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The focus of this symposium is the future of law. It is impossible to talk about that without thinking about the impact of information technology. I have been reflecting a little on the topic. If you had asked me as a young practitioner in the ’80s about what would affect practice in the future, I think I would have nominated the advent of computers. I doubt I would have taken the view of the IBM chairman in the 1940s that the world would need at most five computers. But I would have been talking about computers as word processors, as a convenient replacement for typewriters. I would have seen that as a useful tool, but not as anything which would fundamentally change the way law was then practised and had been, in more or less the same way, for the last century. What I would not have contemplated is the internet, or more importantly, the capacity we now have to store, manage and exchange information, and what that would mean for the profession.

It is said that the digital revolution is our version of the Industrial Revolution, because it too had massive impacts on the organisation of work and on social structure. But the difference between those revolutions is this. The real power behind the Industrial Revolution was the steam engine. Once it became a significant means of production in the early 19th century it remained a constant, albeit with refinements, for the rest of the century, and indeed even today steam turbines have a large role in power generation. So, if you were a rural labourer at the beginning of the 1800s, you may not have liked the disruption and you may have started out wanting to smash a few machines

before you ended up in a Lancashire cotton mill. But once you were absorbed into the factory system, that was the technology you were dealing with for the rest of your working life. And depending on social mobility, it was the same for the next couple of generations of your family.

In contrast, we are dealing with technology in a state of constant development and obsolescence. If you are of my generation or even a bit younger you will already have said hello and goodbye to the telex, the fax, VHS tapes, photographic film, 1G mobile phones and all the following Gs, cassette tapes, electric typewriters and analogue television. The younger among you are likely to have an even more accelerated experience of rapidly changing technology. That is what makes the change we confront unsettling: we have so little idea of what is next and where it may take us.

But I will come back to today for a moment, and some more prosaic matters, before I go back to the speculative. As you know, the courts have started their first steps along the digital path. Last year I spoke to this symposium about our move into eTrials for trials involving large numbers of documents, with the documents scanned and uploaded to and managed through the eCourtbook. At trial they are viewed on monitors, Courtview, in courtrooms adapted for eTrials. I also mentioned work on the Rules to allow electronic filing and the introduction of the court's electronic search and copy facility.

This year I can report that all commercial list matters in the Supreme Court now require electronic delivery of documents, on USB, from which they are uploaded to the courts website, where they are accessible to the public as well as parties unless there is a contrary order. All existing files are being scanned and uploaded. The judges receive documentary exhibits on a USB

with a hyperlinked index, which I am told is terrifically useful for judgment writing.

And the Court of Appeal has begun a pilot program of electronic lodgements of appeal documents by the Director of Public Prosecutions and Legal Aid Queensland. The outlines of argument and lists of authorities, which are hyperlinked to the cases and statutory provisions, are uploaded to the court's eSite, as are the appeal record books. I do not think there is any doubt that this is the way of the future, although I personally will always need a paper copy of anything I need to think hard about. Possibly why they call it a hard copy? And I will take some convincing that anyone, even the millennials, absorb information from a screen as well as they do from a hard copy. But electronic case management certainly holds great promise for future efficiencies.

For the profession too, there are lots of better ways of doing things. There are so many apps which can assist in document management. There is software to help with some of the really boring tasks like discovery. There are assembly tools to enable complex commercial documentation to be generated. You can get apps to let you put together all your documents on an iPad so that you can view them and search them and make notes on them. You can use a task flow system to create management plans for each matter and to allow clients to see the progress of their matter.

I am fascinated to see the advent of virtual firms, with the advantages of needing very little infrastructure, although I am old-fashioned enough to think that any form of practice which minimises face-to-face contact with clients will work only in a limited section of the market. It is very difficult online to

manage empathy or any real interaction or to pick up on the subtle signals that indicate that something may need further exploration. I do not know enough about what the day-to-day practice of virtual firms is like to comment further, but I will be interested to see what their future holds.

But there are downsides for lawyers in our digital revolution. The advantage that lawyers used to have over non-lawyers in knowing how to run cases is diminished by the amount of information available partly from official sources like court websites, but also from unofficial sources on the net. Associated with that is the growth of self-representation and the burdens that can create for the courts and for the lawyers of the opposing parties. Obviously people have different reasons for appearing unrepresented and many are entirely meritorious, but there is no doubt that there are others who litigate to satisfy their own personal obsessions. They consume a disproportionate amount of resources. The internet is certainly a rich source of material for them. And the courts themselves, in making it easier to initiate proceedings, have opened the doorway to a wave of those litigants, many of whom are impecunious and are entitled to a waiver of fees. Promoting access to justice is right and proper, but its attendant disadvantage is that you also open access to some terrible time-wasters.

Apart from those issues, there have for a long time been competitors to proper legal services in the form of will kits and do-it-yourself conveyancing services which are all now available online. These of course do not work very well in situations of any complexity and are not designed to alert the user to situations where they really need expert advice. In particular, do-it-yourself wills are attractive to the baby boomer generation and may mean a whole

avalanche of problems as people fail to recognise factors like tax implications the significance of trust arrangements and so on.

Thinking about these issues, I looked at some online legal advice services which were noteworthy for firstly their lacklustre command of language and secondly their failure to identify exactly who the lawyers said to be providing the service were. Now, I assume that they are staffed by lawyers, because they would otherwise be in breach of the various State legislative prohibitions on providing legal services, but as a consumer I would be wary of a site which will not tell you who is behind it until you sign up. Since I did not sign up, I do not know what they did tell you if you did. And unfortunately, I am probably not a typical consumer of online legal advice.

Other problems: the capacity for dealing with great volumes of documents electronically, which I mentioned earlier as an advance, is not always a boon. In the main Bell liquidation case, Justice Owen received 134,000 documents over the 400 odd days of the trial. The explosion in the numbers of documents which businesses generate electronically, particularly email, makes discovery of the future look daunting. And of course with the expansion of legal databases comes the ability to locate masses of cases which can end up as a time-wasting distraction. Software is, I think, getting more sophisticated in its capacity to refine the relevant and cull out the repetitious, but I do not think we have got beyond the need for human analysis to play a part in determining what is actually useful. There is another issue: the problem of recovering data when storage formats constantly change. That is something which is going to be a concern for the courts in their record-keeping and, I imagine, for practitioners too.

Now, back to the future, which is likely to include some form of online dispute resolution. Developments in the United Kingdom may give some indication of where we are headed. In September 2016 the Lord Chancellor and Lord Chief Justice presented a joint statement of proposed reforms of the justice system. These entailed, among other things, online hearings where all the materials were uploaded for consideration by a judge or, in routine cases, by specially trained staff, without any need for a physical hearing. Where oral argument was necessary it would be in virtual hearings by telephone or video conference. Probate applications and divorce and the work of the Social Security Tribunal would be moved entirely online. The last led to some upset from advocates for the disabled, because they were about 80% of those appearing before the Social Security Tribunal and they perceived disadvantages in being refused access to a face-to-face hearing.

The only exceptions to this regime in the longer-term would be criminal trials and complex cases. One very significant proposal was a system which would resolve summary offences not carrying a prison sentence entirely online by imposition of a predetermined penalty without any judicial officer's involvement.

Some of those proposals have now been reflected in the Prisons and Courts Bill currently before the UK Parliament.[1] There is to be automated online dispute resolution for money claims under £25,000 and there is to be the automatic online conviction with a standard penalty procedure. Online procedures are also to be developed for civil, family and tribunal proceedings. The policy objective for the Bill is said to be an efficient court system which

[1] Prisons and Courts Bill, HC Bill (2016–17) [145].

inspires public confidence. There is also a reference to what they call monetised benefits.

Rather than inspiring confidence in me, there is something about the automated penalty system that disturbs me. I appreciate that there may not be much sense in having judicial officers involved when the outcome is more or less inevitable. I think, really, what I find unattractive is the notion that a court is involved, at least in name, because this seems antithetical to the functions of a court. My idea of equal justice involves some degree of human intervention and consideration of circumstances. Really, if they are going to do this I wish they would hand it over to another agency, say the Post Office. You do wonder if sooner or later they will end up privatising this system, and you will get your adjudication courtesy of Amazon, with advertising.

Let's go high and wide again. The next big step in technological innovation in the justice system is computational law; which means different things to different people, but let's call it automated legal reasoning. For example, I have read of a system developed to give advice on limitation periods.[2] Justice Nettle of the High Court discussed the prospect of computational reasoning with a remarkable degree of tranquillity in a paper he gave to the Bar Association conference last year.[3] He talked about a Family Court system being trialled that could advise on likely property division. Justice Nettle anticipated that developments of the kind would reduce the number of lawyers and perhaps also judges needed for simple litigation. He had two reservations. Firstly, he thought that it would be some time before anybody developed algorithms capable of fact finding particularly where the

[2] Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2008) 15.
[3] Justice Geoffrey Nettle, 'Technology and the Law' (Speech delivered at the Bar Association of Queensland Annual Conference, High Court of Australia, 27 February 2016).

determination depended on what oral evidence was accepted. Secondly, it would be problematic to have computational analysis determining questions like reasonable foreseeability and unconscionability. He thought programmes capable of creative reasoning particularly of the sort that draws analogies from past experience were a long way off. And, Justice Nettle pointed out, if there is resistance to judges applying the policy inherent in, for example, charters of human rights, the idea of computers making policy choices on the basis of input from unidentified engineers could be expected to be even less appealing.

Still, Justice Nettle suggested, in the future counsel and judges and indeed unrepresented litigants may have access to programs which can produce reasons for a decision: identifying the relevant issues, determining which legal rules apply and which precedent cases are relevant, identifying differences between the case and the precedents, presenting arguments on both sides of the issues and offering an answer. The role of lawyers and judges would increasingly become that of a skilled computer scientist able to identify the limitations in programmes and fashion submissions and judgments about them. As I said to him after hearing his paper, I was obliged to him for making retirement and/or death look so much more palatable.

Well, I fear I sound reactionary. But essentially for all this discussion, the law is for society and people. Advances in technology can help to make its administration more efficient and expand access to it. But we as lawyers remain a profession. It is important not to let these developments and their potential obscure that. And we must never lose sight of the values of service and upholding the rule of law that go with being a lawyer.