

CBA LEGAL **FUTURES** INITIATIVE

THE FUTURE OF LEGAL SERVICES IN CANADA: **TRENDS AND ISSUES**



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

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EXECUTIVE SUMMARY

Lawyers, law firms, and the overall legal industry in Canada will be facing a complex and compelling set of challenges over the next decade as they endeavour to remain viable, competitive and relevant in the face of a wave of fundamental change.

The Canadian Bar Association (CBA) has commenced the Legal Futures Initiative to develop original research, consult widely, and create a framework for ideas, approaches and tools to assist the legal profession in identifying, understanding and managing these changes. This paper, based on original research commissioned by the CBA, provides an overview of major impacting trends and issues both inside and outside the legal profession in Canada. It does not contain any recommendations, but instead provides a starting point for consultations and discussions.

The legal industry in Canada is not immune to the major macro trends that are transforming virtually every industry in the world. The globalization of commerce and the rapid spread and adoption of technology are having significant effects on the Canadian legal industry. In many cases economic power has shifted to the consumer or client side, with buyers demanding more say on what lawyers do, how they do it, and how much and how they charge for it. With new competitors already in the marketplace – such as paralegals, global legal publishers, and legal process outsourcers (LPO) – and more on the horizon – law firms and individual lawyers will have to make important decisions on how to maintain a competitive advantage in the provision of legal services in Canada and globally. While these decisions may seem daunting to some people, they also present a vast range of opportunities for the profession to reinvent itself and thereby ensure that it remains dynamic and confident.

Corporate or in-house counsel will face a double set of challenges, as both buyers and suppliers of legal services. As legal service providers, they will be exposed to the same economic, social, technological, and demographic factors affecting others in the legal profession. At the same time, they will have to organize their own legal services operations to support their own companies which are facing issues specific to their own industries. For example, fall-out from the global financial meltdown of 2008 has created a more cautious marketplace in many industry sectors, with “value for money” a dominant theme in most corporate operations.

For the legal industry in Canada, increased competition, downward pressure on prices for legal services, potential excess capacity, and the possibility of low or no growth in many areas of practice have compelled firms and individual lawyers to re-examine their business structures and operating processes and practices. Many larger firms may be forced to adopt new management and hiring approaches to improve efficiency and economy. Alternate business structures (ABS) which feature non-lawyer ownership are already legal in England and Wales as are publically-traded firms in various jurisdictions outside Canada. Canadian law firms, large and small, and sole practitioners will have to consider new options for operating in a changing marketplace.

The rapid growth in innovation and adoption of new technologies may play a transformative role in helping the legal industry in Canada develop new forms of service delivery, knowledge development, and management. For example, the future could see the development of a full-blown, technology-enabled legal marketplace, including virtual law firms. The growth of artificial intelligence (AI) could replace lawyers for many tasks such as “assisted discovery” and eventually even advice, at the same time saving clients both time and money.

The growth of electronic communications, including social networking, will not only change how interactions may take place in the future, but also the expectations of a new generation of clients and lawyers on how business should be conducted and how services should be delivered – quickly, directly, and, in many cases, online. New forms of online competition already exist and more are likely on the way.

The challenges brought on by globalization and technology will also affect the regulation and oversight of the legal profession. Developments such as multi-jurisdictional practices (MJP) will require more cooperation and harmonization, nationally and internationally. Law firm ownership by non-lawyers will raise professional and regulatory questions regarding competence, conflicts of interest, confidentiality, independence, and fidelity to law and other related issues.

Demographics will play an important role in the future of the legal industry in Canada. The number of practicing lawyers in Canada is growing at a rate faster than the general population. While more women and historically marginalized groups are entering the profession, there are still few women in top management positions in firms. In fact, many female practitioners are choosing to work outside of private practice or as corporate counsel. As the Canadian Bar ages, inter-generational conflicts may arise as older lawyers put off retirement, blocking career advancement for the younger cohort.

While demographics are shifting, so too are values and motives. Many lawyers are seeking a better work/life balance through part-time, contract, or work-at-home arrangements. Younger lawyers who are used to the new speed of communication and the democratization of discourse and planning through social media may expect similar management and decision-making processes in legal organizations.

Training a new generation of lawyers will also put pressure on law faculties, as well as law firms, other businesses employing lawyers, other employers, professional development providers, and legal practitioners. Emerging fields of competency may include legal risk management, legal project management, legal process analysis, and legal knowledge engineering. Non-legal skills such as social networking and knowledge of business and commerce for in-house counsel will also be necessary. More lawyers may choose to work in positions outside of law firms or in-house counsel organizations, using their legal training along with other skills to find new jobs.

Continuing professional development will be essential for lawyers in the future, although what courses and how they will be provided are still uncertain. While the use of e-learning continues to grow, there may still be questions about quality, reliability, credentials, and its value compared to direct group discourse and debate.

One fundamental point is that the various changes will affect individuals and legal organizations in different ways. Attitudes towards change vary across the legal industry in Canada. While some remain conservative, there are high-profile examples of individuals and firms in Canada who have chosen to lead change, rather than just to react or ignore it.

Finally, access to justice, which is the subject of a separate CBA initiative, remains a critical consideration for the legal profession in Canada. A commitment to the availability of affordable legal services to a broad range of Canadians must be part of any responses to change in the next decade.

1.0 INTRODUCTION

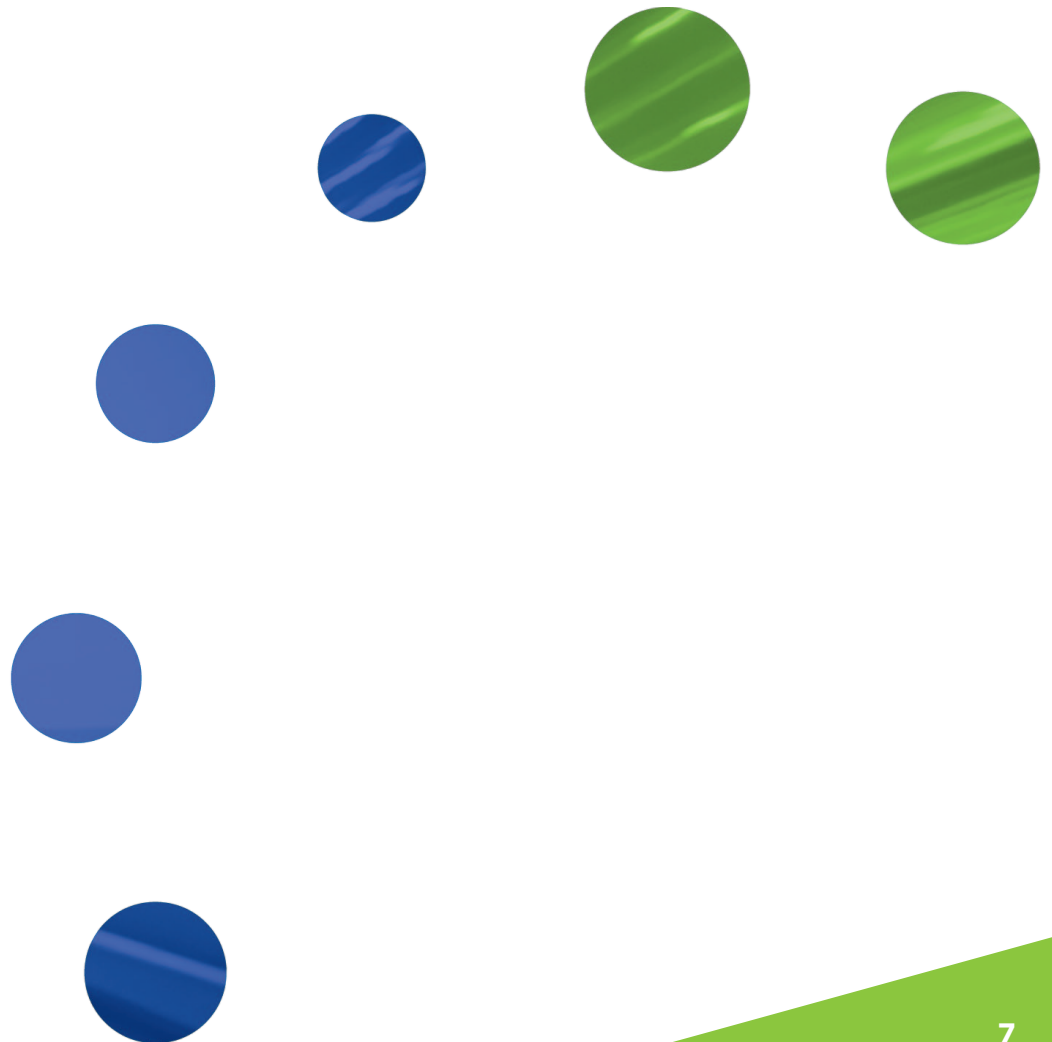
1.1 Purpose of the CBA Legal Futures Initiative

The legal industry in Canada is currently facing a wave of fundamental change. The CBA has commenced a dedicated initiative to examine the nature, extent, and consequences of such change for the future of legal services in Canada.

The purpose of the CBA Legal Futures Initiative (Futures) is threefold:

- *To provide leadership and a strategic and systematic Canadian response in the face of unrelenting, dynamic and transformative change;*
- *To canvass and reflect a wide range of views both from within and outside the legal profession;*
- *To provide a framework for ideas, approaches, and tools to assist the legal profession in adapting to change, so that it remains confident, viable, relevant and competitive.*

In addition to Futures, the CBA is also conducting a separate inquiry into Access to Justice in Canada. As might be expected, there will be overlapping influences and impacts between these two studies.



1.2 Objectives and Timing of the CBA Legal Futures Initiative

The Futures Initiative has established five specific objectives:

- *Identify and consider the factors (economic, social, legal, regulatory, demographic and technological) that are likely to change the market for and the work of practicing lawyers over the next decade and beyond;*
- *Assess the likely shifts in demand – from major companies through to current and potential clients;*
- *Make recommendations on the organization and structure of the profession and of legal businesses, to ensure that legal services are fit for purpose in the long-term;*
- *Make recommendations on the training and education of the next generation of lawyers (in law firms, in-house, and in government and non-profit organizations);*
- *Make recommendations on the regulation of the legal profession and legal services in the future.*

The Futures Initiative has been broken into four phases:

Phase I Focuses on research, to develop a greater understanding of the issues affecting the future market for legal services, including client expectations;

Phase II Focuses on consultations with the CBA membership and the profession as a whole on the Phase I findings;

Phase III Focuses on additional research and consultations on the implications that are identified in Phase II. Three dedicated teams looking at Business Structures and Innovation, Legal Education and Training, and Ethics and Regulatory Issues will look at the consultation feedback and undertake research, analysis and further consultation to make specific recommendations for action;

Phase IV Based on the Phase III recommendations, specification of which tools and resources should be developed by appropriate bodies, and eventual development by CBA of those tools and resources which fall within its own mandate and strategic priorities.

1.3 Background, Content and Structure of this Report

Background – As a first step, the CBA commissioned seven original research studies which covered a wide range of sources and subjects. These studies examined various aspects of legal services both in Canada and internationally, including innovative structures and practices for the delivery of legal services. The research also canvassed a diverse group of consumers on their expectations for the delivery of legal services in Canada in the future. Another study looked specifically at demographic trends in Canada, while another looked at the economic context, currently and in the future.

To obtain as broad a range of viewpoints as possible, the CBA commissioned an original report from Professor Richard Susskind, an internationally recognized expert on the future of the legal profession, on key trends in the legal marketplace. In addition, it commissioned a review of Canadian social media discourse and other writings to get a broader appreciation of current thinking in Canada.

A full list of the seven commissioned studies, as well as other studies, articles and reports consulted, appears in the bibliography at Annex A.

In addition to these studies, the CBA held a facilitated consultation at its mid-winter meeting at Mont Tremblant, Quebec in February 2013. CBA members were asked to reflect specifically on the views of clients on how they see the future of legal practice in Canada. They were also asked to suggest from their own experience the most significant barrier to change in the provision of legal services in the next decade.

This report also benefited from the guidance and direction of the CBA Legal Futures Initiative Steering Committee (see Annex B).

Content – The body of this report contains a synthesis of the main ideas and findings from the commissioned research, augmented by a review of a number of related reports and studies, including a survey of buyers of legal services in Canada.¹ Since this is the first of four phases of the Futures Initiative, it is too early to draw conclusions. Hence, this report will not be prescriptive but rather directional in nature. It will deal chiefly with matters related to the first two objectives of the Futures Initiative – change factors (economic, social, legal, regulatory, demographic, and technological) and likely shifts in client demand and service expectations over the next decade. No specific recommendations are made (this will come in Phases III and IV). In addition, changes and trends in legal business structures, legal education and training, and the regulation of legal service providers are identified.

Structure – To inform the profession about the forces at play that will impact on the practice of law and the provision of legal services, and to assist the Futures Initiative with the consultation phases of the project (Phase II and Phase III), the report begins with a general discussion of change followed by more specific information about the macro and micro changes which are taking place in the legal profession and in the provision of legal services.

To focus thought and discussion, trends and issues are clustered around specific themes – economic, social, technological, etc. Because this is an investigation of the future of legal services, there is a somewhat heavier emphasis on business and economic trends and concepts. But the other areas of discussion are no less important. In fact, there is a strong interconnectedness between the various themes.

2.0 A CHANGING BUSINESS, THE BUSINESS OF CHANGE

Before getting into specific trends and issues, it is important to reflect on the drivers of change that affect all industries today. These drivers will have varying impacts on individuals and organizations, including those in the legal profession.

In addition, consideration must be given to the pace of change which also will vary with particular situations. Even a decade ago, an industry, a firm, or an individual had the luxury of some advance time to identify, contemplate, plan and respond to change. Five-year, ten-year, even fifty-year plans were seen as reasonable options for dealing with the future. But in 2013, that timing has been increasingly compressed: decisions which used to take years are now sometimes required in months, weeks, or even days.

What are the macro trends that are making change so immediate and inevitable?

2.1 Globalization

One important trend is the globalization of commerce. Markets for most products are now increasingly global; service industries are quickly catching up to (and often leading) this trend. Client interests and organizations are now much more international and this is being reflected in the structure of political, legal, economic, and regulatory institutions and organizations.

2.2 Technology

Closely aligned to this move to globalization is the rapid spread and adoption of technology. As more and more suppliers and consumers become connected to electronic networks, both time and distance are reduced as barriers to information gathering, relationship building, and transactions. Because of the increased speed and enhanced knowledge management capabilities of the latest technology, people are able to make quicker, more informed and more analytical decisions than they could in the past. Technology has empowered new organizations and enterprising individuals to take on long-established companies and industries and in some cases even to supplant them. Technology creates new platforms for the marketing and delivery of services. Every technological breakthrough (such as email or PIN to PIN communication) creates new ways of working, often reducing the use of older technologies or eliminating them completely (e.g. fax machines or pagers). As AI technology evolves, there may be increased opportunities for customization of services, including the provision of advice.²

2.3 Liberalization of Markets

With the twin drivers of globalization and technology has come a liberalization of markets. More knowledge, more information and better access have created a desire for freer trade between nations, within countries, and between and within industries. As a consequence, there has been increased professional mobility facilitated both by legislation and by agreement. Further, the breaking down of traditional economies, barriers and boundaries has stimulated innovation in business structures and operations.

2.4 Deregulation, Disaggregation, Electronic Markets, New Communications Media

These overriding factors have themselves created some notable trends which must be considered:

Deregulation – The desire for quicker, cheaper and less complicated services has increased the demand for fewer rules and potentially less oversight (although recent market events have resulted in calls for better governance, greater accountability, and increased transparency). However, too much deregulation can result in consumers and others calling for greater regulatory oversight. Finding the proper balance between regulation and deregulation becomes a difficult challenge as technology erodes traditional borders, and regulatory bodies see their authority challenged.³

Disaggregation – As markets become more integrated and clients become better informed of both the availability and complexity of products and services, there is a trend towards breaking them down into smaller, more identifiable parts or tasks. Clients will undertake themselves those services with which they are more comfortable. They will seek out professional services where that is a more efficient option or where the service is outside their own knowledge base.

Electronic Markets – As information, tasks, products, and services become more and more supported by new technologies, there is the potential to conduct more business through an electronic marketplace (e.g. virtual firms, online transactions, online access to documents, information, and advice).

New Communications Media – The advent and adoption of powerful new technologies has created a whole new realm in which businesses and individuals communicate. Whether through social media applications (e.g. Facebook, Twitter) or more business-oriented sites (e.g. LinkedIn), the amount of new information being created, disseminated and accessed is growing at an unprecedented rate. How people interact through these media also influences their expectations of how they will interact with professionals and service providers. There will likely be quicker and shorter interactions which have the effect of involving the client more closely in the planning and delivery of services.

2.5 Demographics

Although technology may at times mask or replace the human factor in market transactions, the underlying shifts in the makeup of the population are important considerations in any efforts to predict and respond to change. For example, the increased number of women participating in the paid labour force has made an indelible mark both in the workplace and in the marketplace. Demographic shifts in Canada – for example, the aging of the Baby Boomer generation and continuing flows of new immigrants – will also have a substantial impact on the future market conditions and will shape responses. Further, with people living healthier and longer lives, the profile of the work force is changing as older people put off retirement, sometimes blocking the career paths of younger workers.

2.6 General Economic Conditions

One of the few predictable factors of the general economy is that it will undergo a set of regular transitions, commonly called business cycles. Periods of confidence and growth are inevitably followed by periods of decline, destabilization, and even despair. Where a national or international economy is in the business cycle will heavily influence industry, firm and individual decision-making and planning. In an up-cycle, liberalization encourages a freer flow of international capital. Private investments will drive alternatives to existing supply and service delivery arrangements.

While some commentators talk about the “hollowing out” of corporate Canada because of foreign investment, it may only be a cyclical reaction in a particular industry or company. As Canadians continue to innovate and develop new ideas, products, and businesses, new companies will arise to replace those which have been bought out, restructured or eliminated.

Reverberations from the global financial meltdown in 2008 continue in 2013, as many national economies teeter on the brink of bankruptcy. The crises in the banking and housing sectors in the U.S. are only now starting to achieve some degree of stability. Nevertheless, many world financial markets are at or near all-time highs, suggesting that, despite the turbulence, the underlying economic conditions are sound or that there is an unwarranted level of confidence in a system that is unsustainable and which will eventually tumble again. It is this difference in market opinion that will eventually end a growth cycle or begin a new one.

2.7 Characteristics of Change

Although it is difficult to make generalizations on the nature of change because so many factors are involved, some observations may be helpful.

More often than not, change will be externally-driven, rather than coming from inside a firm or an industry. This may be a result of the inertia that gets built up when an individual, firm or industry strives to establish permanency for something of value. An external shock may create the momentum to consider a change in the status quo.

It is difficult to predict a precise point in time when a critical change will take place. Even as companies and institutions strive to build in more predictability in their planning (e.g. regular federal budgets in February or March), they are forced to increase the resources they allot for contingencies. Some imprecision may not be a bad thing, if adaptability to changing circumstances is a value.

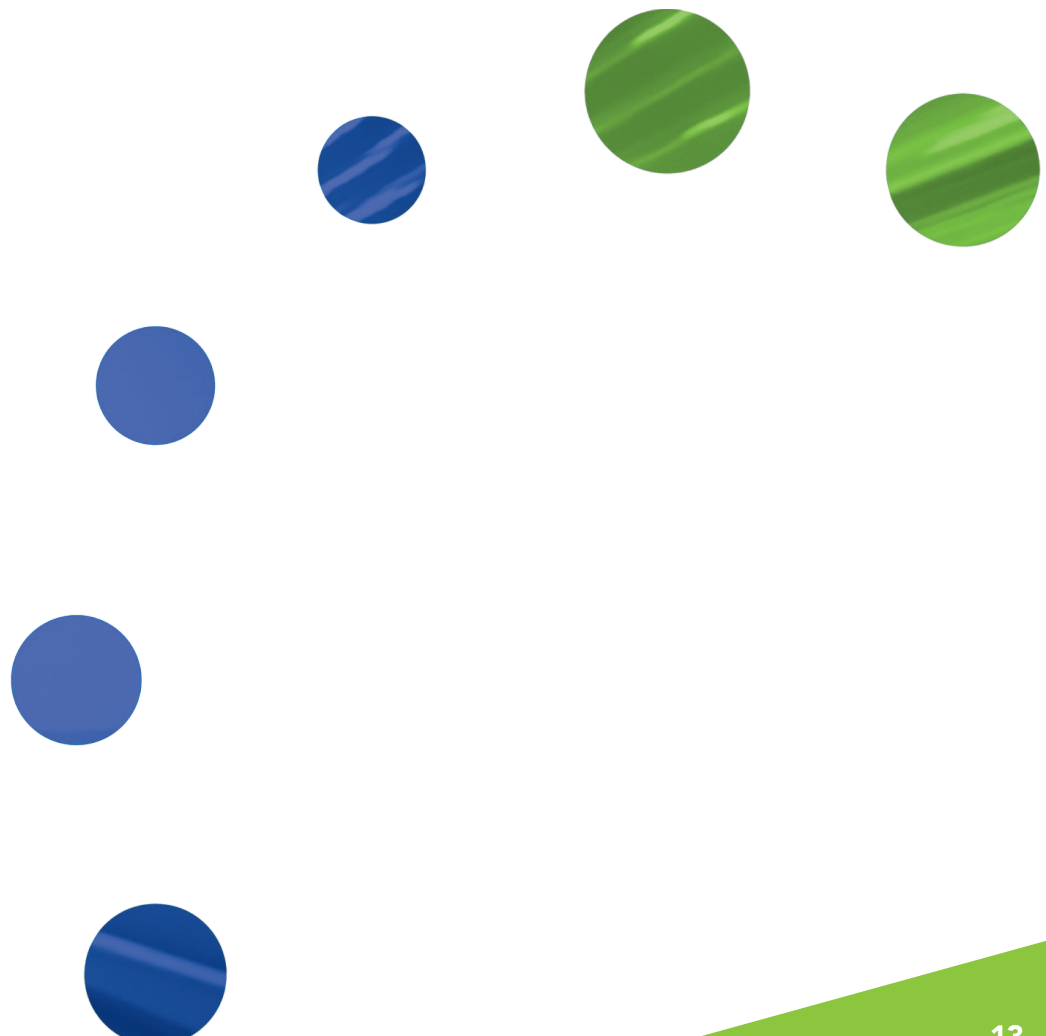
Not all changes will be immediately evident. Some changes are stark, but others are less perceptible, almost sneaky. Only in hindsight or on retrospection will they be noticeable.

As mentioned, major change factors are interrelated and interconnected. Mastering one sphere of change is no guarantee that an entity or an industry will be able to develop comprehensive responses.

There are costs to managing change. These can include direct costs for firms and individuals; but they also include other considerations such as corporate goodwill or lost time. There is a whole set of costs (opportunity costs) which are associated with making poor or incorrect decisions when responding to change.

Another point – one that is very important in this report – is that changes do not affect individuals or firms equally or universally, nor will they all happen at the same time. As will be pointed out in the next chapter, the Canadian legal profession is segmented, as is the market for legal services. So, particular change factors may have multiple impacts (including, possibly, none at all in certain areas).

Just as individual, firm, and industry impacts may vary, so too may their responses to change. There is a whole spectrum of strategies that may be employed including: resist, muddle through, adapt, adopt, lead. The success of a strategy will only be determined by the results it produces in the future.



3.0 THE LEGAL INDUSTRY IN CANADA TODAY

3.1 Market Structure

The market for legal services in Canada is made up of multiple sellers and multiple buyers. The practice of law is restricted to licensed lawyers in Canada, but they operate within a full public protection infrastructure (codes of conduct, insurance, standards of admission, compensation funds, complaint and discipline tools, etc.). Competition does exist on a number of levels: size of practice, types of services, price, location, reputation, experience and other legal service providers.

There appears to be an excess capacity in certain areas of specialty, but there is no clear data supporting a conclusion that the general market in Canada is oversupplied. There may also be some undersupply in certain geographical areas such as northern and rural Canada.

The provision of legal services by lawyers in Canada is stratified into a number of market segments:

- *Sole practitioners;*
- *Small and medium-sized firms;*
- *Large regional or national firms;*
- *Mega and multi-jurisdictional firms;*
- *In-house counsel as well as lawyers working in other corporate areas;*
- *Government and non-profit organizations.*

3.2 Canadian Legal Industry Description

While some data is available on the profile of the legal industry in Canada as a whole, there is very little data at the micro level (there is a fair bit of large firm data, but normally it is not publically available for competitive reasons). At the industry level, there is a wide spectrum of specialties and a range of years of practice. The legal industry in Canada is experiencing a steady increase in the number of women and individuals from historically marginalized demographic groups.

3.3 Management Structures/In-House Counsel

Most firms are organized along traditional partnership models and are consensus-driven. Some “top down” techniques are being introduced, especially in specialized areas such as finance and technology. There is currently no non-lawyer ownership in Canadian law firms (unlike what is now happening in England, Wales, and elsewhere), although some non-lawyers may have specific management responsibilities in larger firms (e.g. an accountant looking after finances).

In-house counsel form an industry within the industry. While typically lawyers work in a company's legal department, more and more lawyers are using their legal skills to work in other parts of a company's operations as well. In-house counsel are faced with changes taking place within the legal industry as well as the industry in which their company is situated. As a result, they experience the impacts of change as both suppliers and consumers of legal services.

3.4 Technology and Innovation

There is uneven adoption of technology by firms and individual lawyers possibly because firms have not had cost concerns in the past and/or their clients have not demanded this type of service in the past. There are no clear patterns of acceptance or use of online services by firms or individuals. Because of partnership structures and tax laws, very few firms re-invest profits in basic research and development, new processes, services, and technology.

3.5 General Attitudes Towards Change

Because of its relative success in the past, the legal profession in Canada is generally conservative. Psychological studies of lawyers have found that they are generally skeptical, autonomous, and not resilient.⁴

Billing methods, such as billable hours, are generally rigid as evidenced by the limited number of arrangements based on other measures. There are certain exceptions to this rule where competition has driven down prices and made structures more flexible – for example, fixed fee transactional work for corporate clients, as well as fixed fees for immigration and patent work.

Evidence of rigidity may be apparent in what is described as the “latent market” for legal services – people who require services but who are unwilling or unable to access services for reasons of affordability (which arises directly from the uncertainty about the costs they face when services are billed by the hour and when there are few processes in place to provide certainty of the time required) or because of other barriers. Nevertheless, within the profession there are pockets of innovators and “early adopters” who create an impetus for change from within.

4.0 TRENDS AND ISSUES IN LEGAL SERVICES

There are a number of significant trends and issues which are impacting the legal profession and legal services in Canada. Observed together, they create a picture of what the overall changes may look like in the years ahead.

4.1 Client Empowerment

Perhaps the most important trend is that power in the marketplace appears to have shifted from the suppliers to clients. This main driver of change is related to clients' perceptions of value and cost. The recent economic slowdown brought this into focus.

With more choice and access to technology-based solutions, clients have been emboldened to question the basic value proposition of lawyers and the cost of legal services.

There has also been a change in client expectations of their legal service providers. Aside from better prices, clients want more information on services, more involvement in decision-making and greater knowledge of the risks and potential outcomes of various legal strategies. Some clients are prepared to take some risk with a less comprehensive product from the legal practitioner.

4.2 Downward Pressure on Prices for Some Legal Services

With changes in the way legal services are delivered, there could be downward pressure on prices in areas such as residential real estate (because of title insurance), immigration (because of consultants), and administrative law (now done by regulated paralegals in Ontario and unregulated ones elsewhere). In-house counsel, compelled by general economic conditions for their companies to do "more with less", continue to pressure legal providers to reduce prices significantly.

4.3 Excess Capacity/Low or No Growth

With few barriers to entry into the marketplace for either new lawyers or paralegal suppliers, there appears to be excess capacity building in the Canadian legal market.⁵ This oversupply may be limited to particular areas of specialization or regions. Unfortunately, there is little reliable data at this time to verify this trend.

Certain locations, such as rural areas or small towns, may actually be experiencing a decline in capacity with older lawyers retiring and younger lawyers experiencing economic barriers to viable rural or remote practices or an unwillingness to live in those communities. Consumers in these areas are either accessing services from larger centres or online, or are becoming part of the growing latent and unsatisfied market for legal products and services.

There are varying opinions about whether the legal industry is, in fact, in “low growth” or “no growth” mode.⁶ Again, with little information available, much of the speculation is based on anecdotal evidence or specific cases where firms have reduced their size, merged with other firms, or simply closed their doors. One theory worth examining is that the market for legal services in Canada is actually growing, but that the lawyers’ share of this market is declining relative to non-lawyer providers.

4.4 Management and Ownership

With increased pressure from clients and competitors, managers of law firms have been forced to continually seek greater economies and efficiencies in their operations. In some segments of the legal services market, more attention is being paid to project management and client relationship management.

Competitive pressures may cause some firms to consider new structural arrangements. Non-lawyer ownership is still rare in Canada (although permitted in Ontario for multi-disciplinary practices (MDP) as long as lawyers maintain control), but demand for new capital and the increased need to manage financial and other risks may create interest in altering existing regulations. The build-up of non-lawyer ownership, management, and participation outside of Canada may provide additional pressure for change in this area.

4.5 Increased Relationship-Building with Clients

Just as the legal profession has become more and more segmented, so too have the clients for legal services. Clients come in many shapes and forms – large, small; complex, simple; regular, one-time; local, multi-jurisdictional; wealthy, poor. As client and business demographics change, legal providers must also adjust to the new variations.

Instead of monolithic, “one size fits all” organizations, law firms and other providers of legal services may have to become more familiar with their clients’ profiles and adapt their resources, operations, and practices to mirror or complement their clients. This could include reducing the size of the client base they wish to serve. This adaptation process may be complicated by rigidities in attitudes, structures, and human resource policies.

Clients will likely expect their services to be delivered to them in familiar ways, such as over the Internet. Social media and other channels may become more prevalent in fostering the lawyer-client relationship. Clients will be involved more in various stages of a file, not only on pricing, but on establishing tasks and changing strategies as the file unfolds, similar to their experience on social media where there is a greater “democratization” of process.

4.6 Aging of the Bar/Succession Planning

One trend that bears watching is the relative aging of the bar as the Baby Boom cohort heads into retirement. This is already being seen in rural and remote areas of Canada. While some legal practitioners will continue to work into their seventies and beyond, competitive and work pressures as well as health and work/life balance issues will convince a growing number of lawyers to accept a full retirement. This will have consequences for existing firms as well as for new entrants to the profession. For example, there could be increased demands within firms to “make space” for younger lawyers on files that have been traditionally held by older lawyers.

The whole issue of succession planning within a firm or legal organization will take on increased importance as this trend comes into play.⁷

4.7 Growth of Practice Areas and Other Law-Related Positions

As Canadian society evolves, certain practice areas may grow in prominence. This could include regulatory compliance, privacy and access to information, aboriginal, and international trade law. Certain areas of tax law, administrative law before tribunals, and environmental law may also increase in importance. In addition, new types of jobs for lawyers may be created such as legal project managers as well as lawyers working in companies but outside of the legal department.

5.0 KEY ECONOMIC TRENDS AND ISSUES

In the previous chapters, general and specific trends and issues were examined through a wide lens. In the next three chapters, trends and issues will be considered in greater detail in key thematic clusters – economics, social, and technological.

5.1 General Legal Services Market Description

As indicated earlier, the market for legal products and services in Canada is quite robust, with multiple buyers and sellers involved in a fairly competitive marketplace. Whatever regulation that exists – such as certification of practitioners or the legal or regulatory requirements to use certain services – is balanced by growing external oversight mechanisms such as fair registration legislation. Pricing imperfections that do exist (i.e. where people believe they are paying too much for a particular service) are generally caused by a lack of information about the value or cost of services and their availability, including through alternative sources.

Although advertising by Canadian legal providers is permitted with some restrictions, there has been only limited activity in differentiating providers by “brand” or by specific services or products. Most advertising is at the firm or personal level, rather than by the industry as a whole.

The Canadian market is becoming more and more impacted by global markets, as evidenced by recent merger and acquisition activity by larger Canadian firms and by efforts to develop new markets and cultivate key international clients, in some cases just to survive. While revenues and incomes of firms and legal practitioners appear to have remained buoyant in most areas of practice, there are growing signs – at least in some specialties – of “no growth” or “low growth” scenarios and possible excess capacity. Latent demand for legal services may be paralleled by a latent supply market component, as some trained lawyers leave the profession or operate below their full potential, while recent graduates have a more difficult time finding permanent employment.

Some of these trends and issues are highly speculative because there is limited data on the number of legal transactions and their specifics, outside of major “blockbuster” deals.

5.2 Supply Considerations

The most compelling trend on the supply side is that a number of new competitors and forms of competition are entering into the legal marketplace.⁸ These range from paralegals and various online services to increased competition in the next couple of years by the “Big Four” accounting firms, global legal publishers, and task-specific LPOs.⁹ In addition, new suppliers may provide project management and risk management expertise to complement traditional legal services.

Contributing to this new competition will be several important trends including: disintermediation, where buyers attempt to get closer to the final legal product or service, in turn, potentially eliminating intermediaries including, in some cases, lawyers and/or legal support staff; commoditization, where work is standardized, systematized, or “routinized” reducing the need for

traditional services from lawyers; unbundling, where instead of providing a “complete bundle” of related legal services, some tasks are passed back to the clients to undertake themselves; and self-representation, where clients accept all of the responsibilities and act totally on their own behalf (where this is by choice and not because of an inability to pay for legal services).

In response to these various forms of increased competition, lawyers and law firms may merge. Or, they may form temporary consortia to provide a large range of services to a single large client for a fixed overall price.¹⁰ Law firms may look off-shore for cheaper suppliers of routine, standardized services or simply move some of their own supply requirements to less expensive locations in Canada (“near-shoring”). Technology may also be a major factor on the supply side as virtual firms and various online services already exist, with more likely on the way.¹¹

Another important supply consideration is the growing extent of decision-making in the hands of in-house counsel. In-house counsel may continue to tighten the rationale for “buy” decisions for legal services, although expanding in-house capabilities may run the risk of substantially increased costs in the long run because of training, pension and other requirements for full-time employees.

A further important issue is the fact that there is little or no control on the number of legal graduates. Interestingly, the legal profession has recently witnessed the creation of new law schools (including offshore) for the first time in 30 years, which should result in even greater supply.

The potential growth of the unauthorized practice of law by unlicensed, unregulated suppliers is an area that may have to be watched carefully, especially in light of the changes created by globalization and technology.

Finally, there may be some variances on the supply side because of basic differences in motives, objectives and strategies of individual lawyers and law firms. The purely professional objectives of lawyers (rule of law, access to justice, etc.) will be co-mingled with the more commercial imperatives of running a viable business in a competitive industry.

5.3 Demand Considerations

As indicated earlier, the most important consideration on the demand side is the shift in market power in many areas of law to the client. (This may not be the case in certain areas such as criminal, poverty and family law.) With this shift has come a changing dynamic in terms of clients’ preferences and expectations.¹²

Clients are expecting more say in the cost of services, input on how they are delivered and more information on what outcomes could/should be expected. As more lawyers and non-lawyers enter the marketplace, this trend may become even more pronounced.

The globalization of markets could well influence demand for Canadian legal services as certain areas of expertise (e.g. natural resource development) increase in importance. Capturing some of this

international demand may require some of the adjustments in firm structure currently taking place in Canada. This trend could work two ways, as certain areas of practice in Canada could be taken away by providers outside of Canada.

Clients are expecting greater transparency and predictability for pricing of services. They expect lawyers to operate more like a business, with justifiable costs incorporated into predictable pricing structures. As the power of clients increases, they may wish to pay the lesser of the cost of actual hours worked or an amount they perceive to be the value of the service. There is considerable resistance by clients to current pricing structures, including billable hours. There appears to be discordance between the perceived value of services by clients and their costs. Part of the problem may be an asymmetry of information; but whatever the cause, price resistance and unpredictability may be driving buyers out of the market or to other (possibly inferior) products and services.

In line with the move towards disintermediation and unbundling, clients are seeking to have legal assignments broken down into discrete tasks and they want to choose which tasks they want provided, by whom, and how they will pay for them. This change will likely support a shift to more demand for electronic, online services, especially for routine matters. The electronic marketplace could become a more comfortable option for “tech savvy” consumers. Unfortunately, those with limited general literacy or without computer literacy or Internet access (“the digital divide”) may have a more difficult time accessing legal services as well as justice.

More information, especially online, could lead to higher demand for legal services, but it could also lead to more self-lawyering. The provision of more public legal education could lead to higher demand for lawyers who deliver services in non-traditional ways. A better-informed public would have an understanding of the complexities of the law, the risks of unfavourable outcomes, and the need for skilled and reliable legal practitioners.

As with medicine where there is now a greater emphasis on prevention and health promotion, there is already a demand in certain sectors for more preventative lawyering to avoid disputes in the first place and reduce legal costs over the longer term. Such an approach would require a better appreciation and acceptance for the need to manage risk associated with legal files and the development of risk indicators to alert professionals that mitigating or corrective action is required.

As was noted under Supply Considerations, there is no clear trend on how changes in the responsibilities of in-house counsel may affect the nature and volume of demand for legal services. General business conditions and individual corporate strategies generally determine the extent of the level of services required outside of major companies.¹³

There are no noticeable trends on how new legislation or regulations will increase or reduce demand for Canadian legal services. Clearly areas such as international trade and taxes, privacy and electronic commerce law should grow. But there is no indication of how these emerging needs will be met.

As mentioned earlier, there is a latent demand from several groups including: the cash-strapped middle class; poor and disadvantaged groups; the apprehensive potential client who seeks advice from non-lawyers out of fear of the costs and unpredictability of obtaining legal services; and persons without access to information or services, electronically or otherwise.¹⁴

5.4 Prices/Costs

As with most of the other economic areas covered in this report, there is little data on actual prices or costs by legal product or service, so it is difficult to establish where likely price/cost equilibrium points may be (i.e. where the demand curve intersects with the supply curve).

There appears to be an absence of benchmarks for prices, costs, or profits in the legal industry in Canada. As a result, many firms use some form of “cost plus” pricing formula (aggregating their various input costs and adding on some notional value of rate of return on investment as their profit). A lot of pricing appears to be directly linked with costs, with little or no differentiation for performance. Merit appears to be a given, with a lawyer’s status in a firm or organization and/or years of experience affecting individual pricing decisions.

The “cost plus” approach is not universal throughout the legal industry in Canada. Personal injury and class action law on the plaintiff side all carry contingency fees, as does most plaintiff employment law. Many criminal lawyers operate on a fixed fee basis, rather than basing their billings on actual time and effort expended.

As indicated earlier, there is a growing demand from clients for lower prices in general – whether fixed or variable – and for the reduction in use of the “billable hour” as a pricing method. Some clients are seeking alternative fee arrangements (AFA).¹⁵ Nonetheless, new billing models are emerging to replace or supplement billable hours.

The most notable trend for the future is that clients no longer accept that firms are the sole arbiter of price.¹⁶ This pressure is forcing legal providers to re-examine their cost structures and to find ways to reduce or eliminate costs. Some methods mentioned earlier include LPOs or moving operations to lower cost domestic locations (“near-shoring”), although, so far, this latter practice is more common in the US and the UK than in Canada.

As the legal industry examines its cost structures, it will also have to take into account the costing of new client demands such as project management and risk management. Often these are just lumped into the overall cost of a file. A further issue that requires consideration are costs on the client side. Clients experiencing new or higher costs at their own end when involved in a legal file will put additional pressure on legal providers to reduce the overall bill.

Another issue is the growing cost of the justice or court system in an era when governments are looking for ways to reduce costs.¹⁷ This will certainly affect issues of access to justice and likely drive a lot of dispute resolution files from the public courts into the private sphere.

5.5 Legal Products and Services Definition

One issue that becomes evident in trying to assess and rationalize the economic underpinnings of the legal industry in Canada is the fact that there appear to be no universally accepted definitions or descriptions of legal products and services (as compared, for example, with various segments of the medical profession). Such an itemization and standardized inventory of services and products could be important in the future not only for legal practitioners, but also for clients, regulators, and educators.

More exact descriptions of certain legal services and products could lead to greater transparency for clients. But they might also increase the propensity for clients to seek disaggregation, disintermediation and an unbundling of services. Currently, it is difficult for clients to specify exactly what they want lawyers to do, and what services they prefer to provide themselves or to buy from non-lawyers.

In terms of new products and services, clients will likely be seeking those that are more technologically-supported, such as online dispute resolution (ODR) and “intelligent search” or assisted discovery. They may also be seeking to avoid legal problems through preventative lawyering. Some competing or complementary products or services, like alternate dispute resolution, will likely continue to grow in importance.

In some cases, larger clients with diverse needs may aggregate their legal requirements (in some ways the opposite of unbundling) so that they can create more cost-effective arrangements with a firm or group of firms.¹⁸

In the future, some clients may want to purchase only a specific product or service; others could also want an ongoing professional relationship. This type of “wrap” arrangement could defy product/service definition and could also be problematic in terms of pricing arrangements.¹⁹

5.6 Legal Products and Services Production Function (The Structure and Organization of Legal Practice)

In this section we will examine how legal products and services are created. In Chapter 8, we will look at how this and other factors could impact legal business structures and models in the future.

The production of legal products and services is a fairly universal process, relying heavily on labour and knowledge factors. As lawyers and firms increasingly introduce technology into their operations, there may be a greater need for financial capital for this area in addition to investments in “bricks and mortar”.

In certain areas, there are attempts to capture market share through specialization despite regulatory impediments to marketing oneself as a specialist. However, very few firms invest in research and development in new products or services. There is certainly room for better understanding and improvement of the production process through process mapping and other techniques. There is currently little information on how individual lawyers and firms organize and operate.

As described earlier, to satisfy client demands there have been moves towards disaggregating various processes into smaller, discrete tasks, with the effect of creating more specialized products, especially those that are standard or routine. As Richard Susskind points out, not all work can be “commoditized”, and the real challenge for the future is to disentangle those parts of legal work that can be “commoditized”, those that require human crafting, and all points in between.²⁰

The lack of information on underlying production functions may be the cause of various internal inefficiencies, which may be at the root of the price/cost discordance cited earlier. In-house counsel are one group of legal practitioners who are facing increased pressure to understand more thoroughly the mechanics and costs of their operations. As part of a corporate team, they must demonstrate that they bring value to their organization in a way that is price competitive and benchmarked against other legal departments, in parallel with other internal support functions, as companies try to enhance their “bottom lines”.

One factor of productivity that is underdeveloped in the legal profession is entrepreneurship. With many new types of suppliers entering the marketplace and with more discerning and demanding clients in the future, there will be a need for more creative ideas in the legal industry besides “let’s do more of what we do, but better, faster, and cheaper”. Technological solutions may lead to a greater variety of business models for a wider variety of legal services.

As discussed in Chapter 2 on change, many of the important breakthroughs come from outside an industry. Law firms and lawyers may have to take advantage of their “incumbent” status or else risk losing more and more of their market share.

6.0 KEY SOCIAL TRENDS AND ISSUES

Social trends and issues in the legal profession and the legal industry in Canada reflect many of the same ones that are facing Canadian society in general.

6.1 General Demographic Trends

Research on demographic trends documents many of the key statistics and issues for lawyers.²¹ These include:

- *The number of practicing lawyers in Canada is growing faster than the general population;*
- *Practicing lawyers are getting older and this trend will continue until the senior cohort retires;*
- *The current median age for lawyers in Canada is 45.6 years and the average retirement age is 75;*
- *Currently, admissions to law school are increasing more quickly than the growth in the number of practicing lawyers;*
- *Since 2000, the number of practicing lawyers has increased by five times the rate of increase in the general population;*
- *Fewer young lawyers are choosing to practice outside urban centres;*
- *There is an increase in mobility between provinces and internationally;*
- *About two-thirds of Canadian lawyers are in private practice, about 20% are in government organizations, and just over 10% act as in-house counsel.*

6.2 Gender

Although the proportion of practicing female lawyers has increased only slightly from 2000 to 2010 (from 33% to 37%), drilling down into the data finds signs that the percentage will continue to grow at a significant rate. For example:

- *Females account for 54% of new admissions since 2000;*
- *Female lawyers with less than 10 years of experience increased from 48.6% of the legal population in 2000 to 54.5% in 2010.*

It should be noted that the proportion of women non-practicing lawyers increased from 37% in 2000 to 41% in 2010. Further, the proportion of women lawyers working in insurance-exempt positions increased from 46% in 2000 to 50% in 2010.

So gains are being made in gender equality. While the number of women in the legal industry is growing, that has not as yet translated into a significant increase in women in top management positions in firms. It should be noted that many female practitioners are choosing to work outside of private practice, in some cases choosing corporate counsel positions.

6.3 Diversity

There are no national statistics on the participation of historically marginalized groups in the legal industry in Canada. Some provincial studies (British Columbia, Ontario, Nova Scotia) have captured limited (and inconsistent) data, but taken together they indicate that while some progress is being made in this area, the proportion of participation by historically marginalized groups is still below the make-up of the general population. It will take some time for this participation statistic to reflect the overall population profile as it also depends on the demographic makeup of retirees. There is already some experience with corporate client demands for diversity within law firms.

6.4 Motives and Values

Underlying these statistics are a number of important trends which may reflect changing motives and values for lawyers, especially young lawyers and new admissions. There appears to be an increasing number of lateral or even downward career moves. Some lawyers even opt out of the profession entirely for financial or other reasons, or choose different ways of working including contract work, part-time work, and work-at-home assignments.

A younger cohort of lawyers is bringing a new set of preferences and expectations to the profession. For example, the speed of communication and the democratization of discourse and planning through social media could find their way into management and decision-making functions in legal practices in the future. Technology-based work in an electronic workplace is considered the norm rather than the exception.

As with other industries, the disparities in motives, values, expectations and preferences between generational cohorts could create some tension. This issue may require some attention, especially if older workers stay on the job longer for financial or personal reasons. Ambitious young lawyers may want to move up the ranks quickly. This could be seen by some older practitioners as an unwillingness to “pay their dues”. In turn, older lawyers may be seen as intransigent for wanting to hold onto their jobs too long, not opening up space for a younger generation of lawyers. The structure of the traditional firm may not resonate with the aspirations of younger lawyers and they may launch new kinds of legal businesses that could be another transformative force in the marketplace.

7.0 KEY TRENDS IN TECHNOLOGY

Of all of the critical change factors in play, none appears to be more important than the rapid growth in innovation and adoption of new technology in virtually every area of society. In the coming years, technology will play both a disruptive role in challenging the status quo and a transformative role in assisting the legal industry into new forms of service delivery, knowledge development, communications, management and administration.

7.1 Major Innovations

Virtually every legal futurist places technology at the top or near the top of major issues impacting on the future of legal justice²². Richard Susskind isolates a number of technologies that he believes will have a major effect on the practice of law and the administration of justice in the future.²³

7.1.1 Online Dispute Resolution

ODR could replace court or other personal appearances by the parties with contacts made electronically, lowering costs and speeding up outcomes through e-negotiation and e-mediation. It is reported that eBay already resolves 60 million disputes a year through ODR.

7.1.2 Electronic Marketplace

Closely related to this concept is the development of a full-blown technology-enabled marketplace where sellers of legal services can present their offerings, credentials and fee structures: and buyers can choose the types of services they wish to purchase, investigate a seller's quality and reputation, and even purchase services through forms of online auctions. The electronic marketplace will likely be suited to more routine work rather than to complex files or ones that require a high degree of personal service.

Virtual law firms may appear as there will be less and less need in certain areas of law to have a physical presence.

7.1.3 Intelligent Systems/Artificial Intelligence

Computer systems are becoming much more adept at mimicking or even surpassing the capabilities of humans in managing and accessing data, solving problems, and drawing conclusions. Such AI will become much more the norm in the coming years, including in the legal industry. Because of their ability to analyse large bodies of documents with speed, precision, and recall, computers will likely be able to outperform humans in certain areas. "Assisted discovery" could create time and cost savings for clients. Ultimately, intelligent systems may be able to offer advice based on comprehensive analyses of data and risk factors.

7.1.4 Social Networking

The explosion in growth and usage of social networks (e.g. Facebook, Twitter, LinkedIn, YouTube) has created a whole new space and set of rules for human interaction. Parts of the legal profession in Canada have been slow to embrace and adopt social networking, although billions of people participate in these communications platforms, including a younger group of clients and a younger group of lawyers and law students.

Social networking is becoming not only part of a new way of doing business, but also integral to a new way of sharing ideas and client expectations. Sites like Slaw have become hot spots for industry thought leaders and early adopters.²⁴

Closed networks for law firms and legal departments already exist (the most popular is Legal OnRamp), although to date this type of site has made only modest inroads in Canada.

7.2 Impact on Client-Lawyer Dynamics and Loyalty

A well-informed client will be a benefit to a legal practitioner; a misinformed client will present an additional hazard, obstacle, and potential cost factor on a file (as many doctors have found when confronted by patients who have already performed “self-diagnosis” based on information found on the Internet).

The shift created by an onslaught of online information will likely challenge important face-to-face relationships that develop between lawyers and their clients and will certainly affect the degree of loyalty that comes from continuing personal interactions in certain legal services. This may not be the case where there is a greater need for clarity and professional judgement.

7.3 Economic Impacts

As mentioned in Chapter 5, the availability of electronic delivery options will put downward pressure on prices for legal products and services. Better and more available information should lead to more accurate pricing models. However, this development could be extremely disruptive, especially to lawyers and firms with rigid structures and policies.

As indicated earlier, the data management and analytical capabilities of new technologies can support disintermediation, unbundling of services, and other efforts to move the client closer to the provider and the ultimate service or product.

7.4 Regulatory Impacts

As more and more transactions are conducted online, there may be a need to revisit legal and regulatory systems to ensure that there is a sufficient degree of oversight. Many services may be provided from distant suppliers and it will be important to have at least fundamental harmonized levels of supervision to ensure quality and probity. Even when not distant, clients have high expectations regarding assurances of the quality of the legal services they purchase, including those purchased online.

Regular or routine “commoditized” services may be provided in the future by both supervised and non-supervised non-lawyer providers. This is a big issue in the U.S. where certain online services have been challenged as the unauthorized practice of law.

7.5 Reputation and Branding

The Internet and social media will likely provide innovative platforms to support increased marketing by legal practitioners. But it should also provide opportunities for competition from non-lawyer providers. In such a crowded and complex communications landscape, branding could become an important differentiator for marketing strategies. Branding is much more than logos, fonts and colours, and encompasses the whole set of values and competencies embedded in and represented by a firm.

Because some information in these new channels can be untrue or misleading, there would be a growing necessity to regularly audit one’s brand and one’s reputation on social media. Several bad reviews – even if false – could create major problems for uninformed or unsuspecting firms or lawyers. As difficult as it might be, the only recourse for false information would be to rebut through the same media. Hence, social media monitoring would be as important as advertising and marketing.

In addition to individual lawyers and law firms, the legal profession itself would need a branding approach to differentiate it from non-lawyer providers.

7.6 A Cultural Shift

Choosing to adopt the newest forms of technology may not be an option for most lawyers and firms in the future. An entire generation has expectations that service providers will conduct business in a way to which they have become accustomed – quickly, directly, and online.

One issue that must be considered are new standards for privacy, generally thought to be lower among younger people. This change may challenge established rules for older lawyers and more traditional law firms and legal organizations in areas such as client confidentiality and privilege.

8.0 BUSINESS STRUCTURES AND MODELS

Change will affect individual firms and legal practitioners in different ways. This chapter will deal with some of the potential impacts on existing legal business structures and models.

8.1 Large Firms/Partnerships

The traditional large firm partnership model will come under considerable stress from without and within. External pressures, such as increased competition and the desire for AFAs, will force larger firms to adopt new management and hiring approaches to improve efficiency and economy. These pressures could also affect profitability, leverage and structure including the number of equity partners. Other business structures may be better suited to improving quality control, service delivery, and investment in technology and infrastructure. Lawyers deemed “surplus” by big law firms may embrace the entrepreneurial values desired by more and more clients and come back as strong competitors to their former firms.

To compete effectively, large firms may have to either grow organically or through mergers, either nationally or internationally. In addition, they may collaborate with other firms on large projects or for large clients to remain active, but competitive. To differentiate themselves from competitors, larger firms will likely continue to take on high profile non-lawyers to tap particular markets and contacts. The growth of MDPs may continue, but this trend is currently virtually non-existent in Canada.

Internally, there may be increased tension between income and equity partners and salaried associates. As clients tighten the purse strings, specific projects and files may have to be “delayered”, with one or two specialists taking on an account, rather than a “wolf pack”.²⁵ Similarly, articling and initial career positions could continue to come under pressure as clients refuse to pay full fees for trainees or new workforce entrants. The cost of training may have to be absorbed or offloaded by the firm, unless other supply arrangements can be made (e.g. contract lawyers, LPOs, etc.). Indeed, these other supply arrangements may limit the number of associates needed by firms which could have long-term implications for partnership prospects as well as firm structure, profitability and growth.

8.2 Alternate Business Structures

The pressures on firms may force them to seek ABSs including non-lawyer ownership, but that would require changes in current regulations. Such structures, which became legal in England and Wales in 2007 and came into force there in 2011,²⁶ are currently not in place in Canada. But global trends such as publically-traded law firms and non-lawyer ownership could migrate to Canada as markets become more closely connected and competition increases.²⁷ Firms seeking to invest in new processes will be drawn to such arrangements to finance the development phase of their work.

8.3 Mid-Size Firms

Mid-size firms may see themselves squeezed by the nimble, efficient, cost-effective specialists on one end of the spectrum and by the large firms with professional management, large capital assets, multi-disciplinary capabilities, multi-jurisdictional presence and market domination on the other.

Such mid-size firms may have to band together through mergers or collaborative arrangements, splinter into specialities, or disappear altogether.

8.4 Small Firms and Sole Practitioners

Although size is often considered an advantage in meeting strong competition, smaller firms or sole practitioners may have an advantage in the legal industry of the future although possibly with lower revenues. In addition to their traditional role as professional advisor, the increased use of technology could advantage small firms over larger entities. Small firms may be well-placed to provide increased specialization, contract or project work, or even outsourcing services. Virtual firms will be another solo or small firm model that will be able to compete effectively both on price and on specialization.

In serving individuals, as opposed to organizations, the research indicates that solo or small firms may benefit from technological advancements which facilitate standardization and frequent communication and collaboration by automating tasks which provide cost reductions and create efficiencies. Similarly, by implementing a task- or process-based approach to their work, these firms may also be able to employ additional non-lawyer staff. These, in turn, may serve to attract potential clients who today represent a substantial portion of the latent market for legal services.

8.5 Some Overarching Trends

Whatever the size and structure of the new business models, there will likely have to be major emphasis placed on building client relationships and goodwill. As mentioned earlier, traditional loyalties may fall by the wayside in the legal industry in the future.

Technology should be a major factor in facilitating these lawyer/client relationships. But it would also be an integral part of knowledge management, process and project management, service delivery, communications, and administration.

Firms, whatever their size, may have to identify, promote and protect their unique blend of services to provide value to the client. Similarly, the legal profession may have to establish its own brand to counter persistent problems of a negative image of lawyers and to identify lawyers as different and better than non-lawyers for specific situations that require their services.

Finally, the demographic trends described in Chapter 6 may rapidly alter the makeup and culture of traditional firms.

9.0 IMPACTS ON INDIVIDUAL LAWYERS

Individual lawyers will be impacted by the high degree of change that will be taking place in the industry in virtually every segment of the market.

9.1 Career Prospects and Progression

With the apparent oversupply of lawyers and stiffer competition from new suppliers, new entrants could be facing a more difficult career path. As the market for legal services shifts, they may require both traditional and non-traditional skills to compete. New lawyers may also be facing potentially lower incomes than current practitioners, except for individual high fliers. This may not be the case in certain areas and types of practice where creative entrepreneurial approaches may open up new markets or redefine parts of the existing market.

New lawyers may have to shift jobs or firms several times during a career, which will necessitate continuous professional development. Or, those entering the profession who are not accustomed to the structures and operations of traditional firms may bring an entrepreneurial spirit and sidestep current providers by offering services in a new way.

9.2 Work/Life Balance

Lawyers may continue to work long hours as technology turns the marketplace into a 24/7 operation. There could be some pushback as some lawyers try to achieve a better balance between work and family life. However, trends show that, rather than balance, there will be a “blending” of both work and personal responsibilities, with the demands of each encroaching on the time and attention of the other.

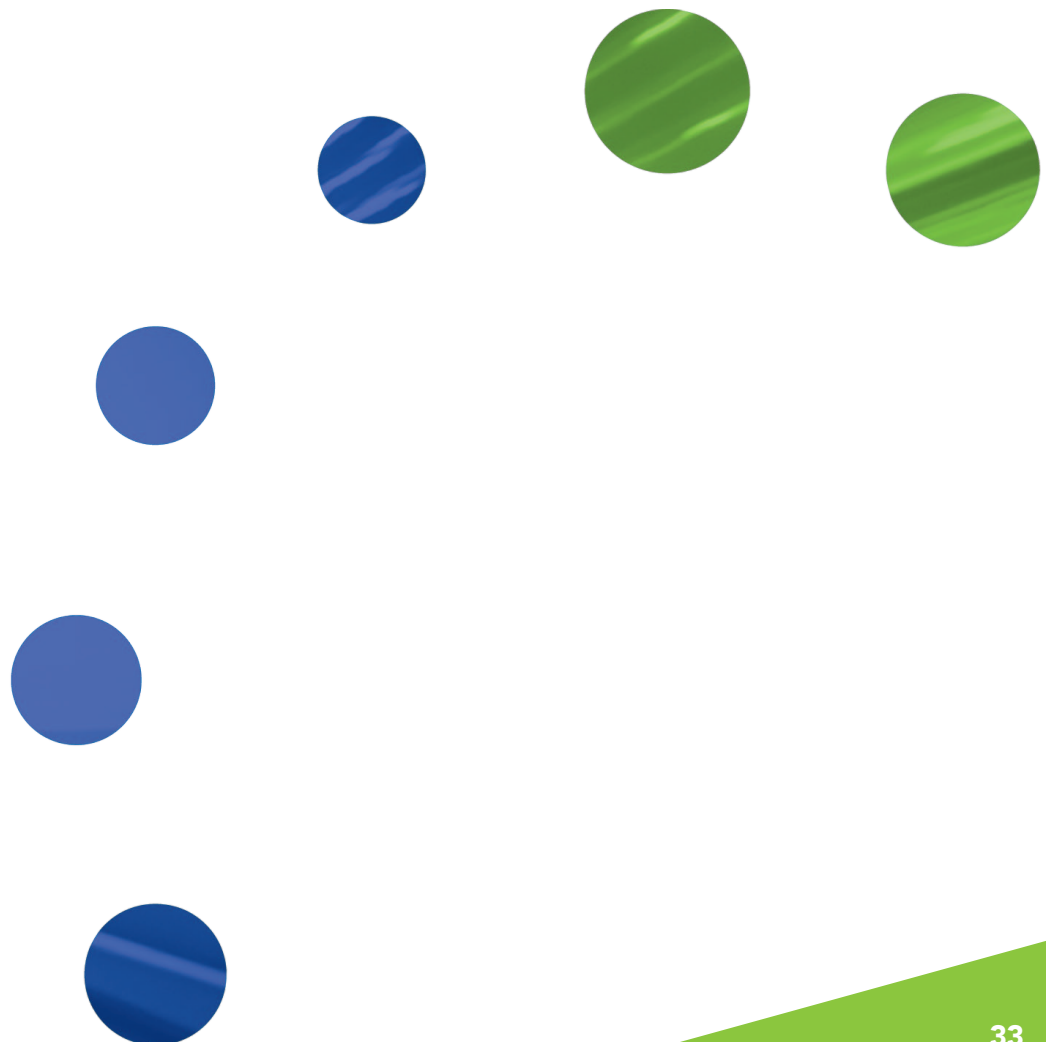
More positively, embracing management techniques from other industries could free lawyers from current work and time pressures. For example, a lawyer may work on every step of a file with a small team who all share the same aspirations (e.g. progressing to partnership). The team would all be expected to contribute to the file, but work could be divided into business development/sales, research, production and delivery. This adds greater predictability to work flows and, in turn, creates opportunities for better balance.

9.3 New Skills Requirements

In the future, lawyers may have to develop skills that go beyond knowledge of the law and legal process. Indications are that non-legal skills that will be required include risk management, project management, and social networking. Computer literacy is now a given and legal practitioners will have to stay abreast of the latest technical innovations so that they can remain “cutting edge” and competitive.

Advocacy, drafting and negotiation skills, which are the building blocks of a legal career, will continue to be essential. However, lawyers will have to adapt these skills to meet client expectations and to be responsive in the new areas in which they may have to operate such as online dispute resolution.

In-house counsel could need an advanced knowledge of business and commerce, likely with a specialization in another field besides the law.



10.0 LEGAL EDUCATION AND TRAINING

One area that is especially vexing when examining the future of legal services in Canada is the challenge of determining how to educate and train the new generation of lawyers, and what skills and expertise they will need beyond knowledge of the law and the justice system.

With the speed of change taking place in the legal environment, choices made at the beginning of a student's course of study may be outdated by the time he or she completes all of the necessary requirements for practice.

10.1 Law Faculties

Law faculties should continue to play an important role in teaching the theory of law, legal principles and legal reasoning. While some observers would have them place increased emphasis on the practice of law, law schools in their current form may not be the best option for providing practice training. Susskind and others have looked at the medical profession for inspiration.²⁸ In medical school, the focus switches quickly from the classroom to the hospital, where teaching and practice are integrated. Such a shift in the legal profession would require a deeper common understanding between the bar and the academy, between professors and practitioners, something that would require a change in culture on both parts. The accounting profession in certain areas has also experimented in shifting education and training outside of the universities, including creating its own self-styled "universities".²⁹

10.2 Continuing Professional Development

All practicing lawyers will need to keep abreast of what knowledge and skills are required. Currently, much continuing professional education is provided in-house, by regulatory or voluntary associations, or by private entities. Because of the scope and cost of new training requirements, there will likely have to be greater cooperation in this area between law schools, law firms, other businesses employing lawyers, other employers, professional development providers, and legal practitioners. Part of this sorting out process will involve determining which group is best placed to provide which types of training, always keeping in mind the learning preferences of the students. Rather than being disjointed, there should be an effort to make the delivery of continuing education and training more "seamless".

10.3 Future Areas of Training

In Section 9.3, a number of future skill needs were presented. Richard Susskind suggests that in training lawyers for the future, emerging fields of competency and new areas of service could include: legal risk management, legal project management, legal process analysis and legal knowledge engineering.³⁰ Basic leadership training would also be an important component for future skills development. In-house counsel in particular would benefit from courses in business management as well as in functional areas such as finance or human resources. Greater emphasis will likely be required on knowledge of international justice and regulatory systems as well.

10.4 E-Learning

There is currently debate in the profession and amongst educators about how much and what types of learning should take place online. The question is whether e-learning is more efficient permitting greater access versus the concern that learning is much deeper if done in a group discourse and debate.

Some of the fears about e-learning may be caused by questions of quality, reliability, and credentials. E-learning is still in its infancy in many parts of the legal profession. But as more and more young or aspiring lawyers demand this type of teaching method and as more and more credible providers come into the online marketplace, this is an issue that will grow in importance.

It should be noted that about 65% of the bar admission courses in Manitoba, Saskatchewan and Alberta are now taught online. There is also a CA School of Business which teaches in a virtual environment.

In discussing apprenticeship models, Susskind suggests that the legal profession may have to consider e-learning and simulated legal practice technologies as an alternate way of exposing legal trainees to a wider range of legal issues.³¹ This is especially true in light of recent experience with the effectiveness and sustainability of the articling system in Ontario.

11.0 REGULATORY ISSUES

One of the objectives of the Futures Initiative is to examine some of the regulatory issues that may arise for the legal profession in the future. As the legal industry is pressured by forces from within and from beyond, the latter seeking to change it from a closed, protected industry to one that is more open, there will inevitably be calls from governments, clients, and the industry itself to examine current regulatory systems to verify that they are still effective.

11.1 Law Firm Ownership

Ownership of incorporated legal practices has been open to non-lawyers in parts of Australia for over a decade. The Legal Services Act of 2007 in England and Wales now permits ownership of legal businesses by non-lawyers and by investors outside of the firm.³² Liberalization of law firm ownership may spread to other countries despite being rejected recently in the American Bar Association's Commission on Ethics 20/20. From a regulatory standpoint there will likely be a need to seriously consider permitting non-lawyer ownership of legal practices, as well as finding ways to require lawyers to adhere to their code when working in non-traditional areas. With publicly-traded companies such as Slater and Gordon in Australia already in existence, this will require thoughtful assessment of the impact of non-lawyer ownership on competence, conflicts of interest, confidentiality, independence, fidelity to law and other issues.

11.2 Law Firm Regulation

For the most part, Canadian law societies regulate lawyers and not law firms. Law societies set rules which are mostly directed at the conduct of individual lawyers. While some practice audits of individual lawyers are conducted, the regulatory process is mostly complaint-driven, focused on the conduct of individual lawyers.

There is increased thinking about achieving better regulatory outcomes by focusing on enhancing the "ethical infrastructures" of law firms. This would prevent misconduct before the fact, rather than meting out punishment after the fact as a result of client complaints. While penalties to individual lawyers may be appropriate, law firms themselves also play a role either directly or indirectly.

11.3 Multi-Jurisdictional Practices

As law firms continue to create mega-firms to increase market advantages, they may increasingly operate in multiple jurisdictions. Within Canada, this has led to regulatory cooperation through the Federation of Law Societies of Canada. Internationally, legal regulators have recently agreed to establish a “support network” for themselves, following an inaugural international conference for legal regulators.

While a degree of harmonization internationally may result, operating in multiple jurisdictions will be a complicated matter for law firms and for clients. Equally, decisions affecting Canadian practice in multi-jurisdictional law firms will inevitably be made by lawyers (or non-lawyers) who are not subject to Canadian legal regulation. Regulation of mega-firms by traditional institutions may effectively mean that those firms are not regulated.

11.4 Regulation of Lawyers Versus Regulation of Services

To the extent that legal services are only allowed to be provided by lawyers, regulation of lawyers is effective regulation of legal services. But it is increasingly clear that some legal services are not necessarily best delivered by lawyers or law firms. In addition, many more people are dealing with legal problems without the benefit of any legal services at all.

Some legal services are commonly provided to individuals by non-lawyers including paralegals. Legal services are increasingly provided to larger enterprises by legal process outsourcers as well as by non-lawyers. With ongoing technological advances, legal services are more commonly delivered remotely, and as indicated earlier, technology will increasingly be able to customize legal advice and services to client requirements.

This evolution in the marketplace suggests that consideration must be given to whether the nature of legal regulation must change to ensure client protection and protection of the administration of justice and rule of law. The regulation of paralegals in Ontario is one example. By the same token, these types of market changes raise the question of whether current regulatory constraints on business structures and economic dealings unduly limit innovation.

11.5 Self-Regulation

As the environment for legal services changes, there may be increased focus on the advantages and limitations of regulation of legal services by lawyers. As legal services are increasingly delivered by non-lawyers, legal regulation by lawyers raises the risk of protectionism. But the commitment of lawyers to high standards of professionalism in legal regulation protects consumers, the administration of justice and the rule of law. In a more unregulated world, even limited self-regulation may be seen as a better option. Decisions may be required on which aspects of the delivery of legal services should be regulated, by whom and for what reasons.³³

12.0 OTHER IMPORTANT ISSUES

There are a number of issues which do not fit neatly into the previous clusters. They are presented here to provide a more complete picture that should be considered when looking at the future of legal services in Canada.

12.1 Role and Value of the Legal Industry

With pressure from clients increasing on a number of issues discussed earlier, individual lawyers, law firms and legal organizations, and the overall legal industry will likely have to reconsider and redefine respective roles in society. Where there is variance between what legal practitioners provide and what clients want and are willing to pay for, there may have to be a culling of products and services so that there is more emphasis on a smaller range where greater knowledge, skills, and participation of trained lawyers is required. Rather than resisting paralegal and other new competitors, lawyers could build their strength by focusing on a core group of products and services.

The role of lawyers as advocates for the rule of law and as protectors of the justice system may have to be clarified as well, both for those in the industry and those outside. Organizations like bar associations play an important role in this area. As the role of lawyers changes, these groups will likely play a central role in leading or focussing discussions on these important issues.

12.2 Industry Data

Planning and decision-making at the industry, firm and individual lawyer levels are hampered by a lack of hard data on the legal industry in Canada. While data does exist in clumps and patches, here and there, there is no legal industry organization tasked with capturing the information that firms and the industry need. Often data collected by other agencies such as Statistics Canada are used as a surrogate.

Without hard information, key decisions are often made on anecdotal information or precedent. Imperfections in the marketplace in the past may have masked and protected against errors created by such less rigorous processes. As the market share of the industry declines and excess capacity appears, fact-based decisions will become more and more necessary.

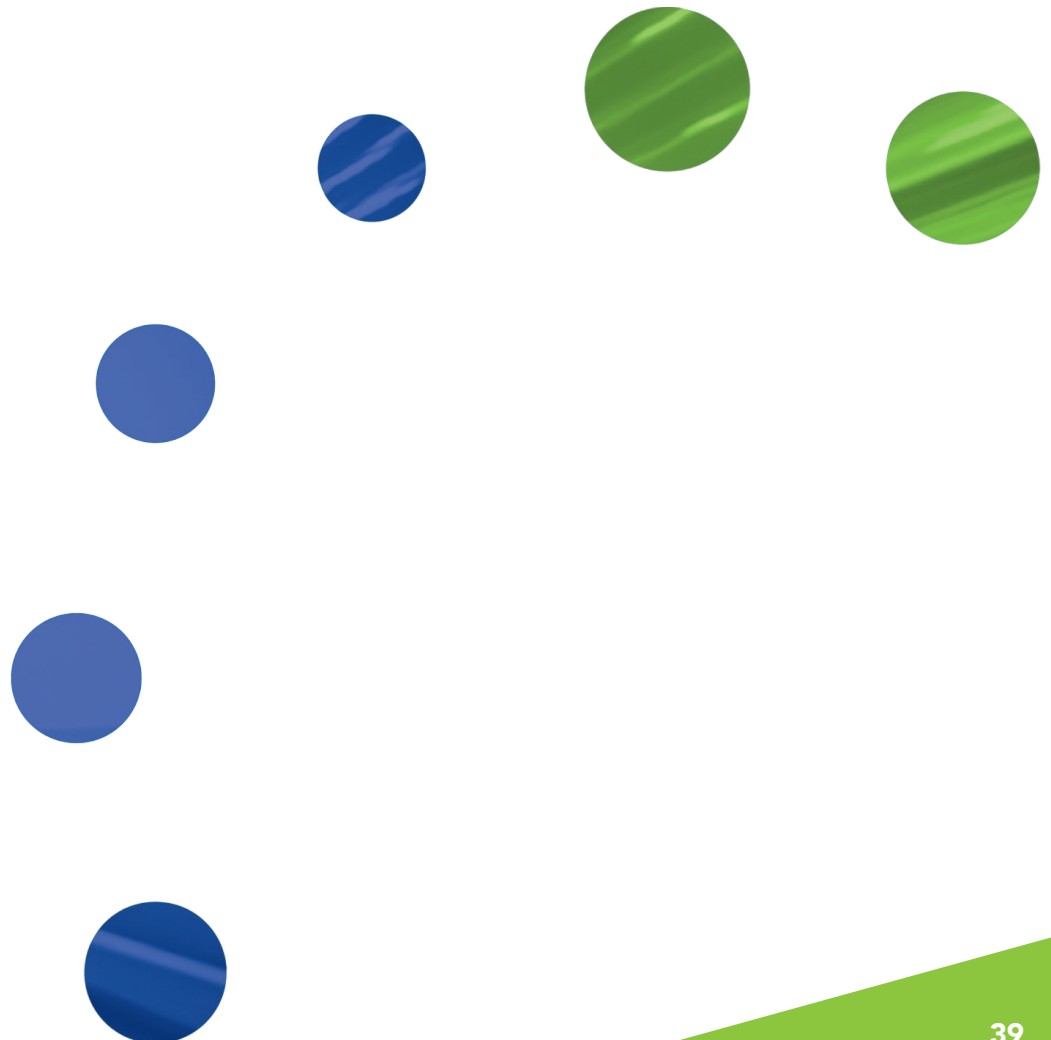
12.3 Access to Justice

Although it is a subject of a separate initiative being conducted by the CBA, access to justice should be mentioned here as an important issue that must be considered. A renewed understanding of legal service delivery must have at its core a commitment to the availability of affordable legal services to a broad range of Canadians.

12.4 Attitudes to Change

Across the legal industry in Canada there may be vastly different attitudes to change. These may vary along age, gender, or other demographic lines. Or they may vary with area of specialization, work structure, client base, or other market-related factors.

Generally, the legal industry in Canada is considered to be conservative and more likely to be resistant to change. Conservatism should not be confused, however, with complacency. As a new generation of lawyers enters the profession, as markets become more competitive, as transactions become more transparent, as technology alters what work is done and how, shrewd practitioners may be compelled to step out of their comfort zone a bit. History is filled with high-profile examples of companies and industries that were either resistant to change or unable to identify and react to changes that were happening.³⁴



13.0 THE NEXT STEPS

Many of the trends and issues outlined in this paper were generated by several recent studies commissioned by the CBA. As a next step, the CBA will consult with its membership and the profession as a whole on many of the major themes that are explored in this report.

With this information, the CBA will conduct additional research and consultations on the implications for legal services and the profession and provide specific recommendations on what actions should be taken in various areas. As a final step, the CBA will help develop specific tools and resources that are within its own mandate and strategic priorities, and encourage other appropriate bodies to develop complementary tools and resources.

ENDNOTES

- ¹ See Phase 5 study for the CBA “Research into Shifting Client Expectations of Legal Services in Canada” and “2013 In-House Counsel Barometer” (Canadian Corporate Counsel Association)
- ² See section 7.1.3 for more on Intelligent Systems/Artificial Intelligence (AI).
- ³ See for example the difficulty of American pharmacy regulators in trying to regulate drugs sold to American consumers by Internet pharmacies located in Canada and elsewhere.
- ⁴ See the work of Larry Richards which is presented in Bruce MacEwen’s paper for the CBA “You Can’t Argue With 100 Years of Success: Navigating Beyond the Inflection Point”.
- ⁵ One of the areas where this issue is evident is in the articling debate currently underway in Ontario.
- ⁶ See, for example, MacEwen’s “You Can’t Argue With 100 Years of Success: Navigating Beyond the Inflection Point”.
- ⁷ There is currently an appeal before the Supreme Court of Canada on the issue of mandatory retirement in large law firms.
- ⁸ These are well-documented in Richard Susskind’s paper for the CBA, “Key Trends in the Legal Marketplace”, with specific examples provided in the CBA paper “Innovations in Legal Services: 14 Eye-opening Case Studies”.
- ⁹ See Richard Susskind’s “Key Trends in the Legal Marketplace”.
- ¹⁰ See, for example, the case described in the CBA’s paper entitled “Innovations in Legal Services: 14 Eye-opening Case Studies”, where Pfizer brought together a group of 19 firms to increase collaboration and efficiency and reduce overall legal costs.
- ¹¹ See the CBA paper “Innovations in Legal Services: 14 Eye-Opening Case Studies” for further examples.
- ¹² See the recent Phase 5 Study “Research into Shifting Client Expectations of Legal Services in Canada”.
- ¹³ In his study, Richard Susskind suggests that in-house legal budgets may be cut 30-50% in the next three to five years.
- ¹⁴ CBA’s Envisioning Equal Justice Initiative addresses the needs of these groups.
- ¹⁵ Although, as Richard Susskind points out, those arrangements are often nothing but modified or re-packaged versions of “billable hours” pricing.
- ¹⁶ See MacEwen’s “You Can’t Argue With 100 Years of Success: Navigating Beyond the Inflection Point”.
- ¹⁷ Susskind notes a general trend towards a reduction in public aid.
- ¹⁸ Again, see the Pfizer case in CBA’s Case Studies paper.

- ¹⁹ See, for example, what happened in the stock brokerage industry when companies introduced a single blanket “wrap” fee for certain accounts as opposed to charging on an individual trade basis.
- ²⁰ See Richard Susskind’s “Key Trends in the Legal Marketplace”.
- ²¹ See CBA paper on “Demographic Trends”.
- ²² See Stéphanie Vig’s “The Future of the Legal Profession: Report on the State of Research” and Simon Fodden’s “Voices of Change: Canadian Social Media and Other Writings on the Future of Legal Practice”.
- ²³ See Susskind’s “Key Trends in the Legal Marketplace”.
- ²⁴ See Simon Fodden: “Voices of Change: Canadian Social Media and Other Writings on the Future of Legal Practice.”
- ²⁵ See MacEwen’s “You Can’t Argue With 100 Years of Success: Navigating Beyond the Inflection Point”.
- ²⁶ See Legal Services Act (2007) in the United Kingdom.
- ²⁷ For important examples of new arrangements see CBA paper “Innovations in Legal Services: 14 Eye-Opening Case Studies”.
- ²⁸ See Richard Susskind’s “Key Trends in the Legal Marketplace”.
- ²⁹ See specifically Deloitte University cited in Susskind’s “Key Trends in the Legal Marketplace”.
- ³⁰ See Richard Susskind’s “Key Trends in the Legal Marketplace”.
- ³¹ See Richard Susskind’s “Key Trends in the Legal Marketplace”.
- ³² The Legal Services Act (2007) in the United Kingdom.
- ³³ There is also the model of regulatory oversight (i.e. self-regulation with external oversight) such as the Solicitors Regulatory Authority in the United Kingdom or the Office des Professions in Quebec.
- ³⁴ See Bruce MacEwen on obsolete business models in “You Can’t Argue With 100 Years of Success: Navigating Beyond the Inflection Point”

ANNEX A BIBLIOGRAPHY

I Canadian Bar Association Commissioned Research

General Trends

Susskind, Richard, "Key Trends in the Legal Marketplace", July 2012, updated September 2012

Research

Vig, Stéphanie, "The Future of the Legal Profession: Report on the State of Research", September 2010, updated May 2012 and January 2013

Economics

MacEwen, Bruce, "You Can't Argue With 100 Years of Success: Navigating Beyond the Inflection Point", June 2013

Client Expectations

Phase 5, "Research into Shifting Client Expectations of Legal Services in Canada", June 2013

Innovation

Canadian Bar Association, "Innovations in Legal Services: 14 Eye-Opening Case Studies", June 2013

Demographics

Canadian Bar Association, Demographic Trends, June 2013

Social Media

Fodden, Simon, "Voices of Change: Social Media and Other Writings on the Future of Legal Practice", June 2013

II Other Related Reports and Studies

Canadian Bar Association, Notes from CBA Futures – Council Consultation, Mont Tremblant, P.Q., February 2013

Canadian Corporate Counsel Association, "2013 In-House Counsel Barometer", February 2013

ANNEX B

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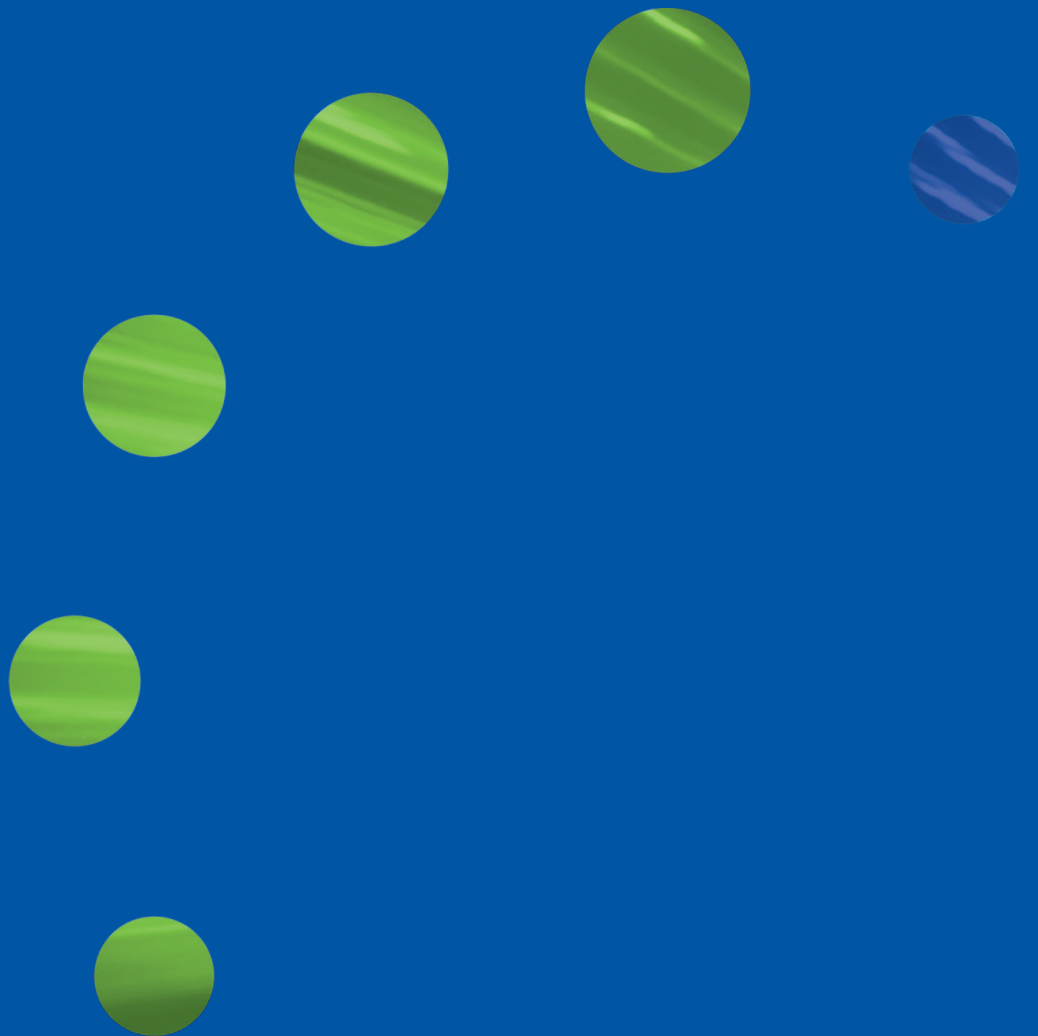
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