

# NATIONAL



THE CANADIAN BAR ASSOCIATION  
L'ASSOCIATION DU BARREAU CANADIEN

NOVEMBER/DECEMBER 1992 NOVEMBRE/DÉCEMBRE

VOLUME 1 NO. 2

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# GRAPHIC

Canadian litigators are adding a hi-tech edge to their courtroom presentations with the latest in computer-generated images

BY JOHN BEAUFOY

It's not a gimmick. It's not a fad. It's the way of the future. Computer animated graphics are coming to Canada's courtrooms.

"As human beings, I think we have always been visually oriented, but the technology wasn't there to enable us to do things about it in court very well, except for flip charts and static drawings," says Clifford Shnier, head lawyer of Richmond Hill, Ontario's Litigation Technologies. "But now, you can punch in the data from the black box of an airplane and feed that into an imaging graphics system and it'll recreate the final few seconds of Flight 393 over Detroit."

Most observers see the slowly emerging computer animation field as particularly useful in complicated disputes. Alan Lenczner, formerly a civil litigator with the Toronto office of McCarthy Tétrault, points to his colleague Ian

Binnie as someone who used the technology to Canada's advantage in the boundary dispute with France over the islands of St. Pierre and Miquelon.

The Canadian legal team used computer graphics to illustrate the consequences of drawing various boundary lines. Lenczner says the French lawyers



were "surprised and stunned" by the rapidity with which the Canadians could graphically illustrate the arguments about where fish swam and where mineral beds lay.

Calgary banking litigator Vaughn Marshall, of Cook Snowdon, says, "What computers do for courtroom work is make you more effective." If old fashioned graphs and mock-ups need to be changed because of evidence in the trial, there's more cost and delay. With

computers, however, a lawyer need only change a variable or two, press a button, and the graphic is updated.

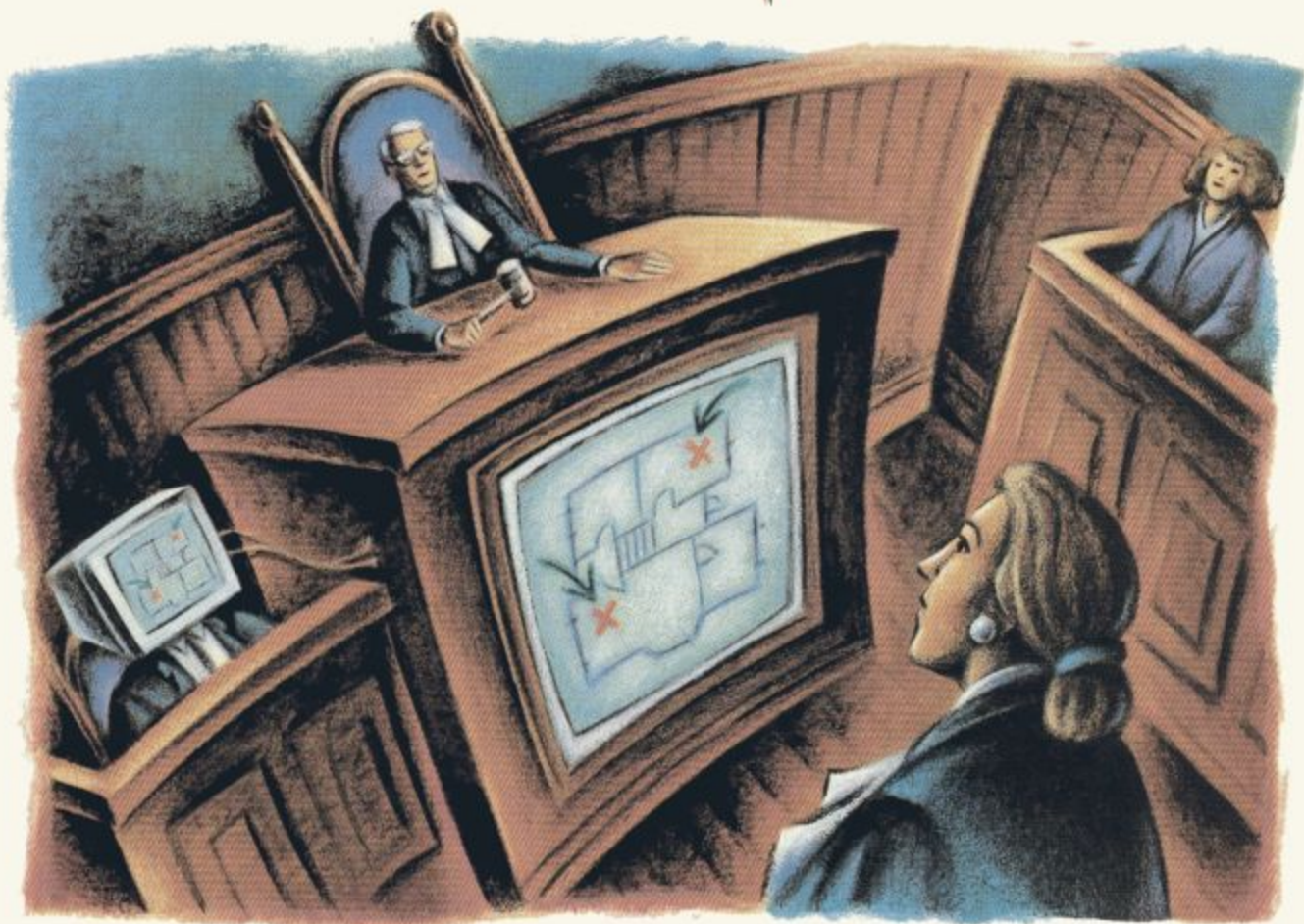
The 'gadgetry', however, is no substitute for a lawyer's traditional role of investigating, preparing and advocating. Marshall cautions. "I've seen the most sophisticated software and hardware available today and I can tell you that there's just no question that the technology could make a big difference, but

the technology was never bigger than the persuasiveness of the presenter."

Maryland lawyer and computer graphics consultant James Keane agrees. "This is simply another arrow in the litigator's quiver and one that, if it's used well, can give a tremendous advantage and I think that's supported by scientific research."

Given the burgeoning enthusiasm for this type of computer in courts, why haven't more Canadian lawyers jumped

# EVIDENCE



MARION STUCK

at the chance to get ahead of their adversaries?

"There's a great story out of Chicago about what happened in the late 1800s or early 1900s when the telephone was first strongly advocated as a positive adjunct to business life," says Marshall. "The most resistant group to

incorporating it was the lawyers. I've heard the same said of lawyers about computers. I know a lot of guys that I talk to in California as well as in Canada say, 'Well, what's wrong with the yellow pad?'"

Keane says the reaction he got at a Canadian conference on computer

graphics technology was almost the same. "I was surprised at the almost open cynicism about it and I think that flies in the face of empirical scientific data about cognitive psychology. In the States, lawyers have been extremely conservative and unwilling to embrace new technology, but what's happened is

## L'AVENIR ET L'ANIMATION PAR ORDINATEUR

À la fin du XIX<sup>e</sup> siècle, les avocats ont été lents à accepter un nouveau gadget électronique : le téléphone. Il en est de même, aujourd'hui, avec l'animation par ordinateur, qui, malgré les réticences des milieux juridiques, s'impose de plus en plus devant les tribunaux. Aux États-Unis, son pouvoir s'affirme rapidement, souvent dans des causes aux enjeux importants. Au Canada, la réaction des avocats est plus réticente : pratiquant dans un milieu moins compétitif que celui de leurs collègues américains, ils ne ressentent pas nécessairement le besoin de quitter les sentiers battus de la plaidoirie. Cependant, il est clair que l'animation par ordinateur aide à la compréhension des auditeurs. Des études de psychologie démontrent que seulement 20 à 30 pour cent d'une présentation orale est retenue alors que « combinée avec des présentations visuelles précises et claires, le pourcentage de compréhension et de rétention de l'information s'élève entre 50 et 60 pour cent. » Avec la réduction du coût des logiciels et des équipements, « un avocat à l'esprit créateur, disposant d'un faible budget, peut anéantir le gars qui a 100 000 \$ en main mais qui manque d'imagination. » Pour l'avocat qui cherche à gagner ses causes auprès d'une génération de plus en plus tournée vers l'image, l'animation par ordinateur est une voie d'avenir.

you get the imaginative lawyer who beats someone's pants off in court because they used the tools and you'll see them reluctantly try it and then become converts."

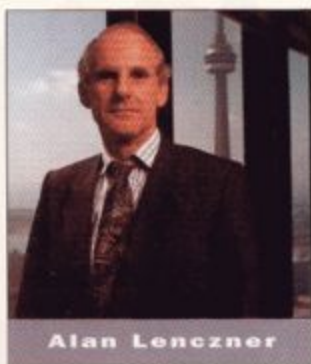
Shnier says our American counterparts are way ahead of us. When he travels to a U.S.-based law firm to make a presentation, he says, they don't have to be persuaded of the utility of automated litigation support. "They already know what that's about and they know it's a good thing." Perhaps, Shnier argues, the difference lies in the way we bill.

"With the contingency fee in the States, lawyers are looking for every possible way to reduce the number of hours that they put into a case because naturally, that means their profit at the end is far greater. Whereas here, we've still got lawyers who haven't shaken the mindset of 'Well, I'll just put in the hours and charge my hourly rate.'"

Keane offers another explanation; jury trials are just not as common in Canada as in the U.S. With more jury trials, he says, American lawyers use every technological advantage to try to make sure jury members understand their arguments.

This was illustrated in a \$50 million Kentucky case where computer graphics were used to winning advantage. After an explosion, a very strong explosive gas leaked out of a food processing plant, seeped into the sewers, then blew up at five in the morning causing over \$50 million in damage.

According to Keane, the animation



Alan Lenczner

PAUL VILLE

was incorporated in the expert's testimony, supporting it like a series of photographs would. The graphics presentation made things clearer for both the judge and jury.

In discussions with psychology professors, he's learned that "in the field of cognitive

psychology and learning, if you are given only an oral set of information, your understanding and retention of the information scores in the 20 to 30 percent range. If you combine that with visual presentations that are articulate and clear, you have 50 percent and 60 percent understanding and

retention. It's really then a question of creativity and resources and I can tell you a highly creative lawyer, on a low budget, can beat the heck out of a guy who's got \$100,000 in the budget but no imagination."

Cost may have been a consideration in the past, but according to the experts, that's no longer the case. Shnier says while the use of such technology used to be a rich lawyer's

game, that's changed as computer hardware and software has become less expensive. "It's down to the point where everybody has computers in their offices now anyway, so it's just a question of acquiring the right software, and the software, in the overall scheme of things, is relatively cheap."

In the Louisville sewer case, for example, production costs were about \$75,000 with \$50 million at stake. Today, Keane says, the cost would be about \$10,000 to \$15,000; and that

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makes good economic sense.

Assuming a lawyer wants to make use of computer animated graphics in court, will members of the judiciary pose a barrier? Not if they can be convinced that it will help to clarify the evidence and speed the case's resolution.

According to Shnier, judges wish lawyers would get on with it so they can have smoother-functioning trials. Technology can speed trials and reduce costs, he says, "and that's critical in these days when litigation is just costing too much. Basically, litigation is not a productive

pursuit. You don't end up with a manufactured object at the end of the day that somebody's going to buy. The less cost that goes into litigating, the better in the sense that it reduces overall social overhead."

There is a risk that animated graphics

## L a p t o p L i t i g a t i o n

*New laptop technology is gaining legal ground*

With all the enthusiasm of a recent convert, Calgary litigator Vaughn Marshall waxes eloquent about his laptop computer. Considering that he only became computer literate in 1989, he's come a long way from the yellow scratch-pad school of lawyering.

His background in mathematics combined with his passion for learning cemented his love affair with the keyboard and the small screen. When he was first shown how computer could be applied to law, "I took to it like a fish to fresh mountain water."

Now, Marshall, a partner with Calgary's 25-member Cook Snowdon, a firm specializing in corporate-commercial work, totes his laptop (a Macintosh Powerbook 170) wherever he goes. He routinely turns spare time in airports, warm afternoons under a tree in the park, as well as California beach visits into billable hours.

His firm has affiliates in Los Angeles, Portland and Seattle and hopes to make similar arrangements soon with firms in Vancouver and New York. With his laptop, there'll be no dead time while travelling and that means more efficient service to clients. "Given the incredible power of the new laptop machines, the timely production of reports, research memos, letters, documents, court pleadings and the like need no longer hold you hostage in your office," he points out.

Marshall says too many Canadian lawyers may be missing the boat when it comes to the advantages of using laptops regularly, particularly in court. "That's the way things are going," he predicts. "Imagine the power of having instantaneous access to your whole case through a machine no bigger than a two pound box of Black Magic chocolates. My laptop has the same power as my office computer — not quite as fast, but it has all of the capabili-

ties. I've got a built-in modem and a program called Remote Access which means I can access all of the data on my office computer or, if I want to, I can use the printer in my office."

Marshall, who defends banks in lender liability and improvident realization cases, says, "The courtroom is where I see some real possibilities and it will depend in large measure on the extent to which counsel

can really help the court open themselves up to this kind of thing."

Luckily, Alberta's Court of Appeal has created a positive climate for the province's judiciary and lawyers can, if they wish, take advantage of laptops in court. "When I intend to argue an important motion or conduct a trial, I bring my Powerbook. With the imaging technology currently available right in Calgary through MicroDynamics MARS system, I have the capacity to access, right in the courtroom from my Powerbook, the transcripts from all discoveries as well as the complete documentary production in the lawsuit."

The question is, are enough lawyers making use of the new laptop technology? In Richmond Hill, just north of Toronto, lawyer Clifford Shnier of Litigation Technologies says the trend is clear.

"The lawyers who don't automate and don't accept the new ways are going to get pretty severely hurt within the next few years. It's already beginning to happen. Clients are expecting value for billings as opposed to straight hourly stuff. They've been hitting American lawyers that way for a couple of years now and it's coming up here finally."

For those with the education and the interest, a laptop can be had for as little as about \$1,600 or as much as \$3,600 depending on the bells and whistles. Some dealers offer lease-to-own programs which can cut the up-front cost. ●



*Vaughn Marshall*

## Video Trial

**M**aryland lawyer James Keane foresees the day when complete trials will be put on video and presented to a judge and jury for a decision; no live witnesses, no lengthy objectives and motions, no interruptions. And he's already begun work on the idea.

"The strategy of the Video Trial Project is to try and get pilot programs to videotape a trial and have all the objections ruled on by a master or someone in the background." The project would have a neutral video service that tries to be fair to both sides. The video would be shown in lieu of a live trial, first to parties involved so they can see what their case really looks like, then to a dispute resolution panel and then, if necessary, to a trial judge or to a judge and jury.

"You've removed so much inefficiency from the process," says Keane. "Now, do you lose things by not having people appear live? Well, that's what we've got to test. But maybe 80 percent of our trials could be disposed of in that way."

Keane can be forgiven his enthusiasm. As a former political corruption prosecutor in the Spiro T. Agnew days, he dealt with complex cases every day. While litigation support services were almost unheard of at the time, he did find one company. It worked out so well they asked him to join them. He did.

and recreations will end up being not only an adjunct to oral testimony but also the evidence itself. Citing the instance of a remote-controlled bank surveillance camera capturing a hold-up, Lenczner points out that no one is operating the camera — it's all automatic.

Still, if Canadian lawyers and judges can overcome their profession's natural conservatism, computer graphics in court will one day be no more extraordinary than laptops and almost instantaneous transcripts. The fact is, most people — including most jurors — get their information visually these days. Many are used to working on computers at the office and playing computer games with their kids at home. The lawyer who makes use of the latest visual tools may well find that it's the winning way of the future. ●

John Beaufoy is a Toronto freelance writer

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