TECHNOLOGY AND THE PACE OF JUSTICE DELIVERY

The Barbados Bar Association Law Conference

MAY 31, 2017

JUDICIARY OF TRINIDAD AND TOBAGO

Knox Street, Port of Spain, Republic of Trinidad and Tobago

Table of Contents

ABSTRACT

The value that information communications technology (ICT) brings to the justice system lies in the court's ability to manage the information it depends on to administer justice. Information is the most valuable asset to the administration of justice. Effective case management relies on information coming into the court, information presented to the court and communicated among court parties, and information added through research to aid the decision-making process. ICT leaders must focus first on meeting users' information needs – before looking for the latest technical enhancement. This requires first understanding users' business responsibilities so that solutions are not provided to address 'fictional' problems. In many instances it starts with process reengineering and redefining the information architecture.

ICT, coupled with a resolute examination of court service delivery and a determination to reengineer court processes, as well as effective case management and information management can transform the pace of justice delivery. The key is ensuring that business processes are the driving force behind the ICT system design rather than technology solutions driving the business processes. Despite this, the best ICT systems will not produce timeliness without the important people factor.

Submitted: Carol A.M. Herbert
Director, Information Communications Technology
Judiciary of Trinidad & Tobago

TECHNOLOGY AND THE PACE OF JUSTICE DELIVERY

1. INTRODUCTION

It is readily accepted that information communications technology (ICT) has the potential to help the Judiciary achieve timely and efficient justice delivery. ICT offers the justice community several advantages which include efficiency, speed, cost effectiveness, access to legal information and service. However, for successful adoption it is necessary to not only consider the budgetary factors affecting implementation but the cultural and political aspects internal and external to the organization, as well.

2. COURT PROCESS RE-ENGINEERING

Focusing on technology alone to solve court problems is the wrong approach. The starting point must be an internal examination of the court's service delivery processes coupled with a willingness to reengineer those processes. Since decisions will impact every aspect of the justice process, this should be a collaborative effort involving a wide cross-section of stakeholders including prosecutors, public defenders, the bar, the police, prisons officers, court clerks, judges, court reporters and court information technology leaders. All will likely have key insights to assist the court in its planning.

[i]Chris Crawford, President, *Justice Served,* suggested that the group should start with identifying and finding solutions for the biggest problems, the non-value adding processes, the subject of the most frequent calls and front-counter interactions, tasks that are duplicated in different locations, and staff shortages in critical areas for which technology can be substituted. Keep in mind that the court's business processes must be the driving force behind the ICT system design instead of letting technology solutions drive the business processes.

3. COURT PROCESS AND INFORMATION MANAGEMENT (IM)

A process takes input, adds value and creates an output that is of value to the customer.[ii] Within the Judiciary, case information comes in as input, which is supplemented by additional information and it is processed, thereby producing new information which is conveyed to the customer. "Parties introduce legally relevant information to the courts, which is processed in a legally relevant way resulting in a legally relevant result of value to one or both parties." The value that ICT brings to justice delivery is really in enabling the judiciary to manage the information it depends on to administer justice. Information is the most valuable asset to the administration of justice, so that without the right information routed to the right person/s at the right time, justice delivery will be stymied. ICT providers must therefore focus on meeting users' information needs, before focusing on bringing in the latest technical enhancement. This hinges on understanding users' business responsibilities so that solutions are not provided to address 'fictional' problems'.

The courts fulfil different roles which require different processes that can benefit from specific forms of information technology. It is necessary to know the work the judiciary performs, how it uses information to accomplish that work and the time it takes to perform the action. Once these are identified, it should be easier to decide on the technology that can improve the process and speed up the case. Some processes that can run more efficiently with automation include: generating a court order by merging text into a word template; randomly selecting jurors and issuing juror summonses using a computer program; receiving and disbursing maintenance monies to parties from a case management system; determining outstanding maintenance payments on cases for warrants to be issued.

Cases with numerous parties and separate legal representation can go on for extensive periods and generate huge amounts of paper. Various forms of technology are available which can assist the judge with managing the documents and the pace of ligation more efficiently but to do this, justice system partners have to work together to improve the process and the exchange of information.

A case in point is a recent civil matter in the Supreme Court of Trinidad and Tobago. The estimated length of trial, which was initially expected to last several months was reduced by 50%. Eighteen boxes of documentary evidence was initially presented for each of the parties and the judge. In order to manage the volumes of exhibits, expedite the case, and improve participation by all parties the judge, attorneys on both sides, judge's clerk, the Court Office staff and the IT Department worked out a process using existing technology to receive, index and retrieve all documents efficiently in a totally paperless trial. The conversion from hardcopy to digital format enabled the information to be easily structured; and to be handled and retrieved quickly during the trial without having to search the paper file for documents that could be out of place. Exhibits were projected on a screen in the courtroom, which facilitated participation by all parties, including the litigants. The trial was completed and the decision given in record time. Participants complimented the efficient and effective handling of the proceedings.

4. IM AND THE USE OF ICT IN THE COURTROOM

According to Professor Frederic I. Lederer,

> *"The courtroom is a place of adjudication, but it is also an information hub. Outside, information is assembled, sorted and brought into the courtroom for presentation. Once presented, various theories of interpretation are argued to the fact finder who then analyses the data according to prescribed rules (determined by the judge through research, analysis and interpretation) and determines a verdict and a result. That result, often with collateral consequences, is then transmitted throughout the legal system as necessary. The courtroom is thus the centre of a complex system of information exchange and management."*[1]

[1] The Honourable Justice Peter Vickery, *"Technology and Timely Dispute Resolution – As illustrated by the Supreme Court of Victoria "RedCrest" Project", (2014).* Timeliness in the Justice System: Ideas and Innovation. Paper 26. http//www.civilJustice.info/timeliness/26

4.1. Case management

Effective case management means managing all the information in the case from filing to disposition. Case information typically flows from the receiving counter through various court personnel to the adjudicating officer and back to the customer. The process generally involves filing, notification, scheduling, hearing, decision-making and enforcement, all requiring lots of paper. This information flow can be administered using a case management information system that allows filings to be sent to the court electronically. The internal challenge lies with inaccurate, untimely, incomplete data entry, which highlights the people factor, that is, staffing, training and supervision. While the ability to file documents on-line will save attorneys time and money, rather than having a Clerk go to the Court Office to physically file documents, the challenge would be that many still prefer to work with paper instead of computers.

4.2. Video files

The courts of today are confronted with new types of information and evidence, for example video files. As CCTV becomes a more prominent feature in law enforcement investigations, and motor vehicle number plate recognition in traffic offenses, courtrooms will have to be equipped with the infrastructure to store, retrieve and display these and evolving data formats to enhance the quality and efficiency of justice delivery. Video files presented on DVD, CD or USB-Drive can come in one of many formats.

To prevent delays caused by incompatible systems, policies must be established regarding what digital video formats can be used and the timeframes for testing material before the actual hearing. Courts cannot acquire the vast amount of proprietary players needed to playback the various video formats. The presenters will have to provide the players along with the evidence, and even so, technical difficulties can arise displaying the evidence - due to differences in computer speeds and display resolutions. In the case of e-filing, it is a security risk for the courts to accept video files, since executable program files submitted from an outside source can potentially compromise the court's network.

4.3. On-line access

Online access to case files from anywhere Internet is available can save Judicial Officers and attorneys time as they can work efficiently without having to transport large files from and to the work place. Additionally, legal material can be accessed online giving rise to the 'virtual law library' available to attorneys and judges, and which can be exchanged in the courtroom. Judgments can be posted on the court's website and advocates will be able to obtain a certified copy of the court order almost immediately without waiting days.

4.4. Audio Visual Presentations

Evidence can be presented in the form of documents, charts, photographs and objects, which can be displayed via multi-media or document cameras to eliminate passing around the item. Attorneys may also present their opening statements, legal arguments and submissions in the form of multi-media briefs and PowerPoint presentations to generate greater participation and progress the proceedings.

4.5. Virtualized Courts and Other Forms of Technology

Virtualized proceedings can address issues relating to distance, logistics, scheduling inefficiencies, delays and costs. For example, email can replace postal services to reduce costs and speed up communications and service. Video-conferencing or tele-presence is used in criminal proceedings to facilitate vulnerable witnesses and mitigate logistical costs. This technology can help to streamline the court's process while saving on the time that can be lost due to absent parties because of geographical issues. There are courts around the world that are already engaging in online dispute resolution, or "people-less courts".

Court recording systems have advanced to the point of virtual hearings. The digital nature of modern court recording systems (video/audio) facilitates transmission to remote locations and provides more comprehensive information to the appeal court because sound and images are available.

5. ICT INFRASTRUCTURE

The infrastructure to support these systems includes hardware, software, connectivity and networking devices. High-speed networks, ample bandwidth, case management systems and storage capacity are key requirements. In-house IT expertise in network management, e-service administration, systems analysis and design, security and handling multimedia formats are key ICT skill-sets needed. A business continuity plan is necessary in the event of a disaster.

5.1. Storage

Digital evidence is handled primarily in the form of CDs and DVDs. Attention must be paid to handling increasing volume and the emerging technology that will make these media obsolete. One of the issues regarding storage that must be addressed is the timeliness of retrieval needed by the court (high availability is more expensive). Another consideration is whether the court will accept cloud storage as an option. This can provide better cost control as the organization will not have to pay for anticipated capacity, which can be unused for a time. Many courts reject cloud storage because of the risks associated with losing control of the data, including its legal validity, reliability, integrity and confidentiality.

.

6. CHALLENGES AND RISKS

The most obvious challenge is the historical underfunding courts face in realising the basic tools and IT infrastructure needed to support electronic court hearings, audio/visual equipment, tools to record hearings, videoconferencing, and reliable Wi-Fi. The anticipated gains in efficiency should be greater than the initial cost and the continual maintenance and upgrading of hardware and software.

Some considerations for IT leaders include the following:

- Ascertaining acceptance of new systems through localized pilot projects
- Instituting a robust and comprehensive change management programme, which includes all the internal and external stakeholder groups affected by the

programme. A unified approach is essential to success as the best systems in the world cannot work without people.

- A move to virtualized hearings changes the risk profile of court operations from physical (court building) security concerns, to the protection of computer systems and the sensitive data contained therein, from cyber-attacks.

7. CONCLUSION

Technology offers justice agencies a vital product—information—that can help them improve the quality and pace of decisions, communicate among the sector and track case outcomes. Processes and skills must be on par. However, the most important factor in the delivery of justice is the people: the judges and magistrates who adjudicate, the courtroom staff who manage the lists, the IT and support teams who facilitate court operations and the practitioners who provide the information the court needs to make decisions. Without strong management in these areas, the best ICT systems will not ensure timeliness. Efficient justice delivery demands both.

SOURCES

[i] Crawford, C (2011), "*Emerging Technology Trends that will Transform Courts,"* Future Trends in State Courts 2011, Special Focus on Access to Justice, National Center for State Courts

[ii] Hammer, M. & Champy, J. (2001) , *Reengineering the Corporation,* London, p38

Lederer, F.I. (1999), *The World of Courtroom Technology,* College of William and May Law School, Faculty Publications

The Honourable Justice Peter Vickery, *"Technology and Timely Dispute Resolution – As illustrated by the Supreme Court of Victoria "RedCrest" Project", (2014).* Timeliness in the Justice System: Ideas and Innovation. Paper 26. http//www.civilJustice.info/timeliness/26