

Family Court Hearings by Video

By Justice Jan Stevenson, Family Court of Australia, Sydney Registry

On 20 March 2020 government-ordered terminations to public gatherings created a difficult predicament for courts. We were required to balance on-going provision of court services with the need to take steps to prevent the spread of the COVID-19 virus.

I am proud to report that the Family Court of Australia adapted promptly and we began to construct interim and appeal hearings by Microsoft Teams technology within a matter of days. We listed final hearings of multiple days' duration within weeks. In May 2020, with some trepidation, I listed for final hearing by Microsoft Teams a complex seven-day parenting trial.

From my perspective, this lengthy and complex trial was conducted in a reasonable and fair manner but with appreciable limitations. For example, I could not see both parties at the same time and the opportunity to observe the demeanour of witnesses was curtailed by their being visible only on a computer screen.

I became aware during this trial of the extent to which judges and the Bar Table rely on visual cues for the smooth conduct of court proceedings. In particular I noticed that everyone in the court room becomes aware that an advocate is about to speak, for example to make an objection, when that person rises to his or her feet. My experience during this trial was that counsel were acutely aware of the need to avoid speaking over each other.

With solicitors, barristers and litigants in different locations, opportunities for settlement negotiations during court breaks and after adjournment for the day seemed to be curtailed to a significant extent. Negotiations by telephone could take place but would seem to be less likely to be fruitful than in person discussions. I would note, however, that a contravention hearing before me was settled last week with one counsel in chambers and the other at his home.

I take this opportunity to thank my chambers Associate and my Legal Associate, who mastered the Microsoft Teams technology very quickly and were of immeasurable assistance with directions for trial preparation and conduct of hearings.



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Pre-trial directions included relaxations on access to and photocopying of subpoenaed documents and the giving of undertakings as to oversight of this material.

My Associates conducted practice log-ins with expert witnesses prior to the time fixed for the giving of their oral evidence. They dealt with concerns of these witnesses in relation to exposure of their locations and personal information.

I take this opportunity also to thank the legal profession, who have embraced video trials and attempted to find constructive solutions to problems which inevitably arise as we expand the use of technology. My experience during the seven-day trial was that the legal representatives did all that they could to ensure that the proceedings were completed as efficiently and as fairly as possible.

It seems to be common experience that video trials introduce a level of exhaustion for all concerned which does not arise in the face-to-face court room situation. The level of concentration seems to be more intense and we are required to depart from our normal experience in trials. Perhaps practise will reduce this overlay to video trials.

I can see advantages to the ongoing use of technology in the litigation process. The Family Court of Australia currently uses technology for the support of vulnerable witnesses by providing remote locations for their evidence. In the future, it would seem to be unreasonable that courts require litigants and witnesses of limited means who live in areas remote from capital cities to travel to capital cities. There should be greater scope for overseas witnesses to be heard by video technology rather than less acceptable telephone connection.

Hopefully, courts will be in a position to resume normal face-to-face litigation in the near future. In the meanwhile, I again commend the efforts of courts and the legal profession to sustain our role in these challenging times. **EN**

