Computerisation: our servant not our master

*By Sir Laurence Street, Chief Justice of NSW**

The year 1984 saw the inauguration of this State's Computerised Legal Information Retrieval System.

For the price of basic equipment and a monthly charge, this service provides immediate access to an enlarging data bank.

Already many NSW and Victorian statutes have been keyed in. Commonwealth legislation from the Commonwealth's Scale System complements this basic primary material.

Within the next few months all NSW and Victorian current sessional legislation and most reprints of statutes of practical utility in both States will be added.

On the case law side, reported cases, and a selection of unreported cases, in recent years from NSW and Victoria are included. Access is available to all the Commonwealth Law Reports through the Scale System together with a further 15 secondary data bases.

Nineteen additional secondary bases with major emphasis on commercial fields are planned. The loading of case law will continue, moving backwards in time and extending out to specialised reports such as Australian Criminal Reports.

The prospect of a comprehensive and up-to-the-minute data bank of statutory and related material is exciting. I view, however, with some reservation the prospect of too widely ranging use of computers as storage banks for case law.

Computerisation of judicial decisions in readily accessible form will prove to be a most valuable servant, but we must be on our guard lest it abandon its role of service and tend towards dominating the practice and administration of the law.

There is a risk of the system overtaking the substance of our law. By this I mean that there is room for justifiable fears that the day-to-day administration, and even more importantly the development, of the law may be crushed under too great a weight and proliferation of decided cases being fed into the data base.

There is, moreover, a concomitant risk of dehumanising the essential process of the law.

The common law has been able to grow and develop in order to meet the changing requirements of society over the decades and over the centuries. This has been a gradual process justifying Tennyson's tribute to the English legal system as one in which

> *Freedom broadens slowly down from precedent to precedent.*

That couplet catches the essence of the common law —the broadening from precedent to precedent.

We are no longer required to give lip service to the ancient fiction that the common law exists in an entire and pure state of perfection so as merely to involve its being ascertained from the precedents and applied to the case in hand.

It is respectable now to acknowledge the undoubted truth that, in determining what should be the form and content of the relevant modern common law rule, the body of case law provides the context against which we evaluate a particular public or social problem as perceived by the court.

Within the ordinary limits of the human mind and capacity for research, it has been neither possible nor practicable until now to collate and attempt to use too many or too detailed individual examples of the application of the law in judicial decisions.

Lawyers have had, perforce, to be selective in their references to case law.

This has tended to preserve an appropriate recognition of the differing status between a case which can properly be regarded as an authoritative and reliable precedent on the one hand and, on the other hand, a case of doubtful authority or a case involving no question of principle and amounting to no more than the application of a well settled rule to the particular issues in suit.

The computer enables us to break the limiting bounds of the ordinary human intellect and research capacity. There will no longer be the same absolute necessity for selectivity and subjective evaluation of those cases that are of real worth.

At the press of a key we will be able to have the lot. And herein lies the risk to which I draw attention.

By the availability of access to an enormous number of detailed individual instances we run the risk of over systematising the law. The computer technologists will be

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able to create a matrix so rigid and so detailed that it could de-personalise the day-to-day operation of the law.

This is a stage at which computerisation will have ceased to be a servant and have taken over instead a dominating role in the practice and administration of the law.

We in the market place, who work within the law, must assist those whose task it is to select cases for inclusion in the data bank by making plain the nature and extent of our requirements and by drawing attention to the risks and dangers of undue liberality in the process of selection.

We must encourage them to be ruthlessly selective in the case law and similar material approved for inclusion in the computer. Cases must be responsibly evaluated as justifying inclusion in the comprehensive data bank.

We need easier and surer on-going access to all the current and past cases of sufficient worth to justify consideration when deciding other cases. That is the extent of our need.

It would be a tragedy if the computer became little more than an unedited means of providing access to a great deal more cases than we have been able thus far to accommodate intellectually. I dread the prospect of being inundated by simply an enlarged multiplicity of cases.

It is quality, not numerical preponderance, that must be the hallmark of the data bank.

Underlying all of this is a fear that computerisation, unless properly controlled and used, has the potential to de-personalise the practice and administration of the law. We are, of course, as lawyers all involved with the affairs and problems of individual human beings, irrespective of whether they be concerned personally or as staff members of major corporations or government departments.

If we are to continue our never-ending struggle to equate law and justice we must preserve such elements of flexibility and discretion as have thus far enabled the law to be fairly and justly applied in individual instances. A system involving arbitrary, computer-dominated determinations of legal problems inevitably will dehumanise the administration of the law and encumber our on-going task of pursuing true justice.

I should make it clear that I do not intend to reflect adversely upon the policy currently being pursued by those responsible for the CLIRS project. In fact, quite contrary to being critical, I warmly endorse the controlled selectivity that is being pursued in that project.

What I fear is the offering of some additional facility that will multiply the number of cases in the data bank.

The current project has involved a major task in catching up decisions of the past. Once that catching up process is complete there may be a temptation — indeed there may even be urgings from some sources — to lower the selection criteria so as to utilise excess computer capacity, and, perhaps, available staff time.

The CLIRS project, as presently administered, will have enormous benefit and I am looking forward with enthusiasm to its fruits becoming widely and economically available. It will provide access to a data bank surpassing the research material available in the ordinary practitioner's library.

My anxiety is that we do not, in later years, find ourselves surrendering our individuality, and the law's flexibility and humanity, all of which are of the very essence of a just and equitable legal system.

Excessive dependence on past decisions is a temptation presented by computerisation. If we yield to that temptation we will have upset the delicate balancing of case law against changing social needs and expectations that has always been part of the genius of the common law.

Computerisaton of case law must be our valued servant and not our unyielding master.