

FAQs - Settling Your Case Outside of Court

How can I negotiate with my spouse?

Negotiations can be informal between you and your spouse, or negotiations can be done with the assistance of your lawyer. This might include the exchange of financial disclosure and settlement proposals between your respective lawyers, or the spouses may agree to a 4-way settlement meeting between themselves and their lawyers to discuss the issues and work on a settlement.

What is a DRO?

A DRO is a Dispute Resolution Process at the Courthouse which is usually mandatory for parents who want to apply for or change child support. The parents and their respective counsel meet at the Courthouse with an experienced family law lawyer who acts as an impartial mediator to assist the parents in negotiating a resolution of their issues. The DRO is for one hour only and is a free service offered at the Courthouse.

What is mediation?

Mediation is an informal and non-binding process where a neutral third party (the mediator) assists the spouses in reaching a settlement of the issues that are in dispute between them. The mediator is usually an experienced family law lawyer and must be a trained and certified mediator. The mediator assists the spouses in discussing the issues in a free and open manner. Mediation is non-binding, which means that you can't be forced to agree to something during the mediation process. Mediation is also confidential and on a "Without Prejudice" basis, which means that something either party said in mediation cannot be used against them in any Court proceeding.

What are the advantages of Mediation?

Mediation is less expensive than going to Court. The process is informal which means that you can speak directly to the mediator and to your spouse, unlike most Court applications which require your lawyer to make representations on your behalf for the Judge to decide specific issues. Mediation allows both spouses to have a say in the decision making process. People are generally more likely to follow an agreement that has been reached through mediation. You can attend mediation on your own or with your lawyer. Lawyer assisted mediation means that your lawyer attends mediation with you to provide legal advice and guidance during the mediation process.

What happens if an agreement is reached during Mediation?

If an agreement is reached, the mediator will prepare a Memorandum of Understanding which will be provided to both spouses and their respective lawyers. One of the

lawyers will then draft a formal legal Agreement, based on the Memorandum of Understanding summarizing what the spouses agreed to at mediation. The Agreement must be signed by both spouses and their lawyers, with independent legal advice, to make the Agreement legally binding. The Memorandum of Understanding is not, by itself, a legally binding document.

What is Mediation / Arbitration?

Mediation/ Arbitration is a process whereby the spouses agree to attend mediation to resolve their issues. If the parties cannot reach an agreement through mediation on one or more of their issues, they agree in advance that the Mediator can become an Arbitrator, which allows the Mediator/ Arbitrator to make a final decision on any issue, which is as binding as a Court Order. The Mediator only becomes an Arbitrator when the spouses demonstrate very clearly that they are unable to reach an agreement or compromise on one or several issues.

What happens if I disagree with the Arbitrator's decision?

Prior to Mediation/ Arbitration, the spouses can decide whether there will be a right to appeal the Arbitrator's decision and the basis for any appeal of the Arbitrator's decision. If the spouses agree to a right to appeal the Arbitrator's decision, an appeal would follow the same process as an appeal of a Court Order. To appeal a Court Order or Arbitration Award is a very expensive and time consuming process. In most cases, spouses agree in advance not to appeal the Arbitrator's decision.

What is Collaborative Law?

Collaborative law is a process whereby both spouses and their respective lawyers agree in writing to follow a specific process to resolve all family law issues without going to Court. At the beginning of the process, both spouses and their lawyers sign a contract agreeing to avoid litigation, to provide complete financial disclosure, to communicate openly and honestly, to use joint experts where needed (eg.: accountants, pension experts, property valuers, parenting coordinators) and to negotiate in good faith, without threatening litigation. If one of the spouses decides to go to Court, both lawyers must immediately withdraw and both spouses must get new lawyers

How does Collaborative Law work?

The Collaborative law process must include two lawyers who are trained in the collaborative law. The spouses and their respective lawyers engage in several 4-ways meetings to discuss the issues and consider options for resolving the issues. Each lawyer represents their own client, but the intention is that the discussions will be interest based, as opposed to position based. The lawyers facilitate the discussions

between the spouses to consider settlement options and to agree on those options that best serve the interests of both spouses and their children.