recently practice skills have also been conceived of as including emotional intelligence, teamwork and collaboration. In terms of emotional intelligence the position is well put by Jordan Furlong, who in a report to the Canadian Bar Association stated:²³

Clients need our empathy, perspective and personal commitment in order to feel that we really understand and appreciate what they're going through. Our colleagues need our engagement, respect and understanding in order to try their hardest and help achieve the best outcomes for those we serve. As lawyer work moves farther away from papers, processes and transactions, the human element of who we are and what we do becomes all the more important.

The significance of emotional intelligence, teamwork and collaboration derives directly from the changes wrought by technology. It is the lawyer's human characteristics that differentiate them from a technological solution.²⁴ Understanding and responding to a client's concerns and goals is the value-add. Unbundling of legal services requires lawyers to collaborate not only with other lawyers but also with technologists, project managers, and the other professionals.²⁵ Globalisation means that "lawyers will also collaborate across geographies, cultures, and in different political and regulatory environments".²⁶

While emotional intelligence, teamwork and collaboration are undoubtedly important the lawyer must also be cognisant of their ethical obligations. The Australian Solicitors' Conduct Rules 2015 not only require a solicitor to "act in the best interests of a client in any matter in which the solicitor represents the client" but also to "avoid any compromise to their integrity and professional independence".²⁷ Empathy and personal commitment cannot be at the expense of independence.

Business Skills / Accounting and Finance

The debate over whether the practice of law is a profession or a business is long standing.²⁸ Today it is both. Large law firms and sole practitioners are running businesses. They must know and apply good business practices including understanding the drivers of their own costs and the market they face. Equally, in house legal departments and community legal centres need to operate within financial constraints. It is also frequently said that commercial clients want lawyers who understand their businesses and how they define value, which includes comprehending the client's financial drivers and constraints, although value is not limited to financial aspects.²⁹ Moreover, business skills

²³ Jordan Furlong, *Do Law Differently – Futures for Young Lawyers* (Canadian Bar Association, 2016) 18. See also Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 75.

²⁴ Michael Legg, "Embrace robotic disruption but don't lose your human skills", *The Australian*, 16 June 2017.

²⁵ Mark Cohen, "The Future Lawyer", *Forbes*, 30 May 2017.

²⁶ *Id.*

²⁷ Australian Solicitors' Conduct Rules 2015 r 4.1.1, 4.1.4.

²⁸ See eg Champ Andrews, "The Law. A Business or a Profession?" (1908) 17 (8) *The Yale Law Journal* 602;

²⁹ Jordan Furlong, *Do Law Differently – Futures for Young Lawyers* (Canadian Bar Association, 2016) 30-31; Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 75.

and the tools of accounting and finance are becoming of greater importance as the practice of law is still evolving and is being influenced by a growing entrepreneurial spirit.³⁰

New legal service providers have made inroads into traditional law firm work through adopting innovative business models that reduce overheads and provide alternative forms of pricing. For example, time-based billing has been replaced by alternative fee arrangements (AFA) such as flat fees or value-based billing. For a lawyer billing by the hour achieving efficiencies so that a task can be completed more quickly can reduce income.³¹ If a task previously took 6 hours and with investment in technology it can now be done in 1 hour then billing by the hour sees the loss of 5 hours of revenue. If the lawyer previously charged \$500/hour then technology could be seen as reducing the firm revenue from \$3000 to \$500. Consequently, the lawyer needs to find a way of billing that provides a return on the lawyer's effort/skill and the investment in the technology but also provide an attractive fee proposition to the client who may choose from a number of law firms. Under an AFA such as a flat fee the lawyer may be able to charge \$1000 for the task which allows the lawyer to make a greater return on the hour of effort, have 5 more hours that can be devoted to other revenue generating activities but also reduce the cost to the client. However, determining what technology to invest in and what fee should be charged requires business skills.

In short, future success in the law is not achieved by simply being an outstanding legal technician. Knowledge of business and the key accounting and finance tools is a necessity to operate in the legal market.³² Indeed, it may be as crucial to the development of the next generation of legal practices as technology.

Legal Project Management

Many large corporate transactions and disputes share many similarities with large projects in other industries which are subject to project management.³³ As a consequence it is not surprising that proven management techniques are being adapted to the provision of legal services to help lawyers achieve their goals, and the goals of their clients.³⁴

Legal project management (LPM) involves the scoping, scheduling and costing of legal work, accompanied by resourcing, managing and monitoring with a view to delivering that legal work in an efficient and effective manner.³⁵ Each of these steps involves the use of various tools and techniques, usually deployed as part of a particular project management approach, such as the Project Management Body of Knowledge (PMBok) or Six Sigma.³⁶

³⁰ Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 8.

³¹ William Ross, *The Honest Hour* (Carolina Academic Press, 1996) 69-70 (quoting a law firm partner as observing 'if this associate stays up all night I get rich, but if he does the job in seconds and goes home with his family, I do not.');

Ani Krikorian, "Billing Outside the Box" (2014) 27 *Georgetown Journal of Legal Ethics* 655, 663.

³² Jordan Furlong, *Do Law Differently – Futures for Young Lawyers* (Canadian Bar Association, 2016) 18.

³³ Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 35.

³⁴ James Mullan, "Legal project management: passing fad or here to stay?" (2012) 12(3) *Legal Information Management* 214; Petra Stirling and Peter Dombkins, "Legal Project Management", UNSW CLE, Sydney, 23 February 2017.

³⁵ See eg Therese Linton, *Legal Project Management* (LexisNexis, 2015) 4.

³⁶ *Id.*, 6-8, 142-144.

The importance of LPM for new lawyers derives from not just it gaining traction in law firms, corporations and government, so that they need to appreciate the role they will perform in the process, but also because of its ability to assist in meeting client needs and in reducing uncertainty and stress for lawyers. LPM creates greater predictability which assists in budgeting and managing costs for the client, but in turn also lets the lawyer be clear on future work.³⁷ Regardless, some lawyers are sceptical as to the benefits of LPM, especially when the steps in the project may be significantly affected by an opponent's actions, such as in litigation.³⁸ However, LPM has developed tools and techniques specifically aimed at complex, unpredictable projects, such as "rolling wave planning" which involves planning near term stages in detail and later term stages at a high level only.³⁹ An assessment of the benefits and utility of LPM necessitates learning about its operation.

International and Transnational Legal Practice

International and comparative law have been long term interests of the academy. In practice disputes and transactions are more frequently giving rise to cross-border issues, particularly enabled by technology, so that a purely domestic legal practice is becoming rarer.⁴⁰ Indeed the entry into Australia of numerous global law firms seeking to represent global businesses signals the continued internationalisation of the Australian market place and consequently the legal profession.

Globalisation increases the substantive knowledge needed by the lawyer including an understanding of the operation of various legal systems, the resolution of conflicts between those systems and international organisations. Consideration needs to be given to whether a greater practical orientation to existing courses is needed.

Inter-disciplinary experience

Law students are typically exposed to clients through undertaking clinics for credit towards their degree or as volunteers in community legal centres, internships and part-time employment. The part-time employment does not need to be in a legal field. Any employment where the student deals with customers and needs to undertake customer service, including retail or food and beverage sales positions, will start to develop the skills needed for dealing with clients. What can be missing from volunteer work or part time employment as compared to more formal clinics or internships is the structured training and reflection that aids the student in learning from the experience. It can also be the case that the interaction is not on a more complex topic with a sophisticated client as can occur in practice. Nonetheless, customer service or client relationships are key to the practice of law and experience with them is valuable preparation.

Lawyers frequently work not only with clients but also other professions and occupations. This can be a transaction where the lawyer is working with bankers, accountants and consultants or litigation involving expert witnesses. With the unbundling of legal services lawyers may also work with other legal services providers. In seeking to teach technology to law students there is also the opportunity

³⁷ Id, 5.

³⁸ George Beaton and Imme Kaschner, *Remaking Law Firms* (American Bar Association, 2016) 168-169.

³⁹ Therese Linton, *Legal Project Management* (LexisNexis, 2015) 9, 71.

⁴⁰ Chief Justice Murray Gleeson, 'The State of the Judicature' (2000) 74 *Australian Law Journal* 147, 156-7; Chief Justice Robert French, 'Transnational Dispute Resolution' (Speech, Supreme and Federal Court Judges' Conference, 25 January 2016) 6-7.

to provide inter-disciplinary experience through Law Apps courses, hackathons and clinics. In relation to clinics there is an opportunity to work on public policy issues arising from technology, such as privacy and free speech, with experts in those areas.⁴¹ The start-up culture that has started to permeate law due to technology giving rise to new products and services also provides an opportunity for law students to work with budding entrepreneurs and experienced lawyers to advise on corporate structures, tax, employment and intellectual property issues relevant to new businesses.⁴²

Resilience

The practice of law has always been stressful, particularly because it is often adversarial and can involve lawyers dealing with the worst of humanity such as heinous crimes. However, the frequency and degree of change that the legal profession has started to be exposed to and which is expected to continue suggests that law students and practitioners will face an extra layer of change or stress than past generations. The response to these challenges is to build resilience, namely resources to sustain well-being in the face of adversity.⁴³ Those resources, both of the individual and of their community (law school, law firm and professional association) can be learned, practiced and improved.⁴⁴

The people and institutions that comprise the new lawyer's community can seek to be resource enhancing through providing support and opportunities for new lawyers to build resilience. For example law schools can assess classroom and organisational practices to assist in the building of resilience in students. The Dean of Columbia Law School in the United States wants to incorporate into legal education skills around work-life balance such as "[m]anaging stress, maintaining physical well-being, community ties, friendships, personal self-care" on the basis that "[p]ractice shouldn't be all or nothing".⁴⁵ Northwestern University Law School provides a wellness curriculum that includes courses and workshops on topics such as resilience, mindfulness, conflict management in legal practice, understanding and avoiding burn out.⁴⁶

However, care must be taken that building resilience resources does not result in the removal of all stressors as this can create an unrealistic environment that removes opportunities to develop resilience. Stress is part of life and of lawyering and is not necessarily unhealthy. Stress is what lets humans get things done, even achieve high performance.⁴⁷

⁴¹ See eg Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley; Technology Law and Policy Clinic at NYU Law.

⁴² See eg Technology Startup Clinic at University of California – Hastings; Tech Startup Clinic at Cardozo Law School; Start Up Ventures Clinic at Duke Law School and Entrepreneurship Clinic at University of Michigan Law School.

⁴³ American Bar Association National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being* (August 2017) 52.

⁴⁴ Id 39-40, 61; Paula Davis-Laack, Larry Richard and David Shearon, "Four Things Resilient Lawyers Do Differently", *Law Practice Today*, 14 June 2016.

⁴⁵ Hannah Kramer, "Columbia Law Dean on How to Train 'Lawyers of the Future'", *Bloomberg Law*, 11 August 2017.

⁴⁶ The wellness curriculum is available here: <http://www.law.northwestern.edu/law-school-life/student-services/wellness/curriculum/>

⁴⁷ Angela Grippo, 'Why Stress Is Both Good and Bad', *Psychology Today*, 20 January 2016; American Bar Association National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being* (August 2017) 51.

“Practice-ready” graduates – A concern?

The term practice-ready graduate is not clearly defined, but connotes a graduate that is able to undertake the tasks that a lawyer in practice does with some level of competence or at least familiarity. The expectations of employers vary. For some, the bar is not very high. All that is expected is an ability to behave professionally when dealing with clients. Others expect someone that can contribute to the running of a matter and have a skill set that can be charged for, such as efficiently drafting correspondence, legal memos and documents, perhaps attending court for straightforward steps or attending to conveyances or filing of documents.

The idea of a practice-ready graduate has become a controversial topic in the United States because it is seen as a response to law graduate unemployment, criticism of law school’s enrolling too many students and failing to adequately prepare them for practice, as well as economic pressures on law firms resulting in employers being unwilling or unable to train new lawyers.⁴⁸ The expectation that is created, for both student and employer, is that the student leaves law school as a fully-formed lawyer.

In Australia those issues have some resonance but not to the same extent as in the US. This is because the Australian legal market was not as dramatically affected after the global financial crisis as in the US. The Australian legal education model differs in important respects from the US model, including that law studies are undertaken for a range of reasons, one of which is admission to practice, the cost of the law degree is dramatically less, and admission to practice is premised on there being additional education and training after law school (eg PLT) rather than just the sitting of a bar exam.⁴⁹ Further, the Australian desire for practice ready graduates seems to come from different, or at least additional, drivers to that in the US, the impact of technology and recognition of the need for “soft skills” such as emotional intelligence.

Nonetheless, the US literature makes a number of salient points for Australia. Care needs to be taken that a practice-ready orientation does not transform law schools into mere trade schools with the loss of important objectives and skills.⁵⁰ Law schools are required to deliver not just private value in terms of allowing graduates to earn a livelihood with the knowledge they have gained, but also public value due to lawyers being central to the functioning of society and the need to advance the rule of law.⁵¹ Further, “a student ultimately can learn to practice only in practice”.⁵² No law school graduate is fully competent to practice law at the end of their degree because classroom study, and even experiential courses, cannot truly mimic practice. Moreover, obtaining practical skills and being a professional require the undertaking of actual lawyering within the social process of working with mentors, peers and clients.

⁴⁸ Martha Kanter and Grace Dodier, “Discarding the Fiction of the Practice-Ready Law Graduate to Reclaim Law as a Profession” (2016) 17 *Thomas M. Cooley Journal of Practical and Clinical Law* 265, 270-275.

⁴⁹ The author is supportive of a final exam for admission to practice, but in conjunction with course work aimed at teaching practical skills.

⁵⁰ Jennifer Mnookin, “Reflections on Law Teaching” (2014) 62 *UCLA Law Review Discourse* 126, 137.

⁵¹ Report and Recommendations of American Bar Association Task Force on the Future of Legal Education (January 2014) 6-7.

⁵² Brian Tamanaha, *Failing Law Schools* (University of Chicago Press, 2012) 173.

The position adopted here is that law schools can seek to include more practice-oriented content without becoming trade schools. A focus on practice can buttress the achievement of existing objectives. Practice-oriented exercises and experiences can assist in understanding why the rule of law and access to justice are important, but can be difficult to achieve. It can illustrate the pressures and incentives that challenge ethical behaviour. Teaching practical skills can reinforce doctrine. It can let the student understand why the law is as it is, and then take the next step of critiquing and seeking to improve the law. The goal for law schools may be better stated as producing “practice aware” law students.⁵³ Equally, the profession and employers have a critical role to play in educating law graduates that cannot be replaced by law school.

Changing Student Knowledge

While the providers of legal education and the legal profession need to equip new lawyers with the above skills it must also be remembered that the knowledge of students entering law school is also changing. Information and Communication Technology (ICT) is one of seven general capabilities in the Australian curriculum and is taught throughout students’ pre-university schooling.⁵⁴ The Australian Curriculum Assessment and Reporting Authority (ACARA) has developed a Digital Technologies curriculum from Foundation to Year 10.⁵⁵ The achievement standard for Year 10 includes “students explain the control and management of networked digital systems and the security implications of the interaction between hardware, software and users. ... Students plan and manage digital projects using an iterative approach. ... Students design and evaluate user experiences and algorithms. ... They take account of privacy and security requirements when selecting and validating data. ... They share and collaborate online, establishing protocols for the use, transmission and maintenance of data and projects”.⁵⁶

Students will enter law school with significant skills in technology as well as related knowledge such as security and privacy, and complementary skills such as collaboration and project management. However, those general skills still need to be directed to, and honed for, the practice of law.

Retaining Traditional Skills

Traditional black-letter law areas of knowledge and lawyer skill sets need to be maintained. This follows from the critical thinking, problem solving and self-learning skills that are part of the current law degree still being crucial to success as a lawyer.⁵⁷ There will be clients that will want to access a lawyer with those traditional areas of knowledge and skills, bespoke lawyering, where the law is applied to a specific client’s particular problem.⁵⁸ Traditional legal courses and the skills they

⁵³ Jay Gary Finkelstein, “Practice in the Academy: Creating ‘Practice Aware’ Law Graduates” (2015) 64 *Journal of Legal Education* 622.

⁵⁴ <http://www.australiancurriculum.edu.au/generalcapabilities/overview/introduction> The other capabilities are: Literacy, Numeracy, Critical and Creative Thinking, Personal and Social Capability, Ethical Understanding and Intercultural Understanding.

⁵⁵ <http://www.australiancurriculum.edu.au/technologies/digital-technologies/curriculum/f-10?layout=1> See also <http://www.digitalcareers.edu.au/teachers/>

⁵⁶ <http://www.australiancurriculum.edu.au/technologies/digital-technologies/curriculum/f-10?layout=1>

⁵⁷ The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017) 77.

⁵⁸ Richard Susskind, *The End of Lawyers* (Oxford University Press, 2008) 39; Jon Garon, “Legal Education in Disruption: The Headwinds and Tailwinds of Technology” (2013) 45 *Connecticut Law Review* 1165, 1205.

develop may also be argued to be necessary to undertake the law related occupations discussed above.⁵⁹ To identify existing problems in legal services (ie failure to provide access to justice) and appreciate the advantages of new legal services one needs to have studied the current system of law and legal services. As a result the challenge is how to include the new skills and knowledge discussed above in a crowded curriculum.⁶⁰ The above skills need to be built into existing core courses where relevant and be the subject of electives, PLT and CLE. For core courses a positive starting point would be to consider how technological developments would be addressed by existing law and whether that law is adequate. For example, administrative law could consider the role of expert systems and decision support technologies in how governments make decisions about the payment of various benefits and how those decisions might be challenged. New developments such as block chain and smart contracts could be introduced in contract law courses, while online dispute resolution and electronic discovery could be introduced in civil procedure. The fundamentals of these areas of law are still taught, but the illustrations of the law being applied should be updated. A new suite of electives may be needed to cater for law students wanting to acquire technology and business skills. These may require a cross-disciplinary approach and be taught in conjunction with other university faculties.

Continuous Improvement

The speed with which technology is improving, and changes to the provision of legal services occurring, requires that the skills for lawyers (and law related occupations) be under continual evaluation, and correspondingly, the teaching of those skills be continually updated and improved.⁶¹

In management speak continuous Improvement (CI) is an ongoing effort to make improvements to products, services or processes over time. These efforts usually seek incremental improvement over time, but also need to be open to breakthrough innovations that result in dramatic change.⁶² The aim is to always be trying to do better. For legal education this means keeping up to date with developments in practice and considering their ramifications for law, legal practice and society more generally. This is done with a view to incorporating those considerations into course materials, or in some circumstances, devising new courses. The improvement process is the responsibility of individual lecturers but also the larger organisation. Most law teachers undertake a version of this by the very nature of staying up to date with what the law is and what is happening in their area of

However, in Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 25-26 it is stated that "much less legal work requires bespoke treatment than many lawyers would have their clients believe."

⁵⁹ Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2d ed 2017) 145.

⁶⁰ The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (2017) 77. Other options may be possible for students seeking to pursue careers in law related occupations that do not need to be admitted to practice. This could include new joint degrees, or replacing some of the compulsory core courses for admission, or new electives provided by other faculties dealing with computer programming, math, statistics and/or project management.

⁶¹ Jon Garon, "Legal Education in Disruption: The Headwinds and Tailwinds of Technology" (2013) 45 *Connecticut Law Review* 1165 at 1212 (nature of changes to legal practice are difficult to predict); George Williams, Testimony to FLIP Inquiry, 22 August 2016 ("students are being trained for a profession that does not exist yet").

⁶² Continuous improvement is derived from the Japanese management approach, kaizen, that transformed Japanese manufacturing to allow for the production of low cost, high quality products: Ron Ashkenas, "It's Time to Rethink Continuous Improvement", *Harvard Business Review Blog*, 8 May 2012.

research. However, the adaption suggested here is to consider changes in technology and related practices as they effect substantive areas of legal knowledge or course content.⁶³

This rapid transformation also suggests that the regulatory requirements for admission to practice need review. A more flexible, principles based approach rather than rules may allow education providers to respond more rapidly to a changing environment.⁶⁴

Conclusion - An Overreaction or a Lack of Imagination?

This article has proceeded on the basis that legal practitioners as defined above will continue to exist but must adapt their skill set to the world that is changing around them. However, it must be recognised that we are operating within our own frame of knowledge which colours what we perceive as possible. Advances in technology may introduce a very different understanding of what a lawyer is and what a lawyer does. Users of legal services may be able to access tailored legal advice and documentation without dealing with a human lawyer. It may even be possible that lawyers, like the chandlers, coopers, and blacksmiths of the past, become obsolete except for very limited roles. Technology may be the extinction-level event for the lawyer species. As one commentator observed:⁶⁵

Perhaps one day, self-driving-car accident disputes will be resolved with checks of the vehicle's logs and programming. Your grievance against the local pizza joint's guarantee of a hot delivery in 10 minutes will be checked by a GPS sensor and a smart thermometer. Divorce papers will be prepared when your iPhone detects, through location tracking and text-message scanning, that you've been unfaithful. Your will could be executed as soon as your Fitbit detects that you're dead.

Much will depend on the future capabilities of technology which are currently unclear but continue to develop.

An alternative view is that only human lawyers can practice law. Three reasons may be given for this. From a regulatory perspective it may be argued that a human who has been admitted as legal practitioner is necessary to protect clients from the unqualified and unethical ie to promote competence and integrity in the public interest.⁶⁶ The lawyer is a fiduciary required to act in the client's best interests. The lawyer is different from the taxi driver, the travel agent or real estate agent that has experienced disruption from the likes of Uber, Expedia and AirBnB, because the

⁶³ An example from civil litigation is the impact of technology on discovery. Technological developments required consideration of the impact of electronically stored information such as word documents and email on discovery, which then extended to social media such as Facebook posts and now to the data created by the internet of things. Technology will continue to create new forms of data. Holograms are one possibility. See Michael Legg, "New Sources of Discovery and Evidence: Electronically Stored Information, Social Media and the Internet of Things" in Michael Legg (ed), *Resolving Civil Disputes* (Lexis Nexis, 2016) Ch 23; Andrew Pepper, Five surprising ways holograms are revolutionising the world, *The Conversation*, 24 May 2017.

⁶⁴ See Arie Freiberg, *The Tools of Regulation* (The Federation Press, 2010) 92-95.

⁶⁵ Jason Koebler, "Rise of the Robolawyers", *The Atlantic* (April 2017).

⁶⁶ See eg Derek Denckla, "Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters" (1999) 67(5) *Fordham Law Review* 2581.

lawyer-client relationship is not just commercial, but professional and fiduciary.⁶⁷ A second reason is that legal practice requires a lawyer who can provide judgment, discretion, creativity, empathy and understanding to a client. Characteristics that are very much human. Lastly, lawyers, in their many roles are essential to civil society, liberty and the rule of law. Goals or conditions that humans value and seek to protect.

Equally, each of the above reasons may not be enough to hold back the tide of technological development. If lawyer provided legal services are unaffordable, or not appreciated for the value they provide, then consumers will choose the technology provided legal service, even if it is a lower quality service. Of course, technology may even be as good as, or better than, the human lawyer.

The current conundrum faced by legal education and legal practice is captured by the aphorisms “Time will tell” and “Time waits for no one”. Change is clearly underway but the result is unknown. In consequence, this article argues that new lawyers need to be equipped with the skills necessary to fulfil their calling in our changing environment now.

⁶⁷ For a discussion of the debate over regulation of legal services by lawyers and non-lawyer providers see Directorate for Financial and Enterprise Affairs Competition Committee, *Protecting and Promoting Competition in Response to ‘Disruptive’ Innovations in Legal Services – Issues Paper DAF/COMP/WP2(2016)1* (OECD, 2016).