

Using technology at the Bar: an overview



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Technology [in the courtroom] is not an optional alternative – it's here and it's essential. – Hon James Allsopp AC¹

Looking to go paperless? Want to update your brief management system? Keen to streamline your cross-examination and presentation during hearings? The NSW Bar Association's recent CPD 'Reading for the Future'² provided an insight in the various practical ways technology can help improve a barrister's practice. This article, drawing upon that CPD and the shared insights from tech-savvy barristers, seeks to provide an overview of the latest tools, tips and current tech trends at the Bar.

Technology in chambers

The vast majority of barristers are heavily reliant upon a laptop and a wide desktop screen for conducting their work. Many will also have iPads or Surface Pros linked to the cloud, allowing them to share or add to their documents away from their desk.

COVID-19 lockdowns encouraged a large portion of the Bar to become paperless. We more often review briefs electronically and attend conferences remotely via Teams or Zoom. To facilitate this, a paid subscription to a cloud storage service³ and Adobe Acrobat (or alternatives such as Nitro PDF Pro or PDF Reader) has also become a modern essential, the latter allowing you to edit, highlight, sign, extract, and compare PDFs while making them text searchable. Electronic briefs have also made it much easier for the junior Bar to prepare useful documents, such as pleading comparisons, evidence matrices and chronologies, which can now be hyperlinked to the source documents in the brief.

When asking for your electronic brief, be sure to request that:

1. the brief is a single pdf that is text searchable;
2. a table of contents is included that is hyperlinked to each document; and

3. it includes structured and well-labelled bookmarks, allowing you to even more easily navigate the brief in your applicable PDF reader.

Some savvy barristers have facilitated their journey to a paperless practice by adopting paper substitute apps such as Microsoft OneNote, Evernote or LiquidText.⁴ These programs, marketed as 'better than paper' and 'a second brain', permit you to insert entire electronic PDF briefs into the program; extract and insert text on or to the side of the PDF, which is linked to the source document; highlight text and view only highlighted text; interlink separate PDFs and PDF pages; search multiple PDFs at once; make handwritten notes with devices like Apple Pencil; and much more.

In the 'Reading for the Future' CPD Ian Hemmings SC mentions that he has built in OneNote his own electronic library of every case he has ever read – all of which is text searchable, highlighted, and contains his own commentary, ensuring that he is prepared for any random authorities lobbed from the other side of the Bar table.

Juniors will have to be flexible about going paperless. Many silks still prefer copies of drafts being brought to their room in hardcopy for markup, while some may not like the idea of having a laptop or iPad shoved in their face when they ask for a document during a conference or a hearing. Speak to your leader early on about what they prefer and, if they use certain applications, be ready to adapt so that your electronic ecosystem is compatible with theirs.

Research is the other primary area of practice in chambers that has become technologically driven. Understanding how to get the most out of your searches on LexisNexis, Westlaw, Jade or Wolters Kluwer is essential, and barristers should attend the free tutorials offered by these suppliers. Many major legal texts and commentaries are now available in ebook form, allowing you to undertake quick word searches of the entire text on your portable device in chambers or in court and speeding up research significantly. It is now easier than ever to compare multiple texts covering a certain topic, for example, comparing the electronic commentary in *Ritchie's* to the Westlaw equivalent: *NSW Civil Procedure*, or the ebook of *The Law of Costs* and Westlaw's *Quick on Costs*. Users of OneNote and LiquidText will quickly learn that they can easily hyperlink and arrange their research (including whole, or extracts of, cases and legislation) into their electronic briefs or separate research 'projects' in the app, allowing you to compile

and cross-reference your research such that it can be easily accessed later on, including for subsequent briefs.

Technology in court

Going paperless in chambers is less daunting than doing so in court. Success with the latter will depend on the jurisdiction, judge, courtroom, and your ability to master your electronic devices.

1. Know your court, courtroom and judge

A starting point should be to review the applicable court's website and practice note. The Federal Court of Australia has the *Technology and the Court Practice Note (GPN-TECH)*⁵ and the accompanying *Technology Resources* page.⁶ The *Practice Note* recommends that legal representatives discuss with each other and the court how technology may be best used to facilitate efficiency in the proceeding. By way of example, it states: 'a judge may order the parties to prepare an electronic court book, upload documents to an electronic court-based platform or engage an external provider to assist in conducting an electronic trial (or eTrial)'.

Use of technology in the Federal Court has been embraced in many National Practice Areas, particularly since judges in that jurisdiction are often hearing cases interstate. It is more common to see PowerPoint or other presentation programs being used to explain complex issues or to facilitate the delivery of expert evidence. The technological capabilities of the Federal Court courtrooms are quite good, particularly for remote appearances and sharing documents on screen electronically for the entire courtroom to see. Indeed, being able to project a single document or image on the screen can be a powerful part of your advocacy toolkit that focusses the attention of the judge or jury on what you want them to see.

The Supreme Court of New South Wales has issued *Practice Note SC GEN 07 – Use of technology*,⁷ which requires legal representatives 'at all stages of their litigation to consider the prospect of using technology for the purposes of information exchange and at trial itself'. For hearings at first instance, the *Practice Note* suggests that where parties have used databases to facilitate discovery, the parties should consider and make submissions about using those databases as the basis of the creation of a court book to be admitted into evidence. The courtrooms of the Supreme Court in Queen's Square are similar to the Federal Court, although hearings on circuit in regional areas will often be in much older courtrooms where technological

barriers may arise. If you wish to have witnesses appear via audiovisual link ('AVL') or have an electronic court book, leave of the court should be sought as early as possible so that necessary arrangements can be made. Matters in the Court of Appeal or Criminal Court of Appeal still tend to be heavily paper-based – a factor to be considered when preparing for your appearance.

The technological capabilities of the courtrooms in other jurisdictions, such as the District Court and the Local Court, can be more limited compared to the Supreme and Federal courtrooms.

In a Local Court hearing last year, my opponent had the unenviable task of cross-examining a witness located in India via AVL through a translator. Unfortunately, there was no way to show the witness documents during cross-examination. The cross-examination had to be adjourned for a day so that the documents could be emailed through to the witness – a not ideal outcome if you are hoping for some element of surprise. However, the limitations of technology flipped in my opponent's favour once the cross-examination recommenced. Immediately after the witness confirmed with the court that he had no one in the room with him, the witness dropped the phone he was appearing from. The new camera angle from the floor revealed a woman in the back of the room, who then swiftly sought, but failed, to hide behind a cupboard. The occurrence may partly explain why the Magistrate gave limited weight to the witness's testimony.

Refer to the applicable court website⁸ and liaise with the court early (whether the registrar, list judge or trial judge) if you will need a courtroom with power points, extension cords, internet access and the capability for videoconference facilities and document sharing. At the same time, be cognisant that the trial judge may prefer a paper-based or hybrid approach. Similarly, the digital divide should also be considered, particularly if going completely electronic will unfairly prejudice another party, such as an unrepresented litigant.

2. Electronic court documents

If the hearing is to proceed with an electronic database, court book or even just electronic authorities, ensure that:

1. they are text searchable;
2. any table of contents is hyperlinked;
3. the page numbers in the PDF align with the page numbers of the actual court book;
4. the PDF is clearly bookmarked with headings such as '1. Pleadings: Tabs 1–4', '2. Particulars: Tabs 7–8', '3. Plaintiff's Expert Evidence: Tabs 9–15', etc and subheadings such as 'Tab 1: Statement of Claim', 'Tab 2: Defence', etc.

Avoid sending to the court updated court books that replace electronic court books that the judge may have already begun highlighting and reviewing. To the extent changes need to be made, try to maintain the existing body of the electronic court book as much as possible to minimise this form of disruption.

Where the electronic court documents consist of multiple files (including videos), rather than just

a single PDF, providing clear file names with dates goes a long way to facilitating easy navigation by the parties and the court.

3. Master your devices

In ideal circumstances, counsel should not have to stop mid-submission and spend an awkward length of time scrolling through their iPad to find a particular page of a multi-volume court book. If you are going to use an iPad, laptop or similar device at the lectern, you need to have mastered it prior to your appearance. As Stern JA noted during the 'Reading for the Future' CPD, 'If you are going to use technology in court, make sure you are confident and adept at the technology you are using.'

To help facilitate smooth submissions, some barristers advocate for a two-iPad (or their equivalent) approach. One sits on the right showing their speaking notes, the other on the left containing the court book, authorities and other source documents. This has the advantage of ensuring that you never lose where you are up to with your submissions or cross-examination while being able to navigate the relevant material being addressed.

If the hearing is a hybrid between electronic and paper-based material:

1. think where you are placing your devices and folders (the less time you spend shuffling documents and devices, the more focussed the judge will be on the point you are trying to make);
2. ensure that you have hardcopy documents to hand up or show a witness; and
3. if the trial judge is using a paper-based court book compared to your electronic court book, at least ensure that (a) you have a spare hardcopy of the court book in case something happens to your device(s) and (b) ensure that the referencing, page numbers and tabs are the same in both forms.

Electronic court books will ordinarily be in PDF form and, assuming it has been properly prepared, being able to electronically navigate one quickly will become possible so long as you have developed the muscle/click/swipe memory of doing so before the hearing. Your ability to navigate may also be enhanced through the use of apps like OneNote and LiquidText, so long as you have spent the time learning how to use such software.

Cross-examining paperless can also be intimidating, but again the interlinking powers of apps like OneNote and LiquidText can allow you to carry out a smooth and clinical cross-examination on specific topics and relevant documents. In the 'Reading for the Future' CPD Ian Hemmings SC explains that through OneNote:

1. he creates a separate series of topics (or desired outcomes) for each witness;
2. he then collates links under those topics of all the material he thinks may be relevant to the topic of that witness; and
3. he then refines what he has, inserting his own notes and interlinking extracts of documents he is going to take the witness to.



On his feet, Ian has his cross-examination notes set out on one device and then his court book and other source material on the second device, with both communicating to each other through the cloud in case he makes a note or highlights something on either device.

Take the leap and explore how you can improve as a barrister with technology

A technologically driven practice for many of us has become a reality, and our ability to remain paperless in court has been enhanced through trial and error and the advancement in computing power, cloud storage and applications that provide a digital replacement for the reams of folders that, before COVID-19, seemed irreplaceable. The courts have indicated their willingness for legal representatives to embrace technology to improve efficiencies in the delivery and administration of justice. It is therefore incumbent on the Bar to prepare and adapt to these technological shifts to remain effective and efficient advocates. **BN**

ENDNOTES

- 1 J Edwards & I Taylor, 'Courtroom 2.0: How to create the courtroom of the future' [2018] (Summer) *Bar News*, 29.
- 2 Available online in the NSW Bar Association CPD Portal <<https://cpd-streaming.nswbar.asn.au/watch/682>> .
- 3 Be sure to read the terms and conditions of the cloud service providers, given that privileged and confidential material is being uploaded to a remote server not owned by you: see Kylie Day and Caroline Dobraszczuk, 'Electronic briefs – briefing by email' [2013–14] (Summer) *Bar News* 40–6.
- 4 Naomi Wooten, 'Liquid Text' [2021] (Autumn) *Bar News* 102–3.
- 5 <<https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-tech>> .
- 6 <<https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-tech/technology-resources>> .
- 7 <http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/a15f50afb1aa22a9ca2570ed000a2b08/19ae2d221b09c4fbc257483001d0781?OpenDocument> .
- 8 For the District Court see: <<https://districtcourt.nsw.gov.au/help-and-support/technology-in-courts.html>> and for the Local Court see: <<https://localcourt.nsw.gov.au>> .