

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada



Robots and Rule-Makers: New Frontiers for Legal Regulation

Report from the 2018 Annual Conference
Charlottetown PEI October 17-18, 2018



Conference Summary

The leaders of Canada's law societies gathered in Charlottetown, Prince Edward Island in October 2018 to talk about legal technology and its implications for legal regulation. *Robots and Rule-Makers: New Frontiers for Legal Regulation* was hosted by the Federation of Law Societies of Canada and planned in conjunction with the law societies. The Conference focused on an issue of increasing importance among Federation stakeholders: what should the legal regulators' role and response be in the wake of fast paced, technology-driven change?

Dennis Kennedy opened the Conference with a countdown of the top trends in technology and legal innovation. His list included:

1. cybersecurity and the legal profession's role in ensuring security of data;
2. the pace of change;
3. social networks;
4. new ways to work collaboratively;
5. big data;
6. Artificial Intelligence, machine learning and robotic process animation;
7. Blockchain;
8. a rise in legal innovation and client-centered legal design thinking through hackathons and access to justice events;
9. the use of platforms like Facebook and APIs (application programming interface) where people can come together to offer their services; and
10. new business models in legal technology.

The trends canvassed by Mr. Kennedy were explored in greater detail by others over the day and a half event. Some presenters were lawyers with an expertise in technology, including members of the law society community. Other speakers hailed from technology companies and the legal academy, including a former legal tech start up entrepreneur turned law student. Through a mix of presentations, panels and workshops the Conference examined the latest legal technologies and what they mean for legal practice and legal regulation. Panelists considered law societies' obligations to the public in this new landscape; whether law societies should regulate technology-based alternative legal service providers; whether current regulatory rules and frameworks can support innovation, and the role of technology in addressing access to justice and access to legal services.



Dennis Kennedy is an American lawyer, author, blogger and an authority on the application of technology to the practice of law.

Professor Gillian Hadfield delivered the Conference keynote, *Reimagining Legal Regulation: New Rules for a New Era*. She asserted that legal regulation is thwarting the emergence of new technologies that could benefit all Canadians. Her point of view was premised on the notion that economic and social rights are dependent on legal infrastructure, whereby legal regulation is economic regulation. The legal technology that is being developed today is for large firms and corporations; traditional lawyers, small and medium size businesses and ordinary people are being left out, she contended. Various factors have contributed to this result, including the way law societies regulate, which presumes traditional lawyering; the inflexibility of our regulatory regimes, which

preclude partnerships between lawyers and technology companies or investors, a flattened global economy, and changes in how people interact and access services.

Ms. Hadfield argued that society needs legal technology for faster, smarter, more agile solutions, but technology cannot be left in the hands of lawyers alone. She proposed that law societies support the creation of an entity regulation regime, allow the corporate practice of law and allow for fee splitting to support greater innovation in legal services. She also urged regulators to partner with other professionals who bring diverse viewpoints and skills and who have a profit and mission incentive for innovation. Finally, Gillian Hadfield challenged legal regulators to take “moonshots” – to imagine what is possible in law – propelling us toward a future that would ensure a just society for all.

The keynote presentation provided a wide angle lens through which to examine the issues under discussion. A number of Ms. Hadfield’s views were echoed by other presenters. This summary highlights themes that emerged, recommendations for change, and questions for further dialogue among the law societies, the Federation and its stakeholders.



Gillian Hadfield is Professor of Law and Professor of Strategic Management at the University of Toronto, and author of *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (2016).

The Pace of Change

We heard repeatedly that legal technologies are being developed at an exponential rate, and that legal technology always outpaces law and regulation. The change is not solely about technology, however. Many changes are converging, changes in the way we organize our world and do business, and transformations in how we consume services and interact with each other. All of these factors influence the legal marketplace and the public’s expectations and needs.

Panelists warned that we can’t ignore these changes any longer. The entrepreneurs who are ready to deliver what the public wants and needs won’t wait for law societies to catch up. Although the horse has left the barn, it’s not too late for legal regulators to join the conversation about legal technology in the justice sphere, and it’s very important that we do.



The Promise of Change

Will legal professionals become obsolete in the face of advancing technologies? This question was posed to the panelists discussing Artificial Intelligence and related technologies. The responses confirmed that legal professionals will not be replaced by robots any time soon. The promise of new technologies like AI is their hybridisation with human intelligence. It is predicted (and indeed is already the case) that there will be a partnership between technology and a legal professional's knowledge and expertise. Lawyering is already being enhanced as machines take over tasks such as compliance, contract analysis, case prediction, document automation and e-discovery. It is anticipated that AI will complement human judgment and allow lawyers to perform some aspects of their work faster, cheaper and more efficiently, driving the work of lawyers and Quebec notaries to higher and more creative levels.

Blockchain is another emerging technology that captured the attention of Conference attendees. Blockchain has been compared to the internet in terms of its revolutionary capacity. Blockchain law boutiques and large firm practice groups are springing up, and firms are grappling with new challenges related to this technology. Blockchain provides an authoritative system of records that can be shared securely, removing the need for a central trusted authority or gatekeeper. Some have predicted that in five years the banks will be obsolete. The benefits of Blockchain include secure and faster transactions, reduced costs and complexity, transparency, and privacy.

Panelists were asked what Blockchain means for legal professionals. One example is smart contracts, which are automated agreements that run on the blockchain, whereby one action triggers another action in the chain (e.g. payment of goods triggers delivery). While some worry that smart contracts will cut lawyers out of the deal and out of work, the panelists disagreed. They shared the perspective that there is an important role for lawyers and Quebec notaries to play as advisors and intermediaries. The promise of Blockchain is that it will free legal professionals from drafting and other routine work that can be automated, allowing them to focus on the more complex and controversial aspects of the law. In the meantime, there are various legal issues relating to privacy and confidentiality for legal professionals to figure out.



Blockchain technology also underpins crypto-currencies, and panelists talked about the challenges cryptocurrencies like Bitcoin raise for law firms and regulators alike. For instance, the Chambre des notaires du Quebec's current rules do not permit bitcoin as down payment for property transactions, and the Chambre is examining the issue. Panelists pointed out that the Canada Revenue Agency and securities regulators have put out guidance on crypto-currencies. They urged the law societies to provide guidance to the legal profession also.

Emerging technologies also have broad application for social reform, participants heard, and are being used by governments and others worldwide for the public good. Examples of governmental applications of Blockchain technology cited included securing of healthcare data, issuing digitally-authenticated identification (specifically for refugees who often do not have paper documentation), introducing stable currency, and reforming the electoral process.

It was evident from the discussions that AI, Blockchain and other technologies have the potential to greatly enhance access to justice. First, technology can redefine how lawyers and Quebec notaries practise. It can make their work more cost effective and efficient, enabling lawyers to pass on savings and deliver better outcomes to their clients.

Most significantly, these technologies can and are being designed for use by consumers of legal services directly. Examples include online dispute resolution, assistance with parking tickets and Small Claims Court matters, and assistance with separation and divorce. Technology can equip ordinary citizens to be agents of their own legal journey. It increases access to legal materials and removes the need for a middle man (the lawyer/notary) therefore reducing costs. Despite the promise of technology to enhance access to legal services, one panelist insightfully commented that the access to justice problem cannot be solved by technology alone. To expect this might result in regulators and governments abdicating their responsibility for structural reform. Also, when access to justice is left in the hands of tech developers, there are no controls in the process and only one vision of reform is put forward.

Other changes that are transforming legal work include the privatization of law through the movement of decision-making to private, online platforms (e.g. EBay). In addition, walls around information distribution are being obliterated and social connections are no longer only local; people expect transactions to be shared on social networks. It was noted that the most successful companies in the world right now are platforms (i.e. Facebook, Apple), where people can come together and offer their services. The Conference shed light on new business models for legal services delivery in the digital context. Subscription models, products, and just-in-time knowledge are the norm. How can traditional models co-exist with or co-opt these market changes?

Several presenters pointed out that many tech start-ups begin by wanting to develop direct-to-consumer legal technology solutions. However, they quickly learn that they cannot do so or that the way forward is dotted with regulatory hurdles. As a result, they switch to creating tools for lawyers instead. Law societies have the power to change this trend. Presenters reminded us that law societies also have the impetus for change, including the role of the legal profession as gatekeepers of the rule of law and the unmet legal needs of 85% of the public.

The Possibilities for Change Within Law Societies

What can law societies do to facilitate greater access to legal technology and innovation for their members and the public alike? A number of creative ideas were suggested by the presenters.

We heard that the very infrastructure of law societies, which was designed for the legal profession of another era, no longer works. It is not possible to keep cramming in more detailed rules. It is slowing down and obstructing the development of legal technology that would benefit society. The structure itself needs to be rethought for the current context. Without structural change, law societies will not have the agility needed to respond to technological change.

Another repeated theme was the need for drivers for new legal technology outside the four walls of the legal profession. Innovation requires a diversity of views and problem-solving approaches, and risk-taking by inventors and investors. Conference goers heard that legal professionals aren't particularly suited to this and they need others around the table to spur innovation.

A lack of transparency in how legal technology issues have been dealt with by some law societies has had a chilling effect on would-be tech developers, attendees were told. While the current regulatory climate is a disincentive for innovation, there's more money available than ever before for legal technology. However, a lot of that money turns away once they get a better sense of how restricted the field is. Law societies were urged to strive for greater transparency.

Several panelists asked the legal regulators to issue education and guidance relating to legal technology. Further, they thought that technological competence should be part of a lawyer or Quebec notary's competence under their Rules of Professional Conduct. It was also recommended that law societies acquire in-house technology expertise or work with legal technology advisory boards.

Attendees heard more than once that law societies need to partner with legal starts ups and provide a safe space for them to experiment. The regulatory sandbox used by other Canadian regulators and legal regulators in England and Wales and other countries is one way for legal regulators to partner with legal tech companies. Other partnership possibilities include waivers and safe harbours for legal tech companies that meet pre-determined criteria. Another suggestion was the opening up of new business models and ownership structures to support innovation, including entity regulation, alternative business structures and fee splitting.

Questions for Further Discussion

The Conference provided a context for thinking about the appropriate scope for law society intervention. One view offered by an attendee was that it's not within the law societies' purview to regulate risks to the public arising from unregulated providers of legal services. The current law society apparatus does not enable law societies to take on this function and it would be too expensive and cumbersome to do in any event. Also, it would be challenging to adopt protocols uniformly across all 14 law societies. However, one law society might take the lead on reform, with lessons learned and shared across the country. Another attendee said that law societies should regulate the profession only; regulating outside of the profession would endanger self-regulation. A contrasting view was offered such that law societies might accredit some alternative legal service providers pursuant to certain standards, which would allow them more freedom than bringing them within the regulatory tent. This is the approach adopted by the Barreau du Quebec in relation to CPD providers.

Panelists flagged the need for overall uniform standards for technology, including ethics of use. It was suggested that legal regulators need to be part of the conversation. It is interesting to note that the Treasury Board Secretariat is working on a policy on the ethical use of technology for the Federal Government, including a white paper and draft directive on automated decision making.

Presenters raised the point that future legal professionals need to be educated for different roles such as legal technologists, process engineers, and advisors with a focus on judgment and strategy, since many routine tasks will be handled by machines. An education think tank was proposed.

Another question for law societies is: how can they get their members to embrace technology to improve quality, efficiency and reduce the cost of legal services? There was discussion to the effect that a rule on technical competence in the Model Code of Conduct is needed. Another important follow-up issue for law societies to address is acquiring the capacity, nimbleness and expertise to work with technology companies.

Conclusion

Attendees provided feedback on a mock debate in which their colleagues presented three visions for how the law societies should respond to change. The options were to:

- (1) avoid change and innovation in the delivery of legal services;
- (2) make room for some change within current regulatory frameworks, and
- (3) open the floodgates for new legal service providers.

Feedback from the session suggested that law societies are prepared for change. The group was equally split about whether change should occur within current structures or entirely outside of them. Survey results indicated that there was strong interest in a national dialogue on these issues.

The Conference was intended as a launching point for an initial discussion about legal technology and what it means for legal regulators. This summary captures some of the discussion topics and themes, and questions for further dialogue among stakeholders.

During the Federation's Business Meetings in March 2019, the Federation and law society leaders again discussed the themes that emerged from the Conference. Consistent with the mood expressed in October 2018, it was agreed that the conversation on technology-driven innovation in law and the regulator's response should continue at the national level. The nature of a national dialogue on these issues will be further explored with law societies later in 2019 as part of the Federation's Strategic planning process.