Publishing the courts: Judgments and public information on the Internet: Lord Justice Brooke, Lord Justice of Appeal: Address at the Commonwealth Law Conference - Melbourne

Courts in many parts of the Commonwealth are adopting the Internet as a key mechanism to communicate information about their role and function and to distribute their judgments. In this paper the author describes the role of the courts of England and Wales in online publishing and the provision of free public access to law on the Internet, and other recent developments in that jurisdiction.

Introduction

I am writing this paper in three capacities. First, I am the judge who has been most heavily involved in the High Court and the Court of Appeal in England and Wales over the last 12 years in identifying and trying to remove the obstacles which lie in the path of free public access to our judgments from the time they have been approved by the court. Secondly, I have for the last two years been designated by the Lord Chief Justice as the judge in charge of modernisation. In that role I am the judicial member of the Court Service programme board which is responsible for driving forward our £300 million court modernisation programme.

And finally I have been at the centre of the multi-disciplinary "Free the Law" movement in the United Kingdom and Ireland. This movement came alive at a crowded meeting in London which I chaired in November 1999 when we unanimously agreed to do everything possible to achieve free public access to both the statute law and the caselaw of our islands. For the last two years I have been chairman of the trustees of the British and Irish Legal Information Institute (BAILII) which is the outward and visible symbol of all we are trying to do in that field.

Having said what I am, I must now say what I am not. This is important because it shows that there are still a number of different autonomous cooks responsible for different parts of the broth that makes up free access to the law in our jurisdiction.

First, I have no responsibility for the arrangements for publishing the "judgments" of the House of Lords and the Judicial Committee of the Privy Council. [Endnote 1] Secondly, I have no responsibility for the arrangements for publishing primary or secondary statutory legislation. And thirdly, under our domestic arrangements, the Court Service Agency, which is an agency of the Lord Chancellor's Department, has assumed the role of publishing information to the public about different aspects of court process, and the influence of the judiciary in any of this work is, at best, indirect.

Top

The House of Lords and the Judicial Committee of the Privy Council

I would like to dwell on these three matters for a little longer. The administrative arrangements underpinning the judicial business of the House of Lords are the responsibility of Parliament. The House of Lords handles between 50 and 75 cases every year. It has its own publishing unit, and this comparatively small volume of business makes it quite easy for its judgments to be published in a common format and to be posted on their website within two hours of delivery. [Endnote 2] In November 1996 the first judgments were published on the web without, so far as I know, any prior announcement, and they have been published there ever since. There are no judgments published there which antedate November 1996.[Endnote 3]

Happily, although they do not make public statements about their administrative policies, the House of Lords has been in the practice of adopting the arrangements we have made from time to time in relation to the publication of our judgments in the new world of the world wide web.[Endnote 4] In January 2001 they introduced paragraph numbers and neutral citations at the same time as we did. More recently, they have

agreed to state the neutral citation of the judgment of the lower court(s), where available, in order to make it easier to maintain a comprehensive electronic index of the judgments at the different levels of court in a case which reaches the House of Lords.

On their website they maintain a list of those qualified to sit to hear appeals to the Appellate Committee of the House of Lords (as well as those who are now disqualified because they have reached the age of 75); the practice directions of the House in relation to civil and criminal business; three recent reports by the Appeals Committee which do not relate to decisions on appeals in particular cases; and some information about the judicial work of the House of Lords, including the history of the jurisdiction. This history ends with the Appellate Jurisdiction Act 1876, which constitutes the source of the present statutory jurisdiction of the House of Lords in judicial matters.

The administrative underpinning of the work of the Judicial Committee of the Privy Council is the responsibility of its Registrar.[Endnote 5] Their section of the Privy Council's website [Endnote 6] contains all the "judgments" of the Privy Council since January 1999, and about 18 leading judgments (going back to 1914) before that date. The editorial content of its web pages is more formal than that of the House of Lords, and it does not seem to have been updated since 2000. It does not contain the names of those who are qualified to sit in the Privy Council, nor the relevant practice directions.

Nor does it contain any description of the history of the Privy Council's jurisdiction, or the way in which over the years different Commonwealth countries have abolished Privy Council appeals in favour of setting up courts of final appeal within their own jurisdictions. Last summer a new policy of publishing Privy Council "judgments" in portable document format ("pdf") and, I think, for a short time as images of images, was introduced without any prior notice or consultation. This made them slow to download and impossible for lawyers to handle. This very unwelcome change was rapidly reversed by the Registrar as soon as it was brought to his attention.[Endnote 7]

Top

Statutes and Statutory Instruments

Responsibility for publishing our statutes and statutory instruments lies with Her Majesty's Stationery Office ("HMSO"). Their web-page [Endnote 8] contains UK statutes going back to 1988, and UK statutory instruments going back to 1987. Secondary legislation relating to Northern Ireland dates back to 1991, and that produced by the Scottish Parliament and the Welsh Assembly to their creation in 1999. This website also contains the Index of 11,000 Private and Personal Acts between 1539 and 1973, and the Index of 26,000 Local Acts between 1797 and 1973.

These dates mark the borders of the Law Commissions' monumental work of compiling these indexes. The website brings each index up to date to the present time, and it publishes a number of the more recent Bills of this type. It also contains the helpful Explanatory Notes which are now a feature of every Bill presented by the Government to Parliament. All this material is produced in an attractive and accessible format, in accordance with a policy that our statute-based law should be available to the citizen free of charge on the web within 24 hours of its being published.

These texts represent statutory material as it was originally enacted. They do not incorporate the many subsequent amendments which are such an unattractive feature of our legislative arrangements. When the Law Commission was created in 1965, it was instrumental in encouraging the publication of a series of volumes called "Statutes in Force" stating what "The Law is Now." Thus in any given year, anyone with access to the volumes in this series could be abreast of all the most recent amendments.

In the early 1990s a decision was taken, however, to suspend this publication for a short time [Endnote 9], and to devote its resources towards the creation of a new electronic statute law database. This would have a base date of 1991, and it would enable the reader to know not only what the statute said at that time, but to trace the history of all its subsequent amendments, as well as incorporating all the statutory material introduced since that time.

Sadly, successive Governments have been unwilling to allocate sufficient resources to enable this work to be completed, although we are told - as we have been off and on over the last ten years - that we can expect the work to be completed within the reasonably foreseeable future. In the meantime commercial publishers have not been willing to wait, and they have produced their own equivalent services on a subscription basis.

All this work has no judicial input. It is of course relevant to the work of the courts, because judges depend on being shown statutory material which is both in force and up to date at the relevant time. From time to time things go badly wrong in court because a judge is given inaccurate information in the absence of an easily accessible source of information provided by the state. On those occasions justice is not done.

Top

Court forms, lists and guides: Money Claims Online

Work which has a small amount of indirect judicial input is the work undertaken by a unit within the Publications Branch of the Court Service. Their products are visible on the Court Service website, which has recently been re-designed.[Endnote 10] It provides a massive amount of useful information, and its scope has greatly increased in recent years. A page entitled "Using the Courts", for instance, contains lists of court addresses, a guide to court fees, the pilot websites for five of our Crown Courts, procedural guides to different courts, advice about jury service, a description of the County Court Bulk Centre at Northampton (which issues electronically a large number of debt-collecting claims every year), and guidance about wills and probate.

A vast number of different Court Forms can now be drawn down from this site. The site is also the home of the very successful new service called "Money Claims Online", which enables anyone with a credit card to initiate a money claim from their computer, provided that there are not more than two defendants and the claim does not exceed £100,000. A recent addition to this service enables a defendant to respond to the claim online.

The judiciary advises on matters affecting the content of this site from time to time, but because Court Service headquarters is located over a mile from the judges' headquarters at the Royal Courts of Justice there is not the same degree of close partnership planning between judges and Court Service staff as exists in jurisdictions where this geographical divide does not exist.

I know that in all this work there is an underlying concern that access to the world wide web may empower a class of litigants who are accustomed to using modern technology. It is an important part of the court modernisation programme that the Court Service should explore with citizens' advice bureaux and other advice agencies the best ways of making these valuable services available to everyone. Work is also going forward to see how information about court processes can be made more "customer-friendly", so that someone who has a boundary dispute with a neighbour, for instance, can easily learn how best to use the processes of the court to help him/her to resolve the dispute.

Top

Free public access to judgments of courts and tribunals

I will now turn to the main part of this talk, which is concerned with the work involved in providing free public access to the judgments and determinations of our courts and leading appeal tribunals. I first started to become interested in issues concerned with IT and the law in 1985, and I was very struck even then by the way that Australia was forging ahead. So far as the United States were concerned, we might as well have been on another planet. For many years I was very conscious that those two countries were miles ahead of us in using applied computer technology in aid of the courts. We needed to study what they were doing in terms of making caselaw and statutes available to everyone online, and what we had to do in order to catch up.

Top

Why the United Kingdom was so far behind

Why were we so far behind? I could think of five reasons immediately. The first was that we were very firmly in the grip of a traditional book-bound legal culture which didn't much like the idea of change. The second was that the Lord Chancellor's Department and the Scottish Courts Administration, which serviced the courts on each side of the Scottish border, were in those days small, rather inward-looking departments which didn't really have a wider vision, much less the funds to support such a vision.

The third reason was that in this country there was then no tradition of judges and court administrators and businessmen and academics - let alone politicians - meeting together to make common cause to drive our court systems forward into the future. The fourth was that our public sector capital spending arrangements didn't permit outside investment, and a Government Department could only be sure of what money it had for one year at a time. The fifth was that in those days law publishers wanted to conserve their markets for hardbook sales, and they were mostly very slow to capitalise on the possibilities of electronic publishing. In their defence I would say that in 1990 there was little demand for it from a very traditional market

Top

Why free access to primary sources of law is so important

Why have I always been so enthusiastic about the need for free provision for primary sources of legal information? My answer is that I have always been keen to establish a level playing-field in access to the law. Our great long-established universities have always had wonderful law libraries. So have the Inns of Court and the Advocates' Library in Edinburgh and our leading lawyers' offices in this island and their equivalents in Belfast and Dublin.

But what about the universities which started developing law faculties from 1960 onwards? What about the smaller lawyers' offices, particularly those away from big urban centres? What about the courts themselves, particularly the smaller courts, and the judges and magistrates and sheriffs who sit there? What about law centres and pro bono units and citizens' advice bureaux? What about the countries of the Commonwealth, particularly in Africa and the Caribbean, which are desperate to obtain access to UK law texts?

The world I watched developing in the 1990s was a world in which the gap between the haves and the have-nots was widening. As the courts provided more and more of their judgments in written form, the lawyers involved in the cases had the precious transcripts photocopied or scanned onto their firm's or their chambers' or their offices' electronic databases, available only to a comparatively small circle. Electronic publishers got hold of these unpublished court transcripts and created subscription services for the customers who could afford to pay for them.[Endnote 11] Unless there was a brief summary in a newspaper law report, the rest of the market was left to wait for the report eventually to be published in one of the series of law reports to which they had access. Often they had to wait a long time.

More and more specialist law report series were also being created, and there was a limit to the number of law reports most people practising or studying or teaching the law could afford. As a judge I watched the way in which the leaders in the field had access to recent case-law which was not readily available to the rest of the market. No doubt the fees they charged their clients reflected, in part, the benefits they could give them from this privileged position.

Top

Making the law accessible to everybody

In January 1995, as chairman of the English Law Commission, I introduced a law reform bill sponsored by our Law Commissions to a House of Lords committee. It was designed to modernise and codify the part of

our private international law which was concerned with the law of tort and delict. I remember referring the committee to a paper it had received from Professor Anson, a great Scottish scholar on this topic. He said that one of the great merits of the bill was that it would make the law accessible to those who didn't have access to very specialist law libraries in the charmed triangle of Oxford, Cambridge and London.

I picked up this theme when I told the committee that the English and Scottish Law Commissions wished to put legal advisers (and their clients) in Wigan and Inverness on an equal footing with those who served their clients from within that privileged triangle, and that this bill would help to achieve that aim. Parliament approved what we were proposing, and the bill became law.[Endnote 12] IT gives us even greater opportunities to do much the same kind of thing much more widely.

Bannister v SGB plc

Matters came to a head, so far as I was concerned, during the first half of 1997, soon after I had become a judge of the Court of Appeal. We then had more than a hundred appeals under Order 17 Rule 11 of the County Court Rules waiting for a hearing in our court. This was a rule which provided that an action should be automatically struck out if no request had been made for a hearing date within 15 months of the pleadings being closed. The rule was fine for simple actions involving only two parties and no pre-trial disputes, but for anything much more complicated it led to chaos, because the rule-makers simply hadn't thought things out properly.

I was a member of a three-judge division of the Court of Appeal which was appointed for a seven week period to get rid of this backlog. We were given the services of a very able judicial assistant, and with his help we looked at all the reported and unreported cases in the Court of Appeal which had dealt with this rule already. We identified 70 different points of dispute for which a judicial solution had not yet been found, and the appeals which best illustrated these points. We then decided to hear 21 of these in the first three weeks of our seven-week stint, so that we could produce a single judgment designed to solve as many of the unresolved problems as possible.[Endnote 13] We hoped that most of the other cases in the queue would then settle when the parties could see what the law was. The plan worked, and by the end of the seven weeks we had cleared off all the appeals which were ready to be heard.

I mention this because we had to find some means of letting everyone have access to the first judgment as quickly as possible. The Lord Chancellor's Department's website was then in its infancy, and we posted the judgment on the web at the same time as we handed it down in court. But we knew that in May 1997 none of the courts and very few lawyers' offices had access to the web. We therefore had to direct that hard copies of this very long judgment should be sent to every civil court centre in the country, for copying to all the judges who might sit at that centre, and also to all the parties to the appeals in the waiting list.

I don't know how much this exercise cost. Through modern eyes it was a very inefficient way of doing things. But it did mean that from the beginning of the following week no judge or deputy judge decided any case involving an automatic strikeout without having our judgment available, and the parties in the Court of Appeal queue had our judgment, too. There were a few more unresolved points we had to decide during the following four weeks, when we issued another much shorter judgment explaining all the decisions we made in that four week period. That one was published on the website too.[Endnote 14]

The All England Reports published both our judgments that September. I remember being struck by the fact that they weren't published by the official law reporters in the Weekly Law Reports, and then only in a shortened form, until long after the immediate crisis was over.

One of the reasons I have mentioned this episode was that this experience showed both me and Lord Justice Saville (as he then was) just how inefficient our arrangements were for allowing everyone to have access to important judgments as fast as possible. Another was that it introduced me for the first time to the work of the Australasian Legal Information Institute (AustLII). If you read our judgment in *Bannister v SGB plc* you will see that we refer to it with admiration at the start.

The pioneering work of AustLII is based at two Australian universities. AustLII was founded on the principle

that everyone should have access to the law of their country free of charge. By the law of a country I mean not only statute law and statutory instruments but also caselaw. A visitor to the AustLII database will have immediate free access to masses of statutes and to the judgments not only of the courts in Australia but also of important tribunal jurisdictions. By the use of their complex software large quantities of new material could be integrated into the database very quickly by automatic processes.

In England, in contrast, we had to wait for a short summary of a judgment to be published in The Times law reports before we knew anything about a case. We would then have to wait very much longer until the case was reported in a printed report. Until this happened, only the favoured few had access to the unreported judgment, as I have already described. As well as being unfair, this was also a very inefficient way of doing things, because judges would be deciding cases in ignorance of decided Court of Appeal authority already touching on the point. Appeals were therefore inevitable.

Top

Advances in England and Wales during the last five years

It has been a long struggle to get to where we are now. A significant advance was made in August 1999. The Court Service had previously allowed the official shorthandwriters to charge a substantial fee for the work they did in connection with judges' reserved judgments, even though these judgments were issued in written form by the judges' clerks (or the judges themselves). The official shorthandwriters merely tidied them up (if they needed tidying) and placed their name on the title sheet. They were also allowed to assert a copyright entitlement over republication.

These practices were ended under a new contract which came into effect that month. The most important judgments of the Court of Appeal and the High Court, by and large, are reserved judgments [Endnote 15], and we were now free to publish all these judgments free from any private copyright entanglement. An important element of the new arrangements, however, was that we had to learn to produce our written judgments more efficiently and in a common format.

This was very much easier said than done. Judges have no particular know-how or interest in desktop publishing. Their clerks come from a variety of different backgrounds. Many of them had a first career in the armed services or the police. Typing skills are just one of the many elements of their heterogeneous job description. Furthermore, in those days the Court Service was providing one form of software to the judges, and a different form of software to their clerks. Such support services as existed came from different sources. There was not much money for IT training, either. There was also no network, so that floppy disks had to be carried around from office to office, with all the risks of virus infection that this practice carried with it.

Somehow or other we found solutions to most of these problems. Our IT staff devised a judgments template which could be used both by a judge (using Word 97) and by his/her clerk (using Word 96). They found ways of stripping out redundant Microsoft coding when the script was converted to rich text format ("rtf") or hypertext mark-up language ("html") for the purpose of publishing a judgment on the world wide web. The development of this template was in itself a difficult problem, as we did not have the funds to hire an expert consultant, and some of the early versions of the template produced inevitable glitches which drove some of our clerks to abandon its use in despair.[Endnote 16]

During the year 2000 there was still a good deal of resistance in high judicial places to the idea that paragraph numbering should be introduced into our judgments.[Endnote 17] This impasse was broken when Chief Justice Michael Black, of the Federal Court of Australia, addressed a meeting of senior judges in London in July of that year. He explained how in Australia, too, the judiciary had had to travel through a similar pain barrier. Now that they were through it, they could all see the value of the new arrangements. This has been our experience as well.[Endnote 18]

In January 2001 the Lord Chief Justice, with the agreement of the other Heads of Division, issued a new Practice Direction, which explained the arrangements for neutral citation and paragraph numbering which were being introduced with immediate effect.[Endnote 19] The House of Lords, and the Privy Council

followed suit. During this first year, we could only issue neutral citations for judgments handled by the official shorthandwriters. Within 12 months we had made arrangements for the High Court, too, to have its own citation system. A further Practice Direction was issued in January 2002 which explained the citation system we had adopted there.[Endnote 20]

We have not yet solved all the problems, because there are still some types of judgments over which private firms of transcribers assert copyright entitlements, and these we cannot publish immediately. This state of affairs produced an odd result during 2002 when Lord Woolf gave an oral guideline judgment on sentences for robbery involving mobile telephones. The Press and politicians were commenting on his judgment without having access to the words he actually used. If they had been able to read his judgment in full, they would have expressed themselves differently. On the other hand, if he had delivered a written judgment, nobody would have had any excuse for misrepresenting him because the judgment would have been available to everybody on the court website.

Top

Publishing judgments: the future

When I look back over the last five years, it is obvious that we have made huge advances. There is still, however, a lot of work to do. Once all the vestiges of private copyright entitlements have disappeared, the way will be open to publish to everyone electronically all the judgments of our courts and our appeal tribunals which we wish to publish. We will not wish to publish them all. A distinction must be made, for instance, between the Civil Division of the Court of Appeal and the Administrative Court (the part of the High Court concerned with judicial review and statutory appeals), where we are likely to wish to publish all their substantive judgments, [Endnote 21] and the Criminal Division of the Court of Appeal and the other parts of the High Court, where we are likely to leave it to judicial discretion whether a judgment should be published on the world wide web.[Endnote 22]

If - as seems likely - a unified Tribunals Service is created in England and Wales, we will need to address similar issues there. I am convinced that the solution is to be found in adopting, so far as possible, common formats and common protocols, so that the job of automatic conversion from a word-processing format to a web-enabled format can be performed as effortlessly as possible. At the moment a lot of time is being wasted in manually unpicking codes before a judgment or tribunal decision can be published on the web.

Top

The British and Irish Legal Information Institute (BAILII)

I will now turn to the way in which the influence of the British and Irish legal Information Institute (BAILII) is driving this work forward. In November 1999 I chaired a meeting [Endnote 23] at Chatham House in London at which Professor Graham Greenleaf of AustLII was the main speaker. It was a bit like a revivalist prayer meeting. There were people there from government and the judiciary, from both sides of the legal profession, from the academic world and the world of legal publishing, from the worlds of law librarians, consumer associations and advice centres. They came not only from England and Wales and Scotland, but from Northern Ireland, Ireland and the Channel Isles, too.

The mood of the meeting was unanimous. We all wanted to see in our islands the creation of an electronic legal information service like the one Professor Greenleaf had showed us, giving access to our primary sources of law, both statute and case-law, free at the point of delivery. A hundred thousand pounds was raised before Christmas to enable work to start quickly, without things getting tangled up in red tape and committees. We then formed a small steering committee to examine what could be done to make this dream into a reality.

In the meantime a pilot website called "www.baillii.org" was launched in Australia. This was almost entirely due to the efforts of the directors of AustLII. Andrew Mowbray built the databases, Philip Chung developed the interface and Graham Greenleaf generally encouraged and negotiated BAILII's development. They

created a pilot site which included a lot of primary source materials that became accessible to everyone free of charge and free of copyright restrictions.

BAILII swiftly became the single largest free access law site for the United Kingdom and Ireland. It obtained 14,000 hits on its first day. Site watchers in early April 2000 saw the volume of English caselaw multiply more than a hundredfold overnight. This occurred when the official shorthandwriters generously made available free of charge to BAILII three years' worth of their archive of transcripts from the two divisions of the Court of Appeal and the Crown Office List.

BAILII became a registered charitable trust in December 2000, and in February 2001 the first three trustees, Lord Saville, Laurie West-Knights QC and I had our first trustees' meeting. In June, for our third meeting, we were joined by five other trustees, including one each from Scotland, Northern Ireland, Ireland and Australia. The following month we appointed our executive director, Joe Ury, and found our London home at the Institute of Advanced Legal Studies in Russell Square. We were able to create a small website for "new cases" in London, but the database remained in Sydney, by courtesy of AustLII, until September 2002. Since then Roger Burton-West, who joined the BAILII team in July, has controlled the database from the London end.

At present BAILII loads onto its site all the caselaw and statute law it can get its hands on free of charge. On the site is the official shorthandwriters' archive of English High Court and Court of Appeal transcripts between May 1996 and August 1999.[Endnote 24] Privy Council and House of Lords judgments go back to 1996. For Scotland, Northern Ireland and Ireland the caselaw usually goes back to 1998 or 1999. In Ireland Supreme Court decisions go back to 1999, High Court decisions to 1996, Irish Information Commissioner's decisions to 1998, and Irish Competition Authority decisions to 1991.

BAILII's database of statute law follows much the same pattern, although UK statutes go back to 1988, Irish statutory material to 1922, and Northern Ireland statutes to 1495! A clutch of recent Irish Law Reform Commission papers is simply the harbinger of what is to follow, once BAILII possesses the necessary resources.

What of the future? The first £100,000 kept the dream alive until Joe Ury arrived. BAILII's trustees were then able to start spending money from the London end. During 2002 BAILII raised a further £100,000.[Endnote 25] With a steady state annual income of £100,000 (which has to be worked for) the trustees could maintain the present level of provision and improve its technical quality. We hope that quite soon we will be able to publish far more judgments from the higher courts in each of our jurisdictions on the day they are delivered.

But this is by no means the limit of our dreams, if only we had the money. We all believe passionately in the need to create a level playing field for access to all, free of charge, to our caselaw and statutes and other publicly available legal materials. It would make a huge difference, for instance, to those who provide advice on housing or social security benefits, asylum, tax or employment law, if they could be sure they could find the latest judgments from the Administrative Court or the leading appeal tribunals on the BAILII site.

Top

Publishing judgments: the role of the state

Throughout the whole of this story we have faced the difficulty that it is Government policy that the administration of civil (and, to a great extent, family) justice should pay for itself. The publication of judgments has very little to do with the normal service provided by the English Court Service or the Scottish Courts Service Administration to litigants who pay court fees in order to take forward their litigation. It is all about making the law of England and Wales, or Scotland, or Northern Ireland, or Ireland available to the people of these islands free of charge, preferably so that they can resolve any disputes they have without the need of paying court fees in litigation.[Endnote 26] When digital television is introduced, they should be able to access the law, if they want to do so, through their television set at home.

The extent to which taxpayers' money should be available for this new service of enabling everybody, rich or poor, to have free access to all the law on a website like this is a matter for Government as a whole and not really for the Court Service Agency or the Scottish Courts Administration. It may be that we will need to go forward eventually with a mix of public and private money. The resolution of these issues lies ahead. The one thing that is certain is that we must never again allow private interests to obtain copyright entitlement over the publication of our judgments. Commercial publishers play an important role in developing more sophisticated electronic services for those who can afford to pay for them, but the publication of the raw text is a public asset, which should be available to all alike.

Top

Making the Law Available for Judges to use

One example of the value of websites of this kind became apparent when the Human Rights Act 1998 was about to come into force. There were not nearly enough printed copies of Strasbourg caselaw to go round all the courts in England and Wales who were under a duty to apply it. As a result the Government made money available to enable judges to access the whole of the Strasbourg database from their laptop computers.[Endnote 27]

Top

The electronic publication of judgments: the benefits and the disadvantages

The good side of all this is that we are creating a level playing field, and those of us who are interpreting the law in the higher courts are being supplied with up to date copies of unreported judgments relevant to the points we are deciding. This has been particularly valuable in the early days of the Human Rights Act, where we have so much to learn from each other. The law would be in chaos if our early decisions were being made in ignorance of what another court had been saying on the same point.

Another great blessing of modern technology is that when we post an important judgment on a website at the time we are handing it down in court, we know that it will then be communicated electronically throughout the country the same day to everyone who has a "need to know", and this does not only mean lawyers. In the second half of 2001 I was involved with cases like Callery v Gray, [Endnote 28] and Sarwar v Alam

[Endnote 29]in which we were explaining the effect of the arrangements for success fees and after the event insurance which have taken the place of legal aid in personal injuries litigation. On each occasion I know that our judgments were sent electronically through a lot of different information networks on the day they were delivered.

This does not only mean that people immediately know what the law is. It also means that press comment is more likely to be accurate, because we are treating the Press like adults. We often publish a short Press Notice the day before an important judgment is delivered, and with the judgment we issue a short summary, or an index, to make it easier for the Press to see what the judgment is all about.

The bad side is that we often suffer from information overload. Cases are cited to us which decide no new point of law, and which merely illustrate the application of familiar law to a new set of facts. We published a practice direction last year [Endnote 30] to try and bring things under some sort of control, but very often lawyers can't recognise a principle of law when they see one. We are getting steadily more and more overloaded with citations of cases which frequently don't help us in the task we have got to do, but which just add to the paper we have to read. This, too, is a problem with which we must continue to struggle, but we are quite sure that the solution to it does not lie in a return to the bad old days when important unreported judgments were available only to the few.

Top

The big inquiry and the future

At our big public inquiries - the Bloody Sunday Inquiry, chaired by Lord Saville, or the Shipman Inquiry, chaired by Lady Justice Janet Smith, for instance - the use of advanced technology is now a very familiar feature of the inquiry scene.[Endnote 31] Their use of LiveNote technology, for instance, enables them to publish the daily transcripts on the Inquiry website for everyone to read.[Endnote 32] We must clearly study what is happening in that field, and explore how we can transfer their practices into the business of the courts. There is at present a considerable nervousness about going too fast too far. The media in England and Wales now frequently reproduce scenes in court on news broadcasts in the evening with actors reading from the daily transcripts which are available to them. It is not a very big step from there, particularly if digital audio technology [Endnote 33] is introduced into our courts, to republish the digital audio tape: and if sound recording is allowed, can video recording be far behind? We will have to wait and see.

Top

Endnotes

1. In the House of Lords the law lords deliver "speeches". In the Privy Council the "Board" give its "advice" to the Queen.
2. They are also immediately available for sale to the public at a price of only £5 for each decided case.
3. www.parliament.the-stationery-office,co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm
4. So has the Judicial Committee of the Privy Council.
5. At present John Watherston, a legally qualified civil servant who has held a number of senior posts within the Lord Chancellor's Department before assuming his present responsibilities.
6. www.privy-council.org.uk/output/page5.asp
7. The protests included a description of the problems facing a lawyer in the Caribbean, or in some other small Commonwealth jurisdiction, who accessed the site with a slow modem. It would take "all night" to download the image of an image, and once downloaded it could not be accommodated within a word-processing package for ease of handling.
8. www.hmso.gov.uk/acts.htm
9. It has never been restarted.
10. www.courtservice.gov.uk
11. During 2002 a practising solicitor wrote of his belief that "the bigger and more important cases" should be reported "more quickly publicly" to save "under the counter copies of judgments floating around London" for "those of us lucky enough to be in the know".
12. See the *Private International Law (Miscellaneous Provisions) Act 1995*, Part III.
13. *Bannister v SGB Plc [1998] 1 WLR 1123; [1997] 4 All ER 129*.
14. Greig Middleton & Co Ltd v Denderowicz [1998] 1 WLR 1164; [1997] 4 All ER 181.
15. The proportion of reserved judgments in the Civil Division of the Court of Appeal has increased, as a result of recent reforms, from 25% to 55% during the last seven years.
16. I remember returning from a week's visit to China in November 2000, to find that an edict had been published in my absence to the effect that none of our clerks should use the judgments template, because it was causing so many problems for some of them. Fortunately, after my return that edict was softened down, because a number of the clerks had discovered their own way of overcoming the glitches, and a good flow of judgments was now going onto the web by this means.
17. There was not the same resistance to neutral citation, because nobody knew what it meant. It would have been difficult, however, to introduce one without the other.
18. The increasing use in court of judgments drawn from electronic databases also pointed to the need for change. Different versions of the judgment had different page numbering, because different people use different formats and different font sizes. A lot of time was being wasted in court trying to find the passage being referred to. Paragraph numbering makes it easy to find our way round judgments even if they are drawn down from the web with different page numbering. It also means that if we add the words "at [51]" after the citation we will not only provide a cross-link with the judgment itself if it is on the same database. We can go straight to the passage in the judgment which is being cited.
19. *Practice Direction (Judgments: Form and Citation) [2001] 1 WLR 194; [2001] 1 All ER 19*.

20. *Practice Direction (Judgments: Neutral Citation) [2002] 1 WLR 346*. Since January 2002 a local area network has been installed in the Royal Courts of Justice, and I hope that during the course of this year our clerks may be able to obtain the citation number electronically without having to make a telephone request for the next number in the list.
21. But not their decisions on applications for permission to appeal, or permission to apply for judicial review, unless the court directs publication.
22. We are determined not to follow the practice adopted in some US jurisdictions of directing that a judgment cannot be published or referred to at all. Instead, we have published a Practice Direction in which we seek to direct counsel's attention to the need to justify the citation of authority to the court in a particular case.
23. I did so in my capacity as President of the Society of Computers and Law, which had helped to arrange the meeting.
24. Since then publication is limited to the handed down judgments in those two courts.
25. The names of all the sponsors are on the BAILII site apart from those who wished to be anonymous.
26. It would also be wrong to overlook the importance of making contemporary English caselaw available to courts and academic institutions in the Commonwealth.
27. At the same time they were also provided, through a contract with Butterworths, with access to a great deal of Butterworths online material. This included their statute law database and the *All England Law Reports*, and access to the complete set of *Law Reports* going back to the 1870s. Since then the whole of *Halsbury's Laws* has been made available to the judiciary through this online service.
28. *Callery v Gray (No 1) [2001] EWCA Civ 1117; [2001] 1 WLR 2112; Callery v Gray (No 2) [2001] EWCA Civ 1246; [2001] 1 WLR 2142*. We were told that the parties in 100,000 cases were waiting for our decision.
29. *Sarwar v Alam [2001] EWCA 1401; [2002] 1 WLR 125.*
30. *Practice Direction (Citation of Authorities) [2001] 1 WLR 1001; [2001] 2 All ER 510*.
31. The use by the Saville Inquiry of computer images simulating virtual Londonderry as it appeared at the time of the Bloody Sunday affair broke new ground in the use of technology at a major inquiry in our jurisdiction.
32. www.bloody-sunday-inquiry.org.uk, www.the-shipmam-inquiry.org.uk
33. Although the use of digital audio technology is now being piloted in three Crown Court centres, there will be no central funding to take this technology forward in our courts during the next three years, even if the trials are successful.