first issue either the Final Notice of Claim (Form 1A) or their own version of it. This has now been formalised in the Magistrates Court (Civil) Rules (rule 20A).

WHEN SHOULD YOU USE THE PRE-LODGEMENT SYSTEM?

If dispute has arisen an individual, business or organisation can issue a "Final Notice of Claim" on the other disputing party in an attempt to resolve the dispute without lodging a formal claim in the Magistrates Court.

Plaintiffs can either issue the notice themselves via the internet website or they can go to any Magistrates Court Registry and obtain a notice over the counter. The Court does not serve the notice. **Plaintiffs must serve the notice themselves.**

The potential defendants then have 21 days in which to respond to the notice. If they do not respond within the 21 days then plaintiffs can issue formal proceedings within the Court.

THE ADVANTAGES OF THE PRE-LODGEMENT SYSTEM

- Inexpensive means of resolving disputes.
- Allows access to justice–the cost barrier to justice is removed.
- Promotes alternative dispute resolution processes.
- Allows parties to resolve disputes themselves rather than resorting to the formal legal system.
- Provides justice to the entire South Australian community.
- The use of the internet allows for broad access.
- Innovative system that takes advantage of modern technology.
- Simple to use.
- The Pre-Lodgement System is available 24 hours a day, 7 days a week.

THE DISADVANTAGES OF THE PRE-LODGEMENT SYSTEM

- It is not a formal claim within the judicial System.
- The potential defendant may ignore the notice, requiring the plaintiff to issue formal proceedings within the Court.

BULK PROCESSING OF "FINAL NOTICE OF CLAIM" FORMS

If clients require a large quantity of Final Notice of Claims (Form 1A) they need to contact their nearest registry and obtain a copy of the

Pre-Lodgement Notice details form. They then need to complete this form for each "Final Notice of Claim" they require.

Once they have completed the details form these can be delivered to their nearest registry along with a cheque for the correct amount.

The Final Notice of Claim forms will then be processed in the registry. The client will then be informed when they are ready for collection.

The client is then responsible for service of the "Final Notice of Claim".

PRE-LODGEMENT MEDIATION

If both parties wish to have their dispute mediated they can do so through the Magistrates Court.

Mediation enquires can be made by telephone, facsimile, post or via email to:

Listings
Adelaide Magistrates Court Civil Registry
Telephone: 8204 0680
Facsimile: 8204 0670

OR

Manager of Mediation
Adelaide Magistrates Court Civil Registry
GPO Box 2618
ADELAIDE
SA 5001

OR

mediation@courts.sa.gov.au

PRE-LODGEMENT SYSTEM FLOW CHART

AT THE REGISTRY

Plaintiff goes into registry

↓

Requests a Form 1A

↓

Asked to complete the details form

↓

Information entered into site

↓

Notice generated

↓

Payment of $10
by cash/cheque/credit card

↓

Client issued with receipt

↓

Plaintiff then serves the notice on the Defendant

VIA THE INTERNET

Plaintiff registers as a user

↓

Logs in via user name and password

↓

Enters credit card details

↓

Authorisation of credit card details

↓

$10 debited from plaintiff's credit card

↓

Plaintiff enters information in site

↓

Notice generated

↓

Plaintiff then serves the notice on the defendant

PUBLIC ACCESS TO LEGISLATIVE INFORMATION AND JUDICIAL DECISIONS IN NEW ZEALAND: PROGRESS AND PROCESS

David Harvey*

Abstract

This paper discusses a number of steps that are being taken towards making legal information available on the internet in New Zealand. The first part of the paper considers steps that are being taken by Parliamentary Counsel Office to make statutory and legislative information available online and the rationale for that process in the New Zealand environment, as well as the possible impact that this step may have on the production of print-based legislative information.

The second part of the paper discusses the process that is currently being developed for the electronic preparation and gathering of court decisions and the development of a central database of decisions, along with the issues that must be addressed in such a process as a preparatory step to making Court decisions available online.

In both cases consideration will be given to the paradigmatic issues that arise in making legal information available online.

Introduction

In this paper I will examine two developments in New Zealand that are directed to placing the law on the internet. The first development is the program that will allow access to legislation online. I shall consider the drivers for this process and the way in which the ultimate outcome will meet the goals and expectations raised by those drivers. The second development is one that is preparatory to making case law available on the internet and examines the process currently being undertaken to

* *Judge of the District Court of New Zealand*

collect judgments into a national database prior to distribution to the public or to publishers.

Both developments demonstrate and contain within them significant aspects of the consequences of the shift from the print paradigm to the digital paradigm. One development is driven (among other things) by the inability of the print paradigm to keep up with the pace of change. The other development has inherent within it holdovers from the print paradigm and perpetuates it. Both developments demonstrate a significant aspect of the digital paradigm that is inherent within it. Change in the digital paradigm is a constant and the implications of constant change upon the concepts of certainty and reliability that underpin the Anglo-American common law system are significant for the future of law. Indeed, it is my contention that the constancy of change inherent within the digital environment is, alone, a rationale for free public access to law.

Access to Legislation

BACKGROUND

At the present time access to legislation in New Zealand is by way of printed copy. It is the responsibility of the Compilation Department of the Office of Parliamentary Counsel:

> As and when directed by the Prime Minister or the Attorney-General, to compile, with their amendments, statutes, amendments whereof have been enacted, and to supervise the printing of such compilations.[1]

This recognises the importance of keeping legislation updated. Acts of Parliament and successive amending legislation may be purchased, but it is difficult to ascertain the precise effect of an amendment unless it is incorporated in a reprinted copy of the statute which incorporates the amendment. Until such reprints become available, law offices, libraries and other such facilities utilise an annotations service to keep legislation up to date. It is a generally accepted principle that Acts should be reprinted with all amendments consolidated at intervals of not more than ten years.[2] A difficulty faced by Parliamentary Counsel's Office is that it cannot keep pace with the requirement to reprint legislation. The

1 Statutes Drafting and Compilation Act 1920, s 5(a).
2 Parliamentary Counsel Office, "Improving Public Access to Legislation" PriceWaterhouseCoopers Report, December 1999 para 4.1 <http://www.pco.parliament.govt.nz/pal/PALreports.html> (visited 23 October 2001).

Crimes Act 1961, which has over 60 amendments awaiting consolidation, and the Local Government Act 1974, which has over 40, are examples.

Statutes in New Zealand have been the subject of special reprints from time to time. This has been a significant aspect of public access to legislative information.

> The first major milestone was the 1908 consolidation of New Zealand legislation. Like subsequent reprints, the particular political, social, economic and technological circumstances of the time were significant drivers for the consolidation. The most relevant issue in 1908 was the need to update the statute book to take account of New Zealand's newly acquired Dominion status in 1907. Also of importance was the fact that New Zealand legislation had never before been consolidated or reprinted—in effect legislation spanning a period of at least 67 years since 1840 required the attention of the consolidators. This requirement—simply to make more accessible legislation passed in the preceding years—was to occur approximately every 20 to 25 years starting from 1908.[3]

The next reprint was in 1931. Twenty years of "the thick growth of legislative jungle"[4] had been added but not incorporated into a compiled or reprinted form. The pressure for a reprint was political, social and economic including the need by a reformist government to pass legislation to deal with the economic problems of the time.

A further reprint in 1957 had a similar impetus. Nearly 30 years had elapsed since the last reprint, new political agendas were in place and there had been significant improvements in publishing technologies. Even so, the reprint took a considerable time and four years passed between the publications of the first and the last volumes.

The final reprint commenced in 1979 but this has not solved the problem of up-to-date public access to compiled legislation.[5]

The issue of public access to legislation has two other aspects. The first is the provision of official programmes and legislative requirements to ensure access to law. In 1974 the Depository Library Scheme was set up. This was designed to ensure that 21 libraries throughout New Zealand were provided with copies of legislation, thereby ensuring that access was provided at no cost to users.[6] The item of legislative significance was the passage of the Acts and Regulations

3 ibid
4 Chief Justice Sir Michael Myers, Foreword to the 1931 Reprint of Statutes
5 PriceWaterhouseCoopers Report, op cit, referring to J.B. Ringer (1991), *An Introduction to New Zealand Government*, Hazard Press, p 189.

Publication Act 1989 which provided that Parliamentary Counsel's Office became responsible under the control of the Attorney-General for arranging printing and publishing of legislation. In the same year the Government Printer was sold, resulting in a shift of the role of publishing legislation into the private sector. A contract was established with a company now known as Legislation Direct to manage the printing and publishing of legislation.

The second aspect is the recognition by the Courts of the right of citizens to know, and implicity have access to, the law. Two examples will suffice. In the case of *Lim Chin Aik v R*[7] it was said:

> In their Lordships' opinion, even if the making of the order by the minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision, corresponding, for example, to that contained in s 3(2) of the English Statutory Instruments Act, 1946, *for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what "the law" is.*[8]

In *Victoria University of Wellington Students Association v Shearer (Government Printer)*[9] Wild CJ made the following observation:

> I think it can be accepted that the Crown is broadly responsible for making the text of enactments of the Legislature available for public information. People must be told what Parliament is doing and must be able to read the letter of the law. At all events very early in New Zealand history the matter was made a constitutional obligation by s 60 of the New Zealand Constitution Act 1852 (15 and 16 Vict c 72) passed by the United Kingdom Parliament. This was as follows:
>
> The Governor shall cause every Act of the said General Assembly which he shall have assented to in Her Majesty's name to be printed in the

6 However this programme does have limitations. The number of libraries do not ensure full access nationwide and the cost of maintaining annotating and updating often means that legislation is not regularly updated as a result of budgetary constraints. For a critique of the Depository Library Scheme see J. Treadwell, "Free Access to the Law: The Strange Case of New Zealand", AustLII Law and the Internet Conference 1999 <http://www.austlii.edu.au/au/other/col/1999/44/index.html> (visited 23 October 2001).

7 [1963] 1 All ER 223 at 227.

8 The emphasis is mine. The maxim referred to was "ignorance of the law is no excuse".

9 [1973] 2 NZLR 21.

> Government Gazette for general information, and such publication by such Governor of any such Act shall be deemed to be in law the promulgation of the same.[10]

By September 1998 it had become clear that the difficulties in keeping the reprints of statutes up to date, advances in technology and a growing recognition that there should be an official version of the statutes and regulations available in electronic form required a reconsideration of how legislation should be made available to the public. As a result Parliamentary Counsel Office issued a discussion paper for public comment.[11]

THE CURRENT POSITION

Following public response to the discussion paper and the commissioning of a review of options by consultants PriceWaterhouseCoopers[12] it was recognised that;

> [M]any people felt frustration that, while they could access legislation of numerous overseas jurisdictions over the internet, they could not do so for themselves here at home. It was clear from the submissions received that there was a high level and broad range of interest in improving public access to legislation. A clear majority of submissions felt that a key function of the State was to make official, up to date legislation available in both printed and electronic form. The Government endorses that view.[13]

A business case was put forward and an implementation partner was selected. Stage 1 of the project involves an analysis of the structure of New Zealand legislation, and the development of user requirements and functional specifications for a new drafting system, an electronic data-

---

10 ibid at 23. In this case the plaintiff association sought a mandamus against the Government Printer to compel him to print and supply copies of the whole of the text of the Judicature Act 1908, including the Second Schedule containing the Supreme Court Code of Civil Procedure and all amendments thereto. In this way students could be spared the expense of purchasing a text book which contained the Code. Mandamus did not issue on the grounds that the Government Printer was not an agent of the Crown designated to do a particular act.

11 "Public Access to Legislation", Press Release, 14 September 1998 <http://www.pco.parliament.govt.nz/Archive/pressreleases.html> (visited 23 October 2001). "Public Access to Legislation–A Discussion Paper for Public Comment", Parliamentary Counsel Office, August 1998 <http://www.pco.parliament.govt.nz/pal/papers.html> (visited 23 October 2001).

12 For the report see n 2.

13 "Legislation on the Net", Press Release, Hon Margaret Wilson, 10 April 2000 <http://www.pco.parliament.govt.nz/pal/PALpressreleases.html> (visited 23 October 2001).

base of legislation, and electronic and hard copy legislation access systems. It will also involve the development of selection criteria for the acquisition of an electronic database of New Zealand legislation.[14] Stage 1 is anticipated to be completed by late November 2001. Stage 2, which is to be concluded by the end of 2002, involves the acquisition of an electronic database of New Zealand legislation, and the implementation of the systems needed to make that database available over the internet, as well as a new drafting tool for law drafters.

The total proposal by Parliamentary Counsel's Office goes beyond the provision of electronic access to legislative material but will enhance drafting and legislation management as it passes through the House. Thus, behind the proposal are a number of drivers for change, many of which arise from the state's duty to provide legislative information to the public, but others of which have ramifications arising from the nature of the print paradigm as well as the political process in New Zealand.

Drivers for Change

DEMOCRATIC PRINCIPLES

As I have stated, our system works upon the proposition that ignorance of the law is no excuse and that citizens should have access to the law. It is incumbent upon the state to make sure that laws are available to citizens. It would not be possible for the state to function if people could only be held accountable for breaches for laws about which they had actual knowledge. Thus, an important role of the state is to provide access to an official, reliable and up-to-date version of its laws and it should not be left to unofficial versions made available by private publishers, even if their products are reliable.[15]

Within the New Zealand context the statutory obligation to provide compilations of statutes and to ensure publication of law has its difficulties. It has been observed that the present compilation or reprinting process is not working for a number of reasons:

(1) It does not take advantage of modern technology and as a result is too slow and inefficient;

14 New Zealand legislation@your.service: "Government signs contract with Unisys", Press Release, Hon Margaret Wilson, 13 July 2001 <http://www.pco.parliament.govt.nz/pal/PALpressreleases.html> (visited 23 October 2001).
15 Geoff Lawn, "Improving Public Access to Legislation", 4 April 2001 <http://www.pco.parliament.govt.nz/pal/GLA.html>.

(2) It does not satisfy the need for timely access to up to date legislation;
(3) It is difficult to link subordinate legislation to its primary legislation;
(4) It does not make the law available in an easily accessible form.[16]

For some time there had been growing dissatisfaction with the reprint system. The process and product had fallen behind the reasonable expectations of the legal profession and the public for access to up-to-date legislation. Advances in technology, particularly the internet and ease of access to legislative material from other systems, raise expectations for the way in which the public should be able to access information and the currency of that information.

Certainly, New Zealand is behind other countries in providing access to legislation. But it has been observed that an advantage of this lag is that New Zealand stands to gain from the experience (and possibly mistakes) of other countries in developing a system that meets local needs.[17]

At the 1999 Law via the Internet conference in Sydney, Jane Treadwell[18] suggested that the private sector had filled the gap left open by lack of an official online legislative resource, and that it was too late for the Government to step back into the field of play. She was concerned as to whether the provision of free access to electronic legislation might destroy the finally balanced legal information market which exists in New Zealand.

Geoff Lawn[19] answered those concerns in the following way:

(1) Up-to-date legislation that is easily accessible and comprehensible to the public may be regarded as part of the basic infrastructure of society, as essential as the roading system or a reliable telecommunication system, and without which the everyday functioning of society is made more difficult.
(2) Does the current situation, in which the availability of legislation in electronic form is dependent solely on the private sector, make legislation as widely available as it should be? It may suit the needs of the legal profession, which can generally afford to pay, but does it meet the needs of the general public for access to "their law"? Does it simply entrench the position of the legal profession as a

16 Geoff Lawn, "What Makes Parliament Tick–Access to Legislation", 17 August 1999 <http://www.pco.parliament.govt.nz/CorporateFile/access.html>.
17 ibid, para 20.
18 op cit, n 6.
19 Geoff Lawn, "What Makes Parliament Tick?", op cit, n 16, para 22.

sort of "priestly caste", the interpreter of the law for those unable to access it for themselves?

(3) Is it desirable to rely on the private sector for such a basic commodity? Can the state afford to run the risk that private sector providers might some day decide to pull out of the market, leaving the state and therefore the public without any central electronic database of legislation?

(4) And as to quality, can a version of legislation in electronic form that is not official, that cannot be relied on as authoritative, really be regarded as fulfilling the duty that Chief Justice Wilde clearly imposed on the government?[20]

Behind this particular driver for change is the conflict created by the digital paradigm and the print paradigm. Inherent within the digital paradigm is ready and speedy access to information. The availability of information heightens our future expectations for information availability generally. Inevitably, if we see a certain class of information available from other jurisdictions the question is asked why similar information cannot be available in a similar way in this jurisdiction. One only has to observe the Tasmanian legislative website to understand the not inconsiderable benefit provided by not only access to current legislation but to an historical database as well. Thus, the digital environment raises expectations and enhances desires for ready availability to information.

The conflict becomes even more apparent when the print paradigm fails to deliver. Clearly, as has been observed with the unsatisfactory progress in terms of the reprinted New Zealand legislation, the print paradigm has been falling behind and has been found wanting. The increase of legislative information[21] together with the growing complexity of legislation, its dynamic, continued demand for transparency and openness in government, and a broader base of users of legislation, have put pressures upon Parliamentary Counsel Office which, within the print paradigm, it is unable to satisfy.

THE LEGISLATIVE PROCESS

A second driver for change arises within the legislative process itself in that wide, free public access to legislative information, allows the workability of the law to be scrutinised and assists in highlighting areas where

20 *VUWSA v Shearer*, op cit, n 9.

21 PriceWaterhouseCoopers Report, op cit, n 2, para 6.1.

it needs changing. Proposals for change and, indeed, citizen-initiated suggestions for change, become enhanced when there is a more ready accessibility to legal information.

In terms of the legislative process itself, a number of changes have been adopted by Parliamentary Counsel Office. Some of these changes have flowed from recommendations of the Law Commission.[22] This is viewed by Parliamentary Counsel Office as an access issue itself in terms of the intelligibility of legislation. However, in terms of the development of legislation through the legislative process, it has been observed that lengthy policy development often results in short deadlines for the introduction of legislation and therefore the time allowed for the drafter to do a good job is severely curtailed.[23] Other difficulties that have a severe impact upon the ability of the drafters to produce well organised and clearly worded legislation are the last minute policy changes. This is not a problem peculiar to New Zealand.[24] In addition, the particular political environment currently in New Zealand following upon the introduction of Mixed Member Proportional Representation (MMP) has produced its own peculiar tension in terms of access to legislation.[25]

The Parliamentary Counsel Office Project

The objectives of Parliamentary Counsel Office project are as follows:

(1) To make legislation available both electronically and in printed form from a database owned and maintained by the Crown;
(2) To provide access to Acts and Regulations in both electronic and printed form as soon as possible after they are enacted or made;
(3) To provide access to legislation with amendments incorporated as soon as possible after the amendments are enacted;
(4) To provide electronic access to Bills at key stages during their progress through Parliament;
(5) To provide electronic access to Bills, Acts and Regulations free via the internet.

22 New Zealand Law Commission, *Report No 27: The Format of Legislation*, Wellington, December 1993.
23 op cit, n 15.
24 See Sir George Engel, "Bills are Made to Pass as Razors are Made to Sell: Practical Constraints in the Preparation of Legislation", (1983) *Statute Law Review* 7.
25 For a discussion of the impact of MMP upon the statutory drafting process see Geoff Lawn, "Improving Public Access to Legislation", op cit, n 15.

Geoff Lawn[26] observes that the project will have benefits in terms of assisting Members of Parliament, lawyers and others involved in the legislative process to understand the implications of proposed changes to legislation. Parliamentary Counsel Office hopes to introduce two features of the new system:

(1) To make it possible to see the effect of proposed changes to the law, through the production of versions of Acts or Regulations with proposed amendments incorporated as if already enacted;
(2) To make it easier to see the effect of proposed amendments to Bills before Parliament, thus benefit would be afforded to those involved in the development of legislative proposals, including policy advisers and lawyers.

Thus the tracking of change in the law becomes enhanced whilst, at the same time, allowing for the encouragement of change as a result of ready access to legislative information. Public scrutiny of legislation, both through the legislative process and after legislation has been passed, may well identify difficulties or problems with legislative enactment that would otherwise have required litigation or perhaps some belated academic analysis to make such shortcomings obvious. In addition, the growing openness of government and the steps that are been taken to ensure that people are becoming more openly involved in the activities of government will encourage this.

Access to Legislation—The Digital Divide

The New Zealand Government's recent vision statement for electronic government also suggests that online access to legislation will be increasingly required by citizens as an essential part of "electronic democracy".[27] Thus, we can observe some of the essential aspects of the print and digital paradigm at work behind the development of the program by Parliamentary Counsel Office to develop free public access to New Zealand legislation by the internet.

However, there is another issue associated with this and it arises from what has become known as the digital divide. Internet-based access to legislation as an alternative to the print medium assumes access to the internet by the citizenry. The sad fact is that for a number of reasons, primarily economic, but also based upon edu-

26 ibid
27 <http://www.govt.nz/evision>

cation and abilities to handle new technology, a large proportion of the citizenry does not have access to or is unable to effectively access material on the internet. Thus, there is a second limb to the proposal to make legislative information available for free on the internet and that is to ensure that resources are available for the citizenry to have access to that legislative information with ease.

It is not suggested that as an adjunct to free public access to legislative information online that the state should fund a computer in every home and an internet service provider account. However, in the same way as the Depository Library Scheme was set up to ensure the availability of legislative information utilising the library system, the same library system can be utilised to make information available via the internet. It is trite to say that access to legislative information online is a one to many model. There are costs involved to the library system, for example, in providing a terminal for citizens who wish to access legislative information at a public library. However, with the relatively low cost of computing equipment and with the ability to restrict access to nominated sites, there seems to be little reason why a terminal or terminals cannot be installed in every public library in New Zealand to enable members of the citizenry to access legislative information online in the same way that they would access legislative information from a copy of a statute book. Indeed, the advantages in this proposition enhance Parliamentary Counsel Office's rationale for access to the law in that, unlike the Depository Library Scheme, access could be made available to libraries throughout the country rather than at twenty nominated libraries. In addition, such a proposition would be consistent with the currently developing view that a library is no longer a storage place for printed material but in fact a service from whence information in all its forms is derived.

Populating a Decisions Database—A Court-Based Model[28]

Any informational database has to be as complete as possible. It is one thing to present decisions on the internet. It is entirely another proposition to devise a system for the collection of such decisions.

In New Zealand all members of the judiciary have access to

28 The discussion that follows is derived from the author's own participation in the development of the software and consultation in the process as a member of the Department for Courts Judicial Information Consultative Committee.

computers as do their support staff. All courts are connected to a network. Judges and their support staff have access to intranets and the internet, as does the judiciary. Since the introduction of computing facilities for the judiciary over ten years ago, judges and their administrative support staff have been involved in the development of a trial and document management tool which assists in the preparation and organisation of judicial decisions. Fundamental to the utility is a system of document templates which constrain the user to conform to standards and at the same time can be used to automate routine processes to improve productivity.

For some time consideration has been given to utilising electronic systems to make the decisions of New Zealand courts more freely available. As part of this process Court of Appeal decisions were made available to AustLII in 1999. Other approaches had been made to the New Zealand Department for Courts and to the judiciary by other organisations, including legal publishers.

These approaches generated interest in judicial needs for electronic access to decisions. As a concept it was considered that decisions should be contained within an "electronic vault" which would be a source of raw material where judges could get hold of key judgments electronically.

As consideration of the process developed, the concept of a judicial decisions database evolved. Essential to the database was the development of a specialised decision document template containing a number of standard fields which are common across the judiciary. This allows for the automation of certain processes, including the finalisation of a decision so that it is set in "read only" format once the judge has determined that it is ready for release.

The decision is prepared within the context of the document management software known as the Judicial Toolkit.

Once the decision has been delivered it is sent electronically to a special section of the server at the judge's court. It is then available for collection and filing in the judicial decisions database.

The database project has three key elements.

- Judgment collection and storage for processing utilising a software tool referred to as the "Hoover".[29] In this way the database is initially populated.

29 Named after a well known vacuum cleaner brand.

- A content management tool for the processing and publishing of judgments.
- The dissemination of judgments external to the Department for Courts, including a potential database for publication on the internet.

The first two elements have been developed.

JUDGMENT COLLECTION AND STORAGE

The "Hoover" is a software tool that collects judgments that have been created using the standard judgments template within the Judicial Toolkit. As I have already noted, when a judgment is finalised by a judge or his or her judicial support staff member, the document is protected in "read only" format and moved to a staging file location in the local server. The Hoover searches each staging location for new documents on a regular basis and copies them to an in-box for processing by content managers.

The content manager may then open a judgment, decide if its properties are valid or not, extract all judgment properties and upload the judgment and its associated properties to both the in-box and the content manager's private document storage database. If it is found that some of the document properties are invalid, the document may then be returned to the authoring judge for correction.

One of the issues that has concerned the judiciary is the disclosure of private or sensitive information, information which may be statutorily barred from publication, or in respect of which the judge may have ordered suppression.[30]

A judge may, as part of the template, make an appropriate notation for suppression of information but when there is no judicial indication that a document is subject to suppression or statutory restriction, a judgment may be searched for words or phrases that indicate the existence of a suppression order. If any are found, the particular suppression property in the template will be changed to indicate a tentative suppression has been found and content managers will be alerted. If there is some question as to the existence of suppression criteria or some statutory restriction upon publication, the judgment may be returned to the judge for correction.

30 Such as the name of a complainant in a sexual offending case or the name of or information leading to the identity of a child subject to the provisions of the Children, Young Persons and their Families Act or cases falling within the provisions of the Family Proceedings Act or the Guardianship Act

THE CONTENT MANAGEMENT TOOL

The second element involves the content management tool which facilitates the publishing of judgments from the inbox to the judicial decisions database. After assessment by the content manager the publication process may take place utilising the content management tool. The tool will facilitate all aspects of document publication and has the ability to edit documents, although this function cannot be used in accordance with policy directions from the judiciary.

The content management tool will–

- Display a list of judgments in all databases.
- Display the properties of any judgment.
- Allow the viewing of judgments in both databases.
- Allow checkout, editing and recheck in of judgments in the inbox.
- Publish a judgment from the inbox to the judicial decisions database.

In addition, links may be created between judgments which are subject to an appeal and also where an appeal has been heard, so that cross-referencing to the judgment appealed from and the appeal judgment may take place.

The proposed "electronic vault" or in-box is therefore an intermediate phase between the delivery of the judgment and its publication to the judicial decisions database. A judge has the ability to note that a judgment is "not for publication" in which case it will not be published into the judicial decisions database. In addition, a judgment may be removed or "unpublished" from the judicial decisions database and placed in the inbox for further action, such as a recall or the application of the "do not publish" command. The decision as to publication or non-publication rests entirely with the judge.

Content managers will be able to link one judgment to other judgments in the database. This is considered useful in the event of linking documents that detail the judgment in separate documents–for example, an order in one document and detailed reasons in another. Once a document is linked within the context of an appeal, the system will prompt the content manager to send an email to the judge of the Lower Court notifying them of the fact that an appeal judgment has been published into the database. If, however, the appeal judgment is not published into the database, the alert will not be generated.

The collection process establishes the important and significant first step in the population of the judicial decisions database.

Automated judgment collection systems ensure that the raw material collected in the inbox for screening by content managers is as full as possible. However, a shortcoming in terms of database integrity is that Judges may nominate which decisions progress to the judicial decisions database and which do not.

The significance of the judicial decisions database is that it makes decisions of all the judiciary that are in the database freely available by means of the database to all judges in New Zealand. It also represents an important first step towards enabling distribution of judgments to publishers and to the publication of judgments on the internet. This significant third aspect–the dissemination of judgments external to the court system, including the potential of publication to the internet–is still a matter which is under discussion.[31]

Databases, Precedent and the Digital Paradigm

Although the collection and assembly of judicial decisions utilises the network environment and uses collection and content management software tools, what is provided is a digital "mirror" of a print-based library, which will be enhanced in the future by the utilisation of electronic search mechanisms to locate appropriate information. The database differs from the "print" library in terms of the volume of information available

The implication in terms of the digital paradigm and the development of precedent within an environment of a large volume of information and incremental change is significant. Elsewhere I have considered the impact of micro-incremental change upon long-held elements of the development of precedent.[32] The very nature of the print paradigm, with its limitations in terms of physical storage, distribution and production (which have ironically impeded access to legislation issues), has a significant impact upon precedent. The dynamic in the development of precedent has arisen from the print paradigm.

31 The Department for Courts has talked to the judiciary about publishing court decisions on the internet.

The department is trying to put together a proposal for the publication on the internet of all decisions. Chief Justice Dame Sian Elias told the Newspaper Publishers Association in June that it would greatly enhance public and media access to the work of the courts: *New Zealand Herald*, 18 October 2001 <http://www.nzherald.co.nz/latestnewsstory.cfm?storyID=223261&thesection=technology&thesubsection=latest&thesecondsubsection=> (visited 1 November 2001).

32 See D.J. Harvey (2000), *Authentication and Verification of Online Legal Materials*, paper prepared for the AIJA Technology for Justice, Melbourne.

A careful balance in terms of available precedential material, limited by the publication of decisions in the law reports, has been significant and a critical mass has been achieved as a result of the print paradigm.[33]

What arises in the digital environment flows from the need to ensure the integrity of the database by having as much material as possible available. This means that for a large number of cases, facts become determinants, instead of developing principle over a lengthy period of time through small incremental steps. The availability of large quantities of judicial information means that rather than having decisions and arguments based upon principle, more significance is attached to ensuring that a previous decision may be found which is on all fours with the facts before the court. Thus, by utilising a "what has gone before" argument, it will be put forward by counsel that, utilising precedent based decisions previously applicable to principle, that facts will become a determinant for the outcome of a decision. The development of precedent will move away from a principle-based system to a fact-based system.

The effect of systems such as the judicial decisions database upon the development of precedent will take time. In some jurisdictions[34] the effect of electronic systems is limited or mitigated by a requirement that only reported decisions may be cited. With the development of systems such as Lexis and Westlaw, which report decisions not published in print, such a mitigating circumstance may be illusory.

Thus, availability of a large number of judicial decisions utilising electronic or network systems has a significant beneficial effect in terms of allowing the citizenry to know and have access to the law and legal information. The potential implication for significant underpinning of common law-based legal systems and the doctrine of precedent is something that will change. How significant that change will be has yet to be determined.

---

33 William Holdsworth (1928), *Some Lessons from our Legal History*, New York, Macmillan, pp 18-19: "One of the main conditions for the success of the system of case law is a limit on the number of case reports." See also Grant Gilmore (1961), "Legal Realism: Its Cause and Cure", 70 *Yale Law Journal* 1037:
"When the number of printed cases becomes like the number of grains of sand on the beach, a precedent-based case law system does not work and cannot be made to work ... the theory of precedent depends, for its ideal operation, on the existence of a comfortable number of precedents, but not too many."
34 The United States in particular–see *Anastasoff v US* (1999) US Dist Lexis 22238; overturned on appeal 235 F 3d 1054; *Hart v Massanari* (2001) US App Lexis 20863.

Conclusion

In this paper I have considered two major constituents of the Anglo-American legislative/common law system. The inadequacies of the print paradigm and print systems has driven the New Zealand Parliamentary Counsel's office to examine and develop digital and online solutions for the progress, production and publication of legislation. Whereas the elements of change in the legislative process were less publicised and less available to the populace, aspects of the incremental change process that are inherent in the passage of legislation through its various stages will become more available to more people and will inform more public debate upon the content of legislation. In this way, change within the progress of legislation will be more thoroughly scrutinised and be the subject of wider debate.

Once legislation is passed it will be more thoroughly scrutinised in action. A consequence of this will be that legislation will be subject to much more amendment throughout its life and the implications of this for concepts of certainty and confidence in the relative immutability of legislative enactments will undergo re-examination. It has been rare, with the exception of failings in tax legislation exposed by judicial examination, that legislative change is other than a relatively glacial process. This will change as access to legislation online allows groups within society to question or challenge legislation in whole or in part. The advent of case law online and the interpretative function performed by the Courts will further inform debate on the need for change in legislation. Thus, in a circular process, online access to legislative material itself will become a driver for constant legislative change which, which, on the precept that a government cannot keep its populace in ignorance of the law, itself requires a government to ensure that access to law online is provided to the governed.

Driven by the inadequacies of the print paradigm and the opportunities provided by the digital paradigm to develop a more efficient publication of legislation and the legislative process, the fact of legislative access online itself accelerates the pace of change and causes us to re-examine long-held preconceptions about the "solidity" and certainty of law.

Similarly with case law. In our quest to make primary legal information available online, and in attempting to achieve the goal of "democratisation" of the law, we may well be developing challenges to many of our fundamental conceptions and underpinnings of our

legal system. In a world where the precipitous pace of change is a constant, the fundamentals of the law have, to date, remained. Whether this will continue as the winds of change blow is in the hands of time.[35] The process, having begun, cannot be stopped.

35 One is reminded of the words that Robert Bolt put in the mouth of Sir Thomas More in *A Man for All Seasons*: "This country's planted thick with laws from coast to coat–Man's laws, not God's–and if you cut them down–and you're just the man to do it–d'you really think you could stand upright in the winds that would blow then?"