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# COURT TECHNOLOGY IN CANADA

Julian Borkowski\*

*The application of court technology is as diverse as the Canadian landscape. This brief description highlights only some of the activities relating to technology employed by Canadian courts. The Author is with the Ministry of Attorney General of British Columbia, located on the west coast of Canada.*

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## INTRODUCTION

Canada is a country blessed with an abundance of geography. Our thirty million people are scattered across one of the larger countries in the world. It is a country divided into thirteen provinces and territories and each has multiple levels of courts.

The majority of our population is located close to our southern border but our citizens can be found throughout vast regions of the north. Our judges sit in courtrooms as far as 1,500 miles from their home courthouse. On occasion, they may travel such a distance to discover that their services are no longer required as the litigants have reached an agreement.

## I. VIDEOCONFERENCING

Today, technology allows certain criminal and civil matters to be addressed via court videoconferencing. A judge may preside over actions in her own courthouse and remote courthouses in the same day. Video appearances can shorten the applicant's waiting period as there may not be a need for the judge to personally appear in their local court location. The result of using such technology is that justice is better served.

Court administrators, especially those holding prisoner escort budgets, have happily embraced court videoconferencing for economic reasons. In British Columbia, 6,000 charge-appearances were processed by video in 2003, which translates into a reduction of thousands of prisoner-miles, and perhaps many body searches. Each in-person court appearance requires four body searches. Video, therefore, eliminates the opportunity for prisoners returning with weapons or other contraband. Of course, we also benefit by avoiding the need to process documentation associated with out-of-jail escorts. When we reduce the number of prisoner escorts over public highways, we in turn reduce risk to the general public

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and courtroom personnel. We recently welcomed the addition of federal correctional institutions to the video technology network; this further reduced the need to transport high-risk prisoners.

Early proponents of court video, such as those in Manitoba and British Columbia, targeted remands and bail hearings as the primary videoconferencing application. Currently, witness appearances and chambers applications are also commonplace by court video technology. Circuit court judges need not travel back to a distant courthouse to hand down a sentence; this too can be done by video. This technology has occasionally been used for internal administrative activities such as employee interviews, but with top priority given to court applications, noncourt activities cannot be effectively scheduled.

Canadian jurisdictions have adopted videoconferencing to bridge distances. The provinces of Ontario and Manitoba have complimented their conventional court video systems with the addition of videophones, extending their reach beyond the larger centres and into areas where data communications options are limited. Alberta Justice, the court services provider in that province, is in the process of connecting their video systems using Internet Protocol (IP). While a preferred path to follow, challenging technical obstacles must be overcome before this method can be generally adopted by our courts. Court video technology, like all other court technology, requires dedicated proponents prepared to change and refine traditional court procedures.

## II. CASE-MANAGEMENT SYSTEMS

Case-management systems are designed to promote the smooth and accurate flow of information throughout the entirety of a legal proceeding. By June of 2001, British Columbia implemented a criminal case management system called JUSTIN.<sup>1</sup> JUSTIN integrates with various related government computer applications, especially police records-management and correctional-institutions systems. Core data can be captured by the 911 emergency call center and electronically dispatched to a mobile computer in the police car. Information is appended at the crime scene and forwarded to the investigations group, who in turn transfer it to prosecutors, who then push it up to court services. This electronic file follows the trial through all levels of court, with each level making a unique contribution. Upon disposition, in the event of a conviction, the file is transferred to the correctional institution or probation department. The elimination of redundant data entry has reduced repetitive manual effort that previously provided the opportunity for data entry errors. Currently there are approximately three thousand users with access to JUSTIN. British Columbia also developed a civil case-management system that is being introduced to the bar at this time. CEIS (Civil Electronic Information

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<sup>1</sup> For information about JUSTIN, see <http://www.ag.gov.bc.ca/justin>.

Systems, pronounced “keys”) allows lawyers to file, search, and follow the progress of their cases without sending representatives to the courthouse.

Other Canadian jurisdictions appreciate the value of case-management systems and indeed have achieved varying levels of automation. Like British Columbia, they are either actively improving or implementing case-management systems.

### III. EVIDENCE PRESENTATION

As more actions are being filed with the courts each year, and as procedures take longer due to the complexity of cases, court service providers are faced with constructing additional courtrooms or developing more efficient methods of conducting the business of the courts.

The presentation of evidence is not only a time-honored skill, but also a very time-consuming one. Canadian court services providers would like to adopt presentation technology that would increase the efficiency of the presentation of evidence while simultaneously reducing costs and improving the delivery of service to the public. Throughout Canada, implementation of technology in courtrooms is driven by high-profile and document-intensive trials such as the Air India trial in Vancouver.<sup>2</sup> Other jurisdictions, such as Quebec, have developed plans for technologically advanced courtrooms in major courthouses and are ready to implement when special requirements come along.

The approach adopted by the court services branch of the Ministry of Attorney General of British Columbia is a movement towards technology-enabled courtrooms. Major renovations include the development of an infrastructure to support technology. Infrastructure involves access flooring, and cabling to accommodate lawyers’ computers, projectors, printers, annotation devices, document cameras, and future courtroom components.

Trials with more than forty thousand pages of disclosure evidence are not uncommon. This compels lawyers to employ technology to locate and evaluate relevant information. Lawyers appear to have accepted the use of technology in their offices to manage large numbers of documents in order to effectively represent clients. The court too must use technology to move the process along in a timely manner. In a recent Vancouver trial, a prosecutor presented 240 exhibits to a witness in a period of four hours using presentation technology. That prosecutor estimated that she would have needed ten court days had she used the traditional method of presenting evidence. This reduction conserved valuable court time for the judge, lawyers and courtroom staff in a period when all resources were and still are being stretched to the limit.

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<sup>2</sup> See, e.g., Kim Bolan, *Air India Probe Has Cost \$43 Million*, VANCOUVER SUN, Dec. 19, 2003.

The courtroom is the meeting place of differing opinions, which is evident when courtroom technology is introduced. Inherent in our judicial process is respect for the independence of the parties involved, precluding the court from enforcing technical standards or technical processes on an unwilling lawyer. Courtroom technology forces lawyers to deal with the fear factor — the fear of looking foolish when the technology fails, and potentially jeopardizing their reputation or causing personal embarrassment.

The cities of Toronto, Montreal, Edmonton, and Vancouver each have a flagship courtroom where presentation technology has been introduced, providing court administrators the opportunity to study and develop new courtroom business procedures. The Air India courtroom in Vancouver and Biker courtrooms in Montreal and Toronto are examples of our latest systems. The Air India courtroom allows hyperlinking of electronic exhibits to an electronic exhibit list. The list is linked to the recorded audio, while simultaneously connected to both the public's and the lawyers' display systems. Upon playback of the digitally recorded audio, the judge may listen to the testimony while looking at the exhibit using a simple notebook computer without any external data connections. Other features allow expert witnesses the ability to manipulate an exhibit on a document camera while augmenting the testimony on a touch-sensitive LCD monitor. The results can be printed and stored electronically on external and portable recording devices. All parties can share electronic data without jeopardizing network security.

Trials with high public interest necessitate the transmission of audio and video signals to overflow courtrooms. Camera switching has been voice-activated, thereby reducing the need for constant camera operation, yet providing the viewer with an almost life-sized image of the speaker. Current videoconferencing systems enable lawyers to present evidence to a witness elsewhere while maintaining eye contact. Such systems can also stream courtroom proceedings to a personal computer anywhere in the world. This feature, in conjunction with voice-activated camera switching, allows for visual communication in the virtual courtroom. This could allow family members of victims, perhaps in a foreign country, to view courtroom proceedings without actually being present in the courtroom. Trials of international interest could also be accommodated in this matter. I must point out that cameras in Canadian courtrooms are not to be used for broadcast purposes but primarily to send images to overflow courtrooms in nearby buildings, particularly for high-profile trials.

Modern courtrooms are examples of technology convergence at its finest, yet it is that convergence that presents challenges to courtroom technology designers and end-users alike. With the knowledge gained from these technologically sophisticated courtrooms, court service providers are able to develop technology for smaller courtrooms hosting more conventional trials. In other words, we have learned how to apply technology to smaller and more conventional courtrooms.

Canadian courtrooms are experiencing a slow-paced evolution towards electronic evidence presentation.

#### IV. COURT RECORDING

Canadian courts have adopted audio recording as the standard method of capturing the official record of the court. Analogue recording systems are found in a majority of our courts, though digital audio recording is viewed as the preferred method of archiving and retrieving recordings. Criminal courts require audio files to be kept for a period of twenty years, while civil court tapes need to be stored for seven years. Digital recording provides the ability to store data optically in CD or DVD formats, which addresses the longevity issues faced by magnetic media.

Digital audio recording merges the computer and audio technologies that have historically been considered separate disciplines. This integration provides both vendors and the courts many challenges.

Alberta courts have been digitally recording 250 courtrooms and centrally managing audio files and transcripts for more than two years. The provinces of Ontario and Quebec are moving to provincewide rollouts of digital recording. Together, their numbers amount to almost one thousand courtrooms. The rest of us are moving in the digital direction, but at a slightly slower pace.

#### V. CHALLENGES FOR COURT SERVICE PROVIDERS

Courtrooms are meeting places for independent groups who hold opposing positions on arguments, triers of fact who must choose sides at the end of such arguments, and a group responsible for maintaining an impartial position throughout the proceedings.

To encourage reluctant users of technology in the courtroom, court service providers must take every opportunity to exhibit the usefulness of courtroom technology. When all court participants fully understand the power of electronics in a properly equipped room, they will become avid users.

Traditional fund shortages remain a major problem from both capital and operating expense perspectives. Capital for the initial implementation is addressed by project funding, but subsequent upgrades and maintenance are an operating expense. New versions of recording software and videoconferencing system upgrades are just two examples of expenditures with which courts had not been previously concerned. Failure to keep technology current with a financial commitment towards maintenance will result in disuse and render the initial capital expenditures wasteful.

While lawyers and judges are the focal point for court technology, court administrators must address the challenges inherent in new technology. To make

technology appear transparent in the courtroom requires skills that court staff may not possess. Our demands on our own people are likely to increase.

## VI. CHALLENGES FOR THE COURT

We witnessed the reluctance of senior lawyers to accept technology in the courtroom. Until court technology standards evolve and stabilize, the judiciary will be called upon to make decisions on how and when technology will be employed. Some of the many other concerns confronting judges are:

- Does witness credibility change when the image of the remote witness is displayed on a courtroom projection screen?
- Can a remote witness be effectively cross-examined from a significant distance when videoconferencing is employed?
- How will a jury react when small objects take on misleading dimensions while displayed under a document camera?
- Should the jury have access to electronic exhibits and audio recordings of proceedings while in deliberation?
- How will a judge or jury handle massive volumes of documents?
- Court-convening at crime scenes can be facilitated by new wireless video technology. Will more remote proceedings be requested when technology can accommodate such requests?

We look forward to leading courtroom technology developers to provide leadership and direction in these areas. While the format of Canadian courtrooms differs from our American neighbors to the south, the challenges facing technology in the courtroom remain the same. We have a common role and objective to assist our judges, lawyers, and staff in viewing technology as simply a more efficient and effective method of communication that will better serve justice.