Secretariat

fieldfisher

AI in Legal Practice: Navigating Technological Evolution

14 March 2024

AI in Legal Practice: Navigating Technological Evolution

The English legal system, steeped in traditional values, stands as one of the most distinguished common law judicial establishments, with roots tracing back to historic times.

Whilst the UK Courts have shown resistance to change over time, in the past decade they have embraced the use of some technologies that naturally improve efficiency. These technologies include CE-filing, online hearings, robo-courts, and digital trial bundles, to name but a few.

Before we briefly touch-upon the direction of travel of legal AI, let's look back at the key evolutionary points of legal AI.

Electronic Discovery – the Genesis of Legal AI

Discovery (or disclosure as it is known in the UK) is the name given to the procedures and processes by which parties exchange documents relevant to the issues in legal proceedings. *Electronic Disclosure*, is, as the name implies, the process of exchanging electronic documents relevant to a dispute. AI tools have developed alongside the exponential growth of data volumes to ease the burden of what would once have been a traditional document-by-document review.

In 2005, George Socha and Tom Gelbmann introduced the the Electronic Discovery Reference Model (EDRM) to streamline handling electronically stored information (ESI). This framework provided a much-needed structure for navigating the technical complexities of Discovery. At the time, no formalised framework existed that clearly outlined the process - while the EDRM diagram has remained essentially the same since its inception, it has changed in modest ways over the years.

Global Acceptance of ESI

From 2006 onward, the approach to ESI was accepted by global legal legislatures and judiciaries. For example, the USA's Federal Rules of Civil Procedure added the phrase "*electronically stored information*" to its rules in 2006. The UK's Civil Procedure Rules specifically legislated for electronic disclosure in Practice Direction 31B, which applied to cases commenced on or after 1 October 2010.

Predictive Coding

In the 2016 case of *Pyrrho*, the English High Court approved the use of predictive coding in disclosure reviews. Predictive coding, a component of Technology Assisted Review (TAR) or Computer-Assisted Review (CAR), involves training a computer algorithm to identify relevant documents within an electronic dataset. This process eliminates the need for manual review of every document. Expert reviewers initially train the algorithm by coding or tagging documents, enabling it to identify the most relevant ones. Human reviewers then assess these relevant documents, forming an iterative cycle of prediction and analysis to predict accurate coding outcomes. Documents deemed irrelevant by the algorithm are excluded from further review, streamlining the process. Notably, the UK's Civil Procedure Rules, along with Practice Direction 57AD (which governs disclosure in the UK's Business & Property Courts), expressly endorse the utilisation of computer-assisted review methodologies.

Court Processes

Since 2017, legal professionals and the public have had access to the online CE-File service for Business and Property Courts, Senior Courts Costs Office, and claims and appeals in the Queen's Bench Division at the Royal Courts of Justice.

Transcription Services

Digital transcription technology is now standard for major Business & Property Court trials and appeals, offering versatility and digital access without altering the process.

AI in Legal Practice:
Navigating Technological Evolution

Remote Hearings

The English civil courts wield robust case management powers, facilitating hearings and evidence reception via telephone or other direct oral communication methods, including remote witness testimony via video link. In response to the COVID-19 pandemic, Lord Chief Justice Lord Burnett of Maldon highlighted the imperative of maintaining judicial operations, leading to heightened adoption of telephone and video technologies for remote proceedings. Emergency legislation such as the Coronavirus Act 2020, coupled with judicial directives, streamlined the broadcasting of court proceedings conducted entirely through video or telephone. Temporary amendments to Civil Procedure Rules, complemented by protocols and guidance, empowered the English civil courts to navigate remote work challenges, ensuring the uninterrupted delivery of justice. Explorations into various videoconferencing platforms, including Zoom, Skype for Business, and Microsoft Teams, were conducted, each offering distinct features and usability considerations. Emphasis was placed on accessibility and functionality, accentuating the need for experimentation and training to leverage videoconferencing tools effectively, with recognition of smartphones' potential suitability for remote hearing participation.

Legal Advice

Secure legal databases (whether these are a law firm's own proprietary or provided via an external vendor) provide fortified platforms for summarising scenario-based legal advice, thus modernising an otherwise traditional task. Moreover, AI is increasingly employed in law firms for tasks such as contract drafting and repapering exercises, eliminating the need to start from scratch. The inherent advantage of generative AI lies in its natural language processing capabilities, facilitating the initial prompt of advice and allowing lawyers to refine and expand upon it, as needed.

Legal Research Databases

Crafting litigation submissions and providing legal advice to clients relies on identifying relevant case precedents and statutes. Manual review is impractical due to the volume of judgments. Legal databases leverage natural language processing to optimise search relevance, using techniques like TF-IDF to enhance precision.

AI in Legal Practice: Navigating Technological Evolution

Chat-GPT

Chat-CPT has made significant strides since its initial release, demonstrating its capability to pass Bar exams in various jurisdictions and achieve comparable scores to human candidates on different test modules. In July 2022, CPT-4 excelled in the Uniform Bar Examination in the USA, surpassing the previous high-score threshold set by Arizona. In 2023, Sir Geoffrey Vos, The Master of the Rolls and the Head of Civil Justice in England and Wales, highlighted ChatGPT's valuable applications for lawyers, including drafting, document review, predicting case outcomes, and aiding in settlement negotiations.

It is important to note that AI can sometimes generate inaccurate responses when faced with unfamiliar questions, akin to someone improvising or fabricating answers under pressure. An instance involving Lawyer Steven Schwartz in New York, whereby Schwartz used ChatGPT to assist in drafting court filings, which later turned out to reference non-existent cases.

Electronic disclosure platforms often incorporate secure, locked-down generative AI functions. These capabilities enable the summarisation of datasets and the prediction of relevant documents, thereby streamlining the review process. The straightforward nature of these AI functions allows for the integration of review protocols or completed documents into the platforms, facilitating comprehensive summaries.

What does the future hold for legal AI?

Legal Research

The integration of AI tools into lawyers' daily routines is poised to increase significantly. During the 20th Annual Law Reform Lecture, Sir Vos underscored the credibility of AI opinions, especially in legal contexts, highlighting their superiority over generic chatbots in accuracy and reliability. As these tools continue to advance, their adoption across law firms is expected to rise. AI solutions refine language, strengthen legal arguments, and enhance legal research through features integrated into legal search engines and databases.

However, it is essential to recognise the limitations of certain tools, such as Chat GPT, in legal practice. Firstly, sensitive data subject to litigation must never be shared or uploaded to open forums for legal augmentation. Additionally, Chat GPT lacks specialisation for litigation purposes, unlike dedicated market tools.

Legal Submissions

Lord Denning once said, "Words are the lawyers' tools of trade"[1]. At present, the manual input required of lawyers when drafting pleadings, witness statements, and other submissions and court documentation is demanding. The courts have endorsed the use of AI to assist lawyers with such demands, with the caveat that practitioners are responsible for material produced in their names, and therefore AI tools should be used appropriately, taking steps to mitigate any risks.

Case Outcome Predictions

Machine learning techniques analyse judicial decisions and predict case outcomes with precision, utilising tailored algorithms to enhance predictive accuracy. This capability extends the practical utility of case outcome prediction significantly to litigants, allowing them to evaluate the viability of their claims before commencing legal proceedings. Moreover, it proves invaluable in settlement negotiations, providing insightful data to guide strategic decisions.

Robo-Courts / AI in the Digital Justice System

Online courtrooms have become increasingly accessible for both criminal and civil matters. Criminal cases can now be addressed online, allowing individuals to pay court fines or make pleas for traffic offences. Similarly, civil parties can file monetary claims electronically, and robo-courts have been established for small claims, certain tax remedies, and specific family law matters like divorce applications.

---

[1] Lord Denning, The Discipline of Law, 1979, p. 5

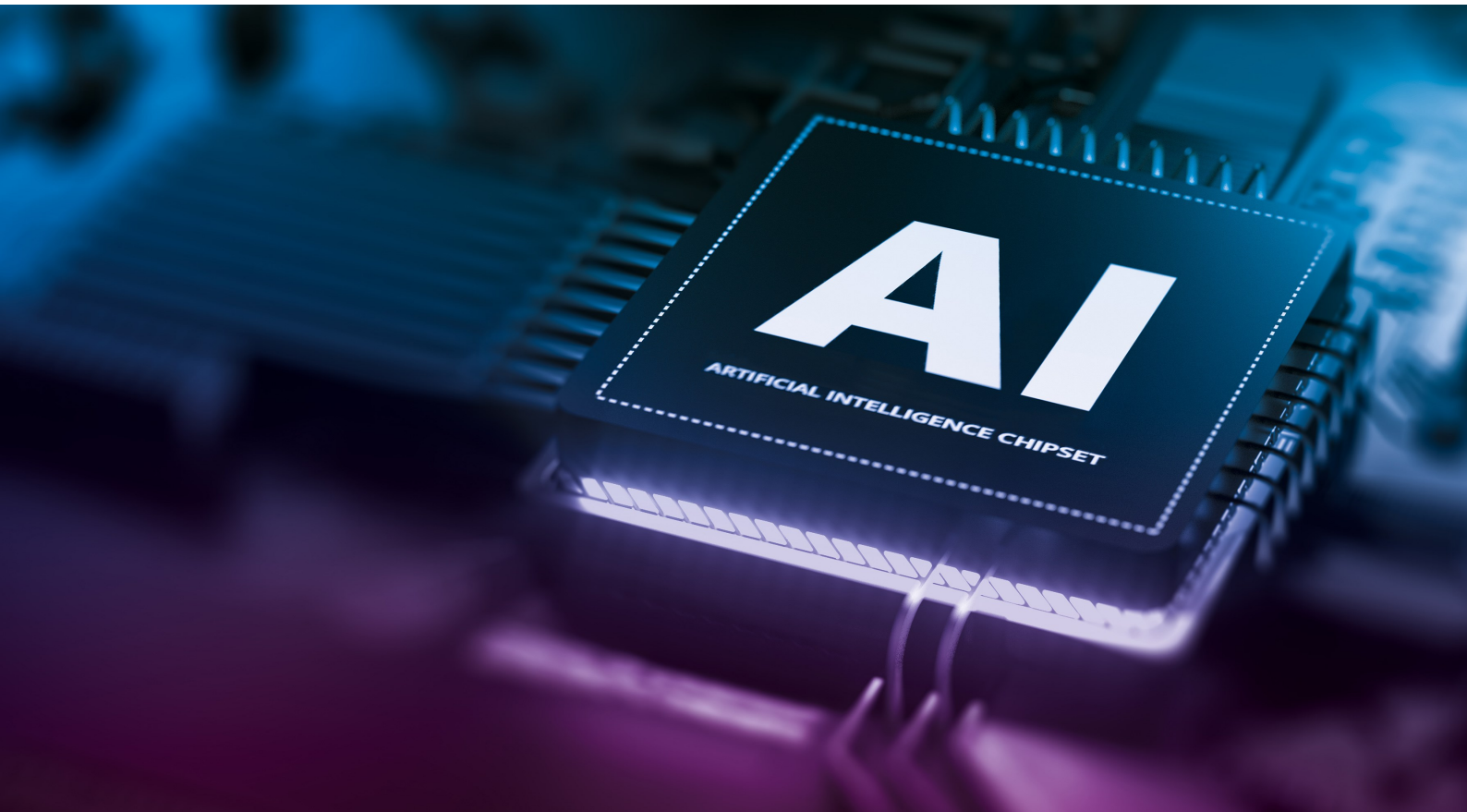# AI in Legal Practice: Navigating Technological Evolution

During the McNair Lecture at Lincolns Inn on April 19, 2023, Sir Geoffrey Vos pondered the potential future where AI may assume responsibility for decisions, even in minor cases. He emphasised the importance of implementing controls in such scenarios, ensuring transparency for parties involved and maintaining the option for appeal to a human judge. While acknowledging the necessity for confidence in any judicial system, Sir Vos highlighted the need for caution, particularly in cases involving sensitive matters like child welfare. However, he stressed the potential for AI to enhance the efficiency of commercial decisions provided it is subject to appropriate oversight.

Sir Vos has outlined plans for the UK courts to integrate AI into the digital justice system, proposing the establishment of a digital platform offering an AI-driven pre-action portal or dispute resolution forum. This initiative aims to provide citizens and businesses with "ELSA" or "Early Legal Services and Advice," leveraging AI to deliver accurate and timely assistance. The successful implementation of this initiative will require collaboration between the Ministry of Justice, HM Courts and Tribunals

Service, the judiciary, the Office for Professional Body Anti-Money Laundering Supervision, and the legal profession.

The evolution of Digital Forensics and eDiscovery

Digital forensics is a branch of forensic science that involves the collection, analysis, and preservation of electronic evidence that has often acted as the precursor to data being prepared for Discovery exercises. It encompasses the examination of digital devices, networks, and data to uncover traces of malicious activities, identify perpetrators, and support legal proceedings. AI innovations are revolutionising this field in a number of ways. Traditional methods of sifting through vast amounts of digital evidence were time-consuming and labour-intensive. AI-powered tools, however, can swiftly process and categorise massive datasets, identifying patterns and anomalies that might elude human investigators.

Machine learning algorithms play a crucial role in enhancing the efficiency and accuracy of both digital forensics and eDiscovery. These algorithms can learn from historical data to recognise commonalities and signatures within datasets, helping investigators identify potential areas of interest more rapidly. Additionally, AI can assist in the automated detection of suspicious activities, allowing for proactive threat mitigation and reducing response times.

Natural language processing (NLP) is another AI enriched capability, primarily benefiting eDiscovery. NLP enables the analysis of unstructured data, such as text messages and social media communications, helping experts extract valuable insights from these sources. Sentiment analysis, entity recognition, and language pattern analysis are all aspects of NLP that contribute to a more comprehensive understanding of digital evidence.

AI is instrumental in the development of advanced forensic tools for image and video analysis. Deep learning algorithms can automatically detect and classify objects, faces, or even illicit content within multimedia files, expediting the identification of relevant evidence. This not only saves time but also ensures a more thorough examination of multimedia data, contributing to the overall efficacy of investigations.

Remote Hearings

HM Courts and Tribunals Service (HMCTS) aims to implement a new video hearings service in 2024, marking a pivotal step forward in modernising court proceedings.

Conclusion

 The significance of AI in litigation is undeniable, and its influence is poised to continue shaping the legal landscape. This integration will undoubtedly impact the types of disputes requiring resolution, the methods of resolution with AI assistance, and the selection of the most suitable tools for each scenario. These profound and swift changes will usher in unprecedented methods of practice, fundamentally reshaping the future of litigation.

However, it's crucial to emphasize that AI's presence does not signify the decline of qualified lawyers or their role in the legal domain. On the contrary, the immense volumes of data involved in today's legal proceedings necessitate legal professionals equipped with the skills and knowledge to leverage and understand AI's capabilities effectively. This collaboration between legal practitioners and AI is essential for achieving optimal outcomes in an ever-evolving legal landscape. As the legal profession embraces this transformation, AI has the potential to become a powerful tool, augmenting the expertise of lawyers and fostering a more efficient, accessible, and just legal system for all.

Fiona Campbell
Fieldfisher LLP

Head of Electronic Disclosure

Jon Fowler
Secretariat

Managing Director

Lee Reason
Secretariat

Director