

Legal Aid, Technology and Access to Justice 2017

Roger Smith

It begins with a voice. And not any voice - the distinctively soft and modulated tones of double Oscar winning actress Cate Blanchett. The face - computer generated (CG) - and the name - Nadia - are different: 'Nadia is a conversational bot,' says Mike Seymour of film website fxguide, 'with a face. She looks at you, answers your questions and holds a normal conversation, and she is not a CG replication of a source actress'. Nadia is the creation of Dr Mark Sagar, himself a double Oscar winner for his work on films like *Avatar*, and his company, New Zealand-based Soul Machines. Nadia will be the star of a new Australian national disability programme to be launched publicly later in the year. For more information on how Ms Blanchett's voice was captured and can be manipulated, you can see a youtube video on *The Making of Nadia*: it is worth watching. And Nadia is a useful opening to a discussion of where we are with technology, legal aid and access to justice. She illustrates a number of key themes that are relevant to contemporary developments in access to justice and technology.

Technological innovation is sweeping across our economies, raising questions about the relevance of old demarcations. The Nadia project is funded by the Australian government to give advice on a disability benefit. She has not been seen as within a 'legal aid' context. But, she is a creation directly in the same line of development as the Rechtwijzer (the interactive programme developed by the Dutch Legal Aid Board to assist users through relationship breakups); the interactive advice provision MyLawBC developed by the Legal Services Society of British Columbia;;the Justice Education Society of BC's avatar 'Jes' used in some of its videos; the chatbots like 'DoNotPay' developed by Joshua Browder; and the A2J self-help provision developed by the US Centre for Computer Assisted Legal Instruction (CALI).

Once fully operational, she should be able to take her place at the head of this line of development in the interactive provision of information and advice, largely developed by contributions from public funds. But, she is also integrally linked to much more mainstream commercial developments - to the digital personal assistants represented by Amazon's Alexa and Apple's Siri. She is the sort of machine that will soon be dealing with your customer order. And she is very powerful. Through your computer camera and artificial intelligence, she can read and interact with your emotions as recognised in your face. Because of the commercial applications, we have the chance that the cost of development of such bots will come much lower and be much more realistic as the front end, for example, of a legal website giving general - or even specialist - information.

The development of Nadia suggests that the failure of the Rechtwijzer during the last year (it is being withdrawn in favour of more limited provision which it is hoped will be commercially successful) will mark a setback rather than an ending. The Rechtwijzer has until recently been the poster child of innovation in legal aid provision. Discussion of its possibilities has dominated international legal aid conferences over the last five or six years. It is important to identify why it failed. This is more likely to be due to contingent factors relating to the individual project; the precipitate demand that it become self-funding; and the withdrawal of core support from the Dutch Legal Aid Board than anything else. It certainly should not mean that the drive to use the interactivity on the net should be ended. There may, however, be a note of caution for the developers of Nadia in the sad Rechtwijzer tale. Any government funded project is subject to political factors (change and you are done for) and financial restrictions (one failure and you are out). In England and Wales, Her Majesty's Courts and Tribunal Service is driving forward with the creation of an online court which could well be a disaster and governments lack the flexibility of mind and funding to participate effectively in the modern culture of 'build to fail' and learn the lessons. They tend to build and fail. The digitalisation of social security benefits in England and Wales has not been a success, particularly from the point of view of claims - on which see the all too accurate depiction in the film *I Daniel Blake*. NHS Online, an online health support system developed by the Labour Government, was wiped out by an incoming Conservative led Coalition.

In relation to the law, an initial question in relation to technology and access to justice concerns the role of private practitioner lawyers. How are they affected; how are they responding and what sign, if any, is there that they may be seriously seeking what Richard Susskind called 'the latent legal market' - those who would pay for services if their cost could be reduced low enough? Can we hope for private practitioners, without public subsidy, significantly to meet the need for access to justice among people on low incomes?

Technology and the Private Profession

Technology has certainly got the attention of the private profession around the world. Four reports on the future of legal services in specific jurisdictions, all covering the impact of innovation and technology, have been published since last August by from law societies and their equivalents covering Singapore, the United States, England and Wales and New South Wales. In addition, the International Bar Association has published a report specifically on artificial intelligence. This institutional interest, in itself, is testament to the growing realisation of the magnitude of the challenge facing lawyers in these jurisdictions. Their description of the current position in each jurisdiction is so similar that you might find it difficult to place quotations from their correct source. This is from the ABA Commission on the Future of Legal Services:

Technology has disrupted and transformed virtually every service area, including travel, banking, and stock trading. The legal services industry, by contrast, has not yet fully harnessed the power of technology to improve the delivery of, and access to, legal services. The impact of technology elsewhere has led academics and experts on the legal profession to conclude that the profession is “at the cusp of a disruption: a transformative shift that will likely change the practice of law in the United States for the foreseeable future, if not forever.” This is a transformation with “profound impacts on not just the legal profession, but also on clients as well as the broader society.” In short, lawyers will deliver legal services in new ways, and these changes will create unique opportunities to “improve access to justice in communities not traditionally served by lawyers and the law” and to offer better value to clients who regularly use lawyers.

It is difficult to get a handle on the range of technological innovations affecting the legal profession. The Singapore and New South Wales reports provide lists of the different innovations that are impacting the profession. New South Wales identifies the following: automated document assembly, relentless connectivity, the electronic legal marketplace, e-learning, online legal guidance, legal open-sourcing, closed legal communities, work flow and project management, embedded legal knowledge, online dispute resolution, intelligent legal search, big data, and artificial intelligence-based problem-solving.

Singapore adopts a slightly different and more prescriptive approach to the others. It seeks to establish as ‘baseline technologies’ the following as ‘seven categories of technologies that are basic enough to apply to all firms’ and including office productivity suites, time logging and billing systems, practice management systems, online profiles, communications (eg Skype), cybersecurity and legal research systems’. It then identifies a pyramid of progression in which the first stage (to take the next 12-18 months) is devoted to adoption of existing technology by all legal service providers; a second phase, in the next two to three years, involves the delivery of enhanced services using developments of existing technology; a third phase (to take place in the next 3 to 5 years) is dominated by providing innovative services created by adapting emerging technology and, finally, we enter the head of the pyramid, a period of ‘legal tech acceleration’ characterised by inventing new technology. The Singaporeans have scoped likely emerging technology in workshops and consultations and it includes: shared workspaces, document review tools, document assembly, online swearing and affirmation of affidavits, contract databases and smarter search facilities.

The reports are very conscious that lawyers are not the only providers of legal services, even in jurisdictions protected, as is the United States, by laws against the unauthorised practice of law. The ABA report repeats a valuation of the market for legal firms and service companies providing bundled and unbundled documents and services. This industry has grown from nothing a decade ago to an estimated value of \$4.1bn in 2014, ‘an annualized rate of nearly eleven percent over the previous five years and ... projected to grow nearly eight percent to \$5.9 billion by 2019.’ The annual income of the US legal profession seems to be relatively reliably estimated at about \$400bn. So, the interlopers have captured about 1 per cent.

A report from the Georgetown University expands on the theme of the new entrants:

The increased market share of outside vendors reflects a proliferation of non-traditional providers of legal and legal-related services. Once regarded as an insignificant sliver of the overall legal market, such non-traditional providers have now established a firm foothold in several service areas once dominated exclusively by law firms. This market shift is documented in a lengthy report recently issued by the Center for WorkLife Law at the University of California, Hastings College of Law. In it, the authors identify five different models of new entities that are reshaping the delivery of legal services in certain segments of the market:

(i) secondment firms that provide lawyers to work on a temporary or part-time basis in client organizations;

(ii) law and business advice companies that combine legal advice with general business advice of the type traditionally provided by management consulting firms;

(iii) law firm “accordion companies” that provide networks of trained and experienced lawyers to meet short-term staffing needs in law firms;

(iv) virtual law firms and companies that typically drive down overhead by having attorneys work from their own homes; and

(v) innovative law firms and companies that typically offer specialized services under special fee arrangements or service delivery models that differ significantly from traditional law firms. The report describes 44 such new model firms currently operating in the United States and Canada. While many of these organizations are relatively small, some are not. Axiom Law, for example, a law and business company based in New York with 14 offices worldwide, has

over 1,200 employees. And Bliss Lawyers, a secondment firm based in Boston, has a national network of some 10,000 lawyers.

The Law Society of England and Wales report provides a typology around four 'clusters' of innovation:

Search and extraction: 'Advanced search functions based on machine learning that can identify specific legal information, blocks of text, clauses, anomalies. Machine learning can be used to speed up document review and create a more efficient, cost-effective process of extracting information from many 1000s of documents. To extract and summarise any provision from virtually any document/contract/lease.'

Data analytics: 'Advances in data mining enable firms to gain insight from the increased amount of digital data they hold about workflow, cases, clients. Use the data to determine where the value lies in the services the firms provide to clients. Identify: the 'right' cases for the firm; client needs; legal risk assessment; workflow and case allocation'. These cover systems for mass document search, e-discovery, machine learning, data mining, predictive analytics, dashboard analytics (workflow, case type, legal spend, legal risk) and virtual assistants.

Document assembly and automation including smart forms, Q and A interfaces, contracts/drafting, 'robo lawyer documents' which are 'Ways to transform frequently used documents and forms into intelligent templates that enable fast production. Automating the assembly and production of documents save time and money, it also reduces risk, increases accuracy and enhances compliance. Systems enable non-lawyers (in-house clients/ public) to complete forms and produce reliable draft legal documents without expert legal knowledge.'

Conversation assembly and automation involving chatbots, virtual assistant Q and A, 'robo-lawyer' questions' where 'The conversational instant messaging interface is able to provide users with information and generate a real-time document specific to a client's needs. Chatbot /Robolawyer technology combines machine learning and natural language processing principles to process user information, answer queries, triage cases and provide a 24/7 point of access.'

These reports indicate a common pattern in four very similar jurisdictions. Innovation in the use of technology is, unsurprisingly, being driven by high end commercial practice. That is particularly so in the use of Artificial Intelligence. This is a topic in itself with major controversy about its impact on employment within the legal profession which is not to be pursued to any depth here. It should be noted, however, that the creation of Nadia is an indication of just how pervasive

the effect of AI may be even outside of the commercial legal sector. There is, however, abundant evidence of the value of a wider technological innovation short of AI to those engaged in providing legal services to those on low incomes. In particular, all practices will identify with the kind of 'baseline technologies' identified as mandatory in Singapore. The Law Society's fourfold analysis of innovation suggests how much specialist technological innovation will be useable by all types of practice. Former legal aid practices might, for the time being, feel that data analytics was beyond them but enhanced search facilities, document assembly and conversation assembly may well be exactly what they need to develop their low fee, high turnover practices.

Until the last couple of years it appeared that private practice might be transformed by national brands which had a web-led presence and offered variations of unbundled services. Co-operative Legal Services were a leader in this field and obtained major publicity for its efforts. It has now cut back severely and is reported to be concentrating on more limited packages that integrate with its funeral business. Quality Solicitors, a group of solicitors firms, who set up to challenge this type of approach has not been notably successful and defections have been reported from the network. In an interesting observation, the veteran observer of the domestic legal scene, Delia Venables, points out that

About 10 years ago there was a strong feeling in the legal profession that selling legal services and documents online was going to be one of the big features of the future ...

However, far from growing steadily ... many of the firms originally doing this have now stopped doing so. There are now fewer than 20 firms that appear to be doing this and, in many of these cases, the services offered are very limited in scope and are certainly not the main means by which they are delivering their legal services.

Why has this aspect of legal services failed to grow?

- It is technically difficult. Sophisticated software is needed to ask the right questions and then incorporate the answers into the right legal processes, or further questions, or documents.
- It is risky. Unless a solicitor monitors the process of each transaction very carefully, it is always possible that the client could do the wrong thing and then blame the firm. Even if sufficient disclaimers are built into the process, arguments about this do not lead to good publicity and indeed, too many disclaimers can discourage the client from starting the process. And you really do not expect disclaimers from a firm of solicitors.

- It is not very profitable. It is generally the “simpler” legal processes which are offered online which are often the least profitable in the firm anyway. By the time a lower price is quoted for the online process, the profit margin is probably very low and, bearing in mind the points 1 and 2 above, may be almost non-existent.
- It leads to arguments with “normal” clients! “If you can offer employment documents for £X online, why should I pay twice as much for the same thing, produced in the conventional way?” Or even “I will do it online and save myself lots of money”.

Overall, the full potential of private provision to meet the latent market remains to be explored.

Outside the Legal Profession: start ups, innovation hubs and hackathons

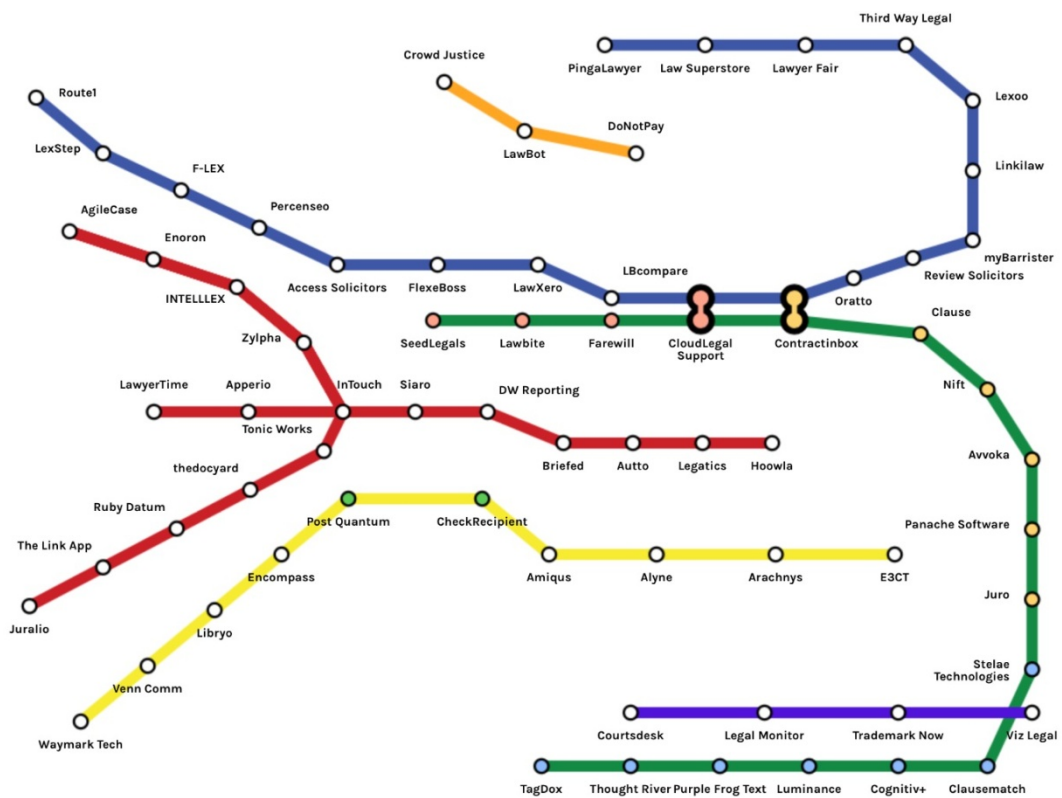
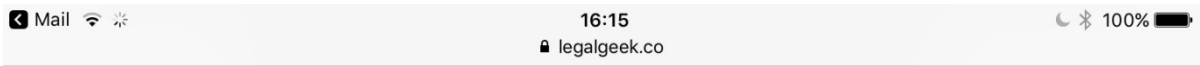
A new element of current developments is the pressure for change coming from outside the legal profession. Hitherto, change has been brought through the organisation of the legal profession itself e.g. through regulation (removal of maximum partnership limits in England and Wales in the late 1960s); funding (growth of legal aid practices in England and Wales since the 1970s); or competition and market opportunity (development of international and transnational commercial practice from the 1980s). Now, the legal profession can feel the momentum of developments outside the profession coming from the mass of legal start ups seeking a share of its market; innovation hubs of various kinds seeking actively to support such start ups and, in the access to justice field, the growth of developments like hackathons encouraging new ways of solving old problems.

The start up market is less than 20 years old. Among leading US start ups, LegalZoom was founded in 1999, RocketLawyer in 2007 and research tool Ravel only in 2012. The numbers of current start ups struggling to survive is startling - if a little obscure. US legal tech expert Bob Ambrogi maintains as accurate a list of legal start ups as he can. As at 25 April, he listed 632 entries. Stanford’s Centre for Legal Informatics has its own list - admitted by Ambrogi to be ‘much more sophisticated than mine’ - with 698 entries as at the same date and divided into nine groups: compliance, e-discovery, analytics, legal education, online dispute resolution, practice management, legal research, market place and document automation. Ambrogi estimated the true number at a recent ABA conference to be probably around 1,000.

The start ups may be new but there is no way that established players in the field - particularly Thomson Reuters and LexisNexis - are going to be left behind. David Curle, TR’s director of strategic competitive intelligence, has been particularly active in seeking to keep tabs. He has drafted a graphic of some of the best known, divided into 11 categories - business



development/market place; litigation funding, legal education, e-discovery, practice management,



legal research, case management/analytics, document automation, contract management/analysis, consumer and online dispute resolution.

For the UK, Thomson Reuters has also helped LegalGeek to produce an equivalent map of UK start ups based on the London Tube map identifying over 70 start ups in rather different categories including Market places; Law for Good; Practice Management; Contracts; Risk and Compliance; Analytics and Search. 'Law For Good' included Casehub, Crowd Justice (too crowd funding sites) LawBot and Do Not Pay (two bot sites).

The particularly relevant areas for access to justice are those which are designed to improve general practice management and the potential for using the internet to develop crowdfunding. The net makes the latter much more possible. Crowd funding is unlikely to be any kind of large demand for routine services but it can make a difference in relation to test litigation. Currently seeking funds on the Crowd Justice website are a range of cases including immigration, planning and public services.

Linked to legal start ups has been the move to establish innovation hubs to encourage their development. Queen Mary College, University of London has qLegal which 'provides free legal advice and resources to tech start ups and enterprises'. Ulster University has set up a legal innovation centre with funding from two large law firms which have 'near shored' commercial work to Belfast, Allen and Overy and Baker McKenzie. A number of large commercial firms have themselves offered start up facilities e.g. Allen and Overy at its London office. It is, so far, the interests of commercial work that seem to have dominated such hubs.

Tech start ups have, however, been happy to use the motivational power of access to justice. The development of the hackathon has provided a way in which informal groups, often of students, can dip their toes in the water of technology start ups. These are often organised around an access to justice issue. For example, LexisNexis' inaugural Rule of Law hackathon (supported also by Amazon Web Services) in November 2016 was based on the theme of securing LGBT rights for people globally. It ran for 48 hours from 6pm on a Friday evening. The winners went by the name of Suitcase Hackers.

This team's innovative approach to creating a covert app is to "*hide in plain sight*". The idea is to piggyback inside Snapchat. All users need to do is install the Snapchat app, add 'Par' as a friend/account. Think of it as a modern free call number. NGOs will then receive raw data from users and can start to tag the data and view the incidents that users have uploaded.

The beauty of this approach was to harness the existing Snapchat infrastructure of confidentially transmitting data and deleting it, so it is never stored with users – only on the NGO side and through a secure AWS server.

A Legal Geek hackathon the previous month, at a conference sponsored by Thomson Reuters, was on the subject of how to address the concept of 'advice deserts'. An earlier Legal Geek challenge was won by a Freshfields' team that designed a virtual receptionist for Hackney Community Law Centre.

The promise of funding inevitably draws much work towards commercial applications. And, indeed, most of the large commercial firms have direct relationships with various firms developing artificial intelligence applications. For example, Freshfields has announced a collaboration with Neota Logic. Allen and Overy is investing 'seed corn' money in a range of experimental technology through its i2 group. There are, of course, potential spin offs for providers to low income customers. First, practice management tools may be directly transferable to any legal business. Second, as we will see, even AI may have uses for not for profit providers. Third, the start up world is well disposed to access to justice. Hackathons are, as we have seen, often organised with the solution of an access problem in mind. There is a danger here - access to justice could be used for its good image rather than in the hope of workable practical solutions. But, on the whole, it must be better that the flame of concern be kept alive rather than extinguished completely. The 2016 LegalGeek conference listened to informed discussion of the problems of advice deserts over the thump of heavy rock beat music - engaging a much younger and diverse audience than is usually the case for debates on it.

We can note one characteristic of this legal start up movement. It is often referred to as heralding 'disruptive innovation'. But, this is a phrase with, in its original use by Clayton Christensen, a precise meaning. Often based on the instance of the failure of Kodak, the original idea was that successful companies end up producing over-sophisticated products for their markets and are ultimately beaten by more nimble later developers who develop lower priced, high volume products which ultimately replace the ossified original giants. There are some instances suggesting behaviour like this in the legal market - for example, the drive by LegalZoom and RocketLawyer - to undercut traditional legal services. However, the majority of the start up markets seems less orientated towards replacement than absorption. And the large providers are well aware of the dangers that may face them. Not for them the Kodak complacency. They are seeking to absorb technological successes within their business.

Improvement of information, automated document assembly and advice on the net

A number of information organisations around the world have improved their web offerings during the year. In England and Wales, the CitizensAdvice Service and in Ontario, CLEO (Community Legal Education Ontario), are going through a formal process of upgrading the

accessibility of their digital information. For Citizens Advice, this involves a team working through the whole of its content with a supporting website and innovations such as publication of live statistics on usage. For CLEO, it means its 'steps to justice' programme using Q and As and 'next steps' together with a live chat facility. It also allows content to be embedded on third party sites.

In many countries, work is progressing - particularly the US where the Legal Services Corporation (LSC) has prioritised the introduction of this facility and has it as goal for every state - on 'triage websites' which will, to varying degrees, assist agencies with intake, referral and the giving of basic information and assistance with simple forms. Microsoft has just announced a collaboration with the LSC for such triage sites to be trialled in Alaska and Hawaii. Illinois Legal Aid Online probably operates the current most comprehensive site. ILAO has been going for an impressive 16 years – well ahead of others in its use of technology in the legal services' field. ILAO's success is the product of early funding and long term commitment from the Chicago Bar Foundation and the Lawyers Trust Fund of Illinois – two organisations which were early appreciators of the possibilities of technology. They worked with the Chicago-Kent School of Law, another early entrant in the field. ILAO has also been involved in a number of one-off technology grants from the Legal Services Corporation. The organisation is located in a downtown block on a floor shared with a legal services provider. Its budget has risen to \$1.75m and it has a staff of 19.

In Australia, Victoria Legal Aid (VLA) has released a prototype online tool – developed with Code for Australia – for the purposes of intake triage. In this first iteration, the subject coverage is fairly limited and the content fairly shallow. The value of the project is more in its potential than its achievement. VLA describes its tool in these terms, as an 'online checker, which aims to help people who have legal problems that are considered 'out of scope' for VLA, meaning we are not the appropriate place for their legal problem. Our Legal Help lawyers can spend up to 5 minutes on the phone for each caller who has an issue that is out of scope for VLA. The online checker provides an alternative way for these people to get help, simply by answering questions online, while also relieving wait times for others who have issues VLA can help with.

The first iteration of the online checker deals only with the most common out of scope matters for Legal Help. Feedback and learnings from the first version will be invaluable in further developing the tool to include more topics and help achieve the overall goal, of better matching people with the right legal service. The potential for time and cost saving will be important for VLA. Its last annual report shows that it received 186,389 legal help calls in 2015-6. VLA is still acting under legislation passed in the late 1970s with statutory objectives that include pursuing 'innovative means of providing legal aid directed at minimising the need for individual legal services in the

community' and gives the organisation a wide brief that includes research reform, education and grant aid to voluntary legal aid bodies (ss4 and 6 Legal Aid Act 1978).

The online tool as yet covers only four areas – wills and estates, migration, personal injury and housing/tenancy. And the actual information given on these areas is fairly straightforward and pretty well exactly what you would expect of a well thought out website. The new bit is small but potentially important. As you go into each area, you are taken through simple questions that begin to tailor the information for your particular needs. This is pretty rudimentary. For example, try housing and you are differentiated by whether you tick the box for being a tenant or a landlord. As a tenant, you get a further pretty basic choice between whether you have a neighbour dispute or any other tenancy issue. Tick for general issues and you are given a range of possibilities and potential clicks through to other websites such as the Tenants Union of Victoria for information, for example, on dealing with repair issues.

The most interesting provider of information on the net remains MyLawBC with its interactive Rechtwijzer-based approach. This incorporates some automated document assembly e.g. in relation to making a will. There must be considerable potential internationally for a triage site that undertakes three basic tasks:

- (a) referral - using user's location and identification of their problem to direct a person to the right place to assist them;
- (b) provision of support and relevant documentation for those who cannot be referred or helped - thereby incorporating the level of assistance given by CLEO, Citizens Advice or MyLawB;
- (c) undertaking intake through not only identifying required clerical and financial information but also using guided pathways (or even, ultimately, AI) to pre-identify the issues on which the user wants assistance and helping the intaking organisation to deal with them.

Improved communication

The net offers the opportunity for much improved communication between advisers. There are any number of net-based adviser groups with this objective. A good example of good use of the possibilities is Rightsnet, an English and Welsh online network of advisers primarily on welfare benefits. It has managed to challenge the established welfare rights resource, the Child Poverty Action Group, for a role in bringing together advisers in the fields of welfare rights, debt, housing, employment and community care. This has well populated advice sites - on the random day of 27

April 2017 there were five information postings on welfare benefits. It also hosted 12 conversation threads with over 1000 replies and one with over 10,000.

A new entrant to the field in England and Wales is the Litigant in Person Network, funded by the Legal Education Foundation. The network had been consciously set up in imitation of the Self Represented Litigants Network in the US. The aim is to provide an online platform for the range of people, organisations and institutions involved in seeking to address the issues raised by what has, over recent years, become a much more visible phenomenon. Legal aid cuts makes this a much harder job than it would otherwise have been – though it brings England and Wales into a similar position to countries overseas. Like the Lipnetwork, this is primarily for those engaged in assisting Litigants in Person rather than individuals themselves. The Canadian (though seemingly focused mainly on Ontario) equivalent, the National Self-Represented Litigants Project (NSRLP) seeks to serve both constituencies. The Lipnetwork firmly dispatches individual litigants in person off to AdviceNow which has received Ministry support for web-based information.

The network is co-ordinated by the Litigant in Person Support Strategy and Ella Playfair, the network's development manager, said: 'We really hope [the website] will provide a space for individuals and groups from different sectors to expand on and connect outside of their regular contacts. We hope that through this pilot we will begin to open up avenues of conversation, collaboration and resource sharing between diverse groups, including academics, the public sector and the advice sector.'

A further example of the use of online to encourage communication between providers and those interested in provision is the website (www.law.tech_a2j) and blog, also funded by the LEF, which lies behind this annual report. This has now been going a year and has attracted an international audience - particularly in the UK, US, Australia, Canada and The Netherlands. The linked twitter account has over 600 followers.

Online Courts

With the demise of the Rechtwijzer (which in its version 2.0 sought to move into the field of resolving issues online by mediation and adjudication), the lead jurisdiction in terms of the introduction of online courts likely to affect those on low incomes becomes the Civil Resolution Tribunal (CRT). In the course of the last year, the CRT handed down its first judgement and in June extends its jurisdiction to small claims. 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 but is notable that the

judgement appeared nothing out of the ordinary, despite the online procedure. 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 dope 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.' 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.

A unique additional feature of the CRT is its Solution Explorer, developed as an opening component. It is described in an animated guide on Youtube. The Solution Explorer has been conceived as the opening procedure within a coherent whole. Its authors have a warning on 'pick and mix' provision in which different elements are grafted together. This is likely to be pertinent to the plans of the Ministry of Justice in England and Wales – which is racing to implement an online small claims court by the time of the next election – but we will see: The notion of end-to-end design, combining dispute resolution phases, is contrasted with initiatives that graft a single dispute resolution process onto a larger, pre-existing one. For example, the addition of a mediation step into an adversarial court process that generally follows typical court procedures, with an orientation towards inevitable trial, will not necessarily reflect an end-to-end design or achieve its goals. The mediation step could certainly generate benefits. But it does not reflect the same type of complete system proposed in [the Civil Resolution Tribunal]. Its champions explain it thus:

The Solution Explorer is a simple, web-based expert system that carries out several functions to assist a user in understanding and resolving their dispute. It does not collect any personal information, and is available for free to the public, regardless of whether they have a CRT claim. An expert system is a technology-based platform that imitates or emulates the feedback, guidance, or reasoning of a human expert. ... This knowledge is structured in a specific way to make it computer readable, and accessible to the expert system user through the system's user interface.

A foundational design principle ... is to create opportunities for early resolution. The Solution Explorer provides these opportunities in different ways. First, the system helps to diagnose a user's problem by narrowing it from the level of a wide domain, down to a much more granular level. A representative model would look like this:

> Karin has a Small Claims problem

>> Karin's Small Claims problem relates to the purchase of a good or service

>>> Karin's purchase is a consumer (personal, family or household use) type

>>>> Karin is the consumer (purchaser)

>>>>> Karin's purchase is a service contract

>>>>>> Karin's service contract is a continuing service contract (e.g. a fitness club membership)

>>>>>>> Karin wants to cancel and is having a disagreement over the terms of cancellation.

The way that the user experiences this 'justice journey' or 'guided pathway' is through a series of questions that follow on from each other. The best way to understand this is to follow through an example in relation either to 'strata disputes' on the CRT website (cases involving rights in relation, largely, to blocks of flats) which are already in the system or, on a wider range of questions, in relation to residential tenancies (and still in beta form) on the BC Ministry site. The latter also comes with its own Youtube video guide. You can choose whether to be a tenant or a lawyer and are then taken through a decision tree similar in essence to the small claims example above. You can stop at any time and your search will be saved for 28 days. You get a password to allow your return. At the end, you get a summary of the information given.

Meanwhile, reform in England and Wales proceeds at pace though, as yet, without much to be seen or tested. There is some ground for concern, however. These are the 'guiding principles'. They sound fine until you start to examine them more closely.

Our guiding principles

- Just – the independent judiciary are supported by processes that are modern, transparent and consistent
- Proportionate—the cost, speed and complexity are appropriate to the nature of the case

- Accessible—affordable, intelligible, and available for use by all

The system will provide targeted and supportive care to those who need it, reducing unnecessary stress for victims and the most vulnerable.

However, on examination, these reveal a degree of selection when compared with values selected as reflecting ‘broad international agreement regarding the core values that courts apply in carrying out their role’ and set out in a document entitled *The International Framework for Court Excellence*. This was published in 2013 by an impressively wide consortium which included which the Australasian Institute of Judicial Administration, The Federal Judicial Center (US), The National Centre for State Courts (US), the Subordinate Courts of Singapore, the European Commission for the Efficiency of Justice (a Council of Europe organisation of which the UK will remain a member even after Brexit), and the World Bank. Its set of values was:

Equality before the law; Fairness; Impartiality; Independence of decision-making; Competence; Integrity; Transparency; Accessibility; Timeliness; Certainty.

Among the differences, there is no mention of equality before the law in the HMCTS document. No mention by the HMCTS that the independent judiciary be supported by processes that are to be fair – only modern, transparent and consistent. And what on earth does ‘modern’ mean? The International Consortium’s absolute value of timeliness is downgraded by the HMCTS to the ‘speed ... appropriate to the nature of the case’. Nor is there any consideration of the provisions of Article 6 of the European Convention on Human Rights which states that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

The HMCTS must be aware that there has been considerable academic discussion of how this is compatible with digitalisation of the courts. Observe the requirement for a hearing within a reasonable time without any qualification of proportionality. Observe too the right to a public hearing – which may be maintained by way of an opt out of digital processes – but might be mentioned. But, how does HMCTS intend to deal with the issue of the exclusion of the press? Even in the most gung-ho celebration of government thinking, you have to deal with this. Of

course, we all know that Ministers in this government do not like being bound by the European Convention and that the plan was to opt out of it as a sop to the Brexiteers once they lost the EU referendum but, of course, it did not work out like that and, even though Ministers might not like it, the HMCTS has to deal with the compatibility of its proposals with the Convention. Not to do so now is too much of a sleight of hand and just stores up problems for later.

The really key question is how would Amazon do this? Surely it would identify a price point, a time requirement, quality criteria and build a system that met them. We all know that the HMCTS has no control whatsoever over the price point for all that it may talk about 'affordability'. We need more transparency on that. The problem at the moment is that we know the input – the HMCTS is going to spend GBP 1bn – but we do not know what output is expected by which these reforms can be judged. Ministers must require the HMCTS to put itself on the line – publicly. What are we getting for our billion in terms of improved services, precisely? What will be the new time expectations, volume expectations, quality criteria?

The introduction of the online small claims court in England and Wales will be directly relevant to access to justice because, from consumers' point of view, the only point is if it improves service and/or lowers cost. But, there will also be knock on indirect consequences. Already, the reduction in the number of tribunal hearings is affecting the number of cases with which pro bono providers, like the Free Representation Unit, can assist - to the detriment of the experience that it wishes to give to those practitioners wanting to develop their skills. Pro bono schemes, which have expanded massively at universities and colleges in recent years, may be hit hard by any major transfer to online - as may some of the commercially orientated McKenzie friend providers. We have yet to see.

The move to online courts should certainly give impetus to online advice as court users search for assistance that they are likely to anticipate will also be online. This is likely to encourage national information providers like AdviceNow and Citizens Advice to provide bridges from their websites to those of the court. The challenge for the court is how user-friendly is its interface with the public going to be? Will we see the sort of attention paid to public accessibility as we can see in the Civil Resolution Tribunal, which has recently revamped its website in anticipation of the increase in its small claims jurisdiction or will the public interface remain much more aloof, official and discouraging?

Evaluation and Monitoring

The Legal Services Corporation usually requires recipients of its Technology Initiative Grants to provide an evaluation as part of their final report. The lack of preset goals and subsequent evaluation in the field of technology and legal services is striking. The team behind the Rechtwijzer proceeded to version 2.0 before the research on 1.0 was completed. In any event, it was primarily a subjective analysis of how users felt about their competence rather than anything more objective. The HMCTS has published no indications of its assumptions on price and numbers for its online small claims court. In the commercial market, success or failure can be determined by whether a product is commercially viable. For governments and other funders in the public realm, evaluation is harder. But it must be done and, even if unfavourable, can be immensely useful.

Victoria Legal Aid (VLA) had the courage to publish 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. It had decided to build an app, *Below the Belt*, for young people on 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 instal 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 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.

To its credit, VLA admitted 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.

Crucial to evaluation is detail. We need precise information of those using the product. A brilliant example of the practical effect of this is the Citizens Advice Advicetracker which lets you see numbers of users and subjects of requests in real time. You can literally see how the site is being used. But, overall, there is a striking lack of transparency over net-based technology and a considerable dislike of prior identification of tangible goals for projects.

Training

The net has obvious potential for training and education - both of those seeking help with problems and those providing that help. In the course of the year, the Families Change programme developed in British Columbia by the Justice Education Society, and already taken by the Californian courts, went fully Canadian and now covers all provinces and territories. Also in Canada, Ryerson University continued its pioneering short legal practice program that incorporates a four month largely online training programme where trainees participate in virtual law firms. This has proved somewhat controversial but gives an indication of how training costs might be reducible by incorporating online provision. In England and Wales, the Solicitors Regulation Authority has announced a new finals examination as the route to qualification which will replace required attendance on a year long course from 2020. It is to be seen if this encourages any kind of boom in online teaching.

Conclusions

1. The legal profession over the world is recognising that major change will follow from technological developments and that this has begun and should be monitored. It is yet really to bite in the sense of re-engineering the market. Firms are, at variable rates, absorbing technology in the management of their practice. There has yet to be a decisive move to providing services to the 'latent legal market' which has, unfortunately, expanded in England and Wales due to the cuts in legal aid.
2. The momentum of legal tech start ups outside the legal profession is palpable - and very obvious in the United States and England and Wales. Some of these innovators - like RocketLawyer and LegalZoom - are focusing on direct service provision of low cost services but are still having relatively minor - though growing - impact on the legal market. The number of

innovation hubs is growing but the impact is to be seen. Hackathons are often focusing on access to justice issues but we need to see more sustained take up of their ideas.

3. There is a gradual improvement of web-provided information as the first line of service to someone in need of legal services, instanced by Citizens Advice in England and Wales and CLEO's Steps for Justice programme. There is improvement too in online triage programmes with the prospect of a Microsoft-assisted project in the US beginning in Alaska and Hawaii. MyLawBC continues as an exemplary interactive information programme and there is increasing interest in chatbots. At the apex of this movement potentially is the Australian development of Nadia using a wide range of artificial intelligence.

4. The failure of the Rechtwijzer leaves BC's Civil Resolution Tribunal with its Solution Explorer as the leading example of an interactive online tribunal seeking to be accessible to users who are representing themselves. It proceeds to small claims in June. There are bold plans for England and Wales to develop an online small claims court though some doubts already about how well this will be done. Performance needs to be rigorously monitored but it is not clear that sufficient attention has been given to user-orientated performance indicators.

5. The provision of legal services to those on low incomes and the adjudication of their problems is becoming ever more fragmented. Legal aid administrations are being revealed in many jurisdictions as representing only part of the assistance available. That points to a potential leadership gap. Which institution will lead on public debate and government action on access to justice? In England and Wales, the judge-led Civil Justice Council is stepping into this gap. Elsewhere, particularly in the US, there has been the growth of access to justice committees of all the stakeholders, often chaired by a judge. This can be effective but no one institution has the power of influence that was once held by e.g. the Legal Services Commission in England and Wales.

6. We need much more rigorous performance standards, monitoring and evaluation, particularly of government funded technology projects.

7. We should look for more innovation in the training of advisers and the education of users via the net.

8. We still can draw very few conclusions on how accessible technology will make legal and adjudication services. How many users will feel comfortable using internet services? The debate remains with little additional hard information. As innovation proceeds, we will get some idea but those behind developments - particularly governments and legal aid administrations - need to

remember that we are probably still a long way from 'digital only' and that workable face to face provision is still required.