

## ALTERNATIVE DISPUTE RESOLUTION

# Environmental lawyers connect

By Pablo Fuchs  
Toronto

Bennett Jones environmental lawyer Shawn Denstedt of Calgary vividly remembers representing a client in a particular contaminated site dispute. It lasted many months and cost more than \$250,000 in consultant and legal fees alone, without resolution of the issue.

"Ultimately the clients settled the matter, but if there was an alternative process in place, it probably would have been a fraction of the cost and the rest of the money could've gone to cleaning up the site, which is where the money should go," Denstedt told *The Lawyers Weekly*.

In their creation of the Canadian Centre for Environmental Arbitration and Mediation (CCEAM), a group of 14 lawyers from across Canada are looking to provide an alternative process that saves clients time and money.

The idea for the CCEAM came from three B.C. lawyers with extensive experience in environmental disputes. Gary Letcher of Edwards Kenny Bray, Paul Cassidy of Blakes and Arvay Finlay's Murray Rankin set about creating the CCEAM after determining that their environmental law expertise could be utilized to offer efficient and effective arbitration and mediation on disputes where, accord-

ing to Letcher, "more is spent on the fight than on the cleanup."

This trio, along with nine other lawyers from across the country, launched the CCEAM late last year, (adding two more advocates to the roster in March and May), intending to offer their clients another option to settle complicated environmental disputes.

"The main benefit to our clients and to governments [of mediating/arbitrating through the CCEAM] is that we provide people with a knowledge base in environmental law not generally available in the court system," said Denstedt, the only Calgary lawyer on the roster. "In the court system, judges are knowledgeable about the law, but not the technical aspects of environmental disputes."

The CCEAM works as a roster where one member would contact another to mediate or arbitrate an environmental dispute.

"All of us are committed to this, but it's not an entity," said Gray Taylor of Davies Ward Phillips & Vineberg. "In every case, we're all partners with our respective firms, so it's not a collective with a fee perspective, but we do have a relationship where we depend on each other if we need to resolve

a dispute through alternative means."

This system offers expert lawyers, reduced costs and swift resolutions. A dispute that's mediated or arbitrated tends to



Back Row: Robert Daigneault, Gary Letcher, Murray Rankin, Shelley O'Callaghan, Gray Taylor, Paul Cassidy. Front Row: Jim Titerle, Ross Switzer, Denny Thomas, Len Griffiths. Absent from the photo: Jean Piette, Shawn Denstedt, Bernard Miller and Katherine van Rensburg

take less time than if litigated, and according to our sources, cost between 30 to 90 per cent less than a trial.

There are other benefits to this system, too, say CCEAM

lawyers.

"The two parties involved would have the ability to control the timing and formality of such proceedings, which would never happen in a courtroom," said Bernie Miller of Moncton, New Brunswick's McInnes Cooper. "We can make sure that the process is conducted within a specific time period and give the participants the option of a mediated approach or a more

time of the trial and this can vary over time," she said. "That's very limiting for the parties involved, so a mediated process gives much greater flexibility."

Currently, van Rensburg is representing two clients who are each involved in separate environmental disputes. Since Ontario has a mandatory mediation program, both cases are in the process of mediating a resolution with a mutually selected mediator. She says the process has been very beneficial.

"It's a huge advantage to have someone who understands the jargon, the differences between scientific and legal certainty, and can cut through the irrelevant areas of dispute and focus on the relevant ones," she told *The Lawyers Weekly*.

None of its members have yet had the opportunity to arbitrate or mediate a CCEAM case, but it will happen sooner rather than later, says Denstedt.

"In a number of agreements that I've been involved with, we've put in clauses that include arbitration provisions which would refer the matter to the CCEAM," he explained. "So it's only a matter of time until one of these issues comes before it."

Said Taylor, "Our mission now is to inform people that this group is out there and that it consists of some of the leading environmental lawyers in the country."

formal arbitrated one."

Added Katherine van Rensburg of Gowlings' Toronto office: "In a civil proceeding, any damages are awarded at the