

Kluwer Mediation Blog

A Turning Point for the Mediation Profession – or a Slippery Slope?

Nadja Alexander (Editor) (Singapore International Dispute Resolution Academy) · Thursday, January 21st, 2016

Last week I spent some time with a European mediation organisation looking to review its mediator accreditation and practice standards. Somehow I expected a discussion about various accreditation initiatives around the world with perhaps some exploration of “mediation models” and how they fit into national regulatory frameworks.

I was pleasantly surprised. What ensued was a passionate and deep exploration of some of the very real issues facing our field. Here are some of the questions we grappled with:

1. What mediators actually do and what they think or say they do. We know that self-reporting is not always reliable, so why should it be any different with mediators? Reporting on research Lorig Charkoudian concludes: “It is possible that when mediators are asked to self-report their strategies they report those that they think they use or think they should be using, but are simply unaware of their actual behavior.”
2. Who gets to say what mediation is and what it is not. As [John Sturrock](#) asks, “who owns mediation?” Is it a question for national regulation or is it up to the parties?
3. Picking up further on John’s previous post, if mediation is, as [Ken Kressel](#) suggests, “highly context dependent”, then to what extent do we (and other stakeholders such as users) desire professional parameters for mediators? And how could we go about setting such parameters?

We seem to be at a turning point for the mediation profession. These are questions that affect all practitioners, and users for that matter. And the good news is, that we can still weigh into the conversation.

After many years of positional posturing about the facilitative—evaluative dichotomy and whether we need mediator accreditation standards at all, there seems to be:

1. a growing acceptance of the need for mediation standards and a healthy debate about what they should be;
2. an emerging recognition that we need to move beyond the facilitative—evaluative distinction; and
3. a subtle yet significant shift in the global mediation discourse towards an increasing, albeit tentative, acceptance of a variety of models of mediation practice.

Let’s focus for a minute on the third point: diversity. It sounds progressive and even politically correct. It also reflects the reality of mediation practice — in both domestic and cross-border

settings.

But how meaningful is this diversity? How does it bring us further as a professional field? How is a mediator to define his or her practice? How is a user to know which mediation approach is better for them? Is it really progressive or the beginning of a very slippery slope where anything goes?

In mediation, the quality of the process is very much linked to the quality and skills of the practitioner. This is where the business of formal credentialing or accreditation of mediators comes into play. Mediator accreditation is concerned with who is judged to be competent to mediate and who is not. Accreditation issues reflect the diversity–consistency tension, that is the tension between, on one hand, the motivation to encourage diversity in practice through flexibility and innovation in credentialing matters and, on the other, to establish consistent and reliable measures of quality in mediator competence and practice through regulation. It is a highly controversial topic in the politics of mediation, and the central theme of the debate focuses on the extent to which uniform standards are required and what they should be.

It is about shaping the meaning of mediation and deciding which practices fall within the definition of mediation and which fall outside it. It is about deciding who gets to be in the mediation club and who does not.

This heightened interest in mediation diversity seems to throw up a whole lot of questions that some mediation boards, bodies and organisations, especially those endorsing one specific model, had hoped they had just put to bed. There is, however no time for sleeping now. We must keep watch and keep talking with one another. There is an ongoing need to review and revise accreditation and practice standards in a way that is both responsive and responsible. Yes, if you thought it was all over, I'm afraid it may be time for a new committee?

Frivolity aside, with a greater acceptance of diversity come new challenges. One is this: the need for a real relationship between mediation standards and their corresponding practices. How can we design standards to reflect a broader and deeper range of practice?

As a starting point, let's look to the notion of clarity of purpose in mediation. [Joe Folger](#) explains that “no tool is ever free from the purpose to which it is put” and provides numerous examples to illustrate his point such as the various purposes for which active listening, caucus and other mediator interventions can be used. So, what is the underlying purpose behind mediation practice? Of course, the answer varies among mediators, users, institutions, models of practice and cultures. So let's start with you. What is your purpose in mediation? Whether you are a mediator, professional representative or party user, you will have a purpose. What is your goal in participating in mediation? What do you hope to achieve in the process?

Mediation community members and institutions need to deeply and collectively reflect on why they do what they do and what values and assumptions they bring to the mediation table. No mediator is completely neutral in the sense that he/she is free of assumptions, and personal and professional values. Where mediation values are not made explicit in codes of conduct, accreditation standards or other norms, then the way mediation is likely to be practised will be a reflection of the implicit worldviews and personal beliefs and assumptions of mediators themselves. So if you describe yourself as a facilitative mediator, what does that mean in terms of the purpose of, and the values that underpin, the facilitative model?

Greater diversity in “accredited” mediation models will likely characterise the next wave of

development in the professionalisation of mediation and mediators. Institutions such as the International Mediation Institute (IMI) are leading the way in this regard. IMI's world-wide mediator certification scheme expressly recognises that mediators approach their craft in different ways and may be informed by different goals, values and assumptions in a variety of cultural settings. As professional training and education in mediation develops in sophistication, so too will offerings that challenge the standard Western facilitative dogma. So before you click out of this post, ask yourself:

1. Are you clear about the purpose of every mediation you do?
2. Are you able to articulate the values that inform your practice?
3. Where you find yourself in a tricky situation in a mediation where you are required to make a judgement call, are you able to explain your choice of intervention according to the values you have previously articulated?

If you are unclear or unsure in any of your responses, it's probably time for reflection and discussion with colleagues. In fact, this would be a terrific conversation to have with mediators, mediation advocates, referrers and users at Singapore's inaugural [Global Pound Conference](#) in March this year.

You see, if we want to embrace diversity in mediation practice, we must be prepared to be accountable for it. It is time to ask ourselves hard questions about the theories behind our practices. We owe it not just to ourselves and the quality of our practice; we owe it to our clients and to the future of the mediation profession.

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