

Court File No.: CV-10-406401

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

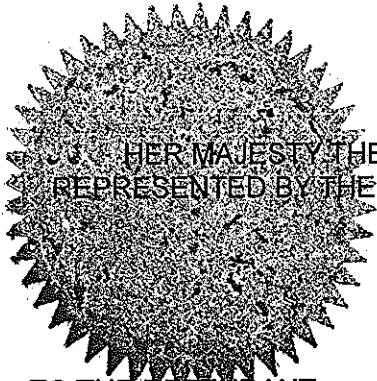
COURT CANADA LTD.

Plaintiff

- and -

HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ONTARIO,
REPRESENTED BY THE MINISTRY OF THE ATTORNEY GENERAL FOR THE PROVINCE
OF ONTARIO

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

DATE: July 8, 2010

Issued by:

A handwritten signature in black ink, appearing to read 'J. G. ...'.

F. Youssef
Registrar

Local Registrar

Address of Court House:
393 University Ave.
10th Floor
Toronto, Ontario
M5G 1E6

TO: The Attorney General of Ontario
The Crown Law Office (Civil Law) of the Ministry of the Attorney General
720 Bay St. 8th Floor
Toronto, Ont.
M5G 2K1

Claim

1. The Plaintiff claims the following:
 - (a) Damages for breach of contract in the amount of \$10,000,000.00;
 - (b) punitive damages in the amount of \$2,000,000.00;
 - (c) its costs on a substantial indemnity basis or in the alternative on a partial indemnity basis;
 - (d) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*; and,
 - (e) such further and other relief as this Honourable Court may permit.

The Parties

2. The Plaintiff is an Ontario corporation specializing in the development of web-based software solutions for the adjudicative process.
3. The Defendant is Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of the Attorney General for the Province of Ontario. The Ontario Ministry of the Attorney General (the "Ministry") is responsible for, inter alia, the administration of the Ontario Superior Court of Justice (the "Superior Court") through its Court Services Division.

The Court Scheduling Project

4. In December 2006, the Plaintiff was contacted by the Ministry to discuss the establishment of a web based pilot project (the "Project") to improve the efficiency of the Court room scheduling process in the Superior Court in Toronto.

5. As a result of discussions between the Ministry and the Plaintiff, the Plaintiff began development of the technology required for the Project. The Plaintiff worked closely with the Ministry in the design and development of the technology and solicited input from relevant stakeholder groups. The cost of developing the technology was borne entirely by the Plaintiff.

The OSCAR Technology

6. By late summer of 2007, the technology for the project was substantially developed and was branded by the Plaintiff as the Online System for Court Attendance Reservations ("OSCAR").
7. OSCAR is a web-based software application that provides public access to Court schedules and information regarding upcoming Court hearings, and enables registered users to search for available Court time and reserve Court attendances online.
8. In addition to its "public-facing" features, OSCAR is also used by Court Services Division staff members ("Court Staff") and other Ministry personnel to manage the "back office" aspects of scheduling in OSCAR-enabled Civil Divisions. OSCAR enables Court Staff to, among other things, input new matters, assign matters to court rooms and Judges, and create and publish Court room "door lists", as well as generate reports on Court operations.

Deployment of OSCAR in The Estates List

9. In October of 2007, the Project was launched by the implementation of OSCAR in the Estates List. Prior to the introduction of OSCAR, the Estates List did not have a functional electronic scheduling system.
10. OSCAR's operation was partially subsidized by a \$15.00 "booking fee" levied on Court attendance reservations made by registered legal professionals through the system. The Ministry was not charged for its "back office" use of the system thereby providing the Defendant with access to reliable high performance technology at no cost to taxpayers.

Court schedules and other information were made publicly available on the site at no charge enhancing transparency and access to justice.

11. OSCAR represented a marked improvement over the inefficient and time-consuming traditional booking practices and received strong support from key stakeholders including lawyers, law firms, professional organizations, media and the judiciary. Estates List Court Staff and Court Services Division management were also supportive of the system.

The Request For Proposals

12. The Ontario Government deemed the Project successful, and in July of 2008, issued a Request For Proposals ("RFP") for a web-based Court scheduling system based on OSCAR's specifications. The RFP set out the Ontario Government's requirements for the system which requirements included the capacity to manage, for up to eight years, all Civil Divisions of the Superior Court in Toronto as well as the rest of the province.
13. The RFP required that the scheduling system be provided to the Ontario Government at no cost. Similar to the terms of the Project, the successful proponent was expected to recoup its investment by levying a service charge on transactions performed by lawyers and non-Ministry users.
14. Pursuant to the RFP, the selected proponent would be required to perform the following functions through the duration of the contract: operation and maintenance of OSCAR, ongoing development and refinement of OSCAR, training for up to 200 Ministry users, sales, marketing and advertising, customer service, technical support, provision, management and maintenance of servers and computer hardware, pre-deployment configuration, and deployment.
15. In delivering its proposal including the required maximum transaction fees, the Plaintiff relied on the annual event volumes and other Ontario Government representations set out in the RFP.

The Agreement

16. In December 2008, the Defendant notified the Plaintiff that it had been selected as the successful proponent in the RFP. The agreement to deliver and manage OSCAR to the Ministry of the Attorney General was executed on or about December 24, 2008 (the "Agreement").
17. Pursuant to the Agreement, the Plaintiff was entitled to deploy OSCAR in all of the Civil Divisions of the Court.

Enhancements to OSCAR

18. Although OSCAR was already in use in the Estates List, substantial additional development and other enhancements were required to ensure that the system had the technical capacity and new features required under the Agreement.
19. In addition to putting in place the extensive computer hardware and technical infrastructure required by the Agreement, the Plaintiff also expanded its development team and built a customer service team, training team, and sales and marketing team.
20. Development of the system and support infrastructure represented a significant investment by the Plaintiff and was made with the legitimate expectation that the company would have the opportunity to earn revenue by, among other things, deploying it on a timely basis in all Civil Divisions. The Plaintiff relied on the annual event volumes and other Ontario Government representations set out in the RFP.

Deployment of OSCAR in the Commercial List

21. The Defendant directed the Plaintiff to deploy the system in the Commercial List division of the Superior Court.
22. The Plaintiff engaged in a "discovery" process to identify and document all processes and

staff procedures involved in managing scheduling in that division in order to configure the system accordingly, and the system became operational in the Commercial List during the Spring of 2009.

23. The annual volume of matters from the Estates List and Commercial List together represent less than fifteen percent of the total volume of Civil Divisions in Toronto and less than five percent of the total volume of civil matters in the province.

Planned Expansion of OSCAR in Other Court Divisions

24. The Defendant then directed the Plaintiff to conduct the discovery process in the Civil (General) and Bankruptcy and Insolvency divisions of the Superior Court, in preparation for expansion of OSCAR. These divisions together represent most of the overall volume of matters heard by the civil courts in Toronto each year.
25. The Plaintiff deployed a team of personnel in the Court Office, and completed the discovery process in the Civil (General) and Bankruptcy and Insolvency divisions in late summer 2009.
26. In addition, the Ministry directed the Plaintiff to conduct its discovery process at the Small Claims Court at 47 Sheppard Avenue in Toronto, due to the high volumes and other challenges faced by the Ministry at that location. The company also completed this discovery process in late summer 2009.
27. Upon completion of the discovery process in the Civil (General) and Bankruptcy and Insolvency divisions, the Plaintiff advised the Defendant that it was ready to commence deployment of the OSCAR system in those divisions.
28. In addition to the considerable costs incurred by the Plaintiff in conducting the discovery process and otherwise preparing for such deployment, the Plaintiff also commenced a marketing and advertising campaign touting the expected expansion.

Ministry Refuses to Expand OSCAR Deployment

29. In January of 2010, the Plaintiff contacted the Defendant regarding the expected deployment of the OSCAR system in the Civil and Bankruptcy and Insolvency divisions of the Superior Court. Despite numerous written requests to the Defendant to advise the Plaintiff as to the timeline for such expansion, the Ministry did not respond.
30. The Plaintiff arranged to meet with the Ministry on March 24, 2010 at which meeting the Plaintiff was advised that the Ministry no longer intended to expand OSCAR beyond the Estates List and Commercial List.
31. The Ministry advised the Plaintiff that the Ministry's decision not to further expand OSCAR was the result of one or more initiatives in which the Ministry's internal information technology staff was engaged. The Ministry confirmed that its decision was not based on any performance issues under the Agreement. In addition, the Ministry confirmed its expectation that the Plaintiff continue to provide OSCAR service to the Estates List and Commercial List Divisions through the duration of the term of the Agreement.

Breach of the Agreement

32. The Defendant is liable to the Plaintiff for its refusal to commence the OSCAR deployment procedure in breach of the Agreement which requires that the Defendant provide the Plaintiff with access to the Courts for the purpose of deploying OSCAR. The Plaintiff has repeatedly requested that the Defendant authorize the company to deploy OSCAR in other Civil Divisions. The Defendant has refused to provide the Plaintiff with access to other Civil Divisions for the purpose of deploying OSCAR.

Ministry's Attempt to Sabotage OSCAR in the Commercial List

33. The Plaintiff has become aware that the that the Defendant has deliberately and systematically attempted to interfere with the integrity of OSCAR in the Commercial List

by (i) deleting or otherwise altering the records of future matters in the system, (ii) preventing further revenue-generating reservations through the system, and (iii) publishing false information on the OSCAR web site. The Defendant's actions were malicious and intended to harm to the Plaintiff's operations and reputation in order to justify its decision not to proceed with the OSCAR deployment notwithstanding the fact that the Defendant had previously confirmed that its decision not to deploy OSCAR was not based on performance issues.

Plaintiff's Damages

34. The Plaintiff has sustained substantial financial harm as a result of the Defendant's wrongful termination of the Agreement and numerous breaches thereof. The Plaintiff will provide particulars of its alleged damages prior to trial.
35. The Plaintiff has continued to make the system available to the Defendant in order to mitigate its damages.

Punitive Damages

36. The Defendant, as set out above, has acted in a high-handed and reckless manner with callous disregard for the contractual rights and other interests of the Plaintiff, and as such the Plaintiff is entitled to punitive damages.
37. The Plaintiff pleads and relies upon the *Proceedings Against the Crown Act*, R.S.O. 1990, c.P.27, the *Ministry of the Attorney General Act*, R.S.O. 1990, c.M.17, the *Ministry of the Solicitor General Act*, R.S.O. 1990, c.M.34
38. The Plaintiff requests that the trial of this action be heard in the City of Toronto.

Date of issue: July 8, 2010

TEPLITSKY, COLSON LLP

Barristers

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Toronto, Ontario

M5B 1X3

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Solicitors for the Plaintiff

and

Plaintiff CourtCanadaLtd.

CV-10-406401

Defendant Her Majesty the Queen

Court File No.:

Ontario Superior Court of Justice
Proceedings Commenced at Toronto

STATEMENT OF CLAIM

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