

Lessons in strategies for the introduction of ICT in the administration of commercial justice in an emerging economy

by

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Across the world, judicial authorities are encouraged to use information technology to improve the way the legal system operates. Some nations began the process in the 1980s with the introduction of computers into the administrative process in courts, whilst others gradually developed other uses for information technology, including the filing of papers electronically and the development of a secure means of communicating files between the courts and lawyers in criminal matters, to mention just two examples.

This process is neither static, nor is it limited to the ‘developed’ nations: every nation in the world has taken a different view of how to use information technology in the judicial system, and no single nation can be considered to be any more ‘advanced’ than any other.

In many ways, if a nation has yet to use any form of information technology in their judicial system, they have an advantage over those nations that used technology from the beginning. This is because there are lessons that have been learnt during the past thirty years that can be applied to those judicial authorities using information technology for the first time. If judicial authorities take note of the lessons, it is highly probable that they will have a better opportunity to determine a long-term strategy, provide for the proper implementation of a given project, ensure all the users that use the newly implemented system will do so with the minimum of fuss, and there is a greater probability that the project can be implemented within budget and within the time frame allocated for its implementation.

Deciding what service to implement

There are a number of options in how to use technology in the judicial system, and it will be necessary to plan the service to be introduced, the sequence in which it is to be introduced, and to provide for the long-term development of the system by incorporating future services as and when the first service works well. The options that can be considered include, but will not be limited to those mentioned below:

Judicial use of technology

Judges to be given computers to write judgments and make notes during trials and hearings.

¹ The author thanks Graham Patterson of the Strategy & Architecture eDelivery Group for the Court Service in England & Wales for his valuable comments to this paper.

Court use of technology

The use of technology for the indexing and review of materials, provisions of a full text review and search; provision of a verbatim record of the proceedings when hearing an appeal; to provide daily lists of cases on a web site; to provide displays in courts to explain what time cases are being heard and the location of the court, including systems linking lawyers, the clerk of the court and witnesses so each knows when to attend; the provision of on-line judgments and legislation.

Secure communications

Putting an infrastructure in place to electronically link those taking part in the criminal justice system to enable the safe and secure transfer of files in criminal proceedings between the investigating authorities, prosecution authorities, defence and the courts; and in family and commercial matters.

Presentation of evidence

Equipment for the presentation of evidence (photographs, maps, charts, documents, graphics, computer based materials); the scanning of documents for use in a trial, rather than copying paper documents and distributing papers in court.

Remote appearance

The provision of videoconferencing systems to enable pre-trial conferences to take place, for bail and pre-trial hearings in criminal cases, and for the purpose of appearances, a hearing and the examination and cross-examination of vulnerable witnesses.

Examples in practice

Electronic case management, e.g. Singapore:

Electronic Filing System, which is part of the case management of the Supreme Court. It is a national network for civil litigation comprising the following elements:

Electronic Filing Service, which allows lawyers to file court documents electronically over the internet 24 hours a day, 7 days a week. The system also provides billing information that can be integrated with their in-house accounting system, which has the potential for providing greater efficiency and accuracy in the management of client accounts. Law firms or litigants-in-person who do not have computer facilities can file documents at the LawNet Service Bureau situated in the Supreme Court Building, which will process paper documents and assist in the electronic filing of the documents upon the payment of a manual handling fee. The web site indicated, in July 2007, the following statistics: 'Presently over 84 per cent of documents are filed in court electronically by more than 400 law firms via the web-based system. More than 2.5 million court documents have been electronically filed to-date. On average, 2,000 documents are processed electronically daily.'

Electronic Extract Service, which allows law firms to request the extraction of copies of the cause papers from the courts, either electronically or by way of the Service Bureau.

Electronic Service of Documents Facility, which permits a lawyer to serve court documents electronically over the internet to the court and all of the other parties concurrently. A certificate of service is automatically generated, which can be filed in court in lieu of the affidavit of service as evidence of service.

Electronic Information Service, which enables law firms and members of the public to search the courts' database through LawNet.

For information on a selection of other jurisdictions and what they are implementing across the world, please see the appendix to this paper for more information.

Planning

The following considerations must be determined at the planning stage, once it is decided precisely what is required.

Permanent planning (to remain in place)

It is essential that an organizational structure is in place to oversee the implementation of the plan; to act as a forum for the users to alert the providers to problems and to make recommendations for improvements, to plan for the future and to offer advice to other relevant committees and organizations that affect the implementation of justice.

It is suggested that such a forum comprises members from the judiciary, the relevant ministry, court managers and administrative staff, the IT personnel, and lawyers.

This forum must have a sufficiently robust constitution with adequate authority to ensure any recommendations are considered with sufficient seriousness by the relevant ministry. In addition, it must be made clear as to who has the responsibility for maintaining the system and making sure it works.

Infrastructure

Physical

Consideration should be given to a range of options, all of which must be considered when planning the introduction of technology. They include, but are not limited to:

Power

Unless lawyers are given a sufficient number of power points next to the benches in courts, there is no point in introducing any form of technology that includes advocates. Unless lawyers have sufficient power for their computers and any other devices that may be necessary, the introduction of technology for the use of the court and all the parties will fail.

Hardware and software

Hardware and software, both internal and external to the courts need to be considered. There is little point in setting up a comprehensive system if it cannot be supported inside the courts system. This is one of the reasons why it was important in England & Wales for the Court Service to modernize some of the internal infrastructure modernization before offering any external services.

Computers: whether to have individual computers or a networked system with individual computers linked in a network; central server with screens and keypads, swipe cards for members of staff to obtain access to the server (such as Sun Solaris) (easier to control from point of view of malicious software attacks, keeping software up-to-date, monitoring activities, providing for effective storage of data and to prevent loss).

Storage requirements (costs and back-up of data; long-term storage requirements; archiving requirements; meeting legal requirements).

Space required in buildings and courts for the technology.

Separate location for back-up of the entire system in a separate physical location.

Provision of adequate cabling of good quality; consideration for the implementation of wi fi, subject to appropriate security measures put in place.

Knowledge and expertise

Any system that is chosen requires the technical people to be familiar and expert in the system purchased – that is, if it is an operating system and application systems such as Microsoft or Sun or Linux.

Education and training

It will be necessary to ensure that everybody involved with using the system is able to use it with confidence and assurance, including: judges, lawyers (to include their administrative employees), court clerks and administrative staff.

Implementing the system

It will be necessary to put adequate procedural rules in place to set out how lawyers and, if relevant, lay people, interact with any system put in place.

Lessons

The following issues have been identified as a result of previous experience, and the list is meant to help the implementation of future projects:

The overall strategy

Any project must be in line with the future plans for the reform of the judicial system.

The level of decision making is crucial: it is important that a senior person has the responsibility and authority to ensure any project is implemented efficiently and on time.

The benefits of having a senior judge as the leader of any the project cannot be underestimated, especially when things become difficult.

In England & Wales, Lord Justice Brooke was instrumental in getting the judiciary and the professions to accept changes associated with introducing some electronic methods of working. He was also very good in managing the expectations of the more technologically aware people inside the system.

The level of investment must be realistic, otherwise nothing will be implemented properly.

It is crucial to take into account the present infrastructure and to plan how to develop the infrastructure to accommodate the new projects.

Organization is crucial

The failure to plan properly, the failure to ensure there are adequate skilled professionals in IT and the failure to ensure responsibilities are discharged properly, will all guarantee money and time will be wasted and little will be achieved.

The judiciary and leadership

The judiciary must be educated at the most senior levels in order for them to give a positive lead, otherwise any system, once implemented, will not be used

Procedure

Ideally, the design of the system must reflect what happens in practice.

Involving everybody - culture

Failing to plan with the end-users in mind will result in failure, because all new systems require all of the users to change their behaviour.

Failure to consult with all of the groups that will use the system will give rise to failure, because the system will alter the way people work, and they need to be involved because it affects their working lives and will reduce resistance to the implementation of the project.

Do not be too ambitious

It is essential to plan for small projects, each of which can be completed successfully before developing and implementing the next stage – it is essential to understand that if it is decided to implement a complex project, it is certain to fail, and consequently any further suggestions for the implementation of other projects will be met with lack of funding and a skepticism that will undermine any future attempts to implement IT in the judicial system.

Plan for incremental development

It is recommended that the approach should be to split any project into separate modules, each of which can be implemented incrementally. For instance, consideration should be given to determining what is required, to split the project into separate isolated items, then to phase the entire project over a number of years. The first phase will invariably involve introducing hardware and adequate wiring. The second phase will see the introduction of the process of automating processes once all the users have become familiar with how to use the systems introduced in the first phase. The third phase may provide for greater flexibility as the system matures and the initial glitches have been dealt with satisfactorily.

Learning from others is not a new concept, but it is now widely accepted that improvements to the implementation of projects will occur if people are willing to listen to the lessons learnt by others, as indicated in the paper initiated by Ian McCartney MP, Minister of State, Cabinet Office, *Successful IT: Modernising Government in Action* (see resources for the URL). The comments and recommendations made in this paper are highly pertinent to the introduction of information technology in the judicial system, and ought to be considered before embarking on any future projects.

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Electronic Signatures in Law (Tottel, 2nd edn, 2007) ISBN 978 1 84766 051 0, this text covers 98 jurisdictions, and has a separate chapter on each the following individual countries written by country-specific authors: Canada by Anila Srivastava, Valerie C. Mann and Thomas S. Woods; Germany by Dr Martin Eßer and the United State of America by Thomas M. Dunlap

E-mail, networks and the internet: A concise guide to compliance with the law (xpl publications, 6th edn, 2006) ISBN 1 85811 3563

He is the general editor of:

International Electronic Evidence, general editor, (British Institute of International and Comparative Law, 2008), ISBN 978-1-905221-29-5, covering

the following jurisdictions: Argentina, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand and Turkey

Electronic Evidence: Disclosure, Discovery & Admissibility, author and general editor (LexisNexis Butterworths, 2007) ISBN 9 781405718370, covering: Australia, Canada, England & Wales, Hong Kong, India, Ireland, New Zealand, Scotland, Singapore, South Africa and the United States of America

He is also the electronic and digital signatures editor and author of Chapter VI 'Electronic and Digital Signatures' for the practitioner loose-leaf textbook by M-T. Michèle Rennie *International Computer and Internet Contracts and Law* (Sweet & Maxwell) and the general editor of the *Digital Evidence and Electronic Signature Law Review* (<http://www.deeslr.org/>).

Appendix

Resources on the internet

Articles

A select list of useful articles is set out below, all of which are available as free downloads from the internet.

Tânia C. D. Bueno, Érica B.Q. Ribeiro, Hugo C. Hoeschl, Samantha Hoffmann, *E-Courts in Brazil Conceptual model for entirely electronic court process* (18th BILETA Conference, Queen Mary college, London, April 2003), available on-line at <http://www.bileta.ac.uk/Document%20Library/1/E-Courts%20in%20Brazil%20-%20Conceptual%20Model%20for%20Entirely%20Electronic%20Court%20Process.pdf>

Fredric I. Lederer, *High-Tech Trial Lawyers and the Court: Responsibilities, Problems, and Opportunities, An Introduction*, available on-line at <http://www.legaltechcenter.net/publications/articles/hightech.pdf>

Fredric I. Lederer, *Courtroom Technology From the Judges' Perspective*, available on-line at <http://www.legaltechcenter.net/publications/articles/judge.pdf>

Fredric I. Lederer, *Courtroom Technology: A Status Report*, originally published in substantially similar form in Kamlesh N. AgarWala and Murli D. Tiwari (ed), *Electronic Judicial Resource Management* (MacMillan India 2005), available on-line at <http://www.legaltechcenter.net/publications/articles/status.pdf>

Ian McCartney MP, Minister of State, Cabinet Office, *Successful IT: Modernising Government in Action*, available on-line at [http://www.ogc.gov.uk/documents/Successful_IT_-_modernising_government_in_action\(1\).pdf](http://www.ogc.gov.uk/documents/Successful_IT_-_modernising_government_in_action(1).pdf)

Waleed H. Malik, *E-Justice: Towards a Strategic Use of ICT in Judicial Reform* (Marrakech conference, Strategies for the modernization of justice in Arab countries, Morocco, 15-17 March 2002), available on-line at <http://www.pogar.org/publications/judiciary/wmalik/impetus.html>

Grozdana Šijanski and Jimmy Barber, *The German order for payment procedure (Mahnverfahren)*, available on-line at <http://www.iuscomp.org/gla/literature/sijanski.htm>

United Kingdom:

Feasibility study into a commercial model for Electronic Filing and Document Management (EFDM) in the civil and family courts (Summary of the final report, January 2006) (PA Consulting Group) available on-line at http://www.hmcourts-service.gov.uk/docs/publications/efdm_feasibility_study_summary_report.pdf

Global Courts

This is a web site run by Chief Judge Stein Schjølberg, Moss Tingrett (Moss District Court), Norway

<http://www.globalcourts.com/index.html>

Academic

The Center for Legal and Court Technology and the Courtroom 21 Project

Introduction taken from the web site:

William & Mary Law School is the home of the Center for Legal and Court Technology (CLCT) and the Courtroom 21 Project. Begun as the Courtroom 21 Project in 1993, CLCT is a joint project of William & Mary Law School and the National Center for State Courts. CLCT's primary external mission is "To improve the world's legal systems through the appropriate use of technology." To accomplish this, CLCT conducts frequent legal technology demonstrations and discussions each week, hosting jurists, lawyers, law faculty, court administrators, technologists, architects and others from throughout the world. CLCT is the world center for empirical and legal research on courtroom technology and is heavily involved in judicial and lawyer education and training. CLCT also provides technology augmented courtroom design consulting services. CLCT is best known for the Law School's McGlothlin Courtroom, the hub of the Courtroom 21 Project, which is the world's most technologically advanced trial and appellate courtroom.

CLCT currently has affiliated overseas projects in the United Kingdom and in Australia. CLCT also supports the Courtroom 21 Court Affiliates, a growing number of state, federal, and foreign courts that wish to use courtroom technology as successfully as possible. These courts meet together at the annual Court Affiliates' Conference to address legal, administrative, and technological concerns.

CLCT also houses the Courtroom Information Project website. This website is a rapidly growing visual database of pictures of the nation's courtrooms with accompanying legal technology information.

<http://www.legaltechcenter.net/index.html>

Argentina

Sistema Argentino de Informática Jurídica

<http://www.saij.jus.gov.ar/>

Australia

Federal

The web site sets out an ‘Overview of eCourt strategy’:

The eCourt strategy has several objectives, one of which is that the Court should take advantage of technological opportunities to achieve benefits for both the Court and its users.

The eCourt strategy:

- complements traditional means of transacting with the Court;
- develops innovative approaches to meeting the needs of Court users and extends the choices available to those wanting access to services and appropriate information;
- improves and enhances access to justice, and reduces inconvenience and the cost of justice to parties, particularly those in outlying regional and country areas;
- focuses on the needs of the broad community (independent of geographic or socioeconomic circumstances);
- assists judges, regardless of location, to carry out their duties as efficiently and effectively as possible;
- enables the Court’s administration to support the judicial function and delivery of services to eCourt users, efficiently and with minimum disruption to the user; and
- makes better use of tried and tested technologies, such as telephone services and video-conferencing.

eCourt

The Federal courts currently provides the following services on-line, with plans to implement more services in due course:

eSearch allows the public to search for information on specific cases.

eFiling enables litigants or legal representatives to lodge applications and other court documents electronically.

eCourtroom allows parties and their legal representatives to participate in a virtual court, used in the management of pre-trial matters by allowing directions and other orders to be made on-line by the relevant docket judge.

http://www.fedcourt.gov.au/ecourt/ecourt_slide.html

Queensland

eCourts

With the following facilities at present: eSearching, eListing and eCourtroom

<http://www.ecourts.courts.qld.gov.au/>

Victoria

Supreme Court of Victoria Litigation technology

<http://www.supremecourt.vic.gov.au/CA256CC60028922C/page/Litigation+Technology?OpenDocument&1=90-Litigation+Technology~&2=~&3=~>

Canada

Federal

E-Filing

This is an electronic filing service, available in English and French, that allows lawyers in Canada to file documents electronically with the Federal Court by way of a secure, internet-based system. At the time of writing, only immigration and refugee applications, maritime law, and intellectual property filing in the Federal Court can be made electronically. Other areas of the Court jurisdiction will be added in over time.

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/E-Filing

England & Wales

Important note: the web site addresses provided below for England & Wales were correct at the time of writing this paper, but the reader must beware that the addresses may change as the result of the creation of the Ministry of Justice.

Online services

<http://www.hmcourts-service.gov.uk/onlineservices/>

Successful PRojects in Government (SPRinG)

<http://spring.dfpni.gov.uk/>

Electronic Library and Information Services eLIS

This service provides legal information for the judiciary, the Department of Constitutional Affairs and the Her Majesty's Courts Service (now the Ministry of Justice)

<http://www.hmcourts-service.gov.uk/elis/index.htm>

Money Claim Online

This is an internet based service for claimants and defendants where a claim for a debt can be made over the internet

<http://www.hmcourts-service.gov.uk/onlineservices/mcol/index.htm>

Possession Claim Online Project (PCOL)

The Possession Claim Online Project proposes to provide an application over the internet to manage claims in county courts for the possession of residential property, and for the failure to pay rent or mortgages

<http://www.hmcourts-service.gov.uk/onlineservices/pcol/index.htm>

Online forms

This pilot service is limited to 20 civil forms that may be completed online and submitted, with a fee if necessary, to one of nine courts that are taking part in the pilot project

<https://www.hmcourts-service.gov.uk/countycourtformsonline/Home.go>

XHIBIT

This provides information about hearings in Crown Courts

<http://www.hmcourts-service.gov.uk/onlineservices/xhibit/index.htm>

Germany

Online-Mahntrag

https://www.online-mahntrag.de/omahn/Mahntrag?_ts=3745727-1184937535979&Command=start

India

See Praveen Dalal at <http://reclaiming-india.blogspot.com/2007/06/e-courts-in-india-prerequisites.html>

‘Kalam to launch national e-courts project on Monday’ newKerala.com, July 2007 online at <http://www.newkerala.com/news5.php?action=fullnews&id=44682>

Singapore

See the main text for the developments in Singapore.

Supreme Court of Singapore

Electronic Filing System

<http://app.supremecourt.gov.sg/default.aspx?pgID=56#1>

The subordinate courts of Singapore

eServices

<http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4480>

The Small Claims Tribunals of Singapore

<http://160.96.179.9/efs/>

Automated Traffic Offence Management System

<https://atoms.subcourts.gov.sg/atoms/shared/onLoadAtoms.do;jsessionid=GTXYnNFrB86pyLnJ1DGBv8457xd8k0WhYFG52vkyhqqgz4JvTJRm!1963991338>

Justice Online

<http://www.justiceonline.com.sg/main/>

United States of America

Federal

Public Access to Court Electronic Records (PACER)

Public Access to Court Electronic Records is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party and Case Index via the internet

<http://pacer.psc.uscourts.gov/>

State

California

The Administrative Office of the Courts initiated the California Electronic Filing Technical Standards (CEFTS) program in 2000 to develop electronic filing standards for the judiciary. Since 2000, courts have gained experience through different electronic filing projects across the state, and a number of courts offer electronic delivery and electronic filing services for specific types of case

<http://www.courtinfo.ca.gov/programs/efiling/>

For a list of projects being undertaken in California

Electronic Filing Projects in California Superior Courts

<http://www.courtinfo.ca.gov/programs/efiling/projects.htm>

New York State unified court system – electronic courts

<http://www.nycourts.gov/ecourts/>

Additional resources in the USA

National Center for State Courts

<http://www.nesconline.org/>

The National Center for State Courts national educational programme

<http://www.e-courts.org/MS/MS7/>

The 2006 conference presentations are available on-line at
<http://ctl.ncsc.dni.us/presentations/2006presentations.htm>

Standards

The reader should be aware that standards developed in one nation will not necessarily help other nations. For instance, England & Wales have problems with Legal XML, not least because of the terminology used. Some standards are very much focused on the United States of America (for obvious reasons), and will probably need to be amended in other countries.

For links to various working groups on standards across the globe, see the LISA Network: <http://www.lisan.org/li/about/about.htm> and <http://www.lisan.org/li/links/links.htm>.