

LEGAL POST



New service offers flat-rate, speedy ruling

\$6,000 charge for expedited arbitration pact



JIM MIDDLEMISS
Behind the Bar

ADR Chambers Inc. has launched a new, flat-rate package for companies looking for a fast resolution to a business dispute.

For \$6,000, companies or individuals who agree to an expedited arbitration can get their disputes heard and ruled on by former judges or senior lawyers within a 2.5-month time frame, explains **Allan Stitt**, president of ADR, a Toronto alternative dispute resolution company. That's much faster than the traditional court system and a lot cheaper.

Mr. Stitt, a lawyer, says the

cost of litigating disputes has skyrocketed. "You end up going to court paying such a significant percentage of what you're arguing about. For the whole amount, it doesn't make sense."

He says the flat-rate arbitration is a "very abbreviated process and not something anyone can force on anyone else."

Parties agree to follow strict rules on the length of materials they file and time frames, he says. There is no discretion for the arbitrators to agree to time extensions.

The parties are responsible for paying their own lawyers to represent them, Mr. Stitt adds, so the fee covers the arbitrator's time and the use of facilities.

The participants submit a written brief and present their case at an oral hearing and the arbitrator provides reasons. There's no formal appeal, though parties can turn to the court if there's a denial of natural justice, which is standard in arbitrations.

Mr. Stitt says the process is best for disputes between \$150,000 and \$250,000, where legal fees can eat up the bulk of any award a court grants and it can take years to resolve.



Allan Stitt, ADR Chambers president, says the process is best for disputes between \$150,000 and \$250,000, where legal fees can eat up the bulk of any award a court grants.

Currently there is one dispute being heard since the service was launched last month and Mr. Stitt expects that it will be popular among companies that conduct business together, but which have a disagreement on the interpretation of a phrase in an existing contract and don't want the matter to ruin their relationship by going to court.

Before launching the program, Mr. Stitt says he spoke to lawyers and judges and said he received "very positive opinions" about the need

for such a service.

"I actually believe this will be the future of arbitration and gain momentum over the next few years."

LEARNERS PREVAILS IN CONFLICT CASE

A recent endorsement from the Ontario Court of Appeal has confirmed a lower court ruling that law firm **Lerners** didn't have to resign on a case involving a supposed third-party conflict.

The firm acted in a tax matter for lawyer **Harold Springer**, who provided business advice to G. Raymond Chang Ltd. (GRCL). In April, 2008, GRCL sued Shopcast Television Inc. in an ownership dispute and filed an affidavit from Mr. Springer supporting its position.

Shopcast retained **Lerners** to defend that dispute. A month later, GRCL brought a motion to disqualify **Lerners** from the file, alleging it was in a conflict because it had acted for Mr. Springer.

Lerners, represented by **Don Jack**, successfully argued that there was no conflict.

Ontario Supreme Court Justice **Sarah Peppall** noted that Mr. Springer was not an officer, director or shareholder in GRCL. Moreover, she said, the "evidence of any interconnection between the two retainers is lacking and is certainly neither clear nor cogent," as the case law requires. She called the assertions "vague" and "insufficient" to disqualify the firm on the basis of conflict.

She ruled that "there is no real risk of impairment of **Lerners**' ability to properly represent the legal interests of both Mr. Springer and Shopcast." The appeal court agreed.

O'Sullivan's comedy is better than his legal briefs, those following the asset-backed commercial paper saga this year would disagree, after his firm's efforts won the only real reprieve for big corporate investors, in his case **Barrick Gold** and **Sun-Times Media Group**. Mr. O'Sullivan and his partner **Clifford Lax** managed to manoeuvre for a payout. No doubt, Mr. O'Sullivan is sharpening his tongue as you read this in preparation for the CGCAs (Hey, no '70s porn star mustache references this year) so get out your body armour.

The CGCA advisory board has been finalized and, as usual, includes some new faces for nominees to lobby, including **Brock Gibson** of **Blake, Cassels & Graydon**, **Rob Staley** of **Bennett Jones**, **Paul H. Harricks** of **Gowling Lafleur Henderson**, **Paul A.D. Mingay**, of **Borden Ladner Gervais**, **Sharon C. Geraghty**, of **Torys**, **Michel A. Brunet**, of **Fraser Milner Casgrain** and **Christopher Sweeney** of **ZSA**. They join returning board members **Richard J. Balfour** of **McCarthy Tétrault**, **Maryse Bertrand**, of **Davies Ward Phillips & Vineberg**, **Susanne Côté**, of **Stikeman Elliott**, **Robert Engbloom**, of **Macleod Dixon**, **Stephen Halperin** of **Goodmans**, **Jonathan A. Levin**, of **Fasken Martineau DuMoulin**, **Dale R. Ponder**, of **Osler, Hoskin & Harcourt**, **Norman M. Steinberg**, of **Ogilvy Renault**, **Mark I. Young**, of **Cassels Brock & Blackwell**, and yours truly. Nominations remain open until April 7, and more information is available at www.cgca.ca.

Financial Post
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GENERAL COUNSEL AWARDS

Emcee extraordinaire and sometimes (oftentimes?) successful litigator **Terry O'Sullivan**, of **Lax O'Sullivan**, has signed on once again to host the Canadian General Counsel Awards, slated for June 1 at the Four Seasons Hotel in Toronto. Though some lawyers might claim that Mr.

McCarthy Tétrault lawyers **David E. Roberge** and **Cindy Vaillancourt** blog about their Haitian adventures for **Lawyers Without Borders Canada**. You can also read about how **Terrible Thursday** hit U.S. law firms hard last week with hundreds of layoffs Financialpost.com/legalpost

Firms can't just 'trim away the fat'

Lawyers must learn to work differently: author

By MITCH KOWALSKI

Richard Susskind is a soft-spoken Scot whose ideas may very well be the future of the legal profession, and he bears a message of change that in-house counsel should welcome.

He was in Toronto last week for the Canadian launch of his latest book, *The End of Lawyers?* He also announced his collaboration with the Canadian Bar Association on a series of round table discussions with our country's leading lawyers about the future of legal services.

Emeritus professor of law at Gresham College, Mr. Susskind is at the top of his profession. He has an Order of the British Empire; is IT advisor to the Lord Chief Justice of England, has written seven books and consults to some of the largest law firms in the world.

"Life is good to me right now," he says, even though the U.K. book launch coincided with back surgery for his wife. "The launch is tremendously

The practice of law cannot continue in the same manner

exciting but there are more important things in life."

The discussions in *The End of Lawyers?* are deliberately provocative and controversial and the central theme is that lawyers must stop seeing the provision of legal services as their birthright.

Rather, lawyers need to earn the right to provide legal services or other, more efficient, providers will dominate the legal marketplace. "Routine and repetitive legal work can be done differently," he says. In at least 12 different ways in fact, such as by off-shoring, outsourcing, subcontracting, home-sourcing and the like.

Given these types of comments, one would expect wild condemnation by the legal profession. However, Mr. Susskind laments, "a disconcertingly large number of people are agreeing with these arguments ... the practice of law cannot continue in the same manner."

He clearly misses the storm of controversy that he set off in 1996 when his book *The Future of Law* dared to suggest that e-mail would be the dominant form of communication between lawyers and clients.



Susskind: "Life is good."

NATIONAL POST & ZSA Legal Recruitment Canadian General Counsel Awards

Recognizing Excellence in the In-House Counsel Community

The National Post and ZSA Legal Recruitment are pleased to launch the 2009 Canadian General Counsel Awards to honour the country's top in-house counsel. The black-tie gala will take place at the Four Seasons Hotel in Toronto on Monday, June 1st.

Nominations are now being accepted from the legal and financial communities at cgca.ca

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NATIONAL POST
ANOTHER READ.

“General counsel who don't push their law firms harder are doing their business a disservice. — *Richard Susskind*, author of *The End of Lawyers?*”

International alliance forms in Madoff affair

35 FIRMS, 22 COUNTRIES

Some 5,000 lawyers have formed an international alliance to defend victims of the alleged scam perpetrated by Wall Street investment broker Bernard Madoff, the alliance head announced yesterday.

“The initiative intends to handle the international legal defense of some three million people hit by the global fraud,” Javier Cremades of Spain told a news conference in Madrid.

The alliance groups 35 law firms

representing almost 5,000 lawyers from 22 countries, including the United States, U.K., France, Germany, the Netherlands, Switzerland, Luxembourg, Brazil, Argentina, Mexico and Israel. One of the goals of the grouping is to compile and exchange information, the lawyers said.

“The creation of the alliance marks the beginning of the gathering of the facts,” said Charles Grice, a representative of New York law firm CRI Compliance.

The law firms involved believe the affair could generate 22,000 legal cases throughout the world. The victims include investment funds and



SUSANA VERA / REUTERS

Lawyer Javier Cremades speaks yesterday at a conference in Spain.

banks as well as private individuals.

Mr. Madoff, a former chairman of the Nasdaq stock market, was arrested in December on suspicion of having taken billions of dollars from new investors to pay off older ones in a so-called Ponzi or pyramid scheme.

Dow Jones and news wires

In-house counsel 'far more savvy'

SUSSKIND

Continued from previous page

That acceptance of many of his ideas has occurred during a backdrop of major economic turmoil that practising lawyers have never seen, is not lost on him. “The recession to some extent has accelerated the effects that I've been talking about ... [We are moving into] a market that is going to become more efficient, and we are going to see a set of clients that are going to become more demanding, and a need for the profession to work differently. Two years ago when I was floating some of these arguments, they were much less compelling than they are today. Pressures on legal services

are ones that we've never seen before.”

Will the push for efficiency come from general counsel? “Historically,” Mr. Susskind says, “[in-house counsel] have been a rather meek bunch; passive recipients of however law firms have cared to deliver legal services. [But now we are starting to get] a group of far more savvy and discerning in-house lawyers who are themselves under considerable pressure and will, it seems to me, begin to dictate the pace. General counsel who don't push their law firms harder are doing their business a disservice because there is opportunity to reduce costs.”

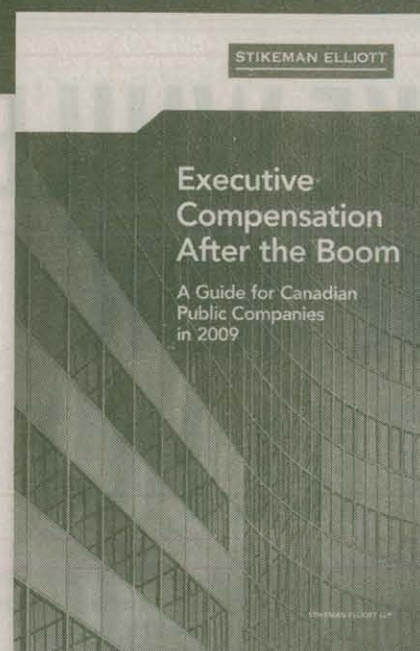
According to Mr. Susskind, applying the efficiencies suggested in *The End of Lawyers?* will also help law firms weather the economic conditions of

2009. He predicts a marked difference between great firms and the firms that will struggle. The latter follow a strategy of “hunkering down for the next 18 months, cutting overhead, winning more than its fair share of work, then, when the dust settles, it will be back to business as normal.” The former says, “We can't simply trim away the fat and continue as we were because when the dust settles the terrain is going to look quite different and we've got to start preparing now, because the kind of techniques that we adopt now will reduce costs, make us more competitive and will actually be characteristic of tomorrow's legal services.”

Asked what are the chances of anyone changing the mindset of a profession that is grounded in precedent and reverses tradition, he says: “Changing the mindset of lawyers worldwide is my personal challenge.”

Financial Post

Executive Compensation After the Boom



The economic slowdown and depressed share prices have heightened investor interest in executive compensation. Clawbacks, salary deferrals, and “underwater” stock options are just some of the difficult issues that boards and executives must address in trying to connect pay to performance and find the right balance.

Stikeman Elliott's “Executive Compensation After the Boom: A Guide for Canadian Public Companies in 2009” explains the key features of executive compensation arrangements and discusses current trends and practices influencing executive pay. This complimentary guide can help you navigate strategic compensation issues and is a valuable resource for public company directors and executives.

To order, contact any of our five Canadian offices or send an e-mail to info@stikeman.com

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