

# COMPUTER TRAINING THE LEGAL PROFESSION

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## Summary

Common explanations of the lawyer's reluctance to learn to operate a computer, such as the fear of appearing inept or being generally of a conservative nature, tell only part of the story. Many other issues are involved, and resistance to soft skills training is a large factor. Some of the blame for that must fall on the law schools, which have been negligent about instilling the appropriate values regarding soft skills training generally, and the use of technology specifically

## Introduction

The legal profession's reluctance to accept new technology in general and computers in particular is a well known and oft lamented fact.

By the end of the 1990s, , computers were present on the desktops of no more than 40% of practicing Canadian lawyers, allowing for some variation by province. True, this figure represents a point on a steadily inclining scale, up from meager beginnings, and it shows no sign of turnaround. It is also True that many lawyers have learned not only how to use the computer, but how to improve the product of their work, , how to enhance their professional and personal lives , and how to reduce their overhead with it.

Nevertheless, 40 per cent is far from a crowning achievement. Lawyers' use of computers in Canada consistently remains low compared to our colleagues south of the border. Moreover, a large portion of our profession remains stubbornly intent on completing their careers without ever having sat in front of a monitor.

Only a minute percentage of the profession embraced small office computer technology when it appeared in the late 1970s and early '80s. Most of our colleagues have been dragged kicking and screaming into the 20th century. Even today, as new technologies emerge, they overflow into legal valleys only after they have flooded the plains of general business. Internet e-mail is a case in point: instead of taking the initiative to move to e-mail to achieve more cost-efficient communications, many

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lawyers have waited until they were embarrassed into obtaining an e-mail account by demanding clients.

Using a computer doesn't necessarily mean doing one's own word processing. A number of computer literate lawyers continue to delegate the bulk of text production to their support staff. What a lawyer should be able to do is take advantage of the computer as an information distribution, work management and communications tool. At a national technology conference in 1990, several speakers — including me — took the position that there is no excuse for a lawyer not to be able to use a computer to retrieve information from the firm's databases. Specifically, the firm's file management information and its in-house research documents. Application programs such as word-processing form only part of the automated lawyer's software portfolio and must be supplemented by tools such as calendars, calculators, schedulers, ticklers, address books, note pads and the like.

Yet, as recently as last fall a court accepted an argument by defence counsel that the Crown's request to produce documentation on CD-ROM was discriminatory because no lawyer in that defence counsel's office knew how to use a computer.

"I'm handicapped," argued the prominent lawyer (apparently with a straight face). "I may be a dinosaur, but I have no intention of learning."

### **Explanations**

One often-tendered explanation for lawyers' slowness to adapt to technology is that lawyers are basically conservative in nature. To my mind, that explanation is overly kind to the profession. It suggests that lawyers have conscientiously chosen the surer traditional methodology over untested waters. The argument would be a lot more convincing were the waters truly untested.

Other reasons proffered in defense of this wait-to-be-pushed attitude, such as, "I don't have the time to learn," "I can't type," "I really don't need to know how because my secretary uses it," are all sham. Arguing the merits of hands-on technology with these lawyers is fruitless. It is more instructive to take one step back, and ask why excuses are being offered in the first place.

On the surface, all these rationalizations might be construed as an attempt to disguise laziness or disorganization. But I submit that the roots go deeper. Other forces—social attitudes, conscious feelings and sub-conscious fears are at work here, preventing an otherwise intelligent human being from acquiring a basic computer education.

The inability to type is a classic example. Often lawyers still use it as an excuse for

not learning to use a computer, despite the fact that many software programs can be operated effectively with minimal typing. The most keyboard-intensive packages are word-processing programs, where text input can be a time-consuming process. Even then, lawyers shouldn't be doing vast amounts of original keying in any case; their best use of the word-processor is to edit documents already on the screen, or to prepare documents from precedents. These activities require far less typing skill. Moreover, for anyone with a computer built in the last three years, the low cost of high quality voice-dictation software negates the validity of this objection completely.

Professional computer trainers often ascribe the lawyer's reluctance to learn to operate a computer to a fear of looking foolish or inept, especially in front of staff. Having personally taught technology skills to several thousand solicitors in Canada and the US, I believe that that truth is a symptom of a larger problem. The bottom line is that many excellent lawyers are poor administrators, and take none of their own advice when running their own practices. (How many law partnerships are formed without partnership agreements?) Many good lawyers are also poor work-flow managers, responding to work demands by putting out fires and management-by-crisis rather than by organized project-handling. We may be ready to give our clients all kinds of advice, yet we often don't clean our own house first.

Learning to operate a computer has proven, both in controlled studies and in the legal trenches, to be a rapidly recouped investment yet many lawyers would still rather waste present time than invest in their futures. Even those who do want to learn to operate a new program would preferably fritter away hours through trial-and-error experimentation than spend an afternoon taking formal training. The personality type of the average lawyer bears heavily on these decisions.

### **People, Information, and Things**

At some point in our lives, most of us search our souls to identify that singular, particular career that reflects our destiny. We try to narrow down that one career which suits our talents, our unique histories, skill sets and make-up, to discover that we have the makings of a great brain surgeon, a great actor, a great bagel baker, and so on.

Conventional career counselling would ask a single revealing question: "Do you like to work with people, information or things?" While not determinative on its own, this tri-polar scale is not a bad starting point. An individual who prefers to work with things would do well to choose a career in auto mechanics over cost accounting. The "people person" would do better to staff an information booth than to catalogue archives in the back shelves of a library.

Some people favour two sides of three, combining a thirst for knowledge with the need to interact with others. Of these seeds are born journalists and teachers. Others

combine talents with information and things to become engineers and chemists; others capitalize on thing- and people-strengths to become physical therapists and portrait photographers.

And lawyers, where do we fit? All possible personality types considered, no one chooses law out of a love of working with things. People, perhaps; information, perhaps; but not things. We might at one time have been inspired to reform the law, to help the poor, to defend the guilty, or simply lured by the fantasy of a high salary, but not one of us chose to go to law school because we were experts with our hands. Certainly when *I* took the LSAT there was no manual dexterity segment.

Small wonder, then, that lawyers have been slow to adapt to computers. For a very, very long time, anyone with an interest in technology had little occasion to put it to use in the practice of law. The nature of the profession was such that for many years it couldn't draw people with the skills necessary to work with technology.

In the 1980s, computers were mere things. The only lawyers who used computers were those who enjoyed tinkering. These pioneers were a small, eccentric group. Before other lawyers would join their ranks, computers had to make the transition from being things to being either information or people.

Information was the easier development, and it came first. Services like QuikLaw (now QuickLaw) and CAN/LAW applied the power of the processor to shorten considerably one of the more time-consuming aspects of practice, and many lawyers got their first exposure to computers by researching case law through the dumb terminal placed in the library.

It was at this stage that the law schools started to incorporate computers into the curriculum when teaching legal research. The terminal, though not the source of the information itself, was at least the pipeline to it. Computer-literate law professors were few and far between, but often the law library staff had some expertise in legal research and could assist in instructing the students.

The next step was logical: if one could keep public information on large computers, then one could keep private information on a microcomputer. The introduction of personal-sized hard disks on computers meant access to your precedents, telephone numbers and schedules.

The lawyer who was attracted to the computer in the first half of the 1990s was one skilled at using information, a skill that overcame any limitations caused by a lack of ability with things. At the same time, those lawyers who stayed away from computers relied on their people skills, which the computer could neither replace nor enhance.

This all changed with the advent of publicly available electronic mail. The Internet

is the summit of the computer's career opportunities; the computer has now made the transition to being people oriented.

The Internet offers us all numerous opportunities to interact with others. Personal e-mail, Internet mailing lists, newsgroups and chat lines are flesh-and-blood people, communicating about old subjects but reachable at new addresses. Now the computer offers something for every lawyer whether they like people, information or things.

Any observer can determine how the lawyers at a firm view technology by examining their web site. Lawyers who don't use computers think of it as a thing, like a machine or a tool, or even a toy. To them, using one is a question of likes versus dislikes. They have little interest in the web site.

When a law firm web site is basically an electronic brochure, it means the lawyers behind it have at least moved to treating the Internet as information. Their web site consists of facts, usually firm-specific facts, and to keep the site from becoming stale someone spends time trying to think of more facts to deliver or more interesting ways to deliver them.

When the law firm has taken the final step, and started thinking of the Internet as people, the web site is the window through which it transacts business with people.

### **Other Attitudes**

Over time, lawyers' fears about technology have changed. At one time, fears might have manifested themselves through phobic statements, such as when one lawyer protested that the computer was turning lawyers into secretaries, reflecting a fear that technology was somehow devaluing the lawyer's skills.

Those fears have mutated, and today are expressed differently. Computers are compromising the practice of law, protest some. Lawyers now write longer contracts and judges write longer decisions. (These may be the same people who complained that the photocopier was creating too much paper.)

Lawyers' fears about their changing roles are not insignificant. Computers are challenging the self-image of the profession, a self-image inherited from many generations of barristers and solicitors who have gone before us.

historically, lawyers never performed their own clerical work. The typing, mailing, filing, and general secretarial duties performed by support staff were not the job of the lawyer. The lawyer was never required to learn these skills; moreover, they were considered menial, and therefore the sole domain of the secretary. The typing-is-for-secretaries attitude is a remnant of general business mores existing for many years. No

doubt, the historical division between common male and female employment roles strongly influenced the longevity of this attitude. An unspoken exception was made for male newspaper reporters who needed to type (*cf.* Clark Kent), but they were still required to use the “two-finger method,” so it didn’t look like they were particularly competent at it.

In the not too distant past, it was considered plainly inappropriate for professionals to do clerical tasks. The reasoning was that the education provided in institutions of higher learning prepared one for mental and not manual labour. To engage in manual tasks was to degrade one’s own position.

### The Archetypal Lawyer

Lawyers’ perceptions about their roles are also shaped in law school. I remember one of my professors extolling the virtues of the keen legal mind. The archetypal lawyer would do no more than sit in an office all day, look out over the world and continuously opine, while various minions ran around handling the paperwork and answering telephones.

Times have changed considerably for most of us. Not only is it considered professional to have a computer on one’s desk, it is even *chic*. Our corporate executive clients use them without feeling an iota of decrease in status; we could take a lesson from them.

Lawyers have always considered themselves different from other professionals. Implicitly, if not overtly, we recognize the status that lawyers as a profession maintain in the social milieu of the Canadian public, whether or not we feel inclined to promote that image. Like all professions, we consider ourselves an elite in our own right: highly educated, specially skilled, self-governing as a profession, and independent as individuals.

We often see ourselves differently from other professionals because we expect ourselves to be omniscient. That which we don’t yet know we undertake to find out. When we prepare for a trial in a personal injury law suit, in addition to the law we must learn what we can about the engineering of seat belt construction, the medicine of internal injuries, and the cost of treatment alternatives.

The lawyer has traditionally seen the job of lawyering as a set of intensively cerebral tasks: thinking, researching, orating, arguing, negotiating. The primary tools were always a pen and pad. The finished product is often a glorified piece of paper, for which the lawyer took responsibility for the content, but delegated the production to support staff.

Contrast this with doctors and dentists, who are taught to use their hands. Manual dexterity is an integral part of their daily task activities. Moreover, new technology is a *cause célèbre* of the trade. Surgeons are expected to be able to use the most modern medical technology to assist them in their work. It is almost ironic that some of the same lawyers who expect their doctors and dentists to use the most up-to-date equipment think it's acceptable for themselves to remain behind.

## **Motivation**

Keen learners make the best students. It would be nice if the motivation to learn computer technology were an eager desire to learn the subject matter. It's not. Clearly, some lawyers truly fear technology itself.

The fear of technology is complex, and may be the combination of a number of factors. Sometimes, the fear is no more than the fear of the unknown, experienced by all of us when put into new situations. To these solicitors, computers are totally new and unfamiliar. The keyboard seems a maze, somehow too complicated or too daunting to be tackled by non-scientists. It may be perceived as related to electronics, engineering or mathematics, subjects which many lawyers have not dealt with for many years.

Many lawyers look upon computers as some kind of uncontrolled commercial tailspin, and reluctantly resign themselves to keeping up with the competition. Others are afraid of becoming obsolete as individuals, squeezed out by younger, fresher professionals making better use of technology. These lawyers are more interested in avoiding the perceived pain of computer training than achieving the satisfaction that acquiring the knowledge will create.

The attitude is not restricted to computers. Among professional trainers, lawyers are notorious for being resistant to soft skills training. Interviewing strategies, handling difficult people, crisis management, time and project management — these are all skills required of active legal professionals, for which they receive next to no training in either law school or the bar admission course. The closest any lawyer ever comes to learning something about those skills is voluntarily attending a one-day continuing legal education (CLE) program on the subject.

Writing skills are the most glaring example of professional arrogance. Most lawyers consider themselves excellent writers, to the point that they refuse to be trained in modern business writing. As a result the vast majority of lawyers' correspondence still reads as if it were drawn up in 1940, using stilted, overly-formal jargon instead of reader-centred prose.

Seats at business management training courses are full of well-educated professionals: MBAs, M. Eds., and others, paying one thousand dollars per day to attend

a training session, while lawyers grumble when the price of a full day CLE course exceeds \$145. The speakers at these CLE courses are invariably lawyers themselves, for surely anyone else suffers from a credibility problem. Most lawyers sincerely doubt that non-lawyers have anything of relevance to teach them.

These attitudes are organizationally systemic. Law firms do little to reward lawyers for taking the initiative to attend formal training, computer training included. Where billing hours reign supreme, the perception still exists that learning time is downtime.

### **Future Computer Training**

It's time to change these attitudes.

Today, a genuine belief in the benefit of being a technologically literate professional must be instilled beginning in law school. That motivation will work to our benefit as instructors. Pupils are more willing to learn, and for the right reasons. From that point, students should be graduating believing that they are embarking on the first stages of learning, rather than feeling they have already learned it all.

When it comes to computer technology, at least the worst of the learning curve is over. User interfaces continue to simplify and the faces of the different operating systems continue to converge. The graphic user interface has been proven beyond any doubt to result in a sharply reduced learning curve, and the newer pen-based and voice-activated systems are merely further steps along the road to the completely transparent interface. The target is a point where the user need not even be aware of interaction with a computer. We actually have reached that point: whenever an answering service asks you to "press 1 for Sales, press 2 for Accounting," you are operating a computer without even knowing how. The most promising technologies are therefore the ones that will allow us to continue to deal with our surroundings as we do now. The more technology emulates our reality, the shorter the bridge to cross to incorporate it.

In the short term, the continued release of new technologies on the market will maintain the requirement for technical training. Learning to operate new software is no longer a matter of memorizing the navigational requirements of the package. Learning about new features is all about learning how they can help your work. Formal training must concentrate on explaining the strategies of the program and the skills needed to turn the user into a more effective worker.

As firms start paying attention to work-flow processes, specifically the movement of data from lawyer to support staff, job descriptions will continue to change. Delegating to the computer the tedious and mechanical work will free up both lawyer and support staff for more challenging and thoughtful work.



Non-involvement with computers is no longer an option for the practicing lawyer. computers are not going to go away. The face of labour in our profession has changed. As educators, we must recognize the prevailing attitudes about technology among the profession, so we can deal with them properly and foster good feelings about learning.

There will be a large number of lawyers who have completeed the 20<sup>th</sup> century without ever having touched a computer in legal practice. If I were one of them, I wouldn't brag about it.