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Electronic Court System (E-Court): Development and Implementation in the Malaysian Courts and Other Jurisdictions

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Abstract

The electronic court system or e-court is one of the projects under the e-government flagship. Originally, the idea of having the e-court system was mooted in 1996 but due to economic crisis in late 1990s, the idea finally materialised in May 2002. At present, the Malaysian courts consist of an audio recording system, verbatim recording of court cases, video recording and video conferencing. There is also the Case Management System (CMS), which includes the Electronic Filing System (EFS) and the Court Recording and Transcription (CRT) system. However, there is no specific rule governing the practice and implementation of the e-court system in Malaysia. This paper discusses the development and implementation of the e-court system in Malaysia and the available laws governing the system. As comparison, the practice and procedures on the e-court system in Singapore, the United Kingdom and Australia will also be discussed. It is submitted that there is a need to review the existing court rules and practice directions in order to achieve effective implementation of the e-court system in Malaysia.

Introduction

The impact of information communication technology (ICT) on the court administration is seen from the establishment of a new computerised court system or electronic court (e-court). The e-court system has been implemented in some countries in the world including Malaysia, Singapore, Australia, the United Kingdom and the United States. In Malaysia, this e-court system is one of the projects under the e-government seven flagships. However, since its implementation there is no specific law or procedure governing the practice and implementation of this e-court system. This paper discusses the development and implementation of the e-court system in Malaysia by comparing it with the e-court system and the procedures available in Singapore, the United Kingdom and Australia. The author is of the view that there is a need to review or update the existing court rules and practices direction in order to achieve effective implementation of the e-court system in Malaysia.

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Development of information and communication technology (ICT) and the court system

The ICT has changed court systems globally. The traditional court has been replaced by a new e-court system which is also known as "courtroom technology". This new technology is regarded as a revolutionary development.¹ The American courts pioneered this new litigation environment and now the system is being followed by the countries like Australia, the United Kingdom, Singapore and Malaysia. This global impact has motivated the Malaysian government to implement the e-court system. However, the former Minister in the Prime Minister's Department Datuk Seri Rais Yatim has stated that:

The establishment of the e-court does not mean we will be totally paperless. The paper need is still there. The hardcopy must always be there as a matter of evidential value for some of the cases.²

The above statement implies that there cannot be a sole reliance on computer technology in the court administration or the electronic filing system, and although the presentation of cases and evidence by electronic means can be adopted in some cases, physical documentary evidence will still be needed, even in so-called paperless litigation.

After several changes since its partial implementation in the early 2000s, finally a proper e-court system was first launched in 2009 by Chief Justice Tun Zaki Azmi. The court is known as the New Commercial Courts (NCC). It is equipped with a computerised system. This will allow for electronic filing and tracking of cases, video recording and monitoring of trials and SMS text alerts for interlocutory hearings. It is reported that the e-court system, the first in the peninsula, will be implemented at the High Court level first and then the lower courts.³ This e-court system was provided by Formis Resources Bhd and it comprises an integrated e-filing system (e-Filing), Case Management System (CMS), Queue Management System (QMS) and a Court Recording and Transcription System (CRT). It will be rolled out to 166 courts in total. In addition, the e-court also consists of an audio recording system, verbatim recording of court cases, video recording, video conferencing and Electronic Filing System (EFS).

1 See Court Tech System, Integrated Courtroom Technology Inc. www.courttech.com/Technology.asp viewed on 22 July 2004; Courtroom 21 at Williamsburg and Courtroom of the Future, University of Arizona. www.parliament.vic.gov.au/lawreform/tech/10.html and Courtroom 1 project at the College of William & Mary's School of Law in Virginia. This project known as McGlothlin Courtroom is considered as the most technologically advanced in the world. See Lederer Frederic I, "Courtroom for trial lawyers, the future is now" *Criminal Justice Magazine*, Spring Volume 19, Number 1 2004 and "The Courtroom 21 Project: Creating the Courtroom of the 21st Century, *Judges' J*, Winter 2004; www.Courtroom21.net. Other references include by Herrera, Frank Jr and Rodriguez, Sonia M, "Courtroom technology: tools for persuasion" *Trial*, May 1999.

2 See Hong, Carolyn, "E-courts in Klang Valley" *New Straits Times*, January 16, 2004, p 5.

3 Koshy, Shaila, "Zaki launches e-court system" September 2, 2009 at <http://thestar.com.my/news/story?file=/2009/9/2/nation/4632643&sec=nation>.

Pursuant to the launching of the new e-court in 2009 the Minister in the Prime Minister's Department, Datuk Seri Nazri Abdul Aziz has issued a statement that e-court is the best way forward to boost efficiency as it will cut costs, time and red tape.⁴ He also mentioned that there is a need to review and change the law as to allow the filing of digital copies via e-filing. This shows that the government is very supportive and ready to improve the future establishment of the e-courts system in all states.

The e-court system and its benefits

The electronic court consists of an integrated court system for the acquisition of audio/video depositions within court rooms, the archiving of legal documents, information retrieval and synchronised audio/video/text consultation.⁵ This e-court system is said to be quick, easy and cost-effective. In other words, it is competent, affordable, speedy and provides transparent justice for everyone. In the United Kingdom, it also provides a uniform litigation process throughout the country.⁶

With the e-court, defence lawyers and prosecutors will be able to present their cases effectively. However, they must acquire some technical skills, particularly on in-court electronic presentation from the tech-experts and will need to allocate funds to cover the cost of doing so.⁷ In Malaysia, in-court electronic presentation covers only video conferencing and video recording of the testimony of a child witness.⁸ There is no electronic presentation such as computer animation, image display and 3D visual presentation such as holographic evidence (allowing, for example, the circulatory system to be seen in three dimensions in the air in front of the judges and lawyers). If it is necessary the computer expert needs to bring his own equipment to present the evidence electronically. The courts do not provide such equipment for effective presentation of evidence. Although this presentation seems unrealistic this

4 "Laws to be amended for e-justice" *The Star*, May 29, 2009; see at www.malaysianbar.org.my/legal/general_news/laws_to_be_amended_for_e_justice_says_nazri.html.

5 See Breuker, Joost, Elhag, Abdullatif, Petkov, Emil and Winkels, Radbound, "IT support for the judiciary: Use of ontologies in the e-court project" at <http://lml.bas.bg/iccs2002/acs/breuker.pdf>, viewed on April 23, 2008, and MacDonald, Roslyn, Burdon, Mark and Jackson, Sheryl M, "Ensuring the integrity of the e-court process", Justice Environments Conference Proceedings, April 20-22, 2006, Melbourne <http://eprints.qut.edu.au/archive/00008480/01/8480.pdf>, viewed on April 23, 2008. The e-court was also discussed in the Australian case of *Harris Scarfe v Ernst & Young* [2005] SASC 407.

6 See "E-Court in England" at http://e-court.uk.com/how_it_works/index.php, visited on March 31, 2011.

7 See Cobo, Michael E, "Technology is a tool, not a case strategy in the courtroom", via DecisionQuest Online, www.decisionquest.com/site/dqlib05.htm, viewed on June 17, 2005; Bos, Carole D, "Presenting evidence with courtroom technology", via Bos & Glazier, www.bosglazier.com/courttech.shtml; Herrera, Frank Jr. and Rodriguez, Sonia M, "Courtroom technology: tools for persuasion", *Trial*, May 1999, via National Center for State Court (NCSC), www.ncsc.dni.us/NCSC/TIS/TIS99/ctromtecTrial1.htm.

8 See further the Evidence Act 1950.

does not mean that there will be no such presentation in the future. Therefore, lawyers and judges should feel free and willing to learn this new technology.

Other benefits of e-court include saving time and the cost of travelling from one place to another. This is evidenced from the implementation of e-court in Sarawak courts.

E-court system in Malaysia: A background study

Although computers have existed in Malaysia since the 1980s, the idea of having the e-court system was only mooted in 1996. Despite the problems caused by the economic crisis of the late 1990s, the idea finally materialised in May 2002. During the launch of the pilot project for the electronic court, the then Chief Justice, Tun Mohamed Dzaiddin stated that the High Court in Kuala Lumpur would be the first court to apply the electronic court system (e-court).⁹ This means, the courts in the Klang Valley and Putrajaya were the first courts which were equipped with the e-court system.

Nevertheless, although this e-court project was considered as a pilot project, there was already an e-court at Subang Jaya Municipal Council (MPSJ) which was the first local authority to have an e-court hearing municipal cases.¹⁰

In 2002 the High Court (Civil Division) dismantled its seven courts and turned them into three Fast Track Courts and two Normal Track Courts.¹¹ The system involved the use of "bar codes" on all files to eliminate misplaced or missing files. However, this new system was abolished in July 2003 on the ground that the disposal of cases under the old system was found to be faster. As a replacement, seven courts known as Civil Courts 1 to 7 then replaced the above courts.¹²

9 At first, it was planned that the RM20 million project would begin at the Kuala Lumpur Courts at Sultan Abdul Samad building. See "Federal Court in RM20m IT exercise" *New Straits Times*, March 2, 2001, p 4; Hong, Carolyn, "Court's online project to get moving again: RM20m budget for pilot programme in Kuala Lumpur" *New Straits Times*, April 20, 2002, p 5; and Ng, Chelsea L Y and Kaur, Charanjeet, "Faster disposal of cases modern court operating system was launched" *The Star*, October, 2, 2002, p 4.

10 The first case was heard before magistrate Hashim Ibrahim on November 28, 2000. Under the new system, parties will have to be present in court for hearings but can retrieve information pertaining to their cases from the Subang Jaya Municipal Council or the MPSJ's website. Other local authorities that had municipal courts are the Kuala Lumpur City Hall's magistrate's court, Petaling Jaya municipal court and Johor Baru municipal court. See "MPSJ's first e-court hearing on November 28," *New Sunday Times*, November 26, 2000, p 3. This country's first local council e-court had heard 300 cases until January 2001. See Santiago, Josephine, "300 cases heard at e-court" *New Straits Times*, January, 12, 2001, p 4.

11 Both Fast Track Courts and Normal Tracks Courts started operation on October 16, 2002. See Ng, Chelsea L Y and Kaur, Charanjeet, "Faster disposal of cases modern court operating system was launched" *The Star*, October, 2, 2002, p 4.

12 See "Court fast track system scrapped", *New Straits Times*, July 2, 2003, p 2 and Pooaparajah, Sujatani, "Faster and more efficient disposal of cases" *New Straits Times*, September 14, 2002, p 2.

After the abolition of the "track" system the then Chief Justice, Tan Sri Dato' Sri Ahmad Fairuz bin Dato' Sheikh Abdul Halim, affirmed that all High Courts in the country would have their own websites to facilitate references by legal practitioners and the public by the end of 2003.¹³ Following that statement, the then Minister in the Prime Minister's Department, Datuk Seri Rais Yatim stated that all courts in the Klang Valley would be turned into e-courts by September 2004 in a RM40 million pilot project to speed up the disposal of cases.¹⁴

In 2004, the idea of establishing a full e-court system remained an idea because the facilities were not yet ready. At that time, the e-court project was said to involve 11 courts in the Klang Valley and the vendor was expected to complete it within 18 months from September 2004. The e-court project involved all 11 courts and they were to be equipped with the Case Management System (CMS) including the Electronic Filing System (EFS) and two of the courts were to be equipped with the Court Recording and Transcription (CRT) system. This CRT system was expected, if completed, to be the first of its type in the world. The RM23million project which was also known as e-judiciary was expected to start operation only in March 2007.¹⁵ But, some High Courts have already implemented an audio recording system that records court proceedings for the judges.¹⁶

The e-court system in Sabah and Sarawak

The e-court system has also been extended to the states of Sabah and Sarawak. In February 2010, it was reported that the High Court, Sessions Court and magistrate's court in Miri achieved a historical feat by having zero backlog of cases. According to Chief Justice Tun Zaki Tun Azmi the zero backlog of cases in Miri courts was due to the adoption of the e-court system since 2009. The learned judge further stated that he would adopt the system used in Miri courts nationwide by June 2010 since there were some funds approved by the government on this matter. Based on this record it can be said that Miri courts in Sarawak are the most advanced and can be a model at the moment.¹⁷

13 See "High Courts to have own websites" *New Straits Times*, August 12, 2003, p 8.

14 See Koh Lay Chin and Lee Pek Sien, "E-courts in Klang Valley by September" *New Straits Times*, January 16, 2004, p 8.

15 Interview, Tuan Haji Jaafar Jama'an, the Director of Information System, Information System Section, Legal Affairs Department, Prime Minister's Department, Federal Government Administrative Centre, Putrajaya, by the author on October 20, 2004 and telephone communication on June 23, 2006. The CMS: User requirement was finally revised and reviewed on July 4, 2003 while the CRT was finally revised on August 14, 2003. See Darshini, Shamini, "E-judiciary to go nationwide" *New Straits Times Online*, www.ctimes.com.my/.

16 See Inaugural Report of the Superior and Subordinate Courts in Malaysia (Laporan Perintis Mahkamah-Mahkamah Atasan dan Rendah di Malaysia), Palace of Justice, August, 2004. www.kehakiman.gov.my/buku_laporan/buku_laporan.html.

17 Tan, Stephen, "Miri Courts as model: System in clearing backlog of cases to be adopted" *The Star*, February 24, 2010 at N15.

Other than that, the system also used transcripts of witnesses prepared and printed inside the court during the proceedings. Video conferencing has also been used extensively to conduct proceedings online with lawyers in Bintulu, Sibul and Kuching. For the lawyers this system is a relief since they can save on travel cost and time when dealing with their cases. In this regard, praise should be given to the judges, prosecuting officers, lawyers and the officers of the Sarawak courts for their achievement.

At present, all courts from subordinate to High Courts at the Jalan Duta complex and the Court of Appeal and the Federal Court at Putrajaya are fully computerised courts.

The New Civil Court (NCvC) and e-filing system

Prior to the introduction of NCvC in September 2010, Deputy Minister in the Prime Minister's Department Datuk Liew Vui Keong said that the court recording and transcription system or CRT, currently being used in 51 courts in Kuala Lumpur, Shah Alam and Petaling Jaya, would be expanded to the High Courts in Penang and Johor in March. He added that the CRT system, introduced under the e-judiciary initiative, would also be implemented in other states in stages.¹⁸

A New Civil Court (NCvC) at the Kuala Lumpur Court Complex in Jalan Duta was launched by the Chief Justice Tun Zaki Tun Azmi in September 2010. This court started its operation on October 1, 2010 replacing the existing civil court (referred to as the "Original Civil Court"). Six judges were assigned to this court and it was based at the High Court Civil 8. The purpose of setting up this court is to streamline expeditious disposal of cases in tandem with the setting up of the New Commercial Court.¹⁹ The maximum time for disposal of all cases is only nine months. Then, on October 15, 2010 the Chief Justice launched an audio conferencing system at the Jalan Duta Court Complex's library. Audio conferencing is a form of meeting where the participants do not have to be in the same place and can simultaneously take part via fixed telephone lines or mobile.²⁰ The lawyers can save time and cost when using this method.

In March 2011, e-filing system was implemented at the lower courts, High court and the Appellate and Special Powers Courts at Jalan Duta Court complex. Litigants and lawyers dealing with matters pertaining to civil and commercial matters including bankruptcy and family cases can use this system. A source

18 "Court Transcription System to be expanded to Penang and Johor, says Minister" *Bernama News*, January 26, 2010.

19 "New Civil Court from October 1: NCvC to cater and dispose of suits within its jurisdiction" *The Star* September 24, 2010 at N22.

20 Mageswari, M, "Audio plan appeals to courts: Conferencing system an efficient way to save money and reduce travel time" *The Star*, October 12, at N10.

said the facility will be expanded to Johor, Penang, Putrajaya, Ipoh and Shah Alam in two months.²¹

This effort is welcome to many. But, the concern is on the sufficiency of training given to the court staff. According to one lawyer, there appears to be uncertainty surrounding the implementation of the system. Some courts in Kuala Lumpur are still relying on the physical court and this creates inconsistency in using the e-filing system.

Development and implementation of e-court system in Singapore, Australia and the United Kingdom

In Singapore, the Singapore Academy of Law conducted a public consultation in January 2005 in order to discuss electronic litigation and its implementation.²² At this time there was already a Technology Court which was introduced into the Singapore Supreme Court in July 1995. This court provides services and facilities such as a weekly list for judges on duty, judges' and registrars' hearing list and the electronic litigation system.²³ There are five Technology Courts in the Supreme Court building in Singapore. The courts are equipped with a unique Electronic Filing System (EFS),²⁴ video-conferencing facilities, a document camera and a multi-format disc player.²⁵ The EFS was launched on March 8, 1997 and it has been in operation since March 1, 2000. Further, the Supreme Court of Singapore adopted the virtual hearings system in March 2002 while its Subordinate Courts had been using it from the beginning of that year.²⁶

In the United Kingdom, the development of e-court started with the establishment of the Information Technology and Courts Committee (ITAC) in 1985. Then, the development of a computerised court system was given attention in the 1990s. In 1992, the Judicial IT Help (JUDITH) was launched by the Lord Chancellor's Department, which provided the funding for the provision of computers and training to 25 judges.²⁷ The Lord Chancellor's Department

21 Mageswari, M, "E-filing for more courts: lawyers to be able to submit papers online in several sates", *The Star*, March 14, 2011 at N14

22 See "Electronic litigation in Singapore: A roadmap for the implementation of technology in the litigation process", www.sal.org.sg/Pdf/Electronic%20Litigation%20Roadmap%20Paper.pdf.

23 See Supreme Court of Singapore. www.supcourt.gov.sg/compute/techcourt.htm.

24 See Pinsler, Jeffrey, *Civil Justice in Singapore: Developments in the course of the 20th century* (Singapore: Butterworths Asia, 2000), pp 101–102 and EFS, www.efs.com.sg/.

25 See Supreme Court of Singapore: Court facilities – Technology, <http://app.supremecourt.gov.sg/default.aspx?pgID=361#10>.

26 The Subordinate Courts have established very impressive electronic courtrooms, such as e-Courts, i-courts and e-chambers. See GlobalCourts.www.globalcourts.com/e-courts.htm and the Subordinate Courts of Singapore. www.subcourts.gov.sg/.

27 See Susskind, R, *Transforming the law: essays on technology, justice and the legal market place* (Oxford: Oxford University Press, 2000), p 236. In order to assist the judges on information technology, the Judges' Standing Committee (JSCIT) on IT was formed and they worked under the project known as JUDITH – Judicial IT Help. See also Ministry of Justice, www.justice.gov.uk/.

was subsumed into the newly created Department for Constitutional Affairs, which became the Ministry of Justice on May 9, 2007.

The court systems in Australia have developed differently since the country consists of nine jurisdictions – one Federal, six States and two Territories, with the three largest jurisdictions being Commonwealth (Federal), New South Wales and Victoria. In New South Wales, for example, “Courtnet” was developed and implemented by the NSW Attorney-General’s Department in 1985. The intention of the department was to computerise the administrative functions of all three levels of the State’s courts (Supreme, District and Local) with a fully integrated Court Registry System.²⁸ However, it seems that the first electronic courtrooms in Australia were set up in the early 1990s by using a mixture of “off-the-shelf” database products and display technologies highly customised by in-house programmers employed by the Director of Public Prosecutions (DPP).²⁹ The other systems include computerisation of court registries and online access by the legal profession,³⁰ the provision of computers for, and computerisation of sources of information needed by, the judiciary. Besides that, as from 1998, the Australian trial and appeal courts are making extensive use of the information technology court system.³¹ To confirm this fact, the Australian Institute of Judicial Administration’s Technology for Justice indicated that at present a “mature and manageable technology” is utilised extensively in the Australian legal system.³²

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- 28 See further Stanfield, Allison, *E-litigation* (Sydney: LawBook Co, 2003), pp 70–90. See also Practice Note No 105 of Supreme Court of NSW (SCNSW), March 15, 1999, www.lawlink.nsw.gov.au/practic.../. In Victoria, the AG’s Department developed a system known as Courtlink that refers to a more diverse and less integrated set of projects than “Courtnet”. And in the Commonwealth the AG’s Department administers three case management systems for Federal courts and tribunals. See Greenleaf, Graham, “Computerization of Australian Courts” in *Yearbook of Law Computer and Technology*, Vol Five (Sydney: Butterworths, 1991), pp 36–49 and *In Brief*, a newsletter of Victorian Bar Council, No 199, March 6, 2001 on “e-court initiatives in the Federal Court”. See also “eCourt rooms”, Federal Court of Australia. <https://ecourt.fedcourt.gov.au/pagecontent/officalcontent.aspx?contentType=Protocol>
- 29 See Farrelly, Phil and Potter, Sandra, “E-court Overview – a vision of now and the future, 3rd MSC International Cyberlaws Conference: Advancing cyber laws: educate, regulate, practise and enforce, March 2, 2004, Kuala Lumpur, and Greenleaf, Graham, “Computerisation of Australian Courts” *Yearbook of Law Computers and Technology* (1991), pp 36–48.
- 30 See for example the LINK (Lawyers’ Information Network) system operated by the Law Institute of Victoria and Morris, Stuart, Justice of the Supreme Court of Victoria, “Where is technology taking the courts and tribunals?” keynote address at Court technology-updates and developments conference, October 20–21, 2004, Sir Zelman Cowen Centre, Melbourne, Australia, www.aija.org.au/CTC/Justice%20Stuart.
- 31 See the High Court of Australia at www.hcourt.gov.au viewed on September 9, 2004 and The Honorable Justice Michael Kirby AC CMG, “The Future of Courts. Do they Have One?”, Third Annual Colloquium: Judicial Conference of Australia, 1998, Gold Coast, Queensland, Australia, www.hcourt.gov.au/speeches/kirbyj/kirbyj_future1.htm.
- 32 See Final Report—Technology and the law, Ch 10: “Courtroom technology”, www.parliament.vic.gov.au/lawreform/tech/10.html and Leeuwenberg, J and Wallace, A, *Technology for Justice Report*, Australian Institute of Judicial Administration (AIJA), 1999.

The courts also use video links to hear applications for leave by other courts to the High Court. This growing use of electronic systems has had a significant effect on Australian courts. It has changed the perception of the public. According to the Australian Law Reform Commission (ALRC) report in 1998, studies had shown that some court users regarded courts as hostile, unfriendly, unintelligible and inaudible places, unpleasant to the lay consumer and to the public alike. On this issue, the Honorable Justice Michael Kirby stated that there is a need for care in the introduction of new technology, which may sometimes enhance the sense of remoteness of the court and the impersonal, disembodied, and non-human features of a trial.³³

Video conferencing and computer animation in court

The implementation of video conferencing can be seen in the Singapore case of *Las Vegas Hilton Corporation v Sunny Khoo Teng Hock*³⁴ which was decided in 1997. This case involved receiving testimony concerning the law of Nevada in the US. The same method was also applied in the case of *Sonica Industries Ltd v Fu Yu Manufacturing Ltd*.³⁵ It was also used in cases involving sexual offences and/or if the alleged victim is of a vulnerable age or disposition. Other facilities available at the courts include an audio visual system that allows evidence on video cassette, digital video discs and video compact disc to be viewed in court and recorded to form part of the court record, a video maker system and an analogue colour video printer. The presence of sophisticated electronic equipment will provide a better way to reduce voluminous documentation and to conduct paperless litigation.

In 1998, computer animation was used to re-construct an accident case that had occurred. This was heralded as a significant evidentiary tool:

Computer graphics animation reconstructions shown in court are cost effective, save valuable time, clearly and simply illustrate complex and technical issues, are realistic and can prove or disprove arguments or theories with reference to the perplexing Newtonian physics involved in many accidents: this technology may well revolutionise accident reconstruction,

33 See Honorable Justice Michael Kirby AC CMG, "The Future of Courts. Do they Have One?" (supra, n 31), n.70. Quoted from S Parker, "Courts and the Public", AIJA (1998); "Technology—what it means for federal dispute", Australian Law Reform Commission (ALRC), Sydney, Issues Paper 23, March 1998.

34 [1997] 1 SLR 341. See the case of *Tony Liew Fatt Lian v Datuk Amar Hj Abdul Aziz Dato' Hj Hussain & Anor* [2010] 1 LNS 1414 for example of a Malaysian case conducted using the video conferencing facility.

35 [1999] 4 SLR 129. Section 62A of the Singapore Evidence Act provides that a person may, with leave of the court, give evidence through a live video or live television link in any proceedings if he/she is a witness and below the age of 16 years, both parties have agreed to use that method, the witness is outside Singapore or the court is satisfied that it is expedient in the interests of justice to do so. But this method may not be applied in a criminal matter. (Section 62A(1).)

thus enabling prosecution and defence to be more effective in proving their claims.³⁶

The need to review the law and procedures

Despite the implementation of audio-video conferencing, video recording of child witnesses and verbatim recording in some courts in Peninsular Malaysia and in Sabah and Sarawak courts, there is still no governing law or specific practice direction for the implementation of the e-court system or technology in court. Specific guidelines on how to manage the e-court system and other related matters are not written in any rules of procedure or statute.

This is contrary to the situation in Singapore where there is a specific Order on the use of the Litigation Support System for Presentation (LSSFP). This is provided in Order 63A, Rules of Court 1996. The Singapore Supreme Court Practice Directions (SCPD) also provide a standard application form to use the Technology Court as well as an application form to use a mobile information technology trolley technology in e-court.³⁷ Part VII of SCPD (1997 ed) contains clauses on how to use the Technology Court (clause 37), display and presentation devices already installed in the court (clauses 38 and 39) and the method to use when tendering opening statements and written submissions as well as physical documents and documentary evidence in electronic form through the Litigation Support System for Presentation (LSSFP) (clause 41). The prescribed form on how to use the Technology Court is provided in Form 8 of the Supreme Court Practice Directions (SCPD).³⁸

Further, s 36A was purposely inserted in 1996 to the Singapore Evidence Act in order to provide guidelines on the "Rules for filing and receiving evidence and documents in court by using information technology" The section provides that:

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- 36 Hala, A and Unver, E, "Animated Reconstruction" *Solicitors Journal* 24 (Supplement), July 17, 1998. See also Girvan, Robert, "An Overview of the Use of Computer-Generated displays in the Courtroom" No 1 [2001] Web JCLI, www.webjcli.ncl.ac.uk/2001/issue1/girvan1.html. Besides this computer animation method the court also used video conferencing method in the case of *Garcin and Others v Amerindo Investment Advisors Ltd and Others* [1991] 1 WLR 1140.
- 37 See s 36A(1) and (2)(a)–(c) of Singapore Evidence Act on the "Rules for filing and receiving evidence and documents in court by using information technology" and Part VII of Singapore Supreme Court Practice Directions (1997 edn).
- 38 See Singapore Supreme Court Practice Direction No 1 of 2005: Automatic Generation of document information pages when filing documents electronically and changes to filing procedures for trial bundle, www.supcourt.gov.sg/supcourt/upload/practicedirections/DOC481.pdf; Practice Direction No 2 of 2005: Introduction of electronic filing to criminal proceedings, www.supcourt.gov.sg/supcourt/upload/practicedirections/DOC482.pdf, and Form 8 in Singapore Supreme Court Practice Directions (1997 edn). The electronic filing and service for both criminal and civil proceedings are also explained by Order 63A of the Rules of Court 1996.

- (1) The Rules Committee constituted under the Supreme Court of Judicature Act [Cap. 322] may make rules to provide for the filing, receiving and recording of evidence and documents in court by the use of information technology in such form, manner or method as may be prescribed.
- (2) Without prejudice to the generality of subsection (1), such rules may –
 - (a) modify such provisions of this Act as may be necessary for the purpose of facilitating the use of electronic filing of documents in court;
 - (b) provide for the burden of proof and rebuttable presumptions in relation to the identity and authority of the person sending or filing the evidence or documents by the use of information technology; and
 - (c) provide for the authentication of evidence and documents filed or received by the use of information technology.

The above section implies that rules can be made by the Rules Committee on the use of technology in court. Thus, evidence may be filed, received and recorded by using information technology and this includes electronic filing of documents in court.

In Australia, the Federal Court of Australia is the first court in Australia that provides eCourtroom. This virtual courtroom assists in the management of pre-trial matters by allowing directions and other orders to be made online. This court may also receive submissions and affidavit evidence and make orders as if the parties were in a normal courtroom. In order to encourage and facilitate the effective use of technology, the Chief Justice of the Federal Court of Australia has in 2009 issued a Practice Note known as Practice Note CM6 on Electronic Technology in Litigation (Assistance).³⁹

What do we have in our Rules of High Court 1980, Subordinate Court Rules 1980, Practice Directions and the Evidence Act 1950? There is no single provision related to the use of e-court in these laws. What is available in Malaysia is the old RHC 1980, which was last amended in 2000 to include Order 34 on Pre-trial Case Management. The latest Practice Direction (PD), which was issued in 2003, does not include matters pertaining to technology in court. Moreover, the new ss 90A, 90B and 90C of the Evidence Act 1950 which were inserted in 1993 do not mention the application and the use of technology in court, e-filing and e-evidence presentation.⁴⁰

From the above discussions, it is submitted that there is a need to review the Subordinate Court Rules 1980, the Rules of High Court 1980 and other court

³⁹ See www.fedcourt.gov.au/ecourt/eregistrars_contact.html and www.fedcourt.gov.au/how/practice_notes_cm6.html visited on March 31, 2011.

⁴⁰ See *Malaysian Court Practice: Practice Directions, Practitioner edition* (Kuala Lumpur: Malayan Law Journal Sdn Bhd, 2004), No 609, p 363. See also Raman, Prasanna, "Nurturing e-law firms" *New Straits Times (Business Computing)* March 11, 2004, p 4.

procedures. There is also a need to provide appropriate Practice Directions or Practice Notes as supplementary to the rules. This was done in the United Kingdom, Australia and Singapore. In fact, in the United Kingdom, there have been 55 updates on the CPR as of April 2011 and these amendments or updates came into force on April 6, 2011. Part 5 of the UK Civil Procedure Rules 1998 (CPR) provides three Practice Directions (PDs) as its supplement. The PDs deal with court documents (PD 5A), Electronic Communication and Filing of Documents (PD 5B) and Electronic Working Scheme (PD5C). This PD 5C operated on April 1, 2010.⁴¹ Further, there is also a Technology and Construction Court (TCC) in UK court system. The user has to use specific forms if he wants to use the TCC. The forms are available and mentioned under Part 60 of the CPR.⁴²

In addition, there is also a need to review the Evidence Act 1950 in a similar manner to what was done in Singapore. At present, there is still no provision similar to Order 60A of the Singapore RC 1996 and s 36A of the Singapore Evidence Act.⁴³

Meanwhile, the government does not only focus on the development and implementation of e-court at civil courts but also in the Syariah courts. The e-Syariah court ranks number seven out of the seven pilot projects of the E-government flagship application. However, the ranking does not mean that it is the least important.

The Electronic Syariah Court (E-Syariah Court)

The introduction of the e-Syariah Courts carries four main objectives: namely, to improve and enhance the quality of service of Syariah courts throughout Malaysia; to monitor and facilitate efficiencies of Syariah courts; to enhance productivity and efficiency of the Syariah courts management and to uphold the image of Islam through ICT. This project consists of six modules; Syariah Court Case Management System (CMS), Syariah Lawyer Registration System, Library Management System, E-Syariah Portal, Office Automation System and e-Syariah System Link.⁴⁴

41 See the Practice Directions at www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part05a.htm visited March 31, 2011

42 See www.justice.gov.uk/civil/procrules_fin/menus/forms.htm#tech visited on March 31, 2011.

43 Singapore Evidence Act, Chapter 97, revised edition 1990.

44 The "CMS" is also known as "Sistem Pengurusan Kes Mahkamah Syariah" (SPKMS). See www.mampu.gov.my/mampu/bm/esyariahbm.html, viewed on July 26, 2004. See Najib Zakaria, "E-Syariah: Now and the future", 3rd MSC International Cyberlaws Conference, March 2-3, 2004, Kuala Lumpur. The e-Syariah court is using software known as Lotus Note. The role of this software is to monitor the workflow, while the whole monitoring of the workflow is done by the Chief Registrar of the Federal Court at the Palace of Justice (POJ) Putrajaya so as to ensure that the work is done and there is no backlog of cases.

The e-Syariah courts are intended to be available in six states: Selangor, Negeri Sembilan, Malacca, Penang, Perlis and Kuala Lumpur.⁴⁵ The project started in March 2001 and was completed in September 2005. It connects the Department of Syariah Judiciary Malaysia (JKSM) of the Prime Minister's Department with the RMP, the National Registration Department (NRD), the Immigration Department, the Department of Islamic Development (JAKIM) and the Legal Aid Bureau Division of the Prime Minister's Department. The Syariah courts in the Federal Territories and Selangor have adopted the ICT technology since its launching in June 2002.⁴⁶ Currently, three Federal Territories (Kuala Lumpur, Putrajaya and Labuan), Selangor, Negeri Sembilan, Malacca, Penang and Perlis are already using the standardised Syariah law. The same process will also be done to other states. In 2006, the six states above adopted and applied the above five modules except the Library Management System (LMS) which is available at the headquarters only.⁴⁷ The e-Syariah court system adopted by the Syariah courts in Terengganu has helped speed up the disposition of divorce cases in the state⁴⁸ and the Syariah courts in Terengganu will go paperless in November 2011.⁴⁹

In addition, the e-Syariah court in Malaysia is regarded as achieving international standards as it has featured in many exhibitions such as "ICT for development (ICT4D)" in Geneva and Jeddah in December 2003,⁵⁰ the OIC Summit in Putrajaya in 2003 and the 3rd International Cyber Laws Conference in Kuala Lumpur in March 2004.⁵¹

Conclusion

The e-court system is developed in stages. Everything depends on the sufficiency of staff to conduct the system and appropriate funding. However, a lack in staff and funding does not mean that Malaysian courts cannot make changes to the existing law and procedures. Some countries like Singapore and the United Kingdom have already implemented e-court system and amended their laws and procedures in order to suit the technology court. However, in Malaysia although the e-court system and its technology have been implemented in some courts there is still no statutory provision

45 It was stated that 106 Syariah courts in Malaysia, which are located at 102 places, will be connected through e-Syariah by the year 2005: www.mampu.gov.my/mamapu/bm/esyariahbm.html viewed on July 26, 2004

46 See "Syariah Courts to go online" *New Straits Times*, December 28, 2002, p 4

47 Interview, Tengku Nazlia bt Tengku Mohammad, Information System Officer, JKSM, by the author on November 1, 2006.

48 "E-Syariah speeds up disposition of divorce cases", *The Star*, July 31, 2011 at <http://thestar.com.my/news/story.asp?file=/2011/7/31/nation/20110731180605&sec=nation>.

49 "Paperless" syariah courts soon in Terengganu, *The New Straits Times*, September 16, 2011 at <http://www.nst.com.my/nst/articles/32tina/Article>.

50 See Fazli Abdullah, "E-Syariah dieksport ke negara OIC" *Berita Harian*, June 23, 2004, p 6.

51 See Najib Zakaria, "E-Syariah: Now and the future", *supra*, n 44.

governing the use of such system and technology. Thus, it is submitted that there is a need to review the laws and procedures in order to achieve effective implementation of e-court system as well as to ensure that fairness and justice will always be upheld.