



## PROFESSIONAL ARTICLE

# Technology-Driven Changes in an Organizational Structure: The Case of Canada's Courts Administration Service

Anastasia Konina\*

Recently, the federal Courts Administration Service of Canada (the CAS) announced its plans to implement an automated case and registry management system (CRMS) in Canada's Federal Courts: the Federal Court of Appeal, the Federal Court, the Tax Court and the Court Martial Appeal Court of Canada. The CRMS embraces many functions that contribute to the courts' daily operations: case management, access to case records and documents, transmission and service of court records, transfer of cases and documents among courts, scheduling of cases and court-rooms, etc. Traditionally, these services have been provided by courts' registries. However, integrated systems offer an opportunity to automate most processes, thereby improving operating efficiencies and reducing procedural delays.

Despite the significant benefits of digitization and automation of courts' operations, the implementation of a CRMS solution poses significant risks to judicial independence. Particularly, this article scrutinizes how CRMS may undermine the security of judicial information and how automation of procedures may adversely affect the procedural independence of the judiciary. To minimize these risks, this article suggests that the CAS create a specialized standard-setting committee that will monitor the CRMS implementation process.

**Keywords:** judicial independence; case and registry management; court administration; information technology

## Introduction

Recently, the federal *Courts Administration Service of Canada* (the CAS, the Service) announced its plans to procure a full-fledged, automated case and registry management system (CRMS) for Canada's Federal Courts: *the Federal Court of Appeal, the Federal Court, the Tax Court and the Court Martial Appeal Court of Canada*.<sup>1</sup> CRMS represents a segment of judicial administration that can be referred to as 'court support services'. It integrates many functions that

\* Université de Montréal, CA. Email: [anastasia.konina@umontreal.ca](mailto:anastasia.konina@umontreal.ca)

<sup>1</sup> Public Works and Government Services Canada, *Letter of Interest. Courts Administration Service Courts and Registry Management System Judicial and Registry Services Request for Information* (23 January 2019), online: <[https://buyandsell.gc.ca/cds/public/2019/01/23/ba0f82432f6e293e106f9d64aa9c3c7c/ABES.PROD.PW\\_\\_XL.B127.E34555.EBSU000.PDF](https://buyandsell.gc.ca/cds/public/2019/01/23/ba0f82432f6e293e106f9d64aa9c3c7c/ABES.PROD.PW__XL.B127.E34555.EBSU000.PDF)> [accessed 28 February 2020].

contribute to the daily functioning of courts: case management, access to court case records and documents, transmission and service of court records, transfer of cases and documents among courts, scheduling of cases and courtrooms, etc.

Traditionally, these services have been provided by the courts' registries. However, private providers of CRMS services offer an opportunity to digitize most processes, thereby improving operating efficiencies and reducing procedural delays in courts. CRMS is the central element that enables the Federal Courts' registries to move to electronic court operations from the moment documents are filed by litigants to the time a decision is made public. The court users and the public will have access to court information and documents from anywhere and at any time through the internet, and court users will be able to submit court proceeding documents and evidence online. All interactions, processes and correspondence between the courts, the registries and court users will be conducted through the system, and all court information will be electronically and centrally held. CRMS will be 'flexible to meet the diverse needs of the various jurisdictions, types of litigation (civil, criminal), and levels of court (courts of first instance, appellate)'.<sup>2</sup>

Despite the benefits of digitization and automation, the implementation of a CRMS solution poses significant risks to judicial independence. This article scrutinizes two main sources of risk: (1) a CRMS solution may undermine the security of judicial information and (2) automation of certain procedures threatens the procedural independence of the judiciary. These risks require that the CAS create a specialized standard-setting committee that will monitor the CRMS implementation process.

This article proceeds in four parts. Part 1 describes the main functions performed by CRMS. Part 2 scrutinizes the risks that CRMS poses to judicial independence. Part 3 critically examines the organizational structure of the CAS, identifies the main actors within the organization that are responsible for implementing CRMS and scrutinizes the deficiencies of this approach. Part 4 introduces the alternative organizational structure for implementing CRMS and argues that it is better aligned with the principle of judicial independence and the provisions of the CAS's enabling statute.

## 1. The main functions performed by a case and registry management system

There is no uniform set of standards that determine the technical specification of a CRMS solution. Such systems can be adapted to the specific needs of the courts in which they are utilized. The complexity of the system and the level of integration of its different components depend on the courts' case load, the geographic area that they serve and the types of cases that they hear (civil, family, criminal, etc.).<sup>3</sup> Despite a variety of components that can be included in such a system, generally, a CRMS solution focuses on four key areas: workflow coordination and collaboration, scheduling, information sharing, and reporting.<sup>4</sup>

**A. Workflow coordination and collaboration.** The workflow coordination and collaboration functions of a CRMS solution allow multiple users to simultaneously enter information about their case, request, download and upload documents, monitor a case's progress and get periodic updates and notifications. For example, one party can initiate an action, such as

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<sup>2</sup> J. Greenwood, G. Bockweg, Insights to Building a Successful E-filing Case Management Service: U.S. Federal Court Experience. *International Journal for Court Administration* 4 (2), p. 2.

<sup>3</sup> Ibid.

<sup>4</sup> Canada, Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Submission by RedMane Technology Canada Inc.* (30 January 2017), pp. 4–6, online: <[https://sencanada.ca/content/sen/committee/421/LCJC/Briefs/RedMane\\_Techn\\_e.pdf](https://sencanada.ca/content/sen/committee/421/LCJC/Briefs/RedMane_Techn_e.pdf)> [accessed 20 February 2020]. The CRMS framework outlined here draws from this submission.

booking a hearing date. A notification about this action is automatically sent to other users, who, in turn, may accept the suggested date it or request a different date. The system can also be programmed to send notifications to appropriate users when a deadline for a particular activity (for example, scheduling a witness deposition or document disclosure) has passed.

**B. Scheduling.** Case and registry management systems allow courts to schedule hearings in due course. One of the companies that provides CRMS services suggests that their software's scheduling capabilities 'minimize the number of court rooms that are inappropriately scheduled and thereby increase the capacity of the courts to hear more cases in an expeditious manner'.<sup>5</sup> A CRMS solution can also promptly address adjournment requests due to unavailability of parties or witnesses. Users can update information about their availability online, eliminating the need to schedule a court appearance to address delays.

**C. Information sharing.** Courts seek to implement case management solutions to expedite the distribution and transfer of information between different actors within the justice system. Users may be able to request necessary information or download certain documents at their own discretion, depending on the system's security settings. Modern case management solutions also allow users to transfer information between different levels and types of courts. This capability is particularly useful in instances when a case changes jurisdiction or when information on one case is contained in a different case. There may also be a need to transfer information between courts and other institutions, such as law enforcement agencies, child welfare services and healthcare providers.

**D. Reporting.** A CRMS solution can be used as a business intelligence tool to monitor and report key court performance indicators (number of incoming cases, case disposition times, average judicial workload, etc.). Such reporting can provide useful information on 'statistics on court filings, delays and dispute outcomes'<sup>6</sup> and help estimate the allocation of human and budgetary resources for courts. Regular or *ad hoc* operational reporting can be made available to different categories of system users: various judicial committees, the Chief Justices of the Federal Courts, the Ministers and Departments of Justice.

## 2. Risks to judicial independence

Although the modernization of the Federal Courts' case management and registry services may increase the courts' efficiency, implementing CRMS requires that private service providers get access to sensitive judicial information and exercise control over a substantial portion of services that are directly related to adjudication. This part critically examines some reasons why this poses threats to judicial independence.

### 2.1 Security of judicial information

As was mentioned above, a CRMS solution stores all information about a court case and gives a variety of users rights to enter, access, and share this information. All documents and data contained in a CRMS fall under one of the following categories: public information or information protected from public access.

Public information usually includes 'a) case files; b) dockets; c) minute books; d) calendars of hearings; e) case indexes; f) registers of actions; and g) records of the proceedings in any

<sup>5</sup> Ibid., p.5.

<sup>6</sup> M. Felsky, *Blueprint for the Security of Judicial Information*, 4th ed. (The Canadian Judicial Council, July 2013), p.11, online: <<https://www.cjc-ccm.gc.ca/cmslib/general/Revised%20Blueprint%202013-08-12%20for%20CJC%20approval.pdf>> [accessed 19 February 2020].

form'.<sup>7</sup> This information is kept open to the public and the media to ensure public scrutiny of courts and, ultimately, to maintain the legitimacy of the justice system. At the same time, some information is protected from public access. This includes juvenile cases, sealed indictments, personal judicial calendars, the history of judicial internet searches, documents containing trade secrets, communications between judges and between parties and counsel, etc.<sup>8</sup>

The familiar problem of protecting the security of judicial information takes on new importance as courts adapt to the digital environment.<sup>9</sup> Against the backdrop of growing digitization of courts' operations, the *Canadian Judicial Council* (the CJC) released a series of reports on electronic access to court records and electronic court information and the security of judicial data.<sup>10</sup> Particularly, the CJC expressed concern that the government-wide information security polices fail to (1) distinguish between types of information produced and stored by the courts and (2) assign a distinct legal status to different types of such information.<sup>11</sup>

To protect certain categories of judicial information, the CJC suggested adopting a taxonomy of information produced, stored and retrieved by courts and articulating clear barriers between the types of information that may and may not be released to the public.<sup>12</sup> So, for example, a 'case file' is a category with restricted access: the information contained in it should be accessible only to the parties, the judge and judicial personnel. However, it includes a sub-set component called the 'court record' that is accessible to the public.<sup>13</sup> The most restricted category of information is judicial information. It includes information relating to a judge's private and social interactions, draft judgments, history of visited web sites, various email correspondence that does not directly relate to a case file, personal and professional calendar other than docket events, statistics showing individual activity or workload, personal research notes, etc.<sup>14</sup> In line with these proposals, the CRMS design must ensure that a solution maintains the security of restricted information. An integrated case management system should have multiple layers of access restrictions depending on each user's status (e.g., judge, clerk, attorney, prosecutor).<sup>15</sup> Access can also be restricted based on such information as case name, docket entry and type of document.<sup>16</sup>

## 2.2 Procedural independence

One of the main goals of CRMS is to increase the efficiency of courts by way of automating certain procedures. For example, a case management system can automatically 'drive [the] escalation process when timelines are not adhered to',<sup>17</sup> send automatic reminders and notifications to the participants in the proceedings, schedule court rooms and hearings and force

<sup>7</sup> J. Sherman, *Court Information Management Policy Framework to Accommodate the Digital Environment*, (The Canadian Judicial Council, 2013), p. 35, online : <<https://www.cjc-ccm.gc.ca/cmslib/general/AJC/Policy%20Framework%20to%20Accommodate%20the%20Digital%20Environment%202013-03.pdf>> [accessed 17 February 2020].

<sup>8</sup> See Greenwood, Bockweg, supra note 2, p. 6.

<sup>9</sup> See Sherman, supra note 7.

<sup>10</sup> See, e.g., Canadian Judicial Council, *Ten Things Judges Can Do Now to Improve the Security of Judicial Data*, (August, 2009), online: <<https://www.cjc-ccm.gc.ca/cmslib/general/JTAC-ssc-Ten-Things-Judges-Can-Do-Article-4th-Edition-2009E.pdf>> [accessed 16 February 2020]; Felsky, supra note 6; Sherman, supra note 7.

<sup>11</sup> See Sherman, supra note 7.

<sup>12</sup> *Ibid.*, pp. 29–37.

<sup>13</sup> *Ibid.*, pp. 31–32.

<sup>14</sup> *Ibid.*, p. 33.

<sup>15</sup> See Greenwood, Bockweg, supra note 2, p. 5.

<sup>16</sup> *Ibid.*

<sup>17</sup> See Standing Senate Committee on Legal and Constitutional Affairs, supra note 4, p. 4.

users to adhere to standardized forms, templates and interfaces.<sup>18</sup> Such a drive towards procedural efficiency should be carefully weighed against the principle of judicial independence, which, among other things, contemplates that judges ‘need to be able to have the final say as to how a case proceeds through the court’ and ‘to control the legal process as case managers’.<sup>19</sup> Particularly, the procedural independence of the judiciary implies that a judge has the ‘capacity to prioritize his or her own workloads’<sup>20</sup> and to decide at his or her own pace on any pre-trial or mid-trial procedural issues,<sup>21</sup> when and which case on the docket to hear, when to hold a case-scheduling conference, when to schedule a trial, etc.

In 2016, the Canadian Task Force of *the American College of Trial Lawyers* undertook a survey of the Canadian judiciary with the goal of formulating proposals for an incremental civil case management reform. According to the survey, ‘[t]he theme that was expressed most consistently (...) was the importance of using flexible case management procedures that can be adapted to suit the needs of a particular case’.<sup>22</sup> Relatedly, in *Hryniak v Mauldin*,<sup>23</sup> the Supreme Court of Canada noted that the civil justice system must be reformed in order to ensure ‘proportional procedures tailored to the needs of the particular case’.<sup>24</sup> Across Canada, the recent wave of reforms in civil justice suggests that the management of cases is becoming more flexible. In civil cases, a majority of provinces have implemented rules that expressly embrace and enforce the principle of procedural proportionality.<sup>25</sup> Generally, in jurisdictions with well-defined case management rules, courts are proactive in supervising the conduct of proceedings with a view to ensuring that cases move along at an appropriate pace and in a suitable manner.

Discussing management of criminal cases in *Jordan*,<sup>26</sup> the Supreme Court of Canada recognized that ‘[t]rial judges should make reasonable efforts to control and manage the conduct of trials’.<sup>27</sup> Similarly, in 2016, in *Bordo*,<sup>28</sup> the Superior Court of Quebec articulated the power of a court to establish schedules and impose deadlines on the parties before it. Justice Cournoyer noted that a presiding judge has an inherent power to manage a trial and has considerable powers to intervene and make any orders necessary to ensure that the trial is moving forward. Both *Jordan* and *Bordo* suggest that presiding judges should take on a deciding role in aligning case management procedures with the requirements of individual cases.

What are the implications of these developments in civil and criminal law for the CRMS implementation project? One can argue that case management tools should embrace the requirement of procedural flexibility. This implies that technologies utilized for case

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<sup>18</sup> F. Contini, A. Cordella, Law and Technology in Civil Judicial Procedures, in: R. Brownsword, E. Scotford & K. Yeung (eds), *The Oxford Handbook of Law, Regulation and Technology*, Oxford University Press, Oxford, UK 2017, pp. 246–268.

<sup>19</sup> Canada, Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada (Final Report)* (June 2017), p.75, online: <[https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court\\_Delays\\_Final\\_Report\\_e.pdf](https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court_Delays_Final_Report_e.pdf)> [accessed 10 February 2020].

<sup>20</sup> *R v K (K.G.)*, 2017 MBQB 96, paragraph 51.

<sup>21</sup> *R v Mamouni*, 2017 ABCA 347, paragraph 91.

<sup>22</sup> The Judiciary Committee of the American College of Trial Lawyers, *Working Smarter but Not Harder in Canada: The Development of A Unified Approach to Case Management in Civil Litigation*, p.16, online: <[https://soar.on.ca/sites/default/files/documents/ACTL.Cda\\_Working\\_Smarter\\_Not\\_Harder\\_compressed.pdf](https://soar.on.ca/sites/default/files/documents/ACTL.Cda_Working_Smarter_Not_Harder_compressed.pdf)> [accessed 21 February 2020].

<sup>23</sup> *Hryniak v Mauldin*, 2014 SCC 7.

<sup>24</sup> *Ibid.*, paragraph 2.

<sup>25</sup> See the Judiciary Committee of the American College of Trial Lawyers, *supra* note 22, p. 19.

<sup>26</sup> *R v Jordan*, 2016 SCC 27.

<sup>27</sup> *Ibid.*, paragraph 139.

<sup>28</sup> *R v Bordo*, 2016 QCCS 477.

management purposes should include several scenarios that allow the presiding judge to extend, expedite and, when necessary, avoid certain procedural actions altogether. In essence, it is imperative that a CRMS design permit the judiciary to override automatically generated dates, times and docket entries and edit prepopulated forms. The judicial right to override the decisions of an automated case management system should be incorporated by design as a baseline requirement.

### 3. Current organizational structure of the Courts Administration Service

Given the potential effects of innovations in case and registry management systems on judicial independence, it is imperative that the CRMS implementation process involve feedback from judicial end-users. This part of the article examines whether the current organizational structure of the CAS offers opportunities for meaningful judicial participation in the innovation process.

The CAS's work builds on three programs: Judicial Services, Registry Services and Corporate Services. These programs can be classified based on the scope of judicial involvement in each of them. For example, the Judicial Services personnel – legal counsels, judicial administrators, law clerks, judicial assistants, librarians and court attendants – work under the direction of the four Chief Justices of the Federal Courts.<sup>29</sup> The Registry Services' mandate is also carried out in close cooperation with the offices of the Chief Justices. The registries process legal documents, provide information to litigants on court procedures, maintain court records, participate in court hearing, and assist in the enforcement of court orders.<sup>30</sup>

The third program, Corporate Services, provides all sorts of operational support to the Federal Courts and their registries: human resources, maintenance of court facilities and information technology, etc.<sup>31</sup> Because the Corporate Services division deals mostly with housekeeping issues (that is, issues that are not directly related to adjudication), the involvement of judges in this area boils down to strategic planning, rather than daily operational management. Under the CAS's enabling statute, the Chief Administrator 'has all the powers necessary for the overall effective and efficient management and administration'<sup>32</sup> of the matters that fall under the realm of the Corporate Services branch, including the power to enter into contracts for the provision of court support services.<sup>33</sup> This means, particularly, that the Chief Administrator has the necessary statutory authority to control the CRMS procurement cycle: from determining the acceptable procurement method (competitive, restricted, sole-source procurement) to evaluating contract performance.

The CAS's current internal procedures seem to suggest that the input of the judiciary is solicited at the planning stage, when the CAS identifies the general judicial requirements for court support services. The feedback is sought from special committees within the judicial branch that are convened for the purposes of strategic planning: *the Chief Justices' Steering Committee and the National Judges' Committees* (on security, on information management and information technology, and on accommodations).<sup>34</sup>

<sup>29</sup> Canada, The Courts Administration Service, *2017-18 Annual Report*, p. 8, online: <[http://www.cas-satj.gc.ca/en/publications/ar/2017-18/pdf/Annual\\_Report\\_Final\\_EN.pdf](http://www.cas-satj.gc.ca/en/publications/ar/2017-18/pdf/Annual_Report_Final_EN.pdf)> [accessed 10 February 2020].

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> *Courts Administration Service Act*, SC 2002, c 8, section 7 (2).

<sup>33</sup> Ibid., section 11 (the Chief Administrator has the power to 'engage on a temporary basis experts or persons who have specialized knowledge for the purposes of advising and assisting the Chief Administrator in the performance of his or her duties and functions in any matter').

<sup>34</sup> The Courts Administration Service, *supra* note 29, p. 12.



Some commentators suggest that a more active participation of the judiciary in the management of courts may divert judicial attention away from adjudication.<sup>35</sup> Based upon this view, professional court administrators have the necessary skills to achieve the strategic goals set by the judicial committees. However, implementation of a CRMS solution differs from traditional projects of the Corporate Services division of the CAS insofar as it leads to major transformations in the Federal Courts' work. As was mentioned above, this modernization project is changing the way courts process legal documents, communicate with litigants, store and retrieve their records, etc. Given the broad scope of potential innovations, it is imperative that the representatives of the CAS engage in a more nuanced dialogue with the judiciary throughout the CRMS implementation process.

Ontario's failed Integrated Justice Project (IJP), while specific in some ways to its context, illustrates why modernization programs should prioritize end-user perspectives. IJP was initiated in 1997 to improve 'the information flow in the [criminal] justice system by streamlining existing processes and replacing older computer systems and paper-based information exchanges with new, compatible systems and technologies'.<sup>36</sup> It was expected that the project would facilitate interactions between a number of potential users: Ontario's public servants, law enforcement agencies, judges, lawyers and the general public.<sup>37</sup> Unfortunately, IJP was suspended in 2002 due to significant costs and delays. The Ontario Auditor General stated that, among other things, the original project plan had failed to recognize the disruptive effects of suggested innovations on the administration of justice.<sup>38</sup> A special task force appointed by the Minister of Government Services of Ontario recommended revising the business plan to prioritize the design stages of the project and to ensure that the perspectives of the end-users drive the project's design.<sup>39</sup>

Similarly, when modernization concerns court support services, judicial endorsement of technology is instrumental to a project's success. According to a study conducted by Jane Bailey and Jacquelyn Burkell, there are several reasons for this.<sup>40</sup> First of all, 'members of the judiciary have specific and important knowledge regarding the workings of the court and the justice system, and many comments stressed the importance of incorporating this knowledge and expertise in the technology planning and implementation'.<sup>41</sup> Also, the judiciary 'have specific needs, often not shared with or understood by other stakeholders'.<sup>42</sup> This refers, first and foremost, to the aforementioned need to 'account for the security of judicial information'<sup>43</sup> before the modernization project reaches the implementation stage. Finally, Bailey and Burkell note that judges have the final say over the use of technology in courts; therefore, 'many technologies would fail without the active support of the judiciary'.<sup>44</sup>

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<sup>35</sup> P. Ryder-Lahey, P. Solomon, The Development and Role of the Court Administrator in Canada. *International Journal for Court Administration* 1 (1), p. 31.

<sup>36</sup> Ontario, The Office of the Provincial Auditor of Ontario, *2003 Annual Report*, p.283, online: <<https://www.auditor.on.ca/en/content/annualreports/arreports/en01/303en01.pdf>> [accessed 30 April 2020].

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Ontario, *Report of Ontario's Special Task Force on the Management of Large-Scale Information & Information Technology Projects* (July 2005), p. 5, online: <<https://collections.ola.org/mon/11000/254912.pdf>> [accessed 30 April 2020].

<sup>40</sup> J. Bailey, J. Burkell, Implementing technology in the justice sector: A Canadian perspective. *Canadian Journal of Law and Technology* 11 (2), pp. 253–281.

<sup>41</sup> *Ibid.*, pp. 261–262.

<sup>42</sup> *Ibid.*, p. 262.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

Consequently, to facilitate the modernization process, judicial end-users should participate in setting quality standards and design specifications for the CRMS. In a digitized environment, judicial independence takes the form of software quality characteristics that should be maintained throughout a system's operational cycle. The system should be designed in a way that allows the judiciary to assume control over functions that may have direct influence on adjudication: scheduling of procedural steps, communications with litigants, information sharing, etc. A system design that is driven by the principle of judicial independence will address specific concerns of judicial users and, eventually, expedite the implementation of CRMS in the Federal Courts. Additionally, the judiciary should participate in establishing goals and objectives by which the performance of the system will be assessed from short- and long-term perspectives.<sup>45</sup>

To achieve these goals, the implementation of CRMS should be accompanied by the transformations of the organizational structure of the CAS.

#### 4. Proposals for a reform

The CAS's enabling statute, *the CAS Act*, does not contain provisions that determine the internal structure of the organization. The CAS Act, however, provides that the Service was created to 'enhance judicial independence (...) by affirming the roles of chief justices and judges in the management of the courts'.<sup>46</sup> Under the Act, the Chief Justices of the four Federal Courts exercise full power over all matters that relate to adjudication, including '[t]he direction and supervision over court sittings and the assignment of judicial duties'.<sup>47</sup> They may also 'issue binding directions in writing to the Chief Administrator with respect to *any matter* within the Chief Administrator's authority'.<sup>48</sup> (emphasis added)

Because the CAS Act vests the Chief Justices with broad judicial administration powers, the CAS model of judicial administration is sometimes referred to as the 'Guardian Model.'<sup>49</sup> In this context, the 'guardian' responsibility is exercised by the Chief Justices, who have the power to 'order the Chief Court Administrator to perform certain tasks or activities (...) in order to reach or maintain an acceptable level of court administrative support to ensure the achievement of broader court goals and objectives'.<sup>50</sup>

The Guardian Model of judicial administration is substantially different from the so-called 'Executive Model' that is still prevalent in courts administered by the provincial and territorial governments. The main features of the Executive Model are: an overwhelming control by the Ministries and Departments of Justice over strategic planning and day-to-day operation of courts; an absence of formal provisions that establish clear command-and-control relationships between the judiciary and the support staff; and a lack of criteria for assessing the quality of support services.<sup>51</sup>

Unlike the Executive Model, the Guardian Model confers many new powers on the Chief Justices and, yet, no guidance is found in the CAS Act or in the legal doctrine about how the Chief Justices should exercise their authority. In practice, the involvement of the Chief Justices in administrative matters depends not only on the scope of their formal powers, but also on personal relationships among the Chief Justices, the Chief Administrator and his staff.

<sup>45</sup> The Canadian Judicial Council, *Alternative Models of Court Administration* (September 2006), p. 27, online: <[https://cjc-ccm.ca/cmslib/general/news\\_pub\\_other\\_Alternative\\_en.pdf](https://cjc-ccm.ca/cmslib/general/news_pub_other_Alternative_en.pdf)> [accessed 30 April 2020].

<sup>46</sup> *Courts Administration Service Act*, supra note 32, section 1.

<sup>47</sup> *Ibid.*, section 8 (1).

<sup>48</sup> *Ibid.*, section 9 (1).

<sup>49</sup> Canadian Judicial Council, supra note 45, p. 102.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, p. 12.



Despite a lack of formal guidance regarding the Chief Justices' powers, there appears to be a shift towards greater judicial involvement in administrative matters. The Chief Justices intervene in seemingly minute issues such as lease agreement extensions<sup>52</sup> and security enhancements in the court building<sup>53</sup> and take on decision-making powers regarding strategic planning. For example, in 2009, the organizational structure of the CAS was revamped to remedy the dearth of judicial participation in the governance of the Service. The aforementioned National Judges' Committees on security, on information management and information technology, and on accommodations were created to promote greater judicial participation in strategic decision-making on the administrative issues of the utmost importance.

These developments suggest that the Chief Justices are unlikely to remain uninvolved in the emerging modernization trends that pose threats to judicial independence. To address the challenges posed by technology, it is imperative that the two main stakeholders of the court administration – the CAS and the Federal Courts – clearly define the scope of the Chief Justices' participatory rights in the modernization process and establish avenues for judicial participation in the CAS's decision-making process. In this context, the CJC's policies regarding the security of judicial information offer useful ideas for bridge-building. For example, in 2013, the CJC suggested that each court in Canada should create a governance group comprising judicial representation<sup>54</sup> to manage the security of judicial information. It was expected that such groups would have oversight powers for the 'development, communication, implementation and review of the Information Management policies'<sup>55</sup> and would report to the Chief Justices of courts. Along these lines, the already existing CAS National Judges' Committee on information management and information technology can be vested with the authority to develop internal policies regarding the CRMS quality standards. These quality standards may cover such aspects of the CRMS as the status and different categories of information, security and multi-user access controls, collection and use of judicial productivity reports, etc. Ideally, policies developed and approved by the judiciary should pre-empt any alternative standards promulgated by other departments of the federal government, or, at least, judicially sanctioned quality standards should be incorporated in the CAS's internal risk-aversion framework that is utilized for assessing the reliability of its potential CRMS contractors.

Alternatively, an *ad hoc* intersectional committee comprising the representatives of the Judicial, Registry and Corporate Services of the CAS could elaborate a set of quality standards for the design of a CRMS solution. The benefit of this approach is that it would draw upon the expertise of judicial and non-judicial stakeholders to design a feasible solution. However, the downfall is that it may be more difficult for multiple stakeholders to reach a consensus on the system's required features.

According to the US courts' modernization experience, a consultative approach to technology design may be productive when at least two conditions are met. First, different advisory committees should be created for different types of courts.<sup>56</sup> This helps to ensure that the case management system will meet the diverse needs of various jurisdictions, types of litigation, and levels of court. Second, members of advisory committees should focus on required,

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<sup>52</sup> Canada, The Courts Administration Service, *2009-10 Annual Report*, p. 3, online: <[http://cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/CAS/AR-RA\\_eng/AR-RA09-10\\_eng](http://cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/CAS/AR-RA_eng/AR-RA09-10_eng)> [accessed 10 February 2020].

<sup>53</sup> Canada, The Courts Administration Service, *2017-18 Annual Report*, p. 11, online: <[http://www.cas-satj.gc.ca/en/publications/ar/2017-18/pdf/Annual\\_Report\\_Final\\_EN.pdf](http://www.cas-satj.gc.ca/en/publications/ar/2017-18/pdf/Annual_Report_Final_EN.pdf)> [accessed 10 February 2020].

<sup>54</sup> Sherman, *supra* note 7, p. 7.

<sup>55</sup> *Ibid.*, p. 43.

<sup>56</sup> Greenwood, Bockweg, *supra* note 2, p. 2.

rather than desirable, features of a service.<sup>57</sup> The initial design of a CRMS should be simple enough to attract new users. More complex specifications and capabilities can be gradually added as users gain more confidence in the system.<sup>58</sup>

Regardless of the ultimate decision about the format of the standard-setting body for Canada's Federal Courts, judicial participation is particularly important at the initial stages of the CRMS procurement process: formulating quality requirements, choosing the procurement format and conducting negotiations with potential bidders. In the early stages, clearly formulated quality standards may help attract qualified service providers and facilitate the process of customizing off-the-shelf case management software to the specific needs of the Federal Courts.

Finally, regular monitoring of a CRMS solution for quality control purposes is required throughout its operational life. In this regard, Greenwood and Bockweg suggest that CRMS quality 'can be measured in many ways: the degree of adoption by courts, legal community, and the public; the volume and extent of usage both transmitting documents to and from the courts; the reliability, validity and dependability of the service; the efficiency and effectiveness of the service and productivity of staff; and improvements in the overall quality of justice.'<sup>59</sup> In the context of identified risks to judicial independence, a special judicially appointed supervisor can ensure that CRMS complies with identified required quality standards and risk-aversion policies and is aligned with advances in technology.<sup>60</sup>

## Conclusion

This article has argued that the modernization of case management and registry services in the Federal Courts requires changing the CAS's organizational structure. This requirement has developed because the CAS cannot recognize and address the challenges posed by technology relying solely on the expertise of the personnel of separate branches of the Service. An organizational structure that engages the perspectives of the judiciary in the technology implementation process may improve the quality of services and minimize risks to judicial independence.

Although this article has focused exclusively on the implementation of CRMS in the Federal Courts, the aforementioned proposals may be equally applicable to the modernization of courts administered by provincial governments.<sup>61</sup> In recent years, some provincial governments, motivated by the principle of judicial independence, have reduced the involvement of the executive branch in court administration. In Ontario, British Columbia and Alberta, the Chief Justices of several courts and the Departments of the Attorney General entered into *Memorandums of Understanding* (MOUs) regarding the administration of courts.<sup>62</sup> These

<sup>57</sup> Ibid.

<sup>58</sup> O. Hanseth, K. Lyytinen, Design Theory for Dynamic Complexity in Information Infrastructures: The Case of Building Internet. *Journal of Information Technology* 25, p. 8.

<sup>59</sup> Greenwood, Bockweg, supra note 2, p. 2.

<sup>60</sup> Sherman, supra note 7, p. 43.

<sup>61</sup> *The Constitution Act, 1867 (UK)*, 30 & 31 Vict, c 3, section 92 (14), reprinted in RSC 1985, Appendix II, No 5; Section 92 (14) of the Act confers upon provincial legislatures the exclusive legislative power to administer justice in the provinces. This legislative power encompasses all courts sitting in the provinces, including provincial courts staffed by the federally appointed judges.

<sup>62</sup> Memorandum of Understanding between the Attorney General of Alberta and the Chief Justice of the Court of Queen's Bench of Alberta (30 January 2017); Memorandum of Understanding between the Minister of Justice and Attorney General of British Columbia and the Chief Justice of British Columbia and the Chief Justice of the Supreme Court of British Columbia and the Chief Judge of the Provincial Court of British Columbia (3 April 2013); Memorandum of Understanding between the Attorney General of Ontario and the Chief Justice of the Ontario Court of Justice (10 August 2016); Memorandum of Understanding between the Chief Justice of the Superior Court of Justice of Ontario and the Attorney General of Ontario (5 May 2008).

MOUs acknowledge that the judiciary and the Departments of the Attorney General may bring different kinds of expertise to the task of court administration, and that more deference should be given to the judiciary, represented by the Chief Justices, in a number of matters, including control over information and scheduling systems.<sup>63</sup> Special judicial committees created for the purposes of implementing these judicial mandates may form the basis for further cooperation between the judiciary and the Departments of the Attorney General regarding the modernization of case and registry management services.

This article is, of course, only a first step on the way towards technology-driven reforms in judicial administration. Even if the CAS adopts a set of judicially approved internal risk-aversion measures, it has to navigate the relationships with other federal departments – for example, the *Treasury Board* and the *Department of Public Services and Procurement* – that are participating in the Federal Courts' modernization process.<sup>64</sup> On the one hand, such interdepartmental cooperation is beneficial because it offers the CAS an opportunity to harness the expertise of a broader array of government experts. On the other hand, if several government departments plan to further collaborate on this project, they will have to negotiate their respective functions and responsibilities. There may be instances in which conflicts will arise – for example, disputes over required technical specifications or the costs of the services. For the CAS, the main challenge, when faced with such conflicts, is to find the best avenues of protecting the judiciary's interests.

### Competing Interests

The authors have no competing interests to declare.

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