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International ADR developments

Mediation in Israel

Susan Zaidel

Events in and around the State of Israel have drawn the attention of people and governments around the globe. Amid the escalation of violence and hostility, and the erosion of remnants of trust between Israel and the Palestinians, the question arises as to whether there is any place for mediation in Israel.

Although this article about mediation in Israel focuses on the usual kind of conflicts within society — divorce, commercial and community disputes — the political situation undoubtedly has an impact on the development of mediation within the country. When critical issues of survival preoccupy the nation, the development of mediation programs is clearly not a high priority. Nonetheless, with all the hostility and violence present it is necessary to work towards strengthening the better side of human nature — to encourage tolerance and respect for others, dialogue and mutual understanding, within Israel's borders and with its neighbours as well.

Historical precedents

It would be an oversight to describe the current mediation activity without acknowledging the mediation carried out in previous generations. For many centuries both the Jewish culture in the diaspora and the Arab culture in what is now Israel had their own 'alternative' methods of dispute resolution to maintain peace and harmony within the community.

Among the Jews, the local rabbi was the mediator, often acting as an arbitrator if 'reason' did not prevail. Among the Arabs, an elaborate peace-making method called 'sulcha' was used for all kinds of conflicts, including

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for crimes as serious as murder, in order to restore harmony and prevent escalation of violence through acts of revenge. These historical precedents indicate that both Israeli and Arab cultures placed a high value on managing conflict and on agreement between the conflicted parties as the basis for resolving disputes.

In the modern State of Israel, where the police and the courts took over the functions of maintaining law and order in the community, the mediation role played by religious leaders and other respected members of the community has decreased in importance, although they still exist to some extent in both cultures.

An overview of current developments

Mediation in Israel began in the late 1980s within the framework of the Israel Family Therapy Association. The earliest mediators were social workers and psychologists with a family systems orientation who adapted the American model of divorce mediation.

The first Hebrew language book about divorce mediation for the Israeli public was published in 1993 (the English edition was published in Israel in 1991). At around that time, a paragraph was added to the legislation governing the courts which defined mediation as a voluntary option for judges to suggest to litigants in any civil lawsuit.

In 1996 a court committee set the criteria for listing mediators in court rosters. The standards set were minimalist, as there were hardly any trained mediators at that time. A few early mediation centres were established and began to offer training courses to interested persons of varied backgrounds. The earliest trainers had received their mediation training in the United States.

It was not long, however, before the new generation of mediators became trainers too, and within a few years, thousands of people had become 'mediators', although most of them had no experience with actual cases.

The Chief Justice of the Supreme Court became convinced that mediation was a good thing — both as a means of reducing the over burdened court system and for its inherent qualities as a means of resolving disputes. As a result of his influence, the court system began to integrate ADR into its systems by creating a new department for screening and referring cases to mediators. However, litigants and their attorneys have been far less enthusiastic about trying mediation, and the rate of refusal among court referrals ranges between 50 and 60 per cent.

Nevertheless, court cases have remained the primary (if not the only) source of referrals to the private market of individual mediators and mediation centres. Little has been done to educate the public about the mediation alternative. Only in the area of divorce do people seek out mediators as an alternative to court proceedings, and, even in that area, couples who mediate on a voluntary basis are few and far between.

The Ministry of Justice established a centre in 1998 for developing ADR in Israel, both within the court system and within the community. With their professional guidance, several community mediation centres have been developing throughout the country, using trained volunteers to mediate neighbour disputes and other conflicts.

The most recent event initiated by

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the Ministry of Justice's ADR centre was a conference on restorative justice, with guest speakers from England and the US aimed at generating interest in the use of victim-offender mediation.

Considering that most of the developments began only in the late 1990s, mediation is clearly still in its 'infancy' in Israel, with 'beginnings' in the various areas found in other countries around the world. There are mediation programs in some schools, isolated programs of victim-offender mediation in the youth probation system, several community mediation centres in early stages of development, mediation centres established within the various regional bar associations and other organisations, several private 'centres' and a few hundred individuals of varying professional backgrounds who offer their services as mediators.

The number of actual mediated cases is very small, however, in spite of the efforts and wishes of the large numbers of trained mediators and mediation centres. Only a handful of persons earn a living as full time mediators. While mandatory mediation is under consideration, there is considerable opposition to moving in that direction.

Recently, a few more Hebrew language books on mediation have been published — one about mediation in the education field, one about commercial mediation and a new, updated book about divorce mediation. Articles have appeared in Israeli law journals and magazines, in social work and psychology journals, and in newspapers and magazines for the general public.

Concerns about standards

In the rush to get things moving, and under pressure from the legal community, the standards set for court lists of mediators were minimal: a 40 hour training course, a college degree in any field, and five years' work experience of any kind for non-family civil disputes; or 60 hours of training, a law degree or a master's degree in one of the helping professions, and five years' work experience in the person's specialised field as qualifications for the family court rosters.

As a result of the limited requirements, the situation moved quickly from one of not having mediators at all to having a few thousand so called qualified mediators. Most had no practical experience in mediating beyond the simulations provided in their training courses. It is not surprising that the outcomes of the court referred cases have not been very successful.

One attempt to improve the level of competence has been to provide supervised mediation experience for trainees who have completed the basic mediation skills course. The ADR centre of the Justice Ministry created a practicum program in co-operation with private mediation centres and the small claims courts in the major cities. It is likely that in the future the criteria for recipients of court referred cases will be expanded to include prior mediation experience, preferably supervised by experienced trainers who evaluate the performance of the trainees. There will soon be a similar practicum program in conjunction with the labour courts. Unfortunately, no such program exists for family court cases.

Role of the Israel Bar Association

The initial response of the legal community was to oppose any 'interference' in the status quo. After a while, when leaders in the Bar Association realised that the mediation 'nonsense' was not going to 'go away' and was actually being endorsed by the courts, they decided to 'take over' by running their own training courses and setting up their own mediation centres.

In the bar leaders' view, mediation of court cases should only be conducted by mediators who are lawyers. Many attorneys refused to take their cases to mediation unless the mediator was an attorney. This led to the widespread use of co-mediation for court cases, as many judges also demanded that at least one mediator be an attorney.

The attempt by the legal community to control court referred mediation has led non-lawyer mediators to channel their energies in other directions, such as community mediation centres and the use of mediation tools in their managerial and other professional roles.

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Divorce mediation

Ironically, although the earliest work in mediation in Israel was with divorcing couples, the recent 'explosion' of mediation activity has not led to a dramatic increase in the family arena. Family courts were established in Israel in a gradual process that began only in 1995. Social service units under the Ministry of Social Welfare were attached to the family courts to assist the judges in their work with difficult families, and the social workers in those units have become mediators for difficult court cases. In the absence of an official policy regarding mediation in the family courts, the use of external mediators has been minimal; there is also inconsistency from one city to the next.

In the earlier years, training in divorce mediation was the only kind of mediation training in Israel and included both the basic mediation skills and the relevant material for understanding and working with divorcing families. Social workers, psychologists, educational counsellors and family therapists were the typical trainees, with an occasional attorney who had the heart of a social worker.

The great wave of basic mediation training courses that dominated the picture in the late 1990s had a negative impact on divorce mediation training. The new approach comprised a core course in mediation skills which was appropriate for the commercial and other non-family conflicts in the courts, and then a brief supplementary course (a mere 20 hours) which focused on mediating divorce issues.

The new approach to the training of divorce mediators has minimised the unique aspects of mediation work with divorcing families and is grossly inadequate (particularly for trainees who are not mental health professionals). Mediators from the helping professions are concerned that the more recently trained divorce mediators will be doing a disservice to divorcing families. Lawyer-mediators with minimal training are attracting clients by offering a one stop service, which includes writing and filing the legal divorce agreement, a service which mediators with a mental health background cannot offer.

Academia

Mediation and the ADR movement have gradually found their place in the curricula of law schools and other academic departments in most of Israel's universities and colleges. Interdisciplinary programs in dispute resolution are emerging at the graduate level, and several students have chosen various aspects of mediation as subjects for masters and doctoral theses in law and social work. Evaluative research is also in the planning stages of the Justice Ministry so that we can monitor and learn from the growing experience with mediation programs.

Conclusion

As the above indicates, the mediation bug has found a warm home in Israel and is propagating in various places. Unfortunately, competition for the currently limited market has created a paradoxical need for mediators to 'practice what they preach'. More co-operation among the different sectors and professions would be helpful in overcoming the natural resistance to change in society. Just as they have on the national political level, so have struggles for economic survival and success on the individual level created tensions, lack of trust and lack of genuine co-operation among mediators which is likely to hinder the development of the mediation field. There is no doubt that peaceful and co-operative relations among groups and individuals within the country will be easier to achieve when Israel exists in peace with its neighbours. Mediation values and methods are clearly needed both within the nation and in relations with others. ●

Susan Zaidel is a psychologist and mediator in Haifa and has been mediating in Israel since 1986. She has served on government committees, was a founder of a not-for-profit mediation centre and was among the first trainers in mediation. She has written two books, in Hebrew, on divorce mediation for Israeli audiences. She can be contacted at zaidel53@bezeqint.net.