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Machine/robot intelligence can never replace real-life lawyers

The legal industry has seen plenty of technologically induced changes over the past decade, as e-discovery, online marketing and advances in legal research reshape the way lawyers work. As part of a symposium on the "legal profession's monopoly" last year, legal scholars argued that "machine intelligence" is on the verge of further revolutionizing the legal industry. The changes could be similar to the undoing of print journalism following the rise of Internet media.

Are such legal futurists just applying the typical clichés about "disruption" and the need to "adapt or die" applied to the legal industry? Absolutely. But there could be more to it than just that.

Automation Creeps Into the Legal Profession

In the eyes of legal futurists, we're already in the midst of a "great disruption." Some technological developments have certainly changed, but not radically altered legal practice. Think legal research or discovery. You no longer flip through physical reporters or review discovery documents by hand. In these cases, the work remains largely the same. A lawyer still needs to review case law or dig through discovery, if only on a computer. What, though, if Westlaw suddenly just had your relevant cases or discovery software immediately found the smoking gun? Automation could someday remove much of the work lawyers do.

According to legal scholars John McGinnis and Russell Pearce, machine intelligence is "on the cusp of substitution for other legal tasks -- from the generation of legal documents to predicting outcomes in litigation." The new automation, they argue, will focus on routine tasks, perhaps with lawyer oversight. Even if unauthorized practice laws do not change, those laws will not stem "the emergence of widespread machine lawyering," the professors say. The areas most likely to see flesh replaced by silicon include: discovery, legal research, document generation, brief and memo writing and predicting trial outcomes
So, basically all the tasks that make practicing law fun.

Machines cannot replace persons in certain tasks
There's room for some healthy skepticism. Imagine your doctor was replaced by a WebMD app. Suddenly, every ache and pain is everything from Lime disease to shingles. Clearly, we're not there yet; computers have just barely begun to replicate complex human activities. Robot journalists, for example, can now write a passable news item, sometimes. But for programs seeking to replace skilled work, subtext, nuance and refined decision-making are not their strong points. Would any sane client, let alone a lawyer, want to put a computer in charge of their *voir dire*?

Even the biggest cyborg lawyer fans acknowledge that there are plenty of tasks automation won't be able to replicate. Further, many areas of law are simply too complex to be managed by an algorithm. But, for lawyers whose practice is largely managing routine, boilerplate matters -- watch out. The machines are on the rise.

Life Peers and Lords-2015

As the 2015-16 session began, six new life peers were introduced as members of the House of Lords. They are all members of the government. Following short introduction ceremonies they are able to contribute and vote in the House of Lords.

Lord Dunlop is a former adviser to the Prime Minister on devolved constitutional issues. He was formerly the head of policy and research for the Scottish Conservative Party, special adviser to the Defence Secretary and a member of the Downing Street Policy Unit. He was appointed Parliamentary Under Secretary of State at the Scotland Office on 14 May 2015.

Lord Maude of Horsham served as MP for Horsham, West Sussex (1997-2015). He held several government posts, including Financial Secretary to the Treasury (1990-1992), and Minister of State at the Foreign and Commonwealth Office (1989-1990). He is also a former chair of the Conservative Party (2005-2007). He was appointed Minister of State for Trade and Investment on 11 May 2015.

Baroness Altmann was the coalition government's Business Champion for Older Workers and is a former non-executive policy adviser to the Policy Unit at 10 Downing Street. She was appointed Minister of State for Pensions on 11 May 2015.

Lord O'Neill of Gatley is a former chief economist at Goldman Sachs. He was appointed Commercial Secretary to the Treasury on 14 May 2015.

Lord Bridges of Headley is a former chair of the Conservative Research Department, and was the Conservative Party's campaign director (2006-2007). He was appointed Parliamentary Secretary for the Cabinet Office on 14 May 2015.

Lord Prior of Brampton is a former chair of the Care Quality Commission (2013-2015). He served as MP for North Norfolk (1997-2001) and is a former deputy chair and CEO of the Conservative Party. He was appointed Minister for NHS Productivity in May 2015.

New members who have joined the House of Lords this year and last year are as follows:

Member	Party/group	Date of Joining the House
Lord Prior of Brampton	Conservative	29 May 2015
Lord Bridges of Headley	Conservative	28 May 2015
Lord O'Neill of Gatley	Conservative	28 May 2015
Lord Dunlop	Conservative	26 May 2015

Lord Maude of Horsham	Conservative	26 May 2015
Baroness Altmann	Conservative	19 May 2015
Lord Kerslake	Crossbench	17 March 2015
Earl of Kinnoull	Crossbench	6 February 2015
Lord Thurlow	Crossbench	6 February 2015
Lord Hay of Ballyore	Democratic Unionist Party	16 December 2014
The Duke of Somerset	Crossbench	12 December 2014
Lord Lisvane	Crossbench	11 December 2014
Lord Russell of Liverpool	Crossbench	11 December 2014
Bishop of Salisbury	Bishops	8 December 2014
Lord Evans of Weardale	Crossbench	3 December 2014
Bishop of Leeds	Bishops	3 December 2014
Baroness Wolf of Dulwich	Crossbench	2 December 2014
Lord Green of Deddington	Crossbench	28 November 2014
Bishop of Southwark	Bishops	11 November 2014
Earl of Oxford and Asquith	Liberal Democrat	24 October 2014
Lord Callanan	Conservative	24 September 2014
Baroness Janke	Liberal Democrat	24 September 2014
Lord Cashman	Labour	23 September 2014
Baroness Pinnock	Liberal Democrat	23 September 2014
Baroness Brady	Conservative	22 September 2014
Lord Lennie	Labour	22 September 2014
Baroness Mobarik	Conservative	19 September 2014
Lord Scriven	Liberal Democrat	19 September 2014
Baroness Helic	Conservative	18 September 2014
Baroness Rebuck	Labour	18 September 2014
Lord Cooper of Windrush	Conservative	17 September 2014
Lord Rose of Monewden	Conservative	17 September 2014
Baroness Chisholm of Owlpen	Conservative	16 September 2014

Baroness Shields	Conservative	16 September 2014
Lord Goddard of Stockport	Liberal Democrat	15 September 2014
Baroness Harding of Winscombe	Conservative	15 September 2014
Baroness Evans of Bowes Park	Conservative	12 September 2014
Baroness Smith of Newnham	Liberal Democrat	12 September 2014
Lord Fox	Liberal Democrat	11 September 2014
Lord Suri	Conservative	11 September 2014
Lord Farmer	Conservative	5 September 2014
Bishop of Ely	Bishops	4 June 2014
Lord Cromwell	Crossbench	10 April 2014
Lord Richards of Herstmonceux	Crossbench	24 February 2014
Bishop of Rochester	Bishops	24 February 2014
Bishop of Durham	Bishops	11 February 2014
Bishop of Chelmsford	Bishops	10 February 2014
Bishop of Peterborough	Bishops	7 January 2014
Bishop of Portsmouth	Bishops	7 January 2014

Law Society Guidelines

In response to the rising numbers of people representing themselves in court without a lawyer as a result of cuts to legal aid, the increase in the small-claims limit and the introduction of employment tribunal fees.
The practical guidelines are relevant to the civil and family courts and tribunals where there has been an influx of people who cannot afford to instruct a lawyer, have not been able to obtain free legal advice and often have no alternative other than to embark on 'do it yourself' justice.
The guidelines discuss how far lawyers can help unrepresented people without this conflicting with their duties to their own clients. Lawyers are advised to communicate clearly and avoid technical language or legal jargon, or to explain jargon to the unrepresented party where it cannot be avoided.
Law Society President Andrew Caplen said: "Cuts to legal aid and increases in court fees have forced more and more people into 'do it yourself' justice, where they find themselves dealing with unfamiliar procedures in busy courtrooms whilst trying to resolve often life-changing issues regarding their families, their homes and their futures. We recognise the difficulties that people face in these circumstances and the consequent challenges created for lawyers acting for represented parties. We hope that these guidelines will help everyone concerned with cases involving self-represented litigants, but would again emphasise that the cuts to legal aid need to be urgently reviewed by the incoming Parliament." Chairman of the Bar, Alistair MacDonald QC, said: “The people who lose out most from the rising tide of litigants in person are the litigants themselves. It is one of the worst outcomes of the legal aid cuts that people facing major life events such as a family break up, have little choice but to put their case alone and without legal support or representation. It would have been easy for the legal profession to sit back and let the chaos play out in order to highlight the full impact of the cuts. However, we believe access to justice is a fundamental part of the rule of law and are doing all we can to help limit the impact upon those who find themselves in this dire situation. As well as supporting this initiative, in 2013 the Bar Council produced A Guide to Representing Yourself in Court, with the specific aim of giving litigants in person a better understanding of how to represent themselves in court. However, there is only so far the legal sector can go in tackling this problem. It won’t go away unless the cuts to civil legal aid are restored so that those of limited means can, again, have proper access to justice." CILEx President Frances Edwards commented: “In drafting these guidelines we have sought to give useful information so lawyers can best support those without legal representation. The ability of any litigant to have access to justice should be the key outcome of our legal system yet, at present, traversing the justice system in the best of circumstances is a challenge, and we expect to see litigants in person in substantial numbers for many years to come. Therefore, whilst we hope these guidelines will help, it does not alter the need to ensure litigants are placed at the heart of the justice system. Meanwhile, we will continue to press for the cuts to legal aid to be reviewed so that legal help is available to those who need it, and maintain our campaign for better access to justice and legal assistance for all.” Lord Dyson, Master of the Rolls, commented: "I warmly welcome the publication of these joint professional guidelines, and the collaboration of the three leading professional bodies in producing a valuable and timely reference for lawyers.

Sentencing Very Large Organisations in Environmental Cases

The Court of Appeal has held that in the worst cases of environmental crime (Category 1 harm caused by deliberate action or inaction) involving very large organisations (those with a turnover of £50,000,000 or more), the sentencing court may well be justified in imposing in a fine of up to 100% of the defendant company's pre-tax net profit for the year in question (or an average if there is more than one year involved), even if this results in fines in excess of £100 million: *R v Thames Water Utilities [2015] EWCA 960*. The Court explicitly drew a comparison with fines in the financial services markets.

In a Category 1 harm case, the imposition of such a fine is a necessary and proper consequence of the importance to be attached to environmental protection.

Where Category 1 harm results from recklessness, the court will of course need to recognise that recklessness is a lower level of culpability than deliberate action or inaction. However, similar sentencing considerations in such cases will still apply, so that in non-Category 1 harm cases it will be appropriate to impose lesser, but nevertheless suitably proportionate penalties, which have regard to the financial circumstances of the organization. This may lead to a fine or fines measured in millions of pounds.

The sentencing court should avoid a mechanistic extrapolation from the levels of fine suggested at step 4 of the guideline for large companies because a very large commercial organisation's turnover very greatly exceeds the threshold for a large company and, further, there is the requirement at step 6 of the guideline to examine the financial circumstances of the organisation in the round.

The Court of Appeal accepted that in the case of a large statutory undertaker, it is impossible for management to ensure that no unauthorised discharge can ever occur. Where no harm is caused as a result of an offence committed without fault on the part of the undertaker, it would be difficult to justify a significant difference in the level of fine imposed on two very large organisations, merely because the infrastructure and turnover of one was twice as large as that of the other.

However, the size of an organization becomes much more important when some harm is caused by negligence or greater fault. The Court reiterated previous dicta in cases such as *Sellafield* that even in the case of a large organisation with an impeccable record the fine must be large enough both to bring the appropriate message home to the directors and shareholders and to punish them. In the case of repeat offenders, the fine should be far higher and should rise to the level necessary to ensure that the directors and shareholders of the organisation take effective measures properly to reform themselves and ensure that they fulfil their environmental obligations.

Mitigating features include: prompt and effective measures to rectify the harm caused by the offence and to prevent its recurrence; frankness and co-operation with the authorities; the prompt payment of full compensation to those harmed by the offence; and, a prompt plea of guilty. In addition, significant expense voluntarily incurred or "reparation" in recognition of the public harm done should be taken into account. Another significant mitigating factor would be clear and accepted evidence from the Chief Executive or Chairman of the main board that the main board was taking effective steps to secure substantial overall improvement in the company's fulfilment of its environmental duties.

In the instant case the Appellant company had pleaded guilty at the first opportunity to an offence involving the discharge of untreated sewage into Chase Brook, which flows through a Natural Trust nature reserve. The offence took place over the course of approximately a week. The cause of the discharge was clogging of the pumps, which should have taken the sewage to a downstream pumping station.

The company was fined £250,000 on the basis that the company had been negligent and should have replaced the pumps earlier. The harm was localised. The company’s turnover was £1.9 billion with profits of £346,000,000.

The Court noted that the Appellant’s record, 106 convictions involving 162 offences, many of which were dealt with the magistrates’ court, over a 24 year period, did not suggest routine disregard of environmental obligations by the Appellant, but did nevertheless leave room for substantial improvement.

The Court stated that it would have upheld a very much more substantial fine given the facts of the case and the Appellant’s record. But for the evidence adduced at the sentencing hearing, which showed that the Appellant was taking its environmental responsibilities seriously, the Court would have taken a starting point significantly into seven figures.

Sentencing very large organisations is a complex process and such hearing should be conducted by a High Court Judge or by another judge only in circumstances where the Presiding Judge has released the case or the Resident judge has allocated the case to a particular judge.

This is the first case in which the Court of Appeal has considered sentencing for very large organisations since the coming into force of the Environmental Sentencing Guideline. Given that the approach set out in the Environmental Guideline is mirrored in the Draft Guideline for Health and Safety Offences and Corporate Manslaughter this decision is of crucial importance to all criminal regulatory lawyers.

In environmental cases in particular great care needs to be taken in the accurate presentation of financial information. Many organisations working under environmental permits collect taxes on behalf of the government, which they then pass on. These taxes appear in the company accounts as turnover but plainly do not amount to profit. It is crucial that this distinction is brought home to sentencing judges so that the organization is not erroneously sentenced on the basis of its turnover alone.

In criminal regulatory cases generally it is now abundantly clear that the landscape of sentencing has changed utterly. The Court of Appeal referred to fines of £100,000,000 or more. Lawyers must be prepared to break some very bad news to their clients.


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