

# **Making Mediation Mainstream**

## **A User/Customer Perspective**

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**Patrick Deane, Wolf von Kumberg, Michael Leathes, Deborah Masucci,  
Michael McIlwrath, Leslie Mooyaart and Bruce Whitney  
With a commentary by Annette van Riemsdijk  
(Authors' descriptions on pages 9 and 10)**

*Mediation has come a long way, but still has much further to go. The field now needs to evolve quickly into a true profession. High minimum practice and ethical standards need to be set, made transparent and achieved internationally; users – customers – of mediation need to see these standards operating effectively. More and better information must be made available by individual mediators about their skills, capabilities and personalities. Quality and Transparency together will enable mediation to grow.*

**Lord Woolf of Barnes**  
Lord Chief Justice of England & Wales 2000-2005  
Judge (non-permanent) of the Court of Final Appeal of Hong Kong  
President of the Civil and Commercial Court of the Qatar Financial Centre  
Recipient of the International Academy of Mediators' Lifetime Achievement Award 2009  
The Woolf Report 1996 was the catalyst for the development of mediation in England & Wales

Experienced in-house counsel increasingly recognise the utility of mediation, and share a concern about how the field is positioned to grow globally. The main challenges facing mediation are evident to anyone who seeks to use it to resolve disputes today. In most countries – even those where mediation is widely practiced - it is only barely self-regulated, the requirements to entry are non-existent or low, and anyone can practice as a mediator. As a result, quality and experience levels of those calling themselves mediators are variable. While mediation will undoubtedly grow, the pace of its growth will in large measure depend on the building blocks of a supporting infrastructure.

This analysis is a perspective based on our relationship with the International Mediation Institute (IMI), an initiative to make mediation and mediators more accepted globally.

The first thing to note is the context in which business disputes today occur. There has recently been a severe global economic downturn. Those experiencing disputes invariably need earlier, less resource-intensive outcomes, as well as outcome certainty. Ever-tighter financial pressures have prompted even greater scrutiny of the long-standing belief that the longer disputes are allowed continue, the harder they are to resolve on acceptable terms. At the same time, both regulators and the marketplace today increasingly expect high levels of transparency in all areas of corporate governance. The latest information technology tools often make transparency easier to achieve than opacity, which certainly drive such expectations.

Just as corporate users have been among the pioneers in promoting the practice of mediation internationally,<sup>1</sup> they are also now at the forefront of IMI, as a profoundly related and necessary initiative designed to drive transparency, high standards and availability of information about mediation practitioners. What in-house counsel are essentially seeking, from the user side, is for all parties to have access to mediation service providers as they would for any profession. Indeed, users perceive a need for mediation to develop beyond being an *ad hoc*, unregulated, inconsistent practice popularized largely through its few star mediators, and to evolve into a globally-recognized, highly-respected profession, populated by many well-regarded practitioners.

Harold J. Wilensky, Professor Emeritus of Political Science at UC Berkeley, captured it well in his seminal piece *The Professionalization of Everyone?*<sup>2</sup>: ***Any occupation wishing to exercise authority must find a technical basis for it, assert an exclusive jurisdiction, link both skill and jurisdiction to standards of training and convince the public that its services are uniquely trustworthy and tied to a set of professional norms.***

Users need access to practitioners who are recognized not just as generic professionals, but as *mediation* professionals. Some are. They are mainly those that have been mediating full time for years and have established reputations. But they are a tiny number, even on a global scale. For so long as the number of recognized *mediation* professionals remains small, so will the practice of mediation itself. This issue needs to be addressed on a more holistic and also international level.

Below, some of the essential features of such a professional body are described, which we believe IMI is designed to offer. We have invited an international mediator with experience of establishing a national mediator quality assurance system, and who has quietly inspired progress in mediation, including the IMI, to provide a global supply-side perspective. But first, it may be useful to identify the background framework that makes the case for IMI, with respect to each stakeholder group.

### **User contribution**

Users of dispute resolution services of all types cannot ignore their vital role in ensuring that disputes that would benefit from an early resolution follow a path designed to increase the likelihood that mediation will be attempted. Contracts of all kinds should feature multi-step dispute resolution clauses that include mediation at some stage of the process, usually prior to arbitration or litigation, or simultaneously with the commencement of litigation or arbitration but prior to them being employed. Numerous model multi-step clauses are available online<sup>3</sup> and some companies have developed their own preferred clauses. Contractual clauses that include a mediation step enable both sides to avoid any perceived weakness that may be implicit in a proposal to mediate and represent good preventive lawyering.

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<sup>1</sup> See *Designing Conflict Management Systems* by Costantino & Bass Merchant – Jossey Bass 1996 and *Handbook of Human Conflict Technology* by Tina Monberg 2007.

<sup>2</sup> *The American Journal of Sociology*, Volume 70, No 2, September 1964

<sup>3</sup> For a wide selection of model clauses see: [www.imimediation.org/model-clause.html](http://www.imimediation.org/model-clause.html)

Knowing where to find the *right* mediator is critical. Always seeking independently-prepared summaries of prior user feedback provides vital information about both the competency and the suitability of the candidate mediators.

There are many other activities companies can undertake to enhance the perception of mediation as an effective settlement tool by others. For example, publishing a conflict resolution policy that favours early negotiation and mediation before litigating can make it a business practice to propose mediation, rather than be seen as an implicit weakness. Internal training programs within a company to enhance both management and in-house counsel awareness are also key.

Law firms are also users, often being the origin of a proposal to mediate. All the above applies equally, and sometimes more poignantly, to law firms. In particular, we appreciate it when outside counsel are trained in assisting clients to get to mediation and effectively preparing and representing them in mediations.<sup>4</sup>

### **Mediator contribution**

A fundamental first step is for those who hold themselves out as mediators to subscribe to a common professional community that sets high practice and ethical standards and establishes clear criteria for what it takes to gain admission as a mediator, and maintain the status of a mediator. The ethical principles and other professional norms by which they operate should be made known up front to users – that is, without our having to ask. We would want to see those principles being meaningful and backed up by disciplinary action that can result in loss of status as a professional mediator. We need this to happen with complete transparency.

Mediators cannot achieve this just by joining one or more provider panels and cloaking themselves with that provider's historic market reputation (which in many instances is often rooted more in arbitration than mediation, with the institution making little or no distinction in qualifications for these very different practices). Members of some panels gain admission because of their vested networks or status, not because objective assessments of their skills and experience has proven them to be highly competent mediators. If users are to treat mediation as seriously as it deserves, mediators need to become part of a highly transparent, high profile professional body that, crucially, is completely detached from the service provider marketplace.

Because mediations happen behind closed doors and in confidence, checking a mediator's competency is a major challenge. The flip side of this coin is that mediators can exaggerate their skills and experience in ways that cannot be contradicted. Although most mediators are not so unscrupulous, the fact that some are is sufficient to dilute the credibility of the real professionals. Users need a reliable and credible way of securing information about mediators.

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<sup>4</sup> See Mediation Representation – Advocating as a Problem Solver in any Country or Culture by H. Abramson (published by National Institute for Trial Advocacy, 2010).

It would greatly help businesses if competent mediators were to ascribe to an international professional standard. That is not to say that mediation itself should be practiced in the same way by all mediators – quite the opposite; users expect mediation to be adapted to the cultural, factual and personal circumstances at stake. However, the standard of quality can be set at a universally high level, meeting globally-applicable criteria. The only international mediation professional body meeting this requirement is the International Mediation Institute.

Previous users of a mediator's services are a rich but usually invisible source of information regarding mediator competency and suitability. While users need feedback, they also need it in an easily digestible form – ideally where a named independent source summarizes and anonymizes feedback that is then made available for the benefit of future users. Feedback is also valuable to the mediator and, if applicable, to the provider.

Mediators should publicly declare the code of ethics they subscribe to, beginning with their own websites, and provide a link to a copy of that code, and explain what redress is available in the unlikely event of a breach of that code. The inclusion of a video portrayal of the mediator explaining their style and experience, direct to camera or in interview mode, would also be useful to users.

These simple steps are neither difficult nor costly but will have a positive effect on user confidence in mediation and mediators, projecting professionalism and engendering respect on the part of the user.

### **Provider contribution**

It should go without saying that users expect that providers will select onto their panels only those mediators meeting high professional standards of competency. Yet such information providing assurances of this is often not readily available. If institutions were to publish their own minimum entry criteria, this would help users and reduce the circulation of war stories based on a single bad experience that can denigrate the good name of providers.

Most providers regularly monitor and assess the competency of their mediators, for example by requesting feedback from users for quality control and professional development purposes. However, few providers publish that feedback, even in a form that summarises all feedback received and protects the users' anonymity. This is an unnecessarily secretive practice that could easily be replaced by greater transparency.

Providers have an important role to play in promoting mediation to users, in addition to promoting their own services, and make as much information as possible available about mediation without restricting circulation through copyright. Guidance about the distinction between administered and non-administered mediation, offering users both options, with clarity about the respective costs, drawbacks and benefits, would be very helpful.

It would also greatly assist users if provider bodies achieving strict criteria were certified by an independent source, something that does not happen at present – other than on a local or regional basis in a few countries.

### **Trainer contribution**

Trainers perform a vital function in promoting mediation and the professionalization of mediation. There seems to be no professional body for mediation training organizations.

There are many training courses at different standards and having different aims. Programs aimed at training people to be mediators should result in accreditation at basic or advanced levels. It would be helpful to users and prospective trainees if the criteria for gaining accreditation are published, including whether independent assessment is used to determine accreditation awards. If these criteria are set on an industry-wide, and preferably global, basis and regularly monitored, users would know exactly what stage a mediator has reached in their professional development. Trainees would know they are following a course respected by users. The leading training organizations could collaborate to bring these criteria to fruition.

An increasing number of users want training organizations to provide programs to businesses that want to train their own staff to be better negotiators, to become more familiar with mediation, and to be equipped to represent their companies in mediations.

### **Educator contribution**

Universities and law schools could positively influence the way disputes are resolved if they primed their students with practical skills that augment their legal education. Universities and professional institutions should consider the introduction of comprehensive mediation theory and practice into their obligatory curricula at degree level as well as courses designed to prepare students for legal professional qualifications.<sup>5</sup> Similar considerations apply to business schools.

### **Arbitrator contribution**

Although mediation is categorised in some countries (the USA in particular) alongside arbitration under the caption of *Alternative Dispute Resolution*, the only similarity between the two is that they do not involve the direct intervention of the courts. Individual arbitrators should not assume that because they can arbitrate they are automatically qualified to mediate, which is unfortunately often the case. Those arbitration institutions that have mediation panels should ensure that all members selected on the basis of their proven high competency as experienced mediators and adopt the suggestions made above for providers.

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<sup>5</sup> The regular ICC International Commercial Mediation Competition and the ABA Representation in Mediation Competition have done much to encourage a better understanding of mediation by students. The competitions judge students on their skills as advocates or party representatives, not as mediators but nonetheless have generated in depth understanding of the mediation process in the US and internationally.

In fact, an increasing number of well-established arbitration institutions, among them the American Arbitration Association/ICDR, Chartered Institute of Arbitrators, ICC, CPR Institute, JAMS, FINRA and WIPO have developed strong mediation expertise to complement their arbitration services. Some, such as the ICC, have broken with convention and do not maintain mediation panels, preferring to find the right mediator on the open market – another reason for total transparency and high professional standards.

Arbitrators should be more amenable to mediation than many current arbitration processes allow, and there is no reason why arbitration should lag behind judicial procedure in this regard. Efforts such as the CEDR Commission on Settlement in International Arbitration<sup>6</sup> are most welcome initiatives, as they recommend steps to encourage parties in international arbitrations to consider settlement; the CEDR Rules applying their recommendations could be adopted as best practice by the arbitration profession.

### **Governmental contribution**

Governments, like the judiciary, have a crucial role of encouraging mediation to occur, and ensuring high standards of delivery. Governments contract with many private parties and have the capacity to lead by example. Government agencies should always include multi-step dispute resolution clauses in contracts and agencies, such as Patent Offices, with judicial or quasi-judicial functions should be much more proactive in this area.

The introduction of mediation on a systematic basis in high profile world trade and investor-state disputes would act as a strong advertisement to businesses for mediation.

Governments could fund more research in the field to encourage users to understand the true value of mediation.

None of these suggestions, which reflect common user needs, is particularly difficult to implement by any of the stakeholders. While there are many more actions that could be taken, if all those proposed above were to be taken up, the positive effect on the growth of mediation would be dramatic. From a structural perspective, the International Mediation Institute now exists to achieve most of the suggestions made here if all stakeholders would take advantage of its mission.

### **The case for the International Mediation Institute [www.IMImediation.org](http://www.IMImediation.org)**

The International Mediation Institute (IMI) was established in 2007 to provide a common global platform for all stakeholders to make mediation mainstream around the world for the reasons, and in the ways, indicated above. It represents a diverse collaboration of the demand side and the supply side, with equal representation of each on the Board. A user representative has chaired IMI since it was formed.

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<sup>6</sup> The Commission's Report was published in November 2009:  
[http://www.cedr.com/about\\_us/arbitration\\_commission/Arbitration\\_Commission\\_Doc\\_Final.pdf](http://www.cedr.com/about_us/arbitration_commission/Arbitration_Commission_Doc_Final.pdf)

IMI is a global public service initiative. Its Mission is to drive transparency and high competency standards into mediation practice across all fields, worldwide. This is being achieved through a transparent international mediator competency certification scheme, based on visible high standards and creating a diverse cadre of *IMI Certified Mediators*. Mediation users are assisted by an open, easily-accessible search engine to surface concise and comparable information relating to suitable competent mediators.

Because IMI is not a service provider, it earns no income from the provision of any mediation, training or other services. IMI is a non-profit charitable institution, registered in The Hague, the Netherlands but operating globally, through its web portal at [www.IMImediation.org](http://www.IMImediation.org). IMI is totally reliant on donations from mediation's worldwide stakeholders to cover its costs.

IMI was established by the collaborative effort of four leading non-profit dispute resolution bodies – the Singapore Mediation Centre, Singapore International Arbitration Centre, Netherlands Mediation Institute and the American Arbitration Association's International Center for Dispute Resolution. Although the Founding Institutions have financed its establishment and start-up, IMI is now funded entirely by benefactors and Patrons among mediation's stakeholders, including users.

The standards are established by the IMI Independent Standards Commission (ISC) which convenes over 60 of the field's thought leaders from over 25 countries. The ISC establishes the IMI practice and ethical standards and reviews and approves the Assessment Programs by which institutions qualify mediators for IMI Certification.

The IMI Advisory Council is chaired by Lord Woolf of Barnes, former Lord Chief Justice of England & Wales. The Advisory Council has a critical strategic, advisory and enabling role to assist the IMI Board implement IMI's Mission.

The IMI Advisory Council and Independent Standards Commission are independent of the IMI Board of Directors. All members of all three bodies serve IMI pro bono.

Over 300 of the world's leading mediators have achieved IMI Certification and are openly searchable on the IMI portal, with many more in process.

IMI sets high standards for mediators, but does not itself conduct any assessments. Instead, institutions that conduct assessment of mediators, such as providers and trainers, are invited to adjust their programs to meet the specific criteria<sup>7</sup> determined by the ISC, and to apply to the ISC for approval to qualify mediators passing those programs and meeting the criteria for IMI Certification. Those mediators then will become *IMI Certified* and their Profiles will be included on the IMI Portal.

### **IMI Certified Mediator Profiles**

In addition to passing an ISC-approved assessment program, IMI Certified mediators are

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<sup>7 7</sup> <http://www.imimediation.org/criteria-programs.html>

required to complete an online Profile for inclusion in the IMI Portal's search function to enable users to identify qualified experienced mediators. They can search via core preferences – location, languages, mediation style(s) and practice areas – and then be presented with a selection of IMI Certified Mediator Profiles meeting those preferences. The search engine is openly accessible from the IMI portal homepage at without login or charges. IMI does not keep any record of visitors using the search engine.

Each Profile contains:

- detailed mandatory information about the Certified Mediator, including a biographical summary, qualifications and areas of special expertise, mediation experience, a description of the Mediator's style and philosophy, applicable Code of Ethical Conduct, professional indemnity insurance and also the optional information about professional affiliations, training and teaching background, publications, links to referees and other information, and:
- an independently-prepared Feedback Digest summarizing impressions received from prior users. It is the one key element that enables users to satisfy themselves about a mediator's competency in the opinion of prior users, and also enable a determination to be made about suitability prior to making a selection.

### **Beyond Certification – IMI's Wider Mission**

In addition to setting standards and enabling users to make informed decisions on mediators, the IMI Portal provides:

- Impartial guidance and information to users of mediation to explain how and why mediation works. As IMI does not provide mediation services, it is a credible source of objective information. An example is the Decision Tree to Find the Right Mediator<sup>8</sup>.
- Informative downloadable material about mediation and related areas of assisted negotiation and dispute resolution to assist and inspire users. This will also include copyright-free roleplays to aid trainers, videos of mediations taking place (which are hard to find), mediation simulation tools, the latest articles and books in the field, together with annotated bibliographies, useful synopses and links to online booksellers and other sources, a worldwide calendar of events and strong encouragement for greater diversity.
- Support for a Young Mediators Initiative to encourage interest in mediation by young professionals in legal, business and other areas, and the acquisition of practical mediation skills by young mediators.
- A Scholarship Program designed to enable aspiring mediators, particularly in developing countries and including those who mediate family and community disputes, to be properly trained and to enable them to get necessary experience for being assessed to become IMI Certified. The Scholarship Program will enable newly-certified mediators to gain practical experience in suitable cases as assistant mediators or co-mediators together with highly experienced IMI Certified Mediators.

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<sup>8</sup> <http://www.imimmediation.org/decision-tree.html>



□ A convening function, to help disputing parties consider mediation as an option. Because IMI will not itself deliver mediations, it is in a unique position to propose mediation to parties whose dispute has become a matter of public record. The role of the convener is a difficult one, involving skill, tact, cultural sensitivity, perseverance and neutrality. IMI will be able to engage its network of prominent and experienced professionals in the field – eg those serving on the Independent Standards Commission – to assist in this endeavour.

□ A leadership role to help drive mediation into new areas. Examples include use mediation to help parties make deals where no dispute exists or is anticipated. The use of hybrid and other lesser-known forms of dispute resolution will be explained and illustrated.

□ The identification of competent specialist family and community mediators.

### **Conclusion**

Skilled mediators, everywhere and regardless of their fields of practice, location and nationality, can with a little effort become part of the movement that is professionalizing mediation. It will benefit their users, but will also benefit themselves and other service providers. The enhanced levels of transparency will bring greater user, and with that will come a deeper understanding and wider acceptance of mediation, leading to renewed growth in mediation for the benefit of everyone.

Mediators are fond of referring to win-win. This is win-win.

**Patrick Deane** is Senior Counsel and Head of the ADR Practice Group, Nestlé

**Wolf von Kumberg** is Assistant General Counsel, Northrop Grumman Corp

**Michael Leathes** is a former in-house counsel of Gillette, Pfizer, IDV and BAT

**Deborah Masucci** is Vice President, Office of Dispute Resolution of Chartis

**Michael McIlwrath** is Senior Counsel-Litigation, GE Oil & Gas

**Leslie Mooyaart** is Vice President, Legal & Tax, A.P. Møller-Maersk Terminals

**Bruce Whitney** is a former Chief Litigation Counsel of Air Products

These views are those of the authors and not necessarily of organizations with which they are associated.

## **An International Mediator Perspective**

**Annette M. van Riemsdijk<sup>9</sup>**

One of our key skills as mediators is the art of active listening and understanding. Then we develop what we have learned to help parties resolve their differences.

So it is second nature for us to hear what some of the users are saying, to understand their needs, interests and desires, then get together to address them. The user message expressed above is poignant and the rationale is powerful. It is the “getting together” aspect that presents the practical challenge.

None of us full time mediators can, by ourselves or even in our panels or professional groups, just wave a magic wand and metamorphose mediation into a fully-fledged profession in the eyes of our clients. Because of how we are organised (or, more accurately un-organised) as private practitioners, we would end up with so many different approaches, standards; procedures and nomenclatures that we would confuse our customer base and make things worse, not better. Perhaps that is why the credentialing studies in the United States in 2001-2004 did not get us any further forward.

Yet the writing on the wall could not be any clearer. Just because the challenge seems so formidable does not mean we should give up. This is the electronic age. It is clear to most of us that mediation must be instantly recognizable as profession, it is equally clear that we are not yet at this stage. In an age where scores of millions professional people are registered on LinkedIn in over 200 countries (the adoption rate in the country of my birth, the Netherlands, is over 30% per capita!), I conclude we can meet the challenge of “getting together” or “acting as one” by leveraging the power of the Internet.

I have discussed this issue with peer mediators right around the world, including in Africa where I have part of my practice, and in North America where many colleagues in Mediators Beyond Borders are located. None so far disagree with the principle, and not surprisingly I have yet to meet a mediator who feels we should not act to address the needs of our clients.

So this merely leaves simple a mechanical question, which is “How?” Our clients have established the main stage, and really all we have to do is perform on a worldwide collective basis. Based on my discussions with mediators, trainers and mediation institutions, I believe that there are at least seven “easy wins” we service providers could quickly achieve.

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<sup>9</sup> **Annette van Riemsdijk is an international mediator and mediation trainer, Managing Director of The Resolution Group and a Director of Mediators Beyond Borders, the International Mediation Institute, the New Resolution Group and the Global Negotiation Insight Initiative.**

## 1. Become IMI Certified

Two of my Californian colleagues expressed it in classically pithy ways. One declared: *it's a no brainer*, and another *there really is no other game in town*. IMI is user driven, and its web portal will therefore be the prime place users will go to find mediators. Literally, nowhere else combines high standards, open feedback, full transparency, an open access search engine, global coverage and complete detachment from competing for market services. Those are all the main elements users are shouting for. Our clients clearly need these features applied consistently, everywhere.

I started the IMI initiative and became IMI Certified partly because I believe that my clients wanted quality assurance and transparency. Becoming IMI Certified represents a real contribution to moving mediation to a position of being a recognised profession. I agree with Lord Woolf and many others identifying the “professionalization” of mediation as the key to its progress. No doubt that is why Lord Woolf, William Ury and other inspiring world leaders in dispute resolution have joined IMI’s Advisory Council – to help achieve this result.

Now to be honest I will make an admission. It did take a little effort for me to become IMI Certified. Good things never come too easy. I had to generate user feedback on a consistent basis, and I must admit that this is something I had neglected to do. I had to appoint an independent Reviewer to receive the feedback (directly from users, or from me if I received it), then summarise the feedback into a Feedback Digest for my IMI Profile. As I began this task, I realised that the Feedback Digest represents a transparent and credible endorsement of my skills to clients who do not know me, and so I selected as my Reviewer someone whose integrity and reputation is second to none.

Collecting the feedback meant explaining to parties why I was asking for it. As soon as I explained that feedback is not a bureaucratic thing, that it is not just deposited in a file and never read, that it is a key to driving mediation forward as a recognised profession, then they focused on it and gladly spent the few minutes needed to complete it.

Now that I have been systematically seeking and receiving feedback for a while, it has become an important part of my practice. The mediators I work with in the teams experience the same. Although we get an indescribable sense of personal achievement when parties resolve their disputes with our help, there is usually a strong anti-climax when it is all over and we move on to the next case. We are all human, and although we often do not like to admit it, we are all grateful for expressions of recognition, a slap-on-the-back, a Thank You! and a suggestion or idea. Feedback delivers these things. When I look back over my feedback and recall the different cases, it is a cathartic and professionally uplifting learning experience. Far from being a pain, feedback is an adrenalin shot.

I strongly urge all experienced practicing mediators to become IMI Certified. It will deliver what our clients need, and it will be a great boost for ourselves professionally.

## **2. Become a Qualifying Assessment Programme (QAP)**

Wearing my training hat, I perceive a major advantage for training groups delivering programmes is they can qualify mediators as IMI Certified. To do so involves putting together a programme that, in the opinion of the IMI Independent Standards Commission, meets the criteria set out on [www.IMImediation.org](http://www.IMImediation.org). These are high-level criteria and not all training programmes will be able to meet them. But as more training programmes are approved as QAPs, the more they will be able to qualify mediators as IMI Certified, and the higher will be the common standard of practicing mediators.

## **3. Authenticate basic training**

Basic training should be the entrance gate to the future mediation profession. Although many of us more mature mediators learned on the job, new entrants should be properly trained, be assessed for a basic qualification, then gain experience, then get credentialed.

There are some wonderful basic mediation training courses, suitable for aspiring mediators and for those wanting to sharpen their negotiation skills. However, there are also some less good courses. It is difficult to distinguish one from the other. It is very important that basic training takes place at a minimum high standard, consistently around the world. I would therefore like to see leading training organisations work with IMI's Independent Standards Commission to establish and unify high-level criteria for basic training programmes. This will enable trainers meeting those criteria to be able to market their programmes with the benefit of IMI endorsement. This would not only assist aspiring mediators but also help users know who has received basic training to a globally-recognised standard, and this would force up training standards everywhere.

## **4. Encourage shadow-mediation schemes**

Shadow mediation schemes can help mediators who have passed basic training to gain experience alongside (ie “shadow”) accomplished mediators. They can gradually develop into assistant mediators, build up a feedback file and gain the confidence and experience to mediate on a solo basis. Over time this will increase the stock of experienced, qualified mediators, and prove to be a viable entry for QAP for IMI Certification.

## **5. Develop mediation representation skills**

Mediators, like myself, are invited to bar associations, universities and law schools to teach students and young lawyers in Amicable Dispute Resolution (ADR). In the Netherlands it is compulsory for young lawyers to be trained one day in ADR. Themes during that day are, after an explication of mediation and the mediation process: when do you refer to a mediator? ; Where do you find a good mediator? ; How to behave and act in mediation and how do you support your client?

I constantly get positive feedback from lawyers and students that I have trained in mediation. For example they often state that, after the training, they come to mediation better prepared. By getting a better understanding of the mediation process, the advocates are able to conduct themselves differently than if they were in arbitration or litigation mode. Mediators who have worked with lawyers trained in mediation report that the behaviour of those lawyers is more constructive and calmer and less of a risk to the mediation process or to the parties' attempts to reach a solution.

We now have outstanding books and materials on mediation representation skills. However, there are still too few training courses focused on the skills and techniques for lawyers and others to effectively prepare and represent clients in a mediation. Mediation representation training, and also learning the skills for mediation referral, increases the quality of outcomes, and also the success rate of mediations.

## **6. Promote cross-field mediation**

Many mediators see cases that involve several fields. Many companies experience potential or active conflict with governments over regulations, or with private individuals or communities. Mediators could do a better job at presenting their individual experience and skills, and the appropriateness on the mediation process, to disputes where the parties are not peers, or engaged in the same field of interest. For example, where an environmental dispute arises, the parties may be a town council and an investing company. Some mediators will present their practice as being corporate, while others market themselves as community mediators, but cases like this require mediators skilled in both corporate and community disputes. While this may be an excellent application for co-mediation, with a mediator from each field, mediators could do more to assist users to promote and set up mediations for the increasing number of cross-field issues.

## **7. Deliver cross-cultural skills**

When I initiated the idea behind IMI, one of my goals was for all of us to be able to recognize quality mediators worldwide. Although I often worked abroad with excellent local mediators, I remained puzzled: how can we systematically identify effective mediators abroad and cooperate with them? Especially in countries without national training facilities or mediation organizations, it can be difficult to identify the right mediator<sup>10</sup>.

Now, five years later, and driven by user demand, IMI has developed quickly but is still treasuring this initial idea: to create a system that enables the market to find the best mediators and to help mediators find qualified contemporaries abroad.

Almost all mediators have cases where the parties' cultures are different, and where cultural problems may be the root of the dispute or block progress in resolving it. This

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<sup>10</sup> Excellent initiatives have been developed to stimulate cooperation in the mediation field, such as the WTO/UNCTAD gatherings, where about 200 representatives from around 75 countries participate to share best practice and learning in Chamonix, France.

happens frequently in cross-border disputes, but also arises often in local disputes in our increasingly multi-cultural societies. Although many mediators have travelled widely, speak different languages and have lived and worked with different cultures, this does not in itself establish the credentials for cross-cultural mediation expertise. Cross-cultural training applied to the mediation context can be highly instrumental in these situations, equipping mediators to adapt the mediation process and interventions optimally. A key focus of such training must be the creation of a mediation team and how the team operates. In my experience it is very difficult to act effectively as a sole mediator in some parts of the world. Yet there are almost no courses on this designed for mediators. I know IMI's Independent Standards Commission is developing criteria for competency in cross-cultural mediations, but it will help inspire greater confidence in our clients if we can all develop and then present our skills better in this respect to our customer base.

## **Conclusion**

There is so much that we mediators and service providers can do to help our clients and our profession. I suggest that we exchange our thoughts and ideas and foster collaborative initiatives. Participation makes national government regulation and control on mediation unnecessary. In some countries in the world government regulation and control is the last thing mediation needs. It would differ in character and degree from one state and country to another and cause a lot of confusion. However, governments will only apply mandatory rules mediation if we mediators fail to self-regulate<sup>11</sup>.

Our clients are calling for us to take a common global approach and to implement it locally.

IMI provides us with an independent, objective and credible platform for this, and it is backed by our users. Let us support it with the actions suggested above. All of them are within our reach without a great deal of time, effort or cost.

Let us act now – as our users have titled this piece – to Make Mediation Mainstream.

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<sup>11</sup> Due to the fact that, with a few enthusiastic mediators and users, we created the Dutch Mediation Institute (NMI) there was no need for regulation. Unfortunately the resistance against regulation also led to the non implementation of the European Directive.