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.
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.