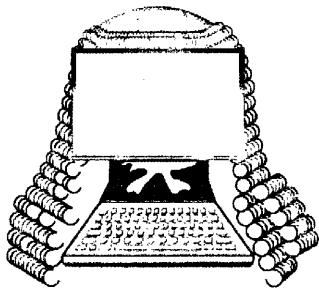


COMPUTERS & LAW

Journal for the Australian and New Zealand Societies

for Computers and the Law



Editor: Dr Pamela N. Gray

ISSN 08117225

Number: 74

December 2008

Law and Technology

The Honourable John Hatzistergos

*Presentation to the AIJA, Law and Technology Conference, Sydney, June 2008 by
The Honourable John Hatzistergos, Attorney General, New South Wales.*

Acknowledgement of Country

Firstly, I would like to pay respect to, and acknowledge, the Gadigal people of the Eora nation, who are the traditional owners of this land we meet on today.

INTRODUCTION AIJA

I am delighted to be here at the Fourth Australasian Institute of Judicial Administration Law and Technology Conference. In the many years since its inception, the AIJA has been an innovating force, promoting excellence in the administration of justice in Australia, New Zealand, and throughout the Asia-Pacific.

AIJA research and educational programs have contributed significantly to developments in judicial administration, including:

- case and trial management;

- alternative dispute resolution;
- cultural awareness;
- judicial ethics and conduct;
- the relationship between courts and the public; and
- law and technology

to name but a few. I commend you for your hard work and achievements.

Since at least 1984, when AIJA hosted a seminar on the *Use of Computers in Court Management*, AIJA has been at the forefront of imagining a new technological future for courts and the justice system... imagining that future, encouraging exchange of ideas and helping to make that future a reality.

Introduction Law and Technology

The law is renowned for its devout attachment to its traditions. The modern justice system is the product of a long and celebrated history in which the great legal thinking of generations past is venerated in legal precedent. Courts however, are far from being immune from changing technologies. The extraordinary technological developments of the past two or three decades have provided opportunities to transform the way courts and tribunals operate, to introduce new services to the public, and to enhance access to justice.

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Across Australia in every jurisdiction, courts have embraced technologies that improve efficiency and transparency, reduce costs, and mitigate the trauma for vulnerable witnesses giving evidence. Court business is now routinely accessible on Court websites. More and more courts are fitted with audio-visual link and real-time digital transcript facilities. We are moving toward comprehensive systems of electronic filing, voice recognition and online hearings which I am sure will be canvassed in the various sessions of this conference dealing with the current state of courts in Australia.

Judges' technological competence

While the technological advances in computer systems, and the provision of more and more advanced hardware and software to the courts is significant, it is equally important for the court users, and especially the judicial officers in charge of the hearing process, to be able to take advantage of the new technology so that it is an aid, not a hindrance to the efficient administration of justice.

To this end last year I wrote to the Heads of Jurisdiction, the Law Society, the NSW Bar Association, Law Council of Australia, the NSW Women Lawyers Association and the Australian Women Lawyers Association seeking their comments on a discussion paper on the selection criteria for judicial appointment. The discussion paper identifies a set of commonly accepted core qualities that should be considered in the selection of candidates for judicial office. This includes the ability to use modern information technology or the capacity to attain this ability.

It builds on the paper published by the Law Council of Australia in March 2002 detailing its policy on the "Process of Judicial Appointments". It includes knowledge of information technology as an attribute for judicial office. Consultation on this issue is

continuing and technological skills for judicial officers will come to play a larger and larger role in the selection process.

JusticeLink

In New South Wales we are in the process of introducing JusticeLink, a new \$48 million computer system that will streamline processes in the Supreme, District, Local, Coroners and Children's Courts, and offer greater accessibility to court users. When fully implemented, JusticeLink will:

- establish a single case management system for New South Wales courts and tribunals,
- provide a range of eServices, and
- facilitate secure information exchange within the wider justice system.

Of course, the benefits of technological developments are not experienced equally in the community. This should never be underemphasised. Access to justice must not become dependent on access to technology. Marginalised communities will be further marginalised unless appropriate services are not only maintained, but continually improved. JusticeLink forms part of the New South Wales Attorney General's Department's Towards 2010 strategy which puts a greater focus on outreach programs for Indigenous people and isolated communities and improved face-to-face court facilities. Together, I believe these initiatives can improve the quality, and efficiency of the administration of justice, while reducing costs and enhancing access.

Case Management

By the end of this year, a single JusticeLink case management system for the Supreme, District and Local Courts of New South Wales will be in place. Case data will be entered into the new JusticeLink system once, eliminating redundant data entry involved in creating multiple files. The system will then generate a single electronic file that will follow the

matter through appeals and transfers in jurisdiction.

eService and eFiling

eServices will give court users the option of using the internet to:

- file documents and pay filing fees online at the same time;
- obtain up-to-date case information using a secure log-in and password; and
- participate in online hearings, particularly in non-contentious interlocutory proceedings.

eServices will be available to court users 24 hours a day, seven days a week. The choice offered by eServices will enable experienced court users to use online processes, while those unfamiliar with court processes can access existing face-to-face services in court registries.

One of the most important parts of eServices is eFiling, which commenced in NSW Courts in November 2005 and was implemented in the Supreme Court several months ago. While limited to the possessions and corporations lists, the system has proven successful.

The eFiling service allows documents to be securely filed along with payments over the Internet and without the need to attend a court registry. As at 30 May 2008, 14233 batches of documents have been lodged using eFiling, as part of a pilot with nine law firms. There are now 224 active users of the system and feedback from the firms has been very positive.

Electronic discovery

The New South Wales Government has also recognised the importance of electronic processes in current discovery practices. For instance Practice Note SC Eq 3 for the Supreme Court Equity Division - Commercial List and Technology and Construction List, provides a presumption that discovery will take place electronically, stating:

"27. The Court endorses a flexible rather than prescriptive approach to discovery to facilitate the making of orders to best suit each case.

28. Subject to an order of the Court or unless otherwise agreed between the parties, discovery is to be made electronically."

The note also states that there is an expectation on the part of the court that all parties to litigation will have properly conferred with each other about electronic discovery, made preparations and "given consideration to and conferred in relation to the particular issues involved in the collection, retention and protection of electronically stored information."

Online Courts

Online Courts are another important innovation, providing sittings conducted entirely by electronic communications between legal practitioners and a judge through JusticeLink. Online Courts are 'virtual courtrooms' and replace the need for physical attendance at court for straightforward matters. Prosecutors and defence lawyers have the ability to log into a bulletin board, where they type their arguments. The judge is alerted to their posts by email and is able to log in and make determinations in real time.

This process has required the development of new software and new processes to bring together the largest court systems in Australia and to unify the separate and distinct case management systems currently used by the three court jurisdictions. Two Supreme Court judges have used online courts in a proof of concept trial. Over 160 Online Courts have been created as part of the pilot work done with the profession and the court. The trial has been successful for all participants: the court, legal profession and litigants.

Recently I signed an Electronic Transactions Order to authorise the use of Online Courts in the District and Local Court. This is an order

under the Electronic Transactions Act 2000 which governs the legal status of the documents and proceedings dealt with under JusticeLink, and how they are to be used.

Information Exchange

JusticeLink will transform information exchange from courts to wider justice system agencies: the Police, Department of Corrective Services, Director of Public Prosecutions, Legal Aid Commission and Bureau of Crime Statistics and Research.

For example, when court staff record the outcome of a criminal matter, JusticeLink will automatically send that information to the computer systems of the Police, the Department of Corrective Services and Bureau of Crime Statistics and Research, updating the defendant's criminal history and imprisonment records where applicable, and providing statistics for research use. The new system will make information updates instantaneous and, by allowing information to be entered by staff in the courtroom, minimise the chances of error.

Future Challenges

Needless to say, JusticeLink represents a small, but important part of the legal technology/administration of justice picture flourishing across Australia.

What of the future?

Prediction is of course always a risky pursuit. Happily, I am not required to undertake an exercise in "legal futurology" to discuss some of the challenges ahead of us. There are so many new and emerging technologies with the potential to produce profound improvements to the efficiency of Australian courts and the justice system. We must continually evaluate developments in IT: what benefits do they offer the administration of justice?

National standards

One important task before us is to develop national standards to facilitate

technological advances in the justice sector. This issue arises in many, varied contexts, from establishing digital evidence standards admissible across jurisdictions to creating a national standard language for electronic information sharing.

Conclusion

On the topic of new communication technologies, I am aware that last month a Chief Technology Officer in Melbourne was able to address a business conference in Adelaide by hologram; I can assure you ladies and gentlemen that I am physically present today. Unfortunately the government's budget does not extend to holographic projectors although if it did I am sure it would revolutionise parliamentary processes and usher in a new era of armchair government.

Some of you may be familiar with Putt's Law:

*"Technology is dominated by two types of people: those who understand what they do not manage, and those who manage what they do not understand."*¹

Regardless of where I might stand in that equation, as I look around this room I wonder at the absolute accuracy of Putt's Law.

In saying to you that we all need to aspire to develop expertise and adopt the tools of the future I am undoubtedly preaching to the converted. The importance of technology to the administration of justice, improving public access to courts, reducing costs, increasing efficiencies, and extending the physical location of courts into remote communities, is unquestionable.

It is now ten years since the first AIJA Technology for Justice Conference was held. Together, in that time, we have achieved extraordinary things. Conferences such as this provide the space for judicial officers, legal practitioners, court administrators, law teachers, IT professionals and others involved in the administration of justice to discuss and progress developments in the area of legal technology.

I would like to acknowledge and thank the Australasian Institute of Judicial Administration for its important, ongoing contribution to improving the administration of justice in New South Wales, across Australia and

regionally. I look forward to hearing the outcomes of your conference.

¹ Archibald Putt, Putts Law and the Successful Technocrat

COMPUTERS AND LAW JOURNAL

STUDENT PRIZE - \$500

for the best article in the field of computers and the law.

The Computers and Law Journal for the Australian and New Zealand Societies for Computers and the Law offers a prize of AUD 500 for the article which is selected by the editors of the Journal as the best article in the field of computers and the law written by a student.

Final closing date for applications for the prize is: **10 December 2009**.

Articles must be no more than 1500 words and must be submitted online with an appropriate covering message to: editors@nswscl.org.au

In the covering message, applicants must provide details of their candidature, including the name of the educational institution at which they are enrolled and their student number.

The winning student will receive a prize certificate as well as \$500, and the winning article will be published in the next edition of the Journal as the winning article; the winning student will also receive a free copy of the Journal edition in which the article is published. The Article will be published online at the website for the NSW Society for Computers and the Law at: <http://www.nswscl.org.au/journal/>

The editors reserve the right not to award the prize. It is intended that the prize be offered annually but terms of the offer may be varied.

The Computers and Law Journal reserves the right to publish articles submitted for the prize which are not the winning article. Applicants will be advised if their article is to be published; they will receive a free copy of the Journal in which their article is published.

Articles may be co-authored as long as all co-authors are students and there are no more than 5 co-authors. If they win, co-authors will be paid the prize in equal shares but they may redistribute their shares by their own agreement. Initial format for articles is the same as for all articles submitted for publication by the Journal; details of this format are available at: <http://www.nswscl.org.au/journal/contribute.htm>

STUDENTS ARE NOW INVITED TO APPLY FOR THE PRIZE.

Submitting an entry is a warranty that the student has the right to publish in the Journal.