

Saving discovery

Darise Ogden discovers a litigation support tool, described as discovery's saviour, that's been around since the turn of this century

Years ago, a senior solicitor handed me a file and mumbled something about "a list of documents". I looked at him blankly – as you do when you have absolutely no idea what someone is talking about. A passing senior associate took pity on me and explained the technical process of the yellow, red, and blue dots. He also gave me the best advice I ever received: by getting to know the evidence better than anyone else, you make yourself invaluable to the file.

I used to repeat these words to myself like a mantra, especially when I sat surrounded by teetering piles of Eastlight folders. Of course, the worst job in discovery was not really the perusal of all those dusty old files – no, it was dictating the never-ending list of documents. Into Word it would go, and if you missed a document out, or accidentally included a privileged document, you could see your Friday night fast disappearing as you sat at your desk, your secretary having long since left for Friday night drinks, trying to insert a line into the list that, at last count, was now 40 pages long.

Thankfully, a computer genius developed the idea of litigation support software.

Searching for the needle in the haystack

Many firms are already using litigation support software, such as Summation, which is supported in New Zealand by Streamlined Litigation Support (SLS). Unfortunately, it does not make the task any less laborious – discovery is, after all, an expensive, labour-intensive task; someone still has to go through and decide which documents are relevant, code them all, and remove those that are privileged – but it does provide you with a searchable database that you can use beyond the provision of the list of documents.

Simpson Grierson senior associate Charlene Fairnie says this is one of the real benefits of Summation. "With one search you can isolate a group of key documents on a particular issue." This benefit, she says, cannot be overemphasised. "Documents can be searched by date, author, recipient, subject, or any category you can identify as relevant, or any combination of categories. The content of each document can also be searched and will ensure that no key document is missed."

It also provides the ability to scan the key documents into the system, and if these are formatted in a particular way (ie OCR), then not only can you search the list looking for documents you have already tagged as particularly relevant, but you can also search the documents themselves – a far more cost-effective plan than sending three law clerks into the litigation war room to search out that letter dated 15 March 1998.

These days, says Buddle Findlay partner Laura O'Gorman, it is difficult to contemplate managing



LexisNexis acquires CCH's leading practice management solution

By Darise Ogden

AS AT 1 June 2008, LexisNexis became the proud owner of CCH New Zealand Limited's 'LAWbase' legal practice management business.

LAWbase, the leading provider of practice management software to small and medium law firms in New Zealand, brings to LexisNexis a customer base of more than 500 firms. It is the most widely used legal practice management system in New Zealand, and delivers to lawyers around the country a variety of solutions that encompass billing, time recording, trust accounting, matter management, marketing, and management reporting.

Committed to bringing "best of breed" applications to New Zealand, LexisNexis is also committed to extending its services to meet its customers' changing needs, said LexisNexis New Zealand general manager Darryn Keiller. "For several years, the legal industry has been grappling with the challenge of using information technology more efficiently to run their businesses," he said. "While many larger law firms are reasonably advanced in the way they apply technology to create value for their customers and their partnership, there remain opportunities throughout the profession to improve efficiencies and service."

The acquisition of LAWbase will expand LexisNexis's existing portfolio of products and services, such as PCLaw and Lexis Affinity, which are designed to help legal professionals manage their businesses and workflows more efficiently, and will help the company better support the growing needs of small to medium-sized firms.

Announcing the sale, Emma Watson, managing director of CCH New Zealand, said, "Whilst LAWbase has been very successful, and we are extremely proud of the market position it has achieved, legal practice management is not part of our longer term strategic plan. In selling LAWbase, we believe that we have arrived at an outcome that delivers benefits to both the customers and staff of LAWbase, whilst at the same time allowing us to concentrate on better executing our long-term strategy."

CCH plans to focus its resources on specific customer needs that will enable it to accelerate planned improvements for its customers in the legal, tax, and accounting and corporate markets.



large-scale litigation without appropriate litigation support software. Like Fairnie, O'Gorman mentions the importance of the database's searchability: "The advantage I couldn't do without is the ability to search the database to locate needles in haystacks. Using the manual method, it was extremely costly to review and take detailed notes about documents, and it was an imprecise process to draw that information together at the critical times for preparing briefs of evidence and submissions. With the new technology, the process is faster, cheaper, and more thorough."

Tim Rainey, a partner with Grimshaw & Co, agrees. "[Summation] has been a saviour with discovery and discovery document management. We practice in an area of litigation which is document intensive, and I can't imagine having to go back to paper discovery." Most importantly, for Rainey, is the fact that he has a searchable database of all the documents in a matter on his desktop. "Keeping on top of those documents is difficult in a paper office, but [being able to] search your entire discovery for a document from your desktop and print out a copy right away without having to fumble through countless Eastlight folders is fantastic."

Also in agreement is Tiffany Byron from the Commerce Commission: "Much of the benefit arises from the ability to quickly search and sort documents, which make a number of tasks much easier." Examples she gives include locating duplicate documents as well as locating the details of missing or "orphaned documents".

Outsourcing it

SLS's John Minn says that virtually anyone who is trained can do the data entry, which means that not only can you train support staff to enter the data, you can actually outsource the basic data entry to a litigation support provider with the solicitors retaining the role of determining relevance and privilege.

Minn says SLS will work on anything from one flat file through to thousands of Eastlights. Most of their work, he says, involves training and supporting the end users. However, another large part of their work is outsourcing. Depending on the firm and their resources in-house, he says, they may outsource aspects of the discovery to SLS. With offices based in Auckland and Wellington, Minn says they have the staff – and the resources to pull in more staff if the job so requires – for cases of any size, small or large. "We can do just the coding, just the scanning, set up a team in-house to do the coding, and just outsource the scanning," he says. Whatever level of assistance a client needs, Minn says they can help – including secondments. "We had one secondment that went on for about 12 months," he says. "We had five staff full-time on a client's site ... due to the confidentiality of the documents."

Minn says his team are skilled, experienced, and can probably do the job in half the time, with the quality higher because they're consistent: "They're doing it all the time, and they know what the end result needs to be... Our guys will just come in and

do it, and then leave, and it should be the same quality every time."

Briefcasing and web-browsing

Even more cost-effective is the provision of inspection documents by way of a CD. Minn says they're finding a lot of cases now where people are doing electronic exchanges; rather than giving each other boxes and boxes of Eastlight folders filled with inspection copies, they just give each other a CD. Most litigation support packages, he says, contain a briefcasing functionality which enables open documents in a list that have been imaged and columns of data sitting in the list of documents to be placed in a 'briefcase'. The briefcase can then be copied onto a CD, and passed to the other side. Says O'Gorman, "Often other parties involved in litigation also use Summation software... This means it is easy to exchange documents electronically for inspection."

But what if the other side does not have Summation software? No problem; it can be sent to the other side in html format. "It just has the image with the columns of data on a CD, so they can just open it and click on the image," says Minn. "They don't need any software as long as they have any Microsoft PC."

Byron also mentions the benefits of easily moveable electronic files. Being able to move these files and their metadata from the Commission's internal database to Summation, without printing or scanning, reduces the costs and delay normally associated with large electronic discoveries, she says.

In addition to all their other functionalities, litigation support products will normally have some sort of web-based program, says Minn, which enables you to lock down the security and host the documents online so that everyone within the case has access. Although this is not that common in New Zealand, Minn says some clients are including a web component to enable offshore clients and witnesses to access the discovered documents in real time.

A reluctance to give up paper

Lawyers by nature are generally conservative – which may explain why, despite having been around since the '90s, it is only in the last five or six years that Summation has been used more heavily. Fairnie says people can be somewhat daunted by the new technology, making them reluctant to move away from manual discovery. But, she says, "[T]he technology once embraced, is simple, as the searches differ very little from searching electronic legal databases".

O'Gorman warns that blind reliance on software can be unwise, as the performance of the software can sometimes be limited by the ability and attitude of the user. However, she says, these days, lawyers are more tech-savvy, and are keen to explore the advantages the software can offer – even if it means learning through trial and error.