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Court Administrators and the Judiciary - Partners in the Delivery of Justice

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Abstract:

This article examines several topics relating to the administration and governance of courts in democratic societies. It includes a summary of the development of court administration as a profession, highlighting Australia and the United States. The summary includes a discussion of how judges and court administrators must work together and coordinate their efforts in key areas of court administration and management. The article also reviews separation of powers issues, highlighting the problems that emerge in systems in which oversight and administration of the courts is vested in the executive branch or power of government, most commonly in a justice ministry. It reviews the practical advantages of having courts governed and managed through institutional mechanisms failing under judicial power rather than the executive power.

Keywords: Court administration, history of court administration, court administration in Australia, relationship between judges and court administrators, separation of powers, institutional independence of the judicial system

1. Introduction

Court administration is a subject of vital importance not only to those who are engaged in the task of administering justice, but also to the broader community. It is difficult to imagine a society or community which is not dependent upon the rule of law for its happiness and prosperity. Without the rule of law, there is either anarchy or despotism. And of course the rule of law depends upon the effective administration of justice by the courts created for that purpose.

It is now generally recognized that the effective administration of justice depends critically upon a successful partnership between the judiciary and those responsible for the administration of the courts. It has not always been thus, as the brief historical review later in this article shows. That review also highlights the unintended consequences of developments in many common law jurisdictions which entrenched the executive model for court administration.

The next section of this article examines some examples of the more recent reforms in court administration and the clearly emerging trend towards greater administrative autonomy and judicial control. This is followed by an examination of two of the emerging objectives of recent court administration reform — case management and 'New Public Management' ('NPN') principles — and how these have necessitated a close working collaboration between judges and court administrators. In this context, the last section addresses the question of whether there is in fact a bright line which demarcates the judicial function from the administrative function in contemporary court administration, and the implications for the executive model of court administration.

Before turning to that, however, some preliminary comments are apposite.

2. The Importance of a Successful Partnership between the Judiciary and Administrators

Contemporary recognition of the vital importance to the community of effective collaboration between the judiciary and those who provide administrative support to the work of the court is encapsulated in the United Nations Office of Drugs and Crime ('UNDOC') publication, *Resource Guide on Strengthening Judicial Integrity and Capacity*:

> Although most of the discussion on judicial competency and ethics focus on the role of judges, there is a growing recognition of the importance of the role of court personnel. Non-judicial court support personnel, who frequently make

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up the bulk of judiciary's employees, are crucial to any reform program that aims at strengthening integrity and capacity of the justice system. Courts cannot carry out their functions without these personnel. They are responsible for administrative and technical tasks that contribute to the outcome of cases and the efficiency of the judiciary. Perhaps most importantly, these officials typically serve as the initial contact point and the dispenser of information to nearly all who come into contact with the judicial system. This initial contact forms citizens' impressions of the system and shapes the confidence that they place in the courts. This role places court employees in an ideal position to promote innovation and help improve services to the public, thereby raising the stature of the court in the public eye.[2]

3. The Importance of an International Perspective

There is much to be gained from taking an international perspective of issues relating to court administration which many face many times a day in the course of their work. An international perspective provides the opportunity to step back from the daily grind and place the issues in a broader perspective. This can only enhance our capacity to analyze and respond effectively to the more significant underlying issues.

Some years ago, at an international conference concerning the judicial function, I made the observation that:

> The issues which we share in common … are vastly greater, and more significant, than the issues which are specific to our individual jurisdictions. The rule of law is a universal concept, and the skills required to maintain the rule of law effectively derive from our shared humanity, and depend much more upon the way in which we interact with our fellow human beings in the administration of the law, than the language we use, the precise structure of our particular judicial system, or, often, the content of the laws we administer. … The rule of law depends upon the independence of the judiciary. Judges must be free to administer the law without fear or favor, free from interference. The challenges to judicial independence are many and varied …[3]

For reasons which I develop later, one potential source of challenge to the independence of the judiciary lies in the arrangements that are made with respect to the administration of the courts in which the judiciary serve. An international perspective of the manner in which that challenge has been addressed can only inform and enhance our response to this challenge in our particular jurisdictions.

4. The International Association for Court Administration

The importance of an international perspective upon issues relating to court administration was recognized 10 years ago when the International Association for Court Administration (IACA) was created. It is interesting to note that the need for such an organization was presciently anticipated by Professor Carl Baar when, after addressing the third Asia Pacific Courts Conference in Shanghai in 1998, he observed that: 'It is a mark of the coming century that judges and courts in many countries, despite their diversity, meet together to share their commonly-understood problems and celebrate their emergence as distinct and significant institutions.'[4]

As Professor Baar observed, the characteristics of court administration have a universality which transcends the particular political, social, cultural, ideological or governance characteristics of any particular jurisdiction:

> Courts not only share functions that both reinforce and check the exercise of public power, but also share common institutional characteristics and concerns. These are often summarized in the twin concepts of judicial independence and impartiality. … [T]he fundamental clash of political theories does not seem to have produced a fundamental clash between judges — whether in liberal regimes, Marxist regimes or regimes based on Asian values or apartheid — over the institutional principles underlying the courts, and the need to protect the principles of independence and impartiality

[2] United Nations Office of Drugs and Crime, *Resource Guide on Strengthening Judicial Integrity and Capacity* (2011) 21 (citation omitted). The UNDOC notes, at 21 n 11, that: Among other functions, court personnel manage court facilities, assist with case management, protect evidence, facilitate the appearance of prisoners and witnesses, and perform a variety of other functions that help avoid postponements and ensure a professional and timely adjudication process. They also help judges conduct thorough legal research and draft decisions, and they ensure that decisions are properly announced and published, thus supporting consistency in decision-making. Court personnel also process and maintain case files to preserve the record for appeal; and promote judicial independence through competent budget and finance controls, and by fostering strong public relations and transparency in court proceedings.

[3] Chief Justice Wayne Martin, 'Judicial Training in a Globalised World' (2014) 2 *Judicial Education and Training* 8, 8–9.

[4] Carl Baar, 'The Emergence of the Judiciary as an Institution' (1999) 8 *Journal of Judicial Administration* 216, 216.

> in practice. This phenomenon is all the more remarkable because the emergence of judging as an activity requiring independence and impartiality is relatively recent.[5]

The importance of the arrangements made in any particular jurisdiction for the administration of the courts of that jurisdiction so as to achieve judicial independence and impartiality, both real and apparent,[6] is a theme to which I will return.

5. Court Administration — A Brief History[7]

The quaint history of the administration of the common law courts of justice shows not only how much the administration of these courts has changed, but also the presumably unintended effect which the elimination of sinecures, nepotism and corruption had upon the capacity of the judiciary to control the courts' administration. A colorful picture of the administration of the courts at Westminster in the 18th and 19th centuries is provided by former Justice Bruce McPherson of the Supreme Court of Queensland:

> Like most other things associated with courts, an account of their staff begins some way back in time. Until well into the first half of the [19th] century, the offices and officers of both Chancery and the courts of common law in England were impressive in number and variety, and included such indispensable functionaries as a purse-bearer, a chaff-wax [whose duty was to prepare wax for sealing documents] and a sealer, not to mention the bag-bearer [who literally attended court with a bag containing the books, documents and pleas] to the *custos brevium* [the keeper of the writs]. Antedating as they did a permanent paid public service, court offices were a saleable commodity that lay in the disposition of the Lord Chancellor or the Chief Justice of the particular court in question. Holders of office were remunerated by fees exacted from litigants as the price of many useless services that were seldom, in fact, performed. Vested interests of purchasers of those offices were thus at stake, and reform came gradually because it was thought necessary to compensate those whose offices were abolished. After 1810 much was done to abolish sinecures, and by 1837 legislation had been passed providing for masters, clerks and messengers of court to receive fixed salaries. Although they were still remunerated out of court fees, what remained after paying their salaries was directed into consolidated funds, and officers were made liable to removal for accepting 'gratuities' in return for their services.[8]

As Justice McPherson points out, these reforms travelled to colonial Australia. Significantly he observed:

> As the means of ending past abuses, they have naturally been welcomed. Attention is less often given to the fact that they also served to diminish the extensive control that powers of appointment, remuneration and dismissal of court officers gave to the judiciary.[9]

Later, I refer to the more recent phenomenon by which the courts of Australia, in common with the courts of many countries, have been subjected to contemporary principles of public administration often collected under the slogan 'New Public Management' ('NPM'). For present purposes it is sufficient to note that, like the reforms of the 19th century, while driven by the best of motives and intentions, they risk the unintended consequence of diminishing the capacity of the judiciary to control the administration of the courts in which they serve.

5.1. An Historical Anomaly

There is a curious historical anomaly which should also be noted. As Professor Baar observed:

> Only in the last two centuries has it been possible in the English-speaking world to talk about courts without using the term 'courts of justice' to differentiate judicial bodies from the royal courts surrounding European monarchs. In this century, many former British colonies still retained executive control over the exercise of judicial power.[10]

Judicial independence and impartiality are relatively recent concepts. In the English language the word 'court' reflects the close connection between the judiciary and the monarchy at a time when executive and legislative power were both reposed in the monarch. Even in relatively recent times in the United Kingdom, the most senior member of the judiciary was a member of both the executive government and the legislature, and the members of the highest court were all

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[5] Ibid, 220–221.
[6] 'Justice must not only be done, but must also be seen to be done.'
[7] My apologies for the common law focus of this section, but considerations of space do not permit a broader comparative analysis.
[8] Justice B H McPherson, 'Structure and Government of Australian Courts' (1992) 1 *Journal of Judicial Administration* 166, 175 (citations omitted).
[9] Ibid, 176.
[10] Baar, above n 4, 221 (citation omitted).

members of the legislature. It is hardly surprising that the same approach was taken in many British colonies. In many of those colonies, the Chief Justice had full executive authority and served as one of the officials administering the colony under the supervision of the Governor.[11]

As the Canadian Judicial Council has observed, this had a particular effect upon the administration of the courts of Singapore:

> In colonial times, there was no separation of executive and judicial authority; as a result, the chief justice sat in cabinet. Thus court administration was under the authority of the chief justice in British times, and remained with the chief justice after independence. Singapore court officials have never known any other system, taking for granted and taking seriously their responsibility for managing the Courts and introducing a wide range of innovations in technology and organization.[12]

Hence the anomaly. When the common law courts were closely aligned with the executive, the judiciary had the practical capacity to control the administration of the courts. In many jurisdictions, the steps which have been taken to separate the judiciary from the executive, in the interests of judicial independence, have had the consequence of significantly reducing the capacity of the judiciary to control the administration of the courts, thereby diminishing judicial independence in a very real and practical sense. The courts of Singapore provide a notable exception, as anyone with even a passing interest in court administration will attest, given the innovation and efficiencies which have been achieved by the administrators of the courts in that country under the direction of the judiciary.

In other common law jurisdictions, this anomalous loss of judicial independence has been addressed by the creation of governance structures which have restored the power of the judiciary to direct and control the administration of the courts in which they serve.[13] However, in many common law jurisdictions, the anomaly remains and under the 'executive model' of court administration, most personnel engaged to administer the court and support the exercise of the judicial function are to a degree controlled by, but always ultimately answerable to, executive government and not to the judiciary. In the increasing number of jurisdictions in which that model of court administration has been abandoned, it has been recognized that not only does it diminish judicial independence, in a real and practical sense, but it is also inefficient economically and managerially, for reasons which I develop later.

5.2. The Executive Model

Justice Bruce McPherson's interesting history of court administration in Australia provides some colorful examples of the inevitable tensions created by the executive model of court administration. The obvious areas of tension concern staffing and budgetary resources.

5.3. Staffing Tensions

In 1889 the executive government of Queensland purported to create the new office of 'taxing officer' of the Supreme Court of Queensland without the prior approval of the judges. During the course of argument in the litigation which followed, Chief Justice Lilley (a former Premier and Attorney General) was moved to volubly enunciate the independence of the court when he observed: 'The Supreme Court is not under any department; it is under the Judges. The Crown comes into the court as a suitor, and as nothing else. It cannot come here to command, nor can it put in any officers to interfere with the functions of the court.'[14]

In the judgment later delivered, speaking on behalf of the Full Court, Lilley CJ asserted judicial control over all court staff in these terms:

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[11] Traces of this approach to colonial governance remain, even in contemporary Australia. See Rebecca Ananian-Welsh and George Williams, *Judges in Vice-Regal Roles* (9 September 2014) Judicial Conference of Australia http://www.jca.asn.au/judges-in-vice-regal-roles-september-2014/.

[12] Canadian Judicial Council, *Alternative Models of Court Administration* (September 2006) 106 ('*Alternative Models*').

[13] Such as the judicial council model adopted in South Australia and Victoria, and in a modified form in Ireland, or the limited autonomous court model adopted by the Federal Courts of Australia and the Canadian Supreme Court, or the executive/guardian model adopted by the other Federal Courts of Canada (see Canadian Judicial Council, *Comparative Analysis of Key Characteristics of Court Administration Systems* (6 July 2011) ('*Comparative Analysis*')). I use the term 'judicial council model' as employed by the then Lord Justice Thomas, for the Council of Europe, in *Councils for the Judiciary – Preliminary Report: States without a High Council* (March 2007); that is to mean 'a body run by the judiciary which enables the judiciary to administer the courts with a professional management structure': at 5.

[14] McPherson, above n 8, 173 quoting 'Supreme Court Tuesday, September 10 – Monthly Full Court', *Brisbane Courier* (Brisbane), 11 September 1889, 1, 3.

> Now, it matters not what rank a person holds in the Supreme Court, whether called a clerk or registrar, if he is lawfully appointed to carry on the administration of justice or the administration of the Court in any way, however humble, he is an officer of the Court subject to the jurisdiction of the Court; all these officers, from the registrar down to the humblest clerk in the office, is subject to the authority of the Court, controlled by it in the discharge of his duties in the Court, and any interference with them is an interference with the Court itself, and cannot be allowed. The importance of this state of the law can hardly be overestimated.[15]

However, there is reason to suspect that this is more wishful thinking than an accurate statement of the true position under the 'executive model' of court administration. For example, as Justice McPherson points out,[16] a little earlier in New South Wales in 1883, the Prothonotary, Mr T M Slattery, acted in accordance with the direction of the judges of the court and refused to report to government with respect to his administration of intestate estates. He was dismissed by the government of the day, even though he was obeying the directions of the judiciary.[17]

It should not be thought that tensions under the executive model of court administration between the executive control of administrative staff and the independence of the judiciary are confined to the annals of history. Within the last 30 years, a Registrar of the District Court of Western Australia, who had both quasi-judicial and administrative responsibilities, vacated his office as a consequence of a dispute relating to his asserted independence from executive direction.

5.4. Budget Tensions

Not surprisingly, many examples of tension between the executive and the judiciary under the executive model of court administration can be found in the area of budgetary constraint. Justice McPherson provides two examples, each related to the expenses of circuit travel.

> In 1887 a long-running dispute over the circuit expenses of the northern judge came to a head when the government unilaterally altered the rules by including in the estimates a reduced sum specifically to cover expenses in the north. No-one told Cooper J about it until the money was about to run out; but the government was in the end forced to relent in the face of his threat to close the circuit, release the prisoners awaiting trial, and return forthwith to his base in Bowen.
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> The Premier responsible for the confrontation was none other than Sir Samuel Griffith. As Chief Justice of the High Court, he had the chance in 1906 to sample the effects of executive frugality when Federal Attorney-General J B Symon elected to cut court expenses by reducing the number of associates and telephones and refusing to install bookshelves for the High Court in Sydney. His contention that the High Court should confine its sittings to Melbourne led Griffith to adopt Cooper's expedient of cancelling the court sittings due to take place there. The conflict ended only with the fall of the government of which Symon was a member. The judges won their point, the High Court remaining resolutely peripatetic until the creation of a permanent seat in Canberra under the *High Court of Australia Act* 1976.[18]

My reference to historical examples should not be taken to suggest that tensions between the executive and the judiciary with respect to budget under the executive model of court administration are historical. To the contrary, I suspect that virtually every head of a court administered under that model would be able to provide endless examples of tension arising from disputes over the provision of resources. I will relate one example from the many I could provide, chosen because it relates to the same subject as Justice McPherson's historical examples — namely, circuit expenses.

Some years ago now, a senior official advised me that a circuit to the north of our State would have to be cancelled because there was insufficient funding remaining within the relevant budget item for the current financial year. Trials had been listed for the circuit, cases had been prepared, witnesses and jurors summoned, etc. A little like Justice Cooper in 1887, I responded by advising the official that while of course I accepted that the provision of the resources necessary to enable the court to function was a matter for executive government, he or any other official minded to give me a written direction to cancel the circuit should understand that the direction would be attached to a media release which I would issue immediately. Happily the direction never came and the circuit proceeded.

5.5. A Threat to Independence

There is a more fundamental point which underpins these apparently superficial examples. As Professor Baar points out, whatever may have been the case in the past, the importance of judicial independence and impartiality now has a universality which transcends politics, ideology and culture. In countries with a written constitution like Australia, it is often

[15] *Byrnes v James* (1889) 3 *Queensland Law Journal* 165, 168–169.
[16] McPherson, above n 8, 178.
[17] A classic example of the adage 'no man can serve two masters'.
[18] McPherson, above n 8, 172 (citations omitted).

recognized as a fundamental characteristic of the constitutional structures for the governance of the country. But can a court which lacks the capacity to decide where and when it will sit, because it depends upon executive government for resources, truly be said to be independent? Can a court which lacks the capacity to appoint and fully control its staff truly be described as independent? Can a court in which most staff are appointed and ultimately controlled by the most prolific litigant in the court truly be said to be impartial?

5.6. Managerial Efficiency and Accountability

There is another dimension to these issues. That dimension concerns the relationship between managerial efficiency and accountability. One does not need to be an economist to understand that holding the person responsible for the allocation of resources accountable for the outcomes achieved by the utilization of those resources is likely to improve efficiency. Most budgets operate on precisely this principle. Disconnection between the authority to allocate resources, and accountability for the outputs from those resources is a recipe for inefficiency and waste.

Because systems for the administration of courts are infrequent topics of conversation amongst members of the general public gathered in bars, restaurants, or indeed anywhere, members of the community understandably hold the courts accountable for their performance. So, when the time which it takes to process a routine application for probate of a deceased estate blows out from two weeks to ten weeks because of staff shortages, the families affected by their incapacity to access the deceased estate so as to put food on the table complain to me, not to the department of government responsible for providing the staff. Very few of those correspondents would be aware that the department has the exclusive responsibility for providing human resources to the court, and that there is nothing which I or any other member of the judiciary can do if adequate resources are not provided. This means that, in a very real sense, the departmental officials who make decisions with respect to the allocation of human resources are not accountable for the consequences of those decisions and those who are held accountable lack the authority to discharge their responsibilities. If one were designing a governance structure for a public enterprise from scratch, it is hard to imagine a worse model.

The problems of efficiency and accountability to which I refer persist even if we assume public knowledge of the arcane structure for the administration of the courts under the executive model. That is because of the bifurcated nature of responsibility under that model. So, when a citizen complains to executive government about delays in the courts, the responsible minister customarily responds by referring to the independence of the judiciary and the inability of executive government to dictate the manner in which the courts allocate and list cases for trial. When that same citizen writes to me complaining about delays in trial times, I reply referring to the fact that executive government decides the level of resources to be provided to the courts, and that the court can only do so much with the resources which have been provided. The citizen exasperated by this passing of the buck from one branch of government to another might be forgiven for thinking that nobody is responsible, or at least that nobody is accepting responsibility.

6. Court Administration Reforms – Some Examples

6.1. The United States

In the United States at least some commentators have suggested that reforms in court administration during the last century were driven more by notions of managerial efficiency and economy than by the objective of institutional independence. Gordon Bermant and Russell R Wheeler assert:

> The idea of a truly independent judicial branch, administratively responsible and competent, even if not administratively autonomous, emerged only in the twentieth century as a product of the Progressive Movement's effort to rationalize government and make it more efficient.[19]

Support for this proposition can be found in the writings of Professor Roscoe Pound. In 1906, he called for the unification of courts in the states in order to facilitate the development of systemic court administration controlled by judges rather than local political elites.[20] In 1914, Pound elaborated what has been described as the 'principle of real administrative autonomy for the judiciary'.[21] However, it seems clear that Pound's justification for providing the judiciary with administrative autonomy was economy and efficiency, not judicial independence. Referencing state court systems, he wrote (with others):

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[19] Gordon Bermant and Russell R Wheeler, 'Federal Judges and the Judicial Branch: Their Independence and Accountability' (1995) 46 *Mercer Law Review* 835, 855.

[20] However, by 1940 he was able to record only individual experiments in some states: Pamela Ryder-Lahey and Professor Peter H Solomon, 'The Development and Role of the Court Administrator in Canada' (January 2008) 1(1) *International Journal for Court Administration* 31, 31 citing Roscoe Pound, *The Organization of Courts* (1940).

[21] *Alternative Models*, above n 12, 61.

> the court should be given control of the clerical and administrative force through a chief clerk, responsible to the court for the conduct of this part of its work. We have hampered the administration of justice by the extreme to which we have carried the decentralization of courts. In many jurisdictions the clerks are independent officers, over whom the courts have little or no control. … Each clerk's office [in most states] is independent of every other. It is no one's duty to study the system, suggest improvements, or enforce them when made. What responsibility will do in this connection, when joined to corresponding power, is shown in the Municipal Court of Chicago, where the system of abbreviated records is said to have effected a saving of $200,000 a year. Moreover, if courts are to do the work demanded of the law in large cities … and in industrial communities, they must develop much greater administrative efficiency, and must be able to compete in this respect with administrative boards and commissions.[22]

Whatever the motivation, in 1939, the US Congress passed legislation creating the Administrative Office of the United States Courts. The office was responsible for administering the federal courts, including determining their budget, under the control and supervision of what is now known as the Judicial Conference of the United States.[23] The independence of the US Federal Courts from executive interference extends even to their budget, which is prepared by the Administrative Office and approved by the Judicial Conference, before being sent to the office of the President, who has a statutory obligation to forward it to Congress without change.[24] However, similar progress in state court systems lagged behind their federal counterparts; according to Alexander B Aikman, it was not until 1947 that an administrator was engaged to assist a US State Chief Justice to bring professional services to the court.[25] According to Aikman:

> It is only since the mid-1950s that courts, the 'third branch', actually have started to create a coherent institution … Extraordinary strides in court administration and in courts themselves have been made since 1947. The judiciary has gone a long way toward establishing itself as a viable, truly independent, responsible, and accountable, branch of government. Part of the growth and maturation is attributable to the growth and maturation of court administration.[26]

6.2. Canada

In Canada the 'emergence of the court administrator … was tied to the movement to unify and streamline provincial courts that began in the late 1960s and reflected a realization that courts had fallen behind the rest of government in the process of administrative modernization'.[27] However, it seems that the modernisation of court administration in Canada 'made some judges nervous that functions that mattered to the administration of justice were being performed by staff that were subordinate to the executive branch.'[28]

These concerns were addressed in a major report sponsored by the Canadian Judges Conference and the Canadian Institute for the Administration of Justice and published in 1981 — *Masters in their Own House: A Study on the Independent Judicial Administration of the Courts*.[29] In that report, the authors called for the establishment of court services departments accountable to provincial judicial councils. However, it seems that the movement towards greater judicial control of court administration was impeded by the decision of the Supreme Court of Canada in *Valente v The Queen*[30] in which it was held that the independence of the judiciary did not require court administration to be subject to judicial control, but that only functions directly related to the adjudicative process, such as the assignment of judges, the scheduling of trials and the allocation of courtrooms was required to be under the control of the judiciary.[31] Notwithstanding that decision, while most provincial and territorial courts in Canada remain governed under the executive model, at the federal level, the Supreme Court of Canada has achieved what has been described as limited autonomy, and the other federal courts are administered by what is described as the executive/guardian model.[32]

6.3. Australia

A similar structure has emerged in Australia. The federal courts have a degree of autonomy, administered by Registrars/CEOs who are responsible to the judiciary but within a budget set by the executive. South Australia and

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[22] Sue K Dosal, Mary C McQueen and Russell R Wheeler, '"Administration of Justice Is Archaic" —The Rise of Modern Court Administration: Assessing Roscoe Pound's Court Administration Prescriptions' (2007) 82(5) *Indiana Law Journal* 1293, 1301 quoting Charles W Eliot et al, The National Economic League, *Preliminary Report on Efficiency in the Administration of Justice* (1914) 17.
[23] *Alternative Models*, above n 12, 62.
[24] Ibid.
[25] Alexander B Aikman, *The Art and Practice of Court Administration* (2006) 2 (citation omitted).
[26] Ibid.
[27] Ryder-Lahey and Solomon, above n 20, 31.
[28] Ibid, 34.
[29] Jules Deschênes (with Carl Barr), Canadian Judicial Council, *Masters in their Own House: A Study on the Independent Judicial Administration of the Courts* (1981).
[30] [1985] 2 SCR 673.
[31] Ryder-Lahey and Solomon, above n 20, 34.
[32] See *Comparative Analysis*, above n 13, 39–99.

recently Victoria have moved to the judicial council model, while the other states and territories remain under the executive model.

6.4. Europe

As many would know, Ireland moved away from the executive model in favour of a modified judicial council model about 15 years ago, and among the non-common law countries, the Scandinavian countries of Denmark, Norway, and Sweden, as well as Holland have been prominent in segregating court administration from executive control. Many other countries in Europe have created judicial councils.[33]

6.5. International Standards for Court Administration

Various international organizations have directed their attention to the relationship between court administration and the independence of the judiciary over the last few decades. In 1980, the International Bar Association embarked upon a project to develop an international code of minimum standards for judicial independence,[34] which included requirements relating to court administration. In 1983, the Montreal Declaration on the Independence of Justice adopted standards similar to those formulated by the International Bar Association,[35] and included a provision that 'the main responsibility for court administration shall vest in the judiciary'.[36] In 1995, the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region* was adopted at a conference of Supreme Court Chief Justices from the Asia Pacific region.[37] It contains prescribed minimum standards for judicial independence after allowing for national differences within the various countries represented in the LAWASIA organization. In relation to judicial administration, the Beijing Principles provide:

> The assignment of cases to judges is a matter of judicial administration over which ultimate control must belong to the chief judicial officer of the relevant court.
>
> The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.
>
> The budget of the courts should be prepared by the courts or a competent authority in collaboration with the courts having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.[38]

In 1997, the Chief Justices of the Australian States and Territories issued a 'Declaration of Principles on Judicial Independence' which referred with approval to the Beijing Statement of Principles.[39] The question of whether the current arrangements for the administration of all of the Australian courts comply with the Beijing Principles is a fair question for debate, but the competing arguments lie beyond the scope of this paper.

6.6. Models of Court Administration

I have already referred to the emergence of different models of court administration in differing jurisdictions, prompted in some cases by a desire to reinforce judicial independence, and in others by a desire to improve economy and efficiency. There have been a number of very helpful surveys of different models in different jurisdictions. Notable amongst those surveys are the comparative analyses of key characteristics of court administration systems presented to and published by the Canadian Judicial Council in 2011, and the preliminary report requested by the Council of Europe on Councils for the Judiciary which was presented by the then Lord Justice Thomas in 2007.[40] Other authors have made important contributions to this analysis.[41]

Differing taxonomies have emerged in the course of these comparative analyses, but they usually identify the extent to which the administration of the court is under the control of the executive and the extent to which the administration is

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[33] Thomas, above n 13.
[34] Shimon Shetreet, 'The Emerging Transnational Jurisprudence on Judicial Independence: The IBA Standards and Montreal Declaration' in Shimon Shetreet and Jules Deschênes (eds), *Judicial Independence: The Contemporary Debate* (1985) 394.
[35] Ibid, 395,
[36] *Montreal Declaration on The Independence of Justice* (10 June 1983) article 2.40.
[37] It was amended on 28 August 1997.
[38] *The Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, Beijing (19 August 1995, as amended in Manila, 28 August 199) articles 35, 36 and 37.
[39] Published in (1996-97) 15 *Australian Bar Review* 176.
[40] See *Comparative Analysis*, above n 12; Thomas, above n 13.
[41] See, eg, Tin Bunjevac, 'Court governance: the challenge of change' (2011) 20 *Journal of Judicial Administration* 201.

subject to control and direction by the judiciary. It is unnecessary to replicate these helpful analyses in this paper. It is sufficient to note that in different jurisdictions, different methods have been adopted in an attempt to enhance judicial independence, improve efficiency and reduce cost. It is clear from the various reviews to which I have referred that in both common law and civil law jurisdictions, a clear trend towards greater administrative autonomy and judicial control is readily apparent.

7. Two Emerging Objectives - Case Management and New Public Management

Over the last few decades, in most jurisdictions two significant objectives have emerged which have had a profound effect upon court administration, and upon the relationship between the judiciary and court administrators. Those two objectives are the proper management of individual cases and the application of the principles of public administration embodied in the expression 'New Public Management' ('NPM').

7.1. Case Management

In common law jurisdictions, traditionally, the emphasis upon the adversarial process resulted in the progress of the case being largely left to the parties. If they took no action, the court took no action. Predictably enough, in the civil side of the court's work, this produced massive backlogs of cases which had been lying stagnant for many years.

In civil law jurisdictions, although the court has traditionally taken greater responsibility for the progress of each case, responsibility for each case is allocated to a particular judicial officer. Caseloads varied between judges, as did attitudes towards expedition and timeliness, which could be idiosyncratic. Overall supervision by the court as a whole was limited.

In both common law and civil law jurisdictions, the last few decades have seen an appreciation of the need to introduce better systems for the management of cases, across the whole jurisdiction of the court, so as to improve timeliness, consistency of process, and efficiency. In many (probably most) common law jurisdictions, there has been a significant cultural shift toward proactive intervention by the court in the progress and resolution of individual cases. In many jurisdictions, this cultural shift has been accompanied by the introduction of procedures for the referral of cases to alternative dispute resolution (ADR), which has become the dominant means for the resolution of civil disputes.[42]

The number of cases which have to be managed in most jurisdictions has meant that judges have had to turn to court administrators for the introduction of systems and technology to support the new approach. In a very real sense, the judges and the administrators have become partners in the achievement of a common objective - the just and fair resolution of all cases before the court in the shortest possible time and at the minimum cost.

The impact of the introduction of case management upon court administration in common law jurisdictions has been cogently expressed by Ryder-Lahey and Solomon:

> Over time the emphasis in judicial administration in the USA shifted from improving the organization and structure of courts to enhancing their accountability, performance, efficiency, and effectiveness. This shift came from the realization that improvements in structure alone would not achieve the goal of efficient and effective courts. Of primary concern was addressing the problems of case backlog and delay, including the potential of caseflow management and mediation. Judges also came to recognize that administrative efficiency of courts required professional managers and staff capable of working with judges in formulating and executing policies at the court.
>
> Caseflow management became in the 1970s a central concern among judges, lawyers and especially court administrators. The increasing caseload in many courts and the accompanying growth in court delay made the achievement of efficiencies imperative and provided fertile soil for the introduction of changes in scheduling and allocation of cases and of major reforms in the processing of cases. Changes in scheduling required wresting control of the calendars of courts away from local lawyers, prosecutors, and elected clerks of courts, and the assertion instead of judicial control. By 1984 the bar recognized the potential benefit of time standards governing the progress and disposition of cases.
>
> Ultimate responsibility for caseflow management rested officially with judges. Judges had the authority to seek assistance from the court administrators and get these administrators actively involved in the pursuit of caseflow management innovations. Such innovations included new systems of allocating cases among judges (not by

[42] In the Supreme Court of Western Australia, for example, less than 3% of the cases lodged with the court are resolved at trial – the majority are settled, many following mediation. This ratio is comparable to many superior courts in the common law world (Chief Justice Wayne Martin, 'Managing Change in the Justice System' (18th Australian Institute of Judicial Administration ('AIJA') Oration in Judicial Administration, Brisbane, 14 September 2012) 6).

specialization but by the complexity of cases and the time needed for resolution); and new ways of tracking and managing cases from initiation to disposition. Thus, caseflow management came increasingly to imply the use of early screening and disposition, and various forms of alternative dispute resolution. In some courts new posts like 'case manager' or 'trial coordinator' were established, in addition to or as substitutes for 'court administrators'.

Arguably, it was the new body of knowledge about caseflow management that gave court administrators a distinct professional identity. Court administrators fully versed in the latest techniques of caseflow management, including the use of computers, offered something to the operation of courts that persons with legal training did not.[43]

A similar point was made in the UNDOC's *Resource Guide on Strengthening Judicial Integrity and Capacity*:

Case management, performance evaluation and technological developments increase the organizational complexity of courts and require new professional skills and abilities that do not necessarily fit the traditional professional profile or job description of judges. This led to the increased prominence of the position of court administrator that in many jurisdictions has authority over all non-judicial court management and administration functions. More specifically, functions that are typically assigned to such court executives or managers include long-range administrative planning, finance, budget, procurement, human resources, facilities management, court security, emergency preparedness planning, and employee discipline in addition to the ministerial and judicial support functions. These new court professionals liberate the chief judges of the courts from having to invest considerable time and energy on non-judicial functions for which they have not been trained. As a consequence, chief judges of the courts can focus on the judicial functions for which they have been trained and can work to implement more far-reaching strategies aimed at guaranteeing a high quality of judicial decisions and dispute resolution. Finally, since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office.[44]

7.2. New Public Management ('NPM')

The adoption of case management techniques over the last four decades corresponds to a broader change in the approach to public administration which has been applied to many agencies and branches of government in many countries. Although in most countries the courts are regarded as an independent branch of government, separate and distinct from the executive branch, they have not been exempted from the modern principles of public management.[45] Those principles, and their application to the judiciary, have been described by Swiss researchers, Professor Yves Emery and Lorenzo De Santis:

Nowadays, organizations within the judicial branch are targets for modernization strategies inspired by the NPM. The new public management (NPM) movement started in the Anglo-Saxon world in the 1970s prior to spreading elsewhere. Its main claim is the superiority of private-sector managerial techniques over those of the more traditional public administration …

All public organizations are accountable to the citizens and governments for the way that they spend their money. NPM techniques are aimed at rendering public institutions more efficient and thus, more valuable for the population (so-called 'value for money') and consequently are supposed to help politicians achieve good management of public resources by enhancing the legitimacy of public institutions. Not surprisingly, as NPM is the son of two opposites, namely the new institutional economics and the business-type managerialism, it created lively debates in both research and practice. As for its methods, Hood [in 'A Public Management For All Seasons?'] defines seven doctrinal components: professional management in the public sector, the use of measures and standards of performance, emphasis on outputs, disaggregation of units, greater competition, stress on private-sector styles and on greater discipline and parsimony in resource use. Others emphasize the centrality of quantitative measurement together with notions such as efficiency, effectiveness and economy. When applied to the judiciary, this led the chief justice of New South Wales to declare that, 'there is clearly a trade-off between efficiency and expedition on the one hand, and fair procedures on the other hand'.[46]

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[43] Ryder-Lahey and Solomon, above n 20, 32–33.
[44] UNDOC, above n 2, 40.
[45] See, eg, Professor Andreas Lienhard's examination of the benefits and risks of NPM, from the perspective of Swiss constitutional and administrative law, and including the feasibility of applying NPN to the organisation of the justice system (Andreas Lienhard, 'New Public Management and Law: The Swiss Case' (Winter 2011/12) 4(2) *NISPAcee Journal of Public Administration and Public Policy* (Special Issue: Law and Public Management Revisited) 169, especially at 183-184).
[46] Yves Emery and Lorenzo Gennaro De Santis, 'What Kind of Justice Today? Expectations of "Good Justice", Convergences and Divergences between Managerial and Judicial Actors and how they fit within Management-Oriented Values' (June 2014) 6(1) *International Journal for Court Administration* 1, 1–2 (citations omitted).

However, the vital point is that there is no need to trade off judicial independence in order to improve managerial efficiency. To the contrary, they can be aligned. This alignment between judicial independence and the achievement of managerial efficiency in accordance with NPM principles is well demonstrated in a monograph commissioned by the Australasian Institute of Judicial Administration in 2004, in which three senior academics in the field of management reviewed the operation of Australia's courts from a managerial perspective.[47] The thesis of the monograph was put succinctly in an address by one of the authors a few years later:

> the courts play a role as an arm of government; and the courts should assume control over court staff and court budgets if they are to be independent of the other arms of government.
>
> (And this is the managerial perspective) Courts also play a role as providers of services. In performing this role, the Executive holds the courts responsible to produce certain services. Principles of sound management demand that those who are to be held responsible to produce must be given the power to fulfil the tasks demanded of them. If the courts are to be held responsible for the production of services they must be given the power to manage their own staff and manage their own budgets.
>
> This managerial perspective means that the perception of a conflict between sound management and the proper role of the courts as an arm of government is illusory. Both principles demand that our courts should be responsible for managing their own staff and should be free to allocate the funds allocated them by the Executive.[48]

However, the application of NPM principles to the courts comes at a price. As Richard Foster PSM has noted:

> notions of accountability and performance tend to come laden with the nomenclature of business and bureaucracy — inputs, outputs, objectives, outcomes, policies, programs and key performance indicators. Such language can sit uncomfortably with the judiciary and it often falls to the senior court administrator to assist them in understanding their accountabilities and responsibilities.[49]

So, like case management, the application of NPM principles to the courts has necessitated a collaborative partnership between the judiciary and those responsible for the administration of the court not only in the management and the administration of the court, but also in the design and application of data collection systems which enable the court to report to executive government and the broader community upon the outcomes which have been achieved by the utilization of public resources.

7.3. Another Threat to Independence

However, there are real dangers if too much emphasis is placed upon the statistical reporting of outcomes. Those dangers include a potential threat to the fundamental objective of the judicial branch of government, which is the provision of justice. That threat arises if judges are influenced in their management of individual cases by a desire to improve statistical outcomes, rather than a focus upon the needs of justice in each individual case. As Chief Justice Spigelman has famously observed many times in this context, 'Not everything that counts can be counted';[50] nor indeed does everything that can be counted matter.

I know from personal experience that there is an almost irresistible tendency to collect data that can be collected easily and to assume, without careful analysis, that the data collected reveals useful information about performance and efficiency, when often it does not. This danger emphasizes again the vital need for a full partnership between the judiciary and the administration. If that partnership is to be successful, the judiciary must discharge the responsibility of identifying precisely what matters in the management of the court by reference to the fundamental objectives of the court. The responsibility of the administrator is to design and implement systems which collect information on the extent to which those fundamental objectives are being achieved. If those systems capture useful information, it can be used to inform decisions as to the processes and procedures which might better achieve the things that really matter, and to report to executive government and the community on the extent to which the court has achieved its fundamental objectives. This can only occur if there is a common understanding between the judiciary and the administration as to the fundamental objectives of the court. If wrong or inaccurate measures of performance are used by executive government to inform

[47] John Alford, Royston Gustavson and Philip Williams, *The Governance of Australia's Courts: A Managerial Perspective* (2004).
[48] Philip Williams, 'The Governance of Australia's Courts: A Managerial Perspective' (AIJA Courts Governance Seminar, 31 May 2008) 1.
[49] Richard Foster, 'Towards Leadership: The Emergence of Contemporary Court Administration in Australia' (February 2013) 5(1) *International Journal for Court Administration*) 1, 5.
[50] See, eg, Chief Justice J J Spigelman, 'Quality in an Age of Measurement: The Limitations of Performance Indicators' (Sydney Leadership Alumni Lecture — The Benevolent Society, Sydney, 28 November 2001) 1.

decisions with respect to the amount or the allocation of the resources provided to the court, the quality of justice delivered by the court will be diminished.

Courts are not Businesses

There are other dangers in an over-rigorous application of NPM principles to the judicial branch. Principles adopted from the private sector, designed to improve the profitability of a business venture, cannot be applied without modification or analysis to a court. A court is not a business venture.[51] Courts are indispensable to the rule of law, and the value of the rule of law, or the provision of justice in an individual case, defies quantification on a balance sheet.

A Business Case?

Despite this fairly obvious proposition, the ubiquity of NPM principles in contemporary public administration can require any proposal for the expenditure of funds to be justified by a 'business case', even though, obviously enough, a court is not a business. The notion of a business case can be readily understood in the private sector, where the fundamental objective of deriving profit requires that expenditure should only be incurred if it produces an acceptable rate of return. The concept has no ready or apparent application to an enterprise in which the fundamental objective is the delivery of justice. Nevertheless, it has been suggested that, for example, every appointment of a judicial officer should be justified by a 'business case'.

It may be possible to make some sense of a 'business case' in the context of a court if there are service and performance parameters which can be measured objectively and against which expenditure can be assessed. So, if the failure to appoint a judge will result in an increase in the median time taken to resolve cases in the court, the consequence of failing to appoint a judge can be assessed, albeit not in terms of revenue or profit. However, that assessment is only useful if one places an economic value upon the timely disposition of cases. But if 'justice delayed is justice denied', can an economic algorithm be usefully applied to the quality of justice provided by a court? And, if the failure to appoint a judge not only delays median times to resolution, but increases the workload of the judges to the point where the quality of justice provided in individual cases diminishes, how is that to be measured in a 'business case'?

7.4. Where does Judging End and Administration Begin?

In the preceding section of this paper I have assessed the impact which contemporary attitudes towards case management and NPM principles have had upon the relationship between judges and court administrators. I have concluded that the emergence of those objectives has necessitated a close working collaboration. In that context, in the last section of this paper I will return to the vital topic of judicial independence and address the question of whether there is in fact a bright line which demarcates the judicial function from the administrative function in contemporary court administration. The answer to that question has profound implications for appropriate court governance structures. For example, the executive model, although in retreat, presupposes that there is a clear delineation between the judicial function, which is the exclusive province of the judicial branch of government, and the administrative function, which is under the control of the executive. If that assumption is flawed, then so is the model.

The contemporary relevance of this issue, in the context of the emphasis upon a managerial approach to court administration, is neatly encapsulated in the following passage:

> The question of independence of the judiciary, due to a more performance-orientated administration of justice, is often brought forward by the heads of the courts. They keep protesting against the reduction of their initiatives and influence in favor of managers who have a direct relationship with the central administration. Such a tension between judges and managers is not peculiar to England, France and the Netherlands, and may prevail at a European level. The question is to know where the action of « judging » begins, and where the action of « administering » ends.[52]

In his review of court governance systems, Lord Justice Thomas noted that the distinction between matters which were the subject of judicial responsibility, and matters of administration, was 'never clear cut and there has been no success in drawing the line'. He went on to observe: 'This is a factor which has to be considered when deciding whether administrative services can be provided to the judiciary which are not ultimately answerable to the judiciary as opposed to the executive.'[53]

At different ends of the spectrum of functions performed in a contemporary court, the allocation of responsibility is clear-cut. The adjudication of a case after trial is the clear responsibility of the judiciary, and nobody would suggest that the

[51] At least not since the abolition of sinecures dependent upon extracting maximum fees from litigants.

[52] Loïc Cadiet et al, 'Better Administering for Better Judging' (December 2012) *International Journal For Court Administration* (Special Issue) 1, 6 (citations omitted).

[53] Thomas, above n 13, 17.

judiciary should take responsibility for the engagement of cleaning contractors or the acquisition of pens and paper. However, there are many areas between the two ends of this spectrum in which the allocation of responsibility is far from clear. I will endeavor to make that proposition good by considering a variety of functions performed in a contemporary court. The topics are not meant to be exhaustive.

Judicial or Administrative Functions?

1. *Accepting or Rejecting Documents Filed at Court*

Most courts have specific requirements which must be satisfied before a document will be accepted for filing. The standards will commonly cover matters of form[54] and substance. Usually those standards will be prescribed by the judiciary and implemented by administrative staff at the front counter or registry of the court.

The manner in which the prescribed standards are implemented can have a profound effect upon the character of the justice dispensed by the court. If those standards are enforced pedantically, with a zealous eye to detail, legally represented parties will suffer delays while documents are redrawn and will incur additional cost, and parties without legal representation may find this practical barrier to justice insurmountable and give up. On the other hand, if the prescribed standards are disregarded by court staff, and documents are accepted that are not properly attested or verified, the quality of justice delivered by the court will be diminished. The creation and maintenance of an administrative culture which strikes an appropriate balance between these two extremes can only be achieved by close collaboration between the judiciary and court administrators. The judiciary must clearly enunciate the manner in which they would like the balance to be struck, having regard to the objectives of the court, in terms of accessibility by self-represented litigants and the maintenance of appropriate standards with respect to reliability and authenticity of documentation. The administrators must implement systems for training and supervision which enable the desired balance to be consistently achieved.

Analysed in this way, it would be facile to suggest that the role of either the judiciary or the administration is more important than the other in the discharge of this important function. Nor would it be accurate to describe this function as falling exclusively within the province of either the judiciary or the administration.

2. *Case File Maintenance and Management*

In most courts, responsibility for the maintenance and management of case files rests with administrative personnel. Responsibility for the IT systems that are now increasingly engaged to perform or support this function also usually rests with administrative personnel. However, the manner in which this function is performed can have a significant effect upon the quality of justice delivered by the judiciary. If documents are misfiled, or take a long time to reach the relevant file, the quality and efficiency of the judicial function will be diminished. Perhaps more significantly, in most courts there will be systems employed so as to identify documents of particular significance, or which require a prompt or even urgent judicial response. The quality and efficiency of those systems will have a significant effect upon the quality and efficiency of judicial work. For that reason, the judiciary must be involved in the specification and oversight of those systems. This is another area in which it would be invidious to suggest that either the judiciary or the administration has a more important role than the other, or to assert that the function is exclusively judicial or exclusively administrative

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3. *The Administrative Disposition of Cases*

Most courts exercising civil jurisdictions will have procedures by which cases can be resolved administratively - for example, if a party fails to respond to court process, or if the moving party fails to take any action in the case for a prescribed period. Often those processes will be implemented administratively, without reference to a judicial officer. However, they usually result in an order of the court which finally disposes of the case. The processes have characteristics which are both administrative and judicial, in the sense that they result in the final disposition of the case. The effective implementation of these procedures is a matter in which the administration and the judiciary have a joint interest.

4. *Allocating Cases to Judicial Officers*

Systems used to allocate cases to judicial officers vary widely. At the risk of over-generalization, in courts with docket-based systems of case management, the process requires each case to be allocated to a particular docket. In courts which do not operate dockets, the process will require each hearing to be allocated to a judicial officer.

The systems used to allocate cases or hearings also vary widely. In some courts, the judiciary perform this function. In others, the function is entirely administrative. In many courts, like mine, the systems involve both judicial officers and administrative personnel.[55]

[54] Font size, lay-out of the document, manner of execution, etc.

Even in those courts in which allocations are performed entirely by administrative personnel, it is obvious that the judiciary have a vital interest in the efficient and impartial performance of the function, and must take responsibility for the methodology employed. So, whatever systems are used to allocate cases, this is another function which cannot be said to lie exclusively within the province of either the judiciary or the administration, nor can the role of either be said to be more important than the other.

5. *Effective Utilization of Information Technology*

Courts increasingly rely upon information technology to dispense justice. There are now very few areas of activity which do not depend heavily upon IT support. IT systems support electronic filing, case management, the listing of cases and notification to the parties, the research and information resources available to the judiciary, trials are commonly conducted using audio visual systems and digitized data, and IT systems support the preparation and publication of reasons and orders of the court, court hearing lists and information for the public on court procedure and statistics.

In most courts, judges have come to rely heavily upon IT managers who are part of the administrative resources of the court for the design, implementation and operation of the various systems which support the judicial function. Close collaboration between the judiciary and relevant IT personnel is essential if the systems are to achieve their objectives. This is yet another area in which the judiciary and administrative personnel have equally important roles and responsibilities and which cannot be said to lie within the exclusive realm of either.

6. *Data Collection and Analysis*

The comments I have already made with respect to the significance of data collection and analysis in the context of New Public Management principles demonstrate the importance of this function to each of the judiciary and the administration, and the important roles which each must play in this area. It is yet another area of joint enterprise or partnership.

7. *Budget Management*

The relationship between the management of the budget and resources available to the court and the effective performance of the judicial function is obvious. Illustrations can be seen in the examples I cited of tension arising in relation to circuit expenses. The level of resources available to support the judiciary, in terms of personal staff, research facilities, clerical and administrative support will obviously affect the quality and efficiency of the justice provided by the court. In most courts decisions will have to be made as to the allocation of limited resources between competing areas of court operations. If the court is to achieve its fundamental objectives, the choice between competing priorities must be made by close collaboration between the judiciary and administration. This is yet another area of joint enterprise or partnership.

8. *Designing, Constructing and Maintaining Court Buildings*

Contemporary research shows a clear relationship between the design and quality of court buildings and the quality of justice delivered in those buildings. This is hardly surprising. Appropriate building design should give all court users - public, media, litigants, witnesses, security and administrative personnel and judiciary - safe and secure access to the spaces and facilities which they need to achieve their objectives.

In the past there has been a tendency to consign responsibility for the design, construction and maintenance of court buildings to administrative personnel because it is usually executive government which bears the cost. In that process, the judiciary are sometimes seen as 'stakeholders', to be consulted by the project team in the same way as other court users, like the legal profession and the media are consulted.

However, in more recent times, in most jurisdictions a more enlightened approach has been taken, in which the judiciary and court administration are viewed jointly as 'the client' by the architects, builders and treasury officials responsible for delivering the project. Experience has shown that this approach delivers much better outcomes in terms of buildings that provide the functionality required for the efficient delivery of justice. So, this is yet another area in which joint enterprise is essential.

9. *Recruiting, Supervising and Retaining Court Staff*

In most courts, responsibility for the recruitment, supervision and retention of court staff rests with administrative personnel, although in some courts the judiciary may have a role in the appointment of the chief executive officer. Nobody would seriously suggest that judicial officers should be involved in the recruitment or supervision of base-level clerical

[55] In the Supreme Court of Western Australia, civil cases managed by a judge on a docket are allocated by a judge. Criminal trials are mainly, but not exclusively, allocated under the supervision of a judge. Administrative staff list civil cases that are not managed on a docket and various miscellaneous cases for hearing.

staff. However, the manner in which those staff are recruited, trained and supervised can have a significant effect upon the quality of justice dispensed by the court, as the example I have already cited in relation to shortages of staff in the probate section of my court illustrates. As the judiciary are held responsible for the outcomes produced by the administrative personnel of the court, they should also have the responsibility and the authority to determine policies with respect to recruitment, training and supervision of administrative staff in collaboration with those responsible for the implementation of those policies.

10. *The Development of Policy with respect to Court Administration and Procedures*

As with any other complex organization, courts must constantly review policies relating to administration and procedures to take account of changing circumstances and opportunities for improved efficiencies. Any effective process of procedural reform must give weight to the fundamental objectives of the court, as assessed by the judiciary, but must also give weight to administrative efficiency, which is best assessed by those responsible for the administration. This is yet another area in which joint collaboration is essential.

11. *Managing the Relationship between the Judiciary and Court Users*

Courts are increasingly regarding themselves as service providers, with a responsibility to continually improve the quality of their service. This is evident in the development of systems for the assessment of the quality of the service delivered, such as the International Framework for Court Excellence, developed in a joint enterprise between the courts of Singapore, the United States and Australia.[56] Even the most superficial glance at that framework will show the importance of the respective roles performed by the judiciary and administrative personnel in service delivery.

In most jurisdictions, communication between the judiciary and court users is constrained to communication within the court process - during hearings and in the publication of reasons for decision, although heads of jurisdiction will often act as a spokesperson for the court. Management of the daily interface between the court and its users is largely the responsibility of administrative personnel, although the judiciary have an obvious and direct interest in that process. The culture which characterizes interaction between court personnel and court users will have a significant impact upon the public assessment of the quality of justice provided by the court. This is yet another area which requires close collaboration between the judiciary, who must take responsibility for providing the cultural settings or parameters which are to govern the interface between the court and the public, and the administrative personnel who are responsible for implementing those standards.

8. Is There a Bright Line between the Judicial and the Administrative Function?

In the preceding section I have not attempted to cover all the many and diverse functions performed by a modern court. However, the functions which I have specifically assessed cover many, if not most of the more important functions which lie between the extreme ends of the spectrum which I earlier posited - namely, adjudication in court at the one end, and buying stationery at the other. The analysis strongly suggests that all of these important functions must be regarded as the joint responsibility of the judiciary and the administration if they are to be effectively performed. The analysis reinforces the views of Lord Justice Thomas and Cadiet et al as to the difficulty of assessing where judging begins and administering ends. It leads me to conclude that while there are ends of the spectrum of court activities which can be classified as exclusively judicial or exclusively administrative, there is a large range of important functions between those ends of the spectrum which are neither.

The consequences which follow from that conclusion are, I suggest, obvious. Earlier portions of this paper assessed court administration from the perspective of judicial independence and managerial efficiency. I suggested that the achievement of those objectives has resulted in a demonstrable trend towards systems of court administration which provide the court with a degree of autonomy and independence from executive government. The assumption which underpins the executive model of court administration, to the effect that all functions which are performed by a court can be classified as either judicial or administrative is demonstrably false. The fact that the effective performance of many of the functions performed by contemporary courts requires close collaboration between the judiciary and administrative personnel should inform the creation of court governance structures which embody a partnership in which each of the partners has different but equally important roles in the achievement of their common objective: the delivery of justice.

[56] With assistance from the European Commission for the Efficiency of Justice, Spring Singapore and the World Bank (International Consortium for Court Excellence, *The International Framework for Court Excellence* (2nd ed , March 2013) pp 3, 4).

Biography:
The Honourable Wayne Martin AC was appointed as Western Australia's 13th Chief Justice on 1 May 2006.
He joined the Independent Bar in 1988 and was appointed Queen's Counsel in 1993. From 2001–2003, he took on the role of counsel assisting the HIH Royal Commission in Sydney. The Chief Justice was President of the WA Bar Association between 1996 and 1999, and Chairman of the Western Australian Law Reform Commission from 1996 to 2001, when the commission completed the *Review of the Criminal and Civil Justice System in Western Australia*. The Chief Justice was also a member of the Council of the Law Society of Western Australia, and was President of the Society when appointed to his current office. In 2007, the Chief Justice was awarded WA Citizen of the Year for the Professions. In 2012, the Chief Justice was awarded a Companion (AC) in the General Division of the Order of Australia for eminent service to the judiciary and to the law, particularly as Chief Justice of Western Australia, to legal reform and education, and to the community. Amongst other positons and appointments His Honour is also Lieutenant Governor of Western Australia and Convenor, Asia Pacific Region, for International Organisation for Judicial Training.

GUIDING PRINCIPLES FOR EFFECTIVE CASE MANAGEMENT

The criminal justice system exists to provide order that is just. To have the necessary moral authority it must protect the rights of the accused, including the right to disclosure and a fair trial, and it must resolve matters effectively. Effectiveness is not mere efficiency or cost cutting. It is ensuring that every step of the process contributes to a just result by working the way it is intended to work, without waste.

Management of cases that go to trial is part of this. This paper identifies five basic principles that can contribute to the effective handling of cases.

1. Cooperation & expectations: Effective case management requires cooperation and clear expectations.

The sectors or "players" in the justice system are autonomous within their sphere. This distributes power and identifies where responsibility for each decision resides. No element is "in control" of the justice system. But each depends on the others. The combination of autonomy and interdependence means they must cooperate appropriately to be effective.

It follows that decisions affecting process should be made with consideration for the impact they have on the rest of the system. The needs of each element of the formal system as well as the accused, witnesses and victims must be considered in developing effective case management practices.

A successful case management system meets broadly accepted expectations and respects the interests of participants. Cooperation is informed by stated, mutual expectations that enable accurate prediction of events and requirements, including resource requirements and performance standards.

The public expects accountability and good stewardship of the criminal justice system.

The Court expects the participants to prepare and conduct each case properly in accordance with the relevant laws, rules and practice directions. This includes early consideration of issues so that hearings focus on what can only be resolved in court and counsel arrive prepared to optimize each appearance.

There is or ought to be an expectation that all counsel actively cooperate with each other and the court in the effective management and conduct of cases.

Other people affect the operation of the courts. Witnesses and victims who understand the system and their part in it will contribute more effectively to the process. The timely provision of information and resources to them pays dividends. This is particularly true for the accused during the initial stages of a case.

The proper disposition of a case requires management of a long supply line consisting of many people and much information. People seen as minor or peripheral participants such as prisoner escorts and policymakers can have a significant impact on court operation. Failure to bring a prisoner to court for a scheduled appearance defeats the best-case management system. Failure to advise authorities that a prisoner is no longer needed for court results in unnecessary prisoner movement. Significant changes in enforcement policy affect demands on the criminal justice system.

Fundamental to cooperation is development of realistic expectations and obligations that respond to the needs of all criminal justice constituencies. One such expectation is that justice ministers within government will take a leadership role in acting as a broker amongst the criminal justice constituencies and in advocating for the support and resources that the system may demonstrably require.

Implementation Examples

a. Pamphlets and web pages that explain court procedures and how to obtain legal counsel in lay terms should be encouraged not only as a means of promoting justice in individual cases but also to improve the effectiveness of each appearance and of the system as a whole

2. Leadership: The court has a leadership role in effective case management.

A system that can't be managed must be lead. Leadership among autonomous players requires the application of influence and in the justice system that requires moral authority. Without a leader, cooperation is less likely to happen and is unlikely to become the norm.

Some judges are uncomfortable with an active role in case management. A judge must, above all else, be above all else. The judge is the impartial apex of the adversarial system's triangle, deciding guilt or innocence in each case without regard to external considerations.

But in our adversarial system, judges have the independence and authority to lead the other players. In short, their impartiality gives judges a unique opportunity to lead effective case management.

We believe good leadership does not detract from impartiality. The judicial leadership we are calling for is less about managing the cases than it is about ensuring the parties are prepared for an effective hearing. While some of the skills and activities required by case management are fundamentally different than the traditional role of judges, case management is not inconsistent with it. Judges have always controlled procedures to ensure hearings are fair and effective. Extending this role "upstream" is only sensible since the effectiveness of a hearing is largely dependent on the preparedness of the

parties. We believe judges and court administration can oversee cases to ensure they are managed in accordance with commonly accepted norms while retaining the flexibility to respond to the unique needs of individual cases.

Judicial leadership does not absolve other players of their responsibility to contribute to an effective justice system. Leadership does not work in isolation. It requires cooperation, respect and the frank exchange of ideas and concerns. Once sectors have forged cooperative relationships and a genuine regard for the roles of each participant, a procedure to effectively manage cases in accordance with appropriate principles becomes a common goal because the relationship makes it impossible to blame the others for common problems.

In short, it is not so much a matter of judges managing cases as seeing to it that cases are managed in accordance with generally accepted standards. Our vision is not that judges manage more. It is that they will manage less because effective case management by each sector will be the norm.

Good case management practices can be established without judicial leadership but judicial support is essential to the application of case management. Consistent enforcement of rules, forms, and expectations for pre-appearance preparation is key to each sector managing cases efficiently.

Efficiency, effectiveness and access to justice are all interconnected. The court, through judges and court administration, with the assistance of other justice system participants, has a leadership role to play in meaningful case management.

<u>Implementation Examples</u>

Active case management by the court

a. In B.C, Criminal Caseflow Management Rules were developed and implemented with active participation by the judiciary, and are now integrated into criminal case processes.
b. In Ontario, a criminal case management protocol has been developed.
c. In Ontario, and several other jurisdictions, Judges regularly participate in educational sessions on their role in the management of cases.

Case preparation

a. Prosecution policies should guide and encourage early resolution.
b. Requirements for early and complete disclosure expedite the process. BC's Rules require counsel to assure the court that they are ready for trial and have stated a preliminary position on sentencing in advance of the trial date.
c. Police can expedite disclosure by vetting, within legal parameters, sensitive witness information and providing duplicate copies of Reports to Crown Counsel for disclosure.

3. <u>Culture:</u> Effective case management creates a criminal justice system culture of responsibility, awareness, and appropriate collaboration.

The third major guiding principle for case management is the cultivation of a case management culture. Sloppy case management is no more acceptable than sloppy case presentation.

The expectations and standards called for above will only be effective to the extent they are followed. Obviously this requires enforcement. We are aware of a study of Scottish Courts that indicates that the degree of judicial tolerance for adjournments is a key variable in effective case management. There are more interests at stake than the Crown and defence but judges sometimes feel they have little choice but to grant an adjournment if Crown and defence agree on the need. This may be in the interests of Bench and Bar collegiality or in the larger interests of justice – regardless of the reason counsel aren't prepared, it would be an injustice to proceed. But put simply, there are many reasons why counsel may want an adjournment and judges have the means to signal their displeasure at some of them even while granting the adjournment. Counsel should be put to the test by the court so that, even if an adjournment may be necessary, counsel will have the benefit of the court's views to guide future case preparation.

Given our views on the tight relationship between case management and case flow management, we recognize that enforcement of expectations is most effective when each case can be understood in the context of all the cases. Under principle 5 we discuss information needs.

That said, a case management culture is best created collaboratively. But once, the decision has been taken to create one, jurisdictions should consider a "case management blitz" to create momentum, signal commitment and to quickly raise management standards across the system. Professional development programs for the Bench and Bar can be coordinated to concentrate on case management for a period of one or two years in order to validate the concept, support its implementation, equip each player with the necessary knowledge, explain the rules, and keep lawyers current on substantive issues affecting decision-making at each stage of a case, such as sentencing.

A case management culture demands case management data and information. As has been said, "You can't manage what you can't measure." While the quality of justice defies measurement its quantity doesn't. The justice system should demand the same evidentiary rigour about its case processing as it does about its cases. Some judges and lawyers are apprehensive about data collection – perhaps fearing somehow that it will detract from the quality of justice done in each case. We do not think this stands logically beside demands for access, efficiency and effectiveness.

Implementation Examples

a. Research and data analysis about the justice system should be within the system, to enhance understanding of issues of common interest.
b. Professional development should encourage a sense of shared responsibility for the justice system, and a vision of justice as a “system of systems”.

4. Local Control: All case management is local.

Effective management of cases is the product of local commitment to good practice. Legislation can enable and support case management but the local bench and Bar will manage well or badly according to their needs and views. And if local control were not inescapable it would still be desirable. It is crucial to effectiveness because only local control can respond to local pressures, issues and personalities. Implemented cooperatively, it brings sectors together, increases communication, understanding and respect for their various roles and their interdependence, and provides a sense of ownership in new initiatives.

The Centre of Criminology report found high variance in case processing times throughout the jurisdictions, demonstrating the need for local or regional solutions that are in line with accepted guiding principles.

But local control can stifle innovation. If local control is to be effective it is vital we strengthen our capacity to share best practices and to provide the data and analysis needed to assess the effectiveness of local practice and alleged “best practices” in particular.

We have examined case management programs based on rules of court, legislation and practice notes. Each has strengths and weaknesses and one is not inherently better than the other. Each location must adopt an approach that is acceptable to local justice system participants.

Implementation Examples

Local case management or court users committees enhance understanding of issues and pressure points and encourage shared initiatives to improve efficiency and effectiveness.

Joint working groups on particular issues of local importance improve communications, build relationships across sectors and foster a sense of ownership and responsibility within the system.

5. <u>Management information</u>: effective case management requires management information.

The justice system is, in some respects, an information system. It gathers, analyzes and evaluates information about someone or something in light of legal information. Considering the volume of information the system handles it is ironic that so little information *about* the system is widely available. A great deal is known about each case and very little about cases in aggregate. Knowledge, in the form of statistics or management information, is a crucial component in understanding exactly what is going on and where to develop and focus initiatives.

There is a large body of national data at the Canadian Centre for Justice Statistics that is supplemented by local data in many jurisdictions. Certainly the quality and usefulness of data can always be improved. Meaningful comparisons over time and location require standard definitions and protocols. Something as basic as what is "one case" can mean different things to different participants within jurisdictions and nationally and can produce very different data as a result.

Case processing time data is important for many case management decisions, especially in relation to policy development and establishment of local resource targets. Yet it paints different pictures depending on whether the time when a warrant is outstanding is counted or not in the data.

But even given these concerns, the information currently available is extensive and valuable. It appears a major impediment is lack of demand for the information or lack of capacity to utilize it. This should change. The Justice Information Council, composed of the provincial deputy ministers responsible for justice in Canada, should attach a higher priority to the collection and dissemination of information about the justice system generally and case flow in particular, and jurisdictions should ensure they fully exploit the potential of CCJS.

Better information is needed to ensure we understand both the problem and the alleged solution. The Centre of Criminology of the University of Toronto study notes a dearth of research on the nature and sources of the case processing problems and suggests that some assumptions about procedures to improve the efficiency of the courts are incorrect. The report indicates that preliminary inquires might actually enhance case processing time.

We may be closer to useful data than appears. Utilizing data, made available through information technology, can assist each sector to actively manage their own process issues; and jointly develop strategies to address issues that involve one or more of them so they can collectively ensure the justice system makes effective use of its time and resources.

Implementation Examples

Integrated management information systems such as Justice Enterprise Information System (JEIN) in Nova Scotia and Justice Information System (JUSTIN) in BC connect parts of the justice system and provide certain types of process information, which can be used for management purposes. These systems may also provide ready access to information about movement of prisoners, case status, correctional histories and other information necessary to the efficient management and analysis of court systems.

IMPLEMENTATION APPROACHES

There are several ways case management or case flow management can be implemented. These may be generally described as:

1. Moral suasion – this is the judge who actively manages their courtroom. These are not formal rules. For example in this courtroom, counsel will provide a written outline of their argument.
2. Local practice – this is moral suasion applied to a set of cases. It is usually geographically circumscribed but can be based on case type. For example, in all commercial crime cases counsel will provide a draft exhibit list.
3. Practice preference – this is more formal and indicates an official preference but is not mandatory. For example, counsel should attempt to pre-mark exhibits on commercial crime cases. It may be applied to a local or general area. Unlike local practices, they are usually published. They are frequently issued by the Chief Judge or Justice but can also be issued by Administrative Judges.
4. Practice directives or notices– these are formal directions that have binding force. For example, counsel will use and file a specific form when mutually agreeing to limit the scope of a preliminary inquiry. Practice directives are normally issued by the Chief Judge or Justice. They are published.
5. Statutory enactments – these are case management and case flow management decisions that are imposed uniformly through a statute. An example is the focusing hearing for preliminary inquiries under s. 536.4(1).
6. Rules of Court – these are broad based rules which can include case management and case flow aspects that are created under s. 482. They require the approval of the lieutenant governor in council of the relevant province and must be published in the Canada Gazette. The British Columbia Criminal Case Management Rules were promulgated under s. 482 after approval by a majority of the provincial court judges in British Columbia.
7. Case Management Rules – these are specific case management rules created under s. 482.1. This rule making power was created because there was uncertainty about the scope of rules permitted under s. 482. Rules made under this section require the approval of the lieutenant governor in council of the relevant province and must be published in the Canada Gazette. This section permits rules that delegate power to court administrative staff.

At present the Criminal Code [ss. 482(5) and 482.1(6)] provide that both Rules of Court and Case Management Rules can be supplanted by the Governor General in Council to secure national uniformity. As outlined further below, consideration should be given to streamlining the process of creating case management systems – either through practice directions or rules – such that there is local autonomy over case management approaches.

RECOMMENDATIONS

The goal of case management is that each appearance be effective and timely, and that duplication and waste of effort be avoided. Expectations and standards should be clear and reasonable so that each sector can rely on the other to meet its commitments. Care should be taken to ensure that expectations clearly fall within a sector's role and articulate a healthy relationship between sectors so they are not seen as mere attempts at off-loading or cost shifting.

With this as a model, we recommend the following:

1. Establishment of Advisory Committees:

a. There should be permanent case standards advisory committees in each province and territory established by the Chief Justice or Chief Judge to collaboratively identify expectations and standards in respect of case management, and the means by which conformity to them may be measured and enforced.
b. Depending on local factors such as the size of the jurisdiction, the number of courts, the geography, it may be desirable to establish more than one committee (per level of court) or to establish subcommittees.
c. The committees should be composed of representatives of the justice sectors including, the bench, Crown, defense Bar and court administration. Local committees may consider including representatives from the police on such committees either generally or on an issue-by-issue basis.

2. Role of Committees:

The committees should:

a. see their role as recommending to the Chief Justice or Chief Judge the most appropriate means to address local case management issues.
b. collaboratively identify expectations and standards in respect of case management that are specific to each of the justice sectors.
c. review and make recommendations to Chief Justice/Chief Judge or Attorney General (as appropriate) on whether the expectations and standards should be embodied in rules, practice directives, guidelines or some combination of all three depending on the substance.
d. make a statement of principles including:

i. Effective management of cases is a shared responsibility;
ii. It is the duty of the parties to resolve issues that can be resolved without a judge and to efficiently present to a judge those issues which cannot;
iii. Judges not only have the right to insist that parties are prepared to present and argue cases when they come to court but judges have a duty to the parties and the public to insist that they are.

3. Tools to Use or Recommend:

a. Self-Management Through Checklists
   i. Each sector, including the judiciary, should be encouraged to develop their own checklists and other guides which aid memory and delegation of routine tasks. Checklists are common in many areas of practice today. While it would be advantageous to develop them pursuant to the Committee's expectations and standards, if there is no committee or it is proceeding slowly, each sector is encouraged to develop checklists on its own, being careful to consult the other sectors.
   ii. Without departing from local control, we see merit in national organizations (such as the National Judicial Institute, the CBA, and other organizations representing the Bar, including organizations of defence counsel and Crown Attorneys'), developing model checklists as a means of articulating best practices and validating key sector responsibilities for case management.

b. Identification and Use of Key Indicators
   i. The Committee should identify key indicators - information each sector requires to monitor the flow of the mass of cases and the progress of each case against the stated expectations.
   ii. The indicators should be reported regularly, in an understandable format, and should not be so excessive in number or detail as to overwhelm the user or producer. The purpose of key indicators is to call attention to possible problems so further analysis can take place.
   iii. Selection of key indicators is also a local matter since conditions vary widely between jurisdictions but should include
      - The number of cases in the system,
      - The number of appearances per case,
      - If possible, the intended purpose of each appearance and whether an appearance achieved its intended purpose,
      - "Backlog" or next available dates.
   iv. The key indicator report should be a publicly available document.
   v. Ideally, the key indicator report should be specific to court location in the interests of transparency and accountability, and so remedial action, such as resource deployment, can be taken quickly. However, initially it may be necessary to blend information, at least in the publicly available report, in order to ease the transition to a case management culture.

4. Further consideration should be given to streamlining the process provided in the *Criminal Code* for creating case management systems:

a. Consideration should be given to amending s. 482 of the *Criminal Code* to facilitate local rule making. We doubt the requirement of publication in the Canada Gazette is worth the time it consumes and we see the procedural distinction between rules made by superior courts and provincial courts as archaic.

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THE ROLE OF JUDICIAL OFFICER IN THE COURT MANAGEMENT & E-COURT MAINTENANCE (SUGGESTED METHOD IN DISTRICT COURT)

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Abstract: *In this paper I studied the role of judicial officers in court Management and e-court system monitoring. I have discussed relevant responsibilities & duties of The Principle District Judge , Principle Judges and judge (for his own court). Those responsibilities are compared with the additional work for executing any plan or mission. I have also discussed that for the need of management training and succession planning in subordinate courts. As per my study, optimum use of internal stakeholders is necessary. It is a preliminary study to prepare a platform for any system or plan in court organization. Few concepts in court management and e-court management (computerized management) are discussed.*

Key words: *Case Information System, Court management, Caseload management, Case-flow management, e-court monitoring.*

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INTRODUCTION:

*"The **Best Preparation For Good Work Tomorrow is to do Good Work Today**"*

....Elbert Hubbard

Hon'ble Chief Justice of India, Hon'ble Justice Shri. S.H. Kapadia has expressed a desire to establish comprehensive Court Management Systems for the country that will enhance quality, responsiveness and timeliness of courts[1] .

The Indian Court has adopted Court Management through professional manager and e-court system. Both missions are to be effectively executed by the stakeholders. The Judge who is the leader of his court and responsible for the Judicial system has to execute both missions in addition to his current court working. The statement of the mission speaks that, Judge is responsible for implementing the policy and action plan. The court managers who possess a Master degree in Business Administration are to assist with the court only for managing it as per the mission and plan. Therefore the role of Court manager is just like a catalyst.

In a district place there is a Principle district judge, administrative judge and at Taluqa place there are principle judges for the administrative works. They also preside over their independent court. They are discharging their work to manage the court and their administrative work as per the circulars, Manuals provided by the superior courts.

Both missions speaks that, the judge must do justice to all irrespective of status. He has to reduce backlog of cases. Without undue regard to the procedural technicalities, they have to administer the justice.

focused delivery of justice. Therefore it is necessary to increase internal human resource capacity, infrastructure and resources. The e-court mission is most useful to take effective steps for expeditious delivery of justice.

For any system in management, it is necessary to create a platform for proposed changes that may facilitate to execute any plan / mission effectively.

A) Present Position of Administration and Court Management work:

(i) Principle District Judge :(Major Tasks)

The Principle district judge is the initial contact between the court and a member of the bar with regard to court services. He may delegate some tasks to other judges but the principle district judge is only the judicial officer who is responsible for the district court . Other Judges are sources of information and supporting judges to him. The bar association,

government and other agencies have concern with the court organization. So the principal district judge has to maintain relations with other agencies like government agencies, semi-government, civic body, vendors of infrastructure. The principle district judge builds relationship with all stakeholders. He has to hold periodic meeting with the other judges for different subjects/issues. He has to conduct departmental enquiries, budget, library, Buildings and Equipment , Land acquisition for court building or court building expansion, court space alterations and construction, court security, Managing court property, residential quarter allotment to judges and staff etc.

The Principal District Judge is responsible for court business like controlling to the staff, recruitment,promotion and transfer of staff. He is responsible for seeing that the court is administered effectively and efficiently and in compliance of the statues like Speedy trial of cases, Under trial cases, Legal Services, reduce backlog, case assignments, and to prepare a policy for statutory requirement compliance , recruitment process, promotion process , writing confidential Report , inspection of courts etc. He has to determine administrative policies and actions of his district . He possesses listening skills. Principle district judge is also responsible for the functioning of courts in the district for its administrative tasks and therefore he is head /chairman/patron-in-chief of various committees.

(ii) Principle Judge at Taluqa Places & Administrative Judge at District Place:

The Principle District judge is responsible for the administrative work of the district judge courts within the district. The principle Judicial officer at Taluqa place court is responsible for administrative functions at Taluqa place.

At some district place, there is a system for administrative work by Senior Civil Judge for Civil Cases and Chief Judicial Magistrate for Criminal cases. Both the establishments are separate establishments.

In court administrative process the above all administrative judges focus on coaching, giving feedback and helping the court staff to realize potential. He has to make continuous efforts to develop the knowledge of the court staff to meet current needs .

(iii) Judge (for his own court):

Judicial and administrative functions at his own court. In court business process he has to focus on coaching, giving feedback and helping the court staff to realize potential. He has to make continuous efforts to develop the knowledge of the court staff to meet current needs.

Here the individual judge of his own court includes Principle district judges of his own court, principle judge of for his own court, administrative judges and other judges in their own courts as discussed above. They are responsible for the effective administration at their own court.

Thus the present position of the judicial officer shows that, as per settled practice and traditional ways , different circulars, rules and court manuals the judicial officers are also discharging Non-judicial work and administrative work of the court.

B) Court Management System [Expected Management in addition/advanced Tasks]

(i) Principle District Judge :

The National Court Management System has to set measurable performance standards for Indian Courts. The set of measurable performance standards includes a system for monitoring and enhancing the performance parameters on quality, responsiveness and timeliness, a system of case management to enhance user friendliness of the Judicial system. It will provide a common national platform for recording and maintaining judicial statistics from across the country. It will provide real time statistics on cases and courts that will enable systematic analysis of key factors such as quality, timeliness and efficiency of the judicial system across courts, districts/states, types of cases, stages of cases, costs of adjudication, time lines of cases, productivity and efficiency of the courts, use of budgets and financial resources. It would enhance transparency and accountability. A court Development planning System that will provide a framework for systematic five year plans for the future development of the Indian Judiciary. The planning system will include individual court development plans for all the courts[1] .

The High court has to frame standard system for the court management. As per the directions of the superior court, the principle district judge to execute the mission effectively. As per established performance standards to the courts including on timeliness, efficiency; quality of court performance; infrastructure ; and human resources ; access to justice; as well as for systems for court management and case management . It establishes the performance standards applicable to the court .

The Principle District Judge has to Carry out an evaluation of the compliance of the court with such standards; identify deficiencies and deviations; identify steps required to achieve compliance; maintain such an evaluation on a current basis through annual updates. He has

to Monitor the implementation of the court development plan and report to superior authorities on the progress. He has to ensure that statistics on all aspects of the functioning of the court are compiled and reported accurately and promptly in accordance with systems established by the High Court; As per Standard systems for court management developed at the High Court Level. He has to ensure that reports on statistics are duly completed and provided as required. He has to ensure that the processes and procedures of the court (Including for filing, scheduling, conduct of adjudication, access to information and documents and grievance Redressal) are fully compliant with the policies and standards established by the High Court for court management and that they safeguard the quality .He has to ensure efficiency and timeliness , and minimize costs to litigants and to the State; and enhance access to justice. He has to ensure that case management systems are fully compliant with the policies and standards established by the High Court for case management and that they address the legitimate needs of each individual litigant in terms of quality, efficiency and timeliness, costs to litigants and to the State. He has to ensure that the court meets standards established by the High Court on access to justice, legal aid and user friendliness. He has to ensure that the court meets quality of adjudication standards established by the High Court. He has to ensure that Human Resource Management of ministerial staff in the court complies with the Human Resource Management standards established by the High Court. He has to ensure that the core systems of the court are established and function effectively (documentation management; utilities management; infrastructure and facilities management; financial systems management (audit; accounts; payments)[2].

The Principal District Judges bear the responsibility of effective management of the courts in order to ensure optimal levels of performance. It is the Principal District Judges who have the responsibility to distribute workload amongst different courts and also to ensure that judges are able to deliver qualitative and timely justice. Given the ever increasing pendency and arrears in all the courts and also considering the increasing number of cases being filed, there has arisen a strong need for effective management techniques [3].

From the above statements it clearly shows that, the National Court Management System has to set measurable performance standards for Indian Courts. The High court has to frame standard system for the court management and as per the directions of the superior

court, the principle district judge to execute the mission effectively. The Principal District Judges bear the responsibility of effective management of the courts in order to ensure optimal levels of performance.

Thus the Role of Principle District Judge would be as :-

1) He has to Monitor Court development plan, case load, reduce backlog, identify the causes for delay in trials.
2) He has to monitor caseloads and identify the problems in case load for each individual court. Monitoring court means monitoring performance and providing feedback to judges and court staff and court manager.

For any system or Plan the Principle District Judge may require to do some material tasks:-

1) To review judgment of the judge as per percentage and interval as directed.

2) To ascertain the information of the court available to public at the website of the District Court. Including effective working with Judicial Service Center.

3) Take effective steps to develop the court business process.

4) Assess the pendency of cases and frequency of filing new cases as directed.

5) Responsiveness in legal aid as expected from the plan or system. He may require to review the decided cases where legal aid was provided to ascertain the quality of provided legal aid.

6) Granting adjournments and its reasons and to find out to minimize the ratio of adjournments.

7) He has to examine the quality of judgment delivered by the judge.

8) More effective grievance resolution method for complaints received about working with internal stakeholders.

9) Monitor the rate of disposal and efficiency of the judge.

10) Control over the working of the Court Manager.

(ii) Principle Judge at Taluqa Places/ Administrative Judge at District Place:

1) He has to execute the plan/mission as directed .
2) He has to monitor case load, reduce backlog, identify the causes for delay in trials.
3) He has to Control over the working of court manager.
4) He has to review the court business , the distribution of work and cases (with the permission from the Principal district Judge) and to find out available resources to reduce backlog, proper local arrangements for lawyers and litigants.

5) He has to identify the needs of training to the stakeholders.
6) He has to continuously review with management of court business, maintaining a technological system. He must make sure that the information technology is effectively in use of the court working.
7) He has to resolve the local issues for court business.
8) He has to submit the reports to the Principal District Judge for execution of the management system and e-court system.
9) He has to find out need of resources (including Human resources) to execute the plan/system.
10) He has to to find out the need of a midterm court development plan and send the proposal to the principle district judge.
11) He has to hold meetings of the joint judges of the other courts from the judicial station.
12) Principle judge should be in continuous in touch with the court manager for professional advice.

Caseload Management:

Caseload process is to support to manage the cases and its activities effectively at individual court. The 'Caseload Management System' from CIS is very important tool to assist the Judge and Manager in taking its benefits for achieving the goals of the plan or mission.

Caseload does not mean number of physically pending / instituted cases only. It includes the actual load in that case. Load means complex nature, seriousness, urgency and method for its trial. Caseload is also called as workload. Key elements are allocation of judicial resources and cases.

Example: At some Taluqa places, if there are two courts. Ordinarily , the system for the allotment of case is to follow Odd and Even number. It means Odd number case is to be allotted to court No.1 and Even number of cases is to be allotted to Court No.2.

Caseload does not mean to allot cases equally . The caseload is nothing but to check the quality of each and every case . If the nature of cases of both courts is verified by qualitative method then the actual load of cases can be ascertain. It may show the real position of workload.

Example: It may be possible that, in court No.1 there would be more criminal cases under

section 66(1)(b) of The Bombay Prohibition Act. It is summary trial case. If the cases pending in court No. 2 are less in number but are regular criminal cases under Indian Penal code. For Regular criminal cases the procedure is warrant trial. It means the workload of Court No.2 is more.

Example: In a suit for declaration where the Will-deed is under challenge. Then the administrative judge has to decide for the allotment of such suit. It is expected that, complex suit to be allotted to the senior judges from that cadre.

Example: For civil suits also, it is necessary to check actual workload of that court. If most of civil suits at court no.2 are for the recovery of money. The civil suits pending in court no.1 are under The Specific Relief Act, The Partition Act. It means caseload at court No.1 is more than the caseload at Court No.2

Judge possess the skill to identify the nature of the case. Not merely due to legal knowledge or pleading but as per his experience , he can easily identify the complex nature of the case. Therefore the Administrative Judge who has to allot cases, he can easily ascertain the workload of cases. For that purpose , the data from the joint courts should be available . The Judge of the court has to send workload data periodically to the administrative judge. The above discussion shows that, the workload of court can be drawn by judge only. The manager may assist to collect statistical data. But actual mind has to be applied by the Judge only.

Following are some material points for caseload management :-

1) To verify physically the number of Pending cases in the court.
2) To verify the quality of the case, its type , nature and required method for trial.
3) To find out required staff to handle the cases.
4) Find out way to allocate cases properly to other courts.
5) To make a balance between the categories of cases.
6) It can ascertain the actual stage of the case and reason for pendency.

(iii) Judge (for his own court):

The National Court Management System speaks that, the planning system will include individual court development plans for all the courts[1].

Following are material tasks to be carried out by Judge for his own court :

1) He has to execute the plan or mission as directed.

2) He has to reduce backlog, identify the causes for delay in trials.
3) He has to co-ordinate with the working of court manager.
4) He has to regularly collect data for pending cases, its stages for pending. He has to prepare his own schedule for listing the cases in the future so that he could fix a target to reduce backlog and may give speedy justice.
5) Control to grant adjournments and to reschedule his own cause list.
6) Maximum use of Videoconferencing for the under trial cases and for that purpose to prepare schedules for such trial.
7) Concentrate towards ADR mechanism to motivate the parties to resolve their dispute.
8) For accomplishing the goals of any system or plan, he must make efforts to find out the necessary tools as provided in the plan or mission.
9) He has to control and monitor the cases throughout the life cycle of the case.
10) To monitor the unnecessary delay in court business .
11) He has to find out need of resources (including Human resources) to execute the plan/system.
12) He has to to find out need of a short-term court development plan and send the proposal to the principle district judge through principle/administrative Judge.

Use of CIS in Court Business: CIS is useful for court's all business process as it has covered life cycle, court circulars, rules and Court Manuals.

Following are example for an illustration of its use:

Example: When the user of CIS is open . It shows the undated cases pending in the court. There were 40 cases undated. On physical verification of cases and daily cause list , only 20 cases were dated (means data for next date was feed). Rest of 20 cases were not in the physical balance Sheet of the court. Those cases were checked at the master balance sheet of District Court/Taluqa place. Out of them, 10 cases were pending in other courts. Said data was corrected. But the rest of 10 cases were not traceable. Then the list for disposal off cases and record of disposal of cases were checked. Five cases were disposed off long before. It means data was not updated in CIS. For rest of five cases, the record from record room was checked. Cases were disposed off and were deposited in the record room. Thus the undated alert was complied.

Example: - Application for certified copies was pending wherein the name of the party (plaintiff) was different. The defendant was company. There were many cases pending against the said company. The applicant was illiterate. He failed to mention the correct number of the case. When the record was physically verified , it revealed that,during the pendency of the case the original plaintiff was died. His legal heirs were brought on record. The amendment was carried out . It means the data in CIS was not corrected.

Judicial Magistrate court have jurisdiction for attached police station area. In some of the police stations the workload observed is much more as compare to the other police station. Therefore the filing of criminal cases at court by the police station depends upon crime rate, rate of filing charge sheets, nature of crimes in that area, bail applications, Remand work, property disposal and other factors.

For civil judge, though pecuniary and territorial area is given but it also depends upon the type of litigations in that area. Speed to dispose off case depends upon the number of advocates in the Bar and their frequency to appear. Waiting period for litigants,witnesses etc.

Thus the CIS is a very useful tool to ascertain the workload of the court. The Judge has to supply information for the workload of his court to the administrative judge.

Case-flow Management: Previously there was system for physical verification of cases by quantitative method only at the interval of four months. The number of (physically) pending cases has to be counted. Then it has to verify from the physical balance sheet of the court.

Case-flow does not mean the flow of cases from institution to till disposal of cases only. Flow means continuous progression. It includes the flow of case trial for each case (independently).

Therefore, Case flow management is the supervision or management of the time and events necessary to move a case from initiation to disposition or adjudication. It includes management of the time and events necessary to move a case from the point of initiation (filing, date of the contest, or arrest) through disposition, regardless of the type of disposition. Case flow management is dependent upon time guidelines to provide the goals for reducing delay in case processing. Without such guidelines, the courts have no uniform goals for case processing and litigants and their advocates have no predictable, uniform time frames from one court to the next within which to expect their cases to be processed.

Therefore it is necessary to frame a case flow management plan that will be actively overseeing the progress of all cases filed in the courts.

The primary purpose of case flow management is to prevent delay in case processing and it is used to implement and maintain case flow management .It is necessary to find out the obstruction in that flow and way to dissolve such obstructions. It requires trial court performance standard plan.

Example: Group of complaints with prayer to reinstate in service were filed in the year 2009. There are 17 cases. The age of complaints was about 25 to 27 years old. In the year 2012 issues were framed. Since then the cases were pending for evidence because of adjournments.

Another group of 84 cases under the Payment of Gratuity Act was pending. Those were pending since year 2012. Since 2007, the applicants have been retired person.

At the point of priority ,it was discussed with counsel for both sides. There is a circular from superior court that, priority shall be given to the cases pending by/against senior citizens . Here the applicants in the group of cases for Payment of Gratuity Act were retired long before. There was a serious question about the future of the young complainants for their reinstatement in the service.

Both groups were kept for expeditious trial. But first priority was given to the cases young complainants. Both trials were fixed for the day to day hearing.

Thus it clearly shows that the case flow management is advanced and systematic method so that the trial schedule can be managed effectively. But such process requires commitment, continuous monitoring progress of cases to achieve the goals of the plan. It requires to fix schedule for the trial . There should be complete control over the entire pending cases. It requires good relations with the bar. While doing this it is necessary to keep in mind the difference between administrative independence and judicial independence.

Following are material points:

1. Check the balance sheet and take physical verification of cases by qualitatively and quantitatively.
2. Find out the reason for pending of the case. Reason for adjournments. It is nothing but to identify to ascertain , Who is causing delay ?.
3. Find out nature of case whether it is simple /complex cases.

4. Go through disposed off cases to ascertain for the reason for the delay in disposal of cases. It may be useful for framing baseline for trial of pending cases .
5. Verify the record for more disposal of certain types of cases. Eg. Plead guilty cases for petty offences.
6. Compare the reason for its delay in disposing within the prescribed time or as per plan.
7. Review the summons service practice, time for evidence recording and court business process.

Thus the judge has to monitor and control over the movements of all cases from its institution to till disposal. He has to prepare the schedule for time to decide the case as the effective case flow management is helpful to enhance due process and timeliness while reducing delays. Adjournments should be under control. He has to monitor such case flow through the CIS. Software developed by NIC known as CIS that displays the number of cases, its type etc.

The manager may help to submit statistical data but the judge is only person who possess judicial knowledge for the actual flow of cases and its seriousness. He can decide to give priority for deciding the case as per its seriousness without committing a breach of any circular issued by the superior court. For the reduction of trial time or early resolution of disputes, the judge has to take more efforts for effective use of judicial resources.

Time Management: For time management, it is necessary to calculate Judge Calender, Judge Year etc.

Following are material points :

1) From time management to decide number of cases on the daily board (cause list).
2) Time for recording evidence.
3) Time for granting adjournments.
4) Time hearing of the case.
5) He has to identify the complexity of case for effective management.
6) Time for case management.
7) Time for core functions and ADR. Time for the administrative work.

In time management, the time has to be managed for the case flow. It means time has to be scheduled so that, the trial of a case should flow smoothly. The manager may help in

collecting data and approximate calculation for them. But in fact, the judge has to manage his own time with the help of such approximate calculated time.

Access to Justice *:* It is necessary to ensure by the Judge that, the legal representative is available to plead or defend by the litigants. He should be continuously connected to Legal Services Cell and Court manager. The Secretary for Legal Services Cell may be busy in his planning for Lok Adalat, Seminars etc. Now the court manager is one of the best channel to remain in continuous touch/contact with the legal aid cell. Detailed information is available [4].

Example: If the accused made complaint of ill-treatment by the police. The police moved an application for police custody remand. Then it is necessary to see , whether the accused is represented through counsel or he desires to legal aid.

Access to justice is a main object of any system. For access to justice it is necessary to focus on the technology and strong leadership. It is necessary to encourage to improve and develop e-courts, e-filing and use of modern technology from all fields . Judges and court staff should actively work together to find ways of improving communication to deal with specific problem areas or issues that are in need of reform. Therefore Judge has to regularly review the execution of plans for his own court , so that he could identify the needs of resources, gaps in the service delivery system, problems of stakeholders.

Leadership by Judge: Judge is a leader of his own court. So he should possess the ability to influence a group toward the achievement of goals. He may use his power for the success of the missions. Now due to coordination with court manager, the judge may use more advanced methods for playing role as leader. There are various theories of leadership , like Great Man Theory, Trait Theory, Behavioral Theories, Participative leadership, Situational Leadership, Contingency Theory, Transactional Leadership, Transformational Leadership. There are assumptions, description and implication for each theory.

There are lady Judicial officers also. Both are effective leaders and are committed to the judicial system. So on this aspect more study is necessary.

Few examples for court management are also discussed in the pilot project [24].

C) E-Court System Monitoring :

(i) Principle District Judge :

As per the e-court plan , the following are the responsibilities of the Principle District Judge:-

1) The district court e-court committee to perform overall monitoring of the project under supervision of the Principal District Judge.
2) The court staff, technicians, vendors and other agencies to act as per the direction of the Judge. The other agencies would work as per the directions and supervision of the e-committee[5].
3) He has to monitor the compliance of IT systems of the court with standards established by the High Court and its full function.
4) He has to Send the proposed National Arrears Grid to be set up to monitor the disposal of cases in all the courts , as and when it is set up.
5) He has to monitor the maintenance of computer system and other electronic instruments properly.
6) He has to monitor the actual working of Judicial service center.

(ii) Principle Judge at Taluqa Places/ Administrative Judge at District Place:

The Taluqa court team to perform the various tasks of monitoring the project implementation at the Taluqa Level as per plan [5]. He has to monitor the maintenance of computer system and other electronic instruments properly. He has to monitor the actual working of Judicial service center.

(iii) Judge (for his own court):

1) He has to monitor the maintenance of computer system and other electronic instruments properly from his own court.
2) He has to monitor the actual data supplied for working on the Judicial service center.
3) He has to identify the court staff who possesses technical knowledge useful for the e-court system.
4) He has to identify the court staff that possesses the skill and capabilities to execute the e-court system more effectively.

D) How to Monitor the e-court System: System maintenance is a very important responsibility over the judge. Unless the system runs properly, it can not be monitored properly. Daily monitoring may require maximum ten minutes time.

Material Points for System Monitoring:

1) To read e-court mission plan, court mission plan and read CIS Manual.
2) Judge has to read the User Manuals for Hardware and software for relevant

electronic instruments.

3) To check the user for the court and its Internet connectivity. Regular monitoring of the system working with network connectivity.
4) Check desktop that specifies data feeding, data for undated cases, old cases etc. with alert flag(the CIS software has provided automatic system monitoring for court business and process like Regular data feeding and updating ,Regular monitoring for the backlog and the reason for pendency) .
5) Check whether judgments are uploaded .
6) Check data feeding for amended pleading/address of the parties.

The actual reason for non feeding of data is known to the court staff and Judge has direct control over the working of court staff. The court manager has also responsibility to monitor the task. But he can collect statistical data only. Therefore , there is need of documentation showing that the implementation of the guidelines is being monitored with a checklist. The documents should show the achieved output. Manager to take effective steps to improve regular scheduling and monitoring[6]. Detailed information for the project monitoring is already provided by NIC at webstie[7] [5]. The current position of district court information is available at http://lobis.nic.in/ .

E) Assistance from the Court Manager:

The duties and responsibilities for the court manager [**2**] shows that the court manager is a professional person so there should be co-ordination and good relations between the judges,court staff and other stakeholders. The responsibility of the manager speaks that, he has to play a role in both plans and to co-ordinate with court staff and other stakeholders. His work is just like a catalyst to give speed to the entire system by providing his professional knowledge in management.

The responsibilities of court manager also speaks that :-

(XII) Without prejudice to the generality of the foregoing sub-rules,-

(1) The High Court and Principal District Judge, with the prior approval of the High Court, may prescribe the duties of the Court Manager , by general or special order, from time to time and likewise , may provide for the subordination of , and internal relatively amongst, the staff of the district Court viz-a-viz Court Manager.
(2) The High Court and Principal District Judge may further specify, modify, add to or

delete from, the duties of the Court Manager, from time to time[2].

the court manager for the effective management of both missions. It is necessary to give duties to the court manager so that it creates a healthy environment to maintain his relations with stakeholders[8].

(F) Trial Monitoring: For trial monitoring , it is necessary to set trial monitoring program because , it may contribute to enhancing the knowledge of judges, prosecutors, counsel and other stakeholders . It should contain, Purpose, objectives, methodology, time to implement it. There are a number of methods for trial monitoring. It gives opportunity to the manager to make team of court staff for workload management . On this aspect more detailed study is necessary.

The centralized registration for newly instituted cases at Judicial Service Center will be helpful for caseload management.

SUGGESTIONS:

Monitoring court by Principle District Judge: For monitoring the court working with judges , it is better to fix CCTV. The principle district judge may monitor the dais timing of the judges. Such recorded Compact Disc would be available so that the principle district judge may watch it at any time.

Evidence Recording: - Audio Voice Recording is necessary to save the time for recording evidence.

Trial on Video conferencing: It is necessary to keep records of trials conducted through videoconferencing.

For Human Resources and Succession :Succession planning and management is necessary to achieve the goals of both missions.

Training: Training for Information Technology relating to maintenance of e-court, court administration, court-room management is necessary to Judges.

At present there is no provision of training to the court staff in the court business. According to me, only judges or senior court staff member can play a good role of trainer to the court staff. Therefore it is necessary to give training to court staff at district level.

Additional Suggestion in Administration:

1) Uniform policy for Promotion & Transfer of court staff applicable to all districts .

2) If the website of the High Court is regularly checked. It shows that, there is a good

administrative system at High Court. It has responsible judicial officers with sections like Inspection, Vigilance, Judicial, Personnel, Legal & Research, Finance & Budget. The judicial officers are responsible for the working of those sections. There is system to maintain accurate and accessible records. They take every caution for entering data in the system. There is regular monitoring, review for all alerts. There may be a good system for effective communication to supply material information. They always ensure that problems are not overlooked. It is good a example for strong administrative control.

The above good administrative system is already available. If it is possible to apply to district court then the judicial officer will be responsible for each section. However more study is necessary for adopting the above administrative system wherein it is also possible to construct the court staff portal.

CONCLUSION:

The active participation in court management may facilitate the development of the management system and methods to monitor the execution of the mission / plan. Computerization and court manager is not substitute to the mind of the judge. But with the help of the computer and court manager , it becomes easy for analyses data, monitor the progress and improve in court management.

Thus both plans shows that, it is expected that , courts should be seen as a an organization. Any system should run and developed with the help of Judges, court staff, professional managers and all stakeholders. The principle district judge has to play pivotal role in court management with the adequate support from all stakeholders.

Each judge must be competent in using the CIS . The use of CIS is the key element in the positive improvement of in the administration of justice. Most of the court management works have to be carried out by the judge, as it requires a judicial mind. The judge has to apply his judicial mind in cases from his court.

A judge may possess less managerial training like a professional manager but he is controlling authority for his own court.The court manager is not for the comfort of the judge. Manager has to assist to the Judge by applying his professional knowledge to make the business process fast and as desired by court management mission/plan or system. Therefore choosing the right people to be court managers is very important factor .

ABBREVIATION:

CIS : Case Information System

CDP : Court Development Plan

CCTV : Closed-circuit television

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IN THE SUPREME COURT OF INDIA

1. **Imtiyaz Ahmad v State Of Uttar Pradesh & Ors**

Decided on: 01 February 2012
(2012) 2 SCC 688
Criminal - Practice & Procedure - Code of Criminal Procedure, 1973, ss. 482 and 397 - Registration of FIR - Stay orders - Sustainability - Magistrate directed for registration of case filed against respondent - FIR was registered, HC passed stay order on application filed by respondent - Investigation, framing of charges or Trial remained pending for a long period of time - Whether Stay granted by HC was sustainable- Held, authority of HC to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases was unquestionable, but exercise of that authority carried with it responsibility to expeditiously dispose of case - Power to grant stay of investigation and trial was a very extraordinary power given to HC and same power was to be exercised sparingly only to prevent an abuse of process and promote ends of justice - It was true that SC had no power of superintendence over HC as HC had over District Courts u/art. 227 of Constitution, like SC, HC was equally a Superior Court of Record with plenary jurisdiction - Under Constitution, HC was not a Court subordinate to SC, SC, however, enjoyed appellate powers over HC as also some other incidental powers, but as last court and in exercise of SC's power to do complete justice which included within its power to improve administration of justice in public interest, SC laid down guidelines for sustaining common man's faith in rule of law and justice delivery system, both being inextricably linked - Matter referred to larger Bench for further consideration on recommendations of Law Commission - Appeals disposed of.

2. **All India Judges Association and others v Union of India and others**

Dated: 2 August 2018
Interlocutory Application No. 279 of 2010 in Writ Petition (Civil) No. 1022 of 1989

This interlocutory application basically relates to infrastructure of the courts especially in subordinate courts. A detailed order was passed on 24.01.2011 which pertained to various projects of court buildings, residential quarters and all other aspects. On 04.04.2011, the following order came to be passed:-

"By our Order dated 21st February, 2011, we had directed States of Maharashtra, Gujarat and Uttarakhand to answer five questions, which, for the sake of brevity, are reiterated hereinbelow:

[1] Since when Proposals/Projects are pending and reasons why they have not been cleared till today?

[2] For how long and why Proposals pending for acquisition of land have not been cleared by the Collectors?

[3] Why Government lands, which are available, are not being urgently made available for Court Buildings and Residential Quarters?
[4] What steps are being taken to expeditiously complete Projects which are under construction?
[5] How many pending Proposals would receive administrative and financial sanction during the next Financial Year?
States of Gujarat and Maharashtra have sought time to put in their response. Request is granted. Hence, four weeks' time is granted. No further adjournment will be granted.
As far as State of Uttrakhand is concerned, we have examined the affidavits filed on 1st April, 2011. The affidavits are vague. The State of Uttarakhand was required to answer each of the above five questions project-wise and format-wise but they have not done so.
In the circumstances, we direct the State of Uttarakhand to file a proper detailed and accurate affidavit to the questions posed. In addition, we direct the State to answer those questions project-wise and format-wise.
We may further add that vide Order dated 24th January, 2011, we had requested various States, including States of Gujarat, Maharashtra and Uttarakhand, to furnish details of the nature of the work, the place at which the project is located as well as the amount to be spent in respect of each of the project. Pursuant to the said order, we had also forwarded the requisite format in the form of Annexures I and II to all the three States. Since we are adjourning the matter by four weeks, we also direct the States of Uttarakhand, Gujarat and Maharashtra to give details duly filled in the formats Annexures I and II.
Place the matter on 9th May, 2011."
Thereafter, the matter was listed on many an occasion but it stood adjourned. In the meantime, it has been brought to the notice of the Court that there has been progress in the field of infrastructure inasmuch as the court projects (court rooms) have been constructed and other steps have been taken. But there are certain other spheres where immediate attention is required so that things are set right.
A sound infrastructure is the linchpin of a strong and stable judicial system. The responsibility for securing justice to the citizenry of our country rests upon the judiciary which makes it imperative upon the State to provide the judicial wing the requisite infrastructure commensurate with the constitutional obligation of the judiciary. It needs to be understood that without a robust infrastructure, the judiciary would not be able to function at its optimum level and, in turn, would fail to deliver the desired results.
The court development plan should comprise of three components - a short term (or annual plan); a medium term plan (or a five year plan); and a long term plan (ten year plan). The annual plans so prepared shall be incorporated into the five year plan which, in turn, rolls into the ten year plan. While focusing on judicial infrastructure, due regard has to be given to adequate and model court building, furniture, fixture, judges chamber, record/file storage, adequate sitting and recreation arrangement for staff and officers, sitting/waiting room for litigants and bar members, latest gadgets and technology. In other words, the core factors in the design of a court complex must reckon - a) optimum working conditions facilitating increased efficiency of judicial officers and

the administrative staff; b) easy access to justice to all and particularly to the underprivileged, persons with disability, women and senior citizens; c) safety and security of judges, administrative staff, litigants, witnesses and under-trial prisoners. The court complex must consist of: -

I. COURT BUILDING

- Court rooms
- Judges' chambers
- Judges' residential complex
- Litigants' waiting area
- Administrative offices
- Conference Hall/Meeting Room
- Video conferencing rooms
- Mediation centre/Legal Services Authority
- Common rooms for male/female staff
- Staff canteen
- De-stress rooms for male/female staff
- Office space for Government pleader/Public prosecutor/Advocate General/Standing Counsel for Union of India with separate cubicles for conducting conferences and including space for accommodating their Secretarial staff and files
- Support facilities like ramp, creche, etc.

II. SPACE FOR LAWYERS/LITIGANTS

- Bar rooms for ladies and gents
- Consultation rooms and cubicles
- Stamp vendors and notary public/oath commissioner/typist/photocopy/business centre
- Library
- Canteen for lawyers and litigants
- Facilitation counter for litigants/visitors
- Support facilities

III. FACILITY CENTRE providing for common facilities for functioning of the complex unrelated to courts such as bank, post office, medical facility, disaster management, etc.

IV. UTILITY BLOCK for accommodating the utility services such as A.C. plant, electrical sub-station, DG set/Solar panel, STP, Repair workshop, storage, garage, etc.

V. JUDICIAL LOCK-UPS.

VI. STRONG ROOM FOR RECORD PRESERVATION.

VII. ADEQUATE PARKING SPACE for judges, lawyers, litigants and other visitors.

VIII. IT INFRASTRUCTURE FOR COMPUTERISATION AND eCOURTS

The finance needed for court infrastructure should be ideally placed under the head of planned expenditure which will be more specific, better managed and obviate any cut by the Governments. The budgeting must be from the demand side and cannot be from the supply side.

Apart from what we have stated above, we think it appropriate to issue the following directions which are the most fundamental and vital features to be provided at the earliest in all court complexes:-

(i) Basic amenities such as adequate seating space for litigant public as well as lawyers, sufficient waiting area with seating arrangements, proper lighting and electricity, functional air-conditioning/air-cooling/heating, accessible clean drinking water with Reverse Osmosis (RO) facility, clean and hygienic washrooms separate for men, women, transgenders and physically handicapped persons, kiosk and functional canteens selling beverages and eatables at nominal rates, preferably managed by court staff are some amenities and facilities which ought to be ensured at court complexes throughout the country. If these are missing in our court complexes, it would be an appalling situation which requires immediate rectification.

(ii) We must further ensure that all our court complexes are conducive and friendly for the differently-abled and towards this end, the Court complexes must have certain features for the benefit of the vulnerable persons such as persons with disability or visually impaired persons. We have to move from disabled friendly buildings to workable and implementable differently-abled friendly court infrastructure. Ramps for such categories of persons must be operable, feasible, tried and tested. Such ramps should definitely have steel railings and handles. The court infrastructure must also keep in view the accessibility for visually impaired persons and, therefore, court complexes must have tactile pavements and signage in braille for the benefit of visually impaired citizens. That apart, for ensuring easy movement of common citizens in the court complexes, there must be maps and floor plans of the entire court complex at entry and exit points and visible signage and directional arrows with colour coding throughout the court premises.

(iii) For saving the litigant public and other citizens from running one end to the other without any guidance in the Court complexes and for assisting them to reach their desired place, it is necessary that all court premises must establish a working and fully operational help desk at major alighting points with trained court staff to brief and guide the citizens about the layout of the court premises.

(iv) Court premises must also have sufficient number of functional electronic case display systems for litigants and lawyers with the feature of automatic update in every ten seconds.

(v) With the increase in motor vehicles, including cars and two-wheelers, it is imperative that court premises have sufficient and proper parking space to ease vehicular traffic and avoid crowding. All upcoming court complexes must have provision for both sufficient underground and surface parking facilities segregated into four broad categories - for judges, court staff, lawyers and litigants. As far as the existing court complexes are concerned, the possibility and feasibility of constructing underground or multi level parking facilities must be explored.

(vi) The court premises must have easy access at both entry and exit points. End to end connectivity of public transport systems must be ensured for court premises by starting feeder bus service and other dedicated transport services between major public transport points and court complexes. Access to justice will forever remain an illusory notion if access to courts is not ensured.

(vii) Court premises must be armed with better crowd management arrangements along with adequate security measures. It has been seen, time and again, that at the time of court proceedings

of cases which are well covered by the media, the crowd management in court premises runs into utter chaos. Measures must be taken to ensure that whenever court premises are thronged with heightened crowds, there is smooth ingress and egress of both vehicular traffic as well as citizens in the court premises.

(viii) Creche facility at nominal rates for toddlers, falling within the age group of 6 months to 6 years, of lawyers, clerks of lawyers, bar association staff and officers and employees of court registry must also be constructed. The said creche facility must not be just for the namesake, it has to be both functional as well as effective with proper space and equipment such as baby proofing and other toddler-friendly provisions. That apart, the courts should have a proper atmosphere for children and vulnerable witnesses.

(ix) Professionally qualified court managers, preferably with an MBA degree, must also be appointed to render assistance in performing the court administration. The said post of Court managers must be created in each judicial district for assisting Principal District and Sessions Judges. Such Court Managers would enable the District Judges to devote more time to their core work, that is, judicial functions. This, in turn, would enhance the efficiency of the District Judicial System. These court managers would also help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective judges for rectifying the same. The services of any person already working as a Court Manager in any district should be regularised by the State Government as we are of the considered view that their assistance is needed for a proper administrative set up in a Court.

(x) Adequate residential accommodation for judicial officers and court staff is another infrastructural aspect which requires immediate attention. The productivity of judicial officers and court staff who are not provided with residential quarters in and/or around the court premises gets negatively hampered. Thus, residential accommodation in proximity of court complexes for judicial officers and court staff must also be provided.

(xi) There shall be solar power installation in each of the district court premises initially and thereafter, the same should spread to all other courts.

(xii) Keeping in view the obtaining scenario, CCTV cameras should be placed at proper locations within the court complex.

(xiii) To enhance the quality of speedy justice, video conferencing equipments and connectivity to jails shall be provided at the earliest.

(xiv) The district court complex should have a dispensary with adequate medical staff and equipments.

It is clear that judicial infrastructure not only needs attention and budgeting but also effective utilization of the funds towards specific and proper ends so that the primary goal of access to justice for all is realized. Prompt measures are to be undertaken and procrastination in these matters cannot brook delay where Rule of Law is supreme.

Let a copy of this order be sent to the Chief Secretaries of each of the States by the Registry requiring them to constitute a committee of which the Secretary of the Department of Law should be a Member to formulate the development plan as per the directions issued by us and present the

status report so that further directions can be issued. The committee shall invite an officer from the High Court to be nominated by the Chief Justice of the High Court. Copies of the order passed today be sent to the Registrar Generals of all the High Courts.

3. Ramrameshwari Devi And Ors v Nirmala Devi And Ors.

Decided on: 04 July 2011
(2011) 8 SCC 249

Civil Procedure - Code of Civil Procedure, 1908 - Whether the prevailing delay in civil litigation could be curbed? - Held, Court suggested few steps by which existing system could be drastically changed or improved if those steps were taken by the trial courts while dealing with the civil trials - Steps were; (i) trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties immediately after civil suits were filed; (ii) Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act; (iii) imposition of actual, realistic or proper costs and or ordering prosecution for introduction of false pleadings and forged and fabricated documents by the litigants; (iv) Court must adopt realistic and pragmatic approach in granting mesne profits; (v) courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders; (vi) litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished (vii) no one should be allowed to abuse the process of the court; (viii) principle of restitution be fully applied in a pragmatic manner - Appeals disposed of.

4. Surjit Singh and others v Gurwant Kaur and others

Decided on: 27 August 2014
(2015) 1 SCC 665

Civil Procedure - Code of Civil Procedure, 1908, O. 41 r. 27 - Additional documents - Admissibility - Respondent No. 1 filed civil suit for specific performance of contract entered into between him and the appellant No. 1 for sale of land - Suit was dismissed - Appeal was filed - During the pendency of the appeal, the appellant filed an application under O. 41 r. 27 of CPC for production of pass books and the statement of bank accounts as additional evidence - Additional District Judge held that the evidence being in nature of documentary evidence and being admissible, it was appropriate to allow the same - Single Judge declined to interfere with said order - Hence, instant appeal - Whether when such an order passed by the Trial Judge had been affirmed by the HC in exercise of supervisory jurisdiction, would it still be permissible from the view of

propriety on the part of the First Appellate Court to accept the documents in exercise of power under O. 41 r. 27 of the CPC -

Held, documents are not so clinching to be accepted as additional evidence in exercise of jurisdiction under O. 41 r. 27 of the CPC. Therefore, appellate court erred in taking recourse to the said clause and allowing the application for taking additional evidence and similarly the HC committed illegality opining that the order passed by the lower appellate court does not suffer from any infirmity. Appeal allowed.

Ratio - When documents are not so clinching to be accepted as additional evidence, jurisdiction not to be exercise under O. 41 r. 27 of the CPC.