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Legal Information in Digital Form: The Challenge of Accessing Computerized Court Records

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Abstract:

This paper addresses the question of digital access to court records that falls within the global reflection about access to law and justice. Based on research studying the way dockets are accessed in Quebec, our article highlights dimensions underlying the question of access to public legal information. Our findings showed an inequality of access between law professionals and non-professionals. However, there are always more citizens seeking to access their legal information on their own, specifically when representing themselves in justice situations. Even though dockets are now digitized, litigants face many barriers when trying to consult them. We review these barriers and stress the need to consider them all in the reflection on access to digital court records. Designing a solution to the access problem is a complex task which technology alone cannot resolve. We need to keep in mind that some initiatives intended to improve access might actually raise the barriers faced by some litigants. Moreover, the privacy issue surrounding the question of public information is also crucial to bear in mind. This paper shows that the docket consultation system is not optimal in Quebec. Improvements are needed that must be carefully thought out. In making them, it is important to adopt a comprehensive vision of the question of access to justice that considers the rights of each and every citizen.

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Introduction

This article addresses the challenges of accessing dockets within the context of the broader issue of citizen access to the legal and justice system in general. Initiatives in this field reflect the desire to provide the citizen with more room for maneuver within the justice system. Efforts to democratize the law in Canada and in Quebec include modernizing the system by removing the barriers standing between citizens and justice.

Our research project is titled “Le plumitif accessible”² and it is part of a 6-year SSHRC-funded project, started in 2016, called ADAJ: “Accès au droit et à la justice (Accessing Law and Justice)” involving 34 researchers, more than 150 students from diverse fields, and 50 partners.³ Our research focuses on the issue of access to digital dockets, and this article reflects on the challenges and questions that emerged from our findings.

In Quebec, dockets are computerized, and anyone can consult them through computer terminals in courthouses. Dockets are also accessible online through La Société québécoise d’information juridique (SOQUIJ, freely translated as Quebec Legal Information Society), a service that operates under the authority of the Quebec Minister of Justice, and whose mission is to “analyze, organize, enrich and publish the law in Quebec” (SOQUIJ, 2018).⁴ Increased accessibility of justice has been the main driver behind the computerization and digitization of the justice system. However, they raise many issues and challenges needing to be addressed if the systems devised are to truly improve accessibility. How do these issues and challenges apply in practice? How should public access be

² In French, dockets are called “plumitifs.” The term refers to the fountain pen — “la plume” in French — with which the Court Registrar used to update hearing records.

³ ADAJ “raises the issue of the difficult relationships between the citizen and the legal sector in complex societies” (ADAJ, “Introducing the project”). This project comprises more than 20 collaborative research hubs focusing on specific issues related to access to justice. This study is part of Hub 3 regarding the issue of access to court records. See online: <http://adaj.ca/home>.

⁴ See Société québécoise d’information juridique, « à propos », online : <http://soquij.qc.ca/fr/a-propos>

defined in this context? How to design a system where public court records are effectively accessible in a problem-free manner? These are the types of questions that have emerged since the beginning of our research.

Analysis of our primary results raised questions to which we have formulated answers that will shape the continuation of our project. Before presenting them, we will introduce the background and thinking that established the basis for this research. Starting from the public character of the law, we will explain how the dockets system operates in Quebec, specifically now that it has been digitized. The second section of this paper addresses access to digital court records in the context of the broader issue of access to justice. Based on desk research and fieldwork conducted by our multidisciplinary team, we highlight the main difficulties encountered. The last section explains the potential solutions we have considered, and that we believe should be applied to ensure access to dockets for all.

From Paper to Digital Access

In Quebec, access to dockets is digital. Litigants can consult their dockets in the courthouse through a computer terminal or in the comfort of their home, online. Both these options present many obstacles, which we discuss in this paper, even though computerized access was introduced with the intention of improving the service. Why is it necessary to be able to access court records? Most importantly, the information is public. Even though dockets are nominally associated with a single litigant, judicial information must be accessible by society in general. After reviewing various public aspects of justice, we examine how digitization has been applied to justice administration as a means of achieving justice along with its publicity requirement, for citizens to be aware of it and its public feature. We finish by presenting the dockets consultation system in Quebec.

The Public Nature of Justice

The public aspect of justice derives from the Rule of Law that is the foundation of our society. Citizens and administrations are subject to the law. The Rule of Law is achievable through the principle of legality. It assumes that the legal significance of a situation and its consequences can only be established in terms of the law applicable at the time that the facts occurred (Beccaria, 2015 [1764]). The public nature of the law is therefore an essential condition for the functioning of the legal system. This justifies, by extension, the argument that no one may be presumed to be ignorant of the law.

Consequently, the promulgation of laws and regulations becomes a condition of the Rule of Law. Provinces operating under civil law adopt specialized codes in which laws are compiled, such as the Civil Code or the Labour Code. In common law, all decisions must be publicized. In Canada, article 18 of the *Canadian Charter of Rights and Freedoms* provides that “[the] statute, records and journals of Parliament shall be printed and published in English and French” (art. 18(1)).

Print has long served as support for dissemination of the law, but the transition to the digital age and development of the internet is making the content of laws and regulations more accessible to citizens. In Canada, the diffusion of jurisprudence in the past could only be carried out selectively. Nowadays, all legal decisions, of any jurisdiction, are published on the internet.

The public nature of legal activities supposes the possibility that litigants, citizens and the media might wish to inform themselves of the progress of the procedures for a specific case. This is the function of a court docket: it provides access to a whole set of information concerning the identity of the parties, the jurisdiction in charge of administering the case, the nature of the proceedings entered in the file, and details concerning the course of the proceedings. In Quebec, court records are public according to the *Act respecting access to documents held by public bodies and the protection of personal*

information (LegisQuébec, LRQ c A-2.1). However, exceptions can be made when a tribunal decides to ban publication: “Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal (...) A tribunal may decide to sit *in camera*, however, in the interests of morality or public order” (LegisQuébec, CQLR c C-12, Article 23 of the *Quebec Charter of Human Rights and Freedoms*).

To sum up, following the public nature of the law, records contain information that is in principle public. Accessing court records is thus important in our justice system. To enhance this access, digital technologies have been integrated into the system. This follows a general trend to digitize and computerize public services.

Integrating Information and Communication Technologies into the Justice System

Digital technologies have been introduced in many fields throughout society in the past years. This digital transformation in the public space reflects the objective of offering improved and more accessible services to citizens. Online services enable direct communication between citizens and state administration. The justice sector, as a whole, has not been immune from this global transformation: “incorporation of modern technologies into the justice system has led to the emergence of a new and innovative field referred to as cyberjustice” (Benyekhlef, 2016, p.1). In this context, integration of information and communication technologies (ICT) leads to rethinking collaboration between courts, attorneys, law professionals and litigants, and to redefining the way they communicate.⁵ Moreover, technology offers new means to follow up on justice decisions. These implications underlie the aim of improving the efficiency of justice. Digitization is seen indeed as a way of obtaining a faster, easier and less expensive justice administration (Epineuse, 2016, p.6).

⁵ To read more about e-government see Reitz, J. C. (2006).

Thus, having juridical information online is surely a way to provide citizens with more direct access, especially those who aim to represent themselves. As the director of the Cyberjustice Laboratory of the Université de Montréal, Karim Benyekhlef, stresses in the introduction to *eAccess to Justice*, in Canada, “up to 50 [percent] of litigants are aiming to represent themselves” (2016, p.13). And this is an expanding trend. According to Professor Bernheim (Université du Québec à Montréal) and Quebec attorney Thibault, self-representation occurs in all the legal fields: in 2016, it represents 55 percent of civil cases and 30 percent of appeal cases presented to the Supreme Court of Canada (Bernheim & Thibault, 2018). In this context, it is important for litigants to be able to find the information regarding their docket, and this is the general intent behind computerized court records.

Cyberjustice not only allows progress in the administration of justice, it also supports the important principle of transparency. Transparency of the justice system strengthens public trust in justice and the administration in general (Benyekhlef, 2016). As researcher Caren Myers explains in her article about internet access to court records, in the United States “openness has long been recognized as helping to check the abuse of governmental power, promote informed discussion of public affairs, and enhance public confidence in the system” (2008, p.2). The advent of the internet and ICT has reduced the practical obscurity surrounding court records—that is, the idea that public information remains difficult to access because of practical obstacles, which can be considered both as barriers and also as protection of privacy (Byrne, 2010; Conley, Datta, Nissenbaum & Sharma, 2012).

In Quebec, the docket has developed from a written document, updated daily by registry staff, to a digital form that can be consulted on the internet for a service fee or via an archaic system interface available for free at the courthouse.

Access to Court Dockets in Quebec

There are many reasons to consult dockets. These records contain all the information about a litigant's legal history and ongoing cases. This information includes the dates of past and upcoming hearings, the names of the parties, past decisions within a given jurisdiction, requests and other details regarding decisions or hearings.

In Quebec, dockets are mainly consulted by lawyers to view the legal history of their clients and to understand the nature and timing of the next steps. Lawyers also consult dockets for more information about complainants, witnesses or co-defendants. Dockets are also consulted for commercial reasons—for instance, by people working in insurance or banking. Fewer citizens than professionals use the consultation system; however, when citizens represent themselves, dockets enable them to consult past or ongoing cases as benchmarks. Certain specific situations require citizens to consult their records; to view a copy of a decision, for example, the file number can be found in their docket.

Before court records were digitized, litigants and professionals were obliged to go to the court, wait to be shown the physical public file they wished to consult, and pay consultation and copy fees. Court records in Quebec can now be consulted electronically in either of two methods. The first, while free of charge, is via computer terminals to the "3270" system located in the Montreal Courthouse. The second, available through a paid subscription to SOQUIJ, is available online.

While both these methods are an improvement in terms of accessibility, difficulties remain, and digitization alone cannot fully resolve the access issue. The 3270 system in the courthouse is not user-friendly, suffering from the inconvenience of its fixed geographical location. The SOQUIJ online system is more user-friendly but its main obstacle to users is the requirement of a paid subscription. In the following part of this paper we discuss the

obstacles encountered today by users of both systems and why it is important to remove these obstacles.

Access to Dockets

As presented above, dockets contain precious information for litigants facing a justice issue. Knowing where and how to find this information is a form of public and personal empowerment. Since docket access is an important entry point to the justice system, we need to examine it with reference to an overarching definition of access to justice. This will provide us tools to deal with the obstacles faced by users of docket consultation systems.

Access to Dockets Is All About Access to Justice

Our research is part of a broader project about access to justice. This topic has been discussed as a major issue for more than 30 years in Canada, yet it is difficult to define access to justice in a way that encompasses everyone's conception of the question.

Traditionally, this topic focuses on access to the courts and lawyers. Professor Trevor Farrow even states that access to justice “has been equated largely with access to lawyers and courts. The more legal process we provide—through lower legal fees, more lawyers, and faster and more accessible court hearings—the more we are improving access to justice” (2014, p.970). However, Farrow also writes that the issue must be investigated from the public side. Access to justice must go further than being able to go in front of the court to resolve a conflict. This conception has increased in importance with the access to justice movement.

It is interesting to look at the work of former McGill Professor Roderick A. Macdonald to understand the various dimensions of the complex issue of access to justice. In 2005, when writing about access to justice in Canada, Macdonald reviewed the evolution of the movement and identified five categories of conception. Inspired by the work of researchers Mauro Cappelletti and Bryant Garth (1978),

Macdonald uses the metaphor of waves to describe the five categories of ways to conceive access to justice through time.⁶ The first wave refers to the initiatives taken in the 1960s to enhance access to justice, especially for those who couldn't afford legal services. The concern was about costs and the time it required to resolve a legal conflict. Legal aid was largely implemented. The second wave refers to how, in the 1970s, the scope enlarged to the court's performance. The movement aimed to improve procedures and redesign the law institutions. The third wave illustrates a shift towards the litigant's experience. Macdonald explains that "by the mid-1980s access to justice in Canada came to be understood as centrally a problem of equality" (2005, p.19) and hence addressed the question of knowledge. Labelled by Macdonald as a "demystification of the law" (2005, p.27), it partly consisted of public information and education measures. Even though litigants gained agency through this third wave, the movement was still concentrated on access to courts. Macdonald describes the fourth wave as reflecting "the recognition that true access to justice had to encompass multiple non-dispute-resolution dimensions" (2005, p.22). This conception reflects the idea that the alternatives created to resolve conflicts should also prevent them. Starting in the 1990s, this wave of preventive law forced the stakeholders to re-examine the foundations of the justice system. The last wave presented by Macdonald points to a proactive access to justice that took place at the beginning of this millennium. It aims to bring citizens closer to the heart of the justice system, enhancing access to the law and justice administrations themselves. Macdonald describes the fifth wave as "providing equal opportunities for the excluded to gain full access to positions of authority within the legal system" (2005, p.23).

⁶ In 1978, Cappelletti and Garth published an article titled "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective." Based on a comparative research project on access to justice, they distinguished three "waves" of the access to justice movement.

Macdonald's work provides a great view on the evolution of the concept of access to justice and, more specifically, on how litigants gained importance in the reflection. The waves described by the author refer to a chronological development of the movement of access to justice. However, all the waves are to be considered when thinking about the issue. Macdonald recommends a "comprehensive access to justice strategy" (2005, p.24), considering the most basic conception of access (i.e., access to courts and lawyers), as well as the conception where the law is alive and reflects "everyday human activity" (2001, p.319).

When addressing the question of access to court records, we are forced to go further than the traditional vision of the justice system and its access—in the words of Patricia Hughes, "the most basic level" (2008, pp.777–778). Our research brought us to consider the diversity of barriers that litigants can face when seeking to access their dockets. The fact that growing numbers of citizens aim to represent themselves in justice is part of our context. The conception of access to justice that focuses on demystifying the law is thus essential to our approach. Not only is it important that litigants be able to access their court records, but also that laypersons understand what these court records contain and why.

Macdonald synthesizes his development using another distinction: the different kinds of barriers preventing access to the justice system. He mentions four of them. The first kinds of barriers are material and physical. For instance, administrations are rarely accessible to rural areas, to citizens working night hours, or to citizens with disabilities. The second kinds of barriers are objective ones, principally cost and time, which expand with the case's complexity. The third kinds of barriers are subjective and related to the citizen's perception and knowledge of the justice system. Some citizens may face discrimination in the justice system and thus have less access to information or become discouraged. An individual's subjective representation of justice is central in this kind of situation. The last category of barriers is related to social issues. Certain psychological

or sociological barriers prevent marginalized citizens from using the justice system (Macdonald, 2005). We employed this typology in our research when addressing difficulties faced by citizens trying to access their digital dockets. Each type of barrier can multiply into many separate obstacles.

Obstacles Encountered by Users in Quebec

During our field research, we observed *in situ* the use of the two docket consultation systems at the Montreal Courthouse (the 3270 system and the SOQUIJ service). The qualitative methodological approach (Poupart et al., 1997; Denzin & Lincoln, 2017) consisted of observations of and short interviews with spontaneously recruited users of the systems. Our objective was to document the reasons for the consultation, and to evaluate the user's experience and appreciation of the systems and their contents, in particular in terms of access to information and the ability to interpret it. Recruitment of participants proved difficult; people were pressed for time and focused on their task, which is why interviews had to be short.

In total, we conducted 19 short interviews with 16 legal professionals⁷ and 3 citizens.⁸ The interviews lasted on average approximately 10 minutes and were conducted in June, November and December 2017. We transcribed and analyzed them using a thematic qualitative coding (Paillé & Mucchieli, 2003) aimed at identifying the reason for consultation, the type of information sought, frequency and experience using the systems, the skills and knowledge required to engage with and benefit from the systems, and the desired areas for improvement of the docket consultation systems.

⁷ Most of the participants were lawyers (civil and criminal lawyers) and paralegals, plus a few court runners and people working in the docket consulting business.

⁸ Two citizens needed information about an ongoing dispute; the third citizen preferred to keep this information confidential.

Our research revealed a great disparity in the use of the docket consultation services reflecting differences in accessibility between two groups of users: law professionals and laypersons.

Neither system is optimal in terms of use and needs, presenting complications for non-professionals not familiar with the systems. Two other fundamental issues emerged from our preliminary findings. First, most citizens are poorly informed about court records, lacking knowledge of their existence, the information they contain or display, and where dockets may be found. Second, even when aware of court records and where to consult them, citizens can face a variety of barriers preventing access to them. In other words, our results show that the computerization of dockets is not sufficient to end practical obscurity. This is explained in the following points.

2.2.1 Technical Obstacles to Dockets

As mentioned above, there are two methods for consulting court records in Quebec: through the 3270 system computer terminals in courthouses and by means of the SOQUIJ's online services.

The 3270 system available in courthouses was described by an attorney and many other users as “archaic”; they reported many dysfunctionalities and difficulties regarding research features and the display of results. The system appears to be unintuitive, inconvenient and not very effective—certainly not what one would expect from a public service aspiring to enhance access for all, law laypersons included. Aside from technical difficulties in use, we can mention a few problems related to the devolution of court records. Not all the information that a litigant might be looking for can be found in the Montreal Courthouse, for instance. Municipal court dockets are kept apart and are not accessible from other courthouses. An attorney explained that this may be inconvenient insofar as litigants can be judicialized in several places (Prom Tep et al., 2018).

The SOQUIJ's interface is more user-friendly and intuitive. In comparison with the 3270 system, users unanimously agreed that

SOQUIJ services were more convenient. However, since a paid subscription is required to access the service, we cannot consider it to be the best alternative, especially when users are not experts in the law.

It is interesting to examine the SOQUIJ offering. Their target clientele has visibly evolved, as growing numbers of citizens who are not law professionals use SOQUIJ services; previously, their clientele comprised mainly professionals. This trend can largely be attributed to the phenomenon of self-representation. A citizen may also need access to their record for employment purposes or to satisfy other private or public parties requesting it. This goal-oriented diversification has created new issues and challenges for SOQUIJ. Consultation of court records by people not acquainted with juridical terminology requires some service adjustments. A better understanding of the user's needs and corresponding evolution of the platform are required. An obstacle encountered by SOQUIJ in doing so, is that they have no direct access to the court data. The information can only be displayed as received (i.e., as a screenshot, which results in a static, rather than dynamic, data format), and thus cannot be adapted for those clients who do not understand the information as is. To sum up, the docket consultation service options provided to Quebec litigants are not optimal. In various aspects, both systems are lacking when it comes to being user-friendly and are problematic from an ergonomic point of view.

Awareness Regarding Court Records

When our research team started to contact users of either the 3270 system or the SOQUIJ services, we had trouble finding non-professionals. This prompted us to question whether laypersons were even aware of the existence of dockets and the system for consulting them.

This situation highlighted an obstacle that has not been removed with the introduction of ICT. The access question will not be resolved if

citizens are unaware of the existence of the information online. Litigants may not know what information they can find in their dockets, how to access it, and how to understand its meaning. During our interviews, many attorneys mentioned clients who were in possession of their own docket, and yet did not know what it was, or its purpose (Prom Tep et al., 2018).

For a litigant, this lack of awareness of information concerning themselves, which could help them track their own case's progress, is itself an obstacle to access. We conclude that access to court records is part of a broader social issue that is more important than the consultation system itself (Prom Tep et al., 2019).

Understanding Court Records and Their Access

Digitization is a way of making court records directly accessible; however, users need to have specific skills in order to access these records. Basic literacy in computers and the law is expected of a professional, but what about the non-professional?

Computer Access and Literacy

In Quebec, accessing court records, whether in the courthouse or online for a fee, requires computer skills. However, “[t]he use of technology (...) may pose challenges at the individual level, since individuals may not own a computer, be computer illiterate or lack access to high-speed internet” (Hughes, 2013, p.18).

The 3270 system, already described as unwieldy, seems to require specific computer skills. An attorney we interviewed in the courthouse said that “even people familiar with information technology found it difficult to consult the docket database since it is not a modern and widespread type of system” (Prom Tep et al., 2018). Even for law professionals the system is not intuitive, and they can have trouble finding the information they are looking for. This issue supports our conclusion regarding access to court records in Quebec: there is an inequality in accessibility between professionals

and laypersons. According to another attorney, the 3270 system was designed by and for people working in the justice system. Accessing the dockets through SOQUIJ is easier but still requires internet access and minimal computer literacy. The “assumption that everyone can access technology can also be a barrier” (Hughes, 2013, p.18).

Law Literacy

One main issue for litigants representing themselves is the ability to understand the information once they have located it: “individuals using information, however acquired, must be able to read it, understand it and apply it to their own situation. Each of these tasks requires an increasing level of literacy” (Hughes, 2013, p.13).

Dockets are not precise reports of court hearings, but more a description of every stage of someone’s court progress. They use technical terminology and specific codes that cannot be understood by litigants consulting them for the first time. For instance, some entries refer to specific articles of the criminal code, which might be clear for a lawyer but meaningless to someone unfamiliar with the law.

In Quebec, even professionals acquainted with court terminology can find dockets difficult to read since information can be displayed differently from one file to another, and the abbreviations used are not always the same. SOQUIJ published a guide that aims to help users understand the information.⁹ An attorney with whom we discussed this issue added that, most of the time, law interns, who are familiar with the semantic field of justice, have “difficulty in understanding the records, even with the help of the guide” (Prom

⁹ This document can be found online : http://soquij.qc.ca/documents/file/documentation_azimut/50002-guide-plumitif-web.pdf *Guide plumitifs des Palais de justice et des cours municipales du Québec, 4^e édition* (2013).

Tep et al., 2018). The lack of uniformity regarding the record display needs to be evaluated to improve its understandability to citizens.¹⁰

Another problem, related to the technical nature of the vocabulary and of the document itself, is the interpretation of dockets. When a record is used by a professional, it is assumed that it will be understood properly. However, when consulted by an employer or a landlord to perform a background check, some elements of the record may be misunderstood, possibly prejudicing the litigant. Citizens enquiring after someone's criminal background may consult dockets themselves rather than ask for a police certificate, which costs more than \$100. Even if dockets were not originally made for this purpose, court records need to be adapted to their uses and users. This issue can be interpreted as a combined lack of law literacy and awareness. According to workers at the Québec Community Justice Center, this lack of law literacy and awareness stems from the fact that court records were first created for internal use and addressed to law professionals (Prom Tep et al., 2018).

To sum up, our research team concluded that computer skills paired with law literacy and previous experience in using the system were mandatory for efficient use of the systems, something that cannot be expected of laypersons. Technology as a means of enhancing access to justice must be provided with a support system, especially for citizens. More generally, digital transition must ensure access and understanding of the tools implemented (Perez, 2003). Efforts to create a user-friendly design would encourage adoption of the system by a diverse group of users (Lupo & Bailey, 2014).

The Complexity of Public Access to Digital Dockets

How can all the issues regarding computerized court records be satisfied while accommodating the objective of public access to

¹⁰ An avenue for research could be whether the lack of uniformity between records comes, *inter alia*, from the court clerk's professional training, which doesn't require a strict way to write and organize this kind of information.

public information? In light of our research, we shall determine the type of access design that is appropriate for dockets. What sensitive aspects need to be considered? What efforts need to be made and improved? Two issues were highlighted by our research that we consider fundamental in the reflection about effective and accessible digital court records.

The Right to Privacy

There is a tension between the public character of court records and the right to privacy that is important to our topic. Dockets contain private information, and yet they are publicly available. Accessing certain personal information might be at odds with the right to privacy and protection of one's reputation. As stated by the Information and Privacy Commissioner of Ontario, "the transition to electronic records requires that the whole question of what personal information truly belongs on the public record needs to be rethought" (1996). Open access to court records has raised discussions amongst the legal community.

Problems relate not to the consultation of dockets but possible misuse of someone's records by malicious or intrusive users in a harmful way (Mormon & Bock, 2004). For example, a landlord could check a potential tenant's background to decide whether to accept or reject the applicant. Within an even more intimate context, one could check a neighbour's or a family member's background just out of malicious curiosity. Nonetheless, according to Nicolas Vermeys, deputy director at the Cyberjustice Laboratory of the Université de Montréal, "a more valid source of worry (...) is that private organizations such as data brokers, insurance companies, and banks could mine court records" (2016, p.130). Even though in Quebec there is not yet "a policy regarding access to court records" (Vermeys, 2016, p.130), legislators have tried to prevent misuse of court information in the

specific context of employment. The *Quebec Charter of Human Rights and Freedoms* guarantees protection against discrimination.¹¹

There is a tendency amongst law scholars studying access to believe that online access to court records affects the right to privacy. Before e-access, the need to ask an administrator at the courthouse for the required information somehow constituted a protective form of privacy, despite the public character of the records. A protective practical obscurity surrounded dockets. According to Lynn Sudbeck (2005), Deputy State Court Administrator in South Dakota, it was easier to identify intentions when the dockets were not computerized, and people had to explain to the court administration why they needed access to a file.¹²

As seen above, the public character of justice is fundamental and related to transparency that builds confidence towards the system. At the same time, litigants can feel vulnerable with the thought that anyone can access their court records. As Vermeys explains, “on the one hand, it will make the legal system more transparent, but on the other, it might very well discourage potential litigants from addressing the courts for fear of exposing their lives to the public” (2016, p.141).

The competing needs of transparency of the justice system and the right to privacy are central to the question of access to dockets, and access to justice more generally. Our literature review of access to court records in various countries enabled us to distinguish three major approaches reflecting different conceptions of public access to justice.

¹¹ In the *Quebec Charter of Human Rights and Freedoms*, RLRQ c C-12, there is a specific legal regime at art. 18.2 about discrimination in employment.

¹² In an article about publicity of court records, researcher Kristen Blankley offers an important summary of this issue: “Prior to Internet publication, sensitive material contained in court documents was protected by the phenomenon of ‘practical obscurity.’ (...) With this information (now) available at the click of a mouse, the government increases the risk of identity theft or other misuse of this sensitive information” (2004, p.413).

Public Access to Court Records

The principle guiding public access is the right of every person to access public information. Concerning access to justice, this approach refers to the idea that every litigant should be able to access legal and juridical information. As Robert Deyling writes in a report for the Office of the U.S. Courts, “the so-called ‘public is public’ approach assumes that the format of the record should not alter the right of access, and that [orders to seal documents] are adequate to protect privacy interests” (1999 & 2003 Suppl.). Online services are then the best way to obtain this full access.

It is evident that precautions need to be taken regarding the right to privacy and all the discriminatory situations that could result from this open access. What personal information should be on display? This must be thought out carefully. Justice administrations using online access incorporate design security solutions to prevent abusive use of information and violation of privacy. As mentioned above, in the U.S., for instance, sealing orders are used to block access to sensitive information. Offering access that involves a fee also creates a barrier against massive collection of data. Public access to court records is also the approach used in Quebec; the practical obscurity surrounding dockets makes them less accessible. However, this obstacle cannot be considered as a privacy safeguard. The system implemented in South Africa is another example of open access, where every litigant’s docket can be accessed online and for free (Prom Tep et al., 2019).

Limited Access to Court Records

This approach puts more emphasis on the protection of privacy by using a digital system protected with encryption and systematic codification (Prom Tep et al., 2019). Digitization is still the model, but this approach aims to serve only in a juridical context. Some information is kept anonymous to protect the litigant’s right to privacy. Typically, this limited access would not be provided online,

but through a computer in the courthouse. This approach “relies on the ‘practical obscurity’ of paper records to keep information private while acknowledging that there may be a need to limit information in court records that are distributed electronically” (Sudbeck, 2005, p.13). This is the system used by the British legal system—access to the court database is free, but personal data regarding the litigant, including the name of either party, is not displayed (Prom Tep et al., 2019).

Access Hierarchy

This approach offers a large degree of protection of individual privacy; the docket is viewed as a judicial monitoring device or tracking tool. In this respect, access is generally restricted and reserved to professionals and parties in trials. In Australia, for instance, while citizens may consult federal court dockets, they are given only partial access to information. Whenever a case is considered to be in the public interest, the federal court’s website will display an online follow-up to the case, and permit access to court documents.¹³ Parties in a case also have specific access for following up and adding any needed documents. The justice administration and attorneys may access this platform as well.¹⁴ This vision of access considers the public nature of this kind of information while putting privacy at the heart of the system.

User Diversity

In a 2013 article about access to justice, Jane Bailey, Jacquelyn Burkell and Graham Reynolds (2013) explain the shift in the Canadian dialogue on this subject. The key is to take a broader approach to this issue: to consider broader problems (what needs to be accessed) and more potential beneficiaries (aiming to make a system that benefits all litigants). This “expansive vision” obliges us

¹³ See online: Federal Court of Australia, “Access to Court Files & Transcripts.” Online: <http://www.fedcourt.gov.au/services/access-to-files-and-transcripts>.

¹⁴ See online: Federal Court of Australia, “Check the Progress of a Case/ Find Future Listings.” Online: <http://www.fedcourt.gov.au/services/check-progress-of-a-case>.

to think further than online access to court records as the solution, and to consider “that socioeconomic and other structural differences among citizens affect their respective abilities to benefit both from the justice system itself and from initiatives designed to improve access to justice” (Bailey et al., 2013, p.1). This is the fifth wave of access to justice as presented by Macdonald (2005).

The obstacles repeatedly raised during our interviews concerned practical and technical access, awareness of the justice system, and digital and law literacy. However, there are as many obstacles to justice as there are citizens seeking to access it. When designing solutions we must identify and keep in mind the various factors that can affect access. “[T]he list of disadvantaged or excluded groups is long,” writes Patricia Hughes (2013, p.4), the executive director of the Law Commission of Ontario, when addressing generic solutions to the access problem. Indeed, economic and geographical factors, cultural differences, as well as gender, age, race and class, constitute, amongst others, the group of barriers depriving some citizens of the ability to exercise their right to consult public information (Noone, 1992).

As Macdonald notes (2005), the citizen can face various types of barriers, some related to a personal situation, which can be affected by psychological or sociological elements. Difficulty in accessing court records is often closely related to a personal situation, and every situation is different.

We need to recognize the complexity of diversity among those who are disadvantaged in accessing the legal system, and understand that not *all* people with a particular characteristic, or belonging to a particular community, have the same difficulty in accessing justice, while people characterized differently may share the same difficulty (Hughes, 2013, p.21).

This is important to understand when putting together solutions to improve access, not only to design systems that would bring solutions

to these problems, but chiefly to ensure that “accessible” systems do not create an even bigger gap between disadvantaged people and justice. This reflection is part of a critique of the use of technology as a means of enhancing access to justice:

[w]e cannot assume that there is a necessary and necessarily positive relationship between court technologies and access to justice: instead, we should proceed with cautious rather than unbridled optimism to ensure that technologies are implemented in such a way as to achieve the positive outcomes that we envision. (Burkell, 2016, p.157)

It is this assumption that motivates Hughes’s critique of “generic solutions,” which are designed to enhance access without considering the whole scale and possibilities of obstacles. In other words, there is a need to devise more inclusive solutions that may not provide effective access to all but avoid increasing exclusion.

Conclusion

In the context of court records, the technical system for accessing documents is important; however, study and discussion of the access to justice issue needs to go beyond the use of technology. The first year of our study showed that, technically speaking, the system in Quebec must be improved with the objective of enabling citizens to regain control of public information that concerns them (Lupo and Bailey, 2014). The justice administration should ensure that the consultation system enables users to find the information they are looking for. Furthermore, the administration must determine *what* information is publicly displayed. “How to conceive public access?” remains the core question here. This will determine what information is open to citizens, and how the system will counter the practical obscurity surrounding dockets. Finally, if citizens are to be at the heart of the access question, the systems and solutions implemented need to be cautiously designed. Even if technology aims to enhance access to justice, we need to be attentive to the consequences that digitization may have on certain groups of people. Designing access

to dockets must therefore consider all types of litigants and the barriers they can face when seeking access to dockets.

The points raised in this paper demonstrate the complexity of the access question. Correspondingly, solutions to problems in this context are complex as well, since they take into account many different issues and aspects. This complexity justifies the interdisciplinary approach that characterizes our research. The discussion and reflections on access to court records belong to the fields of cyberjustice, person-system communication and the sociology of ICT.

Lastly, to make court records effectively accessible, efforts must be made throughout the whole justice system. As Professor Jane Bailey (2016) writes regarding the use of technology to enhance access,

technological innovation in the justice sector should not simply be technology for technology's sake. Instead, it is essential to understand how a technology may facilitate or affect the fundamental values underlying the justice system, values that are essential to access to justice as well. (p.26)

As with many initiatives aiming to include citizens in a public system, making court records and justice accessible is a common task with shared responsibilities. Effective access to court records will then involve efforts from different sectors and levels of government administration.

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