

*Session on Court Evaluation and Research*

***Fourteen Questions for Court Case Management Evaluators***

Paper by: Barry Walsh, International Case Management and Judicial Administration Specialist.

1. **The need for international standards.** After eight years working in court systems in different countries in the Asia Pacific, Africa and the Middle East regions, it no longer surprises me to find that few judicial leaders seem to have much of an idea about how they might apply international standards of performance measurement. This is because there aren't any standards that can be readily applied. Even in the USA, where much of the innovation in this field has occurred over the last 30 years or so, the literature on the subject is largely concerned with developing court administration practice improvements within the USA, i.e. not necessarily in other countries. Countries which have adopted US court management innovations, including Australia, Canada and New Zealand, have done so to the extent they consider necessary to meet their needs. And some Western European countries have done likewise. But to learn more about the success of these innovations, one usually needs to access the literature of particular countries. There is not much published material that advocates or elaborates on standards that might be applied in any or every country.

2. **Justifying the size of judiciaries.** The absence of international standards makes it somewhat more difficult to advise judiciaries in developing countries about how their performance might be improved. If there were well developed ways of measuring court performance it might be easier to steer systems in difficulty towards solutions to their problems. But the lack of adequate systems of measurement often results in some judiciaries misdiagnosing the causes of their problems and pursuing ineffective or futile solutions. In the field of case management, in particular, most systems in the world will measure volumes of cases registered and cases disposed. They may also measure pending caseloads, but very often little else. A consequence of this is that case backlogs are prone to be treated as a complex problem with a seemingly simple solution – the need to appoint more judges.

3. **Measuring processes and outcomes.** A judiciary would be very fortunate if its wish for substantially increased judicial numbers was granted. Of course major expansions in judge numbers almost never happens in most countries, especially in developing countries. What is more likely to happen is that judiciaries may preside over chronic court delays for years, if not decades, in the belief that delay is some inevitable consequence of a lack of resources. To some extent court delays can be remedied by increasing the availability of judges or the degree to which litigants have access to them. However, the experience of judiciaries who have overcome chronic court delays shows that the greatest contributor to increased productivity of courts is not due to increased judge numbers, but to improvements in case management methods. An essential component of improved case management methods is the use of improved methods for caseload measurement and evaluation of court processes and outcomes.

4. **A collection of measures.** I am hoping that the proposed International Framework for Court Excellence will eventually produce a set of measures that all courts can adopt or adapt to their own needs. It would be a good thing to have a single, readily usable set of tools and reference points which may bring about more robust and consistent evaluations of individual systems and more objective comparisons between different systems. But in the meantime I would like to share with you a list of court measurement concepts I have used in

connection with my work in evaluating court systems in developing countries. These I simply call fourteen questions. There used to be twelve of them, then thirteen. I have added to the list each time I have attempted to apply them in different places and I now feel that I can justify asking them all as a diagnostic methodology in just about any court system. The questions are not original. They are really derived from a collection of measurement concepts developed by others which I have refined in small ways into what I think is a readily digestible list. Most of the fourteen will be familiar to those of you who have studied the material published by the World Bank, the National Center for State Courts or the Australian Productivity Commissions' annual reports on government service provision. One or two are my own. In summary, the questions are these:

5. **Fourteen questions:** In relation to each category of cases processed by your court:

- (1) How many cases are filed for adjudication each year?
- (2) How many cases are disposed each year?
- (3) What is the case clearance rate?
- (4) How many cases are in the active caseload and what is their age profile?
- (5) What are the court's standards for timeliness of case disposal and how many active cases meet those standards?
- (6) What are the average number of case disposals per judge each year?
- (7) What is the age profile of disposed cases each year?
- (8) What are the median rate of case adjournments for cases disposed each year?
- (9) What is the civil case settlement rate?
- (10) What is the guilty plea rate for criminal cases?
- (11) What is the conviction rate for criminal cases?
- (12) What is the substantive appeal rate?
- (13) What is the successful appeal rate?
- (14) What is the procedural appeal rate?

6. The meaning of each of these questions needs to be explained with some precision so that the answers might be meaningful. So I have attached to this paper definitions of the terms used and examples of how the answers may be calculated and reported. The value to be gained by answering the fourteen questions concurrently for any single court system is to construct a statistical profile of caseloads that enable conclusions to be drawn about the types of cases processed, the manner and speed of disposal, the outcomes achieved and the overall effectiveness of the court concerned. I have found that it is particularly useful in assaying the extent to which the case for increasing the numbers of judges might be justified. Perhaps the development of the proposed International Framework for Court Excellence will be an opportunity to test and further refine them further.



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## Definitions of concepts used in the fourteen questions for court evaluators

<i>Measure</i>	<i>Definition, formula and examples</i>																								
<p><b>1. New filings</b></p> <p>(can also be called new institutions, registrations or simply cases opened or initiated)</p> <p>A basic measure for any enterprise is a simple count of how much work there is to do. Courts usually measure their workload by counting new case records opened or registered in an operating year, most commonly a calendar year.</p>	<p>Definition: A count of new court records opened or registered by a court in a calendar year or other defined period.</p> <p>Where new case records are opened in respect of pre-existing case records, such as a procedural application, then the count of those records should be made explicit so that the true level of new cases may be precisely counted.</p> <p>Example: Annual new case registration figures for a year in a civil and criminal trial court –</p> <p>In this example the figures in parentheses offer counts which do not form part of the active caseload of the court. Enforcement cases, for example, are treated as cases which have already been counted as disposed but are opened purely for administrative purposes i.e. enforcement of court verdicts. Similarly, the counts in criminal cases of charges recorded and defendants charged do not form part of the count of active or disposed cases because a single prosecution file may relate to more than one defendant or more than one charge.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="background-color: #cccccc;">Cases Initiated – Year 2008</th> </tr> </thead> <tbody> <tr> <td>New civil case files registered</td> <td style="text-align: right;">1,000</td> </tr> <tr> <td>Closed case files re-opened</td> <td style="text-align: right;">10</td> </tr> <tr> <td>Case files transferred from other courts</td> <td style="text-align: right;">15</td> </tr> <tr> <td><b>Total new civil cases</b></td> <td style="text-align: right;"><b>1,025</b></td> </tr> <tr> <td>Closed cases opened for enforcement only</td> <td style="text-align: right;">(100)</td> </tr> <tr> <td>New criminal case files registered</td> <td style="text-align: right;">1,500</td> </tr> <tr> <td>Closed case files re-opened</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Cases files transferred from other courts</td> <td style="text-align: right;">20</td> </tr> <tr> <td><b>Total new criminal cases</b></td> <td style="text-align: right;"><b>1,525</b></td> </tr> <tr> <td>Charges filed</td> <td style="text-align: right;">(2,300)</td> </tr> <tr> <td>Defendants charged</td> <td style="text-align: right;">(1,200)</td> </tr> </tbody> </table>	Cases Initiated – Year 2008		New civil case files registered	1,000	Closed case files re-opened	10	Case files transferred from other courts	15	<b>Total new civil cases</b>	<b>1,025</b>	Closed cases opened for enforcement only	(100)	New criminal case files registered	1,500	Closed case files re-opened	5	Cases files transferred from other courts	20	<b>Total new criminal cases</b>	<b>1,525</b>	Charges filed	(2,300)	Defendants charged	(1,200)
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## 2. Disposals

(can also be called *dispositions* or *cases closed*)

For most courts a case is disposed when the court, exercising its judicial adjudicative power, gives judgment. This does not necessarily mean that the court takes no further action in the case. It may, for example, administer various enforcement activities and it continues to manage its records, often for many years, should there be further disputation about the same case. For the purpose of measuring caseload, however, the giving of judgment or some other decision which purports to finally dispose of the dispute or criminal charge is the practical point in time when the case can be considered disposed.

Definition: The count of court records in which the court, in a calendar year or other defined period, has determined the substantive questions in issue and given judgment or made orders having a similar effect.

Example: Annual case disposal figures for a year in a civil and criminal court –

Civil and criminal cases disposed – end of year report	
Contested cases disposed by verdict or default judgment	1,200
Cases settled	360
Civil case files closed by default of all parties	33
Civil case files transferred to other courts	2
<b>Total disposed civil cases</b>	<b>1,595</b>
Enforcement-only files closed	(85)
Criminal case files disposed by judgment	500
Criminal case files disposed by withdrawal of all charges	12
Criminal case files transferred to other courts	10
<b>Total disposed criminal cases</b>	<b>522</b>

## 3. Case clearance rate

(may also be called a *case clearance index*)

Courts need to know how well they are coping with the influx of newly registered cases. Case clearance rates do this by comparing the rate of case disposals with the rate of new case records opened over time.

Definition: A count of case disposals divided by new filings over a given period, and represented either as a number or a percentage.

Example: Where, in a given year, a court registers 1000 new cases and disposes of 1100, the case clearance rate is  $1100 \div 1000 = 1.1$  (or  $1.1 \times 100 = 110\%$ ).

#### 4. Active caseload

(also called *pending caseload*, or *pendencies* - but it should never be called a *backlog*)

A case is considered to be *pending* or *active* if it has been opened and has not yet been disposed or closed. Technically this means every case is pending from the moment it is filed or otherwise instituted. Consequently, only a proportion of pending or active cases in any court can be considered to be backlogged.

Definition: The count of the number of court cases which, at the end of a calendar year or other defined period, have not yet been disposed.

Example: A year-end pending caseload report:

Age of active cases – general civil cases as at 31 December 2008		
No.	%	
121	6%	< 3 mths
233	13%	≥ 6 mths < 12 mths
299	16%	≥ 12 mths < 18 mths
438	24%	≥ 18 mths < 24 mths
599	32%	≥ 24 mths < 36 mths
157	8%	≥ 36 mths < 48 mths
15	1%	≥ 48 mths
<b>1,862</b>	<b>100%</b>	

#### 5. Backlog

*Backlog* has a meaning that is distinct from active caseload. Backlog is a subset of the active caseload representing cases that have become unsatisfactorily old by reference to a timeliness standard. Courts that describe all of their active caseloads as “backlogged cases” risk overstating the true extent of their backlogs.

Definition: The proportion of the active caseload which, at a given point in time, exceeds the court’s timeliness standards for the disposal of cases.

A **timeliness standard** is an officially accepted notion of how quickly most cases of a particular type should, in a particular court, be disposed before they are considered to be backlogged.

Example of a timeliness standard – 90% of basic level trial cases should be disposed within 12 months of case filing and the remaining 10% of cases should be disposed within 24 months of filing.

If this example of a timeliness standard is applied to the figures in the table shown against item 4 above, only 354 cases (19%) are less than 12 months old. 737 cases (40%) are between 12 months and 24 months old when the timeliness standards permits only 186 cases (10%). Out of a total of 1,862 active cases, the backlog is distinguished from normal active caseload by subtracting from the total those cases which are still within the standard, i.e.  $1,862 - 354 - 737 = 1,322$  cases. Thus, the backlog constitutes 71% of the active caseload.

<p><b>6. Average disposals per judge</b></p> <p>Judicial workload indicators are a way of representing a fundamental resource of courts. This measure directly relates judge numbers with court case outputs.</p>	<p>Definition: The count of a particular category of cases that were disposed by a court over a year, or other defined period, divided by the number of judges who were actually available to dispose of them. In some systems where a judge was not allocated full time to dispose of the particular category of cases, the formula may describe the number of judges as a full time equivalent number.</p> <p>Example: A desk study I undertook in 2005 compared judge numbers in Australia with case disposals and concluded that the average annual disposal rate for all Australian courts in 2004 was 1,511 cases per judge or magistrate<sup>1</sup>. In assessing how many judges may be required for a particular court, this measure provides a better indicator of need than, say, comparing judge numbers to the populations they serve.</p>
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<p><b>7. Age of disposed cases</b></p> <p>The age profile of disposed case is often quite different from the age profile of active cases. This may be due to common possibility that pending caseloads comprise cases that are particularly difficult to dispose of and may be substantially older on average than cases that are disposed.</p>	<p>Definition: For each category of case disposed within a month, year or other specified period, the elapsed duration from the time of case filing until it is disposed – normally represented as a number of cases and a percentile of elapsed time in gradients of days, months, years or ranges of years.</p> <p>Example: A report on age of disposed cases may correspond to the format shown for representing the age of active cases against item 7 above.</p>
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<sup>1</sup> See Barry Walsh, *Judicial Productivity in India*, International Journal for Court Administration, Vol.1, No.1, pp23-30

<p><b>8. Attendance rate</b> (also called a rate of <i>adjournment</i>, <i>postponement</i> or <i>continuance</i>)</p> <p>An attendance rate is concerned with measuring the propensity of courts to adjourn oral case hearings, such as courtroom hearings. A low rate of attendances indicates that the costs of a case in time and legal representation have been minimized.</p>	<p>Definition: For the cases disposed over a month, year or other specific period, the median number of times a disposed case was scheduled for a hearing that required the attendance of at least one party at the court; and whether or not anything substantive outcome was actually achieved at any hearing.</p> <p>An attendance rate may be measured for any number of cases disposed within any practical period and each attendance is counted irrespective of when it occurred. Attendances in this context includes preliminary hearings, mediations, arbitrations and the like, as well as formal court adjudicative hearings.</p>
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<p><b>9. Civil case settlement rate</b></p> <p>Generally in civil courts that have low backlogs and case delay, the settlement rate is usually high, invariably more than half of all cases disposed. Low settlement rates, on the other hand, tend to be correlated with courts that suffer chronic backlogs and case delay.</p>	<p>The proportion of civil cases in a court, represented as a percentage, that are disposed by means other than a verdict by that court after contested proceedings.</p> <p>Example: Annual Civil Case Disposal Report (relying on figures used in the example of dispositions above). This example indicates a civil settlement rate of 25%. Many courts in Australia and other countries, however, can achieve settlement rates above 75%.</p> <table border="1" data-bbox="619 1283 1394 1984"> <thead> <tr> <th>Manner of disposal</th> <th>Cases disposed</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Contested cases disposed by contested adjudication</td> <td>900</td> <td>56%</td> </tr> <tr> <td>Uncontested cases</td> <td>300</td> <td>19%</td> </tr> <tr> <td>Cases settled after trial began</td> <td>87</td> <td>5%</td> </tr> <tr> <td>Cases settled before trial began:</td> <td></td> <td></td> </tr> <tr> <td>    - at mediation</td> <td>80</td> <td>5%</td> </tr> <tr> <td>    - at arbitration</td> <td>43</td> <td>3%</td> </tr> <tr> <td>    - other</td> <td>150</td> <td>9%</td> </tr> <tr> <td>Cases closed by default of all parties (lapsed cases)</td> <td>33</td> <td>2%</td> </tr> <tr> <td>Cases transferred to other courts</td> <td>2</td> <td>&lt;1%</td> </tr> <tr> <td><b>Totals</b></td> <td><b>1,595</b></td> <td><b>100%</b></td> </tr> </tbody> </table>	Manner of disposal	Cases disposed	%	Contested cases disposed by contested adjudication	900	56%	Uncontested cases	300	19%	Cases settled after trial began	87	5%	Cases settled before trial began:			- at mediation	80	5%	- at arbitration	43	3%	- other	150	9%	Cases closed by default of all parties (lapsed cases)	33	2%	Cases transferred to other courts	2	<1%	<b>Totals</b>	<b>1,595</b>	<b>100%</b>
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<p><b>10. Criminal no-contest (plea) rate</b></p> <p>The corollary of a case settlement rate in a civil court is a no-contest or plea rate in a criminal court.</p>	<p>The proportion of criminal cases disposed by a court in a given year, or other defined period, after the defendant formally makes a plea of guilty or indicates that guilt will not be contested, and represented as a percentage.</p> <p>In some court systems the plea rate may be well above 50% of all criminal disposals. In poorly performing systems plea rates can be extremely low, a phenomenon that is usually due to poorly performing prosecution authorities.</p>
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<p><b>11. Successful prosecution (conviction) rate</b></p> <p>Although courts have no formal interest in assisting prosecutors obtain a conviction, they have an interest in reducing the proportion of criminal cases filed which are incompetently or improperly prosecuted.</p>	<p>The proportion of criminal cases, represented by a percentage, that are disposed by a court over a year, or other defined period, by a finding of guilt or offence proven.</p> <p>Effective prosecutor authorities can expect to obtain convictions in 50% or more of defended prosecutions.</p>
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<p><b>12. Substantive appeal rate</b></p> <p>Where most final decisions of a court are routinely appealed, then it implies that the court is ineffective in giving authoritative decisions.</p>	<p>The proportion of cases disposed by a court in a year, or other defined period, where a formal appeal is lodged in that year against a final decision in a disposed case, and represented as a percentage.</p>
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<p><b>13. Successful appeal rate</b></p> <p>This is an indicator of the propensity of litigants to dispute the quality of a court verdict at trial by appealing.</p>	<p>The proportion of appeals against decisions of a court which the appeal court decides in a year, or other defined period, where the appellate court has altered the decision of the lower court, and represented as a percentage.</p> <p>An appeal may be lodged purely for the purpose of delaying enforcement, a tactical appeal. A successful appeal rate distinguishes tactical appeals from others.</p>
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<p><b>14. Procedural appeal rate</b></p> <p>Some courts can be burdened by very high rates of procedural appeals which tend to have the effect of delaying a court's ability to dispose of a case.</p>	<p>A count of procedural appeals or applications disposed by a court in a year, or other defined period, divided by a count of the cases disposed in that year by the same court and represented as a percentage.</p> <p>Some courts may process procedural applications as if they are distinct cases, a factor which can induce higher rates of those kinds of applications. Where this occurs a procedural appeal rate will help distinguish them from substantive actions or disputes.</p>
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