ODR for Family Disputes

Colin Rule

Twenty years ago, technology was rarely utilized in resolving family disputes. Most of the substantive components of a family mediation took place face-to-face, with technology playing a role only around the margins with administrative tasks like scheduling, billing, and document drafting. But over the past two decades the rise of social networks, mobile devices, and videoconferencing has moved technology to a more central place in our lives. Now we routinely use computer-based communication not only for administrative tasks, but in our daily communications with friends and family. The pandemic extended technology's reach even further, making it the default channel connecting us with others. This central role for technology will not end with the pandemic; computer-based communication is the new normal. As a result, we are seeing a flowering of new technology tools and services focused on aiding families through separation, divorce, and co-parenting. In this chapter, we will examine the rise of online dispute resolution (ODR) in family disputes, discuss the current state of family ODR, and make some projections about where things may be headed.

The Evolving Definition of ODR

Online dispute resolution is commonly defined as the use of information and communications technology to help parties resolve their disputes. This definition was created in the late 1990s, and it was accepted as an adequate description of ODR for most of the 2000s and 2010s. It emphasized that ODR was at essence face-to-face dispute resolution (ADR) plus technology, which made it seem less threatening and disruptive to practitioners. But around

2020, as ODR applications expanded in response to the pandemic, several scholars (including Jean Sternlight) observed that this definition was probably too broad to be that useful.

For example, is email ODR? Well, if a mediator uses email to communicate with parties, then yes, it could fit under the definition. Is videoconferencing ODR? Similarly, if it is used for working out an agreement, then yes. The same could be said for any communications technology, like texting or even interacting as avatars in an online game like Minecraft. But parties can also use those communication channels to exacerbate conflict and escalate conflict just as easily. There is nothing intrinsic to online communication that makes technology help parties resolve disputes. In fact, recent experience (such as disinformation and the rise in hate speech on social networks) has demonstrated that technology may do a better job exacerbating disputes than resolving them.

But we now do many other things with technology beyond direct communication. Are calendar invitations ODR? Are online payments ODR? What about document sharing? If one of our parties posts a Tik Tok video doing an expressive dance to show their frustration with their former partner, is that ODR? The incredible explosion of our online activities has illuminated the inadequacy of our early definition of ODR. New definitions that cast more light are needed.

An ODR working group convened by the National Center for State Courts (NCSC) in 2018 defined ODR as "a public-facing digital space in which parties can convene to resolve their dispute or case." This definition offers a much more specific description of what ODR can provide: an online collaborative workspace designed to facilitate communication between the parties, with the specific goal of finding a resolution. This definition could cover mediation or parenting coordination sessions conducted asynchronously (via text) or synchronously (via video), as well as encompassing other communication channels that may be yet to come. But this

definition leaves out a major component of ODR, which is the facilitative role technology can play in helping parties structure their negotiations, understand the key issues, and scope out solutions. This concept of technology as a "fourth party" in a dispute, which was first proposed by Janet Rifkin and Ethan Katsh in their book *Online Dispute Resolution*, is a fundamental concept in ODR (further discussed below) and is absent from the NCSC definition.

At the 2022 ODR Forum in Dublin, Ireland, international ODR leaders Chris Draper and Leah Wing proposed a new framework for defining ODR that envisioned a spectrum of options for the role of technology, ranging from no technology all the way to processes completely managed and outcomes determined by algorithms. Their framework encompasses not only NCSC's "digital space" but also the algorithmic potential of ODR to help people find solutions. The algorithmic potential Draper and Wing's definition encompasses will likely expand in importance as increased computer processing power brings machine learning and artificial intelligence into the mainstream. Draper and Wing argued that the mere use of a technological channel for communication is not sufficient to qualify a process as ODR, just as all face-to-face communication alone is insufficient to define a process as alternative dispute resolution (ADR). The channel of communication may be online, but that's just the O in ODR; the activity occurring over the communication channel must also follow certain approaches and practices embodied in techniques like mediation or arbitration – that's the DR in ODR.

So perhaps a better definition of ODR for this chapter's purposes would be "the practice of using technology to prevent, manage, and resolve conflict by facilitating communication and supporting decision making."

The Rise of Family ODR

In the 1980s and 1990s the popular consensus held that technology-based communication was sterile and transactional, making it a poor fit for relational disputes involving elements like apologies and emotions. Movies and books about technology at the end of the 20th century depicted people slowly transformed by technology into becoming more like computers. We thought the advance of technology meant that we would be forced to utilize typefaces that were easier for computers to read, or to write in a new alphabet (on our Palm Pilots) that computers could more easily interpret. Even some of our music started to sound more computer generated, with the artists playing it (e.g. Devo and Kraftwerk) standing around like expressionless robots.

Now, in retrospect, it's obvious that those predictions did not come to pass. Humans are just as emotionally complicated as we have always been. Almost all popular music is now composed and recorded digitally, but it no longer sounds like the simple bleeps and bloops of the early electronic music – it has all the complexity, nuance, and range of the music we used to produce on analog instruments. We scrawl on our iPads with our Apple pens in our messy handwriting and the computers instantly convert it into clean, spell-and-grammar-checked text. We ask questions through Alexa and Siri in a thousand different accents and the algorithms decode our meaning and provide the answers we seek. Humans didn't change our behavior to be more like computers; the computers became powerful that they could understand us in all of our messy complexity.

Family issues are among the most complicated and emotionally fraught disputes family dispute resolution professionals can encounter, so when technology was perceived as sterile and dehumanizing it seemed logical to conclude that family cases were not a good fit with ODR. In fact, when I began working in ODR in 1999 I had a clear policy: no family disputes. At the time several mediators I admire told me that they believed telling parties they could just click buttons

on a web page to resolve their dispute was at odds with the core tenets of dispute resolution practice, which emphasized in-person human connection. That led me to focus my online practice on simple transactional disputes between strangers with fewer emotional components, like eCommerce purchases.

Professor Janet Rifkin of UMass-Amherst, an ODR pioneer, once told me about her challenges in trying to mediate a dispute online between a husband and wife who were located in different countries. She explained that the husband in the case, who was in South America, got frustrated during the discussion and then abruptly stated he was going to kill himself, followed by an immediate disconnection from the process. Professor Rifkin then analyzed her ethical dilemmas as a mediator in that case: what obligation did she have to follow up? She did not have any contacts or relationships in the country where the husband was living. His spouse dismissed the threat as empty, saying it was consistent with his overall personality; he didn't mean it and wouldn't follow through. But Janet speculated that if her obligations were the same in an online family dispute as they would have been in a face-to-face meeting, then she had an ethical obligation to pursue the matter and to determine if the threat was credible. But her geographic distance from the party made such a follow up impractical if not impossible.

I took these concerns to heart. Professor Rifkin's experience raised serious ethical concerns for me, ones without easy answers. If family dispute resolution was about enabling parties to directly connect with each other to reach agreement, I concluded, perhaps computer-based communication offered too narrow a pathway to be effective in emotionally fraught cases. Even though I was very optimistic about the potential for technology in dispute resolution more broadly, it did feel to me that family disputes were a bridge too far. ODR, which originally evolved out of eCommerce, seemed better suited to online-only disputes that arose between

strangers for relatively low amounts of money. Resolving family disputes seemed too complex to be effectively handled through online channels.

But my "no family" policy received pushback from potential parties. My first ODR company, OnlineResolution.com, had an open filing form on our website, and we would occasionally receive inquiries on family related matters. I would gently explain that our services weren't a good fit with family cases, but the filers did not back down. They would note that (for example) they now lived in different areas of the country, or that the bulk of their separation agreement was already resolved, and they only needed to address a specific issue about vacations or finances. Sometimes, as in Professor Rikfin's case, the parties were in different countries, so jurisdiction was quite confused. They explained that they wanted to resolve the matter online, because they felt it was the best option available to them. I held firm in my position, however: we didn't use our platform for family matters.

Twenty years later I think it is safe to say that I have almost entirely abandoned my prior resistance to using ODR for family mediation. And it's not just me – family ODR is one of the hottest areas of ODR practice around the world. It's not that Professor Rifkin's concerns have gone away. There are still serious ethical issues that must be considered in leveraging technology for resolving family disputes, and we need to evolve our best practices and trainings to address those topics. And while the communications channels have unquestionably become much richer over the years (Zoom is light years ahead of the grainy, jerky videoconferencing we had in 2001) technological advance cannot fully account for the change in attitude.

I believe the main driver behind this change is cultural. Computer mediated communications are now completely normalized. Our parties likely log onto the internet from the

moment they wake up, and then they stay connected throughout the day on their mobile phones and on their computers. In their workplace they may use Outlook for email, Google docs for writing documents, Excel for their spreadsheets, and Zoom for their meetings. Almost any task you need to complete these days, either public or private, will require you to log on to the internet: balancing your taxes, adjusting your savings account, making your health care elections, or even signing your kids up for summer camp. Social networks (like Facebook, LinkedIn, and Twitter) are now many people's primary source of news and social interaction, and mobile devices put them right in our pockets (and on our wrists), letting us know about new developments with a gentle buzz or persistent ding. Technology has insinuated itself into our daily lives in a way that would have seemed like science fiction 20 years ago. We use computers for our emotional and intimate communications every day, so it makes sense that when we encounter a family conflict we expect to use technological channels to get it resolved.

For many people, the best way to find their significant other is through websites like PlentyofFish.com, Match.com, Tinder, and Bumble. It's all swiping left and swiping right these days. If you begin your relationship through technology, doesn't it also make sense to also use technology to end your relationship? People used to be embarrassed to admit their relationship began online, but we have gotten more accepting the role of technology in our intimate relationships over time. One truism of ODR systems design is that parties often expect to resolve their dispute in the same environment where the dispute arose in first place, so if technology was there at the beginning your marriage it makes sense that it would also play a role at the end.

Family ODR Platform Types

As a result of the normalization described above, we have seen a flowering of innovation in the family ODR space in the last ten years. More than a dozen platforms have launched over

that decade, some built by courts, some by legal service bureaus, and some by private companies. Most of these platforms fit into three categories.

The first is that of a general workbook or wizard where a separating couple uses technology as scaffolding for the negotiation and resolution of the key issues in their dispute. You could think of these platforms as "TurboTax for divorce." Private companies in this category presently include Wevorce.com, Blissdivorce.com, Hellodivorce.com, Divorce.com, Justice42.com, and Amicable.co.uk. Courts have built similar (but usually more simplified) wizards along these lines as well (e.g., the Modria platform), and Legal Service Bureaus have also innovated in this space (e.g., the Rechtwijzer platform from the Dutch Legal Aid Board, or the MyLawBC.com system). Many of these systems also integrate the services of live mediators or attorneys to help with document review and submission.

The second category focuses on co-parenting management (rather than dispute resolution per se) post-separation, using the technology as a tool to organize and facilitate productive communication between co-parents around issues like scheduling, budgeting, education, health, and drop offs. While this segment was pioneered by Our Family Wizard, which remains the leader in the space in the United States, many other companies have come and gone in this space over time, including ParentingBridge.com, KidsOnTime.com, coParenter, and others.

The third category encompasses algorithmic tools that assist with decision making, including calculators and artificial intelligence. In California, for example, many family mediators subscribe to a program called Dissomaster that calculates suggested ranges for child and spousal support. These calculators are like large, complex spreadsheets that aggregate data and expertise, analyze input data, and provide helpful guidance. While these tools don't currently decide cases themselves, many courts utilize them to advise and standardize decisions made by

judges. Technology can be very helpful in synthesizing many data points about a couple's financial situation to inform the design of appropriate resolutions. Taking these approaches to the next level, companies like Common Sense Divorce in Canada are now leveraging artificial intelligence (AI) and machine learning to achieve similar (and potentially more nuanced) recommendations (Gingras, 2021). While there is much more talk about AI than actual use of it in family disputes these days, there is no question that these kinds of tools will become more commonplace over the coming decade. These early experiments demonstrate the algorithmic potential of computers in helping parties find resolution to their issues, and as computers get more powerful over the coming years this value will only increase.

Designing Family ODR Systems

Creating an online family resolution process from scratch can be a daunting prospect. Staring at a blank web page and deciding what to add in is a bit like looking at an empty word processor screen when you're starting a book.

My colleague Dr. Jin Ho Verdonschot presented at the Association of Family and Conciliation Courts (AFCC) conference in New Orleans, where he demonstrated a design for the simplest family ODR platform imaginable. In it, the user was presented with a single button on an otherwise blank web page that read, "Click here to get divorced." When the user clicked the button, the page refreshed, and a new message appeared that read, "Congratulations, you are now divorced." Now it's true, that is a simple design – but I think we can agree that it is probably a bit too simple. Dr. Verdonschot's point in was to say, sure, let's add in more to this design, but let's make sure that every additional component we add delivers value, supports the parties, and minimizes confusion. It's okay to add in complexity, but let's ensure that the complexity is

necessary. The objective of our process should be to maximize simplicity while at the same time competently addressing the parties' needs.

A San Francisco mediator once told me once that he hates the word divorce. He wishes he never had to use that word in explaining what he does, but that he must because that's the word his parties use. I asked him how he would prefer to describe his work, and he said he would prefer to say that his expertise is "marital reorganization" because, for the most part—and especially when there are children—couples are not ending their relationships, they are simply reorganizing their family. If your current arrangement as a married couple no longer works, your relationship is not going to end with the end of your marriage, especially if you have young children. You will both be there when your children graduate from high school and college, when they get married, and when they have their own children. You'll need to figure out where the kids will spend Christmas morning, or who will take them to see fireworks on July 4th. You may no longer be spouses, but you'll be something – and a "marital reorganization" expert can help you figure out what that new relationship will be.

This is a helpful frame to think about the design of family ODR systems as well. How can we use technology to help parties go through this reorganization in their lives? How can we help them navigate the "justice journey" from where they are to where they need to go? How can an ODR system take the hand of a user at the very beginning of their separation process and walk them, step by step, all the way to a robust and effective resolution?

The basic design for most transactional/eCommerce ODR platforms is a simple problem/solution matching algorithm. The complainant begins the process by indicating what type of problem they have, perhaps selecting their issue from an exhaustive list of common problem types, and then reviewing a list of solutions appropriate for that particular problem and

selecting which of the solutions they would be willing to accept. Such an approach may be overly simplistic for a dispute as complicated as a divorce, but the basic framework can still create possibilities for adding value. Many court-hosted family dispute resolution processes use a variation on this design, walking parties through a pre-configured set of choices where they can select their preferred solutions.

For example, in the Modria family online dispute resolution platform, the complainant walks through eight key topics (e.g., parenting time) where they can select their preference (e.g., shared, or primary – and if primary, which parent that will be). Once the complainant makes all their selections the platform automatically contacts the respondent, and the respondent walks through the eight questions as well. The difference is that the respondent sees the selection made by the complainant and is asked in each case if they want to accept that proposal or if they like to make another choice. If the respondent decides to make another choice, they see the same options that were originally presented to the complainant.

Once the respondent and complainant have both gone through all eight topics the platform generates a readout that indicates where both parties selected the same option. Then, when a mediator joins the case, several of the eight topics may already have an agreement before the joint session begins. This basic technology-assisted negotiation process can help to structure the key issues that need to be addressed in a family dispute, and walk the parties through the different solutions available (Yates, 2019).

Professor Janet Martinez from Stanford Law School has written (along with her colleagues Stephanie Smith and Lisa Bingham Amsler) an excellent book called *Dispute Systems Design* (DSD) that offers a comprehensive framework for designing new dispute resolution processes. Their framework asks several foundational questions of systems designers, such as:

Who are the stakeholders in the process? What is their relative power? What are their interests, and how are their interests represented in the system? What are their incentives and disincentives for using the system? What is the system's interaction with the formal legal system? How can you know if the process is successful? Each of these questions must be considered in designing family ODR systems (Martinez, Smith, and Amsler, 2020).

I use a rubric for designing ODR systems called DNMEA, which stands for Diagnosis, Negotiation, Mediation, Evaluation, and Appeal. Each of these components operate in an ODR process like steps a staircase. When a new dispute enters the ODR process it begins with diagnosis, and then progresses through each of the steps. Early resolution is always preferable, so if the parties can reach a complete resolution in a particular phase (say, negotiation) then they do not need to proceed through the remaining phases (e.g., mediation, evaluation, and appeal). It is also possible to remove one of these phases if it does not deliver value in an individual case type, for example eliminating mediation and going straight from negotiation to evaluation in situations where the relationship between the parties is so damaged that mediation would not be effective.

Family dispute resolution is unique because although the disputes are very complex, a mediator, lawyer, or judge probably already has a good idea of most of the solution components that need to be present in an effective resolution before they ever meet with the parties. Some family mediators begin the process with a list of all the questions that must be answered to draft a comprehensive parenting plan. This level of clarity on the essential components of a resolution can be very helpful in envisioning an effective family ODR system – essentially, the platform walks the parties through the worksheet and helps them complete it.

Components of Family ODR

While this high-level design advice may be useful in the abstract, what does a family ODR platform look like in practice? Today there are many different examples of systems for helping parties go through the divorce and separation process, and they each have their own approach.

Ten years ago, I was closely involved with *Rechtwijzer,* a program in the Netherlands that was then the most comprehensive platform for divorce and separation. Funded by the Dutch Legal Aid board and designed by The Hague Institute for Innovations in Law (HiiL), the *Rechtwijzer* enabled legal aid organizations to provide a technology-facilitated negotiation process that enabled separating couples to address all of the major issues in their divorce or separation. But like many public technology projects, the funding eventually ran out, which ended new development on the system. However, the *Rechtwijzer's* innovations laid the foundation for other innovative platforms, such as Justice42 and Uitelkaar.nl (Kistemaker, 2021). Every family ODR system designed over the past twenty years has moved innovation forward, and the green shoots of new platforms always emerge from the bones of the old. Such is the process of creative destruction.

One of the biggest changes that has occurred since we designed the Rechtwijzer is the emergence of mobile technology. What we insist on calling "mobile phones" are really very powerful computers that have been miniaturized to fit into our pockets, connected wirelessly to the internet 24x7. As these mobile devices have evolved, we have come to increasingly rely on them, and the power of the applications that can run on these devices has also expanded.

When I first built family ODR platforms a decade ago we found most users were coming in from desktop or laptop computers. Now when we look at the statistics of how people are accessing family ODR systems more than half of the users are coming in via mobile devices.

This has led more recent family ODR platforms to be mobile-first, designing and optimizing their processes for handheld devices and then extending them later to desktops as a secondary priority. Co-parenting platforms like coParenter were designed first to work through mobile devices, which makes sense if you want to support interactions between two co-parents around issues like scheduling. After all, it is much more convenient to have that pickup information available to you on your mobile phone when you are looking for your child after ballet practice than to have to log in through a laptop or desktop computer after you get back to your house.

To illustrate the functioning of a mobile-first family dispute resolution process, I'm going to share with you some screens and flows from a tool called *Amica*, which was crafted in Australia by a design firm called Portable for National Legal Aid. This platform artfully leverages cutting-edge mobile design to support the family dispute resolution process while also demonstrating some of the common components of family ODR platforms more broadly.

The Amica process begins by registering users via their phone number, which (a) uniquely identifies them, (b) enables them to log in and out of the system, and (c) enables the system to authenticate through the use of a texted log-in code.
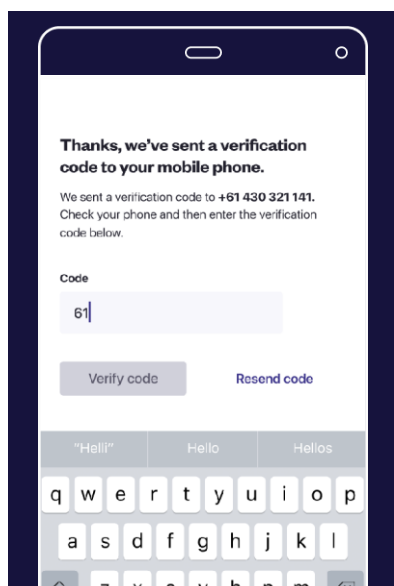
Once the user is registered the Amica system provides them some introductory information about the system to help the user determine if the tool is right for them. The user can then share contact information for their spouse so the Amica platform can reach out and invite them to participate as well.
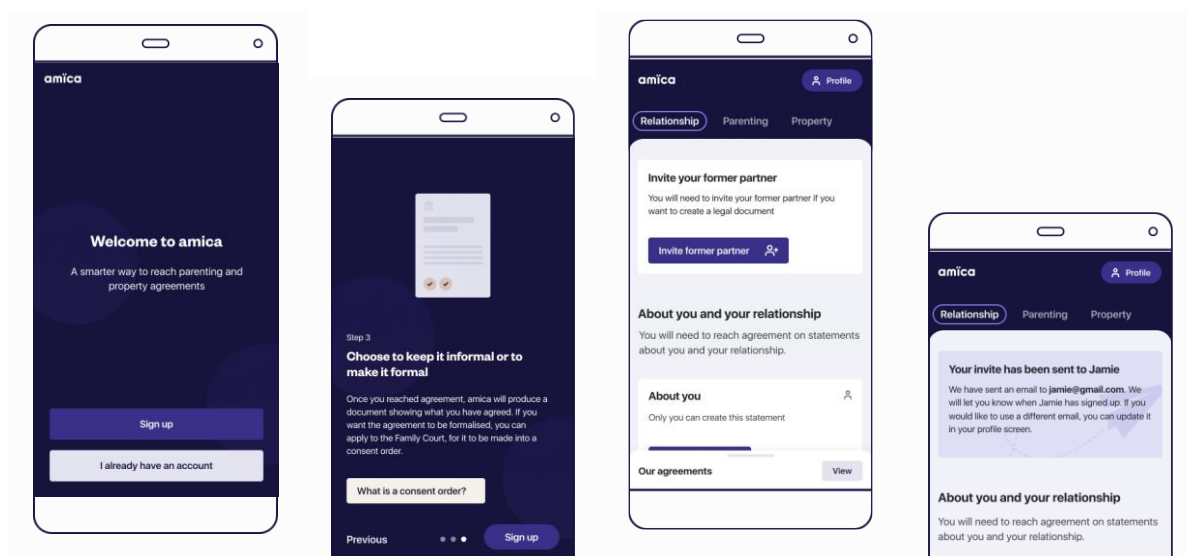

The Amica system facilitates negotiation through what the platform calls *statements*. Users create statements in response to questionnaires offering contextual information and explanatory text. Users can also upload supporting documents to bolster their statements.
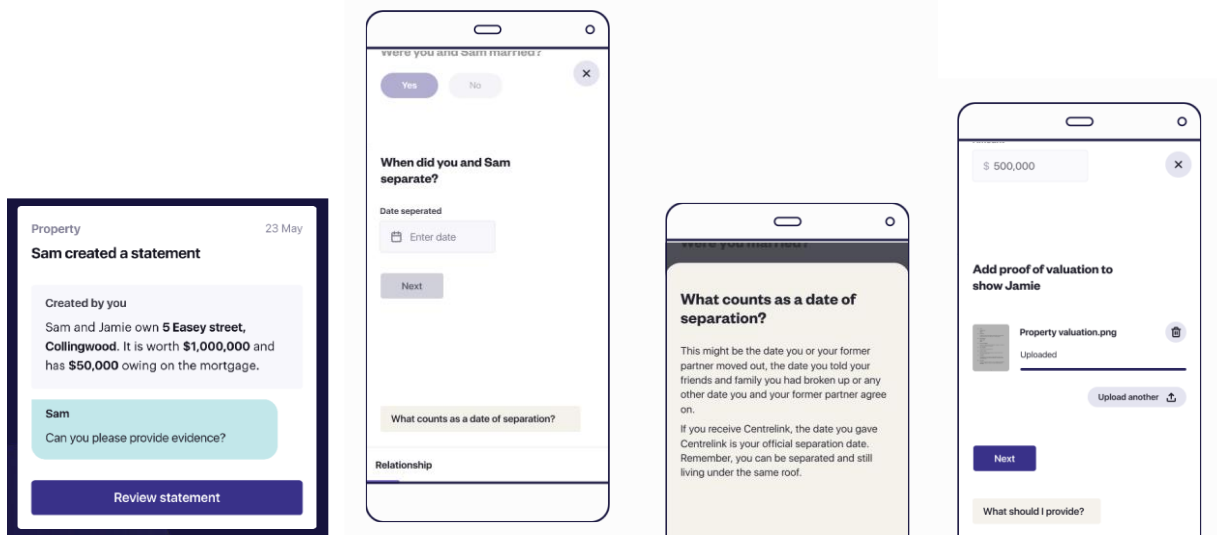
Users can then have a dialogue around the submitted statements to establish a full and frank disclosure of all assets and liabilities. Using statements enables both parties to collaborate and revise as needed to craft their agreement. Amica uses sentiment analysis to prevent parties from using abusive or profane language. Using subtle nudges, Amica intervenes if users aren't moving toward agreement.
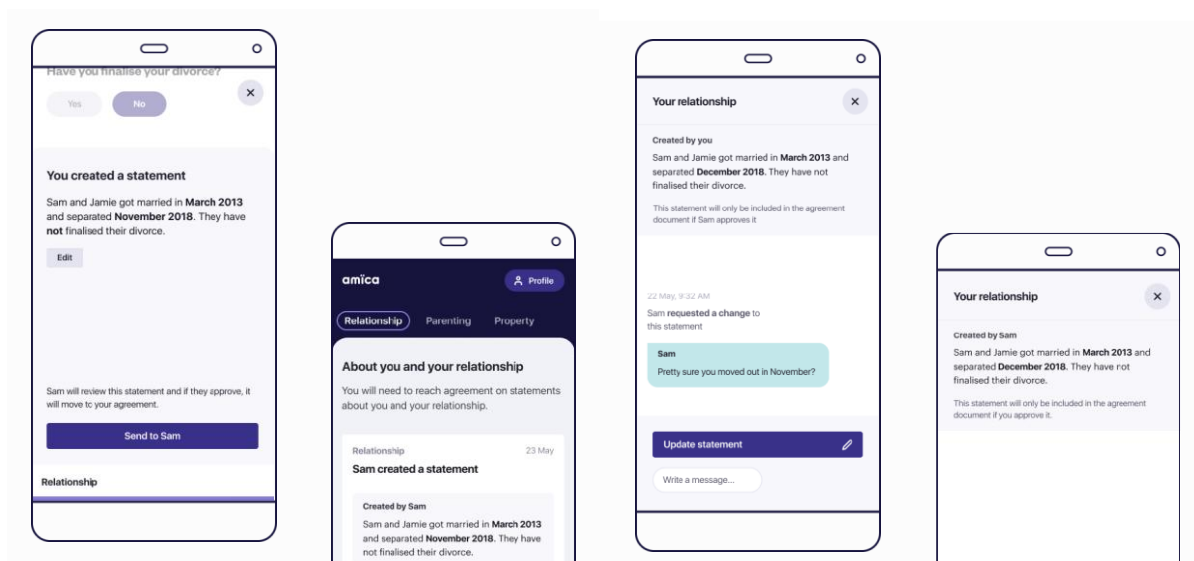
Amica also offers an interactive three-week timeline tool to enable users to schedule preferred days with the children. This visualization syncs with the statement phase and updates each user's number of days in real time. The parenting plan interface automatically represents time with the children as "blocks" to highlight the importance of handovers/exchanges and to encourage users to think about them throughout the process. Amica gathers preferences from users through step-by-step questions that feel intuitive to users.
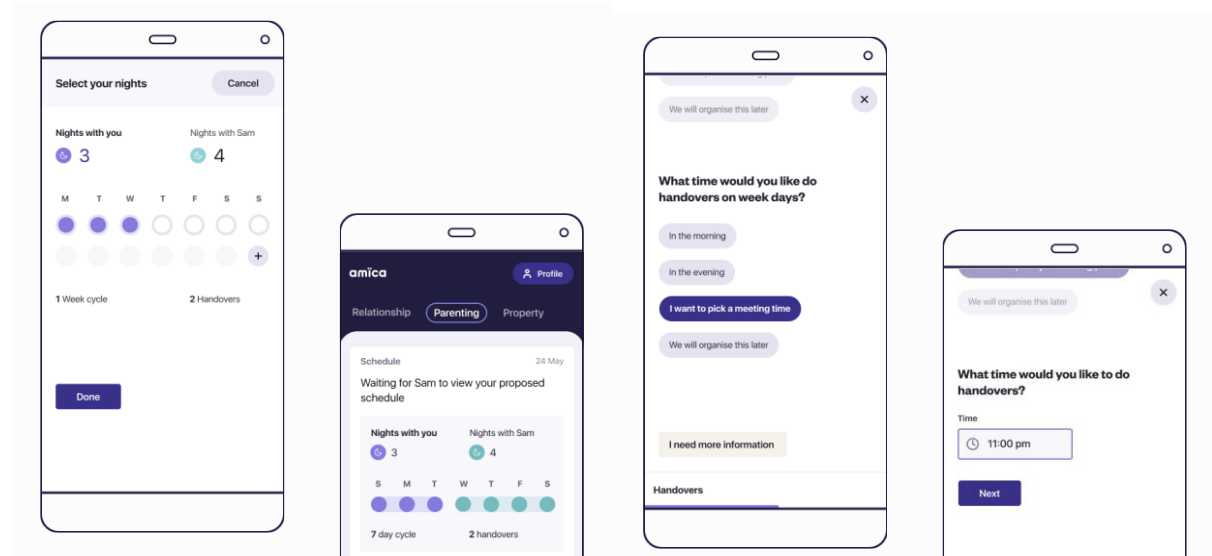
Amica also offers a suggested division tool that makes recommendations to users that they can accept or adjust as a guide to formulate their own agreed percentage split of property or assets. The recommendations generated by the tool are based on calculators designed to offer fair divisions based on expert rules. Users can also create their own offers. Amica will provide guidance if the user creates an offer outside the bounds of the suggested range. Both users can make and receive offers, while being able to review past offers and see the other side's reasoning.
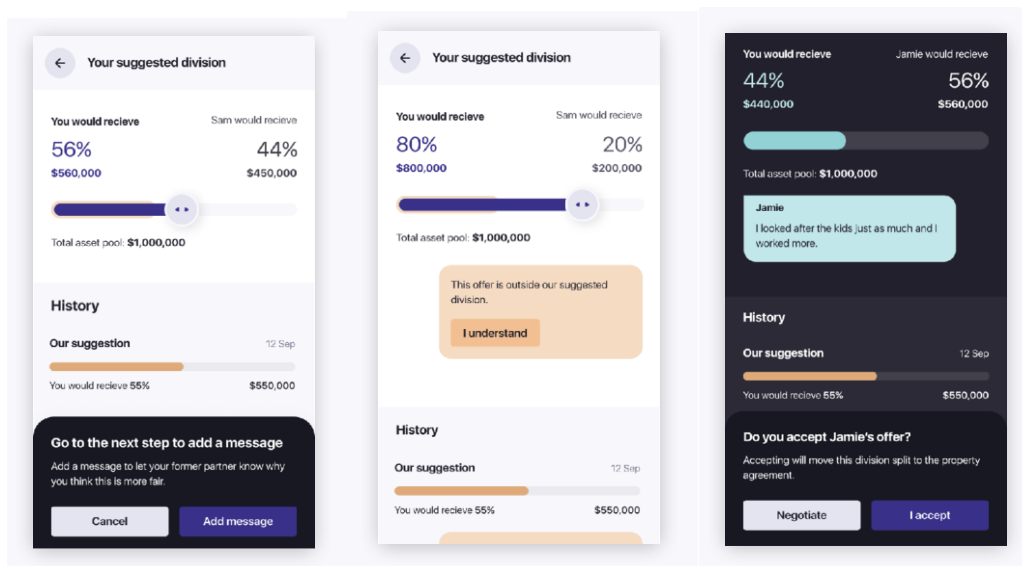
Amica also offers an asset division tool where users can create proposals for how to implement their agreed upon percentages. Users can nominate which assets to keep, transfer, or sell in order to redistribute value. Much like in the division tool, proposals can be shared between users.
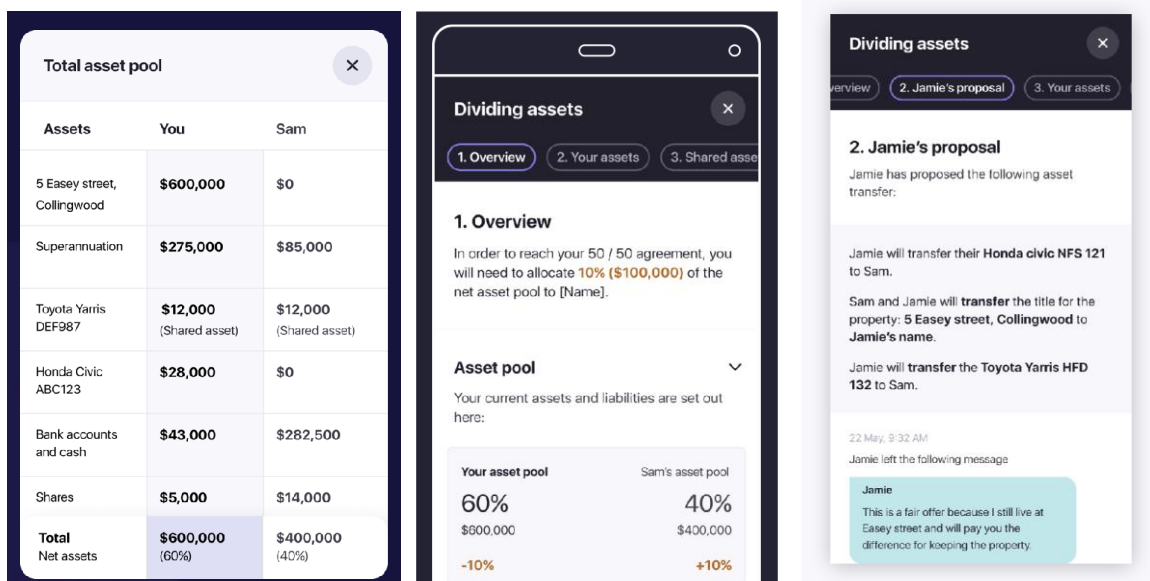
The Amica platform can also generate final agreement documents regarding property or parenting based on the choices made within the system.

The Amica system is a modern and robust end-to-end mobile-optimized system for separating couples to negotiate the key elements of their separation and parenting agreements. The Amica system clearly isn't appropriate for all family disputes, but it is probably a good option for parties who need to be guided through the issues and who are able to work together amicably. But the key components of the Amica system (user authentication, guided interviews, direct dialogue and negotiation, issue tracking, proposals, and document generation) are commonly deployed in other family ODR systems as well.

Technology, Communication, and Psychology

Some family dispute resolution professionals remain unenthusiastic about the incursion of technology into their processes. Most choose their career because they like interacting with people, and it can feel like these tools move us away from the face-to-face conversations that help to build empathy and understanding, which many believe are key to effective and enduring resolution. We have all observed how online interaction can change the way that people behave, sometimes for the worse. One well-documented dynamic is called the Online Disinhibition Effect, where parties may be more aggressive or brutally honest in communicating online because they are not confronting one another side face-to-face, so they cannot see the emotional reaction on the face of the recipient as their comments are heard. This effect is often on display in the comment sections of many websites, where otherwise genial and friendly people act in

ways that they would never behave if they were interacting in person. This effect is a complicating dynamic that dispute resolution professionals and systems designers need to account for in designing family ODR systems.

Some serious thinkers have observed that online mechanisms may not be sophisticated enough to meet the psychological needs of parties in a family dispute resolution process. In her excellent article "Pouring a Little Psychological Cold Water on Online Dispute Resolution" Professor Jean Sternlight raises concerns that the psychological needs of parties might not be met by these very simple algorithmic approaches (Sternlight, 2020). Similarly, Professor Robert Condlin suggests that the "little boxes" approach to disputes, where parties are asked to summarize complex feelings by checking boxes on pre-configured forms, overly simplifies matters and may not provide the satisfaction and procedural justice of a face-to-face dispute resolution process (Condlin, 2017).

Family ODR systems designers must take these concerns seriously. Party psychology must be a key focus when designing these processes. Overly simplifying issues does a disservice to the parties in addressing the complexity of their emotional needs in each case. Optimizing ODR processes in the name of efficiency may undermine the capability of the systems to deliver appropriate and durable resolutions. However, as noted earlier, we should remain open to the possibility that as norms are changing, these technological channels may eventually do a better job meeting the psychological needs of parties; in fact, they have the potential to become the preferred resolution channel moving forward if they are appropriately designed.

Technology can give people the ability to resolve their disputes asynchronously, such as via text-based communication, which can provide disputants a measure of cooling distance. This distance can help parties be more reflective, do more research, and be at their best throughout the

process. For example, is the best time to decide your parenting time schedule during a real-time meeting in a lawyer's conference room at 2:00 p.m. on Wednesday, across the table from your ex-spouse who is driving you crazy – or could it be more psychologically satisfying to express your preferences at 6:00 p.m. on a Saturday, sitting in your bed with your laptop open on your lap, a glass of merlot on the bedside table, and your mother weighing in over speakerphone, with no pressure to respond immediately? Even if mediators and lawyers prefer to hash these matters out in a conference room we need to be open to the possibility that our parties prefer to have the luxury of time to answer at their own pace during non-work-hours, without any pressure from the other side to respond quickly.

There are many family dispute resolution systems, and each design has been crafted to fit the needs of its particular volume of cases and user base. One example of this is cultural norms around divorce and separation. A family ODR platform designed in Sweden, for instance, might not meet the psychological needs of separating couples in Israel. Some cultures may have a social value of making divorce easy and accessible, where others might want to make the process more thorough to ensure that separation is truly the best option for the parties. Family dispute resolution processes are often heavily influenced by the cultural environment within which the algorithm operates. For instance, the systems that I was involved in building in the Netherlands, where more than half of divorces are paid for either fully or partially by the government, probably would not have worked in the United States, where divorce is more of a private process and the costs are usually borne by the parties directly. The patience that Dutch couples exhibited in going through the detailed questionnaires might not have translated to the American context, where parties view themselves more as customers and often expect to have more of a" delight experience" where their needs are met proactively throughout the process.

The Rise of the Fourth Party

Looking to the future, the rise of artificial intelligence and machine learning is likely to change the calculations around family ODR systems in some significant ways. For many years parties have relied on the expertise of attorneys or mediators to help craft separation plans and co-parenting agreements. While artificial intelligence has become a bit overhyped in the capabilities that it can deliver today, there is little question that improvements in computing power will accelerate advances in machine learning over the coming decade, which will in turn increase the effective effectiveness of AI algorithms to provide advice and insight to parties in a dispute. No matter how smart a lawyer is there is no way that they can read and synthesize 10,000 studies and decisions in family courts drawn around the world in 20 different languages – but an algorithm can achieve that. AI is going to change many professions, not just family ODR. But it is worth thinking about where these trends are leading us, so we can leverage them for good.

In the ODR field we don't often talk about artificial intelligence as much as we talk about the *fourth party* (Katsh and Rifkin, 2001). If the disputants are party one and party two and the human mediator is party three, then technology can be envisioned as party four. If you give it a human form (like a robot) or a desktop form (like an Amazon Echo) it could almost have a seat at the table just like any other party to the dispute. In this paradigm, the third party and the fourth party are partners, and they work together to assist party one and party two in resolving their dispute.

There are certain things that we ask the fourth party to do today in our dispute resolution processes that don't particularly seem futuristic: sending out reminders, taking notes, processing payments, managing our calendars, organizing documents. But the real question is what we will

ask the fourth party to do tomorrow. In the future, we may ask the device sitting in front of us on the mediation table what it thinks an appropriate amount of child support should be in a particular case. Or we may enter the relevant information about children into an algorithm and then ask it to craft a draft resolution, which the parties can then review and edit. These ideas may today seem hopelessly futuristic or impractical, but many of the ODR techniques that are commonplace today also felt that way 15 or 20 years ago. Based on the growth of ODR over the last twenty years, it is probably not a question of if, so much as a question of when. The key constraint that will define the adoption timeline is how long it will take for technology to achieve the efficacy and normalization required to convince parties and neutrals to welcome the fourth party into the heart of their dispute resolution processes.

Conclusion

The rise of ODR in family disputes has happened quickly over the past decade, but we are still in the early days. The question is less where we are now and more about where we are headed. The dynamics that have driven innovation in family ODR are not slowing down. There will always be a place for exclusively face-to-face family ODR processes, but the percentage of cases that will occur without some online component will likely decrease over time. Computer-based communication is now the new normal, so innovation in family ODR will continue to accelerate. As a result, we need to constantly evaluate and redesign these new tools to ensure they are a) meeting the psychological needs of our disputants, b) delivering appropriate and durable resolutions, and c) abiding by the ethical guidelines of dispute resolution practice.

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