Readiness for Family and Online Dispute Resolution

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Abstract

The International Conflict Resolution Community has developed considerable theory and many case studies about ripeness and readiness for mediation. Readiness involves a readiness of the disputant to resolve the conflict, while ripeness indicates the time is appropriate to attempt a resolution. There is a sparse amount of theory about these issues in commercial and family dispute resolution (FDR). We discuss the practice of readiness for mediation, FDR and online dispute resolution and develop practices about when to mediate such disputes – especially when domestic violence has occurred.

Keywords: online dispute resolution, family dispute resolution, domestic violence, ripeness and readiness, divorce.

1 Readiness and Ripeness in International Conflict Resolution

In International Conflict Resolution, time is generally not of the essence: the parties can and do wait for weeks, months, years and even decades until they are ready to negotiate! For example, the Hundred Years' War between England and France lasted from 1338 until 1453, and ended only when England itself was involved in a Civil War (The Wars of the Roses, from 1453 until 1485). Hence, International Conflict Resolution researchers have spent much effort discussing when the appropriate time to commence the negotiation of International Disputes is.

Zartman[1] claims that there are essentially two approaches to the study and practice of negotiation:

a The notion that the key to a successful resolution of conflict lies in the substance of the proposals for a solution. Parties resolve their conflict by finding an acceptable agreement – more or less a midpoint – between their positions.

b The other holds that the key to successful conflict resolution lies in the timing of efforts for resolution. Parties resolve their conflict only when they are

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1 I.W. Zartman, 'Ripeness: The Hurting Stalemate and Beyond', *in* P. Stern and D. Druckman (Eds.), *International Conflict Resolution After the Cold War,* Washington, DC, National Academy Press, 2000.

> ready to do so – when alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties find themselves in an uncomfortable and costly predicament. At that point, they grab on to proposals that usually have been in the air for a long time and that only now appear attractive. He argues that *if the (two) parties to a conflict (i) perceive they are in a hurting stalemate and (ii) perceive the possibility of a negotiated solution,* then the conflict is ripe for resolution.

Zartman argues that it is obvious that the second school (b) does not claim to have the sole answer (since it refers to the first) but rather maintains that substantive answers are fruitless until the moment is ripe. The same tends not to be true of the first school, which has long ignored the element of timing and has focused exclusively on finding the right solution regardless of the appropriate moment.

Pruitt[2] discusses the notion of readiness theory. Readiness theory is a revision and elaboration of ripeness theory.[3] It differs from ripeness theory in that it uses the language of variables rather than necessary states and focuses on the thinking within a single party rather than on the joint thinking of both parties to a conflict.

Readiness is a characteristic of an organization (a 'party') reflecting the thinking of its top leaders with regard to a conflict with another organization (the 'adversary'). Pruitt claims that readiness fosters conciliatory behaviour. At moderate strengths, it encourages mild gestures of conciliation. If it increases in strength, the party's behaviour becomes increasingly conciliatory and may eventually take the form of a ceasefire and entry into negotiation. Additional levels of readiness are needed for the party to stay in negotiation and to make concessions. Some readiness is needed on both sides of a conflict for negotiation to start and agreement to be reached.

He states that readiness has two components, which combine multiplicatively:

a Motivation (that is, a goal) to end the conflict, which is fed by a sense that the conflict is unwinnable or poses unacceptable costs or risks and/or pressure from powerful third parties such as allies.
b Optimism about the outcome of conciliation and negotiation.

Pruitt states that motivation and optimism are compensatory, in the sense that more of one can substitute for less of the other. However, both must be present, in some degree, for any conciliatory behaviour to be enacted.

2 D.G. Pruitt, 'Readiness Theory and the Northern Ireland Conflict', *American Behavioral Scientist*, Vol. 50, No. 11, 2007, pp. 1520-1541.
3 Zartman, 2000.

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Although widely used, the predictive worth of ripeness theory is quite limited.[4,5] Its shortcomings prompt a search for complementary models to enhance the theory. Stimec *et al.*[6] claim that despite its popularity, ripeness theory has some limitations: poorly established generalization outside international situations, difficulty of objectifying empirical validation, limited consideration of non-rational factors and low predictability. The purpose of their study was to contribute to enriching ripeness theory by bringing in the theory of grief developed by Elisabeth Kubler-Ross.[7]

Wiget[8] claims that various factors seem to be important for the prospects of success:

1 The parties' willingness to settle the dispute (or at least to negotiate in good faith towards a settlement) is perhaps the most important factor of successful mediation.
2 The amount in dispute – An analysis of data from the Canton of Zurich indicates that the settlement rate falls dramatically with an increasing amount at stake.
3 The parties' ability to value the case – when neutral evaluation can be offered.[9]

In attempting to classify negotiation domains, Zeleznikow[10] examines whether concepts that are valuable in International Conflict Resolution can be transferred to micro disputes such as family mediation. He focuses on the Israel-Palestinian conflict. Zeleznikow claims that family disputes are very different from the Middle Eastern dispute because:

a Family disputes are micro disputes, whereas the Middle Eastern dispute is a macro one;
b Volume – there are a very large number of family disputes, whereas the Middle Eastern dispute is unique;
c Number of players — family disputes are primarily two party conflicts, whereas the Middle Eastern dispute is a multiparty conflict;

4 D. Druckman, 'Turning Points in International Negotiation: A Comparative Analysis', *Journal of Conflict Resolution,* Vol. 45, No. 4, 2001, pp. 519-544.
5 D.G. Pruitt, *Whither Ripeness Theory,* Institute for Conflict Analysis and Resolution, George Mason University, 2005, Working Paper No. 25, available at: http://ebot.gmu.edu/bitstream/handle/1920/10648/wp_25_pruitt_0.pdf?sequence=1andisAllowed=y> (last accessed 16 December 2018).
6 A. Stimec, P. Guillotreau, and J. Poitras, 'Ripeness and Grief in Conflict Analysis', *Group Decision and Negotiation*, Vol. 20, No. 4, 2011, pp. 489-507.
7 E. Kubler-Ross, *On Death and Dying,* London, Tavistock, 1978.
8 L. Wiget, 'Compulsory Mediation as a Prerequisite before Commencement of Court Proceedings-Useful Requirement to Save Resources or Waste of Time and Money?', UNSW Law Research Paper 47, 2012.
9 Currently, Australian Family Law does not offer the opportunity for neutral evaluation. With appropriate training there is no reason why Australian Family Dispute Practitioners could not provide early neutral evaluation.
10 J. Zeleznikow, 'Comparing the Israel–Palestinian Dispute to Australian Family Mediation', *Group Decision and Negotiation*, Vol. 23, No. 6, 2014, pp. 1301-1317.

d Dispute resolution process – in Australian Family Law there is a well-known transparent mediation process. This is definitely not the case for the Middle Eastern dispute.
e Use of agents – in family mediations the parties represent themselves. In the Middle Eastern dispute, the conflict is often conducted by intermediaries.

In this study, we examine whether International Conflict Resolution concepts such as readiness and ripeness to negotiate can be transferred to the family domain, and, in particular, how one can assist warring parents to be both ready and ripe for family mediation. We focus on the role of parent education.

2 Readiness in Family Mediation – The Critical Role of Parent Education

A factor Zeleznikow[11] did not consider in his comparison of International Conflict Resolution and family mediation was time. Thus, he makes no mention of the concepts of readiness or ripeness. In the case of international disputes, potential mediators can often wait until the parties are ready or ripe for a successful mediation.

In family mediation, there is no corresponding notion of readiness or ripeness. The reason for this is that parties have little choice regarding when to negotiate as one party will commence the family dispute resolution (FDR) process, generally without reference to the other party. If the other party refuses to participate in the process, court proceedings may commence. It might be a good idea to wait for anger to subside prior to commencing the FDR process. This allows parents to focus on the children's best interests rather than haggling about relationship issues.

Perhaps the unique factor underlying many family disputes (and this is certainly the case in Australia) is that such disputes are not totally or even primarily about the goals of the parents: they should be about the needs of the children. This leads to very non-traditional negotiation processes (although very well known in the family domain). And indeed, the process in Australia is known as Family Dispute Resolution and not Family Mediation.

2.1 Australian Family Dispute Resolution

As a major step in the Family Law Reforms of 2006, the Australian government provided financial support to open a series of 65 family relationship centres. The centres were funded to provide information, advice and dispute resolution to help people reach agreement on parenting arrangements without the need to go to court. Parkinson[12] claimed:

> Family Relationship Centres formed the centrepiece of major reforms to the family law system in Australia which were introduced from 2006 onwards.

11 *Ibid*.
12 P. Parkinson, 'The Idea of Family Relationship Centres in Australia', *Family Court Review*, Vol. 51, No. 2, 2013, pp. 195-213.

> They provide information and advice and offer free or heavily subsidised mediation of parenting disputes. They are an early intervention strategy to help parents manage the transition from parenting together to parenting apart in the aftermath of separation, and are intended to lead to significant cultural change in the resolution of post-separation parenting disputes. While Family Relationship Centres have many roles, a key purpose is as an early intervention initiative to help parents work out post-separation parenting arrangements and manage the transition from parenting together to parenting apart. (p. 195)

The term mandatory mediation has often been used to describe the resolution of disputes regarding the care of children in Australia. However, the Family Law Act 1975 (Cth) uses the term Family Dispute Resolution, which is defined as

> ...a process (other than a judicial process): a. in which a family dispute resolution practitioners helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and b. in which the practitioner is independent of all of the parties involved in the process.[13]

Parties who are seeking any court orders in relation to parenting are required to make a 'genuine effort' to resolve their disputes through Family Dispute Resolution prior to initiating court proceedings.[14]

Brown and Marriott[15] define mediation as

> A facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them, but uses certain techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication.

The essence of Australian FDR is that while the practitioner is impartial between the parties, she does have a very specific role – to safeguard the paramount interests of the child.[16] In this capacity she is compelled, where necessary, to offer advice about the care of children. A practitioner will not encourage clearly unsuitable parenting plans – for example, she would advise against any plan that involves having the children move house on a daily basis.

For a matter regarding children's interests to be raised in the Family Court of Australia, a party must attempt FDR, if the parties are unable to reach an agree-

13 Family Law Act 1975 (Cth) s 10F.
14 Family Law Act 1975 (Cth) s 60I.
15 H.J. Brown and A.L. Marriott, *ADR Principles and Practice,* Vol. 13, London, Sweet and Maxwell, 1999.
16 Family Law Act 1975 (Cth) s 60CA.

ment during FDR or have a practitioner decide that the case is not suitable for family dispute resolution, after assessing both parties. There are exceptions when there are long-term domestic violence issues, or mental health or positional issues.[17]

Hence, the process in Australia is described as family dispute resolution rather than mediation. Given the very distinct differences between international conflict resolution and family dispute resolution, we wonder if it is it even worthwhile considering the notions of readiness and ripeness to mediate in family dispute resolution.

Beck and Frost[18] discuss commonly accepted standards for competence to participate in mediation for divorce. They describe how their proposed standard can be incorporated in mediation training, model rules and state statutes and regulations, leading to more uniform and equitable decisions and increasing the procedural fairness of divorce mediations within and across jurisdictions.

They distinguish between two degrees of mediation readiness:

a *optimal* mediation readiness, resulting in a fair process and outcome, would require clients to have adequate knowledge of the relevant legal and financial aspects of their situation.
b *minimal* mediation readiness or competence to participate in mediation establishes a threshold below which a mediation should not proceed. It requires that the client has the ability to learn and understand basic information relevant to the mediation. Such a capacity should be a legal requirement in order for divorce mediation to proceed. Only by requiring a threshold level of capability and comprehension can we ensure that mediation participants are not divested of their legal rights outside of a judicial setting designed to protect the interests of the most impaired individuals.

They argue that what is missing is a unifying legal standard by which a client can be judged minimally competent or ready to mediate on the basis of a functional assessment of the client's capabilities in the particular context. They propose that a person is incompetent to participate in mediation if he or she cannot meet the demands of a specific mediation situation because of functional impairments that severely limit

1 A rational and factual understanding of the situation;
2 An ability to consider options, appreciate the impact of decisions and make decisions consistent with his or her own priorities; or
3 An ability to conform his or her behaviour to the ground rules of mediation

Beck and Frost argue that as of 2007, if a mediator feels that a party to a family mediation is unable to participate effectively, there are few guidelines for how to report that decision back to the court having jurisdiction over the case. With a shared, more detailed standard, mediators would be able to identify the reason a party cannot participate in mediation.

17 20 Family Law Act 1975 (Cth) s 60I.

18 C.J. Beck and L.E. Frost, 'Competence as an Element of "Mediation Readiness"', *Conflict Resolution Quarterly*, Vol. 25, No. 2, 2007, pp. 255-278.

Unfortunately, no acceptable[19] standard has been developed on readiness to mediate. And by standards we mean minimal rather than optimal standards.

While Webb and Moloney[20] discuss why FDR outside the more formal litigation processes will vary according to the disputants' adjustment to the separation process, no mention is made about research on readiness to negotiate. Nor has there been subsequent Australian or international research on preparedness for negotiation.

Viewed through the perspective of readiness, Beck and Frost's work indicates when individual members in a family dispute are prepared to negotiate. If conditions 1, 2 and 3 are not met for each party, the dispute is not ready to be mediated.

2.2 Preparing Parents for Family Dispute Resolution

Once we have accepted that FDR is appropriate for a parenting conflict, we need to decide how to prepare the disputants for the FDR process. In essence, this involves preparing the parties to be ready for the time when the dispute is ripe for resolution.

Kitzmann *et al.*[21] claim that several interrelated factors have spurred an increase in the development of specialized programmes that prepare parents to engage in the mediation process:

1 Mediation preparation programmes may increase the likelihood that parents will go on to reach an agreement in mediation.
2 These programmes can provide the foundation for parents to establish and maintain a successful co-parenting relationship, one that can shelter the child from conflict during and after the mediation process.

Kitzmann *et al.* claim that mediation preparation programmes share features with, but are distinct from, divorce education programmes. Divorce education programmes offer information regarding legal options and may include discussion of mediation, yet are offered or required of parents regardless of whether they will be settling, using mediation or using litigation.

They found that there were several features common to many mediation preparation programmes. Specifically, most programmes were brief, psycho-educational in nature and delivered in either an online or a group format. The content of many programmes included information about the mediation process as well as the effects of separation and conflict on children.

In-person sessions and online programmes both used reading materials and videos as teaching tools.

19 Or even any standard.

20 N. Webb and L. Moloney, 'Child-Focused Development Programs for Family Dispute Professionals: Recent Steps in the Evolution of Family Dispute Resolution Strategies in Australia', *Journal of Family Studies*, Vol. 9, No. 1, 2003, pp. 23-36.

21 K.M. Kitzmann, G.R. Parra, and L. Jobe-Shields, 'A Review of Programs Designed to Prepare Parents for Custody and Visitation Mediation', *Family Court Review*, Vol. 50, No. 1, 2012, pp. 128-136.

They were concerned that many programmes did not have stated goals. It can be assumed that the goals of such programmes would include 1) convincing parents to try mediation in jurisdictions where it is not required, 2) motivating parents to truly give mediation a 'good faith' effort and 3) increasing rates of success in mediation. Programmes would also need to define specific goals and, ultimately, use stated goals to organize and plan evaluation efforts.

Unfortunately, neither Kitzmann nor others have conducted research on the best time to commence preparing parents for FDR. How long after separation should one wait? And if domestic violence has occurred, what sort of education should be provided for both the perpetrator and the victim and at what stage? And to what extent do we need to improve the communication and relationships between the parents, before the dispute is ripe for resolution? A checklist of desirable factors that should have occurred before commencing family dispute resolution would be a handy tool in a mediator's armoury.

2.3 Educating Parents

One of the key findings of the Kitzmann *et al.*[22] review is that very few mediation preparation programmes have been evaluated, meaning that little is known about these programmes' effectiveness. In Australia, the dispute resolution preparation programmes focus on family education and keeping the interests of the children paramount. No effort is made to try and have the parents reconcile – indeed, the family dispute resolution practitioner (FDRP) asks the disputants if there is any chance of reconciliation. If both parties' answer is yes, then the FDR is halted, and the parents sent for counselling. The Australian FDR process is thus very different from the United States divorce education programmes.

One of the parties must commence the process – if the other party refuses to participate then the FDRP can issue a certificate that would state that they were unable to proceed with FDR because of the other party's refusal. This certificate is then a key to entering the family law system.

Once a party has commenced the process (known as party A) at the Jewish Mediation Centre, she is put in touch with an FDRP, who conducts a one-and-a-half-hour intake session (two-thirds of FDR initiators are women). As well as taking details of the conflict, the FDRP spends much time educating party A on the process, the dangers to children posed by observing and being confronted with constant conflict and the need for parents to focus on the welfare of the children rather than expressing anger with their ex-partner. The FDRP uses as a paradigm the maxim *that every arrow that a parent shoots at their ex-partner goes through their children*. The FDRP then conducts (or attempts to conduct) a similar fact-finding and education session with party B.

Other appropriate courses are made available for parents, before possibly commencing mediation. Both parties A and B are invited (separately of course) to sessions that have the title of focus on children. Here they are encouraged to keep the children as the central focus of their interactions. This session is conducted in groups, where people are presented with information about how conflicts affect

22 *Ibid.*

the children and the best way to behave during separation to ensure that the children can come through the process as unscathed as possible. To ensure that parties have a basic knowledge of the Family Law Act, the FDRPs discuss relevant legal issues.

Zeleznikow and Zeleznikow[23] have conducted an innovative step-parent survival strategies workshop. Recognizing that step-families have a higher dissolution rate than first-time families,[24] the course provides step-parents with strategies to help them cope with the new family situation, thereby, hopefully, reducing the percentage of further family breakdowns and ensuing conflict.

In a major review of research on US divorce mediation, Kelly[25] does not address the notions of readiness for mediation. While there is much research on methods for the FDR process, there is little research on whether the parties are actually ready to enter into the process!

If disputants are not ready for FDR, what resources should be provided to help prepare them to resume the FDR process? In what circumstances should the FDR process be halted? And should the process be merely postponed (in which case what is required for the process to resume), or should the process be terminated and court proceedings commenced?

Early neutral evaluation is a process in which the parties to a dispute present, at an early stage in attempting to resolve the dispute, arguments and evidence to a dispute resolution practitioner. That practitioner makes a determination on the key issues in dispute and the most effective means of resolving the dispute without determining the facts of the dispute.[26]

In family law, the process was first attempted in the early 1980s in the Northern District of California.[27] He claims that early neutral evaluation gives parties the chance to try to settle their case early on, allowing them to save time and expense. It also lets the parties, not just the lawyers, have a voice. This provides psychological as well as financial benefits. Parties to a divorce need this opportunity to learn about the merits of their case and to separate their emotions from the reality of the situation.

A programme to apply Early Neutral Evaluation (ENE) to child custody and parenting time cases has been cooperatively developed by Hennepin County Family Court Services and the Minnesota Fourth Judicial District Family Court. Parties were referred by the court to a male/female team of experienced neutral evaluators for early feedback on the probable outcome of a full evaluation and an opportunity to negotiate a settlement. It proved to be a highly successful programme in its first two years, with the majority of cases reaching an early settlement. The programme reduced the stress and expense of custody disputes for cli-

23 L. Zeleznikow and J. Zeleznikow, 'Supporting Blended Families to Remain Intact: A Case Study', *Journal of Divorce and Remarriage*, Vol. 56, No. 4, 2015, pp. 317-335.

24 About 70%.

25 J.B. Kelly, 'Family Mediation Research: Is There Empirical Support for the Field?', *Conflict Resolution Quarterly*, Vol. 22, No. 1-2, 2004, pp. 3-35.

26 T. Sourdin, *Alternative Dispute Resolution*, Thomson Reuters Lawbook Company, 2016.

27 J.L. Santeramo, 'Early Neutral Evaluation in Divorce Cases', *Family Court Review*, Vol. 42, No. 2, 2004, pp. 321-341.

ents, expedited judicial case management, maximized Family Court Services staff efficiency and focused subsequent evaluations on critical issues.[28]

Minnesota's Fourth Judicial District (including Minneapolis) has used two ENE processes since 2002. The 'Social' ENE programme addresses custody and parenting time issues, and the 'Financial' ENE programme addresses marital estate issues.[29] At the initial case management conference, which occurs within three weeks after case filing, the parties and lawyers meet with their judge and discuss, among other things, whether they want to use one or both of the ENE processes. If so, the ENE meetings are scheduled to take place soon afterwards. If the parties do not settle, the evaluators help them and the court manage the litigation, including possible referrals to mediation or other procedures.

ENE can assist both parties to be ready for FDR. However, the process involves providing disputants with legal advice, something that is foreign to the mediation process and not allowed in the Australian FDR system. However, FDRPs often refer parties to community legal centres, where the parties can obtain free legal advice.

3 Processes for Measuring Readiness for Family Dispute Resolution

So how can we decide whether and when parties are ready for FDR? Much of the existing evidence comes from anecdotes, rather than quantitative evidence or the case studies that are prevalent in international conflict resolution.

Skinner and Foster[30] developed protocols for RELATE UK[31] to enable parents to become 'mediation ready' by removing practical and attitudinal barriers to formal mediation Barlow *et al.*[32] highlighted the importance of the 'emotional readiness' of parents for their capacity to both absorb legal information and their resilience to undergo processes of mediation or litigation.

Should we not go ahead with family dispute resolution if abuse or violence has previously occurred? In the domain of international conflict, violence is clearly no barrier to dispute resolution; otherwise, disputes might never be

28 Y. Pearson, G. Bankovics, M. Baumann, N. Darcy, S. DeVries, J. Goetz, and G. Kowalsky, 'Early Neutral Evaluations: Applications to Custody and Parenting Time Cases Program Development and Implementation in Hennepin County, Minnesota', *Family Court Review*, Vol. 44, No. 4, 2006, pp. 672-682.

29 Minn. Fourth Dist. Ct., Social Early Neutral Evaluation, available at: www.mncourts.gov/Help-Topics/ENE-ECM.aspx (last accessed 8 December 2016).

30 C. Skinner and I. Foster, *Guiding Parents Through Separation: Family Matters-An Innovative Support Service from Resolution,* 2016. Available at: http://eprints.whiterose.ac.uk/93248/1/family_matters_research_final.pdf (last accessed 16 December 2018).

31 https://www.relate.org.uk/relationship-help/help-separation-and-divorce/mediation (last accessed 8 December 2016).

32 A. Barlow, R. Hunter, J. Smithson, and J. Ewing, Mapping paths to family justice-briefing paper and report on key findings, 20014. Available at: https://ore.exeter.ac.uk/repository/bitstream/handle/10871/16067/Mapping%20briefing%20paper%20final%20post%20conference%20draft%20for%20repring%20version%204%203%20%2B%20ISBN%20Dec%2014.pdf?sequence=6 (last accessed 24 December 2019).

resolved. One such example is the existence of the Truth and Reconciliation Commission in South Africa.

Fernando and Amarasinghe[33] claim that the Truth and Reconciliation Commission (TRC) in South Africa was born out of the political campaign wrought during the negotiations that brought apartheid to an end. The Promotion of National Unity and Reconciliation Act No: 34 was the cardinal point that provided legitimate rights to the TRC in 1995. In fact, the motive of this act was to investigate politically motivated gross human rights violations perpetrated between 1960 and 1994. The novelty of the TRC was the fact that it was the first truth commission to grant amnesty to the persons who accepted and repented before the public about the politically motivated crimes they had committed during the apartheid government in South Africa. In doing so, the newly elected government of South Africa adopted the judicial concept of restorative justice instead of the retributive justice embodied by the Nuremberg-style trial. This restorative justice approach accepted that violence had been prevalent but would not occur in the future and that the perpetrators would admit guilt but not be punished.

3.1 Readiness for Family Dispute Resolution When Domestic Violence Has Occurred

How should the FDR community react to a history of domestic violence during a relationship? While members of a family might be prepared to overlook past history, they are naturally concerned about the possibility of future violence. Children and parents are worried about the risk of further abuse and violence from previous perpetrators.

Woodlock[34] focuses on an emerging trend in the context of domestic violence – the use of technology to facilitate stalking and other forms of abuse. Surveys with 152 domestic violence advocates and 46 victims show that technology – including phones, tablets, computers and social networking websites – is commonly used in intimate partner stalking. Technology was used to create a sense of the perpetrator's omnipresence and to isolate, punish and humiliate domestic violence victims. Perpetrators also threatened to share sexualized content online to humiliate victims. The prevalence of technology-facilitated domestic abuse can prove to be a major drawback to engaging in FDR.

Morris,[35] in her doctoral work, investigated how mediators manage disclosures of domestic abuse. Her study concluded that mediators do not routinely screen for domestic violence during joint meetings of the disputants. Hence, guidance and training for ongoing screening during such sessions is required. Further, she argues that the current guidance and policy for screening needs to be reviewed.

33 S. Fernando and P. Amarasinghe, *Post-conflict Peacebuilding in Sri Lanka through the South African Truth and Reconciliation Model*, 2015. Available at: http://archive.cmb.ac.lk:8080/research/bitstream/70130/4355/1/73%20Page.pdf (last accessed 16 December 2018).

34 D. Woodlock, 'The Abuse of Technology in Domestic Violence and Stalking', *Violence Against Women*, Vol. 23, No. 5, 2017, pp. 1-19.

35 P.E. Morris, *Screening for Domestic Violence in Family Mediation: An Investigation into How Mediators Manage Disclosures of Domestic Abuse and Associated Emotions,* Doctoral dissertation, Brunel University London, 2015.

In Victoria, Australia, if a parent has concerns for a child's welfare, they should contact the Department of Health and Human Services (DHHS). If there is an open case with DHHS, then the FDRP should contact DHHS to check the suitability of the case for FDR.

Field[36] argues that a key and proven initiative in Australian Family Law, the Coordinated Family Dispute Resolution model, has the potential to offer a safe(r) family mediation environment in domestic violence contexts but has not been made accessible to the Australian public. She argues that the Australian government has a social and ethical responsibility to introduce this model to the family law system.

Field and Lynch[37] developed the coordinated family dispute resolution process in response to concerns about parties' voices in family mediation.

> CFDR was designed to support the achievement of safe and sustainable post-separation parenting outcomes for children and their families, by addressing some of the issues of vulnerability, and lack of capacity, arising where a power imbalance exists between the parties as a result of a history of domestic violence. Phase 2 of the CFDR process focusses on preparing the parties for effective participation in CFDR mediation. Both parties are required to attend preparatory legal advice sessions, communication sessions (which are essentially counselling sessions), and a CFDR mediation preparation workshop. The clients' readiness for participation is discussed and confirmed at a case management meeting of the professional team, although the mediation practitioner has the ultimate legal responsibility for deciding on this.
>
> CFDR features a number of special measures to protect the safety of victims and children, to ensure that the parties' voices are heard, and to enable post-separation parenting agreements to uphold the best interests of the children. One such special measure is the implementation of the concept of 'predominant aggressor' which is a key consideration in determining issues of safety and risk and appropriate processes and interventions to be used.[38] Determination of the predominant aggressor involves a consideration of the context and pattern of the violence, the history of the violence in the relationship, which person has been exerting power and control over the other, which person is fearful of the other and whether any violent behaviour on the part of the victim was in retaliation against the predominant aggressor or in self-defence.

36 R. Field, 'A Call for a Safe Model of Family Mediation', *Bond Law Review*, Vol. 28, No. 1, 2016, p. 4.

37 R.M. Field and A. Lynch, '"Hearing Parties" Voices in Coordinated Family Dispute Resolution (CFDR): An Australian Pilot of a Family Mediation Model Designed for Matters Involving a History of Domestic Violence,' *Journal of Social Welfare and Family Law*, Vol. 36, No. 4, 2014, pp. 392-402.

38 Australian Law Reform Commission (ALRC), *Family Violence – A National Legal Response*. ALRC Report 114, 2010.

> Another special measure is the focus on perpetrator accountability. Individual perpetrator accountability acknowledges that it is an individual's choice to be violent and the perpetrator is required to accept responsibility for their actions. The practical effect of such an approach is that it does not allow the perpetrator to make excuses or blame other people or the victim for their own violent behaviour. An expectation that a perpetrator of family violence fully accepts responsibility for their behaviour is unrealistic.[39] At a minimum in CFDR, a perpetrator is required to acknowledge that a family member believes that domestic violence is relevant to working out the future arrangements for the children. At a systemic level, it is important that perpetrator accountability remains a central objective of the process so that professionals and organizations involved in CFDR do not 'buy into' perpetrators' excuses for, or minimization of, violence. This is important for system accountability, and to keep the issue of safety and risk at the heart of decision-making.

The FDR community believes there is one very clear barrier to undergoing FDR – when long-term domestic violence or abuse has been prevalent that places the parties on an uneven playing field, that is, if one party feels in any way intimidated or frightened about being in the same building at the same time with the other party.

Steegh and Dalton[40] report on the research of Johnston,[41] who proposes five guiding principles or priorities:

- Priority 1: Protect children
- Priority 2: Protect the safety and well-being of the victim parent
- Priority 3: Respect the right of adult victims to direct their own lives
- Priority 4: Hold perpetrators accountable for their abusive behaviour
- Priority 5: Allow children access to both parents.

Ellis and Stuckless[42] develop a tool, Domestic Violence Evaluation (DOVE), to give advice about the risk of engaging in family mediation with ex-partners who have a history of domestic abuse. DOVE has demonstrated the ability to identify 19 statistically significant predictors of male partner violence and abuse against female partners after they separated. DOVE links violence prevention interventions with (a) level of risk; (b) the presence of specific types of predictors; and (c) types and levels of violence and abuse.

39 L. Bancroft, J.G. Silverman, and D. Ritchie, *Sage Series on Violence Against Women*: *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics,* 2nd ed., Thousand Oaks, CA, SAGE Publications, 2012.

40 N.V. Steegh and C. Dalton, 'Report from the Wingspread Conference on Domestic Violence and Family Courts', *Family Court Review,* Vol. 46, No. 3, 2008, pp. 454-475.

41 Janet R. Johnston, PhD, Department of Justice Studies, San Jose State University, Presentation at the Wingspread Conference on Domestic Violence and Family Courts: Challenges for Research on Domestic Violence and Child Custody Disputes: An Overview (16 February 2007).

42 D. Ellis and N. Stuckless, 'Domestic Violence, DOVE, and Divorce Mediation', *Family Court Review*, Vol. 44, No. 4, 2006, pp. 658-671.

Table 1 Patterns of abusive behaviour in domestic violence

Form of abuse	Characteristics of behaviour
Physical abuse	Threatening or physically engaging in assaults, including punching, choking, hitting, pushing and shoving, throwing objects, smashing objects, damaging property, assaulting children and injuring pets
Sexual abuse	Any unwanted sexual contact, including rape
Psychological abuse	Emotional and verbal abuse such as humiliation, threats, insults, swearing, harassment or constant criticism and put-downs
Social abuse	Isolating partner from friends and/or family, denying partner access to the telephone, controlling and restricting partner's movements when going out
Economic abuse	Exerting control over household or family income by preventing the other person's access to finances and financial independence
Spiritual abuse	Denying or manipulating religious beliefs or practices to force victims into subordinate roles or to justify other forms of abuse

The resulting risk scores (The DOVE) are used to assign individuals to risk categories. Problems associated with using categorical, frequency and probability risk assessment formats in interpreting and communicating risk are discussed. Plan interventions that are linked with risk category and predictor sub-scores on control, substance abuse, anger, relationship problems, mental health problems and conflict are covered.

Domestic violence is a pattern of abusive behaviours occurring in an intimate personal relationship in which one person seeks to gain power and control over the other. The DOVE tool focuses on physical domestic violence. However, there are other forms of domestic abuse.[43]

Knowlton and Muhlhauser[44] claim that, generally, the debate on the appropriateness of mediation in cases of domestic violence has focused on the following issues:

1 Whether cases should be screened for the dynamics of violence;
2 Whether mediation is appropriate when one of the parties may be vulnerable during the mediation process;
3 Whether mediation should be mandatory;
4 Whether mediation is appropriate when there is a power imbalance during the mediation process; and
5 Whether training and credential requirements should be required for mediators.

43 *See*www.aic.gov.au/publications/current%20series/rip/1-10/07.html (last accessed 19 January 2016); *See also* the definition of family violence in section 5 of the *Family Violence Protection Act 2008* (Vic).

44 D.D. Knowlton and T.L. Muhlhauser, 'Mediation in the Presence of Domestic Violence: Is It the Light at the End of the Tunnel of Is a Train on the Track', North Dakota Law Review, Vol. 70, 1994, p. 255.

Knowlton and Muhlhauser argue that almost all literature finds mediators and advocates agreeing that some screening should take place and that some situations are never appropriate for the mediation process. Some mediators would propose involving certain parties in the mediation process, while others would not consider the same parties appropriate for mediation. The degree of violence and discord between the parties and how that degree of violence and discord will affect the mediation process and the tenor of the agreement is where the debaters part company. Thus, the breadth and depth of screening for domestic violence can strongly affect the mediator's stance as to whether mediation is appropriate for the individuals or the couple. They conclude that mediators should receive sufficient training in the preparatory process to enable them to encounter these dynamics and seek appropriate information from the parties when considering the family violence quotient.

Rimelspach[45] argues that there does not seem to be a clear case to reject mediation for family disputes, despite the prevalence of domestic violence. He claims that one of the key factors in the area of dispute resolution is to offer as many alternatives to parties as possible, so that the most appropriate method can be chosen for each case. He provides a list of sixteen questions that should be used to screen disputants prior to engaging in family dispute resolution. The answers to these questions should be evaluated by a trained screener, who will be able to weigh the answers given. The questions are derived from a number of sources, including the Maine Court Mediation Service. Rimelspach concludes by stressing that considering the numerous benefits that mediation can offer over the adversarial system, it would seem a senseless loss to exclude all court mediation programmes as an option for individuals whose interpersonal relationships contain elements of domestic violence.

Within Australian FDR, there are no hard and fast rules about if and when to conduct an FDR. Sometimes it is not wise to conduct the FDR immediately after people separate as it might be useful for the parties to receive some counselling. It is also useful to have the parties sort out their finances and wait until the initial anger has dissipated.

The only maxim is that parties should mediate only if there is no power imbalance. While the prevalence of domestic abuse often leads to power imbalances, this is not always the case. And if there is a power imbalance, it may be appropriate to engage in shuttle FDR. There is an option of legally assisted FDR, whereby lawyers (usually Community Legal Service lawyers) are present for an FDR to support each party through the process. This is particularly useful when parties are vulnerable.

Often disputants do not realize how very negative behaviour towards their ex-partner affects their children and that is when the educational role of the Family Relationships Centre is incredibly important. Regardless of whether the dispu-

45 R.L. Rimelspach, 'Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court-Connected Mediation Program', *Ohio State Journal on Dispute Resolution*, Vol. 17, 2001, p. 95.

tants come up with a parenting plan, the FDR process enables people to understand the consequences of children being exposed to conflict.

3.2 Readiness for Family Dispute Resolution in Australia

The Australian *Family Law Act 1975* (Cth) states that the court must apply a presumption that parents should have equal shared parental responsibility in relation to parental responsibilities unless and until it is taken away from them by the courts.[46] This responsibility will usually be taken away if there are severe mental health issues, drug or alcohol abuse or domestic violence that directly relates to the children. Shared parental responsibility issues involve all the major items in the children's lives, such as education, religion, major medical and dental issues and overseas travel. Both parents should be involved with such conversations.

Unfortunately, the reality often does not meet the expectations of the law, and there are many children enrolled in school with only one parent's signature. Equal Shared parental responsibility is different from Spending Time with Arrangements. The starting point is 50-50 shared care. 50-50 shared care works when parents live close to each other, when both parents can facilitate the children's educational and child care needs and, most importantly, if they are able to communicate with each other about their children's well-being.

The needs of the children are the determining factor for 50-50 shared care. Most people who come to a Family Relationship Centre are not in that situation to support 50-50 shared care. However, it may be possible in the future.

The next step is about the child's right to have a significant and substantial time with both of their parents.[47] This may be interpreted as having the children spend time with both of their parents, during both the week and the weekends. This enables both parents to be involved in all aspects of the child's life. Both parents should be involved with school and extracurricular activities and a child's life and programme should go on in either household, at any time. One of the FDRP's jobs at the Family Relationship Centre is to ensure that there is a solid bridge between the parents and that the children are free, happy and safe to move between the two households.

3.3 Domestic Violence and Readiness for Family Dispute Resolution

In Victoria, Australia, The Common Risk Assessment Framework (CRAF) is used by FDRPs. It aims to help practitioners and professionals identify and respond to risk factors associated with family violence. It was developed in consultation with Victorian family violence service providers, police and courts and based on international research. It is the basis of the integrated family violence service system in Victoria. It provides a common language for all agencies to talk about risk assessment and promotes a shared understanding of the issues underpinning

46 Family Law Act 1975 (Cth) s 61DA.
47 Family Law Act 1975 (Cth) s 65 DAA.

family violence.[48] The guide provides FDRPs with: 1) a set of possible indicators of family violence, 2) questions to identify family violence, and advice on how to ask these, 3) steps to take if the FDRP identifies family violence. It does not indicate whether an FDRP should continue with the process.

McIntosh *et al.*[49] discuss the Family Law DOORS (Detection of Overall Risk Screen) project.[50] It is a three-part screening framework to assist identification, evaluation and response to safety and well-being risks in separated families. Uniquely, the Family Law DOORS screens for victimization and perpetration risks and appraises infant and child developmental risk.

They claim that they examined the DOVE,[51] the Revised Conflict Tactics Scales (CTS2; Straus *et al.*[52]) and the Mediator's Assessment of Safety Issues and Concerns (MASIC; Holtzworth-Munroe *et al.*[53]). All have one, several or all of the following limitations: they address a narrow definition of *risk,* are not specific to separating couples, appraise subjective experience rather than behaviourally specific indices of abuse, do not address surrounding co-morbidities (e.g. mental illness, drug and alcohol abuse) or surrounding precipitants (e.g. religious significance of separation, lack of social support), are not designed for universal use and screen either victims/potential victims or perpetrators rather than both. They claim that none address developmental risk for infants or children and that none are designed for use by both legal and social science professionals in the family law system.

The Family Law DOORS is a three-part framework[54] designed to aid cross-disciplinary detection of and response to well-being and safety risks in client families of the family law system. The DOORS framework defines *risk* as the potential for physical and psychological harm to self and other family members and includes developmental harm to infants and children. The tool screens for risks of both victimization and perpetration. Screening begins with Level 1 DOORS,[55] a self-report comprising 10 domains. Practitioners select the domains relevant to their client. The full screen takes 15-20 min to complete using either software or pen and paper or longer if by interview administration. A Level 2 follow-up report is generated for the professional (hard copy or software-generated), highlighting risk indices and giving prompts for follow-up enquiry and response planning.

48 *See* www.dvrcv.org.au/training/family-violence-risk-assessment-craf (last accessed 27 September 2016).

49 J.E. McIntosh, Y. Wells, and J. Lee, 'Development and Validation of the Family Law DOORS', *Psychological Assessment,* Vol. 28, No. 11, 2016, pp. 1516-1522.

50 *See also* www.familylawdoors.com.au (last accessed 27 September 2016).

51 Discussed earlier.

52 M.A. Straus, S.L. Hamby, S. Boney-McCoy, and D.B. Sugarman, 'The Revised Conflict Tactics Scales (CTS2): Development and Preliminary Psychometric Data', *Journal of Family Issues,* Vol. 17, 1996, pp. 283-316.

53 A. Holtzworth-Munroe, C.J.A., Beck, and A.G. Applegate, 'The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain', *Family Court Review,* Vol. 48, 2010, pp. 646-662.

54 McIntosh and Ralfs, 2012a.

55 McIntosh, 2011.

Level 3 resources provide specialist assessment tools and literature on risk etiology.

4 Readiness for Family Dispute Resolution and Information Technology

The prevalence of information technology can both enhance and diminish the readiness of parties for dispute resolution. This is particularly so for the case of Family Dispute Resolution.

Online dispute resolution service providers have been targeting conflict niches (such as ResolutionTable.com, specializing in landlord-tenant disputes), and Family Law.[56] Authors have also offered suggestions for operationalizing ODR to resolve workplace disputes.[57] More generally, private-sector mediators have started to offer online services as an add-on to their traditional, face-to-face practice.[58] Jani and Getz,[59] as part of the Distance Mediation Project conducted by Mediate BC in British Columbia, published a set of practice guidelines for family mediation at-a-distance.

Most of the writing on ODR has highlighted its advantages, largely focusing on functional and economical features: ODR saves time, economic cost, environmental costs, coordination efforts, etc. ODR can also provide timely advice. Examples of incorporating other potential advantages of the online environment to provide different, perhaps better, services than offered face to face, might include involving technological platforms providing advice on trade-offs and optimal solutions and systems that calculate child support payments and the distribution of marital property. When disputing parties are ready to talk (but not meet – due to distance or safety concerns) ODR can assist by supporting shuttle mediation.

Recent writing has demonstrated ODR's efficacy, and its advantages over litigation or face-to-face alternative dispute resolution (ADR) mechanisms. However, much of this has been based on an assumption that – other than some pesky issues related to online communication – the theoretical basis for dispute resolution generally hold true. This power of this theoretical assumption is clearly reflected in ODR practice, which sees most providers offering online emulations of face-to-face practice. To put it somewhat bluntly, though, ODR's relationship to basic issues in conflict resolution theory has not been widely discussed, far less put to the test.

56 E. Katsh and O. Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes*, Oxford, Oxford University Press, 2017.

57 J. Parlamis, N. Ebner, and L.D. Mitchell, 'Looking Back to Leap Forward: The Potential for E-mediation at Work', *in Advancing Workplace Mediation Through Integration of Theory and Practice*, Cham, Springer, 2016, pp. 233-249

58 N. Ebner, 'E-mediation', *in* M.S. Abdel Wahab, E. Katsh, and D. Rainey (Eds.), *ODR: Theory and Practice*, The Hague, Eleven International Publishing, 2012.

59 S. Jani and C. Getz, 'Mediating from a Distance: Suggested Practice Guidelines for Family Mediators', 2010. Available at: www.mediatebc.com/PDFs/1-14-Family-Mediation---FAQs/Guidelines_Mediating-from-a-Distance-%28Second-editi.aspx (last accessed 16 December 2018).

ODR has often failed to use the additional facilities offered by the development of the World Wide Web. For example, Thomson[60] explains how the Australian Online Family Dispute Resolution emulates the services provided by Dispute Resolution practitioners based at 65 Family Relationship Centres. The designers assumed that traditional face-to-face mediation would work best in the online environment. Little thought was given to when and where users would interact with the system. Because of this and even though there are substantial delays in receiving a mediation at a Family Relationship Centre, and no delay using the online system, there has been minimal uptake of the online system.

With an eye to developing optimal processes rather than emulating existing ones, one can envision other important background information being offered via the Internet. These might be of a general nature (e.g. textbooks and videos outlining the mediation process) or specific to a conflict context (e.g. in family disputes a system might provide background information or tutorials on child psychology and the welfare of children as well as model parenting plans, incorporating case-specific input regarding the children's age, gender, locale, tendencies, hobbies, etc.).

This poses a double challenge: identifying areas of conflict resolution theory that apply to ODR and developing independent theory for other areas.

We suggest that in the process of taking up this first challenge, of applying conflict resolution theory to ODR contexts, authors could illustrate the relationship between ODR and fundamental conflict theories on either, or both, of two levels.

The first would explore whether ODR mechanisms are capable of supporting processes that are soundly grounded in particular elements of conflict resolution theory and do not do customers a disservice by glossing over such elements theory simply because they are inconvenient to apply at-a-distance. This would help to identify areas in which traditional conflict resolution theory applies.

The second level would go beyond this somewhat defensive or apologetic stance and demonstrate ways in which ODR processes can implement principles of conflict theory to a degree that traditional, face-to-face, conflict resolution processes cannot, or – focusing on practice – simply do not.

It should, however, be stressed that the provision of technology to support Family Dispute Resolution has negative as well as beneficial implications. Ideally, the use of social media to expand relationships between separated parents, as well as between parents and their non-resident children, should be of great benefit to families that are no longer intact. However, this is not always the case.

In Section 3.1 we discussed the research of Woodlock,[61] who focuses on an emerging trend in the context of domestic violence – the use of technology to facilitate stalking and other forms of abuse. Surveys with 152 domestic violence advocates and 46 victims show that technology – including phones, tablets, com-

60 M. Thomson, 'Alternative Modes of Delivery for Family Dispute Resolution: The Telephone Dispute Resolution Service and the Online FDR Project1', *Journal of Family Studies*, Vol. 17, No. 3, 2011, pp. 253-257.

61 Woodlock, 2017.

puters and social networking websites – is commonly used in intimate partner stalking. Technology was used to create a sense of the perpetrator's omnipresence and to isolate, punish and humiliate domestic violence victims. Perpetrators also threatened to share sexualized content online to humiliate victims. The prevalence of technology-facilitated domestic abuse can prove a major drawback to engaging in FDR.

In Markwick *et al.*[62] we note that while the advent of new and increasingly accessible communication technologies provides new, positive and effective ways for individuals to communicate and connect with their communities, it simultaneously provides additional means and forums for perpetrators to abuse and harass their victims. Furthermore, such technologies enable perpetrators of family violence to overcome geographical boundaries and continue their abuse post separation, particularly where there are children of the relationship.

Their article reviews and classifies the existing literature on technology-facilitated abuse, identifying predominant themes in relation to context and focus, as well as the gaps. New forms of criminality as well as new ways to perpetrate existing forms of criminality are described. Erosion of the private-public division has been enabled by social media, allowing a new kind of criminality to emerge whereby the private and the intimate are subject to the purview of an inestimable numbers of strangers.

At the same time, technologies such as text and email, more akin to traditional forms of communication, have provided perpetrators with easier and more insidious ways to perform existing crimes such as stalking and harassment. Another common theme identified in the literature relates to the specific motives of perpetrators in using various technologies. While technologies such as text, email, phone calls and instant messaging are commonly used to abuse and monitor victims, social media platforms, most commonly Facebook, are primarily used to humiliate, punish and stalk victims. Interestingly, phone calls are used to make verbal threats that leave no evidence, while threats made on social media are veiled or perpetrated by proxy.

The use of Global Positioning System (GPS) or spyware is used to stalk, locate and monitor victims. The overwhelming theme in the literature, however, is that perpetrators use technology to create a sense of omnipresence, to instil fear in the victim and demonstrate their control over that victim's life.

The research to date has been largely descriptive, focusing on the use of technology to perpetrate abuse of girls and women online more generally, with emerging attention being given to such abuse perpetrated in the context of family violence. Notable is the dearth of literature on the perpetration of technology-facilitated abuse as an extension of family violence among post-separation parents.

Judge Lewis[63] of the Los Angeles Superior Court says:

62 K. Markwick, A. Bickerdike, E. Wilson-Evered, and J. Zeleznikow, 'Technology and Family Violence in the Context of Post-Separated Parenting', *Australian and New Zealand Journal of Family Therapy*, 2019, 40(1), pp. 143-162.

63 H.T.T. Lewis, 'Helping Families by Maintaining a Strong Well-Funded Family Court that Encourages Consensual Peacemaking: A Judicial Perspective', *Family Court Review*, Vol. 53, No. 3, 2015, pp. 371-377.

> All too frequently e-mails, text messages, and social network postings are used as a battleground for expressing parental conflict.[64] There are several vendors who provide electronic posting services, including Our Family Wizard VR (OFW).[65] One of the advantages of services such as OFW is the use of fact-based, information-driven opportunities for posting, rather than just ill-conceived or reactionary or retaliatory e-mails or text messages that only escalate conflict. ... If parents use services such as OFW effectively and as intended, this tool can reduce conflict or provide verifiable evidence of how parental communication takes place.

Such products can assist separating parents to engage in appropriate and civil behaviour whilst assisting with parenting planning and maintaining a record of parent behaviour.

In a current research project with Relationships Australia Victoria (RAV),[66] we are investigating how separating parents' use and abuse of information technology. Through a quantitative survey of RAV Family Relationship Clients followed up by in-depth follow-up interviews with some of these clients, we intend to determine the scope of the problem.

5 Conclusion

While there are well-developed theories as to when to try to mediate international conflicts, there is little similar research regarding family disputes. Further, the time dimension in family mediation can mean that mediators do not have the flexibility to wait for the appropriate moment for dispute resolution. Some suggestions include:

1 It might not be wise to conduct the FDR immediately after partners separate as it can be useful for the parties to receive some counselling.
2 It is useful to have the parties separate financial and children's issues and to sort out their finances before FDR commences.
3 The FDR process tends to be more successful once the initial anger has dissipated.
4 Most importantly, mediations tend to be more successful once power imbalances have been addressed. This process may involve shuttle mediation and should occur only if no safety issues are present.

64 The practical consequence of electronic communication is its ability to memorialize the actual communications between the parents. Despite the ability to manipulate emails and text, the fact is that these communications often reveal which parent is more inclined to act in a child-centred manner and substantiate which parent is more devoted to the conflict than the resolution.
65 *See* www.ourfamilywizard.com.au/ (last accessed 16 December 2018).
66 www.relationshipsvictoria.com.au/ (last accessed 16 December 2018).