

Commercial mediation scholarship and practice

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Commercial Mediation: The Mediators

The NZ commercial mediation market:

- ▶ Small and dominated by a small group of high-profile mediators.
- ▶ No evidence of any increase in demand for mediation since the mid 2000s.
- ▶ Supply of mediators far outstrips demand.
- ▶ It is probable that this situation will continue until a 'game-changing' development occurs.

Commercial Mediation: The Gatekeepers

Lawyers:

- ▶ Support commercial mediation but largely on their own terms.
- ▶ Are not undermining mediation but believe they are contributing positively to the process.

Clients:

- ▶ Have a more limited knowledge of mediation and usually follow their lawyer's recommendations.

Thus lawyers play a key role as gatekeepers to commercial mediation.

Commercial Mediation: The Users (Insurance)

- ▶ The respondents reported a good knowledge of mediation.
- ▶ They also indicated that the insurance industry as a whole is aware of mediation and supports it.
- ▶ However, most estimate that the organisations they work for use mediation less than 25 times in any given year.
- ▶ Respondents' main reason for using mediation is its cost-effectiveness.
- ▶ Insurance users may be atypical

Conclusions

- ▶ The commercial mediation market may be reaching, or has already reached, its natural limits.
- ▶ The mediation profession's key focus should be on growing the market.
- ▶ The promotion of mediation must continue.

Conclusions

Suggestions:

- ▶ Informal organisation for commercial mediators
- ▶ Public education campaign
- ▶ Wholesale embrace of mediation by lawyers
- ▶ Mandatory court-referred mediation?

In the absence of these it is unlikely that the market will experience sizable growth.

Conclusions

- ▶ Overall, the commercial mediation market works well as a free-market, private service.
- ▶ Commercial mediation is here to stay but is yet to fulfil its potential.