

BLAKE DAWSON WALDRON

L A W Y E R S

Case Study - eCourts On Any Budget

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SIR ZELMAN COWEN CENTRE AND THE AUSTRALIAN INSTITUTE OF JUDICIAL
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When I was asked to speak to you today about my experience in preparing and managing an electronic trial from a law firm's point of view I was really struggling to find a way to make my experience interesting. Unfortunately none of the hearings I've worked on have involved Paris Hilton, none of them have required space travel and none of them have got anywhere near a corporate marquee at the Spring Carnival

All in all up until October 2002 my experience in the electronic court room had been pretty standard. As the law firm we would image and index our documents in accordance with an agreed document management protocol, we would work with the courts to load that data into a court system, we'd organise training sessions for the barristers, re-organise training sessions for the barristers, cross all fingers and toes on day one that the barristers would be OK even though they hadn't attended any of the prearranged training sessions, then start to breath again at around lunch time when everything looked to be running smoothly. Now if I'd been asked to speak on the subject of electronic court rooms back in 2002 that is where I would probably end my talk and we could all go to lunch early. However at the end of 2002 I began working with a team of people in our Perth office, on what is commonly referred to as the Bell matter. The Bell matter is a \$1.4 billion recovery claim by the former WA State Government Insurance Commission, against a group of banks for the former Alan Bond company, including Westpac, National Australia Bank and Commonwealth Bank.

There are a number things that have made my experience working on the Bell matter quite unique from any other matter I have run as an electronic trial. To give you a better picture of what I'm talking about I have to turn the clock back to 1995 when the first of many courier trucks pulled into the loading dock at the Blake Dawson Waldron offices in Perth.

Now 1995 was a pretty exciting year so far as technology was concerned. We were all learning how to use e-mail, wondering what the Internet was and still swapping data on floppy disks. So when the Bell litigation documents arrived we sat a team paralegals down and began writing sequential (folder/document) numbers on little white dots, sticking them on the front pages of each document and describing the documents in a flat file database, that on average was falling off the server once a day due to network traffic.

This matter and the information captured and used by the legal teams has had to adapt over the years to advances and changes in the technology at Blakes but also advances and changes in the way in which the courts administrate matters. The development of technology practice notes in many of the courts on the east coast and the use of sophisticated, off the shelf products available to the courts and law firms (such as the Ringtail suite of products, the Summation iBlaze range

and others), trial management has become highly sophisticated, not only for the top tier commercial firms but for anyone involved in the court process.

In 1999 we made the decision to convert the Bell document management database from its current flat file database environment into Casebook, which at that time was called Lantern. Blakes had installed the first release of Casebook known as Tenet a few years earlier and we were confident that the 500,000 documents we had already indexed would be easier to access in this more robust system. As I mentioned earlier the flat file system was freezing with almost every search even though we had a dedicated heavy duty PC to run such searches.

We knew the conversion would be fairly complicated given the number of fields we were migrating and the number of records so three days were set aside starting on a Friday to reduce user down time. The Ringtail team, who we worked with very closely, also sent one of their team members up to Sydney to assist. Given that this all happened 5 years ago I rang Emma Forbes who was managing the conversion to get her comments. There was a long silence on the phone, then a slight groan, three days and nights turned into 3 weeks and her main memory is that they (Tim from Ringtail and her) had got through 4 years of archived jokes on the jokes.com website and had eaten more pizza than she cared to remember.

During the three week period the users still had access to the flat file system but were obviously not able to make changes to data. Once Casebook (or Lantern) was up and running we started to image the key documents thus making it easier for the legal team to access information and taking pressure off the photocopying department who at the time were working in shifts, around the clock, to keep up with requests for hard copies of various documents.

We worked in cyber-bliss for another 3 years refining our database further and imaging more documents on a daily basis. Court dates would come and go as the parties tap danced around the issues, but in 2002 when we were informed that the hearing would begin in mid 2003 a light sweat broke out down St Georges Terrace.

We met with the solicitors for the Banks, who were apposed to the idea of an electronic trial mainly on the basis of costs, but they also questioned the theory that an electronic court would speed up document recall and consequently the trial process.

At a directions hearing in October of 2002 the Honourable Justice Owen, heard both sides argue for and against the use of an electronic court room. Technology experts were asked to swear affidavits outlining the benefits of technology in the court and the case for using document management systems in the court room. Owen who was still listening to closing submissions on the HIH Royal Commission was well and truly familiar with the benefits of court room technology and promptly ordered the following:

2 The trial of this proceeding be conducted using:

- a) A Court Book
- b) A Book of pleadings, and
- c) Witness statements

In electronic format

- 3 As soon as practicable the parties to meet with Registrar of the Court and discuss:
- a) The specifications for the software, hardware, infrastructure and services required to conduct an electronic trial; and
 - b) The protocols for the information to be supplied about the documents to be included in the court book.

Wonderful we thought, and to be honest we didn't give the court book system a lot more thought. We drafted some document exchange and data protocols based on the New South Wales and Victorian Supreme Court practice notes and information we had been indexing for the last 7 years and went to visit the registrar.

Now in all the electronic trials I've been involved with these meetings have been very useful. You meet up with the court staff and the other parties to finalise the court book format and discuss the computer system we'll use in the court room which often involved suppliers tendering for the provision of court technology services. All fairly standard stuff. So you can imagine our surprise when the court registrar told us that the Supreme Court of Western Australia outsourced all IT to a third party contractor (OK, that's fine) and that the contractor would be a major stakeholder and decision maker in the process of deciding on the court book format, the data exchange protocols and the computer system used inside the court room. But the biggest shock come when we were told that the court book system would not be the all familiar Ringtail Courtbook system but a purpose built Lotus Notes system. When we nervously asked if we could see the system we were told this was not possible because the proposed system did not yet exist.

So here we were, 6 and a half months from trial being told by the court registrar that we had to use a Lotus Notes system that had not yet been built.

This fact was met with a lot of resistance from both parties. Who were both asking:

- Would the system be ready in time for the trial?
- What sort of functionality would the lotus notes system have?
- How would our lawyers and barristers cope with learning a new system before trial?
- Why build a new system when there were off the shelf products that had been tried and tested on the East Coast?
- Would we be able to use our existing data and images in this new Lotus Notes system?

At this stage we were all feeling very anxious about the whole situation.

The court asked us to write a Wish-List of requirements that we'd like to see in an electronic court book system grouping those requirements into those that we felt were critical to users, those that were desirable and those little extra enhancements that we'd all love but are stretching the friendship such as the barrister ejector seat module or the solitaire plug-in.

As both parties had access to the Ringtail Casebook product internally, and were familiar with the Courtbook also written by Ringtail, a lot of the Wish-List functionality was based on these systems.

We came up with a three page list of critical features that covered the areas of

- User access and support,
- Document viewing,
- Searching and viewing results,
- Pleadings and transcript management including full text searching, and
- Data and image exchange format (obviously to minimise any data manipulation at the legal firms' ends)

It was then a matter of the parties negotiating with the development team at the Supreme court about which features should be given developmental priority.

One of the main issues we had to address was the fact that although this matter had been running for over 7 years the parties had not come together to discuss data or imaging protocols, or document numbering procedures. Both parties had captured data in different ways and used very different numbering systems.

The data and image protocols were not a huge issue and were fairly easy to negotiate however the different numbering systems were raising problems. Neither party wanted to adopt the other parties numbering system and neither party wanted a third court book numbering system as it only confuse matters further. To make the issue more complicated some documents had both a plaintiff and a defendant number on the front page and others had neither.

Ultimately the court agreed to adopt the two different numbering systems in the Lotus Notes system. Users would refer to documents by their original discovery number and not a new court book number. We all breathed a sign of relief and moved on.

Over the next 6 months the parties liased with the Vageli Mitakas and his development team very closely. Vageli would often e-mail me and my equivalent at Freehills to check requirements. We were often asked how we would like data to be displayed, and to verify functionality. We would also send test data and images to be loaded into the new system on a regular basis.

Vageli and his team were under an enormous amount of pressure to build a high end system for some very demanding users in a very short period of time. I must say at this point that Vageli and his team were always very interested in any suggestions or information we provided. They were dedicated to the project and understood how important it was for their eTrial system to work in this showcase hearing.

The trial date of 21 July was steaming rolling towards us. About 4 weeks before this date we started supplying CD ROMs of data to the court to be loaded into the system (which at this stage we still had not seen). Before the trial started the court had loaded over 50 CD ROMs of data and images from the plaintiff alone. By the end of the plaintiffs' case the court was to load an additional 172 CD ROMs from the plaintiff, which amounted to around 90,000 documents.

Now I mentioned a minute ago that the trial date of 21 July was getting closer and the parties were fairly preoccupied with getting ready for the first day of the hearing. We were all still waiting for the court to announce that the court system was ready to go and for a training session

to be organised. Finally we were put out of our misery and told that the trial would be postponed for one day so that an eTrial user training session could be given the day before the trial began. You can imagine we were all feeling fairly tense, if not a little over tired and we were now extremely worried that the day before the trial started we would be shown a system that fell short of our requirements.

As it turned out the browser interface was not yet ready so the day before the trial we looked at the Lotus Notes interface which we could replicate in our own office if we had the Lotus Notes software. Which, I might add, Blakes did not, and were not about to invest in.

The system allowed users to search and view documents on a series of public and private monitors around the court room. It was possible to bookmark documents, add annotations and classify documents by user specific issues. The transcript would also be loaded into the system periodically throughout the day allowing searching. Our users were sceptical and saw many gaps in the system but there just wasn't time to dwell on these issues. We had pretty much, by this stage, decided not to use the court system for anything other than viewing documents while we were in the court room.

The next day on 22 July the trial started and Justice Owen opened by saying

So far as the electronics are concerned this is an electronic trial. That does not mean that it is paperless. The phrase "a paperless courtroom" will never be achieved and certainly will not be achieved in this trial. The parties should feel free to conduct their cases as they see fit; use the electronics for their own purposes as they wish or not, but so far as I am concerned it will be an electronic trial.

As with all electronic trials it took a few days for everyone to feel comfortable with the eTrial system. Justice Owen was very supportive and would often have to remind the barristers when they forgot to refer to document numbers.

As the trial progressed so did development on the eTrial system. The court met with the parties on a regular basis to receive feedback on the system and to discuss further development. Over the first 6 months of the trial the eTrial system developed from a fairly simplistic (from a users point of view) Lotus Notes database to a sophisticated web based system. New features and additional functionality was added to the system on a regular basis. I won't go through all of these updates and changes but some of the main changes that really assisted the parties and generally promoted further use of the system outside the court room included:

- Browser front end so that users could access the eTrial system from outside the court room via the Internet without needing the Lotus Notes software on their PC.
- Transcript files could be downloaded from the eTrial system twice a day (a morning session at 3pm and the full day session at 6pm)
- Documents to be Marked For Identification were batch processed using tab delimited or XML files listing the Document ID, date title and an exhibit topic.
- Search results could be exported from the eTrial system in XML or CSV format

So as the trial progressed the system developed and became more useful to the users.

We were still however relying on our own internal document management system to search and review documents in order to prepare for court as our internal system was riddled with subjective data that has been collected and indexed since the matter began back in 1995. Which I do think is a fairly standard practice during an electronic trial.

Three months ago I transferred back to our Melbourne office and thus left the Bell matter and its idiosyncrasies behind. Looking back I realise that I was extremely lucky to be given the opportunity work closely with the courts while they developed what is now a highly functional electronic court room system that matches any other court book system I have had the opportunity to use.