

Comparative Effectiveness of Dispute Resolution Processes in Family Law Conflicts

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A recent study compared the costs and the effectiveness of four methods of resolving family law disputes, and found that mediation and collaborative law provide significantly higher value to disputants than arbitration and litigation in most cases. There was higher value to disputants from mediation and collaborative lawyering in the absolute sense, and the difference was even more profound when the average costs of each procedure were compared to the value received. Paetsch et al. published their comparative study with the Canadian Research Institute for Law and the Family in 2017, based on surveys of 166 family law lawyers across four provinces (Alberta, BC, Nova Scotia and Ontario).¹

The purpose of the study was to compare costs of the four different procedural routes for resolving family law disputes, but also to measure the relative value received by clients from those processes. To quantify the value received by clients, the study measured the social, environmental, and economic impact of the use of each route, producing a figure called the Social Return On Investment (SROI).

The Data

The survey data was compiled by self-reporting from the lawyers surveyed, so it does not give us client views, except indirectly through the lens of their lawyers. Even through that lens, the results paint a very clear picture.

The surveys asked questions about:

- Average costs of the total bill to their clients for low and high conflict disputes
- Their preferences for using the procedures
- Whether the results achieved were in their client's interests
- Whether the results achieved were in the interests of their client's children
- Whether clients were satisfied with the results achieved
- Whether the process makes future cooperation between the parties easier
- Speed and efficiency of the process
- Cost-effectiveness
- Effectiveness for complex issues
- Suitability for high conflict disputes
- Ease of getting adequate disclosure

¹ Paetsch et al., 2017, An Evaluation of the Cost of Family Law Disputes: Measuring the Cost Implication of Various Dispute Resolution Methods. Canadian Research Institute for Law and the Family. Submitted to Canadian Forum on Civil Justice. <http://www.cfcj-fcjc.org/sites/default/files/docs/Cost-Implication-of-Family-Law-Disputes.pdf>

Usage of Processes

Lawyers from Nova Scotia reported using *Collaboration* the most (86%), compared to Ontario with (48%), Alberta with (63%) and British Columbia with (68%).

Mediation was most used by lawyers from Ontario (89%), followed by British Columbia (87%) and Alberta (77%) with Nova Scotia reporting the lowest mediation usage (61.5%). Note that Nova Scotia also had the highest resort to litigation.

Arbitration was the least used procedure of the four, with Alberta at 39%, Ontario at 28%, BC at 23% and Nova Scotia only 8%.

Litigation was most used by lawyers in Nova Scotia (100%), followed by BC (92%), Alberta (89%) and Ontario with the lowest usage at 76%.

Typical Duration and Costs of the Processes

The table below identifies the typical durations of disputes, with the range of durations, as well as the typical bills for legal fees, with the range seen for those. The average billings set out below do not include the cost of disbursements or other professionals retained (like financial experts, or child specialists), just lawyer's fees.

PROCESS	Typical Time Required for Low Conflict Disputes	Typical Time Required for High Conflict Disputes	Average Bill for Low Conflict Disputes	Average Bill for High Conflict Disputes
<i>Collaboration</i>	5 months (range 1-18)	14.8 months (range 2-36)	\$6,269 (range 1-30K)	\$25,110 (range 5-100K)
<i>Mediation</i>	4.8 months (range 1-24)	13.7 months (range 1-60)	\$6,345 (range 630-30K)	\$31,140 (range 630-250K)
<i>Arbitration</i>	6.6 months (range 1-15)	14.8 months (range 1-24)	\$12,328 (range 2.5-50K)	\$40,107 (range 7-100K)
<i>Litigation</i>	10.8 months (range 1-36)	27.7 months (range 6-60)	\$12,395 (range 2-75K)	\$40,107 (range 5-625K)

Mediators' fees cost an average of \$376 per hour. Interestingly, in cases using mediators, the average cost of the mediator is \$4,423 plus an average cost for additional experts of \$5,664 for a total average disbursement of \$10,087 above and beyond legal fees.

For litigation, the average cost of other professionals is \$9,353 but parties may or may not be required to use a mediator anyway, depending on the jurisdiction.

The survey suggests that collaboration can have much higher average costs for ‘other professionals’, depending on the case and the lawyer’s preferences. Using a financial specialist and a child specialist averages more than 13K, for example.

Overall, mediation and collaboration appear to have significantly lower total costs to parties for both low and high conflict family law disputes.

Usefulness and Value of Each Process

In addition to cost-effectiveness, the survey measured the usefulness and value of each process in terms of various factors: how well the results met the client’s and their children’s interests; client satisfaction; speed and efficiency; and effect on future cooperation/relationship between the parties.

For low conflict disputes, mediation was considered the most useful process, followed closely by collaboration. Mediation was seen as “very useful” by 88% of respondents and somewhat useful by a further 10%, whereas litigation was seen as “very useful” by only 9.5% (and “not useful” by a whopping 44%).

For high conflict disputes, litigation was considered by the lawyers to be the most useful process in terms of results, with 54% ranking it as “very useful” and 41% as “somewhat useful”. Mediation was seen as “very useful” by 14% and as somewhat useful by a further 48% in high conflict cases. Collaboration ranked lowest in usefulness for high conflict disputes.

Mediation ranked highest as being useful for three specific types of dispute: a) care of children and parenting; b) child or spousal support; and c) division of property and debt. Approximately two-thirds of lawyers found mediation “very useful” for those disputes (and more than 96% found mediation to be “very useful” or “somewhat useful”). By contrast, litigation was only seen as ‘very useful’ by an average of 34% of respondents across those 3 categories.

Litigation was seen as most useful for questions related to urgent risk of harm to people or property, and substance abuse situations, but got very low results for the impact on future cooperation between parties.

In terms of meeting the goals and concerns of clients and their children, and generating satisfaction, the results are stark. The table below shows what percentage of respondents “strongly agree” with the listed views.

PROCESS	Results are in Client’s Interests	Results are in Client’s Children’s Interests	Clients are satisfied	Makes Future Cooperation Easier	Process is Fast and Efficient	Process is Cost-Effective
<i>Collaboration</i>	94%	99%	94%	93%	62%	68%
<i>Mediation</i>	90%	85%	81%	83%	69%	78%
<i>Arbitration</i>	34%	39%	58%	19%	69%	61%

Litigation	31%	30%	41%	6%	9%	5%
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Collaboration and Mediation both ranked highly in terms of generating good results in a timely and cost-effective way. Collaboration produced slightly more satisfactory results than mediation, but mediation was seen as slightly more time and cost-effective. Litigation ranked lowest in all categories.

While not surveyed, the choice of process is likely related to the degree of conflict in the case on average (i.e., parties willing to voluntarily choose collaboration are likely lower conflict than those choosing mediation, who are likely lower conflict than those opting for pure litigation). In high conflict cases, parties might resist using collaboration or mediation at all, or engage in such processes in fundamentally more adversarial ways, forcing the issues into litigation on one or both sides.

Overall Value

The study compared the cost of each process with the overall Social Return on Investment (SROI) for that process, to get a rough sense of the input costs versus the output values for each process as a dollar for dollar comparison. To do the calculation, the authors have allotted certain non-monetary outcomes a financial dollar value. Outcomes measured included timeliness, degree of stress, fairness and satisfaction, reduction of conflict, and legal cost savings for the family.

For low conflict cases, the highest SROI is for mediation at \$1:\$2.78 (i.e., for every dollar spent, \$2.78 in value is created) and is lowest for litigation at \$1:\$0.39 (for every dollar spent, only 0.39 dollars in value is created).

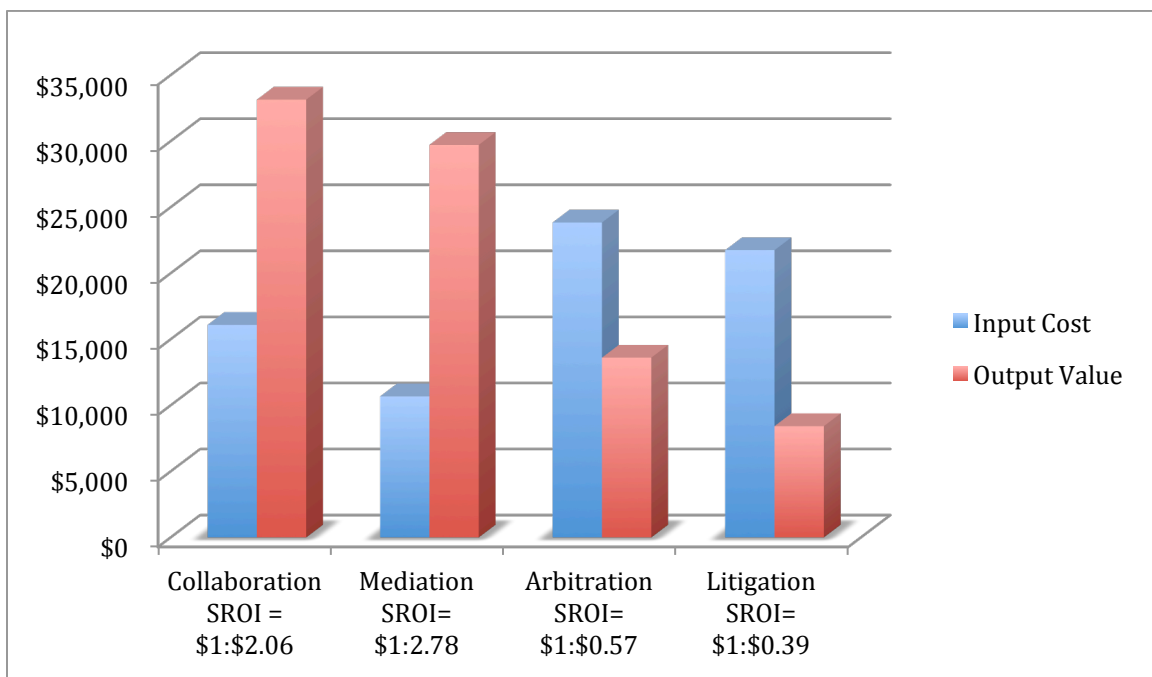


Fig. 1- SROI Results for Low Conflict Cases

For high conflict cases, despite litigation having the highest degree of usefulness for such cases according to the lawyers surveyed, it has by far the lowest SROI (\$1:\$0.04) , with collaboration and mediation ranking highest at \$1:\$1.12 and \$1:\$1.00 respectively.

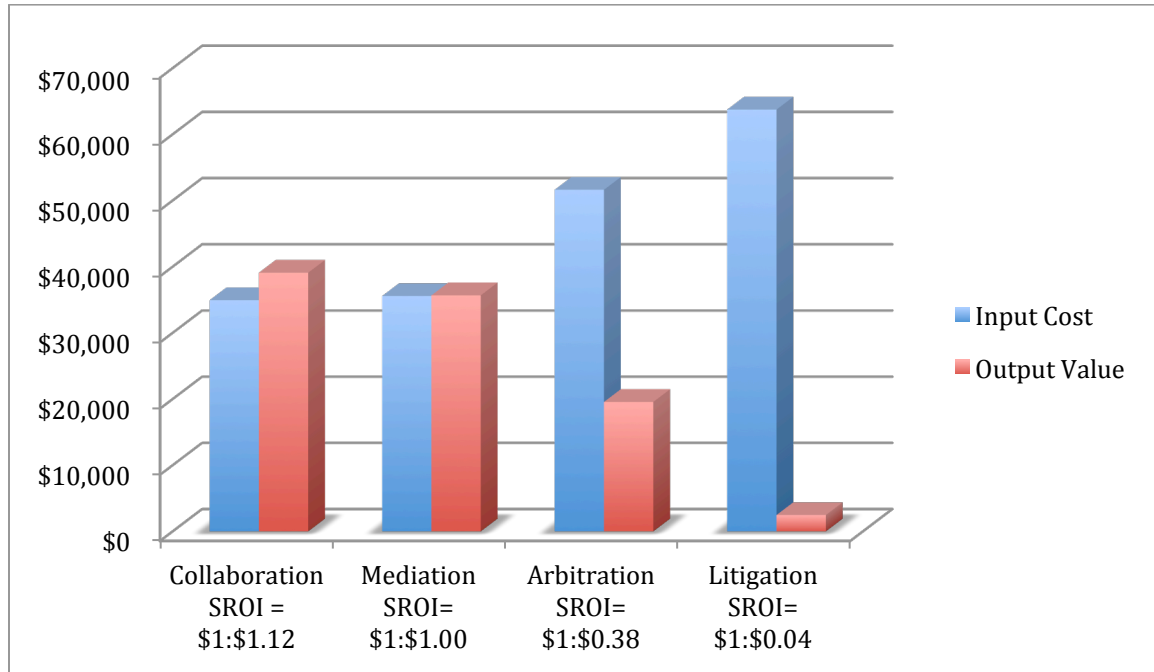


Fig. 2- SROI Results for High Conflict Cases

The high cost of litigation and the low value of the results make litigation a very low value process even in high conflict cases. That being said, when there is truly high conflict, one or both parties may have no choice but to resort to litigation to reach resolution.

Conclusions

The results of this new valuable study suggest that parties and their lawyers would do well to consider using mediation and collaboration to resolve most family law disputes, even in high conflict cases.

Mediation and collaboration are both significantly more time-effective and cost-effective than litigation, and far more likely to achieve results that are in the parties' interests and those of their children. Minimizing relationship damage means that future cooperation is also more likely to be easy when issues are resolved by those two methods.