

Solving disputes without the dilly-dallying

Shaun Drummond

Hours of time wasted in mediation and experience with highly efficient dispute resolution in Asia have inspired the former Asia-Pacific legal director of Cadbury Schweppes, Rod McNeil, to start a pared-down service for commercial disputes.

The market for providers of alternative dispute resolution services is growing more crowded, as both courts and clients seek negotiated settlement to reduce the time and cost of litigation.

Corporate enterprise Endispute was launched in May by former NSW Supreme Court judge Andrew Rogers, QC, to match clients with legal, commercial and government sector experts who oversee a range of flexible dispute resolution processes.

This week the University of NSW said it was recognising a cultural shift in the profession and closing a gap in education in the state with the launch of a masters of dispute resolution.

Now McNeil, principal of McNeil Legal Solutions, has launched a model called "settlement only mediation" which uses strict guidelines to reach a negotiated settlement. McNeil, who was also a mergers and acquisitions partner in Baker & McKenzie's Hong Kong office, says that, over 20 years, he has seen parties to mediation waste time on restated legal arguments



Rod McNeil says we can learn a lot from practices in Asia.

Photo: PAUL RILEY

or linger just to be seen to be negotiating in good faith.

Others introduced reams of new documents to be considered on the day of mediation or send negotiators with no authority to make the final decision.

"I have been in mediations where the other side simply comes with a whole lot of magazines and literally sit there reading them all day," he says.

"Then, at 4.30pm or a quarter to five, they say: 'Right. This is what

we're prepared to offer' and in the last 15 to 30 minutes there is a very heavy negotiation."

McNeil says his time as a partner at Baker's in Hong Kong exposed him to the no-nonsense techniques preferred in Asia.

"Up there people would get on the phone together and fix it," he says. "That's one of the things I noticed that was hugely different when I returned to Australia. There is that reluctance to sort things out themselves."

A dispute over intellectual property in Australia about five years ago convinced McNeil it was possible to resolve disputes a lot more quickly.

"It involved myself as the senior general counsel for a very large company and two of Australia's best known IP lawyers," he says. "We literally just said: 'I will concede to you that you will make every legal argument possible to support your case. In return [you will concede] the same. So let's just see if there is a deal we can do'. Everyone burst out laughing and we crafted a settlement. That laid the seed for it."

Under McNeil's model, supporting arguments must be lodged seven days before mediation begins and a person with authority to negotiate has to be nominated.

On mediation day parties have just five minutes each for opening addresses and introductory remarks followed by about two hours spent workshopping a settlement, based on the points in dispute.

If both sides fail to confirm in writing at 1pm that there is a realistic chance of a settlement, the mediation ends and the afternoon fee is refunded. Preparation costs \$2000 and the morning and afternoon sessions are charged at \$3000 and \$4000 respectively. Extra half-days cost \$4000.