

So, do you want to Litigate or Mediate?

When couples go through a separation, emotions run high. Hurt, disappointment, and a sense of being wronged by the other parent can overwhelm them. So, they turn to the Family Court. It's like revisiting their own childhood, where they sought their parents' authority during sibling disagreements. As parents, they may feel compelled to punish the other partner, hoping that a court will label one as the "good" parent and the other as the "bad" parent.

However, Family Courts operate differently. Their focus isn't on assigning blame or punishment. Instead, they try to prioritise the well-being of the children involved. The "overarching purpose" is "to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible." So, you will be asked to do mediation before making an application to the Family Court and then again when you are in court. Only 5% of cases are decided by a judge after a trial. Litigation and trials are extremely expensive, regularly costing each side more than \$150,000.

The Family Court says unnecessarily adversarial conduct will not be tolerated. At all stages in the proceedings, parties must avoid filing evidence that is unnecessarily lengthy or only of limited relevance to the issues genuinely in dispute. Any failure to comply with these requirements may attract costs orders against parties and/or lawyers and other consequences. The Family Court knows litigation is not a good place for parents to be. That is why they are so often likely to mandate you to attend mediation.

The Family Court does not want to see parents in litigation. The Family Court wants parents to resolve their own issues, because parents are the people that know and love their children the most. Family Court is not about vengeance on the other parent.

Mediation 20 years ago was called Alternative Dispute Resolution. It is now the primary dispute resolution path in Family Law. In the court's eyes, the judge making the decision is reserved as a last resort for a small minority of cases where there are serious safety concerns for children.

So, do you want to Litigate or Mediate? Remember, it's about what's best for the kids—the heart of every decision.

Peter Hanson – Conflict Resolution