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PERSONAL INJURY LAW

Artificial intelligence to impact personal injury law

BY SHANNON KARI
For Law Times

The term artificial intelligence was first coined by a math professor in the United States in 1955 and initially developed as an academic discipline. In recent years, rapid technological changes have led to major developments in the field and "machine learning systems" are likely to have impacts across the board, including the legal profession.

The personal injury field is no exception, both in terms of how these systems might be put to use by insurers and potential benefits for legal research to assist clients in a much more time-effective manner.

Earlier this year, two of the larger multi-national insurance companies started to use artificial intelligence to deal with claims.

Processing time could be cut to as little as five seconds to decide on a claim, a senior official at Zurich Insurance told Reuters this spring. The industry is also making increasing use of "chatbots" — "virtual assistants" that can answer basic questions from customers contacting the company through a phone app.

Michael Giordano says personal injury lawyers should try to find out more about the formulas used to make decisions, once artificial intelligence is used for processing claims.

The benefits of AI for the insurance sector are obvious, but what is still not clear is the impact on clients who have suffered a personal injury and might want to challenge the claim decision.

Michael Giordano, a Toronto-based personal injury lawyer, says it is an issue that the plaintiff-side bar needs to be prepared to handle.

"It is only a matter of time before this technology is used in Canada," says Giordano, a partner at Avanessy Giordano LLP.

"From the plaintiff's side, this may present challenges. In every case, there is an element of optics. There may be a subtlety that requires a human eye. Can this all be captured by an algorithm?" Giordano asks. Once the technology is introduced here, personal injury lawyers should try to find out more about the formulas used to make claims decisions, he suggests.

"Which factor is given the most weight and does that skew the result? The upside, though, is there might be efficiencies that eliminate some of the earlier stages in litigation," says Giordano.

Robert Deutschmann agrees that the technology could have some advantages for clients.

"If it is speeding up the process and it results in an earlier resolution of the claim, that would be a benefit," says Deutschmann, who heads Deustchmann Law in Kitchener, Ont. "Still, the human element can be key," he adds. As well, insurance companies have long utilized technologies, such as asking drivers to put trackers on their vehicles in exchange for lower rates, which may not always end up as a benefit to the client, Deutschmann notes.

The use of AI by insurance companies to speed up decisions on claims is not the only aspect of the technology that is likely to impact personal injury lawyers and their clients. There are also potential benefits. Legal research is just one example.

Thomson Reuters, for example, joined with IBM in 2015 to make use of AI in the legal field.

E-discovery products and other research tools are among the services that have been developed.

There have also been advances in using AI to speed up research of relevant case law, when searching for relevant precedents to assist in litigation.

"Any time that can be saved is going to be helpful," says Deutschmann.

"As well, AI might be able to bring a diagnostic element to the search. In personal injury law, we are telling the story of the client. If in building that story there is a tool that can assist in evaluating the information, that will be beneficial," he says.

At the same time, Deutschmann stresses that a lawyer can't rely only on machine-made decisions and abdicate the responsibility to the client. Research is not the only area where advances in AI might be helpful to lawyers and not only in the personal injury field.

Voice recognition is rapidly improving in terms of speed and accuracy. An article in the July 2017 issue of the Harvard Business Review entitled "The Business of Artificial Intelligence" noted that speech recognition is now, on average, about three times as fast as typing on a smartphone.

The error rate also dropped to just less than five per cent. The authors of the piece stated that they dictated the article to a computer and it was faster than typing.

The legal profession and the courts in Ontario and other provinces are not always quick to make use of new technologies, even if there are clear benefits, notes Giordano.

It is only in recent years that some lawyers have provided iPads to juries in civil trials, to reduce the amount of paper documents and make exhibits and other information easily accessible. "They are now widely accepted," says Giordano.

At the same time, "there are two schools of thought" when it comes to iPads in civil jury trials, says Deutschmann.

"When you are going through your questions of a witness, are they following along?" he asks, although he agrees that notebooks and pens for jurors can be equally distracting during trials.

Advances in AI along with the wealth of information that is stored in our smartphones and other devices such as fitness trackers may also be helpful to plaintiffs in personal injury litigation, depending on the data and its level of accuracy.

"This is evidence that still needs to be contextualized. But it is another piece of the puzzle," says Giordano.   **LT**