

# Electronic Courthouse aims to reduce cost and time of litigation

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Editor

Most people and companies that go through costly litigation aren't anxious to do it again. Yet, litigation has become a fact of life in the construction industry, a fact that can cost companies tens of thousands of dollars, and many months worth of lost time each and every year.

This is where the Electronic Courthouse hopes to carve its niche—as a provider of low-cost, quick legal solutions for contract disputes. According to Teri Kirk, President of the Electronic Courthouse (or Nova Forum), increasingly companies are looking for alternates to traditional litigation, to save time and money.

“Overwhelmingly businesses are looking for faster, more affordable alternatives to litigation and they're thrilled to learn about our solution,” says Kirk.

The issue is substantial; statistics cited by Kirk in a Dec. 2 presentation to Ottawa Construction Association members indicate that litigation is growing at a rate of seven per cent a year, with breach of contract comprising 60 per cent of claims. She says the median amount being disputed is about \$40,000 in Canada, and it takes 600 days on average to reach a resolution in the court system. Nova Forum is aimed primarily at disputes in the \$10,000 to \$1 million range.

“Construction disputes represent about 50 per cent of all commercial disputers so it's a very significant problem within the industry,” Kirk says. “It is a significant issue; business people are coming forward and bringing it to the justice department.”

The Electronic Courthouse aims to provide simple, no-hassle mediation and arbitration services to a number of industries, including the construction industry. For a flat rate of \$2,500 (subscriptions are also available), the Electronic Courthouse promises to resolve the issue within three days of it being filed. Access to an extensive legal database with 70,000 answers to most commonly asked legal questions can be obtained for a small fee, and translation services are offered at low rates per page.

Nova Forum was founded about three years ago and has been growing ever since, but the move towards alternate dispute resolution (ADR) has been ongoing over the past twenty or so years. One of the first moves towards ADR occurred in 1976, when striking workers posed a threat to the Olympic Games in Montreal being able to proceed.

“It was your industry that led the movement away from using the public system,” Kirk told those attending the presentation.

Nova Forum was born of a private public partnership; it was an idea that originated with

Bell Canada, and has received financial backing from the Government of Canada. It was developed in a close partnership with the Bar, and many of Canada's major law firms participate on the panel. The service boasts a "who's who" of highly ranked legal experts, and experts in other fields, including construction.

The mediation process involves the parties trying to resolve the dispute, their advisors and a neutral third party mediator. Mediation generally works best where the parties themselves participate in the mediation sessions.

Everything is done electronically, including the mediation, with "point and click" forms available online. Kirk promises that even those who aren't keen on computers will be able to easily navigate the service.

"We have designed our solution with needs of business people, small and medium enterprises in mind, and companies and individuals that aren't particularly used to dealing with computers," she says. "It's designed for business people to fill out themselves."

Kirk says compliance rates are often higher for ADR than with traditional legal recourse, due to the fact that there is more good will involved (both parties must agree to the mediation, and this is usually achieved through a contractual ADR clause) and because it takes so much less time to resolve disputes

John DeVries, president and general manager of the Ottawa Construction Association says that there is a place for this kind of service in the construction industry.

"The electronic courthouse provides benefits for those that are in different geographical locations or for those rare circumstances when the individuals are so polarized that they can't even stand sitting in the same room with each other and the arbitrator," he says.

DeVries notes that traditional alternate dispute resolution services already exist, but that the Electronic courthouse offers one new ADR option for firms in the construction industry. "I see the association's role as educating the members as to the various options for ADR," he says.

Nova Forum has proposed a fee sharing formula (with a referral bonus) to a number of construction associations, including the OCA. However, DeVries indicated the OCA would not participate.

"As far as a group association plan, Nova Forum has proposed to all associations a fee sharing formula. Because the Association is very strong financially and not in need of additional outside revenue sources, I would forego the Association referral fee in order to further reduce the arbitration fee to the member," he says.