

# Comparative Effectiveness Of Dispute Resolution Processes In Family Law Conflicts

By Paul Godin

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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).<sup>1</sup>

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.

## **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

### Usage of processes

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

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

*Arbitration* was the least-used procedure of the four, with Alberta at 39 per cent, Ontario at 28 per cent, BC at 23 per cent and Nova Scotia only eight per cent.

*Litigation* was most used by lawyers in Nova Scotia (100 per cent), followed by B.C. (92 per cent), Alberta (89 per cent) and Ontario with the lowest usage at 76 per cent.

### 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 lawyers' 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
<b><i>Collaboration</i></b>	5 months (range 1-18)	14.8 months (range 2-36)	\$6,269 (range 1-30K)	\$25,110 (range 5-100K)
<b><i>Mediation</i></b>	4.8 months (range 1-24)	13.7 months (range 1-60)	\$6,345 (range 630-30K)	\$31,140 (range 630-250K)
<b><i>Arbitration</i></b>	6.6 months (range 1-15)	14.8 months (range 1-24)	\$12,328 (range 2.5-50K)	\$40,107 (range 7-100K)
<b><i>Litigation</i></b>	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 \$13,000, 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 per cent of respondents and somewhat useful by a further 10 per cent, whereas litigation was seen as “very useful” by only 9.5 per cent (and “not useful” by a whopping 44 per cent).

For high-conflict disputes, litigation was considered by the lawyers to be the most useful process in terms of results, with 54 per cent ranking it as “very useful” and 41 per cent as “somewhat useful.” Mediation was seen as “very useful” by 14 per cent and as somewhat useful by a further 48 per cent 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 per cent found mediation to be “very useful” or “somewhat useful”). By contrast, litigation was only seen as “very useful” by an average of 34 per cent of respondents across those three 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.

<b>PROCESS</b>	<b>Results are in client's interests</b>	<b>Results are in client's children's interests</b>	<b>Clients are satisfied</b>	<b>Makes future cooperation easier</b>	<b>Process is fast and efficient</b>	<b>Process is cost-effective</b>
<b><i>Collaboration</i></b>	<b>94%</b>	<b>99%</b>	<b>94%</b>	<b>93%</b>	62%	68%
<b><i>Mediation</i></b>	90%	85%	81%	83%	<b>69%</b>	<b>78%</b>
<b><i>Arbitration</i></b>	34%	39%	58%	19%	69%	61%
<b><i>Litigation</i></b>	31%	30%	41%	6%	9%	5%

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 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 assigned a dollar value to certain non-monetary outcomes. Outcomes measured included timeliness, degree of stress, fairness and satisfaction, reduction of conflict, and legal cost savings for the family.

SROI measures how many dollars of value are received by a party for each dollar of input that a party spends. 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). While collaboration has a higher output value than mediation, it costs about 50% more on the input side to get that value, so mediation has more bang per dollar.

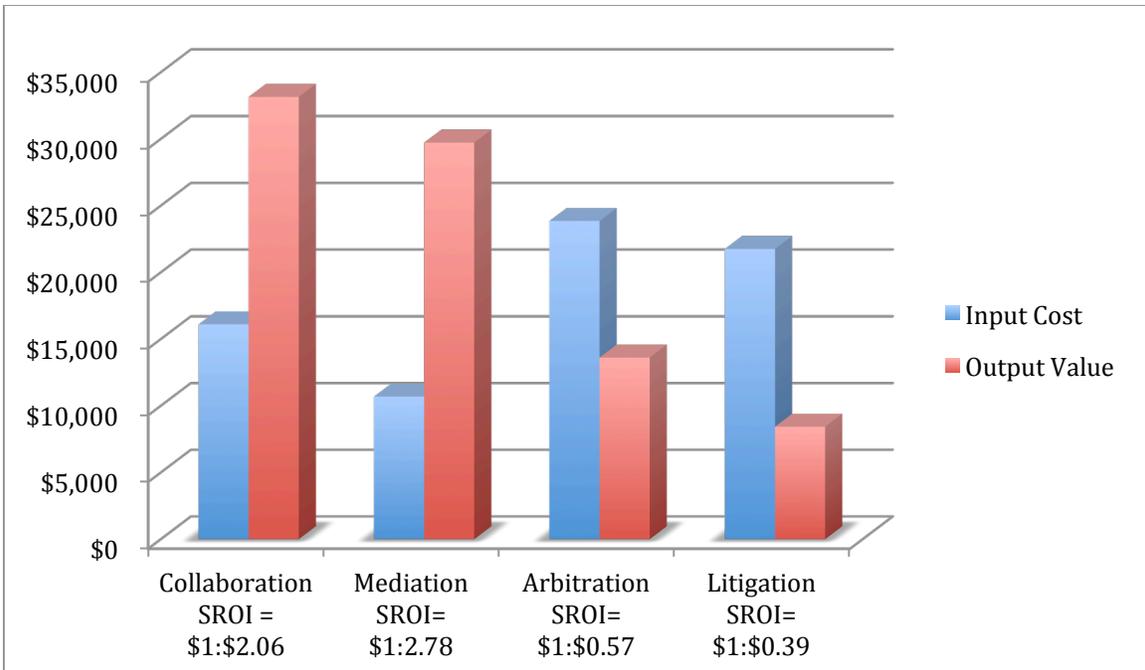


Fig. 1- SROI Results for Low-Conflict Cases

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.

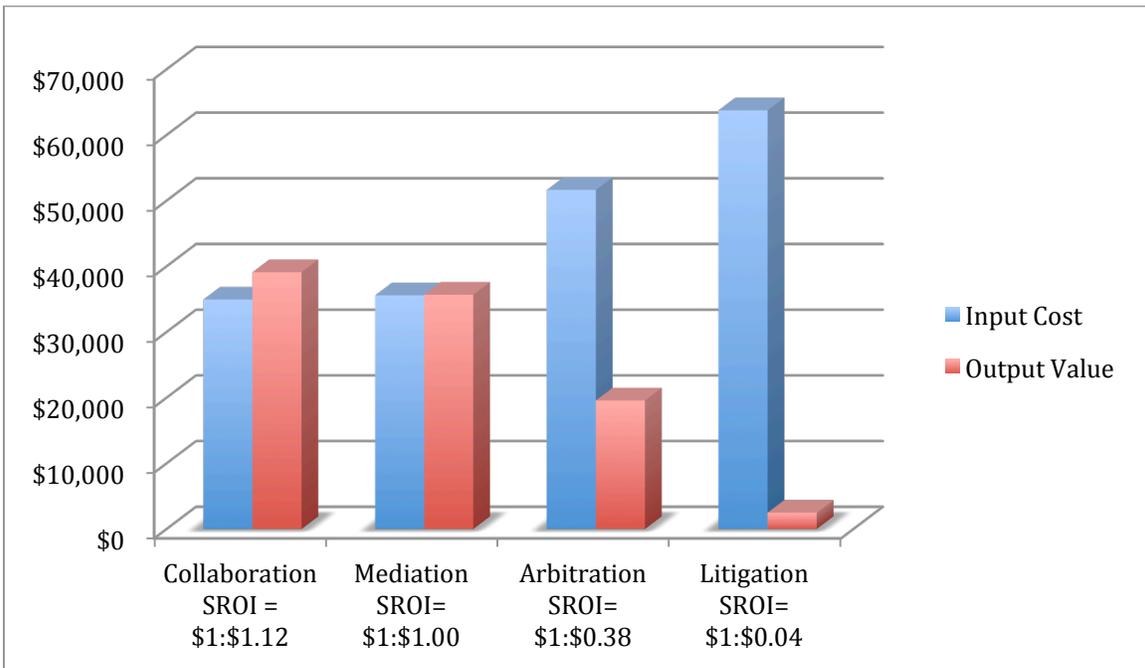


Fig. 2- SROI Results for High-Conflict Cases

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 valuable new 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.

See the [full study](#).

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## **End note**

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.