

# THE FUTURE OF THE LEGAL PROFESSION<sup>†</sup>

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## I INTRODUCTION

The legal profession, if not the world, is in crisis. According to the Chinese, the written character for ‘crisis’ also denotes danger and opportunity, simultaneously.<sup>1</sup> If crisis brings opportunity, then the profession is at a turning point.<sup>2</sup>

It is estimated that 80 per cent of Americans cannot afford a lawyer, resulting in unequal access to justice.<sup>3</sup> At the same time, the number of lawyers has almost tripled in the United States since 1970,<sup>4</sup> contributing to increased economic

<sup>†</sup> This article is based on the author’s paper presented at the Non-Adversarial Justice: Implications for the Legal System and Society Conference held in Melbourne, Australia, in May of 2010, at the kind invitation of Dean Arie Freiberg of Monash University. It is dedicated to the memory of Professor Bruce J Winick, the co-founder of therapeutic jurisprudence (1944–2010), with deep appreciation and gratitude. It summarises and extends the following previous publications of the author: Susan Daicoff, ‘Law as a Healing Profession: The “Comprehensive Law Movement”’ (2006) 6 *Pepperdine Dispute Resolution Law Journal* 1; Susan Swaim Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association Books, 2004); Susan Daicoff, ‘Resolution without Litigation: Are Courtrooms Battlegrounds for Losers?’ (2003) 20(7) *General Practice Solo* 44; Susan Daicoff, ‘The Comprehensive Law Movement: An Emerging Approach to Legal Problems’ in Peter Wahlgren (ed), *Scandinavian Studies in Law Volume 49: A Proactive Approach: Law Libraries* (Scandinavian Institute of Law, 2006) 109; Susan Daicoff, ‘Comprehensive Law: Transformative Responses by the Legal Profession’ in Candice Carter (ed), *Conflict Resolution and Peace Education: Transformations across Disciplines* (Palgrave MacMillan, 2010) 97; Susan Daicoff, ‘On Butlers, Architects, and Lawyers: The Professionalism of “The Remains of the Day” and of “The Fountainhead”’ (2011) 17 *Journal of Law, Business and Ethics* 23.

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1 Benjamin Zimmer, *Crisis = Danger + Opportunity: The Plot Thickens* (27 March 2007) Language Log <<http://itre.cis.upenn.edu/~myl/language-log/archives/004343.html>>.

2 See the ‘tripartite crisis’ the author argues for in Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association, 2004) 3–24.

3 See Legal Services Corporation, *Documenting the Justice Gap in America* (2<sup>nd</sup> ed, 2007) <<http://www.lsc.gov/justicegap.pdf>>, reporting in the preface that ‘the most recent legal needs studies — conducted in Utah and Wisconsin — documented an unmet need of 80 per cent or more ... Other recent data show that 99 per cent of defendants in housing eviction cases in New Jersey and Washington, DC, go to court without a lawyer’, and that ‘for every person helped by [Legal Services Corporation] [legal aid], another is turned away’.

4 There were 350 000 lawyers in the United States in 1970, 700 000 in 1987 and 1.1 million by around 2006. That was one for every 600 persons in 1970 and one for every 300 persons in 1987. See, eg, Ed Quill, *The Boston Globe*, *Number of Lawyers in US Reportedly has Doubled Since ’70* (8 August 1987) Highbeam Research <<http://www.highbeam.com/doc/1P2-8022706.html>>; Bureau of Labor Statistics, United States Department of Labor, *Occupational Outlook Handbook, 2010–11 Edition* (17 December 2009) <<http://www.bls.gov/oco/ocos053.htm>> (759 200 lawyers in 2008 were employed, according to the Bureau of Labor Statistics).

pressure and competition among lawyers. The adversarial court system is no longer functioning as a primary and efficient dispute resolution system, as 98 per cent of all litigated cases settle without trial.<sup>5</sup> Negotiation, settlement, mediation and other types of alternative dispute resolution, even in mandatory forms, are growing<sup>6</sup> and legal personnel are experimenting with new models such as collaborative law<sup>7</sup> and transformative mediation.<sup>8</sup> In those few civil cases that actually go to trial, the process frequently takes two years to reach trial,<sup>9</sup> resulting in calls for more accountability from lawyers to justify their fees and value. The corrections system has failed, as the United States has one of the highest per capita incarceration rates in the world<sup>10</sup> and a recidivism rate of about 67 per

- 5 See Patricia Lee Refo, 'The Vanishing Trial' (2004) 30(2) *Litigation* 1.
- 6 See Jeff Rifleman, *Mandatory Mediation: Implications and Challenges* (December 2005) Mediate.com <<http://www.mediate.com/articles/riflemanJ1.cfm>>. For example, Florida has instituted mandatory mediation of mortgage foreclosure actions to deal with the large number of foreclosure cases in the state. Rob Samouce, 'Florida Supreme Court Orders a New Mandatory Mediation for Residential Homestead Property in Foreclosure', *Naples News* (online), 6 February 2010 <<http://www.naplesnews.com/news/2010/feb/06/rob-samouce-florida-supreme-court-orders-new-manda/>>.
- 7 See, eg, Forrest S Mosten, *Collaborative Divorce Handbook: Effectively Helping Divorcing Families without Going to Court* (Jossey-Bass, 2009); Pauline H Tesler and Peggy Thompson, *Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move On with Your Life* (HarperCollins, 2007); Stuart G Webb and Ronald D Ousky, *The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Cost, and Happier Kids without Going to Court* (Hudson Street Press, 2006); Pauline H Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce without Litigation* (American Bar Association, 2001); Nancy J Cameron, *Collaborative Practice: Deepening the Dialogue* (Continuing Legal Education Society of British Columbia, 2004). See also Pauline H Tesler and Peter B Sandmann, 'Ten Questions for Clients Weighing Litigation v. Collaborative Law' (2003) 21 *Alternatives to the High Cost of Litigation* 9; Mary E O'Connell, 'The Bookshelf: Collaborative Law: Achieving Effective Resolution in Divorce without Litigation' (2002) 40 *Family Court Review* 403; Pauline H Tesler, 'The Basic Elements of Collaborative Law' (2003) 21 *Alternatives to the High Cost of Litigation* 9; Pauline H Tesler, 'Collaborative Law: A New Paradigm for Divorce Lawyers' (1999) 5 *Psychology, Public Policy, and Law* 967; Pauline H Tesler, 'Collaborative Law: What It Is and Why Family Law Attorneys Need to Know about It' (1999) 13 *American Journal of Family Law* 215; Pauline H Tesler, 'Collaborative Law: A New Approach to Family Law Alternate Dispute Resolution' (1996) 2 *Conflict Management Newsletter* 12; Pauline H Tesler, 'Collaborative Law Neutrals Produce Better Resolutions' (2003) 21 *Alternatives to the High Cost of Litigation* 1; Pauline H Tesler, 'Client Relations: Tips from a Collaborative Practitioner' (2003) 21 *Alternatives to the High Cost of Litigation* 13. Collaborative law websites exist in many metropolitan areas, see, for example, the following regional collaborative law websites for South Florida and Minnesota: Collaborative Family Lawyers of South Florida, *A Team Approach* <<http://www.collaborativefamilylawfl.com/index.html>>; Collaborativelawsf.com, *Sponsored Listings* <<http://www.collaborativelaw.org/>>.
- 8 See, eg, Robert A Baruch Bush and Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (Jossey-Bass, 2<sup>nd</sup> ed, 2005).
- 9 Personal communication from Susan Daicoff to a private divorce attorney in Columbus, Ohio, May 2000.
- 10 The United States of America is reported to have the highest per capita incarceration rate in the world, with a rate of 751 per 10 000 citizens, ahead of China and Russia; England's was 151 and Japan's was below the median of 125 per 10 000, see Adam Liptak, 'United States Prison Population Dwarfs that of Other Nations', *New York Times* (online), 23 April 2008 <<http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html>>. Another source reported that there were 1 610 446 sentenced prisoners at year's end 2008, see Matthew Cooper, William J Sabol and Heather C West, *Prisoners in 2008* (8 December 2009) Bureau of Justice Statistics, Office of Justice Programs <<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763>>; the United States population in late 2010 was about 310 000 000 according to United States Census Bureau, *United States Population Clock Projection* (22 December 2010) <<http://www.census.gov/population/www/popclockus.html>>, yielding a rate of about 520 per 10 000 citizens.

cent.<sup>11</sup> Judges and court personnel in the criminal law area are experimenting with alternative court models, such as problem-solving courts<sup>12</sup> and alternative disposition systems, such as restorative justice.<sup>13</sup>

One in five lawyers is suffering from clinically significant levels of depression, anxiety, psychopathology, alcoholism or substance abuse.<sup>14</sup> Some lawyers are desperate for work that matters, makes sense, makes a difference, is moral, is valuable and valued and produces sustainable outcomes.<sup>15</sup> The current economic

- 11 The average recidivism rate in the United States of America is reported to be around 67 per cent, see Bureau of Justice Statistics, Office of Justice Programs, *Recidivism of Prisoners Released in 1994* (2 June 2002) <<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=516>>, compared to rates closer to 40 per cent in Australia, see Australian Associated Press, '40 Per Cent of Released Prisoners Back in Jail within Two Years', *The Australian* (online), 30 January 2009 <<http://www.theaustralian.com.au/news/nation/pc-of-ex-prisoners-back-to-jail-fast/story-e6frg6nf-111118710404>>.
- 12 See, eg, Center for Court Innovation, *Home* (16 August 2011) <<http://www.courtinnovation.org/>>, a website collecting and reporting on a number of innovations in court design and process.
- 13 See, eg, Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002); Daniel W Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (Elsevier Reference, 4<sup>th</sup> ed, 2010).
- 14 See Connie J Beck, Bruce D Sales and G Andrew H Benjamin, 'Lawyer Distress: Alcohol Related Concerns among a Sample of Practicing Lawyers' (1995) 10 *Journal of Law and Health* 1, 18, documenting the greater incidence of depression, anxiety and general psychopathology among lawyers as compared to the general population. See also what I refer to as the 'Benjamin studies': G Andrew H Benjamin, Elaine J Darling and Bruce Sales, 'The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers' (1990) 13 *International Journal of Law and Psychiatry* 233; G Andrew H Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress among Law Students' (1986) 11 *American Bar Foundation Research Journal* 225; G Andrew H Benjamin, Bruce D Sales and Elaine Darling, 'Comprehensive Lawyer Assistance Programs: Justification and Model' (1992) 16 *Law & Psychology Review* 113; Stephen B Shanfield and G Andrew H Benjamin, 'Psychiatric Distress in Law Students' (1985) 35 *Journal of Legal Education* 65, 68–9; Barbara S McCann, Joan Russo and G Andrew H Benjamin, 'Hostility, Social Support, and Perceptions of Work' (1997) 2(2) *Journal of Occupational Health and Psychology* 175, 175, 178, 180; Amiram Elwork and G Andrew H Benjamin, 'Lawyers in Distress' (1995) 23 *Journal of Psychiatry and Law* 205, collectively documenting an incidence of alcoholism among lawyers (18 per cent) that is approximately twice as great as that in the general population (9 to 10 per cent) and tracking the incidence of clinically significant depression among lawyers, law students and pre-law students.
- 15 As evidenced by the popularity of books assisting lawyers to find meaningful work, see, eg, Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (McGraw-Hill, 10<sup>th</sup> ed, 1999) ('*Transforming Practices*'); Deborah L Arron, *Running from the Law: Why Good Lawyers Are Getting Out of the Legal Profession* (Niche Press, 1989); Amiram Elwork, *Stress Management for Lawyers: How to Increase Personal and Professional Satisfaction in the Law* (Vorkell Group, 1995); Sol M Linowitz and Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (Scribner's Sons, 1994); Peter Margulies, 'Review Essay: Progressive Lawyering and Lost Traditions: The Lost Lawyer: Failing Ideals of the Legal Profession by Anthony T Kronman' (1995) 73 *Texas Law Review* 1139; Richard A Zitrin and Carol M Langford, *The Moral Compass of the American Lawyer: Truth, Justice, Power, and Greed* (Ballantine Books, 1999); Monica R Parker, *The Unhappy Lawyer: A Roadmap to Finding Meaningful Work outside of the Law* (Sphinx Publishing, 2008); Jean Stefancic and Richard Delgado, *How Lawyers Lose Their Way: A Profession Fails its Creative Minds* (Duke University Press, 2005); George W Kaufman, *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success* (American Bar Association, 2<sup>nd</sup> ed, 2006); Michael F Melcher, *The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction* (American Bar Association, 2007).

crisis has increased unemployment among lawyers,<sup>16</sup> leading to more competition and calls for new forms of legal work,<sup>17</sup> while law school admissions levels steadily increased until about 2008.<sup>18</sup> Legal education, operating on the basis of Langdell's century-old model, has become increasingly irrelevant and unrelated to the skills required for, and the demands of, modern law practice, leading to less preparedness of new graduates to face the conditions of modern law practice and to serve clients.<sup>19</sup> Clearly, it is time for a change.

This article will explore the current state of the legal profession and then discuss its future, given the rise of emerging alternative forms of law practice and adjudication — known as the 'comprehensive law movement'. In particular, it will examine the effects of the current economic crisis and the 'Millennial' Generation's entrance into the profession on the tasks ahead for the comprehensive law movement.

## II ON THE BRINK OF CHANGE: PROBLEMS

Several existing structures or conditions have served to propel the need for change, by becoming so extreme as to cause difficulties. In the legal profession, these include:

- (1) The dominance of zealous advocacy as the preferred professional role of attorneys.<sup>20</sup>
- (2) The 'lawyer personality' as compared to non-lawyers.<sup>21</sup>
- (3) The irrelevance of legal education to law practice.<sup>22</sup>

16 Unemployment among lawyers was reported to be 1.2 per cent in 2002, double what it was in 1999, but below the national unemployment rate of 5.8 per cent, Karen Roebuck, 'Unemployment Affecting Lawyers', *Tribune Review* (online), 24 April 2003 <[http://www.pittsburghlive.com/x/pittsburghtrib/s\\_130931.html](http://www.pittsburghlive.com/x/pittsburghtrib/s_130931.html)>. The national unemployment rate in the United States was around 9.6 per cent in September 2010, Bureau of Labor Statistics, United States Department of Labor, *Regional and State Employment and Unemployment Summary* (25 March 2011) <<http://www.bls.gov/news.release/laus.nr0.htm>> .

17 See Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford University Press, 2008).

18 Law school admissions increased by 3000 and the number of law schools increased from 176 to 200 over the period 1993–2008, Columbia University School of Law, *Graphs and Data* (2009) <<http://blogs.law.columbia.edu/salt/graphs-data/>>.

19 As evidenced by several reports on legal education reform over the last two decades, see Section of Legal Education and Admissions to the Bar, American Bar Association, *Legal Education and Professional Development: An Educational Continuum Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992); William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, 2007); Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007). See also Stephen Gerst and Gerald Hess, 'Professional Skills and Values in Legal Education: The GPS Model' (2009) 43 *Valparaiso University Law Review* 513, reporting on empirical studies of Chicago, Minnesota and Montana lawyers and also on results of their own study of Arizona lawyers, demonstrating the fact that law school often omits teaching the skills actually needed in law practice.

20 See, eg, Rob Atkinson, 'A Dissenter's Commentary on the Professionalism Crusade' (1995) 74 *Texas Law Review* 259.

21 See, eg, Daicoff, above n 2, 25–49.

22 See, eg, Gerst and Hess, above n 19.

In the world, the ‘argument culture’, as described by Deborah Tannen,<sup>23</sup> has similarly contributed to the need for change. This culture is described as a tendency to blame, justify, argue and defend when conflict arises between individuals or groups, rather than to employ cooperative conflict resolution. These conditions have become dominant and extreme to the point that they are no longer adaptive or healthy for society or for lawyers.

### **A Lawyer Personality and Distress**

I have been researching and writing about the legal profession since the early 1990s, when, as a lawyer enrolled in a graduate program for clinical psychology, I became interested in lawyers’ distress, career dissatisfaction, wellbeing and ethical decision-making.<sup>24</sup> That research led me to survey 40 years of empirical research on lawyers to determine whether there were certain traits that were characteristic of lawyers as a group.<sup>25</sup> That in turn led me to conclude that there were, indeed, about eight distinct traits that distinguished lawyers from non-lawyers, psychologically and decision-making preference-wise. These traits are: dominance, a need for achievement, competitiveness, a tendency to become ambitious and aggressive when under stress, a preference for rational and objective decision-making styles, interpersonal insensitivity, materialism and an economic bottom line orientation.<sup>26</sup>

In the mid-1990s, I argued that these traits were adaptive to the current practice of law, which at the time demanded that lawyers be competitive, aggressive, ambitious, focused on ‘winning’, unemotional, rational, objective, amoral, ‘expert’ zealous advocates and partisan representatives of their clients.<sup>27</sup> The dominant mode of lawyering at that time appeared to be the confrontational, adversarial, neutral partisan/zealous advocate model, in which lawyers’ own values, beliefs and opinions were set aside in order to represent the client’s wishes without question. The client’s legal rights were maximised at all costs and it was implicit that legal problems were solved via an adversarial process.<sup>28</sup> Despite Professor Rob Atkinson’s calls for more diversity in professional roles among lawyers,<sup>29</sup> the zealous advocate model appeared dominant in the legal profession.

23 Deborah Tannen, *The Argument Culture: Stopping America’s War of Words* (Virago Press, 1998). See discussion in David B Wexler, ‘Book Review: The Argument Culture and the Courts: The Argument Culture: Moving from Debate to Dialogue’ (1998) 35 *Court Review* 4, 4–5.

24 The author’s Master’s thesis research on this culminated in Susan Daicoff, ‘(Oxymoron?) Ethical Decision-Making by Attorneys: An Empirical Study’ (1996) 48 *Florida Law Review* 197.

25 Published as Susan Daicoff, ‘Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *American University Law Review* 1337.

26 *Ibid.* This work was extended in Daicoff, above n 2.

27 See Susan Daicoff, ‘Asking Leopards to Change Their Spots: Can Lawyers Change? A Critique of Solutions to Professionalism by Reference to Empirically-Derived Attributes’ (1998) 11 *Georgetown Journal of Legal Ethics* 547.

28 See, eg, Atkinson, above n 20, 304–09, 314.

29 *Ibid* 304–16.

However, I am not sure that this model was really working all that well for lawyers, clients, or society, based on reports of client, societal and lawyer dissatisfaction with the legal profession from 1990 onwards.<sup>30</sup> A 1993 survey by the American Bar Association found that 40–63 per cent of the public viewed lawyers as ‘greedy’, charging ‘excessive fees’, ‘lacking the necessary ethics to serve the public’ and ‘not honest or ethical’.<sup>31</sup> Only 19–35 per cent believed lawyers were ‘caring and compassionate’, ‘honest and ethical’, or a ‘constructive part of the community’. While 78 per cent of respondents liked their own medical doctor, only 45 per cent liked their own attorney. Only seven per cent disliked their own doctor, while 16 per cent disliked their own attorney.<sup>32</sup> A 1991 public opinion poll found that 22 per cent of the public thought that lawyers had ‘high honesty or ethical standards’, compared to 62 per cent for pharmacists, 50 per cent for doctors, college teachers, members of the clergy, dentists and engineers and 35 per cent for funeral directors, bankers and journalists.<sup>33</sup> Lawyers fell between newspaper reporters (24 per cent) and building contractors (20 per cent), realtors (16 per cent), advertisers (12 per cent) and car salesmen (six per cent).<sup>34</sup>

Depression among law students and lawyers, while close to normal levels pre-law school, rockets to an amazing 32 per cent in the first year of law school.<sup>35</sup> It climbs to 40 per cent by the third year of law school, before dropping back to 18–19 per cent of lawyers, across 0–78 years of practice.<sup>36</sup> However, it never returns to pre-law school levels; there is about double the incidence of depression among lawyers as there is in the general population.<sup>37</sup> Alcoholism among lawyers (18 per cent) appears to be twice as prevalent as among the general population (9 per cent).<sup>38</sup> Finally, psychological distress of all types (depression, anxiety, paranoid ideation, social isolation and alienation, hostility, obsessive compulsiveness and interpersonal discomfort) appears to be greatly elevated among male and female lawyers, as compared to the general population.<sup>39</sup> Job dissatisfaction among

30 See reports of lawyer distress, low public opinion of lawyers and low job satisfaction among lawyers in the 1990s, Daicoff, above n 2, 3–24.

31 See Peter D Hart Research Associates, *A Survey of Attitudes Nationwide toward Lawyers and the Legal System* (1993).

32 Ibid.

33 See, eg, American Bar Association, ‘At the Breaking Point: The Report of a National Conference on the Emerging Crisis in the Quality of Lawyers’ Health and Lives: Its Impact on Law Firms and Client Services’ (Paper presented at the At the Breaking Point Conference, Airlie House, Airlie, Virginia, 5–6 April 1991); Young Lawyers Division, American Bar Association, *Young Lawyers Division Survey: Career Satisfaction* (1995) (‘*Career Satisfaction*’); Young Lawyers Division, American Bar Association, *Young Lawyers Division Survey: The State of the Legal Profession* (1990) (‘*The State of the Legal Profession*’).

34 See *The State of the Legal Profession*, above n 33.

35 See the ‘Benjamin studies’, above n 14. See especially Benjamin, ‘The Role of Legal Education’, above n 14.

36 See Benjamin, ‘The Role of Legal Education’, above n 14.

37 See Benjamin, ‘The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers’, above n 14; *ibid.*

38 Ibid.

39 See Beck, Sales and Benjamin, above n 14, 22–25, 49–50.

lawyers also appears rather consistent at 20–28 per cent.<sup>40</sup> From this data, I concluded that approximately 20 per cent of, or one in five, lawyers at any one time are ‘walking wounded’, meaning they are functioning in the legal profession despite having clinically significant levels of psychological distress, substance abuse, or job dissatisfaction.<sup>41</sup>

## **B Legal Profession Changes**

A number of developments in the legal profession since the 1980s and 1990s have eroded the zealous advocacy model, leading us to where we are today, on the brink (or in the midst, depending on where you live) of change. In the United States, the legal profession appears to be entering drastic change, particularly since 2008. In contrast, in other countries, such as Australia, the legal profession may be further along in the change process. These developments<sup>42</sup> are explored below.

The first development is the ‘justice gap’, referring to unequal access to justice depending on income. A large number of people cannot afford lawyers (as they are too rich for legal aid yet too poor for private lawyers). This has resulted in the stratification of the legal profession into a two-tiered justice system, with fewer elite ‘Big Law’ firms (first tier) and more lawyers in small practices or public service (second tier) with ‘one-shotter’ clients. In addition, there are more minorities and women in the second tier.

The second development is that the number of lawyers continues to grow, while the unemployment rate among lawyers is rising and law firms are laying off associate attorneys or placing a ‘freeze’ on new hires.<sup>43</sup> Surprisingly, the justice gap appears to be widening.

Third, court dockets are clogged. Trials are rare, lengthy and very expensive in terms of both costs and legal fees. Court resolutions are often unsatisfactory, anti-climactic and less than optimal, in participants’ eyes.<sup>44</sup> As a result, most cases are

40 See *The State of the Legal Profession*, above n 33; *Career Satisfaction*, above n 33; The Young Lawyers Division of the American Bar Association conducted surveys in 1984, 1990 and 1995 evidencing a growth in dissatisfaction over the period of the three surveys. See, eg, Young Lawyers Division, ‘ABA Young Lawyers Division Survey: Career Satisfaction’ (Survey, American Bar Association, 1995) <[http://www.law.indiana.edu/people/henderson/share/satisfaction\\_800.pdf](http://www.law.indiana.edu/people/henderson/share/satisfaction_800.pdf)>.

41 See Susan Daicoff, ‘Lawyer, Be Thyself: An Empirical Investigation of the Relationship between the Ethic of Care, the Feeling Decision-Making Preference, and Lawyer Wellbeing’ (2008) 16 *Virginia Journal of Social Policy and the Law* 87.

42 These developments are explored in Susskind, above n 17, xxiv–xxxvi, and also generally throughout the book.

43 See Editorial, ‘A Less Gilded Future’, *The Economist* (New York), 5 May 2011, discussing the effects of the recession on the legal business in terms of ‘structural change’, ‘profits’ and ‘survival’ and also documenting the Bureau of Labor Statistics data on lawyer employment, showing that employment increased every year until 2007, after which it declined every year, taking the deepest dive in 2009, and that nearly 10 000 lawyers lost their jobs during the period 2009–10.

44 See Tom R Tyler, ‘The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings’ in David B Wexler and Bruce J Winick (eds), *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Carolina Academic Press, 1996).

settled through negotiation and mediation. However, these forms of alternative dispute resolution may fail to achieve their full healing potential as they often resemble mini-trials, being carried out by lawyers operating in an adversarial mode, without even the benefit of constitutional and evidentiary safeguards. In addition, the training, experience and approach of lawyers, in most cases, are at odds with the dispute resolution mechanisms being used to resolve most legal problems. Finally, lawyers may resist settling cases early as it cuts off their ability to earn more legal fees.

Fourth, clients feel that lawyers' fees are unjustifiably high and companies have thus sprung up to audit and carefully oversee law firms' legal bills.

Fifth, in the criminal arena, incarceration rates and recidivism rates are high, suggesting that the criminal justice system has failed to achieve its ends.

Sixth, there is growing demographic and psychological diversity in the legal profession due to the influx of minority and female students into law schools since around 1980. These 'non-traditional' individuals in the law may be responsible, in part, for an increased demand in the law for work consonant with one's personal values and incorporative of psychology and relational concerns. Lawyer distress and dissatisfaction has pierced holes in the dominance of the model of the lawyer as a blind, zealous advocate, whose personal values and morals are irrelevant to their representation of clients. Lawyers who are unable to divorce themselves from their personal values in their work, may find themselves morally and psychologically bankrupt as a result of working for clients they do not respect or value.<sup>45</sup> As a result, some lawyers began to crave work and clients that they *did* fully believe in.<sup>46</sup>

Seventh, client, lawyer and societal dissatisfaction with the legal system are propelling demand for cost-effective legal services that are more consonant with social science, relationships, emotions and values; demand for more client autonomy, voice, participation in legal processes and in the lawyer-client relationship; demand from clients for more accountability from lawyers (that is, justifying their fees); and demand for fixed fees.

Finally, due to some of these developments, and the continued overemphasis of law schools on doctrinal courses and trial advocacy, the gap between legal education and skills needed in practice has continued to widen.

45 Consider the plight of the attorneys representing a client such as Enron Corporation, who was engaged in widespread corporate and securities fraud. Or, it could be as simple as a lawyer representing a client in a bitterly contested, acrimonious divorce when he or she feels strongly that the divorce is harming the client's children. It could also be a lawyer who is a recovering alcoholic being asked to defend an alcoholic client against a drink driving charge, when he or she feels strongly that the client should rehabilitate.

46 Founder of the International Alliance of Holistic Lawyers, William Van Zyverden, explains that the lawyer's own morals and values are explicitly important in a holistic representation — face-to-face communication between Susan Daicoff and William Van Zyverden at the Annual Conference of the International Alliance of Holistic Lawyers, Marathon Key, Florida, November 1999.

In short, some might claim that the legal profession is dangerously close to obsolescence for all but the most wealthy individual, corporate and institutional clients.<sup>47</sup>

### C World Developments

In the world, various parallel developments and emerging shifts in emphasis have also contributed to making the legal profession ripe for change. Technological advances have spiked upwards, constantly remoulding how people live, work and interact.<sup>48</sup> We now have instant access to information, documents, individuals and groups around the world (as compared to 15 or 20 years ago). Social and professional online networks and sites such as Facebook, LinkedIn, Avvo, virtual law firms and online delivery of legal services have emerged in recent years.<sup>49</sup> Richard Susskind, in *The End of Lawyers ?: Rethinking the Nature of Legal Services*, describes the rise of ‘disruptive legal technologies’ in predicting drastic change in the legal profession in the near future. He also predicts that the traditional law firm model may become outmoded, in part due to calls for different fee structures, outsourcing of legal work and the availability to clients of online ‘community-based knowledge ecosystems’, making one-on-one, face-to-face lawyers less necessary.<sup>50</sup>

There has been a growing awareness of society’s interdependence and interconnectivity globally, as well as an awareness of the need for sustainable, non-destructive forms of living and working. These have placed a new emphasis on collaboration and cooperation. Post-Enlightenment values of connection and community have become more important.<sup>51</sup> Focus has shifted from the dominance of ‘left-brained’, rational, logical analysis, to ‘right-brained’ values such as relationships, emotions, collaboration, connectivity, creativity, holistic analyses of matters and problems, problem-solving and multidisciplinary practice.<sup>52</sup> An increasing emphasis on human capital, the human element and the importance of emotions has been observed.<sup>53</sup>

Growing environmental concern and demand for sustainable, green methods and processes may be contributing to the need to make legal services cost-effective

47 Based on the remarks of attorney and past president of the Illinois State Bar Association, Cheryl Niro, at the University of South Carolina’s Second National Mentoring Conference, Columbia, South Carolina, April 2010. See generally Susskind, above n 17.

48 See, eg, Damien Broderick, *The Spike: How Our Lives Are Being Transformed by Rapidly Advancing Technologies* (Forge, 2001).

49 See generally Thomas D Morgan and Ronald D Rotunda, *Professional Responsibility Problems and Material* (Foundation Press, 10<sup>th</sup> ed, 2008); Susskind, above n 17, both documenting these kinds of sites.

50 See Susskind, above n 17, 99–145.

51 See Thomas D Barton, ‘Troublesome Connections: The Law and Post-Enlightenment Culture’ (1998) 47 *Emory Law Journal* 163, 163–4.

52 See Daniel H Pink, *A Whole New Mind: Why Right-Brainers Will Rule the Future* (Riverhead Books, 2005).

53 For example, in the last two decades a ‘law and socioeconomics movement’ has generated scholarship, see, eg, Lynne L Dallas, *Law and Public Policy: A Socioeconomic Approach* (Carolina Academic Press, 2005).

and conducive to, rather than destructive of, sustainable processes. For example, many have recognised the need for legal processes and dispute resolution methods that preserve interpersonal relationships and promote parties' wellbeing, rather than impair or destroy them (as 'scorched-earth' litigation often does).<sup>54</sup>

Apology and forgiveness have become more prevalent and important, in stark contrast to the traditional legal approach to criminal and civil legal problems, which usually focuses on attributing blame to another and asking a neutral third-party decision-maker to assign fault and responsibility to that other. It also offers only money as the 'apology' in many cases and fails to provide an avenue for non-monetary apology and forgiveness to be exchanged.<sup>55</sup> For example, Toyota and Tiger Woods recently publicly apologised for product defects and marital unfaithfulness, respectively. Apology and forgiveness were also part of the South African Truth and Reconciliation Commission proceedings to heal victims, victims' families and perpetrators post-apartheid.

In corporate culture, a new, non-hierarchical leadership style has become popular. Patrick Lencioni and Jim Collins have both published books describing the ineffectiveness (and thus fall) of 'command and control' corporate leadership and the rise of corporate values such as collaboration, team building, problem-solving, cooperation, humility and transparency.<sup>56</sup>

More recently, the coming of age of the generation known as the 'Millennials'<sup>57</sup> and the current world economic crisis have also contributed to this rapid change.<sup>58</sup> The 'Millennials'' influence, through their increased emphasis on collaboration, civic mindedness and technology, will be explored below in Part V ('Millennials and the Economic Crisis').

Traditional legal jobs are less plentiful; many law firms are not hiring new associates or summer clerks. If they are hiring, they only seek associates with three or more years of experience. Anecdotally, it is apparent that law students are working for free at law firms just to gain experience during law school.

New graduates are considering ways to create new demands and markets for legal services and lawyers. Clients are demanding fixed, lower fees; there are more *pro se* litigants who demand online legal knowledge and forms they can use themselves to save money.<sup>59</sup>

54 See, eg, Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce without Litigation*, above n 7; Webb and Ousky, above n 7.

55 See *A Civil Action* (Directed by Steven Zaillian, Touchstone Pictures, 1998), where attorney Jan Schlichtmann is depicted telling his personal injury client that money is how the defendants apologise and how he gets paid.

56 See, eg, Jim Collins, *Good to Great: Why Some Companies Make the Leap ... and Others Don't* (HarperBusiness, 2001); Patrick Lencioni, *The Five Dysfunctions of a Team: A Leadership Fable* (Jossey-Bass, 2002), both describing a shift in corporate management from hierarchical, command-and-control to team and humility-based leadership.

57 See Neil Howe and William Strauss, *Generations: The History of America's Future, 1584 to 2069* (Morrow, 1991); Neil Howe and William Strauss, *Millennials Rising: The Next Great Generation* (Vintage, 2000), making an historical argument for the existence of the 'Millennial' generation.

58 See Susskind, above n 17.

59 Ibid.

### III RESPONSES AND SOLUTIONS

Many lawyers, judges, mediators and commentators have proposed solutions and responses to these problems, ranging from stress management,<sup>60</sup> to mediation,<sup>61</sup> to sheer innovations in the law.<sup>62</sup> It is proposed, however, that something more foundational than stress management, better traditional law firm management, or traditional mediation and alternative dispute resolution, is required. Those strategies, while helpful, simply mask a greater, more structural need for change in the legal profession.

A number of pioneers, trailblazers and leading edge innovators recognised this early on. Many of those people were present at the Non-Adversarial Justice Conference in May 2010 in Melbourne, continuing their tireless efforts to improve the law. In the 1970s and 1980s, and, in some cases, even in the 1930s, seeds were sown for a new legal profession by these insightful individuals. Inspired by them,<sup>63</sup> many more began formulating new ways of practicing and adjudicating law and resolving legal disputes.

#### A In the Legal Profession

In the legal profession, a number of shifts began to occur. First, lawyers, mediators and judges began experimenting with new forms of legal practice, dispute resolution and adjudication — including collaborative law, holistic law, transformative mediation, restorative justice, community courts and interdisciplinary problem-solving courts.<sup>64</sup> A more egalitarian lawyer–client relationship was tried, as a shift away from the lawyer-as-expert and client-as-subordinate model.<sup>65</sup> Commentators called for a shift from zealous advocacy to a professional role of the attorney that more closely resembled a ‘wise counsellor’<sup>66</sup> or ‘friend’ in the Aristotelian sense<sup>67</sup> of someone who tells the client what they

60 See Elwork, above n 15.

61 See Barbara Ashley Phillips, *The Mediation Field Guide: Transcending Litigation and Resolving Conflicts in Your Business or Organization* (Jossey-Bass, 2001).

62 See the vectors of the ‘comprehensive law movement’ in Susan Daicoff, ‘Law as a Healing Profession: The “Comprehensive Law Movement”’ (2006) 6 *Pepperdine Dispute Resolution Law Journal* 1.

63 These individuals include Professor David B Wexler and Professor Bruce J Winick, Magistrate Michael S King, Professor John Braithwaite, Professor Carrie Menkel-Meadow, Professor Marjorie A Silver, Professor Thomas Barton, Steven Keeva, Astrid Birgden, Justice Peggy Hora, Professor Robert Schopp, Howard Zehr, Professor R Baruch Bush, Professor Louis Brown, Professor Leonard Riskin and attorneys Stuart Webb, Bill Van Zyverden, John McShane, J Kim Wright and Arnie Herz (Non-Adversarial Justice: Implications for the Legal System and Society Conference, Melbourne, 4–5 May 2010).

64 See Daicoff, above n 62.

65 See Pauline H Tesler, ‘Collaborative Family Law’ (2004) 4 *Pepperdine Dispute Resolution Law Journal* 317, 318–20, 328.

66 See Atkinson, above n 20.

67 See Thomas L Shaffer and Robert F Cochran, ““Technical” Defenses: Ethics, Morals, and the Lawyer as Friend’ (2007) 14 *Clinical Law Review* 337, discussing the concept of lawyer as friend and discussing the idea of lawyer as an Aristotelian ‘friend’.

need to hear — the truth — instead of what they want to hear.<sup>68</sup> Lawyers began to use mediation more often and began to see their roles as less ‘warrior’ and more ‘problem-solver’ or ‘conflict-resolver’.<sup>69</sup> Lawyers also experimented with less gamesmanship in litigation, more disclosure and open discussion and a shift in focus from legal rights, duties and obligations to the parties’ interests, needs and desires.<sup>70</sup>

## **B The Comprehensive Law Movement**

In the late 1990s I was invited to one of the many conferences on ‘therapeutic jurisprudence’ organised by Professors Wexler and Winick.<sup>71</sup> Therapeutic jurisprudence (‘TJ’) grew out of the law and psychology movement. Emerging around 1990, it posits that law, legal processes and legal actors have, like it or not, therapeutic or non-therapeutic effects on the individuals involved in legal matters.<sup>72</sup> It then asks how social science can be used to assess these consequences and to propose changes to the law and legal processes which foster their therapeutic effects and minimise their counter-therapeutic effects. Originally applied only to mental health law, TJ was quickly applied to almost every area of substantive law, with great interest and effective application.<sup>73</sup>

At this conference, I noticed that there were programs presented on (in addition to therapeutic jurisprudence): preventive law, the integration of TJ with preventive law, procedural justice, collaborative law and restorative justice. Given my previous interest in the state of the legal profession, lawyer distress and

68 In contrast, zealous advocacy may be more closely aligned with this statement, often attributed to entrepreneur and capitalist J P Morgan who lived from 1837–1913: ‘Well, I don’t know as I want a lawyer to tell me what I cannot do. I hire him to tell me how to do what I want to do.’

69 See, eg, James M Cooper, ‘Toward a New Architecture: Creative Problem Solving and the Evolution of Law’ (1998) 34 *California Western Law Review* 297, advocating creative problem-solving skills in the practice of law; Janeen Kerper, ‘Creative Problem Solving vs. the Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs Palsgraf’ (1998) 34 *California Western Law Review* 351, introducing the emergence of creative problem-solving as a legal discipline; Thomas D Barton, ‘Conceiving the Lawyer as Creative Problem Solver’ (1998) 34 *California Western Law Review* 267, discussing a symposium issue to educate creative problem solvers. Issue 34(2) of the 1998 *California Western Law Review* was devoted to creative problem-solving and California Western Law School houses the McGill Center for Creative Problem-Solving.

70 See Tesler, above n 65, 318–20, 328.

71 This was a therapeutic jurisprudence ‘conference-within-a-conference’ held by David Wexler, John Lyons and Bruce Winick: ‘Therapeutic Jurisprudence and Preventative Law: The TJ Preventive Lawyer’ — American Psychology-Law Society of the American Psychological Association Biennial Conference, Redondo Beach, California, 5 March 1998.

72 See generally David B Wexler and Bruce J Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Carolina Academic Press, 1996); David B Wexler and Bruce J Winick, ‘Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research’ (1991) 45(5) *University of Miami Law Review* 979, 981; David B Wexler, ‘Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies’ (1998) 67(2) *Revista Juridica Universidad de Puerto Rico* 317, 317; David B Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press, 1990).

73 It has perhaps been most effective in the court system, generating interdisciplinary rehabilitative problem-solving courts such as mental health courts, drug treatment courts and domestic violence courts. See generally Center for Court Innovation, *Home* (16 August 2011) <<http://www.courtinnovation.org/>>.

wellbeing and public opinion of law and lawyers, I was struck by the similarities of these disciplines and their coterminous appearance; almost all had emerged around 1990. I asked Professors Wexler and Winick if they thought that these developments might all be part of a larger movement in the law. Their response was to challenge me; if so, they said, then articulate the common ground between all these developments that binds them together, unifies them and distinguishes them from the traditional adversarial justice system.

So I tried. First, I determined that there were about nine developing new approaches to law, lawyering, dispute resolution and adjudication that all fit within this larger movement. In addition to therapeutic jurisprudence, these were: preventive law (like preventive medicine); holistic law (like holistic medicine); procedural justice (social science research on litigants' satisfaction with and perceptions of the fairness of legal processes); creative problem-solving; collaborative law (a non-litigious means for resolving divorce and custody cases with two attorneys, two clients and possibly an interdisciplinary team of experts); transformative mediation (dispute resolution focused on moral growth of the parties); restorative justice (an approach to crime focused on healing through conferencing between victims, offenders and society); and problem-solving courts (such as drug treatment courts, courts for homeless persons, domestic violence courts, etcetera). I refer to these as 'vectors' because, like the spokes of a wheel, they all share a common hub and, being innovative, they all represent forward movement in the law.

What I found was that all of these developments, or vectors, shared at least two common features (the 'hub'). The first was what collaborative lawyer Pauline Tesler calls 'rights-plus', meaning law reaching beyond bare legal rights to incorporate and consider the parties' needs, desires, goals, mental status, wellbeing, relationships and future functioning. Legal rights are not trumped by these concerns, but where the 'rights-plus' concepts can be preserved or improved, they are. Second, they all seek to optimise the outcomes of legal matters as measured by human wellbeing, by assessing the effects of law and legal processes on the 'human element' (meaning emotions, psychological functioning and relationships involved in legal matters), while still resolving the particular legal matter. It is the optimisation feature that causes these disciplines (arguably) to result in 'better' overall outcomes of legal problems as compared to more traditional approaches.

Many share other common features as well, such as: (1) favouring dispute resolution that eschews protracted, scorched-earth litigation in favour of consensual, collaborative, community-based methods and processes affording voice and participation for all; and (2) solving legal problems creatively and holistically as a result of teams of lawyers and clients working together as equal partners, rather than having passive clients represented by dispassionate expert legal technicians who 'know best'.

By about 1990, these developments had begun to eke into the legal consciousness and they hit a chord. Many recognised the need for the reforms being proposed and more reforms, innovations, research, scholarship and interest by legal

educators, lawyers, mediators and judges appeared. By the end of the 1990s, these innovators, and many others interested in these disciplines, began to find each other and share information and ideas at various conferences, realising that their observations were similar and their objectives were related. The next decade saw growth, experimentation and collaboration; by the mid-2000s, it became clear that these efforts did indeed herald an overall movement — one that touched all areas of the law and transcended the scope of each individual discipline.

In 2008, I argued that the comprehensive law movement was in its adolescence, complete with growing pains, as I heard from those in the field that some approaches worked, some required adjustment and tweaking and others had unintended consequences (such as judges who, with a mere hour or two of training in TJ, misapplied the principles and practiced paternalism and coercion in the name of TJ).<sup>74</sup> By 2010, the movement had again matured. The years from 2007 to 2010 saw the publication of five books collecting the vectors of the comprehensive law movement in one place, speaking of them in one breath and treating them as one wave, if you will.<sup>75</sup> The practices continued and deepened and several law school courses and clinics developed.<sup>76</sup> We are now on the brink of worldwide acceptance of the importance and validity of non-adversarial approaches, alongside and together with traditional adversarial systems. Magistrate King's idea of a 'justice system', where courts are only one part of that overall system, along with many other structures and resources that are seen as equal to courts, appears to be a sound model for the future of the law.<sup>77</sup>

By 2010, Dennis Stolle, David Wexler, Bruce Winick, Julie MacFarlane, Marjorie Silver, Susan Brooks, Robert Madden, Michael King, Arie Freiberg, Becky Batagol, Ross Hyams and J Kim Wright had all authored books recognising the scope of the changes being wrought in the legal profession and collecting the vectors of the comprehensive law movement.<sup>78</sup> Ambitious research and scholarship

74 See Susan Daicoff, 'Growing Pains: The Integration vs. Specialization Question for Therapeutic Jurisprudence and Other Comprehensive Law Approaches' (2008) 30(2) *Thomas Jefferson Law Review* 551.

75 See, eg, Susan L Brooks and Robert G Madden, *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice* (Carolina Academic Press, 2010) ('*Relationship-Centered Lawyering*'), including therapeutic jurisprudence, preventive law, procedural justice, transformative mediation and restorative justice; J Kim Wright, *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law* (American Bar Association, 2010) ('*Lawyers as Peacemakers*'), including all of the vectors; Michael King et al, *Non-Adversarial Justice* (The Federation Press, 2009), including all of the vectors; Julie MacFarlane, *The New Lawyer: How Settlement Is Transforming the Practice of Law* (UBC Press, 2008) ('*The New Lawyer*'), a Canadian publication exploring, in depth, the lawyering approach underpinning the movement and including collaborative law, restorative justice, therapeutic jurisprudence and problem-solving courts; Marjorie A Silver, *The Affective Assistance of Counsel: Practicing Law as a Healing Profession* (Carolina Academic Press, 2007) ('*The Affective Assistance of Counsel*'). An earlier book collecting the vectors was Dennis P Stolle, David B Wexler and Bruce J Winick (eds), *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Carolina Academic Press, 2000).

76 Courses exist at the following law schools: Phoenix School of Law, Florida Coastal School of Law, Arizona State University, Seattle University, Monash University (Australia) and South Texas College of Law. More courses on a single vector exist as well (eg, Therapeutic Jurisprudence offered at the University of Puerto Rico and University of Miami, among others). A law school clinic also exists at the William & Mary Law School.

77 See King et al, above n 75.

78 See *ibid*; MacFarlane, above n 75; Silver, above n 75; Brooks and Madden, above n 75; Wright, above n 75.

agendas, frequent national and international conferences and the tireless efforts of many committed individuals, such as Professors Wexler and Winick,<sup>79</sup> author Steven Keeva,<sup>80</sup> lawyer/journalist J Kim Wright<sup>81</sup> and many others, have all contributed to the success of this movement. The year 2010 hosted a watershed conference in Melbourne on the movement.<sup>82</sup> This conference was evidence of a moment of worldwide recognition; indeed these efforts and individuals are succeeding in greatly impacting the future of our chosen profession. It was a momentous occasion, not a time to rest and say ‘we are done’, but an appropriate pause to celebrate and appreciate the efforts and successes of many individuals and organisations who are working for positive change.

#### **IV THE FUTURE OF THE COMPREHENSIVE LAW MOVEMENT**

Despite the prominence of the vectors of the comprehensive law movement, there are challenges ahead. The primary challenges relate to assisting law students, lawyers, mediators and judges in acquiring (or retooling to have) the necessary skills for minimal levels of competence in practising law comprehensively. Second, the ethics codes and ideals may need to be revised slightly to embrace non-adversarial, comprehensive approaches. The professional role of the lawyer may also need to be expanded and diversified. In some cases, substantive law must be revised to accommodate and facilitate comprehensive law practice. Finally, the integration of the comprehensive law vectors into the legal profession, alongside more traditional approaches, must be completed.<sup>83</sup> These challenges are explored, in reverse order, below.

##### **A Integration Question Resolved**

One of the challenges facing the movement, the question of integration versus isolation, which I discussed in 2008,<sup>84</sup> appears to have been resolved. The issue was whether comprehensive law approaches would replace traditional approaches to law, exist alongside them as equal citizens, exist alongside them as second-class citizens, or be entirely integrated into traditional lawyering seamlessly (so that lawyers, mediators and judges would all practice traditional and comprehensive non-adversarial law equally well).<sup>85</sup>

79 See generally their many articles and books collected at: David B Wexler, *Welcome* (27 July 2010) International Network on Therapeutic Jurisprudence <<http://www.law.arizona.edu/depts/upr-intj/>>.

80 Steven Keeva’s prescient book *Transforming Practices* is now in its 10<sup>th</sup> anniversary edition, see Keeva, above n 15.

81 See Wright, above n 75.

82 As discussed in the introductory footnote on page one of this article.

83 See Daicoff, above n 74, 562–6, 573.

84 *Ibid* 561–6.

85 *Ibid*.

King and his colleagues argued in 2009 that non-adversarial justice is part of a continuum which includes adversarial justice.<sup>86</sup> MacFarlane asserted in 2008 that ‘convergence’ of non-adversarial approaches with adversarial approaches is occurring.<sup>87</sup> It appears that what MacFarlane calls ‘convergence’ and I call ‘integration’ is happening; the comprehensive law movement simply adds to the lawyer’s, mediator’s and judge’s toolkit, rather than entirely replacing or quietly supplementing the traditional adversarial systems. There are some lawyers, mediators and judges whose work is entirely non-adversarial or comprehensive, such as Stuart Webb, founder of collaborative law,<sup>88</sup> R Baruch Bush, founder of transformative mediation<sup>89</sup> and former Judge Peggy Hora,<sup>90</sup> an early proponent of drug treatment courts. However, there are other lawyers, mediators and judges who work either adversarially or non-adversarially, depending on the ‘call’ of the legal problem presented. Given current economic conditions, it seems reasonable that most private lawyers would want to offer their client as many options as possible. If lawyers want to offer clients ‘unbundled legal services’ to save them money in legal fees,<sup>91</sup> they could, for example, offer them collaborative divorce instead of traditional divorce, as well.

## **B The New Professional Role of the Lawyer**

Scholars in the comprehensive law movement acknowledge the need for lawyers to shift their concept of the ideal professional role of the lawyer from zealous advocate to some other model.<sup>92</sup> Working in a comprehensive, non-adversarial mode requires the lawyer to be sensitive to the client’s greater good — their psychological needs, resources, goals, relationships, wellbeing, morals and values. If the lawyer unquestioningly does what the client asks him or her to do, the lawyer and client risk a *folie à deux*, where the lawyer and client march towards a result and outcome that are, ultimately, counter-therapeutic or even damaging to the client.

For example, a client may ask a lawyer to represent her in suing her former employer for wrongful termination of employment due to discrimination. She says, ‘Leave no stone unturned, I want to nail these jerks to the wall. They treated me like dirt and I want them to pay for it!’ The zealous advocate can easily carry out the client’s wishes and handle the case in a contentious, adversarial, inflexible mode that will cause much distress to the defendant employer. However, a lawyer adopting a ‘wise counsellor’ role might counsel the employee instead, knowing in the back of their mind that litigants are often in stage two, anger, of Elizabeth Kubler-Ross’s

<sup>86</sup> See King et al, above n 75, 5.

<sup>87</sup> See Macfarlane, above n 75.

<sup>88</sup> See Webb and Ousky, above n 7.

<sup>89</sup> See Bush and Folger, above n 8.

<sup>90</sup> See Peggy Fulton Hora, William G Schma and John T A Rosenthal, ‘Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America’ (1999) 74 *Notre Dame Law Review* 439.

<sup>91</sup> See Mosten, above n 7.

<sup>92</sup> See Macfarlane, above n 75.



the outer limits of practicing law as a Type II or III attorney. This should also provide these attorneys with guidelines on how to gently counsel, advise and help clients without becoming paternalistic or coercive.

### **C The Lawyer's, Mediator's and Judge's Expanded Toolkit**

What's next? The next step, besides continuing to experiment with, evaluate, assess and refine these new modes of law, is to train legal personnel in the required skills to practice comprehensive law well. These break down into four or so categories: intrapersonal skills, interpersonal skills, dispute resolution and judging. However, a preliminary readiness to learn might be a prerequisite to this training. Tesler, for example, has written about how lawyers can 'retool' themselves to practice collaborative law,<sup>96</sup> one of the vectors of comprehensive law. She explains that a change in mindset is often needed<sup>97</sup> before training in these non-traditional lawyering, mediating and judging skills will be effective.

#### **1 Intrapersonal Skills**

Legal personnel in the comprehensive law movement need certain intrapersonal skills, meaning the ability to know themselves and manage their impulses and actions. First, they need to be able to identify 'countertransference', that is, when their reactions to or feelings about another person, are affected by their own personal experiences.<sup>98</sup> For example, a lawyer may be particularly enamoured with a client he is attracted to romantically, or may be particularly impressed with a wealthy client if the lawyer grew up poor and has always wanted to be wealthy. These 'extra' feelings or slightly irrational feelings may cause the lawyer to treat the client differently from other clients, perhaps even to the extent of insisting on the client's innocence when the client is actually guilty. As a result, the lawyer's representation of the client can be compromised. On the other hand, the lawyer might, for example, particularly dislike a male client whose manner is effeminate and emotional, because the lawyer is frustrated with his own teenage son, who he is trying to encourage to be more masculine.<sup>99</sup>

The comprehensive lawyer must be skilled in knowing himself or herself and being able to manage his or her reactions, emotions and impulses. For example, lawyers may want to explore the traits of the 'lawyer personality' and determine how many of these apply to them. Then, they may want to consider how those traits might impede or improve their ability to practice law comprehensively. For example, the typical lawyer trait of 'thinking' as a decision-making preference suggests that most lawyers value logic and rational analysis when making decisions. However, many non-lawyers (about half or more) make decisions on

96 See Tesler, 'Collaborative Law: A New Paradigm for Divorce Lawyers', above n 7, 984 n 43.

97 Ibid 983-5.

98 See Marjorie A Silver, 'Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship' (1999) 6 *Clinical Law Review* 259.

99 Silver, above n 75, 22-8.

the basis of ‘feeling’, which emphasises context, relationship, personal values and harm to others.<sup>100</sup> Another example would be the typical lawyer traits of dominance and competitiveness; if extreme, these may need to be curbed in legal personnel working comprehensively. Anger management, for example, may be useful. Reflection and mindfulness are also useful tools to use in gaining such self-awareness and self-knowledge.<sup>101</sup>

Finally, the comprehensive lawyer needs to be able to watch for paternalism and coercion when working with clients in a healing fashion. Perhaps one of the greatest dangers of these approaches to law is legal personnel foisting ‘healing’ strategies and solutions on unwilling clients, because the lawyer is overly invested in the strategy or solution or simply wants to be a ‘healer’.

## 2 *Interpersonal Skills*

The comprehensive lawyer needs to have excellent listening and observational skills and be able to convey empathy, or the ability to ‘stand in the shoes’ of another and express that understanding to the other. These skills are useful in identifying parties’ underlying needs, motives, interests and wishes — the ‘rights-plus’ feature of the vectors of the movement. Empathy is useful in getting parties to open up and disclose information, in defusing others’ anger and in creating good interpersonal bonds.

The comprehensive lawyer also needs to be able to identify and manage appropriate boundaries, not allowing himself or herself to become ‘enmeshed’ with his or her clients. He or she needs to know how much self-disclosure, or information about himself or herself, to share with others when creating an interpersonal bond. For example, Linda Mills explains that self-disclosure is useful in creating a good lawyer–client relationship when the lawyer has personally undergone the legal problem facing the client (such as domestic violence or bankruptcy).<sup>102</sup>

The comprehensive lawyer needs to have a rudimentary understanding of basic social science and psychology, as well as the tenets of procedural justice. Procedural justice refers to social science findings that litigants’ satisfaction with legal processes depends more on three factors than on whether they won or lost. These three are: voice (the ability to tell their story and be heard); participation (the ability to participate in the decision-making process or at least have the decision-maker justify his or her decision); and respect (being treated by the

100 Lawrence R Richard, ‘Psychological Type and Job Satisfaction among Practicing Lawyers in the United States’ (2002) 29 *Capital University Law Review* 979, 1016.

101 Mindfulness is also relevant for mediators; Professor Leonard Riskin has been most influential in forwarding the use of mindfulness in the law and in dispute resolution. See, eg, Leonard L Riskin, ‘The Contemplative Lawyer: On the Potential Contributions of Mindfulness Mediation to Law Students, Lawyers, and Their Clients’ (2002) 7 *Harvard Law Review* 1; Douglas A Codiga, ‘Mindfulness in the Law and ADR: Reflections on the Potential Growth of Mindfulness Mediation in the Law’ (2002) 7 *Harvard Law Review* 109.

102 See Linda Mills, ‘Affective Lawyering’ in Dennis P Stolle, David B Wexler and Bruce J Winick (eds), *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Carolina Academic Press, 2000) 309.

authorities with dignity).<sup>103</sup> The comprehensive lawyer also needs to know when to refer a client to a non-lawyer professional such as a psychologist, psychiatrist, or financial planner.

Comprehensive lawyers may want to learn how to utilise therapeutic jurisprudence/preventive law concepts, such as ‘psycho-legal soft spots’ and the ‘rewind’ and ‘fast forward’ of cases, to prevent litigation. Creative problem-solving is important for ‘out of the box’ solutions to legal problems. Understanding the value of apology, forgiveness and reconciliation and learning how to facilitate them may also be important. The comprehensive lawyer needs to be able to ‘triage’ legal problems, meaning deciding which comprehensive law vector or vectors in the lawyer’s ‘toolkit’ would be best to apply. Finally, the comprehensive lawyer needs to be able to work well with others (such as cooperatively with his or her client), exercise leadership skills and be able to build teamwork among a group of professionals and parties. Cooperation and collaboration are important to proper practice of comprehensive law vectors, as well as more traditional skills such as advocacy, oral persuasion and confrontation.

### **3 Dispute Resolution Skills**

The comprehensive lawyer needs excellent conflict resolution skills, as comprehensive law utilises non-traditional alternative dispute resolution methods such as collaborative law, transformative mediation, restorative justice and circle process.<sup>104</sup> When a third party decision-maker is desired, the comprehensive lawyer will want to consider non-traditional courts such as problem-solving courts and community courts, as well as more traditional courts.

### **4 Judging Skills**

The comprehensive law judge will also assume a different role to that of the traditional judge. He or she will need to be able to exhibit ‘tough love’ with litigants, collaborate with counsel and non-legal professionals on interdisciplinary teams and form relationships with litigants to function in a healing mode. Drug treatment court judges, for example, employ a host of non-traditional skills in order to function effectively and to attempt to rehabilitate offenders.<sup>105</sup>

### **5 Training Programs**

What is required now is more research and data on what works and how it works, and the development of excellent training materials to train old and new legal personnel in how to practice, adjudicate and mediate comprehensively, so they

<sup>103</sup> See Tyler, above n 44.

<sup>104</sup> For a description of these methods, see Susan Daicoff, *Comprehensive Law Practice: Law as a Healing Profession* (Carolina Academic Press, 2011) 165–234; King et al, above n 75, 39–64, 88–137.

<sup>105</sup> See, eg, David Stevens Hobler, *Drug Treatment Court: The Making of Judicial Capital — Collaborative Therapeutic and Preventive Practices* (20 July 2011) California Western School of Law — San Diego <<http://www.preventivelawyer.org/main/default.asp?pid=essays/hobler.htm>>.

can be equally proficient at adversarial and non-adversarial approaches alike. Law schools need to develop courses and clinics in non-adversarialism to balance out their offerings in adversarial practice such as trial advocacy, moot court, mock trial, pre-trial litigation drafting and the like.<sup>106</sup> Curricular decision-makers need to be approached with information about the prevalence of comprehensive law courses around the globe and proposals to add such courses and clinics to the curriculum.

Finally, more training materials and textbooks need to be developed to stand alongside the now six or so excellent books on the comprehensive law movement. The following can be used as materials for general courses: Stolle, Wexler, and Winick's *Practicing Therapeutic Jurisprudence*, Silver's *The Affective Assistance of Counsel, Non-Adversarial Justice* by King and his colleagues, Wright's *Lawyers as Peacemakers*, MacFarlane's *The New Lawyer and Relationship-Centered Lawyering* by Brooks and Madden.<sup>107</sup>

## V MILLENNIALS AND THE ECONOMIC CRISIS

Ironically, what is most exciting for the future of the comprehensive law movement may be the potential of the rising generation of young lawyers in the profession, when combined with the current economic crisis, to foster the growth of comprehensive law approaches.

### A The Economic Crisis

The current global economic crisis, while devastating in many ways, may have some surprising consequences. It may, for example, accelerate innovation in the legal profession. Unable to afford the traditional hourly legal fees charged by private lawyers, clients may begin seeking cheaper ways to answer questions about the law and handle legal matters,<sup>108</sup> such as: fixed legal fees, unbundled legal services,<sup>109</sup> web-based delivery of legal knowledge, co-opting of legal services and knowledge by non-lawyers<sup>110</sup> and virtual law firms. Susskind suggests that

106 For example, the author's survey shows that her institution, Florida Coastal School of Law, has about 30 to 35 trial related courses and clinics and five to seven non-adversarial courses.

107 See Macfarlane, above n 75, exploring in detail the current state of the legal profession, changing professional roles of the lawyer and lawyering; Silver, above n 75, exploring how lawyers approach clients comprehensively; Brooks and Madden, above n 75, including therapeutic jurisprudence, preventive law, procedural justice, transformative mediation and restorative justice; Stolle, Wexler and Winick (eds), above n 75, including therapeutic jurisprudence, preventive law, procedural justice, transformative mediation and collaborative law; Wright, above n 75, including all of the vectors; King et al, above n 75, including all of the vectors.

108 See Susskind, above n 17, 148–53, noting cost consciousness of clients and predicting changes to billing practices.

109 See Forrest S Mosten, *Unbundling Legal Services: A Guide to Delivering Legal Services A La Carte* (American Bar Association, 2000).

110 See Susskind, above n 17.

outsourcing, web-based delivery and technology will assist clients in drafting their own legal documents with some online help, bypassing lawyers altogether.<sup>111</sup>

The justice gap has also led to innovative solutions such as ‘low bono’, a program staffed by new lawyers to serve clients whose income is too high to qualify for legal aid, but too low to finance traditional legal fees.<sup>112</sup> These programs may be housed in a law school, which benefits the school by employing its graduates and benefits the new lawyers, who need work.<sup>113</sup>

New law school graduates and unemployed lawyers may brainstorm innovative, cost-effective ways to deliver legal services in order to have work. Thus, they may turn to some of the comprehensive law approaches, such as collaborative law, restorative justice and transformative mediation, which often resolve legal matters faster and cheaper than court proceedings.

## **B The Millennial Generation**

The Millennials — those born between (approximately) 1983–2001<sup>114</sup> — have just begun to enter the legal profession in the last few years. Some of their specific traits, likes and characteristics may fit well with comprehensive law approaches.

### **1 Characteristics of the Millennials**

Historians Howe and Strauss identified the ‘Millennial’ generation in the course of studying 500 years or so of history and generational influences.<sup>115</sup> They concluded that there were four general types of generations that appeared in a cyclical pattern. They named these types: Heroes, Artists, Prophets and Nomads. Each of the four types has a distinct set of characteristics, drives and motivations, often developed in response to the generation preceding it. The Hero generations, for example, rise to power after a period of instability and crisis and they work to rebuild, re-establish and stabilise their world. For example, the ‘Greatest Generation’ came of age after the Great Depression.

Howe and Strauss explain that each generation lasts approximately 22 years and since there are four types, there is thus one complete ‘cycle’ every 90 or so years. They posit that these generational influences hold true globally as well. In the 20<sup>th</sup> century, they identified the following generations (birth years and types in parentheses):

111 Ibid.

112 See Luz Herrera, ‘Rethinking Private Attorney Involvement through a “Low Bono” Lens’ (2009) 43 *Loyola Law Review* 1.

113 Karen Sloan, ‘Incubators Give Birth to Flocks of Solo Practitioners’ (2011) *The National Law Journal* <<http://www.law.com/jsp/tx/PubArticleTX.jsp?id=1202513553104&slreturn=1&hblogin=1>>.

114 See Judith Welch Wegner, ‘Reframing Legal Education’s “Wicked Problems”’ (2009) 61 *Rutgers Law Review* 867, 988, citing Howe and Strauss, *Generations*, above n 57, 1584–2069; Susan K McClellan, ‘Externships for Millennial Generation Law Students: Bridging the Generation Gap’ (2009) 15 *Clinical Law Review* 255, 259, placing the birth years between 1982 and the mid-2000s.

115 See generally Howe and Strauss, *Generations*, above n 57.

- Lost Generation (1883–1900) (Nomads)
- Greatest Generation (1901–24) (Heroes)
- Silent Generation (1925–42) (Artists)
- Baby Boomer (1943–60) (Prophets)
- Generation X (1961–81) (Nomads)
- Millennial Generation/Generation Y/Generation Next or Net (1982–98) (Heroes)
- Generation Z/New Silent Generation/Homeland Generation (1999–2019) (Artists)<sup>116</sup>

They claim that the last ‘Hero’ generation, the GI or Greatest Generation, came of age after the crisis of the Great Depression, during World War II, and then rose to power in the 1950s; this generation was responsible for rebuilding, the economic boom and the prosperity of that time.<sup>117</sup> The Millennials are similarly a ‘Hero’ generation; they will rise to power perhaps after the current economic crisis. Commentators suggest that they are likely to find non-traditional solutions to the problems facing the world today, rebuild and re-establish order and prosperity.<sup>118</sup>

The Millennials have been described as follows:<sup>119</sup> they celebrate diversity and work well in diverse teams and groups, they are optimistic, realistic, self-inventive, collaborative, nurtured, close to their parents<sup>120</sup> and civically minded. They seek to rewrite the rules, think institutions are irrelevant, assume technology and spend a great deal of time online, multitask well and seek interactive relationships, structure, mentoring and direct support from mentors.<sup>121</sup>

Their reliance on and proficiency with technology is well-known. They use technology at higher rates than people from other generations. For example, in 2007: 97 per cent of students owned a computer; 94 per cent owned a cell phone; 92 per cent of those reported multitasking while instant messaging; 76 per cent used instant messaging; 56 per cent owned an MP3 player; 40 per cent used television to get most of their news; 34 per cent used the Internet to get their news; and on average they spent at least 3.5 hours a day online.<sup>122</sup>

116 Ibid.

117 Ibid 259–60.

118 See McClellan, above n 114, 259–61.

119 The following descriptions come from: McClellan, above n 114, 259–270; Melody Finnemore, ‘Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business’ (2005) 66 *Oregon State Bar Bulletin* 9, 9–13; Melissa H Weresh, ‘I’ll Start Walking Your Way, You Start Walking Mine: Sociological Perspectives on Professional Identity Developmental and Influence of Generational Differences’ (2009) 61 *South Carolina Law Review* 337, 368.

120 In a survey of college students in the USA, Millennials spoke with their parents an average of 1.5 times per day about a wide range of topics: See Reynol Junco and Jeanna Mastrodicasa, *Connection to the Net Generation: What Higher Education Professionals Need to Know about Today’s Students* (National Association of Student Personnel Administrators, 2007).

121 See McClellan, above n 114, 259–270; Finnemore, above n 119, 9–13; Weresh, above n 119, 368.

122 See Junco and Mastrodicasa, above n 120, 67, 70–80, which surveyed 7705 college students in the USA in a research study.

They have been called ‘trophy kids’ who have a sense of entitlement, as they have experienced school and extracurricular activities where ‘no one loses’ and everyone gets a ‘thanks for participating’ trophy. They are used to structure in their day-to-day schedule and specific, structured rubrics for assignments; thus they have been accused of needing too much direction, supervision, support and ‘hand-holding’. They have high expectations of their work and desire to shape their jobs to fit their lives rather than adapt their lives to the workplace, as they demand work–life balance.

They are also used to working in teams of diverse individuals and prefer to interact in groups rather than one-on-one. They are peer-oriented (for example, they frequently use social networks such as Facebook and Twitter), demand transparency from those in authority and crave immediate, regular feedback laced with much praise. They also seek meaningful work and many want to ‘make a difference’ in the world.

Some estimate that there are 75 million Millennials, as compared to 51 million ‘Gen Xers’. In contrast, the Gen Xers accept but don’t celebrate diversity; are pragmatic, practical, self-reliant and individualistic; reject the rules and mistrust institutions; use technology; and seek a casual, friendly work environment that affords flexibility and freedom and a place to learn. Compared to the Millennials, they can appear like individualistic, cynical loners.

## **2 Relationship to the Law as a Healing Profession**

Several of the characteristics of the Millennials may contribute greatly to the growth of the comprehensive law movement. First, they are civically minded and seek solutions for the pervasive and disturbing problems facing the world and society today, such as poverty, hunger, corruption, water needs, pollution, poor education, health care, the justice gap, etcetera. They ask ‘Why?’, buck tradition and propose reforms. Law as a healing profession, as presented by the vectors of the comprehensive law movement, may appeal to the Millennials’ desire to improve the world. It may appeal to their sense of innovation and desire to remake institutions from the ground up.

Second, Millennials like to work in teams, particularly diverse teams. They enjoy collaboration and teamwork. They enjoy interactive relationships and want their work to be personalised and fulfilling. Law as a healing profession may allow them to be involved and engaged in team-like partnerships with their clients, opposing counsel and judges, instead of working in a solitary, individualistic mode. They are likely to seek out innovative, technology-based, sustainable, cooperative ways to practice and adjudicate law. They are not likely to enjoy the solitary, isolated aspects of the traditional practice of law.

Millennials are not likely to accept the status quo, unquestioningly accept a long period of apprenticeship in the legal profession, or follow tradition. They have the potential to innovate, make changes and brainstorm new, sustainable, previously unimagined ways to make money and deliver legal services to clients.

The comprehensive law movement vectors are likely to appeal to Millennials as they are innovative, cooperative and collaborative and promise solutions to the ills facing the law as an institution.

## VI CONCLUSION

The legal profession has been exhibiting a panoply of difficulties and challenges for several decades, ranging from lawyer distress and low public opinion to the justice gap, failure of the court system and of the criminal justice system, limited or no access to trials, lawyers' inadequate training for mediation and settlement of cases and deficiencies in legal education. Responses to these concerns include a number of new developments in the law, including the vectors of the comprehensive law movement.

The comprehensive law movement, with its disciplines of therapeutic jurisprudence, preventive law, procedural justice, creative problem-solving, collaborative law, restorative justice, transformative mediation, holistic justice and problem-solving courts, has made enormous strides since 1990. By 2010, it had celebrated the publication of at least six books collecting all or some of these vectors<sup>123</sup> and also an international conference on 'non-adversarial justice'. As a movement, it has survived infancy and adolescent awkwardness, as it has struggled to find its proper role in the legal profession, faced opposition and established itself in legal scholarship, law practice, the court system and legal education. Some of its practices have been tested and deemed ethical<sup>124</sup> and the professional role of the attorney has expanded to allow for a more comprehensive approach to client problems.<sup>125</sup>

Its next task is to develop better training materials and methods for law students, lawyers, mediators and judges to learn how to apply its vectors. While several excellent books are available,<sup>126</sup> specific training materials and methods are sparse.

Despite its appeal, the comprehensive law movement has the potential to become marginalised, or so integrated into mainstream law that it becomes diluted in the future. Fortunately, there are two recent developments that have the potential to thrust the comprehensive law movement into the forefront. These are the current economic crisis and the rise of the Millennial generation.

123 See the six books cited, above n 75.

124 An example of an ethical controversy was the question of whether collaborative law's withdrawal feature was ethical. After some controversy, an American Bar Association opinion found in 2007 that it is, as long as informed consent is obtained from the client. See Ethics Committee, 'Ethical Considerations in the Collaborative and Cooperative Law Contexts' (Formal Ethics Opinion No 115, Colorado Bar Association, 24 February 2007); Standing Committee on Ethics and Professional Responsibility, 'Ethical Considerations in Collaborative Law Practice' (Formal Opinion No 07-447 (2007) 3, American Bar Association, 2007).

125 See American Bar Association, *American Bar Association Model Rules of Professional Conduct* (1983) Rule 2.1 <[http://www.law.cornell.edu/ethics/aba/current/ABA\\_CODE.HTM#Rule\\_2.1](http://www.law.cornell.edu/ethics/aba/current/ABA_CODE.HTM#Rule_2.1)>.

126 See the six books cited, above n 75.

First, Millennials are now coming of age and entering the legal profession and as they rise to power, they are likely to innovate and build new institutions and ways to solve legal problems. The vectors of the comprehensive law movement naturally fit with some characteristics attributed to Millennials; namely being able (and liking) to work collaboratively in teams made up of diverse individuals, a desire to remake and rebuild broken institutions and innovativeness.

Secondly, the current economic crisis may drive lawyers to create new ways of delivering legal services to previously untapped sources of clients, work and income. By expanding the lawyer's toolkit with the fresh approaches of the comprehensive law movement, the comprehensive law vectors may be very useful to these innovative lawyers who want to maximise what they can offer their clients. Also, since many of the comprehensive law vectors deliver legal services and solve legal problems in a cost-effective way, they may become very relevant in today's economic climate. Finally, clients may demand outcomes that are 'psychologically sustainable' — they may be unwilling to spend scarce resources on lawyers if the involvement of those lawyers in the legal matter prolongs its resolution, creates a more contentious relationship between the parties and/or impedes the parties' emotional closure on the matter. The comprehensive law movement provides processes that are expressly designed to result in psychologically sustainable outcomes.

These two world events and their consequences have the potential to sound the death knell for the primacy of the adversarial system and herald the remake of the legal profession in a comprehensive way, with non-adversarial and adversarial approaches coexisting in an equal, shoulder-to-shoulder fashion.