Digitisation Challenging Court Files

Development of the digital court through a dialogue-driven process

Michiel Boer MOC
Communications Consultant to the Council for the Judiciary
CONTENTS

01. INTRODUCTION

02. CASE:
   Promotion of process innovation through a dialogue-driven process

03. IMAGES OF THE PRODUCT OWNER

04. LINK TO THEORY
By now it has almost become an understatement that the world is changing at an ever increasing rate. This world that is changing faster and faster is also indicated by the acronym 'VUCA', with the individual letters referring to increased Volatility, Uncertainty, Complexity and Ambiguity.

For an organisation such as the judiciary, a VUCA world means, among other things, that the issues presented to it are becoming a lot more complicated than before. How can the judicial organisation ensure that it is capable of overcoming the new challenges?

For his thesis for the Organisational Coaching Master’s degree programme, Michiel Boer studied the digitisation of the judicial system. He concluded that outsourcing innovation to a small group of people does not work for the judicial organisation. Innovation mainly encompasses social innovation, as well as the involvement the professionals themselves with an intended change.

Students working on their graduation projects for the Organisational Coaching Master’s degree programme not only do research; they also carry out a counselling process. Michiel Boer shows in concrete terms how he entered into a dialogue with judges about digitisation within the judicial system.

In my opinion, his thesis is an inspiring example of how you can contribute to ensuring that an organisation is ready for the VUCA world on a small scale: you can only do this together with the people, not by going over their heads.

Clemens Berendsen
Dean of the Academy of Masters & Professional Courses
Digitaliseren uitdagend rechtbankdossier • Academie voor Masters & Professional Courses
Introduction

The judicial organisation wants to be of better service to society. This means waving goodbye to tried-and-tested, but also complicated paper procedures. Digital proceedings will become the new standard in administrative law and civil procedural law.

To simplify procedural law – the rules of proceedings – new laws have been drawn up. Civilians and lawyers are given digital access to the judicial system. Through a secure web portal, the options they will have include bringing proceedings, putting up a defence, submitting documents and following the progress of proceedings. The parties will only visit the courtroom for the court hearing itself. The Minister of Justice and Security and the Council for the Judiciary, the umbrella organisation for regular courts and courts of appeal, have set up a programme to support the transition: ‘Kwaliteit en Innovatie’ (Quality and Innovation), abbreviated to KEI. One of the tasks is designing legal proceedings for a digital environment. So far, so good.

The transformation to working digitally is a landslide to the judiciary. A gown does not appear to be made for the virtual world. The judicial organisation has for centuries been formed by traditions and rituals. These well-established practices could impede organisational change. One indication for this is the lack of willingness among judges to take the lead in digital innovation.

The wish to become a more learning organisation has resulted in a study into these issues using organisational coaching. The study covered the barriers that are present and the options judges and assistants in the innovation programme have to shape the intended change themselves.
Case: Promotion of process innovation through a dialogue-driven process

The economy is digitising at a high rate and digital banking has by now become standard, but courts still work on paper. Attempts to allow civilians digital access to the courts as well are impeded by a lack of interest within the judiciary. And this is while innovation is very much needed at the judiciary to remain relevant within society.

The study investigated how the appeal of having a leading role in digital innovation, being what is called the product owner, could be improved and how organisational coaching can contribute to this within the learning climate of the judicial system. For this the topics studied included causes of the discrepancy between the existing image and the desired image of the product owner function. The study investigated which factors within the judicial system affect the collective learning ability of the judiciary and which interventions could contribute to a more appealing perspective on the role of product owner.

Organisational context
Since the beginning of this century, the judicial organisation in the Netherlands has been undergoing a continuous process of harmonisation and centralisation. The reorganisations prompted criticism among judges: administrators and management were apparently mainly interested in the costs of the judicial system, not in specific (legal) quality. The notion of mistrust among legal professionals towards the management is important here: innovation is being handled in national projects and programmes and is not part of the world as experienced by judges.

Organisational culture
Why is organisational change so slow for the judicial system? The topics covered by the study include the effects of the organisational culture on the adaptability of the employees and organisation. The judiciary does not want to be put in a cultural box. Harrison (Ten Have, Ten Have & Janssen, 2010) distinguishes four types of organisational cultures: power culture, person culture, role culture and task culture (see Figure 1).
Usually professional organisations (universities, hospitals) are characterised by a person culture. In this type of culture, a lot of value is given to providing room for the individual. In the judiciary, we not only recognise aspects of a personal culture, but also elements of a role culture; a type of culture in which rules and procedures direction to the actions. In this mixed type we can recognise the independence of the judge and their duty to administer justice pursuant to the law. The reason for collaboration, for example, is not because it is satisfying (person culture), but because it is formally prescribed (role culture). Harrison gives both types of cultures the label ‘difficult to change’. A role culture may provide some hope of direction by changing the rules of the game, but in the case of the judicial system this task is not assigned to the management; first and foremost the judge listens to the legislator.

We see this picture again in Denison’s culture types (Ten Have, Ten Have & Janssen, 2010). He defines organisational cultures along two axes: internal versus external and control versus flexibility, see Figure 2 on page 8. The court of the future will fit seamlessly into the top-right quadrant, characterised by flexibility and external orientation. The judges, however, are mostly located in the bottom-left quadrant and are therefore mainly focused internally and on control. Their adaptability is low.
Identity

The issue of the collective learning ability should be viewed within the context of the learning preferences of the professional group involved, being mainly lawyers. Professionals mostly have a more individualistic attitude than non-knowledge workers. They also tend to identify themselves more with the professional group (judiciary) than with the organisation. This notion may be important if, for example, an external focus turns out to be viewed as the organisation’s goal rather than the assignment given to the professional group. The insight is relevant here, as the work process of the judiciary in the existing establishment appears to be insufficiently interwoven with the innovation process.

Another important insight is that a strong professional identity is dysfunctional for the conversion and creation of knowledge. Judges are less likely to share their implicit knowledge with the management or to work together with people in other groups. This can be seen within the innovation programme: for many years the role of product owner was reserved for judges due to the support among colleagues. Learning within an organisation therefore requires bridging the boundaries of the identity using a basis that is acceptable to the parties involved. The identity of the judiciary is expressed in things such as traditional symbols and artefacts linked to the profession. A very obvious expression is the gown, but also the general church-like appearance of the courtroom and the judge’s gavel are characteristic examples.

The identity is also expressed in well-established practices. Examples are the practice of standing when the judge enters the courtroom, which is not prescribed or laid down. The identity legitimises these practices as existing conventions of the judiciary. Changes arising from the desire to develop an organisation can be viewed as a threat to the social identity if the well-established practices are changed. This may hamper the progress of the change process.
Strategy

Another characteristic important to the process is justice as a strategy. Models for business strategy are about profitability and care for continuity; characteristics that have never played a role for judges in their thinking about how to go about their work. Competition may play a role in the future, but that thought is being brushed aside by many judges. Without a sense of urgency, there is no key driving force for innovation.

In order to innovate, regular courts and courts of appeal require an environment that provides greater stimuli than at present. The positioning of courts as independent dispute resolvers may still be valuable, but it may also slow down innovation.

Another aspect associated with this is the one-sided composition of the judiciary. Judges are selected and trained by judges, and appointed for life. Many judges work for the same court their entire lives. This makes them embedded into the same structure and a one-sided information network, whilst organisational development and innovation benefit from a rich variety of perspectives. A lack of diversity within an organisation may therefore undermine the team-learning ability, which negatively affects the adaptability of an organisation.
A product owner in the judicial system is responsible for developing a system (the product) that makes digital proceedings possible. The term ‘product owner’ is taken from the scrum software development method originally from the IT sector, which is now widely used in change management.

Images of the product owner

How do judges view digital innovation?

- There is no overarching vision on the digital administration of justice;
- Digitisation is mainly viewed as support, not as a new way of working;
- Product owners are no longer viewed as judges;
- The position of product owner has no status among judges.

What is the desired image?

- Figurehead of innovation
- Ambassador for working digitally at the courts
- Promotional position
1. Vision
If we consider the literature on learning and development in organisations, we can see links to the theory of Peter Senge. His book The Fifth Discipline (1992) provided a structure for existing ideas on organisational learning. Senge presented five techniques, or disciplines, which a learning organisation can use to develop itself: personal mastery, team learning, mental models, shared vision and systems thinking.

Senge states that, for a learning organisation, a shared vision is crucial. The ambition to improve your ability to create remains meaningless if there is no inspiring vision that the employees want to achieve. This energy is being felt within the innovation programme, but it has not yet been tapped in the courts.

The lack of a common goal means that there is insufficient attraction, which is required to innovate. Forces that want to maintain the status quo can then get the upper hand.

A shared vision also creates an environment in which people take risks and experiment. This is an innovative environment, in which progress is only possible through trial and error (Hadfield, 2016). Reiling (2009) states: experimenting with the translation of the judicial system’s needs in terms of IT applications should be institutionalised.

2. Learning landscape
Most of the innovations made within the KEI programme are invisible to the employees in the primary process. Within the courts themselves, the operations process and primary process are also separate.

Ruijters and Veldkamp (2012) use a fictional landscape to indicate the various needs of the organisation. In it they make a distinction between learning in the existing work (practising), learning by designing new services or products (creating) and learning by gaining new knowledge, insights or skills (researching). The model provides an insight into the way in which those elements are currently organised and offers a guide for answering the question whether bridges are sufficient to make a connection between the elements, or that combinations will have to be made, the so-called ‘polders’. The bridges and polders contribute to creating a learning environment in which the organisation is able to develop. The fact that, from a judge’s perspective, the product ownership is not part of their own organisation means that justice and innovation should be more closely interwoven than at present.

A current plea for organising innovation within the walls of the courts themselves can be found in the study by Brix and Peters (2015). They studied the effects of innovation for an organisation rather than the results of the innovation project itself. The study shows that an innovation project, in which the work on it is visible to the organisation, has a stimulating effect on employees who are not involved with the project.
3. Systemic perspective
The third and final focus area is the systemic perspective. The analysis visualises a number of cause-and-effect relationships that are not immediately visible, e.g. due to time delays. Here are a few examples.

- The assignment for creating a digital design for the civil process was given to a project group that was formerly responsible for the harmonisation of work processes. The people involved are unsure why that group in particular appeared to be suitable for this specific task. The impression is that the assignment was given 'automatically'.

- Digital innovation is being handled in a national programme. The advantages of this include easy knowledge sharing and collaboration beyond structural boundaries. The question is to what extent the disadvantages were considered. A national programme cannot provide judges with a career perspective. The management is now facing issues regarding this in recruitment. In addition, from the viewpoint of the courts, national programmes appear to exist in a parallel universe, which does not make a transition an appealing prospect. Another consequence is the fact that establishing a national programme gives rise to questions about ownership: is KEI responsible for innovation, or are the courts?

- The final cause-and-effect relationship is the one between innovation and the digitising character of the programme. The legislator is required for a number of desired innovations to achieve the objectives in the civil process. It is not (yet) providing the room required to implement all the innovations right away. A lack of innovation automatically means that the focus shifts to digitisation. This in turn has consequences for the image of the programme and the position of product owner, for which the programme is facing issues in recruitment and implementation.
During the counselling process, an appreciative dialogue was held with judges and people involved with the innovation programme. The work session had an effect on two levels: content-specific and process-related. In content-specific terms, the exploration showed that many participants were inspired by the enthusiasm within the innovation programme, of which colleagues were sometimes mutually unaware. This led to the insight that, apparently, the willingness to experiment increases when employees in the primary process themselves become more involved with innovation. This requires digital experimentation to be made visible in the work. The product owner could play an active role here, but there is currently not enough time for this.
Conclusion

The lack of a shared vision creates a lack of willingness to experiment in the primary process. Innovation and the administration of justice are handled by different domains. This leads to a lack of synergy between the work process and the innovation process, so innovation cannot provide the energy for change. Working in a non-legal domain is not appealing to judges.
1. Create room for experimenting in the regular courts and courts of appeal

By seeing this, others will follow. The existing KEI programme may provide pilots at a few courts, but those are serious tests in the run-up to the actual introduction of digital proceedings. They are not testbeds for exploring possible new and better working methods; an innovative context intended to create energy for change.

2. Explore the intent of the organisation

Whilst most of the judges are busy handling over 1.5 million court cases every year, a relatively small group of people are thinking about innovative working methods. This exploration is mainly carried out within a digital frame, but working digitally is not a core value of the judicial system. Judges want to make a difference within society and have a unique added value in social situations that have become stuck. Let that ambition be the starting point for a journey of discovery towards an unknown future. Conduct a free dialogue on passion and dedication and then ask how that intention would be served best within a digital society. This is where judges and innovators will find each other.

3. Focus on a constructive dialogue

The conditions for a constructive dialogue are known as soft values, but realising them appears to be a hard nut to crack. The judicial system is a language-based environment and judges can argue like no other. But organisational development is not a contest in rhetoric, which may even be counterproductive within the context of learning and development. The fault line between business processes and the primary process is an obstruction against a constructive dialogue on what the judicial system needs to remain socially relevant. Organise professional guidance in a constructive dialogue and stop postponing that dialogue.
Organisational coaching includes theories from various scientific domains, including organisational and change management, learning theories, and occupational and organisational psychology. Organisational coaches use this knowledge to increase the ability to learn and change, and to improve the functioning and performance of organisations as a result.
Let’s change! That’s what The Hague University of Applied Sciences encourages everyone to do. We want to change and improve the world we live in. But that can only happen if we work together, evolve and achieve change in the process. If we take a critical look at our present and future situation, we will see that we need new perspectives and solutions. We will find them more quickly if we constantly share and learn to apply one another’s insights, skills and methods.

This is why we advocate students, lecturers and partners to help each other develop into world citizens. These are people who think outside the box, people who really stand their ground and approach the world based on their own conviction. Who realise that their own expertise will make the difference. Who develop and apply creative solutions together with others.

As part of The Hague University of Applied Sciences, the Academy of Masters & Professional Courses is a knowledge institution that takes professionals with work experience a step further. We do this through Master’s degree programmes and post-graduate courses. Change potential is created by connecting personal involvement, high-quality and innovative education and practice-oriented research with the professional practice of our participants.

**Authors**

**Michiel Boer MOC**
Michiel Boer is a Communications Consultant to the Council for the Judiciary in The Hague. He is involved in various innovation projects at the judicial organisation. The conclusions of his graduation thesis partly led to the decision to involve judges differently in the digitisation of their work. He is currently working on the Quality and Innovation of the Judicial System programme.

**Fer van den Boomen**
Dr. Fer van den Boomen is a principal lecturer at the Organisation Coaching Master’s degree programme of the Academy of Masters & Professional Courses. In addition, he also works independently as an organisational coach, has regular publications on the specialisation and conducts research into room for learning in organisational coaching.
Bibliography


Senge, P. De vijfde discipline. De kunst & praktijk van de lerende organisatie. Schiedam: Scriptum