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The professionalization of mediation: the Israeli case

Abstract: This short article describes the effort made in Israel to establish and maintain high standards in the developing field of mediation, aiming to gain statewide recognition of mediation as a profession. To date, only Government initiative and action have contributed to the professionalization of mediation. Self-regulation by the mediation community has failed to do so, and free market competition in mediation training might compromise quality.

Israel is located on the eastern shore of the Mediterranean Sea and enjoys a constant westerly breeze. New ideas and influences are thus carried in to the country, many of them are immediately welcomed and become part of the local climate. Modern mediation arrived in Israel in the late 1980s and was embraced by the Israeli judicial circles. Alberstein (2015) emphasized the contribution of the Israeli courts, especially that of Professor Aharon Barak, President of the Israeli Supreme Court, to the fast expansion of mediation in Israel. Professor Barak invited Frank Sander, founder of the ADR movement in the USA, to Israel and declared “*the mediation revolution*” which inspired a 1992 law that recognized court-related mediation, followed by the 1993 Mediation Regulations issued by the Minister of Justice.

The Ministry of Justice took upon itself to regulate mediation and a new unit – the National Center for Mediation and Dispute Resolution – was established and staffed in 1998, under the leadership of Dr. Peretz Segal. The unit compiled the Roster of Mediators, all of who were graduates of basic mediation training courses. The unit was also very active in encouraging and supporting the creation of community mediation centers throughout the country and offered them custom-made training and standards.

The spread of mediation has prompted what American philosopher Eric Hoffer (1996) described as the shift, in which every great cause begins as a movement and develops into a business. Commercial mediation schools were established in Israel and many thousands of Israelis rushed to take mediation training courses. Commercial competition is vulnerable to the danger of lowering standards of both entry requirements and of the quality and intensity of the courses, leading to an “inflation” of programs and of graduates seeking work in mediation.

The judicial system has responded to this danger by appointing a committee presided by Judge Sarah Gadot. In 1999 the commission published a mandatory curriculum for basic mediation training courses, and stipulated 40 hours (later amended to 60) as the minimal requirement for a course. Another committee, chaired by Judge Ezra Kama, certified a cadre of mediation instructors and assistants.

A major development in the mediation scene in Israel took place in 2003, when Minister of Justice Tommy Lapid appointed a committee to enhance the use of mediation within the Israeli courts. The committee was chaired by Judge Michal Rubinstein, Deputy President of the Tel Aviv District Court and took three years to elaborate and to form its recommendations which were published in 2006. The most important outcome of the Rubinstein Committee is the groundbreaking, pioneering project called Mahut.

Mahut (literally, Essence) is a Hebrew acronym for the words: Information, Acquaintance and

Coordination.

Although currently applied in nine Magistrate Courts in Israel, the project is still defined as a pilot and is conducted under temporary regulations. Mahut is designed to enhance the use of mediation, instead of litigation, in Civil Law cases. Disputants in Civil Law cases of up to NIS 75,000 (about US \$ 20,000) are required to meet a designated mediator for a Mahut meeting. The disputants may bring their attorney along to the Mahut meeting, but they themselves must appear in person. The designated mediator explains what mediation is, how it works, the special characteristics of mediation (such as confidentiality, optional caucuses, voluntary participation, the role of the mediator as a facilitator who cannot pass judgement, and of course the parties' ability to determine the outcome of their talks). The Mahut Project, headed by Adv. Nathalie Levy, is seen as the flagship of the Mediation Department in the Israeli Court Administration and is considered a great success.

Bearing in mind the influx of freshly trained mediators, not all of them true professionals, the Court Administration has ignored the Roster of Mediators that was created by the Ministry of Justice and established its own intimate cadre of Mahut mediators. These mediators were handpicked after a rigorous selection that included interviews and presentation of documents proving that the candidate had undergone both basic and advanced training courses (the Practicum, to which I will refer below), has an academic degree, 5 years of vocational experience, at least 20 full mediations, and good knowledge of mediation theory and practice.

This strict procedure was designed to ensure the highest standards of Mahut mediations and to manifest the advantages of mediation, so as to make mediation a realistic choice by disputed parties. Some 120 mediators were designated as Mahut mediators and only those on the list receive court cases from the nine courts that are part of the project.

All Mahut mediators undergo periodic proficiency training and are constantly monitored for performance and client satisfaction. The Court Administration collects and analyzes statistical data from all Mahut mediations, and these reveal that about half of Mahut mediations are resolved by agreement. This outcome saves the disputants substantial time and money, and frees the courts from many cases, thus reducing the workload of judges and court staff. Ongoing research conducted by the Court Administration shows very high rates of satisfaction with the mediations, the mediators, and the service provided by the Court Administration.

A fascinating outcome of the Mahut program is that some Israeli lawyers who accompanied clients to Mahut mediation, now recommend mediation to new clients even before commencing any court action. Such recommendations can be regarded as the fulfilment of the vision that inspired the project.

The Practicum

Besides Mahut, perhaps the most solid and significant pillar of the professionalization of mediation in Israel, is the Practicum, the advanced training course officially titled Supervised Experience in Mediation. This program was another brainchild of the National Center for Mediation and Conflict Resolution and was launched in 1999, seeking supervised, hands-on experience to supplement the basic training course (Lieberman, Foux-Levy, & Segal, 2005) and aimed at honing the skills of Israeli mediators. The 100-hour course was designed by the National Center, which recruited the cooperation of the Court Administration to supply Small Claims Court cases for the training. A typical Practicum course has 8 students and two full-time instructors. Every student mediates at least 6 Small Claims Court cases, usually in pairs (co-mediation). Each mediation session is thoroughly debriefed and the practical experience serves as a basis for theoretical conceptualization of mediation knowhow. The program con-

tains theoretical studies and workshops, including mediation principles and methodology, the legal aspects of mediation, writing mediation agreements, and providing feedback to mediators.

Executing the program was entrusted to the commercial mediation schools. These schools advertised their courses and sold them to graduates of the basic training course who wanted to gain experience and hone their mediation skills. Beyond the actual learning, most Practicum graduates describe the course as a very significant group and personal experience and a crucial component in the development of their professional identity.

When the Mahut project was announced, one of the entry requirements was the completion of the Practicum course. However, with time the Court Administration discovered that not all commercial mediation schools and not all Practicum instructors adhered to the mandatory syllabus or met the highest professional standards. These findings led to a new tender published in 2011 by the Court Administration, calling for all instructors who wanted to lead Practicum courses to apply and undergo rigorous selection and strict vetting by the Administration. This tight net has yielded a cadre of about 35 qualified Practicum instructors who are now certified by the Court Administration. Many schools and former instructors failed the screening and were forbidden to provide Practicum courses. The main motivation behind this dramatic move was to ensure the best professional training to mediators who will apply to the Mahut project, thus maintaining the high standards of Mahut.

Self-regulation

Mediation began as a “bottom up” movement in the United States and other countries and various associations sprang, laying the infrastructure for self-regulation, typically beginning with an ethical code. In Israel, however, the enthusiasm that characterized the initial embrace by the legal establishment (Alberstein 2015), soon resulted in a “top down” process. The Ministry of Justice formed committees and issued regulations governing mediation, qualification required of mediators, standards for training mediators, etc. Only eight years after the official mediation regulations were issued did the Israeli mediation community rise and try to organize as a movement or a professional association. In 1999 the Association of Israeli Mediators was established with Professor Moti Mironi as president. About 3000 mediators joined, committees were nominated, and the association aimed, among other things, to make sure that mediators adhere to high professional standards. Some working papers were drafted but they faced fierce opposition from the strong Israeli Bar Association that asserted that only lawyers can be mediators. Ironically, the progress of the Association of Israeli Mediators has been halted by internal quarrels and the vast majority of members have quit and cancelled their membership. It still exists these days under another name and is controlled by an entrepreneur who actually annexed the association to his business, thus completing the third phase of Eric Hoffer’s (1996) famous quote: *“Every great cause begins as a movement, becomes a business, and eventually degenerates into a racket”*.

Self-regulation disappeared together with the association and the government remained the sole regulator.

This too came to an end in 2008 when the Minister of Justice nullified the “roster of mediators,” followed with the coup de grace in 2009 when the National Center For Mediation and Dispute Resolution that operated under the Ministry was dismantled. The official explanation for its closure was budget cuts.

In 2014, Minister of Justice Tzipi Livni encouraged a revival of the Regulations, promised to regulate mediation under Knesset (the Israeli parliament) law and to expand Mahut to all courthouses in Israel, including District Courts. She actually approved a final draft of the new regulations just befo-

re the government resigned and new elections were called.

As this article is being written, the only two sectors of mediation in Israel that are regulated and monitored are the Mahut and the Practicum, serving as sole safeguards of mediation professionalism. Both were initiated by the Ministry and are governed by the Court Administration. The future of mediation should not rely solely on State regulation. A true profession (Millerson, 1964) should be organized and grow its own mechanisms of self-regulation, have a common code of ethics under which each member should see himself as the representative of an established, independent and proud profession.

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