

Courting technology

In the future, observers agree, virtual court appearances will be standard, all documents will be digitized and the majority of disputes will be resolved online. But why does the future remain so far away?

By Michael Rappaport

Appearing in the judge's chambers via closed-circuit TV, a bearded man in a blue suit pleads guilty to cocaine possession. Earlier, the defendant navigated an automated telephone message system to schedule and invite parties to the hearing. At the end of the virtual court appearance, Justice Fran Kiteley rendered her decision. Simultaneously, the ruling was posted online, along with a computer-generated transcript and video recording of the proceeding. (If it were up to her, Justice Kiteley quipped, all judgments in future would be limited to Twitter capacity: 140 characters or less.)

Is this a radical vision of our court system in the year 2020? Not exactly. It was a mock trial demo of a high-tech justice system presented as part of a Canadian Forum on Court Technology conference in Ottawa in September. But all the technology used in the mock demo currently exists. So why isn't it used more widely to make our justice system more effective and efficient?

Tomorrow's courts

Technology arguably holds the keys to unlocking a solution to lengthy and expensive trials, backlogged courts and inconvenience for all parties. That's what the bearded man in the blue suit, Dominic Jaar, CEO of the Canadian Centre for Court Technology (CCCT), believes.

Founded in 2007 with funding from the deputy ministers of justice from Ottawa, the provinces and territo-



ries, the CCCT is mandated to provide leadership and bring together stakeholders to promote technological innovation and in our court systems with a view to improving access to justice.

Eventually, Jaar believes, all courts will file documents electronically and courts will use document and case management software to track a case file throughout its life cycle. As well, all courtrooms will one day be computerized, with screens for presenting evidence and videoconferencing facilities

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that allow parties and witnesses to appear remotely.

A major source of inefficiency in our judicial system is that “many courts work with one foot in the paper world and the other in the electronic world,” Jaar says. As e-filing becomes the norm and courts develop systems for managing electronic documents, this reliance on paper will diminish and the task of reviewing documents will become less onerous. “Using meta-search engines, lawyers will quickly find what is relevant without going through piles of documents,” he predicts.

ODR on the way

Paper isn't the only thing that could become passé: brick-and-mortar courthouses may also become archeological relics. In the future most disputes will be resolved online, said keynote speaker Richard Susskind, a CBA special advisor and expert on legal marketplace trends. Susskind points to the growth of Online Dispute Resolution (ODR), specifically the example of eBay.

Last year, eBay — the popular online consumer auction site that boasts more than 90 million users worldwide — resolved about 60 million disputes between vendors and buyers via its “dispute console,” an online communication tool that allows users to track, manage, resolve or close any existing disputes.

ODR has already been integrated successfully into the legal system in some countries. In Singapore, all small claims matters are adjudicated online. A popular ODR platform is The Mediation Room (www.themediationroom.com), launched in 2003 by two lawyers from the UK. Already it has been used by British telecommunications companies to resolve disputes with other suppliers, partners, regulators and consumers, in the US for workplace mediation in the airline and railroad industries, and throughout the EU to handle consumer complaints.

An advantage of ODR is that parties don't have to be at the same place at the same time, said David Bilinsky, a practice management advisor at the Law Society of British Columbia and author of the blog Thoughtful Legal Management (www.thoughtfullaw.com). In heated situations such as child custody and support disputes, he said, handling a matter online might be more effective, since the absence of face-to-face contact “lowers the temperature and allows parties to settle matters reasonably.”

Alberta's example

So the question becomes, as Jaar put it at the conference: “Why are we still investing in bricks and mortar instead of virtual courtrooms?” Alberta, for

example, plans to spend \$1.2 billion to build new courthouses and upgrade current facilities. In contrast, the Alberta government has earmarked only about \$50 million for the province's project to modernize and streamline court-related processes and replace legacy IT systems, via the Justice Innovation and Modernization of Services initiatives (JIMS).

Alberta Deputy Minister of Justice Ray Bodnarek, who has oversight responsibility for JIMS, delivered a plenary speech that asked rhetorically: “Do significant expenditures in bricks and mortar really make sense if, in the future, we will be delivering justice in different ways?” But financing major IT overhauls is an “uphill challenge,” he added.

Alberta's court system is saddled with a legacy IT system

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developed in the 1970s, which is in dire need of replacement. Yet funds for upgrades has not been forthcoming. "It is very hard to get funding for major IT projects when they compete against other infrastructure projects," Bodnarek said. "IT projects are not tangible. Politicians want something concrete to point to, like a new school or hospital."

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Although IT initiatives are not a top priority of Alberta's government, the province's project to modernize its adult criminal court system in Calgary and Edmonton has already seen some noteworthy improvements, according to Allan Lefever, Deputy Chief Judge of the Provincial Court of Alberta.

In 2007, the court spearheaded a project to improve the scheduling of court appearances by implementing a Remote Court Scheduling (RCS) system. Before the RCS system was

launched, defendants had to appear in court at 9:00 am and "wait until whenever to be heard," Justice Lefever says.

Now, with the RCS system in place, defence and Crown lawyers can access court schedules remotely 24 hours a day and schedule a court appearance online in "two and a half minutes." The RCS system has substantially reduced the number of court appearances, and defendants no longer have to wait for hours to be heard, according to Justice Lefever.

Stumbling blocks

One obstacle to the development of a high-tech court system has been the absence of performance metrics and statistics. It's difficult to build a compelling case for IT investments when we lack the data to evaluate how well our courts are doing at achieving basic goals, such as clearance rates, meeting timeliness and avoiding unnecessary delays, says Jaar.

Reluctance to change is another factor. "The system is largely developed and run by lawyers and judges, many of whom are resistant to change," Bodnarek says. In many ways, our justice system remains entrenched in 18th-century processes and practices, which act as barriers to the use of technology that could reduce costs, avoid delays, and improve the public's understanding of the justice system.

Part of the resistance stems from the systemic presumption that witnesses and parties must appear in court in person, so that triers of fact can assess their credibility. But in many routine court appearances, credibility isn't an issue. "Why are we committed to adjudicating in courtrooms? Because we need to see parties and witnesses? Are there other measures we could take?" said Justice Kiteley. "What if we televised proceedings where credibility mattered? What if only parts of the trial were held in the courthouse?"

Even where credibility is at stake, Jaar says many studies have shown that judges who assume they are capable of determining the credibility of a party in person are often wrong. "We need to take a fresh look and challenge assumptions," he says.

Given the complexity of the legal system, with its multiple stakeholders and myriad interconnections, getting everyone to agree to major changes will take considerable time and effort, said Bodnarek: "We need everyone to be at the table. We can't just fix the system one piece at a time."

And any attempt to embrace new technologies must bear in kind the law of unintended consequences, said Allan Seckel, Deputy Minister to the Premier of British Columbia who oversees the B.C. Public Service eGovernment Strategy.

Seckel quoted Bill Gates' two rules governing the application of technology in a business: "Automation applied to an efficient operation will magnify the efficiency, [and] automation applied to an inefficient operation will magnify the inefficiency." He added: "We have an inefficient system. We add technology to it and we make it even more inefficient." Our objective, he says, should not be reproducing inefficient processes but rethinking them.

Nor, in seeking to make our courts more efficient and effective, should we lose sight of the purpose of the judicial system: upholding the law and delivering justice. As Ontario Superior Court Justice Bonnie Wein advised conference delegates: "Every time we bring in a new technology, we must first consider how it will enhance the core work of judges: decision-making." **N**

Michael Rappaport is the managing editor of *National*.

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