ALTERNATIVE DISPUTE RESOLUTION

Electronic Courthouse a timely, affordable ADR solution

By W. Anthony Poland
Toronto

Appealing to today's fast-paced and cost-conscious business environment, Electronic Courthouse is proving to be a timely and affordable Alternative Dispute Resolution (ADR) service.

The Canadian Bar Association (CBA) has named the Electronic Courthouse, owned and operated by NovaForum Inc., a Canadian corporation specializing in the design, build, and operation of e-ADR solutions, as a Member Service Provider for ADR.

Time is certainly an ally of the Electronic Courthouse but while Novaforum president and CEO Teri Kirk says "time and money is the key" to the service's success, clients also want to know their dispute is being handled by top professionals.

For a $2,500 (US) per party flat fee, the service is available in five industry sectors – manufacturing and exporting, banking and insurance, IT and telecom, retail and small business and construction. Clients also choose four time tracks, including the emergency time track, which sees a guaranteed turn around of three business days.

Using the service's website, *ElectronicCourthouse.com*, parties are taken through all the steps they would undertake in a conventional dispute resolution session, allowing participants to fill out electronic forms to create summaries of their positions and post them on a secure website.

There is an online legal database with more than 70,000 answers to commonly asked legal questions, corporate credit reports, model dispute resolution clauses, multilingual translations solutions and what the company calls its Resolution-Room, which allows parties to meet with each other and their Resolution Professional in a secure online meeting room.

Rick Court, e-business entrepreneur and investment banker at Fusion Capital, is a principal investor of the company.

"The Electronic Courthouse is an international forum for commercial dispute resolution — a comprehensive alternative to commercial litigation. It allows parties to carry out conventional mediation and arbitration using today's communications and online tools, templates, legal resources, translation services, and related tools." says Court. "The service is available in any language, in any jurisdiction."

Teri Kirk

The Electronic Courthouse and YorkStreet Group have now entered into an association to provide conventional and e-service delivery options to serve the ADR market.

"The Electronic Courthouse has assembled a roster of top ADR professionals which we are pleased to be a part of," says YorkStreet Principal Paul Iacono. "It has designed and built state-of-the-art telecommunications tools, forms, and precedents and assembled legal resources to provide a highly innovative and effective ADR solution for today's fast-paced business market."

Colin Baxter, a partner in McCarthy Tétrault LLP, carried out two resolution services using Electronic Courthouse.

The 12-year veteran of corporate litigation, who served as mediator on the disputes, told the *Globe & Mail* that the service "was very effective."

The CEO of one of the parties to the dispute, who was not able to identify his company due to the parties' confidentiality clause, was also in favour of the service.

Andrew Putman, responsible for the service's relationships with the CBA, law firms and ADR practitioners, says Electronic Courthouse serves effectively as a broker, marketing its best-in-class ADR solution through international channels and industry associations, then referring the disputes to Resolution Professionals selected from ADR practitioners to serve with Electronic Courthouse.

Putman says the needs of the parties are matched with the skills and experience of the resolution professionals, with the parties making the ultimate choice.

"Our target market is clients who have built a mandatory ADR clause into their contract and are looking for a fast affordable ADR solution." he says. "Most disputes are in the $40K to $1M range."

The service will also license its solution on a private label basis to other adjudicative bodies, allowing them to provide an e-service offering, such as administrative tribunals, boards of inquiry, industry associations, ombudsmen, and government agencies, and enterprises seeking an internal dispute resolution service for human resources or labour relations disputes.

As well, Electronic Courthouse has also announced that it will be receiving funding under the Social Sciences and Humanities Research Council, the federal funding agency for university-based research, to carry out a trial on Litigation System Preferences: An exploratory investigation of Online Dispute Resolution Services.

Walkerton compensation plan pays out $45 million in claims

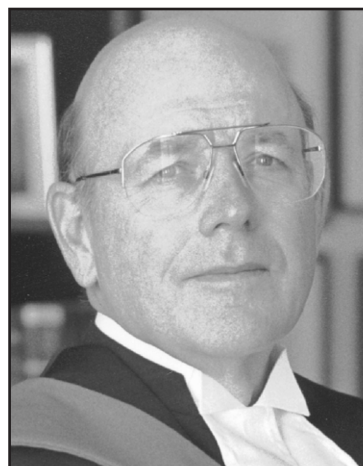
By John Jaffey
Toronto

In the three years since the Walkerton Compensation Plan was approved by the Ontario Superior Court, about $45 million has been paid out for claims and $3.75 million for legal fees, and there is no end in sight. The number of outstanding claims is unknown, observed Justice Warren Winkler at a case conference on February 18, but he called the number 5,400 in the Plan Administrator's tracking system "highly inflated."

At the outset, anticipated claims were estimated at 7,500, based on Walkerton's population of 5,000, plus visitors.

However, the administrator received more than 10,150 applications. Of these, 9,156 were accepted for assessment. And from that group, 6,745 Stage-2 applications were made, of which 5,859 have received at least partial payment.

But, called in by counsel for the Province of Ontario to address difficulties implementing settlement of the plan, Justice Winkler noted that the number of outstanding claims includes some that were not accepted for assessment at the outset, derivative claims that have already been settled as part of the payment for primary claims, and property-value claims that are intended to be dealt with under a separate procedure from personal injury claims.



Justice Warren Winkler

Justice Winkler pointed out that the court has a broad supervisory jurisdiction over the plan, and that, in the past, it has been able to assist the administrator. For example, during year one, a standardized offer system for injuries lasting less than 30 days was implemented as a result of a case conference.

The court also appointed special mediator/arbitrators to deal with difficult claims and appointed an independent advice counsel for unrepresented claimants.

But Justice Winkler found himself unable to deal with the issue of delays until full information was available.

He wrote, "Court intervention must first and foremost be based on accurate information."

Accordingly, he ordered the arbitrator to compile a summary of settled claims and arbitration awards (without claimants' names, to ensure confidentiality) and to update it weekly. Nevertheless, he was able to address a number of other issues.

First, he deplored some of the obstacles impeding the plan's objectives. He called the common theme of these obstacles "lack of communication," which leads to dissemination of inaccurate information and, ultimately, confusion for the claimants in attempting to advance or assess their claims.

Part of the reason, he noted, is counsel's lack of information about completed settlements, which would help both counsel and claimants to evaluate the fairness of offers.

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Mediation requires a leap of faith by lawyers

By Gordon Lemon

Although many in our profession are of the view mediation has become mainstream, I believe they've been spending too much time preaching to the converted.

From my vantage point, there are many (perhaps most) of the Ontario Bar decidedly unconvinced about the merits of mediation. I offer my experience to those who are still unsure.

About seven years ago, it began to dawn on me that alternative dispute resolution methods were fast becoming a skill set that was going to be forced upon me and my clients so I signed up for training.

Whatever this social worker, mumbo-jumbo, group hug sort of stuff had to offer, I needed to find out about it. Only then would I be able to keep them on the safe and predictable course to court.

I can remember sitting at the back of the Landau's course with another litigator, making a nuisance (fool?) of myself as I scoffed at the skills they were teaching; skills in which they clearly believed.

By the end of six days, I grudgingly admitted that perhaps there was merit to the system. However, as an A type litigator, this was not something I could do. Send my clients to, certainly, but not mediate myself. I was also not convinced I could persuade my colleagues on the other side of a file that it would be of benefit to our court focused clients.

At about this time, Legal Aid flirted with mandatory mediation prior to giving out certificates for trials. To me, this seemed to be an interesting waste of time and money. I did not anticipate good results for issues of custody and access with, shall we say, unsophisticated and dug in clients. Imagine my surprise when several of my bound-for-trial cases settled in a matter of hours with a skilful mediator. And the clients seemed happy too!

I also found myself using the skills of mediation to settle my own cases. Through patiently listening to my clients, as well as better negotiation with the opposite counsel, matters seemed to get resolved faster and with happier clients.

So then I thought I might as well try to mediate. Although the skill set is vastly different than litigation, it is not as though one cannot have two sets of behaviour. After all, I do not speak with my mother the way I cross-examine a lying witness.

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