A Changing Legal Market and the Delivery of Legal Services

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By Peabody & Arnold on August 17, 2017

Bart Centauro's article on: A Changing Legal Market and the Delivery of Legal Services which appears in the ABA/BNA publication Lawyer's Manual on Professional Conduct appears here. For the pdf version in the ABA/BNA publication Click Here.

Sam Cooke told us that "A Change is Gonna Come." Never has that been truer for the legal profession than it is today. Our competitors, the demands from our clients, and how we practice are all markedly different than only five years ago, and each will continue to evolve over the next decade. These issues were discussed during the ABA's Spring 2017 National Legal Malpractice Conference in a session moderated by Steven Couch, the president and CEO of the Ohio Bar Liability Insurance Company. The panel also included Steve Crossland of Crossland Law Offices in Cashmere, Washington; Margrett George of the Lawyers Insurance Fund and the Law Society of British Columbia; Trevor McCann of Clyde & Co Montreal, Quebec; and Jordan Furlong, a legal market analyst at Law21 in Ottawa, Ontario.

Woven throughout the discussion was one overriding question: As legal services become more expensive and more specialized, how can we as a profession ensure not only that everyone has access to quality legal services but that everyone can afford them too?

The Changing Face of the Legal Market

Lawyers today face two challenges above all others that are leading to an evolution of the legal services industry: the rise of domestic and foreign non-law firm entities that provide basic legal services that were previously the exclusive domain of law firms; and the evolution of the marketplace where clients demand better customer service at lower costs. These factors have created a buyer's market in the industry that has resulted in longer days, lower margins, and greater uncertainty for lawyers.

Until only recently, lawyers were the exclusive means of legal knowledge and access. Now, legal process outsources (LPOs) and companies such as Rocket Lawyer, Nolo, and Legal Zoom have entered the market and offer convenience and fee packages that traditional law firms have not been able to match. Gone are the days when a client could only receive legal assistance by calling a lawyer at a law firm. Instead, legal help, particularly for routine work that requires little or no legal judgment, is only a website away.

Overhead costs at non-law firm companies are minimal, and labor costs, particularly for LPOs, are a fraction of those of the traditional law firm. LPOs and other online legal service providers also offer round-the-clock availability and, because these companies have found their niche, they offer only a few services and perform those very well.

These options have allowed clients to demand more from the traditional law firm. While law firms have always needed to provide quality work, clients now require greater transparency, better communication, and faster service than ever before, all at a lower price. For routine projects that do not require much

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legal judgment, clients of modest means or who are hesitant to hire a lawyer can avoid law firms altogether and simply use the templates and models they receive from Rocket Lawyer, Nolo, Legal Zoom and the like. Clients have the ability to "self-navigate" like never before. The traditional law firm business model, developed in a bygone era, needs to be updated to address the changing market.

How the Market May Change

Jordan Furlong led the discussion about how the legal services industry may change, and what issues exist for insurance coverage as a result. First, technology will unavoidably be a part of legal practice and be utilized to perform routine work. A study by McKinsey & Co. determined that approximately 69 percent of paralegal work and 23 percent of lawyer-level work can be automated, while Frank Levy of MIT and Dana Remus of the University of North Carolina School of Law estimated the lawyer-level work to be closer to 13 percent. Dana Remus & Frank S. Levy, *Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law* (Nov. 27, 2016).

The point is still made that much of an attorney's job can now or soon be automated. For example, artificial intelligence programs exist that review contracts and suggest particular clauses to use, conduct document reviews, and prepare basic corporate documents. While some lawyers scoff at ever being "replaced" by a machine – clients pay, in part, for a lawyer's experience – databases of judicial and arbitration decisions are available that can help predict a client's chance of success in a case or provide an anticipated settlement range.

This is chilling news for the profession, particularly young lawyers. Routine work typically performed by junior associates in large law firms will likely be automated, leaving more lawyers in the market. Those unattached to firms and carrying substantial law school debt may need to take all the work they can get, even when they do not have the necessary experience or knowledge for the case. Unfortunately these lawyers will be a greater liability risk when performing higher-value work, as opposed to when they were performing routine tasks to gain that valuable experience.

Questions for Insurers

In addition to those already posed, legal insurers will face new questions as technology invades the legal sector. For example, does a law firm that refuses to automate some of its work meet the standard of care? What is the risk that a machine performing an automated task commits an error? As the average age of the legal profession increases, how can the insurer evaluate the risk of a lawyer, particularly a solo practitioner or in a small firm, who does not stay up-to-date with technological advances? And as non-lawyer entities such as Legal Zoom and Nolo occupy a greater percentage of the legal market, is there room in the industry for coverage for these companies?

Legal Access for All

As the legal market changes, the familiar concern of providing affordable legal services to everyone remains. If we ask too much of lawyers, do we price out people from getting legal services? While several states have pro bono obligations and the ABA takes the position that every attorney should seek to provide at least 50 hours of pro bono services each year, many people still cannot afford representation. The second half of the session focused on this issue, and the panelists discussed initiatives in place in

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Washington State and throughout Canada.

Steve Crossland, a solo practitioner in Cashmere, Washington, discussed the Limited License Legal Technician (LLLT) program in Washington State. This program is the first of its kind in the nation, and its goal is to provide affordable legal support options to those who cannot afford to retain an attorney. LLLTs are not lawyers, but they are trained and licensed to advise clients in divorce, child custody, and other family law matters in Washington. In this way, they are similar to nurse practitioners, who can treat patients and prescribe medication but cannot offer the full array of services that a medical doctor can.

LLLTs must meet the same standards of care as lawyers and they are obligated to carry their own malpractice insurance. Any legal issues beyond an LLLT's training must be referred to licensed counsel. Particularly in eastern Washington, LLLTs provide valuable services to individuals who otherwise cannot hire a lawyer to protect their interests in the legal system.

Margrett George and Trevor McCann discussed various initiatives in Canada to provide affordable or free legal services to those in need. Malpractice insurance is compulsory in Canada and is used, in part, to fund pro bono programs. For example, George discussed a pro bono program in British Columbia where primarily retired lawyers who no longer carry insurance represent low income individuals. These lawyers – and some law firms which offer pro bono services – may obtain "free insurance" that is subsidized by lawyers who are currently paying for their insurance. Lawyers who participate in this successful program must commit to keeping a file, even a minimal one, to document case events; ensuring that the services they provide are those covered by the program and promising to refer clients elsewhere if the services extend beyond the coverage; and promising to provide services to low income individuals who are in need.

In Quebec, the Centre Pro Bono Quebec seeks to provide quality legal services to low-income individuals. The Centre assists and coordinates pro bono legal services and offers individuals plain-language documents and forms to assist with their legal needs. It is subsidized through the Canadian Minister of Justice, by insurance premiums paid by lawyers, and through private donations. There are similar initiatives throughout Canada, including in Alberta and Saskatchewan.

Conclusion

As the legal industry changes and lawyers specialize their practices, low-income individuals may have even less access to legal services than ever before. The programs in Washington State, British Columbia, and Quebec may serve as a model for pro bono programs going forward, and non-lawyer companies will fill a void in the marketplace to provide low cost, routine legal services. While lawyers evolve their practices to adapt to a changing market, they must continue to ensure that everyone has access to quality and affordable legal representation.

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