

# NEW SOUTH WALES



## About the author

Shelby Timmins | [Divorce Done Differently](#) | [Divorce 4 Kids](#)

Shelby Timmins is doing law differently. She holds a Masters in Law from the University of Sydney, is a Nationally Accredited Mediator, Family Dispute Resolution Practitioner, Conflict Coach, Parenting Coordinator, Collaborative Professional and Doyles 2019 and 2020 recommended mediator.

Shelby is a training faculty member of the International Association of Collaborative Professionals, Co-Vice President of Collaborative Professionals (NSW) Inc and President of Southern Sydney Collaborative Professionals.

Shelby been an Accredited Family Law Specialist and has over 18 years experience as a family lawyer and spent much of this at one of Sydney's most respected specialist Family Law firms. With a vision of encouraging divorce and the breakdown of families to be viewed in a more respectful and future focussed way, Shelby established **Divorce Done Differently** and **Divorce 4 Kids**. Her practice specialises in mediation, interdisciplinary collaborative practice, conflict coaching, separation and divorce support and family law wellness workshops. Shelby is also an author and presenter in the areas of family dispute resolution and interdisciplinary collaborative practice.

## Family law in lockdown: the lessons learned and the road ahead for dispute resolution

COVID-19 came out of nowhere, bringing chaos to conflict as we all scrambled to find new ways of living and working. And we continue to see seismic change – much of which is likely to last for many years to come.

Since March 2020, it's difficult not to be impressed by the endeavours of all those involved in the family law space. We have been delivering outcomes many of us deemed unlikely or perhaps impossible only a few months ago. Collectively, we've pulled together to create an environment which has allowed us to continue to look after the families, the heartbeat of our working lives. Most of us weren't prepared, but we persevered.

In the early days, there was hope that 'normal' working conditions (whatever that actually meant), would resume relatively quickly. The current rumblings indicate that COVID-19 restrictions will come to a natural conclusion at some point in the coming months (as long as we don't have that dreaded 'second wave'). It's now necessary to reflect on what worked well, and what the road ahead could look like.

## The impact of COVID-19 on family law dispute resolution

Despite COVID-19, family law disputes continued. Many escalated – and as they say, the show had to go on. Immediate and creative ways of providing an ongoing 'out of Court' option to resolving family law problems were staring us down. I have deliberately removed the word 'alternative' from any description associated with 'dispute resolution' in this article. The concept that cost effective, time efficient, emotionally kind and client-centric methods of resolving disputes being described as 'alternative' in 2020 is archaic.

In my view, dispute resolution should be considered as part of the norm for those who have decided to part ways and the professionals who support them. The concept of working together to reach acceptable outcomes for families who have lost their way – more commonly known in family law as mediation, interdisciplinary collaborative practice, parenting coordination, conflict coaching and any other dispute resolution services where parties stay out of Court and work things out – isn't 'alternative'. These are mainstream processes, which are used regularly and effectively, and deserve their place on the divorce podium.

### **Favourite dispute resolution technology forums**

During these unprecedented times, innovative measures such as online mediations and collaboration with professionals (typically appropriately 'suited and booted' from their homes) took place. A multitude of video and telephone conferencing platforms, including Microsoft Teams, Zoom, Skype, Facetime, AAPT Teleconferencing, WhatsApp and the telephone, were regularly used.

Every Court, law firm and individual gravitated to the online forum. Particular processes and new procedures to protect confidentiality, ensure safety of staff and clients, and to make things run like 'clock work' began in earnest. We all had to swiftly adapt to the various technologies being used, rethink how we worked within our own organisations and how we worked together.

### **Responses in the dispute resolution space**

In the dispute resolution space, experts were acutely aware that the pandemic meant that instead of work dissipating, it would increase rapidly as clients desperately tried to find 'calm amongst the chaos'.

The sources and causes of disputes didn't dissolve. Quite the opposite. Cases and their complexity grew.

Research demonstrates that family violence can increase by at least 30% after emergency and natural disaster situations. For many, COVID-19 triggered employment and housing insecurity, financial difficulties and increased, sustained periods of time together at home, while isolated from other people. Factors that we know can increase the likelihood, frequency and severity of family and domestic violence. We needed to offer a solution for these families to try to work this out.

### **Fear of the unknown and how we made it work**

In the early days of COVID-19, when most of us were feeling uncertain about what it all meant, how long it would last and how it would impact our work, I vividly recall receiving an email from a highly respected, experienced colleague. It went something like this: *'Shelby, can't we just meet in person? This online mediation you've proposed is going to be a disaster.'* I had a sense this was coming. I was acutely aware of his fear of the unknown.

The fear came from a good place. A place where his priority was to help, not hinder, a client's troubles. A place where experience had shown him that deals are typically done in person. Where reading the room and watching someone's body language is imperative. A place where shaking someone's hand and looking into their eyes can tell you a lot.

I took a deep breath, reminded myself to respond, not react, and I called him. We talked. I acknowledged it wasn't perfect and that we were all in the stage of learning new stuff. I walked my colleague through the technology we would be using. I talked to him about how I would do my best to recreate our in-person mediations, but this time it would be online to keep everyone COVID-safe. I talked about my familiarity with the platform to be used and how we could create breakout rooms for private discussions, share documents in live time, use electronic whiteboards for agenda setting, option generation and to reflect any agreements. How passwords and waiting rooms could be used to provide a level of privacy for the meeting. I shared the additional clauses I had inserted into my mediation agreement that covered virtual meetings, and we discussed him doing the same. I suggested my preliminary conference/intake session with his client be conducted using the same facility, so that the client became comfortable and familiar with the technology too. We talked through the safety concerns and came up with a plan together. I ended the call suggesting he could also use Zoom to 'touch up my appearance' if he felt he needed it on the day. We laughed.

**“ We made it work together. We resolved the dispute. We created calm for a family in desperate need. ”**

## 10 things I did to make it work

1. I upskilled in terms of my knowledge of the available technology.
2. I asked a lot of questions and watched YouTube videos on 'how to stop Zoom bombing'.
3. I convinced my husband that in his spare time, it might be a good idea to install some IKEA flat packs as cupboards for my new home office.
4. I invested in a good headset, second computer screen, a moveable camera and electronic whiteboard.
5. Breakout rooms, screen sharing and Zoom virtual backgrounds became my best friends to disguise the mounting pile of washing.
6. Accepting technology is literally child's play – asking my 13-year old for afterhours help – became a common call.
7. I learnt the hard way that it's important to turn off email alerts and other screen pop-ups.
8. During online meetings I set my alarm to remind myself that breaks were absolutely necessary, and that shorter meetings often worked best.
9. I became curious about how others were making it work and adopted the things I liked.
10. I realised that watching yourself through a highlighted box for 8 hours a day was exhausting.

**“ Collectively, we genuinely pulled together. I think they call it collaboration!**

I noticed that my colleagues and I became more patient and willing to help. We walked each other and our clients through trial runs of the technology being used before the real meetings. We learnt how documents could be securely uploaded and shared; settlement agreements signed and exchanged. We brainstormed the additional clauses in our mediation and collaborative agreements that needed to be included to cover virtual meetings. We became more conscious of our clients' safety and I conducted online meetings out of hours, from unusual locations such as cars and spare bedrooms, and we accepted that children may be around and did our best to ensure they were otherwise distracted and

out of earshot. We took regular breaks to avoid screen overload. We agreed that if the online technology failed; we would simply pick up the telephone. And we did. We reassured each other that it would be okay. And it was.

## Learnings from lockdown when it comes to dispute resolution

In a nutshell, the COVID-19 dispute resolution experience has been pretty positive! Disputes have been successfully resolved online often efficiently and with reduced costs. It's offered a solution to families in need when in-person meetings were impossible. I also acknowledge it hasn't been perfect and there is some resistance regarding the dehumanisation of what is such a human-centric process.

While there are clearly safety and time-saving advantages offered by resolving disputes online, and it enables us to literally work with anyone, anywhere – there are a few downsides worth considering:

- Technology troubles lead to increased frustration particularly for parties who are already stressed.
- Risks to confidentiality when using online applications.
- Difficulty in building rapport.
- Complications in reading body language.
- Absences of human insight and empathy.
- Disadvantages for those who are not tech-savvy.
- Lack of accountability, regulation and guidelines.

My key takeaways are:

1. Advocacy has evolved.
2. Face-to-face is definitely 5 star.
3. Dispute resolution in a virtual world can work.
4. It ain't perfect, and that's okay.
5. Reaching remote communities and colleagues was an unexpected bonus.
6. Working from home can be isolating.
7. We have all upskilled and become a little more patient and compassionate.
8. Fit the forum to the fuss and work with the most appropriate facility for resolving your specific dispute in a cost and time efficient manner.

## **Our new dispute resolution reality – where to from here?**

For those of us engulfed in the world of separation, divorce and all the associated trimmings, we have had to work with and will continue to manage a high volume of cases, reduced resources, unacceptable backlogs and sub-optimal settings. We have reached a juncture in our family law dispute resolution journey. Now is not the time to sit back. We need to lean in and continue to find new ways of making it work. This means we all need to continue to be collaborative, compassionate (with each other and with our clients) and creative in our processes and solutions.

I acknowledge some of our experiences may have been more positive than others. However, change is upon us and I don't see us returning to our former 'normal'.

Despite the drawbacks, it's likely that online dispute resolution platforms will continue to evolve. There are certainly advantages to integrating the online dispute resolution methods into more traditional models, offering the most potential to enhance, rather than replace, traditional in-person dispute resolution.

The human insight gained from in-person interactions is irreplaceable. The magic that happens in human, 'face-to-face' contact is difficult to replicate online. Instead, we may see the emergence of hybrid models, where the wonders of the online world increasingly enhance traditional models.

As with so many things in life, there isn't a simple or straightforward response – and therein lies the beauty of change and the opportunity it creates. As I recently heard, it's not as simple as *'digital is sufficient'* and *'in-person is unnecessary'*.

## **Online Mediations/Meetings**

1. The Mediation/Meeting may be conducted in person, and when agreed, via video conferencing and/or telephone.
2. The Mediator/Facilitator, the parties, lawyers and any other person attending the mediation, including any expert/s and/or support person/s agree to the following:
  - a. Not to electronically record any aspect of the meeting on any device.
  - b. To only have agreed persons present and to inform all attending the meeting, who they may have present during the meeting, including by telephone and video conferencing.
  - c. Not to share the content of online chats, questions or other documents or communications with anyone who is not part of the process.
  - d. To immediately bring to the attention of everyone attending the meeting, if they can hear and/or see any content of a private session or breakout discussion that does not include them, including breakout rooms on video conference.
  - e. Not to share the video or telephone conference link and/or password with any person not a part of the meeting.
  - f. Anyone attending the meeting in any capacity must be over 18 years of age and if children are in the same location, that the mediator/facilitator is informed of this and that all steps be taken so that any child/ren not be able to hear or see any part of the mediation/meeting.
  - g. Everyone attending the mediation/meeting to ensure they have appropriate technology and Wifi connection, noting that if the mediation/meeting needs to be rescheduled or is substantially delayed due to someone's lack of technology or Wifi, cancellation fees may apply.
  - h. Everyone attending the mediation/meeting will come prepared as if it is being conducted in person, including but not limited to wearing appropriate attire, being free from distractions and interruptions and set up in a suitable location.
  - i. Everyone attending the mediation/meeting in any capacity, will sign the mediation agreement.
  - j. The mediation agreement can be signed by a participant electronically in separate parts and the original posted to the mediator/facilitator.
  - k. The mediator will not be held responsible for any breach of confidentiality due to the failure in any audio-visual technology/equipment.