

Modern Lawyer

Ideas for Legal Leaders

Editor: Catherine McGregor

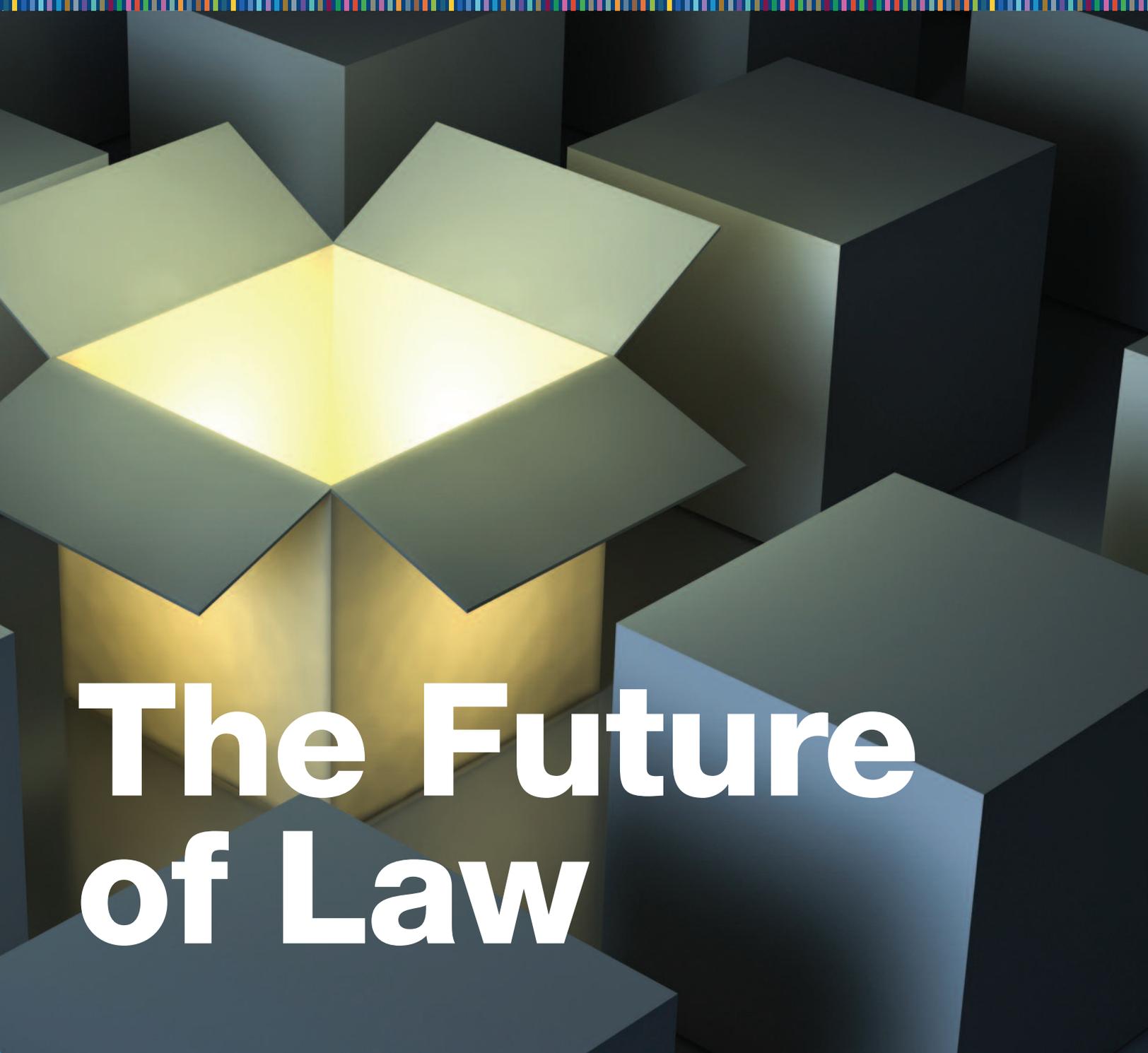
October 2020 www.globelawandbusiness.com

Featured in this issue

*The show must go on:
creativity and thinking
differently in law*

*The pandemic's psychological
price*

*Failure camp – the importance
of psychological safety for
lawyers*

The background of the lower half of the cover is an abstract composition of 3D geometric shapes, primarily cubes and rectangular prisms, in various shades of grey and blue. One central cube is brightly lit from within, casting a warm yellow glow. The overall effect is a sense of depth and modernity.

The Future of Law

Editor
Catherine McGregor

Editorial board
Ida Abbott
Jeremy Barton
James Collis
Neville Eisenberg
Heidi Gardner
Tony King
Moray McLaren
Bendita Cynthia Malakia
Charles Martin
Stephen Mayson
Rebecca Normand-Hochman
Aline Poncelet
Kenny Robertson
Bjarne Tellmann

Globe Law and Business contacts
Sian O'Neill, Managing director
sian@globelawandbusiness.com
Nicola Hornsby, Marketing Manager
nicola@globelawandbusiness.com

To contribute
The Editor and Globe Law and
Business welcome new contributions.

Proposals for new articles/
material should be submitted to
Catherine McGregor at
catherine@globelawandbusiness.com

Citation
This journal should be cited as MLP
Vol 4 [2020]

To subscribe
Susan Brushwood, Account Manager
susan@globelawandbusiness.com

Annual subscription
Hard copy or digital £295/\$425/€375
Hard copy/digital bundle
£345/\$495/€450
Contact Susan Brushwood on
susan@globelawandbusiness.com
for multi-user options

Modern Lawyer is published by
Globe Law and Business Ltd
3 Mylor Close, Horsell, Woking
Surrey GU21 4DD
Tel: +44 20 3745 4770

www.globelawandbusiness.com

Printed and bound in Great Britain
by Ashford Colour Press Ltd

ISSN: (Hard copy) 2634-548X

The idea for this journal arose from the 'Business of Law' series of books, which is co-published with the International Bar Association. The journal is complementary to the book series, and the publishers gratefully acknowledge the support of the IBA.

Contents

Volume 4, Issue 3, October 2020

2

FIRST THINGS FIRST
The Avant Garde: A
Fundamental Rethink of
the Inclusion and Diversity
Professional of the Future
Bendita Cynthia Malakia

6

Modern Lawyer Roundtable
Facing the future; shaping
the present
In discussion with
Catherine McGregor

17

Learning from lockdown:
a space for choice
Alison Nolan

24

Failure camp – the
importance of psychological
safety for lawyers
Richard Danks and
Mark Cruickshank

30

Breaking down barriers in
the purpose pathway
Helen Foord

38

Retirement needs a
complete rethink
Victoria Tomlinson

44

The show must go on:
creativity and thinking
differently in law
An interview with
Annabelle Newman,
Syneos Health
Catherine McGregor

51

The pandemic's
psychological price
Helena Boschi

54

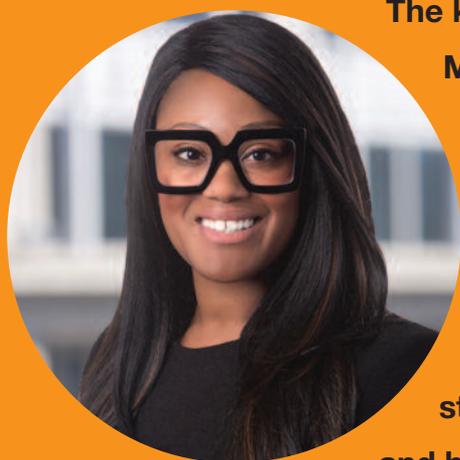
Inherent tension in-house:
defusing the law department
time bomb at a time of
pandemic
Ciarán Fenton

62

THE MENTOR'S MENTOR
Mentoring – it's not what
you think
Herman Stewart

The Avant-Garde: A Fundamental Rethink of the Inclusion and Diversity Professional of the Future

Bendita Cynthia Malakia



The killing of George Floyd at the hands of the police in May and the racial reckoning that ensued around the globe led to actual and performative desires for organisations to demonstrate that they are making significant and systemic internal changes to combat racism and other inequities. One of the first actions that comes after the issuance of a public statement is the hiring of a diversity, equity, inclusion and belonging (D&I) professional.

As a D&I professional, I am naturally delighted by the demand for, and the raised profiles of, D&I professionals. All organisations need professionals trained in, and experienced with, D&I strategy and key competencies to lead their organisations to achieve the results that they expect to see through means that may be challenging for them to embrace.

Our recent societal racial reckoning has also shone

a spotlight on the conditions in which D&I professionals are expected to make transformative change. We require D&I professionals in our organisations to upend systemic racism and other forms of oppressions rooted in our society in the context of businesses and organisations that have primary objectives other than diversity and inclusion. Unfortunately, and many others have written at

length about this, we do not give them the authority commensurate with the magnitude of responsibility, the resources (whether they be personnel, financial or otherwise), or the access to power and information required to succeed in the mission.

As we continue to negotiate what true anti-racist and anti-bias behaviour looks like in our organisations, we have an opportunity to take another look at the role of our D&I leaders in helping us get there and to be honest with ourselves about whether we are setting them up for success. Before doing that, though, I offer some caution. I have witnessed disturbing trends related to the treatment of current D&I professionals in their organisations at this racial inflection point. Some have been treated as scapegoats for the poor D&I progress made to date at their organisations. Other D&I professionals have had their credibility questioned, including by the implication that because (white) leaders now realise the deleterious impact of racism on our organisations, it is an easy problem to be solved quickly. Racism, bias and other pervasive systems are so seamlessly integrated into the fabric of professional life. Put that in the context of a conservative profession that defaults to precedent and we have the makings of an uphill battle. These are hard problems, and it most likely wasn't for want of attention or ability that our D&I professionals failed to move the needle. Additionally, many D&I professionals are diverse and non-diverse women. I am by no means denigrating or excluding the diverse and non-diverse men that have been shoulder-to-shoulder in this fight; however, our organisations placing the blame on the women who, while subject to systemic oppression of their own, have been disproportionately taking the labouring oar on these issues for decades is ironic, and to go a step further, cruel.

Understanding that in broad strokes the legal industry has taken an antiquated approach to the role of a D&I leader, I offer the following reflections on what the future D&I professional – the avant-garde, if you will – could look like:

Is ultimately, but unlikely, non-existent. If our organisations were truly diverse, inclusive and equitable, D&I leaders would have a less significant role or no role at all. All leaders and members of the organisation would approach their responsibilities

with a D&I lens so integrated into their decision-making that an individual to structure around bias, to interrupt bias in key processes, to slow down processes, to measure and track, and to prove business cases with never-ending iterations of data would not be required. In the more distant future, D&I would not be the agenda of a department, function or individual, but the shared privilege of all members of the organisation that understand to their core its critical importance to the success of the organisation. In the near future, our avant-garde would have power, access, resources, legitimacy, and all the other tools at their disposal to make the progress we desperately need.

Sashays beyond the business case and the moral case.

In our D&I future, our avant-garde won't be talking about the business case and the moral case for diversity. We are in a moment where the business case and the moral case for diversity have converged perhaps at peak strength for the first time in history, and those currents can be a powerful force for change. My wish is that our future looks like not having to negotiate our humanity with individuals that want to quantify the return on investment that accepting and leveraging Black and brown bodies produce for the financial benefit of a majority or plurality white, man-owned organisation, which sounds a lot like ... [fill in the blank]. (Note: in the new world, I would not have to write "[fill in the blank]" here.) It is also the hope that the neuroscience around bias, and the sociological and other impacts of systems of oppression, will be more widely known and understood such that we would not be appealing to people's morals; we would just understand that our brains work in a particular way that has a disproportionately negative impact for certain groups of people and we are taking specific actions to counteract those forces.

Racism, bias and other pervasive systems are so seamlessly integrated into the fabric of professional life. Put that in the context of a conservative profession that defaults to precedent and we have the makings of an uphill battle.

Empowered to use ALL the tools in the toolbox (or ‘what gets measured gets done’ doesn’t just mean more quantitative data). Let me take a moment to make sure my soap box is sturdy. Measurable outcomes on D&I are undoubtedly important. There are innumerable studies on organisational psychology, achievement and productivity that demonstrate that metric-based goal-setting yields results. I agree. I even agree that understanding and using data to this end is incredibly important. While some leaders use data on D&I to illuminate gaps and identify trends, others use it as an objective counterpoint to discredit the qualitative experiences of diverse people, and to use minute errors to negate the veracity of the conclusions and the best practices that D&I professionals recommend. We often see this in the request for just a little bit more quantitative data to make a decision, and with time-strapped

The avant-garde is not simply a cost-centre, but is an independent revenue generator, a catalyst to facilitate increased work opportunities for timekeepers and a facilitator to deepen client relationships.

teams and the pressure to ensure quantitative data produced from incomplete data sets (where we do not control the source or inputs) is accurate it can be a means of sending D&I leaders on a wild goose chase, rendering them unable to hone their energy and intellect

into actions and interventions that can make real change. In the future, our avant-garde leverages quantitative data as persuasive, elevates the experiences of diverse people in the organisations as equally worthy of consideration without reprisal, and is able to uplift their experiences without numerical proof in every conversation and interaction to get the job done.

Delivers their expertise as a strategist, consultant, and interrupter. This may be the present for some D&I professionals, but for many they are spending their time executing tasks that undoubtedly help the organisation, but do not make the kind of progress we would hope to see. As

organisations advance in their D&I journeys, the avant-garde should play a strategic, consultative role of bias interrupter. This means that responding to supplier diversity inquiries, client requests for diversity information, preparing diversity communications, identifying diverse images, award-seeking and other activities important to ensuring that we remain in good standing from a business perspective (and that have other functions that focus on these efforts for the rest of the organisation) should be shifted to those other functions. D&I professionals are also well-suited to provide coaching, counsel and other advisory support to leaders and diverse professionals alike.

Revenue generating for the firm. The avant-garde is not simply a cost-centre, but is an independent revenue generator, a catalyst to facilitate increased work opportunities for timekeepers and a facilitator to deepen client relationships. Diversity and inclusion is a critical area for all organisations, including for our clients. Over the last few years, there has been an increase in law firms diversifying their revenue bases through practices ancillary and complementary to key practices (eg, strategic communications). If they have the right credentials and expertise, firm diversity and inclusion personnel are experts that can work with clients to solve their diversity and inclusion challenges. For related practices, this can be a means of keeping key information for an engagement within the firm, provide privilege for engagements that are sensitive but wouldn’t have that protection, and provide additional work for diverse associates. Outside of serving clients independently, D&I professionals can fulfil and develop clients’ diversity and inclusion aspirations through connecting in-house counsel with diverse lawyers that can service their legal work and provide a sweetener in a tight legal market where differentiation is increasingly challenging.

Completely integrated in all processes. In the future we’re working to create, our avant-garde is not the sole person or the head of the sole function whose job is to carry the D&I torch. It is the job of every member of every organisation to demonstrate and deliver on the organisation’s diversity and inclusion principles. No longer will diversity, equity,

inclusion and belonging be sequestered to a part of the organisation where leaders cannot articulate the organisation's posture or key initiatives. Our D&I professionals should be integrated into every process that materially impacts the hiring, development, retention and advancement of diverse legal professionals, especially in the areas where your organisation has identified gaps in success.

Reports directly to the CEO and given resources to execute. Diversity and inclusion has long been subject to the generosity and interest of a single leader, having moderate visibility when in vogue, but falling flat regardless of prior investment when leaders or interests change. Integrating best practices for D&I and including D&I professionals as part of all key processes, and as a bias interrupter, helps to thwart that phenomenon. Regardless, the CEO's or managing partner's influence is necessary to incentivise every person in the organisation to do what they say they want to do (advance D&I) and either simply do not know what to do or are not willing to leverage power and rearrange resources to support it. The best way to do this is to give your D&I leader direct access to the individual with the greatest authority in the organisation; someone who can hear challenges that arise directly, authorise resources without negotiating through others' relationships, and who can make certain decisions without the consent or input of others. Together with an independent reporting structure, D&I needs to be appropriately resourced with the personnel and the funds to effectuate its complex and all-encompassing mission. Most organisations want 5-star results on a motel budget, which just won't do.

Have responsibilities that are understood, and are supported individually and structurally commensurate with the outcomes we expect. Most D&I professionals play many roles, yet they are often

not given titles that appropriately recognise the influence and outcomes that we expect them to achieve in our organisations, or that recognise that D&I should be considered as critical as other business services roles. So much of the work D&I professionals (who are often women of colour, or who are otherwise diverse) do is labour unseen, under-credited, and unvalued by the organisation. For instance, you could easily call your D&I professional, if they do their job well and in no particular order, chief strategist, chief advocate, chief empathy officer, chief innovation officer, chief operations officer, or chief resilience officer. What you cannot call them is chief magician. You cannot expect them to make magic without appropriate access, resources, title and power.

Diversity and inclusion has long been subject to the generosity and interest of a single leader, having moderate visibility when in vogue, but falling flat regardless of prior investment when leaders or interests change.

The avant-garde is the diversity, equity, inclusion and belonging leader of the future. One may already exist at your organisation, and while we have a political moment to drive change, now is the perfect time to align resources, authority and practice to ensure their success. It's time for our organisations to not only rely on outward manifestations of our D&I progress, but to look inward to make investments that lead to true progress for our people. The future is now.



Bendita Cynthia Malakia is the global head of diversity and inclusion at Hogan Lovells, and serves as treasurer of the board for the national LGBT Bar. With a people-centric, metrics-driven approach, she serves to transform the legal profession into a place where diverse lawyers can thrive. A Harvard-trained lawyer, Bendita practised finance law for nearly a decade at a large law firm and two global financial institutions. Bendita can be contacted at www.linkedin.com/in/bendita and www.benditamalakia.com.

Two ways to subscribe to *Modern Lawyer*:

1. For full details of our subscriber offers, go to:

<https://pages.globelawandbusiness.com/modern-lawyer>

2. Email '*Modern Lawyer* subscriber offers' to Susan Brushwood
on susan@globelawandbusiness.com

