

---

## **NON-AGENDA**

---

With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be — Be quiet...Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non-agenda* on the part of government.

—*Jeremy Bentham* (c.1801)

---

## **Resource Management in New Zealand: Environment Court Decisions**

**Richard Hawke**

The Resource Management Act (1991), the RMA, dramatically altered the environmental management framework in New Zealand. It defines the rights structure for protection of particular uses of environmental resources and provides a decentralised decision-making framework. These rights pose constraints, provide incentives, and create a framework for environmental conflict resolution. The Environment Court (EC) is crucial because its decisions impact upon property rights, which underlie individuals' incentives and decisions on resource use. The use of an upper level court is a demonstration of society's views on the importance of environmental considerations and offences (de Prez, 2000). By adjudicating between competing desires, the EC establishes principles for future decision makers. Given the importance of environmental costs, benefits and decisions to individuals and New Zealand generally this paper analyses a subset of EC decisions in an attempt to understand this adjudicator's role. It is not possible to know what may have happened in the absence of the RMA. However, it is important to understand the EC's adjudicating role because the EC's decisions affect the future behaviour of participants in environmental management.

### **Decision-making Under the RMA**

The passing of the RMA established a role for the EC and transformed the legislative framework for land, water and air following the long and arduous Resource Management Law Reform process (Young, 2001). The RMA relies on a

---

*Richard Hawke is Research Associate, School of Earth Sciences, Victoria University of Wellington.*

number of key components. First, rather than deal with natural resources in separate ways this Act enabled integrated management. For example, while previous water-related legislation dealt with the river but not riverbanks or land management the RMA ensures the environmental linkages are recognised in the management of the environment. Second, the overarching purpose of the RMA is sustainable management (Part II, section 5), which itself recognises there are competing desires for resources. Third, the Act defines the 'environment' and 'effects' very broadly. No longer are particular activities regulated (for example, forestry, mining, taking water for irrigation), but their effects are. The rationale for this is that potential third party effects of resource use should be managed rather than particular activities, for example, it should not matter how a particular water quality is arrived at, it is the quality that is important. Fourth, the primary resource management agencies are to be regional and territorial authorities.

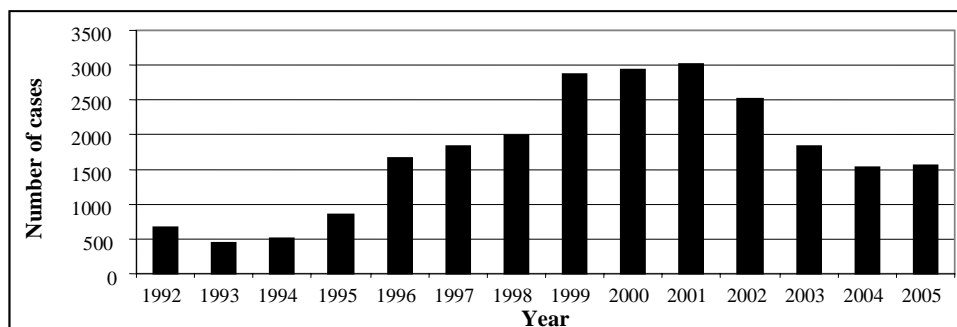
The majority of decisions on environmental effects and conflicts are devolved to local councils and most do not involve public notification. Prior to recent amendments and the promulgation of national standards, local government received little central government guidance. Council decision-making has two crucial components. First, regional or territorial plans or policy statements — the framework documents that guide applicants, interested parties and the consent granting authority — set up the overarching framework within which decision-making takes place. Second, resource consents give effect to individual desires to undertake particular actions that affect resource allocation or use.

A recent survey of local authorities noted that in 2003-04 councils processed 54,658 resource consents, of which 4.8 per cent (2628) were publicly notified and 1.2 per cent (651) were appealed to the EC (Ministry for the Environment, 2005). Appeals on local authority plans and policy statements can also be lodged with the EC. Lodging an appeal does not necessarily mean a court hearing because cases may be withdrawn or agreements reached prior to a hearing. Decisions of the EC may be appealed to the High Court on points of law only.

### **Methodology: Decision Analysis**

From 1992 to 31 May 2002 the EC and other courts (such as the High Court) made 4986 environmental law related decisions. EC cases are filed in Auckland, Wellington or Christchurch. These three centres keep separate registers that from 2001 to 2002 give an approximate indication of the time taken for a determination. In that period 53 per cent of cases took at least two years for determination with anecdotal, EC and Ministry for the Environment (MfE) information suggesting that the time costs associated with the EC were large (MfE, 2003). Since 2001 there have been a number of measures taken to address the delays, for example, the Court has received additional resources and improved services and in April 2004 the Court issued a Practice Note related to Case Management in an attempt to improve the prompt and efficient disposal of cases. Recent data suggests these measures have reduced delays (see Figure 1). Nonetheless, the ability to lodge an appeal and so delay a decision is recognised as a potential action to take.

**Figure 1: Environment Court Cases Awaiting Determination**



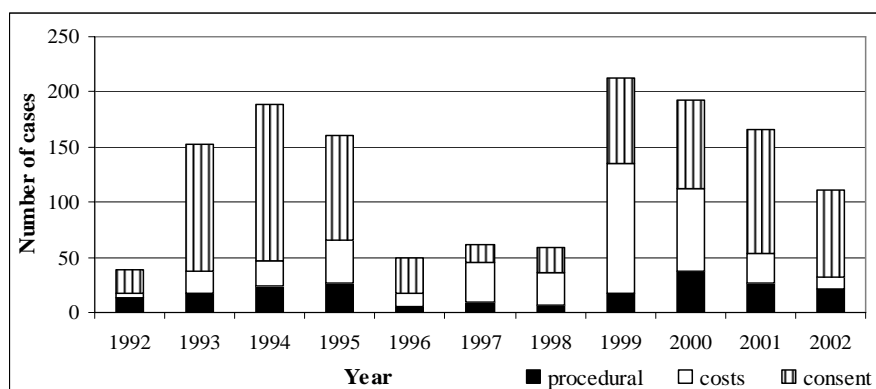
Source: Ministry for the Environment (2004); Registrar of the Environment Court (2003); Ministry of Justice (2005).

The analysis of two important subsets of the decisions provides an insight into the EC’s adjudicating role. First, cases related to section 120 (section of the RMA on resource consents); and second, cases related to the First Schedule Clause 14 (section relating to territorial or regional authority plans). The written decision of each of these cases was analysed and the nature of the case classified.

*Resource consent cases*

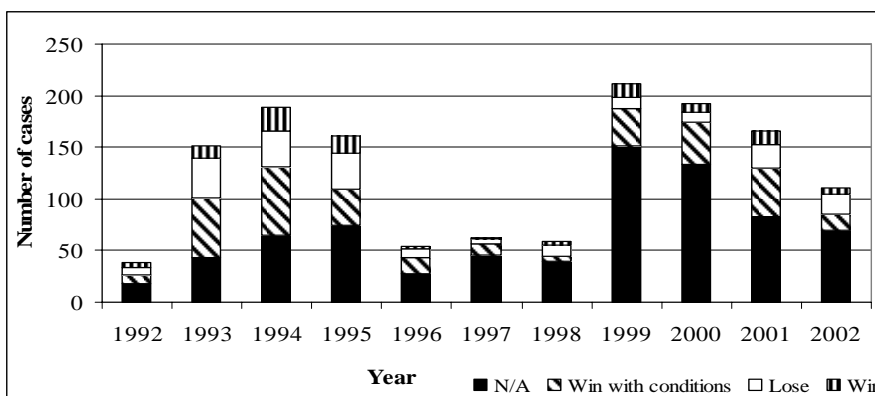
In the period 1992 to 31 May 2002, there were 1397 resource consent cases. The cases were classified by type, plaintiff and respondent type, and outcome. The number and type of case decided each year has been variable (see Figure 2). The majority (57 per cent) of consent cases were classified as consent issues. However, year-to-year this percentage varied between 27 and 76. Interestingly the percentage of procedural cases (approximately 15 per cent) has been relatively constant. The major sub-classifications of the 206 procedural cases were: appeal procedures (43), waivers (36), strikeouts (34) and withdrawals (21). The appellants were individuals (50 per cent) or businesses (43 per cent) whereas in almost all cases (1367 out of 1397 cases), the respondent was a council.

**Figure 2: Type of Resource Consent Cases Decided**



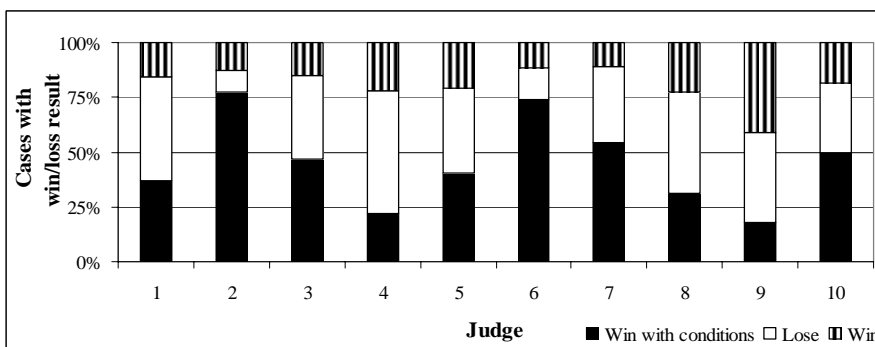
The outcome of the resource consent cases was categorised into: win; loss; and, win with court imposed conditions. Only 5-13 per cent of cases (8 per cent average) in each year were actually ‘won’ by the appellant. An additional 14-38 per cent of cases (24 per cent average) were won with court imposed conditions. For procedural and costs cases, which do not really have a winner, the overall number (or percentage) won by appellants is difficult to quantify (see Figure 3).

**Figure 3: Outcome of Resource Consent Cases**



The distribution of possible outcomes was analysed for each of Auckland, Wellington and Christchurch. After excluding the cases that could not be categorised as win, loss, or win with conditions, there were 183 cases (40 per cent of cases) decided in Auckland, 268 (55 per cent of cases) in Wellington; and 190 (44 per cent of cases) in Christchurch. Won cases were 19 per cent in Auckland, 19 per cent in Wellington, but only 12 per cent in Christchurch. Similarly, the percentage of lost cases varied: 44 per cent, 41 per cent and 17 per cent for Auckland, Wellington and Christchurch respectively. In Christchurch the vast majority of cases (71 per cent) were won but with imposed conditions. Of the 1397, 97 per cent were heard by ten presiding judges and the variation in outcome by location is reflected in the variation in outcome by presiding judge (Figure 4).

**Figure 4: Resource Consent Case Outcomes by Presiding Judge**



There are many possible explanations for the variations by location and by presiding judge including, the type of case, the nature of the appellants and respondents — including their access to experts, the situation and the fact that many EC cases were heard by a panel of judges (or a judge and commissioners) and it is not known if the presiding judge had the same view as the majority. Previous research (Su-Wuen, 2000), which analysed the written decisions from 131 EC cases (and then followed this up with survey results from 36 participants), concluded that the number of experts was a strong influence on the outcome of the cases and that environmental groups often found it difficult to access such experts.

#### *Plan (First Schedule Clause 14) cases*

There were 696 plan cases in the period 1992 to May 31 2002. The majority of these (70 per cent) were plan changes, but the number of procedural cases was also significant. Unlike the resource consent cases, the distribution of cases across the three main centres appears non-uniform: the total number of cases decided in Auckland, Wellington and Christchurch were 190, 125 and 364 respectively; and the percentage of cases decided in each year in each centre varied.

The distribution of cases across the three main centres is reflected in the nature of the cases. It was possible to categorise 66 per cent of the cases (461 cases) by 'resource'. Of these 59 per cent (270) were about 'land', including zoning and property development etc; 17 per cent (80) were coastal and 6 per cent (27) were about aesthetics. However, in Auckland 50 per cent (59) of the categorised cases (118; 62 per cent) were coastal and 36 per cent (43) were about land; in Christchurch 68 per cent (192) of the categorised cases (281; 77 per cent) were about land; and in Wellington 58 per cent (34) of the categorised cases (59; 47 per cent) were about land. Hence, the nature of the contested resource in the different regions affects the total number of cases. For example, 61 of the 192 'land' cases in Christchurch were cases in which Queenstown Lakes District Council was the respondent. Ericksen *et al* (2003) note that nowhere in New Zealand are the conflicts between resource development and environment protection so sharply defined and the consequences so far reaching as in the Queenstown Lakes District. These differences, and the lack of policy guidance particularly in the area of assessing landscape quality, led to the considerable number of 'land' cases as a result of the district plan development process.

The outcome of plan cases was categorised into case won; case won with court-imposed conditions; win by consent between the parties; or, case lost. As a percentage, only 10 per cent of the cases in each year were actually 'won' by the appellant (similar to the percentage for resource consent cases). The majority of cases (49 per cent) were resolved by consent between the parties. Thus in most plan cases the result is a change in the plan and this is completed by either the case being won or the situation being resolved by the parties. This suggests mediation is an important component of the decision-making process.

## Discussion

In general there are two broad categories of institutions: adversarial and cooperative. In an adversarial framework the two (or more) opposing parties in a conflict present their cases to a neutral party, who then makes the decision. In this situation the outcome of the conflict tends to be 'all or nothing'. In contrast, resolution of conflict in a cooperative institution does not involve a decision by a neutral party. Instead, there are various negotiation groups and committees where the opposing parties tend to reach the decision together. Compromises tend to be a typical feature of these decisions (Bostedt and Mattsson, 1996). The recent growth of consensus-type dispute resolution in the area of natural resources has been driven by a desire to reduce costs (including those associated with time delays) and increase the likelihood of achieving solutions that are good for both the economy and the environment (Kahn, 1994; Marcus, Geffen and Sexton, 2002; Prior, 2003). It has also been argued that this type of dispute resolution favours more meaningful participation because it is a more open process and not just less adversarial (Pellow, 1999). While the use of the EC suggests environmental decision-making in New Zealand is more closely aligned to an adversarial process, the RMA contains a number of provisions to encourage the use of mediation. The results of the decision analysis can be interpreted in light of these two categories.

As with the adversarial approach there are problems with the consensus-type approach. First, it is difficult to define what consensus is. Is it unanimity or a compromise? Second, it may not be easy to obtain effective participation. Third, the differences between the parties in many environmental conflicts may be so great and the common ground so small that the process is very slow, and the potential for manipulation, abuse and co-optation is high (Pellow, 1999). Kahn (1994) noted that mediation is most successful when: the number of issues is small, all the parties believe that mediation best serves their interests, and broad issues or public policy are not being negotiated. However, it has been argued that in circumstances of extremely deep conflict the best approach is a collaborative process, not adjudication. An example is the process of 'sustained dialogue' where initial effort is concerned with exploring and learning about the scope of the relationship, probing the dynamics of the relationship, and experiencing the relationship together. Only after passing these stages is action considered. Such a process was developed for the post-cold war intra-state conflicts and continues to be employed for multi-level peace processes (Chufrin and Saunders, 1993; Saunders, 1999; Voorhees, 2002). Thus the relationship between the complexity of the case and the applicability of collaboration is not simple.

### *Decision-making under the RMA*

Approximately 14 per cent of the decisions made by the EC since 1992 have been related to local authority plans and policies; however, when examined in detail 70 per cent of these cases involved plan changes and 24 per cent procedural issues. While 10 per cent of cases were actually won by the appellants, another 49 per

cent of cases were resolved by negotiation between the parties. Thus of the 487 plan changes 85 per cent were approved. While Court processes may appear adversarial in nature, the decisions made by the Court suggest that mediation is significant in many cases. The ongoing importance of procedural issues means that court time is being used to determine process issues rather than matters of substance and the 'rules' of the process are still being defined and interpreted.

The considerable time taken for determination of cases filed with the EC, and the high percentage of cases determined following court intervention or negotiation, demonstrate the significant role of mediated solutions. RMA cases have some particular characteristics, including: multiple parties (which, due to transaction costs, may make it difficult for the parties to negotiate a settlement, especially once a case becomes public because of the possible 'loss of face' that may affect subsequent applications); an open and young process (which admits those with limited understanding and makes it difficult to estimate 'case quality'); an unequal balance in the gains to the parties following the judgement, especially because of unequal costs (for example, an application costly for the applicant but not for a party seeking to prevent a change in the status quo); and, an unequal balance in the parties' trial costs. These characteristics suggest a role for mediation. However, a key advantage of an adversarial system is that parties are encouraged to reveal relevant information and a decision may be quickly reached.

Environmental matters are not usually private disputes or the wishes of the individual or group against the wishes of the collective, rather there is a triadic relationship of two individuals or groups and the state where the state must protect either one party or the other. A successful allocation mechanism relies on generating information about the costs and benefits of alternative resource uses and motivating people to use this information. Rights and costs are crucial in any allocation mechanism (Demsetz, 1964).

The EC plays a pivotal role in the framework for establishing principles of entitlement (such as appeals relating to plans) and impingements on those entitlements (such as appeals relating to individual resource consents). It explicitly adjudicates between competing uses of resources, using relevant qualitative and quantitative information to do so. The range of possible mechanisms for allocating resources among individuals and groups extends from markets to government and from private altruism to anarchy. There is no doubt that system 'failure' can occur in any system, and that no system can yield a perfect outcome (even if this were known). So there is no *a priori* reason to assume one system is unambiguously better than another. Rather, a system is best judged by the outcomes it produces and by how it affects transactions (including what incentives it creates).

Under the RMA, the government has devolved resource management and stewardship to a combination of legal, individual and group processes. The framework created by the RMA emphasizes decentralised decision-making. Decentralised decision-making allows local balancing of the preferences and information needs of decision makers (individuals, groups and courts) to achieve outcomes for the economy as a whole that are at least as desirable as centralised control. Although there will be variations across jurisdictions, this structure does

provide a systematic framework within which to manage the environment. The use of mediation seems highly applicable to cases where opponents are seeking specific outcomes that can be aligned with an applicant's broad objectives (for example, particular conditions). However, there are limits to the use of mediation. The use and consequences of mediation have been explored in the environmental decision-making literature, and some of its limitations have been noted. While it might be intuitively unappealing, given the complexity of most environmental decision-making situations, conflict is inevitable; indeed, deliberate and well intentioned collaborative approaches seldom resolve such conflict and given this reality, the discussion should be around the optimal framework for gaining the best outcome (Marcus, Geffen and Sexton 2002). Adjudication may be optimal for complex situations that are not as deep-rooted as international peace processes.

Given the inevitability of environmental conflict there have been attempts to assess the most appropriate form of conflict resolution. Bostedt and Mattsson (1996) in their study of conflict resolution in the Swedish and United States' forestry industries noted that preference for the adversarial or consensus approach was partially conditioned by the party's attitudes towards risk and the probability of recurring conflict. In particular, is there enough time to get the gains and losses from a court gamble (that is, do the parties expect to interact into the future), or is the situation a one shot game? The adversarial approach is usually associated with one-off game situations rather than long-term relationships. They also noted that it is not often recognised that the adversarial approach has the positive attribute that all interested groups may be involved even if consensus is seldom reached, whereas the consensus approach may be a very closed system.

Harrison's (1995) assessment of environmental regulation compliance noted that the enforcement of the collaborative and cooperative Canadian system of environmental regulation in the pulp and paper industry did not yield the same environmental benefits as the United States adversarial approach. Khanna (2001) noted that the most successful voluntary regulation in the United States was when the regulation was backed up with stringent legislative threats; hence, even under a consensus-type approach there is a role for the adversarial system and *vice versa*.

From an environmental perspective it is unclear that mediation will yield long-run positive benefits: mediation often involves give on both sides and so the possibility of incremental decline in environmental quality may be higher than with a winner take all adversarial system (Kahn, 1994). Litigation has two principal functions: resolving an existing conflict between the parties; and the generation of rules to govern future behaviour. A particular benefit of litigation is that it internalises the costs and benefits of fact-finding to the litigants in a similar way to private property rights in contractual situations (Parker, 1995). In the United States there is considerable research attempting to understand which cases go to trial and the likely outcome of those trials (for example, Waldfogel, 1995)

In summary, while there is international literature on the role of adjudication, mediation and environment conflict resolution, RMA-specific literature is limited. Borrie, Skelton and Memon (2003) discuss the processes for conducting mediation and the legitimacy of mediation under the RMA while Montgomery and Kidd

(2004) discuss the RMA's mediation provisions, but with no quantitative analysis. Eriksen *et al* (2003) analyse the quality of the resource management planning undertaken by regional and territorial authorities in New Zealand.

The decision-making structure underlying the RMA attempts to balance the requirements for decentralised decision-making and planning. Past experience with planning, such as the environmental effects of the planned economies of Eastern Europe, demonstrate the perils of central planning. In addition, issue-specific legislation and an *ad hoc* approach to what is permitted is also an undesirable mechanism. However, enabling each resource management decision to be a one shot game does not encourage optimal outcomes nor fit well with the complex linkages evident in the environment. Hence, there has to be a balance between decentralised decision-making, obtaining the efficiency gains from being able to accurately measure demand and ensuring the value of options and alternatives are systematic, considered and acted upon. One of the results of the recent (2004/05) RMA review has been a movement towards more central government influence, although not control, to ensure that national interests are considered by local decision makers (Guerin, 2005; MfE, 2004a).

Environmental policy is, therefore, about establishing a rights structure that gives protection to certain uses of resources; while environmental management is about setting a decision-making process that results in optimal solutions regarding the manner, timing and allocation of resources within the economic, political, social and institutional framework provided. The RMA follows Bromley's (1988) preferred solution of a process that yields standards of performance that have been collectively (politically) determined, and mechanisms for implementation that reward individual initiative, experimentation and efficiency. That is, planning for the social goals while relying on market-like processes to achieve the most efficient implementation of those goals. This was to avoid problems that occur when planners get too involved in operational issues and when the market has too much involvement over the broader policy issues.

The RMA sets down principles of entitlement (for example, affected parties and notification) and the process by which the general principles should be applied. This institutional arrangement that internalises externalities and limits the role of government to allocating initial property rights is aligned with the conclusions of Lai (1994). As such it is quite different from the system of zoning. The development of policies and plans are one mechanism for establishing property rights and the structure against which impingements on property rights are dealt with (Guerin, 2003). Over time the realisation that robust processes are crucial to ensure the proper allocation of property rights, has grown. For example, there has been a proliferation of material on planning and best practice that emphasises property rights (Quality Planning, 2002). Since 1994 (Wells, 1994a, b) it has been recognised that cost redistribution and investment certainty were significant RMA issues. This work also recognised that the RMA was designed to improve the quality of decision-making and that councils were required to monitor the state of the environment (this is related to their role of protecting the property rights of future generations and the intrinsic components of

the environment). Without a robust process, property rights would not be properly allocated (that is, they would be unclear) and poor resource allocation would likely result, due to the lack of defined responsibilities and incentives

Not only is the RMA an attempt to identify rights it may also be seen as an attempt to leave decisions to the market, rather than use central planning, by properly allocating environmental property rights. 'Effects' in the RMA are the consequences of one person's actions on another person's property rights. Once they have been settled the applicant may make market judgements for any use consistent with the consent. That is, rather than specifying the appropriateness of an activity the RMA is about the nature of effects.

## **Conclusion**

Resource management is fundamentally about allocating resources between competing uses; as such, many are complex and result in conflict. Given this reality, and the need for an open process, the EC is critical. It plays a pivotal role in the framework for establishing property rights (such as appeals relating to plans) and impingements on those rights (such as appeals relating to individual resource consents). Prior to, and even upon case filing, there is a place for mediation within the RMA. Section 99 allows consenting authorities to arrange meetings to encourage dispute resolution, a process that is common throughout New Zealand. Section 268 allows the EC to engage in mediation between parties awaiting a hearing. In fact, the EC offers a free mediation service. Recent evidence suggests that this service is being used frequently and promoted extensively (MfE, 2001 and 2003). The large time costs associated with the EC have been one of the drivers for encouraging mediation; however, the nature of previous case outcomes is an important constraint on the behaviour of all resource management stakeholders. While a court process is time consuming it does provide for external effects to be considered systematically in a manner that promotes decentralised decision-making by firms, individuals or local organisations. However, it is important that the process is not abused by using the court to create delays.

The trick will be for those involved in resource management decision-making processes to learn and for the processes to become less demanding of resources. In particular, it will be important for participants to understand the nature of their case and accurately predict the likely outcome of a court process because this would increase the probability of avoiding the time and expense of court processes. This should occur as participants become more familiar with court decisions (providing they are disseminated) and the results of procedural cases. A reduction in the time costs will also occur if the proportion of procedural cases drops and the court focuses on substantive issues. Furthermore, as the backlog of cases in the court declines there will be less incentive for parties to take a case to the court in the hope that this will buy them time for mediation because the delay will not occur. In this way the benefits of an adversarial system, mediation and individual decision-making can be gained.

## References

- Borrie, N., P. Skelton and A. Memon (2003), 'The Practice of Mediating Environmental Dispute by the Environment Court in New Zealand', *Australasian Journal of Environmental Management* 10:152-161.
- Bostedt, G and L. Mattsson (1996), 'Confrontation or Compromise? Determining Appropriate Institutions for Environmental Conflict Resolution', *Journal of Forest Economics* 2(2):131-147.
- Bromley, D. (1988), 'Property Rights and the Environment: Natural Resource Policy in Transition', A series of lectures presented by Dr Daniel W. Bromley, Ministry for the Environment, Wellington.
- Chufrin, G. and H. Saunders (1993), 'A Public Peace Process', *Negotiation Journal* 9(3):155-177.
- de Prez, P. (2000), 'Excuses, Excuses: The Ritual Trivialisation of Environmental Prosecutions', *Journal of Environmental Law* 12(1):65-77.
- Demsetz, H. (1964), 'The Exchange and Enforcement of Property Rights', *Journal of Law and Economics* 7:11-26.
- Ericksen, N., P. Berke, J. Crawford and J. Dixon (2003), *Planning for Sustainability: New Zealand under the RMA*, International Global Change Institute, The University of Waikato.
- Guerin, K. (2003), 'Property Rights and Environmental Policy: a New Zealand Perspective', New Zealand Treasury working paper, 03/02, Wellington.
- Guerin, K. (2005), 'Central Government Guidance and the Resource Management Act', New Zealand Treasury policy perspectives paper, 05/02, Wellington.
- Harrison, K. (1995), 'Is Cooperation the Answer? Canadian Environmental Enforcement in Comparative Context', *Journal of Policy Analysis and Management* 14(2):221-244.
- Kahn, P. (1994), 'Resolving Environmental Disputes: Litigation, Mediation, and the Courting of Ethical Community', *Environmental Values* 3:211-228.
- Khanna, M. (2001), 'Non-mandatory Approaches to Environmental Protection', *Journal of Economic Surveys* 15(3):291-324.
- Lai, L. (1994), 'The Economics of Land-use Zoning — A Literature Review and Analysis of the Work of Coase', *Town Planning Review* 65(1):77-98.
- Marcus, A., D. Geffen and K. Sexton (2002), 'Business-Government Cooperation in Environmental Decision-making', *Corporate Environmental Strategy* 9(4):345-355.
- Ministry for the Environment (2001), 'You, Mediation and the Environment Court', Ministry for the Environment, Wellington.
- Ministry for the Environment (2003), 'Reducing the Delays: Enhancing New Zealand's Environment Court', Ministry for the Environment, Wellington.
- Ministry for the Environment (2004), 'Improving the RMA Series', <http://www.mfe.govt.nz/publications/rma/improving-rma-sep04.html>

Ministry for the Environment (2005), 'Resource Management Act: Two-yearly Survey of Local Authorities 2003/04', Ministry for the Environment, Wellington.

Ministry of Justice (2005), 'Ministry of Justice Annual Report 2004/05', <http://www.justice.govt.nz/pubs/reports/2005/annual-report-2005/>.

Montgomery, R. and J. Kidd (2004), 'An Appraisal of Environmental Conflict Management Provisions in New Zealand's Resource Management Act 1991', *Asia Pacific Viewpoint* 45(1):105-123.

Parker, J. (1995), 'Daubert's Debut: The Supreme Court, the Economics of Scientific Evidence, and the Adversarial System', *Supreme Court Economic Review* 4:1-56.

Pellow, D. (1999), 'Negotiation and Confrontation: Environmental Policymaking through Consensus', *Society and Natural Resources* 12:189-203.

Prior, J. (2003), 'Environmental Dispute Resolution in Public Policy: Strategies for Reducing Costs and Improving Outcomes', *Australasian Journal of Environmental Management* 10:107-116.

Registrar of the Environment Court (2003), 'Report of the Registrar of the Environment Court — for the 12 months ended 30 June 2003, Appendices to the Journals of the House of Representatives, Part E Document 49'.

Quality Planning (2002), '*Quality Planning — The Environmental Planning Resource Site*', <http://www.qualityplanning.org.nz>.

Saunders, H. (1999), *A Public Peace Process: Sustained Dialogue to Transform Racial and Ethnic Conflicts*, St Martin's Press, New York.

Su-Wuen, O. (2000), '*A Question of Fairness: The Influence of Experts at the Environment Court and the Difficulties Gaining Access to Them*', Masters of Public Policy thesis, Victoria University of Wellington.

Voorhees, J. (2002), *Dialogue Sustained: The Multilevel Peace Process and the Dartmouth Conference*, United States Institute of Peace Press, Washington DC.

Waldfogel, J. (1995), 'The Selection Hypothesis and the Relationship Between Trial and Plaintiff Victory', *Journal of Political Economy* 103(2):229-260.

Wells, C. (1994a), 'Investment Certainty and Costs under the RMA', *Resource Management News* November 1994:3-4.

Wells, C. (1994b), 'Towards Investment Certainty', *Planning Quarterly* November:12-14.

Young, D. (2001), 'Values as Law: The History and Efficacy of the Resource Management Act', Institute of Policy Studies, Wellington.

*This work was undertaken while the author was based at the New Zealand Institute for the Study of Competition and Regulation in 2003. The assistance and guidance of Professor Lewis Evans is gratefully acknowledged. The assistance and efforts of Melissa Storey and Emily Grace in analysing the Court decisions is also gratefully acknowledged. The paper was improved by the helpful comments from the reviewers and the editor.*