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Comparative ADR developments

Global trends in mediation training and accreditation — the case of France

Jean-Pierre Bonafé-Schmitt

Background

Like many countries, France experienced a revival in mediation at the beginning of the 1970s. The phenomenon was heralded by the creation of the position of ‘Mediator of the Republic’, followed by the first experiments in neighbourhood and victim–offender mediation in 1985, family mediation in 1988 and school mediation in 1992.¹ In its development mediation did not escape the omnipresent role played by the state which constitutes the dominant model in the structuring of social relationships in France. This can be seen not only in the development of court-based mediation but also, for example, in the area of employment with the creation of new jobs associated with community liaison such as those carried out by the so-called Agents Locaux de Médiation Sociale (literally, local agents of social mediation). While in Anglo-Saxon countries mediation is seen as constituting only one component of ADR, in France the term has a broad conceptual fluidity, especially in the way it is used by the public powers which tend to designate as mediation all forms of intervention by a third person in the management of conflict.

The interaction of these factors explains both the small number of disputes handled by mediation and an explosion in what could be called ‘mediation activities’, that is, the use of intermediaries to handle problems arising between individuals and institutions, or to answer minor problems of law and order.² First, the reaction of ‘judicial whole’³ has in France been amplified by the dominance of the state, which explains why the number of disputes going to mediation in civil matters represents less than 2% of the caseload undertaken by the tribunals. On the other hand, France has witnessed a veritable infatuation with

‘social mediation’, that is, third-party intervention to preserve social cohesion and public order, a trend often initiated or supported by the public powers. This influence of the state over the development of mediation provides an explanation for the promulgation of certain pieces of legislation designed to control the direction taken by mediation in dispute resolution.

The first of these was the *Law of 3 January 1973*, which created the Mediator of the Republic. It took another 20 years for the state to give itself the means of institutionalising victim–offender mediation with the *Law of 4 January 1993*. The movement towards establishing a legislative framework continued in subsequent years with the *Law of 8 February 1995* which assured the recognition of civil mediation and the *Law of 26 May 2004* relating to family mediation. Subsequent legislation provided for the creation of ‘mediators’ (actually ombudsmen), in the domain of banking. So-called ‘social’ mediation, a kind of community mediation,⁴ has not escaped the movement towards institutionalisation with legislation such as the *Law of 18 March 2003* on internal security, which mentions mediation as one of the axes of security policy.⁵

All this legislation supported the institutionalisation of mediation to some degree, and raised questions as to the training and methods of accreditation required for the new job of mediator.

Training: towards the professionalisation of mediation

Initially, the training of mediators was the province of mediator organisations, and was first provided in the areas of family, victim–offender and community mediation. At the end of the 1980s such courses did not exceed 30 hours.⁶ This is not the case today: there has been a

gradual increase in the length of training which can now exceed 500 hours for the State Diploma of Family Mediation or for a masters degree in mediation.⁷ This increase can be attributed to the concern of mediation professionals to legitimise the new area of intervention in conflict resolution in relation to traditional professions such as law and counselling.

From short specialised courses to diplomas of mediation

In the family mediation arena, in particular, training became an important factor in professionalisation when the main mediator organisations⁸ decided to increase the length of courses for family mediators to 30 days. This was the standard established by the European Charter for the Training of Family Mediators in 1992 and adhered to by a large number of organisations providing courses in family mediation in various European countries (including France, Great Britain, Italy, Switzerland, Germany) under the umbrella of the European Forum for Mediation. This drive towards professionalisation eventually led to the creation in France of the State Diploma for Family Mediation in 2003.

This change over time in the length of courses has also led to a profound change in the way mediators are accredited. Originally courses were provided directly by the large mediation bodies or in private associations created by the pioneers of mediation. Later, institutions such as universities or schools of social workers became involved in the training of mediators. Gradually the number of hours required for accreditation has risen; the courses, which were originally specialised, have become more general in orientation; and the simple certificates issued to mediation trainees are increasingly becoming professional or university diplomas. This applies particularly to



community mediation with the recent creation of the 'certificate of professional training as a mediation information services agent' or of the professional title 'technician mediation services' which are in fact professional diplomas recognised nationwide by the Ministries of Education and Employment respectively.⁹

Duration and content of courses

The difference in the way the supporters of professionalisation look at mediation, as opposed to those who wish to maintain the voluntary participation of the community mediator, can best be understood by analysing the duration and content of mediation courses. In the beginning a certain consensus existed as all courses were of short duration (less than 30 hours) and centred on the acquisition of techniques against the background of a strongly ideological discourse fervently proclaiming the 'benefits' of mediation. These courses were most often conducted by the pioneers of mediation who went on to train in Quebec for family mediation or self-train within the framework provided by victim-offender or community mediation agencies.

Although these first courses basically specialised in the relevant domain, that is, family mediation, victim-offender mediation and so on, an analysis of the programs undertaken shows that they covered the same basic content and teaching methods. The training was very practical, based essentially on role plays or case studies. The content revolved around the acquisition of techniques such as ways of managing the discussion, active listening or reframing or the search for solutions through principled negotiation. The training could also be characterised as interdisciplinary, in that it mixed psychological (management of emotions and so on), legal (legal studies, introductory law) and sociological (strategic and systemic analysis) approaches.¹⁰ While on the subject of content, training in the area of community mediation is distinctly different from other forms of training. Programs for these mediators barely discuss conflict management, but focus instead on the knowledge of institutions, the ways in which they function and so on.

Under the impetus of mediation associations and universities, generalist mediation courses are gradually being established and these have contributed strongly to a unified vision of mediator identity.¹¹ But mediators who receive this type of training are still in the minority; most training is specialised, as evidenced by the creation of the State Diploma of Family Mediation in 2004. This makes it more difficult to create a sense of common identity among mediators than among other professionals involved in conflict management. The fact that specialisation has been maintained is illustrative of the desire of mediator organisations to use training as a way of defining their professional identity as well as limiting access to their area of expertise, with the approval of the course providers and the procedures by which mediators are accredited.

Standards of practice and certification of mediators

If training processes have contributed to the creation of a mediator identity, the drafting of codes of conduct and ethics have tended to favour the unification of the various mediation practices at the heart of each field of mediation. As occurred in the area of training, it was the associations concerned with family mediation and victim-offender mediation who endeavoured to draw up codes of conduct to regulate this new job or profession. In fact, an examination of the content of these codes shows that they represent true 'professional charters', establishing the characteristics and obligations of a mediator (lack of decision-making power, impartiality, confidentiality), and the process and the outcome of mediation (voluntary participation, fully-informed consent). As with training, codes of conduct represented for mediator bodies instruments for defining and regulating the new profession.

Attempts by federal organisations such as the National Centre of Mediation (le Centre National de la Médiation) and the Network of Associated Mediators (le Réseau des Médiateurs Associés) to put forward a general practitioner code were destined to failure and the codes drafted by the

large mediation bodies are still current, for example, those of the APMF and FENAMEF for family mediation and INAVEM for victim-offender mediation.¹² The Government has also been active in this area. The National Council of Family Mediation drafted an ethical framework for family mediation on 22 April 2003,¹³ and in the domain of neighbourhood mediation the Government was also instrumental in the adoption of a Charter of Social Mediation on 1 October 2001.¹⁴

Unlike Anglo-Saxon countries, mediator bodies in France did not accord as much importance to accreditation procedures, but preferred to recognise diplomas of mediation issued by the universities or the large mediation organisations. This phenomenon is not unique to mediation but is consistent with all professions in France, which explains the lobbying of Government by family mediation bodies to establish a diploma similar to those obtained by other conflict management professionals. In this respect, the requirements necessary to become a family mediator are the most precise, set out in a diploma delivered by the State: the State Diploma of Family Mediation. To gain access to this training, students must have studied for at least two to three years after the baccalaureat in areas such as social work or health (baccalaureat plus two years) or law, psychology or sociology (undergraduate or masters degree). To obtain the diploma, candidates must analyse a mediation, maintain and present a folio of prescribed written assignments and sit a written examination to test their knowledge of law, psychology and sociology.¹⁵

In other fields of mediation, a number of pieces of legislation have established the conditions and prerequisites for achieving recognition as a judicial mediator. For example, the decree of 29 June 2001 established the requirements for victim-offender mediators, stating only that a mediator should not carry on legal activities in a professional capacity, should not have been sentenced to a term of imprisonment and should present guarantees of competency, independence and impartiality.¹⁶ With regard to civil matters, the decree of 22 July 1996 laid



down the conditions which should be fulfilled by a mediator in order to carry out a civil mediation: he or she should not have been sentenced to a term of imprisonment, should 'possess by reason of present or past exercise of an activity the requisite qualifications having regard to the nature of the dispute' and 'according to the case, provide evidence of training or experience suitable for the practice of mediation'.¹⁷

Before the publication of this legislation, the competencies a mediator should possess were usually set out in the codes of conduct of the associations. That of the APMF, for example, specified on 5 December 1998 that a mediator should 'already possess technical skill in the family arena either as a professional in the human and/or legal sciences or by way of experience acquired within the framework of an organisation having family support as its object'.¹⁸ Mediators should also have followed specific training as set out in the framework of the European Charter for the training of family mediators.

The influence of mediation models on training and accreditation

The field of mediation is not only a new domain of intervention or action but also a market, which explains why debate has tended to crystallise around questions of training and accreditation. One of the first bones of contention occurred between lawyers and therapists over how to regulate the new domain or market that is mediation. The difference in perspective was particularly evident in the discussions that took place prior to the creation of the State Diploma of Family Mediation, when the lawyers strove to obtain greater recognition of their qualifications and training for the purposes of assessing prior experience. Lawyer bodies were always opposed to the creation of mediation as an independent profession, contending that it could be regarded simply as an adjunct to the professional work of a lawyer.¹⁹

A second area of contention places those who support the professionalisation

of mediation in opposition to those promoting the preservation of some form of the volunteer work particularly practised by community mediation groups. For the latter, the involvement

With regard to the accreditation of mediators, there exists a multiplicity of mediator bodies that set up their own list of accredited mediators. Most have already been mentioned. They include

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of the community in conflict resolution is a form of socialisation and action that allows the social bond to be repaired in the wake of a dispute. It is for this reason that most training in the community sector comprises around 40 hours and that supervision of the work of these mediators is ongoing and allied to continuous training. Thus the association AMELY accredits its mediators after an initial training period of 40 hours followed by 50 hours of practical training at a centre under the supervision of an experienced mediator, a total of 90 hours training.

However, 90 hours of training at AMELY is far from the 560 hours of training required for family mediation. Such discrepancies result in the third area of debate for mediators: the effect of the differences in length of courses for mediation professionals in different fields such as family mediation, business mediation or victim-offender mediation. Apart from family mediation, the duration of training usually ranges from around 40 to 100 hours. Again, with the exception of family mediation, there is no legislation stipulating the content of mediation courses, which explains the diversity of material presented to students. These differences in duration and content create tensions between the various mediator bodies as to what constitutes a qualified mediator and what is the appropriate demarcation of the fields of intervention.

large specialised organisations such as the National Federation of Family Mediation (la Fédération Nationale de la Médiation Familiale, FENAMEF), the Association for Family Mediation (l'Association pour la Médiation Familiale, APMF) for family mediation; the National Institute for Aid to Victims and Mediation (l'Institut National d'Aide aux Victimes et la Médiation, INAVEM) for penal mediation, the Network of Mediators in Business (le Réseau des Médiateurs en Entreprise, RME) for business mediation, the National Network for Access to Law and Mediation (le Réseau National d'Accès au Droit et de la Médiation, RENADEM) for neighbourhood mediation, the Federation of Centres of Mediation (la Fédération des Centres de Médiation, FCM) which essentially comprises lawyers, notaries and auditors. In addition, there exist a number of less influential general mediator organisations such as the National Centre for Mediation (le Centre National de la Médiation, CNM), the National Association of Mediators (l'Association Nationale des Médiateurs, ANM), the Network of Associated Mediators (le Réseau des Médiateurs Associés, RMA), the Syndical Chamber for Mediation (la Chambre syndicale de la Médiation) which each have their own criteria for accreditation.



Future trends

In conclusion, it appears that over time an increasingly significant institutionalisation of mediation can be discerned whether in the area of training or accreditation procedures. For the future, one can hypothesise that the length of courses will continue to increase in all areas of mediation. It is also likely that a modification will occur in the training marketplace with the increasing involvement of large training bodies such as the institutes of social workers and the universities,²⁰ at the expense of the private organisations set up by the pioneers of mediation.

In the years to come, it is also likely that the professionalisation of mediation will continue, with the gradual establishment of long courses culminating according to the French model, in professional diplomas, such as the State Diploma of Family Mediation, which may in their turn tend to be superseded by masters of mediation delivered by the universities. The absence of a national federal structure such as the ACR in the United States does not currently favour the creation of a common mediator identity and this will only occur in France if common training and accreditation procedures can be established. ●

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Translated by Deborah McFarlane, Melbourne, Victoria.

Endnotes

1. Bonafé-Schmitt (J-P) 'La Médiation sociale et pénale' (Community and victim-offender mediation) in Bonafé-Schmitt (J-P), Dahan (J), Salzer (J), Souquet (M), Vouche (J-P) *Les médiations, la médiation*, Erès-trajets, 1999.

2. Bonafé-Schmitt (J-P) 'La Médiation sociale et pénale' in Bonafé-Schmitt (J-P), Dahan (J), Salzer (J), Souquet (M), Vouche (J-P) *Les médiations, la*

médiation, Erès-trajets, 1999 at 36.

3. Translator's note: By 'judicial whole' the author means the courts (judges and staff), lawyers, notaries and other legal professionals.

4. Translator's note: The term 'community' or neighbourhood mediation has broader connotations in French than in English as in fact this sentence demonstrates. It connotes not only neighbourhood mediation, but to some extent includes the work carried out by those who act as intermediaries between members of the community and government, especially members of the immigrant communities and government, in order to reduce not only the usual conflicts that occur between citizens and government, but cultural conflicts as well; hence the involvement of such mediation in internal security.

5. DIV and CNFPT, *La médiation sociale. Une démarche de proximité au service de la cohésion sociale et de la tranquillité publique* (Neighbourhood mediation. A step towards social cohesion and public order), Repères, 2004.

6. From 1987 onwards, the associations AMELY (Association Médiation Lyon) and CMFM (Centre de Médiation et de Formation à la Médiation) offered training in neighbourhood mediation. L'Institut de Formation à la Médiation (Institute for Mediation Training) (IFM) was one of the first organisations to propose a longer period of training for mediators.

7. Because of a proliferation in the organisations offering mediation courses, it is difficult to provide an exhaustive list, but private bodies include l'Institut de Formation à la Médiation, l'Institut Européen de Médiation Familiale (European Institute for Family Mediation), l'Ecole des Parents et des Educateurs, Mediatiss, MEDFORM, Dialogue-Médiation, AMELY, IMFSO and also l'Institut des Sciences de la Famille de l'Université Catholique. Public organisations include the Universities of Paris X, Paris V, Provence, Bourgogne and Lyon.

8. These comprise the Association Pour la Médiation Familiale (APMF or Association for Family Mediation) and the Fédération Nationale des Associations et Services de Médiation Familiale (FENAMEF or National Federation of Family Mediation

Associations and Services).

9. Above note 5 at 9.

10. For example, the State Diploma of Family Mediation provides for a total of 560 hours, which can be broken down into 490 hours of theoretical training and 70 hours of work experience. The theoretical training consists of a module of 315 hours on the techniques and processes of mediation, two modules of 63 hours each on psychology and law and a 35-hour module on sociology. There is also a module of 14 hours on the methodology of report-writing.

11. For example, those offered by the Institute for Medication Training (l'Institut de Formation à la Médiation) and the university diploma of negotiation and mediation from the University of Paris V (le diplôme universitaire de négociation et médiation de l'Université Paris V).

12. For example, the Code of Ethics for Family Mediation adopted by the APMF on 5 September 1988.

13. The National Council for Family Mediation was created on 8 October 2001. One of the results of its work was the creation of the State Diploma for Family Mediation.

14. Charter of neighbourhood mediation put out in DIV and CNFPT, *La médiation sociale*, above note 5 at 263.

15. Circular DGAS/4 A no 2004-376 of 30 July 2004 relating to the methods of preparatory training for the State Diploma of Family Mediation and the organisation of the tests for certification.

16. The decree no 2001-71 of 29 January 2001 replaced the decree n°96-305 of 10 April 1996 which set out similar conditions for mediators.

17. Decree no 96-652 of 22 July 1996 relating to court-based conciliation and mediation.

18. Code of conduct for family mediation adopted by the APMF on 5 September 1988.

19. Bonafé-Schmitt (J-P) and Robert (J-C), *Les médiations: logiques et pratiques sociales* (Mediation: logic and social practice, GIP Droit et Justice, May 2001).

20. The Master of Mediation coordinated by the Institut Université Kurt Bösch (Switzerland) was the first master of mediation in Europe and the Master of Mediation created by University Lyon II is the first master of mediation in France.