

## Episode 15: Summary

**Episode name:** The role of Technology in Creating Operational and Organisational Efficiencies

**Guest(s):** Jonathan Prideaux and Paul Bartholomew

**What area(s) of law does this episode consider?**

Technology in the legal profession; in particular technology assisted review (TAR) to achieve operational efficiencies, and the use of legal process outsourcing (LPO) to achieve organisational efficiencies.

**Why is this topic relevant?**

Technological advancements have revolutionised the way almost every industry operates; including the legal profession. From software that assists with automation, to advancements in artificial intelligence, to organisational innovations such as legal process outsourcing (LPO), the practise of law is constantly evolving. This episode explores how these advancements are both changing the way legal services are provided, while also creating operational efficiencies that help lower costs and assist in solving the 'more for less' challenge faced by so many lawyers.

**What legislation is considered in this episode?**

- Electronic Transactions Amendments (COVID-19 Witnessing of Documents) Regulation 2020 (NSW)
- Division 20.2 of the Federal Court Rules 2011 (Cth)

Other sources are mentioned that provide guideline on accepted uses of technology in the law during both the production of documents and the discovery process including:

- ASIC – Document production guidelines issued March 2020;
- Central Practice Note (CPN-1)
- Technology and the Court Practice Note (GPN-TECH)
- Supreme Court Practise Note No. SC Gen 7

**What cases are considered in this episode?**

Both guests reference the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 2017-2019. They each comment on the significant role that eDiscovery and other technology assisted tools had in facilitating efficiency during that Royal Commission.

There are no reported decisions referenced in this episode. Deidentified cases and examples are provided by both guests.

**What are the main points?**

- Technology assisted tools can help firms increase efficiency in a variety of areas including discovery, due diligence, contract review and knowledge management.
- Machine learning can be used to create operational efficiencies for particular types of tasks. Machine learning is a type of artificial intelligence that uses algorithms to detect patterns in data and apply those patterns to new data to automate particular work flows.
- Technology Assisted Review (TAR) broadly refers to any technology that makes document review more efficient and reliable. A reviewer uses a base set of documents (referred to as the 'seed set') to train the TAR software. Reviewers code the documents as relevant or irrelevant which is then fed into the predictive coding software. This process is ongoing, with the reviewers

checking if the software is correctly identifying documents, then inputting more coding where needed. The software analyses the coded documents and creates its own algorithm for reviewing and identifying similar documents.

- Continuous Active Learning (CAL) is a type of TAR that uses algorithms based on statistical modelling to identify similar documents from a base set often referred to as the seed set.
- Futurist Richard Susskind (who we hope to one day join us on Hearsay) has written many books where he references the “more for less challenge”, referring to clients being less willing to spend money on legal services but needing more from their legal providers. This is particularly the case for process driven work which resulted in an increase in legal process outsourcing (LPO) from 2014-2016 as firms sought to reduce fixed costs by outsourcing process-based work to offshore jurisdictions at a much lower cost.

### What are the practical takeaways?

- TAR can assist law firms in streamlining tasks, particularly in litigation and also due diligence. This creates operational efficiencies and lowers costs for clients. However, TAR services have limitations, including that TAR cannot assess or consider privilege.
- Human review is integral to the effective use of TAR.
- The Supreme and Federal Courts have embraced the use of technology issuing guidance to assist lawyers.
- Government bodies such as ASIC have issued detailed guidelines on the electronic production of documents.
- No process or system is perfect, but perfection is not the aim. The goal is to implement processes that produce comparable, better results than your alternative. Human error is still significantly higher than the error percentage of TAR systems.
- According to Forbes, the disaggregation of legal tasks fuelled by globalisation, technological advances and the GFC resulted in an increase in legal process outsourcing (LPO).
- LPO was initially considered a solution that enabled law firms to lower their fixed costs, but some clients are now by-passing law firms altogether and going straight to LPO's for process driven tasks.

### Show notes

[ASIC – Document production guidelines issued March 2020](#)

[Surden, Harry, 'Machine Learning and Law', \(2014\), University of Colorado Law School](#)

[Part 10 of the Central Practice Note \(CPN-1\)](#)

[Part 4 of the Technology and the Court Practice Note \(GPN-TECH\)](#)

[Division 20.2 of the Federal Court Rules 2011 \(Cth\)](#)

[Supreme Court Practice Note No. SC Gen 7](#)