Quarterly Update Summer 2016

Digital Delivery of Legal Services to People on Low Incomes

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The Legal Education Foundation

The Author

Roger Smith OBE is a researcher, journalist and consultant in the field of legal services and human rights: he edits law-tech-a2j.org, a resource for those interested in the use of technology to advance access to justice around the world which is funded by The Legal Education Foundation. He is a solicitor; a visiting professor at London South Bank University; and a past director of the Legal Action Group, JUSTICE and West Hampstead Community Law Centre. He has also been director of legal education and training for the Law Society of England and Wales and acted for a time as its director of policy. He publishes a regular newsletter for the International Legal Aid Group and writes monthly columns for the Law Society Gazette and New Law Journal. He has undertaken various consultancies on legal aid and published a number of international comparative studies.

Disclaimer

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Introduction

This updates the annual report *Digital Delivery of Legal Services to People on Low Incomes* (thelegaleducationfoundation.org/wp-content/uploads/2016/05/Digital-Technology-Spring-2016.pdf) published by The Legal Education Foundation (TLEF) in May 2016. It incorporates some of the contributions to a website law-tech-a2j.org established by TLEF at pretty well the same time to provide a resource in the field. Regular readers of the website might be aware of some duplication but the update gives the opportunity to put individual contributions into a wider context; to review predictions; and to report on the latest developments within a comprehensive context.

The overall framework of the earlier report was the understanding that, for legal services for those on low incomes, the major cutting edge advances in the deployment of technology which require major financial investment, such as artificial intelligence (AI), are less relevant than established, less revolutionary developments. In particular, the report identified the following five major relevant trends:

(a) the development of guided pathways for advice and information, led by the Dutch Rechtwijzer;

(b) the emergence of national brands using an internet presence to deliver low fee services often linked with unbundling to open up 'the latent legal market' of potential low income clients;

(c) exploration of automated document assembly;

(d) experimentation with various forms of virtual legal practice; and

(e) Online Dispute Resolution[1]

Four improvements might be made to this framework as a result both of developments in the field over the last quarter and more reflection. Providing a general background for such a redrafting is the distinct sense of a change of pace. Practitioners, governments and academics are getting involved in a way that has not been so apparent until now. Contributions below illustrate the involvement of community law centres (in Hackney, London), universities

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1 Digital Delivery of Legal Services to People on Low Incomes (Annual Update May 2016), page 4
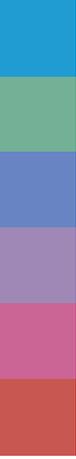
(Melbourne, Australia; Toronto and Montreal, Canada; The Hague, Netherlands) and Ministries of Justice (Toronto). Argument within the legal profession is moving from discussion about whether technology will change the nature of practice to how it will do so.

An article in *Newsweek* (June 17: 'Why the World loves Silicon Valley and Fears it' by Kevin Manley) expressed the view that 'artificial intelligence, 3-D printing and Blockchain' (the source of digital currencies like Bitcoin) will 'challenge all you know about manufacturing, money, services, national sovereignty and much else in your life'. The emphasis on AI must be correct. Several of the large corporate firms based in London have announced tie-ups with AI firms – for example, DLA Piper with Kira Systems (globallegalpost. com/global-view/dla-piper-unveils-new-partnership-with-ai-firm-kira-systems-27829722) and Allen and Overy LLP with i2 (thelawyer.com/issues/online-april-2015/allen-overy-invests-seed-corn-funding-into-experimental-technology-group-i2) and Deloitte's 9 (law360.com/articles/806263/tech-solutionsemerge-as-derivatives-laws-beginto-bite). Blockchain technology, with its ability to provide verified identity

by patterns of user recognition, is being used to assist Syrian refugees to prove identity and obtain debit cards (bravenewcoin.com/news/blockchain-company-helping-syrian-refugees-delivering-on-the-united-nations-vision). As familiarity with technological advances grows, so does their imaginative use in the field of access to justice. Groups in Peru, for example, are seeking to use the GPS functions of smartphones in campaigns against land seizures, an Open Society Foundation conference in Ottawa was told in June.

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Thus, it might be better to formulate the very first trend affecting legal services for those on low incomes as the consequences of general technological developments, particularly AI and the increasing use of the potential of smartphones. This has the additional advantage of sidestepping a potentially sterile debate about any distinction between systems using guided pathways to lead users through problems and the deployment of AI.
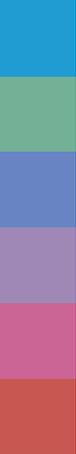
There probably is a real distinction around the capacity of AI to self-learn and to modify its systems but, if – as happened in Melbourne Australia – the guided pathway Rechtwijzer system is described as AI then the distinction does not really seem a matter of much importance.

The second and third changes are largely presentational. On reflection, the development of forms of virtual legal practice and the use of national brands using an internet interface can be brought under the one heading of 'virtual legal practices' to cover both.

There seems a working assumption in the governments of some jurisdictions, notably England and Wales, that users can be assisted digitally and that ODR may be developed satisfactorily without the provision of face to face physical assistance.

It would also seem useful as an additional point to recognise that around the world, and in various forms, we are seeing the emergence of an engagement in challenge funds, hackathons, and university incubators as ways of encouraging the kick starting of provision.

Finally, the issue of a digital divide (in which a section of population is disadvantaged by lack of access to services provided overwhelmingly by digital means) needs some recognition as a theme. The Dutch conceived their Rechtwijzer programme as supplemented by a network of physical offices 'law counters' where people could get face to face assistance. There seems a working assumption in the governments of some jurisdictions, notably England and Wales, that users can be assisted digitally and that ODR may be developed satisfactorily without the provision of face to face physical assistance. Many of those working in the field of actually providing legal services and advice to people are intensely sceptical about the degree to which digital services can work for populations and constituencies who are already hard to reach. The relationship between face to face and digital provision and ways in which the digital divide might be addressed need to be logged and considered.

The result is a slight reworking of how the key developments in the field might be headlined. The seven themes noted below seem, for the moment, to be the major ones under which initiatives and discussions may be usefully categorised. They are, of course, only intended to assist analysis and not to close down discussion of others and, indeed, they need to be kept under continuous review.

1. the consequences of general technological developments such as AI and smartphones;

2. the development of guided pathways to provide information and services;

3. the possibilities of automated document assembly;

4. the development of a variety of virtual legal practices;

5. the emergence of challenge funds, hackathons, incubators and other ways of kickstarting developments;

6. the expansion of ODR into the courts and tribunals likely to be relevant to those on low incomes.

7. the relationship of face to face and digital services.

Accordingly, this update is organised under these seven themes. The content is a combination of original material and contributions to the website established by The Legal Education Foundation to promote coverage of digital developments: law-tech-a2j.org. This is linked to a twitter account: @lawtech_a2j.

They have been established as a resource for those interested in the field. Both were 'soft launched' on 16 May 2016 and are slowly building up an audience. As at 26 July, there were 150 twitter followers. For the month ending 25 July, the website attracted 474 users in 691 sessions – the majority came from the UK but there was significant usage in Canada, the US, Australia and The Netherlands. The average stay on the website was 1 minute 28 seconds and the 'bounce rate' (those who left immediately on landing) was around 70%. On their own, it is difficult to know the meaning of these figures but they provide a baseline for comparisons of usage over time. The website began simply with a blog but has now added a list of publications. If you would like to comment on any matter in this report or to offer a contribution to the blog – and we have had a number of high calibre external contributions already – then please get in touch.

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474

1. Particular applications of general technological advances

The legal press is full of debate about the impact of AI on the practice of the law. Until recently, it seemed safe to assume that those concerned with legal services to those on low incomes might be able to leave the prevalent mix of angst and excitement around AI to those in the commercial field. People on low incomes just do not have the money to pay the fees that finance the necessary investment. Increasingly, however, it is difficult not to worry that this is too complacent. There must at least be value in opening up an examination of the issue.

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Two of the most approachable guides to AI come from commercial sources. Thomson Reuters published a series by Michael Mills on *Artificial Intelligence in Law: the state of play* earlier this year. Deloitte published a still helpful

Demystifying Artificial Intelligence by David Schatsky, Craig Muraskin, & Ragu Gurumurthy in 2014. Both take a common view on the definition of AI, the latter noting that 'AI suffers from both too few and too many definitions'. Ultimately, both basically go for: 'the theory and development of computer systems able to perform tasks that normally require human intelligence'. This remains a little lengthy but the key is, as a contributor to a Law Technology debate said: 'computers/machines and software that are capable of learning. They get smarter with time and access to additional information, thus exhibiting behaviour that often eerily replicates that of a human.'

The Deloitte authors move from discussion of the general field of AI to the 'cognitive technologies' that have flowed from it. These include:

(a) **Computer vision** – the ability to identify the content of visual images used in automated face recognition, medical imaging, and consumer shopping (photo your desired object and get

an ad for it). If you have a bit of time, then watch Stanford Professor Fei Fei Li, Head of its AI lab, give a Technology Entertainment Design (TED) talk on the process of developing this field.

(b) **Machine learning** – the ability of computers to discover patterns in data and make predictions without explicit instructions. This is the technology that, at the simplest level, infuriatingly blocks your credit card every time you go to France without telling your provider.

(c) **Natural language processing**. This is what you would expect – the technology behind working with text in a way that humans do. IBM's Watson has digested massive amounts of medical data on which it can give predictions of diagnosis.

(d) **Robotics** – self-explanatory.

(d) **Speech recognition** – apparent every time you use Siri.

(e) **Expert systems** – added in Michael Mills' analysis.

Many practical uses of these technologies bring them together in various combinations – as is apparent in all the work on driverless cars. Investment in these technologies is immense. IBM's Watson, somewhat to the chagrin of is competitors hogs a lot of the coverage. IBM, no doubt, wants to get maximum return on its £1bn investment. But Google and Facebook are also major investors. And there are others as well wishing to make the point that:

It is one thing to say that machine learning and AI will deeply impact legal practice. It is another to say that Watson will have a deep impact, or a more significant impact than other technologies. Watson is partially a machine learning offering, but there are many other machine learning offerings.

These technologies are going to transform our world with lively debate as to exactly how and whether jobs will be created or lost. They justify book titles like *The Second Machine Age*. More immediately, the issue for us is how they will impact on the practice of law. The two big areas are legal research and electronic discovery. In the former, ROSS Intelligence is developing IBM Watson's capacities in relation to bankruptcy law. Again, if you have time, it might be worth seeing ROSS's Andrew Arruda promoting his product on Youtube. Thomson Reuters is also working with Watson – reportedly initially in the field of financial services regulation. In relation to the latter, there are a number of 'technology assisted review' (TAR) products that can sift massive amounts of data. Both of these are likely to have major impact in large corporate firms. The dire predictions of

the end of lawyers are probably overblown but, the number of paralegals and lawyers in corporate practice is bound to be impacted by these developments. Lawyers will not disappear: but fewer will be needed. Supporters of this process suggest that survivors will be more productive and their lives more fulfilling: we will see.

In the UK, discussion of AI is moving beyond the apocalyptic predictions of Professor Richard Susskind and the harrumphing opposition of diehards who mutter 'no surrender' to the thought of technology. The legal commentator, Joshua Rosenberg QC, used one of his recent radio programmes to cover

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the issue. Among his interviewees was the Chief Executive of Riverview Law who extolled his firm's use of AI, particularly in the employment field in the aftermath of a takeover. Lord Neuberger, President of the UK Supreme Court, slipped a paragraph into a speech on ethics and advocacy referring to AI and the Susskind thesis. He suggested that 'The legal profession should … be preparing for the

problems and opportunities which would arise from … and enormous potential area of development and one of the most difficult challenges will be to consider the potential ethical implications and challenges.' He may be a little behind the curve here. Unlike a few years ago, there is a very serious grappling with the fact of AI at least among solicitors in the City.

So, should we in the legal aid or legal services sector grapple with AI or is it irrelevant to our clients? It is worth remembering that expert systems depend on major inputs of data. The combined resources of IBM and Thomson Reuters are reported to be taking a year to get a beta version of their financial services package on the road. So, dreams that the nationwide advice service provided by Citizens Advice and other agencies might be transformed by purchase of the equivalent of 2001's Hal or Apple's Siri are a long way off. But, there might be areas of law which affect clients with high as well as low incomes. Employment and immigration would be two examples. One could certainly imagine that an AI approach to the former would be useful. Ever tried to get your head around the rules of parental leave sharing? Private clients – including for employment law, employers – might justify the necessary capital outlay.
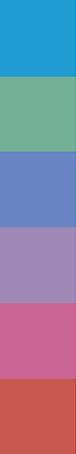
The other potential large funder would be government. After all, the Department of Work and Pensions is engaged in the massive process of putting benefits online – not entirely successfully as yet.

One could imagine advocates finding a use for an all-singing, all-dancing digest of relevant law that allowed them to produce skeleton arguments. This might well include whole swathes of public law which again would have ultimate beneficiaries who were both wealthy and poor. The cost of such a system would potentially be more easily met by advocates who combined commercial and public work – which in London would privilege chambers like Blackstone or Brick Court over those more focused more traditionally on human and civil rights. Even in the days of UK Brexit and US exceptionalism, one effect of technology is likely to encourage advocates and judges to make even greater use of reference to foreign jurisprudence – simply because the system will take them in this direction.

A conference in Melbourne in July under the title *Access to Justice, Design Thinking and Artificial Intelligence* included presentations of the Rechtwijzer. That raises an interesting question about whether the Rechtwijzer really represents AI. Does it have the core capacity to reason for itself or is it better seen as a more mechanistic use of guided pathways. After all, one of the virtues of the programme is that very simplicity – the Rechtwijzer team pioneered the use of guided pathways that take the user through to a resolution of their problem, now assisted in version 2 by the possibilities of online intervention of a live mediator. Ultimately, the definitional issue does not really matter. The Rechtwijzer can be AI or not: whatever it is, the programme represents a paradigm-buster for online advice provision. The core point is that we are on the cusp of using the interactive capacity of the internet. It probably is true that guided pathways represent a much more attainable step forward in the field of legal services for people on low incomes than the wondrous world of AI but, hey, maybe we should not be so sure of that.

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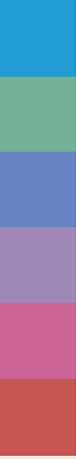
2. The Development of Guided Pathways to provide information and services

The leader in the use of guided pathways for legal services to those on low incomes is the Dutch *Rechtwijzer* programme. The team behind this has also developed two others based on its learning. One is in England and Wales and run by Relate, formerly the National Marriage Guidance Council. The other is MyLawBC.com run by the Legal Services Society of British Columbia. Below is a report of its launch by Sherry MacLennan who is in charge of its implementation.

MyLawBC: official launch

The Legal Services Society (LSS) launched MyLawBC, an online platform with an ODR twist, on May 29, 2016. LSS is British Columbia's legal aid provider, and has a history of providing online self-help. When severe funding cuts in 2002 curtailed family service and eliminated civil legal aid, we filled in gaps online, beginning with our Family Law Website. It was aimed at social service workers who had both the internet access and skills to help our low income clientele.

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MyLawBC is our first foray into online dispute resolution (ODR).

Since 2002, both who is looking for help online and how they access information has changed. Most low income people now regularly access the internet, usually through a smart phone. As a result of those changes, we knew we needed to adapt to better meet the needs of the people who were looking for answers online. We wanted to help them actually solve or avoid everyday legal problems, not just provide information.

To meet this goal, we envisioned MyLawBC as a flexible platform for dispute resolution and avoidance.
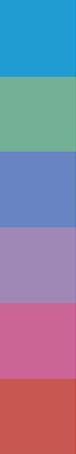
This vision led to the tag line, *My problem, My solution*. Research shows high satisfaction when people feel in control of solutions for their problem. Our object is not so much to educate, but to engage people in solving their problems. To do this, we use a number of techniques:

- interactive questions and answers

- information in small chunks

- user friendly self-help tools

- -inks to in-person services

We also highlight the value of professional assistance and provide options for free or low cost legal and alternative services including mediators and notaries. Many Canadians self-represent because they run out of money before their case concludes or because they are afraid of costs. Many, particularly in family cases, go to court by themselves – in BC there are no laws requiring a lawyer be present.

Collaborating internationally is not without challenges, but is not as difficult as one might first think. The benefits were significant in terms of learning new skills and obtaining a secure, flexible platform in a short period of time.

As a legal aid plan, we had significant cost and time constraints. With one-time limited funding, we concluded we could best realise our vision for MyLawBC by working with the Hague Institute for the Internationalisation of Law (HiiL) and Modria, the agencies behind the Dutch Legal Aid Board's Rechtwijzer website. This website inspired our vision and future goals. Collaborating internationally is not without challenges, but is not as difficult as one might first think. The benefits were significant in terms of learning new skills and obtaining a secure, flexible platform in a short period of time. Future services may include mediation, arbitration and video advice. Continuing collaboration through the consortium of agencies using this technology means we benefit from lower costs, increased sustainability and further development of platform features.

MyLawBC addresses separation, family violence, mortgage debt, wills & personal planning. A question and answer process (a guided pathway) leads to customised tools and self-help resources tailored to your needs. The ODR twist is found in the Dialogue Tool, a negotiation platform for separating couples. This moves the site from
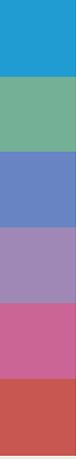
an information orientation to online dispute resolution. The platform supports separating couples to reflect on their situation, facilitates chat online, financial disclosure and enables them to draft a separation agreement together. If you would like to test the Dialogue Tool, use "Mylawbc" as a surname to help us identify test cases. The Dialogue Tool encourages an interest based approach to resolving issues, but works hand in hand with the separation pathway. The pathway provides an overview of key legal concepts and a tailored negotiation tool kit. You receive the most appropriate kit out of twenty on the system, depending on how you answered the pathway questions. The toolkit contains more in-depth information on legal rights and negotiation tips. We know not all family disputes can be settled, so MyLawBC includes pathways to get a court order or respond to court proceedings. In those cases, links to self-help guides on our Family Law Website are provided.

Early stakeholder access and media coverage prior to the official launch meant there were nearly 3000 visits to the site before the official launch. The wills pathway proved most popular with 37% of the traffic, followed by the separation pathway. Feedback has been positive particularly with regard to the design and accessibility: the site focuses on user experience and strong visuals, incorporating infographics, video and audio clips. Text based tools feature illustrations and checklists to engage the reader. Action plans are written at no higher than grade eight literacy levels.

Our next steps are more user testing, an evaluation for effectiveness, planning for future services and applying what we've learned to our older websites.

Sherry MacLennan
Legal Services Society BC

37%

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The concept of guided pathways is of wide application. Here is a contribution from Alan Larkin of Family Law Partners who devised a program initially to assist his firm in dealing with clients.

Guided Pathways: a practitioner's approach

Siaro is an emerging platform for family law. It will be tested by a group of family law practitioners in the Summer of 2016. The prototype for Siaro is a conditional logic questionnaire (or a 'guided pathway') that sits in a secure hosted environment. I will call it the 'FLP prototype'. It has over 1,000 questions focussed specifically on married couples and civil partners in the family law context and has been in use at my firm, Family Law Partners, since July 2014. At the date of writing, there have been 210 client submissions which is a reasonably large cohort from which to make observations and reach tentative conclusions. In short, the inspiration for Siaro is not new but has been deployed in prototype form for nearly two years in an English legal practice. I offer this appreciation of some of the lessons to be drawn from our experience as a contribution to discussion of the potential of this type of approach.

My starting proposition is that there is a general acceptance, validated by Ministry of Justice research in 2015, that the classic 30 minute free interview, often requested by family law clients, is unsatisfactory. It provides insufficient time for a client to fully explain the relevant facts of their case to a lawyer. There is significant risk for a lawyer being drawn into giving advice on those insufficient facts. Despite these clear drawbacks, I had a concern, at the launch of the FLP prototype, that only a modest percentage of the firm's clientele would use an online questionnaire before a first consultation. I calculated that that if we could just get 30% of the clients using the questionnaire then there would be a worthwhile reduction in the soft cost of time otherwise being spent in initial telephone calls and some free interviews.

1,000

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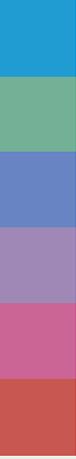
The proposition to the clients was simple: use the questionnaire in your own time free of charge or pay us while we ask you the same questions and, if you could use the questionnaire, we can utilise the subsequent consultation to provide tailored advice. The take up was 100%

There are, at present, 25 such 'red flags' in the Siaro platform that will appear immediately for the lawyer.

The prototype captured, as may be imagined with over 1,000 potential questions, a rich factual matrix. This made it possible for the prototype to make meaningful connections between clients' answers that would flag up issues for the lawyer to address at the subsequent consultation. There are, at present, 25 such 'red flags' in the Siaro platform that will appear immediately for the lawyer. The management and, as far as possible, elimination of risk from the first consultation is as much a priority for the client as it is for the lawyer.

Sometimes the important issues are not legal in nature. The prototype demonstrated the value of including 'soft' questions alongside factual enquiries. Any experienced family lawyer will recognise that capturing the needs, wishes, anxieties and expectations of a client is essential. Acknowledgement of that capture, reflecting back to the client that we have heard and understood, is a human need. To exploit the full potential of a guided pathway, Siaro draws upon the lessons of the collaborative law model to allow clients the opportunity to articulate their legal and non-legal needs. Some of the most powerful questions, and the value of the answers to a lawyer, are non-legal and non-factual.

Unbundling has the potential to make legal advice available to more people than appears possible (affordable) under a traditional full retainer model. It is important to acknowledge that unbundling carries significant risks for legal practitioners facing the *Rumsfeld Conundrum* of the 'unknown unknowns' when advising on a discrete aspect of a client's wider engagement with the judicial system or their spouse's lawyers. A principal aim for Siaro is to accommodate unbundling by allowing clients to make additional submissions to refresh their data and allow a lawyer to see at a glance what has changed since a first consultation. This is
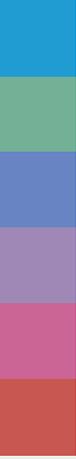
most easily achieved, as are other functions within Siaro, by the use of data visualisation.

A decade ago, automatic or intelligent document production would have been a significant deal for lawyers. Such platforms still are and we pay for them to help our clients. And yet, having client data available through the client pathway, it seems inherently daft not to allow a lawyer to populate a legal form for a client, especially an unbundling client. Siaro will have that additional function, not to compete with document production providers, but just because Siaro can (and should) make life easier for clients.

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Siaro has been designed to connect to other services, whether hosted or running on a lawyer's local hard drive. The problem here is that many of those services are not designed to play along. If a client or lawyer wants to pull in data about house prices in a certain geographical area or information from land registry to assist in the guided pathway then that should be made possible. And if a lawyer (imagine it) wanted to submit a form to the court service from Siaro then that should happen also. Connectivity is at the heart of the covenant we have with digital services and platforms. Yet, in legal services, we still see the dominance of operational silos amongst the leading software providers. Data from one platform has to be re-keyed into another platform. Such inefficiencies should not be tolerated by lawyers for much longer since it impacts so adversely upon an optimal experience for their clients.

The guided pathway is how Siaro begins the engagement process between clients and lawyers. Siaro enables the engagement to clear the hurdle of unbundling if that is the model required by the client. And yet, if Siaro strips out the cost and risk of process in order to allow family law clients to engage directly with the core skills of lawyers it follows that the remaining impediments to cost-effective and swift dispute resolution are thrown into sharp focus. One such impediment is the lack of a platform that allows opposing lawyers or (as has become more common) one lawyer and an unrepresented litigant, to refine the relevant issues,
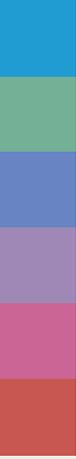
engage productively, and attempt settlement. Siaro has been designed to offer such a platform – and it will include online dispute resolution. The fact that Siaro will be a platform that is utilised by, but independent of, the lawyers may allow for a more informed and trusting dialogue with unrepresented litigants. However, I have practised family law for too long to be naïve about the prospect of unrepresented litigants learning to love their spouse's lawyer. But I would hope, (and it can only be hope since my crystal ball is not working) that Siaro and other providers seeking to positively disrupt existing practices can tap into the latent legal market and encourage more litigants into obtaining legal advice.

There is no reason why Siaro could not be used to more easily and economically provide free, or partly free, initial consultations or unbundled services. If such lawyer/client interactions offer greater 'value' (value defined as specific, tailored advice and solutions addressing the unique and nuanced reality of any one client's situation) then the perception that such legal services are unaffordable can, *arguably*, be challenged.

I can offer some data at this point. The in-house metrics at Family Law Partners suggests that a minimum of one hour and 40 minutes is required on an initial consultation to obtain sufficient facts to safely advise a client. If that client presents with a significant amount of distress, then the time is closer to two hours. This is before full advice, and a plan of action tailored to that client, can be identified and agreed with them.

The use of the prototype threw up one unexpected outcome. Logically, if a consultation without a guided pathway took on average 1 hour and 40 minutes to obtain the facts, then the use of a guided pathway would reduce the consultation time proportionately. Not so. The time was reduced by an average of 30 minutes only. The unscientific consensus among the team's lawyers is that the explanation lies in the changed dynamic of the consultation. Having used the

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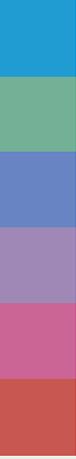
pathway, clients appear generally more relaxed, more informed, and more willing to discuss and examine the various dispute resolution options that best suit their expressed needs and those of their family. Almost without exception, the cohort of 210 clients who have used the prototype at Family Law Partners, paid for their subsequent consultation at an agreed hourly rate rather than on a free interview or a fixed fee basis. The conversion rate – from prospect to client – has been 100%.

I make no grand claims but wonder whether the willingness of clients to pay is that we have demonstrated to them that a technology-assisted model of engagement has real value for them, and not just in the financial sense? I am genuinely curious to discover if Siaro, with its data visualisation tools, document production and ODR potential, will introduce cost-savings and efficiencies sufficient to re-connect family lawyers with clients of modest means who have been so badly served by the civil legal aid cuts in England and Wales.

Alan Larkin
Family Law Partners

100%

The conversion rate – from prospect to client – has been 100%.

3. The possibilities of Automated Document Assembly

The leader in the use of automated document assembly relevant to those on low incomes is probably the a2j author programme jointly owned by the Centre for Computer-Assisted Legal Instruction (CALI) and Chicago-Kent College of Law. The two organisations began a partnership in 2004 which has resulted in the current version (5.0 with 6.0 imminent) of the programme. This is the description from its website:

Access to Justice Author (A2J Author®) is a cloud based software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk's offices, legal services organisations, and law schools to rapidly build and implement user friendly web-based interfaces for document assembly.

These interfaces, called A2J Guided Interviews, take complex legal information from legal forms and present it in a straightforward way to self-represented litigants. A2J Guided Interviews remove many of the barriers faced by self-represented litigants, allowing them to easily complete and print court documents that are ready to be filed with the court system. Those robust features have led to proven results – **3 million** A2J Guided Interviews run and **1.8 million** documents assembled since 2005.

A2J Author is available free to interested court, legal services organisations, and other non-profits for non-commercial use. (www.a2jauthor.org)

A model guided interview can be viewed at a2jauthor.org/content/what-does-a2j-guided-interview-look. The basic notion is a simple visual presentation of a journey along a road to a courthouse with an avatar asking questions from time to time. The user types in the

These interfaces, called A2J Guided Interviews, take complex legal information from legal forms and present it in a straightforward way to self-represented litigants.

answers and supporting software run by a Law Help Interactive Server, using the Lexis Nexis HotDocs program, uses these to populate the relevant documents. As the website explains:

> *A2J Guided Interviews® are made available over the internet through court and statewide websites. The "front-end" software, A2J Author®, developed by Chicago-Kent and CALI, joined with the "back-end" technologies of the LHI server, HotDocs and LHI management tools, provide a full end-to-end solution (see Figure 3). This combined effort makes it possible to provide user-friendly assistance to thousands of self-represented litigants in a rapid and cost effective manner and make the help available wherever there is internet access.* (a2jauthor.org/content/history-a2j-author)

One of the next steps is to integrate the documents created by the system with courts' case management systems. The website explains:

> *The A2J Author® project team has partnered with the U.S. District Court of Eastern Missouri to make A2J Guided Interviews® the pro se front-end to the U.S. Courts' Case Management/ Electronic Case Files (CM/ECF) system (see Figure 4.) Once completed, the A2J Guided*

Interviews® and e-filing integrated technology will be made readily available to all other U.S. Courts interested in similar pro se interface projects. Iowa Legal Aid has recently completed a pilot project that integrates A2J Guided Interviews® with the Pika case management system used in a large number of legal aid offices across the country. (a2jauthor.org/content/history-a2j-author)

The potential of automated document assembly is immense. Commercial providers like Legal Zoom are using it to provide documents like living wills at low prices (starting at $39 in the US) (legalzoom.com/personal/estate-planning/living-will-overview.html). A not for profit is doing the same sort of thing for £10 in the UK (mylivingwill.org.uk). Automated document assembly is, in essence, close to electronic filing, using a visual interface rather than the use of something more closely representing a more conventional form. BC's Civil Resolution Tribunal, perhaps a little disappointingly, uses the latter (see e.g. civilresolutionbc.ca/wp-content/uploads/sites/5/2016/07/Example-Dispute-1.pdf) for its jurisdiction in strata (common areas of apartments) disputes. We shall see, in due course, how imaginative the English and Welsh courts will be in the planned online small claims court.

4. The development of a variety of Virtual Legal Practices'

One of the developments indicated by Siaro (discussed above) is the way in which virtual practices are being integrated into more conventional ways of delivering services to cover parts of the process of acting for a client. It is becoming evident that there are virtual, physical and hybrid

It is becoming evident that there are virtual, physical and hybrid practices.

practices. One example of the latter is the announcement by a national English and Welsh firm, Cartwright King (CK), that it is working to establish a franchise scheme in which individual practitioners will operate under the corporate banner both presentationally and in terms of services. CK's Chief Executive, Rupert Hawke, explained to the *Legal Futures* website:

We understand that an increasing amount of individuals want to work for themselves, achieving a better work life balance as well as receiving the other benefits that come from being your own boss, including the opportunity for increased income. Our franchise scheme enables all this, without the financial and regulatory barriers that come with setting up your own practice … We see this as the future of the profession and believe now is the right time to launch. We are determined to help the legal industry move into the 21st century. (legalfutures. co.uk/latest-news/cartwright-king-launch-franchise-scheme-for-solicitors-looking-strike-out-own)
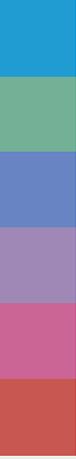
5. The emergence of Challenge Funds, Hackathons, Incubators and other ways of kick-starting developments

As the pace of change steps up, so does the involvement of a wide variety of institutions with an interest in giving things a shove.

This is Miranda Grell's view from an inner London law centre. Miranda is the Development Officer at Hackney Community Law Centre.

Technology: a community law centre steps up to the plate

At Hackney Community Law Centre (HCLC), we have decided to step up our efforts to make better use of technology. The reasons we have done so are threefold. Firstly, the world is changing and digital forms of communication such as smartphones and Skype have become the 'new normal' for most people, including those who approach our Centre for help. Secondly, we believe that better use of technology will help HCLC become more efficient and particularly assist our hard-pressed receptionists to respond to an ever-growing deluge of enquiries at the door and on the phones. Thirdly, if

used correctly, new technology will increase HCLC's efficiency and free up our solicitors' and caseworkers' 'face-time', allowing them to deal with more of the most difficult cases.

All of this is 'motherhood and apple pie' to us but we know that many of our colleagues in the legal and advice sectors are sceptical. However, the perilous financial climate HCLC finds itself operating in – particularly since the introduction of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012 – has led us to conclude that we don't have the luxury of rejecting
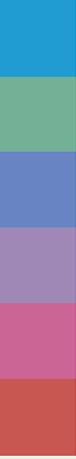
solutions that will help us to help our clients, just because those solutions may be unfamiliar to us as 'legal' rather than 'digital' experts.

Over the last year, HCLC has thrown itself head first into a number of exciting pilot partnerships with tech and 'legal disruption' enthusiasts. Those collaborations are now starting to bear fruit. One of the first digital advice pilots in which HCLC participated was a project to provide our clients with legal advice online. Working with legal consultant Jonathan Maskew, HCLC converted our weekly office-based employment-law sessions into virtual advice appointments. The clients who attended HCLC's offices received pro bono legal advice from an employment barrister sitting in front of a computer in his own Chambers. The technology was similar to Skype but was built specifically with legal advice in mind. The designers had therefore taken into account the critical need for the connection to be secure.

There was also the facility to enable both clients and counsel to upload documents onto the screen in real time. Client feedback following the pilot appointments was extremely positive. One wrote that the 30 minutes in which she was advised by the pilot's barrister was the best 30 minutes' worth of advice she'd had in two years. Time and no money well spent.

Another of HCLC's 2015/16 digital initiatives was partnering with Legal Geek, the UK's largest tech community of groups of lawyers, entrepreneurs, techies and industry experts working to "disrupt" the traditional legal industry. Legal Geek helped HCLC to stage Europe's first ever Law Tech Hackathon. At Shoreditch's Google Campus, over the course of 24 hours spanning 6pm on Friday the 18th of March to 6pm on Saturday the 19th of March 2016, the hackathon saw more than 50 UK based 'coders', and also coders who flew in from as far as Romania, Gibraltar and the USA, split into 10 teams to conceive, build, and pitch technical solutions to improve the delivery of and access to HCLC's legal services.

30min

One client wrote that the 30 minutes in which she was advised by the pilot's barrister was the best 30 minutes' worth of advice she'd had in two years.
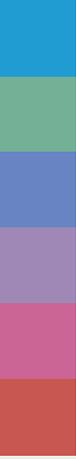
The judges awarded Fresh Innovate – a team made up of lawyers and tech experts from law firm Freshfields – first prize for their design of an entire new HCLC portal management system. Fresh Innovate's interactive website 'triaged' in seven languages to help provide a solution to legal problems in housing, welfare and benefits, immigration, and employment. The aim was that visitors would be able to contact HCLC after 'opening a case' online from a menu of options relating to their specific problem. You can watch Fresh Innovate's winning pitch to the hackathon's judges here.

In HCLC's view, it is time for our sector to turn the terrible challenges we face into exciting opportunities for long overdue and desperately needed innovation.

As well as testing practical digital methods of delivering advice, we also felt it was important that HCLC began to play a greater role in influencing broader strategic and policy discussions about digital advice taking place in the legal and third sectors. We had already begun developing some ideas locally with sister advice agencies, such as the Citizens Advice Bureau,

as part of the 2013–2015 Big Lottery Advice Services Transition Fund (ASTF) project, which HCLC led in Hackney. Last month, HCLC built on that ASTF work by publishing a report into the subject and holding a 'Digital Advice Summit', which brought together Hackney advice providers, senior politicians and officials from the local authority; officers from The Big Lottery Fund, The London Legal Support Trust, The Legal Education Foundation; solicitors from the private and third sectors and senior clerks from barristers' chambers. Following the summit, the conversations HCLC started locally are continuing formally at the regional and national levels.

Based on HCLC's experience so far, we have found that beginning to make better use of technology is not an onerous task for a Law Centre. The technology is there and the tech world is keen to work with us. In HCLC's view, it is time for our sector to turn the terrible challenges we face into exciting opportunities for long overdue and desperately needed innovation.

Miranda Grell

Meanwhile, this is a report of a collaborative approach between a University and a government Ministry in Ontario.

Ontario's new technology challenge

A partnership between the Ministry of the Attorney General and the Legal Innovation Zone (LIZ) at Ryerson University in downtown Toronto has established an Ontario Access to Justice Challenge.

Six startups will be selected and awarded access to the LIZ for a four-month residency and customised programming.

This is what is on offer:

Six startups will be selected and awarded access to the LIZ for a four-month residency and customised programming, to begin August 2, 2016. At the end of four months, the startups will participate in a 'Demo Day' event on or about November 25, 2016, where three of the six startups will be selected and awarded seed money of $25,000, $15,000, and $10,000 (circa £20,000, £11,500 and £7,700)) for 1st place, 2nd place, and 3rd place, respectively. Each of these startups will also be invited to stay in the LIZ for an additional four months.

As part of their residency, LIZ startups will receive:

- A four-month customised program focused on making productive business connections to prospective clients, partners, sector experts, and investors

- Dedicated workspace and resources

- Mentorship and coaching from mentors, advisors, and technology experts

- Special recognition provided by the LIZ through their extensive network

The LIZ was established in April last year. It represents an interesting contrast in style, though perhaps not function, with the university-based programme at the University of Montreal's Cyberjustice Laboratory. Hersh Perlis talks in enthusiastic terms:

"We have just celebrated our first birthday but in that short year have proven leaders in the legal innovation space (18 active legal tech startups working in our incubator) and in the Access to Justice space (we led a four month Family Reform Community Collaboration which has been well received by experts across the board – so this was truly a natural partnership that made sense."

LIZ is also affiliated with the DMZ (Digital Media Zone) at Ryerson University, which is ranked the #1 university business incubator in North America and #3 in the world, so we have the resources and connections to properly pull this off (The DMZ has run numerous competitions in the last few years).

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Hersh Perlis continues:

"LIZ is a co-working space and Canada's first incubator focused on building better legal solutions for the consumers of legal services. The LIZ helps support, foster and develop solutions and technologies that aim to improve legal services and the justice system.

We achieve our goals by:

1. Encouraging and Supporting Entrepreneurial Activity – We provide co-working space, support and resources to companies and individuals working on their own ideas for justice and legal system solutions.

2. R&D for Legal Solutions – We partner with organisations, governments and the legal community to support their own legal innovation agendas by assembling collaborative working groups to tackle challenges.

3. Designing and Developing the 21st Century Justice System – Identify long standing pain points in the justice system and bring together partners to build smarter, faster and better solutions."

The funding for the challenge comes jointly from the University and the Ministry. Hersh Perlis' final comment was that:

"Access to justice is internationally one of the most significant challenges facing the legal profession and it is rare, yet encouraging, to see a government take a leadership role as Ontario has in supporting the A2J Challenge. Engaging entrepreneurs, students, innovators and legal professionals to share their ideas is a unique and innovative way drive innovation and deliver legal services faster, simpler and more affordably. We believe this unique approach will unleash innovators to deliver the justice Ontarians and businesses need in the way that they need it."

The results of the challenge emerge in early August. It may or may not spawn a major advance. It is certainly an indication of the kind of momentum which may help to get things moving and it is good to see a Ministry concerned with justice being prepared to put up some seed corn money for a speculative venture like this.

An alternative approach in Quebec:

From Quebec comes further commitment to development but in a rather different way.

Winner of any prize for the best named institute for the study of technology and the law must be the Cyberjustice Laboratory at the University of Montreal. It also jostles with the other global contenders for leadership in examining the impact of technology on the legal process. That puts it within a class including the Hague Institute for the Internationalisation of Law, the Centre for Legal and Court Technology at William and Mary University, the Open Law Laboratory at Stanford University. Anglophones may find the impact of the centre masked by its primary use of French but the Laboratory has the kind of profile in Belgium and France that it deserves more widely.

The Laboratory was the brainchild of Professors Karim Benyekhlef of the University of Montreal and Fabien Gélinas of the neighbouring McGill University. Its focus is in the integration of technological advances into court processes and the overcoming of the
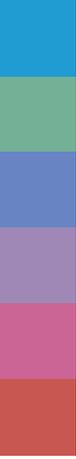
barriers of complexity, history and conservatism. At its physical heart is an all-singing, all-dancing simulated courtroom festooned with technology that includes multiple cameras, software and large screens where new applications can be tested to destruction in simulated hearings and students can get a feel of how courts are likely to develop.

The intellectual origin of the Laboratory lies in the early days of the ODR movement when Professor Benyekhief established the CyberTribunal, one of the first experiments in ODR. That led to the formation of the Laboratory in 2010. The next year, the Laboratory embarked on a seven year federally funded programme, 'Towards Cyberjustice' which has provided the framework of its work ever since and will do until it ends in 2018. This has three streams, where research is directed by three multi-disciplinary working parties. These cover:

- issues around digitalisation of the courts (eg electronic case and evidence management);

- the limits of digitalisation (though the working group's description suggests this is more about addressing obstacles) 'By focussing on the interactions taking place in the hearing room, the Group will be able to identify factors contributing to stakeholders' resistance to change and whether those issues are economic, social, cultural or psychological, and then suggest concrete, well-adapted solutions.'

- new procedural models.

The Laboratory, thus, focuses on both a socio-legal analysis of the challenge of technology for the courts as well as on the technology itself. Its court allows it to develop and test court-oriented programmes developed by itself or others. Its own work uses open source software and rivals the sort of programmes developed by the collaboration between US commercial developer Modria and HiiL (such as the Rechtwijzer and MyLawBC.com). It has developed a core programme for court and case management to which can be added additional modules. For example, it was able to be adapted for use by iPads even though they were not originally invented when the programme was begun. The Laboratory has developed PARLe (parley), an ODR programme which 'explores the potential of new technologies for improving

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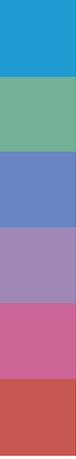
the resolution of low-intensity disputes by reducing their costs and processing time. This website platform is based on a tried and tested 3-steps process (negotiation, mediation and transfer of the case).' This is the sort of existing programme of pre-litigation resolution which Lord Justice Briggs might beneficially have considered in his recommendations for an online small claims court in England and Wales.

In Quebec, as in much of Canada and the US, online legal advice hits the rock of legislation preventing the unauthorised practice of law.

The work of the Laboratory allows comparison with other programmes. As explained by its co-director Nicolas Vermeys, Laboratory programmes use a more formal – literally form-based – approach than the Rechtwijzer. This, he argues, gives a more manageable structure to the evolving resolution of a dispute than the Rechtwijzer's looser use of text. This might be right or it might be wrong but it clearly merits exploration. Professor Vermeys has another assertion that needs testing. He believes that 'statistics show that ODR works better before starting the legal process

or at the very end of the process, but that the "worse" time to use Alternative Dispute Resolution (ADR) seems to be right after filing your documents and paying your fees (which is when a Quebec pilot project unfortunately timed it'.) This has major consequences for the design of online court programmes – something which is again relevant to implementation of the proposals of Lord Justice Briggs in England and Wales.

The Laboratory's work raises the issue, also implicitly brought up by Lord Justice Briggs, of the integration (or lack of it) between pre-litigation information/advice and post-issue process. In Quebec, as in much of Canada and the US, online legal advice hits the rock of legislation preventing the unauthorised practice of law. Only lawyers and notaries can give advice. This has deterred US and Canadian legal services from providing online advice of the kind available through the *Rechtwijzer* and MyLawBC skirts around this with care. Such a rule, of course, is not an obstacle in the jurisdictions of the UK – though the failure to join up thinking about how online advice and the opening process of an online small claims court may well be.

Finally in this section, a challenge from Australia reported by Mark Madden, Deputy Director of the Centre for Innovative Justice at RMIT University, Melbourne.

Access to Justice by Design: an Australian initiative

A unique university program that applies design thinking and technology to tackle access to justice issues gets underway in Melbourne this week.

The Access to Justice through Technology Challenge (A2JTTC) is the social policy stream of RMIT University's Fastrack Innovation Program, a program that combines students from a range of disciplines in a competitive real world environment, matches them with mentors from industry and then sets them the task of finding a solution to a complex issue.

They have just 13 weeks to produce their solution, costings and advice on implementation. The A2JTTC stream is unique for a number of reasons (I am happy to be corrected on this). While it examines access to justice issues, the stream is not run by the University's law school. Instead, it is run in the College of Business by the University's entrepreneurship program, led by successful businessman-cum-academic and architect of the Fastrack Program, Associate Professor David Gilbert, and a graduate of the first year of the Program, Sandra Arico, in association with the RMIT Centre for Innovative Justice. In addition, student participants do not have to come from a legal background, although in this its second year there are law and legal studies students participating.

The initial challenges are identified through consultations with the A2JTTC partners, Victoria Legal Aid and the Federation of Community Legal Centres. This year, four challenges will be tackled by 24 students in eight teams of three. Each problem will be tackled by two teams. The challenges are:

Challenge 1   Challenge 2   Challenge 3   Challenge 4

- **Workers' Rights** (How might we ensure that disadvantaged employees are better equipped, empowered and supported to understand and act on their employment rights?);

- **Debts and Disconnections** (How might we ensure that those in (or at risk of) financial hardship have access to the information, resources and assistance they need, when they need it, to avoid accumulating debt and utilities disconnections?);

- **Accessing Legal Assistance** (How might we improve access to legal assistance in a way that ensures efficiency, high quality, targeted service delivery, and that the most vulnerable have priority?), and

- **Service Delivery Across** Community Legal Centres (How might we ensure that all clients of CLC's receive the best quality service, irrespective of their location?)

The decision to have two teams tackle each challenge introduces a competitive element to the program while allowing for different approaches to be taken.

When the program began in 2015, there were many doubts about whether the program would work or produce anything of value. These doubts were progressively dispelled as the program developed.

In the end, they produced some amazing results. Their work around and insights into family violence has been fed into the implementation process for recommendations of the recent Royal Commission into Family Violence in Victoria. The legal assistance sector is also working to implement new processes and technologies around infringements and in particular the processing of special circumstances claims. More details of their solutions can be found here.

Feedback from students and mentors showed that the benefits flowed both ways. Students gained new understanding about important social and legal issues and the complexities of the justice system while the lawyers were exposed to design thinking and its potential to drive innovation in the justice system.

In hindsight what happened through the process was the virtual

Feedback from students and mentors showed that the benefits flowed both ways.
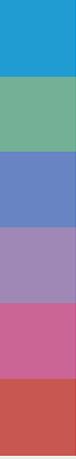
creation of what has been coined the 'T-shaped' lawyer. That is a lawyer, with deep knowledge of the law, that is able to work across or has knowledge of and access to the thinking of different disciplines. The combination of students, lawyers mentors and other industry mentors allowed each group to take a deep dive into the social and legal issues and then apply thinking from 'outside the box' to the challenge.

In a very short space of time students had to deal with team dynamics as well as come to terms with a complex social and legal issues and a new way of thinking!

A number of lessons have been learned and changes made to the second year of the program to allow students more time to understand the issues and complexities around the challenges they were taking on.

Last year, the recruitment into the program was finalised just prior to the start of the program. The successful applicants were then quickly formed into teams and briefed at the first session of the program which began in the first week of second semester. In a very short space of time students had to deal with team dynamics as well as come to terms with a complex social and legal issues and a new way of thinking!

This year, the recruitment was finalised much earlier, and at a session prior to the end of first semester the teams were formed and briefed on the challenges. This means that over the semester break students have been able to develop their teams but more importantly develop a greater understanding of the issues. This will allow them to 'hit the ground running' as it were and spend more time the problem and developing the solution.

Mark Madden

6. The expansion of Online Dispute Resolution into the courts and tribunals is likely to be relevant to those on low incomes

This is an important moment in the development of ODR. A movement which has been orientated towards private provision and associated with the mildly alternative world of ADR is meeting Ministries of Justice and courts as they become interested in the possibilities of putting state-backed, official court processes online. This meeting was symbolised very clearly by the meeting of the 15th ODR conference at The Hague in May 2016 where the two branches met up – with some of the older ODR followers appearing slightly discomforted by the development. Here are three voices from the original ODR movement with various expressions of concern.

The first contribution is from Professor Nancy A. Welsh, Professor of Law and William Trickett Faculty Scholar, Penn State University, Dickinson School of Law, and Chair-Elect, ABA Section of Dispute Resolution

This meeting was symbolised very clearly by the meeting of the 15th ODR conference at The Hague in May 2016 where the two branches (ADR and ODR) met up – with some of the older ODR followers appearing slightly discomforted by the development.

ODR: A Time for Celebration and Procedural Safeguards

There is no question in my mind that those of us involved in ADR need to understand and embrace ODR and celebrate its potential. Meanwhile, I urge ODR's advocates and implementers to learn from the experience of ADR's advocate and implementers, and to be wiser than we were. Specifically, I applaud ODR advocates' passion, innovation, and optimism, *and* I hope that you will see procedural safeguards as helpful in achieving your goals, not as unwelcome signals of distrust.

To that end, I will focus on a concept called "procedural justice" – i.e., what it is, why it matters, to whom it matters, whether it assures fair solutions, and what it suggests for **best** practices in ODR. I will also raise issues regarding the underbelly of procedural justice – i.e., how it can be manipulated, by whom, why and when that matters, and what it counsels regarding procedural safeguards. My goal is to suggest how procedural safeguards may help with avoiding or, at the very least, quickly addressing **worst** practices in ODR.

So, to begin, what is procedural justice? First, it involves people's perceptions regarding whether a procedure is **fair – not** whether it satisfies them or makes them happy. Second, it is a socio-psychological concept, with a vast empirical literature detailing its application to the courts, mediation, negotiation, interactions between people and police, and in the workplace. Third, this empirical literature reliably reveals that people are more likely to perceive a process as fair if it provides for the following:

- **Voice** – the perception that you were able to express what was important to you.

- **Trustworthy consideration** – the perception that the authority figure (or the other decision-maker in a negotiation) cared enough to listen and tried to understand what you had to say.

- **Neutral forum and even-handed treatment** – the perception that the forum is neutral and that you and your claims were treated in an even-handed way.

- **Dignified treatment** – the perception that you were treated in a dignified and respectful manner.

Research shows that if a procedure includes these characteristics, most people are likely to perceive that the substantive (or "distributive") result is fair, even if it is adverse to them;
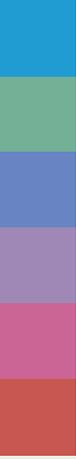
they are more likely to comply with that outcome; and they are more likely to perceive the institution hosting the process as legitimate – which obviously is important to a public institution like the courts.

In some sense, equating fair procedures with fair outcomes represents an act of faith.

Do fair procedures assure fair outcomes? It does seem logical that if parties are permitted to have a voice about what matters to them, and if they receive trustworthy consideration, and if the forum is neutral, even-handed and dignified, the outcome should be better-informed. Similarly, it seems that if parties are permitted to have a voice, if they receive trustworthy consideration, and if the forum is neutral, even-handed and dignified, then they will be treated as "in-group" members – and that generally means they will be treated fairly. Again, this seems logical.

Do we *know*, though, that fair procedures actually assure fair outcomes? Of course not. In some sense, equating fair procedures with fair outcomes represents an act of faith. Further, we must admit that we cannot always know what represents "the" fair outcome. There may be more than one fair outcome, depending upon the norms used.

That brings me back to the relative consistency of procedural justice and what it suggests regarding concrete questions and considerations to achieve best practices in ODR:

Voice

- Does the ODR process provide people with the opportunity to express themselves? Can they input information, particularly information that matters to them? As they respond to questions, will they be limited to a pre-determined list of choices or will they be able to choose "other" and input customised information? Even better, will they be asked open-ended questions?

- Is the medium (text-based, audio-based, video) one that is comfortable and accessible for everyone? I know people who do not know how to use computers and do not own smartphones. I know people who really need to talk with a human being when a problem arises. If these people are not comfortable with ODR, will they have reasonable access to the "old fashioned" hearing that they prefer? Will they ever be able to be in contact with an actual human being? Even though I support ODR, I think it is absolutely necessary that government offers multiple "channels" or "paths" to justice. worry about systems that reserve "old fashioned" human contact for the cases that involve a sufficiently large amount of money.

Trustworthy consideration

- Does the ODR process *demonstrate* that it has "heard" what people had to say? Do the questions and information flow follow logically from what people expressed? Does the screen display a summary of what someone input? Does the process provide an opportunity to correct that summary? Does the process provide an opportunity to observe an actual human being's reaction?

- If the ODR process produces a decision or award, does the award include an explanation regarding why the ODR process is providing this result? Does the explanation include some reference to the facts or other information that the person input?

- If emotions were solicited and expressed, can we trust that they were heard and understood? And is such understanding being expressed by an actual human being or is an algorithm or AI providing a proposed or final response? If it is the latter, I am uneasy describing the dynamic as "trustworthy consideration" unless the ODR provider acknowledges the use of algorithms or AI, and continues to offer a means to reach an actual human being.

Neutral forum and even-handed treatment of parties and their claims

- Has the ODR forum been developed by a third party, or by one of the parties to the dispute? The former is more likely to be perceived as neutral. The latter is more likely to be perceived as biased and thus subject to distrust.

- Is there transparency regarding how the process works and produces individual outcomes, as well as transparency regarding its aggregated outcomes?

- Are the parties able to 'see' the ODR process dealing with both of them at the same time – and be assured of its even-handedness?

Dignified treatment

- Does the ODR process permit people sufficient time to input information and reflect on their responses? Does the process permit people to change their responses before they ultimately click 'submit'?

- Does the ODR interface convey a sense of both accessibility and dignity to people participating in the ODR process? Does it convey a sense of dignity to people observing the process?

Now we will turn to the underbelly of procedural justice. Simply put, procedural justice can be manipulated. Let us assume I am the decision-maker in a procedure. I can give someone the opportunity to speak; I can sit and look like I am listening; I can promise that I will consider what this person had to say; I can be polite. But it can all be an act. I may have no intention of allowing this person to influence my decision-making. Or I may have input certain information into an algorithm beforehand and have no plan to deviate from the algorithm's recommendation. The fix is in.

People know they can be manipulated, and ODR must contend with the heightened suspicions caused by others' misbehavior in the worlds of Big Data and social media.

People know they can be manipulated, and ODR must contend with the heightened suspicions caused by others' misbehavior in the worlds of Big Data and social media. So while I urge ODR advocates and implementers to consider the questions and issues listed above, I also urge you to go further and embrace procedural safeguards – e.g., disclosure of how your processes work and what norms are embedded in your algorithms, transparency regarding individual outcomes and aggregated outcomes (and as differentiated by salient demographics), willingness to develop something akin to algorithmic "audits."
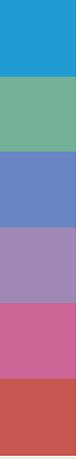
Owen Fiss famously declared himself to be "against settlement." At the time, I was offended. How could he have so little regard for the value of ADR? Today, I wonder whether I should have listened – not in order to be dissuaded from pursuing ADR – but in order to try to anticipate and prevent likely problems and abuses.

Today, I see and celebrate the promise of ODR. And as a friend, I plead with ODR's advocates, implementers and providers to be ready and willing to anticipate the worst. Be ready and willing to anticipate that your good processes, with all of their promise, could also be used for ill. Western literature, old and new, is replete with tales of fallen angels. So embrace those procedural safeguards. They may be pedestrian, but they are also essential to achieving the exciting potential that your pioneers and prophets have foretold.

Nancy Welsh

Be ready and willing to anticipate that your good processes, with all of their promise, could also be used for ill.

Here is a report from another eminent US Professor on The Hague ODR conference, Professor Carrie Menkel-Meadow, Chancellor's Professor of Law, University of California, Irvine and Visiting Distinguished Scholar Queen Mary, University of London, School of Arbitration

Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference

Attending the 15th annual gathering (in The Hague, Netherlands, 22–23 May 2016) of those who design, implement and use online dispute resolution (ODR) I am left asking the question do ODR and 'A' DR (now 'appropriate,' not 'alternative') dispute resolution have the same goals? Access to justice? Efficiency and transparency of dispute resolution? Quality of solutions? Satisfaction with dispute resolution? Justice?

The modern ADR movement was founded in the United States in the 1970s and has now traveled globally for essentially three different reasons: First, what I call 'quantitative' ADR – for cheaper, faster and more efficient docket clearing from long queues in court (the judicially promoted reason); second, more 'qualitative' ADR which means more tailored and party fashioned solutions to legal problems, including a focus on future relations, not just the past, and thirdly, a more politically process oriented hope for greater party participation and de-professionalisation ('lets not have lawyers if we don't need to') and democratisation of dispute resolution.

The 15th annual meeting of the Online Dispute Resolution community presented examples of the first and third motivations for taking disputes out of courts and putting them on computers, but left this participant and observer wondering about the second. Online Dispute Resolution is just a bit younger than the ADR movement. Twenty years ago founders of ODR, Ethan Katsh, Janet Rifkin and Colin Rule all had a hand in online dispute system design by creating and working with e-bay's online dispute resolution system which now handles over 60 million disputes a year between

online vendors and buyers of goods by a private innovative company that wanted to create a world-wide network with a quality reputation. Imagine if all those cases went to court!

The ODR meeting demonstrated both how far and how slow parts of the innovations have progressed. While parts of the private sector have advanced with uses of online complaint systems and customer service (Amazon is reported to have better customer service than any bricks and mortar business, but recent newspaper reports suggest that is due to exploitation of Amazon workers – if the customer is always right, maybe it is the employee who is making it possible!)

This conference was devoted to bringing ODR to the public sector – courts and formal dispute resolution. On offer at the meeting was an opportunity to hear several 'pitches' of the latest ODR products, intended for use in the public sector, particularly as a supplement, or in some cases, a substitute, for parties going to court. Access to justice is the mantra of most platform designers as they hope to interest court systems in moving into the 21st century as so many private companies have done.

The conference began with UK Lord Justice Fulford who clearly thinks the time has come for the UK, citing Richard Susskind's committee's work and the near £1 billion GBP now allocated to digitalising the courts including the creation of an Online Court for disputes under £25,000, to be rolled out within the next 18 months. 'Necessity is the mother of invention' might have been the title of this address, as Sir Adrian suggested that the caseloads of modern life cannot be sustained in a paper filled legal system.

60m

Twenty years ago founders of ODR, Ethan Katsh, Janet Rifkin and Colin Rule all had a hand in online dispute system design by creating and working with e-bay's online dispute resolution system which now handles over 60 million disputes a year.
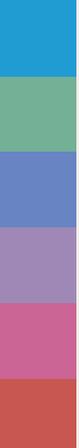
Courts, unlike, hospitals, businesses and even schools, have resisted change in design and function as we move to an electronically based communication society. Lord Fulford suggested we would dispense with buildings and consumer and complainants would indeed have access to computers, smartphones and could go to local community libraries to get online to deal with their cases, as physical courts move into 'Virtual' courts of streamlined case management and document filing and access, and decisions.

There will be risks – privacy, confidentiality, will judges play 'candy crush' in their offices or on the bench, will low value, but factually complex cases, be managed properly, will Rules of Civil Procedure have to be modified for this brave new world? Who will want to be a judge in this computerised world? Will criminal cases be handled without in-person confrontation of witnesses (likely unconstitutional where I come from in the US), though some jurisdictions are experimenting with online admissions of guilt and plea-bargains in minor (mostly driving) cases. Yet Lord Justice Fulford seems to think we are moving to the greatest changes in the legal system in 1000 years. We in the rest of the world will be watching the UK.

I still have my doubts. The digital divide is still profound – language, both linguistic and computer logic language, age (sight and typing and comprehension for the elderly or those alone), income, access to equipment and learning of constant updates and an inability to talk to a real person to give and get advice about legal matters that don't lend themselves to tick boxes are issues that continue to worry me.

I am most impressed by the Dutch Rechtwijzer divorce platform which combines great computer design and human interfaces – parties will be able to file for divorce and then use financial and calendar programs to figure out support and child custody schedules on their own, but also to access a counselor or mediator if they prefer some real life human interaction. Watching how this program can work has converted me somewhat to thinking the future of ODR is a combination of a well-designed computer platform where some interactive possibilities still allow human and more flexible and tailored advice and information to come through.

The Dutch were in the lead for legal aid for most of human history so it is no surprise they might be the prime innovators here – but consider; all of this has considerable support of the state. The UK has suffered massive
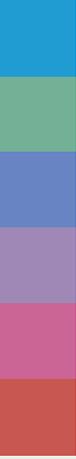
cuts in legal aid and support for its legal system, and my country never had such support to begin with. And, we also heard from a major innovator, the former head of the small claims court in Holland, Judge Dory Reiling, consultant for the World Bank on justice systems, who described her own journey to create a small claims platform for Holland that did not get enough use for further development.

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Nevertheless, the greatest innovations will perhaps come from the federal systems, which can experiment by state or province, in smaller piloted programs, rather than the whole nation at once, like Canada, which is soon to launch a compulsory Civil Resolution Tribunal in British Columbia (all civil cases on line), the US, where California (my state) is looking at on line case processing for some claims, and Ohio has launched an online property tax assessment dispute resolution system, and Australia (with variations in New South Wales and Victoria states).

Other innovations of some promise are those that dispense legal information (like a demonstrated program on Labour law and advice in the Netherlands, and others in the Czech Republic and family matters (Relate in the UK). On the other hand, the audience at the conference was riveted by the sad tale of two French consumer dispute online designers, website Demander Justice.com, (with business and engineering, but no law, degrees, who have been pursued (so far unsuccessfully) by the French and Paris Bars for unauthorised practice of law in several rounds of litigation in criminal and appeals courts, at great expense, with the clear purpose of putting them out of business.

As one who has been studying the challenges of regulating the new platform economies of Uber and airbnb as they both offer new access to services, but also challenge labour, health and safety regulations, and tax payments, I wonder how the regulation of advice giving online will play out in different legal regimes – much will depend on the power of that great profession of monopolisation – the lawyers.
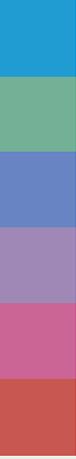
Attendees at the conference received excellent presentations from Nancy Welsh and Leah Wing to be reminded of the importance of "procedural justice" and ethics of ODR design. In my personal interviews of several of the platform developers it is clear that ethics and quality is a concern of many of those who attended this conference. What about those entrepreneurial outliers who seek to make money without participating in these voluntary meetings of sharing the state of the art and knowledge at the cutting edge of the field? Platform developers in attendance were there to learn from each other and also to pitch their products. I was approached as a legal academic expert to serve on advisory panels of new groups just emerging to consider what can be done – fallen away lawyers, mediators, disgruntled disputants themselves – all of whom want to make dispute resolution more accessible and easy for others. But what about those who weren't there to hear these exchanges and proposed codes of conduct in an unregulated field?

So, there was much talk about 'justice'. What I heard was that in small, simple disputes, a quick and easy form to be filled in,

documents uploaded, monitored communications between the parties (think returns and money refunds, and small fines) and yes

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For me ODR may be one tool for some 'access' to dispute resolution of some kind, but I wouldn't over claim the 'justice' part.

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even decisions could be done on line. What I wonder about is what drove me to ADR in the first place – where in the tick boxes and the email communications will there be room to brainstorm and create a different solution, give an apology, come to understand someone else's perspective, and improve, rather than just 'resolve', relations and disputes. For me ODR may be one tool for some 'access' to dispute resolution of some kind, but I wouldn't over claim the 'justice' part. I recently resolved an ongoing dispute with one of my airlines online – what I felt was relief it was over and done, not any sense that 'justice' had been served and it was very clear that at the other end of my computer was not someone with the power or discretion of a mediator or judge to consider a more creative and tailored
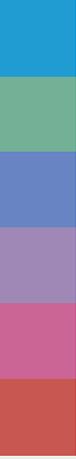
solution. I got what the tick boxes or company policy allowed. Will we be getting small claims or civil justice in a programmed set of legally required tick boxes? I thought the common law allowed more flexible rulings and mediators and negotiators working in the 'shadow of the law' could still fashion new and creative remedies that looked to the parties' futures, as well as past conflicts.

I remain intrigued by what ODR might be able to do in some cases, but I remain a bigger fan of old fashioned in person ADR, because for me, one size will not fit all – I remain a process pluralist –ODR will work in some matters for some people, but let's not yet throw out the baby (ADR) with the bathwater (the old and rigid legal system).

Carrie Menkel-Meadow

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Also at the conference was Colin Rule, one of the founders of modria.com who was also one of the developers of the ODR software used by eBay and PayPal. Here he is, reporting on a family court initiative in the United States.

Bringing ODR to Family Courts in the United States

'A Court Compass for Litigants: Building an App for That' was the title of a meeting of the Institute for the Advancement of the American Legal System (IAALS) on June 9–10, 2016 in Denver, Colorado. The attendees were diverse: family attorneys, CEOs and Clerks of courts in large counties, Academics and Researchers, Court Innovations Entrepreneurs, and Executives from Legal Service Bureaus. They shared a passion for expanding access to justice through the

> They shared a passion for expanding access to justice through the creation of a Court Compass, or a software-powered diagnosis and case management tool that could assist litigators through their justice journey.

creation of a *Court Compass*, or a software-powered diagnosis and case management tool that could assist litigators through their justice journey. Tom Clarke from the National Center for State Courts prepared a paper in advance of the meeting that called out the business and technical requirements for such a system, and the two days were filled with animated discussions around what such a system would look like and what features it should encompass.

IAALS has now released a paper that summarises the meeting. The paper recognises two new realities: (a) that justice is not court-centric, and (b) that it is impossible to supply every litigant who needs one with an attorney. The paper then observes that many see a promising option for addressing these realities as 'a litigant portal that helps individuals diagnose the existence of a legal problem and provides rich and relevant referrals, ODR where appropriate, and also seamless entry into the court process when chosen – accompanied by user friendly tools that will assist and support them through the court process.'

The paper acknowledges that there has already been some progress toward realising the vision of this portal, but those efforts have been too fragmented to gain much traction. The paper calls for a new strategic approach that is 1. Manageable in the first instance; 2. Grounded in standards that assure compatibility; 3. Scalable across states and courts; 4. Robustly measured; and 5. Ultimately financially sustainable.

As a result, the paper's core recommendation calls for the creation of a 'Family Law Portal' (FLP) that will be largely based on ODR. From the report:

> To help plan for the FLP, at the A Court Compass for Litigants convening, attendees were shown two tools designed to help people resolve their family law issues: Rechtwijzer 2.0 used in the Netherlands and MyLawBC used in British Columbia. The latter replicates the functionality of the former and adds an additional Guided Pathways feature. The features common to both include an ODR system that helps families that are getting divorced with a minimum of judicial intervention. This process is based upon a concept developed for resolving consumer disputes on eBay – a system that resolves over 60 million disputes a year. The parties start the process online by following guided interviews that help them identify the issues and learn ways to resolve them. If the parties reach an impasse on an issue, they can request the assistance of a professional mediator. Again, this is all within the online system. Should they not be able to reach agreement through mediation, they can request a decision on the issue from a non-judicial hearing examiner. At the end of the process, the parties have a settlement agreement that will be filed with the court and signed by a judge.

The report further recommends that the Rechtwijzer/MyLawBC platform be extended to multiple courts in the US to test its effectiveness in the US market. From the conclusion:

> Rather than reinventing the wheel, IAALS proposes to replicate the features of Rechtwijzer and MyLawBC on a platform that can be scaled throughout the United States. In addition to the features described, it will incorporate the work that is being done by the Stanford Design School to facilitate natural
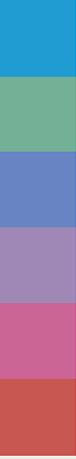
language search inquiries, so that users do not need to cite legalese. The Stanford project plans to work with Google to identify the terms 'real people' use when looking for answers to their legal problems. This natural language approach will be used throughout the process.

This meeting, and the resulting enthusiasm being marshalled by IAALS, represents the most coordinated effort to date to bring the cutting-edge ODR techniques already in use in Europe and Canada to the United States. In addition to the American Bar Association, several large foundations have expressed their interest in putting resources behind the design and launch of such a system. Most likely the pilot will start in one or two states, but once key performance indicators show the system is working as intended, it is likely that other states will join in as well.

Colin Rule

The Stanford project plans to work with Google to identify the terms 'real people' use when looking for answers to their legal problems.

Finally in this section, we have the personal thoughts of Mark Madden, the Australian Deputy Director of the Centre for Innovative Justice at RMIT University, Melbourne – a former journalist who, in a telling colloquialism, has been around the block a few times.

ODR: songs of innocence and experience

My experiences with the implementation of new technologies have provided some salutary lessons. The first was that the claimed benefits were not always delivered; the second was the importance of involving the users in the design, and the third was to be wary of courts (and governmental agencies) insisting on the bespoke development of large-scale IT projects. All are relevant to the discussion about the implementation of on-line dispute resolution.

Whilst working in a government minister's office I was involved in the oversight of the development and implementation of a new information technology system for various parts of the justice system. This particular project was inherited from the previous government after an unexpected election result. It was based on US software and was to be adapted to Victorian conditions and include the ability to link the police with the courts. It supposedly had the support and involvement of senior members of the police and the courts. The plan was essentially to translate the existing paper-based processes into software-based processes. At that time, no-one-one, including me, thought to question the processes themselves. The outcome was a system that was expensive and complex. It simply digitised old processes. It ultimately failed. Our courts are still using the system it was meant to replace.

The implementation of ODR brings these issues to the fore. They certainly surfaced recently in Australia prompted by the demonstration and discussion of the revolutionary Dutch system Rechtwijzer 2.0. A forum on design thinking, AI and access to justice featuring the demonstration was hosted by National Legal Aid, Victoria Legal Aid and RMIT University's Centre for Innovative Justice. A number of roundtables including judicial officers, courts and tribunal members and administrators, legal assistance sectors lawyers and design thinkers followed. A number of those at the roundtables had also been
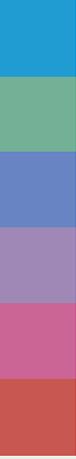
exposed to the thinking that is driving the implementation of British Columbia's online Civil Resolution Tribunal by its Chair, Shannon Salter.

This leads me to suggest that while a promise of 100% access to justice (at least civil justice) is alluring and exciting and definitely worth aiming for it should not blind us to the range of other barriers that exist to improving access to justice. In this and in most things it is often better to under-promise and over-deliver than the other way round.

At a time when governments are rightly wary of large scale IT projects, the ability of these systems to progressively scale up and remain agile has to be a major bonus.

Perhaps the most important issue though is whether the governments and courts will take the opportunity provided by the advent of ODR coupled with design thinking or human centred design to rethink and redesign the justice system from the users' perspective. To do so will empower those users to become actively engaged in resolving their disputes and significantly improve the access to and quality of justice. Think language, locations, opening times and forms and the removal of often self-inflicted burdensome

court procedures and processes. Perhaps the most challenging question for the courts' leaders to ask is the one put by Richard Susskind, 'are courts a place or a service?' The empowerment model sits at the heart of the Rechtwijzer and the Civil Resolution Tribunal, but as we know our court systems and government departments have been successful for some time in keeping innovation at the periphery.

The other advantage of the approach taken by the Dutch and the British Columbians is 'scalability'. At a time when governments are rightly wary of large scale IT projects, the ability of these systems to progressively scale up and remain agile has to be a major bonus.

This brings me back to an interesting contradiction that also emerged during the discussions. It is so-called 'robot-lawyers' informed by design thinking that are 'humanising' dispute resolution by empowering people to resolve their own disputes, something the existing 'human-powered' adversarial system has struggled to do. As one participant reflected 'what could be more robotic than the way lawyers currently work in a system that for most people does not compute.'

7. The relationship of Face to Face and Digital Services

The justice policy-makers dream is that digital services can replace in their entirety conventional face to face provision. There will be no need for legal aid; court staff; advice provision: just the one off cost of getting the right material online. The temptation is particularly acute in proposals for online courts where the potential sale of court real estate adds a tempting – and tasty – incentive. British Columbia's online Civil Resolution Tribunal is intended to become mandatory 'sometime in 2017.[2]

For England and Wales, Lord Justice Briggs suggests in his interim report that there will be three stages to small claims determination, all of them online:

> The justice policy-makers dream is that digital services can replace in their entirety conventional face to face provision.

The [Online Court] is likely to adopt a variant of the three stage or 'tier' structure …

Stage 1 will consist of a mainly automated process by which litigants are assisted in identifying their case (or defence) online in terms sufficiently well ordered to be suitable to be understood by their opponents and resolved by the court, and required to upload (i.e. place online) the documents and other evidence which the court will need for the purpose of resolution.

Stage 2 will involve a mix of conciliation and case management, mainly by a Case Officer, conducted partly online, partly by telephone, but probably not face-to-face.

Stage 3 will consist of determination by judges, in practice DJs or DDJs…[3]

The precise detail of the proposed stage 1 is not entirely clear neither from Lord Briggs report nor from the earlier Susskind proposal. Lord Justice Briggs appears to imagine that the court will be responsible for a Stage 1 which will include a variety of different components:

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2 http://www.civilresolutionbc.ca/question/when-will-the-crt-become-mandatory/
3 Para 6.7
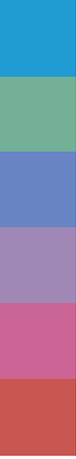
1. 'online help at every stage' in the preparation of documents;

2. 'simple commoditised online advice as to the bare essentials of the relevant law';

3. the capture of 'the essential details of, and evidence about, a litigant's case' presented at the outset;

4. a 'triage process' separating cases into different categories for determination.

The Briggs proposals amount to a major reform of current arrangements have been a series of ad hoc responses to the escalating numbers of litigants in person which ballooned after the withdrawal of legal aid from significant parts of the civil justice system. We now have a major problem in litigants in person who lack information and confidence in relation to pursuing their cases and representing themselves. Pro bono provision and agencies of various kinds have responded in various ways. The Royal Courts of Justice CAB (Citizens Advice Bureau) has developed its online CourtNav programme. The Advicenow website has sought to address the need through its 'Going to Court or Tribunal' resources focusing not just on information about the law but on what to do and how to do it, step by step and using a range of learning techniques to get the message across including clear, straightforward language, jargon busters, case studies, diagrams, audio files, example letters and short films. The CAB website also provides some assistance both general (eg citizensadvice.org.uk/consumer/going-to-court/going-to-court) and specific in relation to different claims. There is the considerable danger of a major separation between this initial provision and the later stages proposed in the report. The success of the latter will be dependent on the smooth and successful transfer from initial information to the further graduated stages envisaged in Lord Briggs' report. There has been discussion of 'assisted digital support' for litigants but it should be noted that the CAB and other advice agencies are operating at a stage earlier than anyone would come into contact with a court based and oriented service.

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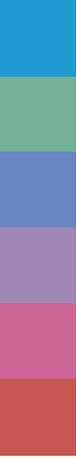
So, the Briggs and similar proposals which argue for a wholly digital online court face three problems.

- First, do all potential users have effective access to the internet i.e. beyond physical access, do they have the necessary cognitive, language, technical skills?

- Second, how will potential users identify themselves as potential litigants in person. How will online court procedures interface with existing, largely physically delivered, advice services?

- Third, how will users overcome difficulties in using online procedures? Will there be individualised provision to assist them and, if so, can it safely be provided only digitally?

There are a number of models available in other jurisdictions. There are imaginative examples of the use of digital assistance. The A2J software in the US, described above, was developed specifically to help litigants complete forms.

50%

Policymakers cannot currently assume that more than 50% of potential users on low incomes can use digital provision.

That approach, which partly uses visual means, has been developed to use avatars as advisers to provide online digital assistance (eg the Justice Education Society of BC – see smallclaimsbc.ca/court-home). Much can be done through the use of guided pathways – particularly when supplemented, as they are for the Rechtwijzer – by physical assistance. The Californian courts, in particular, make major use of a legal education model to help litigants in person through classes and guided assistance through the court process.

The problem cannot be swept under the table. Policymakers cannot currently assume that more than 50% of potential users on low incomes can use digital provision. That is a large enough percentage to be encouraging but small enough to stop wholesale, mandatory online courts that are not supplemented by conventional face to face to advice. That may change over time: it pretty certainly will. But, if jurisdictions are to move decisively to online provision for the type of claims that are relevant to those on low incomes then one of the consequential costs will have to be investment in the advice, and on occasion, the legal sector. Otherwise, the lot of the poor just got worse and the digital divide opened ever wider.
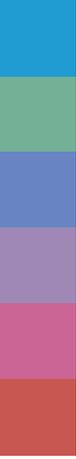
8. Conclusion

What you can hear in the contributions above is the sound of a movement, still fractured and focused on different things, grappling with the enormity of the coming technological revolution – which has, classically, elements of both enormous opportunity and threat for those who are the poorest in society. To pick up a point made in the introduction, it really does seem as we are in the course of a decisive increase in the speed of change – and the increasingly widespread acceptance of its inevitability. Through these updates and the content of law-tech-a2j.org, we hope to provide a way in which those engaged, or interested in, developments can find a way of following them and putting them within some overall context.
To repeat a further point, please do email in observations and contributions:

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rsmith@rogersmith.info

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