

Resolution: The Focus of Family Law

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Resolving cases in family law has recently taken on greater emphasis.

The legislation [*Divorce Act* and *Children's Law Reform Act*] was amended in 2021 to provide a focus on engaging dispute resolution processes, including giving Courts the ability to now direct parties to attend a process for resolving disputes where appropriate [see section 16.1(6) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp)]. The preference is for parents, and not the Court, to develop their own resolutions, including parenting and financial issues. The Supreme Court of Canada recently commented on the amendments to the *Divorce Act*, in the support context, noting that “Parents should be encouraged — absent family violence or significant power imbalances — to resolve their disputes themselves outside the court structure...” [see *Colucci v. Colucci*, 2021 SCC 24, para. 69 - <https://canlii.ca/t/jg7j5>].

The Ontario Court of Appeal also outlined this preference when addressing parenting in *Knapp v. Knapp*: “It is always preferable — and in the best interests of the children — that the parenting plans be developed by the parents. That is why there is an emphasis on resolution in family law legislation and practice. When the parents cannot agree, the court must formulate a plan for them. This frequently results in at least one parent being dissatisfied. So too here” [see *Knapp v. Knapp*, 2021 ONCA 305, para. 17 - <https://canlii.ca/t/jft1n>].

There are many benefits to resolution, including:

1. Parties remaining in control of the process and the outcome;
2. The ability to make parenting plans unique to the specific family needs;
3. Obtaining a faster result; and
4. Savings in terms of time, money and the emotional aspects that come with litigation.

The emphasis on resolution is positive in the family law context, and represents the trend away from litigation as noted by the Supreme Court of Canada: “There is a trend in family law away from an adversarial culture of litigation to a culture of negotiation” [see *Colucci v. Colucci*, 2021 SCC 24, para. 69 - <https://canlii.ca/t/jg7j5>].

In some cases, particularly involving children, the parties will continue to communicate with each other for a long period of time post-separation. Resolving a case will better position the parties to work co-operatively in the future on addressing any issues that may arise.