Computer News for Judges

CNJ

CANADIANS EXPLORE COURT TECHNOLOGY AT CTC8

Mr. Justice Garrett A. Handrigan
Trial Division, Supreme Court of Newfoundland and Labrador

The eighth National Court Technology Conference (CTC8), the biennial conference of the U.S. National Center for State Courts, was held October 28-30, 2003, in Kansas City, Missouri. It provided an occasion for the Judges Technology Advisory Committee (JTAC) to meet and explore leading-edge electronic applications for court settings.

JTAC's own meeting in conjunction with the conference dealt with key committee projects. One project is discussed in this issue of CNJ, see "E-access: Judicial Council Seeks Comments on Discussion Paper." JTAC also:

- received reports from Dr. Martin Felsky on JTAC's blueprint on computer security and on electronic evidence standards;
- discussed a preliminary paper by JTAC member Daniel Poulin, professor at the Faculty of Law at the University of Montreal, on the concept of a Canadian Centre for Court Technology;
- received a further report from Professor Poulin on a project to develop standards for uniform case naming and guidelines for the protection of identities in published case law.

JTAC hosted more than 60 Canadians in attendance at CTC8 for a noon-hour briefing on JTAC's work and issues relevant to Canadian courts. Chaired by Madam Justice Adelle Fruman of the Alberta Court of Appeal, the meeting heard from Madam Justice Fran Kiteley, of the Ontario Superior Court of Justice, concerning the consultation on the discussion paper on open courts and electronic access and the work of the subcommittee considering the feasibility of the creation of a Canadian Centre for Court Technology; Dr. Felsky on the draft blueprint; Professor Poulin on judgment standards and citations; Ms. Jennifer Jordan, Registrar of the B.C. Court of Appeal, on other initiatives of JTAC; Mr. Justice Robert Carr of the Manitoba Court of Queen's Bench, on JAIN; Mr. Michael Walker, Director, Communications and Information Systems Division, FJA, on the NJI-FJA "partnership"; and Ms. Ann Roland, Registrar of the Supreme Court of Canada, on her court's experience with e-filing.

CTC8 – THE ULTIMATE TECHNOLOGY SHOW

The National Center for State Courts, a non-profit organization that provides leadership and service to state courts, is made up of divisions dealing with court research, court management consulting, education, government relations, international programs, and technology.

Read about ...

Its technology conferences bring together judges, court administrators and information technologists for an extraordinary mix of education sessions and exhibits.

Since the first conference in Chicago in 1984, attendance has grown by an average of 25 percent a year. To the point where in 2003, the vast Kansas City Convention Center welcomed more than 2,500 participants, many from beyond U.S. borders, and more than 100 vendors.

Topics addressed by two of the conference sessions are described in this issue of *CNJ*, see "Judicial Decision Support Systems — A Judicial Tool Kit" and "Automated Court Performance Measurement Systems — The Next Big Thing."

For further information on CTC8, visit http://www.ctc8.net

JUDICIAL DECISION SUPPORT SYSTEMS — A JUDICIAL TOOL KIT

Madam Justice Laurie Allen
Court of Queen's Bench of Manitoba

One of the main benefits of attending the National Center for State Courts biennial National Court Technology Conference is finding out what is going on in other jurisdictions.

This time, I have come back from Kansas City, Missouri, full of enthusiasm and a fair degree of envy about a New Zealand initiative.

By customizing two off-the-shelf programs — Microsoft Word and Access — the judges of New Zealand have created an incredible suite of tools that:

- assists with trial management and decision writing
- provides a filing system for decisions
- creates a personal library
- gives direct access to documents, bench books and templates and
- is a gateway to electronic research material.

The computer literacy skills needed to use the program are minimal and the benefits seem incredible.

The design criteria were developed by judges who wanted to use technology in every area of judicial activity that was amenable to technology support. Their goals were:

- demystify the computer process
- use familiar terms and concepts (e.g. "workspace" for "file")
- automate the filing process to avoid the necessity for computer knowledge
- simplify and standardize search processes.

So, how does it work?

Trial management

By creating a new workspace for each trial, a judge has access to a number of documents including the chronology table, issue table, summing up, and judgment documents discussed here as well as trial notes and evidence.

The chronology table document automatically organizes evidence by date. You simply key in a date as you take notes and the document creates a table that sets out the date, the event which took place on that date and the transcript reference to witness name and page.

The issue table document will sort your notes by issue. You must first define the issues you expect in the trial (e.g. use of a document, nature of a document, description of person using document) and then as the witnesses speak to any of these issues, a simple code (100, 200, etc.) will flag the evidence from each witness, again with a reference to transcript page and witness name.

For a jury trial, the summing up document contains a list of elements — an outline, space for preliminary remarks (boiler plate), elements of the offence, the evidence, Crown case, defence case and closing remarks. Plus, you can go directly to the Criminal Law Bench Book (with only one click) and import the elements of the offence directly into the summing up document.

The judgment template asks for a few details and then establishes a permanent style of cause. While you still have to write your own judgment, once you are finished, you are asked:

- is it time to finalize and lock the document

- are there any suppression orders re witness names, bans on publication, etc.
- in terms of distribution, what publication priority do you feel it has.

The judgment then goes automatically to the court judgment data base and, if you wish, your own personal library. The court judgment data base will then serve as the distribution point for legal publishers. The key words you enter direct the filing of the case in the data base and will be the basis for future retrieval by your colleagues.

The libraries

Both the "public" library and the judge's personal library looked like wonderful features. As well, because of the finalization process, the Judicial Decision Data Base is updated daily with all cases from all courts. It seemed very seamless to jump from feature to feature. For example, if you were researching sentences, the left side of the screen has the list of offences and the right side has all relevant cases (with the leading case in bold).

Gateway to the Internet

Again, no moving in and out of programs — one click and you are connected to the Internet for research beyond the New Zealand Judicial Decision Data Base.

Summary

I have only scratched the surface in my description of this Judicial Tool Kit, but it seems to me that even if the program only organizes trial notes it would be incredibly useful. When the other features are added, it seems almost too good to be true. But I did see it work and heard the Hon. David Harvey of the New Zealand District Court extol its virtues.

This Judicial Tool Kit concept surely seems like something that Canadian judges should be trying to develop.

If you want to know more, you can contact Judge Harvey at djhdcj@courts.govt.nz or contact me at lallen@judicom.gc.ca for a copy of Judge Harvey's paper, which is part of the CTC8 collection.

AUTOMATED COURT PERFORMANCE MEASUREMENT SYSTEMS — THE NEXT BIG THING

If courts don't take the lead in measuring court performance, others will impose systems on them. This was the warning from presenters in plenary and educational sessions of the eighth National Court Technology Conference.

They argued that performance measurement drives success. Performance measurement systems are commonplace in the private sector and rapidly moving into the executive and legislative branches of government, as well as the non-profit sector.

Presenters discussed their work in developing a critical set of measures to regularly monitor, evaluate, lead, plan and manage. Automated court performance measurement systems (CPMS) — wherein computer technology makes performance measures available to court managers, court clerks and judges on demand — are likely to be the "next big thing" in court administration.

For example, the home page of a court's Web site could display a window highlighting performance information summarized by a single number, the "Court Performance Index" or CPI. A green or red triangle with another number would indicate whether the CPI is up or down from the previous day and by how many points.

The indicators in development include: citizen/court user opinions of court performance; an index of caseflow efficiency and timeliness; case file reliability and accuracy; effective collection of monetary penalties imposed by a court; jury representativeness; court work force strength; court cost; and performance measurement readiness.

For more information on the CPMS concept contact session leader Ingo Keilitz at ikeilitz@cox.net.

E-ACCESS: JUDICIAL COUNCIL SEEKS COMMENTS ON DISCUSSION PAPER

A host of questions must be resolved to make way for electronic access to court records.

The opportunity to contribute to a national consultation on e-access is presented by the Judges Technology Advisory Committee (JTAC) through its discussion paper *Open Courts, Electronic Access to Court Records, and Privacy*. JTAC has sent the paper to deputy attorneys general, provincial and territorial chief judges, and Council members and their courts soliciting comments.

The discussion paper surveys the rapid movement across North America to electronic filing and electronic retrieval of court records and docket information. It also highlights policy and practical issues that e-access presents for decision makers.

The key question, says the paper, is the relationship between two fundamental values: the right of the public to transparency in the administration of justice and the right of an individual to privacy.

From an analysis of legislation, regulations and common law decisions in Canada and the United States, the paper draws these central conclusions:

- The right of the public to open courts is an important constitutional rule.
- The right of an individual to privacy is a fundamental value.
- The right to open courts generally outweighs the right to privacy.

The discussion paper provides a framework within which electronic access policies might be established. It refrains from recommending a model policy due to the complexity of the issues and the importance of consultation among the many players involved in electronic access. It warns of the challenges ahead and the many conflicting interests to be weighed.

DRAMATIC CHANGES FROM A PAPER WORLD

The issue of accessibility and the rationalization of the fundamental values of openness and privacy have arisen in a world dominated by paper. That will change dramatically, predicts the discussion paper.

Printed documents of all kinds comprise only .003 percent of the new information published each year. Magnetic storage is by far the largest medium for storing information and is the most rapidly growing, with shipped hard disk drive capacity doubling every year.

Canadians are hooked on electronic technologies. In Canada in 2001, half the small businesses were doing business on-line. Canada leads North America in connectivity with 60 percent of Canadians on-line as of 2001, compared with 52 percent of Americans. In the financial sector, 85 percent of Canadians have a debit card and 82 percent of debit card holders have used their card to make a purchase. An estimated 2.5 billion debit card transactions were made in Canada in 2002. Canadians can use their debit cards at more than 460,000 terminals across Canada.

In short, electronic access is occurring in other domains, and coming for the courts.

> It is not a question of whether the electronic environment will dominate the administration of justice. It is a question of when.

May we have your comments?

The discussion paper *Open Courts, Electronic Access to Court Records, and Privacy* may be found on the Canadian Judicial Council's Web site at http//www.cjc-ccm.gc.ca/english/publications/OpenCourts

The Canadian Judicial Council seeks comments from interested persons and organizations. Send comments by mail to the Judges Technology Advisory Committee, Canadian Judicial Council, 15th floor, 150 Metcalfe St., Ottawa K1A 0W8 or by e-mail to e-access@fja.gc.ca.

Several courts have embarked on electronic filing of court records, including the Supreme Court of Canada, the Federal Court, the Tax Court of Canada and superior courts in at least four provinces. Several courts now provide remote electronic retrieval of docket information. No court in Canada facilitates e-access to court records yet.

In some jurisdictions, courts post judgments to their own Web sites; in others, they provide electronic versions to CANLII or commercial publishers. The paper points out a number of anomalies in current practices. Reasons for decision are no longer universally available without charge. Some subscribers pay a registration fee with a commercial publisher. In child protection matters, there may be a lack of consistency in the "anonymization" protocols commercial publishers use. In some provinces, there may be many versions of a judgment: the version released to the parties, the version released on the court Web site, and the versions provided by different commercial publishers.

Policy issues

The time to work out access policies is before the access systems are put in place, says the paper. The paper includes a discussion of the policy issues outlined here.

Responsibility for policies
Should the judiciary and the Council have a role in establishing e-access policies?

Yes, in that courts have supervisory and protecting power over their own records, and the Council is mandated under the *Judges Act* to "promote efficiency and uniformity" in the administration of justice. So the Council should play a leadership role in initiating discussions and debate about the development of electronic access policies. But judges will continue to adjudicate disputes about access by the public to court records and docket information.

> It might be seen to fetter the discretion of judges disposing of the merits of a proceeding where an individual or group has attempted to gain e-access to court records or docket information if the Council had adopted a policy which it encouraged all chief justices and chief judges to adopt.

In any event, attorneys general and the Minister of Justice have statutory and regulatory responsibilities related to the subject, and lawyers, court agents, members of the public, the media and businesses will be keenly interested in developments.

Differences between paper and electronic environments
The concept of "open courts" includes both the right to be present in the courtroom as the proceedings are conducted and the right to access the court record and docket information upon which the judicial disposition was made.

But "practical obscurity" — the inaccessibility of individual pieces of information stored in traditional paper form — has meant that court records are not, in fact, as available as they are meant to be.

Those interested in access to court records but denied them in practice now may have much easier access using electronic technology. The paper notes that 60 percent of Canadians now have on-line access from home or workplace; others have access in a library or public kiosk.

Strong arguments may be made for and against consistency between paper and electronic access.

Purpose of filing
The purpose for which the court record was filed and the docket information was created is a factor to be considered in deciding who has access to all or part of the court record and docket information. Fair information practices suggest that information should not be used for a purpose other than the one for which it was provided.

Contents of the court file
There may be little controversy about the accessibility of some of the contents of the court file, such as the information or indictment (in criminal matters) and pleadings (in non-criminal matters) and judicial work product (endorsements, orders and judgments).

There will likely be controversy about accessibility to most of the other documents and information contained in the court file. There will be competing interests involved in establishing policies of accessibility.

Personal identifiers
In many criminal and non-criminal situations, material is filed and remains on the court record even when settlements are achieved without trial or any disposition by a judge. Unrestricted access to unnecessary information, including names, ages, addresses and personal financial data, creates opportunities for illegal activity and identity theft. It may be possible to segregate or protect this information from disclosure.

Sealing files and "anonymization"
Existing legislation and regulations do not consistently spell out when a court may order "anonymization," that is, the use of initials or pseudonyms to protect the privacy of parties in a case. Statutes and rules of procedures that establish methods by which a litigant or a witness might request a publication ban, a sealing order, or an order for anonymization, ought to be considered to determine whether they require amendments to reflect the electronic medium.

Who is "the public"?
The theoretical openness to paper records is limited by logistical barriers or "practical obscurity." Where electronic access exists, the definition of "public" will likely expand to include some of the following:

- commercial enterprises interested in using the divorce petitions data base as a marketing tool for diapers or dating agencies;
- disgruntled franchisees searching for other disaffected franchisees who have sued their common franchisor;
- possible class action participants searching for others who have commenced individual or class action proceedings;
- employers searching the background of potential employees;
- legal researchers capturing the work load of particular judicial officers;
- non-parties with harmless motives such as the nosy neighbour;
- non-parties with inappropriate motives such as possible predators who use divorce petitions to identify children and potential identity thieves who obtain social insurance numbers and property ownership details from financial statements filed in family proceedings.

Organizations may seek bulk access in order to sell the information contained in dockets for profit.

These motives make it relevant in deciding about access to consider the purpose for which access is sought. The purposes for which media and commercial enterprises intend to use court records and docket information may conflict with the interests of the parties. Access may be restricted, for example, by facilitating single searches only and prohibiting or limiting bulk searches.

Logistical and administrative issues

There are a multitude of logistical issues for consideration, such as those included here.

Defamation and privilege
What if material subject to access is defamatory? Who bears responsibility for its accuracy? Whether absolute or qualified privilege applies to the reporting and publication of the contents of pleadings is a subject of controversy. The paper says the implications of electronic filing and electronic access on the tort of defamation should be considered.

Accuracy of the court file
Assuming that the court record and docket information is made available in electronic form, there are several issues of accuracy, including:

- changes are made by a party or lawyer to documents previously filed;
- securing the sealed parts of the court file from the unsealed parts;
- removing the information from the court file which is not part of the public record;
- ensuring that data which is entered and which appears in the docket information indicates the current status of judicial dispositions.

Who is liable if wrong information is recorded in the electronic record or if correct information is given to an unauthorized person? Is it the responsibility of the court to ensure that the court record and docket information is complete and accurate? Or the responsibility of the party and his or her counsel?

On-site and remote access
Even if remote electronic access is afforded without restrictions, there will still be a significant number of the public who do not have electronic access and to ensure equal access for them, on-site electronic access at kiosks may be required.

Identity of users
Before affording greater electronic access than is now available, it will be important to consider whether, for what purpose and to what extent users of electronic access will be logged. If they ought to be logged, who will have access to the logs and for what purpose?

Responsibility for communication of access policies
In a paper environment, little is communicated to the litigants, their counsel and others about access to court files. As many more people have access electronically to much more information, it will be necessary to formulate policies that are readily understandable, perhaps in multiple languages, and friendly to unrepresented litigants. There must be systems in place for communicating, applying and enforcing the policies.

ENCRYPTION . . . ON BOARD THE WIRELESS TRAIN

Martin Felsky

I am writing this article on a train equipped with a high speed wireless Internet connection. As I work on my notebook computer, I can check my e-mail, surf the Web, and log into my company's network to review client files. I can pay my VISA bill and make hotel reservations. I can buy a book and download new software. I can even have a live text messaging "conversation" with my sons if they happen to be on-line. But I have to wonder: is anybody watching?

Judges everywhere should ask themselves the same question. You don't need to be on a train to be concerned. In the courthouse, in your chambers, at home or at the cottage: do strangers have access to your draft judgments? Can they tell what Web sites you are visiting? Can a virus attach itself to an e-mail message and wipe out your hard drive or worse still, bring the whole court system to a halt? The answer to all these questions is yes, unless deliberate and careful steps are taken to protect the privacy and integrity of your information.

Wireless local area networks (WLANs) are all the rage, and for a good reason. They allow us to access e-mail and Web sites without plugging in to a wired network connection. Wireless networks work really well in homes (and courthouses) where wiring is impracticable or too expensive. For example, in a trial involving large volumes of documentary evidence, counsel and judges can use a wireless network to share access to a common data base in the courthouse or even at a secure remote Web repository — no drilling holes in oak furniture, no tripping on the cabling.

In offices, wireless networks allow for unprecedented mobility. The large Toronto law firm McMillan Binch has gone wireless, and lawyers and administrators wander the halls with their notebooks. In colleagues' offices and meeting rooms, users are always connected to the firm's network resources including documents, research data bases, e-mail and client contacts.

My new notebook has a built-in wireless network card. Equipped with Windows XP, my computer automatically picks up any wireless network signal in the area. Sensitivity extends to hundreds of feet (like a cordless phone). So far I have found, and connected to, private networks in hotels (in my room and in the lobby), at my office (a neighbouring business), and at my mother's apartment in Sarnia (she doesn't even have a computer). I would like to thank those businesses and neighbours for providing me with free high speed Internet access. Obviously they have not heard of password protecting their networks. Wireless networks can and should be protected with "WEP" encryption, or Wired Equivalent Privacy.

Most wireless networks are shipped with the WEP security disabled by default. Studies show that more than half of all home wireless users do not use encryption. I would guess that most users are not aware it is available, and that those who know about it find it too complicated to set up. Many people may also have the attitude that WEP is easy to crack, and so why bother.

It is strongly recommended that all wireless networks be protected with WEP. It may not be as secure as wired protocols, but it definitely keeps the neighbours out.

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YOU WERE ASKING . . . ABOUT CREATING A TABLE OF CONTENTS FOR YOUR JUDGMENTS

Q. Is there a way to automate the creation of a table of contents for a long judgment?

A. Manually creating a table of contents in Word or WordPerfect is not only tedious and unnecessary but highly susceptible to error. It is better to take a few moments to customize the built-in table of contents feature of your word processor to produce something that is professional looking, accurate, and easy to modify.

In Word, a table of contents ("TOC") can be automatically generated based on outline levels. The best way to use outline levels is to associate them with styles. If you are not familiar with styles or outline levels you're in for a nice surprise.

If you are like the average user, when you wish to create a new heading in your judgment you set about doing it manually. For example, if you want the heading to be bold and underlined and slightly larger than the rest of the text, typically you would highlight the heading, apply bold, underlining, and the font size changes to produce **Heading**. As you continue your judgment, you keep manually inserting headings and formatting them accordingly.

By using styles, this manual formatting of your headings can be automated. Styles allow you to quickly apply the same formatting to subsequent headings.

To create a style, first format the heading to the desired appearance, next place your cursor in the heading and select format/styles. (The actual commands will differ depending on the version of Word or WordPerfect you are using. Refer to your program's Help file.) Choose the option to create a new style and give your new style a name. Then, while still in the style dialogue box, choose format/paragraph and select outline level 1. Once you have clicked OK to back out of these boxes, you have saved the formatting and identified this formatting combination as a main heading. You can create subheadings the same way, assigning them appropriate outline levels.

To create new headings as you draft the judgment, just type the heading text and apply the new style with one click of the mouse from the drop down list on the toolbar. You have now identified a set of headings that the table of contents feature can use to create a table of contents.

For further help:

http://office.microsoft.com/assistance

http://techrepublic.com.com/5100-6270_11-1043709-2.html

http://www.mhhe.com/business/buscom/lesikar/ch16/how5.html

http://www.luc.edu/infotech/document/wpword/tableofcont.html

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