

Session: Artificial Intelligence

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Session Description: Artificial intelligence is now making its presence felt in various fields. Tax is no exception. Using concrete examples based on business scenarios, this panel brings together perspectives from academia, the software industry, tax litigation, and the judiciary to contend with the key “big picture” questions that AI raises for tax professionals. How fast is AI developing in tax? What principles and safeguards should be guiding development of AI tools? Are the existing rules of ethics and professionalism sufficient to deal with AI? What questions should judges be asking themselves with respect to AI tools? How acute is the need to address gaps in the current legal framework governing privilege and confidentiality? What consequences will AI have for the future path of the law?

Outline of Presentation

The Rise and Fall of Legal Ambiguity: Prof. Benjamin Alarie

1. Introduction
2. Law as prediction
 - a. Lots of problems can be treated as computational problems at root
 - i. consider shift of photography from a chemical process to a math/computer process with digital photography
 - ii. or consider library science and knowledge management, which relies on experts to classify and organize books (Dewey decimal system) but has been turned on its head with search engines—does anyone use a card catalogue these days? You can find any book on Amazon in seconds with full biographical info
 - b. Positive versus normative accounts of the law
 - i. Discussion of Oliver Wendell Holmes Jr., “Path of the Law”
 - ii. Law can be regarded as a prediction of what the courts will in fact do
 - iii. Taking judgments as data—i.e., as the results of particular ‘experiments’—allows for the use of empirical methods
 - c. What machines can do and not do
 - i. AI is beginning in law with positive focus—what does the law require
 - ii. Still very much a role for normative work for academics, lawyers, judges
 - iii. Eventually (in future decades) we should expect AI to move up the value chain in law and influence not just “ambiguity reduction” (its immediate role) but also normative misspecifications
3. The role of judgment in legal education
 - a. Humans cannot “overpower” the breadth and depth of legal materials available
 - b. We instead use judgment / heuristics, chunking concepts, principles, information
 - c. Our method of teaching and learning law reflect this reality of our cognition
 - d. Notably, machines exhibit different relative abilities
4. The role of ambiguity and imperfect substantive justice in the legal system
 - a. Certainty, predictability and fairness are imperfectly attainable
 - b. Perfect fairness would require perfect tailoring to all circumstances and an (impossibly?) deep specification of normative values and future consequences
 - c. Consequently, the optimal level of ambiguity in a legal system is not zero, and the optimal level of tax avoidance in a legal system is not necessarily zero
 - d. It is well-understood that ambiguity and imperfect substantive justice in the legal system is quite costly, however, and (obviously) can be abused
 - e. It is difficult to police these abuses of ambiguity and imperfect justice, hence ethics and professionalism
5. Regulating ambiguity through ethics and professionalism
 - a. Infinite regress and the difficulty of policing the police
 - b. Tax professionals and the ambit of professional responsibility
 - c. Articulating the areas of potential abuse and remaining diligent

- d. Analog to digital to computational—how ethics and professionalism are adapting to changing technologies—the rise of ‘machine diligence’
 6. Certainty, predictability and fairness: ‘machine diligence’ and the future of law
 - a. How to articulate a vision of how to think about ethics and professionalism for tax professionals as technology changes
 - b. While legal ambiguity is often valuable as a way to cope with misspecification and imperfect substantive justice, it is naturally better to seek to reduce it in conjunction with fostering greater confidence in the proper substantive specification of the law
 - c. Improving the substantive specification of the law is challenging and contested and is taking and will take a (very) long time
 - d. Legal ambiguity is and will continue to remain valuable as we collectively coax out of the human experience how to regulate and govern ourselves; the scope of reasonable disagreement will not (maybe not ever!) close entirely; it should not ever completely close
 - e. The role of technology in improving legal prediction is two-fold; increase our ability to predict what the current state of the law actually is (increasing transparency and predictability) and thereby creating space for our current mechanisms to increase its fairness (a law reform effort we can all continue to contribute to)
 7. Conclusion
 - a. Machine diligence will allow us to measure and manage with greater sophistication legal ambiguity
 - b. With new AI tools, we can better identify what the law requires and also better target our efforts at legal reform (through case by case with judicial nudges; more generally with regulation and legislation)
 - c. The availability of new AI tools will not create new professional ethics and responsibilities; the tools will however change in important tactical ways in which these duties and responsibilities are discharged
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Artificial Intelligence and the Judiciary: *The Hon. Karen Sharlow*

1. Introduction: Back to basics

- The rule of law
- The role of the judiciary
- The sources of law
- Is AI generating a new source of law?

2. How should judges regard what AI can teach?

- What does AI teach?
- What is not visible (methodology, updating techniques, who is doing the work)?
- Does the product of AI fit into the work of judges?
 - If so, how?
 - Are there limitations, and if so, what are they?

3. What is the proper use of the product of AI in litigation?

- How should advocates use the product of AI?
 - Are there ethical considerations (duty to the court)?
- How should judges interpret what they are told about the product of AI?
- Should judges embark on their own AI research?
 - If so, what limitations should they observe?

4. Evolution of the law

- How will the product of AI change legal analysis?
- Could it displace standard legal analysis?
 - If so, is that a result to encouraged or avoided?

1. Impacts of Emerging Technologies

- Context: understanding AI and other emerging technologies
- Impacts at the national and international level
- Some examples of emerging trends, i.e. fake news, etc

2. Changes in the Legal Profession

- An environmental scan on technology demonstrate that the legal industry is in the midst of a significant transformation and the way legal services are being provided is evolving.
- New legal skills, new areas of law, new technologies and alternative legal service providers are starting to emerge in the profession. Need to pay attention to what is happening around us.

3. Examples of AI Applications

- Legal AI applications now range from predicting legal outcomes; conducting legal research using only speech as you would be speaking to Alexa; going as far as having AI drafting preliminary legal memos to answer specific legal questions.
- Lots of unknowns and today we have more questions than answers (i.e. what impact will AI have on the way clients approach their needs for legal services; how will it impact our approach to settlements and dispute resolutions)

4. Legal and Ethical Challenges

- While there is no doubt that AI could improve our operations and services to Canadians, we also can't afford to look to this future without a critical reflection. New legal challenges and uncharted territory.
- Lack of regulatory frameworks. Overview of national and international context
- Some unique questions raised in the context of AI:
 - When is it necessary to have human input in a machine decision-making process?
 - Could a human ever be found professionally liable for having failed to follow AI generated advice?
 - Should we extend legal protection for AI generated decisions?
 - Who should be responsible to ensure that a "moral, ethical and legal" code apply to AI? What would this even look like?
 - What impact will AI have on our professional responsibility as lawyers?
 - Enumerate challenges to existing legal areas

5. Taskforce on Artificial Intelligence

- Adopting AI in legal practices will require prudence and careful weighing of the risks and benefits. And to meet this need Justice created a Taskforce on Artificial Intelligence.
- The Taskforce has been mandated to identify opportunities to use AI in the practice of law; implement pilot projects; and reflect on the legal and ethical issues related to the use of AI.