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Quote of the week

"I find it hard to believe some defence lawyers are opposed to electronic disclosure, it's really the way to go."

— Lawyer Chris Kostopoulos
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All the evidence on 12 CD-ROMs

Judges, lawyers like 'paperless justice'

By Gail J. Cohen
Law Times

TORONTO — The largest tax-fraud case in Canadian history may have spent 15 months before the courts, but it would have been a lot longer if all the disclosure documents weren't stored electronically.

"That's not all that long for a trial of this dimension and documentary evidence, and that's only because of the electronic courtroom," says Superior Court Justice Sandra Chapnik. "It was much faster and less expensive than it could have been."

The prosecution of Einar Bellfield and Osvaldo Minchella — who concocted a luxury-yacht scheme that bilked 613 people out \$22.8 million and the government of \$2 million in questionable tax credits — took five years and yielded more than 500,000 documents. From the start of their investigation, Revenue Canada (now the Canada Customs and Revenue Agency) scanned in everything, including credit card slips, invoices, and notes on little scraps of paper.

So, instead of boxes full of paper, lawyers needed to carry around only 12 compact discs.

"I think it worked well," says defence counsel Chris Kostopoulos of Zaduk Kostopoulos. "In a case in which you have hundreds of thousands of documents, it's much easier carrying a laptop with CD-ROMs than 50 boxes of papers."

Courtroom 6-2 at Toronto's University Avenue courthouse was completely made over. There are computer screens looming everywhere — by the judge's chair, in the prisoner's dock, in the jury box, beside the court reporter, next to each defence counsel and Crown attorney, and even one facing the public-seating area.

At a cost of \$100,000, funded in large part by Revenue Canada, it's Canada's first stab at paperless justice.

Federal Crown attorney Peter Brauti says the wired courtroom will house similar trials in the future.

Using a program called SuperText, documents were scanned and text information identifying the image was attached. The original image of the document is stored on CDs, while the text is indexed in a searchable database.

Each document had a serial number noted on the top of the originals (of which there was one

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PHOTO: PAUL LAWRENCE



Ontario Superior Court Justice Sandra Chapnik: electronic trials are the way of the future.

Paperless court

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set). Documents on the CDs can't be altered, but if there is a question of validity the hard copies are always available.

The electronic image can be quickly retrieved using that number, and comes up on all the screens in the courtroom.

"It was much more efficient for me than thumbing through papers," says Chapnik. "I could just key in a particular word and it would come up with a list."

She says it was also much more efficient for the lawyers to deal with the evidence in this way.

"It lets counsel focus on their main role," she says. They didn't have to worry about finding documents and handing them around: there was a technician in the court to deal with all that.

Kostopoulos said the electronic documents meant less time was spent preparing for witnesses.

"What we did in a night or two could have taken a month of hard

work just searching for a scribble" in loads of boxes and papers strewn all over the place. "You can't imagine the headaches."

Instead, using search keywords, he and junior counsel Michael Passeri would easily be able to find out what was seized at a particular location, for example, or what documents were authored by a certain individual.

However, he admits he still lives in somewhat of a paper world and would print documents he was going to use.

The only drawback in having it all on a screen in the courtroom, he says, is that you can only show one page at a time. His only piece of advice would be to have either two screens or a split screen that would allow the easy comparison of pages.

"I find it hard to believe some defence lawyers are opposed to electronic disclosure, it's really the way to go," says Kostopoulos. "The bottom line is that it was of great as-

sistance to us. We probably couldn't have done the trial without it."

Brauti made maximum use of the technology. He did his closing argument using PowerPoint presentation software — something frequently done in the business world, but rarely used in a courtroom.

It allowed him to use coloured flow charts to explain an otherwise-complex issue involving millions of dollars, fake companies, some yachts, Revenue Canada and a slew of unwitting investors, including broadcaster Brian Costello, Michael Bergman, chairman of the Second Cup coffee-shop chain, and Barry Sherman, chief executive officer of the pharmaceutical company Apotex Inc.

He needed the jury to understand the relationship between the accuseds, their alleged fake Swiss bank and management company, the relationships between the investors, the fake companies and Revenue Canada.

He didn't have his entire closing done on computer because there are times when you want the jurors to concentrate on what you're saying, he says.

"But for complicated things it was nice to have charts on the screen."

It was definitely the first time a jury had ever sat through a trial with computer screens. There were some initial glitches that had to be worked out, says Chapnik. Such as the first set of jurors' chairs being too low to see parts of the courtroom over the monitors. A new set of chairs had to be bought.

Having the documents on screen, the lawyers could zoom in on a particular paragraph or section of a page and show only that to the jurors, she said.

"It focuses the evidence," she points out. "It's an effective way of conveying complex issues to the jury. It helped make it understandable."

In this case, jurors were allowed to take notes and — in the spirit of the wired trial — one of the jurors asked to use a laptop computer to take notes.

"We thought we'd try," says Chapnik. "He was quiet and non-obtrusive."

In her charge before the jury went off to deliberate, the judge

said she dealt with the electronic nature of the evidence and how the jury should assess it.

The jury couldn't take the disks into their deliberations. But, if there were questions about the evidence, the jurors were all brought back into the courtroom, seated in their usual locations and the technician would bring up the evidence in question.

"That was fine with me as long as they didn't discuss [the evidence] until they were back in the deliberation room," says Chapnik.

At the beginning, some of the jurors were uncomfortable with the technology. But, as the trial went on, everyone was fine with it, she says.

She was excited to be part of this case. "You don't see this stuff in the books," she quips. Chapnik says there's no doubt electronic trials are the way of the future.

The architects of the tax fraud that led to the trial were both found guilty. Bellfield, who masterminded the scheme, was sentenced to 10 years and fined \$1 million, to be paid to the government of Canada within three years. His right-hand man Minchella was given seven years. LJ