

THE OXFORD
COMPANION
— • TO THE • —

HIGH COURT OF AUSTRALIA

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election, by the use of advisory judicial appointment commissions, by a requirement for senate approval of appointments, or by a process of independent assessment of proposed appointees. Whether any of these systems would be an improvement on the present system in Australia remains open to debate.

NINIAN STEPHEN

Information technology. The Court has come a long way in its use of information technology, or in the old terminology, 'equipment', since 1903. A perusal of correspondence between the District Registrar in NSW and the Principal Registrar in Melbourne reveals that office requisites then included such items as ink wells, steel nibs for wooden pens, chalk (presumably for the drying of ink), and typewriter ribbon.

Court proceedings and the Register of Practitioners were recorded in traditional leather-bound registers. The entries were made in ink, using steel-ribbed pens, until about 1973, when entries by fountain pen or ball point pen were permitted. The Court's registers were retained until the installation of computer systems in the Registry and in the Justices' chambers in the early 1980s.

Judgments were typewritten by secretaries, with carbon copies being taken at the same time. The carbon copies gave way to stencils that could be printed on a hand-operated machine that produced any number of printed ink copies. This form of reproduction of judgments continued into the early 1970s, when it was replaced by the photocopy process.

The photocopier was perhaps the first major technology introduced to the Court. It enabled the more efficient distribution of draft judgments between chambers, and a more rapid dissemination of the Court's judgments to the legal profession, the press, and the general public. The photocopier also relieved the pressure on the library resources of the Court. Copies could be made of authorities, which enabled Justices to work at home without needing to transport bound law reports to their homes or, even more inconveniently, when they went on circuit. As copiers have become more sophisticated, reliance on printed law reports has declined.

The production of judgments was changed from automated typewriters to IBM Magcard machines in the late 1970s. Barwick had seen the machines in England during a visit, and had asked IBM to demonstrate them. The Magcard machine used special cards that were sent from the Justices' various chambers. The machine collated the cards, enabling the judgment to be produced as a single continuous judgment, rather than as separate judgments stapled together. The Court introduced computerised word processing in the early 1980s, later moving to stand-alone personal computers. The Justices initially resisted the introduction of a linked network because of what they perceived to be a lack of security in respect of their individual judgments while in draft form.

The Court now uses information technology not only to facilitate its internal operations, but as an important part of its interaction with the public. It has a local area network that connects personal computers in its premises in Canberra, Sydney, and Melbourne. The network makes use of 'thin-client' technology to provide remote access to networked applications over standard telephone lines. Word processing applications are used for research and in the preparation of

judgments. Database applications and web browsers are used to assist in research by Justices' staff and by the library. Other applications (for example, accounting packages) are used by staff in the management of the Court.

The Court's Registry uses a purpose-built case management system that tracks matters from the time the first documents are filed until a decision is handed down and (if necessary) costs are taxed. The system also generates standard correspondence from Registry staff to parties, as well as providing statistical data for the Court's annual reports. The case management system also holds contact information for the firms that represent parties in cases and for litigants in person, and a database of legal practitioners (barristers and solicitors).

Video links, introduced in March 1988, enable counsel to appear in a state capital and have their argument televised live to the Bench sitting in Canberra. After some initial reluctance by counsel, who feared that video links would impact adversely on the style of their oral argument, the video link system has been accepted by both the Justices and counsel, and is used regularly throughout the year for applications for special leave to appeal, chamber matters, and some administrative matters.

In January 1997, the Court launched an Internet home page <www.highcourt.gov.au>. The site has information about the Court and the Justices, including its annual reports and its business lists. There are also links to judgments and transcripts of hearings. These are hosted by the Australasian Legal Information Institute at <www.austlii.edu.au>; the Institute receives e-mailed copies of judgments from the Court minutes after they are handed down, and transcripts soon after they are prepared; it automatically adds hypertext links to legislation and cases referred to in those decisions and transcripts before making them available on the web.

As a consequence of the increased availability of electronic copies of its judgments, the Court adopted paragraph numbering in its judgments from the beginning of 1998 to facilitate 'medium neutral' citation of the Court's decisions: that is, citation that does not rely on the pagination of a document by a particular word processing or page layout application.

The Court's case management system has been designed to facilitate future enhancements. If the Court approved it, much of the data held in the system could be regularly published on the Internet. This would allow parties, practitioners, and interested members of the public to follow the progress of cases using a web browser. The system has also been designed with the possibility of the electronic filing of documents in mind. At present, the High Court Rules require that parties file documents in paper form at an office of the Registry. If the Court were to approve a change to those Rules, documents could be submitted electronically (by e-mail or using a web browser), stored in the case management system and, once accepted for filing, made publicly available on the Internet with other information about cases. This would make widely and readily available information that is currently publicly available, but only through examination of the Registry's paper files.

The principal area of the Court's activities in which there is still scope for further use of information technology is in the courtrooms themselves. Material that is now handed up to

the Court in paper form could be electronically made available to the Court during the hearing. The bench and the bar table could also have access to databases of legislation, cases, and articles referred to during the hearing—for individual perusal, or to bring to the attention of all present. The **appeal book** (selected material from the courts below, currently put before the Court in paper form) could also be provided electronically. This would require some standardisation of the electronic document formats used by lower courts, and by the practitioners who appear in them. It would also require a significant change in practice by the Court, whose members have, of course, been used to receiving this material on paper.

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Further Reading

Tony de la Fosse, 'The Application of Remote Control Software in a Judicial Environment' (1997) 8 *JLIS* 320

James Popple and Tony de la Fosse, 'Escaping the Relational Database Paradigm: Case Management in the High Court of Australia' (1998) *Proceedings of the Australian Institute of Judicial Administration 'Technology for Justice' Conference*

Inglis Clark, Andrew (b 24 February 1848; d 14 November 1907). 'So you are not to be one of the High Court Judges,' wrote William Harrison Moore to Inglis Clark on 12 October 1906. Harrison Moore continued: 'For many reasons I am sorry. But I fear that you could have taken it too hard, and that the want of any permanent settlement, and the break up of your family life would have left you little of joy in the office. Both Isaacs and Higgins will I am sure feel this very much.'

Inglis Clark was born in Hobart, the youngest son of Alexander Russell Clark and Ann, née Inglis. His family were of Scottish stock, emigrating to Australia in 1832. Inglis Clark was a frail child who acquired much of his early education at home from his formidable mother. He completed his secondary education at Hobart High School. Initially, he qualified as an engineer and joined the family business; but at 24, he decided that his interests lay in the law, and was articled to the **Solicitor-General**, Robert Adams. In 1877, he was called to the Bar.

The 1870s marked an important period in the young lawyer's life. He converted from the family's Baptist heritage to Unitarianism and began to promote his progressive ideas through the pages of his short-lived journal, *Quadriateral*. He was prominent in a number of clubs and societies and championed progressive ideas on moral and social issues.

In 1878, he decided to enter politics, and stood for the electorate of Norfolk Plains. His nomination was heralded by the *Hobart Mercury* in less than effusive terms: 'Mr AI Clark will be a candidate as a rising young lawyer—very young, some 17 months standing, and is credited with holding such very ultra-republican, if not revolutionary, ideas that we should hardly think he will prove acceptable to the electors of Norfolk Plains.'

Inglis Clark was elected unopposed. He rejected the *Mercury's* claim that he was 'one who finds his proper place in a band of Communists', replying that he 'believed in the theory of Government which was propounded by the late A Lin-

coln—"Government of the people, for the people, and by the people"'.

As a backbencher, in 1880 Inglis Clark introduced a number of private member's Bills in an attempt to reform the *Master and Servant Act 1856* (Tas) and Tasmanian criminal law. He lost his seat in Parliament at the 1882 election and was unsuccessful in East Hobart in 1884 and 1886.

Out of Parliament, Inglis Clark established himself at the Bar in a number of criminal and civil matters. His reputation as a reformer continued to expand as he founded the Southern Tasmanian Political Reform Association.

In 1887, he was elected in a by-election to the seat of South Hobart and became **Attorney-General** in the Phillip Fysh government—a position he held until 1892. He was again Attorney-General to the Braddon government from 1894 to 1897. Consistent with his activities outside the Assembly, he set about implementing a law reform agenda that included amendment of the Master and Servant Act, legalisation of trade unions, and reform of the electoral system (the introduction of the 'Hare-Clark' system). In all, Inglis Clark initiated over 150 ministerial Bills in his short parliamentary career, 'one less than Sir Henry Parkes during his whole career'.

Inglis Clark's interest in federation was theoretical as well as practical. The customs walls that impeded interstate trade would have been evident from the activities of the family business. As a lawyer, he was keenly aware of the limitations associated with a colonial Australia. Writing to Barton in 1889, he noted the obstacles that Parkes had placed in the way of federation. However, he noted, 'his day of authority and obstruction will come to an end like that of other Ministers, and ... I have no doubt that you will then be in a position to effectually assist the cause of Australasian federation'. In the same letter, Inglis Clark raised the failures of colonial administrations to deal with joint stock companies, executor and trustee companies, and deceased estates with property in several colonies, as well as the need for mutual recognition of the orders of other colonial jurisdictions.

Federation was in the air in 1890. Inglis Clark joined the delegates from the other colonies assembled in Melbourne for the Federation Conference. He made a bold push for the American constitutional model, rather than the Canadian model (the *British North America Act 1867* (Imp)). In doing so, he was at odds with Griffith, one of two delegates from Queensland.

In 1891, Inglis Clark represented Tasmania in the Privy Council appeal from *Main Line Railway v The Queen* (1889). The appeal was settled, but gave him an opportunity to observe at first hand the 'grand and august tribunal' where 'only one of the judges was awake and the other three were all dozing'.

Inglis Clark's preference for the USA as a federal template is not surprising. As Alfred Deakin noted, it was 'a country to which in spirit he belonged'. He was consumed by all things American and studied its history, law, and politics. His three visits to the USA established friendship with leading public figures including Oliver Wendell Holmes Jr, with whom he corresponded. It is said that his adulation of Holmes extended to the installation of a window from Holmes' house into the study of Inglis Clark's Battery Point house in Hobart.