

# Canadian Arbitration and Mediation JOURNAL d'Arbitrage et de Médiation Canadien

Summer 2003

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# Who are we?

The ADR Institute of Canada, Inc. was created from the Arbitrators' Institute of Canada, Inc. in 1974 as the first Canada-wide professional association for dispute resolution. Its primary function was to provide the public with the means of resolving disputes and to act as a national centre of information, education and services in the field of alternative dispute resolution.

The Institute is a non-profit organization which brings together not only arbitrators, mediators and other ADR professionals, but also major corporations and law firms who work together to promote the creative resolution of conflicts and disputes. This broad membership base brings diverse skills and experience to the Institute and contributes to the development of the field of dispute resolution in Canada.

The National institute works in collaboration with seven Regional Affiliates throughout Canada to develop and promote standards for practice. The Regional Institutes develop programs and services targeted to regional needs.

All members throughout Canada adhere to the Institute's Code of Ethics and are subject to its disciplinary policies. Members who have achieved the required education and practical experience may apply for recognition as a Chartered Arbitrator or Chartered Mediator.

In 2002, the ADR Institute of Canada launched new national rules for administered ADR. These new rules provide parties to a dispute with a professional third-party neutral (as have past rules). The new national arbitration rules also provide for administration of disputes by the Institute.

With an expanded membership and expanded ADR services, the National Institute and its Regional Affiliates are poised to become the dispute resolution leaders in Canada.

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# Qui sommes nous?

L'Institut d'Arbitrage et de Médiation du Canada, Inc. est originaire de la Fondation des Arbitres du Canada en 1974 comme la première association professionnelle de RED canadienne. Sa fonction primaire était de fournir le public avec les moyens de résoudre des disputes et de servir comme centre national d'information, d'éducation et d'améliorer les services dans le domaine.

L'Institut est une organisation à but non-lucratif qui réunit, non seulement des médiateurs et des arbitres, mais aussi les autres gens de la profession, les sociétés commerciales et les cabinets d'avocats. Ils travaillent ensemble pour promouvoir les règlements afin de résoudre des conflits. Leurs expertises apportent des techniques et expériences diverses à l'Institut et contribue au développement du domaine au Canada.

L'Institut National travaille en collaboration avec sept Affiliées Régionales à travers le Canada pour développer et promouvoir des normes de pratique. Les Instituts Régionaux développent des programmes uniques à leurs besoins régionaux.

On exige que tous les membres se soumettent au code de déontologie de l'Institut et aux procédures disciplinaires adoptées par celui-ci. Les membres qui ont acquis de l'expérience et de la formation requises, conformément aux normes de l'Institut peuvent se demander de la reconnaissance comme un Médiateur Certifié ou Arbitre Certifié.

En 2002, L'Institut d'Arbitrage et de Médiation du Canada a lancé des nouvelles règles nationales pour le RED administré. Ces nouvelles règles fournissent aux partis d'une dispute avec une tierspartie professionnel neutre (comme aux anciens règlements); mais, les nouvelles règles d'arbitrage nationales pourvoient aussi à l'administration de conflits par l'Institut.

Avec un sociétariat divers et des services augmentés, l'Institut National et ses Affiliées Régionales sont sur le point de devenir les dirigeants de résolution de dispute au Canada.

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# Message from the President



*Barry C. Effler, LL.B., C.Arb.  
President of the ADR Institute of Canada,  
Inc./ Institut d'Arbitrage et de Médiation du  
Canada Inc.*

The question I hear most often from both newcomers to the field of dispute resolution and even some experienced practitioners is, "How do I get more work?" The related question is, of course, "How does the ADR Institute of Canada help ME to get more work?"

Marketing is the answer.

One of the most common concerns right now is that a large portion of the population does not know what ADR is: what facilitation is, what mediation is, what arbitration is, what collaborative law is, or what the differences are between them. If they don't know what ADR is, how will they know that it is the right thing for them?

How do you, as an ADR professional, set up and run an ADR practice when you have to face this difficulty? How do you establish your credibility and professional standing? How do you demonstrate that you are consistent, trustworthy and a valued neutral?

You can benefit from associating yourself with our Institute.

- Belong to the ADR Institute of Canada, Inc.
- Become a Chartered Member
- Use and promote our ADR Rules for arbitration and mediation
- Advertise your association with us and your credentialing through us in your promotional materials
- Explore opportunities for regional and national panel and referral services

Firstly, by being a member of a truly national ADR organization, you demonstrate your professionalism. You are showing you are committed to the development of the use of alternative dispute resolution and its growth in Canada. Let your clients, peers and professional networks know that you are a member.

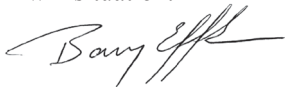
Secondly, ADR Canada membership allows you to seek the national designations of Chartered Arbitrator and Chartered Mediator. Obtaining your Chartered Member credentials allows you to show potential clients and peers that you are committed to excellence in practice and have considerable training and experience. Use your designation on your cards and in your correspondence.

Thirdly, being a member keeps you in the loop so you hear about opportunities to serve on panels being created by the Institute to assist a growing list of organizations which have asked for our help to establish ADR protocols. Stay involved by attending meeting and events, contributing to Institute initiatives, reading institute publications, and checking your e-mail and the website for messages. Watch for community meetings and consultations where your expertise and the profile of the Institute may open new doors.

... continued on next page ...

Fourthly, be familiar with our current arbitration and mediation rules. Encourage your clients to review and use these rules to assist in their disputes. The rules set a standard for efficient management of disputes, and free you and your clients to concentrate on resolution rather than procedural and administrative details.

The Institute alone cannot create broad awareness of ADR and work for its members. But, by working together, the Institute and its members can spread the word about the value of committed professionals with demonstrated skills and experience. This raises your profile and ours, a classic win-win situation.



Barry C. Effler, LL.B., C.Arb.  
President of the ADR Institute of  
Canada, Inc./ Institut d'Arbitrage  
et de Médiation du Canada Inc.

#### **New Arbitration Rules gain national support . . .**

In an unprecedented collaborative venture, seventeen national law firms and representatives of major corporations joined the ADR Institute of Canada in the launch of their new rules for administered arbitrations and mediations. The business and legal communities agree that they will become the national standard.

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ADR Institute of Canada, Inc.  
Institut d'Arbitrage et de  
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# Mediating Commercial Disputes

**Allan J. Stitt,**  
B.Comm., LL.B., J.D., LL.M., C.Med., C.Arb.,  
President of the Stitt Feld Handy Group

... is your best source for a complete  
understanding of how to effectively  
conduct commercial mediation



**Mediating Commercial Disputes** is a masterly examination by one of Canada's most experienced mediators, Allan J. Stitt, clearly demonstrating every aspect of how to effectively handle and conduct mediation in today's complex business world.

Beginning with the basics, this essential resource explains what mediation is, the rationale behind it, and how it differs from the traditional types of litigation. It then takes you step-by-step through the intricacies of the mediation process, providing practical tips and interesting anecdotes to guide you along the way.

Written in a simple, straightforward style, **Mediating Commercial Disputes** shows you:

- what mediators do to facilitate mediation and why they do it
- what the roles and responsibilities of each party are, including the mediator, lawyer and participants
- the practical solutions you need to resolve the thorny problems which arise in practice, such as what to do when someone walks out of a session or the lawyer just refuses to settle
- the various styles of mediation adopted by negotiators and the advantage of combining other styles while avoiding their pitfalls
- when to end mediation ... and much more!

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# Notice of Annual General Meeting

October 18, 2003

**The Annual General Meeting of the Members of the ADR Institute of Canada, Inc. will be held Saturday, October 18, 2003 at 11:30 a.m. in Toronto, Ontario.**

The meeting will be followed by a special luncheon for presentation of the McGowan Awards of Excellence for National and Regional service. These awards recognize outstanding contribution to the support, development and success of the ADR Institute of Canada, Inc. or a regional affiliate, and to the promotion and/or development of alternative dispute resolution nationally or within a region. The luncheon also features a keynote address. Details of the meeting and luncheon will be posted on the national website at [www.adrcanada.ca](http://www.adrcanada.ca).

Votes may be given either personally or by proxy at any annual or special membership meeting.

## ANNUAL GENERAL MEETING PROXY

The undersigned is a Member in good standing of the ADR Institute of Canada, Inc. and hereby appoints:

☐ **OPTION 1** Barry C. Effler, C.Med., President of the ADR Institute of Canada, Inc.,  
or

☐ **OPTION 2** \_\_\_\_\_, member of the ADR Institute of Canada, Inc.,

as the proxy of the undersigned to attend and act at the Annual General Meeting of the Members of the ADR Institute of Canada, Inc. to be held on the 18th day of October, 2003 and at any adjournment or adjournments thereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003

Name (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Region: \_\_\_\_\_

**If you are not able to attend the Annual General Meeting and wish to assign proxy, please complete and return a proxy form by fax or mail to:**



ADR Institute of Canada, Inc.

Institut d'Arbitrage et de  
Médiation du Canada Inc.

234 Eglinton Avenue East, Suite 500  
Toronto, Ontario, M4P 1K5  
Fax: 416-487-4429





# Conflict Coaching

## An Innovative Form of Dispute Resolution

by Cinnie Noble,

C.M., B.S.W., LL.B., LL.M. (ADR)

This article is adapted in part, from its first iteration published in the Spring 2002 issue of *Interaction* (v. 15, n. 1) and is reprinted here with permission.

Cinnie Noble, C.M., B.S.W., LL.B., LL.M. (ADR), is a lawyer-mediator and a former social worker. In addition to providing a wide range of ADR services through Noble Solutions, she has developed a unique model for coaching conflict management. Cinnie also trains coaches and mediators how to coach in the area of conflict management.

### Coaching

Coaching may be defined as an alliance between a trained coach and a client who wants assistance to improve one or more aspects of his or her life. The role of the coach is a combination of personal consultant, supporter, advisor, motivator and trainer.

At an organizational level, internal staff such as human resource professionals may coach staff in their career development as a way, for example, of supporting improved performance and productivity. External corporate coaches are also hired by companies to perform these tasks and others, such as helping executives to reorient and strategize their goals or groups of staff members to work more compatibly and effectively. In whichever context and for whatever objectives, coaching is gaining a foothold in organizations and corporations, in small businesses and at a personal level.

### Conflict Coaching

Conflict coaching is a unique coaching model that marries the field of coaching with the field of Alternative/Appropriate Dispute Resolution (ADR) and provides a practical and preventative approach to conflict management. The goal of conflict coaching is to assist people to prevent or resolve specific disputes and/or improve the way they deal with conflict in general. This may be on a professional or personal basis.

Among other benefits, conflict coaching provides individuals with the opportunity to develop insight into their own dispute resolution style and possible contribution to unproductive interactions. The process also helps people to identify their own interests and those of others, to consider what skills are needed to resolve conflict in constructive and conciliatory ways, to practice alternative ways to replace habitual and counterproductive behaviours and to enable effective and satisfying problem-solving.

There are many forms that conflict coaching may take, contingent upon the particular objective of the individual client. Conflict coaching serves many purposes and may or may not be dispute specific. That is, many clients seek coaching to help them be less argumentative, competitive, confrontational, etc. Situations may be used in coaching, but it is the behaviour clients seek to change – not just as it may apply to a certain altercation. On the other hand, forms of conflict coaching that are dispute specific include negotiation and mediation coaching.

### Negotiation and Mediation Coaching

To a great extent, mediators coach parties when assisting them in pre-mediation and throughout the mediation process. However, the focus of coaching one party to the dispute extends beyond the usual scope of the mediator's role in any given mediation. In mediation coaching, the coach champions the party and actively works with him/her to develop options, anticipate reactions, practice responses, etc.

In negotiation coaching, people hire a coach to help ready themselves for a specific negotiation in which they are going to be involved. Some of these clients may also want to improve their negotiating skills in

a more general way. Like other forms of conflict coaching, a combination of coaching principles and concepts from transformative, narrative and interest-based mediation are used for these types of coaching.

### Application

Practitioners in the field of dispute resolution will find that conflict coaching is another mechanism for helping clients manage conflict. (It is important to note of course, that many dispute resolution practitioners and coaches are commonly engaged in "coaching" people around conflict issues. The concept that has been developed and referred to in this article formalizes one model, while acknowledging that the practice is not totally unique.)

Divorce, relationship and business/personal partnerships, in addition to organizational (co-workers, manager-employee, etc.) coaching, are just some of the applications of conflict coaching. As a mechanism for preventing unnecessary disputes and resolving conflict in ways that transform destructive reactions to constructive responses, the application is expansive.

### Summary

Conflict coaching is an innovative form of dispute resolution that assists people on a one-on-one basis to improve their effectiveness in handling conflict. As such, it has far-reaching possibilities and applications. Conflict coaching may not be a process that everyone trained in the field of conflict management and dispute resolution will embrace. However, for practitioners interested in working one-on-one with clients, you already have much of the skill base to be able to learn and develop conflict coaching as an additional conflict management technique.

# L'entraînement en gestion du conflit

## Une forme innovatrice dans la résolution des disputes privées

Par: Mme. Cinnie Noble,

C.M., B.S.W., LL.B., LL.M. (ADR)

Cet article est adapté en parti de sa première itération publiée dans l'exemplaire du printemps 2002 d'Interaction (v.15, n.1) et est réimprimé ici avec autorisation.

Noble Cinnie, C.M., B.S.W., LL.B., LL.M. (ADR), est avocate médiatrice et une ancienne travailleuse sociale. En plus de fournir une gamme diversifiée de services RED par Noble Solutions, elle a développé un modèle unique pour entraîner les gens en gestion du conflit. Cinnie forme aussi des entraîneurs et des médiateurs à entraîner eux aussi d'autres personnes dans la région.

L'entraînement peut être défini comme une alliance entre un entraîneur compétent et un client qui recherchent du soutien afin d'améliorer un ou plus aspects de sa vie.

Au niveau de l'organisation, le personnel interne tel que les professionnels des ressources humaines peuvent entraîner le personnel dans leur cheminement professionnel afin de soutenir une performance améliorée et une productivité accrue. Les entraîneurs d'entreprises externes sont aussi embauchés par les compagnies pour exécuter ces tâches et autres, tel qu'orienter les cadres dans la formulation de nouvelles stratégies conformement à leurs buts, et de motiver les membres du personnel à travailler plus collectivement et efficacement. Dans n'importe quel contexte et objectif, ce genre d'entraînement gagne de l'appui dans les organisations, les petites firmes, et au niveau personnel.

## L'entraînement en gestion du conflit

L'entraînement en gestion du conflit est un modèle unique qui unis le champ d'entraînement avec le champ de résolution de dispute (RED) pour fournir une approche pratique et préventive pour la gestion du conflit. Le but primordial de cet entraînement est d'offrir des mesures préventives ou la résolution des discussions spécifiques et/ou améliorer le chemin de la négociation dans les conflits en général. Ceci peut se dérouler sur une base professionnelle autant que personnelle.

Parmi d'autres avantages, l'entraînement en gestion du conflit donne l'opportunité aux participants de développer de la rétroaction dans leur propre style de résolution de conflit, et de trouver les causes possibles des interactions improductives. Ce processus aide aussi aux gens d'identifier leurs propres intérêts ainsi que ceux des autres et les compétences requises pour résoudre le problème d'une manière constructive et conciliatrice, d'explorer des options alternatives pour remplacer le comportement inefficace, et de permettre la résolution de problèmes qui satisfait aux personnes impliquées.

L'entraînement en gestion du conflit ne se limite pas à une seule tactique car celui-ci doit répondre à un objectif particulier du client. Ce système répond à des buts variés et peut ou ne peut pas être relié à une discussion spécifique. Beaucoup de clients recherchent ce genre de formation pour faciliter la réduction de certains comportements qui peuvent aggraver une situation de conflit tel que: être trop défensif, compétitif, ou provoquer des confrontations. Certaines situations peuvent être bénéficiaires à l'entraînement mais ce sont les clients qui doivent être réceptifs aux changements afin que le tout s'améliore. En revanche, les branches d'entraînements en gestion du conflit sont spécifiques et inclues la négociation et la médiation.

## Entraînement en négociation et en médiation

En grande mesure, les médiateurs entraînent le parti et leur offre de l'assistance au stade initial de la médiation et pendant tout le processus. Cependant, l'emphase de l'entraînement d'un parti s'étend au-delà du rôle conventionnel du médiateur. Pendant l'apprentissage de la médiation, l'entraîneur soutient le parti et travaille activement avec lui pour développer des options, d'anticiper des réactions, etc.

Pendant l'entraînement de la négociation, les gens embauchent un entraîneur pour les préparer pour une négociation spécifique dans laquelle ils sont impliqués. Quelques-uns de ces clients peuvent vouloir aussi améliorer leurs aptitudes en négociations d'une façon générale. Comme autres formes d'entraînements en gestion du conflit, une combinaison des principes et des concepts transformatifs, la narration et la médiation sont utilisés.

## Application

Les praticiens dans le champ de la résolution de conflit considèrent cet entraînement comme un mécanisme qui aide aux clients à diriger le conflit. (Il est important de noter que beaucoup des praticiens de ce genre et les entraîneurs participent communément à entraîner les gens autour de la question du conflit. Le concept qui a été développé et qui s'est présenté dans cet article formalise un modèle, en reconnaissant que l'entraînement n'est pas totalement unique.)

Voici quelques exemples dans lequel l'entraînement peut faciliter la gestion de conflits: le divorce, les relations et rapports des partenariats d'affaires et personnels, en plus de l'organisation ( collègue, directeur, employé, etc.). Ce mécanisme agit pour prévenir des discussions inutiles et résoud le conflit qui engendre des réactions négatives aux réponses constructives; donc, l'application est vaste.

## Résumé

L'entraînement en gestion du conflit est une forme innovatrice de résolution de dispute qui aide aux gens sur une base individuelle pour améliorer leur efficacité dans ce domaine. Comme les possibilités sont illimitées, parfois l'entraînement risque de ne pas être bien reçu par certaines personnes. Cependant, les praticiens sont sensibles à ceci et travaille un à un avec les clients afin d'apprendre et de développer des techniques en gestion du conflit supplémentaires.

# Auditor's Report

ADR INSTITUTE OF CANADA INC.  
FINANCIAL STATEMENTS  
FOR THE YEAR ENDED DECEMBER 31, 2002

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Statement of Revenue and Expenditure  
Notes to Financial Statements

## **JOHNSON CROSS NEPHIN & WINTER** *CHARTERED ACCOUNTANTS*

### AUDITORS' REPORT

To the Members,  
ADR Institute of Canada Inc.

We have audited the balance sheet of ADR Institute of Canada Inc. as at December 31, 2002 and the statements of revenue and expenditure and members' equity for the year then ended. These financial statements are the responsibility of the Institute's management. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as explained in the following paragraph, we conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

The Institute derives revenue from membership fees and grant revenue, the completeness of which is not susceptible to satisfactory audit verification. Accordingly, our verification of these revenues was limited to amounts recorded as received from regional affiliates in the records of the Institute, and we were not able to determine whether any adjustments might be necessary to membership fees and other revenue, net revenue, assets and members' equity.

In our opinion, except for the effect of adjustments, if any, which we might have determined to be necessary had we been able to satisfy ourselves concerning the completeness of membership fees and other revenue referred to in the preceding paragraph, these financial statements present fairly, in all material respects, the financial position of the Institute as at December 31, 2002 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

*Johnson Cross Nephin & Winter*

Chartered Accountants

Smiths Falls, Ontario  
February 25, 2003





**ADR INSTITUTE OF CANADA INC.**  
BALANCE SHEET  
AS AT DECEMBER 31, 2002

**ASSETS**

CURRENT	2002	2001
Cash	\$ 45,100	\$ 1,344
Investments, at cost	40,000	40,000
Accounts receivable	83,261	68,943
Accounts receivable - other	1,014	912
Prepaid expense	<u>7,347</u>	<u>2,197</u>
	<u>176,722</u>	<u>113,396</u>

**CAPITAL - at cost (note 2)**

Furniture and equipment	2,165	-
Less accumulated amortization	<u>388</u>	<u>-</u>
	<u>1,777</u>	<u>-</u>
	<u>\$ 178,499</u>	<u>\$ 113,396</u>

**LIABILITIES**

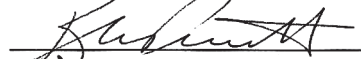

**CURRENT**

Accounts payable and accrued liabilities	\$ 15,885	\$ 4,596
Corporate Membership Special Fund	12,000	10,700
Unearned revenue	<u>69,700</u>	<u>55,154</u>
	97,585	70,450

**MEMBERS' EQUITY**

Balance, end of year	<u>80,914</u>	<u>42,946</u>
	<u>\$ 178,499</u>	<u>\$ 113,396</u>

APPROVED ON BEHALF OF THE BOARD:

 Director  
 Director

The accompanying notes are an integral part of the financial statements.

**ADR INSTITUTE OF CANADA INC.**  
STATEMENT OF REVENUE AND EXPENDITURE  
FOR THE YEAR ENDED DECEMBER 31, 2002

	2002	2001
<b>REVENUE</b>		
Membership fees		
Individual	\$ 80,079	\$ 96,267
Chartered Arbitrators and Chartered Mediators	52,329	46,768
Corporate	14,442	28,383
Correspondence course fees	6,015	1,767
Handbook revenue	5,760	6,111
Other income	5,482	2,567
Special projects	27,075	-
Interest	<u>2,277</u>	<u>2,232</u>
	<u>193,459</u>	<u>184,095</u>
<b>EXPENSE</b>		
Governance		
Audit and legal	4,422	3,050
Board, Committee and annual meeting	<u>7,829</u>	<u>35,948</u>
	<u>12,251</u>	<u>38,998</u>
Administration		
Management fees	80,000	59,700
Office	6,848	7,530
Insurance	2,010	2,007
Rent	8,160	-
Salaries and employee benefits	-	12,808
Telephone	3,250	4,542
Travel	-	890
Amortization (note 2)	388	-
Bank charges	<u>500</u>	<u>426</u>
	<u>101,156</u>	<u>87,903</u>
Program		
Marketing and communication	6,296	14,859
Conventions and seminars	-	12,955
Printing and publications	8,877	27,158
Correspondence course	1,075	442
Special projects	<u>25,836</u>	<u>33,800</u>
	<u>42,084</u>	<u>89,214</u>
	<u>155,491</u>	<u>216,115</u>
NET (EXPENDITURE)/REVENUE FOR THE YEAR	<u>\$ 37,968</u>	<u>\$ (32,020)</u>

The accompanying notes are an integral part of the financial statements.

**ADR INSTITUTE OF CANADA INC.**  
STATEMENT OF MEMBERS' EQUITY  
FOR THE YEAR ENDED DECEMBER 31, 2002

	2002	2001
Balance, beginning of year	\$ 42,946	\$ 74,966
Net (expenditure)/revenue for the year	<u>37,968</u>	<u>(32,020)</u>
Balance, end of year	<u>\$ 80,914</u>	<u>\$ 42,946</u>

The accompanying notes are an integral part of the financial statements.

**ADR INSTITUTE OF CANADA INC.**  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED DECEMBER 31, 2002

**1. Purpose**

The ADR Institute of Canada Inc. is incorporated without share capital, as a not-for-profit organization within the meaning of the Income Tax Act, and is exempt from income taxes. Their mission is to establish and maintain standards with respect to the training, education and conduct of arbitrators, mediators, and other dispute resolution practitioners. ADR Institute of Canada Inc. with the assistance of its provincial institutes, is working to facilitate training in Canada, coordinate the growth and development of Alternative Dispute Resolution ("ADR") and promoting the use of ADR across Canada.

**2. Significant accounting policies**

**Accrual basis of accounting**

Revenue and expenditures are recorded on the accrual basis whereby they are reflected in the accounts in the period in which they are earned and incurred respectively, whether or not such transactions have been finally settled by the receipt or payment of money.

**Amortization**

The association amortizes its capital assets on the straight line method over 5 and 10 years.

**3. Statement of changes in financial position**

This statement has not been prepared as all of the relevant information is apparent from the other financial statements.



# New Opportunities Under the Youth Criminal Justice Act

by Mary T. Satterfield  
MSW, LL.B., C.Med, C.Arb.  
Mediator and Arbitrator  
Barrister and Solicitor

In March 2003, the John Howard Society of Canada hosted the Voluntary Sector – Youth Justice Conference in Mississauga, Ontario to create broader awareness of the new Act and to identify the community resources and relationships needed for its implementation. The ADR Institute of Canada was pleased to be offered a space at this limited-enrolment event. Mary Satterfield attended on our behalf. Her report of the Conference is offered in hopes that it will encourage our members to seek opportunities to contribute to local planning initiatives that are expected to shape the implementation of the new Act.

The new **Youth Criminal Justice Act** (Bill C-7) came into force on April 1, 2003, bringing with it a number of potential opportunities for ADR practitioners. The opportunities, while not specified, appear to be triggered by such words as “extrajudicial measures” (S.4), “conferences” (S.19 and S.44), and “community services and facilities for young people” (S.40). The meaning of these phrases is undefined at present. Therein lies the opportunity.

The new Act is a procedural statute, which sets out in exquisite detail the process to which a young person is subjected, from apprehension to final disposition, when a criminal act is alleged. It is procedurally far more stringent than the **Young Offenders Act** which it replaces. Yet the community involvement which it espouses is entirely undefined. It is *not* a treatment statute and custody under this Act is not to be used as a substitute for appropriate child protection, mental health or other social measures (S.39).

The most challenging and exciting aspect of the new statute is that it contemplates young persons who appear to have

committed an offence to be dealt with completely outside of the court system, in the community by non-judicial means. In other words, it is possible to develop a complete response in the community.

There appear to be three windows of opportunity for alternative measures in the Act. The first and most significant change and opportunity is opened by S.6, which requires police officers to consider extra-judicial measures *before* starting judicial proceedings, presumably before actually charging the young person with a criminal offence.

This is the provision which appears to contemplate redirection of a potential criminal charge, and the offending young person, completely out of any involvement with the courts and the criminal justice system, *only if* the apprehending police officer believes that the needs of the young person and the community can be adequately met outside of the courts.

A further provision, at S.18, provides for the establishment of Youth Justice Committees to assist in developing programs or services for young persons, which may include advice on extra-judicial measures. These provisions could include mediative services, among many others, to negotiate the most appropriate plan of action for both the young person and the community. This provision clearly sets up an expectation that services which meet both the young person *and* the community exist, or will exist.

The second window is opened at the pre-disposition stage by the reference to Conferences at section 19. How these conferences will function, in various regions of Canada, is not yet known. However, any such meeting for a specific purpose can benefit from facilitative or mediative expertise in order to satisfy the needs of the young person, the victim and community representatives.

The third window of opportunity after a finding that the young person committed a criminal act, is presented by further reference to Conferences at S.41. These Conferences are expected to generate and to recommend to the court an appropriate youth sentence or disposition.

The missing links, at present, between the legal process and community alternatives, are the independent community bodies whose function is to negotiate and recommend to the police, to the courts and to the preparer of pre-sentence reports the services and options which are available at each stage. The form and function of these community bodies will likely differ greatly from one region to another, depending on the needs of each area, the young persons who are apprehended and the communities in which they live. Defining the opportunity and moving forward to implementation is the challenge for ADR practitioners.

*“There appear to be three windows of opportunity for alternative measures in the Act.”*

*“Defining the opportunity and moving forward to implementation is the challenge for ADR practitioners.”*

# An Alberta Perspective on Mediation in Energy Disputes

Prepared by E. David D. Tavender, Q.C.<sup>1</sup>

of Fraser Milner Casgrain, Calgary, for the ICC and CBA Conference "International Commercial Arbitration & Energy Disputes – A Global Perspective", May 29-30, 2003 at Calgary, Alberta.

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E. David D. Tavender, Q.C.

I think I can safely say, without fear of exaggeration, that 15 years ago, mediation<sup>2</sup> in the energy industry in Alberta was virtually unheard of. Energy disputes settled. Energy disputes went to Court. Energy disputes got arbitrated. Mediation, however, seemed to be an alien matter reserved for the resolution of labour disputes and the odd family law problem. Then, in the early 1990s, a sea-change occurred. Two very large cases involving fires at the Fort McMurray upgrading facilities of Syncrude and Suncor were each successfully resolved by mediation. Inspired in part by the success of those two mediations, and in any event, coincidental with them, developments occurred which increased the visibility and use of mediation in the energy industry. These developments included:

1. The use of Judicial Dispute Resolution in the Alberta Court of Queen's Bench, where sitting Judges assisted consenting parties by conducting mediations and settlement conferences;
2. The establishment, primarily through the efforts of some of the major energy companies in Calgary, of the Canadian Foundation for Dispute Resolution<sup>3</sup>, which promoted the use of mediation and other appropriate dispute resolution techniques;

<sup>1</sup> The writer would like to acknowledge the contributions in the preparation of this paper of Bernie J. Roth and Christian Weisenburger, both of Fraser Milner Casgrain's Calgary Office.

<sup>2</sup> By "mediation" I mean "a decision-making process in which the parties are assisted by a third party, the mediator; the mediator attempts to improve the process of decision-making, through use of a variety of skills and techniques, to assist the parties to reach an outcome to which each of them can assent": Boule & Kelly, *Mediation Principles, Process, Practice* (Butterworth's ed., 1998), page 3.

<sup>3</sup> The Canadian Foundation for Dispute Resolution has since merged with the Arbitration and Mediation Institute of Canada, and is now known as the ADR Institute of Canada.

3. The report of the CBA Civil Justice Task Force in August, 1996, which recommended the non-mandatory use of early and ongoing mediation in civil disputes in Canada;
4. The adoption in 2001 by the Alberta Energy Utilities Board ("AEUB") of voluntary (but strongly encouraged) mediation for regulatory disputes;<sup>4</sup>
5. The creation, approximately one year ago, of a multi-disciplinary "Company Against Company Dispute Resolution Task Force" in Calgary to promote early resolution of disputes in the energy industry.

Based on what I hear and my own practice as a mediator and as counsel, I know that mediations are now occurring in the energy industry in Alberta. That, in itself, is not a particularly reliable measurement, nor does it tell us how the energy industry perceives mediation, how frequently it is used, and with what success.

I thought the participants at this conference might benefit from some information emanating directly from the energy industry as to its recent experience with mediation in Alberta. To obtain this information, I have utilized two sources. The first source is the AEUB, which has reported on the success of its Appropriate Dispute Resolution Program. The second source is a survey of some of the leading members of the energy industry that I conducted for the purposes of this paper. Relying on these two sources, I am pleased to report that the energy industry in Alberta is indeed using mediation, and doing so with an encouragingly high degree of success. There are, however, reservations and concerns that

<sup>4</sup> The National Energy Board is developing a similar programme: see NEB "Appropriate Dispute Resolution Discussion Paper" dated September 27, 2002.

need to be addressed if there is to be an increased effective use of mediation in the future.

Let me first turn to the AEUB experience. The AEUB has provided publicly available information<sup>5</sup> on the success of its ADR program for the years 2001 and 2002. For 2001, the AEUB reported that its staff participated in 115 completed facilitations of which 98 were resolved, that is an 85% success record. For the same year, it reported there were 23 completed mediations of which 19 were resolved (indicating a success record of 82%). In 2002, the AEUB staff completed 154 facilitations, of which 129 were fully resolved, for an 84% success record. In addition, 27 mediations were completed with a success rate of 81%.

My survey, based on the responses at the time of writing of 16 energy companies, indicates that in the last two years there were 32 non-regulatory mediated disputes, of which 16 led directly to a settlement and five led indirectly to a settlement. At least one of these mediations has not been completed. In result, 52% of these mediations led directly to a settlement, 16% led indirectly to a settlement, which combined produces an overall success record of about 68%.

Most of the non-regulated mediations were domestic (as opposed to international) disputes. Many (over 22%) occurred early in the dispute resolution process before the discovery phase had commenced. One respondent added "the earlier the better", as parties are forced to prepare and examine their and the other side's case in a realistic manner. Over 37% of those responding reported a positive

<sup>5</sup> AEUB Appropriate Dispute Resolution Annual Report 2001; AEUB featured article: "ADR Provides Solid Second Year Results" dated May 12, 2003.

... continued on page 10 ...



response to their mediation experience and 50% of the respondents indicated they would be inclined to use mediation more frequently in the near future. It is interesting to note that mediation was not typically mandated in the contracts utilized by the respondents, although it was included as a contractual option available to the parties in some instances.

The survey responses contained some valuable insights into why mediation had not, in certain circumstances, been utilized. The most frequently expressed reason for not having recourse to mediation was the belief that the parties could settle their own disputes without the need for a mediator. This reason was cited by 50% of the respondents. 25% of the respondents did not mediate certain disputes because they did not want to compromise. In 44% of the responses, companies indicated that they had not utilized mediation because they were doubtful that mediation would work or mediation was not considered.

In terms of trends, just over 56% of those responding felt there was an increasing trend in the use of mediation, whereas 27% of those responding detected no trend towards an increased use of mediation.

Many of the respondents contributed valuable additional insights, two of which may have particular significance to the participants at this conference. There is a concern expressed that many persons (including executives, contractors and customers) are reluctant to submit disputes to mediation because of a lack of understanding and familiarity with the process. This concern shouts out for enhanced education about mediation, not only within the energy industry, but amongst all participants in the justice system. One respondent suggested increased use of mediation will be inhibited until the Court of Queen's Bench in Alberta adopts a mandatory or quasi-mandatory Court directed mediation process. This is a reform that I strongly endorse.

The second concern raised was focused on the problem of selecting mediators. Several respondents had encountered difficulties in identifying qualified and experienced mediators for particular disputes. One respondent said that the selection of the right arbitrator was the most significant,

yet the hardest, decision to make because the parties are often dependent on no more than the subjective opinions of other people about whom they should select. This is a problem that all of us frequently encounter. How, indeed, does one determine who has the right skills and style appropriate for a given case? The ICC and other ADR institutions are actively endeavouring to monitor and rate the performance of mediators on their rosters, but the opinions of the institutions may not always be comprehensive and a large number of mediations, in any event, are self-administered by the parties. Mediation training, while highly

desirable, is no substitute for experience, and experience for mediators is not easily obtained without a track record and a reputation for success. I think the concern raised by these respondents is a legitimate one, and it remains a major challenge for all involved in ADR to help parties identify those mediators who are most qualified, experienced and appropriate for a given case. Having said that, I think the high success record reported in the conduct of mediations is a credit to the skills of those who acted as mediators. Word-of-mouth and the subjective opinions of those

*continued on page 16 . . .*

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# A Canadian Perspective on UN Conflict Resolution

by Mr. W. Hayde

Wayne Hayde is a Canadian arbitrator and mediator currently stationed with the UN mission in East Timor. In addition to providing a wide range of ADR services, Mr. Hayde is also a renowned calypsonist.

My first UN appointment was in 1998 as a Witness Support Officer/Investigator with the International Criminal Tribunal for Rwanda. The Rwandan conflict had culminated in 1994 with genocide and other crimes against humanity allegedly committed by those persons who were charged by the court. The protection and resettlement of witnesses who gave evidence meant that negotiations had to be conducted with both UN and Rwandan government agencies and officials to ensure that witnesses were adequately provided for. The Tribunal's Registrar and the court itself settled decisions with respect to the rights of witnesses, and the witnesses themselves had little power to affect such decisions.

On the other hand my later visits to prisons as an Investigator to obtain statements from inmates was a delicate operation, as any information given had to be concealed from fellow inmates out of fear of reprisal. Since it was impossible to conceal our visits, various misdirection techniques were used to protect informants. For example inmates known to be opposed to our efforts were also called and interviewed and even though they volunteered no information, the willing witnesses interviewed could also claim to have said nothing. My previous experience as a police officer in Trinidad and Tobago was invaluable in such a setting.

My next assignment took me to East Timor as part of a UN peacekeeping mission set up under Chapter V11 of the UN Charter. This was in response to the destruction brought on by Indonesian military, police, and pro-Indonesian militia in October 1999, after the people had overwhelmingly voted for independence from Indonesia.

Article 1 of the UN Charter outlines the purposes of the Organisation as including the maintenance of International Peace and

Security, and achieving International cooperation in solving economic, social, cultural and humanitarian problems.

Article 33(1) states that parties to a dispute shall seek a solution by negotiation or other peaceful means. But if the situation becomes a threat to or breach of international peace and security, the Security Council is empowered under Chapter V11 to take certain economic or military action to nullify the threat. Provided, however, that its members can agree that such a situation exists; at least nine of the 15 members vote in favour of it; and the decision is not vetoed by one of the five permanent members.<sup>1</sup> But whereas mediation or arbitration is undertaken with the consent of the parties in dispute, a Security Council Resolution in such circumstances will impose a settlement process on them.

The UN mission in East Timor had a mandate to virtually create a new country from scratch. This is a third generation concept of peace building, the rationale being that unless systems are put into place to manage the conflict and consolidate the political and social institutions and processes, there could easily be a return to the fighting and humanitarian disaster caused by the original dispute.

Peacekeeping/enforcement is basically Track One Diplomacy that is essentially coercive in nature. If the conflict is occurring in an area where the belligerents can constantly confront each other, e.g. occupying the same geographical area as in Jammu and Kashmir, then the coercive aspect will tend to overshadow all other aspects of diplomacy and conflict resolution.

The East Timor situation was different mainly because the Indonesians pulled back behind their own accepted border and most of the militia went with them. This left less complication for the peacekeeping role, but also made the UN the prime target for criticism whenever conflicts arise that are not immediately resolved.

All of the existing governmental institutions in East Timor had stopped functioning in the wake of the violence. The rules and processes found in a normal legal system had ceased to exist and could not be relied upon to settle even the most rudimentary legal disputes, particularly in constitutional and commercial matters.

While negotiation, mediation, and arbitration was the best way to settle most of these disputes, the only existing method of conflict resolution lay with the Traditional Justice system. This has been practiced in the villages for hundreds of years under both Portuguese and Indonesian control despite the existence of operating formal legal systems.

It has a lot in common with regular ADR processes. Traditionally the parties in dispute accept the authority of village elders to settle the dispute, and when a dispute arises the elder of each family will get together in an attempt to mediate. If this fails then the matter will eventually find its way to the Village Chief who will act as arbitrator and impose a settlement after listening to the parties.<sup>2</sup> Though there are no written rules, the unwritten ones are clearly understood by the parties who will abide by them.

The lack of recourse to a formal adversarial legal system to settle disputes actually fit in quite well with the normal UN mode of operations. All UN officials are protected by the UN Convention of Privileges and Immunities and their actions are not subject to court intervention as long as they were done in the execution of official duties. Of course the Secretary General could waive the immunities in any case where he deems that the interest of Justice so demands.<sup>3</sup> Contracts entered into by the UN have a standard Arbitration clause for settling disputes in accordance with UNCITRAL Arbitration Rules.

The UN Transitional Administrator in East Timor, Sergio De Mello, was en-

<sup>1</sup> The recent situation in Iraq provides a good example of the difficulties of coming to such a decision.

<sup>2</sup> This may take several hours in full view of the entire village.

<sup>3</sup> This is usually reserved for allegations of criminal conduct.

... continued on page 12 ...





*continued from page 11 . . .*

trusted with executive and legislative authority but had to consult with a body of local politicians. However, he was also the Head of the UN Mission, which meant that when certain disputes arose he was seen as sitting on both sides of the fence at the same time.

Given the mandate it became necessary for the UN to create rules and systems for the fledgling country. The creation or re-establishment of institutions of government and civil society cannot be accomplished without encountering longstanding or recently created conflicts or disputes. As the 'government' the UN was required and expected to resolve many disputes, some harking back to the pre-Indonesian period, e.g. ownership of land seized by the Indonesian after the 1975 annexation. There were also the fault lines between the emerging political parties, and even between UN officials performing competing tasks.

The consultation and negotiation process involved selling these ideas to the stakeholders. Any proposal that is put on the table becomes a part of positional negotiating, except that the recipients were not expected to come with a clear proposal of their own but can simply critique what was being presented.

In such circumstances a good rule of thumb is always to remember that you are the outsider whose imposition of ideas may not always be welcome. It is often better to adopt an interest-based negotiation strategy so that the underlying needs and issues can be drawn out in a manner that can allow such interests to be satisfied.

My own style in such situations is to seek justice by listening to the arguments of the other side and seeking to align my position as close as possible to it within the framework of the recommendation I am making. If an altered position is still unacceptable one must be willing to scrap the entire plan and start over, no matter how strong one's view on the matter. In the final analysis it is their country not yours so ownership of the process belongs to them.

My role as Legal Advisor to both the local and international Police Commissioners and then to the Director of Administration required me to assist in the resolution

of some of these conflicts through consultation or negotiation, and in drafting laws and policies and getting them approved. Arbitrating in disputes between staff members and local persons was also done for a few cases.

Because there was no elected Parliament in the year 2000,<sup>4</sup> all substantive laws passed by the UN administration were called Regulations with subsidiary legislation being called Directives. I was tasked to draft two important pieces of legislation, the East Timor Police Service Regulation and the Road Traffic Regulation, together with their respective subsidiary legislation, the Code of Conduct for the East Timorese Police and the Road Traffic Rules. I assisted in drafting the Transitional Rules of Criminal Procedure, as well as the Firearm, Ammunition, Explosives and other Offensive Weapons Regulation. They are all part of the existing laws of the country, but are expected to be replaced at some time by laws of the democratically elected Parliament.

Each piece of legislation was preceded by a policy proposal and there was wide and seemingly never-ending consultation before the legislation finally submitted to the National Council for further debate and vote. A delicate process of negotiation had to be undertaken not only with local interest groups but also with NGOs and other international agencies from all over the world. As the drafter I was called upon to explain the contents and rationale of the law either to the interim Cabinet, National Council members or interest groups.

Patience, tact, understanding and stamina were invaluable tools of trade. However, it was extremely rewarding to see the fruits of my labour at each graduation ceremony of new police officers, or in watching the relatively organized traffic system.

The Road Traffic Regulation provides a good example of the sensitivities involved in negotiating the passage of law. Indonesian laws were kept by the UN administration as the applicable law in East Timor.<sup>5</sup> The Indonesian Traffic Law was similar to that in many developed countries, but was clearly inappropriate for a

post conflict country in which the lack of equipment and procedures meant that most of the Timorese drivers had no valid licences, insurance, or registration for vehicles being driven on the roads.

But the passage of a simpler traffic law that catered for the post conflict problems became stuck in the National Council due to the objections of a few members who wanted to retain the Indonesian traffic law. I was invited to attend two committee sessions of the Council to explain the rationale behind the new law. I was able to convince the dissenting members to vote for it after pointing out the benefits to be derived as opposed to the hardships the people would endure if the old laws were enforced.

## How can you get involved?

So how does one get such challenging but rewarding work? There are many options of which only a few will be mentioned here. The first and most obvious way is to submit an application for advertised posts within the UN, or to submit an unsolicited application on a UN Personal History Form (P-11) to be considered for any post within one's area of expertise.

For posts in the professional category the minimum requirements are a bachelors degree and at least 3 years of relevant experience. However an increasing number of candidates possess at least a masters degree and five years experience in their field. Bearing in mind that thousands of applications are received for a handful of jobs, a good mix of qualifications and experience is needed to stand a chance of being selected. Having two languages, particularly English and French, is a definite advantage. Being an international organization, gender balance and geographic distribution also play an important role in appointments. Women and candidates from under-represented countries will be given a preference if the candidates are equally qualified.

A good place to begin looking for UN jobs is the OHRM website at <http://www.un.org/depts/OHRM/indexpo.htm> Or try the UN official website locator at <http://www.unsystem.org> that lists all UN and affiliated agencies. Follow each link to their employment/jobs listings. Thirdly,

<sup>4</sup> This only occurred in 2002 shortly before independence.

<sup>5</sup> Except for those that did not comply with international human rights standards.



you can look in the official UN website at <http://www.un.org> and follow the employment link. This will reveal the new Galaxy system that is supposed to make it easier to apply for selected UN jobs. All candidates can create their profile by filling out a Personal History Form (PHF) that remains lodged in the system, but can be updated at any time. Candidates can then apply online for any advertised job on the site and can keep track of the progress of the vacancy.

UN Peacekeeping offers the best opportunities for those with legal, conflict resolution, community development and capacity building skills who want to work for varying periods in post conflict settings. There is a dedicated website at <http://www.un.org/Depts/dpko/field/vacancy.htm> but some such jobs can also be found on the official UN website.

Though not considered as part of the internal UN recruitment system the United Nations Volunteers (UNV) <http://www.unv.org> provides opportunities for those seeking to impart their expertise in the international arena for a short term and for a reasonable stipend (actual salaries are not paid to them). It is not advisable for those seeking regular UN employment, as such conversion is not always possible.

But the UN is not the only game in town and opportunities are available in a number of other international agencies and organizations:

- International Criminal Court (ICC) is now in the process of recruiting ADR staff <http://www.icc-cpi.int/php/index.php>
- Organisation for Security and Cooperation in Europe (OSCE) employs nationals from member states to work in post conflict situations <http://www.osce.org>
- CANADEM accepts resumes from qualified Canadians for possible placement in international jobs <http://www.canadem.ca>
- The Charity Village website provides employment opportunities in international NGOs e.g. World Vision <http://www.3.sympatico.ca>

Lionel J. McGowan

# Memorial Awards of Excellence

The ADR Institute of Canada, Inc. is calling for nominees for the Lionel J. McGowan Awards of Excellence in Dispute Resolution. The presentation of the Awards will take place at the Institute's Annual General Meeting held in Toronto, Ontario on October 18, 2003. There are two awards: one for contributions to the Institute and the field at the Regional level, and one for contributions at the National level. The criteria follow.



Lionel J. McGowan

## McGowan Award of Excellence – Regional

This award is given to an individual who has (a) made outstanding contributions to the development and success of a Regional Institute, either by a short term outstanding effort or through constant contributions over a long period of time and (b) who has contributed significantly to the promotion and/or development of ADR within the Region.

It should be noted that paying dues for many years, being on a committee or a Board for many years, or carrying out one's own ADR practice for remuneration do not count toward the award. Normally the person would be a "peer" within the Region and the Regional structure. The award is designed to encourage people to work for the Region and for the Region's efforts to enhance ADR in the area.

To nominate someone, please send a letter detailing the contributions of the individual and specifying the award for which the nomination is made, before September 15, 2003, to:

**McGowan Awards Committee**  
c/o the ADR Institute of Canada, Inc.  
234 Eglinton Avenue East  
Toronto, Ontario M4P 1K5

## McGowan Award of Excellence – National

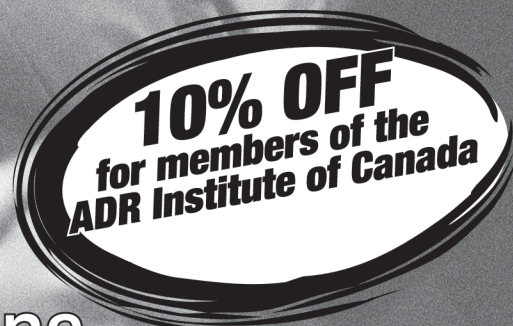
This award is similar to the Regional Award, but given for contributions to the National Institute. A candidate's contributions to the support, development and/or progress of the ADR Institute of Canada, Inc. and its policies and programs, and to promotion of ADR on a national scale, would count.

Professional ADR teaching, hearing ADR cases, and other ADR practice activities do not count. As well, simply being on the Board of the National Institute would not count unless it included major contributions to the Institute through development of the Institute's structure, national-regional relationships, national programs or materials, funding, or other significant Institute initiatives.



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## **Mediating Justice: Legal Dispute Negotiations**

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- ▶ when mediation fails; choosing alternative processes



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# Regional Reports

## Alberta

The AAMS is working to expand the use of ADR in the community. We have worked closely with Alberta Justice to implement the use of mediation in the court system. In addition to mandatory mediation for selected cases in small claims court, Alberta Justice is preparing to implement mediation at Court of Queens Bench. AAMS also participates on the Steering Committee at Alberta Municipal Affairs with the Mediation program for disputes between municipalities and within municipalities. AAMS continues to be the Provincial Administrator for CAMVAP and the Jurisdictional Arbitration Plan for the Construction Industry. AAMS also continues to operate its Certificate Program in Conflict Management in partnership with the University of Calgary, Grant McEwan College, Red Deer College, and Grande Prairie Community College.

## British Columbia

The preceding year has been one of transition, with new offices, a new administrator and the termination of our negotiations to amalgamate with three of BC's ADR organizations. The Board of Directors has commenced planning a series of actions to move BCAMI into the next level of operations. It came to our attention that the BC Government was preparing legislation to allow the use of ADR for the settlement of disputes involving municipal bylaw infractions within this province. As a result, we are currently working on the details of the pilot project with the provincial government which will include BCAMI's continuing involvement. An announcement will be made once the details have been concluded.

At our Annual General Meeting on June 20, 2003 our outgoing president Gary Fitzpatrick announced that BCAMI has concluded an agreement in principle to assume responsibility for the day to day management of the BC International Commercial Arbitration Centre (BCICAC) operations as of June 25, 2003. The Centre and the Institute are leading organizations serving the ADR needs of British Columbians. The Centre is a recognized service provider while the Institute provides education and accreditation for arbitrators and mediators as well as administering various service programs. As of June 25, 2003 the Centre and the Institute are sharing office space at 104 – 1260 Hornby Street, Vancouver BC V6Z 1W2. Other than the address, there will be no change to the Institute's contact information.

The appointment of a new Board of Directors for BCAMI was completed and a new executive announced comprising of: Clayton Shultz, President, Sheila Begg, Vice-President, Cliff Jones, Secretary, Murray Rose, Treasurer.

## Manitoba

In the last few months, there have been a number of large projects being undertaken. The board has been working on updating, renewing and re-writing the AMIM general bylaws. A first draft has been established and accepted by the AMIM board of directors and is now awaiting full acceptance/ratification at the upcoming AMIM Annual General Meeting to be held in the fall.

Many changes are expected to come, including a re-working of the organizational governance structure, overhaul of the membership categories to make them

more compatible with the national membership categories, a renewal and re-establishment of the strategic plan for AMIM and an overhaul and upgrade of how AMIM markets itself and its members.

A session of the full arbitration training course was held this past month by special request and we await the final exam from the students and new members. The new education schedule for the fall 2003 and spring of 2004 is currently being developed. We are hoping to add some new courses, such as a 3 to 5 day basic mediation course.

We held a Speaker's Luncheon in conjunction with the Manitoba Bar Association, ADR Section, in March 2003, with The Honourable Madam Justice Marilyn Goldberg, who gave an informative and entertaining speech on the "Decision Making Process".

## Ontario

The ADR Institute of Ontario held its eighteenth annual general meeting in May 2003. The President spoke of initiatives and achievements of the past year, including new Ontario mediation rules, a key role in the new national arbitration rules and the launch of the new rules in Toronto in October 2002, and approval in principle of new Ontario rules for condominium disputes. The Institute's focus on standards to promote membership included continuing education events, a review of the code of ethics, and changes to the Ontario Institute's approved course policy. The Institute participated in joint national/regional strategic planning and acted as administrator for the national office. It also acted as administrator for 407 ETR toll disputes.

... continued on page 16 ...



Our president described the coming year as a critical time for the Ontario Institute. The Institute is the premiere professional organization for ADR practitioners, but this alone is not enough to secure its future. It needs to grow, and to have government and business approach it for information and assistance. To succeed, it needs member involvement and strong participation in initiatives. He stated that committing time to the Institute is a classic win-win situation. Helping the Institute pushes the goal posts forward and raises its and members' profiles. Members were invited to assist in promotion of the new rules, in the proposed new observation project, in an expanded continuing education program, in the review of codes of ethics, in building a lobbying voice, and in new sections.

In line with its focus on standards, the Institute will present several continuing education events in the fall, including two advanced mediation training workshops and a Meet 'N' Greet to promote the national Institute's chartered designations and to recognize Ontario's Chartered Mediators and Chartered Arbitrators.

The office is pleased to have a summer student employee to assist in developing protocols and systems for efficient administration of disputes. The student was hired with HRDC support, and is looking forward to learning about ADR as well as contributing to its development.

We would like to take this opportunity to wish members and staff of the Institutes across Canada a sun-filled and refreshing summer.

## Atlantic

The Institute is continuing to work with Family Mediation Nova Scotia to jointly host/sponsor programs. To this end, the Institute held its AGM on November 25th, 2002 with Family Mediation Nova Scotia – "Emerging Trends in Mediation" with a presentation by Ms. Karla Ressor of the National Energy Board, Calgary, and three discussion groups in the areas of National Energy and Marine pipelines, gay/lesbian relationships and eldercare mediation.

The ADR Atlantic Institute and the Nova Scotia Department of Justice are continuing, for the second year, the Nova Scotia Small Claims Court Student Mediators Program. The first year was a success; the feedback both from the student mediators and the clients who used this service was very positive.

In April again this year, the Institute assisted Family Mediation Nova Scotia in the organization and publicity for the Presentation which they held after their AGM.

One of the areas of focus of the Institute this year is to organize ADR education programs / training courses in the different Atlantic Provinces. A Committee has been given the task of devising these programs. This task is not easy, not only because of the different geographic locations of the four Atlantic Provinces, but because the needs of each Region, service providers, and users of ADR are varied and diverse. The committee will work together with the vice presidents of each Province and the Institute's members to formulate these programs.

Harrison Goodwin Jr., our current President, is the Institute's representative in the National Strategic Planning Committee. He has been a very active participant and has given much input to the National Strategic Committee of the concerns and suggestions of our members to build a more effective, stronger National organization which in turn would benefit the Regional affiliates and the general membership.

who have been involved in mediations may continue to be the best, if imperfect, information about who to retain in the next case.

Standing back, I believe that mediation is the most significant recent reform that has occurred in the justice system in Alberta. Mediations are now firmly on the radar screen in the energy industry. Where used, mediations have yielded successful resolutions in an encouragingly high number of cases. Mediation, as one of the respondents to my survey accurately put it, "is time effective for preparation, client involvement and resolution. It is also more cost effective than litigation or arbitration. It offers a greater number of potential solutions and tends to be without any significant adverse risk." On the other hand, mediation is not a panacea and is no substitute for parties conducting their own settlement negotiations, or having recourse to judicial or arbitral decisions when compromise is not an option. Further growth in the use of mediation in the energy industry in Alberta is not assured without increased education, without the development of more qualified and experienced mediators and without, perhaps, procedural reforms in the Court of Queen's Bench promoting the use of mediation in appropriate cases.

In closing, I would like to thank those companies in the Alberta energy industry who assisted me by responding to my survey request. I hope their responses and the discussion contained in this paper will facilitate a lively debate and lead to further improvements in the effective utilization of mediation.

***"I believe that mediation is the most significant recent reform that has occurred in the justice system in Alberta."***



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