

## Chapter 3

# Information and Document Management

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Information and document management can be extremely expensive and, as such, it is essential to undertake a robust review of any existing manual systems before embarking upon the purchase and installation of a technology-based system. The road to an effective IT-based system has often been littered with expensive wrecks: either the base manual system has been imperfect and not conducive to being mechanised and/or a court administrator has gone ahead with an inappropriate system after having been ‘promised the world’ by an IT company’s slick sales pitch.

It should be remembered that there is no shame in using a manual system if that is what an institution’s workload and budget permits. An effective manual system is better than an ineffective IT-based one.

### 3.1 Moving to an IT-based system

When moving to a technological support system, there are a number of options available. As with the decision to move to an IT-based system or continue to operate a manual system, the institution should start with an assessment of its needs and capabilities. Sufficient time must be allowed: in The Bahamas, for example, there was a five-year plan to introduce systems and technology into the Registry of the Court of Appeal (Demeritte-Francis, 2010).

The advantages of introducing technology, while usually involving a massive financial investment, are clear. Technology will help to reduce time spent by employees on routine, time-consuming tasks, such as telephone or document inquiries from lawyers and the public. More importantly, it will provide enhanced control over the caseload and enable communication with, and facilitate transparency for, the public.

However, with any technology system, there will always be a need for a ‘backup system’ and this will also have to be established. No system is infallible and, without a properly planned and carefully organised backup system, there will be a risk of chaos.

It is not within the scope of this *Handbook* to review in any detail the specific options which advisers and service providers could devise. With the speed of change in technological developments, there will no doubt be a range of different software programs, facilities and functions made available on a regular basis.

In general terms, one could point to three types of generic systems: (a) a ‘bare-bones’ case listing system; (b) a case listing system with a scanning, filing and scheduling facility; and (c) a case listing system which, in addition to scanning, filing and scheduling, has additional facilities, for example, an archival system. Inevitably, the range of options regarding to technological support will also depend upon the size, workload and resources of a court or tribunal, including its ability to properly support any IT-based system on an ongoing basis after installation. In this respect, it is always

critical to factor the ongoing operational costs of such systems in the budgeting process, over and above the actual purchase price.

As with most other topics covered in this manual, it is always recommended to learn from the experience of others, especially courts or institutions of similar size or mandate, before embarking on any major IT-based initiative.

For example, a Business Transformation Program for the Supreme Court of Canada has been established as a priority for fiscal years 2012–13 and beyond so as to better align: (a) case management improvement; (b) process changes relating to the operational management of cases; and (c) technology initiatives in the Office of the Registrar, more closely with the Office's long-term strategy and vision. Given the complexity and number of individual projects involved, the registrar decided that business transformation should be approached as a programme following the success of a recently completed Court Modernization Program. Under the umbrella of the Business Transformation Program, various business transformation projects will be identified, prioritised, resourced and tracked. Governance and proper project management are key to the success of such a programme and, accordingly, a Program Office will be established to track projects as they come in and out of the programme.

Similar methodology was used for the Court Modernization Program, under which the Supreme Court of Canada brought computers into the courtroom, among other courtroom improvements. A Program Management Office was established, with a steering committee and working groups established as required. In that case, there was also greater reliance on outside contractors to assist with the design and implementation of the new technology.

### **Box 3.1 Website introduction in The Bahamas**

... [T]he introduction of the website launched in 2003 and [its implementation has had the following benefits]:

A reduction in the daily correspondence and telephone enquiries regarding court procedures.

The provision of an alternative medium to practitioners and the general public for the delivery of court information. For example, the daily cause list is posted to the website and court judgments are posted and are available on the day it is pronounced.

An increase in control and management by the Court of Appeal.

The provision of transparency for the public at large.

(Demeritte-Francis, 2010)

### 3.1.1 The need for staff training on IT

The implementation of technology will not be successful without proper training for staff and other users of the system. Potential employees should have a minimum level of technological expertise. At the very least, all staff should have basic keyboard skills.

Since the aim of the registry is the timely and efficient completion of the court or tribunal's caseload, the consensus appears to be that there will be a growing trend towards technological support and IT-based systems. The analysis which has so far been identified in the *Handbook* as comprising the make-up of an operating model of a court or tribunal is that it should be operated under clear rules, under the overall governance of a chief/senior judge, and with both judicial and administrative functions under the control of a registrar who is directly answerable and accountable to the chief/senior judge. There can be no doubt that one of the principal measures of the success of the institution will always be its case flow/output efficiency which, in turn, depends to a critical degree on the proper administration of its case management system.

Case management begins when documents, prepared in accordance with procedural rules, are filed in the registry. At the time of filing, fees have to be paid or become payable. Staff members need to be disciplined in the recording, retention and calculation of the required fees. This, in turn, requires that they have been given appropriate training and have a minimum knowledge of the character of the legal documents being submitted. However, case management for registry staff is a continuing responsibility throughout the life of the case. As cases develop, the documentation can become voluminous. The filing and the categorisation of the documents can become complex. This requires staff to have training and a minimum level of legal knowledge in order to understand the process of which the documents form a part. There should be built into the process a capability and a facility to identify and retrieve documents. Each case as it is commenced must be entered in a cause book or recording system. The registrar is directly accountable for the contents and disposal of all matters listed in the cause book or system.

The experience of those operating technology in these areas supports a firm conclusion that overall efficiency and accuracy will improve even where the technology is confined to the sole introduction of a listing system. That is a consequence of the importance to be attached to the list of causes lodged within the registry, along with a concurrent need to monitor and process them expeditiously.

Additionally, a listing system which includes the capacity for scanning to image the paper version of various documents, computerised filing, creating statistics and computerised scheduling will manifestly assist staff in the registry, but such a system will not remove the need for staff to have suitable IT training and to possess a minimum level of legal knowledge. In this regard, it has been found that, as a result of training for managing computerisation and from its practical application to the job and tasks at hand, staff have developed an enhanced level of knowledge of the legal process and requirements attendant to various types of legal documents and proceedings.

As with other training requirements, it should be remembered that there is considerable experience available in existing courts or tribunals regarding training programmes across the board. There may also be a possibility of ‘twinning’ with another similar institution and sharing both experience and perhaps resources. For example, various provincial jurisdictions in Canada are planning to offer training sessions to court staff in other Canadian jurisdictions, either in person, by video conference or by webinar (i.e. by web-based seminar). This is especially helpful for smaller provincial jurisdictions, which have less resources or capacity to offer training for their staff. The same principle could easily apply to national and international courts or tribunals that need specialised training for their staff in IT or technology matters, among others.

### 3.2 E-filing

E-filing is one of the most important considerations with respect to technology in courts and tribunals. Yet, it is an area that is still hampered by obstacles to implementation.

At its first stage, there are two forms of e-filing that may be considered: first, e-filing directly by attorneys and, second, the filing by attorneys of a CD-Rom and documents at the registry. At the time of writing, direct e-filing is a concept rather than a reality in most institutions. However, it has been considered or examined in some courts (Actie, 2010). The concept brings into play an important principle, namely access to justice. At present, it is not justified to make the assumption that all attorneys have the technological capability to commence their clients’ proceedings by e-filing.

In addition, in most jurisdictions there has been an increased volume of litigation being commenced and pursued by litigants in person using the conventional paper process. Until there is a proper constitutional safeguard for the accessibility of litigants to justice – with e-filing or without – e-filing faces considerable practical obstacles. In other words, the justice system will very likely continue to take steps aimed at advancing e-filing mechanisms in all courts or tribunals, but a way will have to be found to accommodate litigants or lawyers who are unable to use e-filing.

On the other hand, the filing of a CD-Rom containing a copy of the documents in a given case has proved successful (Demeritte-Francis, 2010). (An obvious, but nevertheless significant, aspect of the adoption of this system is to reduce the physical space taken up by copies of documents being lodged and kept in the registry).

However, it is crucial to bear in mind that there must be complete consistency between the documents on the CD-Rom and the documents that are filed in paper format. This is an important obligation and duty which must be imposed on attorneys or litigants. A failure to do so is not simply a bureaucratic error, because the filing of documents is governed by the rules, is connected with the obligations of disclosure of documents in proceedings, provides the backup which is required for the computerised system and, therefore, amounts to a substantive obligation in connection with the filing of documents.

Two fundamental aspects of e-filing must be noted. Any e-filing process will require an amendment of the procedural rules of the court or tribunal, because the process constitutes a significant change to the formal procedural steps normally covered by the rules of a court or tribunal. All work within the registry forms part of a formal process and must be underwritten by the rules. The second fundamental aspect is the need to maintain confidentiality of all documents generated by a legal process. Indeed, one of the principal difficulties envisaged with direct e-filing, a difficulty yet to be satisfactorily resolved, concerns the maintenance of security in connection with legal documents. Appellate courts have had to consider on many occasions the consequences of unwitting and unintended disclosure of documents outside the confines of the court process. The potential for widespread disclosure in a case of electronic disclosure by error or by deliberate act on the part of those controlling the documents requires close attention. For the same reason, namely the confidentiality of all documents lodged with a court or tribunal as part of its process, the selected system must ensure that the court or tribunal filing is immune to interference by entry into it and the abstraction of court orders and documents. Such protection has been provided in registries by an effective Internet Gateway Security Module.

The importance of maintaining security in connection with the stored information – and the additions to the stored information – cannot be over-emphasised. Thus, there must be a form of audit facility, designed in the software application, which can

### **Box 3.2 The benefits of e-filing in the East Caribbean Supreme Court**

E-filing exploits the electronic super-highway to minimise not just the physical movement of people and paper documents, but also to contain the increasing requirement for physical storage space. The following are the main benefits of e-filing:

- An integrated information system through which courts can proactively track each case through its lifespan,

- Improvements in efficiency through minimising paper flow throughout the litigation process,

- Shortened case processing times,

- Faster document filing and retrieval,

- Minimising loss of documents or files through filing mistakes,

- Concurrent access to any case file by different persons, and

- Access to case files from any location (e.g. outside the courts).

E-filing greatly benefits both the law firms and the judiciary and has greatly enhanced case flow management since its introduction.

(Actie, 2010)

guarantee the veracity of the information entered onto the system. Users will need to be nominated and qualified according to the task to be put on the system, and an audit trail will have to be created to ensure responsibility can be allocated for each entry. The audit trail must run to the stage of judgment and include monitoring the procedural steps leading to judgment. Where, for example, a number of individuals may be involved in the drafting of formal papers, including drafts of judgments, security is required to ensure that the status of the judgment which is to be published is maintained. Experience has shown that draft judgments can sometimes be published on the internet, with the obvious consequent difficulties that this can give rise to.

It should be noted that a considerable amount of work has been carried out across existing courts or tribunals on this topic. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) has been working for some time on an 'e-court' system. It is therefore recommended to assess various systems already in place in other courts or tribunals, to determine which may be compatible for each specific registry's needs and requirements.

### 3.3 The judiciary and technology

Mention has already been made of the need to ensure adequate training for the staff involved in setting up or operating any IT or computer-based system. Since judges are the backbone of any court or tribunal and carry responsibility for the delivery of justice, it will be difficult to obtain best value from an investment in technology unless judges are also trained to take advantage of the benefits of a computerised information system. Further, judges' time in court will be greatly assisted by the process of filing documents in electronic format. A CD-Rom, for example, will greatly facilitate research and reference by the judges and attorneys in the course of the proceedings.

Nonetheless, it is again important to look at the experience available on the international scene. It might also be borne in mind that not all members of the judiciary across courts or tribunals will necessarily be enthusiastic about (or capable of) operating technology, regardless of the advantages of its use. Staff will need to keep that in mind and make adjustments accordingly.

### 3.4 Technology and outreach to the public and the media

The demands of the media and the public have drastically increased, with more focus being given to court proceedings and legal issues. Fundamental rights concepts and societal change have generated an enhanced requirement for transparency and understanding in the delivery of justice. Judges are communicators, but largely only through their judgments. The public also needs to be reached through the administrative arm of the court or tribunal and the facilities that are available should be publicised.

In this regard, a website media portal with links to news releases, publication of decisions, and information and guidance on procedure and functions is certainly something that can be effectively organised through technology. Similarly, the public

management and publication of court proceedings can be advanced invaluablely by the use of technology. A simple example can be taken from The Bahamas, where the Court of Appeal no longer places a cause list on a bulletin board in the building as well as publishing the list on the internet. Such publication on the internet is, in accordance with the rules, sufficient notice of the proceedings and it is upon that which the lawyers and attorneys must act (keeping in mind that access to justice and access to court information to the public, litigants or lawyers without computer access also needs to be maintained).

During the Ottawa meeting it was commonly found that, where technology exists, there are great advantages in the promotion of public awareness. However, not surprisingly, there were comments that the public who attend court were not able to see documents meant only for the judges and attorneys during the course of the hearing. Here again, technology can be used to increase public awareness of a court or tribunal's work, as well as to generate greater participation and understanding in the course of a hearing. Special provision can always be made for those documents that should be seen only by judges and attorneys, but not by the public at large.

Where possible (and affordable), technology should be embraced to meet the growing expectations of court users in all respects. For example, the Supreme Court of Canada adopted in 2009 a policy governing access to case-related records. This policy document is the foundation for public access, through the internet, of docket information, party information, pleadings, case summaries and webcasts (online broadcasts) of hearings. The information provided to the public is extensive and serves to enhance the public's understanding of the role and work of the court.

There is also a crucial need for a well-designed and well-resourced outreach programme to further increase the understanding and knowledge of a court or tribunal by users or the public.

In Canada, for example, the Office of the Registrar of the Supreme Court is dedicated to ensuring that the public is well informed and understands the role of the court. Litigants, the public and the media can access various court services, including court documents, through the Registry Office or the court website. Access to information about the court, its role, its building, the judges, as well as the administration of the court, is also readily available on its website. Tours of the building are also available year-round and provide visitors with the opportunity to learn more about the Canadian judicial system, as well as the role and work of the Supreme Court of Canada itself. In particular, the court has a special educational programme aimed at elementary and secondary level students, in which they are able to visit the court and learn about the Canadian judicial system and the important role of the court. School teachers who are unable to visit the court with their classes are able to download an educational kit from the website, which can be used to help teach students about the important role of the Supreme Court of Canada as a national institution.

Where a court or tribunal will, by reason of the profile of its caseload, be under closer than usual media scrutiny (for example, an international tribunal created for a single purpose or goal), staff should be available who are properly trained in handling the

media so that they might clearly articulate an appropriate response in regard to the tribunal's activities.

The expectations of the wider public also need to be considered in the outreach information that is provided by such tribunals to interested/affected communities via press releases.

In summary, any steps that can be taken to provide information to the public about a court or tribunal's work and operations will be useful and will enhance the public's understanding of the institution.