

Evidence Presentation Technology
Carter Holt Harvey v Genesis Power and Rolls-Royce
High Court of New Zealand - CIV 2001-404-1974
Before Justice Cooper – 20 April 2009 to 17 February 2010

Background

The proceedings *Carter Holt Harvey v Genesis Power and Rolls-Royce*, NZHC CIV 2001-404-1974, the CHH Trial, were heard before Justice Cooper of High Court of New Zealand between 20 April 2009 and 17 February 2010.

Throughout the hearings, evidence was presented and managed using Systematics' evidence presentation technology "Systematics Court".

This paper describes "Systematics Court" from both technical and operational perspectives, quantifies the impact of the evidence presentation technology on the CHH trial and records the observations of the presiding Justice and participating Legal Practitioners.

All references in this paper to Dollars are New Zealand Dollars. On 15 September 2010 CAN\$1.00=NZ\$1.33.

The Scope and Nature of the Case

Carter Holt Harvey is a substantial New Zealand based wood products group which sought to develop an electricity generation capacity fuelled by timber wastes. The company entered into a contract with Genesis Power, a New Zealand electricity generation company and Rolls Royce for this purpose. A complex dispute developed between the parties and proceedings were filed in 2001.

Relevant evidence was substantial. After disclosure in the order of 1 million documents, a court bundle of 5,571 documents (93,098 pages) was ultimately agreed between the parties for reference at trial. The Court sat for 158 days before resolution by settlement on 17 February 2010. In the course of the trial items of evidence were presented for consideration 12,658 times. The Court record notes the Appearance of 17 Legal Practitioners, Counsel and Solicitors, representing the three parties to the dispute.

Early in 2009, the learned Judge and Counsel observed that that the hearing would be substantial both in terms of the duration of hearings (at that time estimated up to 100 sitting days) and the volume of documentary evidence required to be presented to the Court (at that time estimated up to 3,000 documents) and evidence presentation and management technology options were investigated.

After investigation, Systematics Court was selected and a contract was signed with the technology and service provider, Systematics, on 31 March 2009.

The Contract

The Objectives of the Agreement were recited as follows:

“The Litigants seek to put in place the Software, Facility and Services to aide evidence management with the objective of reducing the duration of the Hearing of the Litigation. Specifically, the Software, Facility and Services will make available images of documentary evidence and other required information to the Court and Litigants. This will reduce the need to generate multiple paper copies of documentary evidence and will enable the conduct of the Hearing by reference to image display in place of paper documents.

The Contractor represents that the proper use of the Facility and Services will reduce the duration of the Hearing.” (Although not expressed in this Contract Systematics routinely guarantees an acceleration of proceedings by more than 25% committing to forfeit its fee if, in the opinion of the presiding justice, this level of acceleration is not achieved.)

At a practical level the agreement required the litigants to deliver the agreed bundle of document images and machine readable data for import into Systematics Court. The contractor was required to provide:

1. A file server suitable to the collection and application to reside in the Court for the duration of the proceedings.
2. A remote replicated backup site to be available as an immediate alternative service if the Court resident server failed (The NZ High Court provided and met the cost of a high speed data link).
3. Services, including:
 - a. Training – for participating Legal Practitioners and the Judicial team.
 - b. Implementation, Technical and Data Management Services.
 - c. Data Import Services.
4. Software – Systematics Court and foundation software components.

The contract was expressed in rates of charge for the various elements to be delivered by the contractor but, based on 100 days of hearing and a pre-trial agreed court bundle of 3,000 documents the cost per party for evidence presentation was, prior to the contract, estimated to be \$27,000.

The Contract also contemplated the provision of private services to the parties and expressed rates of charge for such private services.

The parties provided PC workstations for connection to the Case site to service their own purposes both inside and external to the Courtroom and provided PC workstations for the Judge and his team.

Outside the scope of Data Imports and Case site administration, operation of the delivered facility was placed in the hands of the participating Legal Practitioners.

Systematics Court

At a design level, Systematics Court is intended to fully replicate the information flows of a traditional courtroom using a generic technology framework.

Systematics Court is a web site, either resident locally on a dedicated server within the Court or remotely hosted, which acts as a repository for all materials relevant to a proceeding being heard. In effect, it can contain or address all materials which a legal practitioner might otherwise choose to carry into a court. It makes those materials accessible through a comprehensive raft of search mechanisms, both through full text search and meta-data classification combinations, and allows for the management of evidentiary status based upon allocated rights.

Under normal circumstances Court is accessible from any Internet connected PC and is most often configured with replication to a secondary site to provide operational continuity in the event of localised communication or system failure.

In common with most evidence presentation and management technologies, Systematics Court accelerates hearings primarily by reducing the lag between Counsel seeking to draw the attention of the Court to a document and that document being effectively available before all participants. In effect, it eliminates the time, typically estimated at 2 minutes in substantial proceedings, taken by all participants to locate and open a copy of the document in the folder set available to them in Court.

Systematics Court does this by applying internet technologies to publish (push) evidence to participants. This is distinguished from the common view approach of most evidence presentation technologies.

Publication, in a virtual sense, places a discrete, complete copy of the item of evidence, open at the page of current interest, in the hands of each participant in the proceedings, such that once the item is received the item can be manipulated by the recipient just as would be possible if the participant had been handed a paper copy of the document. This includes the ability to page forward and backward, to re-orient, zoom, annotate or highlight and pass the document on to other participants, without interrupting the view of the document by any other participant.

Publication breaks the most common evidence presentation model which delivers the same view of the image of the evidence to all participants. The common evidence presentation model does not allow the Judge, Witness, Legal Practitioners or other participants to interact with the presented evidence.

Systematics Court makes the capacity to publish items of evidence available to any authorised user. This allows any participant to bundle, sequence and present evidence closely following the methodology and workflow which applies in a traditional court. This is distinguished from the common evidence presentation technology model which effectively requires Counsel to call upon a single independent evidence presentation operator or court official to make the evidence available to view by other participants.

Most significantly, Systematics Court recognises that the unmarked evidence being considered by the Court is not the same as the working version of the same item used by the Judge and Legal Practitioners. The need to highlight and side note private editions of the evidence, both in the course of preparation and as the trial is underway is supported. Court associates the edition of the item of evidence recognised by the public record with multiple private editions of the item and presents them to provide a personalised view of the evidence and private stream of data to each participant.

This functionality reproduces the information handling characteristics of a traditional courtroom accurately in a way that does not exist in any other evidence presentation technology framework.

The root of Systematics Court technology is a generic TCP/IP network applying a raft of internet technologies. The consequence of this approach is the capacity to deliver all functionality wirelessly within the Court and across public data infrastructure to participants who are not physically within the Court. As a result Court can be deployed very rapidly and at very low cost.

Systematics Court as Deployed and Operated for CHH

The Agreement between the parties and Systematics was signed on 31 March 2009 and the Systematics Court web site was available, from the secondary (remote, Brisbane resident) facility, inclusive of the first tranche of materials for access by Legal Practitioner users on 1 April 2009.

Systematics was provided with physical access to the Courtroom (NZ High Court - Court 8 Auckland) on 14 April and the in Court local/primary site was available to users at close of business that day. User training was delivered in the Courtroom on 16 and 17 April (subsequently the local server failed and was replaced on the evening of Friday 17 April).

The Trial commenced on Monday 20 April.

From the commencement of hearings, operational control of the technology was in the hands of participating Legal Practitioners.

Out of court, practitioners would, using the remotely accessible Court resident server, bundle and sequence the items of evidence intended to be presented in the course of submissions or to witnesses as the subject of questions.

In Court, the same practitioners would proceed to publish documents sequentially into evidence as Counsel progressed through submissions or questions.

Systematics staff remained in attendance on-site for the first week of the trial, 20 to 24 April, to be on-hand if technical issues were encountered and to provide supplementary training and to answer questions as necessary.

Thereafter, support provided remotely from Brisbane included the maintenance of an open real time instant message/chat service with capacity to take remote control of equipment in the Court to resolve issues if necessary.

About 6 weeks into the trial a progressive slowing of publication was observed, investigated and rectified but at no time during the trial did the server fail or through any other issue was the trial interrupted due to technology factors.

During the course of the trial, a total of 12,658 publications were effected without technical or operational intervention.

Business Issues

The agreement for provision of facility, software and services for evidence presentation was based on an understanding of requirements that specified up to 100 sitting days, addressing a collection of 3,000 documents, consisting of 15,000 pages, delivered in a single, machine readable, bundle.

The total cost of evidence presentation for CHH in these terms was estimated at \$26,713 per party or slightly more than \$80,000 in total. Incidental private requirements were foreshadowed but not defined and projected private expenses were not estimated at the time of the contract.

Ultimately, the trial proceeded for 158 days, addressed 5,571 documents made up of 93,098 pages delivered in 69 discrete batches.

The total final cost of evidence presentation for the CHH hearing was \$115,000 – about \$820 per sitting day. Incidental private expenses for all parties totalled \$220,000.

On the benefits side of the ledger, most significantly, Justice Cooper observes that the use of evidence presentation technology accelerated the proceedings by “at least 50%, probably significantly more”. Other benefits include improved access to evidence and substantial reductions in photocopy and incidental expense.

There are a number of alternative models which might reasonably be applied to quantify the value of evidence presentation technology in the CHH proceedings.

A simple view looks at the publication of 12,658 items and attaches the common measure of 2 minutes per item saved if those items had been presented conventionally - an acceleration of approximately 86 sitting days.

The obvious alternative would apply the acceleration factor suggested by Justice Cooper which suggest that in 158 days of sittings, the equivalent of more than 316 days of progress in the in the hearing of the matter had been achieved.

Estimating only legal practitioner fees for the 17 appearances referenced in the court record, a sitting day daily cost of approximately \$50,000 would apply.

On the first basis of estimation this translates to a cost reduction of \$3.9m or a Cost/Benefit of 34:1.

On the second basis of estimation this translates to a cost reduction of \$7.3m or a Cost /Benefit of 63:1.

These figures do not take into account savings associated with reduced Para-legal and other out of Court legal services, Court fees, photocopy and other incidental expenses.

Clearly these benefits are substantial but there is at least one offsetting factor which should be considered.

Technology does not reduce the complexity or scope of the issues being considered at trial.

Legal Practitioners participating in litigation during a trial, even when conventional processes are applied, are already hard pressed to properly service the issues as they progressively unfold. Technology effectively accelerates the hearing, equally effectively compressing the already onerous obligations of participating legal practitioners which must be accommodated outside the daily court sitting schedule.

By way of comparison, the most common Court sitting schedule in Australia excludes Fridays from the sitting calendar and has Courts receiving evidence from 10.00am to 4.00pm, leaving reasonable scope for consequential case issues as they develop. In New Zealand, however, the Courts typically sit all 5 weekdays from 10.00am to 5.00pm, effectively consigning case development issues to evenings and weekends. In the context of evidence presentation technology this may well constitute an excessive workload for those involved.