



Family dispute resolution: resolving family law issues out of court

Divorce and separation can be difficult, especially if you have children. You may feel stressed about the different decisions you need to make about parenting arrangements and financial issues.

This document will

- give you some general information about different types of family dispute resolution processes, and
- help you understand the options available to you to help you come to an agreement with your former partner without going to court.

Family dispute resolution

'Family dispute resolution process' is a new term in the *Divorce Act*. It is used to describe a number of out-of-court processes families can use to solve issues such as parenting, child support, and for some families, property issues. Negotiation, mediation, collaborative law and arbitration are types of family dispute resolution that are explained below.

Using family dispute resolution: new legal obligations

On June 21, 2019 Parliament made changes to the *Divorce Act* that affect family dispute resolution. These changes apply as of March 1, 2021.

Family dispute resolution options that don't require you to go to court, such as mediation, are already available to you. What is new is that the *Divorce Act* says that you need to try to solve your family law issues by using family dispute resolution, if it is appropriate.

Legal advisers now have a duty to encourage you—as their client—to try solve issues through a family dispute resolution process, unless it would be clearly inappropriate to do so.

There are many ways people can make decisions about issues related to separation or divorce. You need to decide on the approach that works best for you and your family. No matter what process you use, it is important to focus on your children's best interests.

Benefits of solving issues by agreement

There are many advantages of solving issues by agreement instead of having a judge make decisions for you:

- you understand your children's needs
- family dispute resolution can be less expensive and much faster than going to court
- it can be good for your children to see parents cooperating
- some family dispute resolution processes can help improve your ability to communicate with each other

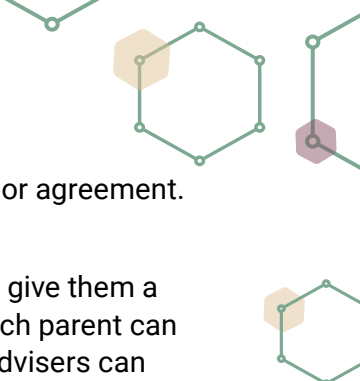
Under the new *Divorce Act*, parents have a duty to protect their children from conflict relating to parenting and support issues. More information on the duties of parties is available here (Fact Sheet–Duties of parties).

Getting legal information and legal advice

A legal adviser is anyone who is qualified to provide you with legal advice or represent you in case under the *Divorce Act*. This includes lawyers, but also others who are qualified in your province. For example, in Québec notaries can provide family law legal advice.

Family law issues can be complex. A legal adviser can help you at different times and in different ways throughout your separation or divorce. They can explain

- your legal rights and responsibilities and those of others
- your options
- how legal issues may be linked to one another
- how the courts work
- how quickly issues are likely to be solved through court and family dispute resolution processes
- the advantages and disadvantages of having an agreement or court order



It is recommended that you speak to a legal adviser **before** you sign a parenting plan or agreement. You may have forgotten something important that they can explain to you.

If you have children, schools, doctors, and government departments may need you to give them a copy of your written agreement or court order. This document can let them know which parent can pick up the child and who can make important decisions about your children. Legal advisers can help make sure your documents are clear and easy to understand.

Seeking the help of a legal adviser can be particularly important in cases where there has been family violence, substance abuse, or serious mental illness. More information about family violence is available [here](#).

When family dispute resolution is not appropriate—safety concerns

Certain types of dispute resolution may not be appropriate including in cases of high conflict, power imbalance or family violence. For example, if one parent is controlling, the other parent may not be able to speak up for themselves or their children when both parents are in the same room.

Accredited mediators and other family justice professionals will ask you questions about family violence and other factors to help determine which dispute resolution approach is appropriate in the circumstances. If you have concerns about family dispute resolution, it is important to discuss this with them to see if a solution is possible.

Differences between negotiation, mediation, collaborative law and arbitration

There are many ways a family law dispute can be solved outside of the courtroom. The new *Divorce Act* mentions negotiation, mediation and collaborative law. However, there are other forms of family dispute resolution. Some provinces permit the use of arbitration to solve family law disputes.


Deciding which approach is best for you will depend on your situation.

Negotiation

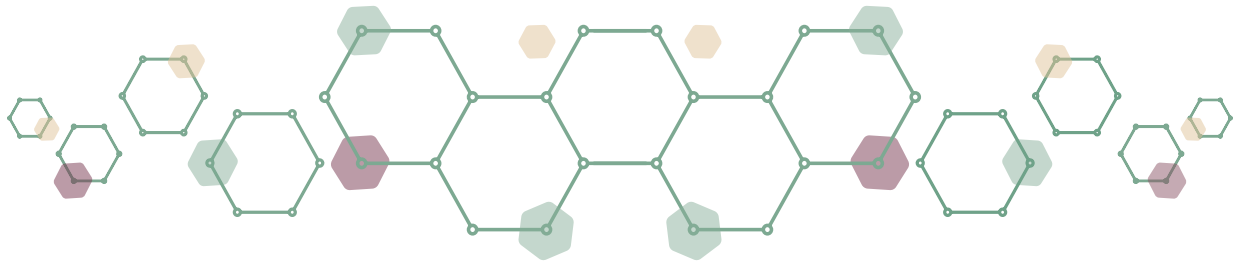
Negotiation can be done with or without the help of a legal adviser. It involves discussions between you and your former spouse to try and come up with a compromise or agreement about issues related to separation and divorce.

A **parenting plan** outlines how parents will raise their children after separation or divorce. Parenting plans describe how parents not living together will care for and make important decisions about their children in both homes. You can come up with a parenting plan through any of the forms of family dispute resolution. For more information on parenting plans consult the [Parenting plan checklist](#).

Collaborative Law



Collaborative law is a specific type of negotiation. In collaborative law, you and your former partner, your legal advisers and any other professionals (for example, financial advisors, mental health professionals or accountants), agree to work cooperatively to come to an agreement. During the collaborative process, you and your former partner agree not to bring any court applications.



Mediation

A mediator is a neutral third party who can help you and your former partner identify and discuss issues relating to parenting, separation or divorce. Mediators can help you identify issues and work on possible solutions. During mediation, you and your former partner tell each other directly what you want and need for yourself. If you have children, you can also say what you believe is in your children's best interests.

The mediator does not take sides or make decisions for you. They also cannot give legal advice. While the mediator will help you arrive at an agreement, in the end you and your former partner make the decisions including those about the best parenting arrangement for your child.

Because mediation usually involves direct discussions with the other person, it is not appropriate for everyone. For example, if there has been family violence and there are ongoing safety concerns, it may not be possible for you and the other person to mediate safely and effectively.

In some cases, other ways of mediating are better. For example, in **shuttle mediation**, you and your former partner do not need to be in the same room. The mediator speaks to one person, and then to the other person separately. You and your former partner negotiate with the help of the mediator, without being face-to-face.

It may also be possible to mediate from different locations using technology such as a telephone or videoconference. For example, you might do this if you and your former partner live in different cities.

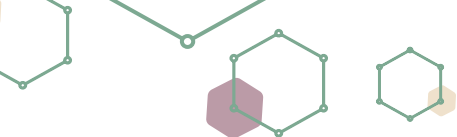
Arbitration

In some provinces, parenting issues, as well as property and support issues, can be solved through **arbitration**. In arbitration, you and the other person agree to allow a neutral person—the arbitrator—to decide the legal issues.

Arbitration is a private process and you and your former partner are responsible for paying the arbitrator, as well as your own legal advisers (if you have them). Arbitration tends to be a more informal process than a court trial.

Parenting coordination

Parenting coordination is a child-focused family dispute resolution process. It is for resolving parenting disputes that come up after you have made an agreement or order about parenting time, parental responsibilities or contact between the child and other important people in the child's life. Parenting coordinators may use a combination of mediation and arbitration to solve parenting disagreements. Parenting coordinators can be family law lawyers, mental health professionals, social workers, family therapists, mediators, and arbitrators.



How to decide which family dispute resolution approach is best for your family

When deciding which family dispute resolution option is best for you, there are many things to think about. The publication [Making Plans](#) contains helpful information about parenting after separation and divorce. For example, you may need to think about the amount of conflict between you and the other parent.

You may also decide that having someone, like a judge or an arbitrator, make those decisions for you is the best option for you and your family.

When you do need to go to court

If you and your former partner cannot come to an agreement or are only able to agree on certain issues, you may need someone else to make the decision for you.

Arbitration is one way that allows you to have someone else make the decision for you.

You can also go to court. Going to court means that you're asking a judge to decide what outcomes are appropriate for you and your family. You should not expect the court to give you a court order right away. It can take a long time.

There are many steps in the court process, which may be different depending on where you live. Even if you end up going to court, the court will encourage you and your former partner to come to an agreement through another method, if possible. In fact, a judge may try to settle the issues out of court themselves as well—for example with a procedure called a settlement conference. At a settlement conference a judge gives you and your former partner options about how some or all of the issues can be settled, without going further in the court process.

As well, the courts in your province may make you and your former partner participate in some other form of dispute resolution before moving forward with a court action.

If you cannot settle your dispute, a judge will hold a hearing or a trial, and then make a court order. You must do what the court order says.

You can also ask the court to include an agreement you have made in a court order. This is called a "consent order" because you and your former partner have agreed to it. The process is much simpler than when the parties do not agree.



Remember

You may solve your disputes outside of court through family dispute resolution, but only a court can grant a divorce. Once the judge grants the divorce, the court will issue a divorce certificate proving that you are no longer married.

There may be other reasons you need to get a court order. For example, if you want your agreement to be recognized as a court order in another province or country, you will need to go to court.

Family justice services in your province

Family justice services are either public (paid by the government) or private services (paid by you) that help people deal with issues arising from separation or divorce. Provinces and territories have [family justice services](#) such as mediation and parenting information sessions that you may find useful. You may also find other helpful services on the website of [your provincial or territorial government](#). Professionals in the private sector may also offer family dispute resolution services in your province or territory.

Related links

- [Making Plans: A guide to parenting arrangements after separation or divorce](#)
- [The parenting plan checklist](#)
- [Access the parenting plan tool](#)
- [Federal Child Support Guidelines: Step-by-Step](#)
- [Fact Sheet - Divorce and Family Violence](#)

