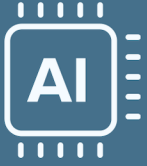




THE
LAW SOCIETY
OF HONG KONG
香港律師會



THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE LEGAL PROFESSION

人工智能對法律專業的影響

POSITION PAPER OF
THE LAW SOCIETY OF HONG KONG
香港律師會立場文件

A white icon of a cloud with the letters 'AI' inside, set against a dark blue background.

AI





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The Impact of Artificial Intelligence on the Legal Profession

Position Paper

of

The Law Society of Hong Kong

January 2024

The power of Artificial Intelligence (“AI”) is impacting not only the legal sector but every aspect of society around the world. The urgency to tackle the issues surrounding AI cannot be better illustrated by the one-sentence statement issued by top world leaders in technology including leaders from OpenAI and Google DeepMind that *“Mitigating the risk of extinction from AI should be a global priority alongside other societal-scale risks such as pandemics and nuclear war.”*

The far-reaching impact of AI is permeating every vein in society at lightning speed bringing with it challenges as well as opportunities.

Faced with the inevitability and the speed of this driver of change, either we work proactively together as a matter of urgency to address the challenges and grasp the opportunities and guide them to work to our benefit, or take it slowly and passively and let the AI wave carry us into the unknown realm of no return.

Through the issue of this Position Paper, the Law Society hopes to contribute to a comprehensive understanding of the impact of AI on the legal profession.

We also hope to impress upon our profession and other stakeholders including, among others, the Government, the Judiciary and legal professional educators the urgent need of coordinated timely proactive actions and reforms so that we can guide the direction of the application of AI for the benefit of our profession as a whole.

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Technological integration in legal practice

1. The legal profession, which is famed for its recalcitrance to innovation, has reached a tipping point. The legal, regulatory and business demands that lawyers must help their clients navigate ever more quickly by the day have pushed many practitioners, who want to remain relevant, to look towards technological solutions for assistance.
2. The legal profession has traditionally been considered a human-exclusive practice where machine automation had no meaningful role. However, the development of new technological tools has increasingly demonstrated technology's relevance and usefulness to legal service providers.

Innovative tools

3. These innovative tools range from the automation of mundane time-keeping tasks to sophisticated legal research and review work. For instance, timekeeping solutions can now streamline and simplify the process of tracking billable hours by capturing relevant time, through the application of artificial intelligence ("AI") analysis, across all devices, including desktops, laptops, and mobile, and producing a daily summary to the user.
4. In legal research use cases, the AI tools analyse large amounts of case law, statutes, regulations, treatise, and other materials to identify the most relevant content response for a legal research query. The fact that they do so with a degree of accuracy and diligence that cannot be matched by humans has led to these tools becoming a standard part of the lawyer's daily workflow.
5. Machine learning algorithms have also been "reviewing" contracts and identifying key terms, clauses, and potential risks for some time. These systems assist lawyers in, for example, due diligence reviews and contract negotiations where the searching of key terms within huge volumes of documents can produce highly accurate responses in seconds and save many hours of lawyer time. AI can speed up due diligence for mergers and acquisitions by analysing thousands of documents and surfacing the most relevant information.

Advantages

6. The automation of repetitive, high-volume tasks allows lawyers to focus on higher-value work and has demonstrably increased productivity and efficiency.
7. AI tools not only digest huge amounts of data and documents to reveal insights and patterns but can also do so with a higher degree of accuracy as compared to human equivalents.
8. By leveraging automation and reducing manual work, AI may help lower costs, generate innovative ways to provide legal services and improve access to justice.

Impact – unbundling / rise of OSPs

9. Non-law firms are aggressively leveraging on their technological skills to take on the more mechanical tasks outsourced to them by law firms as unbundled back-office services.
10. The rise of online service providers (“OSPs”) had also been a trend for some time. They provide standard document templates and allow subscribers to create their own documents based on standardised templates and an online questionnaire and guidance.
11. These OSPs are not law firms. They are unregulated and have no mandatory professional indemnity cover to protect the public from losses arising from their services.

Crossing the boundary

12. Recent AI developments, particularly, Generative AI that uses a Large Language Model (“LLM”), have transformed AI’s ability to learn, create, develop and improve new content. It generates natural language text (and speech) in response to natural language questions.
13. This is a game changer as it has brought the technological impact on the legal industry to a new phase. The machine now has the ability to create new content, or “answers” from materials it has been trained on in the way that a human might respond.
14. The boundary of the “human touch” of professional engagement with clients that used to be very secure for lawyers has now been crossed.
15. The “dream” of “having a computer imitating a human to such a degree that a human would not be able to tell whether they were engaging with a machine or another human” is near realisation. Lawyers have to reach a higher level of thinking and find innovative ways of protecting data privacy, privilege and confidentiality.

Concerns

16. However, this dream technology has raised some serious issues of concern.
17. LLMs do not understand words and language in the sense understood by philosophers or psychologists. The LLM is a statistical modelling system that looks for patterns in language that are often used and then uses that to predict the likely next word. That is not understanding the words; it is understanding patterns of words and predicting the next most likely.
18. Therefore, LLMs do not represent a search for truth and meaning. This, in turn, leads to the increasingly well-known phenomenon of “Hallucinations”. Or in plain language, making up things that are not true. This is because the LLM is assessing the likelihood of probable next words, not the truth value of those words or even the truth value of the connections of those words as concepts.

19. The Open AI model goes out into the open internet and learns all the word patterns it can find. As a necessary consequence, this means it collects all the bias, errors, discrimination, abuse, and nonsense that is available on the open internet. The more of any word connection there is, the more the statistical model will be persuaded to reuse that language in response to a relevant prompt. It is a response based on statistics, not “truth” or even accuracy.
20. Substantial amounts of legal data are highly confidential and/or protected by legal professional privilege. There are concerns about client data privacy and securing sensitive information when using AI via cloud services. When interacting with an Open AI model, all inputs are sent to the relevant cloud services provider and is used by the LLM to further assist in training. Such data therefore becomes available to anyone else using the same LLM model.
21. The free availability of Open AI tools may encourage a revival of unregulated OSPs to become even more aggressive in eroding the work of lawyers by generating documents created by these AI tools with unverified information, putting the public interest at risk. There are also concerns about unethical prompting and engineering.

Impact on law firm operation

22. Given the time benefits that come from process efficiencies which AI can deliver, it is conceivable that clients may begin to expect implementation of AI capabilities in law firms.
23. Are law firms prepared to respond satisfactorily to clients’ demands on AI in terms of their expertise and infrastructure?
24. It is obvious that smaller firms have more limited budgets and may lack the financial resources to acquire costly AI systems. Large firms can more easily absorb the investment and ongoing costs. Ways to help bridge this AI divide to level the playing field need to be examined to ensure sustainability of the development of the legal profession.
25. Within a law firm, key roles and skills will be required to keep up with the adoption of AI systems. Examples include:
 - (a) Legal Knowledge Engineers, or increasingly known as “Prompt Engineers”
 - (i) Their duties include developing the knowledge bases and ontologies that power legal AI system. encoding legal knowledge and rules into machine-readable form.
 - (ii) They will need to combine some legal knowledge, knowledge of AI approaches like machine learning and Natural Language Processing, knowledge of how to engage with an AI system to obtain best possible results, logic programming, knowledge representation. They will also need to

explore new ways for integrating laws and AI.

(b) Legal Technologists & Automation Specialists

- (i) Their duties include evaluating, implementing, customizing, and managing legal AI tools within organizations and integrating AI with existing systems.
- (ii) Their role would require understanding of legal operations, project management, legal software, data integration, QA testing, change management.
- (iii) They would need to identify processes to automate, design workflows, implement legal AI tools, train end users.

These roles require an understanding of legal concepts and processes as well as technical skills to apply AI successfully in legal settings.

- 26. Automation of tasks like document review etc will reduce the need for some entry-level legal jobs over time and result in job losses.
- 27. Continuing education and reskilling training are essential to facilitate the evolution of entry-level roles such as paralegals and legal assistants transitioning into more specialized roles managing and overseeing AI systems and processes.
- 28. Further, mid-level lawyers will spend less time on document review and research. They will have to take on more advisory roles, using AI insights to provide strategic legal advice.
- 29. Law firms need to apply greater commercial skills in understanding and planning the financial situation of the operation.
- 30. With the development of new roles in law firms, the organisational structure, hiring focus and remuneration packages of firms will need to be reviewed to examine if the existing business model is still a viable one.

Impact on administration of justice

- 31. The free availability of Open AI tools may encourage more self-represented litigants to feel that they can prepare legal documents and filings on their own without a lawyer. However, an untrained litigant-in-person, combined with a hallucinating Open AI system, is not in the best interests of either the litigant or the administration of justice.
- 32. Judges will need to be equipped with practical skills on how AI can assist workflows and its responsible use as well as substantive legal knowledge to cope with novel and complex legal issues stemming from emerging technologies like AI.

Position on adoption of AI

33. Faced with these unanswered concerns and working within the current legal ethical and regulatory framework, the Law Society reiterates our position as follows in the context of the adoption of AI technology:
- (a) The legal profession is defined by the core values which it holds dearly – independence, confidentiality, absence of conflict of interest. A lawyer’s duty is to serve the public ethically, diligently, and competently.
 - (b) No matter what tools a lawyer uses to assist him in his legal practice. His professional ethical duties and values should not change. A solicitor has a duty to act competently.
 - (c) Principle 1.07 of the Hong Kong Solicitors’ Guide to Professional Conduct Volume 1 (“Conduct Guide”) provides that “*A solicitor using information communication technology should endeavor to ensure within the parameters of technology, information and knowledge available at the time of use, that no Principle in the Guide or a provision in the Practice Direction or applicable law is breached by such use.*”
 - (d) Principle 6.01 of the Conduct Guide provides that “*(a) A solicitor owes his client a duty to be competent to perform any legal services undertaken on the client’s behalf. (b) A solicitor must serve his client in a conscientious, diligent, prompt and efficient manner.*”
 - (e) Competence goes beyond formal qualification to practise law. It has to do with a solicitor’s capability to deal with the matter in question. It includes knowledge, skill, and the ability to use them effectively in the interests of a client. Commentary 4 of Principle 6.01 provides that “*Competence involves more than an understanding of legal principles. It involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied and the ability to put such knowledge to practical effect.*”
 - (f) If a solicitor wants to rely on AI and other technologies, which are becoming more advanced, more complex and more extensive, as part of the services to his client, he must make sure that he understands how the tools he uses work. He must know the capabilities and limitations of the tools and consider the risks and benefits of the products generated by those tools in the context of the specific case that he is working on.
 - (g) As a qualified legal practitioner, the solicitor shoulders the ultimate responsibility on the quality of the work. Having a good understanding on how the technological solutions work is essential so that he can decide the extent of reliance he should place on the tools. Keeping up to speed on technology is thus becoming an additional component of competence required of a solicitor.

- (h) AI tools are tools to augment the value-added work of legal service providers, not to replace legal service providers and not to be promoted as a mechanism for “self-help legal advisory service”.
- (i) AI tools should be used by the Judiciary to augment judges' capabilities, not replace human discretion.

Position on training

34. The technology will continue to evolve and, as such, the legal education programs will need to continue to adapt with it. The training of lawyers should at least consist of:
- (a) general awareness of what LLMs/AI systems are
 - (b) a basic understanding of the way it works
 - (c) the importance of the distinction between “Open AI” and “Closed AI” systems
 - (d) the various applications to which the AI systems can be put
 - (e) the limitations of Open AI systems and especially the issue of “Hallucinations”
 - (f) the importance of human oversight
 - (g) reference to, and relevance of, the professional code of conduct.
 - (h) improving meta level thinking
35. Given the nature of the developing technology, these elements will continue to be applicable at every stage of legal education: academic, graduate, postgraduate and continuing professional education.

Law Schools

- (a) Students leaving law studies should be equipped for the world they will enter. Law schools will need to expand curricula to develop both legal and technical competencies required for the future workforce.
- (b) Legal education should adopt a fuller inter-disciplinary approach combining law, technology, business skills, ethics and human skills development.

Inter-disciplinary training programmes

- (c) Inter-disciplinary training programmes may emerge to develop these specialized skill sets, and technologists may become senior figures in law firms.
- (d) Law schools will need to offer courses and programmes in legal technology, data analytics, and AI applications to develop digitally literate lawyers. Hands-on experiential learning with legal AI tools may need to become an essential component of law programs.
- (e) New degree programmes may emerge focusing on training legal technologists, legal knowledge engineers, and other specialist roles.
- (f) Core law curricula will need to incorporate training on digital ethics, privacy, and emerging regulations governing legal AI systems and its relationship to professional standards, codes of conduct and, statutory obligations.
- (g) Programmes on human skills like creativity, empathy, and communication will grow and be required to complement AI technical skills.

Continuing professional education

- (h) Technology continues to evolve and training programmes must continue to adapt with it.
 - (i) Continuing professional education must provide sufficient opportunities for members of the legal profession to not only keep updated on technological developments but also enhance their practice management skills for transition to a more sophisticated business model that can maximise the benefits brought by the revolutionary support provided by AI tools to legal practices.
36. With respect to judges, they should receive enhanced training on legal issues stemming from emerging technologies like AI as they will need to rule on new legal issues surrounding, for instance, liability, bias and intellectual property issues arising from the use of AI. Policies and guidance should be developed for responsible use of AI in courts and tribunals.
37. For members of the public, they should be educated on the hallucination concerns and the risks of using Open AI models in preparation of legal proceedings conducted by litigants in person.

Reforms

38. The legal, ethical and regulatory framework in accordance with which law firms operate and lawyers practise should be reviewed to maximize the benefits brought by the AI revolution while ensuring that the associated threats to the sustainability of the legal profession are addressed with proper regulatory safeguards.

39. For example, while AI adoption poses challenges for all law firms, small firms tend to have fewer internal resources to overcome limitations. Over 80% of Hong Kong law firms are sole proprietorships or firms with 2 to 5 partners. Innovative ways should be explored to help bridge the AI divide.
40. Coordinated efforts on the formulation of ethical guides on the use of AI are urgently needed in areas like data protection and data governance, security and safety, transparency, disclosure and proper human oversight.

Way forward

41. As an open guide to the way forward (which is subject to change in response to the rapidly evolving development of AI), the Law Society proposes to adopt a three-phased approach.

Phase 1 – Inform

42. For phase one, the Law Society plans to:
 - (a) host educational events and seminars to build legal community awareness of AI
 - (b) survey lawyers on their AI adoption challenges to identify top issues and needs
 - (c) include a section of the Law Society website as a hub for AI related law resources

Phase 2 – Engage

43. For phase two, the Law Society plans to:
 - (a) convene meetings with different stakeholders including but not limited to the Department of Justice, the Judiciary and legal education providers, to discuss AI strategies
 - (b) collaborate with research institutes to conduct research studies on updates of AI legal applications, development of AI ethical standards and best practices for law firms on responsible AI adoption
 - (c) commission the development of continuing professional development courses on AI and tech training and business modelling
 - (d) advocate for government support and funding for AI skilling initiatives
 - (e) conduct research on whether reforms on the legal ethical and regulatory framework are required to enable the profession to take full advantage of the benefits brought by the AI revolution and to address the associated threats to its sustainability including ways to help bridge the AI divide between large and small law firms.

Phase 3 – Implement

44. For phase three, the Law Society plans to:

- (a) launch continuing professional development courses on AI and tech training
- (b) issue AI ethical standards and best practices for law firms on responsible AI adoption
- (c) support the Judiciary where necessary in establishing AI protocols, guidance and pilot projects
- (d) support the Government where necessary in formulating policies to govern the use of AI in the legal system
- (e) create incentives and recognition for lawyers completing AI upskilling

Acknowledgment

The Law Society acknowledges the assistance provided by Mr Ian McDougall in his capacity as consultant to the Law Society in the preparation of this position paper. Mr McDougall is the Executive Vice President and General Counsel for LexisNexis, Legal & Professional division of RELX Group. Mr McDougall is also President of the LexisNexis Rule of Law Foundation, a charitable organisation established to advance the Rule of Law.

AI and more powerful technology
are on their way into our lives.

Let us work together to turn these
disruptions into blessings for
ourselves and our future generations.

- End of Paper –