THE ADVOCATE AND THE INTERNET

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It may seem strange to begin a discussion of 21st Century technologies, and their use by the legal profession, almost 1500 years ago. But I begin this story with Justinian's ***Code***, first published in 533AD. The Code consisted, in essence, of three parts: the ***Institutes***, a kind of basic text book of fundamental legal principles; the ***Digest***, a collection of authoritative pronouncements on specific legal issues; and the ***Codex***, a consolidation of legislative provisions currently in force.

Why do I begin this discussion with Justinian's ***Code*** ? For the simple reason that, almost 1500 years later, the basic components of legal research have not changed at all: to find an answer to a legal problem, we still consult (though not necessarily in the same order) legal texts, judicial authorities, and statutes.

Let us then turn the clock forward, through more than a millennium, to the man who, almost single-handedly, transformed the English legal system into a modern, systematic and rigorous discipline – Chief Justice Sir Edward Coke. Were this the appropriate occasion, there are many things which I should like to say to you about Coke, whom I regard as being incomparably the greatest figure in our legal history. But for present purposes, it is only necessary to focus on one of Coke's many achievements.

The latest technological advance in Coke's England was the printing press, invented by Johannes Gutenberg in the 15th Century, and brought to England by William Caxton in the latter part of that Century. Of course, the growth of technology was much slower in those times, and printing was still a relatively modern science when Coke began publishing legal works in the late 1500s and early 1600s.

Of his fairly prodigious output of legal publications, perhaps the most significant was ***The Reports*** – the first English set of law reports, in the form that we have come to know them. So, if you want to know who to blame for the small fortune which you pay each year to Butterworths, the Law Book Company, and other publishing firms in order to keep your professional libraries up-to-date, Sir Edward Coke is the main culprit.

Apart from ***The Reports***, Coke also published a multi-volume legal textbook, to which he gave the title (borrowed from Justinian) of ***Institutes of the Laws of England***. Though there had been previous treatises published in respect of specific branches of English law – the works of Bracton and Littleton are perhaps the best known – Coke was the first to attempt an encyclopaedic text. His ***Institutes*** were the forerunner to publications such as ***Blackstone's Commentaries*** and ***Halsbury's Laws of England***.

But that was not the limit of Coke's innovation, or even the most significant aspect of it. Coke may well have been the first writer in the English language, and possibly the first writer in any language, to utilise footnotes. He did so for one clear reason: for Coke, it was an article of faith that every legal pronouncement, contained in the ***Institutes***, should be traced back to an authoritative source – whether it was an Act of Parliament, a judicial decision, or the opinion of an earlier text-writer. He thereby entrenched, and perhaps invented, the approach to legal reasoning which all of us now regard as second nature: that, in order to establish a proposition of law, it is necessary to identify either a statutory provision or a judicial precedent supporting the proposition or, failing either of those sources, the opinion of a respected legal author. The three elements of legal research incorporated into Justinian's ***Code*** in 533AD were repeated in Coke's ***Institutes*** between 1628 and 1641, and have remained ever since the building-blocks of legal reasoning, not only in England, but in every country to which the Common Law of England has been transported.

In Coke's time, as I have said, printing was the very latest technology. Not only did Coke found the system of jurisprudence which exists to this day; his influence has been so great that, even today, many lawyers feel compelled to use 16th Century technology when applying Coke's system of jurisprudence. Thus, if you walk into any solicitor's office, any barrister's chambers, or indeed any Judge's chambers, you will see the walls lined with a lasting tribute to Sir Edward Coke, in the form of row upon row of legal books: texts, reports and statutes. It is my proposition, simply put, that the time has arrived to throw off the shackles of mediæval technology, without disturbing the fundamentals of legal learning and research which have traditionally been presented to us in that antiquated technological format.

Lawyers have not been slow to embrace technology in other areas of their practice, as I might demonstrate by two anecdotes.

The first concerns my own grandfather who, due to his Germanic background, was not accepted for military service during the First World War. Instead, he gained employment as a clerk in a solicitor's office – the Brisbane firm of O'Shea & O'Shea, now known as O'Shea, Corser & Wadley. His job, like Sir Joseph Porter in ***HMS Pinafore***, was to "copy all the letters in a big round hand". Correspondence, advices, pleadings, affidavits – indeed, all manner of legal documents – were produced by the partners in long-hand, or dictated to my grandfather to be taken down in Pitman short-hand, and then reproduced in copperplate script. In the absence of photocopiers, this even included hand-written reproductions of evidentiary documents.

I doubt that anyone here laments the fact that this practice has given way to typewriters, photocopiers and word processors, though in his recently published monograph

entitled ***Feez Ruthning & Co. – The First Hundred Years***, my father (Graeme Morris) makes the acerbic observation that, when barristers started to employ typists, the length of their opinions increased exponentially, without any noticeable change in the quality of the advice provided.

The other anecdote which I should like to share concerns the setting-up of my own chambers, by Mr. G.E. Fitzgerald QC (as he then was), almost twenty years ago. When my chambers were established, there was a serious debate as to whether we should invest in a telex machine, or alternatively a facsimile machine. I doubt that any member of the profession, aged under 40 – which is, these days, the majority of the profession – has ever even seen a telex machine.

I am not one of those who believes that the "paperless office", any more than the "paperless courtroom", will become a practical reality in the foreseeable future. I also must confess that I am something of a bibliophile, and that I will always prefer to have books on my shelves, especially if they are leather-bound, even though I recognise that they are increasingly valueless – both in a monetary sense, and also in a utilitarian sense.

The view which I do urge upon all of you, however, is this: within the service industry that is the modern legal profession, it is incumbent on all of us to shake off our troglodyte adherence to yesterday's technologies, and examine the ways that today's technologies can help us to provide a better, more efficient, and – most importantly of all – a less expensive service to our clients. On this occasion, I should like to identify just a few basic ways in which we can do this.

Legal Research

There is now no excuse for any member of the legal profession not to utilise on-line research facilities. Hard copies of law reports and statutes may still decorate your reception area, but they are out of print before the ink is dry. There is no reason why any lawyer should fail to refer to up-to-date statutory provisions, or case-law, which is accessible from your own desktop – and often at no cost.

It is almost five years since I set up a website, called ***Lex Scripta*** and subtitled "Essential Web Links for Queensland Lawyers", in order to assist members of our profession to explore the research options available on the Internet – not only to access statutes and caselaw, but to access a huge range of other online facilities, from legal dictionaries, to on-line translation services, to currency conversion facilities. Judging from the number of "hits" which this site continues to receive, it is still fulfilling a useful role in educating members of the legal profession as to the availability of on-line research facilities.

Digital Dictation

We all remember those old movies in which the business executive or professional (invariably a man) "buzzes" a female stenographer, who walks into the man's office, sits down, takes out a pad and pencil, and proceeds to "take a letter". In the last 30 years or so, the use of analogue dictating machines – that is, tape recorders – has become ubiquitous. Let me assure you that the time has now arrived to throw out your tape recorder.

Digital dictation is not only of higher quality, safer and more reliable than tape recordings – you don't have the problem of tapes which go missing or are accidentally erased. It is also cheaper, because you don't need tapes; and more flexible, because digital files can be distributed and shared between staff in a typing pool. It also offers a benefit which the old system simply cannot match, because digital dictation files can be transmitted over the internet.

One obvious application arises when you are working away from your office. You can dictate a document, and then email it to your secretary, from the other side of the city, the other side of the country, or the other side of the world.

Some firms have now embraced this technology, to the extent that digital dictation files are transmitted overnight to typing services in India or South-East Asia, and then re-transmitted, in the form of completed documents, in the early hours of the following morning. Whilst I am not personally convinced that this system will ever compete with the competence and experience of an efficient legal secretary, it may at least be an option in cases of urgency where a lengthy document has to be typed overnight.

The time may also come when voice recognition technology allows the lawyer merely to speak into a microphone and have the spoken words automatically converted into typescript. My own experience of such technologies is that they have not yet reached an adequate level of reliability, so that the time spent in editing a document produced by this technology makes it uneconomical. But, as with all technologies, I expect that improvements will continue to occur exponentially.

Document Management

I am reliably assured that, except perhaps in the very simplest cases, by far the largest pre-trial cost in most civil litigation is incurred in respect of discovery of documents, or "disclosure" as it is now called in some jurisdictions. Technology can assist, not only to make the process more efficient and less expensive, but also to make it more useful.

A fairly minimilistic approach is to use a computerised document indexing system, with individual documents bar-coded for efficient location and retrieval. But that is just the beginning.

In larger commercial cases, it is now becoming common to have all documents scanned into a digital format, and then "burned" to a CD, or transferred to the hard drive of a laptop computer, so that they can be accessed efficiently – in the solicitor's office, at the client's office, in counsel's chambers, or in the courtroom – without having to photocopy and transport veritable barrow-loads of paper.

The fact that this saves a great deal of time and money – and, incidentally, a few rainforests – should be enough, in itself, to encourage its adoption. But the real benefit is the ability electronically to search documents in a digital format. To take the very simplest example, just consider the advantages, when cross-examining a witness, of being able to search for every mention of the witness's name in the discovered documents.

Co-operative Drafting

Commercial lawyers are now well ahead of litigation lawyers in using Internet technology to facilitate the drafting of detailed commercial agreements. But the same technologies, which in all probability are currently being used by solicitors in your firm's commercial division, also offer significant advantages to litigation lawyers.

Only a few years ago, when lawyers representing opposing parties were collaborating in the preparation of a lengthy commercial agreement, the process was a slow and tedious one. A draft was prepared in solicitor A's office, and was then sent – by fax or "snail mail" – to solicitor B. In solicitor B's office, it was re-typed with solicitor B's proposed emendations, and then returned to solicitor A. And so the process continued, until both sides had a document which was acceptable to them. Not only was the process slow and cumbersome; in Benjamin Franklin's words, there was "many a slip twixt cup and lip". Lawyers spent painstaking hours comparing each successive version of the draft, to ensure that no disagreeable changes had been made, either accidentally or deliberately.

Again, exchanging drafts by email does not merely save time, money and paper – it also reduces the risk of accidents, by allowing changes to be tracked electronically.

In the Courtroom

In light of the other presentations made this afternoon, I do not propose to dwell over-long on the scope which exists to use the Internet and other digital technologies in the courtroom. So I will just make three quick points.

First, in complex cases, PowerPoint presentations and the like can be much more effective in presenting opening and closing submissions and detailed evidence – such as accounting evidence and other forms of expert testimony – to the tribunal of fact, whether a Magistrate, a Judge or a Jury. Even being able to project a piece of evidence on a screen in the courtroom makes it much easier for everyone in the courtroom to follow a detailed analysis of the thing which is being projected, whether it be an account, a plan, a diagram, or a photograph.

Secondly, as previously mentioned, a laptop computer with access to discovered documents in a digital format is extremely efficient in assisting the search for relevant entries, especially in a case where the documentary evidence is voluminous.

And thirdly, most courts now offer the facility of providing transcripts in an electronic format, which offers similar advantages – especially in a case expected to run for more than a couple of days. In Queensland, there have been trials of "real time" transcription services, which allow the parties' legal representatives – as well as the bench – not only to search the transcript as it is produced, but also to highlight and annotate the transcript within seconds after the words are spoken.

The Future

I began this discussion with references to Justinian's ***Code*** and Coke's ***Institutes*** to allay the concerns of the technophobes amongst us that computers, the Internet, and other forms of digital technology are going to result in fundamental changes to the law and the way that it is practised. That will not happen.

The essential work of a lawyer will never be replicated by a machine. We are not like bank tellers, who can be replaced with ATMs. A computer will never be able to take instructions from a client, or proof a witness, or draft an affidavit, or settle a pleading, or present a case in court, or cross-examine a witness. And no computer will ever sit in judgment.

These technologies will not replace us or change what we do; they will only assist us to do, more efficiently, the things which we already do. Nobody in the legal profession need feel apprehensive that he or she will ever be displaced by even the most sophisticated technology.

At the same time, none of us can afford to bury our heads in the sand. As the growth of technology increases, computer literacy will become an essential qualification for legal professionals. We can, at the very least, look forward to the existing technologies improving and becoming more widely used – for example, real-time transcription services will become standard in the courtroom, rather that a novel experiment; video links for directions hearings, and even the oral testimony of witnesses, will become commonplace – not only to accommodate a witness who is ill or in a remote location, but also (for example) to minimise inconvenience to witnesses such as medical specialists.

I wish that I could predict which new technologies will, even in 5 or 10 years' time, be regarded as essential by all lawyers – if I knew that, I could make a fortune on the stock-market by investing in the "dot com" shares. I don't pretend to know which specific technologies it will be, but I am absolutely certain that there will be some.

The bizarre thing with technology is that, when you don't have it, you don't know how important it is; again, addressing my comments to the minority of us who are under 40, let me remind you of a time – not so long ago – before mobile phones became standard issue equipment even for articled clerks. In those days, we thought nothing of going off to court with a pocket-full of 20 pieces, so that we could use the pay-phones if necessary. If we had thought about it, we might have guessed that mobile phones would be a useful innovation; but we probably wouldn't have anticipated that they would become indispensable.

In the same way, the next technological innovation – whatever it may be – will one day be regarded as vital. Those of you now aged in your twenties, when you are in your forties, will be asked by fresh-faced juniors ... "How did you ever get by without such-and-such ?"

As I have said, I don't pretend to know which specific technologies will, even in 5 or 10 years' time, come to be regarded by all lawyers as essential. Like you, I can only watch and wait – and keep an open mind.

Conclusions

In all walks of life, adaptation to the use of computers and digital technology has met with some resistance. Extraordinarily, even in the computer industry itself, such resistance has been more common that you might expect.

- In 1943, the founder and chairman of IBM, Thomas Watson, expressed the view that "there is a world market for maybe five computers".

- In 1949, ***Popular Mechanics*** magazine predicted that "Computers in future may weigh no more than 1.5 tons".

- More recently, in 1997, the founder and chairman of Digital Electronics Corporation, Ken Olsen, could not understand why "anyone would want a computer in their home".

- And even Bill Gates, of MicroSoft fame, is on record as saying that he could not see why anyone "would ever need more than 640 kilobytes of RAM" (Gates, of course, provided the answer to his own rhetorical question, by producing software so bloated that it cannot function except on the most high-powered computers).

These various predictions are on a par with the pronouncement of the British Astronomer Royal, Richard Woolley, in 1956, that "Space travel is utter bilge" – less than twelve months later, Sputnik went into orbit.

In a similar vein, let me conclude by quoting from a 1962 article by Frederick B. Wiener (in the ***American Bar Association Journal***:

> "In short, members of the Bar will be well advised to stay very far away from computers if they want to remain – or become – lawyers rather than simply attorneys at law. Computers are fine for inertial guidance problems – but the law is neither a missile nor an atomic submarine."

I beg to differ. A soldier going into battle, armed only with a flintlock musket, will be no match for one armed with the latest weaponry produced by 21st Century technology. In equal proportion, a lawyer who insists on using only mediæval technologies, in conducting a courtroom battle on a client's behalf, is no match for the lawyer who embraces everything which is offered by computers, the Internet, and other forms of digital technology.