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ADR and family law

Grandparents and mediation

Coral Slattery

Whenever we hear mention of family law matters, either in the press or by government announcements, the main focus has always been on the parents and children when family breakdown occurs. Little or no mention is made of grandparents. These older members of society suffer, usually in silence, and are given no recognition for the heartache they, too, endure as a result of divorce within the family unit.

Progress has been made in the courts following extensive lobbying by grandparent groups throughout Australia, in particular under the leadership of Di Underwood. Included in the Family Law Reform Bill 1994 was provision for grandparents to institute proceedings in the Family Court for access to their grandchildren. This was considered a great victory at the time, as grandparents were finally recognised as being an important part of children's lives.

While recognition of grandparents in the courts is a significant breakthrough, those who wish to take advantage of this legislation soon find out that the costs involved in litigation are prohibitive. Access to Legal Aid is not always possible, or is not an option because of their accumulated assets. This could lead to their 'nest eggs' being eroded. Worse still, there is no guarantee that they will win. This is compounded by the fact that even if they do win, the Family Court finds difficulty in enforcing its orders if problems arise.

Court appearances are traumatic at the best of times and for grandparents it could be said that it is twice as traumatic because of their advancing years. Most older people would have never been in a courtroom before and the very thought could be distressing. Judges and barristers are used to the 'goings on' in a courtroom, but an elderly person is not likely to take too kindly to being the brunt of an attacking barrister acting on behalf of his or her unco-operative, often

insensitive, client.

The adversarial climate of a courtroom is unsuitable for the handling of family law matters. Grandparents are not criminals. Rather, they are ordinary people sharing a common interest in the welfare of children. In many cases, grandparents are the only source of stability for their grandchildren when their parents are otherwise occupied with their own relationship problems. Why then would we want to load them with further hardship by forcing them into court to 'fight' to see their grandchildren, some of whom they had previously cared for on a daily basis to enable both parents to go to work? One could ask 'who is divorcing whom'? Are the parents divorcing each other, or are their whole families divorcing? These children are in danger of losing half their extended family members. Going to court, where there is a 'winner' and a 'loser', will not solve the problems amicably.

Mediation — a better way

The *World Book Dictionary* defines mediation as 'effecting an agreement; friendly interference, especially to effect an agreement, or reconciliation'.

When analysing this definition one can see that mediation represents a more appropriate method of resolving family law matters. It does not threaten anyone's position and does not seek to blame anyone. Participants arrive with a 'clean slate' and it is the mediator's role to then move participants towards a satisfactory resolution which will be beneficial to both parties. There is neither a winner nor a loser, and each party feels that they have contributed in a positive manner to the outcome. Outcomes made in an atmosphere of co-operation and good faith are more likely to be adhered to.

Those grandparents who know about and

have used this method of dispute resolution have found it the answer to their call for help. It is cost effective and does not put them under any undue pressure, as is the case with the adversarial court system. Most grandparents don't wish to be caught up in the marital problems of their children; they just wish to be a part of their grandchildren's lives. This cannot be achieved unless they have the co-operation of both the children's parents so that they can continue to have a loving relationship with their grandchildren, free from any animosity and fear of saying the wrong thing. This is often impossible with a court decision, as the children may become alienated from the grandparents and will either not want to see their grandparents, or be brought 'kicking and screaming' to their access visits.

Maturity usually brings patience and knowledge. The trouble is, the 'wise old owl' comes from a different generation and finds it difficult to get the younger generation to settle down sufficiently and agree to go to mediation. However, if this can be achieved, all will certainly benefit in the long term.

Because mediation is somewhat in its infancy, we are faced with the difficulty of getting the message out into the community about what mediation is and how it can assist warring families. People are confused about the difference between counselling and mediation and the role of each service. This is certainly the case with an older generation who grew up in times when problems were sometimes left unresolved — perhaps because of the lack of expertise available. A recent case saw a grandmother spend thousands of dollars in court, only to end up watching her grandchildren from afar because the court orders were unenforceable. One could ask why she didn't try mediation — was it that she didn't know about it?

Older people just can't go to court. They can't afford it, their health is at stake and it doesn't provide enforceable outcomes. Mediation is the only way to go. ●

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