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VICTORIA UNIVERSITY OF WELLINGTON - TE HERENGA WAKA

"LEADR/Victoria University Commercial Mediation in New Zealand Project Report (June 2015)" 

*Victoria University of Wellington Legal Research Paper No. 55/2022*

**GRANT HAMILTON MORRIS**, Victoria University of Wellington, Te Herenga Waka - Faculty of Law

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This report delivers the results from the first project to systematically explore commercial mediation in New Zealand. A key aim of this project is to move the study of commercial mediation in New Zealand from anecdote to evidence. There has been a lot of talk about the growing importance of commercial mediation in New Zealand but no empirical evidence to support the claims. This information vacuum weakens the mediation profession's efforts to effectively promote mediation for commercial disputes. It also leaves the profession vulnerable to criticism from those suspicious of mediation i.e. it is difficult to rebut criticism without convincing evidence.

Specific research questions covered in the project include:

How much commercial mediation is taking place?

What styles of mediation are being used in commercial disputes?

How effective is this mediation?

Who is carrying out commercial mediation? Where is it happening?

How can the use of commercial mediation be increased and encouraged?

What are the key challenges facing commercial mediation?

Relevant written sources have been analysed and individual mediators surveyed and interviewed regarding the nature of their work. Along with providing an overview of New Zealand's commercial mediation landscape the project will hopefully stimulate further research into this area of mediation practice. This report assesses the current state of commercial mediation in New Zealand and offers predictions for the future.

## **"Resolution Institute/Victoria University 'Lawyers as Gatekeepers to Commercial Mediation in New Zealand' Report"**

*Victoria University of Wellington Legal Research Paper No. 56/2022*

**GRANT HAMILTON MORRIS**, Victoria University of Wellington, Te Herenga Waka - Faculty of Law  
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**AMANDA LAMB**, Victoria University of Wellington, Te Herenga Waka - Faculty of Law, Student/Alumni

This report contains research following on from the 2015 study examining the nature of private commercial mediation in New Zealand. The aim of this research project is to examine gatekeepers' perspectives on commercial mediation. There is a lack of empirical information on the nature and use of commercial mediation in New Zealand. This project aims to gather empirical data from lawyers working within this field to gain a picture of the current market.

Overall conclusions include:

- Lawyers know about commercial mediation and support it, but largely on their own terms. They are not undermining it. Lawyers believe they are contributing positively to the mediation process.
- Clients have a more limited knowledge of mediation but usually follow their lawyer's recommendations. Thus lawyers play a key role as gatekeepers to commercial mediation.
- The main reason lawyers recommend mediation is cost, i.e. it is cheaper than litigation.
- Lawyers prefer legal trained mediators with experience and a good reputation.
- Lawyers report high mediation settlement rates and high overall quality of mediation. Lawyers are generally happy with the standard of commercial mediation in New Zealand.
- It appears that while mediators believe it would be advantageous to expand commercial mediation in New Zealand, lawyers are generally satisfied with the level and quality of commercial mediation. The group that has not yet been surveyed is clients and potential clients of commercial mediation.

## **"Resolution Institute/Victoria University of Wellington 'Users of Commercial Mediation in**

## New Zealand – Insurance Industry' Report"

Victoria University of Wellington Legal Research Paper No. 57/2022

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The results of this survey provide an understanding of users' perspectives on 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 the use of it. Users report they are using mediation often and believe that it is well utilised in the insurance sector. 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. Respondents' main reason for not using mediation is the other party's unwillingness. This indicates the party on the other side of a dispute may be a barrier to using mediation. Respondents also noted that the other party having a weak case or unrealistic expectations were reasons not to use mediation.

## "Victoria University of Wellington/Resolution Institute 'Commercial Mediation in New Zealand: The Mediators' Project Report (August 2019)"

Victoria University of Wellington Legal Research Paper No. 58/2022

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This report outlines the findings of a research project that was co-funded by the Resolution Institute as part of Victoria University's 2018/19 Summer Scholarship programme. It forms part of the New Zealand Commercial Mediation Study (NZCMS).

This report aims to provide insight into the practice of commercial mediation in New Zealand and builds on the previous studies: the first examining the nature of private commercial mediation in New Zealand (as this does also), the second examining the perspectives of commercial lawyers, the 'gatekeepers' of mediation, and the third examining the perspectives of 'users' of commercial mediation (more specifically in the insurance sector).

The longitudinal nature of this research allows readers to see the differences in the private mediation market from early 2015 to early 2019. Investigation into the private mediation market is necessary for its growth and development as a form of alternative dispute resolution.

## "'Commercial Mediation in New Zealand: The Judiciary' Project Report (August 2021)"

Victoria University of Wellington Legal Research Paper No. 59/2022

**GRANT HAMILTON MORRIS**, Victoria University of Wellington, Te Herenga Waka - Faculty of Law

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**HANNA MALLOCH**, Victoria University of Wellington, Te Herenga Waka - Faculty of Law, Student/Alumni

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This report outlines the findings of a research project that was co-funded by the Government Centre for Dispute Resolution as part of Victoria University of Wellington's 2020/2021 Summer Scholarship Programme. It forms part of the New Zealand Commercial Mediation Study. This report aims to provide insight into the practice of commercial mediation in New Zealand and its relationship to the judiciary. It builds on the four previous reports within this study: the first and fourth which examined the nature of private commercial mediation in New Zealand by surveying mediators; the second which examined the perspectives of commercial lawyers (the 'gatekeepers'); and the third which examined the 'users' of commercial mediation, more specifically the insurance sector. Investigation into the private mediation market is necessary for the growth and development of mediation as a form of alternative dispute resolution.

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## About this eJournal

Victoria University of Wellington - Te Herenga Waka Legal Studies Research Paper Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**.

Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington - Te Herenga Waka Legal Studies Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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