

**elitigation: the paperless court**  
 The impact of electronic documents on litigation and the implication for lawyers

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**What is the impact of electronic documents on litigation?**

- » efilng of court documents & accessing cases – Federal court
- » UCPR rules – stage one uniform court rules, stage two implementation of Courtlink the computer case management system for the Supreme, District and Local Courts efilng in local, District and Supreme Court
- » pre-trial directions and simple interlocutory motions to occur electronically
- » The paperless court - eCourt hearings

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**Steps to a paperless court room**

- » Discovery process – documents discovered electronically in databases
- » eCourt book/etender bundle for hearing hearing
- » eCourt room for hearing – computers

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## Why do we need paperless Courts?

"Mega-litigation" involving many parties & vast amounts of material, eg:

- » Seven Network Ltd v News Ltd:  
589,392 pages in discovery; 115,586 pages into evidence; 5000 pages submissions; 9,530 pages transcript
  
- » Idoport Pty Ltd v National Bank Ltd:  
over 15,000 pages of transcript before case dismissed; 868 pages of affidavits and 33,572 pages of exhibits just on costs application

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## IT issues

- » Scanning and coding of documents into electronic database
  
- » May need specialised IT forensic assistance
  
- » Use of same technology with other parties
  
- » Setting up court room at parties' expense

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### Discovery process – database/casebook

- » Process of listing documents relevant to the issues in dispute
- » Each party allowed the opportunity to inspect opposing party's documents prior to hearing
- » Ediscovery is the process of scanning documents into database and entering information about each document into the database for easy retrieval

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### Steps for discovery/casebook process

- » Collect documents & liaise with IT lit support to collect electronic data
- » Import electronic raw data into Casebook & barcode
- » Barcode hard copy documents
- » Scan hard copy documents
- » Enter data into fields for each image/document

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### Discovery process - casebook

- » Web-based program that can be accessed from anywhere
- » The data fields and the text on images are fully searchable
- » Documents or parts of them can be redacted using redaction tools

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## Features of Casebook

- » It has a stored list function – allows easy reproduction of a list or index
- » Allows easy identification and collation of documents by “issues”, “witness” etc in preparation of tender bundles
- » Enables you to build chronologies
- » Easy to export into an electronic Courtbook for an electronic hearing

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## Court practice notes

- » NSW SC use of technology– PN SC Gen 7 as a general rule Court expects that consideration given to using technology for discovery where more than 500 documents
- » NSW SC – PN SC Eq 3 – Commercial List. Practitioners to consider electronic discovery or tender bundles

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## Litigation

- » Practice Notes issued by the courts encourage the use of technology in the management & conduct of hearings
  - Supreme Court of NSW Practice Note 127
  - Supreme Court of Victoria Practice Note 1 of 2002
  - Supreme Court of QLD Practice Note 8 of 2004
  - Federal Court Of Australia Practice Note 17

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## Court practice notes (2)

### Federal court – Practice note 17

- » Guidelines for the use of information technology in litigation in any civil matter
- » Consideration to be given to use of technology when over 500 documents, parties to consider and attempt to agree on arrangements for electronic documents

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## Features of electronic courtroom

- » Use of electronic documents on computer monitors rather than paper documents
- » Facilitates large quantities of edocuments
- » Real time transcript

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## C7 E-court



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## What are the implications of electronic courtroom for lawyers?

- » IT issues – need expert IT assistance
- » Expense vs convenience – not cost efficient in smaller matters
- » Faster production and analysis in large documentary cases involving many documents

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## Costs of mega litigation

- » Seven Network Ltd v New Ltd
  - legal fees \$150 million to \$200 million
- » Idoport v NAB
  - \$61 million costs awarded by Einstein J to plaintiff plus interest

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## Evaluation

- » Electronic courtrooms facilitate large cases but have not resolved issues arising in mega litigation
- » Courts and practice incorporating much more use of electronic courts and other processes, however, not cost effective in smaller cases

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## Evaluation

Seven Network, per Sackville J at [4]:

“Electronic trials have many advantages, but reducing the amount of documentation produced or relied on by the parties is not one of them.”

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Thank you

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