

## AUTOMATED DOCUMENT ASSEMBLY

### Access to Justice and Consumer Risk

In the world of legal tech, automated document assembly offers economies for commercial entities as well as opportunities to expand access to justice for lower-income individuals and businesses. In particular, automated court document assembly is a major step forward for unrepresented litigants, as its design allows laypersons to access legal content through guided interviews which produce coherent court documents. Automated document assembly systems should therefore be developed, but there are risks to consumers which should be identified and evaluated. Based on a comparison of commercial and non-profit document assembly systems, this article suggests a series of questions to assess consumer risk. Depending on the context, these factors indicate that while some documents from commercial sources raise issues, court document assembly can pose relatively little risk for consumers, because of the non-profit mission of entities that create the documents and the collaborative nature of the creation process.

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#### I. Introduction

1 Legal technology has arrived. The prediction of death for traditional professions has not come to pass,<sup>2</sup> but legal technology, or

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2 Richard Susskind & Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford: Oxford University Press, 2015) at p 303 (“we foresee that, in the end, the traditional professions will be dismantled,  
(cont'd on the next page)

“legal tech”, has produced many changes in legal practice, as well as opportunities to expand access to justice for lower-income individuals and businesses. Legal tech, defined as technologies that enable “a legal services provider to better provide value to anybody involved in understanding or applying the law”,<sup>3</sup> targets different user groups, including “lawyers, law firms, corporations, in-house legal departments, court systems, community organizations, and individual users who are not trained as attorneys”.<sup>4</sup> While surveys of legal innovation and legal tech tend to focus on the commercial legal market,<sup>5</sup> there are a variety of legal tech applications for access to justice,<sup>6</sup> understood here as the ability of all individuals to access law and resolve legal disputes. This article considers automated document assembly systems, online programmes that prompt users to answer questions and then use the information to produce legal documents, and in particular automated court documents, *ie*, automated documents intended to be filed in court.<sup>7</sup> Court document assembly has been characterised as an “ideal mechanism”<sup>8</sup> to effectively address particular issues faced by individuals who cannot afford an

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leaving most (but not all) professionals to be replaced by less expert people and high-performing systems”).

- 3 *Legal Technology Vision: Towards the Digital Transformation of the Legal Sector* (Legal Technology Cluster Committee, Singapore Academy of Law, 2017) at para 9.
- 4 Rebecca L Sandefur, *Legal Tech for Non-Lawyers: Report of the Survey of US Legal Technologies* (American Bar Foundation, 2019) at p 5.
- 5 See *State of Legal Innovation in the Asia Pacific* (Jerrold Soh chief ed) (Singapore: Singapore Management University, 2019) at p 3 (“our present focus is on innovation in the practice of law”); *Legal Technology Vision: Towards the Digital Transformation of the Legal Sector* (Legal Technology Cluster Committee, Singapore Academy of Law, 2017) at paras 14 and 12 (although one concern is “how should the legal profession prepare for the elephant-in-the-room scenario where clients ultimately use legal technology ... without the ostensible need for lawyers”, the focus “will be circumscribed to lawyers in practice and in-house counsel”); and “Legal Technology in Singapore” *LawTech.Asia* <<https://lawtech.asia/legal-technology-in-singapore/>> (accessed 15 July 2020).
- 6 See “Using Technology to Enhance Access to Justice” (Fall 2002) 26(1) *Harvard Journal of Law & Technology*, a collection of seven articles published as part of the US Legal Service Corporation’s June 2012 technology summit <<http://jolt.law.harvard.edu/articles/pdf/v26/26HarvJLTech241.pdf>> (accessed 15 July 2020).
- 7 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 at 1193.
- 8 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 at 1193; see also Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 97, who in the context of court self-help centres, states that document assembly is a “critical tool”.

attorney for representation in court,<sup>9</sup> and it has had a healthy development in Singapore.

2 To evaluate the benefits and risks of automated documents, this article compares the documents generated by two different kinds of entities: (a) commercial actors, including law firms and the so-called disruption services that offer a variety of legal documents directly to low and middle-income individuals and businesses; and (b) public or non-profit entities, such as courts, educational institutions and non-profit organisations, who produce court document assembly systems. This second, somewhat eclectic, group includes entities referred to as public institutions, but all entities are grouped together as the non-profit environment to distinguish them from commercial enterprises. The juxtaposition of commercial and non-profit environments provides the basis for an exploration of the kinds and levels of consumer risk in different markets, and it is intended to bring the likely forms of consumer risk into sharper focus so that the desirability and appropriate level of regulation can be considered.

3 One theme that runs through an evaluation of automated legal documents is the degree of legal support offered to the user apart from the online programme itself, referred to here as “separate legal support”. When a user generates an automated document, separate legal support can run from none to varying degrees. The use of a lawyer to produce a legal document is not risk free, but to the extent that users proceed without legal support apart from the automated document itself, because of necessity or other reasons, they may encounter risks. The question of what kind of legal services can or should be offered by non-lawyers is complex indeed, and automated documents raise issues under different kinds of regulation, such as rules regarding unauthorised practice of law and prohibitions on non-lawyers giving legal advice.<sup>10</sup> These issues are important, but in order to not prematurely restrict analysis to the contours of current jurisprudence, the article adopts a broader, policy perspective, which allows for a description of current practices and identification of the risks likely to arise for users.

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9 Richard Susskind also identified automated document assembly as one of 13 innovative technologies that he expected would disrupt and radically change the way lawyers and courts operate; see Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013) at pp 13 and 40.

10 See Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at pp 14–20; and Rebecca L Sandefur, “Legal Advice from Non-Lawyers: Consumer Demand, Provider Quality, and Public Harms” (2020) XVI *Stanford Journal of Civil Rights & Civil Liberties* 283 at 286–288.

4 Throughout the article, the experiences of the US and Singapore are considered. The US has the largest number of legal tech firms by far,<sup>11</sup> and many issues regarding automated documents have played out there first, offering points of comparison. Also, the article considers the consumer risks raised by document assembly systems, which, as noted above, potentially comprise legal advice. Singapore professional regulation differs considerably from the US on some points, but Singapore and the US offer fundamentally similar regulatory contexts for purposes of document assembly systems; both jurisdictions restrict who may provide legal advice, enabling a more coherent overall comparison than the UK, which does not include legal advice in its list of controlled activities.<sup>12</sup>

5 The article observes that document assembly systems offer economies for commercial and non-profit environments as well as opportunities to expand access to justice for lower-income individuals and businesses. Automated court documents in particular have an unprecedented potential to address some of the issues posed by unrepresented litigants.<sup>13</sup> However, if a user proceeds without the separate assistance of someone trained in the law, these systems may pose risks to users. Parts II<sup>14</sup> and III<sup>15</sup> review the commercial and non-profit markets in which these documents arise, using and building upon Darryl Mountain's business models for document assembly<sup>16</sup> to identify initial points of concern. The article then suggests a further series of questions to help balance consumer risk and access to justice, and applies the questions to selected examples from different markets. The article argues that depending on the context, while some automated documents from commercial sources raise concerns, court document assembly poses relatively little risk for consumers, because of the non-profit mission of

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11 See Eric Chin, "Legal Tech Strategies for Singapore Law Firms" *Law Gazette* (July 2019).

12 See Judith Bennett *et al*, "Current State of Automated Legal Advice Tools" (Networked Society Institute Discussion Paper 1, April 2018) at pp 18–19; and Darryl R Mountain, "Disrupting Conventional Law Firm Business Models using Document Assembly" (2006) 15(2) *International Journal of Law and Information Technology* 170 at 188; and see generally, Noel Semple, Russel G Pearce & Renee Newman Knake, "A Taxonomy of Lawyer Regulation" (2013) 16(2) *Legal Ethics* 258.

13 Parties without legal representation in court are identified by different terminology, such as unrepresented litigants, self-represented litigants, litigants in person, *etc*; for ease of reference, this article uses the term "unrepresented litigant".

14 See paras 6–18 below.

15 See paras 19–43 below.

16 Darryl R Mountain, "Disrupting Conventional Law Firm Business Models Using Document Assembly" (2006) 15(2) *International Journal of Law and Information Technology* 170.

entities that create the documents and the collaborative nature of the creation process.

## II. Commercial legal document assembly systems

### A. Commercial usage in the US

6 While research in legal tech encompasses more complex matters such as artificial intelligence, “transactional and estate planning lawyers have utilized document automation for decades”.<sup>17</sup> The basic function of document assembly in this context has been to replace repetitive manual inputting of information with a template; the user answers questions from the template software, which is then used to produce a draft of the document.<sup>18</sup> More recently, when prompted by client demands for lower fees and different kinds of fee structures,<sup>19</sup> law firms began to offer online document assembly to their corporate clients, reducing costs and encouraging the client to review the draft with a legal expert.<sup>20</sup> In terms of consumer risk, the use of a lawyer is of course not risk free, but this kind of automated document poses relatively lower levels of consumer risk because the product of the automated system is utilised together with the assistance of someone trained in the law.

7 Law firms, however, are not the only ones using document assembly. Richard Granat dates the legal document preparation industry, *ie*, non-lawyers who assist consumers and small businesses in preparing legal forms without providing legal advice or custom drafting, from the early 1990’s.<sup>21</sup> A major change in this industry occurred when the development of the web browser allowed clients to find and use document

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17 William E Foster & Andrew L Lawson, “When to Praise the Machine: The Promise and Perils of Automated Document Drafting” (2018) 69(3) SC L Rev 597 at 598.

18 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 172.

19 See IBA Legal Policy & Research Unit, “*Times Are A-Changin’*”: *Disruptive Innovation and the Legal Profession* (International Bar Association, May 2016) at pp 12–13; and Commission on the Future of Legal Services, *A Report on the Future of Legal Services in the United States* (American Bar Association, 2016) at p 26.

20 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 98.

21 Richard S Granat, “The Legal Document Preparation Industry” (13 September 2019) <<https://www.richardgranat.com/post/2019/09/12/the-legal-document-preparation-industry>> (accessed 15 July 2020).

assembly systems on their own.<sup>22</sup> LegalZoom and Rocket Lawyer are two of the better-known companies that allow users, primarily small companies and consumers, to create their own documents online.<sup>23</sup> LegalZoom users log on and provide answers to questions, after which document assistants review the document and contact the user if there are any questions, followed by document delivery and wrap up instructions.<sup>24</sup>

8 This kind of automated legal document, in which a user receives a document without the separate assistance of a lawyer, has been characterised as disruptive, and a starting point of much analysis regarding technological disruption in the legal industry is the work of Richard Susskind.<sup>25</sup> Susskind applied Christensen's theory of disruption<sup>26</sup> to the legal profession and produced different models of legal practice, including the traditional bespoke model, in which legal work is highly customised to the client, and commoditisation, in which the legal work that has become "so commonplace and routinizable" is made available freely on the Web.<sup>27</sup> However, these models apply to the provision of legal services generally, and they do not reflect sensitivity to some of the issues raised by document assembly.

9 Mountain has identified six kinds of law business models regarding document assembly.<sup>28</sup> The models reflect the fact that not all business models make the most out of, or even do well with, document assembly. In the first model, law firms that charge clients using hourly billing structures, law firm lawyers generate the documents for clients. In this model, it may appear that a more efficient system would cause lawyers to bill fewer hours for the same service and be less profitable, however, lawyers using this system can earn more money overall if they provide the

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22 Darryl R Mountain, "Disrupting Conventional Law Firm Business Models Using Document Assembly" (2006) 15(2) *International Journal of Law and Information Technology* 170 at 173.

23 See IBA Legal Policy & Research Unit, "Times Are A-Changing: Disruptive Innovation and the Legal Profession" (International Bar Association, May 2016) at p 18.

24 Benjamin P Cooper, "Access to Justice Without Lawyers" (2014) 47 *Akron Law Review* 205 at 211.

25 See Richard E Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford; New York: Oxford University Press, 2008); Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013); and Richard Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford: Oxford University Press, 2015).

26 See Clayton M Christensen, *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail* (Boston, Mass: Harvard Business School Press, 1997).

27 Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013) at p 28.

28 Darryl R Mountain, "Disrupting Conventional Law Firm Business Models Using Document Assembly" (2006) 15(2) *International Journal of Law and Information Technology* 170 at 175–184.



service to more clients.<sup>29</sup> In this commercial model, though, there may be questions about whether law firms pass on cost savings to the client.<sup>30</sup> The second model, law firms that use alternative billing arrangements such as a flat fee, fares better because document assembly lowers costs and enables competitive bids for work.<sup>31</sup> The third model, referred to here as the “hybrid model”, is a hybrid of self-help documents and legal advice in which the client uses law firm technology to generate the first draft of the document, which is then reviewed by a lawyer within that law firm.<sup>32</sup> In the fourth model, document assembly and outsourcing,<sup>33</sup> teams of document producers in countries with lower salaries for lawyers produce the first draft of the document using document software, and then forward the document to the law firm attorney for review.<sup>34</sup> The fifth and the sixth models focus on the individual consumer market, and they license the document to the client, online or from a bricks and mortar store.<sup>35</sup> Some of these models offer documents only, while some offer paralegal or lawyer support.<sup>36</sup> The model that offers documents only is referred to here as the “direct model without separate legal support”, while the model that offers documents with paralegal or lawyer support is referred to as the “direct model with separate legal support”. Although the hybrid

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- 29 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 176; and see Tejas G Patel, “Document Automation Software: Solving the Dichotomy Between Meeting Attorneys’ Financial Needs and Ethical Obligations” (2014) 19(2) *Suffolk Journal of Trial & Appellate Advocacy* 352 at 379–380.
- 30 Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 35.
- 31 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 177–178.
- 32 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 178–179.
- 33 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 180–181.
- 34 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 180; and see Tejas G Patel, “Document Automation Software: Solving the Dichotomy Between Meeting Attorneys’ Financial Needs and Ethical Obligations” (2014) 19(2) *Suffolk Journal of Trial & Appellate Advocacy* 352 at 371–384.
- 35 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 181–184.
- 36 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 182.

model and the direct model with separate legal support have similarities, a distinction between them should be made, primarily because giving the user a choice about whether to generate a legal document with or without separate legal support arguably creates a consumer risk that should be evaluated. The difference between the fifth and the sixth models is the degree of consumer recourse if something goes wrong; in the fifth model, consumer recovery is limited or non-existent, while in the sixth model, referred to here as the “insurance model”, the automated document is combined with some kind of insurance.<sup>37</sup> The insurance model offers the consumer more protection, but it is understood not to offer all the protection available to a client who uses a lawyer.

10 LegalZoom illustrates Mountain’s direct model. LegalZoom differs from traditional legal services in that instead of meeting the client, determining their needs and delivering services to meet those needs, it identifies “a particular legal product or service that will serve clients for whom that product or service is appropriate. In other words, it provides a limited service only to those clients whose needs will be met by that particular service”.<sup>38</sup> LegalZoom targets the middle of the market, “those who can afford some assistance”.<sup>39</sup>

11 This model of document production is not characterised by those providing it as legal advice.<sup>40</sup> Both LegalZoom and Rocket Lawyer, the largest players in this market,<sup>41</sup> sell monthly plans of legal advice,<sup>42</sup> which would comprise the direct model with separate legal support, but these services are different from their main document assembly services, which would comprise the direct model without separate legal support. As LegalZoom’s website notes, the “information contained on this site is not legal advice. Any information you submit through this site may not be protected by attorney-client privilege and may be provided to attorneys

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37 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 183.

38 Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 37.

39 Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 38.

40 See Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955 at 973.

41 See Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955 at 964.

42 See Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955 at 961.



for the purpose of determining your need for legal services”.<sup>43</sup> LegalZoom offers legal documents, so legally-trained personnel must be involved in the document process at some point, but LegalZoom’s services allow individuals to proceed without a lawyer.<sup>44</sup>

12 LegalZoom has a claims process, but it offers documents directly to the consumer without an insurance feature, and it disclaims responsibility for aspects of the process. For example, LegalZoom states that it vetted the attorneys that users can access and “spent a lot of time finding top-notch ones”,<sup>45</sup> but its disclaimer in the “Attorney Advice” section states: “LegalZoom does not endorse or recommend any lawyer or law firm who advertises on our site. We do not make any representation and have not made any judgment as to the qualifications, expertise or credentials of any participating lawyer.”<sup>46</sup> Because companies like LegalZoom allow lower and middle-income individuals and companies to access legal documents, they have arguably expanded access to justice,<sup>47</sup> but they do so in a profit-making mode, and the basic document assembly they offer is characterised as not constituting legal advice. The disclaimers attached to this activity mean that if the user’s legal interests were harmed, they could not avail themselves of the traditional means of recourse against lawyers, such as malpractice claims, complaints to the bar, or bar compensation funds. Whether or not the non-legal advice characterisation is accurate, these services may pose potential consumer risk when the user proceeds without the separate assistance of someone trained in the law.<sup>48</sup>

## **B. Commercial document assembly in Singapore**

13 Compared to the US, online platforms of legal services are “relatively new territory in South-east Asia”.<sup>49</sup> As of 2019, there were 16 legal document automation companies in the South East Asian

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43 LegalZoom.com <<https://www.legalzoom.com/why-us/>> (accessed 15 July 2020).

44 Benjamin P Cooper, “Access to Justice Without Lawyers” (2014) 47 *Akron Law Review* 205 at 211.

45 LegalZoom.com <<https://www.legalzoom.com/why-us/>> (accessed 15 July 2020).

46 LegalZoom.com <<https://www.legalzoom.com/attorneys/>> (accessed 15 July 2020).

47 See Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 38; and see Benjamin P Cooper, “Access to Justice Without Lawyers” (2014) 47 *Akron Law Review* 205 at 211–212.

48 For further analysis of the potential confusion arising from these disclaimers, see paras 44–59 below.

49 Kelly Ng, “More Singapore Law Firms Go Online to Meet Needs of Start-ups” *Today* (27 June 2016).

market,<sup>50</sup> although the document automation market is reportedly the largest segment in the overall legal tech market in Southeast Asia and Australia.<sup>51</sup>

14 Automated documents and related systems are currently available to different kinds of users in Singapore. Law firms use legal tech to save costs and share knowledge more efficiently,<sup>52</sup> and apply it to various tasks, including contracts and data analysis,<sup>53</sup> and work flow,<sup>54</sup> although the kind and degree of law firm usage may not be apparent from the outside.<sup>55</sup> A few organisations in Singapore offer production of commercial legal documents for small and medium-sized businesses, while some document assembly services are offered directly to individual consumers. LawOnline Singapore<sup>56</sup> is at the low-tech end of the online document spectrum. Its goal “is to make LawOnline the convenient first stop whenever anyone is looking for Singapore legal resources”.<sup>57</sup> It offers legal frequently asked questions (“FAQs”), a list of law forms with links, links to legal sites, and forms and samples. The forms, which are geared to commercial activity such as an employment contract, are static PDF samples and forms with blanks which the user would have to fill in.<sup>58</sup> LawOnline Singapore asserts a disclaimer that the materials are for general information and do not constitute any kind of advice.<sup>59</sup>

15 Other sites offer document assembly, with no separate legal support or differing levels of support for a fee. Most websites target

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50 Eric Chin, “LegalTech Strategies for Singapore Law Firms” *Law Gazette* (July 2019).

51 Eric Chin, “LegalTech Strategies for Singapore Law Firms” *Law Gazette* (July 2019).

52 Gregory Vijayendran, “President’s Message” *Law Gazette* (May 2019).

53 See “A New Trajectory for Legal Innovation” *Law Gazette* (August 2018); and Tech Talk, “Year of Tech” *Law Gazette* (May 2018).

54 See Calvin Thean, “Rethinking the Conveyancing Practice” *Law Gazette* (February 2018); Daniel Chan, Eugene Low & Muslim Albakri, “Spotlight on Tech-celerate for Law: Breaking the Mould and Giving Back” *Law Gazette* (March 2020); and Tech Talk, “Spotlight on Tech-celerate for Law: A Testament to Technology” *Law Gazette* (March 2020).

55 For a review of types of legal technology in Singapore, see *Legal Technology Vision: Towards the Digital Transformation of the Legal Sector* (Legal Technology Cluster Committee, Singapore Academy of Law, 2017) at paras 51–76 and 84–115.

56 LawOnline website <<https://lawonline.com.sg>>.

57 LawOnline, “About Us” <<https://lawonline.com.sg>> (accessed 15 July 2020).

58 LawOnline, “Forms and Samples” <<https://lawonline.com.sg/forms/>> (accessed 15 July 2020).

59 The disclaimer states: “This Site and all its web pages, including the information, content and other materials displayed (‘Contents’) are provided on an ‘as is’ basis for general information purposes and not as any form of advice. The Contents are of a general nature and may not be applicable to your specific situation. While we try to ensure that the Contents are correct, they may not be up to date or free from error or omission. No warranty of any kind is given in respect of this Site or the Contents – see Terms of Use.” <<https://lawonline.com.sg/forms/>>.

commercial users. An example is Zegal, which offers over 1,200 documents customised for the jurisdictions of Hong Kong, Singapore, New Zealand, Australia and the UK.<sup>60</sup> Zegal offers a free option, which allows users to generate documents such as non-disclosure agreements, although it monetises services via subscriptions and more complex support.<sup>61</sup> Another provider, LawLive, targets similar small and medium enterprises and offers similar documents.<sup>62</sup> Payment options include subscriptions or pay as you go.<sup>63</sup> LawLive notifies users that it is not guaranteeing the legal appropriateness of the document; in its FAQs, in response to the question, “How do you know that the LAWLIVE® document is legal and will work for you?”, LawLive states:<sup>64</sup>

Our documents have been provided by qualified lawyers. We are unable to advise you whether any of our documents is appropriate for your particular circumstance and we strongly recommend that you get professional legal advice to ensure you have the correct documentation in place. Purchasing one of our documents can be a good starting point for any further discussion with a lawyer and we are happy to amend any document to accommodate changes at no extra charge.

Like the US’s LegalZoom, and depending on whether the user procures only the document or the document with legal support, these commercial automated documents would fit the direct model without separate legal support or the direct model with separate legal support. The documents appear to be offered without an insurance aspect.

16 VanillaLaw,<sup>65</sup> also focused on the commercial market, acts more like a law firm, in that it uses document assembly to increase lawyer efficiency.<sup>66</sup> In the first stage of document assembly, the client uses law firm software to generate a draft document, which is then subject to vetting and legal advice from lawyers.<sup>67</sup> Generating a document at the

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60 Zegal website <<https://zegal.com/en-sg/all-docs/>>.

61 Leighton Cosseboom, “Dragon Law Wants to Take a Bite Out of Startups’ Legal Hassles” *Tech in Asia* (10 August 2015) <<https://www.techinasia.com/singapore-hong-kong-dragon-law-startup>> (accessed 15 July 2020).

62 LawLive website <<https://lawlive.com.sg/>>.

63 LawLive, “Payment Options” <<https://lawlive.com.sg/paymentoptions>> (accessed 15 July 2020).

64 LawLive, “Frequently Asked Questions” <<https://lawlive.com.sg/faq#Faql1>> (accessed 15 July 2020).

65 VanillaLaw website <<https://www.vanillalaw.com.sg/>>.

66 *State of Legal Innovation in the Asia Pacific* (Jerrold Soh chief ed) (Singapore: Singapore Management University, 2019) at p 88.

67 Ng Huiwen, “Lawyer’s Software Comes in Handy for SMEs” *The Straits Times* (7 July 2016); “How a Singapore Lawyer Uses Vanilla to Stop the SME Goose Chase” *Speak/pr – Public Relations for Business Owners* (5 December 2019) <<https://www.speakpr.com/pr-articles/how-a-singapore-lawyer-uses-vanilla-to-stop-the-sme-geese-chase>> (cont’d on the next page)

lowest complexity tier the VanillaLaw way would run around \$800,<sup>68</sup> and while the price can go up from there, engaging a lawyer to draft a simple agreement at another firm would reportedly start at approximately \$1,800.<sup>69</sup> VanillaLaw is an example of the hybrid model, and it poses relatively lower risk to the user, assuming the documents are reviewed by lawyers before they are used.

17 DivorceBureau is directed at individual family law matters. It describes itself as a “Do-It-Yourself (DIY) online Portal developed by veteran Singapore Divorce Lawyer Beatrice Yeo of Yeo & Associates LLC”,<sup>70</sup> and it is limited to uncontested divorces. In the first step, users determine whether they are eligible for an uncontested divorce, and in the second and third steps, they complete the online interview which generates the legal documents and then file the documents in court. The price for an uncontested divorce, \$599, is stated prominently on the website landing page, and DivorceBureau states that users will save “thousands of dollars in legal fees”.<sup>71</sup> Beyond the online fee, divorce petitioners would have to pay court filing fees and other costs, and there is an additional \$150 “if the client visits the office for legal advice”; the estimated total cost is \$1,200.<sup>72</sup> Other law firms offer packages for uncontested divorces, although those fees range from \$1,500 to more than \$3,000; *per* Yeo, the DIY online method is “meant to cut costs and time”.<sup>73</sup> Like other online document services, the website states that the documents do not constitute legal advice.<sup>74</sup> These documents fit the direct model without separate legal support, although if the user pays the additional fee for legal advice, the documents would shift to the direct model with separate legal support.

18 Some automated documents for individuals in Singapore are not expressly associated with lawyers at all. At the end of 2018, the Overseas Chinese Banking Corporation (“OCBC”) began offering a free online will preparation service.<sup>75</sup> The instructions note that completion should

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buzzsprout.com/850540/2655859-how-a-singapore-lawyer-uses-vanilla-to-stop-the-sme-goose-chase> (accessed 15 July 2020).

68 Ng Huiwen, “Lawyer’s Software Comes in Handy for SMEs” *The Straits Times* (7 July 2016).

69 “Vanilla Law – Brand New Flavour” *Channel NewsAsia* (13 September 2016).

70 DivorceBureau website <<https://divorcebureau.com.sg/>> (accessed 15 July 2020).

71 DivorceBureau website <<https://divorcebureau.com.sg/>> (accessed 15 July 2020).

72 K C Vijayan, “Law Firm’s DIY Portal Aims to Slash Legal Costs for Divorce” *The Straits Times* (14 October 2018).

73 K C Vijayan, “Law Firm’s DIY Portal Aims to Slash Legal Costs for Divorce” *The Straits Times* (14 October 2018).

74 DivorceBureau, “Disclaimer” <<https://divorcebureau.com.sg/disclaimer.php>> (accessed 15 July 2020).

75 Sundaresh Menon, “Deep Thinking: The Future of the Legal Profession in an Age of Technology”, gala dinner address at the 29th Inter-Pacific Bar Association  
(*cont’d on the next page*)

take “less than 10 minutes to complete if all the information is available”.<sup>76</sup> The user is advised that the will needs to be printed and signed, and that it “will only be valid once it has been signed by you and two witnesses”.<sup>77</sup> FAQs regarding the service are accompanied by the usual disclaimers:<sup>78</sup>

This FAQ is intended to provide general information only and does not contain or convey any legal or other advice. OCBC Bank does not act as adviser to the user. OCBC Bank gives no warranty as to the accuracy or completeness of the information, and is not responsible for or liable to any person for any loss or damage arising from any reliance thereon.

This automated document also fits the direct model without separate legal support, as it is not issued with the separate assistance of someone trained in the law. As the website disclaims any liability, there does not appear to be any insurance aspect.

### III. Court document assembly

#### A. Unrepresented litigants

19 Court document assembly focuses exclusively on court documents intended to be filed in court, and a key aspect of their history is that they were developed to help meet the needs of unrepresented litigants, *ie*, litigants proceeding in court without legal representation. Unrepresented litigants are not all alike, but the majority share characteristics which pose issues in court proceedings. A 2009 New Zealand study reported that unrepresented litigants in both summary criminal and family jurisdictions experienced the same difficulty of not understanding court processes and procedures,<sup>79</sup> leading them to make mistakes such as “presenting irrelevant and excessive material, not being aware of their options when making pleas (criminal summary jurisdiction), and in the family jurisdiction, making errors when filing

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Annual Meeting and Conference (25 April 2019) at pp 4–5; see also *State of Legal Innovation in the Asia Pacific* (Jerrold Soh chief ed) (Singapore: Singapore Management University, 2019) at pp 88–89.

76 OCBC Bank, “OCBC Online Will Generator” <<https://www.ocbc.com/personal-banking/lifegoals/willgenerator/#/>> (accessed 21 April 2020).

77 OCBC Bank, “OCBC Online Will Generator” <<https://www.ocbc.com/personal-banking/lifegoals/willgenerator/#/>> (accessed 21 April 2020).

78 OCBC Bank, “Online Will Generator FAQ” <<https://www.ocbc.com/personal-banking/lifegoals/willgenerator/assets/faq.pdf>> (accessed 21 April 2020).

79 Melissa Smith, Esther Banbury & Su-Wuen Ong, *Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions* (New Zealand: Ministry of Justice, July 2009) at p 110.

and writing documents”, problems which mirror international findings.<sup>80</sup> In Singapore, a 2019 study of 206 unrepresented litigants indicated that of the individuals who had ongoing cases, 47.06% identified “understanding the court’s processes” as the most challenging aspect of self-representation.<sup>81</sup> Other Singapore research has corroborated the difficulties of unrepresented Singapore litigants in matters such as the lack of legal knowledge, having to visit the court during work hours to file documents and get assistance, and the emotional strain of having to conduct litigation without sufficient legal knowledge.<sup>82</sup>

20 Studies also indicate that unrepresented parties can negatively impact the administration of justice. Unrepresented litigants appear more likely to require more court time and more pre-trial proceedings, all of which increases the demand for court resources and costs.<sup>83</sup> These issues can result in delays, with costs and justice consequences for other parties.<sup>84</sup> Perhaps the most troubling aspect of an unrepresented litigant’s experience is that for reasons beyond their control, they may be less likely to succeed in their claim than represented litigants, and they are more likely to have their matter dismissed, discontinued or have costs awarded against them.<sup>85</sup> In a 2009 survey conducted by the American Bar Association of 986 state court judges,<sup>86</sup> 62% of respondents said that outcomes were worse in cases without representation.<sup>87</sup>

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80 Melissa Smith, Esther Banbury & Su-Wuen Ong, *Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions* (New Zealand: Ministry of Justice, July 2009) at pp 110–111.

81 Leonard Lee & Joey Lee, “An Exploratory Study of Litigants-in-Person and the Use of Technology” (2020) at p 14 (copy on file with author).

82 Jaclyn L Neo & Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Singapore: Academy Publishing, 2021) ch 4.

83 Jaclyn L Neo & Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Singapore: Academy Publishing, 2021) at para 1.10, citing Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice system in Western Australia: Final Report Project 92* (1999) at p 153, and Elizabeth Richardson, Tania Sourdin & Nerida Wallace, *Self-Represented Litigants: Literature Review* (Australia Centre for Justice Innovation, July 2012) at p 14.

84 Jaclyn L Neo & Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Singapore: Academy Publishing, 2021) at para 1.10.

85 See Elizabeth Richardson, Tania Sourdin & Nerida Wallace, *Self-Represented Litigants: Literature Review* (Australia Centre for Justice Innovation, July 2012) at p 31.

86 American Bar Association Coalition for Justice, *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts* (Preliminary) (12 July 2010) (Chair: Linda Klein) at p 5.

87 ABA Coalition for Justice, *Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts* (Preliminary) (12 July 2010) at p 3.



21 One of the matters foreign to unrepresented litigants is the submission of court documents. To state the obvious, it is “impossible to fully access the legal system without completing and filing written court papers”,<sup>88</sup> and “[v]irtually every court event is accompanied by the creation and filing of a form”.<sup>89</sup> Templates for court documents are therefore the first resource requested by unrepresented litigants.<sup>90</sup> But without the legal education and training that even beginner lawyers have, unrepresented litigants are “often confused by the myriad of legal documents and procedures they face”.<sup>91</sup> Unrepresented litigants are not sure what document to file or how to fill them out,<sup>92</sup> resulting in mistakes which take time to be corrected by others, such as court personnel, opposing counsel, or a judge. If mistakes are not identified and corrected, the failure to fill out court paperwork correctly can have serious consequences for the litigant.<sup>93</sup> Taken together, the difficulties that large numbers<sup>94</sup> of unrepresented litigants encounter and pose for the justice system prompted the development of court document assembly systems.

## **B. Court document assembly in the US**

22 There are different varieties of automated court forms aimed at low-income individuals in the US, but the main system is Access to Justice Author (“A2J Author”).<sup>95</sup> A2J Author began in 1999–2001,<sup>96</sup> when a project entitled “Access to Justice, Meeting the Needs of Self-Represented

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- 88 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1194.
  - 89 John M Greacen, *Eighteen Ways Courts Should Use Technology* (IAALS, 30 October 2018) at p 13.
  - 90 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1194.
  - 91 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 251–252.
  - 92 See Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants, Final Report* (May 2013) at pp 61–62.
  - 93 See Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1197–1198.
  - 94 In Singapore, see Ashley Chia, “Justice Centre to Aid the Self-represented” *Today* (21 June 2012); and in the US, see Self-Represented Litigation Network, “SRLN Brief: How Many SRLs?” (2019) <<https://www.srln.org/node/548/srln-brief-how-many-srls-srln-2015>> (accessed 1 October 2019).
  - 95 A2J Author, “Where is A2J Author Used?” <[https://www.a2jauthor.org/where\\_is\\_A2JAuthor\\_used](https://www.a2jauthor.org/where_is_A2JAuthor_used)> (accessed 15 July 2020).
  - 96 Some authors identify earlier dates for similar projects; see, eg, Ronald W Staudt, “All the Wild Possibilities” (2009) 42 *Loy LA L Rev* 1117 at 1122–1123.

Litigants: A Consumer Based Approach” identified the major barriers that unrepresented litigants encountered when they attempted to access justice via the courts.<sup>97</sup> A main insight from the study was that the simple act of filling out forms raised unique challenges that many low-income unrepresented litigants had trouble overcoming.<sup>98</sup>

23 Following this study, the Illinois Tech Chicago-Kent College of Law created the “Illinois Joint Simplified Dissolution of Marriage” prototype.<sup>99</sup> The prototype demonstrated that an automated document could assist litigants to overcome challenges with court paperwork, but the building of the form was expensive and time consuming.<sup>100</sup> Around the same time, the Legal Services Corporation (“LSC”), the non-profit entity established by the US Congress to oversee funding for civil legal aid to low-income Americans,<sup>101</sup> began issuing Technology Initiative Grants (“TIG”) that encouraged legal aid organisations to use technology to expand access to justice.<sup>102</sup> In a “tribute to standardization”, LSC selected a single document assembly technology,<sup>103</sup> LexisNexis’s HotDocs.<sup>104</sup> HotDocs was a leading document assembly software in the law firm market, so there were lawyers and others with considerable expertise using it.<sup>105</sup> However, because HotDocs was aimed at legally-trained users, the user interface was judged too complicated for legal aid clients.<sup>106</sup>

24 The TIG grants then produced the “software solution to the interface problem”<sup>107</sup> with unrepresented litigants. In 2004, Chicago-Kent and the Centre for Computer-Assisted Legal Instruction (“CALI”), a non-profit consortium of law schools, law libraries and related organisations

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97 A2J Author, “History of A2J Author” <<https://www.a2jauthor.org/content/history-a2j-author>> (accessed 15 July 2020).

98 A2J Author, “History of A2J Author” <<https://www.a2jauthor.org/content/history-a2j-author>> (accessed 15 July 2020).

99 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 252.

100 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 252–253.

101 Legal Services Corporation, “How Legal Aid Works” <<https://www.lsc.gov/>>.

102 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 253.

103 Ronald W Staudt, “All the Wild Possibilities” (2009) 42 Loy LA L Rev 1117 at 1127.

104 Ronald W Staudt, “All the Wild Possibilities” (2009) 42 Loy LA L Rev 1117 at 1127.

105 Ronald W Staudt, “All the Wild Possibilities” (2009) 42 Loy LA L Rev 1117 at 1127.

106 Ronald W Staudt, “All the Wild Possibilities” (2009) 42 Loy LA L Rev 1117 at 1128–1129.

107 Ronald W Staudt, “All the Wild Possibilities” (2009) 42 Loy LA L Rev 1117 at 1128.

that conducts applied research in computer-mediated legal education,<sup>108</sup> collaborated to produce a software tool that legally-trained persons could use to produce an automated document, more quickly, easily and cheaply.<sup>109</sup> Using CALI's experience in devising online interactions with students,<sup>110</sup> they created A2J Author,<sup>111</sup> designed to be a "tool to build tools".<sup>112</sup>

25 A2J Author is defined as "a cloud based software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk's offices, legal services organizations, and law schools to rapidly build and implement user friendly web-based document assembly projects".<sup>113</sup> For interactions at the litigant level, A2J Author uses what is referred to as a guided interview.<sup>114</sup> The litigant is asked a series of logical questions, one at a time. The path taken through the document depends on the user's answers, and the user does not see a question screen if it does not apply to their situation.<sup>115</sup> There is a graphic interface, which in the default version uses a guide walking step by step to the courthouse, with signposts that show progress and announce the next set of questions.<sup>116</sup> The user's answers to the questions are used to populate a document, which is accomplished by a back-end assembly machine such as HotDocs.<sup>117</sup> In addition to the questions, the user is supported along the way by additional information

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108 See Center for Computer-Assisted Legal Instruction, "About CALI" <<https://www.cali.org/content/about-cali>> (accessed 15 July 2020).

109 Jessica Frank, "A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly" (2017) 39(2) *Western New England Law Review* 251 at 253.

110 Ronald W Staudt, "All the Wild Possibilities" (2009) 42 Loy LA L Rev 1117 at 1133.

111 Jessica Frank, "A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly" (2017) 39(2) *Western New England Law Review* 251 at 253.

112 Ronald W Staudt, "All the Wild Possibilities" (2009) 42 Loy LA L Rev 1117 at 1132, citing Ronald W Staudt, "Technology for Justice Customers: Bridging the Digital Divide Facing Self-Represented Litigants" (2005) 5 *University of Maryland Law Journal of Race, Religion, Gender & Class* 71 at 84.

113 A2J Author website <<https://www.a2jauthor.org/>> (accessed 15 July 2020).

114 A2J Author, "History of A2J Author" <<https://www.a2jauthor.org/content/history-a2j-author>> (accessed 15 July 2020).

115 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 1.

116 Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's 'DIY' Forms" (2014) *XLI Fordham Urban Law Journal* 1189 at 1200.

117 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.

and guidance,<sup>118</sup> and personalised instructions and information can be provided to increase the litigant's chances of reaching the courthouse.<sup>119</sup>

26 After its first release in 2005, A2J Author was picked up by legal aid offices and courts in state and federal court systems.<sup>120</sup> At the time of writing, A2J Author was being used in 43 states, the District of Columbia, Puerto Rico, the US Virgin Islands, Guam, Canada and Australia,<sup>121</sup> and statistics regarding usage are impressive. As of 2020, the programme had run over 4.7 million guided interviews and produced over 2.6 million documents.<sup>122</sup> It is understood in the industry that not all guided interviews lead to the creation and filing of a document, and the average rate of assembly is 53%.<sup>123</sup>

27 Document assembly programmes such as A2J Author benefit litigants, legal aid organisations, and participants in court proceedings. For the litigant, instead of having to search the Internet and court and other resources, and finding static forms<sup>124</sup> which require the litigant to figure out what information the form is asking for, litigants are asked a series of comprehensible questions. This saves unrepresented litigants considerable amounts of time.<sup>125</sup> They also know that they are receiving a set of legally sufficient forms, which can be filed in court.<sup>126</sup> They have access to legal information at times and locations which work for them, and they are more likely to complete the process of document production

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118 Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's 'DIY' Forms" (2014) XLI *Fordham Urban Law Journal* 1189 at 1200–1201.

119 Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's 'DIY' Forms" (2014) XLI *Fordham Urban Law Journal* 1189 at 1203.

120 Jessica Frank, "A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly" (2017) 39(2) *Western New England Law Review* 251 at 256; A2J Author <<https://www.a2jauthor.org/content/chapter-1-a2j-author-overview>> (accessed 15 July 2020).

121 A2J Author <[https://www.a2jauthor.org/where\\_is\\_A2JAuthor\\_used](https://www.a2jauthor.org/where_is_A2JAuthor_used)> (accessed 15 July 2020).

122 A2J Author <<https://www.a2jauthor.org/>> (accessed 15 July 2020).

123 Claudia Johnson, "Online Document Assembly Initiatives to Aid the Self-Represented" in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 100.

124 Jane Ribadeneyra, "Web-Based Legal Services Delivery Capabilities" (2002) 26(1) *Harv JL & Tech* 246 at 251.

125 Rochelle Klempner, "The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's 'DIY' Forms" (2014) XLI *Fordham Urban Law Journal* 1189 at 1212.

126 See Rebecca L Sandefur, "Legal Advice from Non-Lawyers: Consumer Demand, Provider Quality, and Public Harms" (2020) XVI *Stanford Journal of Civil Rights & Civil Liberties* 283 at 298–299.

faster and more often.<sup>127</sup> The removal of knowledge and resource barriers reduces the frustration<sup>128</sup> and stress encountered by unrepresented litigants,<sup>129</sup> which can be considerable. Lastly, the guided interviews have an educational as well as confidence building effect.<sup>130</sup> In terms of the law, unrepresented litigants understand procedures better, and they have a better sense of what their rights are.<sup>131</sup> Litigants who use these programmes report that they are empowering.<sup>132</sup>

28 Legal aid organisations use these systems to expand the reach of their limited funds,<sup>133</sup> for example, in the intake interview process,<sup>134</sup> or more often, by making them available to unrepresented individuals.<sup>135</sup> Automated documents allow staff to focus on more complex lawyering tasks<sup>136</sup> and create more document assembly content instead of trying to

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127 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.

128 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1216.

129 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 105.

130 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 105.

131 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.

132 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1212.

133 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 255.

134 See A2J Author, “Using A2J Author to Develop an Online Intake Project” <<https://www.a2jauthor.org/content/using-a2j-author-develop-online-intake-project>> (accessed 15 July 2020).

135 See Center for Computer-Assisted Legal Instruction, “A2J” <<https://www.cali.org/content/a2j-author>> (accessed 15 July 2020) (“A2J Author helps legal aid attorneys, court staff, and law students create web-based, self-guided A2J Guided Interviews for use by self-represented litigants and others in need”).

136 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 100.

obtain programming know-how.<sup>137</sup> Outside of legal aid circles, private *pro bono* attorneys can meet with clients, advise them what automated document to complete, and then review the document with the client.<sup>138</sup> Document automation is particularly helpful for *pro bono* attorneys who may lack particular expertise in a relevant practice area,<sup>139</sup> a concern that has limited *pro bono* participation among lawyers over the years.<sup>140</sup>

29 Judges, court personnel, and lawyers for parties opposing an unrepresented litigant also benefit from correctly conceived automated documents. Rochelle Klempner notes that automated documents “save court clerk time and improve court efficiency in various ways,”<sup>141</sup> and that the courts may have actually received greater benefits from automated documents than litigants.<sup>142</sup> The forms reduce the questions from litigants, as well as the number of errors that have to be corrected.<sup>143</sup> These documents more often produce legally sufficient pleadings with more accurate information for the judge, leading to “an increased chance of success on the merits and fewer applications for the same relief.”<sup>144</sup> The more efficient processing of court forms also eases court congestion for all

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137 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 255.

138 Pam Weisz, “Help Yourself: LawHelp Interactive Provides Online Assistance for Pro Se Litigants” *Law Technology News* (8 January 2010) <[https://www.probono.net/dasupport/news/article.290816-Help\\_Yourself\\_LawHelp\\_Interactive\\_provides\\_online\\_assistance\\_for\\_pro\\_se\\_lit](https://www.probono.net/dasupport/news/article.290816-Help_Yourself_LawHelp_Interactive_provides_online_assistance_for_pro_se_lit)> (accessed 17 December 2020).

139 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 100; Pam Weisz, “Help Yourself: LawHelp Interactive Provides Online Assistance for Pro Se Litigants” *Law Technology News* (8 January 2010) <[https://www.probono.net/dasupport/news/article.290816-Help\\_Yourself\\_LawHelp\\_Interactive\\_provides\\_online\\_assistance\\_for\\_pro\\_se\\_lit](https://www.probono.net/dasupport/news/article.290816-Help_Yourself_LawHelp_Interactive_provides_online_assistance_for_pro_se_lit)> (accessed 17 December 2020).

140 See Deborah L. Rhode, *Ethics in Practice: Lawyers’ Roles, Responsibilities, and Regulation* (Oxford; New York: Oxford University Press, 2000) at p 268; and James D. Abrams & Ann Hancock, “The Justice Gap and Pro Bono Legal” (ABA, 14 February 2017) <<https://www.americanbar.org/groups/litigation/committees/commercial-business/spotlight/2017/justice-gap-pro-bono-legal/>> (accessed 15 July 2020).

141 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 at 1215.

142 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 at 1214.

143 Jessica Frank, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (2017) 39(2) *Western New England Law Review* 251 at 258.

144 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.



users.<sup>145</sup> Attorneys for represented parties, who may otherwise be asked to assist the unrepresented party,<sup>146</sup> also benefit from the time savings as well as the clarity and predictability of issues. Perhaps most importantly, good quality document assembly programmes enhance “public trust and confidence in the court”, and litigants “perceive that they have received fair and equitable justice”.<sup>147</sup>

30 When automated court documents are offered directly to the public without the separate assistance of a legally-trained person, they would fit the direct model without separate legal support, and they would appear to raise consumer risks similar to the commercial documents that use this model. However, two key features distinguish court documents from commercial documents, and these features suggest that the level of consumer risk can differ. First, the entities creating court documents, such as legal aid groups, non-profit organisations, courts, and universities, have a mission to assist users; and second, the history of court document assembly systems and the current methods of creating prototype documents indicate that these systems are created by collaborations among these entities. Automated court forms “by necessity” create the need to consult and include different groups working with the overlapping populations that appear in court.<sup>148</sup> These collaborations, although challenging to manage, offer considerable benefits,<sup>149</sup> as partnerships can encourage the sharing of expertise and resources, and bring down costs.<sup>150</sup> Klempner suggests that courts are “in the best position to oversee a document assembly project to produce court-based programs

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145 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 at 1216.

146 See Liz Trinder, Richard Moorhead & Victoria Hinchly, *Litigants in Person in Private Family Law Cases* (UK: Ministry of Justice Analytical Services, 2014) at p 52; Elizabeth Richardson, Tania Sourdin & Nerida Wallace, *Self-Represented Litigants: Gathering Useful Information Final Report* (Australian Centre for Justice Innovation, 2012) at p 32; and Wing Hong Chui, Elsa Kelly & Camille Cameron, “Lawyers’ Perspectives on the Impacts of Self-representation in Civil Proceedings in Hong Kong” (2007) 14(2) *International Journal of the Legal Profession* 195 at 200–201.

147 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.

148 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 112.

149 See generally Task Force on Justice, “Innovating Justice: Needed and Possible” (Hiil, 2019) at pp 18–19.

150 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 10.

and implement courthouse usage for an array of reasons”,<sup>151</sup> including the need for neutral access to the justice system.<sup>152</sup> However, she also observes that while courts have the experience in determining whether a pleading should be accepted, legal aid organisations have a wealth of experience dealing with low-income litigants, and other partners such as libraries, clergy and charitable organisations are able to conduct public outreach and assist litigants with usage issues.<sup>153</sup> When these groups are consulted, they can provide important corrections to documents, ensuring their accuracy and conditions for use, and when the form goes live divergent groups can support and advocate for it, avoiding the inertia or even opposition that can otherwise arise.<sup>154</sup>

### C. *Government, court and non-profit document assembly in Singapore*

31 Singapore presents an environment in which users are likely to submit online documents in the legal context. It is possible to file a non-urgent police report online,<sup>155</sup> as well as initiate other matters such as applying for a licence or permit.<sup>156</sup> The Ministry of Law provides links to e-services for, *inter alia*, the Registry of Moneylenders, Applications for Community Mediation, and the Legal Aid Bureau.<sup>157</sup> In the court context, users can also encounter simplified proceedings and online documents. Unlike the US, where the myriad of state courts, case management systems, and forms create a “herculean task of coordination”,<sup>158</sup> Singapore has a unified court system, one that is forward looking and has reliable levels of funding.

151 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 2.

152 Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) *XLI Fordham Urban Law Journal* 1189 at 1208–1209.

153 Rochelle Klempner, *Best Practices: Document Assembly Programs Best Practices Guide for Court System Development and Implementation Using A2J Author* (New York State Courts Access to Justice Program, 3rd Ed, 2017) at p 10.

154 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 112.

155 Singapore Police Force, “Police Report” <<https://eservices.police.gov.sg/content/policehubhome/homepage/police-report.html>> (accessed 15 July 2020).

156 Singapore Police Force, “eServices” <<https://eservices.police.gov.sg/homepage>> (accessed 15 July 2020).

157 Singapore Ministry of Law, “E-Services” <<https://www.mlaw.gov.sg/e-services/>> (accessed 15 July 2020).

158 Rebecca L Sandefur, *Legal Tech for Non-Lawyers: Report of the Survey of US Legal Technologies* (American Bar Foundation, 2019) at p 16.

32 In Singapore, simplified forms and/or online filing are available for small claims, employment claims and neighbour disputes.<sup>159</sup> The Community Justice and Tribunals System (“CJTS”) was launched in July 2017 as an “online case filing and management system for claims in the Small Claims Tribunals”.<sup>160</sup> In February 2018, the second phase of CJTS was launched to facilitate the electronic filing of neighbour dispute claims before the Community Disputes Resolution Tribunals (“CDRT”), which includes a pre-filing assessment for applicants to find out if their dispute comes within the CDRT’s jurisdiction, and this was followed in January 2019 by the third phase, the online filing of claims before the Employment Claims Tribunal.<sup>161</sup> An online dispute resolution option is also available for CJTS matters.<sup>162</sup>

33 Efforts are made to make court forms accessible to laypersons, and simplified forms in plain English are used in the CDRT,<sup>163</sup> although these forums do not necessarily use an automated form with guided interviews. In the Employment Claims Tribunal, claims are filed online, but questions have been raised regarding the legalistic language used in the online documents, which may pose difficulties for workers with basic English skills, who may also lack computer literacy and access.<sup>164</sup> The State Courts have noted that prior to filing the claim, court users can call a hotline, ask for assistance at court counters, or get assistance from the Community Justice Centre (“CJC”),<sup>165</sup> illustrating the fact that different approaches to online documents can be used.

34 The Family Justice Courts have developed the Integrated Family Application Management System (“iFAMS”), for the filing of maintenance

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159 State Courts of Singapore, “Community Justice and Tribunals System” <<https://www.statecourts.gov.sg/CJTS/#!/index1>> (accessed 15 July 2020).

160 Justice See Kee Oon, “State Courts: 2020 and Beyond”, keynote address at the State Courts Workplan 2019 (8 March 2019) at para 13.

161 Justice See Kee Oon, “State Courts: 2020 and Beyond”, keynote address at the State Courts Workplan 2019 (8 March 2019) at para 14.

162 Community Justice & Tribunals Division, State Courts of Singapore, “E-Negotiation” <<https://stg.statecourts.gov.sg/cws/SmallClaims/Pages/e-Negotiation.aspx>> (accessed January 2021); and see Justice See Kee Oon, “State Courts: 2020 and Beyond”, keynote address at the State Courts Workplan 2019 (8 March 2019) at para 15; and *State of Legal Innovation in the Asia Pacific* (Jerrold Soh chief ed) (Singapore: Singapore Management University, 2019) at p 92.

163 See *State of Legal Innovation in the Asia Pacific* (Jerrold Soh chief ed) (Singapore: Singapore Management University, 2019) at p 92.

164 Desiree Long, “E-filing of Employment Claims a Challenge for Migrant Workers” (Letter) *The Straits Times* (19 April 2019).

165 Andre Tan, “On-site Support for Court Users at Every Stage” (Letter) *The Straits Times* (27 April 2019).

and protection orders and related applications.<sup>166</sup> Launched on 10 July 2017, iFAMS simplifies “processes for family violence and maintenance applications”, and it moved the relevant documents from a hard paper submission at the court to online submission.<sup>167</sup> iFAMS also covers “electronic case filing, workflow routing and the generation of electronic letters and court orders”.<sup>168</sup> When it was first launched, applicants needed to process applications either at the court or at community and family violence specialist centres,<sup>169</sup> but at the time of writing iFAMS was also available from the user’s device.<sup>170</sup> The portal offers maintenance order applications, protection order applications, Vulnerable Adults Act<sup>171</sup> applications, and applications for the appointment of a deputy or related orders under the Mental Capacity Act.<sup>172</sup> These online documents use simplified language and provide informational and other support. For example, for a fresh maintenance order, the website advises the documents required, estimates 10–15 minutes of completion time, and provides a link to organisations that can assist applicants.<sup>173</sup> Commenting on applications to change the amount of maintenance, one lawyer noted that iFAMS helps divorcing couples; they do not need to hire a lawyer each time they want to change the sum of maintenance awarded previously, because they can “do it themselves through the portal”.<sup>174</sup>

35 A significant source of automated court documents in Singapore is the CJC, a Singapore charity that works closely with the courts to support unrepresented litigants. The history and activities of the CJC indicate that they have the focus and expertise to support unrepresented litigants in a variety of ways. The precursor to the CJC was the HELP (Helping to Empower Litigants-in-Person) Centre, established in 2010<sup>175</sup> within

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166 Family Justice Courts of Singapore, “Frequently Asked Questions” <[https://www.ifaq.gov.sg/FamilyJusticeCourts/apps/fcd\\_faqlmain.aspx#FAQ\\_222781](https://www.ifaq.gov.sg/FamilyJusticeCourts/apps/fcd_faqlmain.aspx#FAQ_222781)> (accessed 15 July 2020).

167 Valerie Koh, “Application Forms for Protection and Maintenance Orders Can Now Be Prepared Online” *Today* (23 April 2017).

168 Valerie Koh, “Application Forms for Protection and Maintenance Orders Can Now Be Prepared Online” *Today* (23 April 2017).

169 Valerie Koh, “Application Forms for Protection and Maintenance Orders Can Now Be Prepared Online” *Today* (23 April 2017).

170 Theresa Tan, “Family Justice Courts Launch Cheaper and Faster Way for Users to File Applications” *The Straits Times* (2 October 2017).

171 Act 27 of 2018.

172 Family Justice Courts of Singapore, “iFAMS” <<https://ifams.gov.sg/sop/process/IFAMS/Home#iFAMS>> (accessed 15 July 2020).

173 Family Justice Courts of Singapore <<https://ifams.gov.sg/sop/process/IFAMS/MaintenanceOrder/FreshMo#iFAMS>> (accessed 15 July 2020).

174 Theresa Tan, “Family Justice Courts Launch Cheaper and Faster Way for Users to File Applications” *The Straits Times* (2 October 2019).

175 Subordinate Courts of Singapore, “HELP Centre” 01 *Subcourts News* (September 2010) at p 4.

the lower tier of Singapore courts, then referred to as the Subordinate Courts.<sup>176</sup> The objective of the Centre was to “assist litigants-in-person in the conduct of their cases by providing them with basic information on court processes, procedures and practices, as well as additional avenues through which they can seek legal advice and assistance”.<sup>177</sup> In 2012, the Subordinate Courts determined that “[m]ore can be done to enhance the access to justice, and to ensure the sustainable delivery of the support initiatives”.<sup>178</sup> A collaboration between the Subordinate Courts, the Tan Chin Tuan Foundation,<sup>179</sup> the Ministry of Community Development, Youth and Sports, the Ministry of Law, and the Law Society of Singapore established the CJC, a “one-stop hub that provides free practical and emotional support to indigent” litigants who are unrepresented.<sup>180</sup> Moving beyond just legal information, the CJC also provided non-legal assistance such as “interim financial support and food vouchers, in collaboration with [other] organisations ... and makes referrals to social service agencies for longer-term support”.<sup>181</sup> The primary structure of assistance to unrepresented litigants in Singapore thus changed at that time, from the courts to a non-profit charity, but the CJC continues to work closely with the courts and other stakeholders. The Patron of the CJC when it was created was then Chief Justice Chan Sek Keong,<sup>182</sup> and the current Patron is the current Chief Justice, Sundaresh Menon.<sup>183</sup> As reflected in the CJC Annual Report 2018, the CJC Executive Committee includes members of the Judiciary in the State Courts and the Family Justice Courts, and representatives from the Ministry of Law, the Ministry of Social and Family Development, the Law Society, and the Tan Chin Tuan Foundation,<sup>184</sup> illustrating the collaborative efforts that go into CJC activities.

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176 See Subordinate Courts (Amendment) Act 2014 (Act 5 of 2014); and the State Courts Act (Cap 321, 2007 Rev Ed).

177 Subordinate Courts of Singapore, “HELP Centre” 01 *Subcourts News* (September 2010) at p 4.

178 Subordinate Courts of Singapore, “Establishing the Community Justice Centre: Enhancing Access to Justice for Litigants in Person” 04 *Subcourts News* (June 2012) at p 3.

179 A charitable organisation, the Tan Chin Tuan Foundation provided \$250,000 annually for three years; see Amir Hussain, “Community Justice Centre to Help Unrepresented Litigants” *Today* (2 March 2013).

180 Subordinate Courts of Singapore, “Establishing the Community Justice Centre: Enhancing Access to Justice for Litigants in Person” 04 *Subcourts News* (June 2012) at p 3.

181 Lee Wen-Yi, “Self-Representing in Court? Shew is There to Help” *The Straits Times* (14 April 2018).

182 “New Community Justice Centre to Start Operations in Q4” *Channel NewsAsia* (20 June 2012).

183 Community Justice Centre, *Annual Report 2018*.

184 Community Justice Centre, *Annual Report 2018*.

36 The CJC's experience with unrepresented litigants is reflected in the six main forms of support that it offers: information services educating litigants on, *eg*, court jurisdiction and procedure; referral services to government and specialist agencies; legal clinics by volunteer lawyers providing free legal advice; practical support services such as completion of court forms; lay assistance via volunteers to support litigants when they attend court; and public outreach to educate a wider group of users.<sup>185</sup> The CJC offers programmes such as the "Guidance for Plea" Scheme, in which volunteer lawyers give *pro bono* advice to litigants who may be unaware of their legal rights, and the "Friends of Litigant-in-Person" ("FLiP") programme, where volunteers accompanied unrepresented litigants to court and provided emotional support and guidance.<sup>186</sup> In 2014, the CJC launched the On-site Legal Advice Scheme, in which two lawyers are available five days a week to provide free legal advice. An average of 14 people use the service every day.<sup>187</sup>

37 Automated Court Documents Assembly ("ACDA"), the CJC's automated document assembly system, was launched on 13 April 2018 as part of the CJC's online help centre.<sup>188</sup> The CJC recognised that unrepresented litigants lacked "a comprehensive support system that could assist them in understanding court processes and filling up court forms", and that an online system could assist unrepresented litigants as well as expand the operational efficiency of CJC personnel.<sup>189</sup>

38 The CJC's online help centre, called the Self-Help eWeb ("SHeW"),<sup>190</sup> includes both automated court documents and a chatbox.<sup>191</sup> The SHeW system also incorporated features which allow the CJC to develop reporting and statistical analysis, to track and predict usage trends.<sup>192</sup> Leonard Lee, Executive Director of the CJC, observed that

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185 Subordinate Courts of Singapore, "Establishing the Community Justice Centre: Enhancing Access to Justice for Litigants in Person" 04 *Subcourts News* (June 2012) at p 3.

186 State Courts of Singapore, *Annual Report 2013* at p 49, "Launch of the Community Justice Centre".

187 Joyce Lim, "Over 8,000 Get Aid from Courts' One-stop Centre" *The Straits Times* (30 September 2014).

188 Kamini Devadass, "New E-Tool to Help Litigants-In-Person Prepare Court Documents" *Channel NewsAsia* (13 April 2018).

189 Bernice Tan, "Innovation in the Pro Bono Scene: An Interview with Leonard Lee" (2018) *Singapore Comparative Law Review* 132 at 133.

190 Lee Wen-Yi, "NGO Rolls Out Online Centre to Guide People Who Represent Themselves in Court" *The Straits Times* (13 April 2018).

191 Bernice Tan, "Innovation in the Pro Bono Scene: An Interview with Leonard Lee" (2018) *Singapore Comparative Law Review* 132 at 132.

192 Bernice Tan, "Innovation in the Pro Bono Scene: An Interview with Leonard Lee" (2018) *Singapore Comparative Law Review* 132 at 132.



ACDA should only be used after an unrepresented litigant had “exhausted all other options, such as engaging a lawyer, contacting the Legal Aid Bureau, or using other legal aid schemes such as the Criminal Legal Aid Scheme under the Law Society Pro Bono Services, or the Primary Justice Project under the CJC. The current technology is good to assist and supplement, but not replace the legal services from lawyers”.<sup>193</sup>

39 At the time of writing, ACDA included four documents:<sup>194</sup> self-declared bankruptcy applications, mitigation pleas, deputyship applications and a magistrate’s complaint.<sup>195</sup> The CJC indicated that it chose to focus on these areas “as litigants-in-person sought assistance on them more frequently”.<sup>196</sup> The first automated document was the debtor’s bankruptcy application (“Application”), because in view of the type of proceeding, these litigants clearly did not have money for a lawyer’s assistance.<sup>197</sup> The document went through multiple rounds of testing with feedback, in hypothetical and real cases, which helped to calibrate the correct reading level.<sup>198</sup> The current process with the Application is that the user fills out the document, on their own or with the assistance of law students at the On-site Legal Clinic at the Supreme Court building where bankruptcy matters are heard, and before the document is issued, it can be reviewed by a lawyer at the On-site Legal Clinic.<sup>199</sup> The clinic is free, and slots are included on days when bankruptcy hearings are held.<sup>200</sup> After the Application is submitted, it is reviewed in a court hearing.<sup>201</sup>

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193 Bernice Tan, “Innovation in the Pro Bono Scene: An Interview with Leonard Lee” (2018) *Singapore Comparative Law Review* 132 at 133.

194 Community Justice Centre, “Automated Court Documents Assembly” <<https://cjc.org.sg/automated-court-documents-assembly/>> (accessed 15 July 2020).

195 In Singapore, a magistrate’s complaint is filed by a person pursuing a private prosecution, which is “the pursuit of criminal legal proceedings by a private individual, who believes that an offence has been committed against him”; see State Courts of Singapore, “An Overview of Magistrate’s Complaints” <<https://www.statecourts.gov.sg/cws/FilingMagistrateComplaint/Pages/Magistrate-Complaints-Overview.aspx>> (accessed 15 July 2020).

196 Kamini Devadass, “New E-Tool to Help Litigants-in-Person Prepare Court Documents” *Channel NewsAsia* (13 April 2018).

197 Interview with Leonard Lee, Executive Director of the Community Justice Centre (Singapore, 2020).

198 Interview with Leonard Lee, Executive Director of the Community Justice Centre (Singapore, 2020).

199 Interview with Leonard Lee, Executive Director of the Community Justice Centre (Singapore, 2020).

200 Community Justice Centre, “On-site Legal Clinic (OSLAS)” <<https://cjc.org.sg/services/legal-services/on-site-legal-clinic-olas/>> (accessed 15 July 2020).

201 See Pt 16, s 308 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) (“Persons who may make debtor’s bankruptcy application”) and r 5 of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 (S 585/2020) (“Hearing of Applications”).

40 As reviewed above, the collaborative process that guides the development of automated court documents in the non-profit environment in the US is also present in Singapore, a point reflected in the split handling of the magistrate's complaint. An "Overview of Magistrate's Complaints"<sup>202</sup> and a "Pre-Filing Assessment for Magistrate's Complaints" to ensure the user meets basic requirements<sup>203</sup> are hosted by the Singapore State Courts, while the document assembly and visual guides and informational tools are hosted by the CJC.<sup>204</sup>

41 ACDA is a relatively recent development in Singapore, and only limited usage statistics are available. Statistics from the CJC indicate that there has been uptake. Table 1 indicates that debtor's bankruptcy application users numbered 37 in the first year, 2018, and that users increased to 42 in 2019. The Ministry of Law publishes figures of the number of bankruptcy applications but does not report debtor applications separately,<sup>205</sup> so the percentage of applications made using ACDA is not calculated here. It can be noted that ACDA's average percentages of generated bankruptcy applications for 2018 and 2019 are 75.7% and 61.9% respectively, higher than the 50% averages for document generation in the US.

42 Uptake for the magistrate's complaint is even higher, with 456 users in 2019 and a generation percentage of 72.6%. At the time of writing, statistics were not available for the number of magistrate's complaints in the Community Justice and Tribunals Division for 2019, but in 2018 there were 1,785 complaints,<sup>206</sup> and if the numbers remain fairly consistent for 2019, that would suggest that roughly 18.5% of complaints may have been generated using the document assembly system.

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202 State Courts of Singapore, "An Overview of Magistrate's Complaints" <<https://www.statecourts.gov.sg/cws/FilingMagistrateComplaint/Pages/Magistrate-Complaints-Overview.aspx>> (accessed 15 July 2020).

203 State Courts of Singapore, "Pre-Filing Assessment for Mag Complaints" <<https://form.gov.sg/#/5ce351c15b73fe00175fb7be>> (accessed 15 July 2020).

204 Community Justice Centre, Automated Court Documents Assembly, "Magistrate's Complaint" <<https://cjc.org.sg/automated-court-documents-assembly/self-help-magistrates-complaint/>> (accessed 15 July 2020).

205 "Number of Bankruptcy Applications, Orders Made and Discharges" (January–December 2019) <[https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges\(December19\).pdf/](https://io.mlaw.gov.sg/files/NumberofBankruptcyApplicationsOrdersMadeandDischarges(December19).pdf/)> (accessed 15 July 2020).

206 "State Courts Caseload Figures Breakdown by Case Type" <<https://data.gov.sg/dataset/caseload-figures-of-state-courts>> (accessed 15 July 2020).

	2018		2019	
	Number of Users	Number of Forms Generated	Number of Users	Number of Forms Generated
Bankruptcy	37	28	42	26
Magistrate's Complaint	–	–	456	331

Table 1: ACDA users and generated forms<sup>207</sup>

43 There will be users who are not comfortable with or have the resources to use online documents,<sup>208</sup> or do not possess the required level of English language skills,<sup>209</sup> and there does need to be a venue of assistance for these users. As the ACDA programme was intended to supplement and not replace the CJC’s different forms of assistance, these users are able to contact or visit the CJC for help, although other kinds of support services may need to be explored.<sup>210</sup>

IV. Challenges raised by document assembly systems: Balancing access to justice and consumer risk

44 Parts II and III above reviewed different kinds of automated documents, using Mountain’s automated document models to identify the environments in which documents are created as well as initial concerns regarding consumer risk. Excluding law firm usage, the examples mostly fall into the direct model, either with or without separate legal support. Commercial automated documents and non-profit court assembly documents, as they both fall within these models, may appear to pose similar levels of consumer risk. However, the comparative review of the entities that create these documents and the process used to generate them suggests that the risks in these environments can differ. Further analysis is needed, and the article suggests four questions to analyse consumer risk more closely:

207 Statistics provided by Leonard Lee, Executive Director of the Community Justice Centre.

208 See Chief Justice Sundaresh Menon, “Technology and the Changing Face of Justice”, keynote lecture at the Negotiation and Conflict Management Group ADR Conference 2019 (14 November 2019) at paras 29 and 32.

209 Leonard Lee & Joey Lee, “An Exploratory Study of Litigants-in-Person and the Use of Technology” (2020) at pp 3 and 18 (copy on file with author).

210 See Catrina Denvir, *Assisted Digital Support for Civil Justice System Users: Demand, Design, & Implementation* (London: Civil Justice Council, Final Research Report, April 2018).

- (a) How would a lay user view a document produced by a document assembly system?
- (b) Who creates the automated document?
- (c) What kind of document is it? And will a knowledgeable third party other than the user or the document producer review the document, in a timely fashion?
- (d) Is there any recourse if things go wrong, and is it adequate and fair?

45 In Part IV, all four questions are applied to key examples of non-profit court document automation, as well as automated commercial documents created outside of the law firm context. Law firm usage, via internal usage not visible to the client or via the hybrid model, is not considered further, because although this usage offers a significant point of comparison to direct models, it appears to pose relatively lower levels of consumer risk.

**A. *How would a lay user view a document produced by a document assembly system?***

46 Because the potential user considered here is not trained in the law, analysis begins with the question of how a layperson would typically view a document produced by a document assembly system, what confusions they may encounter, and what caution they might exercise. There are of course different kinds of users, some more law or tech savvy than others, but Mountain has observed that many people think of matters such as estate planning “as form-filling and regard the consumer document preparation businesses as a perfect substitute for a lawyer”.<sup>211</sup> An unregulated market may therefore create “problems for consumers if their rights are inadequately protected or even harmed by the documents they receive”,<sup>212</sup> but consumers don’t appear “to recognize the need to reduce their risk” or be aware of the insurance function provided by lawyers.<sup>213</sup>

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211 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 183.

212 Catherine J Lancot, “Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law” (2002) 30(3) *Hofstra L Rev* 811 at 848.

213 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 183.

47 Document assembly systems do expand access to justice because they serve as an affordable bridge between the lay user and the law, but there is concern that automated documents may increase the ability of some unrepresented litigants to harm themselves.<sup>214</sup> The main fear is that users will find the form online and use it “without fully understanding the implications of their pleadings, placing their own case at risk”.<sup>215</sup> If this occurs, there is nothing wrong with the automated document but it may not suit the user. At this stage of their development, automated documents are limited in number, so if a document needed by the user is not available the user may substitute another one.<sup>216</sup> Complications may arise if an unrepresented litigant presents a well-crafted document but one not suited to their needs, because this document may attract less of a review from a court than a poorly-drafted document. These kinds of possibilities mean that automated documents must be accompanied by an initial assessment<sup>217</sup> that screens users out of using documents not suited to their circumstances, and optimally refers them to other sources of information and support.<sup>218</sup>

48 If the user grasps that the document is legal and needs to be treated with caution, *eg*, because the website says users can create “legal documents”,<sup>219</sup> the matter is made potentially confusing if the website also says that it is not providing legal advice, which many online document providers do.<sup>220</sup> These disclaimers are used by commercial as well as

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214 Linder Rexler & Phil Malone, “Overcoming Barriers to Adoption of Effective Technology Strategies for Improving Access to Justice” (Fall 2002) 26(1) Harv JL & Tech 305 at 308.

215 Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at p 109.

216 See Linder Rexler & Phil Malone, “Overcoming Barriers to Adoption of Effective Technology Strategies for Improving Access to Justice” (Fall 2002) 26(1) Harv JL & Tech 305 at 309 (parent’s use of a divorce form intended for couples without children).

217 Linder Rexler & Phil Malone, “Overcoming Barriers to Adoption of Effective Technology Strategies for Improving Access to Justice” (Fall 2002) 26(1) Harv JL & Tech 305 at 308–309.

218 See Rochelle Klempner, “The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System’s ‘DIY’ Forms” (2014) XLI *Fordham Urban Law Journal* 1189 and 1202; and see Claudia Johnson, “Online Document Assembly Initiatives to Aid the Self-Represented” in *Innovations for Self-Represented Litigants* (Bonnie Rose Hough & Pamela Cardullo Ortiz eds) (Association of Family and Conciliation Courts, 2011) at pp 108, 109 and 113–114.

219 See, *eg*, LawPath <<https://lawpath.com.au/>> (accessed 15 July 2020).

220 See generally Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955 at 973.

non-profit entities.<sup>221</sup> Websites may advise users that they can seek the assistance of a lawyer if they want legal advice<sup>222</sup> – but why should users seek a lawyer’s assistance if the document they receive is not legal advice?

49 This circularity makes perfect sense in the context of unauthorised practice of law (“UPL”) regulation. Professional regulation in many common law jurisdictions has traditionally differentiated legal information, which non-lawyers can provide, from legal advice, which only lawyers can provide.<sup>223</sup> The US has historically been an enthusiastic promoter of UPL, although it appears that recently bar associations have mostly failed to, for example, “curtail LegalZoom’s online forms business”.<sup>224</sup> Suggestions have been made to adjust these conceptual categories,<sup>225</sup> and the legal information-legal advice duality may in time give way to a different category or approach, but under current schemes of professional regulation in many common law countries, document assembly systems intended for use without a lawyer need to state that

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221 In Singapore see, eg, Community Justice Centre, “What Is Automated Court Document Assembly (ACDA)?” <<https://cjc.org.sg/automated-court-documents-assembly/self-help-bankruptcy/frequently-asked-questions/>> (accessed 15 July 2020):

The ACDA is not intended to supplement or substitute any legal services. You are strongly encouraged to seek professional legal assistance if you have any doubts with respect to your case or the completeness of the documents generated. The CJC holds no responsibility for any incomplete, inaccurate or submission of wrong court forms.

222 See, eg, LawPath, “If Legal Advice Is Required the Customer Should Contact a Legal Professional” <<https://lawpath.com.au/terms-and-conditions>> (accessed 15 July 2020).

223 In the US, see Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955; Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 41–54; Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at pp 14–20; Deborah L Rhode & Lucy Buford Ricca, “Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement” (2014) 82 *Fordham L Rev* 2587; Darryl R Mountain, “Disrupting Conventional Law Firm Business Models Using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 186–188; and Catherine J Lancot, “Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law” (2002) 30(3) *Hofstra L Rev* 811.

224 Benjamin H Barton & Deborah L Rhode, “Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators” (2019) 70 *Hastings LJ* 955 at 963; and see Judith Bennett *et al*, “Current State of Automated Legal Advice Tools”, Networked Society Institute Discussion Paper 1 (April 2018) at p 19.

225 See, eg, Raymond H Brescia, Alexandria Decatur & Julia Kosineski, “Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations” (2019) 29(1) *Albany Law Journal of Science & Technology* 16 at 49–54 (asserting a third category of legal guidance).



what they provide is not legal advice.<sup>226</sup> A related difficulty is that because the consumer can access the legal document assembly website from the Internet, it seems to have an implicit seal of approval. Lay users in this environment could reasonably conclude that they do not need a lawyer to produce the document from a document assembly system. Websites that offer additional lawyer review, for a different, higher price, *ie*, the direct model with separate legal support, arguably convey this point even more strongly.

50 Assuming that some users may be confused about whether their document is legal advice, or that some users might use the wrong document or use the document incorrectly, that does not require the conclusion that document assembly systems should be prohibited. As established above, document assembly systems expand access to justice for unrepresented individuals and benefit other justice actors as well. Also, even if a jurisdiction decided to prohibit automated legal documents, it would be a difficult decision to enforce given the fluidity of Internet borders.<sup>227</sup> In working through the risks posed by automated documents, policy makers can consider the combined impact of the four factors identified here, and determine how particular combinations should be handled.

## **B. Who creates the automated document?**

51 Document assembly systems could potentially have flaws, *eg*, they could produce outdated documents or documents inappropriate for the stated task. If they exist, flaws “in many legal forms cannot easily be discerned by most lay customers”.<sup>228</sup> The documents therefore must incorporate “the latest legal developments” and be “up-to-date”.<sup>229</sup> Regarding these and other important qualities of automated documents, should it matter what entity produces the document? One approach to ensuring that the entities creating and maintaining the document are qualified to do so is a private governance scheme that bestows

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226 Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at pp 15–20.

227 See, *eg*, Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at p 14.

228 See American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers Report” (Resolution 10A, adopted 12–13 August 2019) at p 10; see also Rebecca L Sandefur, “Legal Advice from Non-Lawyers: Consumer Demand, Provider Quality, and Public Harms” (2020) XVI *Stanford Journal of Civil Rights & Civil Liberties* 283 at 300.

229 Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at p 32.

a certification.<sup>230</sup> If utilised, this approach could potentially address the issues raised by document providers who are out of the jurisdiction and beyond the reach of regulatory authorities.

52 Another approach could distinguish between the type of entities creating and hosting automated documents. As noted in Parts II and III above, commercial producers of documents develop documents in-house or with a commercial partner, while court documents are normally produced by collaboration among courts, universities, and legal aid and other organisations serving the needs of poor individuals. The distinction between the types of entities producing assembly systems was addressed when the American Bar Association adopted its Best Practice Guidelines for Online Legal Document Providers (“ABA Guidelines”) in 2019.<sup>231</sup> Various bar associations in the US had attacked online document providers such as LegalZoom for engaging in the unauthorised practice of law as well as other issues.<sup>232</sup> The Report accompanying the ABA Guidelines observed that these efforts were “almost always settled favorably” for document providers, or if a ruling went against them, it was “sometimes overruled by legislatures”.<sup>233</sup> Working together with the New York County Lawyers Association, the ABA threw in the UPL towel and agreed to a set of guidelines that outlined best practices for document providers, which, *inter alia*, directs providers to provide users with clear, plain instructions as to how to complete the forms and the appropriate uses for each form, and maintain the form’s validity in the jurisdiction or explain any limitations.<sup>234</sup>

53 The ABA Guidelines, however, do not apply to every document provider. Exempt entities include: lawyers and law firms that have a *bona fide* attorney–client relationship with the user, where the user is protected by the lawyer’s professional obligations of competence, *etc*; forms primarily marketed to lawyers, who presumably have the expertise to do their own evaluation; and forms prepared by “courts, court-related

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230 Susan Saab Fortney, “Online Legal Document Providers and the Public Interest: Using a Certification Approach to Balance Access to Justice and Public Protection” (2019) 72(1) *Oklahoma Law Review* 91.

231 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers” (Resolution 10A, adopted 12–13 August 2019).

232 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers Report” (Resolution 10A, adopted 12–13 August 2019) at p 3.

233 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers Report” (Resolution 10A, adopted 12–13 August 2019) at pp 3 and 4.

234 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers” (Resolution 10A, adopted 12–13 August 2019).

self-help centers, or government agencies”.<sup>235</sup> The ABA exempted these entities because they “have far less of an incentive, and are simply less likely than other [online document providers], to provide inaccurate forms, misuse customer data or otherwise cause harm to members of the public”.<sup>236</sup> Commercial document assembly companies should desire a good reputation and would likely work to achieve it, but their need to make a profit may distinguish them from the multi-dimensional collaborations that review and produce court documents.<sup>237</sup> The ABA Guidelines did not exempt non-profits generally, but the rationale for the ABA Guidelines would arguably apply to entities whose primary goal is to assist the user and who are not under pressure to turn a profit. For example, one issue noted by the ABA Guidelines is the potential misuse of customer data. Data protection is a potential issue with any document assembly system,<sup>238</sup> but this risk appears to pose greater issues from companies that need to maximise profits, eg, leading some for-profit companies that collect data to sell, rent or exchange it in order to maximise value.<sup>239</sup> Also, in the wider context of professional regulation, there are indications that the legal advice provided in a commercial setting is viewed differently from non-profit or *pro bono* assistance,<sup>240</sup> at least

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235 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers” (Resolution 10A, adopted 12–13 August 2019) at fn 1.

236 American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers Report” (Resolution 10A, adopted 12–13 August 2019) at p 5.

237 On other potential roles in access to justice for persons in positions of trust, see Tanina Rostain, “Techno-Optimism & Access to the Legal System” (2019) *Dædalus* 93 at 95–96.

238 In Singapore, see, eg, the Community Justice Centre, “What Is Automated Court Documents Assembly (ACDA)?” <<https://cjc.org.sg/automated-court-documents-assembly/self-help-bankruptcy/frequently-asked-questions/>> (accessed 15 July 2020) (“[y]our answers are stored on a secure and encrypted server. After 90 days, your personal information will automatically be deleted from the system”) and “Privacy and Cookie Policy” <<https://cjc.org.sg/privacy-and-cookie-policy/>>; and see the American Bar Association, “ABA Best Practice Guidelines for Online Legal Document Providers” (Resolution 10A, adopted 12–13 August 2019) Guidelines 7, 9 and 10.

239 See, eg, Louise Matsakis, “The WIRED Guide to Your Personal Data (and Who Is Using It): Information about You, What You Buy, Where You Go, Even Where You Look Is the Oil That Fuels the Digital Economy” *Wired* (15 February 2019) <<https://www.wired.com/story/wired-guide-personal-data-collection/>> (accessed 15 July 2020); Gabriel J X Dance, Michael LaForgia & Nicholas Confessore, “As Facebook Raised a Privacy Wall, It Carved an Opening for Tech Giants” *The New York Times* (18 December 2018); and Katharine Schwab, “How Widely Do Companies Share User Data? Here’s a Chilling Glimpse” *Fast Company* (19 January 2018) (“[w]hen you sign up for a digital service that asks you to sign a long terms-of-service agreement, chances are that company is going to be sharing your data with third parties”).

240 See Tanina Rostain, “Techno-Optimism & Access to the Legal System” (2019) *Dædalus* 93 at 95 (as of 2018, no publicised attempts to enforce US unauthorised practice of law (“UPL”) regulations “against nonprofit organisations”); Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society (cont’d on the next page))

regarding certain issues.<sup>241</sup> The kind of entity producing an automated document does not ensure the quality of the document, but it is a factor which could be taken into account when evaluating the risks posed by different document assembly systems.

**C.      *What kind of document is it? And will a knowledgeable third party other than the user or the document producer review the document, in a timely fashion?***

54      The kind of document produced, and the related question of whether the document will be reviewed by a third party in a timely fashion, also impact consumer risk. For example, if the document is an entry-level court document that will get the user into the legal system, and the document will be reviewed by a third party other than the user or the document producer, then this review can flag issues and prompt the interrogation of difficulties. ACDA's debtor's bankruptcy application is a good example of these qualities. Before the debtor uses the document, it can be reviewed by a legal clinic lawyer, and after the document is filed, it is subject to further review in court. If an automated document is not an entry-level document, but it will be reviewed by an independent third party such as a judge or referee, that reduces the chances that a wrong document will harm the user.

55      The need to reduce the risks that an incorrect or wrong document pose to the consumer is one of the reasons why wills generated by document assembly systems pose issues. By their nature, wills are private documents, and others may not know they exist, let alone whether they were drawn up by a lawyer or an online service. A will may not be reviewed by a legally-trained person until decades after it was produced, and more importantly after the testator has passed away, leaving no ability to correct the document or execution errors. As Catherine Lanctot queried, "how many of us would be happy to learn that our parents had purchased their

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Institute Discussion Paper 1, April 2018) at p 20 (giving legal advice for reward is at the very centre of legal practice); Benjamin P Cooper, "Access to Justice Without Lawyers" (2014) 47(1) *Akron Law Review* 205 at 214 (*pro bono* efforts to assist in the creation and provision of forms may avoid UPL laws); and in the context of rules prohibiting champertous agreements, see the Singapore High Court decision in *Law Society of Singapore v Kurubalan* [2013] 4 SLR 91 at [89].

241 In Singapore, see Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Singapore: Academy Publishing, 2007) at para 26-017; in the US, see American Bar Association, Section of Litigation, "Pro Bono Basics" <<https://www.americanbar.org/groups/litigation/initiatives/pro-bono-for-immigrant-children/pro-bono-basics/>> (accessed 15 July 2020).

will” online?<sup>242</sup> At the time of writing in Singapore, in a development apparently generated in part by the spread of the COVID-19 virus, AsiaLaw Network offered a “[COVID-19 Frontline Healthcare] Pro Bono Wills and LPA Consult”, a “[f]ree 20 minutes consult with lawyers to run through any queries they may have in drafting wills and [lasting power of attorney] LPA using OCBC will generator and LPA forms online”.<sup>243</sup> It is not clear how long this service might continue, but even a relatively brief review by a legally-trained person provides some level of assurance that the user has not chosen the wrong document and that the entire document is appropriate for the user.

56 If a document review occurs, it should be done by someone with sufficient legal training to identify difficulties. This does not have to be a lawyer, but it could be, and in fact document assembly systems offer a restructured, time-efficient stream of *pro bono* assistance that could replace work currently being done in a more labour-intensive manner. Review of documents produced by document assembly could be undertaken by any lawyer, but it appears suited to a new Singapore Academy of Law scheme, Collaborative Law, Innovative Co-Creation and Knowledge-Sharing, known as CLICKS @ State Courts (“CLICKS”). CLICKS is a co-working venue which will “house a mix of law firms of various sizes representing legal practitioners specialising in criminal law, family law, and community or relational disputes”,<sup>244</sup> but preference will be given “to lawyers with a strong record in pro bono work”.<sup>245</sup> The hope is that “by helping small law firms cut operational costs and inefficiencies through providing shared amenities and facilities – such as meeting rooms and office equipment, these firms can focus on adopting technology at their law practices. In turn, they can continue to provide accessible and affordable legal services to the man-in-the-street”.<sup>246</sup> Intended as a venue for technology innovation and *pro bono* work, CLICKS is a potential venue for review of documents produced by document assembly, which could be usefully coupled with document feedback. It may be easier for a *pro bono* lawyer to generate a document fresh than review a document generated by an unfamiliar automated document system,<sup>247</sup> but if the

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242 Catherine J Lancot, “Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law” (2002) 30(3) Hofstra L Rev 811 at 854.

243 AsiaLawNetwork, “Quick Consult” <<https://www.asialawnetwork.com/quick-consult/get/sg>> (accessed 15 July 2020).

244 Ng Ren Jye, “New State Courts Towers to Offer Co-working Space for Small Law Firms” *The Business Times* (8 March 2019).

245 Charmaine Ng, “New State Courts Towers to Include Co-working Space for Lawyers, Tech Start-ups” *The Straits Times* (8 March 2019).

246 Ng Ren Jye, “New State Courts Towers to Offer Co-working Space for Small Law Firms” *The Business Times* (8 March 2019).

247 Interview with Cheryl Tan, CEO, AsiaLawNetwork (Singapore, 2020) <<https://www.asialawnetwork.com/team>> (accessed 15 July 2020).

lawyer is familiar with the document assembly system this is likely to be an advantage, as law firm experience with document assembly systems suggests. In this way, *pro bono* lawyering could incorporate some of the legal tech efficiencies developed by law firms, efficiencies which are arguably more urgent in the *pro bono* context.

**D. *Is there any recourse if things go wrong, and is it adequate and fair?***

57 Mountain argues that “[a] major part of a lawyer’s role is to perform an insurance function”.<sup>248</sup> Lawyers are hired because of their legal expertise, but if they end up harming a client, the lawyer-client relationship normally creates multiple avenues for recovery, such as complaints filed with a bar organisation, private law claims for malpractice, and bar compensation funds.<sup>249</sup> Users of a document assembly system utilising the direct model without separate legal support, because they do not appear to receive legal advice or have a lawyer-client relationship with the document provider, are excluded from these avenues of recovery. Mountain therefore identifies the need for an insurance function for automated documents, which includes the literal sense of protection via a policy of insurance, as well as the general idea that there is adequate protection for consumers. In the context of commercial document assembly systems, it has been argued that document users should have “recourse against abuse”,<sup>250</sup> and in general, there appear to be two main options, some variation of a claim process, or some form of insurance.<sup>251</sup>

58 Commercial online document providers have been subject to legal claims,<sup>252</sup> and they are likely to have some form of claim procedure. The question is whether the procedure is up to the task. In the US, the ABA Guidelines observed that many online document providers “require the resolution of disputes in arbitration ... in distant locations inconvenient

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248 Darryl R Mountain, “Disrupting Conventional Law Firm Business Models using Document Assembly” (2006) 15(2) *International Journal of Law and Information Technology* 170 at 183.

249 Regarding compensation funds in Singapore, see Law Society of Singapore, “Compensation Fund” <<https://www.lawsociety.org.sg/our-community/compensation-fund/>> (accessed 15 July 2020).

250 New York County Lawyers Association, *Report of NYCLA Task Force on On-Line Legal Providers Regarding On-Line Legal Documents* (2017) at p 5.

251 There may also be protection under the consumer law of the jurisdiction; see Law Society of New South Wales, Commission of Inquiry, *The Future of Law and Innovation in the Profession* (2017) at p 103, referring to Australia Consumer Law.

252 See, eg, “Online Legal Documents Company Sued over Flawed Estate Plan” *ElderlawAnswers* (10 January 2020) <<https://www.elderlawanswers.com/online-legal-documents-company-sued-over-flawed-estate-plan-8355/>> (accessed 15 July 2020).



to the customer”, providing the example of LawDepot, which required US users to arbitrate claims in Edmonton, Canada.<sup>253</sup> Beyond a claims process, another option is insurance. Legal insurance has not caught on in that many countries,<sup>254</sup> and document assembly users may not want to pay for insurance, even if they should. However, if there are enough users, and if the risks are as low as the collaborative process of court document production suggests, the combination of these two factors may generate affordable premiums, which could be rolled into the funding of document production, voluntarily or via a requirement.

## V. Conclusion

59 The literature of access to justice can seem like a never-ending negative refrain. Legal need is immense, and many individuals with a legal issue are not able to see a lawyer, let alone have their dispute resolved in court. For disputes that do reach the court, lawyers charge fees that many individuals cannot afford, and the public funds allocated to pay for lawyers for poor or vulnerable persons is limited. One of the many problems encountered by unrepresented litigants are the submissions required by the courts, and although courts have provided forms, as one US judge put it, “[f]orms without knowledge are just useless pieces of paper”.<sup>255</sup>

60 Legal tech has entered this rather intractable set of problems and changed the picture, in part by developing document assembly systems. Court document assembly can help unrepresented litigants “more successfully resolve legal disputes by reducing substantive and procedural knowledge deficits”.<sup>256</sup> However, the real advances offered by different systems of document assembly do not mean that they pose no risks for consumers. Decisions regarding any legal tech will ultimately require “a fine balancing act between the competing interests of consumers, the legal market, the legal profession and access to justice”,<sup>257</sup> but the series of questions and comparisons in this article provide initial suggestions of how to evaluate consumer risk in this area. These factors suggest

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253 American Bar Association, “Best Practice Guidelines for Online Legal Document Providers Report” (Adopted 12–13 August 2019) at fn 31, and see Guideline 15.

254 See International Bar Association, *Legal Expenses Insurance Report* (2019) at pp 14–15.

255 Denise S Owens, “The Reality of Pro Se Representation” (2013) 82 *Mississippi Law Journal* 147 at 158, cited in Benjamin P Cooper, “Access to Justice Without Lawyers” (2014) 47 *Akron Law Review* 205 at n 39.

256 Michael J Wolf, “Collaborative Technology Improves Access to Justice” (2012) 15(3) *New York University Journal of Legislation and Public Policy* 759 at 762.

257 Judith Bennett *et al*, “Current State of Automated Legal Advice Tools” (Networked Society Institute Discussion Paper 1, April 2018) at p 35.

that while commercial document assembly without separate assistance from someone trained in the law can raise issues in some contexts, court document assembly can pose relatively little risk for consumers. If a mechanism for balancing access to justice and consumer risk in automated documents is adopted, that will support a stronger foundation for access to justice. It will also leave room for the contemplation of related strategies. As automated documents rely on the user to determine or confirm that they need the document in the first place, different or complementary online tools can be implemented by persons in positions of trust in order to help overcome the extensive array of access barriers that exist.<sup>258</sup>

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258 See Singapore Family Justice Courts, Family Protection, “How Do I Make an Application?” <<https://www.familyjusticecourts.gov.sg/what-we-do/family-courts/family-protection>> (accessed 15 July 2020) (applicants for personal protection orders “are encouraged to approach any one of the Family Violence Service Centres (‘FVSCs’) conveniently located near your area”); and see generally, Tanina Rostain, “Techno-Optimism & Access to the Legal System” (2019) *Dædalus* 93 at 95.