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**Citation:**

Johare, Rusnah, Nurussobah Hussin and Adnan Jamaludin, "Management of Electronic Court Records: An Example from the TEAM Malaysia Case Studies," in *Proceedings of the InterPARES 3 International Symposium, 4-5 June 2009, Seoul, South Korea* (Seoul: Sungkyunkwan University, 2009), 363-392.

# Management of Electronic Court Records: An Example from the TEAM Malaysia Case Study

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## Abstract:

*This paper highlights the need for electronic court records management in the Judiciary. The awareness and the practical approach adopted by other countries in developing electronic court records management, such as electronic court filing systems, should be extended to the Malaysian courts. Accordingly, a preliminary study has been conducted at the Court of Appeal to identify the existing practices in managing court records in electronic format in the Malaysian Superior Courts. The case study data collection involved face-to-face interviews, direct observation and document analysis. The results reveal that, at present, the Malaysian Court of Appeal has not yet implemented an electronic recordkeeping system for its records. At present, the electronic systems available in the Court of Appeal are limited only to a correspondence coding system, a bar coding system for file tracking, an electronic payment system and the case management system, which focuses on the scanning of documents. Further to this, the staff of the Court of Appeal was unaware of the availability of the records retention requirements. This may result in file overloading, the misfiling of documents and files, and case backlog. This situation may have a negative impact on service delivery, which includes inefficiency in the ability of the courts to administer justice. Therefore, a comprehensive study will be conducted further with the main aim to develop a model requirement for the management of court records in electronic format as one of the strategies to implement a credible court records management system in the Malaysian Judiciary. It is hoped that the development of the model requirement will contribute to automated recordkeeping functionality, enhance the ability to support auditing activities, improve the Court of Appeal business processes and assist to ensure good governance through good recordkeeping.*

## Introduction

Records are fundamental to the efficient and effective operation of the legal system of a country and perhaps are even more crucial to the administration of law than to any other function of the public sector. Not only are current records in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies. If court staff cannot locate the case papers related to a trial, an appeal against conviction may be delayed, even indefinitely, and justice may not be served to a citizen who was wrongly convicted.<sup>1</sup>

Court records technically may be available in paper form, except in certain circumstances, such as when they have been sealed. But accessing records of previous actions is not easy, especially if the records are kept far away from the office of origin. It may take a while, perhaps even days, for the court staff to retrieve a file, after which, one may have to fill out paperwork and then wait for a few days or weeks to receive the requested documents.

In contrast, as Spratt (2007) notes, in courts where files are available through remote electronic access, information is made available more quickly and conveniently.<sup>2</sup> In the federal court system, many courts make available online not just docket sheets but also filed documents. This makes it easier for journalists, lawyers or watchdogs to fully understand what is happening in a case. With a remote electronic system, it can take minutes to retrieve information that can take days or weeks to retrieve if only paper files are available. In support of the need for electronic access to records, Smith and Millar (2007) noted that, in 2006, more than ninety percent of all records created were electronic, and that the vast majority of these records were never printed to a hard-copy format.<sup>3</sup>

## Management of electronic court records

### An Overview

According to Mohamad (2006), statements submitted electronically were used for various purposes in handling court cases, such as those noted below:

- to consolidate excuses against charges of sexual harassment;
- to authenticate the imitation of copyright or to recognize the misuse of the contents in a license;
- to collect information on property belonging to oneself;
- to obtain clear explanations involving fraudulent deception and other illegal acts;
- to consolidate evidence for illegitimate dismissal from work;

<sup>1</sup> Stuart Orr, "Managing Legal Records," in Michael Roper, general editor, *Managing Public Sector Records: A Study Programme* (London: International Records Management Trust, 1999). <http://www.irmt.org/educationTrainMaterials.html>.

<sup>2</sup> Catherine Spratt (2007), "Electronic Access to Court Records," *News Media and the Law*. Reporters Committee for Freedom of the Press, HighBeam Research. <http://www.highbeam.com/doc/1P3-1304397411.html>.

<sup>3</sup> Thomas J. Smith and Daniel R. Miller (2007), "Electronic Records Management: New obligations, New Tools," *Community Banker* (June). [http://www.klgates.com/files/Publication/d89fdaf9-751a-41fc-a1a2-5da3b24551cb/Presentation/PublicationAttachment/51b3bed1-05b3-4416-8b59-61b161a8d7bb/article\\_smith\\_miller\\_0607.pdf](http://www.klgates.com/files/Publication/d89fdaf9-751a-41fc-a1a2-5da3b24551cb/Presentation/PublicationAttachment/51b3bed1-05b3-4416-8b59-61b161a8d7bb/article_smith_miller_0607.pdf).

- to provide clear explanations of business transactions;
- to establish evidence connecting an accused killer to the victim;
- to provide better evidence concerning blackmail through e-mails; and
- to make it easier to identify criminals.<sup>4</sup>

Hence, every court should have a program for managing the creation, maintenance and disposition of all court records. Any records management program instituted should consider the handling of a file from case initiation to destruction as well as the handling of other court records not necessarily associated with a specific case file. Standards for managing trial court case files, which represent the majority of a court's records management needs, have been established through the Michigan Supreme Court Administrative Order 1999-4 and the Michigan Trial Court Case File Management Standards.<sup>5</sup>

In support of the above statement, the King County Department of Judicial Administration (DJA) initiated the Electronic Court Records (ECR) program in 2007, an effort that required not only a physical shift from a paper to an electronic filing system, but also a revised understanding of what was the "official" court record.<sup>6</sup> The ECR program considers the electronic object created through scanning or electronic filing to be the "original record" once it has been secured within the Clerk's electronic document management system. The ECR Program has thus created a paperless court record that is so effective that, with few exceptions, most paper documents are discarded. Once severely restricted due to the sheer volume of records, the King County Superior Court Clerk's Office now provides timely, electronic access to court documents through the ECR program.

### ***The need of functional requirements for the management of electronic court records***

Clearly, the revolution in computerization, especially in networked environments, has, in some sense, turned the recordkeeping world upside down.<sup>7</sup> The rapid evolution of information technology makes the task of managing and preserving electronic records complex and costly. Many states are in transition—either trying to implement policies or still debating and developing policies.<sup>8</sup> Most national archives in leading industrialized countries have developed policies, guidelines and functional requirements that are readily adaptable to business sector circumstances.<sup>9</sup>

According to the International Council on Archives, electronic evidence in the form of records often has operational or juridical requirements for persistence over periods of time that may exceed the lifespan of the hardware or software that created it.<sup>10</sup> Each element in a complex electronic record may have different requirements for storage, reproduction and use, which is why it is critical when preserving an electronic record to ensure that mechanisms are in place to allow for preservation of and access to every element within the record.<sup>11</sup>

As Fisher (2004) emphasizes, the requirements put forth in Canada's Electronic Records as Documentary Evidence standard (CAN/CGSB-72.34-2005) will provide great service to organizations and individuals with a minimal amount of effort and will remove the uncertainty that currently exists in the absence of an authoritative, objective legal standard for recordkeeping and information management.<sup>12</sup>

As proven by Guy (2006), most of the results of electronic filing are positive.<sup>13</sup> To implement the electronic filing of court documents, a policy recommendation on the various aspects of the use of technology in the court system is needed.<sup>14</sup> In the legal environment, the ambit and application of a piece of legislation is referred to as its jurisdiction. If the jurisdiction of a particular policy or act is not clear, this can create difficulties for record managers and archivists. For example, in Australia there has been an uncertainty about the jurisdiction of archival legislation over the records of the courts. Because the legislation does not explicitly cover case files and transcripts of the courts, these documents may not be affected by the legislation. By contrast, in Namibia, the Archives Act of 1992 explicitly states the legal records to which it applies.<sup>15</sup>

As reported in *Information Age: News, Analysis and Insight for IT and Business Leaders* (2005), electronic documents can easily be thrown out of court when so-called 'compliance points' are found to be missing in systems from which a company sources evidence, according to experts at the British Standards Institute.<sup>16</sup> These missing compliance points could include no information policy document, no retention schedule, inappropriate security controls, lack of procedural documentation, insufficient control on document input procedures, insufficient information about the technology from the system supplier, use of inappropriate facilities such as image clean-up, no thought of future migration requirements and lack of documentation on audit trail content and access

<sup>4</sup> Mohamad Ismail Bin Hj Mohamad Yunus (2006), "Kedudukan Bahan Bukti (Exhibit) Elektronik Dan Digital Dalam Keterangan: Masalah Dan Cabaran Masa Kini," *INSAF: The Journal of the Malaysian Bar* XXXV(1): 2. [http://www.malaysianbar.org.my/index.php?option=com\\_docman&task=doc\\_view&gid=830&Itemid=332](http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_view&gid=830&Itemid=332).

<sup>5</sup> Michigan Supreme Court (2008), "Michigan Trial Court Case File Management Standards." <http://courts.michigan.gov/scao/resources/standards/index.htm>.

<sup>6</sup> King County (2007), "Electronic Court Records," Harvard University Kennedy School of Government. <http://www.innovations.harvard.edu/awards.html?id=85931>.

<sup>7</sup> David Wallace (2001), "Electronic Records Management Defined by Court Case and Policy," *Information Management Journal* 35(1): p4, 8p. <http://www.highbeam.com/doc/1G1-79742891.html>.

<sup>8</sup> Spratt, "Electronic Access to Court Records," *ibid*.

<sup>9</sup> Piers Cain (2003), "MoReq: The Standard of the Future?" *Information Management Journal* 37(2): p54, 5p. <http://www.highbeam.com/doc/1G1-99236466.html>.

<sup>10</sup> International Council on Archives, *Principles and Functional Requirement for Records in Electronic Office Environment*, 2008. Published in 3 modules at <http://www.ica.org/en/node/38972>.

<sup>11</sup> Segomotso Keakopa, Laura Millar, Greg O'Shea, Lori Podolsky Nordland and Jim Suderman, "Module 1: Understanding the Context of Electronic Records Management," in L. Millar, general editor, *Training in Electronic Records Management* (London: International Records Management Trust, 2009). <http://irmt.org/educationTrainMaterials.html>.

<sup>12</sup> Paul Fisher (2004), "Electronic Records as Evidence: The Case for Canada's New Standard," *Information Management Journal* 38(2): p39, 6p. <http://www.highbeam.com/doc/1G1-114475665.html>.

<sup>13</sup> Sandra Guy (2006), "E-filing is new currency in bankruptcy courts: Paperwork is a thing of the past in federal system," *Chicago Sun-Times*, August 16. <http://www.highbeam.com/doc/1P2-1640088.html>.

<sup>14</sup> Gary Blankenship, "Court plans to embrace technological innovations: e-filing and online access are at the top of the agenda," *Florida Bar News* (1 March 2008). <http://www.thefreelibrary.com/Court+plans+to+embrace+technological+innovations%3a+e-filing+and+online...-a0186998427>.

<sup>15</sup> International Records Management Trust, "Legal and Judicial Records and Information System," *ibid*.

<sup>16</sup> "Court is in session," *Information Age* (25 February 2006). <http://www.information-age.com/articles/284751/court-is-in-session.thtml>.

procedures. Thus, a comprehensive functional requirement for the design, select and audit of court records management systems is needed to enhance interoperability.

According to the *Technology Standards Resource Guide* of the National Centre for State Courts (NCSC), there are many technology standards being produced as one of the strategies to improve the administration of justice through leadership and service to state courts around the world.<sup>17</sup> Below are a few lists of standards for court case management systems:

- Technology Standards Functional Requirements. National Centre for State Courts, the Conference of State Court Administrators (COSCA) and National Association for Court Management (NACM) (2000 – 2008).
- Electronic Court Filing Standards. OASIS LegalXML Electronic Court Filing Technical Committee (ECF TC) (2008).
- Functional Requirements. Office of State Court Administrator, Supreme Court of Florida (October 2002). Functional requirements (with diagrams) for criminal, civil, juvenile, probate, traffic, drug courts and jury.
- Electronic Filing Standards Project. California Administrative Office of the Courts (2001). California elected to join in a nationwide standards-setting effort and adopted an approach of consultation and consensus among the parties who can make electronic filing happen.
- Electronic Filing Technical Standards for the Washington State Courts. General Court Rule 30 (GR 30), adopted by the Washington State Supreme Court, requires the Judicial Information System Committee (JISC) to adopt electronic court filing technical standards that are to be followed by the courts in the state of Washington that implement electronic filing.

In support of these efforts, the Supreme Court of Texas Judicial Commission for Children, Youth and Families formally has already adopted a functional requirements reference model to address the special case management needs of courts handling child protection dependency cases. The reference model consists of a number of web pages presented in an interactive format, providing overviews of the court process, timelines, a feature to allow deep drilldown into the particulars of each sub process, and detailed descriptions of the data requirements.<sup>18</sup>

### **The implementation of electronic court records management**

These days, many developed countries are very eager to implement electronic court records management in courts. The United States and Australia are examples of two developed countries that have already implemented an electronic court filing system. Hulsey (2007) reported that all court actions filed in Montgomery County Common Pleas Court will be done electronically within a year.<sup>19</sup> Moreover, Stull (2008) acknowledges that attorneys and others can e-file and process cases and documents in Erie County Surrogate's Court by electronic filing.<sup>20</sup> Effective February 2009, the Nevada Supreme Court began to accept electronic filing or e filing of all criminal cases at the court.<sup>21</sup>

On the other hand, in the developing countries, the IRMT has conducted case studies on the legal and judicial records and information systems in Argentina, Ecuador, Gambia and South Africa.<sup>22</sup> The findings reveal that a system is needed to ensure that records are secure and available when required. According to Nthomiwa (2007), South Africa, in an effort to improve efficiency, introduce a computer program called the Court Records Management System in 2008.<sup>23</sup> The intention of this program was to help the staff manage case records that have since time immemorial been managed manually. The system entailed comprehensive planning that started with the development of a SOUR (Statement of User Requirements).

In South East Asia, Singapore developed and launched an Electronic Filing System in 1997 and made its use compulsory in 2000.<sup>24</sup> In a study on the Electronic Filing System (EFS) of the Supreme Court of Singapore, Goh (2005) illustrates that the development of the EFS had been one of the various measures taken by the Court to clear its backlog of cases in the early 1990s.<sup>25</sup> The EFS was part of the court strategy to reform the judicial system, fulfill its mandate, and achieve its overall aim of "being a world class judiciary." The automated workflow of the EFS has supported the Court's commitment of providing quality public service as it has allowed the Court to be more efficient in monitoring cases. Perhaps an awareness of the practical approaches opted by other countries in creating and managing electronic court records, augmented by the implementation of an electronic filing system, will serve as an eye opener and help kick start similar practices in Malaysia.

### **Background of the Malaysian judiciary**

Understanding the legal and organizational environments in which records are created and used is essential in establishing a successful and effective records management program.<sup>26</sup> Malaysia has a unified judicial system, and all courts must be cognizant of both federal and state laws. The jurisdiction of the Malaysian courts is determined by the Courts of Judicature Act and the Subordinate

<sup>17</sup> National Centre for State Courts, *Technology Standards 2000 – 2008*.  
[http://www.ncsconline.org/d\\_tech/standards/default.asp](http://www.ncsconline.org/d_tech/standards/default.asp).

<sup>18</sup> Jim McMillan, "Texas Judicial Commission Adopts Functional Model," *Court Technology Bulletin* (10 July 2008).  
[http://www.ncsconline.org/D\\_tech/CTB2/view\\_cs\\_cont.asp?NCSC\\_CMS\\_CONTENT\\_ID=2373](http://www.ncsconline.org/D_tech/CTB2/view_cs_cont.asp?NCSC_CMS_CONTENT_ID=2373).

<sup>19</sup> Lynn Hulsey, "Court to go electronic in a year to save money, streamline records, no transaction fee will be charged and no special equipment will be necessary for attorneys or others," *Dayton Daily News* (18 July 2007).  
<http://www.highbeam.com/doc/1P2-12000987.html>.

<sup>20</sup> Elizabeth Stull, "E-filing begins in Erie County Surrogate's Court," *Daily Record (Rochester, NY)* (20 May 2008).  
<http://www.highbeam.com/doc/1P2-16375320.html>.

<sup>21</sup> Supreme Court of Nevada, "Nevada Supreme Court Expands E-Filing System," 24 February 2009.

<http://www.nevadajudiciary.us/index.php/supnews/81-nevada-supreme-court-expands-e-filing-system.html?layout=default&date=2009-05-01>.

<sup>22</sup> International Records Management Trust, "Legal and Judicial Records and Information System," *ibid*.

<sup>23</sup> Gn Nthomiwa (2007), "Presentation on Case Flow Management System: An Efficient and Transparent Means to Deliver Justice," paper presented at the SAJC/VENICE Commission Registrars' Workshop, December 5-9, Johannesburg, South Africa.  
[http://www.venice.coe.int/SAJC/2007\\_12\\_RSA\\_Johannesburg/PRESENTATION\\_CASE\\_FLOW\\_%20MANAGEMENT.doc](http://www.venice.coe.int/SAJC/2007_12_RSA_Johannesburg/PRESENTATION_CASE_FLOW_%20MANAGEMENT.doc).

<sup>24</sup> Cornie Ng (2008), "Integrated Electronic Litigation System for the Singapore Judiciary," Supreme Court, Singapore.  
<http://ctl.ncsc.dni.us/presentations/Singapore-iELS%20Briefing%20for%20e-Courts.pdf>.

<sup>25</sup> Elaine Goh (2005), "InterPARES 2 Project - Case Study 21 Final Report: The Electronic Filing System (EFS) of the Supreme Court of Singapore."  
[http://www.interpares.org/rws/display\\_file.cfm?doc=ip2\\_cs21\\_final\\_report.pdf](http://www.interpares.org/rws/display_file.cfm?doc=ip2_cs21_final_report.pdf).

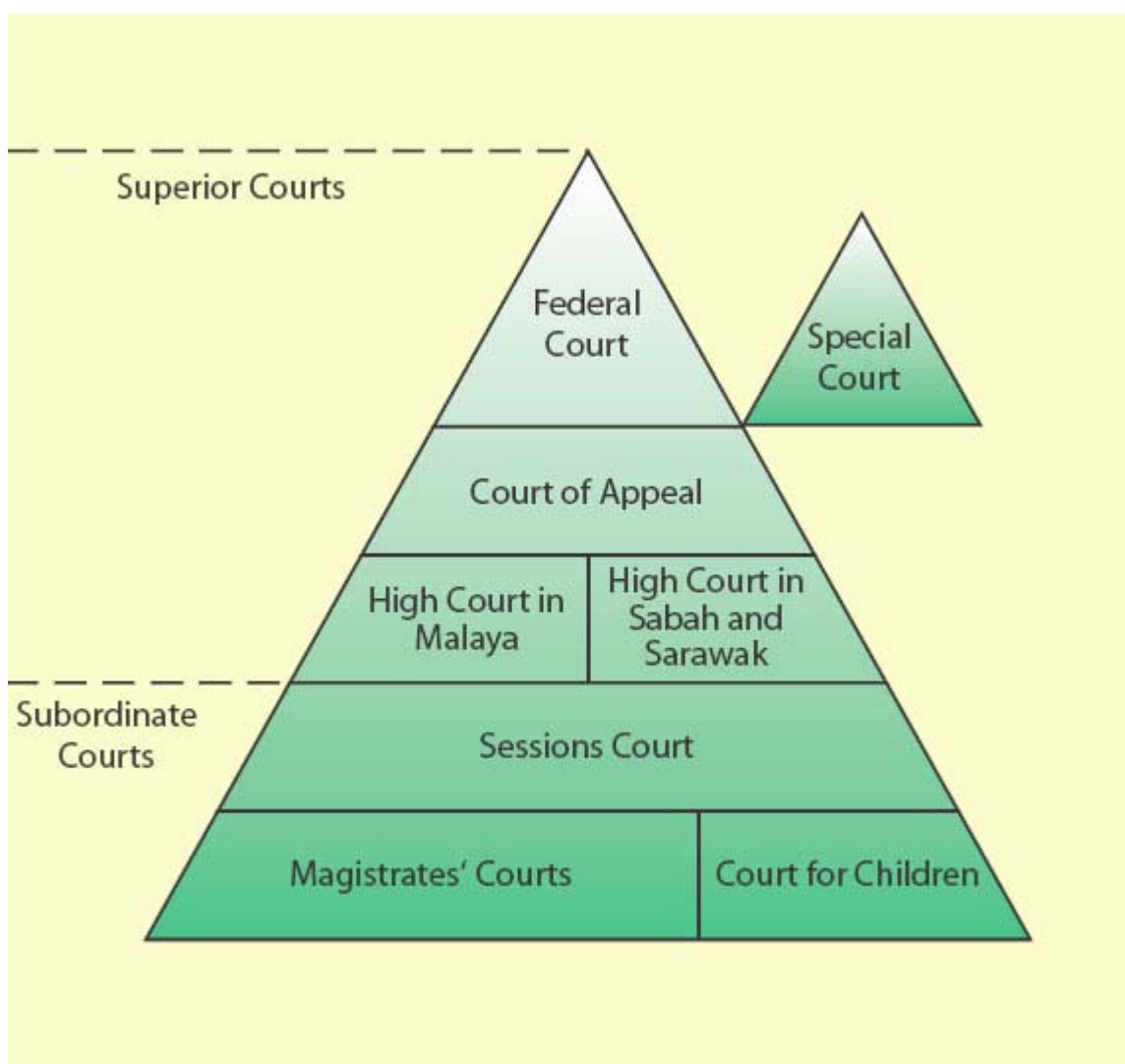
<sup>26</sup> Keakopa et al., "Understanding the Context of Electronic Records Management," *ibid*.

Courts Act 1948. Before 1957, the name “Supreme Court” was used to refer to the highest court for Malaysia just below the Privy Council. With the abolition of appeal to the Privy Council from January 1, 1985, the Supreme Court was finally designated the highest court in Malaysia. However, the material distinction between the constitution of the former “Supreme Court” and that of the present should be noted. The Supreme Court was renamed the Federal Court of Malaysia vide Act A885 effective June 24, 1994, and is now the final court of appeal for Malaysia.<sup>27</sup>

As shown in Figure 1, the Federal Court of Malaysia is the highest judicial authority and the final court of appeal in Malaysia.<sup>28</sup> The country, although federally constituted, has a single-structured judicial system consisting of two parts: the superior courts and the subordinate courts. The subordinate courts are the Magistrate Courts, the Sessions Courts and the Court for Children, whilst the superior courts are the two High Courts of co-ordinate jurisdiction and status, one for Peninsular Malaysia and the other for the States of Sabah and Sarawak, the Court of Appeal, the Special Court and the Federal Court.

The Federal Court of Malaysia may hear appeals of civil decisions of the Court of Appeal where the Federal Court grants leave to do so. The Federal Court also hears criminal appeals from the Court of Appeal, but only in respect of matters heard by the High Court in its original jurisdiction (i.e., where the case has not been appealed from the Subordinate Courts).

The Court of Appeal hears appeals from the high court. In cases where the claim is less than RM250,000, the judgment or order relates to costs only, and the appeal is against a decision of a judge in chambers on an interpleaded summons on undisputed facts, the leave of the Court of Appeal must first be obtained. The Court of Appeal also hears appeals of criminal decisions of the High Court; it



**Figure 1.** Malaysian Judicial Structure

(Source: Malaysian Court Official Web, “Jurisdiction of the Court.” <http://www.kehakiman.gov.my/courts/judicialEN.shtml>)

<sup>27</sup> *Encyclopedia of the Nations* (Advameg, 2009). <http://www.nationsencyclopedia.com/>

<sup>28</sup> “The Malaysian Judiciary: History of the Court,” Malaysian Court Official Web. <http://www.kehakiman.gov.my/courts/maljudiciary.shtml#His>.

is the court of final jurisdiction for cases that began in any subordinate courts.

The Special Court hears cases of offences or wrong doings made by a Ruler. A Ruler includes the Yang di-Pertuan Agong (King), the sultans of monarchical states in Malaysia, the Yang di-Pertua Negeri, and the Yang di-Pertuan Besar (i.e., the head of states of Malaysia and its component states). Prior to this, Rulers were immune from any proceedings brought against them in their personal capacity.

The two High Courts in Malaysia have general supervisory and revisionary jurisdiction over all the Subordinate Courts, and jurisdiction to hear appeals from the Subordinate Courts in civil and criminal matters. The High Courts have unlimited civil jurisdiction and, generally, hear actions where the claim exceeds RM250,000, other than actions involving motor vehicle accidents, landlord and tenant disputes and distress. The High Courts have unlimited jurisdiction in all criminal matters other than matters involving Islamic law. The High Courts have original jurisdiction in criminal cases punishable by death.

The Magistrates' Courts and Sessions Courts in Malaysia have jurisdiction in both criminal and civil matters. The Sessions Courts hear all civil matters for which the claim exceeds RM25,000 but does not exceed RM250,000, except in matters relating to motor vehicle accidents, landlord and tenant and distress, where the Sessions Courts have unlimited jurisdiction while the Magistrates' Courts hear all civil matters for which the claim does not exceed RM25,000.

The Court for Children, previously known as the Juvenile Court, hears cases involving minors, except cases carrying the death penalty, which are heard in High Courts instead. Cases for children are governed by the Child Act 2001. A child is defined as any person below the age of 18.

For the smooth administration of the Judiciary, the Chief Registrar's Office, which is headed by the Chief Registrar, was established to handle both judicial and administrative matters. The Chief Registrar is assisted by the Registrar of the Court of Appeal, the Registrar of the High Court in Malaya and the Registrar of the High Court in Sabah and Sarawak. Below them are a number of Deputy Registrars, Senior Assistant Registrars, Administrators, Librarian, Information Systems Officer and support staff.

## **The need for electronic court records management in the Malaysian judiciary**

Nowadays, Malaysian newspapers report on many issues regarding missing court files, long waits for trial/appeal dates, long trials, long waits for grounds of judgment and case backlogs at all levels of courts. Koshy reported in *The Sunday Star*, May 2008, that the backlog in the High Court was 91,702 cases, 125,944 cases in the Sessions Court and 777,703 cases in the Magistrates' Court.<sup>29</sup> Based on the Annual Report of Superior and Subordinate Courts, Malaysia (2006/2007), some of the reasons for postponements in criminal cases in the High Courts were due to records that are not being received by the courts, incomplete documents for prosecutions and the long waiting period for cases to be decided and disposed of.<sup>30</sup> Nthomiwa cautions that the implications of delays in the disposal of cases are loss of public confidence in the Judiciary, threat to the flow of foreign direct investment opportunities and a burgeoning backlog.<sup>31</sup>

In an initial exploration of these issues, a preliminary case study was carried out during August 2008 in the Court of Appeal to identify the records management practices and the need for the management of electronic court records in Malaysia. To this end, various approaches were undertaken, as described below.

### **Face-to-face interviews**

An interview session was conducted with the Deputy Registrar and one of the programmers of the Court of Appeal to ascertain the court's records management practices and the need for a recordkeeping system in the Court of Appeal.

The author interviewed the Deputy Registrar as one of the top management and, thus, the individual responsible for the effectiveness of records management in the Court of Appeal. It was revealed that most of the court records in Malaysia are currently in paper form. In early 2008, the file room was disorganized. At the end of February 2008, the Court of Appeal had the following number of files registered:

- 20,309 civil appeals
- 2324 criminal appeals
- 5563 civil leave applications
- 248 criminal leave applications

The total number of files registered was 28,444, out of which 9928 are still pending. This is due to an increase in the number of cases each month—at the rate of 200 to 300 cases—which need four sets of copies of the appeals to be filed.

However, in March 2008, the President of the Court of Appeal urged the staff to reorganize the arrangement of files, records and documents systematically and efficiently in the file room to help clear administrative hurdles, improve the delivery system of the judiciary, and minimize the postponement of cases. Therefore, today, files and records are duly arranged and they have initiated a bar coding system for file tracking. Nevertheless, the bar coding system only focuses on the availability of the file in the file room.

Further to this, the Court of Appeal's staff were unaware of the availability of retention requirements for court records in Malaysia. According to the Deputy Registrar, all of the appeals' records will not be disposed of and will be kept permanently due to the possibility of cases being appealed in the future. That statement is in contradiction with the retention requirements of court records developed in Malaysia. Unawareness of the existence of retention requirements among the records keepers in the courts will result in file overloads, missing court files, case backlogs and so on. Increased availability of such records may also have negative long-term impact on service delivery, including inefficiency in the ability of the courts to administer justice.

<sup>29</sup> Shaila Koshy, "Judging the Recording System," *The Sunday Star (Malaysia)*, 11 May 2008.

<http://thestar.com.my/news/story.asp?file=/2008/5/11/focus/21216086&sec=focus>.

<sup>30</sup> *Annual Report of the Superior and Subordinate Courts in Malaysia 2006/2007*. [http://www.kehakiman.gov.my/buku\\_laporan/buku\\_laporan.shtml](http://www.kehakiman.gov.my/buku_laporan/buku_laporan.shtml).

<sup>31</sup> Nthomiwa, "Presentation on Case Flow Management System," *ibid*.

Regarding the electronic records system, one of the programmers of the Court of Appeal clarified that, at present, the Court of Appeal has not yet implemented a proper electronic court records management or recordkeeping system. Currently, the electronic systems available at the Court of Appeal are an electronic payment system, a correspondence coding system, a bar coding system for file tracking and a case management system (CMS). The CMS under the e-Court project is only focusing on the scanning of documents, which is not cost-effective. Referring to the IRMT, the case management system is intended to reduce the scope of corruption rather than improve recordkeeping.<sup>32</sup> Furthermore, the e-Court system is not fully implemented and is still in the midst of improvement. Thus, there is an urgent need for implementing a recordkeeping system, such as an electronic filing system that is already used in other developing countries, namely Singapore and Argentina, to handle the unacceptably high case backlogs and for effective recordkeeping.

**Direct observation**

Direct observation is a field visit to the case study “site.”<sup>33</sup> Additional information and evidence was collected by visiting the file room (see Figure 2) and by exploring the electronic system available to the Court of Appeal.

As shown in Figures 3 and 4, the tagged files are arranged in racks according to the respective years, with different file cover colours used to differentiate between civil and criminal appeals and motions for leave application. The files and records of appeal also are colour coded and tagged at the side/spine of the documents for easy identification according to the years. Figures 5 and 6 provide screen shots of the Court’s bar coding system for file tracking.



Figure 2. The Court of Appeal File Room in August 2008



Figure 3. Tagged files

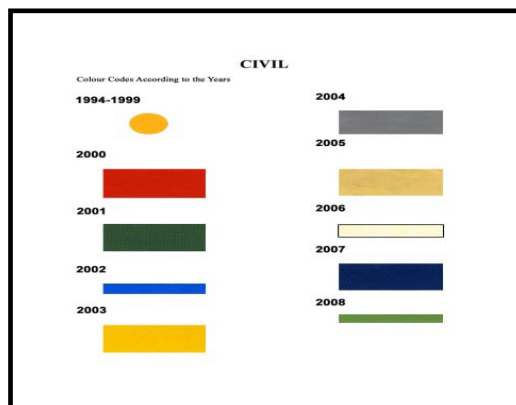
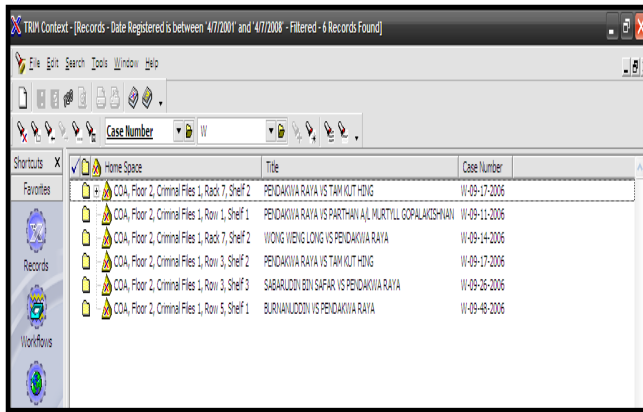


Figure 4. File colour code tags

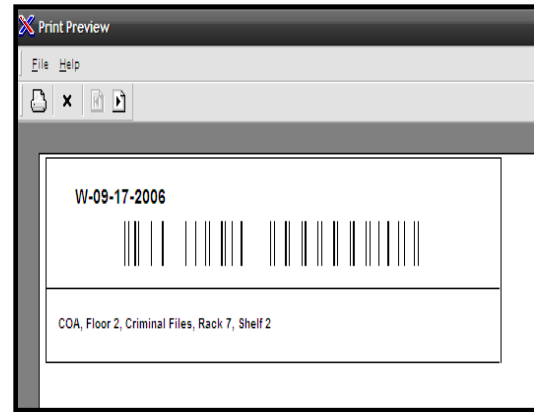
**Documentation**

To corroborate and augment evidence collected during the face-to-face interviews and the site visit, a variety of documents were analyzed, including:

<sup>32</sup> International Records Management Trust, “Legal and Judicial Records and Information System,” *ibid.*  
<sup>33</sup> Robert K. Yin, *Case Study Research: Design and Method*, 3rd ed. (Thousand Oaks, CA: Sage Publications, 2003).



**Figure 5.** Screen shot of the file tracking system for criminal files



**Figure 6.** Screen shot of the barcode for criminal appeal (file no. W-09-17-2006)

- Annual report: Superior and Subordinate Courts of Malaysia 2006/2007
- Malaysian Courts Official Web
- Newspaper clippings
- Online articles
- Proceedings
- National policies

Based on the documents analyzed, the author discovered that the Malaysian courts have not yet developed proper definitions of and solutions for the problems that need to be addressed. Besides, there are no policies, guidelines or standards on the management of electronic court records in Malaysia. Mahfuzah (2004) agrees that the main issue in managing and preserving electronic records in Malaysia is the lack of standards.<sup>34</sup> Thus far, the National Archives of Malaysia (NAM) and MAMPU have produced a few guidelines on electronic records management, including: (1) *Electronic Records Management and Archives Management Policy: Guideline on Electronic Records Management (NAM 2003)*, (2) *Guidelines on Procedural use of Internet and Electronic at Government Agencies (MAMPU 2003)*, (3) *Information Technology Infrastructure (MAMPU and Prime Minister's Department 2007)*, and (4) *Electronic Records Management System: System Specification for Public Office (NAM 2008)*. However, these guidelines are general and focus on public agencies as a whole. Therefore, the need for a comprehensive specification of a functional requirement that needs to be included in a design specification when building or upgrading an electronic court records system is critical. Specific functional requirements for the management of electronic court records are necessary to support the longevity of records for permanent or long-term retention. Accordingly, a comprehensive study will be conducted to develop a model requirement for the management of electronic court records as the first strategy to the implementation of a systematic recordkeeping system in Malaysian courts.

## Aim and objectives

The aim of the proposed study is to develop and describe a model requirement for the management of electronic court records in the Superior Courts of Malaysia (Federal Court, Special Court, Court of Appeal and High Court in Malaya).

In pursuance of the above aim, this study embarks on the following objectives:

1. To investigate the current practices of the recordkeeping system in the Superior Courts of Malaysia. The investigations will be based on two criteria:
  - Describing the relevant context of the Superior Courts in accordance to the five contexts identified by InterPARES: Provenancial, Juridical, Administrative, Procedural, Documentary and Technological.
  - Answering the research questions developed by the InterPARES 3 Project with respect to records and recordkeeping system case studies.
2. To identify and analyze the various international and national best practices of functional requirements for electronic court records management and electronic records management.
3. To evaluate the applicability of the model developed based on the best practices framework to the practice of recordkeeping in the system of the Superior Courts of Malaysia.

## Scope of the study

This study focuses mainly on developing the model requirement for the management of electronic court records in Malaysia. This study only covers Superior Courts—i.e., Federal Court, Special Court, Court of Appeal and High Court in Malaya. Syariah courts will not be included as the provision and management of Syariah law is different. This study is limited to official functional court records

<sup>34</sup> Yusof Mahfuzah, "Problems in Preserving Electronic Records & Standard for Electronic Records Management in Malaysia," in *Proceedings of National Seminar on Management of Corporate Memory: Key Challenges, Issues and Trends*. (Shah Alam: UiTM, Faculty of Information Management, 2004), 27-34.



in the Superior Courts. The findings of the study will be customized for the benefit of judges, attorneys, judicial officers, courtroom personnel and records keepers in the Malaysian legal environment. However, the study will not attempt to include requirements that are not specific to, or necessary for, records management; for example, general system management and design requirements.

## Research methodology

Qualitative research will be chosen as the approach for this study. Case study has been identified as the most suitable strategy for this research. Yin states that a case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.<sup>35</sup> To answer the research questions, this study will adopt records and recordkeeping case studies guided by the InterPARES 3 Project's case study research questions. In addition, this project will utilize the theory and methods developed by InterPARES. The data collection techniques will include documentary analysis, in-depth interviews and direct observation. Integrated definition function (IDEF0) modeling<sup>36</sup> will be used to model the procedures for creating functional requirements and for the representation and definition of the activities involved in managing electronic court records in the Superior Court of Malaysia. The strategies involved are identifying the specific function and identifying its internal and external factors that influence its development.

## Significance of the study

This study seeks to make a contribution to existing knowledge of electronic records management by developing a model requirement for the management of electronic court records in Malaysia. The findings could be used to design, select and audit court records management systems. It is certain that the study will contribute to the implementation of automated recordkeeping functionality, the preservation of corporate memory, and an enhanced ability to support auditing activities and to ensure good governance such as accountability, transparency and enhanced service delivery through good recordkeeping.

In addition, it is hoped that the development of a model requirement for the management of court records in Malaysia will encourage and assist the Malaysian Judiciary to develop a systematic recordkeeping system such as an electronic court filing system. Such a system for the Malaysian courts would benefit the government, judges, lawyers, courts' staff and clients. An electronic filing system would streamline records management, save file storage space and reduce manual handling of files. It would save both time and money for attorneys and their clients by delivering more efficient services to them. In addition, it could also eliminate petty problems with misplaced or stolen documents, thus giving judges convenient and immediate access to filings via desktops, laptops, handheld devices and any other device that accesses the Internet. Moreover, it would also benefit the plaintiffs and defendants because the functional requirements of the system would speed up the legal procedures, which are time and energy constrained.

Simultaneously, this study will complement and support Malaysia's Electronic Government Flagship Application.<sup>37</sup> As noted, electronic government applications have become widespread in order to increase the speed and to improve the efficiency of the public services, and to accelerate the communication between the government and fellow citizens. Therefore, the findings of this study are expected to help the government to improve the work-flow of the Malaysian Judiciary through a systematic recordkeeping system.

## Conclusion

Since the introduction of the Electronic Government Flagship Application in 1996, the Malaysian government agencies, including the Malaysian Judiciary, have been striving to achieve efficiency in service delivery through the use of information technology. However, the need to manage electronic records is not as great as had been predicted. On this basis, a model functional requirement for the management of electronic court records will be one of the important elements needed to achieve the effectiveness in implementing the electronic records management in the Malaysian courts. The underlying philosophy of the new requirement will provide a framework for the courts to manage electronic records efficiently to maximize the probability of their admissibility as evidence in court and for the preservation of their permanent value.

## Author Biographies

*Rusnah Johare received her MA in archival studies from the University College London (1991) and her PhD in records management from the Northumbria University, Newcastle, UK (2006). She has many years of professional and academic experience in the records and archives management field, ranging from a position as an archivist at the National Archives of Malaysia to her current position as an Associate Professor in the Faculty of Information Management, Universiti Teknologi MARA (UiTM), Malaysia. Her major areas of research are in electronic records management and long-term preservation of corporate memory. She is currently the Director of TEAM Malaysia of the InterPARES 3 Project and a member of the Technical Committee of the Malaysian Standards Development.*

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<sup>35</sup> Yin, Case Study Research, *ibid*.

<sup>36</sup> See <http://www.idef.com/IDEF0.html>.

<sup>37</sup> See <http://www.mscomalaysia.my/topic/12073046901815>.