

A Case for Mediation: The Cost-Effectiveness of Civil, Family, and Workplace Mediation



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January 2014

Executive Summary

This report synthesizes the existing empirical evidence about the cost-effectiveness of mediation. Literature in three substantive areas is reviewed: civil (including small claims), family, and workplace disputes. The following five ways that mediation, either directly or indirectly, saves the government money were identified, and evidence of each is provided:

1. By resolving conflicts outside of, or earlier in, the court system, limited court resources can be re-allocated to other matters. This happens when:
 - Mediation results in conflicts resolving before a court action is commenced;
 - Mediation occurs relatively early in the litigation process, resulting in shorter time to resolution and, therefore, less use of court staff and judicial time;
 - Mediated agreements are complied with more often than court-imposed terms, thereby reducing re-litigation; and;
 - Even when mediation does not result in an agreement, post-mediation court proceedings are shorter and therefore less expensive (e.g., because the mediation process gave the parties more information about the dispute, narrowed the issues for trial, allowed them to resolve some issues, made them less adversarial, etc.).
2. For both civil litigants and families, mediation saves money in legal and court fees that would otherwise be spent in the economy.
3. Family mediation produces better psychosocial outcomes than adversarial approaches, and this could result in reduced use of publicly-funded social assistance and other social services.
4. Mediation reduces conflict in the workplace, which saves businesses significant money. This boosts the economy through savings, investments, and hiring, and generates more tax income for government. Additionally, mediation reduces workplace conflict in the public sector – directly saving government money.

5. Mediation can reduce the cost of civil litigation in which government and/or crown corporations are involved.

In order to present a balanced view, the last part of the report analyzes empirical results sometimes raised as evidence that mediation does not save money. I conclude that the cost-effectiveness of mediation is demonstrable, and the “next generation” of empirical work in this area should focus on determining what form of dispute resolution works best in particular situations. In other words, research should be directed toward the goals of effective triage and matching i.e. *tailoring* mediation and other dispute resolution techniques to the needs of the parties and the type of dispute. The more appropriately mediation is used (i.e., the more often it results in settlement and efficient use of resources), the more net economic benefit it will provide.

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Introduction

Overview

The purpose of this report is to synthesize the existing empirical evidence about the cost-effectiveness of mediation, that is, the extent to which mediation can save public funds and bolster the economy¹. I focus on three substantive areas: civil (including small claims) disputes, family disputes, and workplace disputes. In these domains, there are several direct and indirect routes through which mediation can have economic benefits at the societal level.

In a direct sense, the literature demonstrates that mediation can save government money by resolving conflicts outside of or earlier in the court system. This allows court resources to be re-allocated to other matters. More indirectly, mediation saves civil litigants and families legal and court fees they would otherwise spend in the economy. Family mediation has been shown to produce better psychosocial outcomes than adversarial approaches, which may result in reduced use of publicly-funded social assistance and other social services. Further, mediation in the workplace provides a cost-effective method for addressing the full economic consequences of conflict including lost productivity, absenteeism, employee turnover, and failed projects that translates into approximately \$359 billion dollars a year in wages alone in the U.S.². Businesses become more profitable, spend more in the economy, employ more people and generate more tax income for government. Additionally, mediation reduces workplace conflict in the public sector – directly saving government money. Finally, mediation can reduce the

¹ No specific jurisdictions were focussed on or excluded. However, only English sources were used and, as a result, most information is from mediation programs in the U.S., Canada, the UK, and Australia.

² See for instance, CPP Inc. (July, 2008). *Global human capital report: Workplace conflict and how businesses can harness it to thrive*. Author CPP Inc. Retrieved from: http://www.wkw.at/docextern/ubit/wirtschaftsmediatoren/Studie%20_CPP_Global_Human_Capital_Report_Workplace_Conflict.pdf.

cost of civil litigation in which government and/or crown corporations are involved.

Evidence to support each of these contentions is provided. Canadian evidence, which is scant, is highlighted. In order to present a balanced view, the last part of this report analyzes some of the empirical results suggesting that mediation does not save money.

This analysis is offered with the following caveats:

- It only synthesizes *cost-related* research. It does not touch on theoretical or ethical criticisms of mediation.
- Mediation programs differ widely in their “design features,” that is, how they are structured, delivered, and the characteristics of the disputants they serve. Such domains of difference can include: the nature of the disputes being mediated; the cost of the program’s services to users; the length of the mediation sessions; whether mediations occur in-person, over distance, or both; the training and experience of the mediators; the mediation techniques used; the issues open to mediation; whether it is mandatory or voluntary; whether it is court-connected, court-annexed, or private; whether the parties are represented by counsel, etc. This analysis makes no attempt to speak to how these different design features might be associated with different outcomes. While practitioners have been turning their minds to the issue of what dispute resolution options work best in which circumstances³, the empirical work on this question is not yet sufficiently developed to permit a review.

³ See for instance Sander, F.E.A. & Goldberg, S.B. (1994). Fitting the forum to the fuss: A user-friendly guide to selecting an ADR procedure. *Negotiation Journal, January*, 49–68.

Literature Synthesis

Mediation saves government court administration costs

Mediation can save government court administration costs in the following ways:

- *By resolving conflicts before a court action is commenced, many conflicts are kept out of the courts.*
- *By resolving court disputes relatively early in the litigation process, less court staff and judicial resources are used.*
- *The vast majority of studies conducted on the issue find that the overall time to disposition of mediated cases as a group (i.e., including cases that do not settle at mediation) to be lower than cases using traditional litigation procedures.*
- *Some evidence indicates that post-mediation court proceedings are actually shorter when a case mediates but does not resolve at mediation. Therefore, mediation may make these case less expensive (e.g., because the mediation process gave the parties more information about the dispute, narrowed the issues, allowed them to resolve some issues, made them less adversarial, etc.).*
- *By leading to agreements that are complied with more often than litigated court orders, mediation reduces re-litigation.*

Empirical evidence for these conclusions includes:

- a. *In civil mediation (including small claims)*
 - In Canada:
 - In a 1995 mandatory mediation pilot in the Toronto General Division Court, approximately 40% of cases settled before any judicial intervention occurred. Further, lawyers believed that costs were

reduced in both mediated cases that settled *and did not settle* because parties were forced to evaluate their cases at an early stage⁴.

- In 2007, researchers found that in the Alberta Court of Queen's Bench Civil Mediation Program about 75% of cases settled in full, and that the majority of lawyers and litigants believed that mediation saved time and money⁵.
- In a 2011 study of civil cases in Michigan with a monetary value of \$25,000 or more, mediation produced far more settlements and consent judgments (i.e., 84% of cases) than other approaches including case evaluation (62%), mediation plus case evaluation (62%), and the regular litigation stream (45%). Additionally, mediated cases took an average of 295 days to resolve (regardless of whether they settled or not), while case evaluation took an average of 463 days, and cases in the regular litigation stream took an average of 322 days⁶.
- A meta-analysis of the effectiveness of 37 civil mediation programs in Canada and the US conducted in 2007⁷ found that compared to cases that did not mediate,⁸ mediated cases:

⁴ Macfarlane, J. (1995). *Court-based mediation of civil cases: An evaluation of the Ontario Court (General Division) ADR Centre*. Windsor, ON: University of Windsor.

⁵ PRA Inc. (2007) *Evaluation of the civil mediation program, Court of Queen's Bench of Alberta*. Edmonton, AB: Author. Retrieved from <http://www.albertacourts.ab.ca/Portals/ext/qb/civilmediation/qbcmp-ExecutiveSummary.pdf> [Executive summary only].

⁶ Campbell, T.G. & Pizzuti, S.L. (October 2011). *The effectiveness of case evaluation and mediation in Michigan Circuit Courts*. East Lansing, MI: Courtland Consulting. Retrieved from <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/The%20Effectiveness%20of%20Case%20Evaluation%20and%20Mediation%20in%20MI%20Circuit%20Courts.pdf>

⁷ Lawrence, A., Nugent, J., & Scarfone, C. (2007). *The effectiveness of using mediation in selected civil law disputes: A meta-analysis*. Ottawa, ON: Department of Justice Canada. Retrieved from: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_3/index.html.

⁸ This study was a meta-analysis that aggregated the results of multiple individual studies, so the nature of the comparison groups in the individual studies could vary. However, the authors stated that the majority of the comparison cases were those that were litigated without mediation.

- demonstrated “an 11% improvement in the rate at which cases were settled in contrast to a comparison group” (p. 21);
 - resolved about 5 months more quickly;
 - saved about 60 hours of court staff time; and,
 - cost approximately \$16,000 less per case.
- In Australia, evaluation of a mandatory civil mediation program in 2008 for matters under \$10,000 demonstrated settlement rates of 86%, 32% of which settled before mediation and 12% which settled shortly after. This reduced judicial and administrator workloads significantly⁹.
 - According to a 2011 survey, mediators in the UK deal with over 8,000 commercial and civil cases a year, and about 90% of these cases settle with binding agreements that are enforceable by law¹⁰.
 - In a pilot of a court-connected voluntary mediation program conducted in London England, Genn (1998)¹¹ found:
 - that 62% of mediated cases settled during the mediation itself;
 - that mediated cases (including those that did not settle at the mediation sessions) settled far more often (73%; n=160) than cases in which mediation was rejected (57%; n = 376) and cases that were not offered mediation (52%; n=188)¹²;

⁹ Transformation Management Services (2008). *Court-annexed mediation – Broadmeadows Pilot evaluation*. Australia: Author. Retrieved from:

<http://www.transformation.com.au/docs/Broadmeadows%20Evaluation%20REPORTPDFNov.pdf>.

¹⁰ Centre for Effective Dispute Resolution (2012). *The Fifth mediation audit: A survey of commercial mediator attitudes and experience*. London: Author. Retrieved from:

<http://www.cedr.com/docslib/TheMediatorAudit2012.pdf>.

¹¹ Genn, H. (1998). *The Central London County Court Pilot Mediation Scheme evaluation report*. London: The Research Unit, Department for Constitutional Affairs. Retrieved from:

<http://www.ucl.ac.uk/laws/judicial-institute/docs/5-98%20CLCC%20Pilot%20Mediation%20Scheme.pdf>.

¹² These do not include personal injury cases because too few personal injury cases mediated (i.e., only 7) to make meaningful comparisons.

- that cases that settled at mediation took an average of 158 days from filing of the defence to ultimate resolution. They were concluded far earlier than cases that rejected mediation (average = 205 days) and cases that were not offered mediation (average = 252 days); and,
- That cases that *did not* settle at mediation were also concluded earlier (average = 196 days) than cases that rejected mediation and cases that were not offered mediation.
- The author concluded that: “settlement is more likely following mediation even when cases fail to settle at mediation. It is naturally arguable that the population of mediated cases is highly self-selected and that the mere fact of agreeing to mediation indicates that the case is ripe for settlement. However, the stated reasons for accepting offers of mediation provide an alternative view, and suggest that for a proportion of cases at least, the motivation for accepting the court’s offer of mediation was that the case was difficult to settle, the parties had become entrenched and that communication between the opposing sides was poor. Moreover, one of the most common reasons for rejecting offers of mediation was that the case was likely to settle in any case”(p. 63).
- An evaluation of early mediation pilot programs was conducted from 2000–2001 in five California courts (San Diego, Los Angeles, Fresno, Contra Contra, and Sonoma)¹³ In San Diego and Fresno, all general civil cases were randomly assigned to either be on the mediation track or the regular litigation track that did not involve mediation. In Los Angeles, the control group consisted of all general civil cases in 53 administrative departments that were not participating in the pilot and one half of the

¹³ Anderson, H. & Pi, R. (February 2004) *Evaluation of the Early Mediation Pilot Programs*. San Francisco, CA: Judicial Council of California, Administrative Office of the Courts. Retrieved from: <http://www.courts.ca.gov/documents/empprept.pdf>.

cases in the 9 administrative departments that were participating in the pilot¹⁴. The authors reported that:

- in San Diego and Los Angeles, trial rates were 24%–30% lower in the mediation track than the regular litigation track (there was not sufficient information to calculate this for Fresno, and Contra Contra and Sonoma did not have comparison groups);
 - Mediation could save as much \$1.6 – \$2 million dollars and 521–670 trial days a year (estimates varied by site);
 - Mediation reduced time to resolution; and,
 - In 4 of the 5 courts, mediation resulted in 18%–48% fewer motions and 11%–32% fewer pretrial hearings of other kinds.
- In a 2009 comprehensive study¹⁵ of the use of alternative dispute resolution¹⁶ (“ADR”) in consumer disputes across the European Union (commissioned by the European Commission’s Directorate General for Health and Consumer Affairs) researchers concluded that:
 - “[m]ost ADR cases are decided within a period of less than 90 days, which appears to be a very reasonable time frame (p. 8);” and that,
 - “ADR schemes are indeed a low-cost and quick alternative for consumers for settling of disputes with businesses ... the analysis shows many problems connected with court proceedings can be solved by effective ADR schemes, such as cost, duration of proceedings and formality” (pp. 8–9).

¹⁴ In Los Angeles, cases in the control group under \$50,000 could still be referred to a different mandatory mediation program by a judge. There were no comparison groups in the Contra Contra or Sonoma pilots.

¹⁵ Civic Consulting. (October 16, 2009). *Study on the use of alternative dispute resolution in the European Union*. Berlin: The Consumer Policy Evaluation Consortium. Retrieved from: http://ec.europa.eu/consumers/redress_cons/adr_study.pdf.

¹⁶ This study used the term ADR in an omnibus manner to include any out-of-court proceeding. The authors estimated that 12% of cases in the study used mediation. Outcome data was not broken down by type of ADR.

- In North Carolina, Clarke, Ellen, & McCormick (1995) reported that mediation decreased case processing time by seven weeks¹⁷.
- In a civil mediation program connected to two Maine Superior Courts that was evaluated in 1992¹⁸:
 - motion hearings in a litigation control group were double that of cases assigned to mediation; and,
 - cases assigned to mediation resolved 59 days earlier than those in the litigation group.
- In a Scottish mediation pilot for primarily small claims cases that ran from 2006 through 2008, 90% of parties that settled at mediation reported that the terms of their agreement had been carried out, while only 67% of litigants who settled during the course of litigation reported compliance with the agreement¹⁹.
- In a 1981 report of outcomes from small claims cases in Maine, researchers reported that 70.6% of mediated agreements involving monetary terms were fully complied with compared to only 33.8% of orders made in adjudicated cases.²⁰
- In the 2000–2001 California Early Mediation Pilot Programs, cases randomly assigned to the mediation track were better complied with than

¹⁷ Clarke, S.H., Ellen, E.D., & McCormick, K. (1995). *Court-ordered civil case mediation in North Carolina: An evaluation of its effects*. Chapel Hill, NC: Institute of Government. Retrieved from: <http://ncsc.contentdm.oclc.org/cdm/ref/collection/civil/id/99>.

¹⁸ McEwen, C. (January, 1992). *An evaluation of the ADR Pilot Project: Final report*. Unpublished manuscript. Retrieved from: <http://www.bowdoin.ws/faculty/c/cmcewen/pdfs/an-evaluation-of-the-adr-pilot-project-final-report-1992.pdf>

¹⁹ Ross, M. & Bain, D. (2010). *Report on evaluation of in court mediation schemes in Glasgow and Aberdeen Sheriff Courts*. Edinburgh: Queen’s Printers of Scotland. Retrieved from: <http://www.scotland.gov.uk/Publications/2010/04/22091346/19>.

²⁰ McEwen, C. A., and Maiman, R. J. (1981). Small claims mediation in Maine: An empirical assessment. *Maine Law Review*, 33, 237–268.

the settlements or orders made in cases not assigned to the mediation track²¹.

- In EU commercial cases, a 2001 study found that even those that do not settle at mediation involved fewer subsequent proceedings and were therefore shorter and less costly to the courts and the disputants. Specifically, the researchers found that²²:
 - “a 75% mediation success rate in Belgium can save approximately 330 days and 5.000 €€ per dispute; a 75% success rate in Italy can save 860 days – more than two years—and over 7.000 €€ per dispute” (p. 4); and;
 - “Simply put, mediation in most instances saves time and money and can relieve crowded courts” (p. 4).
- In evaluating the effectiveness of mediation in UK construction disputes, researchers in 2010 found that approximately 75% of litigants who did not settle in mediation did not believe their time or money was wasted in mediation²³.

b. Family mediation

- In Canada:
 - Court-connected family mediation programs in Alberta demonstrated that in 2009 between 54% – 77% of mediated cases

²¹ Anderson & Pi, *supra* note 13. See page 6 of this report for a description of the control groups in this pilot study.

²² De Palo, G., Feasley, A., & Orecchini, F. (2011). *Quantifying the cost of not using Mediation – A data analysis*. Brussels: European Parliament Policy Department C: Citizens' Rights and Constitutional Affairs. Retrieved from: <http://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19592/20110518ATT19592EN.pdf>

²³ Gould, N., King, C. & Britton, P. (January 2010). *Mediating construction disputes: An evaluation of existing practice*. London: The Centre of Construction Law & Dispute Resolution, King's College London. Retrieved from: <http://www.ciarb.org/information-and-resources/2010/02/17/KCL%20Mediating%20Construction%20Complete.pdf>

reached full agreement (depending on the site), and an additional 13% – 36% reached partial agreement²⁴.

- In 2011–2012, early mediation programs in Ontario family courts had a settlement rate of 79%²⁵.
- In a 2007 study of legal-aid based family mediation to the UK House of Commons²⁶, the UK National Audit Office found that:
 - “The average cost of legal aid in non-mediated cases is estimated at £1,682, compared with £752 for mediated cases, representing an additional annual cost to the taxpayer of some £74 million ... [i]f 14 per cent of the cases that proceeded to court had been resolved through mediation, there would have been resulting savings equivalent to some £10 million a year” (p. 5);
 - “[m]ediated cases are quicker to resolve, taking on average 110 days, compared with 435 days for non-mediated cases” (p. 5); and that,
 - “There is scope to improve the value for money achieved from the legal aid budget through increasing the take-up of mediation. In addition to financial savings, this would bring potential benefits for those involved in family breakdown in terms of outcomes that are less acrimonious, quicker, and longer lasting than might otherwise have been achieved. In order to achieve this, the [UK Legal Services] Commission should publicise the benefits of this option to the

²⁴ Canadian Research Institute for Law and the Family (May 2009). *An evaluation of Alberta's Family Law Act*. Edmonton, AB: Alberta Law Foundation. Retrieved from http://people.ucalgary.ca/~crilf/publications/FLA_Final_Report_May_2009.pdf

²⁵ Ministry of the Attorney General Court Services Division (2011–2012). *Annual Report*. Toronto, ON: Queen's Printer for Ontario. Retrieved from: http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_11/Court_Services_Annual_Report_FULL_EN.pdf

²⁶ National Audit Office (26 February, 2007). *Legal aid and mediation for people involved in family breakdown*. London: The Stationary Office. Available at: <http://www.nao.org.uk/wp-content/uploads/2007/03/0607256.pdf>.

general public so that they are aware of and have confidence in it as a means of resolution, and remove the disincentives to solicitors of recommending this option to their clients” (p. 5).

- In a 12 year follow-up of a Virginia child custody mediation program published in 2005²⁷:
 - 72% of cases randomly assigned to the regular litigation process ended up appearing in court, compared to only 11% of cases randomly assigned to a mediation stream;
 - cases in the regular litigation stream were 7 times more likely to be resolved by court order than cases that were mediated; and,
 - mediated cases settled 50% more quickly than cases in the litigation stream.
- In a Denver court-connected mediation project for contested custody and visitation cases, researchers found that cases that settled at mediation were disposed of approximately two months faster than cases in a control group that did not mediate²⁸. Further:
 - After 18 months, only 4% of mediated cases filed for a modification, compared to 15% in the control group; and,
 - Court re-hearings were 20% among mediated cases and almost 50% in control cases.
- Emery et al. (1991) found that custody cases assigned to mediation settled more quickly than cases randomly assigned to litigation²⁹.
- Keilitz et al. (1992) found that mediated family cases resolved more quickly than litigated cases in 3 of the 4 courts in which mediation was

²⁷ Emery, R. E., Sbarra, D. & Grover, T. (2005). Divorce mediation: Research and reflections. *Family Court Review*, 43, 23–37.

²⁸ Pearson, J. & Thoennes, N. (1984). Mediating and litigating custody disputes: A longitudinal evaluation. *Family Law Quarterly*, 17(4), 497–523.

²⁹ Emery, R. E., Matthews, S. G., & Wyer, M. M. (1991). Child custody mediation and litigation: Further evidence on the differing views of mothers and fathers. *Journal of Consulting and Clinical Psychology*, 59(3), 410–418.

available (the mediation program was available in Florida, Nevada, New Mexico, and North Carolina)³⁰.

- In 2004, Kelly reported significantly higher compliance by divorcing couples in the California Divorce and Mediation Project who mediated than those who used more adversarial methods of dispute resolution³¹.
- Meirding (1993) reported that, of 119 parties she surveyed, 78% reported that their mediated agreements were being complied with fully or had been mutually modified³².
- In the Hamilton Unified Court Family Mediation Pilot Project (Ellis, 1994), higher compliance was observed among mediating cases than those that did not mediate. Further, cases that involved more than one mediation session had the highest compliance³³.

Mediation saves people and businesses money

Mediation saves people and businesses money in legal and court fees. This is money that could otherwise be spent in the economy. Family mediation also produces better psychosocial and economic outcomes than adversarial approaches, which may result in reduced use of social assistance and other social services.

Empirical evidence for these conclusions includes:

a. Civil mediation (including small claims)

³⁰ Keilitz, S., Daley, H.W.K., & Hanson, R.A. (September 1992). *A multi-state assessment of divorce mediation and traditional court processing*. Williamsburg, VA: National Center for State Courts. Retrieved from:

<http://cdm16501.contentdm.oclc.org/cdm/singleitem/collection/famct/id/15/rec/10>

³¹ Kelly, J. (2004). Family mediation research: Is there empirical support for the field? *Conflict Resolution Quarterly*, 22(1-2), 3-35.

³² Meirding, N.R. (1993). Does mediation work? A survey of long-term satisfaction and durability rates for privately mediated agreements. *Mediation Quarterly*, 11(2), 157-170.

³³ Ellis, D. (1994). *Family Mediation Pilot Project*. Toronto, ON: Attorney General of Ontario.

- In Canada:
 - In a study of the effectiveness of mandatory civil mediation of case-managed cases in the Ottawa and Toronto divisions of the Ontario Superior Court of Justice (2001), lawyers estimated their clients' cost savings to be \$10,000 or more per case in 38% of mediated cases, to be less than \$5000 in 34% of them, and from \$5000– \$10,000 in 28% of mediated cases³⁴.
 - In (1995) court-connected civil mediation in the Ontario Court (General Division), approximately half of lawyers estimated that mediation saved their clients between \$1000 and \$5000³⁵.
- In Michigan civil cases (2011) valued over \$25,000, lawyers reported that mediation saved their clients' money in the long term over other approaches because it is more productive, that is, issues were narrowed and information was made available and processed³⁶.
- In UK construction disputes (2010), “[t]he cost savings attributed to successful mediations were significant, providing a real incentive for parties. Only 15% of responses reported savings of less than £25,000; 76% saved more than £25,000; and the top 9% of cases saved over £300,000. The cost savings were generally proportional to the cost of the mediation itself. This may be an indication that high value claims spend more money on the mediation itself, presumably because they realise that the potential savings resulting from the mediation will be higher³⁷” (p. 63).
- In the California Early Mediation Pilot Program (2004), cases assigned to mediate involved an average of 50–66 hours less in legal fees than cases

³⁴ Hann, R.G., & Baar, C. (March 2001). *Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Final report -- the first 23 months*. Toronto, ON: Queen's Printer.

³⁵ Macfarlane, *supra* note 4.

³⁶ Campbell & Pizzuti, *supra* note 6.

³⁷ Gould, King, & Britton, *supra* note 23.

on the litigation track, and litigants' costs were reduced by almost \$50 million over the 2 years of the Program³⁸.

- In a 1995 North Carolina civil mediation program, “[p]arties appear to have saved some money with mediation. For plaintiffs, average attorney fees and costs were \$6,716 in mediation, \$9,667 for conventional settlement, and \$30,146 for trial; for defendants, the averages were \$4,507, \$8,702, and \$13,238, respectively³⁹” (p. vii).
- In 2011, De Palo et al. reported that, “the average cost to litigate in the European Union is €10.449 while the average cost to mediate is €2.497. Therefore, when mediation is successful, European citizens can save over €7500 per dispute⁴⁰” (p. 4).
- In a 1997 evaluation of a Missouri early assessment program, approximately 75% of lawyers reported that mediation reduced litigation costs⁴¹.

b. Family mediation

- According to a recent survey of lawyers, the average fee for a contested divorce in Western Canada was \$16,001 per litigant in 2012. Further, over half of the attorneys who responded intended to raise their fees in 2013⁴². Additionally, “the costs of litigation are paid directly by adults, but they are also paid indirectly by the children of these adults. Parenting requires

³⁸ Anderson & Pi, *supra* note 13.

³⁹ Clarke et al., *supra* note 17.

⁴⁰ De Palo et al., *supra* note 22.

⁴¹ Stienstra, D. Johnson, M. & Lombard, P. (January 1997). *Report to the Judicial Conference Committee on court administration and case management: A study of the Five Demonstration Programs established under the Civil Justice Reform Act of 1990*. Washington, DC: The Federal Judicial Center. Retrieved from: <https://bulk.resource.org/courts.gov/fjc/0024.pdf>.

⁴² Todd, R. (June 2012). *The going rate*. *www.CanadianLawyerMag.com*. Online article retrieved from: <http://www.canadianlawyerMag.com/4191/june-2012-the-going-rate.html>.

time, money, and energy, and family litigation can easily consume these scarce resources to the extent that it impairs parenting⁴³” (p. 64).

- In 1984, Pearson and Thoennes found that parties who used mediation to resolve their custody and visitation disputes paid approximately half the legal fees paid by parties that did not mediate⁴⁴.
- In the California Divorce and Mediation Project (reported by Kelly, 2004⁴⁵), the total cost per divorcing couple (including legal fees, mediator fees, fees for independent legal advice, accountant fees, and appraisal fees) was 1.4 times higher in the adversarial group (i.e., couples who had filed a divorce petition and had been randomly selected from court records, had lawyers representing them, and agreed to participate in the study) than the mediation group (who voluntarily mediated). Further, the two groups were similar in terms of case complexity and conflict, suggesting that it was not merely the “easier cases” that choose to mediate.
- According to Saccuzzo (2003), “[a]djudication of a modern divorce extracts a heavy toll on the parties and their children. Financially, divorce proceedings often consume a large percentage of the parties' wealth, which causes both parties to suffer a reduced standard of living immediately after the divorce⁴⁶” (p. 425).
- Kelly (2004)⁴⁷ reported that, “[m]ediation respondents with minor children reported less conflict during the divorce process, at final divorce, and in the first year after final divorce on a number of measures compared to parents in the adversarial group ... when conflict occurred, the mediation parents used a more direct and mutual style of resolving their

⁴³ Semple, N. (2010). *Cost-benefit analysis of family service delivery*. Law Commission of Ontario Family Law Process Project. Available at: <http://www.lco-cdo.org/family-law-process-call-for-papers-semble.pdf>.

⁴⁴ Pearson & Thoennes, *supra* note 28.

⁴⁵ Kelly, *supra* note 31.

⁴⁶ Dennis P. Saccuzzo (2003). Controversies in divorce mediation. *North Dakota Law Review*, 79, 425-437.

⁴⁷ Kelly, *supra* note 31.

conflict, compared to the adversarial parents, who most often avoided each other” (p. 18).

- Similarly, Emery et al. (2005) found that 12 years after divorce, parents who had mediated their divorce were far more likely to be involved in their children’s lives⁴⁸.

⁴⁸ Emery, R.E., Sbarra, D., & Grover, T. (2005). Divorce mediation: Research and reflections. *Family Court Review*, 43(1), 22–37.

Mediation reduces workplace conflict, which saves private and public sector funds

Conflict is ubiquitous in private and public sector workplaces. Mediation reduces conflict in the workplace, which saves businesses significant money. This results in a boosted economy, as businesses spend and invest more, and generates more tax income for government. Additionally, mediation reduces workplace conflict in the public sector – saving government money directly.

Empirical evidence for these conclusions includes:

a. Conflict in the workplace is ubiquitous and costly for businesses and the public sector

- In Canada:
 - According to respondents from a 2009 study conducted in Canada⁴⁹, workplace conflict is most prevalent in the government (42.7%), education (41.8%), and not-for-profit (41.3%) sectors. Further, over 75% of respondents had observed conflict leading to sickness and absenteeism. Financial losses due to workplace conflict therefore affects government coffers directly and indirectly through the programs they fund (e.g., education, health care, etc.).
 - Managers spend a good deal of their time dealing with workplace conflict. However, research indicates that, "...at the present time, it appears that many leaders are falling short. When asked how well leaders deal with conflict, only 13% said they are effective. Instead, the vast majority of leaders seem to be muddling their way through, with 64% being rated as only somewhat effective. Clearly there is

⁴⁹ Psychometrics Canada Ltd. (2009). *Warring egos, toxic individuals, feeble leadership: A study of conflict in the Canadian workplace*. Edmonton, AB: Author. Retrieved from: http://www.psychometrics.com/docs/conflictstudy_09.pdf.

opportunity for managers to improve how they lead people through conflict⁵⁰” (p. 10).

- According to research performed in 2001, “[u]nmanaged employee conflict is perhaps the largest reducible cost in organizations today – and probably the least recognized. It is estimated that over 65% of performance problems result from strained relationships between employees – not from deficits in individual employees’ skill or motivation.” Further, “[c]hronic unresolved conflict acts as a decisive factor in at least 50% of departures. Conflict accounts for up to 90% of involuntary departures, with the possible exception of staff reductions due to downsizing and restructuring⁵¹” (p. 1).
- The Global Human Capital Report on workplace conflict (2008)⁵² reported that American workers spend an average of 2.8 hours a week dealing with conflict, and that this translates into about \$359 billion in wages (based on average hourly earnings of \$17.95), or 385 million work days. Further:
 - Avoiding conflict led 25% of surveyed employees to engage in absenteeism; and,
 - Work conflict often led to failing projects and employee turnover.
- According to Lawler (2010), “If a worker uses five sick days a year to avoid conflict, that’s a direct cost of over \$700 to your business, not to mention the cost of covering the employee’s missed work (e.g., overtime pay for another worker or hiring a temporary employee). Multiply that by 50 workers, or even 10, and you can immediately see the kind of money drain conflict creates⁵³.”
- As one commentator noted (2003), “[t]he math isn’t complicated. A [workplace] complaint that escalates to a lawsuit can easily cost \$50,000

⁵⁰ *Ibid.*

⁵¹ Dana, D. (2002). *The Dana Measure of the financial cost of organizational conflict*. Prairie Village, KS: MTI Publications Inc. Retrieved from: <http://www.mediationworks.com/restricted/DanaMeasure.pdf>

⁵² CPP Inc., *supra* note 1.

⁵³ Lawler, J. (June 20, 2010). The real cost of workplace conflict. *Entrepreneur.com*. Online article retrieved from: <http://www.entrepreneur.com/article/207196>.

to \$100,000 and take three to five years to settle. It doesn't stop there. Add absenteeism, employee theft, sabotage, not to mention the cost of employee turnover (estimated to be as much as 75% to 150% of base salary) and it is understandable why companies are paying attention⁵⁴" (p. 8). Further, "no matter what the cause, turnover has a number of undesirable implications for organizations, including the costs of losing an experienced worker, recruiting and retraining a successor (retraining is estimated to cost 1.5 times the employee's annual salary), the lower productivity of a new worker, and secondary morale effects on managers, peers and subordinates⁵⁵" (p. 27).

b. Mediation can reduce workplace conflict and resolve employment-related conflict better than litigation – both in the public and private sector.

- i. In the public sector, mediation is effective in resolving public service complaints, reduces the number of formal complaints, reduces transaction costs, reduces time to resolution, and has higher resolution rates than other more formal processes (such as investigation and adjudication).

Empirical evidence for these conclusions includes:

- In Canada:
 - From October 1999 to September 2000, the Canadian Public Service Staff Relations Board offered mediation to employees with grievances that would otherwise be adjudicated more formally. Independent evaluators of this pilot program found that 500 files had been mediated and reported an 85% success rate. A modified

⁵⁴ Taylor, R. (March 17 2003). Workplace tiffs boosting demand for mediators. *National Post*, FP8.

⁵⁵ Duxbury, L. & Higgins, C. (October 2003). *Work-life conflict in Canada in the new millennium: A status report*. Health Canada. Retrieved from: <http://publications.gc.ca/collections/Collection/H72-21-186-2003E.pdf>.

version of the pilot program has now become a permanent part of the Board's dispute resolution processes⁵⁶.

- Reporting on long-term outcomes from the US Postal Services' mediation program for discrimination complaints, Bingham & Pitts⁵⁷ found that formal complaints dropped by 17% after implementation of the program. They concluded that, "...cost savings are possible through programs like REDRESS ... organizations can reduce transaction costs by resolving conflict at an earlier stage in the administrative process using an appropriately designed mediation program⁵⁸" (p. 144).
- After all US federal agencies were mandated to offer ADR to all employees with equal employment opportunity complaints, case processing times for these complaints dropped dramatically⁵⁹. Further, cases proceeding through ADR resolved from 50-127 days faster than those going through the traditional, more formal procedure. Researchers concluded that, "ADR appears to be highly efficient in terms of processing time, resolving cases well under the 90-day time limit and likely contributing to the overall drop in processing time for all cases since 2000" (p. 56). Agencies were free to design their own ADR programs, so long as they were voluntary, neutral, confidential, and enforceable. The most used process was mediation.
- The U.S. Federal Executive Boards ("FEB") are responsible for facilitating collaboration among U.S. federal agencies. In its 2012 Annual Report⁶⁰, the FEB National Network stated that the mediation programs it sponsored or supported within these federal agencies (provided at low to no cost)

⁵⁶ Baron, Guy (2003). Public Service Staff Relations Board Mediation Program. *Canadian Bar Association's Possibilities Newsletter*. Retrieved from: <http://www.cba.org/cba/newsletters/ADR-2003/PrintHtml.aspx?DocId=11580>.

⁵⁷ Bingham, L.B. & Pitts, D.W. (2002). Highlights of mediation at work: The national REDRESS evaluation project. *Negotiation Journal*, 18(2), 135 - 146.

⁵⁸ *Ibid.*

⁵⁹ Nabatchi, T. & Stanger, A. (2013) Faster? Cheaper? Better? Using ADR to resolve federal sector EEO complaints. *Public Administration Review*, 73(1), 50-61.

⁶⁰ Federal Executive Board National Network (2012). *Fiscal Year Annual Report*, U.S. Office of Personnel Management. Retrieved from: www.feb.gov/FY12_FEB_AnnualReport.pdf.

successfully settled 502 cases, resulting in an estimated cost avoidance of \$23,898,026, and concluded that, “[t]hese programs helped avoid costly formal procedures and litigation” (p. 5).

- ii. **In the private sector, mediation programs save organizations and businesses time and money, increase employees’ and managers’ conflict-management skills, and reduce overall conflict within the organization.**

Empirical evidence for these conclusions includes:

- In Canada:
 - In a study conducted in Alberta among trade unions and small and large enterprises, researchers found that between 1982 and 1994 there were 489 grievance mediations – 85% of which settled in mediation⁶¹.
- Goldberg (2005)⁶² describes the short- and long-term outcomes of an interest-based mediation program for employee grievances in four coal companies as follows:
 - In the short-term: 2,928 (86%) of the 3,387 grievances mediated within 23.5 years resolved. Mediation was far cheaper (\$672 versus \$3202 per case on average) and faster (43.5 versus 473 hours on average) than arbitration. Further, people who had been involved in both mediation and arbitration *universally* preferred mediation; and,
 - In the long-term: Of the 40 employees interviewed over 20 years later, 83% reported that the mediation had helped them learn to manage conflict more effectively, and 65% reported that the mediation program had improved relationships between the company and the unions.

⁶¹ Elliott, D. C. & Goss, J. (1994). *Grievance mediation: Why and how it works*. Aurora, ON: Canada Law Book.

⁶² Goldberg, S. (2005). How interest based grievance mediation performs in the long term. *Dispute Resolution Journal*, 60(4), 8–15.

- In a one-year pilot project among small businesses in the United Kingdom, Seargeant (2005)⁶³ reported that, mediation saved time, resources, future internal disputes, and departures from the business.
- UK organisations that provide employees with mediation training have fewer employment tribunal cases than those that do not⁶⁴.
- In a 2008 survey, UK employers believed that workplace mediation helped employees avoid stresses associated with more formal processes, helped develop a more positive organizational culture, and improved relationships among employees⁶⁵.
- In the U.S. Postal Service's mediation program, 66% of employees and 92% of supervisors believed mediation to be more effective than other processes (1997)⁶⁶
- According to the 2011 CIPD Conflict Management survey report,⁶⁷ workplace mediation programs are most beneficial in improving relationships between workers (endorsed by 80% of respondents), reducing the stress of formal procedures (endorsed by 64% of respondents), and avoiding the cost of more formal procedures (endorsed by 52% of respondents).

⁶³ Seargeant, J. (2005) The Acas small firms mediation pilot: Research to explore parties' experiences and views on the value of mediation. London: Acas. Retrieved from: http://www.acas.org.uk/media/pdf/d/l/Research_Paper_04_05-accessible-version-July-2011.pdf.

⁶⁴ Chartered Institute for Personnel and Development (February 2007). *Managing conflict at work*. London: CIPD. Retrieved from: <http://www.cipd.co.uk/NR/rdonlyres/2A206FFD-CF79-4F2A-9B8A-FA7F2A05CE07/0/manconflwrk.pdf>

⁶⁵ Chartered Institute for Personnel and Development (2008). *Workplace mediation - how employers do it*. London: CIPD. Retrieved from: <http://www.cipd.co.uk/hr-resources/survey-reports/workplace-mediation-employers-do-it.aspx>.

⁶⁶ Anderson, J. & Bingham, L. (1997). Upstream effects from mediation of workplace disputes: Some preliminary evidence from the USPS. *Labor Law Journal*, 48, 601-615.

⁶⁷ Chartered Institute for Personnel and Development. (March 2011). *Conflict management survey report*. London: Author. Retrieved from: http://www.cipd.co.uk/binaries/5461_Conflict_manage_SR_WEB.pdf.

- The 2008 CIPD survey on mediation⁶⁸ also identified other benefits of workplace mediation, including: employee retention (endorsed by 63% of respondents); reducing formal grievances (endorsed by 57% of respondents); creating a better organizational culture (endorsed by 55% of respondents); reducing illness-related absence (endorsed by 33% of respondents); and maintaining confidentiality (endorsed by 18% of respondents).
- Workplace mediation provides an alternative approach for staff wishing to pursue a grievance in a less confrontational manner ⁶⁹ , perhaps encouraging employees who would normally avoid conflict and even leave their job to broach their concerns.⁷⁰
- Implementing mediation programs in the workplace can have a transformative effect on organizational culture, including improved working relations and lower levels of conflict⁷¹ and improved managerial conflict management skills⁷².

Mediation can reduce the cost of civil litigation in which government and/or crown corporations are involved

Empirical evidence for this conclusion includes:

⁶⁸ Chartered Institute for Personnel and Development (2008), *supra* note 64.

⁶⁹ Fox, M. (May 2005). *Evaluation of the Acas pilot of mediation and employment law visits to small companies*. London: Acas. Retrieved from:
<http://www.acas.org.uk/media/pdf/i/q/research-paper-05-05-accessible-version-July-2011.pdf>.

⁷⁰ Berggren, K. (2006). *Do formal mediation programs work in the settlement of employee-employer disputes?* Unpublished manuscript. Retrieved from:
http://www.uri.edu/research/lrc/research/papers/Berggren_Mediation.pdf

⁷¹ Chartered Institute for Personnel and Development (2007; 2008), *supra* notes 63 and 64.

⁷² Seargeant, *supra* note 63.

- In reviewing British Columbia motor vehicle personal injury cases, Hogarth and Boyle (2002)⁷³ found that:
 - settlement rates in mediations held on these cases were extremely high (in the 80 – 90% range) irrespective of the complexity or type of the claim;
 - used strategically, mediation could assist in resolving more complex and higher claim cases early and fairly; and,
 - “With appropriate safeguards, it may be possible to provide unrepresented claimants with access to a broader range of resolution tools including mediation” (p. 6).
- Lead trial counsel in the U.S. Department of Justice keep records in all cases in which a private neutral conducted an ADR process in Department litigation across the country. These statistics demonstrate that in 2012⁷⁴:
 - The success rate for voluntary ADR proceedings ranged from 69%–79%;
 - Actual costs that were avoided (including e.g., discovery costs, trial exhibits, etc.) were \$12,618,450;
 - 9,047 days of attorney and staff time were saved; and,
 - 1,516 months of litigation time were saved.
- In fraud, employment discrimination, civil rights, and tort cases, Assistant US Attorneys and their staff estimated that in 2009⁷⁵ they spent 88 fewer hours on cases in which ADR (including mediation) were used⁷⁶, and that

⁷³ Hogarth, J., & Boyle, K. (April 2002). *Is mediation a cost-effective alternative in motor vehicle personal injury claims? Statistical analyses and observations*. UBC Program on Dispute Resolution. Retrieved from: http://www.law.ubc.ca/drcura/pdf/Statistical_Analysis_Final.pdf

⁷⁴ *Statistical summary: Use and benefits of alternative dispute resolution by the Department of Justice*. (2012). Retrieved from: <http://www.justice.gov/olp/adr/doj-statistics.htm>.

⁷⁵ Bingham, L., Nabatchi, T., Senger, J.M., & Jackman, M.S. (2009). Dispute resolution and the vanishing trial: Comparing federal government litigation and ADR Outcomes. *Ohio State Journal on Dispute Resolution*, 24(2), 1–39.

⁷⁶ The authors define an ADR process as, “any process or procedure, other than adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues

these cases resolved about six months earlier than they would have had they been litigated. They also estimated that:

- ADR saved about \$10,700 per case in litigation costs (i.e., transcripts, expert witness fees, other preparation expenses, etc.); and,
- Cases in which ADR was used settled over twice as often as cases that did not use ADR.

Distance mediation and online dispute resolution will save money and become the way of the future

- Distance and technology-assisted mediation are viable, and are areas of particular expertise for Mediate BC. The Law Foundation of BC funded Distance Mediation Project concluded that mediation using web-conferencing or teleconferencing can provide a safe, affordable and accessible option for resolving family conflicts involving separation and divorce⁷⁷. Further, this is an area that will most likely expand, as newer generations become more comfortable with technology, and people recognize the cost-savings associated with these techniques⁷⁸.
- In recognition of these factors, the European Union has recently pursued a “Digital Agenda” that will, *inter alia*, involve an EU-wide online ADR strategy⁷⁹. Further, “[b]ecause they will continue to be fully engaged trading partners with the European Union, U.S. multinational companies will become familiar with the European Union online dispute resolution systems. It is

in controversy, through processes such as early neutral evaluation, mediation, mini-trial, and arbitration” (pp. 6–7).

⁷⁷ Evaluation and other information from Mediate BC’s Distance Mediation Project can be accessed at: <http://www.mediatebc.com/About-Mediation/Mediating-at-a-Distance.aspx>

⁷⁸ Larson, D.A. (2011). Brother, can you spare a dime?” Technology can reduce dispute resolution costs when times are tough and improve outcomes. *Nevada Law Journal*, 11, 523–559.

⁷⁹ *Ibid.*

likely that those companies will bring elements of those systems, or the entire online dispute resolution systems themselves, back to the U.S. domestic market⁸⁰ (p. 543).

Empirical evidence purporting to demonstrate that mediation is not cost-effective

To provide a more balanced review, this portion of the report analyzes empirical results sometimes raised as evidence that mediation is not cost-effective.

The RAND Study

In 1996, Kakalik and colleagues produced a study, sponsored by the RAND Corporation, which has subsequently been interpreted by many as evidence against the cost-effectiveness of mediation⁸¹. They focussed on six sites in which either mediation or neutral evaluation programs had been implemented in response to the *Civil Justice Reform Act* of 1990 (which was designed to reduce costs and delays in civil litigation in the U.S. federal district courts). They compared their findings to comparison courts. In short, they found no statistical difference between the research and comparison sites in time to disposition or litigation costs. There are several reasons why this study should be interpreted with caution:

1. The programs that were being evaluated were quite heterogeneous in terms of design features such as whether they were mandatory versus voluntary, what stage of the case they were in when they were referred to mediation, referral criteria, the lengths of the mediation sessions, and the program fees. Lumping programs with all these different characteristics

⁸⁰ *Ibid* at p. 543.

⁸¹ Kakalik, J. Dunworth, T., Hill, L. McCaffrey, D., Oshiro, M., Pace, N. & Vaiana, M. (1996). *An evaluation of mediation and early neutral evaluation under the Civil Justice Reform Act*. Santa Monica, CA: RAND.

together could have obscured overall differences between research and comparison programs in time to disposition and litigation costs.

2. The courts that were used as comparators were actually “quite different geographically, culturally, and in terms of their caseloads⁸²”
3. The authors themselves refer to several potential methodological confounds, including the belief that judges were referring more “difficult” cases to mediation⁸³.
4. Further, several policy changes were made to the research programs during the course of the study that could have affected time to disposition, including case management practices.

Overall, this study is best thought of as inconclusive. As the authors concluded in a follow-up publication, “[w]e *have no justification for a strong policy recommendation because we found no major program effects, either positive or negative*⁸⁴.”

Heise (2000 and 2010)

In two studies conducted in the 2000s, Heise investigated the correlations between use of ADR and settlement and time to disposition in large samples of U.S. civil cases that went to trial or appeal.

In his 2000 study,⁸⁵ he analyzed outcomes from 6109 cases that went to a jury trial – 2256 of which had been referred to ADR. Using multiple regression

⁸² Menkel-Meadow, C. (2013). Regulation of dispute resolution in the United States of America: From the formal to the informal to the ‘semi-formal.’ In Steffek, F., Unberath, H., Genn, H., Greger, R. & Menkel-Meadow (Eds.) *Regulating dispute resolution: ADR and access to justice at the crossroads*. Oxford, U.K.: Hart.

⁸³ Kakalik, J. Dunworth, T., Hill, L. McCaffrey, D., Oshiro, M., Pace, N. & Vaiana, M. (1997). An evaluation of mediation and early neutral evaluation under the Civil Justice Reform Act: A summary. *Dispute Resolution Magazine*, 3(4), 7-9.

⁸⁴ *Ibid.*

⁸⁵ Heise, M. (2000). Justice delayed? An empirical analysis of civil case disposition time. *Case Western Reserve Law Review*, 50, 813-849.

techniques, he investigated the relationships between a number of case characteristics (e.g., substantive area of law, locale, use of ADR, whether there was a counterclaim, etc.) and party characteristics (e.g., the number and type of parties involved, locale, etc.) and settlement / time to disposition. He found statistically significant relationships between many of these variables, including the finding that cases that were referred to ADR tended to take longer to resolve. There are several limitations to his study, some of which the author addressed and some he did not, including the following:

1. There are several alternative reasons why referral to ADR could correlate with increased time to disposition, the most likely of which is that more complex/difficult cases were referred to ADR – a phenomena that authors of the RAND study noted to have happened at the sites they studied⁸⁶.
2. It is not clear whether he took the length of the trial into account, and therefore cannot discount the possibility that trials in which ADR occurred were more efficient (due to narrowed issues, etc.).
3. He does not describe what is meant by “ADR”. Presumably it included mediation, but the proportion of cases that were mediated (as opposed to being arbitrated, etc.) and the appropriateness of mediation are not described.
4. His sample only included civil cases that went to *jury* trial (not judge-only trials).
5. Although it was statistically significant, the magnitude of the relationship between referral to ADR and time to disposition was so small as to be virtually meaningless from a practical perspective. The average time to disposition was 30.2 months over all cases, and was 31.8 on average for cases referred to ADR. Further, all of the variables he used to predict time to disposition, in combination, only explained 11.6% of the variance in time to disposition, and whether a case was referred to ADR only explained 2% of the variance in time to disposition. Put another way, the relationship

⁸⁶ Kakalik et al. (1997) *supra* note 83.

between whether a case was referred to ADR and time to disposition is really much ado about nothing. It is quite possible that this relationship was solely due to the actual time spent in ADR. The purpose of statistical significance testing is not to estimate the magnitude of differences, only to determine whether a difference is reliable or not, i.e., whether or not it is due to chance fluctuations.

6. Finally, as the author notes, he analyzed data from trial cases, which are not generalizable to general civil cases. Only 3.5% of these cases go to trial, and they tend to be the more difficult cases to start with.

In his 2010 study, Heise looks specifically at use of ADR in appellate cases⁸⁷. His sample included 965 cases in which appeals had been filed. Using logistic regression techniques, he again found a statistically significant positive relationship between use of ADR and time to disposition. He addressed several of the weaknesses of his 2000 study. However, he still cannot refute the possibility that cases referred to ADR were more difficult. Further, the effects he observed were, again, very small in magnitude. Finally, because of their complexity and history of litigation, appellate cases may be less amenable to mediation than cases handled at the trial level.

Conclusions

The vast bulk of available empirical evidence supports mediation as a cost-effective way of resolving legal disputes and workplace conflict. Mediation saves court administration money by resolving many cases outside of, or early into, the litigation process. It saves families and businesses money that could otherwise be spend in the economy. It produces better psychosocial outcomes for families, and can save private companies and the public sector from significant monetary losses associated with workplace conflict.

⁸⁷ Heise, M. (2010). Why ADR programs aren't more appealing: An empirical perspective. *Journal of Empirical Legal Studies*, 7(1), 64–96.

It is suggested that the “next generation” of empirical work in this area should focus on which dispute resolution processes work best in which circumstances. In other words, research should be directed toward the goals of effective triage and matching, i.e., *tailoring* mediation and other dispute resolution techniques to the needs of the parties and the type of dispute. The more appropriately mediation is used (i.e., the more often it results in settlement and efficient use of resources), the more net economic benefit it will provide. As Shack opines:

The questions: “Can mediation save time and money? Can it increase the satisfaction of those using the court system?” are more productive and change the answer from “we don’t know” to the resounding “yes!” that mediation practitioners have long desired. In order to fully understand the answer to those questions, however, the focus of the research regarding the effectiveness of mediation should shift from whether mediation saves time, reduces cost, and increases satisfaction to a more constructive examination of under what circumstances it is most likely to do so⁸⁸ (p. 39; emphasis added).

⁸⁸ Shack, J. (2003). Mediation can bring gains, but under what conditions? *Dispute Resolution Magazine*, 9(2), 38–42.