

2. The deficiency or error may be such that the purported reasons are not reasons within the meaning of the contract and, if it be the case that the provision of reasons is a necessary condition of the binding operation of the determination, the deficiency or error will have the result that the determination is not binding."

In this case the Court found that the expert had determined the issues defined

by the parties and dealt with each claim "meticulously". The question as to whether there was an unexplained inconsistency was described as a "threshold question" to be determined before the question of whether the reasons were insufficient to support a binding determination arose.

In each of the variations which were the subject of the determination, the Court found that there was no inconsistency between the Expert's findings nor was there any relevant deficiency in the explanation given in the expert determi-

nation of the process of reasoning adopted. The appeal was allowed.

Expert Determinations are an integral part of many construction contracts and it is worth noting that an Expert Determination may not be bound by the same clear provisions and requirements as arbitration. Clear drafting of dispute resolution provisions and careful consideration of those in existing standard forms can avoid differences of understanding concerning process and requirements for determinations.

MEDIATOR PROFILE: TIMOTHY MCMICHAEL

Timothy McMichael is a mediator and counsellor based in the Hawkes Bay specialising in family conflict.



Timothy became involved in mediation through a "somewhat unconventional path" following a holiday to the West of England in late 1998 when he met and became friendly with an English solicitor who was a full time mediator. The solicitor listened with interest to details of Timothy's career of some 10 year standing as a successful therapist and trainer and told Timothy he thought that he would be a good mediator. McMichael says "frankly, at that time I had little idea what a mediator, or mediation, was".

Nevertheless, with his appetite whetted Timothy did some research, and subsequently applied to be trained as a Mediator with the UK Family Mediators Association. "What followed was an exhaustive written application, a nerve racking full day interview process which included endless role plays, and an anxious two-week wait to hear if I was to be offered a place on their annual training" he says.

McMichael qualified some six months later, and then within about six months he secured a position with a significant mediation firm based in the West Midlands. What he describes as "hundreds of cases" followed, including numbers of mediations where domestic violence, cultural mediation with the Sikh community, and minimal mental acuity were characteristics. Timothy worked as both a co mediator, a solo mediator. He was then invited to join the UK Family Mediators Association as a Board member, a trainer and their National Treasurer.

Having moved to New Zealand in 2008, Timothy attended both the AMINZ and LEADR 2009 conferences in Wellington and Melbourne respectively, and subsequently became a member of LEADR and obtained status as an accredited panel member.

Currently almost all Timothy's mediation work is family mediation. He says "I am fortunate to live and work in a quieter part of country where, as a Family Court counsellor, I have been able to bring to the table the whole range of skills and attributes needed to assist parties to reach proposals and agreements outside the courtroom".

He says "It feels like I've now gone full circle. With some amusement I look back to my own teenage years, when I experienced the horrors of my own parents' fully defended divorce, which culminated in a court hearing in the High Court in London. I recall seeing the trauma the whole legal process created, and became determined, as I explained to my school career teacher, to train as a barrister when I grew up so "I could do it better". Well, 35 years on, albeit through a slightly different route, it feels like I've achieved just that".

For Timothy, "to be able to assist parties when they are typically at their most vulnerable, to assist them to find a path through their emotional barriers, the conflict and pain, and particularly so when the care of children is relevant, is an occupation which truly humbles me at times". He says he gains enormous satisfaction from presenting parties with their memoranda of understandings, and find the most satisfaction when all issues mediation is completed, where parties have looked at not only relationship and contact issues, but significantly property and finance issues too.

Timothy says:

Back in the UK, I was fortunate to experience what was referred to as the "Rolls Royce" of mediation training, and I would encourage anyone who has an interest in human potential and conflict resolution, to ponder on a career as a mediator. If you have a genuine interest in helping people solve conflict, if you're empathic and unflappable and if you think you can survive the heat of the mediation room — it's a career path worthy of consideration.

As ADR becomes more widely accepted and a mandatory part of more and more legal processes, I am increasingly confident of the potential to help couples, businesses, neighbours resolve their disputes outside of the court room door. Much is already understood of the facilitative nature of mediation; in the future I think we will understand more and more of the transformational nature of mediation. Bring it on!