

Emphasis on Resolution in Family Law

Date: March 31, 2022

Settlement in family law continues to be emphasized and encouraged by the Courts.

The message to participants in family law cases is to use the Court as a last resort. The Ontario Court of Appeal recently noted that “[s]eparating spouses are strongly encouraged to resolve their family law disputes either entirely outside of court or with limited resort to the courts”, citing the observation from the Supreme Court of Canada that family law is trending to “a culture of negotiation” [[Meloche v. Meloche, 2021 ONCA 640](#), paras. 11-12].

The Courts are now equipped, based on amendments from 2021, to assist in this call for a resolution first approach, by being able to direct parties to attend a resolution process where appropriate [see section 16.1(6) of the Divorce Act, RSC 1985, c 3 (2nd Supp)]. This option was exercised in *L. v. B.*, with respect to parenting issues, where the Court stated that “[h]aving parents arrive a decision together, with the assistance of a skilled professional, is far better for children than having the Court impose a decision on a family where parents cannot reach a resolution about an important matter affecting children” [[L. v. B, 2021 ONSC 6866](#), para. 25].

From the perspective of the Court, the benefit of a resolution approach is that “[p]arents will always know their child better than a judge” and “[t]hey are more likely to accept and comply with a decision if they helped create it themselves. This is important in achieving a durable resolution, and to avoid the resentment which often undermines compliance with judge-imposed decisions” [[K.M. v. J.R.](#), 2022 ONSC 111, para. 368].

Overall, resolution is an aim for family law cases, which has many benefits, from an emotional, financial, and child focused perspective. Resolution helps parties remain in control of the process, keeps them involved in setting up a family roadmap that works for their particular situation, and can lead to timely closure.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

