

Visiting senior research fellowships

The Institute has established a small number of new (non-stipendiary) Visiting Senior Fellowships with the aim of enabling it to develop its activities across a broader spectrum of legal scholarship, and each Fellow will be expected to develop and undertake a programme of research in the relevant field and to disseminate the results.

The first cohort of Fellows will develop research programmes in the areas of jurisprudence, public law and legal history. The posts were advertised nationally and applications were considered by a small sub-committee of the Institute's Research Committee, chaired by Professor Michael Palmer (School of Oriental and African Studies), which decided to offer Fellowships to Professor Neil Duxbury (University of Manchester), Professor Allan Hutchinson (Cardiff Law School), Dr Michael Lobban (Brunel University) and Professor David Sugarman (University of Lancaster).

Professor Duxbury is widely regarded as being one of the leading UK legal theorists of his generation, marked by his appointment to a Chair at a very early age. During his tenure, he intends to work on a major project looking at case notes as a form of commentary in English law. Professor Hutchinson, a previous holder of the Inns of Court Fellowship at the Institute,

will devote his energies to two separate, but overlapping projects: the first a study of the current theory/anti-theory debate in jurisprudence and the second a study of tradition and transformation in the common law. Dr Lobban, a leading English legal historian, will be working on two projects which reflect his interests in the doctrinal and institutional history of English law in the 19th century and the longer-term history of English ideas; and Professor Sugarman, a regular contributor to Institute research projects over a number of years, will be undertaking a project which seeks to place the construction and transmission of modern constitutional law in its intellectual milieu, providing a genealogy of key ideas and projects.

All four Fellows have accepted three-year tenures, which will commence on 1 January 2000 (Lobban and Sugarman), 1 May 2000 (Duxbury) and 1 June 2000 (Hutchinson). The Institute looks forward to working closely with all four Fellows and is confident that this new initiative will produce significant work in the relevant fields. 

David Phillips

Administrative Secretary, IALS

'Free the Law' seminar – inspiration and motivation

On 8 November at Chatham House, the Society for Computers and Law and other convening organisations combined to hear from Professor Graham Greenleaf, in a seminar entitled 'Free the Law', about electronic access to legal materials in Australia and to examine the possibility of emulating the Australian example in the UK.

I doubt that many of those attending the meeting expected to be part of an historic event. But by the end of the evening, the mood of the hall was so positive that it seemed clear that something stunning really could be achieved. If we expected to stand and admire the achievements of AustLII and moan yet again about the stuttering progress in the UK, we stayed to be amazed by the realisation that what had been achieved in Australia was attainable and practicable for the UK.

AUSTLII

In order to follow this report of the events of the evening, it is necessary to understand what AustLII is.

The simple part is to say that it is the shortened name for the Australasian Legal Information Institute. That Institute is the holder of a vast range of primary legal materials of relevance to jurisdictions in Australasia – legislation and transcripts of cases from a vast number of courts within the jurisdictions. These are held on databases which are accessible on the Internet, free to users, searchable, kept up to date and linked so that, for

example, you can click through from a mention of a statute in a case to the full text of the relevant section in its amended form.

THE MEETING

The meeting itself was an extraordinary collaboration between five different organisations: SCL, ITAC (Information Technology and the Courts), BIALL (British and Irish Association of Law Librarians), BILETA (British and Irish Legal Education and Technology Association) and IALS (the Institute of Advanced Legal Studies). The common aim was to listen to Professor Graham Greenleaf, one of the founders of AustLII.

The meeting began with an introduction from Stephen Hockman QC, Chairman of the Practice Management and Development Committee of the Bar Council.

He sought to define the topic to be covered and focus on the promulgation of the law. Reflecting on the indignation which Thomas Hobbes expressed at the difficulties which confronted the layman in ascertaining the law, he expressed the view that, with the advent of electronic forms of communication, there is to be a social revolution in this area unmatched since the invention of printing.

Stephen Hockman continued his introduction with a review of the current provision of legal information: HMSO's site, the limited availability of appeal court cases in England and Wales,

the much wider provision of recent cases for Scotland and access to human rights and European Court of Justice decisions.

There were, in his view, policy issues which required intervention (or at least a benevolent indulgence), particularly as regards the Statute Law Database and the availability of transcribed judgments in England and Wales. He detected signs that a positive view was likely to emanate from Whitehall and emphatically expressed the view that a government concerned about 'information exclusion' should meet the problem identified by Thomas Hobbes centuries ago: if citizens are bound by the law, they should at least have the opportunity of knowing it.

PROFESSOR GRAHAM GREENLEAF

What Graham Greenleaf told us was that AustLII's foundation arose from a commitment to free access to public legal information. It is now financed by stake-holders – there are no charges and no advertising. He dealt with both the technical and the public policy issues.

Technical matters

AustLII is 'based around large-scale provision of legal information'. There are 80 databases of case law, legislation and other materials, including full texts of over 100,000 cases and a million pages of legislation.

Not only is there large-scale provision, there is large-scale usage too. There are 200,000 hits or pages accessed per day.

Astonishingly, all this is achieved with only eight full-time staff members and with a budget of £200,000. The key is automated conversion of data. Software is written in-house, which allows considerable potential for integration and makes the provision of information by various tools more seamless. There are over 22 million hypertext links automatically inserted into the databases using the 'Usermark' tool.

So central is the automation of the process to AustLII that their first rule was that if they cannot automate to achieve an objective then it should be left to the commercial publishers. They take the view that their automation innovations 'lift the bar' as to what is value-added; that increases the competitiveness of the legal publishing industry as a whole and improves the products from all sources that are available to the public.

Graham Greenleaf generously offered to make AustLII's software freely available to any UK institution which has a commitment to free and non-profit access to law and the technical and institutional capacity to make a success of it.

Public policy matters

Graham Greenleaf said that, since starting AustLII, their approach had been that public policy should aim to maximise access to public legal information because this supports access to justice (a phrase which echoes present concerns in the UK) and supports the rule of law. It also supports business efficiency by enabling businesses to access a wide spread of legal information and sometimes to use it without the intervention of legal professionals. The existence of such a facility is even seen as a factor in the attraction of foreign investment and increasing export earnings, because it contributes to the creation of an attractive trading environment.

A great deal of the practicality of the AustLII initiative has flowed from the acceptance of the public policy arguments. For example, all Australian parliamentary counsel provide AustLII with consolidated legislation – there is government acceptance of a duty to provide this to the public and that duty is fulfilled by provision of material to AustLII. Similarly Australian courts and tribunals 'complete the job' by providing AustLII with written decisions and even now provide a court-designated citation. The use of paragraph numbering to provide the ultimate in vendor-neutral pinpoint citation is now being widely adopted by Australian courts.

Graham Greenleaf swept aside objections which have loomed in the UK context. Alternative public provision was fine but did not detract from the need for first-class co-ordinated access – an independent source such as AustLII was a guarantee against a sudden reversion to a 'user pays' policy or the pretence of access when what is offered is a second-class service without links or searching facilities. Copyright issues were treated as irrelevant: 'the moral of our experience is that copyright issues should not be allowed to be used as a distraction from providing free access – access is simply a policy issue'.

The impact of AustLII

In terms of access, AustLII can claim a minimum of 1 million pages accessed per week – the figures are really much higher than that because many hits are on proxy servers. It costs less than one Australian cent per page accessed, and AustLII can now add a new database to the system for around A\$5,000 per annum.

Users come from across the whole community. Many members of the general public use the site, for example for research on family disputes or tenancy matters but also for browsing and accessing a very wide range of legal information. Businesses are strong users and about 20% of users are from the educational sector.

on the internet

<http://www.lawonline.cc/ukileli.htm>

Visit this site for the latest information on progress towards funding and setting up a UK internet site for access to primary legal materials.

Wish list

Professor Greenleaf concluded with 'a foreign lawyer's wish list for access to UK and Irish law'. He would like to see one independent site for UK case law and legislation, ideally with materials from the Irish Republic included too. There should be high quality search and hypertext facilities that unite the collection and make it seamlessly navigable. He saw no reason why his wish could not come true:

'Multiple jurisdictions are no bar to doing something effective ... if AustLII can lend a hand with technical matters, it will be forthcoming. ... the funding requirements to establish an independent source are reasonably modest if it is set up in the right environment. For a site to have a very significant impact in the UK, I cannot imagine that its first year of operation would cost much more than £100,000. ... The task of official bodies is not all that hard. The main thing is to provide the data. That is all that is needed from them. The main ingredients are goodwill, cooperation and a desire to maximise public access to the law.'

The rule of law and access to justice deserve nothing less than that.'

Panel discussion

The meeting concluded with a lengthy panel discussion, chaired by Richard Susskind. The panel consisted of Amanda Finlay, the Director of Private and Public Rights at the Lord Chancellor's Department, Edward Donelan from the Attorney-General's Office in Dublin, Professor Abdul Paliwala from the University of Warwick, Laurie West-Knights, Vice-Chair of SCL, and Graham Greenleaf himself.

There was spirited debate and numerous questions from the floor. Highlights to emerge from the exchanges included:

- the government is looking beyond the needs of lawyers and academics to the legal information needs of the community but acknowledges that the providers of services to the community rely on up-to-date statutes and case law for the provision of their services;
- there is an interesting European dimension which needs to be considered;
- present resources for government posting of judgments on the Web are so scarce that only those cases of major public importance can be posted;
- the Irish Government holds to a policy that government information should be free;
- current access costs and limitations restrict academic research and tuition;
- the posting of judgments has not given rise in Australia to an unmanageable leviathan of information – judges have had no problem with excessive citation of pointless decisions;
- judicial leadership is crucial.

Perhaps the most important contribution, which clearly echoed the mood of the meeting, was Laurie West-Knights' call for a start to be made:

'Step 1 is to start to capture the data now, set up a UKLII, fund it ([costs] would be minimal), and get on with it. Today.'

on the internet

<http://www.scl.org/free-the-law>

A full transcript of the seminar entitled 'Free the Law', edited by Professor Graham Greenleaf and with links to pages on the AustLII site, can be accessed on this website.

AFTERGLOW

The meeting left me genuinely inspired and motivated. Graham Greenleaf's presentation cannot be properly covered without the aid of the online demonstrations which punctuated his talk. It was truly impressive, even for those of us who have visited the AustLII site on occasion.

The two strong messages which I left with were that the cost of a UK equivalent to AustLII was capable of being met from private sources (I had previously assumed that it was beyond the means of any but government) and that it would be a long wait for government intervention. Curiously, the fact that such intervention was distant was a positive: it removed the need to wait.

INTERNET ACCESS TO PRIMARY LEGAL MATERIALS: MAKING IT HAPPEN

Since the 'Free the Law' meeting on 8 November real progress has been made in turning an exciting possibility into a reality.

Laurie West-Knights has followed through on his view that there was need for immediate action. His actions have been supported by a large number of others, many of whom attended the meeting itself, and by a range of funders – from personal offers of £50 through to institutional pledges of £20,000.

The progress has been unbelievably swift and continues at such a great pace that whatever you read here is inevitably outdated. For an update, visit: www.lawonline.cc/ukileli.htm

FUNDING

The initial funding for a pilot/first step has been found from a variety of sources. SCL itself has pledged £20,000. The Bar Council Practice Management and Development Committee has recommended funding and the Bar Council GMC has committed £20,000. At the time of writing it seems likely that the Law Society of England and Wales will match that sum.

Two leading firms of solicitors, Clifford Chance and Hammond Suddards, have each pledged £10,000 and Jordans Publishing have also committed that amount. Since other offers from individuals and smaller organisations already total £5,000, the initial funding target of £100,000 seems certain to be met.

DATA AND STRATEGY

A series of meetings have followed the initial discussions which the Graham Greenleaf presentation inspired. In particular, Lord Saville, Lord Justice Brooke, Richard Susskind, Amanda Finlay and Laurie West-Knights have met to devise a strategy and outline a business plan. They have begun to identify the sources of data and thrown their very considerable weight behind its acquisition: House of Lords, Court of Appeal and Court Service material seems sure to be available at stage one.

Discussions with the Institute of Advanced Legal Studies and the University of Warwick make Warwick's Law Technology Centre a leading candidate to host the databases. Discussions continue to develop contacts in Scotland, Ireland, Northern Ireland and with European sources in Strasbourg. AustLII remains firm in its crucial support on technical matters, and there is a firm commitment to warehousing captured material both as a back-up and to allow alternative exploitation by other like-minded organisations.

It really looks like it is going to happen. The aim is to have an organisation with a working database early in the New Year 2000.

A full transcript of the meeting, edited by Graham Greenleaf and including links to pages on the AustLII site, can be accessed at www.scl.org/free-the-law. SCL and the other joint convenors of the meeting are grateful to Smith Bernal, who kindly agreed to create and provide that transcript entirely gratis. 

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