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The Shifting Frontiers of Law: Access to Justice and Underemployment in the Legal Profession

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Special Issue Article



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The Shifting Frontiers of Law: Access to Justice and Underemployment in the Legal Profession

Abstract

The article examines two interrelated issues attracting attention from the legal academy, the profession, and policy makers: i) the crisis of access to justice among ordinary Canadians, and ii) the increasing number of qualified and underemployed lawyers. This article sets out to understand the interrelated factors underlying these two trends, and explores long-term, accessible solutions to address the misalignment between the supply of underemployed law graduates and a demand for affordable legal services. In response to these twin problems, we examine how legislative reform, open source networks, and the automation of legal work can allow lawyers to create more cost-effective delivery mechanisms for legal services, while allowing clients to choose, and work with, lawyers in a more informed manner. While the alternatives we explore are a radical shift from the traditional methods of the legal profession, they are in line with emerging technological realities, and are realistic market solutions to the access to justice problem. To conclude, we focus on the legal academy's important role in motivating budding lawyers to think critically about how the legal profession, as a social institution, can be ameliorated to ensure that claims for justice do not fall outside of its purview.

Keywords

Justice, Administration of; Practice of law; Lawyers; Underemployment; Canada

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Special Issue

Creating Opportunities: A Vision for the Future

The Shifting Frontiers of Law: Access to Justice and Underemployment in the Legal Profession*

NANDINI RAMANUJAM[†] & ALEXANDER AGNELLO[‡]

The article examines two interrelated issues attracting attention from the legal academy, the profession, and policy makers: i) the crisis of access to justice among ordinary Canadians, and ii) the increasing number of qualified and underemployed lawyers. This article sets out to understand the interrelated factors underlying these two trends, and explores long-term, accessible solutions to address the misalignment between the supply of underemployed law graduates and a demand for affordable legal services. In response to these twin problems, we examine how legislative reform, open source networks, and the automation of legal work can allow lawyers to create more cost-effective delivery mechanisms for legal services, while allowing clients to choose, and work with, lawyers in a more informed manner. While the alternatives we explore are a radical shift from the traditional methods of the legal profession, they are in line with emerging technological realities, and are realistic market solutions to the access to justice problem. To conclude, we focus on the legal academy's important role in motivating budding lawyers to think critically about how the legal profession, as a social institution, can be ameliorated to ensure that claims for justice do not fall outside of its purview.

Le présent article examine deux questions interdépendantes qui retiennent l'attention des théoriciens du droit, de la profession et des décideurs politiques : i) la crise de l'accès à la justice chez les Canadiens ordinaires, et ii) le nombre croissant d'avocats qualifiés et sous-employés. L'article se penche sur les facteurs expliquant ces deux tendances et analyse des solutions accessibles et à long terme pour remédier au décalage entre le nombre de

* An earlier version of this article was presented at the Creating Opportunities Summit. The Summit took place on 26-27 January 2017 at Osgoode Hall Law School, Toronto.

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diplômés en droit sous-employés et la demande de services juridiques abordables. Face à ce double problème, nous examinons comment les réformes législatives, les réseaux ouverts et l'automatisation du travail juridique peuvent permettre aux avocats de fournir des services avec un meilleur rapport coût-efficacité, et aux clients de choisir des avocats et de traiter avec eux en meilleure connaissance de cause. Bien que les solutions que nous explorons constituent un virage radical par rapport aux méthodes traditionnelles de la profession juridique, elles cadrent avec les nouvelles réalités technologiques et représentent des options réalistes face au problème d'accès à la justice. En guise de conclusion, nous mettons l'accent sur le rôle important que jouent les théoriciens du droit pour inciter les jeunes avocats à réfléchir de manière critique aux moyens d'améliorer la profession juridique en tant qu'institution sociale, de sorte que les revendications de justice ne sortent pas du cadre de ses compétences.

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TWO SIMULTANEOUS PHENOMENA ARE ATTRACTING ATTENTION from the legal academy, the legal profession, and policy makers: (i) the crisis of access to justice among ordinary Canadians, and (ii) an increasing pool of qualified underemployed lawyers. On the one hand, legal services remain unaffordable for most Canadians, and on the other hand, young lawyers are unable to find secure and stable employment. This article seeks to understand the interrelated factors underlying these two trends, and explores long-term, accessible solutions

to address the disparity between the supply of underemployed law graduates and the demand for affordable legal services. We argue that this disparity is the result of a static model of delivery of legal services that is misaligned with rapidly changing technological and economic systems.¹ Approximately twelve million Canadians will have at least one legal problem in any given three-year period.² Access to justice is a pervasive problem that requires an array of resources to anticipate, prevent, and manage common legal issues. For this reason, this article will explore pathways for empowering people to access legal services through new technology-based repositories such as open access databases. The article also probes potential legislative reforms and technological innovations that could usher in an era of supple and responsive models of legal service delivery to bridge the gap between demand for and supply of affordable legal services.

Part I presents an overview of the two coexisting phenomena of an oversupply of law graduates and a lack of affordable legal services, which together create a crisis of access of justice in our society. Part II looks at the history and structure of the traditional North American law firm. This section sheds light on reasons for the legal profession's billable hours model and statutory monopoly over legal services, which may have served the profession well in the past, and will posit that these practices exacerbate the problem of access to justice at present. Part III provides critical insight into the legal profession's role in exacerbating the access to justice problem and underscores its correlative ethical obligation to ensure access to justice. We analyze the legal profession's instrumental role in upholding the rule of law, and explore the moral obligations that stem from its statutory monopoly and its beginnings as a helping profession.

Part IV discusses the potential for legislative reforms and technological innovations that could provide the necessary impetus for the modernization of the law firm model and pricing structure, making them responsive to changing socio-economic and technological paradigms. This section also highlights innovations from other jurisdictions. Technological innovation is not, however, crucial only to a lawyer's role in the modernization of the profession. The open source movement and the electronic marketplace are also tools for client empowerment. These movements create public awareness surrounding civic rights and responsibilities, allow clients to choose lawyers in a more informed manner, and advise them on how to work effectively with lawyers to reduce

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1. Canadian Bar Association, *Do Law Differently: Futures for Young Lawyers* (CBA Legal Futures Initiative, 2016) at 11.
 2. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: October 2013) at 2.

start-up costs. Lastly, Part V focuses on the role of the legal academy in preparing law graduates to adapt to new challenges and engage creatively in the exercise of reimagining the landscape of the legal profession.

I. LAW GRADUATES: TOO MANY YET TOO DEAR

A. UNAFFORDABLE JUSTICE AND UNDEREMPLOYED LAW GRADUATES

The Canadian Bar Association's 2013 report *Reaching Equal Justice* predicts that 45 per cent of Canadians will encounter a legal problem, and a significant number of them will not receive the legal help they require due to perceived or actual barriers.³ As many as two-thirds of Canadians are unable to afford a lawyer, forcing them to make uncounseled decisions regarding their legal situation.⁴ The report also highlights that the personal delivery model of legal services has driven up the prices of these services and puts civil justice out of reach for the poor and the middle class.⁵

The difficulties that underlie the access to justice problem cannot be explained simply by the economics of supply and demand of lawyers. In fact, on the supply side, there is a saturation of qualified lawyers who are unable to secure full-time employment in their field. The Canadian Bar Association has not released national statistics detailing the decline in national employment rates, which makes it difficult to accurately determine the extent of the problem at this point in time.⁶ However, there is a general perception among law faculties and leaders in the profession of a serious market saturation. Available data paint a stark picture. Law Society of Upper Canada statistics show that only 53.5 per cent of articling students were hired back by their firm at the date of their Call to the Bar.⁷

We argue that the static paradigm of the market for legal services is one of the main contributors to the serious unmet need for legal services, and to the

3. Jennifer Brown, "CBA Rolls Out Strategy to Improve Access to Justice," *Canadian Lawyer Magazine* (17 December 2013), online: <<http://www.canadianlawyermag.com/legalfeeds/1841/cba-rolls-out-strategy-to-improve-access-to-justice.html>>.

4. *Ibid.*

5. Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa: CBA, 2013) at 105.

6. Emily Alderson, "Law Graduates and Employment: Too Little Information," *CBA National* (4 April 2016), online: <<http://www.nationalmagazine.ca/Blog/April-2016/Law-graduates-and-employment-Too-little-informatio.aspx>>.

7. Law Society of Upper Canada, *Articling Task Force Consultation Report* (Toronto: LSUC, 2011) at 81.

stagnant growth in the job market for law graduates. There is growing evidence to suggest that the prolonged statutory monopoly that law firms have claimed on the provision of legal services is stifling innovation that could enhance the efficiency and affordability of legal services. The prevalent one-size-fits-all legal service delivery system forces clients to pay based on time, rather than services rendered, and leads to greater variability in cost and risk. Canadian Lawyer Magazine reveals that a two-day civil trial can cost anywhere between \$18,000 and \$63,000 (CAD).⁸ The possibility of protracted litigation for even routine legal problems could easily indebt middle-income households, or at least dissuade them from seeking out legal solutions. Those who ultimately cannot afford legal representation in Canada may also face barriers when attempting to access legal aid.

B. PUBLICLY FUNDED LEGAL AID

Under the current delivery model, legal services are only reasonably available to individuals who have the means to afford high-priced solutions, or to those who fall below the income threshold for legal aid. The vast majority of Canadians lie outside of these parameters, and are left with a paucity of realistic options. Moreover, legal aid across Canada is an overstretched and underfunded system, and those who do qualify for assistance may only receive partial support. The report of the Legal Aid Review prepared for the Ontario Ministry of the Attorney General notes a reduction in government funding to legal aid programs, difficulties in retaining counsel, and a “sharply diminishing” percentage of people who qualify for legal aid.⁹ These factors make it most difficult for the working poor and middle class to seek adequate legal protection, as they are just above the income threshold to qualify for legal aid, but make too little to afford legal representation.¹⁰ These individuals have to make difficult sacrifices to access the justice system, such as putting a second mortgage on their homes, or dipping into funds that they have set aside for retirement or a child’s education.¹¹ If they cannot make these sacrifices to engage the services of a lawyer, unresolved legal problems

8. “Has Our Justice System Priced Itself beyond the Reach of Average Citizens?” *CBC Radio* (23 November 2014), online: <<http://www.cbc.ca/radio/checkup/has-our-justice-system-priced-itself-beyond-the-reach-of-average-citizens-1.2845004>>.

9. William McDowell & Usman M Sheikh, “A Lawyer’s Duty to Ensure Access to Justice” (Paper delivered at The Advocates’ Society Symposium on Professionalism, 27 January 2009) [unpublished] at 5.

10. *Ibid* at 6; *Access to Civil & Family Justice*, *supra* note 2 at 3–4.

11. Fabien Gélinas et al, *Foundations of Civil Justice: Toward a Value-based Framework for Reform* (Cham, Switzerland: Springer, 2015) at 118.

may multiply and corrode other aspects of their lives.¹² It is estimated that 40 per cent of people with one or more legal problems experience a social or health problem linked to their legal situation.¹³ These unresolved and compounding legal problems may lead to mounting costs for the individual and for society in the form of government assistance.¹⁴

Moreover, the current threshold for legal aid is not anywhere near what the government regards as poverty status in Canada. In Ontario, a person who earns twice as much as the legal aid cutoff (\$13,635 CAD) still falls below the poverty line, and would likely have to spend the lion's share of their yearly earning to invoke their legal rights.¹⁵ Ontario rejected almost twice as many applications for full legal aid than it accepted in 2013–2014. Most criminal defendants who do not qualify for legal aid back down and plead guilty to end the mounting costs.¹⁶ To understand the elements of the legal system in place that have contributed to the access to justice problem, we will look at the history and structure of the law firm. Specifically, we will consider how the billable hours model and statutory monopoly have served the profession well in the past, and why these practices exacerbate the problem of access to justice at present.

II. THE HISTORY AND STRUCTURE OF THE LAW FIRM

A. THE BILLABLE HOUR: THEN AND NOW

Throughout the nineteenth century, legal fees in North America were capped by statute.¹⁷ However, as legal issues became more complex and time consuming, many lawyers found themselves working far longer hours for the same standardized fee, and falling behind the pay rate of other professions.¹⁸ A 1958 American Bar Association (ABA) publication titled “The 1958 Lawyer and His 1938 Dollar” attributed law’s relative disadvantage in comparison to other professions to poor

12. Action Committee, *supra* note 2 at 3.

13. *Ibid* at 3.

14. *Ibid*.

15. Legal Aid Ontario, “Am I eligible for legal aid?” online: <<http://www.legalaid.on.ca/en/getting/eligibility.asp>>; “Ottawa must help provinces fix legal aid: Editorial,” *The Toronto Star* (6 June 2016), online: <<https://www.thestar.com/opinion/editorials/2016/06/06/ottawa-must-help-provinces-fix-legal-aid-editorial.html>>[“Ottawa must help”].

16. “Ottawa must help,” *supra* note 15.

17. Frank Strong, “History and Origin of the Billable Hour” (6 March 2017), *Business of Law Blog*, online: <<http://businessoflawblog.com/2015/06/history-origin-billable-hour/>>.

18. *Ibid*.

business practices.¹⁹ The ABA of the time insisted on operating on standardized fees (a minimum fee and a capped fee), and deviation from this system resulted in penalties.²⁰ However, the US Supreme Court in *Goldfarb v Virginia State Bar* held that minimum fees violated competition laws and undermined a client's ability to get a more competitive quote.²¹ This paved the way for the advent of the billable hour, which was regarded as beneficial for both lawyers and clients: "lawyers should be paid for their time and effort, and the client is able to control legal costs by specifying who will do the work and at what hourly rate."²²

The abolition of standardized fees by the Supreme Court in *Goldfarb* ultimately led to grossly inflated rates and a scarcity of affordable alternatives. 'Big Law' in New York City and London has produced the "\$1000-Plus an Hour Club," with some law firms charging \$1,250 USD an hour for legal services.²³ In addition to making exorbitant rates the norm, the billable hours model creates systemic problems for the internal structure of law firms.²⁴ In a highly competitive legal market, the importance of accruing billable hours may dissuade associates from referring a client to a more knowledgeable colleague.²⁵ The number of billable hours becomes more important than the quality of the work, and this adversely affects clients and disadvantages lawyers who work diligently and efficiently.²⁶

The pressure in law firms to meet billable hour targets can lead to inefficiencies and adverse effects for corporate and individual clients alike. In *Bank of Nova Scotia v Diemer*, the Ontario Court of Appeal specifically addressed how the billable hour model creates a conflict of interest between lawyer and client through incongruent priorities.²⁷ The client seeks robust yet efficient representation—but tying compensation and effort to the number of billable hours creates economic

19. American Bar Association, *The 1958 Lawyer and His 1938 Dollar* (St Paul, Minn: West, 1959).

20. Strong, *supra* note 17.

21. *Goldfarb v Virginia State Bar*, 421 US 773 (1975).

22. Huseyin Leblebici, "Your Income" in Laura Empson, ed, *Managing the Modern Law Firm: New Challenges, New Perspectives* (Oxford: Oxford University Press, 2007) 117 at 122.

23. Vanessa O'Connell, "Big Law's \$1,000-Plus an Hour Club," *The Wall Street Journal* (23 February 2011), online: <<https://www.wsj.com/articles/SB10001424052748704071304576160362028728234>>.

24. Aly R Hâji, *The Illusion of Innovation at Canadian Law Firms* (Advanced Topics in Management I- Independent MBA Study, Desautels Faculty of Management, McGill University, 2017) at 3.

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

incentives for lawyers to prolong proceedings.²⁸ In *Diemer*, the court found that “[t]here is something inherently troubling about a billing system that pits a lawyer’s financial interest against that of its client and that has built-in incentives for inefficiency. The billable hour model has both undesirable features.”²⁹ In *Hryniak v Mauldin*, the Supreme Court of Canada recognized the need to fundamentally change civil justice through more efficient processes that “create an environment promoting timely and affordable access to the civil justice system.”³⁰ The Court in *Mauldin* recognized how the billable hours model affects access to justice, and sought to accelerate the route to justice without compromising the ultimate value of a sound and just adjudicative process by removing unjustified barriers to the use of summary judgments, which provide a faster and more cost-effective alternative to a full trial.³¹

B. RATIONALE FOR BARRING MULTIDISCIPLINARY PRACTICE AND CORPORATE INVESTMENT

The possibility of transforming the law firm model from a historical monopoly to a system that permits multidisciplinary practices (MDPs), alternative pricing structures, and non-lawyer investment was debated before the ABA’s Kutak Commission.³² The primary problem debated before the Commission was that the need for legal services for the middle class (who do not qualify for legal aid) was not being effectively met by traditional legal practices.³³ The Commission considered problems with the historical exclusion of multidisciplinary and corporate-owned practices,³⁴ and proposed that MDPs be permitted to effectively address the middle-class demand for accessible legal services. However, the Commission’s hopes of introducing alternative business strategies to the US legal market were derailed when it was established during debate that major retailers could theoretically sell legal services. As a result, the “fear of Sears” overshadowed accessibility goals.³⁵ As we will see through a discussion on the *UK Legal Services*

28. *Ibid* at 4.

29. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 36, 247 ACWS (3d) 584.

30. *Hryniak v Mauldin*, 2014 SCC 7 at para 2, [2014] 1 SCR 87.

31. *Ibid* at paras 23, 79.

32. American Bar Association Commission on Evaluation of Professional Standards, *Model Rules of Professional Conduct*, Kutak Commission Drafts, Discussion Draft of 30 January 1980, online: <http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/kutakcommissiondrafts.html>.

33. *Ibid*.

34. James Moliterno, *The American Legal Profession in Crisis: Resistance and Responses to Change* (New York: Oxford University Press, 2014) at 162-64.

35. *Ibid* at 165.

Act, which established regulatory liberation in the United Kingdom, the fear of a flood of retail legal services was preemptive and highly dramatized.

The common and long-standing argument used to justify barring MDPs is to protect lawyers and the legal profession from government interference and the influence of corporate interest.³⁶ The ABA's *Model Rules* and the Canadian Bar Association's *Code of Conduct* highlight the importance of the unbridled independence of the profession.³⁷ The legislative history of the *Model Rules* goes one step further to elaborate that the law profession cannot allow non-lawyer ownership interest because "non-lawyer[s], motivated by a desire for profit, would be unable to appreciate the ethical considerations in representing a client."³⁸ According to this reasoning, we should assume that lawyers are professionals with no desire for making profits, and establish practices that always put a client's interests before the lawyer's.³⁹

C. THE PROFESSION'S INDEPENDENCE FROM GOVERNMENT

The Law Society's emphasis on safeguarding the ideals of independence and self-governance masks the reality of how law societies came to be, and how legislative provisions and government intervention continually regulate lawyers' conduct in many different legal systems.⁴⁰ While disciplinary processes are independently carried out by law societies, the everyday work of a lawyer may be affected by different sources of authority.⁴¹ In the United States, for instance, malpractice liability is a creation of state law, and has the effect of governing lawyer conduct.⁴² Furthermore, US courts are now responsible for monitoring conflicts of interests.⁴³ In Canada, the primary responsibility for the administration of justice in matters of civil procedure rests with the provincial governments.⁴⁴ Moreover, Canadian law societies are created and recognized by government through specific Acts, again undermining the notion of complete independence from government intervention.⁴⁵ The UK has allowed deregulation of the legal services market in pursuit of access to justice through the *Legal Services Act*. The

36. *Ibid* at 171.

37. Kutak Commission Drafts, *supra* note 32.

38. Moliterno, *supra* note 34 at 166.

39. *Ibid*.

40. *Ibid* at 237.

41. *Ibid*.

42. *Ibid*.

43. *Ibid*.

44. Law Society of Upper Canada, "History," online: <<http://www.lsuc.on.ca/with.aspx?id=427>>.

45. *Ibid*.

UK government has historically treated the legal profession as any other business, while in neighboring civil law jurisdictions, the ministry of justice claims jurisdiction over the profession.⁴⁶ The resistance to government involvement in the legal profession is still strong in North America, yet, as discussed, this resistance obscures the fact that the government already plays a considerable role in monitoring the conduct of lawyers in the United States, Canada, and abroad.⁴⁷ Moreover, lawyers are clinging on to the appearance of unbridled independence at the peril of people who lack access to justice. Many other jurisdictions have been able to balance (relative) autonomy and government involvement to better meet the access to justice aims of society.

III. LOOKING THROUGH THE RULE OF LAW PRISM

A. THE RULE OF LAW

In the previous sections, we conceptualized the lack of access to justice as a problem that is exacerbated by the profession's resistance to change. Through a brief review of the history, tools, and mode of operation of the law firm, we saw the profession's monopoly and the billable model as vestigial elements that are now hard to justify. By maintaining the status quo, the legal profession is exacerbating the access to justice problem. In this section, we will develop key arguments for why the legal profession has an obligation to ensure access to justice under the principle of the rule of law. The overall goal of this article is to develop concrete and innovative steps towards addressing the access to justice problem. This goal requires us first to establish that the legal profession has an obligation to ensure access to justice. The World Justice Project's Rule of Law Index ranks Canada thirteenth out of twenty-nine high-income countries in access to civil justice, and finds that the rule of law in Canada is hindered in particular by the cost barrier to civil justice.⁴⁸ Although the rule of law is not to be conflated with the rule of lawyers, the profession plays a critical role in facilitating access to justice.

A minimalist conception of the rule of law holds that individuals should be provided with an accessible and intelligible guide for action and equal legal protection against the state or other citizens.⁴⁹ To be intelligible, the rule of law should be based on laws that are public and relatively constant, so that they can be invoked by individuals through an even-handed and informed process of

46. Moliterno, *supra* note 34 at 237.

47. *Ibid.*

48. Action Committee, *supra* note 2 at 4.

49. Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964) at 39.

dispute resolution.⁵⁰ The aims of accessibility, understood in conjunction with the egalitarian aims of our liberal democracy, require the promotion of equal treatment and equal access to justice for all.⁵¹ The notion of equal treatment under the rule of law is undermined when most Canadians cannot afford access to effective remedies.

Lawyers defend the rights of citizens through the legal process and in so doing, provide a point of contact between society and the court system. The role of the Law Society as a promoter of the rule of law is severely undermined if most Canadians cannot seek the services of a lawyer to intelligibly navigate the court system. However, one can argue that the country's highest court is not committed concretely to creating access to civil justice. In *Trial Lawyers Association of British Columbia v British Columbia*, Chief Justice McLachlin held that if people do not have the means to challenge government action in court, the government may be seen as being above the rule of law, while the law itself will not be given its intended effect.⁵² However, in *British Columbia (Attorney General) v Christie*, Chief Justice McLachlin held that the right to legal counsel is only given constitutional status in criminal cases, and that the rule of law does not require a general right to counsel in civil matters.⁵³ The right to counsel is given constitutional status in the criminal context because the accused faces deprivation of their life and liberty. However, the Court's finding does not engage with the fact that civil matters constitute the clear majority of cases, and that unresolved civil legal problems can become compounded, resulting in more serious violations of rights. Civil disputes, depending on their nature, can impact many facets of a person's life (social, economic, cultural, et cetera) and militate against future opportunities to seek equal standing and dignity before the law.

50. McDowell & Sheikh, *supra* note 9 at 8.

51. *Ibid.*

52. *Trial Lawyers Association of British Columbia v British Columbia (AG)*, 2014 SCC 59, at para 40 [2014] 3 SCR 3.

53. *Christie v British Columbia (AG)*, 2007 SCC 21, [2007] 1 SCR 873.

B. THE STATUTORY MONOPOLY

It has been argued that the Law Society's statutory monopoly over legal work entails a correlative obligation to ensure access to justice.⁵⁴ If the cost of representation is out of reach for most Canadians, and this is largely caused by the legal profession's constricting monopoly, then lawyers have an obligation to make their services equitably available to all.⁵⁵ This argument imposes a moral obligation on lawyers to ensure access to justice, or else the profession's monopoly would have no justified basis, and only serve to erect ad hoc barriers to the delivery of legal services.⁵⁶ Other arguments point specifically to the fact that if the statutory monopoly is abused, and if its correlative moral obligation goes unfilled, the public may lose trust in the legal system altogether. Justice Major issued a warning on the abuse of the law profession's monopoly:

The absence of access to legal services, for whatever reason, creates a vacuum in the marketplace and, like nature, the marketplace abhors a vacuum. If the legal profession does not move to fill it, we can be certain that someone or something else will. When this happens, a large potential market will be lost, but more significantly, the profession will undergo changes.⁵⁷

While the legal profession may have a moral obligation to ensure access to justice as a quid pro quo for holding a monopoly, we question whether the profession has the will, the ability, and the incentives to seek out concrete and long-term solutions to the access to justice problem. The following sections of the paper will cast doubt on whether Big Law in particular is in the best position to innovate and provide accessible legal services. Accessibility, we argue, will likely involve the infiltration of technology and efficiency mechanisms that other organizations are in a better position to provide. The current framework seems to assume outright that a statutory monopoly is the best option, without considering access to justice innovations in other jurisdictions (in particular, the United Kingdom and Australia) that have arisen because of regulatory liberalization. The alternatives being produced mirror best practices and make use of the latest trends in technology. However, it is uncertain whether North American 'Big Law' will accept viable solutions that undermine its monopoly.

54. *Supra* note 9 at 7.

55. *Ibid.*

56. Allan C Hutchinson, *Legal Ethics and Professional Responsibility*, 2nd ed (Toronto: Irwin Law, 2006) at 85.

57. Chief Justice Beverley McLachlin, "The Challenges We Face" (Remarks presented at the Empire Club of Canada, 8 March 2007) [unpublished]; Justice JC Major, "Lawyers' Obligation to Provide Legal Services" (1994-1995) 33:4 *Alta L Rev* 719 at 720, 728.

C. PRO BONO LEGAL SERVICES

Historian James Brundage connects the legal profession's obligation to ensure access to justice to its beginnings as a "helping profession" geared towards providing aid to those who could not afford legal services.⁵⁸ Brundage argues that civil advocates began to emerge as a profession in the mid-thirteenth century when they assumed responsibility for providing legal services to indigents.⁵⁹ Providing legal assistance to a class of people that would otherwise be unable to access this benefit was a crucial part of the move towards professional status:

[T]his historical fact is "more than a mere accident of history" and serves to show that the concept of service *pro bono publico* is not only what distinguishes the practice of law as a profession but is also "at the very core of the [legal] profession" and, indeed, "the premise upon which the profession is founded."⁶⁰

Pro bono legal services are still highly relevant today; they provide valuable training for new lawyers, they demonstrate to communities that lawyers are motivated by more than profit, and they are mandated by law societies.⁶¹ However, in the twenty-first century economic paradigm, it is unrealistic to claim that the concept of *pro bono publico* is still what commonly drives law students to become members of the profession. While the historical argument depicts the profession's benevolent beginnings, it is unlikely that a desire to undertake work without charge, or even to honour the underlying sentiment of *pro bono* (for the good of the people) is what alone grounds the legal profession's obligation to ensure access to justice. This ideal was upheld when the law was dominated by individuals from the upper echelons of society. The legal academy and the profession now admit students from diverse socio-economic backgrounds, who take on serious debt loads to pursue legal education and therefore cannot afford to work for free.

D. FACILITATORS OF ACCESS TO JUSTICE

We have explored different ways of conceptually grounding the law profession's obligation to ensure access to justice. However, it is also important to understand why the access to justice problem cannot fall squarely on the shoulders of lawyers. The problem of access to justice is one that strikes at the heart of the rule of law,

58. McDowell & Sheikh, *supra* note 9 at 6.

59. James A Brundage, "Legal Aid for the Poor and the Professionalization of Law in the Middle Ages" (1988) 9:2 J Leg Hist 169 at 169-79.

60. *Ibid* at 175.

61. McDowell & Sheikh, *supra* note 9 at 6.

and as such, other stakeholders such as governments and civil society should also be involved. While pro bono legal services and legal aid are historical practices that have allowed indigent clients to seek justice, the demand for both vastly exceeds the supply, and thus neither is a comprehensive answer to the legal problems of the working poor and the middle class. The institution of pro bono is highly contingent on volunteers, and it is not organized or implemented to deliver services that address the extent of the country's justice needs. Meanwhile, legal aid is severely underfunded and as we have discussed, the threshold for accessing it is not in line with what is considered poverty in Canada. Ultimately, these are laudable yet partial solutions to the access to justice problem.

The current lack of market-based solutions for the delivery of legal services is also causing serious impediments to access to justice. As we have discussed, delayed legislative reform, mixed with the profession's unwillingness to part with its monopoly or make comprehensive changes to its service delivery model, has saddled clients with one-size-fits-all, expensive legal services. We live in a litigious society, and legal professionals receive an education that focuses far more on dispute resolution than dispute avoidance. Lawyers are trained to settle disputes, and devote far too few resources to educating the public about the law and their legal rights.⁶² Regulatory liberalization and the emergence of MDPs will spur a legal sphere with a diversity of viable legal options for the middle class. In keeping with its benevolent beginnings, the legal profession should also consider how modern technology-based solutions can be used to empower clients by educating them on dispute avoidance strategies. Legislative reform and the adoption of modern methods will likely bring new risks and challenges to the profession, such as the threat of automation. However, it is important to consider how other jurisdictions are managing these risks, and to recognize that because the law is a social institution, technology will inevitably permeate the legal profession. Our contention is that it is more advantageous for the law to harness the potential of technology than to avoid making changes until change becomes inevitable.

62. Action Committee, *supra* note 2 at 6.

IV. LONG-TERM SOLUTIONS TO THE ACCESS TO JUSTICE PROBLEM

While access to justice is a problem that directly impacts clients, it has created a sizeable unmet market for legal services that budding lawyers may be able to address. As we mentioned, the issues of law graduate employment and the serious unmet need for legal services, are interrelated problems that could be resolved through common solutions. The development of long-term solutions requires viewing the access to justice problem from the perspectives of the (potential) client and the legal professional. In the case of the client, we discuss the importance of empowering citizens to make educated decisions regarding how they seek out legal solutions. In the case of the lawyer, we discuss how legislative reforms can create opportunities for new lawyers to gain a competitive edge over major law firms by offering services that are modeled and priced differently. By incorporating technology and easy-to-use services into their delivery plan, these lawyers can empower citizens to make better-informed decisions about the route and cost of justice through more transparent methods and pricing options. Lastly, while assessing the methods to provide long-term solutions to access to justice, we also weigh their associated risks and rewards, as well as the detrimental effects of failing to adopt certain measures.

A. LEGISLATIVE REFORM

Legislative reforms to the regulation of the legal profession are a direct way to redefine the market to promote the delivery of legal services that are within reach of the middle class and working poor. The United States and Canada are in a period of “regulatory stasis,” meaning that law societies are highly resistant to change, despite the warning signs and statements from courts at various levels in Canada calling for need to simplify court processes and rethink the billable hours model.⁶³ In response to similar issues, lawyers in England have begun re-imagining their role in the workforce with the help of some legislative reforms that permit full equity partnerships with professionals in other domains.⁶⁴ MDPs involving non-lawyers are not only permitted in the United Kingdom, they are

63. Mark Cohen, “The Pond Seems Wider: The Regulatory Gap Between UK and U.S. Legal Practice,” *Legal Mosaic* (4 March 2015), online: <<http://legalmosaic.com/2015/05/04/regulatory-gap-between-uk-and-u-s-legal-practice/>>.

64. Laura Snyder, “Does the UK Know Something We Don’t About Alternative Business Structures?” *ABA Journal* (1 January 2015), online: <http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures>.

highly encouraged.⁶⁵ The partnering of lawyers and specialists in other industries was promoted in order to find market means to meet a massive demand for legal services through diverse services and pricing options.⁶⁶ Regulatory liberalization in the United Kingdom did not open the flood gates to retail chain law practices; the “fear of Sears” that ended discussions on regulatory liberalization in the United States was overly dramatized. While the UK’s *Legal Services Act* (2007) permits interdisciplinary practice and non-lawyer management and investment in law firms, it also features a regulatory scheme. To differentiate between traditional law firms, sole practitioners, and MDPs, the *Act* provides for a new category of legal company called an “alternative business structure” (ABS).⁶⁷ Interestingly, a growing number of American law firms have applied and secured ABS licenses through their limited liability companies (LLC) in the United Kingdom to capture this segment of the market and compete with other ABS firms.⁶⁸ Even if these ABS firms are not operating with the aim of addressing the access to justice problem, they gain a competitive edge by filling the gap in the market left by Big Law, and are starting to deliver legal services and pricing structures that are in line with unfulfilled market needs.

B. TECHNOLOGY: AN OPPORTUNITY NOT A THREAT

Another major reform to the legal profession will take place through the adoption and utilization of new technologies. For some time, we have seen professional organizations move towards the standardization of services, with lawyers relying on precedent, doctors using detailed charts and records, and consultants applying standard theories and methods.⁶⁹ More recently, there has been a shift towards systematization, or the use of new methods and technology such as statistical modeling and artificial intelligence (AI) to automate professional work.⁷⁰ While other industries are rapidly transforming due to the AI revolution currently underway, professionals still operate on the assumption that their practices are immune to automation (or not nearly as susceptible to it) because of the highly

65. *Ibid.*

66. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 11.

67. Snyder, *supra* note 64.

68. Cohen, *supra* note 63.

69. Richard Susskind & Daniel Susskind, “Technology Will Replace Many Doctors, Lawyers, and Other Professionals,” *Harvard Business Review* (11 October 2016), online: <<https://hbr.org/2016/10/robots-will-replace-doctors-lawyers-and-other-professionals>> [R Susskind & D Susskind].

70. *Ibid.*

personalized nature of their work.⁷¹ This claim usually rests on the assumption that AI must be creative or empathetic to render professional services.⁷² Richard Susskind, a pioneer on the subject of law and technology, argues that this assumption rests on the “AI fallacy... the view that the only way to get machines to outperform the best human professionals will be to copy the way that these professionals work.”⁷³ The assumption, in other words, is that to outperform the human professional, AI must be able to replicate human activity and render personalized or bespoke legal services in a way that calls for judgment, creativity, and empathy. However, once professional work is organized into distinct components that are “routine and process-based,” we see that human judgment, creativity, and empathy are not required, and are in fact outmatched by remarkable algorithms, computer processing capability, and big data.⁷⁴

For instance, machine-learning software (*e.g.*, IBM’s Watson) is advanced enough to carry out much of the research, drafting, motions, and revisions done by junior associates.⁷⁵ An AI robot created by the University of Toronto (Ross) has received significant attention and investment from Denton’s, the world’s largest law firm.⁷⁶ While the mainstream legal field has not yet implemented AI technology across the board, the fact that major law firms have caught on to the AI revolution means that this technology is capable of meeting the needs of Big Law. Many AI machines can carry out much of the work of junior associates. The looming negative impact of AI on entry-level employment at big firms is exacerbated by the fact that large commercial clients prefer to pay high rates for the services of senior partners rather than associates, rendering associates less and less valuable in the broader scheme.⁷⁷

C. EVOLVING THE PROFESSION

While the transformative effects of AI technology on Big Law may negatively impact the chances of an articling student becoming a junior associate, we must also realize that the current legal system and delivery model are unaffordable,

71. *Ibid.*

72. *Ibid.*

73. *Ibid.*

74. *Ibid.*

75. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 11-12.

76. Jeff Gray, “U of T Students’ Artificially Intelligent Robot Signs With Denton’s Law Firm,” *The Globe and Mail* (9 August 2015), online: <<http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/u-of-t-students-artificially-intelligent-robot-signs-with-dentons-law-firm/article25898779/>>.

77. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 11-12.

inefficient, difficult to navigate, and ultimately a disservice to most Canadians. With the viability of the law firm in doubt, and with groundbreaking technology shifting our perception of the role of the lawyer, there has never been a greater impetus to renovate the profession and maximize the availability of accessible and innovative options for clients. Harnessing powerful technologies can help to provide greater access to justice, and can free lawyers from more tedious tasks, allowing them to innovate in other ways.⁷⁸

To provide value where technology cannot, the lawyer of the future will likely need to be an innovator and a specialist in increasingly complex areas of law.⁷⁹ Part of this increasing complexity is due to the new legal questions that arise with the constant development and inevitable integration of technology into our lives and into the legal sphere. These developments will always engender new legal problems, make law more complex, and thus require specialists to fully understand their impact.⁸⁰ The legal profession has been able to resist some of the effects of technological development through its independent status, but disassociating from these developments will be detrimental to the profession. The law's ability to oversee and manage the conduct of individuals, organizations, and institutions will be severely compromised if it is unable to adequately meet the challenges that arise from the development and use of new technologies. The sharing economy (*e.g.*, Airbnb, Uber) has only recently taken flight, but it is already creating tax loopholes and may spawn a host of other problems, including privacy issues and premises liability.⁸¹ Janet Welch, Executive Director of the State Bar of Michigan, has warned that "the failure to understand technology exposes lawyers and clients to ethical dangers such as breaches of client confidentiality."⁸² The message from this statement is clear: technology will inevitably infiltrate the legal sphere, and it is better to be proactive and anticipate how it can engender legal problems before we leave the public at large without legal protection.

78. Julie Sobowale, "How Artificial Intelligence Is Transforming the Legal Profession," *ABA Journal* (1 April 2016) online: <http://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession>.

79. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 11-12.

80. *Ibid.*

81. Vanessa Katz, "Regulating the Sharing Economy" (2015) 30:1 Berkeley Technology Law Journal 1067. See generally, Arvind Malhotra & Marshall Van Alstyne, "The dark side of the sharing economy... and how to lighten it" (2014) 57:11 Communications of the ACM 24; Shu-Yi Oei & Diane M Ring, "Can Sharing Be Taxed?" (2016) 93:4 Wash U L Rev 989.

82. Nicole Black, "Today's Tech: How the State Bar Of Michigan Is Embracing Technology" (22 September 2016), *Above the Law* (blog), online: <<http://abovethelaw.com/2016/09/todays-tech-how-the-state-bar-of-michigan-is-embracing-technology/>>.

However, it is also worth noting that the legal profession should not be seriously engaging with the question of technology merely to avoid reaching a tipping point. As argued earlier, pro-active integration of technology with the aim of efficient and affordable delivery of legal services will allow lawyers to gain a competitive edge in addressing a massive unmet market. With the emergence of automated legal services, we can also expect technology to spur an evolving database of legal information, and collaboration among lawyers on legal issues through open source networking and community building initiatives. If legal work, information, and resources are digitally organized, they may be available and transferable through the many means of the open source movement.⁸³ An example of an open source initiative includes publishing case work for the purpose of allowing other lawyers to use those documents as exemplars, making case work more efficient and ultimately less expensive for clients.⁸⁴

D. TECHNOLOGY AND CLIENT EMPOWERMENT

Open source initiatives are also conducive to client empowerment and can build on other initiatives such as pro bono legal services. A one-hour-per-week pro bono requirement is likely not enough time to adequately address the full extent of a client's legal issue. Furthermore, pro bono legal services usually only pertain to the client in question. On the other hand, open source is a more comprehensive solution because it serves as an ever-expanding knowledge bank that can be useful to a host of clients, and contributes to the freedom and empowerment of individuals. Legal information websites such as *Educaloi*⁸⁵ give clients some handle on their legal affairs by providing interactive guides to common legal problems. This service may be useful for recommending early intervention strategies by providing broad diagnostics that help people identify legal issues and avoid costly delays in the justice process.⁸⁶ An example is Nijahawan-McMillian Barristers, a litigation firm co-founded by McGill law graduate and human rights worker Kelly MacMillan, that facilitates early intervention by offering flat fee consultations.⁸⁷

83. R Susskind & D Susskind, *supra* note 69.

84. Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2010) at 125-30 [Susskind, *The End of Lawyers?*].

85. For more information, please visit <<https://www.educaloi.qc.ca/en>>.

86. Canadian Bar Association, "Innovations That Could Improve Access to Justice," online: <http://www.cba.org/CBA-Equal-Justice/About/Innovations-that-could-improve-access-to-justice>>.

87. Nijahawan McMillan Barristers, "Our Fees," online: <<http://www.nmbarristers.com/our-fees>>.

A legal profession that is more receptive to the online marketplace would also give clients more power in selecting legal services through the support of various online utilities, such as reputation systems and price comparison tools. This would allow clients to select legal advisers and seek quotes for routine legal work, as opposed to simply relying on referrals.⁸⁸ Equally as important, the online marketplace helps clients to seek and sort through legal alternatives, thus saving on the initial expenses of finding a lawyer.⁸⁹ This marketplace may provide ratings and information on new and affordable means of dispute resolution. One example is online dispute resolution services, which provide users with a confidential forum to negotiate a settlement or determine the division of property, without the constant involvement of a mediator.⁹⁰

E. FROM PERSONALIZED LEGAL SERVICE TO PACKAGED LEGAL SERVICES⁹¹

Lawyers hoping to deliver more accessible, cost-effective, and streamlined legal services for their clients will need to adopt easy-to-use technologies that automate certain elements of their professional work. Susskind projects a shift from bespoke, personalized services towards standardized, systematized, and packaged delivery models.⁹² Bespoke or personalized legal services usually involve a one-on-one consultation with a lawyer and are delivered on a billable hour basis.⁹³ However, lawyers may handle an identical legal problem differently, creating variability in cost, quality, and risk. Services moving towards the packaged side heavily rely on technology to employ process controls that reduce variability and mitigate risk by performing legal work in systematized ways (*i.e.*, employing automatic document assembling systems and providing packaged, shrink-wrapped legal services).⁹⁴

Susskind notes a reluctance on the part of Big Law to move beyond bespoke legal services, because this is considered to be a move towards legal services that are less personalized and thus less geared toward solving the client's particular legal issues.⁹⁵ That said, it is interesting to note that law firms are maximizing the potential of automating legal services by using templates or reusable work from

88. Susskind, *The End of Lawyers?*, *supra* note 84 at 108-13.

89. *Ibid.*

90. Canadian Bar Association, *Innovations*, *supra* note 86.

91. Susskind, *The End of Lawyers?*, *supra* note 84 at 29.

92. *Ibid.* at 33-36.

93. *Ibid.* at 35.

94. *Ibid.*

95. *Ibid.* at 35-39.

prior cases.⁹⁶ For our analysis, we should point out that the legal problems of most Canadians are routine and do not require bespoke counsel or personalized solutions for their resolution. In fact, seeking bespoke services would likely indebt most Canadians.

From the practitioner's perspective, there is a competitive advantage for the first mover who has an opportunity to make a mark in a new sector and become a disruptive force by finding innovative ways to deliver cheaper yet effective services and solutions.⁹⁷ Charging fixed rates will create an atmosphere where lawyers look for efficiencies and savings in their service to clients. Lawyers using more automated systems of delivery can stand to charge less because it is possible for them to provide solutions for their clients without having to actively perform a service.⁹⁸

The technologies available to the legal profession provide clients with a far greater range of options, and should be judged on their results rather than being barred outright. More pointedly, these explored initiatives should be judged on how they contribute to the aims of equal access and treatment under the law, and how they ultimately benefit clients. They should not be dismissed simply on the basis that technology-based services are at odds with traditional conceptions of the profession.

V. FOOD FOR THOUGHT FOR THE ACADEMY: EDUCATING THE NEXT GENERATION OF LAWYERS

A. BRIDGING THE THEORY-PRACTICE DIVIDE

Law school debates have often centered on the professional separation between scholar and practitioner.⁹⁹ The impact of this dichotomy on legal education was bemoaned by Dean Ephraim Gurney of Harvard Law School long ago:

In my judgment, ...if... the School commits itself to the theory of breeding within itself its Corps of instructors and thus severs itself from the great current of legal life which flows through the courts and the bar, it commits the gravest error of policy which it could adopt.... Another feature to my mind of the same tendency is the extreme unwillingness to have anything furnished by the School except the pure science of the law.¹⁰⁰

96. *Ibid.*

97. *Ibid.* at 36-39.

98. *Ibid.*

99. Moliterno, *supra* note 34 at 225-26.

100. *Ibid.*

James Moliterno argues that the legal profession is still recovering from the decision of elite law schools to breed legal scientists rather than professionals who, like in other disciplines such as medicine, have one foot in the academy and one foot in the field through clinical education.¹⁰¹ Fewer articling positions, large-scale corporate investment in firms, and increasing automation of more routine legal tasks bring the North American law graduate face-to-face with the shifting frontiers of law. The question is whether traditional legal education can equip students to thrive in such unfamiliar territory.

To meet the challenges and embrace the opportunities posed by developments in technology and economic reform, the lawyer of the future will likely need to be a specialized soloist who can connect and collaborate with professionals and clients in different sectors.¹⁰² Law schools must come to terms with the fact that they are training future practitioners. They will need to instill in their students qualities that allow them to engage with technology, work with small-firm entrepreneurial endeavours, and collaborate with non-lawyer partners. To meet this new reality, law schools must go beyond teaching the conventional skills of the profession (*i.e.*, technical writing, legal advocacy, negotiation).¹⁰³ The lawyer of tomorrow will have to engage with sophisticated details and developments in other industries to anticipate how the law can add value to a client's growing business in a new industry.¹⁰⁴ The successful lawyer in an age of MDP is an adviser who can meet business partners and clients on their own terms and is well versed in their domains in order to help them anticipate and solve legal problems.¹⁰⁵ Enodo Rights, led by McGill graduate Yousuf Aftab, collaborates with an array of advisors including law firms, sustainability groups, management consultants, and public relations firms to bring human rights considerations into business strategies.¹⁰⁶ Their largest engagement to date was working with mining giant Barrick Gold to launch a grievance mechanism to address sexual violence committed by Barrick Gold's private security personnel.¹⁰⁷ Enodo Rights is a prime example of specialized soloists working with a deep knowledge of other industries and an engagement with relevant stakeholders. What follows is a discussion of the attributes and skills that the lawyer of the future must possess to thrive in MDP.

101. *Ibid* at 226.

102. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 11-12.

103. Moliterno, *supra* note 34 at 228.

104. *Ibid.*

105. *Ibid.*

106. Enodo Rights, "Method," online: <<http://www.enodorights.com/method>>.

107. Enodo Rights, "Engagements," online: <<http://www.enodorights.com/engagements/>>.

B. THE VALUE OF EMOTIONAL INTELLIGENCE

Emotional intelligence is a form of intellect that is mistakenly considered less valuable than analytical reasoning. Law school ethos tends to neglect the importance of emotional intelligence for empathizing with and understanding a client's point of view. The law has been historically conceptualized as regulating social practices in a rational and impartial manner. Emotions have been viewed as allowing bias and variability to seep into this process. On the other hand, a lawyer's emotional development is crucial to fostering collaborative relationships with the general public and professionals in other sectors. Whether for the purposes of engaging the public on the issue of access to justice, or participating in interdisciplinary collaborations through MDPs, emotional intelligence is important for establishing connections with others who might not have been formally educated in law. One impediment to this vision of increased collaboration between the legal profession and other sectors of society is the fact that lawyers tend to score lower than the general public when tested for emotional intelligence.¹⁰⁸ As Vanderbilt Law Professor Chris Guthrie explains, "[l]awyers are analytically oriented, [but] emotionally and interpersonally underdeveloped."¹⁰⁹ Analytical reasoning is not the only task of a lawyer, and developing oneself emotionally is not necessarily at odds with sound legal reasoning. Emotional intelligence is an ability to understand when a situation calls for rational judgment or an emotive response. Clients want to know that you can relate to what they are going through and can consider their feelings and best interests when making legal decisions on their behalf. Demonstrating a strong sense of empathy and a personal commitment to your clients gives them a sense of reassurance.¹¹⁰

C. ENTREPRENEURSHIP, INNOVATION, AND RISK TAKING

In the context of entrepreneurship, law schools should encourage students to think critically about how the profession can be improved and how the skills they learn in law school, mixed with their proper set of talents, can contribute to solutions.¹¹¹ Motivating future lawyers to take the path of innovation might involve revising curricula that are largely meant to prepare students to take the beaten path of Big Law, and teaching law students other valuable skill sets.

108. Ronda Muir, "Emotional Intelligence for Lawyers" (30 September 2015) *ABA Legal Career Central* (blog), online: <<http://www.abalcc.org/2015/09/30/emotional-intelligence-for-lawyer/>>.

109. *Ibid.*

110. Canadian Bar Association, *Do Law Differently*, *supra* note 1 at 18.

111. *Ibid.*

Big technology companies like Google and Microsoft are expanding into the so-called “Internet of Things” and are constantly re-imagining and re-designing existing businesses.¹¹² This kind of innovation will inevitably bring up a whole new set of legal issues that will require lawyers who can understand the sophisticated details behind these companies’ high-tech problems.¹¹³ Some schools are being proactive by remaining up-to-date with innovations and developments across disciplines, and by allowing this information to inform the specialized courses they offer.¹¹⁴ The University of Colorado, Boulder Law School established an entrepreneurial law clinic that provides law students with practical experience in transactional law while offering free legal services to local startups that lack access to legal services.¹¹⁵ Georgetown University is responding to the privacy concerns related to new developments in technology by introducing law courses in cyber security and the law of robots.¹¹⁶ Georgetown Law takes interdisciplinarity to a new level by giving their students the freedom to learn computer programming languages and collaborate with Massachusetts Institute of Technology computer engineers to better understand the legal nuances of privacy problems.¹¹⁷ These university initiatives create avenues for students to engage with technology’s redefinition of existing legal problems, and demonstrate the importance of collaborating with other sectors to find solutions.

One anticipated criticism of these clinical initiatives is that as an academic unit focused on legal scholarship, it is not the law school’s role to mirror the operations of professional programs and meet the aims of the market economy. In response, we argue that it is wholly unrealistic to deny that law schools are responsible for training the practitioners of tomorrow. There are many students who take a genuine interest in legal scholarship and enroll in law school in hopes of

112. The “Internet of Things” refers to “the concept of basically connecting any device with an on and off switch to the Internet (and/or to each other).” See Jacob Morgan, “A Simple Explanation of ‘The Internet of Things,’” *Forbes* (13 May 2014), online: <<https://www.forbes.com/sites/jacobmorgan/2014/05/13/simple-explanation-internet-things-that-anyone-can-understand/#49c3966d1d09>>.

113. “3 Reasons Why Tech Companies Need a New Kind of Lawyer” (17 February 2016) *Cornell Tech* (blog), online: <<https://tech.cornell.edu/news/3-reasons-why-tech-companies-need-a-new-kind-of-lawyer>>.

114. Deborah Rhode, “Reforming American Legal Education and Legal Practice” (2013) 16:2 *Leg Ethics* 243.

115. Colorado Law, University of Colorado Boulder, “Entrepreneurial Law Clinic,” (online): <<http://www.colorado.edu/law/academics/clinics/entrepreneurial-law-clinic>>.

116. Jane Croft, “Lawyers Must Learn to Embrace Technology,” *Financial Times* (20 November 2016), online: <<https://www.ft.com/content/aa77a9ec-9ace-11e6-8f9b-70e3cabccfae>>.

117. *Ibid.*

becoming an academic. It is, however, misguided to draw a sharp divide between the study and practice of law. Legal scholarship is often done in connection to the way law is practiced. Moreover, it is unreasonable to think that corporate law firms are not already having an impact on the standard curricula in law schools (*e.g.*, contracts, business associations, property law). Once we are clear on the fact that legal scholarship looks to legal practice (and vice versa), and that the law school curriculum is affected by market conditions, there is no reason why law schools cannot adapt to meet the legal needs of a shifting economy.

In fact, a law school that is unwilling to engage with technology effectively cultivates graduates that may lack the tools to address new problems in developing industries. Law schools must find ways for students to actively engage with other professions that have already begun incorporating technology into their practices. For instance, closely examining how medical professionals are responding to problems with online medical diagnosis and symptom analysis may give us a starting point for regulating the dissemination of legal information over the internet. Susskind argues that law students are not embracing technology because of a lack of exposure.¹¹⁸ A recent study by Eversheds and Winmark suggests that many lawyers are aware of the benefits that technology can bring, but face barriers in trying to integrate technologies into their practices due to a lack of technological proficiency.¹¹⁹ One theory for why many lawyers are averse to technological developments in the profession is that they want to mitigate risk for themselves and their clients by falling back on tried and true methods.¹²⁰ Welch sees this approach as faulty and misguided. Lawyers who are unwilling to learn about and adopt technological innovations are less capable of capturing the unmet market for legal services, and are not adept at dealing with law at the intersection with technology. As Welch points out, “non-lawyers are now using the internet to reach around the musty old regulatory structure to snatch away clients who in many cases would be much better served by access to a lawyer.”¹²¹

118. Jonathan Keane, “Can Technology Bring Lawyers into the 21st Century?” *BBC News* (16 February 2016), online: <<http://www.bbc.com/news/business-35459433>>.

119. Eversheds-Sutherland, “In-House Legal Teams Want to Embrace Technology, but Face Internal Barriers to Investment,” online: <<http://www.eversheds.com/global/en/what/publications/shownews.page?News=en/uk/In-house-legal-teams-want-to-embrace-technology>>.

120. Keane, *supra* note 118.

121. Black, *supra* note 82.

VI. CONCLUSION

Access to justice is an ideal that is not well committed to in practice. Bespoke legal services are unaffordable, inefficient, and wholly unnecessary for addressing common legal problems. Instead, new market solutions that systematize certain elements of legal work can harness the potential of modern technology to deliver legal service to a class of people who would otherwise not gain access to justice. While the solutions explored in this article are a radical shift from traditional methods, they are in line with emerging technological realities, and are a realistic market solution to the access to justice problem. The legal profession will need to break with tradition if it wishes to continue to serve the public interest. Similarly, law schools must teach budding lawyers to think critically about how the legal profession, as a social institution, can be ameliorated to ensure that claims for justice do not fall outside of its purview.