

WHO WILL TRAIN THE LAWYERS (AND WILL WE EVEN NEED THEM)?



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A co-founder of Lawyers On Demand, Ken is a pioneer of NewLaw and is regarded as an expert on the changing nature of the legal industry and legal service delivery innovation. Prior to establishing AdventBalance (now Lawyers On Demand), Ken was a Partner at Freehills (now Herbert Smith Freehills).

In almost every discussion with Corporate Counsel about the changing landscape of the legal profession and the role of in-house counsel, the most frequently asked question is – who will train the in-house lawyers of the future?

To this day, almost all in-house counsel are still the product (at least to some extent) of the traditional in-house lawyer training model. That model relied on a symbiotic (and somewhat expensive) relationship between law firms and their clients.

For years now the process has been that law firms employ the graduates, and provide excellent training through a combination of dedicated in-house programs and on the job learning on client matters.

The law firms could afford to do this because they actually charged their clients for the graduate and junior lawyers work (at hourly rates arguably disproportionate to their skills). Then at a certain point, usually around the Senior Associate level, corporate teams would reach into the law firms and employ some of the best and brightest thereby guaranteeing themselves a pool of quality, ready to go lawyers. Usually all the in-house corporate teams then had to provide, was an injection of “commerciality” to these new recruits.

The legal landscape has changed forever

The old model of in-house lawyer training is no longer sustainable nor more importantly, is it fit for purpose. A number of factors are at play.

The death of law firm leverage

The graduate employment statistics don't lie. The GFC saw a significant reduction in the amount of graduates taken by the large commercial law firms and the numbers have never, and will never, recover. This outcome is structural not cyclical. There are three key structural changes.

- In-house counsel are directly responsible for the situation. There has been a mass revolt against paying law firms to train their own people. General Counsel are refusing to pay for juniors and some are going even further and insisting that junior lawyers not work on their matters at all. Ironically the law firms' insistence on hourly billing exposed the training payment to the daylight when in other industries, the use and training of juniors is hidden in the agreed fee.

- The commercial reality of a mature market for legal services, intense competition and a stronger in-house community, have placed significant pressure on law firm profitability. Most law firms refuse to allow partner profits to fall but are unable or unwilling to alter the commercial structures that might allow them to practice in a new and sustainable way. In those circumstances the only way to maintain profitability in a low growth legal market is to reduce costs. And the only significant cost lever in a professional services firm is the cost of labour. Consequently all law firms are trying to do more with less lawyers.
- The rise of sophisticated NewLaw providers with more flexible economic and billing models, and who use technology and people in a more efficient and cost effective way, has put significant pressure on law firm market share and required law firms to adopt more efficient (and less profitable) ways of doing business.

As a consequence of these three structural realities, there will be no return to highly leveraged law firms and no return to the mass production of highly trained lawyers available to in-house teams.

Commoditisation, technology and outsourcing

The commoditisation of legal work is a not a new issue. The definition of a 'full service commercial law firm' has been contracting for decades. Before the turn of the century most firms in this category had large insurance and commercial leasing divisions which engaged and trained junior lawyers on the basics of risk and claims management, negotiation and dispute resolution, litigation, commercial drafting etc.

Clients eventually insisted on fixed deals for this bulk work, then put in place internal systems and processes to deal more efficiently with these matters themselves and briefed specialist lower cost boutique law firms who made significant use of paralegals and other non-lawyers.

The modern version of this trend is using technology, process improvement techniques and outsourced providers to undertake discovery, due diligence and the preparation and negotiation of standard contracts. Junior lawyers are no longer afforded the same opportunities to train on smaller contracts and disputes, get involved in the litigation process or sit in on deals as part of the due diligence team.



The consequence of these developments for corporate users of legal services, is that the opportunities for junior lawyers to acquire basic legal and commercial skills within law firms, is greatly diminished.

The Millennial Lawyer

The much discussed Millennial Lawyer has no time for the traditional legal career path. In fact many law graduates are eschewing a legal career altogether. The ones who do engage have no time for slogging away in a law firm, making Senior Associate and then going in-house or becoming a Partner in their 30's and working for another 25 years. Frankly, they regard the previous generations as mad for going down this path.

Their expectation is that from day one, they will be provided with training, interesting work and regular opportunities. They want it all, they want it earlier, and they are prepared to back themselves. The Grad Australia 2017 Student Survey noted that 70% of graduates expected to spend less than five years with their first employer¹ and the 2016 Deloitte Millennial Survey² found that one in four millennials would quit their job in the next year.

So even if the traditional training was available in law firms, today's graduates would be unlikely to stick it out and acquire the skills that the generation of in-house lawyers before them possessed upon entry to the corporate world.

Is the disintegration of the old training model actually a problem?

The changing and expanded role of in-house counsel has arguably made the old training model redundant, or at the very least, no longer entirely fit for purpose.

Not only are we seeing an increase in the number of lawyers employed by corporates (a 22% increase between 2011 and 2014)³ but the role of modern corporate counsel now goes well beyond the provision of legal advice and the management of external counsel. The function is multi-disciplinary.

Traditional legal skill is just one component of what is required from a modern in-house lawyer. The role requires business acumen, proficiency in project and third party

provider management, skills in procurement, corporate governance, compliance, data analytics, process improvement, workflow delivery, human resources and importantly a significant IT capability and understanding of the potential role and scope for Artificial Intelligence and technology more generally. Traditional law firm training only provides an important, but small subset of these skills.

Training the In-house Lawyer

So how is the in-house lawyer of the future likely to be trained? Larger corporates are beginning to reach directly into the universities to employ graduates and as a result are having to develop their own graduate training programs. Hewlett-Packard for example has a Legal Talent Development Project⁴ which recruits three law graduates in the core areas of intellectual property, litigation and corporate/commercial. For companies without the resources of a Hewlett-Packard, a focus on industry specific training programs is perhaps more realistic and necessary.

Corporates also now recognise that training is a cost of doing business and have begun to look at cost sharing collaborations with their trusted legal service providers to develop the specific capabilities they require. These training programs are moving well beyond traditional one-hour continuing legal education sessions to something far more substantive.

However the training will need to move well beyond legal. For instance project management, negotiation and mediation skills, corporate governance, process improvement capabilities and technology application skills are all standalone professional disciplines in their own right. It will be the responsibility of individual lawyers (not just their employers) to ensure that they obtain the "non-legal" training most relevant to their industry, employer and role.

Will we even need the lawyers?

The scope of what is considered to require the legal judgement and skill of a trained lawyer has been shrinking for decades. The trend is most evident within law firms who have been pushed further and further up the

legal value chain.

The current debate about what Artificial Intelligence will mean for the legal profession and the workforce more generally, is simply the latest (and possibly scariest) manifestation of an inexorable trend and a particular worry for law firms who still do repeatable work. Artificial Intelligence is even likely to be able to provide much of what today is still regarded as the exclusive preserve of human skill and judgement. Bad news for law firms, lawyers and professionals generally.

The good news is that in-house lawyers are currently in one of the few sectors of the profession where their role is actually expanding into non-traditional areas. Corporate lawyers are being asked to take on roles that were not previously considered the purview of the legal function. Perhaps the only true growth area of the entire profession. But will this continue?

It is possible that the in-house legal teams of the future will not consist entirely or even predominantly of lawyers. As Jordon Furlong points out in *The Rise of the Millennial Lawyer*⁵, legal teams of the future are more likely to be disaggregated, collaborative and multi-disciplinary. A combination of lawyers, finance and business professionals, data scientists, systems analysts and programmers.

For the largest corporates it is probably more realistic to add non-lawyers to the in-house team than train lawyers to undertake or supervise these tasks. For the rest though, a lawyer with the broadest possible skillset will be a valuable commodity for years to come.

So happily we will still need lawyers (or at least in-house lawyers) for a while yet. But the in-house lawyers' role is changing quickly and the training available must change with it. Basic legal training remains fundamental but it is only one part of what a modern in-house lawyer will need. Corporate teams and individual lawyers will have to take responsibility for their own education, looking to a range of internal programs and external providers, and develop tailored company and industry specific programs covering a broad range of disciplines.

It is a considerable challenge but one that must be faced. 

Footnotes

- <https://gradaustralia.com.au/news/what-students-want-from-their-graduate-employment-2017>
- <http://landing.deloitte.com.au/rs/761-IBL-328/images/deloitte-au-millennial-survey-2016-exec-summary-050216.pdf>
- <https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1149382.pdf>
- <http://www.in-houseaccess.com/tag/hewlett-packard/>
- <https://www.lodlaw.com/the-rise-of-the-millennial-lawyer-14-ways-a-generation-is-changing-the-rules/>