

The use of electronic communications including e-litigation and possibilities for making court documents (including submissions and proceedings) available or accessible on the internet

1 INTRODUCTION

- 1.1 This submission is in response to the request of the review group chaired by the President of the High Court, Mr Justice Peter Kelly, established to reform the administration of civil justice in Ireland.
- 1.2 Eversheds Sutherland is an international full service law firm and welcomes the opportunity to make a submission and to promote dialogue on the use of electronic methods of communications including e-litigation and examining the extent to which pleadings, submissions, and other Court documents should be available or accessible on the internet.

2 E-LITIGATION

- 2.1 Advances in technology means that corporate and private affairs are now conducted almost entirely electronically. We envisage e-litigation as a process that will streamline all components of the judicial process, from filing documents electronically, to scheduling hearings and having cases presented to the Courts by electronic means.

3 BENEFITS OF E-LITIGATION

- 3.1 Commercial litigation is a traditionally paper-heavy form of litigation. If the litigation process removed, or at least minimised, the use of hard copy documentation by using the available technology this would increase efficiency and streamline the overall litigation process from the perspective of litigants, the judiciary, and practitioners. At a macro level, greater efficiency maximises the use of Court time, allows greater predictability on legal costs and speeds up the litigation process.
- 3.2 We see the goals of e-litigation as potentially including the following:
 - 3.2.1 A streamlined filing process whereby Court documents comprising pleadings and affidavits are digitally signed thereby allowing for automated acceptance by the Courts Service of certain documents. For example, DocuSign is a cloud-based solution used by Eversheds Sutherland that allows our firm to manage the signing of documents via a single, secure, web-based platform. We believe a similar system could be used by the Courts Service for the purposes of e-filing.
 - (i) A system of e-filing would allow core pleadings to be filed remotely by electronic means on a secure server. Taking the High Court as an example, originating documents such as summonses could be filed electronically and allocated a secure reference number making them easily identifiable and accessible by litigants and their legal teams.
 - (ii) All subsequent pleadings could also be filed electronically with concurrent online remote access by the parties.

- 3.2.2 Minimise the use of hard copy documents or trial bundles and promote efficient use of documents before and during trial with simplified use of annotation, key word searches, hyperlinking between content, and more efficient collaboration between legal teams in preparing for trial and in ease of the Courts.
- 3.2.3 Continued access to Court files by litigants and their legal teams with potential for an online facility to periodically update agreed core books for Court as opposed to finalising before trial. A facility such as this could minimise risk of human error.
- 3.2.4 The processes and technologies around e-discovery are complex due to the sheer volume of electronic data produced and stored. Once discovery is agreed and exchanged, documents can be stored on the agreed electronic platform and accessed via a tablet device making all documents available both in advance of trial and during the trial phase itself and imaged easily on screen during the hearing. The use of various features such as annotation, hyperlinking and key word searching means that practitioners and the judiciary can locate relevant documents with ease.
- 3.2.5 The use of 'mirroring' technology at trial could facilitate paperless Court presentation. The person presenting to the Court can transmit the page being referred to in Court to all user's devices. This essentially means, the trial Judge, Counsel on both sides, the solicitors and the witnesses can quickly identify and share the relevant exhibit or pleading straight away, as opposed to trawling through hard copy trial books.
- 3.2.6 Parties could receive notices, orders and judgments instantly through an online portal and other routine Court tasks could become automated. This could also increase the efficiency of the Courts Service in communicating with practitioners.
- 3.2.7 Electronic storage of materials can free up valuable physical space that could be put to alternative uses. Similarly, e-filing and paperless trials could reduce the environmental footprint of litigating in Ireland.

4 OUR UNDERSTANDING OF THE CURRENT I.T. INFRASTRUCTURE AND TECHNOLOGY ABILITY WITHIN THE COURTS SERVICE

- 4.1 The benefits of e-litigation identified above can be achieved. We note the Courts Service objective to extend the Courts Service Online (the "CSOL") system which is very much welcomed. The CSOL is a system that provides facilities for online applications, uploading documents, distribution of Court documents, listing of cases, payment of fees, production of Court Orders and other documents.
- 4.2 The Courts Service ICT Strategy Statement 2016 - 2018 (the "ICT Strategy") highlights the important developments already made by the Courts Service. We note the Wide Area Network contracts in particular will be renewed over the course of the ICT Strategy, higher bandwidth made available and the use of the planned Government Cloud Network will be optimised.
- 4.3 The Courts Service in its ICT Strategy has also committed to continuing to expand the number of courtrooms that use technology to display evidence electronically in the courtroom. Indeed the Commercial Court was originally designed to facilitate paperless trials with a courtroom on Bow Street in Dublin being fitted

with VDUs, laptop connections, and facilities for e-filing, electronic presentation of evidence, video conferencing and digital audio recording.

- 4.4 Significant progress has been made in the development of IT infrastructure and technology within the Courts Service over the last number of years such as the introduction of the Commercial Court, video-conferencing, and the online legal diary. The Supreme Court successfully piloted paperless litigation in the case of *Lanigan v Barry* in June 2016, and was regarded as a success by the Chief Justice, Mr Justice Frank Clarke.
- 4.5 The legal profession now has the opportunity to build on this infrastructure and pave the way for the roll out of e-litigation services to the benefit of litigants, the judiciary and the Courts Service.

5 CONCLUSION

- 5.1 E-litigation has proven to be successful among other jurisdictions as outlined in the **Appendix** to this submission.
- 5.2 We recommend the establishment of a working group comprising a suitable representation from the judiciary, the Courts Service, legal practitioners with management expertise, IT experts, and the public who can make constructive recommendations on the introduction and promotion of e-litigation.
- 5.2.1 The working group should also seek to identify the most cost efficient and secure data retention system. It is possible that the use of third party service providers through a competitive tendering process can prove more economical than investing in capital infrastructure. This is relevant in particular to trial presentation systems.
- 5.3 Through our international network we have experience of systems which utilise a 'cloud' based approach rather than an onsite server. We understand the perceived security concerns relating to the cloud which is a matter for IT expertise. However, in our experience cloud based applications can offer greater flexibility to users.
- 5.4 Tight timeframes, consistency and uniform application of the Commercial Court rules in 2004 had a significant positive impact on shortening the time from initiation of an action to allocation of a hearing date. A mirroring of this approach and the adoption of e-litigation Court rules might be considered whereby the parties to a particular case can elect to be bound by a set of rules to conduct the particular hearing through electronic means.

APPENDIX

TRENDS

The Courts Service could look to other jurisdictions where e-litigation, particularly e-filing, has proven to be very successful.

United Kingdom

The use of e-filing has been compulsory for professional users since 25 April 2017 in the Royal Courts of Justice in the United Kingdom.

We have experience in the United Kingdom, particularly in inquiries and investigations, of evidence presentation systems where case documents remain in a single secure workspace from which legal professionals view documents and transcripts, and work together on hearings and trial preparation. One of the key benefits is the flexibility this affords practitioners, the judiciary and clients.

The Commercial Court heard a paperless trial in 2012 in the case of *Berezovsky v Abramovich*. It was widely reported that the trial and the technology used saved an estimated five millions sheets of paper. In her judgment, Mrs Justice Elizabeth Gloster commented that:

I was able to conduct what, at least so far as I was concerned, was a paperless trial. There can be no doubt that this enabled the trial to be concluded within the allotted timetable, and with the maximum efficiency. It also provided the inestimable advantage, from my perspective, of being able to access my notes made during trial, and the full galaxy of the trial bundles, from wherever I was and at whatever time of day (or night).

United States

The Courts of Delaware adopted e-filing in 1991 which has since been expanded to all major categories of civil cases. Delaware was the first state in the United States to implement an e-docketing and e-filing system for civil cases.

The Supreme Court of the United States operates an e-filing system. While paper remains the official form of filing, all parties who are represented by counsel must also submit electronic versions of filings through the system.

Federal Courts in the United States also accept e-filings via the judiciary's Case Management-Electronic Case Files (CM/ECF) system. The system allows each court the option of permitting pleadings and other documents to be filed with court over the internet.

Singapore

Singapore is a pioneer in the area of e-litigation. The Electronic Filing System (the "EFS") is the Singaporean judiciary's platform for the electronic filing of documents established in 1997 before becoming mandatory in 2000. The Integrated Electronic Litigation System (the "iELS") is an initiative launched in 2013 to replace the EFS.

Singapore Personal Access (or SingPass) allows users of the platform to transact with over 60 government agencies easily and securely online.

The Supreme Court in Singapore houses 'Technology Courts', first launched in 1995. The network in each courtroom links the various systems within the courtroom and enables them to share online information. In addition to being equipped to conduct hearings of cases where documents are e-filed under the iELS, the Technology Courts are also equipped with a wide variety of audio-visual equipment.

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