
Towards Leadership: The Emergence Of Contemporary Court Administration In Australia¹

By Richard Foster, PSM

**The leader is best,...
When his work is done, his aim fulfilled,
The people say, 'We did it ourselves'.**

Lao Tzu (500BC)²

1. Introduction

Australian court administration as we know it today emerged in the mid-1980s in response to a range of factors. This paper draws on the wisdom of pioneering court and judicial administrators to explain how the past has shaped contemporary court practices, and to explore the challenges for modern leaders in court administration.

The paper briefly sets out the recent history of court administration, including an examination of practices and roles prior to the beginning of reforms in the 1980s. The paper then chronicles the remarkable role that court administrators have played in responding to the demands of change, and their reinvention as educated and respected management professionals.

Discussion then turns to current court administration and the demands it places on its practitioners in areas including performance measurement, client centered services, financial management, relationships with the judiciary, external relationships and innovation. The subjects covered in this section have been confined to those areas where the author believes the leadership implications are greatest. The paper then looks forward, examining the implications of emerging trends.

Finally, the paper concludes that while the technical management skills demanded of the court administrator are important and should in no way be diminished, reflection on the past, present and emerging future shows that it is an aptitude for the intangible art of leadership that sets apart those who succeed in this role.

While much of this paper is written with the senior court administrator or chief executive in mind, many of its observations and conclusions can be applied to the profession of court administration more generally.

2. Recent History and Impetus for Change

The revolution in Australian court administration began in the 1980s,³ and had its genesis in a range of converging factors.

Prior to this time the Australian public service operated on a centralized, hierarchical and rule based model. Courts, deeply embedded in the public service culture,⁴ operated comfortably within this paradigm. Court administration largely involved following rules, processing forms, and rubber stamping. Early selection processes for administrative staff consequently reflected a bias toward applicants who could accurately fill in forms, file, and who had neat handwriting.

In the 1980s, governments developed expectations for the judiciary to take responsibility for the courts' efficient operation. Rising caseload pressures were beginning to impose unacceptable time and financial costs on litigants, and citizens were becoming more aware of their rights to a professional, well-run court system. Meanwhile the North American experience

¹. I wish to acknowledge the research assistance of Theresa Layton & Leisha Lister

². "Lao Tzu." Lao Tzu was born in app. 500 BC, in southern China in the state of Ch'u, now known as the Hunan Province. Almost nothing is known about Lao Tzu apart from what can be gleaned from the legends that surround his name. His book of spiritual reflections called the Tao Te Ching (The Way – Virtue – Progress) has been published in more languages than any book except the Bible.

³. Much of the material from this section was sourced through an interview and email exchange with Gary Byron AM (former Director General of WA's Justice Ministry, former Director General of the New South Wales Department of Courts Administration).

⁴. Kathy Laster, (Assoc/Professor in the Faculty of Law, Monash University), telephone interview by Theresa Layton. March 23, 2012. For example, in Victoria, for example, Clerks of Court were one of only two named positions named in legislation (along with Clerk of Mines).

of court reform, particularly case management and administration had “just reached Australian shores and was taking hold.”⁵

Outside of the courts, new information and communications technologies were emerging, and government was beginning to embrace managerial reforms. The wider public service was becoming skilled in IT, contract management, accrual accounting and performance management, and applications for government funding now included business cases.

As the 1980s progressed, courts, though initially slow to embrace reform, realized that unless they shifted from paper based, traditional ways of working, they would struggle to attract good staff or efficiently meet caseload demands.⁶ In addition, traditional methods of bidding for funds based solely on judicial request were no longer adequate, and were increasingly rejected by those holding the purse strings.

3. The Nature of Early Changes

3.1 The 1980s

Response to the calls for change in court administration, not surprisingly, tended to be *ad hoc*. Differences between Commonwealth, State and Territory jurisdictions presented challenges for harmonized reform,⁷ and some administrators and members of the judiciary resisted amendment to their existing practices. However, there were others who embraced the need for reform, and it is from within these ranks that many leaders and pioneers of contemporary court administration appeared. As Gary Byron observes, the more accountable and transparent courts that exist today could not have been developed “without a responsive judiciary supported by the management and financial skills of competent court administrators.”⁸

New relationships were forged between the judiciary and court administrators, leading to a fresh dialogue on management. Court administration was reviewed to take into account modern expectations of fiscal and staff management, while emerging technologies began to be absorbed into court practices. Importantly, the role of the court administrator adapted to reflect the necessity for new professional management skills.

New Working Relationships

The Australian Institute of Judicial Administration (AIJA) was formed in 1979 and attracted members of the judiciary interested in improving the operation of the justice system. Initially open only to the judiciary, the AIJA expanded its membership to include magistrates, tribunal members, court administrators, members of the legal profession and academia, and others with an interest in judicial administration in recognition of the “broader range of experience qualifications, insights and skills”⁹ they could bring to judicial administration.

The increased contact between the judiciary and senior administrators facilitated by the AIJA allowed for what Alastair Nicholson called “a cooperative and respectful relationship between the judiciary and court administrators”,¹⁰ and marked the beginning of a then unique collaboration between the judicial and administrative arms of courts. The early focus of the AIJA and its members was case management, technology, and communication.¹¹

Embracing Technology

Courts in the 1980s could not ignore the potential value of new technologies. For some the need to computerise was driven by the sheer volume of cases requiring management. For others the opportunity to replace uninteresting ‘rubber stamping’ roles with higher skilled jobs was attractive.

⁵ Gary Byron AM, (former Director General of WA's Justice Ministry, former Director General of the New South Wales Department of Courts Administration), in-person interview by Theresa Layton, Canberra. April 12, 2012.

⁶ Laster, interview, 2012. Partly due to concern that the reforms could interfere with judicial independence.

⁷ Richard Foster, “A commentary on Managing the Business of Australian Higher Courts” (paper presented at the Second Biennial AIJA Higher Courts' Administrators' Conference. Brisbane, Queensland, 21-22 May 1992). P2

⁸ Gary Byron AM, e-mail message to Theresa Layton, April 15, 2012

⁹ Gary Byron AM, e-mail, 2012

¹⁰ The Hon Alastair Nicholson AO RFD QC (former Chief Justice of the Family Court of Australia), interview by Theresa Layton, Canberra. Ap 16, 2012.

¹¹ Byron, e-mail, 2012. “Many of these early developments were pioneered in the State of South Australia where the then Chief Justice of that State, the Honourable Len King was moved to observe that courts administration had achieved the status of a profession in its own right, in the practice of public administration.”

Despite the many benefits, the introduction of computers created its own challenges, not least of which required acquainting the judiciary with screen and keyboard. Gary Byron recalls an early AIJA education event where the main aim was to have the judges place their fingers on a keyboard for the first time.

*It was guerrilla management. We had to find the influential people, get them on board, and get them to persuade others.*¹²

Case Management

Changing case management practices evolved in response to the pressures created by expanding judicial workloads and unacceptable delays in proceedings,¹³ and publications emanating from North America promoting new case-flow management systems and delay reduction began to influence Australian practices.¹⁴ It was increasingly acknowledged that the pace of litigation had to be controlled, necessitating new procedures and formal case management process. Senior court administrators were a key resource to the judiciary in developing these systems, combining a management perspective with an understanding of the broader judicial landscape.

Professionalization

The new reforms meant that the days of court administrators as entrenched, bureaucratic processors were a thing of the past. A senior court administrator in the new judicial world not only needed courts experience, but also a broader range of skills to fulfill their role, including an understanding of the law, and corporate management knowledge. In turn, administrators began to require that their staff have skills and qualifications relevant to the new procedural environment. Pioneering senior court administrators initiated relationships with academic institutions to establish university level qualifications in management in a justice environment. Policies were also developed linking qualifications to promotion in order to motivate staff to up-skill.¹⁵ Many senior court administrators led the charge by undertaking further studies themselves.

Strategic Planning

Reform of administrative processes included shifting corporate functions such as human resources, finance, and asset management in-house. These structural changes meant the employment of business professionals who brought with them a new perspective, including modern corporate expectations, particularly in the area of strategic planning. Corporate planning practices in the courts resulted, with senior court administrators re-skilling in the art of strategic and operational planning.

3.2 Continuing Change - 1990s and 2000s

By the mid-1990s courts were benefiting from a diverse range of skilled staff with management qualifications, and court administrators increasingly shared information and ideas through conferences, associations¹⁶ and networks which gradually expanded from jurisdiction, to state, to national and international levels. The judiciary also had wider skills in administration and management, assisted by the recruitment of members from legal firms where they had managed busy practices.

New public management reforms were taking hold, and public service organizations, including courts, were being reshaped by philosophies of lean government, performance measurement, customer focus, and the application of business models from the commercial sector.¹⁷

¹² Byron, interview, 2012.

¹³ Justice Ronald Sackville, "From Access to Justice to Managing Justice: The Transformation of the Judicial Role" (paper presented at the annual conference of the Australian Institute of Judicial Administration, Brisbane, Australia, July 12 -14, 2002). 2.

¹⁴ Warwick Soden, "Perspectives on the changing role of the judiciary in coordinating criminal justice" (paper presented at the Australian Institute of Criminology conference, Canberra, Australia, April 2003). 124. Soden writes that "The leading publication (American Bar Association 1986, Defeating Delay, Developing and Implementing a Court Delay Reduction Program) has been used as a guide in some courts in Australia, including, in particular, the Supreme Court of NSW and the District Court of South Australia."

¹⁵ In the past there was an expectation that time in a job, rather than performance, resulted in advancement.

¹⁶ By the 1990s the Australian Court Administrators Group was established further facilitating the sharing of knowledge, ideas and experience between jurisdictions.

¹⁷ O'Donnell, M., Allan, C., & Peetz, D. (1999). The new public management and workplace change in Australia (Academic Paper. University of New South Wales, Sydney). New Public management represented a marriage between economic theories (public choice theory, transaction cost theory and principal-agent theory) and a variety of private sector management techniques. The former emphasised notions of user choice and transparency while the latter promoted the portability of professional managerial knowledge and the need to increase the freedom available to public service managers to generate results and improve organisational performance.

In the 1998 Access to Justice Report,¹⁸ Peter Sallmann referred to the “quiet but enormously significant revolution” that occurred as higher courts moved toward a more interventionist role in managing their workload. Spiegelman also observed a “general acceptance of a greater role for the judiciary in case management”, adding that this had led to a degree of judicial intervention in proceedings “unheard of a few decades ago...”¹⁹ Changing judicial case management practices were supported by ongoing improvements in wider case flow management by the administrative arm of courts and the introduction of case management software.

The 2000s brought the next wave of reform, labeled “public value”, introducing concepts such as networked government, partnerships and public value.²⁰ These reforms placed new demands on the court administrator, increasingly requiring them to be change managers, financial managers, negotiators, and client service experts. They were expected to build new relationships with government and stakeholders, while maintaining internal relationships, and supporting the judiciary.

4. Contemporary Court Administration and Its Implications for Administrators

The significant reforms to courts during the 1980s, 90s and 2000s created an administrative environment that demanded a uniquely skilled, experienced court administrator. It is to the contemporary court environment that this paper now turns, examining aspects of modern court administration in Australia along with the leadership implications for senior court administrators. In particular, a shift towards client orientation has required senior court administrators to not only manage the internal workings of the court in a corporate environment, but to provide strategic guidance taking into account the newly recognized needs of court users.

5. Client Orientation

With modern court administration, the Hon. Alastair Nicholson observes, comes the multiple challenges of “needing to understand the needs of court users, tailoring services so that people are not treated as numbers and providing services within our constraints.”²¹ This focus on client orientation has created new challenges and opportunities for senior court administrators.

Client orientation²² is inexorably linked to design. The registry creates a first and lasting impression for people accessing the judicial system. Comfortable seating in registries results in a positive experience for court-users waiting for service.²³ Efficient queuing systems ensure court-users are served in a fair order, while partitioning of service counters protects privacy. Forms are designed to be simple and use plain English, and the internet is utilized to provide an alternative mechanism for users to access services off site.²⁴ Court services are now also tailored to the needs of many client types including self-represented litigants, those from culturally and linguistically diverse backgrounds, indigenous clients, and those with mental illness.

A court-user perspective must be maintained despite the environment of tight federal and state budgets under the catchcry of “doing more with less”. Creativity and inventiveness is required by court administrators to deliver these services within existing, or often diminishing budgets.

More challenging than the redesigning of physical infrastructure is inspiring in others the desired attitudes and behaviors toward court-users. Client orientation means staff must provide fair treatment and the right information to court users without judgment. For this reason, court staff who deal with the public are often recruited from service industries and ideally have a desire to assist others, are empathetic and enjoy problem solving. Senior court administrators are required to provide ongoing programs for training, mentoring and re-skilling for court staff, supported by practices to recruit and

¹⁸. Attorney Generals’ Department. Access to Justice Report, par 17.5, citing P A Sallmann, “Managing the Business of Australian Higher Courts” (1992) 2 JJA 80, 80.

¹⁹. The Hon JJ Spiegelman, “Judicial accountability and performance indicators” (paper presented at the 300th Anniversary of the Act of Settlement, Vancouver, British Columbia, Canada. May 2001)

²⁰. The concept of public value originated with professor Mark H. Moore (Harvard), who published *Creating Public Value Strategic Management in Government*, in 1995. In simple terms, it is the equivalent of stakeholder value for private organisations - public sector organisations are expected to understand and maximise public value.

²¹. Nicholson, interview, 2012.

²². For many the term client implies a willing participant. In many courts the term court-user is substituted.

²³. For example, in the Parramatta Registry of the Family Law Courts, the waiting area is designed for children and families who wait for services around a large domed internal atrium that houses rabbits and hens.

²⁴. For example, the Commonwealth Courts Portal, an initiative of the Family Court of Australia, Federal Court of Australia and Federal Magistrates Court of Australia, provides web-based services for clients to access information about cases before the courts and file document electronically (at www.comcourts.gov.au).

retain the right people.²⁵ Where court users are dissatisfied with the handling of their case or the conduct of judicial officers, complaint handling processes allow investigation and possible redress. Complaints data is now also seen by most senior court administrators as a good source of information about potential issues in the court system.²⁶

6. Measuring Performance

Ultimately, the accountability for the administration of the court sits with the Chief Justice. However, notions of accountability and performance tend to come laden with the nomenclature of business and bureaucracy – inputs, outputs, objectives, outcomes, policies, programs and key performance indicators. Such language can sit uncomfortably with the judiciary and it often falls to the senior court administrator to assist them in understanding their accountabilities and responsibilities.

The international framework for court excellence identifies the role of the senior administrator.

In most countries the head of courts are judges with a high level of judicial expertise. This does not automatically guarantee that they are also the best managers for courts. Excellent courts may also engage non-judge court administrators who are professionally trained in financial and organizational management and may encourage them, as well as the judges in leadership roles, to take part in courses to improve their management skills.²⁷

Performance measurement provides an important means for administrators to understand whether court resources are being used efficiently and effectively, and the responsibility for ensuring that data is collected, available, robust, and used appropriately to measure performance lies with the senior court administrator.²⁸ The Productivity Commission identifies the benefits of measuring performance as upholding accountability, having access to performance information and encouraging ongoing improvements in service delivery.²⁹ Performance indicators are also an important source of information to the Government on policy and program performance.

7. Financial Accountability

Federal courts, unlike most state and territory courts, have administrative independence. This autonomy enables money to be directed more innovatively, tailoring it to the needs of a particular court, and more importantly, to the court users and public it serves.

With autonomy comes the requirement to “demonstrate to Parliament, and ultimately the public, that they are using public funds wisely.”³⁰ In Australia, it mostly falls to the senior court administrator to front senate estimates and other parliamentary committees to answer questions about overall performance and the court’s budget.³¹ Not only must court administrators be able to read and understand financial reports, work with financial managers and make the required links between budget and overall performance, but they must also be politically aware and able to manage the pressure of close public scrutiny.

Given the courts are now competing for the same scarce resources as sectors such as health and education, Government is constantly making tradeoffs and prioritizing limited funds between sectors.³² The days of courts being seen as special in the fiscal arena are long gone. Wade, McKinna and Laster observe that courts are at a disadvantage given the timing of court reform in Australia, noting that “the most significant period of transformation has occurred when governments are least receptive to extra expenditure.”³³ To ensure the financial requirements and priorities of the courts are front of mind,

²⁵. At times senior administrators must make difficult decisions to redeploy or terminate the employment of staff who are unwilling to embrace a client orientation.

²⁶. Complaints regarding judicial decisions do not fall within these policies, since dissatisfaction with a court decision is only capable of being resolved by appealing from that decision.

²⁷. International Consortium for Court Excellence, 2008. *International Framework for Court Excellence*. National Center for State Courts (NCSC): USA. 12.

²⁸. These may include indicators of judicial performance required by the Chief Justice such as clearance rates, outstanding judgements, etc. for which the court administrator is not accountable for but does have an accountability for providing data if required.

²⁹. Productivity Commission, Report on Government Services, Canberra, 2012. 7.1.

³⁰. Attorney-General’s Department -Civil Jurisdiction and Federal Courts Branch, *Federal Civil Justice System Strategy Paper*, Canberra, December 2003. 172.

³¹. Foundations of Governance in the Australian Public Service, APSC, update 2008, <http://www.apsc.gov.au/foundations/index.html> Under the Australian system of responsible Government, Ministers are responsible to Parliament for the overall administration of their portfolios, both in terms of policy and management and also for carriage in the Parliament of their accountability obligations to that institution.

³². State and territory courts have struggled particularly to maintain their portion of diminishing state budget funds.

³³. Liz Wade, Sara McKinna and Kathy Laster, “Building the Capacity of Court Administrators,” draft chapter for *Australian Courts: serving democracy and its publics* for the Australian Institute of Judicial Administration, 2011 (unpublished).

the senior court official must stay close to decision makers in central agencies, while managing the expectations of a few in the judiciary who maintain the link between judicial independence and unconstrained funding.

8. Relationships with the Judiciary

The desired relationship between senior court administrators and the Chief Justice is based on “trust, mutual respect, tolerance, co-operation and a sense of common purpose,” observes Gary Byron.

*Each has a role to play; each has a contribution to make and between them, they should be a fairly formidable team.*³⁴

To allow this relationship to function, it is important that the unique contribution of each party to the effective running of the court is respected. The higher levels of education and professionalism in court administration have assisted in generating greater respect for the role.

The senior court administrator has to acknowledge that the ultimate accountability for the court administration and policy setting sits with the Chief Justice, and it is the senior court administrator's role to advise, assist and support them in executing those responsibilities. However, according to former Chief Justice of the Family Court, the Hon. Alastair Nicholson, when it comes to management issues, the Chief Justice should “expect to be involved in championing issues when required to but otherwise should not interfere”³⁵ as the senior court administrator must have the license to administer the policies of the court and oversee day to day operations without undue judicial interference.³⁶

The role of assisting, providing wise counsel and supporting does not mean always telling the judiciary what it wants to hear. The days of forelock tugging are long gone. At times it means challenging ideas, educating and influencing. It means ensuring that the judiciary meet their administrative obligations and don't hide unnecessarily behind veils of judicial independence or legislation. However, a successful senior court administrator will also be open to ideas and support the judiciary wherever possible. The execution of the role is understandably assisted by the many judges who have an appreciation of management imperatives and are themselves leaders in judicial administration.

To maintain positive relationships communication channels must remain open both internally and with other organizations. Senior court administrators often have a close working relationship with the Chief Justice with regular communication. This includes advising the judiciary of information provided by other people, although administrators must be cautious to not be perceived by interest groups as the primary mechanism for delivery of bad news. Managing communication channels may mean frequent travel or attending numerous meetings. Informal communication, such as the conversation in a corridor or the car park also provides invaluable opportunity for information about the overall health of the court to be passed on.

9. External Relationships

The modern senior court administrator must not only have an internal focus, but must be available to build relationships with a vast range of external stakeholders, including ministers, other court officers, government departments, not for profit organizations, and unions. Each relationship is different in its needs and boundaries, requiring the senior court administrator to adapt to the nature and style of relationship needed. They must take a long term view in building relationships, establishing trust through credibility and reliability, and should maintain respectful partnerships rather than hierarchical relationships bedded in power plays.

The Senior Executive Leadership Capability Framework states that as part of their leadership role, the senior executive “creates a sense of 'interconnectedness' with other departments and agencies, ensuring opportunities to share views and ideas.”³⁷

An example of this is the increasing acceptance of therapeutic jurisprudence in Australia which has seen courts working more closely with human services agencies to address social and personal problems from drug-abuse and addictions, homelessness, unemployment, mental health, behavioral issues and a lack of work-related and parenting skills.³⁸ In a

³⁴. Gary Byron, "Court Governance: The Owl and the Bureaucrat", *Journal of Judicial Administration* 8, no. 3 (1999): P143.

³⁵. Nicholson, interview, Canberra. Ap 16, 2012.

³⁶. For example, if members of the judiciary raise concerns about an administrative staff member, the Chief Justice would expect to raise the issue with the senior court administrator but then not interfere with how that person was managed.

³⁷. Australian Public Service Commission, *Senior Executive Leadership Capability Framework*, Canberra, 2004, 2.

³⁸. Sharyn Roach Anleu and Kathy Mack, "Australian magistrates, therapeutic jurisprudence and social change", *Law & Policy* 29, issue 2, April 2007.

Family law context, this has meant creating close working relationships with central agencies, legal aid, family relationship centers, mental health support organizations, child protection agencies and research institutions.

It is also part of the senior administrator's role to manage relationships with ministers and members of parliament, and to provide the frank, honest, comprehensive, accurate and timely advice required under the *Public Service Act 1999*.³⁹ The senior court administrator must develop and nurture these relationships. This does not mean simply reacting to information requests from members of parliament (such as answering questions from parliamentary committees or briefing a minister). The senior court administrator must also initiate meetings where necessary. For example, where a public statement reveals a minister's misunderstanding of courts, the senior court administrator may seek a meeting to provide clarifying information. Interactions with ministers must be managed in consultation with the central agencies that are pivotal to the administration of courts.

The senior court administrator needs to also maintain a professional network, developing mutually beneficial relationships and working across portfolio boundaries to negotiate the best outcomes for courts.

10. Culture of Innovation

Public expectations of government service delivery are increasing. This is driven by comparison to private sector service improvements, but also by comparative improvements in public services nationally and internationally, and by demographic shifts in society. Innovation is now seen by government to be at the heart of good public administration. *A high-performing public service is relentless in its commitment to continuous improvement. It never assumes that the current policies, processes and services are the best or only solution.*⁴⁰

The International Framework for Court Excellence takes important notice of the need for innovation, stating that strong court leadership requires, among other things, an "...eye for innovation and a proactive response to changes in society."⁴¹ At its most effective, innovation in courts leads to new ways of delivering services, new administrative approaches and new systems. However innovation does not just occur, it must be nurtured.⁴²

To precipitate innovation, idea generation is required. For this, leaders must be outward looking and encourage others to be so. Courts must borrow, share, and generate ideas. In contemporary court administration, there are many structures that support these activities. Member organizations such as the AIJA and International Association for Court Administration provide opportunities through conferences, forums and networks. Ideas are also cultivated as a result of international relationships.⁴³

Innovation comes from all levels within Courts. While many senior court administrators in Australia have been working in Courts for a long time, it is important that they not become cynical. Senior staff must actively seek out new perspectives, particularly from more youthful recruits.⁴⁴

Courts are traditionally conservative, and the senior court administration will at times be required to push back against the risk adverse culture. However, recently published research by the Attorney-General's Department acknowledges that many public sector innovations involve complex stakeholder and political management issues not found in the private sector. In many instances, the public will not tolerate mistakes or 'trial and error' in the public sector and consultation becomes key. The research found that the most successful innovation in the public sector occurs when an organization has control over the time needed to innovate and implement, and can reduce uncertainty associated with the innovation.

³⁹. Public Service Act 1999, section 10(1)(f).

⁴⁰. Australian Public Service Commission, *Empowering Change*, Canberra 2010, 1.

⁴¹. ICCE, *International Framework*, 2008.

⁴². Hurley, Robert, F, and G. Tomas M Hult, "Innovation, market orientation and organisational learning", *Journal of Marketing*, July 1998 Vol 62, 45.

⁴³. For example, since 2008, a formal partnership between the Supreme Court of Indonesia, the Federal Court of Australia and the Family Court has enabled courts in both countries to share experiences regarding case management, court administration, information technology, client services, supporting vulnerable litigants and access to justice. Such relationships inspire the haring of ideas and innovation. To prosper they require significant administrative support and the ongoing management of relationships at all levels, judge to judge and administrator to administrator.

⁴⁴. Richard Foster, (2008, April 4). *Young employees find their voices in the Family Court* [Media Release]. Retrieved from http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Media/Media_Releases/FCOA_Young_Employees. For example, in the Family Court of Australia, a Young Employees' advisory group is established to contribute to achieving best practice within the Court and to harness their enthusiasm. Its aim is to "empower its young staff members to 'shout' and 'share' and enrich our workplace" and to gain a "youth perspective on certain issues."

It further suggests that collaboration can be a success factor in public sector innovation.⁴⁵ The senior court administrator must be able to balance these tensions if innovation is to occur.

11. Looking Forward

Over the last years, despite increasing demands and shrinking budgets, Wade, McKinna and Laster find the reform program has in fact “gained momentum.”⁴⁶

Court administrators in Australia must accept that they are operating in an environment of constant, and often complex, change. As technology allows courts to do more, government priorities change, the social environment shifts, and the demands of the public evolve. Managing multiple changes is the new way for all courts.

Some of the already emerging challenges are discussed below along with their implications for administrative leaders.

12. Harnessing Technology

The role of technology, and advances in technological tools continues to challenge and create exciting new opportunities for courts to improve the way they deliver services to court users.

*...the range and variety of technological miracles that are occurring at this time should make us excited [observed the Hon Justice Michael Kirby]. They present great opportunities for law and other professions to reach out to the public they serve and to enhance efficiency, accuracy and quality of the services they provide.*⁴⁷

The private sector is making use of advances in IT to deliver increasingly tailored and streamlined services to consumers and thus “amplifying demand for public sector providers to follow suit”.⁴⁸ In many regards, courts are still heavily reliant on (and some would say addicted to) the paper files that form the backbone of case information. However, there are readily available technologies in areas such as customer relationship management, appointment and queue management, voice recognition, paperless workflows, and digital signatures⁴⁹ that could streamline file management. Courts may struggle to deliver what is required within the resources available over the long term if they do not begin to embrace some of the new technologies. It falls to the senior court administrator to understand the possibilities, lobby for government funding, and to lead adoption of the technology internally.

13. Non Adversarial Justice

Non-adversarial approaches and therapeutic jurisprudence are gaining momentum in Australia. Existing adversarial approaches are noted by the Hon. Alastair Nicholson as “too costly and don’t serve the public.”⁵⁰ Non-adversarial justice casts a wide net and includes the related concepts of therapeutic jurisprudence, restorative justice, participatory justice, preventive law, comprehensive law, creative problem-solving, diversion, holistic law appropriate dispute resolution (including mediation, negotiation, conciliation and arbitration) and others.⁵¹

So what does this all mean for the court administrator?

According to Stockwell, as the paradigm shifts toward non adversarial approaches, it means changing court management practices, institutional arrangements and legal and other professional cultures.⁵² She observes that therapeutic jurisprudence principles are already informing the reform of court services with a view to increasing the amount of multi-disciplinary case management and collaboration.

⁴⁵. Dr Robert Kay & Dr Chris Goldspink, *What public sector leaders mean when they say they want to innovate*, research report prepared for the Attorney General’s Department and the Australian Public Service Commission Canberra, 2012.

⁴⁶. Wade et al, *Building the Capacity* 2011, 2.

⁴⁷. The Hon Justice Michael Kirby AC CMG, ‘The Commonwealth Lawyer Law in the Age of Fantastic Technological Change’, derived from a talk given to the Eighth Greek/Australian International Legal and Medical Conference, Corfu, Greece, 4 June 2001.

⁴⁸. Australian Public Service Commission, *Empowering Change*, Canberra 2010, 1.

⁴⁹. The Australian Government and most states and territories in Australia have already enacted legislation that gives electronic communications the same status as written communications at law (both criminal and civil). However, since the validity of documents with digital signatures has never been challenged in court, their legal status is not yet well-defined.

⁵⁰. Nicholson, interview, 2012.

⁵¹. Arie Freiberg, “Psychiatry, psychology and non-adversarial justice: from integration to transformation,” RG Myers memorial lecture, Australian and New Zealand Association of Psychiatry, Psychology and Law, 25 October 2010.

⁵². Charlotte Stockwell, “Managing the Transition from the Adversarial to the Non-Adversarial Court: A Court Administrator’s Perspective”, 2010. Retrieved from www.ajia.org.au/NAJ%202010/Papers/Stockwell%20C.pdf

For the senior court administrator, it will mean building closer and more collaborative approaches between courts and different professions, organizations and communities, as well as expanding the focus of education and training to include interdisciplinary approaches. Freiberg observes that even the physical design of the court can reflect non-adversarial justice and therapeutic jurisprudence in the way that courtrooms are “configured to promote respect for cultures or better communication between the participants.”⁵³

14. Evaluating Performance

In 1998, Professor Parker noted that while most Australian courts have a culture of continuous improvement, it is not matched by a culture of subsequent evaluation.⁵⁴ This area remains a challenge for many courts with concepts such as program logic⁵⁵ remaining foreign. Senior court administrators have an ongoing obligation to ensure systems are in place to gather robust, useable data to allow the evaluation of performance. This will become increasingly important as resources become scarcer and robust information is needed to make decisions about the best use of limited funds.

15. The Changing Workforce

In a recent speech, the Australian Public Service Commissioner identified a shifting workplace.

*Rising education levels, changing roles, different attitudes toward authority and work, and greater demands for participation are all components of a wider social transformation in the workplace.*⁵⁶

The court administrator must plan for an environment where double income families, often with caring roles for older parents and/or children, make up a significant part of the workplace. The increasing equilibrium of the workplace combined with a new expectation of fathers to spend time with their children has increased the need for a family friendly workplace. Meanwhile, the aging of the public service workforce brings with it challenges about how to both “retain access to experience” while “effecting generational change and managing organizational renewal over time.”⁵⁷ At the other end of the spectrum, younger generations have different work expectations, anticipating more flexibility and fluidity in both how and where they work.

It falls to the senior court administrator to align the needs of the organization with the expectations of the workforce.

16. Conclusion

The revolution in court administration which began in the 1980s was rapid and gained enormous momentum. Over a period of 30 years the professional court administrator adapted to government, societal, technological and court driven reforms that fundamentally changed the way courts operate.

The skills of most senior court administrators were built in layers as successive waves of reform took hold. Court administrators are now more educated and skilled than ever before. They bring not only experience in courts but also management skills and an understanding of social sciences.

But these are largely technical management skills, and while their importance is not to be diminished, it is an aptitude for the darker art of leadership that distinguishes those who succeed in this role. This paper has drafted an informal nomenclature of court leadership. It describes the senior court administrator as a collaborator. As a person who inspires, influences, stimulates debate, persuades and challenges. As one who looks forward, thinks holistically, tolerates uncertainty, provides wise counsel, manages risks, works across agency boundaries and is flexible. They must have an aptitude for overcoming complex problems and hurdles. They create a workforce that is aligned to the needs and priorities of the organization. They understand that their role is tied to the Chief Justice who has the ultimate responsibility for a court’s administration.

It is not a role for the faint hearted.

Yet, with the greatest challenges come the greatest rewards. The work of the senior court administrator is intellectually rewarding, well respected, and provides the opportunity to build relationships with an exceptional group of people. And

⁵³. Freiberg, Psychiatry, psychology, 18.

⁵⁴. Stephen Parker, *Courts and the Public*, 1998, 160.

⁵⁵. Program logic provides an agreed description of how a project or program is intended to work, sets out the context in which the project or program operates and is the basis for outlining the project or program’s expected performance and provides information for evaluation.

⁵⁶. Steve Sedgwick, Public Service Commissioner, “Evaluating the Current State of the Public Sector and its Future Demands to Up Skill its Workforce”, speech given on 9 August 2011. Retrieved from <http://www.apsc.gov.au/media/sedgwick090811.htm>

⁵⁷. *Ib id*

the court administrator knows that when court users have a positive experience of a court it is not solely a reflection of their day in court or the outcomes of their case, but also a reflection on the quality of administration.

Bibliography

Aikman, Alexander B. *The Art and Practice of Court Administration*. Boca Raton : Taylor & Francis Group, 2007.

Anleu, Sharyn Roach and Mack, Kathy. "Australian magistrates, therapeutic jurisprudence and social change". *Law & Policy* 29, issue 2, (April 2007). P 183–209.

Attorney-General's Department - Civil Jurisdiction and Federal Courts Branch, *Federal Civil Justice System Strategy Paper*, Canberra, December 2003.

Attorney-General's Department and the Australian Public Service Commission. *What public sector leaders mean when they say they want to innovate*, research report prepared by Dr R Kay and Dr C Goldspink. Canberra. 2012.

Australian Public Service Commission. *Senior Executive Leadership Capability Framework*. Canberra, 2004.

Australian Public Service Commission. *Empowering Change*. Canberra, 2010.

Byron, Gary. " Court Governance: The Owl and the Bureaucrat", *Journal of Judicial Administration* 8, no. 3 (1999): P142 – 158

Foster, Richard. "A commentary on Managing the Business of Australian Higher Courts" Paper presented at the Second Biennial AIJA Higher Courts' Administrators' Conference. Brisbane, Queensland, 21-22 May 1992.

Freiberg, Arie. Psychiatry, psychology and non-adversarial justice: from integration to transformation. RG Myers memorial lecture, Australian and New Zealand Association of Psychiatry, Psychology and Law. 25 October 2010.

Hurley, Robert, F, and G. Tomas M Hult. Innovation, market orientation and organisational learning. *Journal of Marketing* 62 (July 1998): P42-54.

International Consortium for Court Excellence. *International Framework for Court Excellence*. National Centre for State Courts: USA. 2008.

Kay, Dr Robert & Goldspink, Dr Chris. See Attorney General's Department and the Australian Public Service Commission Canberra, 2012.

Kirby, the Hon Justice Michael AC CMG. 'The Commonwealth Lawyer Law in the Age of Fantastic Technological Change'. Speech given at the *Eighth Greek/Australian International Legal and Medical Conference*. Corfu, Greece, 4 Jun 2001.

Murphy, The Hon Justice Peter. "A better experience for clients: transforming service delivery". Paper presented at the *Asia-Pacific Courts Conference (APCC)*. Singapore, 4-6 October 2010.

O'Donnell, M., Allan, C., & Peetz, D. (1999). The new public management and workplace change in Australia. Academic Paper. (University of New South Wales, Sydney).

Parker, Stephen. *Courts and the Public* (Australian Institute of Judicial Administration, Melbourne, 1998).

Productivity Commission. *Report on Government Services*. Canberra ,2012 i.1

Sackville, the Hon Justice Ronald. "Howling From Access to Justice to Managing Justice: The Transformation of the Judicial Role." Paper presented at the *annual conference of the Australian Institute of Judicial Administration*, Brisbane, Australia. July 12 -1 4, 2002.

Sedgwick, Steve. Public Service Commissioner. "Evaluating the Current State of the Public Sector and its Future Demands to Up Skill its Workforce". Speech given on 9 August 2011. <http://www.apsc.gov.au/media/sedgwick090811>

Soden, Warwick. "Perspectives on the changing role of the judiciary in coordinating criminal justice." Paper presented at the *Australian Institute of Criminology conference*, Canberra, Australia, April 2003.

Spiegelman, the Hon JJ, Chief Justice of NSW, "Judicial accountability and Performance indicators". Paper presented at the 300th Anniversary of the Act of Settlement, Vancouver, British Columbia, Canada. May 2001.

Stockwell, Charlotte. "Managing the Transition from the Adversarial to the Non-Adversarial Court: A Court Administrator's Perspective." Australian Institute of Judicial Administration. www.aija.org.au/NAJ%202010/Papers/Stockwell

Liz Wade, Sara McKinna and Kathy Laster, "Building the Capacity of Court Administrators," draft chapter for *Australian Courts: serving democracy and its publics* for the Australian Institute of Judicial Administration (unpublished). 2011
Wikipedia, "Lao Tsu." Last modified May 02, 2012. Accessed May 7, 2012. www.Wikipedia.org.

Setting the Standard



Digital audio and video capture



Case management integration



HD video and video conferencing



Multi-tiered storage



Remote monitoring



Scalability



Simple, sophisticated digital recording solutions that set the standard for excellence

For over 25 years, our company has been providing courts around the world with simple yet sophisticated computer-based digital audio and video capture and management solutions. Our flexible, modular software suite allows courts to adopt the level of sophistication that is right for their organization, and our growing list of customers range from single-courtroom standalone installations to complex, country-wide installations with hundreds of courtrooms, multiple servers and thousands of users.

With VIQ Solutions, you can start with simple digital audio recording and add sophistication as you grow through advanced features like remote monitoring and recording control, multi-channel HD video capture, multi-tiered server distribution for complete redundancy, integration with case management systems and video conferencing integration for remote arraignment. Our flexible suite of digital recording solutions is scalable, with a clear migration path, allowing you to protect your initial investment while adapting to your court's changing needs.

For more information, visit us online at www.viqsolutions.com or email us at info@viqsolutions.com.

VIQ
Solutions