

This book on family mediation by two authors, one a well known American writer on mediation, the other an experienced Australian practitioner, is a timely publication. Given the increasingly central role of alternative dispute resolution in family law matters, *The Fundamentals of Family Mediation*, by John Haynes and Stephanie Charlesworth, should prove a useful reference for mediators (and their clients) operating under the major changes in legislation and procedures regulating child and property arrangements after divorce.

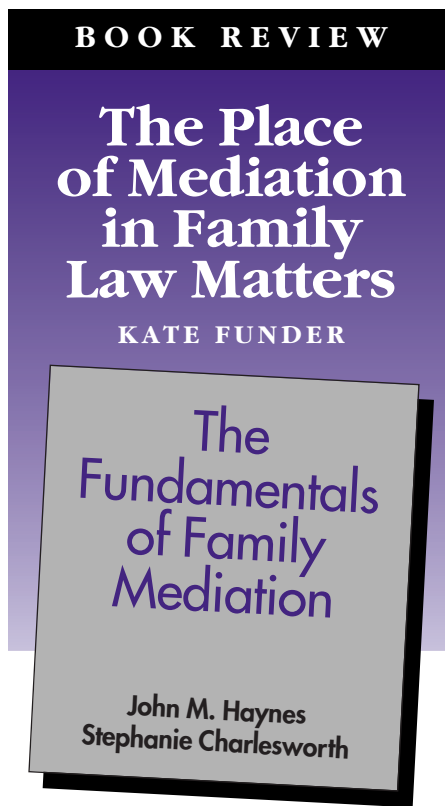
These initiatives make assumptions about how disputes associated with divorce should be approached in the first instance. Legislation to enable parents to have greater privacy and autonomy in arranging for the continuing care and responsibility for children after separation and divorce is contained in the Family Law Reform Bill (1995), which comes into operation in June 1996. A central feature of the new legislation is the re-routing of children's issues away from adversarial procedures into other means of making workable plans. Recognising that people who face the crisis and dislocation of separation require information, guidance, and a means of settling differences, the legislation provides a trousseau of dispute resolution processes.

The Family Law Reform Bill (1995) shifts the emphasis away from the few who use full legal and Court processes to settle matters to the vast majority who minimise legal disputes. In tandem with this shift in emphasis in the law, the Family Court of Australia has renamed the processes of counselling, mediation and conciliation from Alternative Dispute Resolution procedures to *Primary Dispute Resolution* procedures. In a similar spirit, the Family Court of Australia introduced simplified procedures which among other things do away with much of the early legal documentation (such as the filing of affidavits) and give people access to counselling, mediation and conciliation as first ports of call (see Opinion/Comment/Analysis column elsewhere in this issue of *Family Matters*).

The new Act will come into operation on 11 June 1996, and with it an increased demand for counselling and mediation services within the Court, from approved government agencies such as Relationships Australia and Centre Care, and from private counsellors and mediators.

The *Fundamentals of Family Mediation* will be a valuable compendium of information on the processes for these service providers and their clients. The sections presenting Court procedures and Child Support regulations are practical; they also reduce the parameters for dispute. With these basics, people can form realistic expectations of what can be achieved in family mediation. In addition, the book sets out what is expected of clients as participants in a family mediation process.

The book makes available to a general audience (both professional and lay) the principles and practice of mediation, and the distinct features of mediation which set it apart from counselling, therapy, and legal bargaining. On these latter points, John Haynes makes an interesting observation. When asked whether a legal or counselling



Federation Press, Annandale, NSW, 1996
Price: \$35.00

background was better for mediators, he replied: 'Neither!'. This response becomes clearer as he describes his own professional training in management negotiations, and the possible traps for psychologists and lawyers.

Mediation is distinguished from both legal advocacy and counselling by its quite focused goals and distinct process. Haynes and Charlesworth define it thus:

Mediation is a process in which a third party helps the participants in a dispute to resolve it. The agreement resolves the problem with a mutually acceptable solution and is structured in a way that helps maintain the continuing civil relationships of the people involved. This is particularly important when former spouses have to continue to work together as parents (p.1).

The authors describe the mediator as a 'manager of the negotiations who takes charge of the discussion of the issues to be resolved'. There is considerable debate in the literature, however, about the confinement of mediators to the role of process manager and their neutrality in that process. Dingwall (1993) and others comment on the built-in expectation that a negotiated agreement will be the outcome and that mediators exert power on the one side or other. In particular, critics comment on the implicit power of male mediators to affect outcomes for women, and some argue that co-mediation with a male and female is essential as a safeguard.

On this last point, Haynes comments that there is a distinct correlation between co-mediation and public-funded mediation and that, while private services rarely offer co-mediation, there is scant evidence that private mediation is inferior.

Whatever the reality, the process is far from simple and, as it is in its infancy, but promising to grow like Topsy, it is imperative

that continuing attention be paid to standards and the monitoring of outcomes.

The book sets out the processes that are generic in mediation processes, then proceeds to the details of family mediation with many case studies as illustrations. The generic processes are outlined in nine stages: recognising the problem, choosing the arena, selecting the mediator, fact finding, defining the problem, developing options, redefining positions, bargaining and drafting the agreement. Where there are several issues, this process may be repeated.

However, mediation is not confined to family law matters or divorce. In fact, the present move towards using mediation in the resolution of child and property matters associated with divorce is only part of a much larger movement to use other than adversarial, common law and costly processes to settle civil matters. As evidence of this, the Attorney General's Department has instituted a National Alternative Disputes Resolution Advisory Council to oversee and advise on the broader application of mediation, conciliation and arbitration as methods of resolving disputes. As this list implies, mediation is but one of a range of approaches which is unified by its being more or less outside the 'fighting for rights' approach of normal legal and court processes.

There are many reasons for promoting primary dispute resolution, of which reducing costs and delay are two. In family law, a third is perhaps as important. It is that settling family disputes (especially those involving children) by adversarial process and the filing of affidavits is inimical to the goals of contained conflict and lasting working relationships among all family members. Sadly, there will always be the need for the law to act as protector of children whose parents cannot come to the discussion table or protect them; but for the vast majority, mediation and its stablemates of counselling and conciliation will provide a process which is consonant with their goals.

On a practical level, *The Fundamentals of Family Mediation* sets out very clearly what mediation can and cannot do, the safeguards for clients and practitioners, steps in mediation, the pitfalls and how to avoid them. The book gets right to the details of parenting plans and the drafting process. As appendices, the book contains Child Support details and copies of the relevant Court documents that may need to be competed at different points in proceedings.

In all, Haynes and Charlesworth have rendered the community – mediators, lawyers, counsellors and clients – a signal service by their clear and critical approach to the area, and by their acceptance of the necessity to evolve processes that match and complement the changing face of marriage and divorce in Australia.

Reference

Dingwall, Robert (1993), 'Who is in charge? rhetoric and evidence in the study of mediation', *Journal of Social Welfare and Family Law*, vol.6.

Kate Funder is a Principal Researcher at the Australian Institute of Family Studies.