

Benefits of Settling Family Law Disputes Out of Court

When a relationship breaks down, whether it be a marriage or a de facto relationship, one party may feel it is necessary to have any property or children's issues decided by a Court. Any Court process requires the filling of extensive Court documents, the expenditure of a considerable amount of time and money and emotion. Almost without exception, the litigation process is a long and drawn out one and fraught with uncertainty.

Good advice for any client is that generally litigation proceedings take longer, cost more than expected and may ultimately deliver a less favourable outcome compared to what might have been agreed upon had the parties worked towards settling the matter.

In all family law matters involving children, the Courts expect to be the last resort. Consequently, unless there are concerns about family violence and child abuse, it is expected that both parties attend mediation with a family dispute resolution practitioner who will then help the parties try to reach an agreement. Sometimes despite the parties' best efforts they simply cannot reach agreement. If they have however made a genuine effort the family dispute resolution practitioner will issue a certificate to that effect. Where a party refuses to attend or does attend and makes no genuine effort then the certificate also reflects this and it can be used in Court proceedings in an effort to try to recover costs.

In property matters, again it is expected that the Court is the last resort and that under the Family Law Rules and Regulations each party is to exchange financial information with the other and put forward an offer prior to commencing Court proceedings. Failure to do so can again raise the potential for a costs order to be made against the defaulting party. It would of course be different in circumstances that warranted urgency.

The advantages of settling a dispute are numerous. The majority of parties whose relationship has ended are not only in emotional distress, but often experience financial stress. Settlement reduces costs significantly. If the parties have children there are large benefits in parents reaching agreement about their care.

Social research on children whose parents have separated irrespective of whether they were married, or have never married, consistently shows that children manage breakdown of their parents' relationship but have difficulty managing where the conflict between the parents is ongoing. Parenting proceedings by their very nature perpetuate and promote ongoing conflict between parents. Consequently, parents need to be careful what proceedings should

be brought before the Court and what matters could be resolved by a concerted effort on each parent's part and consider the use of, for example, a good quality children's mediator and psychologist.

When settling children's matters we can include third parties such as a children's psychologist who can tell each parent what it is like to be their child and what it is that the child wants and needs. This information is invaluable and helps parents make smart care decisions for their children. The parents need to focus on their child's relationship with the other parent, not their own conflicted relationship with that parent.

Settlements can take many forms and are to an extent limited only by the imagination.

We can exchange formal written offers. Generally we then receive counter offers and bit by bit the parties work together until the entire matter is resolved.

We can have four way settlement conferences where each party, together with their solicitors, attends and we can spend up to a day sorting out an agreement. All issues can be canvassed and both parties participate actively in their own matter, which is important given that it is their own family and their own life.

In addition, Atkinson Vinden offers a collaborative practice. Collaborative practice is where all parties to the dispute, together with their collaboratively trained lawyers, attend a series of four way conferences where

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they each work through set tasks. Consequently one session may involve the use of a children's psychologist and talking about particular issues concerning one of the children or all of them. Another session may focus on financial issues and an accountant can be called in to work with both parties with all cards on the table, to work out what would be the best financial outcome for each party and the children. A collaborative process is generally reported by participants as giving them a high rate of settlement outcome satisfaction. It helps de-escalate conflict, re-establishes a degree of trust and, rather than each party becoming positional and protecting their own interests, each party works together to protect all stakeholders' interests. Stakeholders are all the people concerned in any family law matter, whether it be extended family members, the parties themselves and their children.

It is rare that a settlement outcome is not in the best interests of all parties. Where settlement is inappropriate is in circumstances with a significant disparity in the bargaining positions of each party; this is often evident in situations of ongoing family violence, bullying and control. Notwithstanding that, sometimes the latter can be settled, particularly through a collaborative process if the perpetrator of that type of conduct is willing, as part of the process, to undertake further programs so as to break the pattern of behaviour.

If you have any questions in relation to resolving disputes in the realm of family law, please do not hesitate to contact Annabel Murray or Nathan Avery-Williams on **(02) 9411 4466**.



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