

**Submission by  
eCúirt Teoranta/eCourt™  
to the  
Review Group on the Administration of  
Civil Justice**

eCúirt Teoranta t/a eCourt™ has prepared this submission for the Review of the Administration of Civil Justice undertaken by the Review Group chaired by the Honourable Mr Justice Peter Kelly, President of the High Court. The submission will discuss certain matters that eCourt™ thinks would be of assistance to the Review Group. Our submission refers, in particular to:

*d) Reviewing the use of electronic methods of communications including e-litigation and possibilities for making court documents (including submissions and pleadings) available or accessible on the internet;*

and is made without prejudice to the rights of other eLitigation providers.

eCourt™ has developed trial presentation technology which facilitates the presentation of documents to court in electronic form.

In the overall context of eLitigation, which encompasses the litigation process from inception to disposal of a case, only limited progress has been made:

1. **eFiling**: it is anticipated from Head 9 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 that the Rules Committees will be given the power to provide rules for the electronic filing of documents. This has been welcomed by the Bar of Ireland in its submission to this Review Group (paragraph 10.4).
2. **eService**: The Courts have long allowed service of notice of the granting of certain emergency orders such as interim injunctions by way of email. The High Court has recently demonstrated, in the course of applications for substituted service, that it is amenable to permitting the service of proceedings electronically whether by email or by way of social media. (c.f. Bar of Ireland submissions at paragraph 10.2). The Bar of Ireland suggest that **eService** be rolled out as a primary method of service of proceedings, beginning with service on registered companies (paragraph 10.3).
3. **eFileManagement**: Many commercial providers such as Bundledocs, which has made a submission to this Review Group, provide electronic file management software where documents, photographs, charts and video are stored, shared and worked on in electronic form, rather than in paper form or hard copy. These software solutions prohibit documents to be used in Court from being altered or corrupted.
4. **eBriefing**: This is the logical next step facilitated by the secure email addresses **another@lawlibrary.ie** and the Bar of Ireland's **OneDrive** facility. Barristers can be, and often are, briefed electronically without the files, which are electronically stored by the instructing solicitor, being wastefully printed out and sent by post or courier. File

management software, such as Bundledocs, facilitates the barrister(s) accessing and working with the brief.

5. **ePresentation**: This is the most under-utilised aspect of **eLitigation**. Even in the case of major solicitor firms and Insurance companies which have embraced **eFileManagement** to the extent of running paperless offices, scanning and then shredding correspondence, briefs are compiled electronically only to be printed out for the hearing of the action and all interlocutory hearings.

Where **ePresentation** is utilised, it often involves the installation of fixed screens in Court or in the tribunal's hearing room. Counsels' autonomy, and that of the Bench, is compromised as the presentation is generally made via an independent operator in the court, who must be informed of the running order of documents or videos the evening before the day of their presentation, so that he or she can call up the required documents for viewing by all parties on the day.

The **eCourt™** system is very different in the way that case files are managed. The files to be opened in court are uploaded in advance of the hearing on to the iPad or Android tablet device of each lawyer and judge, where they can be viewed and privately annotated. The files are located on each individual user's tablet device, not stored remotely on the cloud. Users have access to, and control over, their own files as would be the case with paper. No third-party intervention is required. Using mirroring technology, which involves the selected page reference being transmitted between devices via a remote server, the presenting counsel viewing a particular document can take others in court to the equivalent document on their own devices. No-one sees the other's document or annotations and no data transfer occurs during mirroring.

To overcome the lack of WiFi connectivity in the Courts, **eCourt™** has developed our own portable network and server, the **eCourt Box**. The system is "plug and play" and can be set up quickly and easily in any courtroom. No data attracting GDPR regulation passes through, or is stored on, an **eCourtbox**.

eCourt was founded in 2013 by barristers Dáithí Mac Cárthaigh and Kieran Morris to address the issue of more efficient trial presentation. **eCourt™** has been developed with the end user in mind. The ultimate goal has been to develop a reliable easy to use presentation tool, bringing together all the facets which allow for the creation and distribution of files and their presentation thereafter in a totally secure environment often where the availability of an internet connection may be limited or non-existent.

The principle of electronic presentation has been established in both the Supreme Court and High Court. **eCourt™** was piloted in the paperless Supreme Court case of *Lannigan v. Barry* [2016] 1 I.R. 656 in July 2016. In his judgment Clarke J. (as he then was) endorsed the eCourt System at p. 659 in the following terms:-

*[6] Before going on to consider the issues arising I think it is appropriate that I should record that the hearing of this appeal was facilitated by the first use in this court of a new system known as eCourt. That system involves all of the documentation for the appeal being placed on tablets, one of which is made available to each of the members of the court with additional tablets being provided to the legal teams representing the parties. The software facilitates ease of access to any particular document which may be under discussion at a specific point in the hearing. While, doubtless, as will always be the case with a new experiment, improvements can and will be made, I should record my own view that the experiment must be regarded as a success. In addition the cooperation of the legal teams and court staff with those providing the service is very much to be welcomed.*

William Fry Solicitors acted for the appellant in the aforementioned Supreme Court pilot. They very kindly provide feedback with constructive suggestions as follows:-

*Conclusion: Despite the possible improvements suggested above, the overwhelming consensus is that the pilot was a great success which was heavily praised by both solicitors and counsel. All involved would be delighted to see the Irish Courts Service introduce the use of the eCourt application across the board and feel that there should be no hesitation in taking advantage of the vast capabilities that its technology can offer going forward.*

**eCourt™** was used in the High Court case *The Data Protection Commissioner v. Facebook and Schrems* [2017] IEHC 545 (21 days in February March 2017). Over 30 tablet devices, with in excess of 50,000 pages loaded on each device, were provided for the participants. This equated to the equivalent of over 1.5 million sheets of paper, were all said documents to be printed off. This case was a hybrid presentation with both paper and **ePresentation** being used.

Feedback from the aforementioned cases not only served to highlight the in-court efficiencies to be achieved by the elimination of paper and the saving of court time, but lawyers and judges alike also noted the added convenience of being able to work with high volume pdf case files outside the courtroom before, during, and after the hearing.

Following further feedback and consultation, **eCourt™** technology is currently being redeveloped by an American software company, Salsita Software. The latest version is operable on both iOS/Apple and Android tablet devices. Salsita Software are partnering with eCourt to provide ongoing technical support and updated versions into the future.

**eCourt™** will co-host a conference at King's Inns on Saturday the 13<sup>th</sup> October 2018 to discuss and demonstrate all the above aspects of **eLitigation**: eFiling; eService; eFileManagement; eBriefing; and ePresentation. The **ePresentation** aspect will utilise the latest **eCourt™** technology by means of an exhibition moot court.

**eCourt™** is engaging with Legal IT Ltd., which has developed the case preparation software "Bundledocs". A partnership arrangement will allow for a seamless experience for practitioners from preparation of the trial bundle to its presentation to Court. Bundledocs will make a presentation in relation to **eFileManagement** and **eBriefing** at the conference at King's Inns.

**Proposal:**

Without prejudice to the rights of other **eLitigation** providers in this space and in order for the Courts Service to further prove the concept, **eCourt™** proposes a pilot program whereby 6 paperless hearings be held during the Michaelmas Term 2018. The support of the Judiciary and the Courts Service is necessary to put out the call for participants in such a pilot programme.

**eCourt™** will provide all necessary hardware (tablet devices and in-court WiFi network) and software, induction and training, at no cost to the Courts Service. **BundleDocs** software will be made available to the participants to manage their files and build the briefs in electronic form, replicating the paper equivalent. Participants would pay eCourt a fee, capped at the same amount as would normally be expended on paper in such a given case.

Following this pilot programme, a detailed assessment of the potential of **eLitigation** could take place. Again, this would be without prejudice to the rights of other **eLitigation** providers in this space to offer their services. Said assessment would include an examination of potential costs savings, both in terms of the physical replacement of paper and the savings in court time.

**Costs**

In relation to the issue of costs, and the context of the ongoing review of Order 99 RSC, the aforementioned assessment would include the option that printing and photocopying attract a much smaller quantum at taxation in order to discourage this wasteful, costly and time-consuming practice where paperless options are available.

**eCúirt Teoranta**

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