

2020: a vision of the future of family law

As resolution celebrates a highly successful first 25 years, a reflection on the dramatic changes made by the Code of Practice and the conciliatory approach also causes practitioners to reflect on the very many other changes in family law practice over this past quarter decade.

Change always changes more rapidly. Any prediction for our society in 25 years time is pure science fiction. But what of the next decade? What will be the practice of family law for those now just starting as solicitors when they will be the junior and middle partners running both their law practices and steering the organisation into the further future?

This article looks at some possible changes by the year 2020. Will we then have perfect vision of what is family law fairness or will it be simply déjà vu? Travel with me to 2020!

Within the law office, meetings with clients are a rarity, replaced by video conferencing and video mails. The infrequent hearings at court which remain after the dramatic changes in law and procedure are most often conducted by video links, with judges, advocates and clients in separate locations. This saves travel, time and costs. Lawyers no longer need to be close to the court room nor to the centres of communities. Most family law work is undertaken in a few large centres around the country.

The qualification of being a solicitor had become increasingly devalued and cases with any complexity are only dealt with by accredited lawyers who meet the highest standards of the resolution accreditation scheme

There are just a few conventional partnerships remaining. Most became limited liability partnerships many years ago. The most dramatic change was that ownership of law firms passed from the exclusive preserve of lawyers. Many law firms had been purchased, or simply taken over because of their debts in struggling to cope with the costs of technology, by some local companies, a number of national companies and by international corporations. Some lawyers are on the management board of the legal services department but very few now have any ownership. Lawyers are simply employees. The public had uniformly welcomed these changes and felt much more comfortable dealing with recognised brand names, even if not previously known for providing family law services.

Typists ceased to be employed many years ago; lawyers operate their own digital dictation. Personal assistants had quickly become paralegals and had taken over a considerable amount of the day-to-day work.

Successive governments had grown weary of trying to make legal aid work within private practice. It is now all undertaken by public offices employing lawyers and paralegals in key centres around the country, receiving instructions from customers, specifically no longer called clients, in video booths in community centres.

Public law children work had been recognised as a particularly costly drain on public resources. It had been taken out of the court system, save for exceptional cases and appeals, and is now heard within tribunals with relaxed rules of evidence, non lawyer chairs, and specifically cutting back on the number of advocates attending.

The number of collaborative lawyers giving up altogether any non collaborative law work had significantly increased, as some lawyers discovered how delightful it was not to have the worry about the other side issuing proceedings without warning. This new body persuaded the government and the Law Society that collaborative lawyers acting alone could thereby act for both parties on matters where there was no

real conflict or possibility of proceedings. They now act in the reaching of pre marriage agreements and the division of assets on divorce. They have formed close links with notaries on continental Europe

Alternative dispute resolution, now known as PDR, primary dispute resolution, consists of a variety of models. Many specialist lawyers had become directive mediators, specifically helping the parties reach an agreement through a mixture of traditional mediation and early neutral evaluation. Every party has to attempt some form of PDR before they can commence court proceedings. In children applications, this includes compulsory education on the impact of parental separation on children

England bowed to pressure from Europe and introduced binding financial agreements including pre-marriage agreements. However England still insists the parties have separate legal advice or alternatively consult a collaborative lawyer together. Continental Europe still enforces agreements without disclosure and separate representation but each has agreed to recognise each other's agreements!

Alan Miller won his case to the European Court of Human Rights against the United Kingdom government. The European Court held English financial provision law was uncertain, unclear and unfair. In any event, a succession of conflicting higher Court decisions had left practitioners completely uncertain of the law on which to advise a settlement. Accordingly the English government had abolished financial provision law and instead created a highly sophisticated computer software program. Upon entry of the relevant information by the couple, the electronic family court judge, as the system is known, produces an award which is binding. The implementation of this award is then carried out by collaborative lawyers acting for the parties. Only in certain exceptional and unusual circumstances, known as departure provisions, is there reference to lawyers and the family law courts, and then initially via binding family arbitration. There had been some resistance to the outcomes in a few hard cases but overall the public had preferred the finality, speed and certainty of the electronic family court judges.

Every member of society has an identity card. Vital information is incorporated within the card. Decrees absolute of divorce ceased to exist on paper as the family court judge makes the necessary change electronically to the ID records of the parties.

After another colossal public debate, no-fault divorce was introduced but specifically on the basis that it is dealt with in the family proceedings court, becoming an automatic process without any hearings. It requires a period of one year notification and either party can give a notification to the court that the one-year period was commencing. To appease sections of the community, the notification can be given three times.

Judges had become vociferous about parents who through intractable hostility made difficulties with contact. After a number of cases in which the primary residential parent had been sent to jail for refusing to comply with contact orders and when residence had been awarded to the other parent, contact orders became increasingly complied with. However non primary residential parents who do not have substantial contact with their children are penalised by paying much greater child support payments. The new CSA has at last gained acceptance, and operates through the Inland Revenue computer system which at last now actually works.

After many protests about the law, there was a statutory change to the relocation law giving greater weight to the family life of the left behind parent and grandparents, making international relocations much more difficult especially for lifestyle reasons.

The Hague Conference Child Abduction Unit had set up a global policing arrangement to deal with, "name and shame", those countries who regularly breached their Hague Convention child abduction obligations. Moreover an international court sits in each continent to deal with child abduction cases, comprising a couple of permanent judges and rotating national family court judges who then go back to their own domestic courts, thereby producing higher standards and consistency.

Although Brussels refused for many years to give way on the first to issue principle, the European Union eventually accepted new rules on jurisdiction of divorce across Europe, giving first priority to agreements, and then a hierarchy of jurisdiction based on different forms of connections so there was no doubt which country had the closest connection to deal with the affairs of a family. By this device, there was no further debate on applicable law.

A major success story from Europe had been the introduction of reciprocal enforcement of maintenance and other (non “maintenance”) family Court financial orders, automatically recognised across Europe and many other countries, and directly enforceable against foreign real property, foreign banks and foreign employers etc.

The European system of family law had become so successful that several westernised countries outside of Europe had joined, creating a unified family law jurisdiction across much of the developed world.

Space travel had become more frequent and The International Family Law Group had become the first family lawyers to set up an extra terrestrial office, on Venus.

The National Committee of resolution looked forward to its 40th anniversary and congratulated themselves on a history of incredible success and involvement in reform of law, practice and procedure. However they admitted that the organisation had made one major mistake in its history. Quietly and without any fuss, they changed its name.

These comments are personal conjecture and do not necessarily represent the views or policy of Resolution

David Hodson
dh@davidhodson.com
© May 2020