

# A Personal Reflection on the practice of Family Law during COVID-19

By Claire Cantrall



In March this year I was preparing to emerge from my second stint of maternity leave.

I was very much looking forward to leaving the house, track pants and offspring behind to re-join my colleagues of six years at Waratah Chambers in the practice of Family Law. No such luck. I have spent the past three months working from home, baby and toddler underfoot.

COVID-19 rapidly and dramatically impacted on my practice, and those effects are still unfolding. Practically speaking, the initial response was total confusion from all sides as to how matters, which had been set down for hearing more than 12 months prior, could possibly proceed.

In the first two weeks, most hearings were vacated as everyone contemplated the apocalypse upon us. Very quickly thereafter, telephone and video hearings emerged as the new norm, with the courts and the profession attempting to preserve as much time as possible for litigants who already faced a significant wait for court time.

Family law has always been about what goes on at home, and thanks to COVID-19, home was the only place where anything was going on. New matters and old became dominated by the impossibilities of sharing households, finances and children between people who suddenly have more anxiety, less money and no capacity to agree. Relationships which would have ordinarily been able to



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dissolve without incident, in some cases needed judicial intervention to determine where parties might live, and the short-term arrangements for children. Urgent parenting matters in particular revealed situations where the stakes were higher.

Evidence was obtained from clients in the home environment, at times from parents who had no capacity to have others care for

children. Affidavit evidence seemed to need updating the minute it was electronically filed, as events were unfolding within families, schools and communities so quickly. The courts provided latitude where possible, and there was a collegial effort to do what was possible in most instances.

For family law litigants who happen to have their 'day in court' during COVID-19, the experience is no doubt more challenging. Obtaining instructions and giving frank advice is far more difficult over electronic media, and I have experienced fewer matters settling as parties are not forced to wait out the day in each other's presence in the hallowed halls of the courts.

Cross-examining a witness via video while they sat in bed, doona and all, was a highly unusual experience for me, but in many ways summed up the new norm. The hardest feature of the work has been the absence of the physical court room dynamic, which assists counsel, judge and litigant to navigate the space between the words, which is where the most important meaning is often made. I have, however, seen significant benefit in administrative hearings being conducted over the phone and without much ado, saving time and costs. Continuing this initiative into the future could be a sensible measure.

I am hopeful that the latter half of this year will see us return to the court room and the offices of our colleagues in a more meaningful way.

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