

Computerised legal data bases

Something useful, or a gimmick?

— R.H. Macready

During the past year a number of computerised legal data bases have become available to members of the Bar.

Judging by the number of subscribers to some of these services it would appear that members of the Bar still regard such systems with reserve, or perhaps, scepticism. This may not be unusual given that in general members of the Bar tend to be conservative.

Unlike many solicitors, members of the Bar do not appear to be computer literate and there is no widespread acceptance by the Bar of the use of computers for usual and commonplace functions like word processing and accounting.

To consider the question posed by the title of this article it is first necessary to look at the type of information that is available at the moment on computerised legal data bases. Then consideration can be given as to how this information is accessed and the problems which spring to mind given the nature of the information available.

In Sydney there are a series of data bases presently or soon to be available. These include:

- (a) CLIRS
- (b) Estopl
- (c) Overseas data bases
- (d) Miscellaneous data bases.

I will deal with each of these in turn.

(a) CLIRS

This is currently the most extensive of the data bases that might be of interest to barristers in their everyday practice.

It comprises a range of data bases some of which are of more interest to solicitors than barristers. It contains, for instance, data bases which have details of mineral and geological surveys kept by the Department of Mines. The data bases maintained within CLIRS that are most likely to be of interest to barristers include the following:

- (i) Commonwealth Acts
- (ii) Commonwealth Law Reports
- (iii) New South Wales Acts
- (iv) New South Wales Principal Acts and Reprinted Acts
- (v) New South Wales Law Reports
- (vi) New South Wales Unreported Judgements
- (vii) New South Wales Supreme Court Practice Notes
- (viii) Victorian Acts
- (ix) Victorian Principal and Reprinted Acts
- (x) Victorian Law Reports
- (xi) Victorian Unreported Judgements

As the method of searching these data bases involves the scanning of the text of the data base to look for words or groups of words it is important, in order to

judge the usefulness of the data base, to know precisely what text has been incorporated for any given sets of reports.

By way of example the CLIRS data base for Commonwealth Law Reports at this stage contains the head notes of cases reported in Volume 1 to 127 and the full text of cases reported in Volumes 128 to 147 Part 3.

The New South Wales Law Reports presently contain the full text from Volume 65 State Reports (NSW) to Volume 72 State Reports (NSW) and the New South Wales Law Reports from 1971 to 1984 Volume 2 Parts 1 to 3.

The Victorian Reports at present comprise the full text of the reports from 1969 to 1985 and certain reports from 1957 onwards.

The process of adding further parts of the New South Wales and Victorian Reports is continuing. It has been indicated that the data base will be extended to the law reports of other States of Australia subject to satisfactory negotiations with the States concerned.

(b) Estopl

Most barristers will be aware of the regular monthly printouts of the looseleaf service of Estopl which digests unreported judgements.

Estopl also provides an online service to search this facility by means of a computer. This has the benefit of having the most up to date information, i.e. the search can be made to include the most recent additions to the data base which may not yet be in the last reprint of the Estopl information.

Recently there has been an announcement that this data base is to be extended to allow a linking of Commonwealth Law Reports to English authority, i.e. one can, by searching the data base, find out whether the High Court has considered a particular English case and if so obtain the reference to the High Court case which considered it.

This data base is also in the preliminary stages. It presently extends back to Volume 64 of C.L.R. It is intended to extend this further to Volume 40.

(c) Overseas Data Bases

Various statements have been made about the possibility of linking through CLIRS into data bases in Europe.

It was proposed that through CLIRS access would be had to the Eurolex data base which contained information of United Kingdom reports. From what little information is available the possibility of this happening is somewhat uncertain at the moment.

Apparently the data base has been acquired by an American data base operator and transferred to America. Whether access will be able to be obtained to

these overseas data bases through CLIRS will have to wait the outcome of discussions between the various operators. No doubt announcements will be made by them as soon as agreement is reached.

Recently Butterworths have made available in Australia the Lexis data base which has full text access to a large number of U.K. cases (53,000) back to 1945. These cases are from the usual reports and a large number of specialised reports.

They include recent unreported cases. There is also access to various specialised topic libraries and English statutory information. Certain European data bases are available and importantly it also gives access to the Lexis data base in the United States.

This has been in operation for some years and is extensively used in the United States. It includes a wide variety of United States legal material and reports.

(d) Miscellaneous Data Bases

There are other data that are available to anyone who has the appropriate hardware to communicate with the data base.

An example of this type of data base is that provided by Aussinet and CCH which is a listing of a large number of articles dealing with taxation matters.

The data base does not provide the full text of the articles but is a bibliographical list of articles, whether they be in accountants' journals or otherwise, dealing with tax matters. It enables one to search for articles on given taxation subjects or for articles dealing with given sections of the Income Tax Act.

From what little has been said above it would become apparent to a reader that the method of searching in a data base must be substantially different to that currently employed by members of the Bar in their traditional research techniques.

The computer has the ability to be able to scan large amounts of text in order to find occurrences of given words or numbers. This ability is the key matter which is utilised in legal data base searching. The effectiveness or completeness of the search will depend on two factors.

These are:

1. The appropriate choice of words to be searched; and
2. The extent of the data base available for searching.

So far as the first factor is concerned the appropriate choice of words to be searched is a skill which can only be acquired through training and practice. CLIRS offer detailed training seminars which are of great assistance in achieving a basic level of skill in searching techniques.

It is not the purpose of this article to discuss in detail the various searching techniques which can be used to search any given data base.

It can be said, however, that the technique involves quite a different approach to standard research techniques and also requires skill on the part of the person carrying out the search. The skill level required assumes a detailed knowledge of legal principles and the method of expression of legal principles by the courts in order to pick the right words for the search.

For this reason such searches would normally have to be carried out by the barrister himself. It is not a question of being able to ask a secretary to make some simple entries on a keyboard to carry out the search.

The equipment needed to access a data base does not have to be complex in the sense that any person can operate it with the minimum amount of training.

In general the equipment would, if one were purchasing equipment to install in one's own chambers, comprise (i) a terminal which consists of a keyboard and a screen, (ii) a modem which allows the communication between the terminal and the data base and (iii) a printer.

The communication medium for such equipment in the Sydney area is via Telecom telephone lines and it is desirable to have a line specially installed for this purpose.

Such equipment if it were to be installed by an individual barrister would normally cost between \$3000 and \$4000 and can be installed without any great difficulty. Points to watch include the following:

- (1) Telephone lines should be separate lines not passing through a switchboard.
- (2) The rate of communication through the modem to the data base is important. The equipment should have the capability of communication at 1200 BPS on a full duplex basis. Although equipment is available at 300 BPS and is somewhat cheaper, this is not suitable for CLIRS and in any event because it operates at a slower rate the costs in the long term of searching data bases would outweigh the initial capital savings.
- (3) It is worth checking specifically with CLIRS or other data bases whether the equipment proposed to be bought will be compatible.

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Some word processing systems which may be installed by groups of barristers can also have the capability of communication with data bases.

This requires a system which has the software for communications, a modem and a printer which is capable of receiving and printing at the rate of the data transfer, normally at least 120 characters per second.

It should be noted, however, that for some systems the cost of the software to give the system the ability to communicate with a data base may outweigh the costs of a single installation using merely a simple terminal, modem and a printer.

Whether the facility to communicate with a data base is had by one barrister or by a group of barristers a useful factor in the way they operate is that each individual person has his own account with the data base.

This account is safeguarded by certain passwords which are changed at regular intervals and all charges for searching the data base are sent direct to that person. The passwords ensure that a system cannot be readily abused.

There are a number of areas that spring to mind when one is considering the present usefulness of these computerised data bases. These are as follows:

1. The size of the data base.
2. The cost of using such data bases.
3. Whether the data base will replace the conventional legal library.
4. Whether the data base's greater currency requires that it must be used.

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5. The misuses of such data bases by over extensive citation of cases.

I will deal with each of these in turn.

1. The size of the data base.

From the short review of the data bases mentioned above it is apparent that the extent of the information presently available on the data base in no way approaches the amount of information normally available through conventional searching methods such as the Australian Digest system. That Digest covers reports from many courts in all States of the Commonwealth.

At this stage CLIRS data base falls far short of this. This does not mean however that it cannot be successfully used at this stage.

For instance the Commonwealth Law Report section of the CLIRS data base would enable one to very quickly search and see all the subsequent references by the High Court to an earlier case it had decided.

When one carries out a task such as this one can view the results of the search on the screen of the terminal and at the same time print out the results on the printer so that one has a permanent list of the cases which have subsequently considered the given earlier case in the Commonwealth Law Reports.

In addition one can use special features available to jump from report to report to look at the particular passage where the earlier case is referred to in order to form a view as to whether or not it is likely to be of interest.

In this respect the searching time may be far shorter than the time taken searching through the Digest and looking at individual reports to try to see the relevance of any particular case that has commented on an earlier case. The present state however of the extent of the data base available for searching indicates that it is not yet in any sense a replacement for the standard means of researching a topic.

2. The cost of using such data bases

The searching of computerised data bases is not cheap.

Normally there may be charge for logging on to the system and thereafter charges are based on the time spent actually connected to the data base. The charges for CLIRS start at a base of \$100 per hour if only one hour of searching is done per month and reduce substantially if there is more use of the system than one hour per month.

However these costs for an individual barrister can represent a substantial item of expenditure. It does of course encourage one to carefully plan out the area of the search and the terms to be searched before using the terminal to access the computer.

The other area where costs are important is the time involved in copying out information from the data base. By this I do not mean the actual results of a search which would normally list the cases referred to, but where one sought to have copied from the computer data base the terms of an Act or the full text of a case.

This would involve quite some time and expense if one were to access the hard copy of the materials being searched by having them printed out from the computer.

There may of course be times when this is necessary, for instance a New South Wales barrister might well wish to have copied out details of an A.C.T. Regulation or Act or part of a Victorian Statute if he needed it urgently. However, as mentioned, it is a factor which will substantially affect the cost of using the service.

3. Whether the data base will replace the conventional legal library

The question involves a consideration of the respective roles to be played by both standard law libraries and by computerised legal information retrieval systems.

Given that a good library today costs somewhere between \$5000 and \$10,000 per annum to maintain, the additional costs imposed in also accessing a computerised legal data base must give rise to the question as to whether one or both are necessary.

The costs involved in accessing computerised legal data bases are substantial and accordingly they are not suited to a careful and lengthy consideration of any given piece of written material.

Accordingly, having found via a computerised legal data base the case that one thinks governs the point there is always the need to be able to sit down and consider the case at length. Certainly it can be done by the computerised legal information system either printing out the case or by viewing it on the screen, but this becomes too expensive.

It seems therefore that one is bound still to have access to a library of law reports and statutes. Apart from the question of the consideration of the report for preparation of an argument there is also the necessity to have the written material for citation to the court.

While on this subject a current problem ought to be mentioned, that is that access is normally had over Telecom telephone lines. There quite often is interference on these lines which affects the quality of the reproduction of the material obtained from the data bases. Although not normally such as to render it inaccurate, it is annoying and may require a repeat transmission of some parts of the information.

4. Whether the data base's greater currency requires that it must be used.

One thing to note about the systems now developing is that there is access to very recent up-to-date listings of unreported judgements.

Given that these are now available even say to all members through the equipment provided by the Bar Association in the Bar library, it may well be that the ordinary standards of prudence in advising or preparing for a case will require that one should use these means of access in order to have properly carried out one's duties in researching a given subject before advising or presenting an argument in court, i.e. the very availability of the most up-to-date information may increase the level of care which is expected of barristers in researching problems.

5. The misuse of such data base by the over extensive reporting or citation that are necessary in cases.

There is with any system which allows an easy reproduction of a large number of cases commenting on a specific topic the danger of quoting large numbers of



cases to a court in the support of a proposition. Such cases may well only have marginal relevance on the point at issue.

Because of the ready availability of the large number of cases which tends to occur from the use of a computerised legal data base, greater care will have to be exercised by barristers in the way in which they cite cases in support of propositions put to the courts.

Although as mentioned a legal data base may encourage access to a greater number of cases, it should not be considered the sole cause of the extensive citing of slightly relevant judgments to support propositions.

This already exists as a problem because of the ever increasing volume of reported decisions. As always care will be needed to restrict cases to only those that elucidate the principles in question.

If one were to return to the heading of this article and after this short review ask the question, are legal data bases useful or merely a gimmick, one would be forced to conclude that at this stage they have some serious restrictions.

The most important of these is the present restricted data base compared to the existing data bases available through conventional searching techniques.

They are expensive and at this stage do not necessarily provide a mean of supplanting the existing legal data bases.

They do however have some advantages. In certain areas they can quickly search out and scan material to provide useful listings of cases commenting on earlier cases.

They also provide an alternative means for researching a problem. This is a very useful facility and prevents one from becoming too caught up in the traditional way of searching for authorities on a point.

It may in fact allow access to a greater volume of material than is presently available. However clearly the area is one which is developing at a fast rate and it at this stage is too early to form hard and fast conclusions as to the usefulness of the data bases.

If they continue to expand the extent of the coverage of the data base, they may well become a useful tool as a different means of researching topics.

The likelihood of them supplanting existing data bases is somewhat remote and accordingly the cost penalties for using them may be high.

However time will only tell and it is to be hoped that many at the Bar are prepared to put some effort into using the system in its early stages so the Bar can play a part in the development of these data bases.