



Mark Kelly

Barrister & Commercial Mediator

PROFILE

RECENT ADVOCACY WORK

COMMERCIAL MEDIATION

CHAMBERS

Mark Kelly

Barrister & Commercial Mediator

PROFILE

Mark practises as a barrister, and as a commercial mediator.

He won the Mediator of the Year Award at the 2019 New Zealand Law Awards.

Mark is one of New Zealand's leading commercial mediators, with a reputation for skill, determination, commerciality, and relatability.

He is also a sought-after adviser on medico-legal and dispute resolution issues.

Background

Mark graduated LLB (Hons) BA from Auckland University in 1993, and was admitted to the New Zealand bar that year.

From 1994-2004, Mark was a litigator at leading law firms in New Zealand and Ireland. Since 2005, he has been a barrister, practising now from Bankside Chambers, Auckland.

As counsel, Mark has litigated a wide variety of civil disputes. He has appeared in the New Zealand High and District Courts many times, and in the Court of Appeal. He also has experience in the Employment Court, the Employment Authority, the Weathertight Homes Tribunal, the Health Practitioners Disciplinary Tribunal, and the Coroners Court. He has acted in numerous arbitrations.

Mark also appeared many times as counsel in commercial mediations, experience which led to him becoming a commercial mediator. His commercial mediation practice has grown rapidly, and it has become his full-time focus.

He also has extensive experience in, and continues to undertake, medico-legal and dispute resolution advisory work.

Mark is married, with two teenage children, and lives just north of Auckland.

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Commercial Mediation

Mark completed the Mediating Disputes course at Harvard Law School. He is also Resolution Institute trained.

He is a Fellow of the Arbitrators' and Mediators' Institute of New Zealand, and an AMINZ Council member. He is also a Fellow of the International Academy of Mediators.

Mark is on mediation panels for AMINZ, Complete Online Dispute Resolution (CODR), the Health and Disability Commission, the New Zealand Dispute Resolution Centre, the New Zealand Law Society Lawyers Complaints Service, and the Weathertight Homes Tribunal.

He is a facilitator with the Greater Christchurch Claims Resolution Service.

He is on the AMINZ Rural List. As an experienced rural mediator, he has been heavily involved in submissions to Parliament on, and training others about, the Farm Debt Mediation Act 2019.

He is an appointee on the World Intellectual Property Organisation Center's List of Mediators. He is also on the AMINZ Intellectual Property List.

He has extensive experience successfully mediating high value disputes involving: general commercial issues (company, contract, debt, education, employment, finance, negligence, partnership, property, relationship property, (family businesses)), construction, insurance, intellectual property, trusts and estates, rural and farm debt, earthquake, weathertightness and international issues.

He has worked with international parties, and mediated cross-border issues. He is a member of Bankside Chambers' Singapore office – see www.bankside.co.nz/singapore.

Mark was the winner of the Resolution Institute's 2015 award for contribution to dispute resolution by an emerging practitioner. In 2016 he was awarded the AMINZ Ann Edge Memorial Award for Excellence in Fellowship Mediation and the Fellowship Mediation Prize.

Medico-legal

Mark has extensive experience in dealing with medico-legal issues. For many years, he has been one of the leading counsel regularly instructed by New Zealand Medical Professionals Insurance to act for its policyholders.

He regularly advises health practitioners on: complaint management, privacy, professional discipline, interactions with other agencies (including the Police and ACC), Coronial enquiries, partnership/commercial issues, and dispute resolution generally.

He has represented practitioners in the Health Practitioners Disciplinary Tribunal, and the Coroner's Court.

Dispute Advisory

Mark is frequently called on to advise on dispute resolution in commercial matters. He provides opinions, strategic input, tailored dispute resolution process design (consensual and determinative), negotiation coaching, and recovery options.

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Teaching & Memberships

Mark has written and presented extensively, locally and internationally, on mediation, and other legal topics.

He has guest-lectured, and provided mediation skills coaching, at the Auckland University Law School.

He is the Deputy Director of Education (Mediation) at AMINZ. He is a regular on the faculty of the AMINZ Mediation Skills Intensive course. In 2019, he supervised the AMINZ Fellowship (Mediation) Assessment.

He is a fellow of AMINZ, and of the International Academy of Mediators.

He is a current member of the New Zealand Society of Construction Law, the New Zealand Bar Association, the New Zealand Insurance Law Association, the Auckland Medico-Legal Society and the Intellectual Property Society of Australia and New Zealand.

Pro Bono

Mark has maintained a pro bono commitment to the Otara Citizens' Advice Bureau since the mid-90s.

He spent seven years as a trustee (with responsibility for finance) on the board of a decile one school in East Tamaki. He spent two years as a selector for Gymsports New Zealand (selecting athletes for Commonwealth Games and World Championships).

He mediates for the New Zealand Law Society Lawyers Complaints Service without charge, and undertakes other pro bono mediations.

He has been involved in various other charitable and pro bono work.

From August 2019, he has committed to funding the planting of one native tree for each participant in his mediations, via **Trees That Count**.

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RECENT ADVOCACY WORK

Many of Mark's cases are confidentially negotiated, mediated or arbitrated.

Recent court/tribunal cases in which Mark has acted as counsel have included the following:

- Eight Mile Style LLC & Anor. v The New Zealand National Party & Ors. - 2014-ongoing, High Court, CIV 2014-485-11220 - Acting for a party in the "Eminem" copyright infringement claim
- Hansells Food Group Ltd. v William Aitken & Co Ltd. & Ors. - 2014-2015, High Court, CIV 2014-404-2433 - Copyright infringement claim
- Turner & Ors. v Wrightson & Ors. - 2013-2014, Weathertight Homes Tribunal, TRI 2012-100-109 - Leaky home claim
- Rock Solid Holdings Ltd. v Johelen Corporate Trustees Ltd. & Anor. - 2013-2014, High Court, CIV 2013-404-3443 - Sale and purchase dispute
- Dalgety Finance Ltd. v Trends Publishing International Ltd. - 2013, High Court, CIV 2013-404-2740 - Dispute over fees for financial services
- Foodstuffs (Wellington) Co-Operative Society Ltd. v Apollo Projects Ltd. & Ors - 2013, High Court, CIV 2012-485-001933 - Construction dispute
- Johelen Corporate Trustee Ltd. v Rock Solid Ltd. - 2013-2014, High Court, CIV 2013-404-2389 - Sustaining a caveat
- Body Corporate 198570 v Auckland Council & Ors. - 2012-2013, Weathertight Homes Tribunal, TRI 2011-100-028 - Leaky home claim
- Re Seniorcare Group Ltd., ex parte Harvey - 2012, High Court, CIV 2011-404-8358 - Bankruptcy dispute
- Re Drury - 2012, Health Practitioners Disciplinary Tribunal, PDT 500/Psy12/216P - Disciplinary issues for a psychologist
- Waite v Global Integrated Solutions Ltd. - 2010-11, High Court, CIV 2010-404-8333 - Inter-shareholder issues, significant security for costs application
- Managh v Morrison - 2009-11, High Court, CIV 2009-441-522 - Insolvency and property issues
- Alderman Property Ltd. v Body Corporate 379933 - 2010-11, High Court, CIV 2010-404-3658 - Administration of a body corporate
- Saunders v Perrins - 2008-10, High Court, CIV 2008-404-3674 - Dispute over shareholders' returns
- The Baby Hammock Co Ltd. v AJ Park Law - 2010, High Court, CIV 2008-404-3581 - Protecting a third party in a dispute relating to intellectual property

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COMMERCIAL MEDIATION

Expertise

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AMINZ Ann Edge Memorial Award for Excellence in Fellowship Mediation and the Fellowship Mediation Prize.

He has extensive experience successfully mediating high value disputes involving:

General Commercial Issues

Company, contract, debt, education, employment, finance, negligence, partnership, property, relationship property (family businesses).

With 25 years experience as a litigator, Mark understands the legal, evidential, and costs dynamics in general commercial litigation. He works with counsel and participants in mediations to ensure that all are making settlement decisions on the basis of realistic risk/cost analyses.

Construction

In the construction space, Mark has mediated with contractors, principals, sub-contractors, consultants and a wide variety of experts. He has mediated multi-party claims, high-value residential claims, commercial claims and infrastructure disputes. He is familiar with the legislative and contractual framework within which construction disputes occur – from the Building and Construction Contracts Acts, to NZS3910 and the NZIA SCC.

He is a member of the New Zealand Society of Construction Law.

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Insurance

Mark has mediated with insurers, insured claimants, insured defendants and third parties, and in many extent/declinature of cover disputes.

He is a member of the New Zealand Insurance Law Association

Intellectual Property

Mark studied intellectual property at Auckland Law School. He has been senior counsel in IP trials, from *Harlow v Griffins Foods Ltd* [2003] BCL 31 (breach of confidence), to *Eight Mile Style, LLC v New Zealand National Party* (2017) 127 IPR 318 (the "Eminem" breach of copyright claim). He has also acted on patent and trademark infringement claims

He understands the framework and language of IP disputes. He has mediated a variety of IP issues, and enjoys working with participants on the particular intellectual and commercial challenges that such issues can pose.

He is an appointee on the World Intellectual Property Organisation Center's List of Mediators. He is also on the AMINZ Intellectual Property List.

He is a member of the Intellectual Property Society of Australia and New Zealand.

Trusts & Estates

Mark appreciates the delicate family dynamics that often come with disputes over trusts and estates. He has mediated such disputes involving a variety of asset-types, including residential property, commercial and rural property, cash and shares. He is familiar with trustee and executor liability issues.

Rural & Farm Debt Matters

Mark has mediated rural disputes about: farm management, farm land and buildings, farm equipment, farm leases, cool stores, debt issues, and farms as part of estates.

He is on the AMINZ Rural List. As an experienced rural mediator, he has been heavily involved in submissions to Parliament on, and training others about, the Farm Debt Mediation Act 2019.

Earthquake Insurance

Mark has been mediating Canterbury earthquake sequence insurance disputes since 2015. He has an in-depth appreciation of the emotional, legal, engineering, consenting, construction and costs issues that arise in these disputes. He works in a sensitive but determined manner to try and help parties find common ground so they can move on.

He is a facilitator with the Greater Christchurch Claims Resolution Service.

Weathertightness

Mark has mediated many weathertightness claims, including very large multi-party and multi-unit matters.

He is on the mediation panel for the Weathertight Homes Tribunal.

International Issues

He has worked with international parties, and mediated cross-border issues.

He is a member of Bankside Chambers' Singapore office – see www.bankside.co.nz/singapore.

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Fees

Mark's fees as a mediator are:

A standard rate of \$7,250 plus G.S.T. for a full-day mediation, including preliminary steps; or

\$6,000 plus G.S.T. for a full-day mediation relating to: private earthquake insurance; or farm debt issues, including preliminary steps; or

Such fee as may be agreed in advance in relation to mediations of shorter or longer duration, panel-generated mediations, or international appointments. Mark is based in Auckland, but does not charge travel time or costs for mediations in other New Zealand centres.

Pro bono

Mark is happy to discuss pro bono matters.

Venues

Mark is based in Auckland, but does not charge travel time or costs for mediations in other New Zealand centres.

Parties can arrange their own venue for a mediation, or assistance can be provided. The Arbitration and Mediation Centre is a recommended option in Auckland.

Mark can facilitate teleconferences as required.

Videoconferencing

Mark has experience mediating on-line, by videoconference. He has successfully concluded high value, multi-party mediations in this way.

He works with participants to ensure they are comfortable with, and can get the best from, the format. He typically hosts videoconferences on Zoom. But, if parties prefer other platforms, he is happy to work with them on that.

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CHAMBERS

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