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The Influence of Artificial Intelligence on Your Practice: Have You Thought About It?

Montreal is one of the leaders in the development of artificial intelligence. This technology has significantly changed the world, especially in the workplace, where it has made remarkable inroads. The legal field will not escape this new trend and we are likely to see a profound transformation in the way we provide legal services in the coming years. According to a study conducted in 2017,¹ the legal field is the eleventh sector of activity most affected by artificial intelligence. Should we fear for our jobs? If we are to believe several experts, the answer is no. However, lawyers will certainly have to reinvent themselves. Indeed, some experts are of the opinion that between 13% and 39% of legal tasks could be replaced by artificial intelligence.²

The purpose of this article is not to take a position on whether artificial intelligence is good or bad, especially since no technology is good or bad in and of itself. Rather, it is the use we make of it that determines whether it is beneficial or not. Thus, the aim of this text is to get you to think about the future of the practice and the adoption of preventive measures to limit errors in connection with the use of artificial intelligence.

Definition of Artificial Intelligence

First of all, it is important to clearly define what we mean by artificial intelligence. A succinct definition defines artificial intelligence as [TRANSLATION] "human intelligence, manifested by machines".³ In other words, researchers aspire to recreate the full range of human cognitive abilities and transpose them into a machine. To date, it appears that they have not been able to replicate all of these human capabilities. In fact, research seems to be at a stage called an expert system where the machine [TRANSLATION] "simulates human reasoning and decision-making only in a *given* area of expertise".⁴

¹ François Normand, *11 secteurs qui seront touchés par l'IA*, Les Affaires, October 27, 2017. Found at: <https://www.lesaffaires.com/dossier/ia-comment-le-quebec-prend-part-a-la-revolution/l-intelligence-artificielle-touchera-tout-le-monde-mais-differemment-secteurs/598290>

² M^e Alex Shee, *Quand l'intelligence artificielle s'invite dans le monde juridique*, conference presented on June 15, 2017 as part of the Journées du Barreau du Québec.

³ *Id.*

⁴ Soleïca Monnier and Erwan Jonchères, *Intelligence artificielle et Justice canadienne, une conjonction bénéfique?*, BlogueduCRL.com, October 15, 2018. Found at: <http://www.blogueducrl.com/2018/10/intelligence-artificielle-et-justice.html>

Some Examples of the Use of Artificial Intelligence in the Legal Profession

In this section, we intend to provide an overall picture of the possibilities offered by artificial intelligence in the area of legal services. Here, then, are some of these possibilities:⁵

Optimization of Legal Research:⁶ Not surprisingly, artificial intelligence is well integrated into many traditional legal search engines. In such a case, artificial intelligence makes it possible, among other things, to refine the user's search and improve the accuracy of the suggested results.

Document Review:⁷ Similarly, there are technological solutions that can be used to review a large volume of documents and identify inconsistencies or potentially problematic clauses. Due diligence in the context of a transaction lends itself well to the use of such technology, as does preparation for a negotiation.

Legal Drafting / Document Automation:⁸ Artificial intelligence can also be used to draft contracts or the specification of a patent application. These technological solutions work in a relatively intuitive manner. Generally speaking, there is a virtual questionnaire in which the lawyer enters the information that should be included in the document. The software then generates an initial version which will have to be refined by the lawyer.

Assistance in Dispute Resolution: Other platforms allow litigants to settle their disputes without the services of a lawyer. In particular, the PARLe platform developed by the Cyberjustice Laboratory is worth noting. This platform is used by the Office de la protection du consommateur and more recently by the Commission des normes, de l'équité, de la santé et de la sécurité du travail. Among other things, it allows individuals to negotiate settlement offers in the context of their disagreement. That said, if the parties cannot agree, they can ask to use a mediator to help them find a solution to their dispute.

Assistance in Decision Making:⁹ Some artificial intelligence systems are now able to predict the chances of success of a case and even simulate a judgment. Litigants can therefore be assisted in making a decision regarding their case and thus minimize the costs associated with litigation. This artificial intelligence is part of the range of technological solutions also known as predictive justice. In short, the artificial intelligence system generates its prediction or judgment by studying previous case law and the information provided about the relevant facts of the case.¹⁰

⁵ This text is intended as an information tool. Although the names of some software programs are mentioned, readers should not take this as a recommendation as to which software programs should be used in their practice. It is up to each professional to conduct the appropriate research to determine the technological tool that best suits their needs.

⁶ From among the legal search engines that use artificial intelligence, Alex Shee, *supra*, note 2, gives the example of LexisNexis and Westlaw. SOQUIJ also uses artificial intelligence. See the Element AI website. Found at: <https://www.elementai.com/>; SOQUIJ, *Rapport annuel 2018-2019 : Nouvelle ère numérique de la justice*. Found at: https://soquij.qc.ca/documents/file/corpo_politiques/ra2018-2019.pdf

In particular, it states that SOQUIJ collaborated with Element AI and others in the legal community on a project to translate legal terms and concepts into plain language.

⁷ Andrée-Anne Perras-Fortin and Eric Lavallée, *L'intelligence artificielle au service de l'avocat : l'avocat robot est-il à nos portes?*, September 26, 2018. Found at: <https://www.lavery.ca/fr/publications/nos-publications/3133-lintelligence-artificielle-au-service-de-lavocat-lavocat-robot-est-il-a-nos-portes-.html>.

Software to assist with document review includes Luminance, Kira Systems and Thomson Reuters, among others. Examples of negotiation assistance software include LegalSifter and LawGeex.

⁸ Andrée-Anne Perras-Fortin and Eric Lavallée, *supra*, note 7, mention the software program Specifio. See also the Thomson Reuters website. Found at: <https://www.thomsonreuters.ca/en/contract-express.html>

⁹ See Tax Foresight and Employment Foresight by BlueJLegal, JusticeBot or Ross Intelligence Inc.

¹⁰ Andrée-Anne Perras-Fortin and Eric Lavallée, *supra*, note 7.

Virtual Courts: Finally, artificial intelligence has been used to create fully virtual courts. For example, in Ontario, it is possible to bring digital court actions in condominium disputes.¹¹ In the same vein, British Columbia has developed an online Civil Resolution Tribunal that allows litigants to have disputes relating to co-ownership and small claims adjudicated.¹² Finally, the Cyberjustice Laboratory is working on a new virtual court platform that will be able to "model in a very short time most of the major essential functions of a criminal, civil or administrative justice chain".¹³ The COVID-19 pandemic has accelerated the development of entirely virtual courts in Quebec, particularly to hear urgent family and criminal law cases.

We have identified several areas within the legal field where artificial intelligence is beginning to make its mark. That said, this technological breakthrough is not without some concerns. In the next section, we propose a brief portrait of the arguments for and against the implementation of artificial intelligence in the legal field.

Room for Debate¹⁴

Artificial intelligence advocates argue that it will allow lawyers to increase productivity and eliminate routine tasks that have no real added value for clients. This will result in lower costs for clients and therefore better access to justice. Lawyers will not be shortchanged, since the assistance provided by artificial intelligence will enable them to take on more cases. Artificial intelligence will also give them a better capacity to analyze the nuts and bolts of a case.

Notwithstanding the above, some people have reservations about the use of artificial intelligence because they argue that it is not neutral. The recommendations generated by the algorithms depend on the data programmed by their designer. However, both the designer and the data have biases. Indeed, historically some ethnic, social or economic communities have been more discriminated against by the judicial system. This discrimination is reflected, among other things, in court decisions. Thus, considering that algorithms use these decisions to make recommendations, the question arises as to whether the use of artificial intelligence will reproduce the discrimination of the past. In addition, a major challenge lies in the decision-making autonomy of the predictive technology user. More specifically, will users feel free to deviate from the machine's recommendation or, on the contrary, will they slavishly confine themselves to that recommendation?¹⁵ In other words, the fear lies in the loss of all creativity in the development of the law. Lastly, routine tasks such as case law research and contract drafting provide young lawyers with the opportunity to acquire the knowledge they need to excel. To the extent that these tasks will be entrusted in future to artificial intelligence, the in-office training of junior lawyers will have to be rethought.

¹¹ See the Condominium Authority of Ontario website. Found at: <https://www.condoauthorityontario.ca/en-US/tribunal/>

¹² See the Civil Resolution Tribunal website. Found at: <https://civilresolutionbc.ca/>

¹³ Cyberjustice Laboratory, *Virtual Court Platform*. Found at <https://www.cyberjustice.ca/en/logiciels-cyberjustice/nos-solutions-logicielles/le-tribunal-virtuel/>

¹⁴ The comments reported in this section are based, in particular, on the following texts: Soleïca Monnier and Erwan Jonchères, *La société des algorithmes – Partie 2*, ExtraJudiciaire, vol. 33, no. 1, February 2019, pp. 5-6; Annaëlle Pembellot, *Justice prédictive, solution ou simple reproduction du passé?*, Cyberjustice Laboratory, July 18, 2019. Found at: <https://www.cyberjustice.ca/2019/07/18/justice-predictive-solution-ou-simple-reproduction-du-passe/>; M^e Alex Shee, *supra*, note 2.

¹⁵ Soleïca Monnier and Erwan Jonchères, *supra*, note 14; Annaëlle Pembellot, *supra*, note 14.

Preventive Measures

Considering the technological solutions currently available, the following suggestions are relevant:

First of all, the general observation that emerges from the above is the need for human intelligence to remain "behind the machine". Current laws and regulations such as the *Act respecting the Barreau du Québec*¹⁶ or the *Code of Professional Conduct of Lawyers*¹⁷ exclude any reference to artificial intelligence in their respective texts. It must be concluded that lawyers (and to a certain extent solicitors) are the only ones who can perform the acts provided for in section 128 of the *Act respecting the Barreau du Québec*¹⁸ and be accountable for the quality of the services provided. Thus, lawyers must monitor the work done by artificial intelligence and ensure that they comply with their legal and ethical obligations.

Given the foregoing, the choice of artificial intelligence technology should be guided by the criteria of security and protection of professional secrecy.

You should also make sure you understand the features of the platform you are using, as well as its limitations. This will make it easier for you to detect errors made by the machine. Moreover, the prudent use of artificial intelligence requires an adjustment of the parameters of the technology so that any ambiguity is brought to the attention of a human.¹⁹

Raise awareness among legal and support staff and provide training to them on the safe and effective use of the artificial intelligence solutions used.

Moreover, implement a policy within the firm on the use of artificial intelligence technologies. For example, such a policy could include the following:

- The protection of personal and confidential information used by artificial intelligence technologies;
- The restricted use of artificial intelligence for certain acts;
- A procedure for verifying the recommendations, predictions and results produced by artificial intelligence.

Obtain your client's consent before using an artificial intelligence solution in their file. Make sure they fully understand how it will be used. You could include a reference to this in your engagement letter.

In all cases, document your file on the steps taken to validate the recommendations, predictions and results produced by the artificial intelligence solution.

In closing, the major technological revolution that is taking place in the legal profession is dizzying. Nevertheless, it will be interesting to see how we will succeed in reinventing ourselves to provide value-added services to our clients.

¹⁶ *Act respecting the Barreau du Québec*, CQLR, c. B-1.

¹⁷ *Code of Professional Conduct of Lawyers*, CQLR, c. B-1, r. 3.1.

¹⁸ *Act respecting the Barreau du Québec*, *supra*, note 16, s. 128.

¹⁹ Andrée-Anne Perras-Fortin and Eric Lavallée, *supra*, note 7.