

International Seminar DIGITAL RECORDS AND LEGAL ADMISSIBILITY



Mr. Mohamad Kamil bin Nizam Federal Court of Malaysia

Are We Ready for Electronic Courts: Issues and **Challenges?**











ARE WE READY FOR ONLINE COURTS?

ISSUES AND CHALLENGES

By:

Mohamad Kamil Bin Nizam Sessions Court Judge, Seremban

OVERVIEW



What is Online Courts?

Online Courts in Malaysia

Online Courts
- Issues and
Challenges

Conclusion

INTRODUCTION THE CONVENTIONAL COMMON LAW JUDICIAL SYSTEM

INTRODUCTION

THE CONVENTIONAL COMMON LAW JUDICIAL SYSTEM

Involves intricate information processing by the Courts

Information gathered from the pleadings filed and evidence presented

Forms the basis of judicial decisions





THE CONVENTIONAL JUDICIALSYSTEM

THE CONVENTIONAL COURT SYSTEM

 The Malaysian Judiciary consists of the Federal Court, the Court of Appeal, High Courts of Malaya, Sabah and Sarawak, the Sessions Courts and Magistrate Courts

 The system is rigid and relied heavily on the physical presence of parties in courts

 With time, cases became more complex and the number of cases filed increased





3



THE ISSUES RAPID ECONOMIC AND SOCIAL DEVELOPMENT



Cases became more complex and contributed to the increased number of cases in Courts



- Prolonged case resolution times
- Growing list of unsettled cases
- Significant backlogs of cases

AN INSIGHT OF THE MALAYSIAN COURTS

RAPID ECONOMIC AND SOCIAL DEVELOPMENT ATTRIBUTION

"The backlogs in the High Court was **91,702** cases, with **125,944** in the Sessions Court and **777,703** in the magistrate's courts."

"We have about **700 cases** per court. I have already given out dates for Dec 14 and 15, 2009," — Former High Court Judge in May 2008



Check rising prices

Hard target for young holidaymakers?

The Council and the second second

"There were loud gasps last week when Malaysians read from Parliament reports that the backlog of cases was almost one million."

The Sunday Star, 11th May 2008



BRIEF HISTORY OF THE ONLINE COURTS IN MALAYSIA

BRIEF HISTORY OF THE ONLINE COURTS IN MALAYSIA THE CALL FOR ONLINE COURTS

Pressing challenges faced by the Judiciary

Government and the Judiciary looked into technological advancement

Aim to reduce the backlogs of cases and expedite disposal of cases





DEFINITION OF ONLINE COURTS

ONLINE COURTS REFERS TO **A DISPUTE RESOLUTION PROCEEDING CONDUCTED**THROUGH A DIGITAL PLATFORM THAT, BY DEFAULT, ALLOWS PARTIES TO RESOLVE

THEIR DISPUTES DIRECTLY AND ENTIRELY ONLINE, FROM FILING A CLAIM TO THE

DELIVERY OF A JUDGMENT.

IT CAN BE COMPLEMENTED BY **VARIOUS SERVICES AND TOOLS** TO ASSIST IN DISPUTE RESOLUTION, SUCH AS DIRECT NEGOTIATIONS BETWEEN PARTIES, MEDIATION SERVICES AND FILLING OUT FORMS.

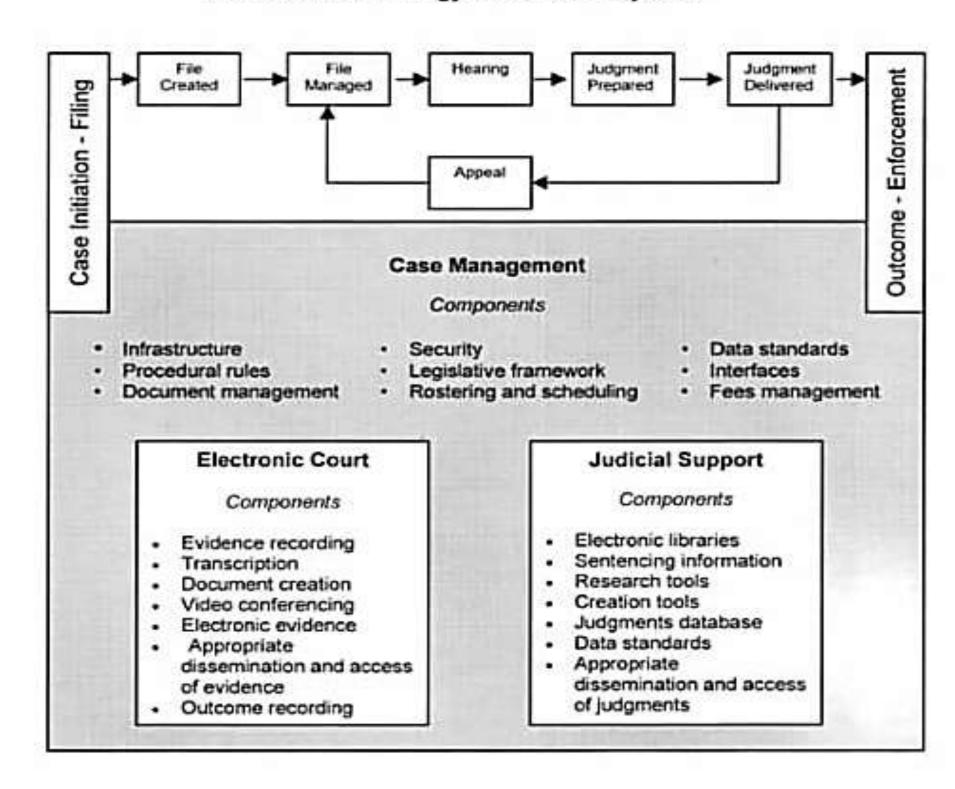
- "ARE YOU READY FOR ONLINE COURTS?" - BY EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)





ARCHITECTURE OF ONLINE COURTS

The Use of Technology in the Court System





"COURTROOMS OF TODAY ARE INDEED THE CULMINATION OF AN EXTENSIVE AND METHODICAL DIGITALISATION PROCESS, STRATEGICALLY IMPLEMENTED IN SUCCESSIVE PHASES OVER THE YEARS."

"THE MALAYSIAN JUDICIARY STANDS AS A TESTAMENT TO THIS EVOLUTION,
HAVING EMBARKED ON ITS TRANSFORMATIVE JOURNEY TOWARDS
DIGITALISATION AS EARLY AS 2009.."

YAA TUN TENGKU MAIMUN BINTI TUAN MAT, SHIEF JUSTICE OF MALAYSIA IN THE OPENING ADDRESS AT THE INTERNATIONAL MALAYSIA LAW CONFERENCE 2023

INTRODUCTION TO THE MALAYSIAN ONLINE COURTS e-KEHAKIMAN SYSTEM



Refers to the Malaysian electronic court system



It is also known as the e-Courts System



Aims to expedite the disposal of cases and reduces backlogs of cases

INTRODUCTION TO THE MALAYSIAN ONLINE COURTS PRIOR TO THE e-COURTS SYSTEM

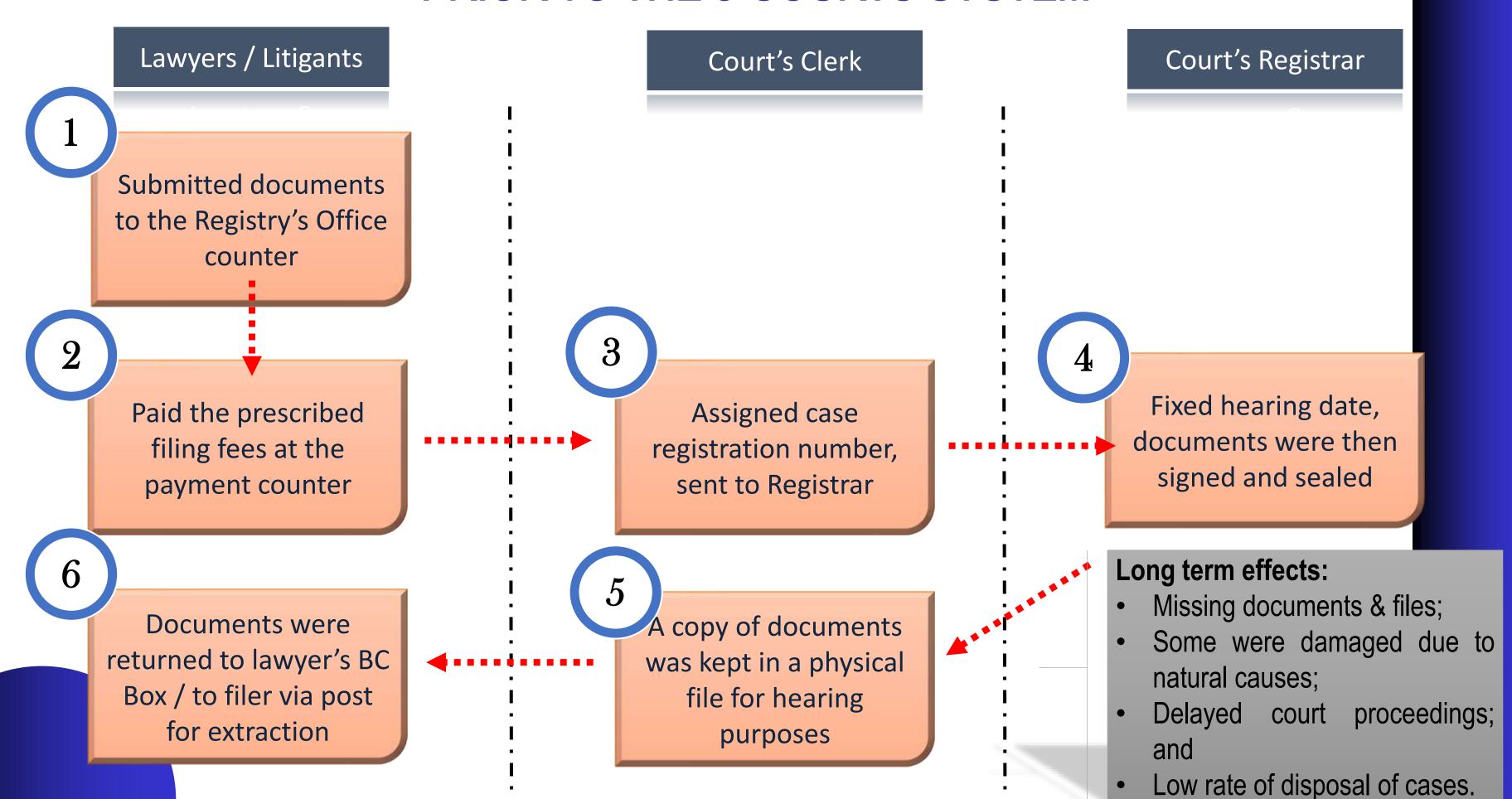
Lawyers and individual litigants had to come to Court to file cause papers





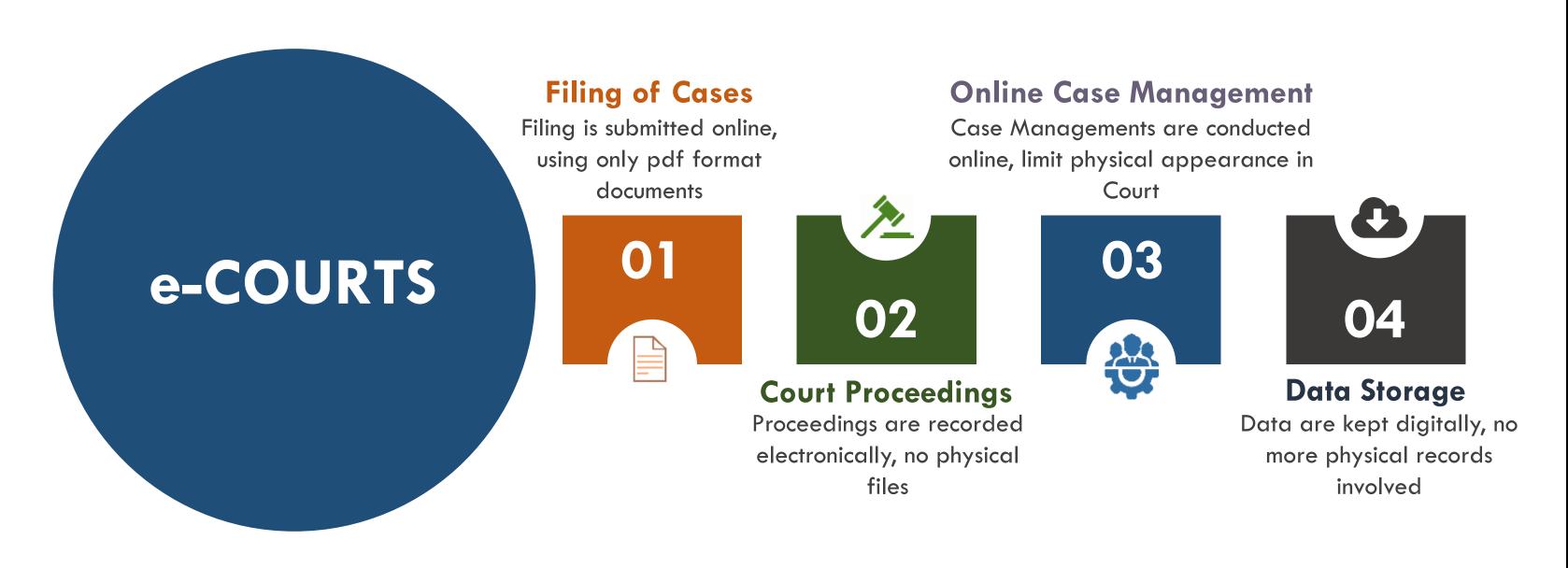


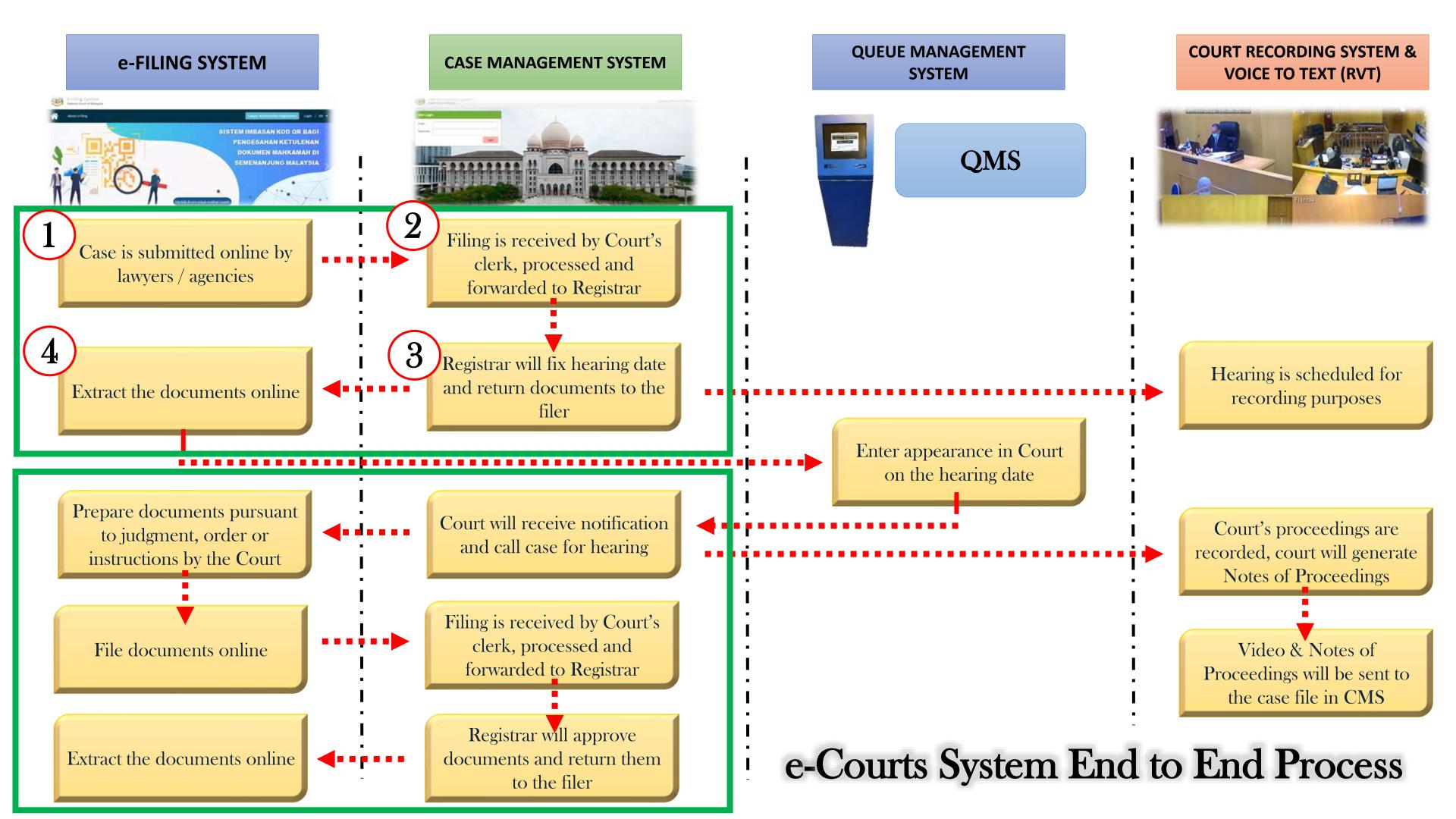
PRIOR TO THE e-COURTS SYSTEM



INTRODUCTION TO THE MALAYSIAN ONLINE COURTS MAIN FOCUS OF THE e-COURTS SYSTEM

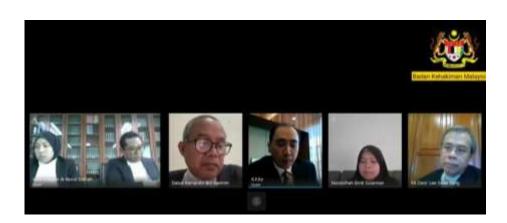
The e-Courts System was developed to focus on the followings:





INTRODUCTION TO THE MALAYSIAN ONLINE COURTS

e-COURT SYSTEM: REALISATION OF DIGITALISATION COURT PROCESS

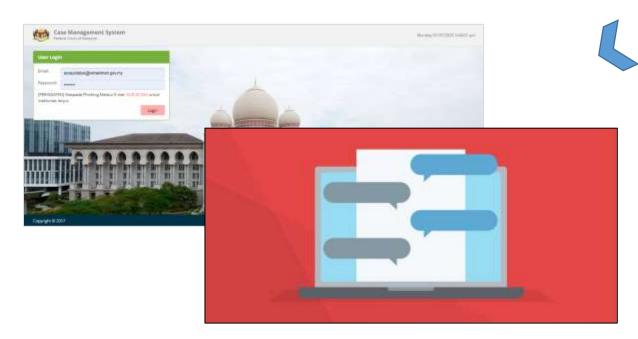


Remote Communication Technology : Video Conferencing





Al (sentencing guideline) for Subordinate Courts)













To this:

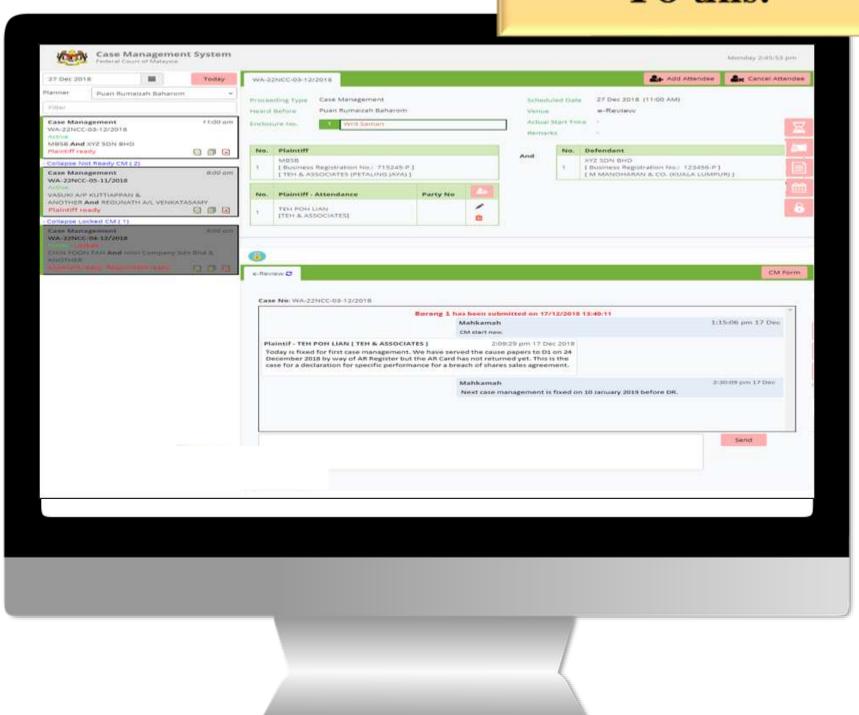




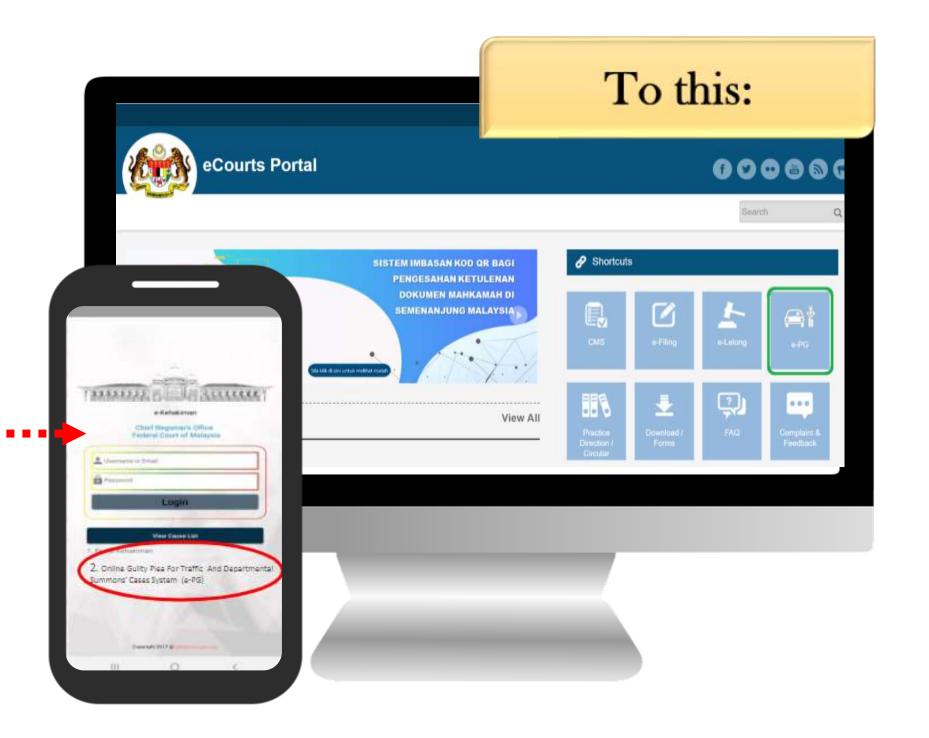




To this:









To this:





IMPLEMENTING ONLINE COURTS IN MALAYSIA

CHANGING MINDSET: THE SWITCH FROM PAPER TO ELECTRONIC DOCUMENTS

- Difficulty in convincing the legal profession to go paperless
- The fear of change requires longer time to overcome

TRANSFER OF DATA ENTRY FROM THE COURT TO THE FILER

- Legal firms are required to conduct accurate data entry into the system
- Courts to provide user guide, manuals for policy and technical issues, and help desk support
- Ongoing training for the legal firms: the challenge in reaching and getting their cooperation

INFRASTRUCTURE

- Lack of equipment and internet facilities on the part of stakeholders
- Costs implications
- Unable to participate due to nonreadiness

CHANGE MANAGEMENT

- Court users and public face difficulties to adapt with changes in work flow
- Break in chain of knowledge transfer between employees

USERS' IT SKILLS

- Users require time to learn new skills
- Engagement, explanation and training sessions are held periodically

INCOMPLETE ONLINE CYCLE

- The e-Courts system does not run in full cycle
- There are modules that are still operating manually
- Not productive and cost ineffective for parties involved
- Increase waiting time for disposal
- e.g; mediation cases, execution cases.

SELF REPRESENTED LITIGANTS

- Electronic filing requires digital signing which is in accordance with the Digital Signature Act 1997
- Subscription fees is high
- Unable to participate in electronic filing
 & online case management
- Physical attendance in courts is still required

Users encountered difficulties during the transition period

MALAYSU

No more 5am queues to file lawsuits



By 7.50am, the queue grew to a manageable level of about 56 people at the KL court complex, which is roughly equivalent to 100 queue numbers if each person takes two numbers. July 27, 2017. — Seture by Ida Lim

Follow us on Instagram, subscribe to our Telegram channel and browser alerts for the latest news you need to know.

By By Ida Lim

Sunday, 13 Aug 2017 9:36 AM MYT

KUALA LUMPUR, Aug 13 — Lawyers' staff no longer need to go to court here before dawn to beat the queue and to file documents as the judiciary claims that initial problems with a new e-filing system have been resolved.

Malay Mail Online was told that office clerks and despatch workers even had to be at the Kuala Lumpur court complex by Sam or 6am as recently as June and July, just to get the limited 200 queue numbers issued daily or risk having to return another day to file their documents.

When contacted, the judiciary's e-Kehakiman division said the "sudden increase" of users at the KL Court e-filing service bureau's counters during the transition period in June was due to "teething problems" faced by those who were trying to migrate from the E-Court system's first phase to the second phase:

Some of them had to do filing at the service bureaus then, it said.

MALATRIA (2 h apr





6 m ago

Five nabbed as RM6.6m worth of drugs seized in Tapah



11 m ago

Najib's lawyers threaten legal action against Malaysian Bar president for defamation



14 m ago

Law minister: Special task force identified 19 points from Tommy

MALAYMA / 16 it ages

Lawyers required to go digital by 2018



By 2018, all lawyers in Peninsular Malaysia must start using the a-filling system which allows them to file court documents online instead of doing it at the courts. — AFP pix

Follow us on Instagram, subscribe to our Telegram channel and browser alerts for the latest news you need to know.

By By Ida Lim

Friday, 11 Aug 2017 7:02 AM MYT

KUALA LUMPUR, Aug 11 — Lawyers practising in the peninsula have until the end of the year to file court documents online, even as only a quarter of them have registered for the e-filing system introduced six years ago.

"Service bureau would be made accessible for unrepresented litigant (public) only or as an option whenever the e-filing system is not accessible due to technical reasons. It has been 6 years since e-filing system was introduced on March 2011 and lawyers have more than enough time to prepare themselves for online filing," the e-Kehakiman division said in a recent email response to Malay Mail Online.

IMPLEMENTING ONLINCOURTS IN MALAYSIA

INITIATIVE TO OVERCOME THE CHALLENGES

IMPLEMENTING ONLINE COURTS IN MALAYSIA INITIATIVE TO OVERCOME THE CHALLENGES

NATIONAL DIGITAL IDENTITY

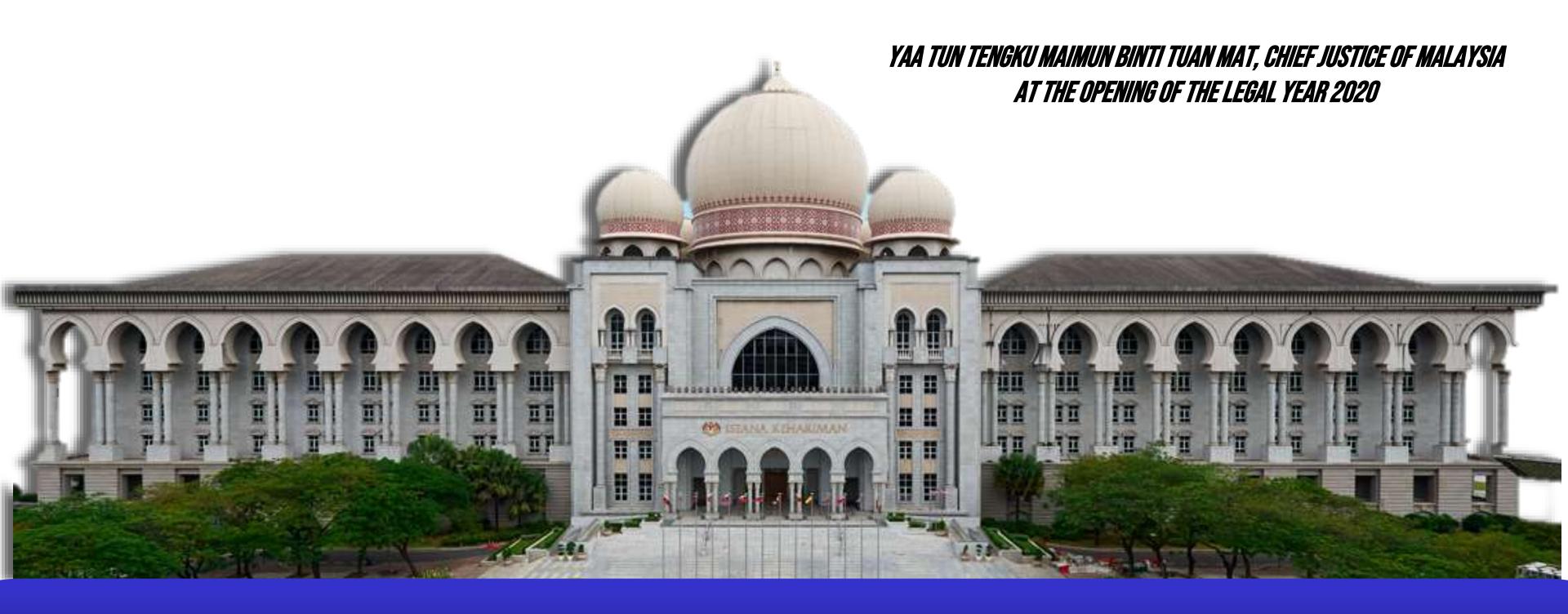
- One of the government's latest initiative
- To verify the identities of individuals on the internet
- Works as an alternative to enable public to participate in online courts

PRACTICE DIRECTIONS AND GUIDELINES

- Stipulate requirements and guidelines for parties in using online courts
- Standard procedures for all parties



"MODERN TECHNOLOGICAL ADVANCEMENTS SERVE PRIMARILY TO BOOST ACCESS TO JUSTICE. DEVELOPING THE PROCESS IS THEREFORE ABSOLUTELY NECESSARY."



TOWARDS GREATER DELIVERY OF JUSTICE MOVING FORWARD



Online Hearing

The Malaysian
Judiciary offers
hearings for civil
cases to be
conducted online



AI Technology

With rapid development in technology, Artificial Intelligence should be embraced

TOWARDS GREATER DELIVERY OF JUSTICE MOVING FORWARD: ONLINE HEARING

- (1) Without limiting section 15, the Court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, through a **remote communication technology**.
- (2) In the case of the High Court, the place in which the High Court is held to conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology shall be deemed to be conducted within the local jurisdiction of such High Court.

Section 15A, Courts Of Judicature Act 1964 (Revised 1972)

TOWARDS GREATER DELIVERY OF JUSTICE MOVING FORWARD: ONLINE HEARING

- (1) Without limiting section 101, the court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, or hold any inquiry, **through a remote communication technology**.
- (2) The place in which the court is held to conduct the proceedings of any cause or matter, civil or criminal, or hold any inquiry, through a remote communication technology shall be deemed to be conducted within the local limits of jurisdiction assigned to it under section 59 or 76, or, if no such local limits have been assigned, arising in any part of Peninsular Malaysia.

Section 101B, Subordinate Courts Act 1948 (Revised - 1972)

TOWARDS GREATER DELIVERY OF JUSTICE MOVING FORWARD: ONLINE HEARING

KETUA HAKIM NEGARA MAHKAMAH PERSEKUTUAN MALAYSIA PUTRAJAYA



CHIEF JUSTICE FEDERAL COURT MALAYSIA

KHN.0042 Jld 2 Januari 2021

YA Hakim-Hakim Mahkamah Persekutuan

YA Hakim-Hakim Mahkamah Rayuan

YA Hakim-Hakim/Pesuruhjaya Kehakiman Mahkamah Tinggi Seluruh Malaysia

Hakim Mahkamah Sesyen Mahkamah Sesyen Seluruh Malaysia

Majistret Mahkamah Majistret Seluruh Malaysia

Pegawai Khas/ Pegawai Penyelidik/ Timbalan Pendaftar/ Penolong Kanan Pendaftar Mahkamah Persekutuan/Mahkamah Rayuan/ Mahkamah Tinggi/Mahkamah Rendah Seluruh Malaysia

ARAHAN AMALAN KETUA HAKIM NEGARA
BILANGAN 1 TAHUN 2021
PENGENDALIAN PROSIDING KES SIVIL MELALUI TEKNOLOGI
KOMUNIKASI JARAK JAUH BAGI MAHKAMAH DI SELURUH
MALAYSIA

Practice Direction No. 1 of 2021

- Court proceedings may be conducted via:
 - Remote communication technology;
 - Physical attendance of the parties; or
 - A hybrid method which combines the use of remote communication technology and also through physical means.
- Guidelines for procedure of conducting hearings by way of remote communication technology

TOWARDS GREATER DELIVERY OF JUSTICE MOVING FORWARD: ONLINE HEARING

FORE PROCEEDINGS

ш

 $\overline{\mathbf{m}}$

- 1. Court to issue early notice to the Parties for CM and hearings
- 2. Case Management before trial:
- Documents: digital copies and written submissions
- Details of parties
- Time management
- Witness handling
- 3. Conducts of briefing for trial session (3 days before)

DURING PROCEEDINGS

- 1. Microphone is on mute except when necessary
- 2. Legal ethics and court decorum are observed
- 3. External recording of the session is strictly prohibited

AFTER PROCEEDINGS

Parties may apply to be supplied with the recording of the proceedings

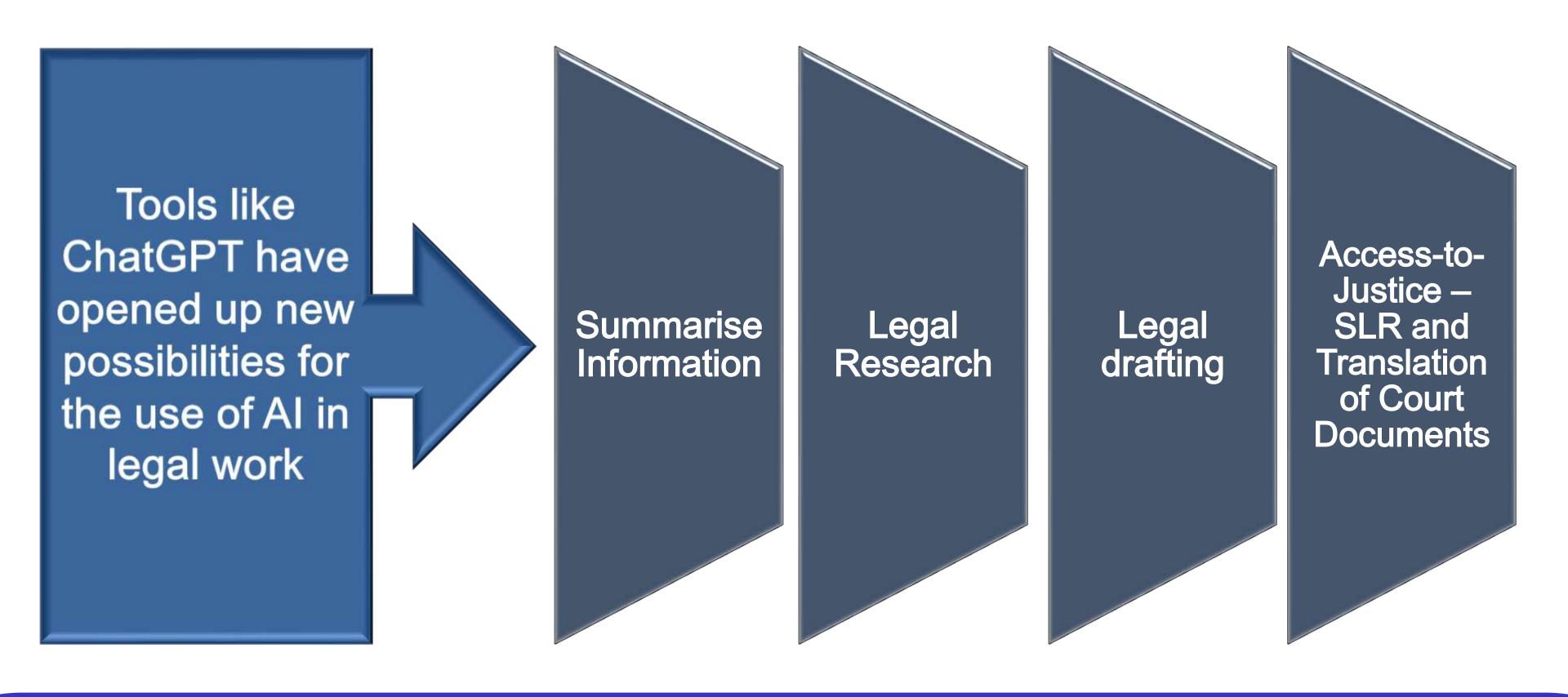
MOVING FORWARD: AI AND THE CHALLENGES

MOVING FORWARD: AI AND THE CHALLENGES

"In contemplating the second generation of online courts, it would be hard to ignore the recent upsurge of interest in artificial intelligence (AI) for lawyers and judges."

- Richard Susskind: Online Courts and The Future of Justice (2019)

MOVING FORWARD: AI AND THE CHALLENGES



MOVING FORWARD: AI AND THE CHALLENGES



Jan 30 (Reuters) - A New York lawyer is fecing possible discipline for citing a non-existent case generated by artificial intelligence, marking Al's latest disruption for attorneys and courts learning to navigate the emerging technology.

The 2nd U.S. Circuit Court of Appeals in a Tuesday order (3 referred lawyer Jae Lee to its attorney grievence panel after she used OpenAl's ChatGPT for research in a medical malpractice lawsuit and did not confirm that the case she cited was valid.

Forbes

FORBES > BUSINESS

BREAKING

Lawyer Used ChatGPT In Court— And Cited Fake Cases. A Judge Is **Considering Sanctions**

Molly Bohannon Forbes Staff Molly Bohannon has been a Forbes news reporter since 2023.

Follow

П

Jun 8, 2023, 02:06pm EDT

Updated Jun 8, 2023, 03:42pm EDT

- TOPLINE The lawyer for a man suing an airline in a routine personal injury suit used ChatGPT to prepare a filing, but the artificial intelligence bot delivered fake cases that the attorney then presented to the court, prompting a judge to weigh sanctions as the legal community grapples with one of the first cases of AI
- "hallucinations" making it to court.

WHAT SHOULD BE THE JUDICIARY'S APPROACH TO AI?

TOWARDS GREATER DELIVERY OF JUSTICE WHAT SHOULD BE THE JUDICIARY'S APPROACH TO AI?

THE STRATISTIMES

SINGAPORE

LOG IN St SUBSCRIBE FOR Recommended by Outbrain D

Lawyers should learn AI but must be aware of its ethical risks: Chief Justice Menon



Chief Justice Menon reminded them that lawyers who use generative artificial intelligence (AI) must verify the accuracy of the information gathered from such tools.

Because while AI can serve as a supplement to their work, it must not be a substitute, as AI tools come with various ethical risks.

It was the first time since 2019 the mass call event to admit new lawyers was held in a fully physical format due to the pandemic.

TOWARDS GREATER DELIVERY OF JUSTICE WHAT SHOULD BE THE JUDICIARY'S APPROACH TO AI?

Two US lawyers fined for submitting fake court citations from ChatGPT

Law firm also penalised after chatbot invented six legal cases that were then used in an aviation injury claim



The judge said one of the fake decisions had 'some traits that are superficially consistent with actual judicial decisions' but other portions contained 'gibberish' and were 'nonsensical'. Photograph: Richard Drew/AP

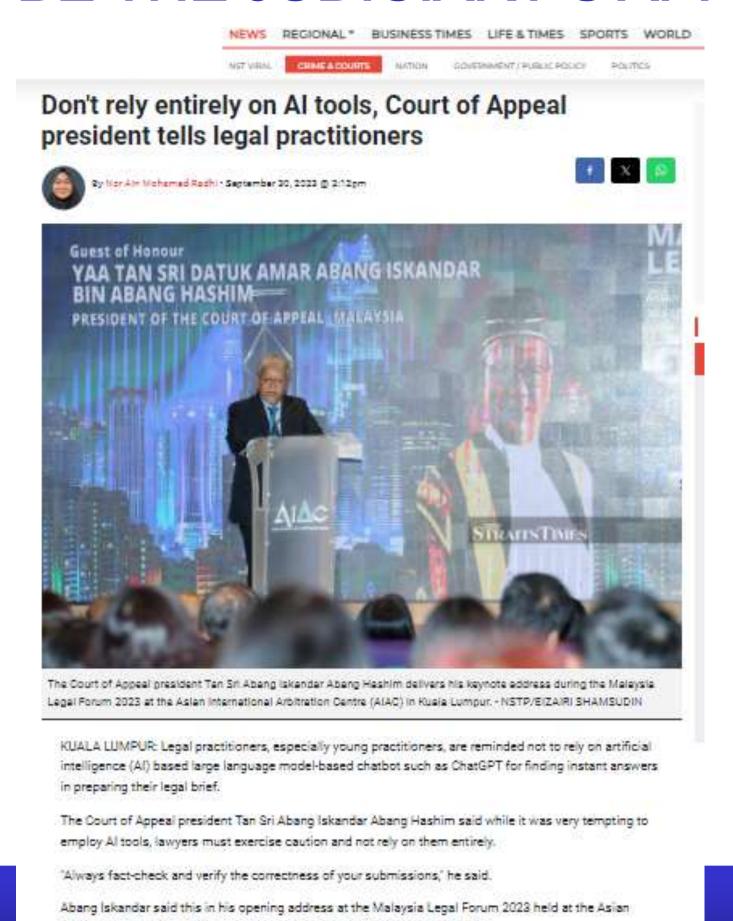
A US judge has fined two lawyers and a law firm \$5,000 (£3,935) after fake citations generated by ChatGPT were submitted in a court filing.

A district judge in Manhattan ordered Steven Schwartz, Peter LoDuca and their law firm Levidow Levidow & Oberman to pay the fine after fictitious

"Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance,"

"But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings." - Justice P Kevin Castel, District Judge, Manhattan

TOWARDS GREATER DELIVERY OF JUSTICE WHAT SHOULD BE THE JUDICIARY'S APPROACH TO AI?



TOWARDS GREATER DELIVERY OF JUSTICE AI AND THE COURTS – MOVING FORWARD



COURTS OF NEW ZEALAND I NGÃ KÔTI O AOTEAROA

GUIDELINES FOR USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN COURTS AND TRIBUNALS

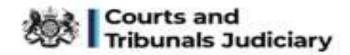
Judges, Judicial Officers, Tribunal Members and Judicial Support Staff

7 December 2023

These guidelines for the use of generative artificial intelligence (GenAI) chatbots (such as ChatGPT, Bing Chat or Google Bard) have been developed to assist judges, judicial officers, tribunal members and judicial support staff who may wish to use such tools in the course of their work.

Any use of GenAI chatbots or other generative AI tools by the judiciary and judicial staff must be consistent with the judiciary's overarching obligation to protect the integrity of the administration of justice and court/tribunal processes. The key risks inherent in GenAI chatbots, and some suggestions for mitigating them are set out below.

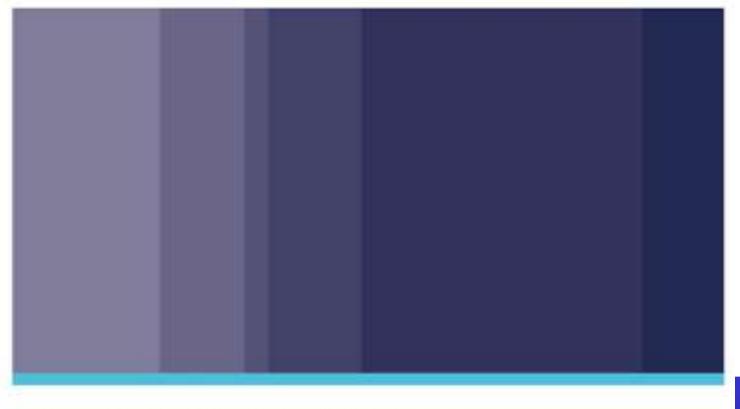
This guidance applies to all judges, judicial officers and members of the courts and tribunals listed on page 9, and to their support staff (including associates, personal assistants, clerks and legal research counsel). Examples of potential uses and a set of FAQs are included on pages 5-8.



Artificial Intelligence (AI)

Guidance for Judicial Office Holders

12 December 2023



Independence, Impartiality, Integrity

AI GUIDELINES – KEY TAKE AWAYS

Principal	Explanation
Understand AI and its applications	 Al does not provide answers from authoritative databases Generates new text using complex algorithm based on prompts it receives and the data it is trained upon Currently AI has limited access to information on local laws
Uphold confidentiality and privacy	 Do not enter confidential/private or legally privileged into AI Chatbot Disable chat history in AI Chatbots Unintentional disclosure should be disclosed to your superior

AI GUIDELINES – KEY TAKE AWAYS

Principal	Explanation
Ensure accountability and accuracy	 The accuracy of any information that has been provided by an AI tool must be checked before it is used or relied upon
Be aware of bias	 Al tools based on LLMs generate responses based on the dataset it is trained upon (from the internet)
Maintain security	 Use work devices and emails Paid subscription of AI chatbot is more secure Any security breach should be disclosed to your superior
Take Responsibility	Disclose the use of AI tools

TOWARDS GREATER DELIVERY OF JUSTICE AI AND THE COURTS - MOVING FORWARD



XLILL LUNIPUR: Malayala is coming up with a set of artificial intelligence (LI) governance and code of ethics on the back of increased interest in the LI businesses expanding their reach and accessing new markets.

The initiative is expected to be ready this year, according to industry officials.

A notable example of heightened interest here is the collaboration between YTL Power International Sholl and US-based Wridle Corp to develop All infrastructure and introduce the fasteet supersomputers to Malayala by mid-000d

The announcement was made during a meeting between Noticle oblef executive officer Jensen Huang and Prime Miniater Danck Sett Amust Grahler.

MORE NEWS

- Malayale targets higher R&D investments to be on per with. developed countries
- Mostlife launch single window initiative to strengthen Malayala's
- Duras Malayala hit by market litters
- HLIB research says YTL Corp's stock is undervalued, fair value is RM3.23

In the same month, the government and global tech giant Google had reamed up to Boost opportunities

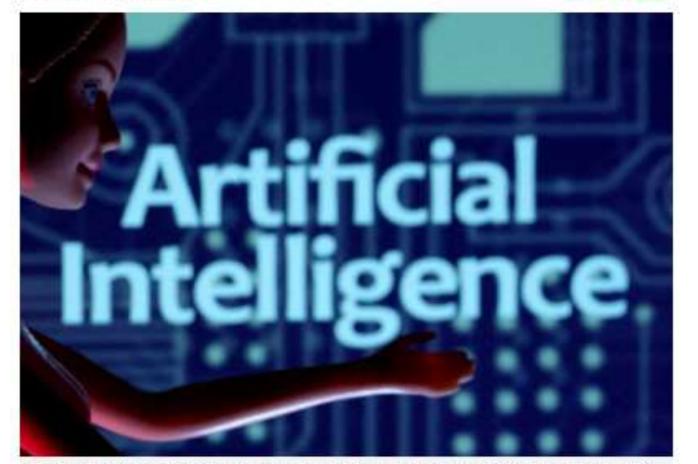
Al ethics and governance guidelines nearing completion - MOSTI

By 2 wmsms + March 5, 2024 @ 2:26pm









The development of the artificial intelligence (Al) code of ethics and governance guidelines has now reached 90 per cent. according to the Ministry of Science, Technology and innovation (MQST); - REUTERS PIC (for illustration purposes only)

KUALA LUMPUR: The development of the artificial intelligence (AI) code of ethics and governance guidelines has now reached 90 per cent, according to the Ministry of Science, Technology and Innovation (MOSTI).

It said the document is scheduled to be presented to the Cabinet this month before its official launch in

These guidelines are developed specifically for three main categories, namely users and the public, policymakers and providers or developers of Al-based technology.

"In general, it outlines seven principles of responsible AI that can be applied to all three main categories. Compliance with these guidelines can ensure ethical and safe use of Al," it said in a written reply



CONCLUSION

ARE WE READY FOR ONLINE COURTS?

4

• The Malaysian courts are ready with online courts

2

 However, there are rooms for improvement and enhancement for a better delivery of justice

3

 The Malaysian Courts will be ready to overcome the issues and challenges











THANK YOU

PREPARED BY
OFFICE OF THE CHIEF REGISTRAR FEDERAL COURT OF MALAYSIA