

# **Legal Informatics and Access to Justice:**

## **Innovation in Education and the Community Sector**



New Zealand  
Winston Churchill  
Memorial Trust

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March 2017**

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## 1. *Introduction*

Access to justice is an important feature of legal systems. It is a basic principle of the rule of law and is crucial for the protection of all other human rights. Sadly, however, the ability to access justice is something that remains out of reach for many people. There is a gap between the need for, and the availability of quality legal assistance.

New Zealand's legal community is aware of the problem. There is general concern about the number of people with unmet legal needs and the related problems of cost and accessibility of justice services. Calls have been made for the legal profession to participate more,<sup>1</sup> and many different solutions to how the wider legal community can adapt have been put forward.

A number of academics and practitioners have suggested that technological developments and the Internet will fundamentally alter the nature of the justice system and related professions.<sup>2</sup> This sentiment is echoed in the growing body of international research, scholarship and creative activity which suggests that technology should be harnessed by those in the access to justice space to address unmet legal needs.

### 1.1. *Aims of the research*

The aim of the research project was to understand how innovations in legal informatics, that is the study of information and use of information and communications technologies by the legal community, can facilitate access to justice in New Zealand.

The research concentrated on initiatives led by voluntary and community organisations as well as law, technology and innovation research centres within universities.

The goal of the research process was to understand the characteristics and impacts of information and communications technology systems, applications and strategies in the access to justice space across a range of international jurisdictions.

By drawing together overseas examples of work in this area it is hoped that this report will provide a basis for further discussion and research into how the New Zealand legal community can innovate to increase access to justice.

### 1.2. *The structure of the report*

This report focuses on the issues of access to civil justice for disadvantaged and low income people, as opposed to barriers created by criminal justice policy. The report first establishes a

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<sup>1</sup> See for example: Helen Winkelmann, Chief High Court Judge, "Access to Justice – Who Needs Lawyers?" (Ethel Benjamin Address, 7 November 2014); and Kathryn Beck, "A Huge Issue for New Zealand" (Law Talk, no 878, November 2015).

<sup>2</sup> Richard Susskind, *Tomorrows Lawyers* (Oxford University Press, Oxford, 2013).

definition of ‘access to justice’ and then explains why it is worthwhile to look internationally at the subject. This is followed by country profiles and a description of the main activities of each organisation visited. In the final part, the report identifies the potential of information and communications technologies to facilitate access to justice and a number of factors to be considered by the organisations seeking to innovate in this area.

### 1.3. *Out of scope of the report*

The focus of the research means some technologies relevant to the justice sector are excluded from this report. Court-led initiatives to simplify administrative procedures, such as e-filing are not discussed. Neither is artificial intelligence,<sup>3</sup> or the computerisation of procedures to determine justice such as online dispute resolution.<sup>4</sup>

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<sup>3</sup> The application of artificial intelligence to access to justice is a field which is still in its infancy and remains a research curiosity. The term is often incorrectly applied to data matching and big data analysis in the access to justice space.

<sup>4</sup> For discussion of online dispute resolution’s potential to enhance access to justice, See: David J. Harvey, “From Susskind to Briggs: Online Court Approaches” (2016) 5(2) JCivLP, 84.

## 2. *Understanding What Is Meant By ‘Access to Justice’*

Access to justice means different things to different people. As a term ‘access to justice’ was first popularised in the 1970s,<sup>5</sup> and has subsequently been put to use in a variety of different contexts, often interchangeably and generally without an explanation of its meaning.<sup>6</sup>

Access to justice is commonly used to refer to an individual’s ability to access the courts and judicial institutions however this is only part of what the access to justice means. Access to justice is also a human right and an integral part of the rule of law in constitutional democracies.

This report adopts a broad concept of access to justice, aligned with the aims of the Legal Services Act 2011,<sup>7</sup> the New Zealand Bill of Rights Act 1990,<sup>8</sup> and the work of the New Zealand Law Commission on the subject of access to justice.<sup>9</sup> As used herein, the term, ‘access to justice’ is intended to mean effective access to the systems, procedures, information and locations used in the administration of justice for everyone, regardless of race, ethnic origins, gender or disability.<sup>10</sup>

Promoting access to justice means working to ensure everyone has access to the resources necessary to protect their rights and interests. It starts with ensuring people are aware of and understand their rights. It also involves assisting people to navigate both formal and informal dispute resolution mechanisms. Promoting effective access to justice involves ensuring the justice system delivers fair, meaningful and enforceable solutions.

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<sup>5</sup> Popular use of the term ‘access to justice’ stems from the work of Italian jurist, Mauro Cappelletti who wrote a series of volumes on the subject in the 1970s. See: Bryant G. Garth and Mauro Cappelletti (eds) *Access to Justice* (Giuffrè Editore, Milan; and Sijthoff & Noordhoff, Alphen aan den Rijn, Netherlands, 1978). See also: Bryant G. Garth and Mauro Cappelletti, “Access to Justice, the Newest Wave in the Worldwide Movement to Make Rights Effective” (1978) 27, *Buff L Rev* 181 at 182.

<sup>6</sup> Christine Coumarelos and others, “Legal Australia-Wide Survey: Legal Need in Australia” in *Access to Justice and Legal Needs* (Vol 7, Report, Law and Justice Foundation of New South Wales, August, 2012).

<sup>7</sup> Section 3 of the Legal Services Act 2011 does not provide a definition of ‘access to justice’, but does purport to promote it by establishing “a system that provides legal services to people of insufficient means and delivers those services in the most effective and efficient manner.”

<sup>8</sup> Section 27 of the New Zealand Bill of Rights Act 1990 provides a Right to Justice, being “Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person’s rights, obligations, or interests protected or recognised by law.”

<sup>9</sup> See for example: “Delivering Justice for All: A Vision for New Zealand Courts and Tribunals” (NZLC R85, Wellington, 2004); and “Woman’s Access to Legal Services” (NZLC SP1, Wellington, 1991)

<sup>10</sup> Stephanie Ortoleva, “Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System” (2004) 17(2) *ILSA J Int’l & Comp L*, 281 at 284.

### ***3. Why Look Internationally at Access to Justice?***

There is a degree of universality to the problems associated with access to justice. Worldwide, low income and disadvantaged people are vulnerable to legal difficulties. The major issues that act as barriers to accessing justice, such as cost, complexity of law and inability to physically access relevant services tend to transcend cultural differences and geographical boundaries and apply to everyone. Accordingly the strategies to overcome such obstacles are also universal. This means international efforts to design systems to facilitate access to justice may be used to evaluate the adoption of similar strategies in New Zealand.

In 2016 the author visited the United States of America, Fiji and Australia and met with organisations who have developed a reputation for innovation in the field of access to justice. These three countries were selected on two criteria: they are governed by a common law legal system and they contain diverse people, cultures and geographic environments. The following is an overview of each country and the organisations visited.

## 4. *Countries Visited*

### 4.1. *Australia*

The Commonwealth of Australia is a federal republic made up of six states and ten federal territories. Australia's population is approximately 24 million people, with an average life expectancy of 82 years. Australia is a multicultural and multiracial country. Indigenous Australians make up 3 percent of the overall population and most Australians are immigrants or the descendants of immigrants who arrived over the last two centuries from many different countries. Australia's geography lends itself to heavily populated coastal areas and a sparsely populated interior desert.<sup>11</sup> Australia is one of the largest mixed market economies in the world, its GDP represents 2.16 percent of the global economic output.<sup>12</sup>

The Australian Government is introducing new initiatives and reforms that aim to improve access to their justice system. The Attorney-General's Department oversees the Strategic Framework for Access to Justice<sup>13</sup> and coordinates government policy and projects that seek to make the federal justice system less complex and more accessible. However, there is still a long way to go before this is achieved. An Australian wide survey of legal need<sup>14</sup> reported that a sizeable proportion of people experience legal problems – with 50 percent of respondents having experience in one or more legal problems in the previous 12 months. Vulnerability to legal problems varied according to demographic characteristics, with the four most prevalent types of problems identified being classified as consumer, crime, housing and government problems. Of note, there were sizeable gaps in the awareness of respondents of not-for profit legal services with only a 36 percent recognising the role of community law centres. The survey also assessed barriers to obtaining advice for legal problems. Respondents identified communication, distance and cost as the most common barriers to obtaining help from legal advisers.

### 4.2. *Fiji*

The Republic of Fiji is an archipelago in the South Pacific made up of over 300 islands, 110 of which are inhabited. The population is approximately 900,000 people, with an average life expectancy of 70 years. Fiji is a multicultural and multi-racial nation consisting mainly of ethnic Fijians (Melanesian–Polynesian), and people of Indian origin. The country's geography lends itself to heavily populated coastal plains and sparsely populated mountainous interiors. The nation's capital is Suva, home to the majority of the country's urban population.<sup>15</sup> Fiji is one of the most developed economies in the Pacific Islands.

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<sup>11</sup> Attorney General's Department, "Living Safe Together"

<[www.livingsafetogether.gov.au/informationadvice/Pages/Multicultural-Australia.aspx](http://www.livingsafetogether.gov.au/informationadvice/Pages/Multicultural-Australia.aspx)>

<sup>12</sup> World Bank Group, "World Data Bank – Open Data" <[data.worldbank.org/country/australia?view=chart](http://data.worldbank.org/country/australia?view=chart)>

<sup>13</sup> Attorney General's Department, "Strategic Framework for Access to Justice" (Report, September, 2009)

<sup>14</sup> Above n 6.

<sup>15</sup> World Bank Group, "World Data Bank – Open Data" <[data.worldbank.org/country/fiji?view=chart](http://data.worldbank.org/country/fiji?view=chart)>

Fiji has had a turbulent history over the last few decades. Following independence from the United Kingdom in 1970, ethnic division has led to sporadic unrest and the country has been subject to four coups d'état, the last in 2006 leading to a period of military rule concluding with the adoption of a new Constitution and parliamentary elections in 2014.

Fiji's legal system is well established and functions in accordance with the Constitution. The government has made efforts towards improving justice outcomes by promoting judicial independence and transparency and funding legal service delivery. It is committed to improving access to justice. However, the justice system still faces a range of challenges, including rights awareness and overcoming physical and geographical barriers to accessing services.<sup>16</sup>

#### 4.3. *United States of America*

The United States of America is a federal republic made up of 50 states and various territories and possessions. The population of the United States is estimated to be approximately 322 million people, with an average life expectancy of 78 years.<sup>17</sup> The United States is a multi-cultural and multi-racial country. Indigenous Americans make up only 0.8% of the population and most Americans are immigrants or the descendants of immigrants who arrived in successive waves of migration from the first half of the 19th century onwards.<sup>18</sup> The United States is the world's third largest country by area and has a large rural and urban population. The United States' economy is the largest in the world in terms of nominal GDP.<sup>19</sup>

In the United States, most legal problems experienced by low-income and disadvantaged people living are addressed without the assistance of legal representation.<sup>20</sup> Many litigants navigate the court system by representing themselves because they cannot afford lawyers. Interestingly a significant number of people who are unrepresented do in fact qualify for federal or state-funded legal aid but do not receive it due to the limited resources for legal providers.<sup>21</sup> A nationwide survey of unmet civil legal needs conducted by the United States Legal Services Corporation (LSC), a major provider of free civil legal services, identified that for every person LSC helped, one was turned away because of resource constraints.<sup>22</sup> LSC also found that only a small fraction

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<sup>16</sup> For further discussion see: Don Patterson, "Legal Challenges for Small Jurisdictions in relation to Privacy, Freedom of Information and Access to Justice" (200) 4 JSPL, <[www.usp.ac.fj/index.php?id=13197](http://www.usp.ac.fj/index.php?id=13197)>

<sup>17</sup> United States Census Bureau, "Population Clock" <[www.census.gov/](http://www.census.gov/)>.

<sup>18</sup> Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans." (Report, September, 2009).

<sup>19</sup> World Bank Group, "World Data Bank – Open Data" <[data.worldbank.org/country/united-states?view=chart](http://data.worldbank.org/country/united-states?view=chart)>

<sup>20</sup> Columbia Law School Human Rights Institute and others, "Equal Access To Justice: Ensuring Meaningful Access to Counsel in Civil Cases, Including Immigration Proceedings" (Report, July 2014) at 1.

<sup>21</sup> Ibid, at 2.

<sup>22</sup> Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans." (Report, September, 2009) at 9.



of the legal needs of low-income people are addressed with the assistance of a lawyer.<sup>23</sup> The primary cause underlying such findings was financial, however the report also identified that other barriers such as geographical distance and isolation, low literacy, physical or mental disability, limited English proficiency, culture and ethnic background, and apprehension about the courts and the legal system also prevent people from seeking help to resolve their legal problems.

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<sup>23</sup> Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans." (Report, September, 2009) at 6.

## 5. *Organisations Visited*

### 5.1. *IIT Chicago-Kent College of Law's Center for Access to Justice & Technology*

The Center for Access to Justice and Technology's (CAJT) mission is to make justice more accessible to the public by promoting the use of the Internet in the teaching, practice and public access to the law.

The CAJT was established at the Chicago-Kent College of Law in the early 2000s following completion of Illinois Institute of Technology's 'Access to Justice, Meeting the Needs of Self-represented litigants: A Consumer Based Approach' Project.

This project identified various opportunities to use software to bridge the justice gap – a key insight being the 'simple' act of filling out legal forms becoming a barrier to accessing justice for many low income self-represented litigants. This led to the development of Access to Justice (*A2J Author*)<sup>®</sup>.

First released in 2004, *A2J Author* is a software tool that guides a person through the process of providing information necessary to complete court documents that are ready to be filed with the court system. *A2J Author* enables staff from the courts and community legal service providers to build web-based guided document assembly modules at very low cost. *A2J Author* acts as a front end solution; the data collected from users can then be printed off or imported into commercial document assembly products such as *Hotdocs*.

*A2J Author* is unique in its design and approach. Aimed at self-represented litigants, *A2J Author Guided Interviews* sets itself apart from comparable products by using a customisable avatar to engage with users and literally guide them through the process. The focus on the visual aspect of the program recognises that many of the program's users will not have strong literacy skills and the use of an avatar is comforting. The gender and skin tone of the avatar can also be tailored to best suit the audience, an approach which has been proven to be particularly effective with various refugee communities.

CAJT continues to manage and promotes the *A2J Author*, working in close cooperation with the Center for Computer-Assisted Legal Instruction (CALI), who co-owns *A2J Author*, and is responsible for its ongoing development.

*A2J Author* has undergone significant development. JavaScript has replaced Flash as the programming language used to build *A2J Author*. New versions have been released on both Windows<sup>®</sup> and Macintosh<sup>®</sup> operating systems. Mobile-friendly layouts and design elements have also been included. In October 2016 *A2J Author* moved from being downloadable software to a web hosted '*as-a-service*' solution.

*A2J Author* is available for non-commercial use by courts, community law centers and other non-profit organisations.

CATJ also conducts a semester-long Justice and Technology Practicum exploring the use of technology in the legal field, and directs the Self-Help Web Center (SHWC) located at Circuit Court of Cook County in the Chicago Loop. The SHWC is a help desk comprising of three Internet-enabled computer workstations designed to assist self-represented litigants by providing free access to user web-based tools and legal resources created by Illinois Legal Aid Online.

CATJ work is funded largely by the Legal Services Commission Technology Initiative Grant Program.

## 5.2. *Illinois Legal Aid Online*

Illinois Legal Aid Online's (ILAO) mission is to increase access to justice for lower income and vulnerable Illinois residents through the innovative use of technology. ILAO aims to assist and educate the public and to train and support legal aid providers and *pro bono* attorneys.

Illinois legal Aid Online's focus is providing legal information to website visitors as well as hosting separate websites that assist *pro bono* and Legal Aid lawyers to connect with clients and relevant organisations. ILAO describes their organisational identity as a 'collaborator and connector'.

ILAO began in 2001 as part of the Chicago Kent's Center for Access to Justice (CATJ) and became a separate not for profit organisation in 2005. ILAO is governed by a management team overseen by a board, much in the same way as community law centres operate worldwide. As of May 2016, ILAO has 17 staff members including four from Americorp VISTA (Volunteer Services to America), a national program designed to alleviate poverty. In addition, ILAO has 400 volunteers who act as subject matter experts to develop content that offers website visitors practical information and answers to some of the most frequently asked questions about various legal issues and who provide remote assistance to website visitors by guiding them to the material which is most relevant to their enquiry.

As a provider of legal information online, ILAO does not have clients and no staff practice as attorneys. Student volunteers who provide remote assistance undergo training in the chat software and in what to say to ensure that the advice they give is limited to navigational assistance only.

Content management has presented a number of challenges for ILAO. Over the years the number of articles has increased to over 2000 on their English speaking web portal (ILAO also provides a mirror site in Spanish). ILAO recognises that too much information can be a barrier to communication, with a lot of articles being duplicative and containing overlapping subject matter. This can be confusing for users of the in-site search and puts pressure on resources to keep the

information up to date. When the Spanish speaking mirror site was established, ILAO chose to reduce the number of articles to 300 and it feels that is a much more effective number. As part of the ILAO sites redevelopment, which saw the four websites condensed into one in October 2016, ILAO purged a large number of English language articles and updated its content management system. HTML replaced many of the PDF and rich text documents; the new system enables logged-in volunteers to update articles as the law changes or new issues come to light. Volunteers who hold specific permissions have the ability to edit text and have their changes peer-reviewed before being published to the website.

ILAO actively use metrics to review the number of web site visitors and monitor trends and demands for particular types of legal information. Google Analytics supplies a variety of information, from; the number of visitors, visits and page views (186,974 for the month as at the 20th of May 2016); to the time people spent on a page, as well as the number of new users. From this data, further information can be deduced For example, what is the most popular content (family law issues) and what are the seasonal trends? From a service delivery perspective this information is very useful as it can identify where content or effort need to be focused.

ILAO receives funding through various grant programs administered by private organisations, the Chicago Bar Foundation and the Attorney General, as well as revenue generated from contracting technology services to third parties.

### 5.3. *National Center for Access to Justice*

Established in 2010, National Center for Access to Justice (NCAJ) is an academically affiliated law and policy organisation that relies on data to promote reform in both the civil and criminal justice systems.

The NCAJ's main focus is producing the Justice Index which ranks each of the 50 states, the District of Columbia and Puerto Rico based on the extent to which their laws, policies and practices facilitate access to justice. The data is collected by courts in all 52 jurisdictions and is then evaluated to determine the degree to which best practices for ensuring access to the justice system have been adopted across the country. The information gathered is presented in one of four categories of research findings: i) the number of attorneys for people in poverty; ii) the amount of support for people with limited English proficiency; iii) access for people with disabilities; and iv) help for people proceeding without lawyers. NCAJ then gives each state a score which is indicative of its performance on a 100 point scale, with higher scores indicating better access to justice.

The project continues to evolve with the publication of each new Justice index. For example, the 2016 index contains 68 more indicators, 3,593 more data points, and 2,270 more cited sources than the 2014 version. As the quantity of data increases, so too does the challenge to represent and to derive meaning from it.

The Justice Index makes use of sophisticated tools to transform data into valuable metrics that can be used to tell a story. The data is placed in a visual context to help people understand the significance of it. Data visualisation is used to illustrate patterns, trends and correlations that might otherwise go undetected in text-based data. Through data gathered during 2015 as part of the 2016 Index, the NCAJ found that:

- Some states have fewer than one civil legal aid attorney per 10,000 people who are poor, while there are 40 attorneys for every 10,000 people across the nation.
- 24 percent of states do not have a rule authorising court clerks to provide informational assistance to people who have no lawyers.
- 45 percent of state judiciary web sites do not provide information in any language other than English.
- 25 percent of the states do not yet assure quality by using language interpreters that are ‘certified’.
- 22 percent of states allow judges to charge a deaf or hearing impaired person for the cost of a sign language interpreter.
- 47 percent of states do not authorise judges to take steps to ensure that unrepresented individuals are fairly heard.

The Justice Index is made possible through funding and participation from corporate sponsors and with the assistance of five *pro bono* law firm research teams.

The NCAJ has expanded its field of operation as part of its recent move to Fordham Law School, New York City. New areas of focus include the role of big data in access to justice and supporting the implementation in the United States of United Nations Sustainable Development Agenda’s ‘SDG16 Data Initiative’, which calls on all countries to draw on the ‘data revolution’ to build effective, accountable and inclusive institutions to assure access to justice.

#### 5.4. ***The New Media Advocacy Project***

The New Media Advocacy Project (N-MAP) uses innovative video and storytelling techniques as a tool in human rights litigation and advocacy. By developing short form informational videos, documentaries and social media campaigns, N-MAP’s goal is to help lawyers and advocates win cases and succeed in campaigning on behalf of vulnerable communities.

Formed in 2010 and based in New York, N-MAP is a non-profit organisation that embraces ‘start up’ culture and digital media. N-MAP has grown from a one person operation to being governed by a small board of directors who actively manage the organisation. As of May 2016, the organisation also employs four Project Managers, two of whom focus on the technical side of NMAP’s work, while the other two, who are legally trained, are located in Mexico and Nigeria respectively; the two countries outside of the US which are NMAP’s current focus. Three interns make up the rest of their staff. NMAP also contracts cinematographers and content editors as and when required.

N-MAP’s combination of legal and media expertise enables the organisation to tell powerful and persuasive stories. N-MAP recognises that the complex nature of law and legal institutions means clients are often omitted from judicial process or their experiences are reduced to words recounted by someone else. Driven by the belief that visual imagery can move us in ways that writing cannot, N-MAP uses digital media to document human stories as a way to explain technical and legal concepts in a visceral manner. Video allows lawyers to bring clients’ voices directly to policymakers, judges, and mainstream media as well as to promote rights awareness within communities.

N-MAP’s work spans a range of human rights causes around the world in countries including Georgia, Mexico and Nigeria. Currently 70 percent of NMAP’s work is conducted in developing nations and the remaining 30 percent occurs domestically in the United States.

N-MAP’s achievements include: contributing to making bus lines in Georgia’s capital, Tbilisi, accessible to disabled citizens; enabling the Brooklyn Community Bail Fund to provide charitable bail to defendants charged with misdemeanour crimes; and producing a series of interactive rights education videos to help New Yorkers sued for consumer debt.

N-MAP is privately funded by a number of charitable trusts. Revenue is also received from supplying professional services to not for profit organisations developing media content.

In the future N-MAP aims to grow as an organisation. It intends to move more technical aspects of its operation in-house while continuing to develop relationships with independent cinematographers and production staff. N-MAP also intends to expand the scope of its work by developing more of its own projects and by working with other organisations to promote justice reform.

##### **5.5. *Pro Bono Net***

Pro Bono Net is a non-profit organisation that develops highly innovative pro bono and self-help web platforms for use by legal service agencies and the public. Pro Bono Net’s mission is to assist low income and disadvantaged Americans to access justice through the provision of innovative

communication and information solutions and by facilitating collaboration among members of the nationwide legal community.

Established in 2004, Pro Bono net is based in New York City and has an office in San Francisco. As of May 2016, the organisation employs thirty five people as either program staff, who come from law related backgrounds and who are responsible for the preparation, delivery and ongoing development of work programs; or technical staff, who are responsible for software development and maintaining the information and communications technologies underlying infrastructure.

Pro Bono Net's various programs of work aim to empower the public with information and self-help tools to improve their lives, equip advocates with the resources to make a stronger impact, and mobilize volunteers to expand help available.

Pro Bono Net's Law Help is an online resource that helps people understand their legal issues and find legal help. Web site visitors can access legal education guides, information on where to find free legal aid programs in their communities, court information and links to social service agencies. This resource was built and is maintained in partnership with legal aid, pro bono and court-based programs in 28 states.

Law Help Interactive is an online legal document assembly service that enables legal services groups to assist represented litigants. Staff from the courts and community legal service organisations use Law Help Interactive to generate a series of simple questions that guide users to provide the information necessary to automatically complete court documents that are ready to be filed with the court system. Law Help Interactive is used daily to produce about a half-million legal documents a year by legal services groups in 39 states, Guam, and Ontario, Canada.

The Immigration Advocates Network and Citizenship Works provide free, easily accessible and comprehensive online resources and tools to assist with immigration matters. The Citizenship Works service, for example, helps people to apply for citizenship by providing interactive resources explaining eligibility for naturalisation and assisting with the completion of application forms. In addition to providing online guides applicants are given the option of being connected with free live online legal advice from one of Pro Bono Net's Immigration Advocates Network partners. An online tutorial also helps applicants prepare for the naturalization tests.

Pro Bono Net is funded through revenue generated from the supply of the Pro Bono Manager, Pro Bono Net's hosted pro bono program management platform, to law firms and through the support of institutional funders, corporate sponsorship and charitable contributions from law firms.

#### **5.6. *RMIT's Centre for Innovative Justice***

The Centre for Innovative Justice's (CIJ) mission is to research, teach and promote innovative ways of delivering justice.

The CIJ was established at RMIT University, Melbourne, Australia in October 2012 and focuses on therapeutic jurisprudence, restorative justice and alternative pathways to justice. The CIJ is involved in developing new modes of legal service delivery and capturing data to achieve justice reform. Two of CIJ's projects are particularly focused on the use of information and communications technologies to assist access to justice.

The Access to Justice Through Technology Challenge (A2JTTC) is a 13 week practical course of study for undergraduates students which is run as part of RMIT's Fastrack Innovation program in partnership with; the CIJ, Victoria Legal Aid and the community legal sector.

Small teams of students from a variety of backgrounds are paired with mentors from the community legal sector and asked to use their design and technology skills to solve specific legal problems associated with access to justice.

In 2016, seven teams developed solutions which addressed workers' rights, sought to improve access to legal assistance and service delivery at community law centres, or help those in financial hardship avoid utilities disconnections. Each of the solutions was centred around the innovative use of information and communications technologies with a special focus on web-based platforms.

The students do not build their solutions; rather, the focus of the course is innovative thinking and pitching a proposal. Students learn about important social and legal issues and gain exposure to design thinking and how it can be used to drive innovation in the justice system. At the end of the programme the teams present their solutions to a panel of judges made up of RMIT and Victoria Legal Aid representatives.

A number of solutions from the 2015 round of the A2JTTC are in the process of receiving government and private funding so they may be introduced into the legal assistance sector.

The ATJTTC program continues to develop, based on feedback from the previous year's participants, and is funded by Victoria Legal Aid with support from Deloitte Digital.

The Justice Index Project investigates ways to collect and document detailed data on how justice is delivered and experienced across Australia.

The importance of evidence-informed policy practices and the ability of research to improve legal service delivery decisions underpin the project. Part of the work includes identifying what factors need to be considered to ensure that the findings reflect the conditions experienced by the population, including marginalised and disadvantaged sectors of society. The Justice index is



intended to encourage all jurisdictions to take a more innovative and data driven approach to how justice is delivered and experienced by people using their legal services.

In 2016, the Justice Index project delivered its report to Commonwealth Attorney General's Department. The CIJ continues to build on this initial work and intends to develop and expand its findings.

#### **5.7. *United Nations Development Program Pacific Office***

The United Nations Development Programme (UNDP) promotes effective, responsive, and fair justice systems and is committed to integrating access to justice principles into the United Nations post-2015 development agenda.

UNDP's Pacific Office located in Fiji's capital Suva is currently administering two access to justice projects in partnership with Fiji's government. Both of these initiatives value innovation and use information and communications technologies.

Project REACH (Rights, Empowerment and Cohesion for Rural and Urban Fijians) which was launched in April 2015 aims to raise awareness of individuals' economic, social and legal rights and to improve access to social and legal services, especially legal aid.

REACH Mobile teams deliver rights awareness programmes and legal outreach services to communities in rural and urban informal settlements. Each visit involves a rights awareness-raising session followed by a service delivery component where members of the REACH team with backgrounds as legal aid lawyers and court registrars provide legal advice to individuals. The visits deal with a broad scope of issues, including local government, family law and human rights matters. The vast majority (85 percent) of the communities visited have never received rights based information before. Notable successes include informing people of their rights to elderly pensions, which they may not have been aware of due to the age of eligibility having been reduced.

Information and communications technologies play an important part in the work of project REACH. One challenge the REACH team has faced is delivering information in an effective way to audiences with a variety of cultural backgrounds. iTaukei and Indo-Fijian have different communication styles and respond differently to cues when interpersonal information is being exchanged. The mobile teams have overcome this issue by adopting different presentation techniques, developing special video content and limiting the duration of rights awareness-raising sessions to under an hour in length.

The REACH Pilot project rolled out in the North of Fiji was successfully concluded in early 2016. Project REACH project commenced in other parts of Fiji in late 2016, having incurred delays caused by the effects of Cyclone Winston.

Project Reach is a three year project funded by the Government of Japan.

The Fiji Access to Justice was launched in August 2016. The project aims to improve the administration and operations of the courts, to develop legal aid and to fund NGO accompaniment services to low income and disadvantaged citizens.

Information and communications technologies will feature as part of the project. Judicial strengthening will include provision of a national electronic case management system. The project will also establish a legal information helpline to raise awareness of available services. Many components of the project have yet to be determined. However, the intention is to adopt a data driven approach to determining what will be focus areas. Initiatives will be selected based on evidence of need and responses by Fijian peoples.

The Access to Justice Project is a four year project primarily funded by the European Union with additional funding from UNDP.

## 6. *Key Findings*

### 6.1. *Innovation in the access to justice space*

Although lawyers, academics and other professionals dedicated to promoting access to justice have been using computers for several decades, recent advances in technology show computers are no longer just a means of accessing traditional information resources or managing productivity. They are now directly capable of affecting social change.

All the organisations visited as part of this research project use information and communications technologies innovatively to support access to justice. The projects can be broadly classified into three categories.

- Online platforms that house education modules that assist and enable people experiencing legal problems to understand legal issues and connect with local resources.
- Systems for aggregating data for better decision making in the access to justice space.
- Multimedia storytelling systems for the purpose of rights awareness and advocacy.

The wide variety of projects and technologies shows the potential for further innovation in the field of access to justice by the education and the community sectors. The following discussion provides examples, at a high level, of the types of activities that technology can assist with and is based on observations made during the project.

#### 6.1.1. *New ways to convey legal information*

Information and communications technologies offer new ways to frame information and to approach legal concepts so that individuals with legal problems can better understand their rights and access relevant services.

Online information retrieval systems provide low income and disadvantaged people with interactive resources and a facility for remote assistance. Examples such as web portals may also be used to direct individuals to specific organisations, coordinate volunteers and *pro bono* activities, and enable advocates to privately collaborate and share resources.

Document assembly applications assist self-represented litigants and legal services staff in preparing legal documents quickly and effectively. The Center for Access to Justice and Technology's *A2J Author* and Pro Bono Net's *Law Help Interactive* are examples of how document assembly programs can transform the process of completing court forms by taking the often confusing paper based practice and automating it.

#### 6.1.2. *Encouraging inclusion and promoting transparency in the justice system*

Information and communications technologies offer individuals with legal problems a platform to ask difficult questions and voice their opinions. By communicating their issues and problems, they can receive access to information, support and local resources, and influence the development of policy and law reform.

Multimedia storytelling can be effective in bringing the voices of people who have unmet legal needs to the attention of authorities and to prompt inquiries, conciliation and court action. The New Media Advocacy Project and UNDP's work in the Pacific provide examples of how multimedia story telling can be used to facilitate access to justice.

A number of organisations cited technology-enabled crowdsourcing as a useful method of engaging the public on issues of access to justice. Crowdsourcing involves drawing on opinions, labour or other resources of a potentially large group of people. The concept is increasingly being applied to policies and strategies at national, regional and local levels and is viewed as a powerful tool to augment traditional citizen participation routes such as elections and referendum. The publication of this data can enhance transparency and help communities understand how their feedback is processed.

#### 6.1.3. *The provision of aggregated data for better decision making*

Information and communications technologies can provide detailed statistical data about access to justice. Organisations can use this data to evaluate options and make informed decisions to improve resourcing, reduce costs, and increase accuracy and accountability.

RMIT and NCAJ's justice index projects are examples of how data may be used to solve a problem or optimise a process. These projects also showcase how data-analytic tools can improve our understanding of issues by organising data in specific ways for analysis. The results can be used to highlight issues of real public concern and provide graphic evidence to support the case for reform of policy and practices that impact access to justice.

Platforms and systems that assist people experiencing legal problems can also be a source of meaningful data. For example, web analytics, social media analysis and text mining can provide the appropriate metrics to evaluate users' needs and the overall success of the project. In this way, a system operates as a feedback loop to determine further innovation and resource prioritisation. Making appropriate data publicly available has the potential to encourage future innovation.

#### 6.2. *Who to involve in the innovation process?*

Thus far, the discussion about access to justice in New Zealand has been led by the legal profession and community services agencies with little input from people outside of this group. This will need to change if innovation is to occur. What is required is expertise in a range of skills and involvement from individuals with different professional backgrounds. The following is a summary of the types of team roles observed at the organisations visited as part of this project.

Lawyers, academics and other professionals dedicated to promoting access to justice are responsible for instigating, shaping and driving forward initiatives designed to promote access to justice. This group of individuals understands how the current system fails to address the legal needs of low income and disadvantaged peoples, which is a logical starting point when considering how information and communications technologies may assist access to justice.

Project manager are responsible for the day to day operational aspects of a project. They have solid knowledge of the technologies involved in the project and can use technical details to shape strategy. They also have the ability to build consensus within a team, bridge the gap between technical and non-technical team members and deliver information appropriately. Interestingly, there was a consensus among interviewees that legal professionals should not fill this role unless they have recognised project management experience.<sup>24</sup> One interviewee commented: “Although lawyers sometime consider themselves project managers, without the necessary training they lack understanding of the technologies involved and are not equipped to respond to the practical difficulties associated with deploying software”.

Technical professionals are specialists who are responsible for specific areas such as development, implementation and the ongoing maintenance of the technology. Depending on the nature of the project, they may include any or all of the following activities:

- Content editor – primarily responsible for the production and publication of original written content as well as video and multimedia.
- Cinematographer – primarily responsible for capturing the film image as required by and under the direction of the team
- Designer – primarily responsible for the visual elements of the user interface. The designer may also be responsible for overseeing the usability and accessibility of solutions.
- Developer – primarily responsible for the technical architecture of the platform or software and ongoing maintenance.
- Film editor – primarily responsible for cutting and piecing together recorded footage into a finished product.
- Subject matter expert – primarily responsible for providing specific, detailed information to a team and verifying volunteer or user generated content.

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<sup>24</sup> For further discussion on this subject see: Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, Oxford, 2011),32.

- Testers – primarily responsible for finding application defects and preventing bugs from reaching the end user.

### 6.3. *Outsourcing and collaboration*

Depending on the nature of the project and the teams' abilities, other people's expert opinion may be sought to provide input to decisions or to perform tasks.

Outsourcing is the practice of obtaining from another party the supply of goods or services which could have been or are usually provided internally. Outsourcing may be used to bring into the team the necessary skills required to fill any of the roles described above.

Collaboration is the practice of working together to accomplish a task that is impossible or difficult to reach without the efforts of others. Many of the projects observed featured collaboration and there was a strong sense of collegiality among the organisations visited. There was a consensus among interviewees that the benefits of working with other organisations to achieve goals outweighed any negatives.

The degree and nature of collaboration varied across the projects observed. Collaboration among online legal service providers was viewed as crucial to reaching those most in need. For example, the Center for Access to Justice and Technology, Illinois Legal Aid Online and Pro Bono Net all partner with other legal services providers, courts, and libraries across the United States to provide assistance to significant numbers of low income and disadvantaged people. In the education field, the work of RMIT's Centre for Innovative Justice and the IIT Chicago-Kent College of Law's Center for Access to Justice and Technology provided numerous example of the value of collaboration. Of note, the RMIT Fastrack Innovation Program's Access to Justice Through Technology Challenge is founded on inter-professional collaborative practice. In a number of other projects, collaboration was a condition of receiving grant funding. Interviewees remarked that such acts of collaboration were generally positive, but also led to the need to compromise on certain features of a project so that the objectives of the organisations are achieved.

### 6.4. *Legal Issues to consider when planning a project*

All technology projects involve legal issues. The following aims to outline those relevant projects in the access to justice space, as observed at organisations visited as part of this project.

#### 6.4.1. *Unauthorised practice of law*

In the United States, the unauthorised practice of law by persons or entities not authorised to practice pursuant to state law has had major implications for online legal services, including those in the access to justice space. The provision of online legal services by companies has led to litigation, including class actions, alleging unauthorised practice of law in a number of states.

Although these claims have been generally unsuccessful or settled out of court,<sup>25</sup> the non-profit sector remains wary of being seen to be providing legal advice.

The organisations visited generally restricted their services to providing ‘legal information only’, and did not employ lawyers to act for their clients in anyway. A number of interviewees did, however, acknowledge the irony that there is little difference in practice between a lawyer and an expert system providing advice on a procedural matter.

Anecdotal evidence was supplied by Interviewees that suggests opinion on the legitimacy of online legal services is changing in the United States. Legal academics and commentators have remarked that it is time that the legal profession drops efforts to shut down such companies for unauthorised practice of law and instead focus on how to regulate their services to best protect their users.<sup>26</sup>

In New Zealand, similar laws apply and as do the reservations about the provision of online legal service. For example, the New Zealand Law Society has published a practice briefing titled, ‘Offering Legal Services on the Internet’,<sup>27</sup> which includes the following statement:

“Lawyers should be mindful of the reputation of the profession in the provision and advertising of online legal services. Lawyers have an obligation to uphold the reputation of the legal profession and avoid any conduct that might bring it into disrepute.”

Legal advice, which includes advice on the direction or management of legal proceedings, falls within the reserved areas of ‘legal work’ law described in the Lawyers and Conveyancers Act 2006.<sup>28</sup> This limits the scope of legal assistance which may be available online to instances when a client-lawyer relationship is established. However, anyone in New Zealand can offer legal information and a wide variety of non-legal service providers are routinely the only points of contact with a professional for many people with legal problems. This means there is ample opportunity for the provision of general legal information and limited assistance in the access to justice space.

#### 6.4.2. *Privacy and software development*

Privacy is an important consideration when developing any software that involves the collection, use, storage and disclosure of personal information. Organisations concerned with access to justice who intend to develop web-based platforms and to offer services that rely on their users’

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<sup>25</sup> For example see: Robert Ambrogi, “Why Is This Man Smiling? Latest Legal Victory has Legal Zoom Poised to Grow” (ABA Journal, no 8, August 2014).

<sup>26</sup> Ibid.

<sup>27</sup> New Zealand Law Society “Offering Legal Services on the Internet” (Practice Briefing, April 2013)

<sup>28</sup> Lawyers and Conveyancers Act 2006, s6.

personal information have ethical and legal obligations to safeguard such information from loss, misuse and unauthorised access by any other parties.

The organisations visited who offered services that use personal information took privacy seriously and maintained high standards of information security. They also emphasised the need to take special care to ensure vulnerable users were aware of their right to control collection, use, and distribution of their personal information.

In New Zealand, personal information is protected by the Privacy Act 1993. Advice on maintaining privacy is available from the Office of the Privacy Commissioner.<sup>29</sup> In addition, the New Zealand Law Society has published two practice briefings that provide information on privacy which are relevant to organisations developing software in the access to justice space. They are: ‘Protecting Clients’ Personal Information’<sup>30</sup> and ‘Cloud Computing Guidelines for Lawyers,’<sup>31</sup> Each practice briefing acknowledges that The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and the Privacy Act 1993 require lawyers to protect and hold in strict confidence all information concerning a client acquired in the course of the professional relationship. Even if a project does not intend to provide regulated legal services (and therefore their users are not clients as defined by the Lawyers and Conveyancers Act 2006), the briefings may still be considered useful guidelines for the handling of personal information by organisations who support innovation and whose objective is to promote access to justice.

#### 6.4.3. *Intellectual property ownership*

Ownership of the intellectual property in the software, documentation and multimedia content produced as part of a project is another matter worth understanding and, where appropriate, formalising.

Under New Zealand law, copyright in literary works (which includes software), artistic works, and other categories of protected works<sup>32</sup> belong to the creator of the work in the first instance; however, copyright created by an employee in the course of their employment is generally held by their employer.<sup>33</sup> Organisations should be aware that this rule does not apply to volunteers, but does apply to contractors, unless there is a written agreement stating otherwise.<sup>34</sup> Intellectual property ownership may become further complicated when an organisation collaborates with another organisation to produce software of multimedia content. In this case it is especially worth formalising who owns what elements of the creative output. Finally, it is worth noting that intellectual property must be held by a legal person, i.e. an actual person or a corporation. An

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<sup>29</sup> Office of the Privacy Commissioner, <[www.privacy.org.nz/](http://www.privacy.org.nz/)>

<sup>30</sup> New Zealand Law Society “Protecting Client’s Personal Information” (Practice Briefing, June 2014)

<sup>31</sup> New Zealand Law Society “Cloud Computing Guidelines for Lawyers” (Practice Briefing, June 2014)

<sup>32</sup> For a complete list of the types of works in which copyright may subsist, see: Copyright Act 1994, s 14.

<sup>33</sup> Copyright Act 1994, s 21(2).

<sup>34</sup> Copyright Act 1994, s 21(3).



unincorporated organisation cannot legally own intellectual property because it lacks a separate legal identity. In this case, intellectual property may be held by an individual, on trust for the organisation.

#### 6.5. *Overcoming challenges with user centred design*

The ability to effectively use technology in the access to justice space is not without its challenges. Although what these are will differ from project to project, a matter of common concern among interview participants was avoiding using 'technology for technology's sake' and defining the benefits of technology deployment in terms of project objectives.

Many of the organisations visited applied user-centred design to overcome this challenge and ensure their projects were developed with the end-user in mind. User-centred design refers to the process of designing information and communications technologies, such as a website's or application's user interface, from the perspective of how it will be understood and interacted with by the end user. This will often require users to be involved in the project at the design, development and evaluation stages. Underpinning user-centred design is a number of design heuristics, these are the processes and methods intended to promote usability. The Heuristics emphasise the importance of reducing unnecessary mental effort by the user and ensuring the solution is task focused. Members of various organisations visited declared user-centred design to be the key to the success of a project in the access to justice space. They also offered a number of useful suggestions for anyone developing a project to assist access to justice. These included:

- Design to promote engagement – make use of gamification, video and multimedia to make systems as engaging as possible. Gamification can be a great tool to improve legal awareness and empower individuals. Gamified systems apply game elements to non-game activities and are purposely easy to use and they contain motivational triggers such as positive feedback, rapid advance, and awarding points. Gamification rewards participation and could be used to better engage users.
- Design with flexibility in mind - users may come from diverse backgrounds and having the ability to customise design elements to accommodate this fact may enhance overall usability. A number of interview participants discussed how different cultures have different communication styles and respond differently to cues when interpersonal information is being exchanged. A solution put forward by one organisation is to develop an information architecture which effectively incorporates multimedia and visualises non-verbal information wherever possible. Another suggestion was to provide the same information in different formats depending on the context.
- Don't underestimate the difficulties involved in the design process - although user-centred design is intended to bring simplicity to an interface and the user's experience, this does not mean that the design process will be straightforward. There are many challenges to

making an interface suitable for low income and disadvantaged users; for example, ensuring it is functional across personal computing and mobile communication devices since many users' access to the Internet is limited to their mobile telephones. Developers also need to be aware that the same features that make an application friendly for unsophisticated users may make it unfriendly for those who use the application more frequently, such as legal services staff.

## **7. Conclusion**

Access to justice is a vital public good. Despite this fact it is something that remains out reach for many people.

This research project concludes that information and communications technologies have the potential to reduce the number of low income and disadvantage people with unmet legal needs.

Innovation in the access to justice space was explored in depth and a range of examples were considered. It was found that information and communications technologies increase efficiency and decrease costs associated with legal service delivery. They provide new ways to convey legal information, provide data for better decision making and promote transparency within the justice system.

Although the projects observed varied widely, there is some noticeable common ground in both the challenges and practices employed to overcome them.

Organisations looking to innovate in the access to justice space should avoid the temptation to use 'technology for technology's sake' and should always define the benefits of technology deployment in terms of project objectives. Expertise in a range of skills is necessary for success, as is for all of those involved to share similar visions for the projects. This may require looking beyond your own organisation and collaborating with external partners.

The New Zealand legal community has the opportunity to learn from overseas innovations in access to justice. As discussed in the introduction to this report, the author sees this project as a starting point for future work in this area and encourages those in the education and community sector to consider the potential of information and communications technologies to facilitate access to justice.

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