The Use of the Internet by Courts and the Judiciary

findings from a study trip and supplementary research

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Executive Summary

This report focuses on the provision of Judicial and court information to the public through the use of the internet, and how this technology can be used in the New Zealand courts system. Most of the study was conducted through a research trip to the jurisdictions concerned, and is supported by supplementary research.

Specifically of interest for the purposes of this report were the issues, challenges and difficulties faced in the implementation of technology in the Court environment.

Hence the focus of research was on not only the administrative and technical aspects of technology, but also the legislative and environmental aspects.

The report begins with an overview of the drivers behind the study, and discusses such factors as the restructuring of New Zealand’s Justice sector and the issues surrounding access to justice and the law. A discussion of factors such as the technology tools used in courts, and requirements regarding security, privacy, rules and directions follows.

The report suggests that many of the underlying drivers associated with both the technology capabilities and the contemporary demands placed on Courts that were observed overseas, are present in New Zealand. It is suggested that for New Zealand Courts to develop a strategic vision for technology in the Court environment and associated work programmes would provide significant benefits to Courts, users of the Courts and the community at large.

In particular improving access to Court information and implementation of electronic filing, will vastly improve community confidence in the justice system, reduce costs for the legal profession and other users, introduce further efficiencies in Court processes, and contribute toward faster disposal and timeliness standards.

About this report

This report is based on a study trip undertaken in December 2000 and January 2001, supplemented by additional research. Every attempt has been made to confirm information received and to check its accuracy, however, this has not always been possible.

Terms and phrases used are generally those in common usage in New Zealand.

The views expressed in this report are purely those of the author. Neither these views, nor the opportunities proposed in this report, can be considered to be those of the courts, the New Zealand Government or the New Zealand Law Foundation.
1 Introduction

There has been considerable interest in recent years in the implementation of technology in the court environment. Numerous jurisdictions, including Australia, Singapore, Canada, the United States and several within Europe, have made significant use of the internet in providing a complete range of court information and material. Developments range from provision of information, including judgments, through to electronic filing of court documents and case management information.

These international developments have served to raise awareness and expectations in New Zealand from the legal profession, the Judiciary, academics, researchers, and the wider community.

That demand, together with the advancing work on the case management systems in New Zealand, led to the development of a proposal to visit a number of jurisdictions to examine courts’ use of the internet.

It was recognised that this would be of interest not only to the Department for Courts and the legal profession, but also to the wider justice sector, the State Services Commission eGovernment Unit, the publishing sector (particularly legal publishers), information management professionals, and the community at large.

The intention was also to support the work of the information needs project, supported by the New Zealand Law Foundation (NZLF) and the New Zealand Law Society (NZLS).

The study trip was enabled primarily through a grant from the Law Foundation, with further cost contribution from the Department for Courts.

1.1 Purpose

The study trip focused on the provision of Judicial and court information to the community through the internet, and specifically evaluated implementation issues and the challenges and difficulties faced in those jurisdictions visited. Information in this context is seen as:

- Court schedules and lists.
- Judgments, opinions and rulings of courts and administrative tribunals, and availability of case outcome and case management information.
- Court procedures and forms, and information about processes to assist citizens to realise their rights and benefits created by law.
- Commercially available research information, particularly where there is shared access between the Judiciary and courts, and the legal profession.
Particular attention was paid to the following aspects.

- **Legislative**
  - privacy in publishing Judicial and court information on the internet
  - copyright issues
  - statutory restriction on disclosure or availability

- **Administrative**
  - management of court-ordered suppression
  - authentication
  - collection and publishing mechanisms
  - electronic filing and the virtual court from an administrative perspective

- **Technical**
  - adoption of uniform document creation standards
  - medium neutral citation standards
  - digital signatures

- **Environmental**
  - interaction with statutes and regulations provided over the internet
  - involvement of publishers in the process
  - interaction with commercially published legal information, particularly where publishers add value to court and Judicial information
  - adoption and use of medium neutral citations

### 1.2 Nature of the Study

The visits included meeting with producers and providers of Judicial and court information, as well as key consumers or users.

Producers and providers include the Judiciary, court administrators and publishers, while users include publishers, law practitioners and library and information professionals.

Extra research has also been undertaken, and examples of best practice or solutions applied to the various technologies or implementation issues are highlighted.

The primary focus of this report is on the provision of judgments or opinions through the internet, but it also looks at other technology initiatives that are being delivered or accessed through the internet.
2 The Drivers

2.1 Overview
The Judicial system is characterised as a complex information processing system.\(^1\) Information, such as pleadings and evidence, come into the court and a Judicial decision or determination is made on the basis of that information. Developments in information technology will therefore have a considerable impact on the way in which that information is used and managed within the Judicial system.

The maintenance and enhancement of the integrity of the Judicial decision-making process, and the balancing of access to justice issues, are the key drivers for any organisation administering the Judicial system. In any change environment, whether it be technology focused or otherwise, these basic principles must be upheld.

Based on current trends, and the initiatives for modernisation which are already in progress, it is reasonable to predict that courts in the future will be knowledge-based organisations with the need for high quality information management skills and competencies.

It can be expected that technology tools will assist in managing the information. A professionally skilled staff will also work in closer partnership with the Judiciary to facilitate the collation and analysis of evidence and precedent prior to the Judicial decision-making process.

This section details the major drivers that are shaping these technological and information management environments in which courts are increasingly operating.

2.2 Justice Sector Restructuring
In 1995 the former New Zealand Department of Justice was disestablished to create the Ministry of Justice, Department of Corrections and the Department for Courts. A key feature of that restructuring from the court perspective was to provide an entity that could focus on serving the Judicial decision-making process. A formal grouping of Departments and Ministries was formed under the umbrella title of the Justice Sector. The core group comprises the Ministry of Justice, the Department for Courts, Department of Corrections, Police, Ministry of Transport, Land Transport Safety Authority, Ministry of Social Policy and the Department of Child Youth and Family.\(^2\)

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\(^1\) Karen Blochlinger, ‘Primus inter pares: is the Singapore Judiciary first among equals’?, *Pacific Rim Law and Policy Journal*, v9(3), September 2000, 602

\(^2\) Ministry of Justice, *Justice Sector Information Strategy: Informing the Justice Sector*, New Zealand, August 1996
One of the principal drivers in the New Zealand Justice Sector has been the need to move from the 1970s-built Law Enforcement Systems (LES, previously known as the Wanganui Computer). The system was not at that time Y2K compliant, nor was it felt that it was capable of coping with the increasingly sophisticated information management requirements of the Justice Sector agencies.

2.3 Modernisation Programme
The Modernisation Programme for the Department for Courts was approved by Cabinet in 1998, and foresaw a fundamental change in the approach to courts services. It planned the introduction of new processes, accompanied by training and recruitment to improve the professional skills of staff, with the support of a new technology platform to replace the LES.

2.3.1 Caseflow Standards and Case Management
The key principle underpinning the Modernisation Programme was the focus on managing cases to identified and agreed standards. This included developing a system to enable court staff to support the Judiciary in active management of the scheduled events in the life of a case, so that sequence and timing are both predictable and timely. This would generate certainty for all parties, reduce stress, and facilitate efficient and effective dispute resolution.

2.3.2 Skills and Technology
Case management requires that the court proactively sets the time for hearing cases, advises counsel, and manages the case through to disposal. Under a substantially automated system, court staff have increased responsibility and maximum efficiency is more likely to be achieved. The technology also provides vastly improved information management systems.

2.3.3 Consequential New Structure: Court Clusters
One of the consequences of improved processes, skilled staff, and technology-based information management is that workloads can be managed by area or region, rather than by individual courts. This means that the preparatory processing of a case can be done in a larger court registry, then the Judge and the case file could, if necessary, travel to a smaller court or hearing centre to hear the case.

Each combination of larger central processing registry with a series of smaller registries or hearing centres is a ‘cluster’. Each cluster has the ability to share staff and resources to effectively support the Judicial decision-making process and to expedite the disposal of cases before the court. Preparation can be completed at the central registry and teams are then able to travel to smaller centres to hear cases. This means that some Courts Services can be provided to towns and places that currently are unable to hold hearings, or do not have courthouses.
2.4 The Internet

... [the internet] will change the way information workers, or those that work predominantly with and through information, will operate. It is important to understand that the practice of the law and the delivery of justice is principally and primarily an information activity. This is a critical issue, because one of the key determinants of the internet and information revolution is that it will drastically affect the operations of information based industries ...³

The internet, together with the user friendly World Wide Web (WWW), has transformed much that it touches. Business, government, science, entertainment, education, professional groups and individuals have all made rapid advances in using the technology to conduct activities and deliver information.

Some of the types of information traditionally suited to publication on the internet include calendars, induction material, phone lists, financial data, vendor information, training materials, reports, policies, and vacancies.

The following chart illustrates the ‘Publish—Interact—Transact’ model. The power of the internet lies in its interactive and transactional phases.

The extent and amount of information that is available on the internet is astounding. Increasingly however, both providers and users require assistance in identifying and filtering relevant information.

³ Tony Sutherland, ‘The Internet and beyond: a new order for Justice?’, AIJA Justice for Technology conference. Melbourne, Australia, October 2000
2.5  Courts As Knowledge-Intensive Organisations

As knowledge-intensive organisations, courts exhibit some of the characteristics of these types of organisations, including:

- learning by hiring and training;
- converting ideas into capital;
- turning individual into collective knowledge;
- possessing social as well as technical knowledge; and
- the ability to lose knowledge.

One of the key characteristics of knowledge organisations is the way in which knowledge flows. There are four levers, shown in the following diagram, which can be used to promote knowledge flow within an organisation.

![Diagram showing the four levers of knowledge flow: Technology, Mission, Culture, Organisation.](image)

*Technology* in this instance describes the tools used by the organisation, such as the internet or the IT infrastructure. *Organisation* refers to the systems and processes that are in place. *Culture* is the nature of the organisation and the way in which it operates, and the *mission* is the vision or statement of intent. If one area is changed, there is an equal and opposite effect in other areas. If the mission of a company is changed radically, there will be a follow-on effect with the other levers. A large chunk of the culture may become redundant, and there may be some technology that needs to be brought in to support the revised mission.

Knowledge management is different in each organisation because the nature of the four levers will be unique to each organisation. For example, some organisations focus on the technology aspect, and later find that they have forgotten to address the flow-on effects in the other aspects. Unless systems and processes are changed to support an organisation’s aims, it can have the effect of creating two organisations: one that fits the old model and operates in the old way, and one that operates the new way.
Issues confronting many organisations in the age of knowledge management include:

- changes in the roles and skills needed as the organisation moves into knowledge management
- a feeling that there is a lack of value from the information/knowledge assets
- existing IT infrastructure that creates barriers to effective management of information
- the need to identify the disablers and often shift (as opposed to change) organisational culture
- cost and skills implications
- the requirement to establish standards
- the move from a linear to a circular process in information handling

2.6 Access to Justice and the Law

In a speech launching the National Law Collection of the Australasian Legal Information Institute (AustLII) in 1999, The Hon Justice Michael Kirby spoke of Englishman Jeremy Bentham, who devoted much of his life in the late eighteenth century to jurisprudence and criticism of the legal system in that country. Bentham advocated the codification of law, which would 'mark out the line of the subject's conduct by visible directions instead of turning [the subject] loose into the wilds of perpetual conjecture'.

The common law system, despite Bentham's criticism, has remained with England and commonwealth countries. Criticisms also remain. Justice Kirby summed it up:

> The English system was, and is, resilient precisely because of its adaptability over time and space and its capacity to provide solutions to entirely new problems, which solutions seem mostly just to the Judges, lawyers, jurors and citizens of succeeding generations. But it is a messy system. Finding the relevant case, and extracting from the Judge's discursive reasoning the principle that will bind or guide later Judges to their decision is a process in which there are many pitfalls. The greatest of these, until lately, has been that the cases were hidden in books, bound in velum or buckram in lawyers' offices and a few libraries. Knowing where to go to get the law was a daunting challenge even for the experienced lawyer. For a member of the public it was virtually impossible.

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Professor Susskind argues that there is a ‘latent legal market’ where citizens need and would benefit from legal guidance (or earlier and more timely help) but obtaining the legal input today seems to be too costly, excessively time-consuming, too cumbersome and convoluted or just plain forbidding.  

Susskind suggests that this market will be liberated by the availability of electronic legal information systems and services:

They will not replace conventional legal services, but they will provide affordable, easy access to legal guidance where many have [been] unaffordable or impractical in the past.

Further, he sees additional benefit for smaller sized businesses who ‘are willing to pay for legal help today but not perhaps as much as lawyers want to charge them.’

This focus on access to improved, cheaper and fairer means of resolving disputes is reflected again in the Lord Woolfe report on access to justice, and in many other reports which are discussed on a country-by-country basis later in this report. Often the call for better access to justice is actually a call for access to improved dispute resolution.

Susskind argues that in the information society there are two further dimensions.

The first is dispute pre-emption:

Non lawyers would generally prefer the prevention or avoidance of legal problems to the dispute resolution process no matter how much it is overhauled. In law, as elsewhere, prevention is better than cure; and access to legal guidance will give rise to a more just society, in the same way that immunisation leads to a healthier community.

Secondly,

... the law ... surely provides us with the means by which we can improve our general well-being; and not only by helping to resolve or avoid problems. Instead, there are many benefits, improvements and advantages that the law can confer, even when there is no perceived problem or difficulty. And yet, as I said earlier, many people are hopelessly unaware of the full range of facilities available today. ... Access to justice, in this third sense, means access to the opportunities that the law creates.

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Information technology, and the internet in particular, have been instrumental in delivering Bentham’s basic idea – that the people have free access to the law. However, there remain some difficulties in this arena. Kirby summarises these as:

- absorbing the data;
- thinking conceptually;
- understanding legal structures, systems and institutions;
- currency and comprehensiveness; and
- acknowledging that technology is not infallible.

Information technology literacy poses a further barrier to public access to the law. Even if citizens are armed with knowledge of our legal systems and structures, and have access to the appropriate technology, what if they are unable to use that technology or to search the databases to positive outcomes?

How accessible is accessible? It is a simple algorithm. Publishing information on a Web Site but hiding it through a number of skills the user needs to have (e.g. search engine syntax, results list navigation, web experience) virtually guarantees that the public are not able to access what they are after.\(^8\)

2.7 Information control

Some argue that increased access to the law actually lessens the accessibility of the law. Increased availability of judgments has meant that in courts have been swamped with cited authorities, where previously this was restricted to those that were reported.\(^9\)

Some jurisdictions, such as the United States, have continued to maintain rules, which do not allow the citation of unreported judgments in court. That has worked well where the decision on what should be reported is generally a judicial decision. In other jurisdictions, notably the UK, Australia and New Zealand, the determination of what should be reported is generally undertaken by legal publishers. Increasingly practice notes and other methods of guidance to assist advocates and other court users in the use and citation of authorities are being adopted in these latter jurisdictions.

2.8 Communications Environment

Courts operate in an environment that is characterised by increasingly media-savvy and discerning observers and users, and a public that is increasingly cynical about the role of the media and the interests of authority. At the same time, the media marketplace is crowded with a multitude of formats and delivery mechanisms, and there has been a significant increase in the volume of available information.

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\(^8\) Bruce Mcleod (Spirit Consulting), Information overload equals pattern recognition: providing relevant information to the public from Government Funded Legal Web Sites. September 1999

2.8.1 Criticisms and Requirements

There are many criticisms of the current provision of legal information, including:

- lack of speed and selectivity in traditional legal publishing;
- the technical skill required to make use of legal information;
- the cost and general availability of legal information, even through intermediaries;
- the poor standard of legal information presented and reported in the mass media;
- the skills required in order to identify, locate, access and navigate legal information; and
- the lack of domestic availability of an increasing amount of applicable regional or international law.

While there are issues regarding faster, easier and cheaper access to judgments and court information in an electronic environment, many of these exist also in the traditional context. However, the technology of electronic distribution focuses attention on the adequacy of measures used to control access and the sorts of measures that are used.

There is also a growing demand from a variety of quarters for better, more even-handed service from the system, particularly as an aspect of access to the law (‘open justice’). There is also evidence that the measures used to control access are increasingly viewed as archaic. Finally, the sheer number and variety of specialist users and their unique individual requirements presents additional problems.

Additional benefits in distributing court information electronically include significantly lower costs, as the copy can be reproduced more cheaply, and less registry and Judicial support staff time is spent dealing with requests for judgments. This also diminishes the opportunities to overlook or ignore court-ordered or statute-imposed suppression orders or restrictions. And finally, there is the wider benefit, already discussed, of significantly improved access to case law.

Late in 2000 the South Australian Courts Administration Authority held a ‘Courts Consulting the Community’ conference. The conference provided the opportunity for representatives of the community to express their views about matters affecting confidence in the courts. Representatives were also asked to give their views on the services provided by courts, and court facilities.

In particular it was noted at the conference that the community is strongly critical of the quality of information provided by the media, and the problem of inequality between those who have legal representation (including those who pay for it themselves as well as those who have legal aid) and those who cannot afford it.

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… the dominant issue in relation to community confidence and service levels was that of information and education. Judging by what we heard, the community wants more information about courts as an institution, about what to expect when they go to court, and about the work of the courts. They want a substantially improved level of information for people who attend court, better explanations of what is happening when they are at court, and more reliable information through the media about what has happened in court. …

… They look to court staff to provide some of this information.

2.8.2 Courts of New Zealand Site
The Courts of New Zealand internet site\(^{11}\) was redeveloped in February 2000. The primary objectives of that redevelopment were:

- to develop the Department for Courts’ internet presence as a primary communication tool in delivering key information about the organisation, the Judiciary and its statutory and constitutional function, the courts, and court processes;
- to contribute to individual and community access to justice;
- to empower Department for Courts stakeholders by providing relevant information that is not currently available in an online form; and
- to provide this information in a timely and cost effective manner.

The redevelopment work was not seen as an isolated achievement. Rather, it was intended to bring the site to a point where it can provide a base for further and ongoing development.

The Department’s internet site is currently very firmly in the ‘publish’ phase of the model discussed in section 2.4.

The Family Court content relating to divorce on the Courts of New Zealand internet site illustrates the point of increased user expectations around internet content. One of the most frequently requested questions resulting in failed searches was for information about the process for obtaining a divorce. Accordingly the information was significantly enhanced to answer those questions. It stopped short of providing the necessary forms or the ability to apply for a divorce over the internet, since the Court still required those components of the process to be conducted in the traditional manner. Visitors to the internet site and those pages in particular began asking why they could not obtain the forms online, or apply via the internet. In other words, visitors very quickly developed further expectations and began pushing courts along

\(^{11}\) http://www.courts.govt.nz/
the spectrum of the ‘Publish – Interact – Transact’ internet model mentioned earlier.

### 2.9 Electronic Government (eGovernment)

Electronic government is a larger picture issue than those subsets previously discussed. New Zealand is estimated to have around 51 percent of the population with home access to the internet. The following table represents the most recent figures.

**Percent of people 16+ in Asia Pacific with internet access at home or work**

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<th>Country</th>
<th>% with internet access at home</th>
<th>% with internet access at work</th>
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<tbody>
<tr>
<td>Australia</td>
<td>50</td>
<td>30</td>
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<tr>
<td>Hong Kong</td>
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The use of the internet has lead the New Zealand Government, as with many internationally, to seek to deliver an ambitious eGovernment programme whereby the internet will be the dominant means of enabling ready access to government information, services and processes by 2004.\(^{13}\)

Already a number of initiatives have launched, such as the Terranet internet site (a Land Information New Zealand/Terralink initiative),\(^ {14}\) which allows access to land valuations, plans, certificate of titles and sales history over the internet. On the Terranet site information can be ordered electronically, and businesses and individuals can complete basic transactions, including payment. The New Zealand Companies Office site\(^ {15}\) provides similar facility and utility. Sites such as this continue to raise community expectations as well as driving other agencies of government to look to the internet to deliver services and information, in addition to using the technology as a shop front.

Specific New Zealand eGovernment\(^ {16}\) initiatives and projects include:

**Authentication**

As agencies start to share data, applications and systems, it will be important to authenticate users for security reasons. It is critical that the process of authentication is handled in a common manner by all government agencies.

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\(^{12}\) Nielsen/NetRatings Global Internet Trends, Q1 2001


\(^{14}\) [http://www.terranet.co.nz](http://www.terranet.co.nz)

\(^{15}\) [http://www.companies.govt.nz/search/cad/dbssiten.main](http://www.companies.govt.nz/search/cad/dbssiten.main)

This project will address this requirement, and develop the necessary authentication frameworks.

Inter-Operability
An inter-operability framework (made up of policies, standards and governance arrangements) will be designed and implemented during 2001. This framework will be the first step in creating the capability for agencies to create and share information and related systems. This in turn will support the eGovernment strategic objective of providing an integrated and trusted front-office view of Government, and a rationalised back office IT infrastructure.

Data and Information Systems Policies and Standards
This project is a sub-project of the Interoperability Framework. This will provide the basis for agencies to be able to share data and information systems in the future through facilitating the adoption of common data management and information systems policies and standards across government. There is also the functionality for development of new, or revision of existing data management and information systems policies and standards.

Leveraging Infrastructure
This project aims to develop a technology strategy that will support the delivery of integrated information and services across whole of government. It will look at the requirements for the back office of eGovernment, focusing on the ‘technology agenda’.

Another feature of the project is the examination of all aspects of the infrastructure, from the networks, hardware and software to the human capital for leverage. Finally, a strategy will be delivered that identifies the necessary governance, frameworks, policies and standards and technology implementation, with a 2–5 year view.

Based on this strategy, the information and communications technology environment in the public service will become more integrated over time. The goal is to create an integrated back office in order to support the ultimate goal of an integrated front office. Additionally, it is envisaged that there will be cost savings in overall expenditure on infrastructure.

National Information Infrastructure Protection
New Zealand is increasingly dependent on information infrastructures, which are vulnerable to disruption. This project will develop a national strategy for protecting these infrastructures from ‘cyber threat’. It will also identify the respective responsibilities of the public and private sectors, and create some responsibilities for agencies in the area of electronic security.

eBilling
This project will evaluate the applicability of electronic billing systems to government operations, and lead to a framework of policy guidelines for using these payment mechanisms. It may also lead to the development of a common e-billing facility that can be made available through the government portal, and linked to those agencies that undertake billing activities.
**Government Web Guidelines**
A set of government web use guidelines have been drafted, reviewed by GOVIS (the Government Information Service), and forwarded to the eGovernment unit for further review. The goal is to ensure that the design of government web sites takes into account the needs of people with disabilities and those without access to the latest technology.

**Guide Delivery (Online Forms)**
The first part of this project involves producing an inventory of all public forms across government, with the ultimate goal of creating a facility where they can all be conveniently accessed online.

Subsequently, the project will focus on standardising the way forms are published online, and identify a means for migrating forms from static documents to interactive interfaces into government service delivery processes.

**eProcurement**
This project will develop a strategy for the adoption of eProcurement across government as quickly as feasible. This will involve creating a commonly used eProcurement system. As well as having an impact on the cost-effectiveness of government agencies, this project will also contribute to the Government’s eCommerce strategy objectives by encouraging small- and medium-sized suppliers to government to take their businesses online.

As well as the focus on eProcurement, ministers are being advised about opportunities to improve government procurement through adoption of a strategic sourcing approach across agencies, and by creating mechanisms for agencies to share procurement information and leading practice.

**Guide Framework – Metadata**
This project will put in place a government-wide consistent metadata standard to allow government agencies to ‘catalogue’ information in a common way. This will make government information much more easily discovered by the public, especially through online channels.

**Geospatial**
This is a programme of projects to rationalise core spatial data for use by a wide range of agencies. Ultimately these projects will enable any government agency to access definitive location data. Common location identifiers such as ‘address’ will be used to access other information. For instance, the system will understand questions such as ‘Which school zone am I in?’ and ‘What is the nearest police station?’
Portal Strategy
A portal strategy will be developed and implemented during 2001. This will allow New Zealanders to interact with government through an ‘integrated front-office’ or ‘single window’ style approach. The portal strategy will support multiple electronic channels into government, e.g. internet via PC or digital TV, and complement traditional across-the-counter and telephone services.

Secure Electronic Environment
This project will create a secure electronic environment (SEE) for exchange of email between government agencies and provide for secure access to repositories of government information by authorised public servants.

Essentially, this will be a secure extranet for government agencies. In time, the SEE environment will be used to develop shared applications, business processes and workflow systems for internal government activities (such as the policy development process).

Membership of the SEE environment will be voluntary for agencies. However, member agencies will have to comply with a set of mandatory security policies and standards to gain admittance.

Other related projects, although not strictly eGovernment, are the eCommerce strategy and the work that is being undertaken on addressing the digital divide.

2.10 eCommerce Strategy Project
The Ministry of Economic Development manages the eCommerce strategy project. It is concerned with assessing and developing the business readiness of the private sector to interact with other private sector organisations and government agencies electronically. A cornerstone of the eCommerce strategy is the Electronic Transactions Bill, noted later in section 3.3.4.

2.11 Digital Divide
The Department of Labour is running the Digital Divide project. The term ‘digital divide’ refers to the gap between those New Zealanders who have access to information and communications technology, and those that do not – typically those on low incomes, people with low or no qualifications or poor literacy skills, and people living outside the main telecommunications infrastructure network.

The project is concerned with reducing this disparity to ensure that all New Zealanders have access to this technology, allowing them to interact with Government electronically. Digital Divide is also concerned with both information and technology literacy.
3 The Environment

3.1 Overview

It is useful to provide an overview of some of the key technologies that are being used in courts. Many of these technologies are internet-enabled or internet-based, and therefore increasingly are being associated with the internet itself.

This section seeks to outline the key characteristics of court technology.

The information revolution today is outstripping our capacity to cope, antiquating our laws, transforming our mores, reshuffling our economy, redefining our work places, and shifting our concept of reality. The Judiciary, whilst a constitutional creature, is not isolated from these rapid shifts.\(^{17}\)

Professor Susskind speaks of the transformative effect of information technology.\(^ {18}\) He states that IT and the internet will

… fundamentally, irreversibly and comprehensively change legal practice, the administration of justice and the way in which non-lawyers handle their legal and quasi-legal affairs.

This represents a complete shift in legal paradigm.

As Susskind and many others have observed, the systems and processes employed in courts are often crude, paper-based, and oriented towards the process of administration. Many are long established and therefore unable to cope with the increasing demands placed upon them. The results of course are high staff costs, inefficiencies, error, delay, poor reputation, and dissatisfaction. The introduction of technology therefore offers considerable potential benefits.

Susskind observes ‘rendering the current system more efficient through automation is only to begin work on bringing the administration of justice into the information age.’

The majority of existing or planned technology-based changes have two key characteristics:

On the one hand, many of the possible applications of IT (for example, desktop videoconferencing) are generic, in that they actually apply to, or are relevant for, more (if not all) individual parts of the justice system. On the other hand, many of them are instances of innovation rather

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\(^{18}\) Professor Richard Susskind, *Transforming the law: essays on technology, Justice and the legal marketplace*, Oxford University Press, United Kingdom, 2001
than automation. This means that their deployment would result not just in the streamlining of specific organisations but instead would often bring fundamental change well beyond the component of the justice system to which they most obviously apply. In turn this would impact heavily on neighbouring bodies, agencies or organisations.\(^{19}\)

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19 fn 18
3.2 A Summary of Court Technology (Tools)

This section is a summary of various technologies that have been used in Courts around the world. It does not necessarily represent usage in New Zealand.

According to Susskind, a justice system supported by IT will lead not only to a more efficient justice system and better access to the law, but also to a reduction in delays, costs and time, with greater empowerment of the voluntary sector, and ultimately, stimulation of greater confidence in the justice sector.

Susskind provides a model to form the basis of strategic thinking. This sees three vital roles for IT in the justice sector: an internal communications infrastructure for justice workers; the provision of electronic legal information and services within the justice system; and finally, public access to the law and legal guidance. These are the mechanisms by which users will interface with the courts. In summary, the functions they fulfill are:

- delivery of information over the internet;
- case management;
- electronic filing, including electronic appeals;
- electronic or online courts, including video technology and voice recognition;
- management of legal documents on the internet/Legal XML and metadata;
- Judicial support, including legal information; and
- investigation and litigation support.

3.2.1 The Internet As Delivery Mechanism

In recent times there have been significant developments in the use of the internet by courts. Use of the internet has been seen particularly as a mechanism to enhance public access to the law.

Content of court internet sites cover a diverse array, from the provision of contact and address information through to full electronic interaction with courts. Typical information includes:

- description of function;
- legislation, or links to legislation;
- lists and calendars;
- procedural information, practice notes;
- judgments;
- assistance and guidance for members of the public and litigant in person;
- court contacts, and links to other courts and related agencies;
- extension of case management systems;
- electronic filing;
- broadcasting proceedings, including video footage and transcripts being broadcast;
- online payments of courts fines and fees; and
- online mediation or other alternative disputes resolution (ADR) services.
3.2.2 Case Management

Caseflow management is the active management of cases by the court to identified and agreed standards. Its implementation in many courts has coincided with the implementation of case management technology. In the first generation of systems this technology generally recorded key life events or procedural stages of cases. New systems additionally provide significantly enhanced information management functionality, electronic data storage, retrieval and analysis capability.

Many such technical systems also provide jury management components, fines collections systems, and other eCommerce aspects to support caseflow management.

Case management systems are increasingly incorporating electronic filing systems as part of their functionality. This is further addressed in the next section.

3.2.3 Electronic Filing

Increasingly, electronic filing is being viewed as a component of the new generation of case management systems. Generally speaking electronic filing requires basic document management systems, together with a range of capabilities including:

- scanning;
- optical character recognition;
- indexing; and
- provision of transcripts.

Once the basics are in place, certain aspects of court practice can be opened up to the wider community, for example, online access to court calendars, including provision for solicitors to book trial dates, venues, and specific lists.

Electronic filing joined with case management will have a significant impact on efficiency, reduction of errors, and may even result in some cost savings.

Increasingly jurisdictions are seeking to conduct electronic appeals where all materials relevant to the appeal are presented to the court in electronic form and accessed electronically in court by all participants. Many of these materials, such as the judgment, evidence and submissions from the lower Court hearing, are prepared and stored electronically in the lower Court and are provided directly to the appeal Court. Generally these appeals are being prepared and entered into separate electronic document management systems.

There are obviously inefficiencies associated with this approach, and it is envisaged that as more courts develop electronic filing systems and electronic court facilities, particularly electronic transcription, electronic appeals will be automatically generated from the lower court hearing.
Without the benefits of electronic filing and electronic courts, electronic appeals are being approached on a case-by-case basis. They tend to be used only in those matters where the costs of the litigation would make the preparation of an electronic appeal book worthwhile.

There is some evidence to suggest that in some jurisdictions enthusiasm for electronic filing within the legal profession is limited. This results from a variety of implications, including the costs associated with adopting electronic filing such as software and the impact on traditional charging of disbursements and other costs.

3.2.4 Electronic Courts

Technological advances in recent years have created an environment where courts are now able to seriously consider the implementation of electronic courts.

Personal computers are in common use. Advances in large screen and in particular flat screen hardware are ideal for use in Court.

Public access from remote locations is a key feature of the electronic court; particularly to rural or isolated communities. Australia in particular has made strong moves in this regard.

Video conferencing is increasingly used for pre-trial and directions hearing, dealing with applications for special leave, to hand down judgments, to receive evidence from witnesses from remote locations or overseas, to conduct remands, and even to pass sentence.

There is likely to be increased use of desktop video over the internet. A principal benefit will be the elimination of the costs associated with setting up fixed video conferencing facilities in specific locations.

Voice recognition technology in the Court context remains a technology in its infancy. In particular concerns about the amount of time taken to ‘train’ the software to understand individuals voice and speech patterns, together with a degree of uncertainty surrounding its potential application, are barriers to widespread introduction. However the potential benefits are clear.

3.2.5 Judicial Support

The use of technology to provide support and assistance to the Judiciary has many facets. For the purposes of this document the focus is on the use of systems that provide access over an intranet system to primary research materials, such as cases and legislation, supplemented by a variety of other materials of immediate relevance to Judicial officers. This may include sentencing information, bench books and other publications, such as court bulletins or administrative circulars, and intranets.
There have been significant advances in electronic access over recent years – particularly in the approval of a standard for medium neutral citation. Despite this, the absence of common technical standards for the production of much of the source material makes the task of those involved in building these databases much more difficult that it needs to be.

3.3 Infrastructure (Access)
This is the technology link between court users and the courts, necessary to support and enable access. Decisions that courts make about what their access infrastructure will be have potentially significant implications on users.

3.3.1 Security and authentication
It is accepted that court processes need security, confidentiality and authentication. The prevalence of hacking, viruses and other forms of attack on computer systems indicate the need for vigilance.

Many jurisdictions have made advances in this area, namely with Public Key/Private Key cryptography (PKI) and the non-repudiation of digital signatures. The technology is not widely used yet, but is likely to be so in the future.

It is essential that Courts can have confidence in the documents and information placed before it.

Legal information also needs authenticity, accuracy, and authority. Laws themselves, as well as case law sources, need to be accepted as authentic and authoritative and immune from forgery.  

Information in digital form loses originality and there is nothing to distinguish one bit from another and the digital paradigm, unlike the printed law report, cannot automatically supply authentication by virtue of its existence. Authenticating digital content requires special care to be taken in the production of the information. The Internet, being an open network, requires a level of care of several orders of increased magnitude in terms of authentication of digital information.

John Gregory, in a paper "Electronic Legal Records: Pretty Good Authentication" suggests that there may be various levels of authentication required depending upon which the use to which this information is put. In many respects the source of origin of the data may well provide a measure of authenticity. Gregory examines the question of encryption but suggests that a policy beyond the scope of technology is required.

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In suggesting encryption or a form of digital signature a high level of authentication is provided but these technologies cannot be used generally by any member of a large public audience of users. Encryption of digital signatures requires that a relationship be established with each individual user so that that one individual may have access to the documents. Thus, this form of authentication can actually impede the developing trend towards free and open public access to law.

3.3.2 Confidentiality and Privacy

There is ongoing tension in respect of balancing the openness of court proceedings and the public right to know court information, with confidentiality and privacy concerns.\(^{21}\)

Essentially, while courts have long operated under the precept that proceedings are open, unless there is good reason to restrict access to proceedings, in the past access to information about cases has been severely limited, unless individuals actually attended proceedings in person.

The introduction of information technology in the courts, and generally, has forced a reconsideration of this internationally. This issue has been subject to significant work in the United States, discussed in section 5.1.11.

In Australia, CrimeNet,\(^{22}\) which provides a searchable database of criminals, was accused of contempt of court in 2000 when a Victorian judge dismissed the jury in a murder trial because jurors may have seen inaccurate details of the defendant's criminal record on the site. The Attorney-General’s department asked the site to remove all details pertaining to anyone standing trial, based on the law list published daily in the Melbourne Age newspaper. The publishers indicated that this was asking CrimeNet ‘… to perform impossible tasks.’\(^{23}\)

The increase in the availability of newspaper archives and library databases of newspaper articles has increased the ability of individuals to identify and locate information relating to reported criminal proceedings. It is likely courts are going to have to accept that this information can be obtained from a variety of sources.

Courts themselves are increasingly publishing information relating to criminal proceedings on their own internet sites, having taken the view that the public’s right to know outweighs the privacy and confidentiality concerns.


\(^{22}\) http://www.crimenet.com.au

3.3.3 Procedural Rules and Directions

It is necessary to specifically address the court procedures and directions to allow many of the technologies to be used in the court environment. This also extends to the use of authorities in Court proceedings and when unreported decisions, whether sourced electronically or in paper format, may be cited in Court.

Most jurisdictions are moving toward the adoption of medium neutral citation or Court directed citation and are requiring the use of these citations in addition to the reported citation.

3.3.4 Legislation

There needs to be adequate legislative provisions to facilitate and protect the use of information technology. There should also be legislation that reduces uncertainty regarding the legal effect of information in electronic form, or that is transmitted by electronic means, and providing that certain legal requirements or safeguards that exist in a paper-based environment are met using information technology.

Many jurisdictions have adopted such legislation. In New Zealand, the Electronic Transactions Bill 2000 is currently before Parliament. Based on work carried out by the New Zealand Law Commission,\(^24\) it closely follows both the Model Law on Electronic Commerce issued by the United Nations,\(^25\) and the Australian Electronic Transaction Act 1999.\(^26\) Objectives of the New Zealand Bill include the reduction of compliance and transaction costs for business and the general public; the removal of legislative impediments in dealing with the government electronically; the promotion of consistency between New Zealand law and that of our major trading partners, particularly Australia; and the promotion of the development of electronic commerce.

In so doing, the Bill aims to achieve two specific objectives: to reduce uncertainty around the use of electronic technology; and to permit certain paper-based legal requirements, in particular writing, signature, and retention and production of documents, to be met using electronic technology.

There are, however, a number of legal requirements that cannot currently be met appropriately using electronic technology, or require more specific management in order for electronic methods to be safely used. These are excluded from the application of the Bill, and fall into six broad categories:

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• Documents or dealings that require a very high level of integrity.
• Documents that are unique and have no electronic equivalent.
• Instances where electronic methods are not yet adequate to meet the policy objectives of a legal requirement.
• Instances where electronic dealings may be appropriate, but the introduction of these requires specific management through legislative or other means.
• Contexts where consent is not a sufficient safeguard because consent is likely to be impaired due to such things as disability or vulnerability.
• Cases where the requirement is probably covered by a general exclusion, but a specific exclusion is desirable to ensure the position is clear.

There is in the Electronic Transactions Bill a qualified exclusion for courts and tribunals. The Bill specifically allows courts and tribunals to use electronic methods by changing their rules or issuing guidelines. The onus will be on the rule-making bodies to address this issue in a timely manner.

3.4 Evidence Code
The Law Commission has prepared a draft Evidence Code,\(^\text{27}\) which it recommends should replace the Evidence Act 1908 and its various amendments. In the context of reform of the laws of evidence as a whole, the Code specifically addresses the production of electronically generated evidence in Judicial proceedings. An Evidence Bill to implement the Evidence Code has been approved as part of the legislative programme for 2001.

3.5 eCommerce
Electronic commerce as applied to court processes is yet to really be established, and only a relatively small number of examples exist. In many respects other sectors or types of organisations are leading developments. That includes government agencies such as Inland Revenue, banks and the retail sector. However, the New Zealand Fines Online\(^\text{28}\) website is one current example where payment of fines can be made electronically, and in some of the electronic filing systems highlights that payment of fees can occur electronically.

3.6 Document and Information Standards
While many legal and court documents are created using computers, they are generally not in a format that can be interpreted by computers. That is, the computer cannot identify the salient features of a document such as date of the document, what type of document it is and what the document is about. The reader can ascertain this information; the computer can only see text.

\(^{28}\) http://www.fines.govt.nz
For information to be truly exchanged electronically it is essential that it be captured and exchanged in a consistent format. The primary methods of capturing information consistently are the standard use of document styles in word processors, and the use of structured mark-up languages, including HTML, SGML and XML.

Innovation and wider use of electronic filing is likely to be affected by the increased use of Legal XML in document definition, exchange, authentication, and conversion. Currently electronic filing mostly works within a single jurisdiction, according to rules and interfaces established by the regulating authority. Legal XML promises the ability to work across jurisdictions and across software platforms.

XML (eXtensible Mark-up Language) was developed in 1996 by the World Wide Web Consortium (W3C) and is based upon on SGML (Standard Generalised Mark-up Language). The intention was to address limitations in the HTML mark-up language by providing an improved alternative that did not impose the significant burden of the SGML standard. XML has in the legal context subsequently assumed a central role for everything from transcripts to electronic filing.

Australia in particular is very active in Legal XML development, which involves collaborative, voluntary development, with the outcome available at no cost. Legal XML is primarily involved with document description and mark-up standards for legal documents on the internet. Standards in Legal XML are expected to evolve and become widely used very quickly.

The importance of developing common technical standards to improve interoperability between different systems is recognised as a crucial issue. It is becoming increasingly important as courts move towards internet-based systems of electronic filing.

Documents that are produced in a manner that is electronically consistent can be shared between these different systems, further reducing double-handling and associated costs, and ensuring a smooth flow of information.

Other standards revolve around the uniform creation of judgments and other documents, the use of medium neutral or court directed citations, protocols governing electronic filing, and metadata schemes to describe information in a uniform manner.

3.7 The Need for Human Intervention

While metadata and other document and information standards are vital to management of information in the process of storage and arrangement of data, it is human intervention that is required to assist in the identification, location and sorting of information. The approach may be to automate and incorporate

29 [http://www.legalxml.org](http://www.legalxml.org)
user requirements as much as possible but at the critical point we use human intelligence.\textsuperscript{30}

This is demonstrated well in the example of many portals, such as those like EEVL or the Australian Federal Government example discussed later in this report.

\subsection*{3.8 Courts As Publishers and Information Providers}

There are significant issues surrounding the publication of court information, especially judgments. These include the mechanisms by which information is managed and adequately controlled, and providing the Judiciary and the courts with the confidence that robust and appropriate mechanisms and processes are in place.

This is particularly important with regard to the imposition, observance and management of any restrictions on publication that are imposed by statute, or suppression orders made by Judges in the course of court proceedings.

Allied issues include the responsibility that is imposed on courts as publishers of information, including the management of privacy and confidentiality; and how user expectations are to be met and managed in the provision of access to more than the primary source materials, without courts assuming a complete publishing role.

It has been argued that the more ‘value’ that the creators of information add, the less there is to distinguish the product of public access providers from that of publishers of legal information.\textsuperscript{31} This does not, however, mean that the originators face the criticisms directed at the current providers. Primarily, this is that public legal information providers (such as AustLII and Cornell's Legal Information Institute) are on restricted budgets and are relatively unsophisticated, providing only an intermediate level of added value to the raw information. Secondly, legal publishers price and present their information in ways which make it inaccessible to anyone but knowledgeable, trained or experienced users and those who are prepared or able to pay for it.

There is an increasing realisation the document and information standards such as Legal XML and various metadata standards do in fact offer the basic level of value-add to legal information that has traditionally been the domain of the legal publishing industry.


\textsuperscript{31} Thomas R Bruce (Legal Information Institute, Cornell Law School), Public legal information: focus and future, Law via the Internet conference, Sydney, Australia, September 1999
3.9 Pro se litigants

The area of pro se litigants, or litigants in person, has generated significant debate in many jurisdictions. In particular if individuals choose to represent themselves, what duty does the court have to assist those individuals? In the interests of justice and efficient court proceedings, to what extent should the court become involved?

Courts have traditionally taken a very firm stance on prohibiting staff from providing information to the public, because of concerns about giving incorrect advice or binding Judges. It has however been argued that courts staff are sufficiently knowledgeable about the law and are in the best position to provide advice.32

Five general principles have been proposed:

1. Court staff have an obligation to explain court processes and procedures to litigants, the media, and other interested citizens.
2. Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
3. Court staff cannot advise litigants whether to bring their problems before the court for resolution.
4. Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.
5. Court staff should be mindful of the basic principle that neither parties nor their attorneys may communicate with the judge ex parte. Court staff should not let themselves be used to circumvent that principle by conveying information to a Judge on behalf of a litigant, or fail to respect it in acting on matters delegated to them for decision.

32 John M Greacen, 'Legal information vs. legal advice: developments during the last five years', Judicature, 84(4) p198
4 Opportunities for New Zealand

It is reiterated that the views expressed in this section of the report are purely those of the author. The opportunities presented cannot be considered to be binding upon or in any way the official views of the Department for Courts, the New Zealand Government, the New Zealand Law Foundation or any other agency mentioned.

4.1 Overview

Susskind argues that systematic strategic planning should occur so that the technical possibilities and opportunities are prioritised in an informed, structured and controlled way, and further that the choices between the various possible options are made on sound policy grounds. He emphasises strategic direction over highly detailed plans and suggests:

- well-established high-level priorities
- shared sense of purpose
- strong linkage to overarching policy objectives or business strategy

That approach, in line with contemporary information technology/information management project methodologies, is endorsed implicitly in this section of the report.

4.2 The New Zealand Context

A number of characteristics make New Zealand unique. The following are based on those identified in the eGovernment Portal Strategy for New Zealand. Factors that are specific to New Zealand, and are viewed as opportunities, are:

- a small geographically dispersed population;
- Maori culture and heritage;
- a population that is significant and enthusiastic adopters of new technology;
- a single time zone;
- a sound technical infrastructure;
- two layers of government; and
- our public sector management model.

To these, I add, in the context of Courts, the following characteristics:

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33 fn 10. At 256
• single court administration authority (with the exception of the Employment Court and some other specialist Tribunals)
• more unified Judicial and court administration system with joint decision-making
• smaller public sector with an increasing focus on inter-agency co-operation.

These characteristics present New Zealand with a number of benefits and opportunities. Consistently viewed overseas was the significant size of the projects undertaken and the complexities in successful implementation. While the technical complexities remain, the size of our population with the resultant smaller size of the New Zealand public sector reduces the scale of deployment and implementation.

Further, New Zealand is not necessarily viewed as a leader in the adoption of new or emerging technology, therefore considerable scope exists to learn from those whom have gone before. Thus while we have not, at times, been a world leader in respect of technology, once commissioned and initiated we have been comparatively quick to implement.

4.3 Strategy and Vision

In response to the eGovernment Programme, the completion of the Department for Courts Modernisation Programme and increasing Justice Sector co-ordination, it is suggested that a strategic framework to lead the medium to long term work programmes should be undertaken. Elements of this work are already underway but the overarching framework has yet to be determined.

That strategy should extend to include all courts, tribunals and authorities in New Zealand, not just those administered by the Department for Courts. Extension of standards to all will facilitate the transfer and flow of information.

The two streams of activity that would naturally flow from such a strategic framework are ‘Transacting with the Court’, and ‘Public Access to Court’.

4.4 Transacting with the court

Primarily this work stream would revolve around undertaking consultation and defining what electronic filing might mean in New Zealand. A number of possible processes are candidates, including the a fully electronic process similar to that provided in many overseas jurisdictions.

It is likely that the electronic filing environment would entail one of the following options:

• Paper based system supported by a data record. The data used to build case records through an interface.

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35 Jo Lake and JJW Bailey. ‘The development and implementation of a constitutional partnership : making the courts more effective’, (1999) 9 JJA 37
• Paper based system supported by a data record. Parties are encouraged to file copies of their pleadings electronically but must later submit the original in paper form.
• Paperless system based on an electronic data record. Parties must submit their proceedings electronically.
• Paperless system based on an electronic image record.
• Paperless system based on a combination of image and data records.

An entirely paperless environment is contemplated for many Court processes and proceedings. This could include that all pleadings are filed and stored electronically and all case records are maintained electronically. All court outputs such as orders, warrants and notices would also be in electronic form. Rules would support electronic as well as manual processes for matters such as service and other interactions between parties.

Preliminary discussions within courts in New Zealand on electronic filing have identified certain potential processes for a full electronic approach, including:

• The criminal summary jurisdiction of the District Court; and
• The civil jurisdiction of the High Court, in particular the claims process.

Should these be considered suitable there appears to be little reason not to also include:

• the entire criminal process including the trial and appellate jurisdictions;
• the civil jurisdiction of the District Court;
• the processes of the Family Court, or at least some of them;
• Residential Tenancy Tribunal processes (electronic records already permitted); and
• probate and administration.

4.4.1 Interfaces

Interfaces could be extended beyond those presently included in the case management system. Existing interfaces in the case management system duplicate those that existed in the LES. Work towards an eJustice vision does offer the opportunity to identify potential new interfaces. Private sector collection and credit reporting agencies are major users in the civil jurisdiction. Significant data entry and document generation savings could be expected to accrue if interfaces were developed for those users.

4.4.2 Reporting

The electronic filing environment could introduce a totally electronic process for managing requests for reports or services and the provision of reports by providers in electronic form. These would include reports such as pre sentence reports, psychiatric reports and counsel for the child reports.

4.4.3 Electronic courtroom

Many overseas jurisdictions have established electronic courtrooms that are used to trial and showcase a range of technology systems and platforms. It is suggested that this could usefully be undertaken in New Zealand and that a
courtroom be established as a technology rich courtroom to showcase state of the art equipment and technology facilities. This would provide a useful demonstration facility, but could also be used in selective situations to test and trial new and emerging technology.

These technologies could include:

- new evidence recording technology
- video conferencing
- evidence display
- electronic library and case management system access within the courtroom
- use of kiosks and other self-help technology facilities at all premises around New Zealand

4.4.4 Legislative and rule change

The processes of the courts are, almost without exception, prescribed in legislation or in rules. Changes of the type required to support a fully electronic court environment, no matter what its form, would almost inevitably require legislative change.

The following is a list of some of the issues that might require legislative or rule changes and extensive work on the part of the Judiciary and the Department for Courts.

- to permit or facilitate a change from paper to an electronic record, or to both a paper and electronic record
- to dictate or permit filing in a specified form, e.g. must or may be electronic and, where appropriate, remove obsolete filing methods
- search rules – of a case record for parties and for others
- search rules – of public records such as indexes or registers
- service – methods of service and how it will occur, e.g. personal service and electronic service, as well as how service will be proven
- filing of documents and how this will be achieved, particularly for documents that are now required to be signed (or sworn) or documents with attachments / exhibits
- courts’ output forms – for example warrants to arrest, warrants for imprisonment etc and whether these will remain in their paper form or can be electronic
- access by the media
- access to Justice issues arising from any change and, in particular, access to the system for litigants in person or those without access to the required form of technology
The Judiciary may investigate issuing procedural rules and directions for the:

- citation of authorities in court
- use of electronic sourced material in court
- citation formats for New Zealand and overseas courts
- support for the electronic presentation of documentary exhibits.
- defining minimum standards for courtroom technical infrastructure to enable
  the judiciary and practitioners to operate effectively in that environment
- prescribing how audio and video records of court proceedings are stored or
  managed as a part of the electronic case record

4.5 Public Access to Court

4.5.1 Legal queries
Although controversial in some respects, there is a move overseas to the
development of internet based answers to common or fundamental legal
questions. These are not seen as providing a final answer to questions relating
to the law, but rather to provide a first port of call to common themes and
questions, such as those frequently fielded by citizens advice bureau or
community law centres.

These sites often refer users to sources for further information, including
directories of practitioners who have expertise in the given areas.

There are currently some services in New Zealand, but it is considered that this
area could be significantly enhanced and become a major co-operative area so
that it is not seen to be controlled either by a single Government agency or by
private enterprise. Such a service is strongly advocated for New Zealand.

4.5.2 Sentencing Information System (SIS) and the Sentencing Digest
There is strong external interest in this information and it is noted that many
overseas jurisdictions have placed sentencing notes and other sentencing
related information on their internet sites in order to support more informed
media and public debate. This includes the sentence details for individual
cases. It is suggested that New Zealand should investigate improving media
and public access to this information.

4.5.3 Judicial Toolkit (JTK) and the Judicial Decisions Database (JDD)
The availability of judicial decisions is of significant external interest and is likely
to be seen by the legal profession, the media, other specialist users and
members of the public as one of the most important electronic court
developments.

The judgments database currently in development should be made available to
the public, and a process of retrospective conversion of historical judgments be
identified so that a programme for including important historic decisions may be
determined. It is considered important that historic decisions considered of
merit that have not been reported be the obvious first priority.
4.5.4 Legal Portal

This project was initially proposed following New Zealand Law Foundation interest in extending access to eLibs to the legal profession. Legal Information New Zealand Ltd has been formed to develop a legal portal.

The portal concept is to provide equity of access to a comprehensive, authoritative source of legal information in electronic form for the legal profession and citizens. Its intention is to overcome several identified difficulties in existing access, including: geography; work habits; skill, knowledge and training; technology availability and literacy, and; the perceived high cost of legal information.

The Department for Courts should continue to support this initiative as an information provider (and take a lead in the government in supporting it).

The legal portal is also a potentially powerful additional channel through which the department’s electronic courts programme can be delivered, should one such a programme proceed.

4.5.5 eGovernment Strategy

In May 2000 the Government released its vision for eGovernment, it is:

That New Zealand will be a world leader in eGovernment.

A number of the constituent eGovernment projects will directly influence future direction an electronic courts environment. These include the Government Portal, Government Web Guidelines, authentication and Secure Electronic Environment.

Above all, it should be ensured that work of the eGovernment Unit is incorporated into, and shapes the future of, technology decisions in the Department for Courts.

4.5.6 Metadata and Thesauri

This is a related eGovernment initiative in which the Department for Courts has participated. The Department should continue to pursue the extension for these standards to specifically cover the legal sector, which would provide flow on benefits to the justice sector and underpin the legal portal.

That collaboration should extend to the development of metadata schemes, including thesauri, controlled vocabularies, Legal XML and other common document and information standards.

4.5.7 Courts of New Zealand Internet Site

It is proposed to further update the Courts of New Zealand site to provide the building blocks for future electronic court driven initiatives as well as comply with eGovernment metadata, website and general usability standards.
It is intended to use the internet site to provide a full range of court information and to extend the content, functionality and utility of the site. Proposed future development includes:

- a cohesive, portal approach and the integration of all courts internet sites
- judgment summaries and full text
- court calendars and lists
- sentencing information
- statistics
- court file archival/access information
- electronic filing of court documents, submission of forms and payment of fees and fines
- interaction with case management systems
- virtual court
- development of children and youth focused information
- procedural information (including practice notes and legislation)

4.6 Consultation

In order to develop the strategic framework and the resulting work streams it is vital that extensive consultation be undertaken. The Department for Courts could take a lead role in undertaking the necessary consultation.

Genuine consultation will improve the prospects of key user commitment to the changes, encourage initial investment and result in the development of a more effective strategy.

The following table identifies those who should or could be consulted during this development. The list should not be considered exhaustive.

<table>
<thead>
<tr>
<th>Court User</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Profession:</td>
<td>A successful transition to an electronic environment will depend on the co-operation of practitioners. The profession could be expected to contribute from a user perspective. They could also provide significant input to any review of legislation and procedural rules.</td>
</tr>
<tr>
<td>NZ Law Society</td>
<td></td>
</tr>
<tr>
<td>Bar Association</td>
<td></td>
</tr>
<tr>
<td>Crown Law Office</td>
<td></td>
</tr>
<tr>
<td>Justice Sector:</td>
<td>Each of these agencies is assured access to the law enforcement information administered by the Department for Courts (5th Schedule, Privacy Act 1993). Data is shared or exchanged with these agencies through the Law Enforcement System (LES). From 2002 this exchange will occur from the CMS. Police are the largest filer of court proceedings. Any change to computing in the courts will impact on the Police.</td>
</tr>
<tr>
<td>Police</td>
<td></td>
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<tr>
<td>Corrections</td>
<td></td>
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<tr>
<td>LTSA</td>
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<td>SFO</td>
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</tr>
<tr>
<td>Legal Services</td>
<td></td>
</tr>
<tr>
<td>Ministry of Justice</td>
<td>The Ministry of Justice and the Law Commission will be involved in the legislative changes necessary. Their interest could range across a number of issues including Access to Justice and procedural fairness. The Ministry is a major user of law enforcement data and will be concerned to ensure ongoing availability and accuracy.</td>
</tr>
<tr>
<td>Law Commission</td>
<td></td>
</tr>
<tr>
<td>Other Government Agencies</td>
<td>Should electronic filing of criminal proceedings be pursued it will be necessary to consult with all prosecuting agencies.</td>
</tr>
<tr>
<td>Local Authorities</td>
<td>Consultation will be necessary to ensure an ongoing capability to exchange data with the Local Authorities. This is required to support their filing of Reminder Notices for unpaid Infringement Fees.</td>
</tr>
<tr>
<td>Major Court Users</td>
<td>This group could include the collection agencies and, perhaps, service providers. The collection agencies are major court users and will have an interest in any change to the way in which they interact with the courts.</td>
</tr>
<tr>
<td>Court User</td>
<td>Comment</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Privacy Commissioner</td>
<td>Consultation with the Privacy Commissioner will be required to assess the impact, if any, of the proposed changes on the provisions of the Privacy Act 1993 relating to personal information and law enforcement data.</td>
</tr>
<tr>
<td>Ombudsman</td>
<td>Consultation with the Ombudsman will be required to assess the impact, if any, of the proposed changes on the provisions of the Official Information Act 1982 and the Ombudsmen Act 1972.</td>
</tr>
</tbody>
</table>

In addition there are a range of groups and organisations that have an interest in elements of this work. These include:

- New Zealand Law Foundation
- New Zealand Council of Law Reporting
- Community Law centres
- Citizens Advice Bureau
- State Services Commission, eGovernment Unit
- Parliamentary Counsel Office
- Legal publishers
- Legal Information New Zealand Ltd (legal portal)
- New Zealand Law Librarians Group Inc
- Library and Information Association of New Zealand
- National Library of New Zealand
- Archives New Zealand
- Department of Labour (for Employment Courts and Tribunal)

### 4.7 Summary of Opportunities

- Develop a strategic framework and vision to lead the medium to long term work programmes around the introduction of electronic filing and other technologies in the Court context.

- The framework should seek to develop standards and other necessary infrastructure that will allow extension to other organisations such as practitioners and other Courts and Tribunals not administered by the Department for Courts.

- Undertake consultation and define what electronic filing might mean in New Zealand. An entirely paperless environment is contemplated for many Court processes and proceedings.

- Extend interfaces beyond those presently included in the case management system, including to appropriate private sector organisations and service providers.

- Establish an electronic courtroom to trial and showcase a range of technology systems and platforms.

- Undertake extensive consultation with a wide range of public and private sector organisations to determine the implications and required action to
move towards the strategic vision. This includes legislative and procedural change, and the adoption of standards governing the technology environment.

- Support the development of resource aimed at citizens to provide answers to common legal questions and themes.

- Continue to investigate the wider availability of sentencing related information, judicial decisions and other court information to the legal profession and other interested parties.

- Continue to support the development of a legal portal of information resources, and the availability of eLibs access in the Court environment.

- Ensure that all developments take the work of the eGovernment Unit into account and are complimentary to adopted standards and frameworks. This includes investigating the extension of eGovernment standards and frameworks to the legal and justice sectors where appropriate.

- Continue the development of the Courts of New Zealand internet site, with a particular emphasis on positioning it as the gateway for all future developments and applications.

4.8 Conclusion

In conclusion, many of the underlying drivers associated with both the technology capabilities and the contemporary demands placed on Courts that were observed overseas, are present in New Zealand. To develop a strategic vision and associated work programme for New Zealand Courts will provide significant benefits to Courts, users of the Courts and the community at large.

In particular improving access to information about, and emanating from, the Courts will vastly improve community confidence in the justice system, reduce costs for the legal profession and other users, and support improved knowledge and understanding of the Courts.

For the New Zealand Courts to move toward a fully electronic filing environment will introduce further efficiencies in Court processes, reduce costs for Court users, and contribute toward faster disposal and timeliness standards.

As Susskind has observed\(^{36}\) ‘rendering the current system more efficient through automation is only to begin work on beginning administration of justice into the information age.’

\(^{36}\) fn 18
5 Appendix – Overseas Experiences

This section is structured by jurisdiction. Where I have actually visited the jurisdiction as part of this project, details of meetings and visits are recorded. Each country is then covered under key topic subheadings. The focus is on examining best practice, and interesting or challenging examples are included.

Visits have been supplemented with significant research.
5.1 United States of America

5.1.1 Summary of the United States Jurisdiction

In 1948 Congress established the Judicial Conference of the United States, to continue the work of an earlier body of Judges created in 1922. This had the fundamental purpose of making policy for the administration of the United States courts. The Judicial Conference also supervises the Director of the Administrative Office of the United States Courts in the performance of his duties as the administrative officer of the courts of the United States.

The National Center for State Courts is an independent not-for-profit organisation dedicated to the improvement of justice. Founded in 1971, activities include: developing policies to enhance state courts; fostering state court adaptation to future changes; facilitating state court collaboration; and providing a model for organisational administration. There are some 1500 courts within the NCSC remit.

5.1.2 Visits Undertaken in the United States

- Cheryl Nyberg, Reference Librarian, Marian Gould Gallagher Law Library, University of Washington, Seattle
- Tim Sheehy, Branch Librarian, US Courts Library, US Courthouse, Seattle
- Barbara Cornwell Holt, Director of Law Library and Information Services, Perkins Coie LLP, Seattle
- Jill E Allyn, Librarian, Garvey Schubert and Barer, Seattle
- Christopher Shelton, Senior Court Management Consultant, National Center for State Courts, Washington D.C. office
5.1.3 Traditional Publication of Judgments

The legal profession, the Judiciary and academics have long expressed concern about the expanding body of case law. Concerns have included:

- storage problems;
- identification and location of relevant information; and
- the increasing amount of the complete body of case law.

In the 1970s the Federal Circuits determined a course that restricted publication of case law to a selected representation of the thousands of opinions. Principally this included the development of court rules restricting the citation of unpublished opinions in court. These rules are also, increasingly, designed to fulfil a function of qualitative control on proceedings.

However, over time specialists, academics, librarians and advocates for improving access to the law have demonstrated that unreported case law can be both useful and important. Unreported opinions are increasingly being used, even though procedure does not permit their citation in court.

Prior to the 1990s, Lexis and West were the only publishers of case law, and all courts except the Supreme Court had abdicated responsibility. Judges, however, decide what is published in the official reports, the Reporters, which are published by West. Lexis and West exercise no publishing selectivity, and publish everything that they receive from courts.

Despite the restriction on the citation of unreported judgments in court, it would be considered malpractice not to use electronic research facilities, because of the delay and selectivity of the publication of case law. There are guidelines for the legal profession on the rules of ethics regarding use all available research facilities, including electronic resources.

5.1.4 The Internet

There is currently considerable variation in internet sites between Federal and State Courts, with no existing standards or broad level policy directives. In some courts the web site is driven by the Judiciary, and in others the court administrators.

However, many court internet sites do look similar, which is generally explained by the fact that Federal Courts have a bulk license arrangement for the use of Lotus Notes, and consequently its use is widespread.

A book of guidelines and recommendations for Government internet sites is scheduled for publication in late 2001. This will provide assistance to courts as well.\textsuperscript{38}

The Oklahoma State Supreme Court\textsuperscript{39} has what is considered a model internet site in terms of the policy and technical directives, conversion of data and the embedding of active hypertext links. It also is one of the few to provide access to historical judgments back to the 1930s.

5.1.5 Judgments on the Internet

Publication and distribution contracts with commercial publishers already exist, and while this often raises revenue for courts, it also locks them into particular distribution arrangements, which can make publication of judgments on the internet more problematic. Publishers also perform a proofreading function in the preparation of judgments, which has implications for courts when considering putting their judgments directly onto the internet.

Another issue is that users cannot expect to do comprehensive searches of free judgments on the internet, as there are gaps, especially regarding material prior to the mid-1980s. Lexis One, for example, is comprehensive from 1996 onwards. There is, however, a concern about adding opinions retrospectively, and the cost and resource implications this could have.

At a Federal level each Judge has the discretion to determine which opinions should be published on the internet. This means that there are many unpublished decisions available on the internet that are not on Lexis or Westlaw. It is estimated that 15–20 percent of District Court opinions and 80 percent of Court of Appeal decisions are reported.

Feedback says that in order for courts to be accountable to the public, all decisions should be made available. Small firms and interest groups (law librarians, public access to the law advocates) are strongly in favour of making all decisions available.

Public access to a site on the internet featuring selected decisions, as determined locally by Judges using their own citation format, seems to have been the compromise that has developed.

VsLaw, LoisLaw, and Quicklaw are less expensive services aimed at attorneys to compete with West and Lexis. However they do not have the functionality, scope or polish of the more expensive services.


\textsuperscript{39} http://www.oscn.net
The ideal research service would be:

- retrospective;
- comprehensive;
- consistent format for all material;
- XML legal compliant;
- Complete with a good search engine;
- full text together with a summary; and
- free to air.

One example of the usefulness of the internet became apparent during the cases surrounding the US Presidential elections, when the Florida Supreme Court were able to refer their judgments to the internet within five minutes of release.

5.1.6 Case Management

In the Federal Court there is a system known as Public Access to Court Electronic Records (PACER). It is a web-based electronic public access service that allows users to obtain both the actual case file documents, and the dockets (a list of the documents filed in the case) from Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index.

Electronic access is available for most courts by registering with a centralised registration, billing, and technical support centre. The PACER Service Center is run by the Administrative Office of the United States Courts. Individuals seeking a particular document or case file will need to open a PACER account and obtain a login and password. After obtaining these, an individual may access case files – either created by imaging paper files or through the Case Management/Electronic Court Filing system discussed in section 5.1.7 – over the internet. Public access through PACER will involve a fee of 7 cents per page for each case file document or docket viewed, downloaded or printed. This compares favourably with the current 50 cents per page photocopy charge.

Each court maintains its own case information within the PACER database systems. As a result, while information from each service is comparable, the format and content of information provided may differ slightly.

PACER offers electronic access to case dockets to retrieve information including:
- A listing of all parties and participants including Judges, attorneys, and trustees.
- A compilation of case-related information such as cause of action, nature of suit, and dollar demand.
- A chronology of dates of case events entered in the case record.
- A claims registry.
- A listing of new cases each day in the bankruptcy court.
- Appellate court opinions.
- Judgments or case status.
- Types of documents filed for certain cases.

The US Party/Case Index is a national index for the U.S. district, bankruptcy, and Appellate Courts, serving as a locator index for PACER. Through this it is possible to conduct nationwide searches to determine if a party is involved in federal litigation.

The United States Congress has given the Judicial Conference of the United States authority to impose user fees for electronic access to case information. All registered agencies or individuals will be charged a user fee.

The Judicial Conference of the United States approved a measure in March 2001 that no fee is owed until a user accrues more than $10 worth of charges in a calendar year. Consequently, if an account does not accrue $10 worth of usage between January 1st and December 31st each year, all balances will be deleted from the records.

5.1.7 Electronic Filing

The New Mexico experience, presented at both the Courts Technology Conference 6 (CTC6)\(^{40}\) and the Australasian Institute of Judicial Administration (AIJA) Technology for Justice 2000\(^{41}\) conference, is a good example of an electronic filing system integrated with case management.

This example demonstrates how the internet can be used, with data entered directly into the courts system using forms, and service available 24 hours a day, 7 days a week. Registered users need to have a logon and password for security purposes. New Mexico is particularly noteworthy for the pragmatic approach adopted towards security and authentication. In particular, there was an acceptance that the adversarial nature of court proceedings would ensure security and authentication.

In adopting electronic filing, New Mexico switched from the paper-based system and scans all paper documents electronically at the court, thereby avoiding the running of parallel systems. Adobe Acrobat PDF was chosen as the standard format for all documents filed electronically.

\(^{40}\) http://www.ncsc.dni.us/ctc6.htm
\(^{41}\) http://www.aija.org.au/tech2/
In other courts in the US, PACER is being supplemented by the Case Management/Electronic Case Files (CM/ECF) project. US$14 million was used to fund this project, which will provide docket sheets, key facts, and details of offenders. CM/ECF will enable registered users to electronically file court documents using PDF as the standard file format. PACER will be the shop front nationally, although there are no planned standard practice guidelines.

PDF is being used as the standard because it so closely follows the integrity of the original documents. The technical implications are considered relatively minor, requiring a PDF writer (at US$200 per seat), and read ability is now included in word processing packages. The view is that this new requirement should be seen against the savings that can be attained.

It is recognised that before many courts in the US can move toward full electronic filing there is a strong need to undertake more business process engineering. That includes identifying the benefits and keeping the small and remote users in mind without hampering developments.

There is some resistance from the Judiciary and the bar regarding the use of electronic court filing. Developments to date have tended to be in the Bankruptcy Courts, those courts with more IT-literate Judges, and cases with document heavy files, although some courts are beginning to mandate ECF.

The primary benefit of electronic filing from the court perspective is in the reduction of re-keying, and of court time in copying and distribution of documents.

National rollout of electronic filing in the Bankruptcy Court occurred in January, and some issues, generally of a technical nature, have cropped up.

5.1.8 Judicial Support
There are no known examples of bar and bench sharing access to resources, probably due to the widespread availability of WestLaw and Lexis.

The Federal Courts operate decentralised purchasing for Judicial libraries. There are 12 operational regions, with budget planning and policy being managed at a national level.

There are centralised national contracts with WestLaw and Lexis. These services are such an integral part of research requirements that there are monthly meetings with the vendors. The service is used daily by 16,000 members of the Judiciary and courts staff.

Intranet-based delivery of the virtual library is planned. Publishers of traditional paper-based library materials have been generous in licensing to courts. There is a 10-year plan to reduce expenditure on books and paper-based library materials.
5.1.9 Document and Information Standards

In respect of the preparation of judgments, Lexis and WestLaw have generally accepted material in whatever format it is prepared. It is assumed however that these companies have had quite an impact on standard formatting at court level.

Diversity at local, regional and state levels has made it very difficult amongst civil, criminal, probate and juvenile jurisdictions to standardise data. However, State-wide information systems are helping.

The American Association of Law Libraries, has a committee named the Access to Electronic Legal Information Committee, which has developed a website that highlights selected internet sites delivering legal information to the public.

Legal XML is most widely being developed and monitored with a view to eventual implementation in the US. Civil filings in some courts are already being prepared to that standard.

The Association of Trial Lawyers of America (ATLA) is a large international coalition of attorneys, law professors, paralegals, and law students. It promotes justice and fairness for injured persons, safeguarding victims’ rights – particularly the right to trial by jury – and strengthening the civil justice system through education and disclosure of information critical to public health and safety. ATLA has more than 56,000 members. Exchange, the research arm of ATLA, provides an electronic system providing depositions, briefs, contacts, and directories of specialities. The service provides abstract and full text searching, and enables searching across all documents. ATLA have contracted the private sector for major website development, while content development occurs in-house, and they are looking strongly towards Legal XML, as are their members. All Exchange databases are ready to go live with Legal XML once it becomes an agreed standard.

5.1.10 Guidance to the Public

An estimated 4.3 million Californians represent themselves in court each year. This figure means that just over half of all Californians who find themselves in court do not have attorneys. This has been the driving force behind the recently launched California Courts Online Self-Help Center, a comprehensive resource on California court information.

The service, while not encouraging people to represent themselves in court, provides step-by-step assistance to those who do so. The service offers:

- tools, resources, and links for legal assistance in the areas most needed by self-represented litigants, including divorce, domestic violence, child custody/support, traffic, and small claims;
- plain English descriptions of court procedures;

42 http://www.aallnet.org/committee/aelic/index.html
43 http://www.courtinfo.ca.gov/
• step-by-step guides for choosing and completing necessary court forms for various types of legal proceedings;
• links to legal services organisations and lawyer referral programmes where litigants can get legal advice and additional assistance.

Chief Justice Ronald M. George, chair of the Judicial Council, states:

Our new Web site will make the legal process more accessible to the many Californians who go to court without an attorney because of economic reasons. Even those individuals who have an attorney can become more involved in their case and work more effectively with their chosen attorney. We know that informed litigants ensure a more just and efficient process for both the litigants and the courts.44

A number of US courts, including Utah, Iowa and Michigan, have implemented guidelines for staff on the provision of legal information to court users.

5.1.11 Privacy and Confidentiality

Debate centres around privacy of the individual versus the public’s right to access. Some States are finding that these privacy issues are becoming increasingly important as they place more case information on the internet. Limits are beginning to emerge, and these are being implemented. The easiest method is to emulate the current paper-based systems, and leave it to users to labour to find the information through traditional court research.

Privacy is more of an issue within the State Court system, as there is not the same degree of repeat offences at Federal level. State Courts have, therefore, developed a variety of rules relating to the control and access of criminal records history. Criminal jurisdiction in particular differs from court to court, with great variances. As a result, some courts publish all criminal information on the internet, while others do not.

At Federal level, the Judicial Conference of the United States issued a discussion document early in 200145 seeking submissions on the issue of privacy, and the security implications of providing electronic public access to court case files (as distinct from case information).

Specifically, submissions were sought on:

• the Judiciary’s plans to provide electronic access to case files through the internet;
• the privacy and security implications of public access to electronic case files; and
• potential policy alternatives and the appropriate scope of Judicial branch action in this area.

45 http://www.privacy.uscourts.gov
It was identified that Federal Courts were moving towards creating electronic case files and providing public access to those files through the internet. This transition from paper to electronic files is quickly transforming the way case file documents may be used by attorneys, litigants, courts, and the public. The creation of electronic case files means that documents from a court case file can be obtained without physical presence in the courthouse where a file is maintained. Increasingly, case files may be viewed, printed, or downloaded by anyone, at any time, through the internet.

The courts plan to provide public access to electronic files, both at the courthouse and away from it, through the internet. The primary method of access will be through the PACER system mentioned in section 5.1.6. Electronic case files also will be available at public computer terminals in courthouses, free of charge.

Electronic case files promise significant benefits for the courts, litigants, attorneys, and the public. There is increasing awareness, however, of the personal privacy implications of unlimited internet access to court case files. In the court community, some have begun to suggest that case files – long presumed to be open for public inspection and copying unless sealed by court order – contain private or sensitive information that should be protected from unlimited public disclosure and dissemination in the new electronic environment. Others maintain that electronic case files should be treated the same as paper files in terms of public access and that existing court practices are adequate to protect privacy interests.

Federal court case files contain personal and sensitive information that litigants and third parties often are compelled by law to disclose for adjudication purposes. Bankruptcy debtors, for example, must divulge intimate details of their financial affairs for review by the case trustee, creditors, and the Judge. Civil case files may contain medical records, personnel files, proprietary information, tax returns, and other sensitive information. Criminal files may contain arrest warrants, plea agreements, and other information that raise law enforcement and security concerns.

The Judiciary has a long tradition – rooted in both constitutional and common law principles – of open access to public court records. Accordingly, all case file documents, unless sealed or otherwise subject to restricted access by statute or federal rule, have traditionally been available for public inspection and copying. The Supreme Court has recognised, however, that access rights are not absolute, and that technology may affect the balance between access rights and privacy and security interests. See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), and *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

The following policy options for each type of case file have been proposed.

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Civil Case Files

- Maintain the presumption that all filed documents that are not sealed are available both at the courthouse and electronically.
- Define what documents should be included in the ‘public file’ and therefore available to the public either at the courthouse or electronically.
- Establish ‘levels of access’ to certain electronic case file information.
- Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy and security interests.

Criminal Case Files

- Do not provide electronic public access to criminal case files.
- Provide limited electronic public access to criminal case files.

Bankruptcy Case Files

- Seek an amendment to section 107 of the Bankruptcy Code.
- Require less information on petitions or schedules and statements filed in bankruptcy cases.
- Restrict use of Social Security, credit card, and other account numbers to only the last four digits to protect privacy and security interests.
- Segregate certain sensitive information from the public file by collecting it on separate forms that will be protected from unlimited public access and made available only to the courts, the U.S. Trustee, and to parties in interest.

Appellate Cases

- Apply the same access rules to appellate courts that apply at the trial court level.
- Treat any document that is sealed or subject to public access restrictions at the trial court level with the same protections at the appellate level unless and until a party challenges the restriction in the appellate court.

In August 2001, a panel of 14 federal judges unanimously endorsed the position that court records should be placed online, with some restrictions. The Committee on Court Administration and Case Management of the Judicial Conference of the U.S. said that some personal information, including social security numbers, financial account information, dates of birth, and minors' names, should be removed from online court records. They also said that criminal cases should not be put on the internet for the moment, although that decision will be reviewed.

The Judicial Conference of the United States meets during September and will consider the Committee's recommendations. The Administrative Office of the US Courts further announced on 7 May 2002 that it had selected eleven Federal Courts to pilot putting criminal cases online.

5.2 Canada

5.2.1 Summary of the Canadian Jurisdiction

The Supreme Court of Canada is a general Court of Appeal both in criminal and civil matters. Its jurisdiction covers the civil law of Quebec and the common law of the nine common law provinces and the two territories. The Court reviews cases coming from the provincial Courts of Appeal and from the Appeal Division of the Federal Court of Canada, and judgments of federal administrative tribunals.

The Federal Court of Canada is organised into appeal and trial divisions and, while it is based in Ottawa, the judges of both divisions may sit across the country. The court reviews the disputed decisions of federal boards, commissions and tribunals.

The superior courts of the provinces include both trial and appeal levels of court. The trial levels, in turn, may include some or all of the following divisions: small claims; family; and general. The names of the superior courts and their divisions vary considerably from province to province.

The vast majority of criminal trials take place in the inferior or Provincial Courts, which may also include family, and small claims, as well as a youth or young offenders divisions.49

5.2.2 Visits Undertaken in Canada

- Rosalie Fox, Head Librarian, Federal Court of Canada, Ottawa
- Robert O’Brien, Senior Registry Officer in charge of Operational Services, Federal Court of Canada, Ottawa
- Mary Jane Sinclair, Legal Counsel, Supreme Court of Canada, Ottawa
- Claude Marguis, Chief Legal Editor, Supreme Court of Canada, Ottawa
- Nadia Loreti, Senior Counsel/Acting Director, Registry Branch, Supreme Court of Canada, Ottawa
- Timothy Wilson, Legal Counsel, Supreme Court of Canada, Ottawa
- Joanne Laniel, Senior Registry Officer, Supreme Court of Canada, Ottawa
- His Honour Justice Douglas Coo, Superior Court of Justice, Toronto
- Her Honour Justice Fran Kiteley, Court of Appeal for Ontario, Toronto
- Member of the Canadian Judicial Council Judges Technology Advisory Committee
- Maria Cece, Manager, Judicial Library Services, Ontario Ministry of the Attorney-General, Toronto
- Janine Miller, Director of Libraries, Law Society of Upper Canada, Toronto
- Ted Tjaden, Co-ordinator, Information Services, Bora Laskin Law Library, University of Toronto
- Martin Felsky, President and General Counsel, Commonwealth Legal, Member of the Canadian Judicial Council Judges Technology Advisory Committee
- Rachel Francis, Director, Legal Markets, Carswell, Toronto
- Patrick W. Hearn, Business Development Manager, Work Solutions, Carswell, Toronto

5.2.3 Provision of Judgments

The Office of the Commissioner of Judicial Affairs has a Federal Court reports branch, who edit and publish the official reports of this court. Approximately 15 percent of judgments are reported, but the Federal Court does not restrict non-reported cases from being cited in court. The court also has a distribution office for judgments, which automatically distributes judgments to 500 lawyers by profile. All of these individuals pay for the judgments they receive.

The main issue around the distribution of paper copy of judgments is that distribution is seen as a purely clerical function; however, clerical staff are not seen to understand the information they are dealing with.

The Supreme Court publishes all decisions in an official report series.

In 2000, the Department of Justice appointed an editorial advisory board to the Federal Court, to assist an editor in selecting from the 5000+ judgments made per annum.

5.2.4 Creation of Judgments

The process for judgments in the Federal Court is demonstrated in the following diagram.
In the Federal Court, delays in distribution occur largely because of formatting issues, as there has been some difficulty getting all staff to conform to uniform creation standards. Other delays can occur due to the ratio in the Federal Court of only one secretary to seven Judges.

For Superior Court and Court of Appeal judgments, publishers make editorial changes and discuss these with the Judges.

In the Supreme Court there is an in-house database of the judgments documents in WordPerfect format. Use of the existing template, developed by the University of Montreal, is mandatory, although it is not always adhered to. The court developed the creation tool.

The court compresses files into a ZIP file and FTP upload them to the University of Montreal. The University creates a document type definition, and then converts into SMGL. Three formats are provided: HTML, WordPerfect for Windows and Text. This process in the past took an hour, but judgments are now available within 15 minutes.

From 1996 onwards, the Supreme Court has provided handouts, keywords and tables with judgments.

5.2.5 Information and Document Standards
The Supreme Court judgments use the Dublin Core metadata fields.

The Canadian Citation Committee\(^{50}\) is an initiative launched with the help of the Department of Justice of Canada, the Department of Justice of Quebec, the Canadian Judicial Council, the Fonds pour la formation de chercheurs et l’aide a la recherche (FCAR) of Quebec, the Federation of Law Societies of Canada, Integer.actif (formerly the Legal Research Network), Wilson & Lafleur, Canadian Association of Law Libraries and Quicklaw.

The adoption of medium neutral citation across Canada is being driven by the Judges’ Technology Advisory Committee of the Canadian Judicial Council. The citation committee met early in 2001 to update the 1996 standard. It specifically looked at reconciling different implementation techniques, and bringing all provinces and territories in line with the standard. There has been a slow start to implementation, but uptake is occurring and use of medium neutral citation will be fully implemented in the medium term. Two provinces, Quebec and Ontario, do not publish medium neutral citations on their judgments, but they have agreed in principle to the standard and its eventual implementation.

There continues to be some confusion surrounding the use of paragraph numbering. Part of the problem is that not all publishers are using paragraph numbering in all instances, which is not correct in that the numbering constitutes part of the judgment.

\(^{50}\) http://www.lexum.umontreal.ca/citation/en/
5.2.6 Privacy and Confidentiality

The Supreme Court has issued an advisory memorandum to warn of publication restrictions. This is primarily intended for the media and publishers.

The Supreme Court is currently considering whether court file documents constitute part of the public access. This issue has arisen in part due to the availability of Employment Insurance cases on the internet. Initially there was considerable concern expressed about this, due to personal details being made available.

The system works well at the moment, mainly because it is so difficult to obtain court case information.

5.2.7 The Internet

There are arrangements in place where original judgments are provided to suppliers such as Quicklaw. They supply all judgments they receive back to courts at no cost.

The Federal Court internet site was developed by private contractors and is maintained by internal systems managers. The Chief Justice and Associate Chief Justice are strong advocates for providing greater public access, although librarians and publishers continue to push for more access.

The Office of the Commissioner of Judicial Affairs receives the reformatted version of judgments and sends them to the University of Montreal who reformat and then publish (many data elements are lost or not included in the original source documents).

Supreme Court sends judgments directly the University of Montreal. The Supreme Court internet site was relaunched in January, and is managed by a Web Council with a webmaster.

A project is currently underway to assist in the archiving of electronic judgments. British Columbia do this now that the core of their judgments database is on the web.

There is no national standard of what, how, or when judgments should be published on the internet. It is left entirely to courts and provinces. In the Federal Court there are kiosks provided in court foyers display a range of information for self-representing litigants and the general public.

5.2.8 Electronic Government

The Government Online (GOL) initiative seeks to enable the Government to conduct all business with citizens electronically by 2004. CAN$3 billion has

51 http://www.ei-ae.gc.ca/easyk/about_e.shtml
54 http://www.scc-csc.gc.ca/home/index_e.html
55 http://www.courts.gov.bc.ca/SC/sc-main.htm
been set aside for the project. The Industry Department is the lead agency driving the initiative.

There are some concerns about the timeframe involved, and each Department has established a task force to look at how the timetable can be achieved.

Courts and Justice are not viewed as eGovernment priority areas. Some 25 percent of Federal Court cases are immigration related (and therefore deal with non-taxpayers).

5.2.9 Integrated Justice System

This project will create a shared database between the Police, Corrections, Crown Attorney, and the Probation agencies. Its primary focus will be on case management.

Access to elements of the database will be restricted to specific agencies – for example trial Judges will not be able to see an individual's criminal record. Security levels can administer this, allowing the trial Judge to still have the ability to add background and notes to the file.

From a court’s perspective there will be less likelihood of losing files and a reduction in much of the repetitive nature of work undertaken by court staff.

The private sector will build and develop the system with Unisys the contracting party. Hardware, maintenance and staffing are the responsibility of the government.

The courts component is a case management system. This has been two and a half years in development. Windsor, Ontario has been trialling this for the civil system, and London, Ontario for the criminal courts. Final testing was undertaken in early 2001, with rollout scheduled for summer 2001. Theoretically this will mean that no paper is used for case management, either because documents are filed electronically or they are scanned at the court.

Canadian company BCB Technologies is undertaking the digital audio component for the transcription of court proceedings. The transcripts will be the official record, although transcripts will continue to be prepared. Parliament use a similar system for sittings and committee, and the US courts are making wide use of the facilities. There will be the ability to key text in electronically, and the entries will be organised by date and time. The system still relies on court reporters for text entries.

The digital file will be a part of the case file, and compact discs can be provided upon request. The system will have an impact on the way cross-examination is conducted, as ‘transcripts’ will now be able to be played back to the court. Court proceedings are recorded 90% of the time currently, but this new facility will be of improved quality and will provide the ability to search.

The system also has a scheduling mechanism.
Full implementation is expected to take 18 months.

5.2.10 Electronic filing
The Federal Court has given the electronic court filing project a 3–5 year timeframe.

There is currently a legacy system, which logs documents in files. Known as the Proceedings Events Record, this performs in real time across Canada, over 16 Federal Court registries.

At the heart of the case management systems is eFiling, which is currently under trial. This system will not work province wide, nor will it be in web or XML formats. It is designed to be compatible with four versions of Word and WordPerfect, and with HTML.

Effectively eFiling will be a simplified word-processing programme with all forms online for completion and then filing. These will be checked electronically by the Sustain system, and it is hoped that after an individual has filed their first form, subsequent forms will populate themselves with most data. Access to the system is via the internet, where users can complete forms online, or download and email them to the courthouse. The system will also allow a status check of cases. Payment of fees will be accepted by a variety of means.

A pilot is planned with real cases at three courts. There have been some rule problems, however revisions are underway.

An option for the access to court files is to leave it to the Judge's decision, however this is considered an onerous task and imposes significant work on judges. This approach also puts Judges in the difficult position of having to balance public access and privacy interests.

5.2.11 Security
Legislation has just been passed at Federal level, which impacts on privacy and electronic documents in the private sector. Provinces are able to either adopt this, or to pass legislation that complies with the Federal law.

Security, particularly of Judicial information, will be achieved through PKI and encryption. A study is currently being undertaken to look at the management of technology systems and their impact upon the independence of the Judiciary.

5.2.12 Judicial Support
The Federal Court library runs Judicial computer training, while WordPerfect and Word training is provided by the Office of the Commissioner of Judicial Affairs. The training is one-on-one, and is funded by the Office.

There are very few library materials provided for Judges on circuit, and the Judges' library is relatively small. Access to internet resources can only improve this situation.
Canada has a significant judicial-only intranet known as JAIN. This provides access to an electronic library of speeches, academic papers and commonwealth case law, as well as providing an online discussion forum.\footnote{Kirk Makin, ‘Today’s judges chat on-line’, Globe and Mail, 13 December 2000}

5.2.13 Publishers Processes

Approximately 35 percent of all judgments sent to Carswell publishers are received in electronic format. This is expected to become more commonplace, as technology becomes more accepted. The trial courts are seen as being the most resistant regarding migration to electronic format. Carswell has no control over what formats judgments are supplied to them by the courts. If this could be standardised, the process would be significantly streamlined.

In response to privacy concerns, Carswell has undertaken to initialise surnames where suppression orders have been imposed. They look for relationships between judgments and where other cases or legislation is cited. Documents are converted to SMGL. This procedure was developed in 1994 and has not changed substantially since.
5.3 Continental Europe

5.3.1 Summary of Jurisdiction

The Court of Justice is a European Community institution, and consists of two jurisdictions. The Court of First Instance deals with actions brought by private parties against the Community Institutions. The second jurisdiction, the Court of Justice, deals with other actions against Community Institutions, actions against Member States brought by Institutions or other Member States, appeals against decisions of the Court of First Instance, and references for preliminary rulings from the national courts.

The Court of First Instance has 15 judges, the second Court 15 judges and 8 Advocates General.

There are around 1000 staff in the two institutions, over a third of whom belong to the translation service. Other functions include: the registries (one for each jurisdiction), library, research and documentation, finance, personnel, interior, interpretation, and a computer and new technologies service.

5.3.2 Visit Undertaken in Luxembourg

- European Court of Justice and Court of First Instance
5.3.3 Relevant Projects
The Research Institute on Judicial Systems (IRSIG-CNR), part of the Italian National Research Council, has a specific project looking at information technology and its application in the courts of European Member states. The institute has conducted research into:

- implementation of video (hearings at distance, video-depositions, court reporting)
- information technology in the courts and prosecution offices
- organisational structure and workflow of courts and prosecutors' offices
- implementation of judicial reforms (e.g. the code of criminal procedure), court statistics, and juvenile courts.

The ultimate goal of the project was to organise the first European Seminar on Court Technology, and to collect and disseminate information about court technology applications and trends in the European Union.

The questionnaire data and the papers presented at the seminar have been published on the internet.  

5.3.4 The Internet
The Court of Justice and Court of First Instance have an internet site which contains basic information about the court and its structure.

5.3.5 Case Management
Both the Court of First Instance and the Court of Justice use a case management system, which was developed by the courts. The Court of First Instance is developing a new package-based system (which will be work-flow oriented), incorporating document production facilities.

The current system mainly manages the procedure in the cases before the Court, calendar and workload management, and Judicial statistics.

5.3.6 Electronic Courts
Hearings are audio taped and made available in the original language, as well as in French. However, transcripts are not available to parties or to the public and are for Court use only. There are no video or audio conferencing facilities available.

5.3.7 Judicial Support
Personnel supporting judicial work have PCs with word processing and the particular structure required for the documents to be published in the Law Reports. These personnel also have access to internal databases of case law and external databases such as CELEX and Eurlex.

57 http://federica.irsig.bo.cnr.it/dscgi/ds.py/View/Collection-12
58 http://www.curia.eu.int/en/index.htm
5.4 England

5.4.1 Summary of the English Jurisdiction

The Courts Service is an executive agency of the Lord Chancellor's Department, providing administrative support to a number of courts and tribunals in England and Wales, including the High Court, the Crown Court and the county courts. The Royal Courts of Justice is the home of the High Court.

5.4.2 Visits Undertaken in England

- Lord Justice Brooke, Royal Inns of Courts
- Professor Richard Susskind
- Andrew Mackersie, Judicial Clerk, House of Lords
- Kalpana Patel, Keith Garrett and Tony Hopkins, Statute Law Database project, Lord Chancellors Department
- Colin Main and Martin Dutnell, Community Legal Services, Lord Chancellors Department
- Paul Crook, Head of Publications, Court Service
- Don Raistrict Chief Librarian, Courts Service
- David Jacobs, Modernising Civil Courts project, Courts Service
- Francis Curran, Head of IT Projects, Court Service
- Paul Pedley, Head of Research, Economist Intelligence Unit
5.4.3 Access to Judgments

There are considerable issues relating to access to judgments, and transcripts in particular. The first person to request a particular transcript pays a large fee for transcription, but once this has been done, fees are considerably reduced for subsequent requestors. Both Smith Bernal and other companies only retain the transcripts for six years, then they are destroyed.

There is also considerable uncertainty around whether a transcribed judgment is approved/unapproved by the Judge as the official version, and consequently what its official status is.

Transcripts are done by contractors appointed by the Lord Chancellors Department (LCD). For example, Smith Bernal undertake transcripts for the Court of Appeal, and the Administrative Court (Queens Bench review, Crown Office list and Judicial review).

There have been Judicial rulings on how transcripts are use, and unofficial transcripts can not be used in court. The Lord Chief Justice issued a practice statement in 1998, which provided:

- The retention of the embargo on copying the draft judgment that is sent to the parties two days before a judgment is handed down.
- An approved judgment, when handed down in court, will now be entitled "Judgment: Approved by the court for handing down (subject to editorial corrections)"
- Every page of a judgment that is handed down in this form will be marked in a similar manner.
- There will be no embargo on copying a judgment handed down in this form, so long as its status is made clear, and at present no charge will be made for permission to copy it.
- In order to make it possible for approved judgments to be handed down in this way, the parties' legal advisers will be requested to submit their written list of suggested corrections by 12 noon on the day before judgment is handed down.
- If it is not possible to comply with this deadline, any later corrections approved by the Judge will be included in the final text which the official shorthand writer (or the Judge's clerk, in courts which lack an official shorthand writer) will incorporate into the approved official text of the judgment as soon as practicable.
• Where a reserved written judgment has not been reported, reference must still be made in court to the approved official transcript (if this is available) and not to the approved transcript which is handed down, since this may have been subject to late revision after the text was prepared for handing down.59

Transcripts were freely available after a couple of months, but this is no longer the case.

The British and Irish Legal Information Institute (BAILII)60, based on the AustLII model has floundered somewhat, with competing interests wanting to own it. The private sector does not want Government running it, out of concern that they will control it detrimentally.

In theory, unreported judgments cannot be cited. However, it has been held in case law that it is a matter of good advocacy.

There has been considerable criticism of the selectivity and speed in publishing judgments in law report series.

5.4.4 The Internet

The Courts Service61 developed their internet site five years ago with the publication of the Courts Charter. The site received five hits a week initially, and now receives in excess of 160,000 hits a week. Judgments account for between 60,000 and 70,000 hits, forms and leaflets 40,000, and court daily lists around 7000.

The site is aimed at the legal profession as well as the general public. There are around 300 interactive forms, which is the highest number in the civil service. Courts want to allow the electronic filing of forms and to make them more dynamic, but are awaiting work from Cabinet Office and Treasury’s Central Communication and Telecommunications Office on authentication and electronic signatures.

The Lord Chancellors Department has technology to allow it to proceed with electronic filing, however the courts are not yet in a position to receive electronic filing. The Modern Civil Courts and Crown Court Programmes will provide for a common infrastructure.

Other content on the Courts Service site includes:

• practice notes;
• procedural information;
• court lists (for Crown Courts, not County Courts);
• public forms, for example divorce and probate; and
• lists of vexatious litigants (on the internet and intranet).

59 http://www.courtservice.gov.uk/pds/crim/crpd0498x.htm
60 http://www.bailii.org
61 http://www.courtservice.gov.uk
A key aim of the site is to reduce enquiries received at or by the courts.

A group of six staff manage paper publications, and a further six staff work on intranet and internet, with another two positions being created.

Courts used to be dependent upon other government agencies for publishing the internet content, but they are now publishing directly.

The eGovernment strategy, known as Modernising Government, is a key driver. The strategy’s goal is to enable all citizens’ transactions with the Government to be on the internet by 2005.

Customer feedback is the primary method of determining areas of internet site development. Usage statistics, especially at the low level, are carefully monitored.

The judgments database is a Lotus Notes Domino database. Speed and response times have emerged as an issue; numbers of hits can reduce as a result, as users become frustrated. The solution has been to develop a search interface, rather than listing all judgments, as was the practice. This solution was implemented during 2001, which has provided significantly improved speed and navigation around the collection of judgments provided.

The database started in 1997 with 500 judgments, selected by Judges as being the most important judgments. There are now thousands available.

The Royal Courts of Justice have a template to assist Judges and their support staff in creating judgments. This is a Word template, and incorporates paragraph numbering.

Publishers report that between the Magistrates service, prosecution service, and Courts Service, there is no consistency or co-operation on judgment format or delivery.

5.4.5 Public guidance

The Just Ask! internet site has been developed by the Community Legal Service. It is designed to be a first port of call for legal help and information in England and Wales. It provides advice directly, as well as linking to other carefully selected sites also providing advice, and a directory of advice providers for further contact.

There are proposals to further enhance this site, in order to provide more concrete advice.

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62 [http://www.justask.org.uk](http://www.justask.org.uk)
5.4.6 Case Management

The Woolfe report placed a great emphasis on IT and assumed largely that the necessary technical infrastructure already exists. Historically however there has been a large under-investment in courts, and where there is technology it is generally of a poor standard.

In 1997 the CASEMAN system was developed to computerise the court record, but not case file. This was primarily an administrative tool, and was of little use to the Judiciary. No major business process reengineering was undertaken.

Now, however, the implications of technology, and the ways in which courts could take advantage of it, are being addressed. The Modernising Civil Courts programme is to look at business, and how IT can assist. This will be the first major review in 150 years, during which time terminology, workflow, and processes have not changed. Civil court largely reflects the world of the 1840s, and there still exists a decree, dating from this time, that no one in England should live more than seven miles from a court (there were 500 in 1840s). It is accepted now that there needs to be another set of criteria to determine the provision of courts and Courts Services.

The courts system currently deals only with people in person or by paper. Some minor exceptions exist, such as answering of enquiries by telephone. This focus however is changing, in line with eGovernment targets, to include the internet.

Courts are looking at developing a business centre network over the next 10 years, following the systems used by companies such as British Telecom and credit card companies. This would mean that case processing, and administration of undefended claims, would occur in bulk. This has big implications for real estate requirements.

Small claims, and family and housing hearings are more customer focused however, and these would continue to be dealt with locally.

5.4.7 Electronic courts

In March 2001 Lord Chancellors Department Ministers launched the first technology Crown Court at Kingston upon Thames. The launch signalled the beginning of a programme to modernise all 78 Crown Courts throughout England and Wales by the year 2005. The programme includes:

- Electronic information screens outside each courtroom
- Scheduling systems
- Information kiosks for court information
- Electronic systems for the display of evidence
- Case management officers
- Flexibility in the using paper- or email-based systems where appropriate

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63 fn 8
• evidence recording and transcription systems

5.4.8 Judicial Support

Between 1991 and 1996 the JUDIS project allocated £1.6 million towards computers and software for Judges. Four hundred of the 1200 Judges were equipped, 120 with software for their own private machines. No training was provided however. In 1999, £8 million was allocated to provide 1000 Judges with updated equipment. Again, minimal training was offered. However, High Court rules state that compulsory Judicial computer training must take place in vacation period.

The Human Rights Act project earmarked a further £12 million for computer equipment for Judges in July 2000. This included internet access, access to LEXICON (provided by Butterworths) and to Strasbourg European Court of Human Rights cases. Further material, such as the official law reports, will be added to LEXICON.

Judges can nominate to have compact disc versions of key library texts.

An immediate reduction in expenditure on paper-based library resources is being sought. The Judicial Technology Committee has agreed to assist in achieving that reduction.

Butterworths do training in their products and internet use for Judges, and EDS, the private computing contractors, provide further training, focusing on Word 97 and the new judgments template.

Courts are looking to publish directly on the internet without having to go through the Courts Service. The current process takes 20 minutes of handling.

The Modernising Civil Courts and Crown Court programmes will further invest in technology and the necessary infrastructure. Civil is required to pay for itself through fees.

There are 10 crown courts experimenting with different forms of IT, including live transcription, audio recording and video conferencing. £23 million one off budget for these various projects. A review report on the Criminal Courts was due Easter 2001.

Modernising Civil Courts has a budget allocation of £43 million over three years. This will seek to centralise information and data, and allow for tele- and video-conferencing. A team of five are producing a report specifically on Judicial needs.

Judicial Libraries operate within the information service division; the branch is information management with a total of 75 staff. The intranet and internet functions were moved to another group 18 months ago.

There is a staff of 32 in library services, and a further 20 in records.

Primary users are the Judiciary but the Judicial Libraries also support the Lord Chancellors Department, the Courts Service and the Law Commission (a separate statutory body but with administration from the department).

There are 12 staff employed outside of London.

There is a Head of Court Libraries (with an annual budget of £4.3 million), and a Head of London Libraries and Projects.

Budgets and management of staff are centralised. In courts that cannot justify dedicated librarians, court staff are designated library liaison officers and the function is managed regionally.

Court libraries are sometimes run by Law Societies or local authorities in those centres where dedicated Court staff cannot be justified to run libraries. Legal professionals are allowed access to court libraries.

5.4.9 Courts Service Intranet

The Courts Service intranet is currently available to every circuit, group management and court managers offices, but not to staff. Judges do not currently have access but this is planned.

It provides:
- access to CASEMAN or FAMMAN remote or dumb terminal access;
- Excel forms and guidance, divisional pages, policy pages; and
- CTRL + F search function.

The intranet currently has around 20,000 hits per week. There is a desire to make it more familiar and readily easy to use, including extending it to all staff (10,000 people over England and Wales).

It also includes a staff suggestion scheme, which promotes staff suggesting ‘good ideas’ for which a financial incentive is offered. This has received 1605 hits since it was launched in October 2000. The scheme generated more suggestions in the first month on the intranet than through the previous year.

The Chief Executive encourages individuals to contact him through his personal intranet pages. He has received 8000 hits since December 1999.
5.4.10 Procedural Rules and Directions

The Lord Chief Justice issued a practice note early in 2001, providing guidance on the use of authorities in Court. It provided:

“There has been a substantial growth in the number of readily available reports of judgments in this and other jurisdictions, such reports being available either in published reports or in transcript form. Widespread knowledge of the work and decisions of the courts is to be welcomed. At the same time, however, the current weight of available material causes problems both for advocates and for courts in properly limiting the nature and amount of material that is used in the preparation and argument of subsequent cases.”

“Recent and continuing efforts to increase the efficiency, and thus reduce the cost, of litigation, whilst maintaining the interests of justice, will be threatened if courts are burdened with a weight of inappropriate and unnecessary authority, and if advocates are uncertain as to the extent to which it is necessary to deploy authorities in the argument of any given case.”

“With a view to limiting the citation of previous authority to cases that are relevant and useful to the court, this Practice Direction lays down a number of rules as to what material may be cited, and the manner in which that cited material should be handled by advocates. These rules are in large part such as many courts already follow in pursuit of their general discretion in the management of litigation. However, it is now desirable to promote uniformity of practice by the same rules being followed by all courts.”

A judgment falling into one of the categories referred to below may not in future be cited before any court unless it clearly indicates that it purports to establish a new principle or to extend the present law.

- applications attended by one party only;
- applications for permission to appeal;
- decisions on applications that only decide that the application is arguable; and
- County Court cases, unless
  a. cited in order to illustrate the conventional measure of damages in a personal injury case; or
  b. cited in a County Court in order to demonstrate current authority at that level on an issue in respect of which no decision at a higher level of authority is available.

Citation of other categories of judgment.

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“Courts will in future pay particular attention, when it is sought to cite other categories of judgment, to any indication given by the court delivering the judgment that it was seen by that court as only applying decided law to the facts of the particular case; or otherwise as not extending or adding to the existing law.”

The practice direction also details methods of citation to be used.

5.4.11 Document and Information Standards

International knowledge and information management consultancy TFPL have undertaken considerable research into the use of taxonomies. These are high-level information search devices constructed to provide a means of understanding, navigating and gaining access to the intellectual capital of an organisation.

The work undertaken by TFPL has challenged the view that taxonomies are not essential in a world where contemporary informatics can be used for information retrieval and where new software claims to eliminate the need for people-crafted taxonomies.

The Lord Chancellors Department published a report on metadata, which sought to adopt a metadata standard for use across the legal sector in the UK. The legal metadata work was initiated by the department with no formal delegation from the Office of the eEnvoy (OEE).

The OEE is developing ‘whole of government’ metadata standards, and those proposed by the department are in line with OEE proposals for elements.

The work is proceeding in parallel. OEE have defined some high level points, covering depth of government. As yet, however, there is no clear picture of how specific legal examples fit into the broader picture.

The UK legal metadata standards are focus on information retrieval, rather than discovery level. The inclusion of subject terms is mandatory for information retrieval.

Levels of understanding are reflected in terms and the content and classification scheme and thesauri should also cope with different language usage and understanding for users. As part of the legal metadata standard they are looking at search facilities for those whose first language is not English. However, use of non-standard character sets can complicate language issues. British Telecom has produced a proof of concept and a report is likely to be produced later in 2001.

67 http://www.tfpl.com

68 Lord Chancellors Department, Developing Common Standards - Metadata Scheme for Websites in the Legal and Advice Sectors: Responses to the Consultation Paper, United Kingdom, February 2001. Available at <http://www.lcd.gov.uk/consult/meta/metaresp.htm>
The Department’s initiative is very citizen-focused. While there are discussions with the Courts Service it is considered that their focus will be directed toward the legal professionals.

5.4.12 Legislation Database

The Lord Chancellors Department has had a legislation database under development for eight years. It currently includes all amendments in primary legislation up to 2000. Secondary legislation is also included. The database uses the Topic search facility.

The three commercial products from Butterworths, Sweet & Maxwell, and Context provide selected legislation for the database.

The database contains links to amending Acts, and includes history from February 1991. There is some interest in putting the database in the public domain.

Original legislation is obtained from the HMSO printing office and this is scanned and converted into HTML for placing into the database. The Department has had to develop their own technical and business solutions. The Parliamentary Counsel Office does not provide electronic versions of legislation.

By 2004 it will be mandatory for all of the civil service to have implemented electronic records management. CCTA, within Treasury, and the Public Records Office are looking at document and record formats. The Australian Victoria Public Records Office is using Dublin Core metadata and that is being followed as a model for the British Government. The development of Legal XML is being closely monitored, but there is concern that it is still not an agreed standard.

5.4.13 Public Attitudes

The majority of the British population believes crime is on the increase, even though the overall recorded rate has fallen in recent years.69 The results of the British Crime Survey covered 8000 adults, and suggest that the lack of faith in the criminal justice system is in large part due to ‘misperceptions’ about what is really happening. Four out of five people thought sentences were too lenient, with more than 80 percent saying they thought Judges were ‘out of touch’ and 63 percent felt the same about magistrates.

‘This suggests there is a crisis of confidence in sentencers which needs to be tackled with some urgency,’ said a report on the results.70 The number of offenders in prison is now at a record high level, largely as a result of Judges responding to a perceived public desire for tougher sentences.

69 Philip Johnston, ‘Courts seen as too soft and out of touch’.
The report said:

The most likely reason for public misperceptions is that information about sentencing comes largely from the media, and news values militate against balanced coverage. Erratic court sentences make news; sensible ones do not.

Mr Straw said: ‘Only when crime and the criminal justice system is presented in the correct context will the public begin to regain confidence in the justice it delivers.’

Michael Hough, one of the academics who conducted the survey, said that public confidence in the system was being eroded. ‘There needs to be much greater emphasis on informing the public about the realities of sentencing practice,’ he said.

5.4.14 Shared Resources

The Joint Information Systems Committee\(^{71}\) (JISC) is building a Distributed National Electronic Resource (DNER) – a nationally managed information environment for further and higher education. The DNER is a co-ordinated and comprehensive collection of high quality digital resources for use in learning, teaching, and research.

There are numerous initiatives associated with this project, including joint negotiation and purchasing, distributed collection development, portals and centres of excellence, digitisation projects, and open archives.

The primary objective is to stimulate the use of a collection of high quality electronic resources within all areas of the higher and further education sector.

A number of subject-based portals have been developed including:

- [www.sosig.ac.uk](http://www.sosig.ac.uk) – social sciences
- [www.eevl.ac.uk](http://www.eevl.ac.uk) – engineering

These are excellent examples of internet portals. EEVL is discussed in more detail in section 5.5.10.

\(^{71}\) [http://www.jisc.ac.uk](http://www.jisc.ac.uk)
5.5 Scotland

5.5.1 Summary of the Scottish Jurisdiction

The courts in Scotland are administered by the Scottish Courts Service (SCS), which is an executive agency. The Court of Session is the supreme civil court in Scotland and is located in Parliament House in Edinburgh. It sits in an appeal capacity, and as a civil court. The principal Judge is the Lord President.

The High Court of Justiciary deals with criminal appeals and serious criminal cases. The Court is based in Edinburgh, although trials are held in towns and cities throughout Scotland. The principal Judge is the Lord Justice-General.

There are 49 Sherriff’s Courts in six administrative regions. Each region has a Sherriff Principal, dealing with civil, criminal, and commissary (probate) matters.

5.5.2 Visits Undertaken in Scotland

- David Morris, IS Manager, Scottish Courts Service
- Eric Cumming, Head of Operations and Policy Unit, Scottish Courts Service
- David Lynn, Operations and Policy Unit, Scottish Courts Service
- David Stewart, Head of Judicial Appointments and Finance, Courts Group, Scottish Office Justice Department
- Linda Kerr, Co-ordinator, Edinburgh Engineering Virtual Library (EEVL), Heriot-Watt University
5.5.3 The Internet

The [Scottish Courts Service](http://www.scotcourts.gov.uk) internet site has been two years in development. It includes:

- information about the role and function of courts and the administering bodies;
- court locations;
- Judicial biographies;
- opinions of the court;
- Rolls of Court;
- court announcements;
- leaflets and publications; and
- links to related sites.

In May 1999 the internet site had 9000 hits over a seven-day period, which has since risen to 25,000 per week (3500 per day). The opinions database rates 15 percent of these hits, making it the second most popular area of the site. This database is discussed in more detail in the section 5.5.4

Judges’ biographies are also provided, and are based on each individual's ‘Who’s Who’ entry. Contact is available through the Clerks of Court.

The Rolls of Court used to be published daily and sent out paper copy. Eventually it was distributed by email, and now it is provided in Word and HTML formats on the internet site. The Rolls are maintained on the website for a period of six months.

An enquiry point is also provided on the site, but this is not for the provision of legal advice. However, an increasing number of self-representing litigants use the internet site to gather information in support of their cases.

Use of the site has demystified the law and raised customer service expectations, resulting in an increase in the number of people who are prepared to complain about unsatisfactory court decisions, either to the internet site or to the Courts Service.

5.5.4 Opinions Database

The push to use the internet site to deliver opinions (judgments) of the court came from the Lord President Judge. The primary driver was to establish a mechanism for wide distribution and prompt reporting of opinions. A second priority was to provide improved ability to locate and identify cases. The database offers search functionality by keyword and type of opinion; date; name of Judge; pursuer (or appellant) and defender (or respondent); and type of action.

Opinions of the courts are added to the site by 2pm every day. Availability of opinions varies between the courts. In the Supreme Courts, Court of Session opinions are available from September 1998, including commercial cases from

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72 [http://www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)
January 1998. Criminal opinions of the High Court of Justiciary, including opinions in some sentence appeals, are also available. However, with opinions of the Criminal Appeal Court (a three-Judge bench), a Judicial decision must be made on which opinions will be reported. Sentencings from the Criminal Appeal Court are not published on the site.

Judges in the Sherriff’s Court also determine which opinions are sent to publishers for reporting, and which are published on the internet site. Generally speaking, opinions from the Sherriff’s Court available on the site are those relating to a significant point of law, or that are of particular public interest.

In addition there is a list on the internet site of all opinions that are subject to orders made under section 4(2) of the Act, as well as section 46(1) of the Children and Young Persons (Scotland) Act 1937. This is primarily intended as a checklist for the media.

While there are some calls for opinions that are not published or made available on the internet site, these are a relatively small number.

The opinions database now houses two years’ worth of opinions – a total of 10,000 opinions (1179 since February 1999), with approximately three opinions added per day. Each opinion on the database is comprised of a ruberic (headnote), and the text of the opinion.

5.5.5 Case Management

Several years ago the Scottish justice system had a civil case tracking system purpose built. This system is an Oracle database platform, which uses Access as a front-end.

The criminal system (COPS) on the other hand is now 9–10 years old, and is due for review. Its primary function is the management of fines, although it also issues warrants and bail orders. These events are recorded, and the system is designed to be flexible.

New case management systems are being developed for the civil jurisdiction in the Sherriff, High and Supreme Courts, as well as the criminal jurisdiction for the High and Supreme Courts. These are internal-only projects and there is no intention of making information public at this stage.

A significant initiative currently underway in Scotland is the Integration of the Scottish Criminal Justice Information Systems (ISCJIS). This project aims to improve the exchange of information between agencies and departments within the criminal justice system, and includes Police, the Scottish Criminal Records Office, the Procurator Fiscal, Prisons, courts, Social Services and the Legal Aid Board. All systems are independent, but data definition and flow is standard. The primary loop is between the Police, the Procurator Fiscal and the Scottish Criminal Records Office. The ultimate aim is to ensure the electronic exchange

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73 [http://www.scotcourts.gov.uk/announcements.htm](http://www.scotcourts.gov.uk/announcements.htm)
of all data. Further information can be found by searching the internet site of the Scottish Executive.74

5.5.6 Electronic Filing
Research in Scotland has established that there is little demand there for electronic filing.

There are however plans to include forms on the internet site in the future, and while it is envisaged that eventually it will be possible to transact electronically with the courts, this is still some time away.

5.5.7 Judicial Support
The University of Strathclyde has developed a sentencing database based on information from the High Court jurisdiction only. The information is available only to Judges, who enter key facts to generate a histogram of 10 years' sentencing ranges. The primary aim of the database is to assist in achieving consistency in sentencing practice.

While some Judges type their opinions before passing them to administrative staff for preparation for inclusion on the database, in other cases the process is completely undertaken by administrative staff. There is no established standard for the creation of opinions, but there is a template for those that are published on the internet site.

Judges input keywords or categories to the system, while administration staff input database functionality. The database is Access, which is then exported in text files and FTP to internet site host.

Ninety percent of Judges have laptops or computer equipment, and there is a shared email system.

5.5.8 Procedural Rules and Directions
All opinions subject to suppression or restriction on publishing are noted on the internet site under court announcements. Members of the press are invited to contact courts directly for details of the relevant orders.

5.5.9 Legislation
The Contempt of Court Act allows Judges to control the reporting details. Judges take responsibility to edit out details that may be subject to privacy concerns.

5.5.10 Document and Information Standards
The Joint Information Systems Committee (JISC) is building a Distributed National Electronic Resource (DNER) – a nationally managed information environment for further and higher education. The DNER is a co-ordinated and comprehensive collection of high quality digital resources for use in learning, teaching and research.

74 http://www.scotland.gov.uk
The Edinburgh Engineering Virtual Library (EEVL) is a UK-based guide to engineering information on the internet. It is a free service, created and run by a team of information specialists from Heriot-Watt University, using the Dublin Core metadata set. The site features a catalogue of quality engineering resources (selected by subject consultants), targeted engineering search engines, bibliographic and events databases, and links to useful sites.

Although not legal in focus, EEVL is an excellent example of a specialist information resource provided over the internet, and has won a number of awards. EEVL is also the international Virtual Library for Engineering.

EEVL’s strength comes from the use of subject specialists to determine which content is of appropriate quality and scope for inclusion. It is this human element that provides the initial high-quality resource, and on-going monitoring maintains confidence in its continued relevance.

As part of this on-going monitoring, EEVL run link checks on a monthly basis. Maintenance of the site is a time-consuming task, as checks must be made to ensure continued relevance, as well as adding of new content and maintenance of existing links. Approximately 100 new sites or resources are added each month.

5.5.11 Access to the Law

In most courts, opinions are automatically sent to publishers. However, the Sherriff’s Court decides on a case-by-case basis what should be sent to publishers.

Although there is no official report series, those that are noted in journals can be cited in court. There are two journals for court opinions:

- **Scots Law Time** is a weekly publication, bound annually, that includes Sherriff, High, Session and Land Courts. It is published by W Green and Co (an S&M company) and includes summaries, cross references, and easy method.\(^75\)
- **Session Cases** are published a couple of times a year, covering Supreme and High Courts. These are published by T and T Clerk (a Butterworths company).\(^76\)

In addition, there are the **Scot Civil Law Report** and the **Scot Criminal Cases Reports**, both published by the law society, with four issues per annum.

Both main publishers have established themselves well, and are highly regarded. All opinions are sent to barristers and advocates libraries in hard copy. Unreported opinions may be cited in court.

There is currently no method of court or medium neutral citation.

\(^75\) [www.wgreen.co.uk](http://www.wgreen.co.uk)
\(^76\) [www.lawscot.org.uk](http://www.lawscot.org.uk)
5.5.12 Guidance for the Public

Scotland initiated a project in October 2000, launched by the Deputy First Minister and the Minister for Justice, that established a working group to examine how a community legal service might be developed for Scotland. This group is to report back in October 2001 with recommendations. The main focus of the project has been on legal representation, but it has also concerned itself with the provision of advice and legal information.

The working group includes representatives from: Scottish Executive Justice Department, Scottish Executive Central Research Unit, Scottish Legal Aid Board, Citizens’ Advice Scotland, Law Society of Scotland, Equal Opportunities Commission, Money Advice Scotland, Disability Rights Commission, Federation of Information and Advice Centres, Shelter Scotland, Scottish Association of Law Centres, Scottish Homes, Scottish Consumer Council, University of Strathclyde, Legal Services Commission, Five Lamps Organisation, and the Convention of Scottish Local Authorities.

A survey of 1351 people had been conducted as part of the study. Some of the preliminary findings include:

Problems and seeking help
- Of those respondents who experienced a justiciable problem, neighbourhood disputes (48%) and housing problems (22%) were the most prevalent;
- 70% of those with a justiciable problem sought help or advice;
- Respondents seeking help or advice were most likely to approach the local council, a solicitor, the Police or a Citizens Advice Bureau; and
- 60% of those respondents who looked for help or advice for their problem attempted to solve the problem themselves before looking for help or advice.

Method of contact/accessing information
- 90% sought advice over the phone
- 60% wished to gain advice over the phone
- 20% would find it useful to receive information over the internet
- Users had no issue with the quality of advice received

Those undertaking the qualitative work made the following observations:
- The majority of users preferred to access information and advice in person
- Users preferred to access all information and advice from one location
- Telephone systems/helplines were not appealing to the public
- Users do not like being referred or being passed from pillar to post.
- From most quarters, there was some recognition that some level of charging would be required for legal advice services.
- There was a widely held perception that the legal system is expensive

[77 http://www.scotland.gov.uk/justice/legaladvice/](http://www.scotland.gov.uk/justice/legaladvice/)
5.6 Ireland

5.6.1 Visits undertaken in Ireland

- Madeline Dennison - Law Librarian, Mary Johnson – Parliamentary Counsel, Tom Hannon – Know-how Officer, and Pat O’Sullivan – Head of Administration, Electronic Irish Statute Book Working Group, Office of the Attorney-General
- Jennifer Aston, Librarian, Irish Bar Council Library
- Joseph Donnelly - Librarian, Noel Rubotham – Registrar, Wards of Court, and John Coyle – Head of IT, Irish Courts Service

5.6.2 The Internet

The Ireland Courts Service has had an internet site since 1999,\(^78\) which currently has approximately 3000 pages. Information includes:

- calendar of sittings of the Superior Court (legal diary);
- introduction to the role, types of proceedings;
- frequently asked questions;
- staff directory and contact details; and
- links to the rules of the court for the Superior and Subordinate Courts.

There is one information officer and a webmaster. The internet site is managed by the Web Management Group (WMG), who have a co-ordination role. There is a lack of integration in the system generally, and the internet site is often overlooked.

\(^78\) [http://www.courts.gov.ie](http://www.courts.gov.ie)
Previously the Department of Justice maintained some court information on the internet but now the Courts Service is a separate entity and they have the responsibility for providing information about the courts.

Phase 2 of the internet site plan for the next 12 months includes:

- publication of judgments of the Supreme, High and Circuit/Subordinate Courts;
- courts heritage (buildings of note);
- student and youth-targeted information catering to various ages; and
- local information and maps (to street level).

5.6.3 Judgments on the Internet

The Courts Service will develop a protocol for placing judgments on the web. Currently the software used to produce judgments varies, and each Judge decides whether or not a judgment should be made available on the internet.

One of the significant issues is faster release of information. The WMG would like to have Judicial Researchers (JCs) proof and then publish the judgments. The internet consultative group will determine the actual properties of the judgments database.

5.6.4 Case Management

The Courts Service embarked upon a computerisation project for all courts in September 1998. This will provide for civil and criminal case tracking and jury selection.

Privacy and security concerns do exist at a central level. Criminal case tracking has been implemented in four courts and will be rolled out to all courts later this year. The courts accounting system and forms management have been to tender, and civil case tracking is expected to go to tender late in 2001.

For legal aid and criminal proceedings, solicitors will be able to access specific case status and other details relevant to those specific cases in a secure environment.

5.6.5 Electronic Filing

The Courts Service is looking to build on the computerisation project towards improved utility such as electronic court filing. However, this would require significant investment in the existing infrastructure at back end.

5.6.6 Statute Book

The project of digitising the statutes of Ireland and making them available electronically, principally by compact disc, was initiated in 1995. The electronic versions were created by scanning the hard copy – so the law is unannotated and remains as passed. In addition, 99.9 percent OCR accuracy was not attained.

The Government currently prints official enacted promulgated law, and this costs £20, or £1500 for the complete set per annum.
Issues remain:

- There is no Irish language version, only English.
- There is a subject index covering 1922–1985, but nothing subsequently.
- There are 50 Acts, and 450–550 statutory instruments, so there is always a backlog.
- Different departments put their own legislation in different formats.
- Secondary legislation is difficult to document.
- Functions of Government move around, and Ministerial responsibilities can be shifted.
- Official version in hard copy is unannotated.

As part of the Government Action Plan 'Implementing the Information Society in Ireland' the Department of Enterprise, Trade and Employment has developed the Business Access to State Information and Services (BASIS) project. This initiative aims to improve the compliance processes that affect business in Ireland by delivering electronic information and services based around the 'life events' of a business e.g. business start-up and development, paying taxes and employing staff.

The BASIS website will provide business with a single access point to all Government information and services. The information will be delivered with a consistent look and feel and will focus on the needs of the business community rather than the structure of Government. It will bring Government information and services within easy reach of business, 24 hours a day, 7 days a week.

BASIS is working closely with REACH, the cross-departmental agency established by Government to improve the quality of service to customers of the Irish Public Service. In particular BASIS will work with REACH to develop a framework for the integration of services and the implementation of eGovernment in Ireland.

5.6.7 Information and Document Standards

The BASIS project has commissioned a content management study, which recommends the adoption of metadata and improved standardisation.

Both the eGovernment and BASIS projects are looking to a 'whole of Government' metadata standard.

There is much interest in Legal XML, but only at a preliminary level, and the standard has not yet been ratified.

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79 http://www.basis.ie
80 http://www.reach.ie
82 http://www.irlgov.ie/taoisearch/publication/infosocactionplan/infosoc.htm
5.6.8 Access to the Law

The Council of Law Reports publishes the official series of reports, the *Irish Reports*. There are a number of unofficial series of law reports, including the *Irish Law Reports Monthly*, which can be cited in court with the permission of the court. FirstLaw, a private company, receives some judgments electronically and scans them. The Bar Council also maintains a database and has its own supply arrangements.

There was some hope the BIALLI would solve many of the problems associated with access to judgments. However, this has not yet come to pass.

There are no court rules that preclude citation of unreported judgments.
5.7 Singapore

5.7.1 Introduction
Singapore was not a jurisdiction that was visited as part of the study trip, however, both the Supreme Court and the Subordinate Courts have promoted the use of information technology in court proceedings, with the aim of saving costs as well as making proceedings speedier and more efficient.

Singapore serves as a model of best practice in the implementation of technology, and also consistently enjoys high ratings in international surveys for overall quality of the justice system. Technology, while not the only factor, has had a significant impact.84

5.7.2 Overview of the Singapore Jurisdiction
The Singapore Judicial structure consists of three tiers. The Supreme Court, with two tiers, is the superior court of record, comprising the Court of Appeal and the High Court. The Judiciary consists of the Chief Justice, the Judges of Appeal, the Judges of the High Court and the Judicial Commissioners of the Supreme Court.

The Subordinate Courts, the first tier, comprises the District Courts, Magistrates' Courts, the Family Court, Juvenile Court, Coroner's Court, the Small Claims Tribunals and the Court Mediation Centre. These courts are presided over by the Senior District Judge and other Judicial officers. An estimated 95 percent of all court cases in Singapore are handled in the Subordinate Courts.

Some of the technology systems that have been developed and implemented include:

- Admission of Advocates and Solicitors System
- Bills of Sale System
- Civil System
- Criminal System
- Deposits Miscellaneous System
- Disciplinary Committee System
- File Tracking System
- Judgment Management System
- Powers of Attorney System
- Practising Certificates System
- Pre-Trial Conference System
- Solicitors' Profile System
- Sheriff's Account System
- Taxation Information and Management System
- Writs of Execution System

These systems together form an extensive and comprehensive database of almost all the documents filed or generated in all types of civil and criminal proceedings and matters dealt with by the Supreme Court. These systems allow the progress of almost all proceedings to be tracked and managed, and also provide facilities to enhance the productivity of the staff, such as the generation of pro-forma letters and notices or hearings lists. These systems also provide tools to assist the Supreme Court to carry out many routine operational, administrative and financial tasks faster and more efficiently.

5.7.3 Strategic Direction

One of the key features of Singapore is their strong strategic approach to technology and its implementation in the court environment.

In 1996, at the Technology Renaissance Courts Conference in Singapore, the Chief Justice proposed a Strategic Framework for the application of technology in the Judiciary. The Framework is as follows:

1. Technology should foster greater access to the courts; there should be easy access to justice via consumer-friendly technology that is comprehensible and requires little or no training;
2. Technology should enhance the role of the court as a service institution;
3. Technology should improve the quality of justice;
4. Technology should enhance the management of the justice system by increasing efficiency;
5. Technology should not be used as a substitute for the knowledge, skills and judgement of individuals. Rather, it should assist them in the exercise of their knowledge, skills and judgement;
6. Technology should enhance productivity, reduce delay, or otherwise be cost effective;
7. Technology should improve the decision-making process by providing complete and accurate information;
8. Technology should be acceptable and convenient to end users;
9. Technology should accommodate the need for data integrity, confidentiality, and protection of privacy; and
10. Technology should have a useful life.  

5.7.4 The Internet as Delivery Mechanism

The Supreme Court launched its own internet website on 28 June 1996.  

Information available on the website includes organisation structure, policies and procedures, hearing lists, notices, announcements and information about

86 http://www.supcourt.gov.sg
computerisation of the courts. In addition, members of the public can give feedback and make suggestions using the internet feedback form included in the website.

User-friendly electronic information kiosks have been installed in both the Supreme Court and the Subordinate Courts to provide lawyers and members of the public with general information as well as details of hearing lists, court operations and floor plans of the court buildings.

The Subordinate Courts\(^7\) also has an internet site.

### 5.7.5 Case Management

The Subordinate Courts are currently working on a fully computerised file tracking and information management system for criminal cases. The system will house databases containing all vital information concerning criminal cases dealt with in the Subordinate Courts.

Electronic searches of court records may be conducted by lawyers or by members of the public through LAWNET, a strategic legal information and communication network which links users and providers of legal information services electronically.

The Subordinate Courts launched the Automated Traffic Offence Management System (ATOMS) on 1 November 1996. Under this system, members of the public may pay composition fines for many minor traffic or parking offences at automated kiosks, which are located throughout Singapore. Where the period for payment of composition fines has lapsed, members of the public may plead guilty to the offence at these kiosks without the need to appear in court. This is the first system of its kind in the world.

The Integrated Criminal Justice System (ICJS) essentially involves the setting up of an integrated networking between the Subordinate Courts and agencies such as the Attorney-General's Chambers, Prisons Department and the Criminal Records Office. The network will enable these organisations to share information and common operational data.

### 5.7.6 Electronic Filing

The Supreme Court and the Subordinate Courts are also jointly undertaking a project known as the Electronic Filing System (EFS), which will enable law firms to file court documents electronically, either from their own offices, or through Service Bureaux located at the Supreme Court and the Subordinate Courts. This system will also allow law firms to receive documents from the courts in electronic form. The launch of the EFS will be a step towards the eventual installation of paperless courtrooms.

\(^7\) [http://www.gov.sg/judiciary/subct](http://www.gov.sg/judiciary/subct)
The EFS will provide an easy and convenient system for legal practitioners and members of the public to file documents electronically without the need to go to court.

5.7.7 Electronic Courts

Electronic Courts provide a convenient means of communication between persons at two distinct physical locations. In the Subordinate Courts, for example, a video-conferencing link has been established between Court 26 and Queenstown Remand Prison to facilitate the hearing of matters such as bail applications and to eliminate the security risks entailed in transporting people between the prisons and the courts. In the Supreme Court, video-conferencing has been used to allow evidence in Singapore civil proceedings to be given from as far away as the United States of America.

Video-conferencing facilities can also be used to allow vulnerable witnesses (for example, young children and victims in rape cases) to give evidence away from the court room, thereby saving these witnesses from any emotional trauma they may otherwise suffer from having to appear in open court.

In the Subordinate Courts, the Rechambering System further allows lawyers to make certain applications via desktop video-conferencing.

Interpreters situated at the Subordinate Courts in Havelock Square are also able to provide interpretation services to litigants at the Family, Juvenile and Civil Division located at the Paterson Complex via a Remote Interpretation (REMAIN) System of desktop video-conferencing.

On 8 July 1995 the Supreme Court launched the Technology Court, a court room designed to house a whole array of information technology tools, including the video-conferencing and computer-based recording transcription facilities mentioned above. Other apparatus available in the Technology Court includes an integrated audio-visual system which incorporates remote-controlled cameras; microphones; a visualiser and a large rear projection screen; as well as the Litigation Support System for Presentation (LSSP), which allows for the use of multimedia presentations. All of this is aimed at assisting lawyers to present their cases in a structured and convincing manner.

The Technology Court is a dramatic example of how information technology has been harnessed to serve the ends of justice. In launching the Technology Court, the Chief Justice remarked, ‘Depending on usage and the experience gained, more technology courts will be progressively constructed both in the Supreme Court and the Subordinate Courts.’

The Technology Courts in the Supreme Court and the Subordinate Courts (proposed) are also able to provide computer-based recording transcription facilities, whereby testimony given in court is recorded digitally as computer files. More than one person can transcribe a computer file recording simultaneously, unlike a cassette tape recording, which can be transcribed by only a person at a time. In addition, the transcription process can take place
while the recording continues, which is not possible in the case of analogue recording using cassette tapes. This should save both time and costs.

The Subordinate Courts have launched this Court of the Future project to showcase information technology products and applications relevant to the courts. The use of information technology which includes video-conferencing; multi-media products and applications; digital audio recording and computer-aided transcription; pen-based computing; voice-recognition transcription services; and Judicial research and litigation support software, has been successfully demonstrated.

CTV 21 is an on-going project that enables the Subordinate Courts to continually source for new technologies and applications, and to evaluate and adapt them for use in the courtroom.

5.7.8 Security

The Electronic Filing System (EFS) has a Key Management System component that manages overall security. This component manages and tracks authorised users, issues digital signatures to authorised users and allows users to be identified and authenticated.

5.7.9 Public Guidance

LawNet88 is a legal information network that provides users with the ability to retrieve legal information services electronically. A wide variety of services are currently available, relating to legal research, litigation, conveyancing, and corporate law. LawNet is provided by the Singapore Academy of Law.

The ‘legal workbench’ contains:

- Legislation
- Case law
- Foreign and international law
- Notices and directions
- Reports and publications

Most information is directed at the legal profession and is available at a cost. However, some content is available at no charge for community and individual access. This is limited to:

- a selection of statutes;
- Reports of the Law Reform Committee of the Singapore Academy of Law; and
- general legal information published by the Subordinate Courts.

88 http://www.lawnet.com.sg
5.8 Australia

5.8.1 Introduction

While a visit to Australia was not specifically part of this project, because of the proximity of Australia to New Zealand, and the relatively sophisticated use of technology in the court environment in that country, I have decided to include some information in this report.

Much information has been gleaned from attendance at the Technology for Justice Conference 2000, which was organised by the Australian Institute of Judicial Administration (AIJA). Other information published by that organisation has been of use, as well as specific information received from specific courts or jurisdictions in Australia. An excellent summary of technology in Australian courts has been published by the AIJA.

5.8.2 The Internet as Delivery Mechanism

All Australian courts have made extensive use of the internet. In particular, the High Court and the Family Court have high quality sites, which often win awards.

For example, the Family Court internet site includes the following information:

- Family law information service
- Divorce, children, consent, and other client information
- Brochures
- Do-it-yourself kits
- Making some common applications
- How to manage your case
- Information for children & young people
- Student resource material
- E-mail notification service
- Legal resources
- Court lists
- Court forms
- Judgments
- Legislation (Family Law Act, Rules, etc.)
- Practice directions
- Case management guidelines and directions
- Papers and reports
- How to find out in family law
- Court locations and addresses

The development of internet portals is also strong in Australia, particularly where a State Government establishes a portal site on Government services.

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91 http://www.highcourt.gov.au
92 http://www.familycourt.gov.au
This assists users to locate relevant or appropriate courts, sources of assistance and legal and other advice. The states of New South Wales, Victoria, South Australia and Tasmania all have developed sites such these.

5.8.3 Case Management

Australian courts have also been advanced in the development and implementation of case management systems. A good example is that of the Family Court of Australia. That court initiated a project in 1998 to develop a new approach to case management as well as the technology required to support it.

The design approach included the following requirements for the new system, which serve as general pointer to the type of considerations that courts and tribunals will increasingly look to as they implement new systems:

- a high level of functionality – allowing the court to meet its client needs;
- a low risk development – proven technology and fixed price; and
- an infrastructure comprised of current mainstream technology.\(^{93}\)

The Family Court Casetrack system is based on a system developed by the Western Australian Ministry of Justice. This approach is a good demonstration of that being undertaken by many Australian courts.

Courts are not interested in being test sites for cutting edge technologies and there would appear to be a greater willingness to look to experiences in other courts and jurisdictions with a view to adapting technology that has proven to work elsewhere.\(^{94}\)

Another good example of a case management system is that used by the Dust Diseases Tribunal of New South Wales. The system, known as Amairgen, is held to be one of the first case management systems designed to be upscaled to facilitate electronic filing of court documents. Amairgen will ultimately completely integrate the registry, court schedule and electronic courtroom functions.

5.8.4 Electronic Filing

The Victorian Civil and Administrative Tribunal (VCAT) has developed an electronic filing system for residential tenancy disputes which was launched at the Technology for Justice conference. The system allows registered users, for example landlords and tenants, direct access to the tribunals system via the internet, and to file applications, produce notices, lodge enquiries, pay necessary fees, receive documents and monitor the status of their case.

Another project, that of Court 13 in the Victorian Supreme Court in collaboration with Ringtail Solutions, offers an electronic filing cabinet service. The process allows courts to accept documents in image and electronic format, plus relevant index information. Flexible bulk importing from other applications is provided.

\(^{93}\) fn 36 at 14
\(^{94}\) fn 36 at 14
Australia has been active in the development of electronic appeal books, a form of electronic filing in the appellate jurisdiction. The Council of Chief Justices of Australia and New Zealand (CCJ)\(^5\) has been investigating the use of electronic appeal books in courts and released a report in May 1998. Specifically the Council examined the development of common rules for the presentation and format of appeal material in electronic format.

Regular reports continue to be provided to the Council on developments and progress in each jurisdiction. Many states have adopted the recommendations and are progressing towards electronic filing, not just in the case of appeals.

5.8.5 Electronic Courts

Australia has made extensive use of technology in the courtroom and a summary of examples can be found in the Technology for Justice 2000\(^6\) conference report.

In July 2001 the Queensland Chief Justice and Attorney-General launched Australia’s first purpose built courtroom. This included use of computer screens for members of the jury, the bar and the judge’s bench to access all papers and documents. Transcriptions could be accessed during the course of proceedings and notes made by counsel and the judge.

5.8.6 Judicial Support

Many Courts in Australia have made good use of intranets to deliver information to the judiciary and share documents amongst Judges. Examples include the Federal Court of Australia, Western Australia and the Magistrates Court of South Australia\(^7\).

The New South Wales Judicial Commission has developed a significant tool called the Judicial Information Research System (JIRS)\(^8\). JIRS is most widely regarded for its sentencing information system, which is considered one of the best examples in the world.

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\(^6\) Fn 36


Again, most Australian courts have provided tools to assist Judges create judgments and other documents as well as providing judgments databases. Those tools and the associated standards are referred to in section 5.8.9. The Supreme Court of Western Australia was the first in Australia to successfully move to a standard electronic format at the point of creation for its judgments.

Judgments databases are highly regarded research tools for the Judiciary and their support staff and the registry, but they also provide the mechanism by which courts are able to supply judgments to the public, thereby satisfying the demand for improved access to justice. To illustrate, all Australian courts provide their judgments to the Australasian Legal Information Institute (AustLII) service.99

AustLII provides free internet access to Australian legal materials. It has a policy agenda to improve access to justice through better access to information. AustLII publishes legal information such as legislation and decisions of courts and tribunals as well as law reform and royal commission reports. It is considered a world leader and has spawned Canadian, British and Irish and Pacific versions.

The Supreme Court Library of Queensland has developed an electronic library for the judiciary, which provides direct access to relevant information products and services.100 Victoria has developed a similar system, with shared electronic library facilities between the Supreme Court and the County and Magistrates Courts.

5.8.7 Security

Security and authentication is one of the infrastructure prerequisites for satisfactory electronic filing and, accordingly, is important in two instances of electronic filing – VCAT, and the joint Law Society and NSW Land and Environment Court project. VCAT uses a user id/password approach as being appropriate to their client base and level of security concern, while the Land and Environment Court is using a prototype of a PKI approach.

5.8.8 Confidentiality and Privacy

The Supreme Court of Tasmania has developed a database of sentencing notes, which they publish on the internet101.

Some examples of Tasmanian headlines that lead to the publication of sentencing notes on the internet are:

- ‘...where’s the justice asks Tassie Mum?.....’
- ‘...sentence just a slap on the wrist....’
- ‘...rape victim complains about leniency...’
- ‘...twelve months imprisonment a joke....’

99 http://www.austlii.edu.au
It seemed to the Judges that such headlines undermined public confidence in the work of the court and undermined the general deterrent effect of the sentences imposed. The story that accompanied the headline was, more often than not, an incomplete and inaccurate account of the reasons for sentence. The Registrar of the Court wrote the odd letter to the paper in an effort to correct the misapprehensions these accounts created but they were seldom published.\footnote{97}

It was decided by the Judiciary that they had to ensure that the public were properly informed of the full reasons for sentencing. The decision was made to publish on the internet.

Since the court started publishing the reasons for sentence on the internet in April 1999 there has been a marked difference in the reporting of sentencing decisions.\footnote{98}

The key to the success of the programme is the speed at which the material is put on the internet, and is subsequently available to the media in particular. Rather than requiring a journalist be present in the court to record details, they are now able to source the information off the internet and write their stories.

A tape recording of the full reasons for every sentence is transcribed by the Judge's secretary, and stored in the court's sentencing database. These comments are edited to prevent the disclosure of the identity of victims of sexual crimes and youthful offenders, and the reasons are then published to the court's internet site.

In the first four months of operation the site had over 2000 hits, and now averages 230 visitors per week.

The reasons are removed after 14 days to make it more difficult for a person to build their own database, for some improper purpose, of sentences imposed by the court. It is acknowledged that that risk remains to some degree, but on balance it is felt that the need to properly inform the public takes precedence over that level of risk.

Tasmania was the first jurisdiction in Australia to do this, and recently the Australian Capital Territory has followed suit.\footnote{99}

5.8.9 \textit{Document and Information Standards}

The Legal Information Standards Council\footnote{100} has produced best practice guidelines for legal internet sites. There are twelve key guidelines:

\footnotesize
\begin{itemize}
\item \footnote{98} http://www.supremecourt.act.gov.au/search/sentences.asp?textonly=no
\item \footnote{99} http://lawfoundation.net.au/lisc/recommend/bpguide.html
\end{itemize}
The person(s) or organisation(s) responsible for the information on a site is clearly indicated on all pages of the site. Full contact details are provided including address, phone, fax and email.

Legal content is checked by a lawyer with expertise in the area.

The currency of the information is clear.

The jurisdiction to which any information relates is clear.

The content is written and presented in a way that makes a clear distinction between legal information and legal advice.

Where appropriate, users are directed to other quality sites and sources that contain related information. An annotation that briefly indicates the authorship, content or relevance of these sites enhances the usefulness of these links.

Consider providing links to relevant legislation and case law.

For sites where links to primary legislation and case law are considered useful, use the correct form of citation.

Where appropriate, users are provided with information on how and where to obtain legal advice or further information. Referral information includes name, address, telephone and fax numbers, email and web address where available.

Permission is obtained to use content sourced from other providers. The source of the content is acknowledged on the site.

Links are not made to other sites by framing them within the original site, unless permission has been obtained.

The site meets recognised usability and accessibility guidelines.

The AIJA has also produced guidelines for the production of judgments. These guidelines, revised in 1999, cover:

- Judgment formats
- Catchwords or subject terms
- Pagination of judgments
- Medium neutral citations
- Technical structure and document preparation

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