

# iHearings in the input methodology appeals

## *A technophobe's experience with electronic bundles*

The recent input methodology appeals in the High Court were conducted with electronic bundles. Barrister Victoria Casey reports on the experience.

**BY THE NUMBERS, THE INPUT METHODOLOGY** appeal hearings<sup>1</sup> in the High Court at Wellington were always going to be challenging: 13 appeals, 11 parties, 37 counsel appearing (not usually all at once, thankfully), 39 days of hearing, 0 witnesses, 2,500 pages of written submissions filed in advance.<sup>2</sup>

But it was the “closed” record for the appeals that was really impressive. By statute, the record included all the material generated in the input methodologies consultation, which had been an intensive two-year process. The first practical control mechanism put in place for the appeals was that the full record would not be filed. Only those documents referred to in submissions in the appeals would be included in the bundle. That, however, only took us so far.

The bundle of documents based on 2,500 pages of written submissions came to approximately 40,000 pages: 80 volumes. With 11 parties and a three-member bench, even at only one set per party that amounted to 1,120 volumes of paper in court. And the photocopying cost alone for just one set of the bundle was \$4,000.

Sense prevailed. The hearing went electronic. I was one of the counsel for the Commerce Commission, and in charge of “electrifying” the hearing.<sup>3</sup> These are my personal observations of how well it worked.

### The advantage of iPads: mobile paper

Aside from cost savings, the most obvious advantage was, of course, mobility. One iPad weighs significantly less and is quite a lot smaller than 80 volumes of paper, and can be carried back and forth to court (and meetings, and expert briefings, and home, and on holiday ...). It also meant that all counsel could have their own copy of the bundle, and experts and clients at the back of the court could follow the submissions with their own copy of the bundle. The increase in efficiency is easy to imagine.

The (very cheap) iAnnotate type programmes also allow you to treat the screen

like paper. You can highlight, you can scribble notes in the margin, you can put in sticky tags (kind of), and you can have lots of documents open at once and flip between them. Then, once you have mastered that (allow about 3 minutes), there are the things you can't do with paper. You can wipe your document clean and start all over again (very useful for a long hearing), you can type and even dictate notes into the document, and, most importantly, you can conduct a full text search of all 40,000 pages with one button. This takes about five minutes to learn. Then there is all the advanced stuff, for people who are into these things.

### Key to success: simplicity

Given the number of parties and (to put it in neutral terms) the range of “adaptation willingness” of counsel, iPads had to be optional. Those who wanted to stick with paper were free to do so.<sup>4</sup> I think this constraint actually contributed significantly to the success of the trial.


First, it meant that the iPad and paper bundles had to be identical. The practice developed of identifying documents by the six digit page number (a simple search on the iPad) followed by volume and tab references for the traditionalists. The result was that each person could use the iPads at the level that they were comfortable with. Provided you could key in a page reference, you were ready to go. Everything else was just a bonus. The low key approach made it less threatening to start using the technology and easier to become proficient over the course of the hearing.

It also meant that everyone managed their own iPads as they wished, so we didn't need any overarching technology management or co-ordination during the hearing. Different programmes could be used, additional documents could be loaded (submissions, bundles of authorities, hand-ups), but all as a matter of choice. The only co-ordination required was a simple direction that everything filed or handed up by a party had to be provided

in electronic form (ie, emailed), which is standard anyway. The enhancement that most parties adopted was to ensure that the documents they generated were also fully text searchable, but it wasn't a disaster that some didn't.

### The acid test: impact on advocacy

Experience with the earlier days of eCourt technology has made a number of counsel wary of technology becoming an obstruction rather than a help when presenting submissions. However, from a (very) casual survey, those of us who used the iPads while presenting submissions were pretty happy with the experience. It was less clumsy than feared and soon became routine, bar the odd minor disaster. I think it helped in the early stages that the members of the court were firmly endorsing the use of iPads and were determinedly using them themselves, so we had an environment that was both tolerant of teething problems and open to exploring the potential of the technology.

Certainly those surveyed are continuing to actively use iPads in their practice, which is probably the best endorsement. We are not rushing to a “no-paper” court though. It helps to have some key papers physically separate when presenting submissions (such as the submissions themselves). An iPad bundle is excellent, but an iPad replacing every piece of paper is hopeless. Two iPads, however, might work fine. 

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- 1 Appeals from the Commerce Commission determinations of the input methodologies for regulation of natural monopolies under Part 4 of the Commerce Act 1986.
- 2 1,666 pages from the appellants and 819 pages from the Commerce Commission.
- 3 Huge thanks are due to the technical staff at Crown Law, Te Raina Davidson and Julia Cameron, who generated the bundle, and to Dave Lemmon who had the task of explaining how everything worked to everyone.
- 4 The bundle was served only on disc, with one hard copy filed in Court. Parties who wished to use a hard copy printed out their own sets.