

What's In It for Me? Mediator Certification and the Laws of Supply and Demand

By Irena Vanenkova

In my role as Executive Director of the International Mediation Institute (IMI),¹ I interact with many users of mediation services and with many mediators. I have found that each will have a rather different set of interests with regard to some aspects of mediation.

Nothing illustrates the diversity of perspectives more than comparing the three most frequent observations and questions I hear from the demand and supply sides of the mediation field on the subject of mediator certification.

Users say:

Certification can help us address the main problem—getting the other party to the table,

Certification is a good platform for finding the right mediator for all the parties, and

Transparency on skills and practices needs to be a central feature of any certification.

The three most common questions I hear from mediators are the following:

How can the competency of mediators possibly be certified?

Why do I need to become certified—what's in it for me/will I get more work? and

How do I become certified?

I will address all six, but first I must declare an interest of my own.

Mission of the International Mediation Institute

IMI is the only global body certifying competency of mediators. It is a user-driven public interest initiative that convenes users and providers—and is open to all. Although the Board of IMI reflects a balance between the demand² and supply³ sides of the mediation field, the Chair of IMI is always chosen from the demand side. IMI is set up as a charitable foundation funded entirely by donations and provides no services in the marketplace. Although IMI has office accommodation, the true home of IMI is in cyberspace at IMImediation.org.

The Vision of IMI is: *Professional Mediation Worldwide: Promoting Consensus & Access to Justice*. Its Mission is also brief: *IMI will achieve its Vision by setting high competency and ethical standards, convening stakeholders and parties, promoting understanding and adoption of mediation, and disseminating skills for parties, counsel and mediators.*

A key driver of the Mission of IMI is therefore setting and certifying high, transparent practice standards so that mediation becomes more of a profession than just a field.

To implement its Mission, IMI established an Independent Standards Commission (ISC)⁴ drawn from all mediation stakeholder groups—mediators, providers, users, counsel and other advisers, trainers, educators, and adjudicators. The ISC develops the quality standards that are approved by the Board. The standards have been devised to be applicable everywhere, at a high level and in all practice fields and styles of mediation.

Providing guidance and advice to the Board and ISC is an Advisory Council comprising visionaries in the international dispute resolution field.⁵

So as my role entails assisting in the development of the standards and the certifying system established by IMI, I declare a vested interest in promoting mediator certification, but I will nonetheless try to give an honest and balanced appraisal of what I have learned in this field in the five years since IMI embarked on its Mission.

The User Perspective

Certification can help us address the main problem—getting the other party to the table

Mediators see the cases that come to mediation. They rarely see those that don't. Many users tell me that the main problem for them is how to get the other party to the table in the right frame of mind. Michael McIlwrath, Associate General Counsel-Litigation for GE Oil & Gas, is a member of the IMI Board. The best I can do is to quote him:

For every case in which I propose mediation to the other side, perhaps one in twenty, maybe fewer, will actually get to mediation. Why? For a variety of reasons, including outright rejection by the other side's lawyer, excuses like "the time is not right," suspicion of a fishing expedition, fear of incurring more cost, and lack of familiarity with mediation. But a key reason for rejection is lack of confidence in the independent professionalism of mediators and the sense that it is difficult to find a suitable mediator. A uniform international system for certifying competency of mediators is sorely needed.

The main area for growth of mediation is where parties voluntarily agree to mediate, whether they have a dispute or a deal to settle. But even in appointing mediators to court rosters, it would be helpful to have a uniform method for determining a high minimum level of mediation competency.

Users make another important point about certification. When they suggest a mediator to the other party, the recommendation may be rejected merely because the other side made the suggestion, perhaps fearing some prior connection. But if the suggested mediator is certified by an independent international professional body and his/her Profile can be viewed openly online alongside many others who are also professionally recognised, the proposal is much more likely to be viewed as an objective choice. And if the other side does not approve the suggestion, they have many other certified mediators to consider.

Certification is a good platform for finding the right mediator for all the parties

When parties decide to mediate, they typically find mediators in a haphazard way. The most likely selection methods are:

- Ask a lawyer or other professional for a recommendation.
- Input “mediator” + place + field (e.g., family or commercial) into a search engine.
- Consult a directory, or a Hall of Fame listing.
- Go to a mediation provider organization and use its roster.
- Rely on mediators’ websites, their self-generated PR, and their reputation.

Even combining all five of these methods is sub-optimal because reliance is not placed on factual information. Gossip, hearsay and innuendo are especially unreliable. Even when mediators get selected, they rarely know for sure what factors really influenced their being chosen. More significantly, they never get to know why they were not selected, or even that they were on a short list and did not get chosen.

Users find guesswork difficult and frustrating. Many delegate the choice to legal or other advisers because there is little or no coherent, objective, information-based reference point on competency, no objective standard they can rely upon, and limited factual evidence to aid their selection. One user told me: *It’s like driving in fog.*

Certification levels the playing field for users. The two most important considerations for users are competency and suitability. On competency, the user wants to be able to trust the professional abilities of mediators without even meeting them. On suitability, the user wants to know that the mediator’s personality and approach

feel right for the case in question. A Certified Mediator’s Profile that includes a Feedback Digest prepared by an independent and trustworthy source as an attestation of competency addresses both competency and suitability aspects and increases the likelihood that all the parties will buy into the selection—whether the mediator in question was proposed by themselves, or by the other party or by a referrer, like a judge or arbitrator.

Transparency of skills and practices needs to be a central feature of any certification

As mediation is practiced behind closed doors in confidential environments, the individual abilities and characteristics of those practicing as mediators are hard, often impossible, for users to assess in advance. To select a mediator without guesswork or blind faith requires access to objective information. However, most of the information that is available is subjective, limited and cherry-picked. Users find this lacks credibility.

Mediators should focus on increasing the credibility of information about themselves. One answer is party feedback that surfaces practice skills and competency—but for credibility purposes it needs to be summarised by an independent and trustworthy source and presented in a digestible format (not a stack of feedback forms). Feedback Digests constitute the most credible marketing a mediator could ever dream of having.

The Mediator Perspective

How can the competency of mediators possibly be certified?

Some mediators say that mediation is a purely subjective art form that cannot be certified. But actors and musicians are certified by their schools, are celebrated by awards, and we have all assessed the skills of Bob Dylan and Meryl Streep. Unlike mediators, artists perform under public scrutiny.

Webster’s defines *certify* as an *authoritative attestation*. Many mediation training programs employ assessors whose job is to *authoritatively attest* the skills acquired by trainees, often deciding whether to grant a formal accreditation or certification. Most users, especially seasoned legal professionals who represent or accompany clients in mediations, feel perfectly capable of assessing whether mediators are skilled in their work. Managers regularly assess professional subordinates during annual performance appraisals. Mediators cannot escape scrutiny and certification by claiming to be *artists*.

Studies dating from the mid-90s⁶ show how mediators’ performance can be evaluated. Several local and national certifying bodies use those methodologies. For example, mediators certified by the Netherlands Mediation Institute⁷ have undertaken an ISO assessment.

It is possible to authoritatively attest and certify mediator competency. We just need to approach the task objectively and methodically—and set the bar high rather than low.

Why should I become certified? What's in it for me? Will I get more referrals?

Some mediators say they have captive networks and more referrals than they can handle, so why should they bother with certification? Some mediators refuse certification as a matter of principle unless it can be statistically associated with increased or higher quality referrals. The best answer to such mercenary, negative and often knee-jerk reactions to mediator certification is five positives:

First, established mediators, those with more work than they can manage, carry a professional responsibility to uphold and advance the standards of the field within which they are practicing for the benefit of future users and the practitioners following behind. Being certified at a high and transparent practice standard sets a vital aspirational example for others. This upholds both professional standards and user expectations.

Second, mediators may hear that a certain person or organisation recommended them, but they usually do not learn what sources were used to check out that recommendation. They may believe that their website did the trick. But no sound is ever louder than when someone else toots your horn. The echo of the Feedback Digest carries a long way.

Third, although competency as a mediator is critical to user selection, it is not the only factor determining choice. As already mentioned, a mediator's suitability in terms of style, non-mediation skills and other characteristics is also important. Feedback Digests help users on suitability as well as competency. IMI Certification assumes competency, and IMI Certified Mediator Profiles are often used for suitability analyses.

Fourth, a non-service-providing body like IMI can get its search engine into places that provider rosters cannot reach. For example, the IMI Certified Mediator search engine is the only mediator listing embedded in the Kluwer Corporate Counsel Online Mediation Service.⁸

Finally, yes, certification does bring in work. I know international organisations that will now only consider appointing IMI Certified mediators, because the thing that they regard as critical is the Feedback Digest embedded in every IMI Certified Mediator's Profile. As IMI Certification gains wider recognition among users, this trend is sure to increase. Mediators see the referrals they get, not those they don't. In many cases, mediators may never know that the users selected them through their certification listing.

How do I become certified?

There are various certification schemes for mediators in different parts of the world. I will describe the only one that is actually global, which is the IMI Certification scheme.

IMI sets standards. The task of actually qualifying mediators for IMI Certification is carried out by independent service providers, trainers, and educational and professional institutions that have prepared Qualifying Assessment Programs (QAPs) approved by the IMI Independent Standards Commission (ISC). The ISC has established a set of 7 Criteria⁹ for QAPs designed to qualify mediators for IMI Certification. They relate to experience, knowledge, skills, transparency, program integrity, monitoring and commitment to diversity. All QAPs are required to have methodologies for assessing experience, knowledge and skills and these must be approved by the ISC. At the time of this writing (April 2012) 19 institutions based in 14 countries have approved QAPs, and their details are all viewable on the IMI portal.¹⁰ Although individual methodologies may vary from one QAP to another, the ISC ensures that all meet a high minimum standard.

To become IMI Certified, a mediator merely needs to be qualified by one of the QAPs.

After being qualified for IMI Certification through a QAP, each mediator constructs a Profile for inclusion on the IMI portal's *Find The Right Mediator* search engine. IMI has created a format for mediator Profiles, designed to help users find the information they need, compile easy shortlists and make quick comparisons. There are six obligatory and six optional sections. One of the obligatory sections is a statement of which Code of Conduct binds the mediator, and which disciplinary process applies. IMI has a default Code of Conduct and disciplinary process that any IMI Certified Mediator may select.

Another obligatory section is the Feedback Digest. Mediators appoint an independent person or institution to act as their "Reviewer," whose role is to summarise feedback that the mediator requests from parties using a Feedback Request Form. The Reviewer implements IMI Guidelines to prepare a summary of those feedbacks and uploads it via the IMI portal onto a section of the mediator's Profile that is reserved for the Reviewer.

IMI Certified Mediators increasingly use the dedicated IMI Certified Mediator logo and link to their IMI Certified Mediator Profile directly from their own websites.

Conclusions

Mediation is an emerging profession. Over the 36 years since the 1976 Pound Conference, modern mediation has developed mainly as a supply-side practice. There are few standards, and none that are globally ap-

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plicable. Anyone has been able to hang out a shingle and proclaim to be a mediator, whether having extensive experience or none at all. Exaggerated claims can be made about knowledge, skills and experience without anyone being able to prove otherwise. Streetwise users know this.

Having reached a critical point in its development, with many outstanding mediators, but also many with inferior skills, mediation is undergoing an inevitable change process in the direction of professionalization. This is an almost worldwide phenomenon, and it is driven by user demand.

The rules of engagement are no longer confined to those established by mediators for mediators. The new rulebook is the one being written by users for their purposes. Users are now more discerning. They want better quality, more credible information. They want greater transparency. Many want to exert more control over mediator selection. This trend is very likely to increase.

It is time for mediators to reconsider the issue of certification, and to appreciate the considerable upsides. An intelligently implemented certification scheme can address both demand and supply needs and interests and drive growth into mediation as an independent profession.

Endnotes

1. www.IMImediation.org.
2. General Electric Company, Northrop Grumman Corp., Shell International and Nestlé.
3. AAA/ICDR, the International Chamber of Commerce– ICC, Singapore Mediation Centre, Singapore International Arbitration Centre, Bahrain Chamber for Dispute Resolution and the Netherlands Mediation Institute.
4. <http://imimediation.org/imi-independent-standards-commission>.
5. Lord Woolf of Barnes, William Ury, Minister Aleš Zalar, William Slate III, Sheikh Haya Rashed Al-Khalifa, and Professor Tommy Koh (<http://imimediation.org/imi-advisory-council>).
6. Performance-Based Assessment—a methodology for use in selecting, training and evaluating mediators, National Institute for Dispute Resolution 1995 by Chris Honeyman, et al. at www.convenor.com/madison/method.pdf. For a list of other publications see: www.transformative-mediation.com/training/page/view.php?id=40.
7. www.nmi-mediation.nl/english/welcome.php.
8. http://img.en25.com/Web/WoltersKluwerLawBusiness/{3546928f-1d02-4d9b-8e8b-2695052e8a5}_WK_CCDR_Brochure_Final_web.pdf.
9. <http://imimediation.org/criteria-for-qualifying-assessment-programs>.
10. <http://imimediation.org/find-a-qualifying-assessment-program>.

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