CYBERLEX

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The adoption of information technology in business and indeed every day life has resulted in the generation of more information (at exponential rates). This increase in information brings with it the need to manage information in an efficient and effective manner.

Information can come in all forms, from documents (correspondence, email, pleadings, affidavits) to objects (physical evidence). This increase in information affects the litigation process by increasing the amount of information that needs to be considered. This volume of information cannot be directly related to the value of the matter, so even the smallest of matters in terms of cost can have a large volume of information. The management of this information can be a determining factor in the success or failure of a matter.

Technology can be successfully applied to aid the management of information. A substantial part of litigation, inter alia, is an exercise in the management of information. Technologies used in support of litigation include: internet and/or intranet technologies (including hypertext); optical character recognition; imaging; text search/retrieval software; databases (image and/or text); and a host of applications such as word processors. In short, technology can support the litigation process by storing, organising, managing, and retrieving information.

Any lawyer who has prepared an electronic list of documents using the tables feature available in most word processors has already employed litigation support technology. A lawyer can manipulate the information stored in the table to aid the location of documents. The indexing of documents in a matter, such as the list of documents, is a very powerful tool. If instead of just using the word processor, the index was placed in a database and other "features" of the document were cataloged or stored (for example, date, author, recipient, description and/or subject, type, whether the document is privileged or prejudicial or raises a particular point of law) then the power of that index is significantly increased.

The ability to retrieve a list of documents within a date range by a particular person on a particular point of law is very powerful when preparing for court. This database (index of documents) could then be used

to produce the list of documents (some definitions of litigation support technology include document generation, but I will deal with this type of technology in a separate article). The success of a document index in a matter is to ensure the cataloging of the documents contains the information you might want to search for at a later time. While indexing has been around for a long time (even before the use of computers) and is readily affordable (from a technology required view point) other techniques such as document imaging and full text searching are becoming more accessible.

Traditionally the cost of implementing document imaging, which can best be described as a "photograph" of the document, and full text searching have restricted the use of this technology to large matters (Rothwells, Fairfax, Estate Mortgage, Thredbo inquiry NSW Police Royal Commission). While technology has advanced, the cost of these solutions is still significant and usually requires significant infrastructure (such as a server to host the underlying database and software).

The use of technology, however sophisticated, does not obviate the need to review all the documents in a particular matter. To be indexed or recorded, each document must be considered. The real benefit is from not having to manually search through all the documents more than once. The main benefit is the increased efficiency in management and control of the documents in a matter. This can translate into either the reduced cost of litigation or provide a higher standard of service through spending the time saved through efficiency on more analysis.

There are a number of questions which spring to mind when looking at technology in support of litigation. When is the use of technology mandatory, if at all? What happens when the use of technology would have reduced the risk of error or cost of litigation? What if the system contained a vital document, but the lawyer was not trained adequately in the use of the technology resulting in a serious error? Failure to implement appropriate systems may result in negligence, especially in light of comments made by Justice Kirby regarding the use of Austlii(1). In a climate of rising professional indemnity insurance can the availability of technologies suitable

to the support of the litigation process reduce a firms premiums or conversely, will the lack of this technology increase premiums?

One aspect of litigation support I have not looked at is its role in court proceedings. This role is better looked at in a discussion of court technologies. However, the Law Society recently distributed to its members Federal Court Practice Note No. 17 "Guidelines for the use of Information Technology in Litigation in any Civil Matter". This practice note provides for the adoption of standards for electronic discovery (on a case by case basis) and encourages the use of technology. The adoption of standards means that parties are not bound to particular programs or applications, but rather are required to conform to an agreed format for the information. It is quite clear that the courts will encourage (and I believe ultimately require) the adoption of technology by users of the justice system.

Litigation support systems have usually been created as an additional system for a particular matter. Essentially, litigation support is the management and control of information/documents. The cost of integrating litigation support requirements into existing systems is often the reason why litigation support is a separate system. Attention should to be given to the similarities in requirements and the ability to have a combined approach, especially where neither has an existing system implemented. Integration has obvious benefits, but one that cannot be overstated is training. The costs and risks of requiring lawyers to learn and use a number of applications can be reduced if an integrated approach to office systems and litigation support is adopted.

Attention now and in the future to the use of litigation support techniques is being driven by courts, other legal professionals, independent inquiries in the use of IT and the legal system and clients. It will not be long before litigation support technology will be a necessity, if only to maintain your competitiveness.

(1) "Any lawyer today who works with textbooks that may be two, three or more years out of date does so at great professional peril." Kirby (1999) "Free The Law - Beyond The "Dark Chaos'" [1999] COL 4 33