

Legal technology update for 2017

Philip Argy, Solicitor, Mediator, Arbitrator, Negotiator

Tory Ishigaki: Hi and welcome to the InfoTrack podcast. I'm your host Tory Ishigaki, and today I'm sitting down with Philip Argy, solicitor, commercial mediator, arbitrator, negotiator and strategist to discuss the 2017 outlook for technology in the legal industry. Welcome Philip.

Philip Argy: Good morning Tory, Happy New Year to you.

Tory: Happy New year to you as well. So you have quite a long list of credentials, especially when it comes to legal technology - you're Chairman of Law Society of NSW Legal Technology Committee, Chairman of Law Council of Australia's National Electronic Conveyancing System Committee, Former Chairman of Mallesons' Technology & Information Committee and former President of the Australian Computer Society. So we figured you would be a great guest to have in to talk about the technology for 2017. We're always hearing about how the legal industry is a bit stuck in the past and clinging onto its books and paper, but in the last year especially we've seen a noticeable shift with more firms embracing technology. For InfoTrack in particular, more and more of our clients are beginning to digitise processes and there's always something in the legal news popping up about technology. From your position in the industry, do you get this same sense that the pace of change and adoption is picking up a bit?

Philip: It is, there's a number of reasons for that. Obviously as younger lawyers come to they're must more conversant with technology and more comfortable with it so they tend to use it more and with that comes ideas of how it can be used to do their job better. On top of that, the pressure on law firms in the cost space are forever increasing, everyone wants more for less. To get the costs down, the best way to lower your costs is to automate things because lawyers are very high cost labour and labour is very hard to substitute. So the starting point for law firms historically was to automate the non-fee earner tasks - support back office type stuff because you could do that and become more profitable.

Historically there was a big problem with automating people who billed on an hourly rate because all you were doing was reducing the fee you could get for the same job and your less efficient competitor, even at a lower rate will actually make more money. You were giving away all the benefit, so you were footing the bill and giving away the benefit because you were doing the same job in half the time and not getting the value for it. And clients were as unsophisticated purchasers as the lawyers were at pricing so I think that's starting to change in particularly in areas where work can be systematised like conveyancing and certain other forms of volume deals.

I think tech is fantastic and the other area where tech is very helpful is in risk management. So you can get people using AI to prompt them, keep them on the right track and make sure they don't overlook something. In many ways, expert system technology which has been around for a long while, since the mid-70s in Australia, is making people simply more consistent in the way they do things and the way they lead things - the PI insurers love that, the clients like it and they get a better quality product. And the lawyers are more comfortable, in letting perhaps the more junior level lawyers do the work because it's harder for them to get it wrong.

Tory: What would you say for the people that are concerned about AI taking over the job of the lawyer? There seems to be an article about that every other week.

Philip: There is. Look I'm a bit sceptical, there's a father and son who go around the world telling everyone they're going to be obsolete. I say to people take the cook in the local restaurant, or the carpenter or electrician - they don't lie awake at night saying "oh my jobs going to be replaced by my thermomix or my electric drill" - you know tools will get better and better which will enable the craftsman whether it be a profession or a tradesman to do their job better, easier, faster, at lower cost ultimately and everybody benefits provided that customers are prepared to pay for the value of the job. It's not good saying that only took you five minutes. It took me five minutes because I've spent \$100,000 on the machine that reduces the time from 60 min to 5min. What do you expect me to charge you now? 5 minutes of my fees? So there's got to be an understanding and until the marketplace becomes a bit smarter about understanding what they're getting and lawyers become a bit smarter at pricing, what they're doing... you're going to see that hesitancy in take up of technology for doing the pure legal work because it's very hard to get the ROI.

Tory: The industry does seem to be accepting change a bit more, it still seems pretty slow. We did a survey recently with ALMPA of legal professionals across Australia and New Zealand and almost 80% of leaders said that manual, inefficient and old-fashioned processes were holding them back. So it seems like a lot of firms recognise the need for change but are still hesitant to actually implement it and are a bit slow in doing that. What do you think the root of that is?

Philip: Lawyers are sort of genetically risk adverse and in a sense that's sort of the training to be conservative and risk

adverse. No one wants to recommend their client do something risky but when it comes to their own management of their own firms they tend to be more risk adverse, partly because in a partnership, everybody is liable for what anybody does so the culture is to be mindful of what you do because it's not just you at risk, it's all your partners. So if you have a partnership of 200 partners, your entire asset base is on the line every minute of every day, what 200 people do anywhere on the planet. So when you think about that it makes you a little bit risk adverse and that's not just how robust advice you give, it includes things like giving people a fixed price quote. If you underquote, all of your fellow partners are effectively losing out because the cost of doing the job will exceed the price you've quoted. So people tend to fall back on the hourly rate, which is under huge pressure. Doesn't matter if you use technology to halve the time you do the job, there's no one game to double their hourly rate to get the same ROI. Clients are still getting the same job in half the time but would never agree in a million years to pay the same price they would've paid last week because your hourly rate has doubled. Part of the problem is you can only move forward as quickly as your marketplace, as your consumers are prepared to pay for what they're getting. That's quite a challenge and has been for 40 years.

Tory: Do you think we'll overcome that challenge eventually?

Philip: We will because lawyers will get more comfortable in what their costs are and being prepared to quote fixed price numbers to clients and getting the confidence that that's going to be pretty close to what it's going to cost. The real problem is the lack of confidence that they have in the price they quoted being right. Builders have been for 100 years quoting you per square foot saying grade a, b, c, d building, here's the price for each kind of grade or finish and quality or here's your price per square foot, how many square feet do you want? If they can do that, lawyers can do that. It's just a matter of studying your historical records and deriving how many hours of partner time, senior associate time, secretary time, photocopying and whatever it might be and coming up with a price and the more you do the more comfortable you get and clients love that – general counsel in particular love knowing what it's going to cost.

Tory: Do you know any firms who have done this yet?

Philip: A lot of the more innovative firms are doing it. Keypoint Law, Legal Vision, are starting to do a lot more of that kind of thing. I think that's one of the reasons that general counsel are using some of these more innovative firms for a lot more things because they get a comfort level, they see the partners from some of the more old traditional firms are actually moving into some of these small firms because they like the lifestyles better and you get a fair price for what you do.

Tory: One of the challenges that we hear from a lot of people is just the lack of investment that their firm is willing to put into technology. Either they feel that they just don't have enough money or they can't get the decision makers to agree with them. So what would you say to those people who want to invest in tech but they don't know how to get their firm on board?

Philip: A couple of things. Obviously, the more senior management at a law firm will be older lawyers, who are slower to embrace technology. But I'd say to the younger lawyers it's no good saying "you've got to do this, everyone's doing this", or "you're an old fogey", that doesn't cut it because their house is on the line and they're more conservative. What you've got to do is come up with a business case. Learn how to put together a business case and demonstrate to them that it's actually more profitable to do it the way you're suggesting, and if you can do that they'll jump at it. If they get a confidence level that what you've put together makes sense, they'll be much more willing to do it. You can't just do it by asserting, you've got to demonstrate and show and explain. Lawyers are supposed to be good advocates at marshalling arguments. They tend to be quite poor at doing it internally. Great advocates for their clients and poor advocates for themselves.

Tory: What do you think some of the biggest trends in technology will be for 2017? Have you heard anything out there that has really sparked your interest?

Philip: Look, you read about more use of AI. I've been a big fan of expert systems, in fact I wrote a very early one in the mid-1970s to solve problems under the Trade Practices Act so I'm a big fan of that, both the risk management perspective and value billing perspective because it helps you get it right more reliably, more quickly and more often. So that's one aspect, I think voice recognition is getting better and better and better. I think systemisation of processes is getting better and better.

I think even if I take the thing that is sort of dear to your heart which is end-to-end seamless conveyancing, that has come of age. You've now got true end to end especially now with the integration with PEXA. You can now get the client into the door to VOI, you know all your searches, doing your docs, getting them electronically signed and doing the financial settlement and getting the docs lodged and adjusted. From beginning to end you can do it at your desk wherever you are on the planet on an iPad. That is a big time saver and particularly in something like that, that's a service to the client where the client can easily get an appreciation of the value. So if you just say "here's the price", you can get a pretty high confidence level about that price for that kind of job which is reasonably certain in terms of what it involves. So I think

that's going to be a big sea change.

It's interesting because I'm not a believer in saying to people do it or else you'll be left out or you're missing out or whatever. Everyone comes to it at their own pace, you know you get the early adopters, and they'll make the running and then you get the next tier who sees what they do and then they get confidence and pick it up. It's like any technology where you get that bell curve of adoption and I don't see lawyers as being any different and I don't see any particular need to force it unnaturally... it needs to just work its way through the system.

All I do is tell people look there's often a mystery threshold it's ankle high so don't stub your toe on it, just give it the ten minutes to look at it. Give it 10 quality minutes to understand it and you'll be fine, instead of giving it 10 seconds and saying "it's too hard, I can't be bothered" or whatever. That's part of the problem, people are too busy to give it 10 minutes of focus to say oh is that all. And for want of that they could be much more efficient and even enjoy it more. It's so much more satisfying some of this technology, you can see people smile when they're working. I mean that's almost unnatural to see lawyers smile when they work - the legal profession has one of the highest incidences of depression. I think some of the things we're doing with technology should make people happy.

Tory: I think one of the biggest pieces of feedback we've gotten over the last year especially with the conveyancing market was just there's so much change especially with the legislation changes and all this new tech, it was a bit overwhelming.

Philip: A bit of change fatigue yes.

Tory: Yeah, but I know that you came with us on our end-to-end eConveyancing roadshow.

Philip: That was terrific

Tory: We were showing everyone the technology and as you said they saw it and within a few minutes they could understand how it would change things. But as you said, it was just getting them out there and in front of it and I just want to know a bit about how was your experience on the road show? How were people reacting to the technology? What were they hesitant about? What impressed them the most?

Philip: There were two categories of people at the roadshow, one was the early adopters, and for them it confirmed what they were hoping so it was great and they enjoyed it. The others were scared that if they didn't go they'd be left behind. They were the cohort I was really interested in and they were just so impressed. As you know, they said "is that all there is to it? Even I can do that". There was nobody who said when they saw it that it was too hard and they couldn't do it. In fact, interestingly, the regional practitioners were much quicker to realise that this gave them a significant competitive advantage. Their overhead is much lower than their city brethren, but they can now sit at their desk in Burke or Dubbo or Brokenhill and do an end-to-end conveyancing of a property in Sydney as easily as somebody sitting in the CBD can do it. They don't need to go anywhere, they don't need to visit anyone, you don't need to have physical presence. You can do it in Adelaide or Perth as well. That's a big, big change so they're pretty happy that gives them the ability to do a lot more work and to be quite competitive to their city brethren. I had expected and maybe it says more about me than anything else, I was expecting some of these more remote areas to be quite unsophisticated with technology and the reverse was the case. I mean they were all comparing what their bandwidth was with their colleagues. That was the big talk. In the city it's still the weather, in the country it "are you getting 30 MB per second or 40"? I thought that was terrific, I found it a very enjoyable thing and from your point of view I was really impressed by how happy your clients are.

Tory: Thanks.

Philip: And I'm not just saying it. To actually get clients overtly expressing their satisfaction is a big deal. Don't undervalue what you've got there. You've generated a lot of good will with your client base which is terrific because you do a good job and you give them something that's useful to them. That's the key to it, you're not flogging tech for tech's sake. You take the trouble to understand what are the day to day tasks they do, show them how can automating make them more efficient, lower risk, lower costs- it's incredibly good for them and you're helping them.

Tory: We are always talking to them to figure out what they need and trying to fix anything that needs fixing. And I think one thing that they kind of appreciated was the hop on hop off aspect of it. You don't need to adopt every single part of the end-to-end process.

Philip: The other part of it too is that a lot of it is a disbursement. See that comes back to this issue of if it's adding to your overhead it's hard to recover. If it's a disbursement because it's quantifiable per job, per search or per document that you're using, whatever I might be, once you make it a disbursement, there's no addition to your overhead. So you get an efficiency, the client is getting the benefit and they are paying for the value directly. So that's a big deal for a lot of lawyers. In fact, I'm not sure you guys actually promote that enough and explain - apart from the training which is a legitimate investment in time and money because you're devoting expensive labour to doing the training, but once

they've been trained everything's a disbursement and it goes straight on the client ledger. You're getting the recovery rate up as well so there's none of this recovered disbursements stuff. So I think it's a good story to tell.

Tory: One of the most common questions we get from clients lately is about electronic signing. Is it legal? What are the risks? People seem a bit wary of it still, I know you had a really great way of explaining it to people and how it's not actually that different from ink and paper and if anything a bit safer. If you could tell us a bit about that?

Philip: It's interesting because you know, signatures have been around since Moses was in the bulrushes. But people don't think, when I asked everyone in the audience the last time they got a contract for sale on their desk and they actually recognised the purchaser's signature or the vendor's signature or whoever it might be of course they wouldn't have any idea. The just take it on - you see a squiggle and assume it's who they say it is. So you know, people say oh that's fine but you haven't the faintest idea.

The beauty of eSigning is you've got vastly more assurance that it was signed by the person it purports to be signed by, witnessed by the person it's purported to be witnessed by and you've got all the meta data captured about where it was signed, when it was signed, the ID of the device it was signed on, the latitude and longitude of where the device was at the time it was signed. That's a fantastic forensic trail, I mean I'm a litigator so in terms of evidence, the enforceability of electronically signed contracts is vastly better than a piece of paper with an anonymous signature on it. I think it's quite funny that people ever had any doubt and on top of that you've got the ETA (Electronic Transactions Act) which of course says it's perfectly fine to do it that way as well so it's never been an issue even without that legislation but with the legislation it just cements it. When people sort of understand all of that they pick it up.

You look now, there's probably something in the order of 300,000-400,000 documents a day eSigned with very high value. So it's a non-issue. It doesn't mean there's no risk, same as with a wet signature - it's a signature. Much harder to forge an eSignature but it's not impossible, particularly if you're silly enough to give someone your id and password and let them log in as you and use your signature. There's a risk they'll use it impermissibly but that's no different to the old days when you had a stamp with your signature on it or you know you use a particular font in word to create a simulated signature or you give someone a pdf of your signature. Any of those things can be misused so you've got to put in place a mechanism to be wary of that happening but it should not be an issue. eSignatures are absolutely the way to go and much more efficient for the client. Why should a client come into your office? What a waste of time.

Tory: Any last words of wisdom for practitioners who are looking to start using new technology in 2017?

Philip: What I would say is, try it out. Don't ever buy technology that you haven't tried to see how it fits. You don't buy a suit without trying it on. You don't buy shoes without seeing if they fit. If you've got a technology vendor that doesn't let you try something for a while, forget it. You have to try it in place, in your practice on a real matter and see how it works and you quickly get a feel for if that's going to help you do your job better. If it does why wouldn't you take it up? If it doesn't why would you? And that sounds very trite. But if it helps you do it, if it doesn't don't do it. Teaching people to suck eggs really, but that's really the honest answer there's nothing magic about it.

Tory: Sound advice. Thank you so much for joining us today Philip. 2017 is looking like an exciting year for legal technology.