

Episode 136: Summary

Episode name: Shuttling Back and Forth: Tips for Alternative Dispute Resolution in Legal Practice

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What area(s) of law does this episode consider?

Alternative Dispute Resolution; Mediation.

Why is this topic relevant?

In the intricate landscape of family law, Alternative Dispute Resolution (ADR) has emerged as a vital tool for resolving disputes efficiently and amicably. ADR encompasses various processes like mediation, arbitration, and conciliation, which allow parties to come to an agreement without the lengthy and often costly court proceedings. This approach is particularly significant given the courts' expectations that parties will first seek resolution through ADR before resorting to litigation, thereby promoting a more constructive atmosphere for family law matters.

The importance of ADR cannot be overstated, especially in the context of family law disputes where emotions run high, and relationships are often strained. By employing ADR methods, solicitors can help clients navigate their conflicts in a more controlled environment, facilitating better communication and understanding between parties. This not only aids in achieving fair outcomes but also reduces the overall financial and emotional toll of legal disputes on families.

What are the main points?

- Alternative Dispute Resolution (ADR) encompasses a variety of methods of resolving disputes outside of court. Among other benefits, ADR methods may be more time and cost efficient than seeking resolutions through court proceedings.
- In mediation, an impartial mediator guides the parties in identifying the core issues of a dispute, exploring options, and negotiating a mutually acceptable resolution. If an agreement is reached, the mediator helps to formalise the agreement into a legally enforceable contract.
- Although all kinds of legal disputes can involve heightened emotions, family law matters are often emotionally charged, especially following a relationship breakdown, or matters involving children.
- Family law therefore requires a personal and empathetic approach, focusing on helping clients not only with resolutions to their immediate disputes, but also ensuring that they provide resolutions that are sustainable over time, particularly where the parties will have ongoing responsibilities to each other.

- Resolving disputes outside of court may allow clients to reach unique agreements that may not be possible through a traditional court order, such as planning to sell a house in the future and splitting the entitlement.
- Position or mediation papers can contain intentionally inflammatory material in an attempt to paint the other party in a negative light. The goal may not always be resolution but rather adjusting expectations and setting the right tone for productive discussions.
- In future, inheritance disputes are expected to become more prevalent and complex, leading to an increase in the use of mediation services. Large firms of mediators, similar to law firms, are likely to become more common, with increasing use of tandem mediation.

What are the practical takeaways?

- Lawyers play a crucial role in framing a dispute for their clients. Often written communication to the other party influences their perception and, if hostile or inconsiderate, may lead to a worse outcome for their client.
- Lawyers can become personally invested in their cases and possess a strong sense of empathy towards their clients. This emotional investment can heighten the emotions in negotiations and escalate disputes beyond their original scope.
- To navigate such situations productively, it is advised for lawyers to focus on self-regulation and maintain a positive, cooperative attitude to avoid escalating or creating unnecessary conflicts.
- It is important to assess the significance of disputes before bringing them up, as not all matters hold equal importance. It is crucial to prioritise meaningful disagreements rather than getting caught up in every minor detail.
- When reaching interim agreements in child custody matters, it is important to set expectations and understand the potential outcomes, even in the absence of a final settlement. Mediation can be helpful in reaching agreements, especially in complex cases involving multiple parties.
- Asking your client about what they think the other party's perception of the situation is may reveal insights into their thought process. This line of questioning can help understand the underlying reasons for disputes and uncover new information.
- Following the traditional model of mediation, where mediation is done jointly in the same room, may be ideal for encouraging cooperation and accurate understanding of the other's views. In cases where a client may struggle to

maintain composure or risk derailing the process, shuttle mediation may be more suitable.

- Clients should be advised of the potential long-term effects of their decisions. Establishing open communication and mutual respect from the beginning can help individuals navigate future dealings with each other.