



**AN EVALUATION OF THE COST OF FAMILY LAW DISPUTES:**

**MEASURING THE COST IMPLICATION OF  
VARIOUS DISPUTE RESOLUTION METHODS**

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# Canadian Research Institute for Law and the Family

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The Canadian Research Institute for Law and the Family is a non-profit, independent charitable institute affiliated with the University of Calgary. The major goals of the Institute are to undertake and promote interdisciplinary research, education, and publication on issues related to law and the family. The Institute's mission and vision statement is:

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The Canadian Forum on Civil Justice is a national not-for-profit organization dedicated to civil justice reform and access to justice research and advocacy. Established by the Canadian Bar Association and affiliated with Osgoode Hall Law School, the CFCJ envisions an accessible, sustainable and effective justice system for all Canadians.

*"This research ... by the Canadian Forum on Civil Justice will be essential in helping us understand the true extent of the problem of cost and how it impacts on the justice system. I believe that it will prove to be of great assistance to ... identify concrete solutions to the problem of access to justice."*

– The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada (2011)

The Cost of Justice project (2011-2018) examines the social and economic costs of Canada's justice system. It is guided by two questions: What is the cost of delivering access to justice? And what is the cost of not delivering access to justice? Comprised of leading researchers investigating various dimensions of access to justice and cost across the country, the Cost of Justice project is producing empirical data that will inform the future of access to justice in Canada and abroad. The lead research team includes: Trevor C.W. Farrow (Principal Investigator), Lisa Moore, Nicole Aylwin and Les Jacobs.

The Cost of Justice project is funded by a \$1 million grant from the Social Sciences and Humanities Research Council of Canada. For more details please visit Canadian Forum on Civil Justice, "Cost of Justice", online at [www.cfcj-fcjc.org/cost-of-justice](http://www.cfcj-fcjc.org/cost-of-justice).



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# Table of Contents

	Page
List of Tables and Figures .....	vi
Acknowledgements .....	ix
1.0 Introduction .....	1
1.1 Methodology.....	2
1.1.1 Lawyers’ Survey.....	2
1.1.2 Social Return on Investment Analyses .....	3
1.2 Limitations .....	3
2.0 Results from the Lawyers’ Survey.....	4
2.1 Demographic Information .....	4
2.2 Dispute Resolution Processes.....	5
2.2.1 Collaborative Settlement Processes .....	6
2.2.2 Mediation .....	10
2.2.3 Arbitration.....	14
2.2.4 Litigation .....	17
2.3 Comparisons of Dispute Resolution Processes .....	23
3.0 Social Return on Investment Analyses .....	37
3.1 Introduction .....	37
3.1.1 The SROI Process .....	38
3.2 SROI Analyses .....	39

4.0	Summary, Discussion and Recommendations .....	44
4.1	Summary of Lawyers' Survey Findings .....	44
4.1.1	Demographic Information .....	44
4.1.2	Collaborative Settlement Processes .....	44
4.1.3	Mediation .....	46
4.1.4	Arbitration.....	47
4.1.5	Litigation .....	48
4.1.6	Comparisons of Dispute Resolution Processes .....	50
4.2	Summary of Social Return on Investment Analyses .....	53
4.3	Discussion .....	53
4.4	Recommendations.....	55
	References .....	58
	Glossary.....	59
	Appendix A: Lawyers' Survey	

# List of Tables and Figures

	Page
Figure 2.1 Age of Respondents.....	4
Figure 2.2 Percentage of Respondents Reporting They Use Various Dispute Resolution Processes, by Province.....	5
Table 2.1 Frequency with Which Respondents Use Other Professionals When Resolving a Family Law Dispute Through Collaboration .....	7
Table 2.2 Amounts That Respondents’ Clients Typically Pay for Other Professionals.....	7
Table 2.3 Extent to Which Respondents Agree with Statements About Collaboration .....	8
Table 2.4 Extent to Which Respondents Agree with Statements About the Qualities of Collaboration.....	10
Table 2.5 Extent to Which Respondents Agree with Statements About Mediation .....	12
Table 2.6 Extent to Which Respondents Agree with Statements About the Qualities of Mediation.....	13
Table 2.7 Extent to Which Respondents Agree with Statements About Arbitration.....	15
Table 2.8 Extent to Which Respondents Agree with Statements About the Qualities of Arbitration .....	17
Table 2.9 Extent to Which Respondents Agree with Statements About Litigation .....	19
Table 2.10 Extent to Which Respondents Agree with Statements About the Qualities of Litigation.....	20

Table 2.11	Extent to Which Respondents Agree with Various Statements About the Use of Litigation .....	21
Table 2.12	Extent to Which Respondents Agree with Various Statements About Funding Issues .....	23
Table 2.13	Frequency with Which Respondents Use Dispute Resolution Processes to Resolve Family Law Disputes.....	24
Table 2.14	Respondents' Views on the Usefulness of Dispute Resolution Processes for Various Types of Disputes.....	25
Table 2.15	Respondents' Views on the Usefulness of Dispute Resolution Processes to Address Various Issues.....	26
Table 2.16	Respondents' Views on the Suitability of Dispute Resolution Processes to Hear Various Types of Evidence .....	28
Figure 2.3	Respondents' Views on Which Dispute Resolution Processes Usually Result in the Most Long-lasting Resolutions of Family Law Disputes .....	29
Figure 2.4	Lawyers' Estimates of How Long It Usually Takes to Resolve Typical Low- and High-conflict Disputes by Various Dispute Resolution Processes.....	30
Figure 2.5	Lawyers' Estimates of Total Bill to Client for Their Professional Services for Typical Low- and High-conflict Disputes by Various Dispute Resolution Processes.....	30
Figure 2.6	Extent to Which Respondents Agree They Prefer to Resolve Family Law Disputes Through Specified Dispute Resolution Processes .....	31
Figure 2.7	Extent to Which Respondents Agree That the Results They Achieve Through a Specified Dispute Resolution Process Are in the Client's Interest.....	32
Figure 2.8	Extent to Which Respondents Agree That the Results They Achieve Through a Specified Dispute Resolution Process Are in the Interest of Clients' Children .....	32

Figure 2.9	Extent to Which Respondents Agree That Their Clients are Satisfied with the Results They Achieved Through a Specified Dispute Resolution Process .....	33
Figure 2.10	Extent to Which Respondents Agree That Resolving Family Law Disputes Through a Specified Dispute Resolution Process Makes it Easier for Parties to Cooperate in the Future Than Other Dispute Resolution Processes.....	34
Figure 2.11	Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Usually Fast and Efficient.....	34
Figure 2.12	Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Usually Cost-effective .....	35
Figure 2.13	Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Suited for High-conflict Family Law Disputes.....	36
Figure 3.1	Input, Social Value Created and SROI Ratio for Low-conflict Family Law Disputes, by Dispute Resolution Process .....	42
Figure 3.2	Input, Social Value Created and SROI Ratio for High-conflict Family Law Disputes, by Dispute Resolution Process .....	43



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Alberta **LAW**  
**FOUNDATION**



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THE COST  
OF JUSTICE

## 1.0 INTRODUCTION

The Canadian Forum on Civil Justice contracted the Canadian Research Institute for Law and the Family to conduct a project measuring the cost implications of various dispute resolution methods for resolving family law disputes. Despite the greater emphasis in recent years on the importance of access to justice and the need to resolve family matters outside the court, there is little research on the effectiveness of various dispute resolution methods, and even less on the cost of the different approaches.

In their study on understanding the pathways to family dispute resolution and justice reforms in Ontario, Saini, Birnbaum, Bala & McLarty (2016) interviewed family court professionals and analyzed closed court files of family cases involving children. They found that the vast majority of cases where court files are opened are settled without trial, usually through negotiation. However, they also found that while most lawyers settle most of their cases, there is a small group of lawyers who resolve many or most of their cases by trial.

The Institute conducted a survey of family law lawyers to obtain their views on various dispute resolution processes. The survey provided additional insights into the costs of these processes, how long cases take to resolve, and counsels' perceptions of their efficacy. In these times of limited resources, the findings from this study provide information that is useful for policymakers and program developers in identifying best practices in cost-effective dispute resolution methods.

The Institute also developed a client survey, with the intention of obtaining information from clients with which to conduct a case study to compare the costs of resolving family disputes through court processes to resolution by other methods, specifically collaborative processes, mediation, and arbitration. Selected lawyers were asked to identify a typical low-conflict and high-conflict case falling within specific characteristics using a specific dispute resolution process. Lawyers were asked to approach their clients to explain the study and they were offered a \$50 Visa gift card to complete a survey and consent to using their information as a case study. If the clients agreed to participate, they were given a link to the electronic survey that included demographic questions, such as age, gender, income and education level, as well as questions about their legal dispute and the resolution process they used.

Unfortunately, the methodology was not successful, and we were unable to obtain sufficient data from which to conduct the case study. As an alternative, we decided to use the information available from the lawyers' surveys to conduct a Social Return on Investment analysis. SROI analyses are frameworks for measuring and communicating the social, economic or environmental impact of investment in an organization, project or program.

This report presents the results of the lawyers' survey, as well as the results of the Social Return on Investment analyses of the various dispute resolution methods. The findings of our research are discussed, and recommendations are made for moving forward.

## **1.1 Methodology**

### **1.1.1 Lawyers' Survey**

The survey of lawyers was conducted electronically using SurveyMonkey, an online program for developing and administering surveys, and contained questions designed to obtain quantitative data. The Canadian Bar Association's national Family Law Section was asked for its assistance in distributing the survey to its members in four provinces selected to sample the views of respondents across Canada: Alberta; British Columbia; Ontario; and Nova Scotia. A total of 207 lawyers started completing the survey; however, 41 respondents (19.8%) did not complete any parts in the survey other than demographic questions, and were not included in the data analysis. Thus, the sample analyzed for this report consisted of 166 surveys.

The lawyers' survey included: demographic questions, such as age and gender; information on their legal experience, such as year of call to the bar and their areas of law; as well as questions comparing the four dispute resolution methods being examined in this study. The survey is attached at Appendix A.

The lawyers' surveys were anonymous. No identifying information was requested, unless lawyers chose to provide their name and email address to enter a draw for a 128 GB iPad Mini, in which case the data were kept confidential. Following the draw, lawyers' contact information was removed from the data set. Data were analyzed quantitatively, and have only been reported in aggregate form.

### **1.1.2 Social Return on Investment Analyses**

The comparisons of the various dispute resolution processes were conducted using Social Return on Investment methodology. SROI analyses are frameworks for measuring and communicating the social, economic or environmental impact of investment in an organization, project or program (The SROI Network, 2012). The process of creating an SROI builds upon the logic model or outcomes framework of an organization or program by assessing the impact of the outcomes and establishing the possible social value creation of this impact. The SROI methodology attempts to quantify the impacts of the program using financial proxies that represent the value of certain social and environmental outcomes.

We adapted the SROI approach to look at the effect of different models of dispute resolution on case outcomes and thus this study also provides insight into how the SROI methodology could be used for studying components of the justice system.

## **1.2 Limitations**

The individuals who completed the lawyers' survey do not necessarily represent a random sample of family law lawyers from the four provinces examined in this study and therefore caution should be exercised in generalizing the findings to all family law lawyers in those provinces, or all family law lawyers in Canada.

As well, the data obtained are impressionistic. Lawyers were not asked to confirm their answers against actual case outcomes or their records. We sought, and this report presents, respondents' opinions.

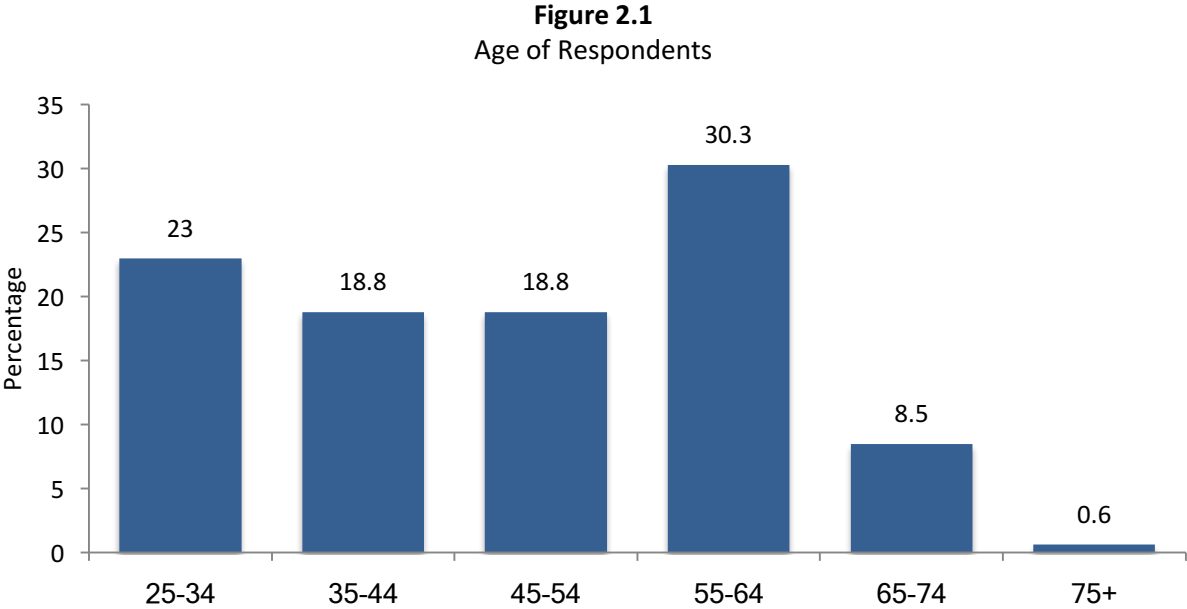
It is important to remember that the financial proxies used in the Social Return on Investment analyses are somewhat arbitrary. Although arbitrary, they have been applied consistently across all dispute resolution processes, however, providing a means for comparison between those processes. It is also important to note that the client satisfaction data were obtained from the lawyers' perspectives, and not the clients themselves. Because this type of methodology has never been used in this context, the results of the SROI analyses should be viewed as exploratory only.

## 2.0 RESULTS FROM THE LAWYERS' SURVEY

This chapter presents the results from the lawyers' survey. In addition to asking lawyers demographic questions, such as about their age, gender, location, and year of their first call to the bar in Canada, the survey asked questions about lawyers' use of four dispute resolution processes: collaboration; mediation; arbitration; and litigation. The survey also asked lawyers to indicate the extent to which they agreed with various statements regarding the different dispute resolution processes.

### 2.1 Demographic Information

Almost three-quarters of respondents were female (72.6%), 26.8% were male, and 0.6% identified their gender identity as "other"; two lawyers declined to state their gender identification. Lawyers were asked their age in pre-determined categories and the results are presented in Figure 2.1. Almost one-third of respondents (30.3%) fell into the 55 to 64 year age category, and over one-third (37.6%) were aged 35 to 54. About one-quarter of respondents (23%) were 25 to 34 years old, and only one-tenth (9.1%) were 65 years or older.



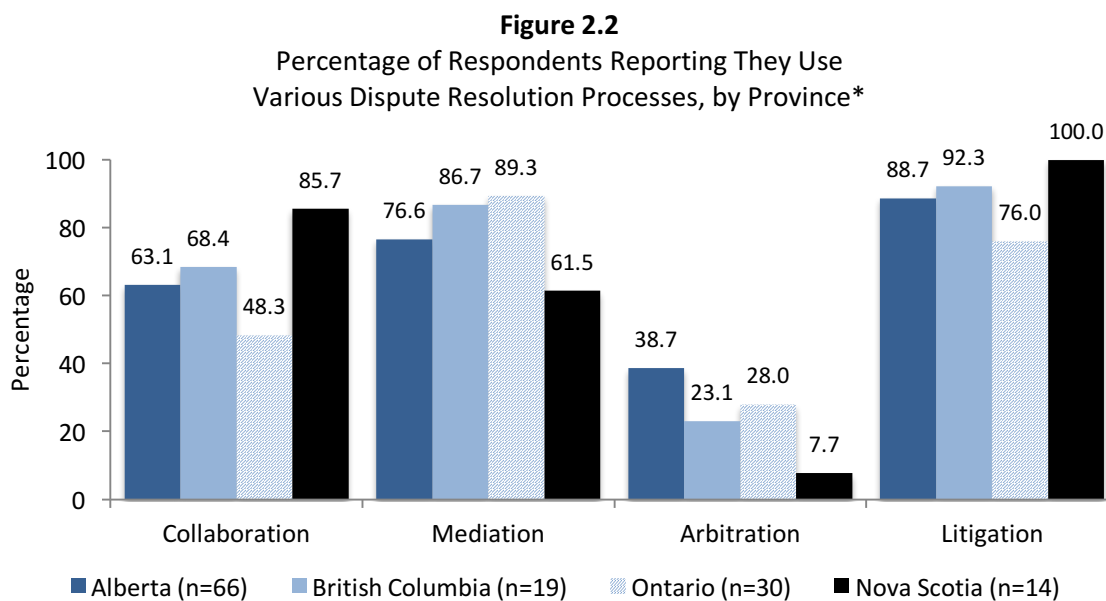
Source of Data: CFCJ Lawyer Survey  
N=166; Missing cases=1

On average, the number of years passing since respondents were first called to a bar in Canada was 17.6 (range=1 to 47). In terms of location, half the respondents were from

Alberta (48.9%), almost one-quarter were from Ontario (22.2%), 14.1% were from British Columbia, 10.4% were from Nova Scotia, and 4.4% were from Northwest Territories. The respondents' location was unknown for 18.7% of the sample.

## 2.2 Dispute Resolution Processes

Lawyers were asked if they use the following dispute resolution processes in their practice: collaboration; mediation; arbitration; and litigation. Figure 2.2 summarizes the results by province. A much larger proportion of respondents from Nova Scotia (85.7%) reported using collaboration compared to Ontario (48.3%), Alberta (63.1%) and British Columbia (68.4%). Larger proportions of respondents from Ontario (89.3%), British Columbia (86.7%) and Alberta (76.6%) reported using mediation than respondents from Nova Scotia (61.5%). While smaller proportions of respondents reported using arbitration compared to the other dispute resolution processes, a much larger proportion of respondents from Alberta (38.7%) reported using arbitration than respondents from Nova Scotia (7.7%), British Columbia (23.1%) and Ontario (28.0%). Most respondents reported using litigation in their practice, although a smaller proportion of respondents from Ontario (76.0%) reported doing so compared to the other provinces, and all respondents from Nova Scotia reported using litigation in their practice.



Source of Data: CFCJ Lawyer Survey

\* Given the small number of cases, data from the Northwest Territories were not included in this analysis.

The following sections present the results relating to each of the four dispute resolution processes.

### 2.2.1 Collaborative Settlement Processes

Lawyers were asked if they use collaborative settlement processes in their practice. Almost two-thirds of respondents (62.7%) said *yes* and 37.3% said *no* (N=166; missing cases=5). Respondents who reported using collaboration (n=101) were then asked a series of additional questions.

Lawyers were asked to estimate, when they resolve a family law dispute primarily through collaboration, how long (in months) it usually takes to resolve typical low- and high-conflict disputes. For low-conflict disputes, the average length of time reported was 5 months (range=1 to 18), while for high-conflict disputes, the average length of time was 14.8 months (range=1.5 to 36).

Lawyers were also asked to estimate the amount of their total bill to their client for their professional services, excluding disbursements and other charges, for typical low- and high-conflict disputes when they resolve a family law dispute primarily through collaboration. For low-conflict disputes, the average bill was \$6,269 (range=\$1,000 to \$30,000), and for high-conflict disputes, the average bill was \$25,110 (range=\$5,000 to \$100,000).

When asked how often they use other professionals when resolving a family law dispute through collaboration, one-half of respondents (48.8%) reported that they *always* or *often* use financial specialists, and a further 34.1% said they *occasionally* use financial specialists; see Table 2.1. One-third of the lawyers (33.8%) reported using child specialists *always* or *often*, and one-half (52.5%) said they *occasionally* use child specialists. Over one-quarter of respondents (27.5%) said they *always* or *often* use divorce coaches or counsellors, and one-third (32.5%) said they *occasionally* do. Two-fifths of the respondents (40.1%), however, reported that they *rarely* or *never* use divorce coaches or counsellors. Some respondents (n=36) said they use other specialists, including: psychologists; mental health professionals; medical professionals; mediators; business valuers; real estate appraisers; parenting coordinators; private investigators; and children's counsel.

Respondents were then asked about how much their clients paid for other professionals involved in collaborative processes, and the results are presented in Table 2.2. Some lawyers answered the question in terms of an hourly rate, while others reported a total cost. The average total cost for a financial specialist was \$7,573, with a range of \$1,000 to \$30,000. The average hourly rate for a financial specialist was \$277, with a range of \$150 to \$500. Lawyers who used child specialists said that the average total cost was \$6,108,

with a range of \$950 to \$20,000. The average hourly rate for child specialists was reported as being \$222, with a range of \$150 to \$300. According to the respondents, the average total cost of a divorce coach or counsellor was \$2,250, with a range of \$500 to \$5,000, and the average hourly rate was \$215, with a range of \$88 to \$300.

**Table 2.1**  
Frequency with Which Respondents Use Other Professionals When Resolving a Family Law Dispute Through Collaboration<sup>1</sup>

	Always		Often		Occasionally		Rarely		Never	
	n	%	n	%	n	%	n	%	n	%
Divorce coaches/ counsellors (n=80)	2	2.5	20	25.0	<b>26</b>	<b>32.5</b>	17	21.3	15	18.8
Child specialists (n=80)	1	1.3	26	32.5	<b>42</b>	<b>52.5</b>	8	10.0	3	3.8
Financial specialists (n=82)	3	3.7	<b>37</b>	<b>45.1</b>	28	34.1	13	15.9	1	1.2
Other specialist <sup>2</sup> (n=36)	2	5.6	9	25.0	8	22.2	6	16.7	<b>11</b>	<b>30.6</b>

Source of Data: CFCJ Lawyer Survey; n=101

<sup>1</sup> This question was only asked of respondents who reported that they use collaboration.

<sup>2</sup> "Other specialist" includes: psychologists; mental health professionals; medical professionals; mediators; business valuers; real estate appraisers; parenting coordinators; private investigators; children's counsel.

**Table 2.2**  
Amounts That Respondents' Clients Typically Pay for Other Professionals<sup>1</sup>

Other Professional	n	Hourly Rate		n	Total Cost	
		Mean	Range		Mean	Range
Divorce coaches/ counsellors	14	\$215	\$88-\$300	10	\$2,250	\$500-\$5,000
Child specialists	20	\$222	\$150-\$300	25	\$6,108	\$950-\$20,000
Financial specialists	16	\$277	\$150-\$500	28	\$7,573	\$1,000-\$30,000
Other experts	3	\$283	\$250-\$350	10	\$5,425	\$700-\$17,500

Source of Data: CFCJ Lawyer Survey; n=101

<sup>1</sup> This question was only asked of respondents who reported that they use collaboration.

Lawyers were asked to indicate the extent to which they agreed with various statements regarding collaboration; see Table 2.3. All but one respondent (98.9%) *strongly agreed* or *agreed* that the results they achieve through collaborative processes are in the interest of



the client’s children, and 94% *strongly agreed* or *agreed* that the results they achieve are in the client’s interest.

**Table 2.3**  
Extent to Which Respondents Agree with Statements  
About Collaboration<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
I prefer to resolve family law disputes through collaborative processes whenever possible	56	66.7	21	25.0	5	6.0	2	2.4	0	0.0
The results I achieve through collaborative processes are in the client’s interest	52	61.9	27	32.1	3	3.6	2	2.4	0	0.0
The results I achieve through collaborative processes are in the interest of the client’s children	57	67.9	26	31.0	1	1.2	0	0.0	0	0.0
My clients are satisfied with the results I achieve through collaborative processes	33	39.3	46	54.8	5	6.0	0	0.0	0	0.0
I prefer collaborative processes over litigation	59	70.2	14	16.7	10	11.9	1	1.2	0	0.0
My clients prefer collaborative processes over litigation	43	51.2	24	28.6	16	19.0	1	1.2	0	0.0
Resolving family law disputes through collaborative processes makes it easier for the parties to cooperate in the future than other dispute resolution processes	53	63.1	25	29.8	4	4.8	2	2.4	0	0.0

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use collaboration.  
n=101; missing cases=17

Two-thirds of lawyers (66.7%) *strongly agreed* that they prefer to resolve family law disputes through collaborative processes whenever possible, and a further 25% *agreed*. Two respondents (2.4%) *disagreed* with this statement, and 6% *neither agreed nor disagreed*. Similarly, 70.2% of respondents *strongly agreed* that they prefer collaborative processes over litigation, and a further 16.7% *agreed*. Only one respondent (1.2%) *disagreed* with this statement, and 11.9% *neither agreed nor disagreed*.

According to the respondents, their clients are satisfied with the results they achieve through collaborative processes; 94.1% *strongly agreed* or *agreed* with this statement, and 6% *neither agreed nor disagreed*. Lawyers also believe that their clients prefer collaborative processes over litigation. Over one-half (51.2%) *strongly agreed* with this statement, and a further 28.6% *agreed*. Only one respondent (1.2%) *disagreed*, and 19% *neither agreed nor disagreed*.

The final statement in this survey question asked lawyers the extent to which they agreed that resolving family law disputes through collaborative processes makes it easier for the parties to cooperate in the future than other dispute resolution processes. Again, respondents expressed strong agreement with this statement. Almost two-thirds (63.1%) *strongly agreed*, and almost one-third (29.8%) *agreed*. Only two respondents (2.4%) *disagreed*, and 4.8% *neither agreed nor disagreed*.

The next question in the survey asked lawyers to indicate the extent to which they agreed with a series of statements about the qualities of collaboration; see Table 2.4. The quality that the largest proportion of respondents (85.6%) *strongly agreed* or *agreed* with was that they could deal with complex issues through collaborative processes. Only two respondents (2.4%) *disagreed* with this statement, and 12% *neither agreed nor disagreed*.

Approximately two-thirds of respondents *strongly agreed* or *agreed* that collaborative processes are usually fast and efficient (61.9%), cost-effective (67.9%), and that getting adequate disclosure is rarely a problem when using them to resolve family law disputes (65.5%). For each of these three statements, approximately one-fifth of the respondents *disagreed*, and about one-quarter *neither agreed nor disagreed*.

The statement that received the least support from lawyers was that collaborative processes are suited for high-conflict family law disputes. Over one-third of respondents *strongly agreed* or *agreed* (36.1%) with this statement, and over one-third (37.4%) *disagreed* or *strongly disagreed*. Almost one-quarter of respondents *neither agreed nor disagreed*.

**Table 2.4**  
Extent to Which Respondents Agree with Statements  
About the Qualities of Collaboration<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Collaborative processes are usually fast and efficient	8	9.5	<b>44</b>	<b>52.4</b>	25	29.8	7	8.3	0	0.0
Collaborative processes are usually cost-effective	11	13.1	<b>46</b>	<b>54.8</b>	21	25.0	6	7.1	0	0.0
I can deal with complex issues through collaborative processes (missing cases=18)	<b>37</b>	<b>44.6</b>	34	41.0	10	12.0	2	2.4	0	0.0
Collaborative processes are suited for high-conflict family law disputes (missing cases=18)	8	9.6	<b>22</b>	<b>26.5</b>	<b>22</b>	<b>26.5</b>	18	21.7	13	15.7
Getting adequate disclosure is rarely a problem when using collaborative processes to resolve family law disputes	22	26.2	<b>33</b>	<b>39.3</b>	19	22.6	10	11.9	0	0.0

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use collaboration. n=101; missing cases=17 (except where noted)

## 2.2.2 Mediation

Lawyers were asked if they use mediation in their practice. Four-fifths of respondents (80.1%) said *yes* and 19.9% said *no* (N=166; missing cases=20). Respondents who reported using mediation (n=117) were then asked a series of additional questions.

Lawyers were asked to estimate, when they resolve a family law dispute primarily through mediation, how long (in months) it usually takes to resolve typical low- and high-conflict disputes. For low-conflict disputes, the average length of time reported was 4.8 months (range=1 to 24), while for high-conflict disputes, the average length of time was 13.7 months (range=1 to 60).

Lawyers were also asked to estimate the amount of their total bill to their client for their professional services, excluding disbursements and other charges, for typical low- and high-conflict disputes when they resolve a family law dispute primarily through mediation. For low-conflict disputes, the average bill was \$6,345 (range=\$630 to \$30,000), and for high-conflict disputes, the average bill was \$31,140 (range=\$630 to \$250,000).

Respondents were then asked how much their clients typically pay for the mediator's services. Lawyers who reported an hourly rate (n=32) said that the mediator's services cost an average of \$376 per hour (range=\$84 to \$600). Lawyers who reported a total cost (n=39) said that the mediator's services cost an average of \$4,423 (range=\$500 to \$20,000).

When asked how frequently the services of other experts are used in their mediation cases, lawyers (n=104) responded *always* or *often* (21.2%), *occasionally* (51.9%), and *rarely* or *never* (26.9%). When other experts are used in their mediation cases, lawyers said their clients typically pay \$361 per hour (range=\$150 to \$650; n=10) or a total of \$5,664 (range=\$750 to \$15,000; n=32).

The next question in the survey asked lawyers to indicate the extent to which they agreed with various statements about mediation, and the results are presented in Table 2.5. Respondents overwhelmingly *strongly agreed* or *agreed* (90.2%) that the results they achieve through mediation are in the client's interest. Only two lawyers (1.9%) *disagreed*, and 7.8% *neither agreed nor disagreed*. The vast majority of respondents also *strongly agreed* or *agreed* (85.4%) that the results they achieve are in the interest of the client's children. One respondent (1%) *strongly disagreed* with this statement, and 13.6% *neither agreed nor disagreed*.

When asked if they prefer mediation over litigation, almost two-thirds of respondents (63.1%) *strongly agreed*, and a further 22.3% *agreed*. Five respondents (4.9%) *disagreed*, and 9.7% *neither agreed nor disagreed*. Similarly, the majority of respondents (79.6%) *strongly agreed* or *agreed* that they prefer to resolve family law disputes through mediation whenever possible; 4.9% *disagreed*, and 15.5% *neither agreed nor disagreed*.

Respondents also indicated that their clients also prefer mediation over litigation; 80.5% *strongly agreed* or *agreed* with this statement, only 1% *disagreed*, and 18.4% *neither agreed nor disagreed*. Lawyers also indicated that their clients are satisfied with the results they achieve through mediation. The majority (81.5%) *strongly agreed* or *agreed*, 1.9% *disagreed*, and 16.5% *neither agreed nor disagreed*.

The final statement in the question asked lawyers if resolving family law disputes through mediation makes it easier for the parties to cooperate in the future than other dispute resolution processes. Over one-half of respondents (53.4%) *strongly agreed* and a further 29.1% *agreed*. One respondent (1%) *disagreed* and one (1%) *strongly disagreed*, and 15.5% *neither agreed nor disagreed*.

**Table 2.5**  
Extent to Which Respondents Agree with Statements  
About Mediation<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
I prefer to resolve family law disputes through mediation whenever possible	57	55.3	25	24.3	16	15.5	5	4.9	0	0.0
The results I achieve through mediation are in the client's interest	50	48.5	43	41.7	8	7.8	2	1.9	0	0.0
The results I achieve through mediation are in the interest of the client's children	44	42.7	44	42.7	14	13.6	0	0.0	1	1.0
My clients are satisfied with the results I achieve through mediation	34	33.0	50	48.5	17	16.5	2	1.9	0	0.0
I prefer mediation over litigation	65	63.1	23	22.3	10	9.7	5	4.9	0	0.0
My clients prefer mediation over litigation	50	48.5	33	32.0	19	18.4	1	1.0	0	0.0
Resolving family law disputes through mediation makes it easier for the parties to cooperate in the future than other dispute resolution processes	55	53.4	30	29.1	16	15.5	1	1.0	1	1.0

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use mediation.

n=117; missing cases=14

Lawyers who reported that they use mediation were then asked the extent to which they agreed with a series of statements about the qualities of mediation; see Table 2.6. Just over three-quarters of the respondents (77.7%) *strongly agreed* or *agreed* that mediation is usually a cost-effective dispute resolution process. One respondent (1%) *strongly disagreed*, 6.8% *disagreed*, and 14.6% *neither agreed nor disagreed*. Similar proportions of respondents *strongly agreed* or *agreed* (77.6%) that they can deal with complex issues through mediation; one respondent (1%) *strongly disagreed*, 7.8% *disagreed*, and 13.6% *neither agreed nor disagreed*. A slightly smaller proportion of respondents (68.9%) *strongly agreed* or *agreed* that mediation is usually a fast and efficient dispute resolution process. One respondent (1%) *strongly disagreed*, 9.7% *disagreed*, and 20.4% *neither agreed nor disagreed*.

**Table 2.6**  
Extent to Which Respondents Agree with Statements  
About the Qualities of Mediation<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Mediation is usually a fast and efficient dispute resolution process	26	25.2	45	43.7	21	20.4	10	9.7	1	1.0
Mediation is usually a cost-effective dispute resolution process	32	31.1	48	46.6	15	14.6	7	6.8	1	1.0
I can deal with complex issues through mediation	33	32.0	47	45.6	14	13.6	8	7.8	1	1.0
Mediation is suited for high-conflict family law disputes	7	6.8	18	17.5	39	37.9	22	21.4	17	16.5
Getting adequate disclosure is rarely a problem when mediating family law disputes	9	8.7	32	31.1	30	29.1	29	28.2	3	2.9

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use mediation.

n=117; missing cases=14

Respondents were much less in agreement about the final two statements in the survey question. Only 39.8% of lawyers *strongly agreed* or *agreed* that getting adequate disclosure is rarely a problem when mediating family law disputes. Almost one-third of

respondents (31.1%) *disagreed* or *strongly disagreed*, and 29.1% *neither agreed nor disagreed*. When asked how much they agreed that mediation is suited for high-conflict family law disputes, the most common response was that lawyers *neither agreed nor disagreed* with the statement. However, 37.9% *disagreed* or *strongly disagreed*, and only one-quarter of respondents (24.3%) *strongly agreed* or *agreed*.

### 2.2.3 Arbitration

Lawyers were asked if they use arbitration in their practice. One-third of respondents (32.1%) said *yes* and 67.9% said *no* (N=166; missing cases=32). Respondents who reported using arbitration (n=43) were then asked a series of additional questions.

Lawyers were asked to estimate, when they resolve a family law dispute primarily through arbitration, how long (in months) it usually takes to resolve typical low- and high-conflict disputes. For low-conflict disputes, the average length of time reported was 6.6 months (range=1 to 15), while for high-conflict disputes, the average length of time was 14.8 months (range=1 to 24).

Lawyers were also asked to estimate the amount of their total bill to their client for their professional services, excluding disbursements and other charges, for typical low- and high-conflict disputes when they resolve a family law dispute primarily through arbitration. For low-conflict disputes, the average bill was \$12,328 (range=\$2,500 to \$50,000), and for high-conflict disputes, the average bill was \$40,107 (range=\$7,000 to \$100,000).

Respondents were then asked how much their clients typically pay for the arbitrator's services. Lawyers who reported an hourly rate (n=14) said that the arbitrator's services cost an average of \$450 per hour (range=\$350 to \$600). Lawyers who reported a total cost (n=17) said that the arbitrator's services cost an average of \$11,515 (range=\$2,000 to \$25,000). When asked how frequently the services of other experts are used in their arbitration cases, lawyers (n=38) responded *always* or *often* (34.2%), *occasionally* (50%), and *rarely* or *never* (15.8%). When other experts are used in their arbitration cases, lawyers said their clients typically pay \$450 per hour (range=\$350 to \$500; n=3) or a total of \$13,867 (range=\$2,500 to \$50,000; n=15).

As with the previous two dispute resolution processes, lawyers who reported that they use arbitration were asked the extent to which they agreed with various statements about arbitration; see Table 2.7. Just under one-third of respondents (31.5%) *strongly agreed* or

*agreed* that they prefer to resolve family law disputes through arbitration whenever possible, and under one-third (29%) *disagreed* or *strongly disagreed*. Two-fifths of respondents (39.5%) said they *neither agreed nor disagreed* with the statement. A larger proportion of lawyers, however, *strongly agreed* (21.1%) or *agreed* (37.8%) that they prefer arbitration over litigation; 16.2% *disagreed* or *strongly disagreed*, and one-quarter (24.3%) *neither agreed nor disagreed*.

**Table 2.7**  
Extent to Which Respondents Agree with Statements  
About Arbitration<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
I prefer to resolve family law disputes through arbitration whenever possible	1	2.6	11	28.9	15	39.5	8	21.1	3	7.9
The results I achieve through arbitration are in the client's interest	1	2.6	12	31.6	21	55.3	2	5.3	2	5.3
The results I achieve through arbitration are in the interest of the client's children	2	5.3	13	34.2	17	44.7	4	10.5	2	5.3
My clients are satisfied with the results I achieve through arbitration	1	2.6	21	55.3	11	28.9	2	5.3	3	7.9
I prefer arbitration over litigation (missing cases=6)	8	21.6	14	37.8	9	24.3	2	5.4	4	10.8
My clients prefer arbitration over litigation	8	21.1	14	36.8	11	28.9	2	5.3	3	7.9
Resolving family law disputes through arbitration makes it easier for the parties to cooperate in the future than other dispute resolution processes	2	5.3	5	13.2	19	50.0	9	23.7	3	7.9

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use arbitration.  
n=43; missing cases=5 (except where noted)



About one-third of respondents *strongly agreed* or *agreed* (34.2%) that the results they achieve through arbitration are in the client's interest. The majority of respondents (55.3%) *neither agreed nor disagreed*, and 10.6% *disagreed* or *strongly disagreed*. Similarly, 39.5% of the lawyers who responded *strongly agreed* or *agreed* that the results they achieved through arbitration are in the interest of the client's children; 15.8% *disagreed* or *strongly disagreed*, and 44.7% said *neither*. The same proportions of lawyers *strongly agreed* or *agreed* (57.9%) that their clients are satisfied with the results they achieve through arbitration and their clients prefer arbitration over litigation; for both of these statements, 13.2% of respondents *disagreed* or *strongly disagreed*, and 28.9% *neither agreed nor disagreed*.

When asked if they agreed that resolving family law disputes through arbitration makes it easier for the parties to cooperate in the future than other dispute resolution processes, one-half of the lawyers (50%) *neither agreed nor disagreed*. Almost one-third (31.6%) *disagreed* or *strongly disagreed* with this statement, and only 18.5% *strongly agreed* or *agreed*.

Lawyers were asked to indicate the extent to which they agreed with a series of statements about the qualities of arbitration, and the findings are presented in Table 2.8. The benefit that resulted in the greatest agreement among respondents was that they can deal with complex issues through arbitration. One-half of the lawyers (50%) *agreed* with this statement, and a further 39.5% *strongly agreed*. One respondent (2.6%) *strongly disagreed*, and 7.9% *neither agreed nor disagreed*.

Lawyers were also in general agreement that arbitration is suited for high-conflict family law disputes. Almost one-third of respondents (31.6%) *strongly agreed*, and a further 39.5% *agreed*. Four respondents (10.5%) *strongly disagreed*, and 18.4% *neither agreed nor disagreed*.

Over two-thirds of respondents (68.5%) *strongly agreed* or *agreed* that arbitration is usually a fast and efficient dispute resolution process; 10.6% *disagreed* or *strongly disagreed*, and 21.1% *neither agreed nor disagreed*. A smaller proportion of lawyers *strongly agreed* or *agreed* that arbitration is usually a cost-effective dispute resolution process (60.5%); 21.1% *disagreed* or *strongly disagreed*, and 18.4% *neither agreed nor disagreed*.

Lastly, over half of the respondents (55.3%) *strongly agreed* or *agreed* that getting adequate disclosure is rarely a problem when arbitrating family law disputes; 18.5% *disagreed* or *strongly disagreed*, and over one-quarter (26.3%) *neither agreed nor disagreed*.

**Table 2.8**  
Extent to Which Respondents Agree with Statements  
About the Qualities of Arbitration<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Arbitration is usually a fast and efficient dispute resolution process	5	13.2	21	55.3	8	21.1	2	5.3	2	5.3
Arbitration is usually a cost-effective dispute resolution process	6	15.8	17	44.7	7	18.4	5	13.2	3	7.9
I can deal with complex issues through arbitration	15	39.5	19	50.0	3	7.9	0	0.0	1	2.6
Arbitration is suited for high-conflict family law disputes	12	31.6	15	39.5	7	18.4	0	0.0	4	10.5
Getting adequate disclosure is rarely a problem when arbitrating family law disputes	5	13.2	16	42.1	10	26.3	5	13.2	2	5.3

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use arbitration.  
n=43; missing cases=5

## 2.2.4 Litigation

Lawyers were asked if they use litigation in their practice. Over two-thirds of respondents (68.7%) said *yes* and 9.6% said *no* (N=166; missing cases=36). Respondents who reported using litigation (n=114) were then asked a series of additional questions.

Lawyers were asked to estimate, when they resolve a family law dispute primarily through litigation, how long (in months) it usually takes to resolve typical low- and high-conflict disputes. For low-conflict disputes, the average length of time reported was 10.8 months (range=1 to 36), while for high-conflict disputes, the average length of time was 27.7 months (range=6 to 60).

Lawyers were also asked to estimate the amount of their total bill to their client for their professional services, excluding disbursements and other charges, for typical low- and

high-conflict disputes when they resolve a family law dispute primarily through litigation. For low-conflict disputes, the average bill was \$12,395 (range=\$2,000 to \$75,000), and for high-conflict disputes, the average bill was \$54,390 (range=\$5,000 to \$625,000).

When asked how frequently the services of other experts are used in their litigation cases, lawyers (n=109) responded *always* or *often* (52.3%), *occasionally* (41.3%), and *rarely* or *never* (6.4%). When other experts are used in their litigation cases, lawyers said their clients typically pay \$449 per hour (range=\$290 to \$750; n=7) or a total of \$9,353 (range=\$750 to \$35,000; n=49).

Lawyers were asked their level of agreement with various statements regarding litigation, and the results are presented in Table 2.9. Three-quarters of respondents (74.3%) *disagreed* or *strongly disagreed* that they prefer to resolve family law disputes through litigation whenever possible. Only 5.5% *strongly agreed* or *agreed* with this statement, and 20.2% *neither agreed nor disagreed*.

Similarly, almost three-quarters of respondents (72.5%) *disagreed* or *strongly disagreed* with the statement that they prefer litigation over other dispute resolution processes with 41.3% *strongly disagreeing*, though 10.1% of respondents *strongly agreed* or *agreed*. While almost three-fifths of the respondents (57.4%) *disagreed* or *strongly disagreed* that they enjoy resolving family law disputes through litigation, slightly less than one-fifth (19.4%) *strongly agreed* or *agreed* with this statement and only 4.6% *strongly agreed*.

When asked how much they agreed that the results they achieve through litigation are in the client's interest, less than one-third of respondents (31.2%) *strongly agreed* or *agreed* with only 2.8% *strongly agreeing*; 17.4% *disagreed* or *strongly disagreed*, and the majority of respondents said they *neither agreed nor disagreed*. Comparable findings were reported when lawyers were asked if they agreed that the results they achieved through litigation are in the interest of the client's children. Less than one-third (30.2%) *strongly agreed* or *agreed*, 22.9% *disagreed* or *strongly disagreed*, and 46.8% said *neither*.

Lawyers were asked if they agreed that their clients are satisfied with the results they achieve through litigation, and 41.3% *strongly agreed* or *agreed* with the statement with only 4.6% *strongly agreeing*. Almost half of the respondents (45.9%) *neither agreed nor disagreed*, and 12.9% *disagreed* or *strongly disagreed*. When asked if their clients prefer litigation over other dispute resolution processes, the majority (59.6%) *disagreed* or *strongly disagreed*. Only 7.4% *strongly agreed* or *agreed*, and one-third (33%) *neither agreed nor disagreed*.

**Table 2.9**  
Extent to Which Respondents Agree with Statements  
About Litigation<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
I prefer to resolve family law disputes through litigation whenever possible	4	3.7	2	1.8	22	20.2	<b>48</b>	<b>44.0</b>	33	30.3
I enjoy resolving family law disputes through litigation (missing cases=6)	5	4.6	16	14.8	25	23.1	<b>32</b>	<b>29.6</b>	30	27.8
The results I achieve through litigation are in the client's interest	3	2.8	31	28.4	<b>56</b>	<b>51.4</b>	12	11.0	7	6.4
The results I achieve through litigation are in the interest of the client's children	2	1.8	31	28.4	<b>51</b>	<b>46.8</b>	18	16.5	7	6.4
My clients are satisfied with the results I achieve through litigation	5	4.6	40	36.7	<b>50</b>	<b>45.9</b>	9	8.3	5	4.6
I prefer litigation over other dispute resolution processes	4	3.7	7	6.4	19	17.4	34	31.2	<b>45</b>	<b>41.3</b>
My clients prefer litigation over other dispute resolution processes	4	3.7	4	3.7	36	33.0	<b>41</b>	<b>37.6</b>	24	22.0
Resolving family law disputes through litigation makes it easier for the parties to cooperate in the future than other dispute resolution processes	2	1.8	5	4.6	18	16.5	39	35.8	<b>45</b>	<b>41.3</b>

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use litigation.  
n=114; missing cases=5 (except where noted)

Over three-quarters of respondents *disagreed* (35.8%) or *strongly disagreed* (41.3%) that resolving family law disputes through litigation makes it easier for the parties to

cooperate in the future than other dispute resolution processes. Only 6.4% of lawyers *strongly agreed* or *agreed* with this statement. Consistent with the survey questions regarding other dispute resolution processes, lawyers were asked the extent to which they agreed with statements about the qualities of litigation. As indicated in Table 2.10, the vast majority of respondents did not agree that litigation is either fast or cost-effective. In response to the statement that litigation is usually a fast and efficient dispute resolution process, 45.9% of lawyers *strongly disagreed*, and a further 37.6% *disagreed*; 9.2% *strongly agreed* or *agreed*. Likewise, in response to the statement that litigation is usually a cost-effective dispute resolution process, 55% of lawyers *strongly disagreed*, and 32.1% *disagreed*. Only 4.6% of respondents *strongly agreed* or *agreed*.

**Table 2.10**  
Extent to Which Respondents Agree with Statements  
About the Qualities of Litigation<sup>1</sup>

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Litigation is usually a fast and efficient dispute resolution process	4	3.7	6	5.5	8	7.3	41	37.6	50	45.9
Litigation is usually a cost-effective dispute resolution process	3	2.8	2	1.8	9	8.3	35	32.1	60	55.0
I can deal with complex issues through litigation	33	30.3	60	55.0	10	9.2	3	2.8	3	2.8
Litigation is suited for high-conflict family law disputes	23	21.1	47	43.1	24	22.0	11	10.1	4	3.7
Getting adequate disclosure is rarely a problem when litigating family law disputes	9	8.3	30	27.5	19	17.4	38	34.9	13	11.9

Source of Data: CFCJ Lawyer Survey

<sup>1</sup> This question was only asked of respondents who reported that they use litigation.

n=114; missing cases=5

Respondents did agree, however, that litigation is suited for high-conflict family law disputes; 43.1% *agreed* and 21.1% *strongly agreed*; 13.8% *disagreed* or *strongly disagreed* and almost one-quarter (22%) *neither agreed nor disagreed*. An even greater proportion of

respondents *agreed* (55%) or *strongly agreed* (30.3%) that they can deal with complex issues through litigation; only 5.6% *disagreed* or *strongly disagreed*. Finally, regarding the statement that getting adequate disclosure is rarely a problem when litigating family law disputes, almost half the respondents (46.8%) *disagreed* or *strongly disagreed*, while over one-third (35.8%) *strongly agreed* or *agreed*.

The final question in the survey asked all respondents to indicate the extent to which they agreed with a number of statements about the use of litigation (see Table 2.11) and public funding of legal aid and the court system (see Table 2.12).

**Table 2.11**  
Extent to Which Respondents Agree with Various Statements  
About the Use of Litigation

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Litigation should only be used as a last resort, when other dispute resolution processes have failed (n=126)	46	36.5	49	38.9	14	11.1	12	9.5	5	4.0
Litigation should only be used when there are threats to the safety of persons or the preservation of property (n=124)	24	19.4	26	21.0	27	21.8	34	27.4	13	10.5
People should attempt to resolve their dispute through another dispute resolution process before litigating (n=125)	68	54.4	40	32.0	9	7.2	4	3.2	4	3.2
Except in urgent circumstances, people should be required to attempt to resolve their dispute through another dispute resolution process before litigating (n=125)	53	42.4	38	30.4	10	8.0	15	12.0	9	7.2

Source of Data: CFCJ Lawyer Survey; Total N=166

As shown in Table 2.11, the vast majority of lawyers *strongly agreed* (54.4%) or *agreed* (32%) that people should attempt to resolve their dispute through another dispute resolution process before litigating. Only 6.4% of respondents *disagreed* or *strongly disagreed* with this statement. Three-quarters of the lawyers (75.4%) *strongly agreed* or *agreed* that litigation should only be used as a last resort, when other dispute resolution processes have failed; 13.5% of respondents *disagreed* or *strongly disagreed*.

Similarly, almost three-quarters of lawyers surveyed *strongly agreed* (42.4%) or *agreed* (30.4%) that, except in urgent circumstances, people should be required to attempt to resolve their dispute through another dispute resolution process before litigating. One-fifth of respondents (19.2%) *disagreed* or *strongly disagreed* with this statement.

Lawyers were fairly evenly split on whether litigation should only be used when there are threats to the safety of persons or the preservation of property. Two-fifths of respondents (40.4%) *strongly agreed* or *agreed* with this statement, and 37.9% *disagreed* or *strongly disagreed*; 21.8% said the *neither agreed nor disagreed*.

Not surprisingly, almost all respondents either *strongly agreed* (76.8%) or *agreed* (15.2%) that legal aid funding should be available for people resolving family law disputes through all dispute resolution processes, not just litigation; see Table 2.12. Almost three-quarters of lawyers (71.2%) *strongly agreed* or *agreed* that money spent on legal aid for litigation would be better spent providing legal aid for other dispute resolution processes; 10.4% of respondents *disagreed* or *strongly disagreed* with this statement.

Regarding the statement that money spent on the court system would be better spent funding other dispute resolution processes, 67.7% *strongly agreed* or *agreed*, 12.9% *disagreed* or *strongly disagreed*, and 19.4% *neither agreed nor disagreed*.

**Table 2.12**  
Extent to Which Respondents Agree with Various Statements  
About Funding Issues

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Legal aid funding should be available for people resolving family law disputes through all dispute resolution processes, not just litigation (n=125)	96	76.8	19	15.2	7	5.6	2	1.6	1	0.8
Money spent on the court system would be better spent funding other dispute resolution processes (n=124)	53	42.7	31	25.0	24	19.4	11	8.9	5	4.0
Money spent on legal aid for litigation would be better spent providing legal aid for other dispute resolution processes (n=125)	54	43.2	35	28.0	23	18.4	9	7.2	4	3.2

Source of Data: CFCJ Lawyer Survey  
Total N=166

### 2.3 Comparisons of Dispute Resolution Processes

All respondents to the lawyer survey were asked how frequently they use the four dispute resolution processes being examined in this study to resolve family law disputes; see Table 2.13. Over half the respondents (54.3%) reporting using litigation *often* or *always*, while 21.6% said they *rarely* or *never* use litigation. Almost half the respondents (47.8%) said they use mediation *often* or *always*, 33.5% said they use it *occasionally*, and 18.6% said they *rarely* or *never* use mediation. Just over a third of lawyers surveyed (36.9%) said they use collaboration *often* or *always*, 19.1% use it *occasionally*, and 43.9% *rarely* or *never* use it. The dispute resolution process used least frequently is arbitration; only 8.5% of respondents use it *often*, 19% use it *occasionally*, and almost three-quarters of the respondents (72.6%) said they *rarely* or *never* use it.



**Table 2.13**  
Frequency with Which Respondents Use Dispute Resolution Processes  
to Resolve Family Law Disputes

	Always		Often		Occasionally		Rarely		Never	
	n	%	n	%	n	%	n	%	n	%
Collaboration (n=157)	11	7.0	<b>47</b>	<b>29.9</b>	30	19.1	22	14.0	<b>47</b>	<b>29.9</b>
Mediation (n=161)	6	3.7	<b>71</b>	<b>44.1</b>	54	33.5	23	14.3	7	4.3
Arbitration (n=153)	0	0.0	13	8.5	29	19.0	46	30.1	<b>65</b>	<b>42.5</b>
Litigation (n=162)	7	4.3	<b>81</b>	<b>50.0</b>	39	24.1	20	12.3	15	9.3

Source of Data: CFCJ Lawyer Survey  
Total N=166

In order to compare the four dispute resolution processes, lawyers were asked to rate the usefulness of each process for various types of family law disputes. As shown in Table 2.14, with the exception of high-conflict disputes, mediation is considered the most generally useful dispute resolution process, followed by collaboration. For example, for disputes about the care of children and parenting, 70.4% of lawyers thought mediation was *very useful*, and 59.4% thought collaboration was *very useful*. Litigation and arbitration were most likely to be viewed as *somewhat useful* (51.6% and 49%, respectively) for this type of dispute.

Likewise, for disputes about the division of property and debt, mediation and collaboration were more likely to be considered *very useful* (65.4% and 60.9%, respectively), and litigation and arbitration were more likely to be viewed as *somewhat useful* (48.1% and 43.2%, respectively). For disputes about child support or spousal support, respondents considered mediation (61.6%), collaboration (56.2%), and litigation (45%) as *very useful*, while arbitration was most likely to be viewed as *somewhat useful* (42.8%).

For high-conflict disputes, however, litigation was viewed by more respondents as being *very useful* (54%), while mediation and arbitration were more likely to be considered *somewhat useful* (47.8% and 46.9%, respectively). Collaboration was viewed by more lawyers as being *not useful* (46.1%) for high-conflict disputes.

For low-conflict disputes, the majority of respondents viewed mediation and collaboration as *very useful* (88.1% and 80.9%, respectively), and arbitration and litigation

as *somewhat useful* (50.3% and 46.2%, respectively). An almost equal proportion of respondents also viewed litigation as *not useful* (44.3%) in low-conflict disputes.

**Table 2.14**  
Respondents' Views on the Usefulness of Dispute Resolution Processes  
for Various Types of Disputes

Type of Dispute	Very Useful		Somewhat Useful		Not Useful	
	n	%	n	%	n	%
Usefulness of process for disputes about the care of children and parenting?						
Collaboration (n=155)	<b>92</b>	<b>59.4</b>	44	28.4	19	12.3
Mediation (n=159)	<b>112</b>	<b>70.4</b>	44	27.7	3	1.9
Arbitration (n=147)	40	27.2	<b>72</b>	<b>49.0</b>	35	23.8
Litigation (n=159)	32	20.1	<b>82</b>	<b>51.6</b>	45	28.3
Usefulness of process for disputes about child support or spousal support?						
Collaboration (n=153)	<b>86</b>	<b>56.2</b>	50	32.7	17	11.1
Mediation (n=159)	<b>98</b>	<b>61.6</b>	52	32.7	9	5.7
Arbitration (n=145)	56	38.6	<b>62</b>	<b>42.8</b>	27	18.6
Litigation (n=160)	<b>72</b>	<b>45.0</b>	70	43.8	18	11.3
Usefulness of process for disputes about the division of property and debt?						
Collaboration (n=151)	<b>92</b>	<b>60.9</b>	44	29.1	15	9.9
Mediation (n=159)	<b>104</b>	<b>65.4</b>	49	30.8	6	3.8
Arbitration (n=146)	61	41.8	<b>63</b>	<b>43.2</b>	22	15.1
Litigation (n=158)	58	36.7	<b>76</b>	<b>48.1</b>	24	15.2
Usefulness of process for high-conflict disputes?						
Collaboration (n=152)	19	12.5	63	41.4	<b>70</b>	<b>46.1</b>
Mediation (n=157)	22	14.0	<b>75</b>	<b>47.8</b>	60	38.2
Arbitration (n=147)	47	32.0	<b>69</b>	<b>46.9</b>	31	21.1
Litigation (n=161)	<b>87</b>	<b>54.0</b>	66	41.0	8	5.0
Usefulness of process for low-conflict disputes?						
Collaboration (n=152)	<b>123</b>	<b>80.9</b>	19	12.5	10	6.6
Mediation (n=160)	<b>141</b>	<b>88.1</b>	16	10.0	3	1.9
Arbitration (n=147)	38	25.9	<b>74</b>	<b>50.3</b>	35	23.8
Litigation (n=158)	15	9.5	<b>73</b>	<b>46.2</b>	70	44.3

Source of Data: CFCJ Lawyer Survey

Total N=166

All lawyers were asked to rate the usefulness of each dispute resolution process for addressing various issues in family law disputes; see Table 2.15. For urgent problems or allegations of violence, lawyers consistently viewed litigation as the most useful dispute resolution process, and collaboration, mediation and arbitration as the least useful. For example, for urgent problems involving a risk to an adult or child, three-quarters of respondents (75.9%) viewed litigation as *very useful*, while collaboration (64.7%), mediation (63.1%) and arbitration (55.4%) were more likely to be viewed as *not useful*. Similar results were obtained for urgent problems involving a risk to property. Three-quarters of the lawyers surveyed (73.7%) viewed litigation as *very useful* for this issue, while approximately half were more likely to view collaboration (50.3%), mediation (48.4%), and arbitration (45.5%) as *not useful*.

**Table 2.15**  
Respondents' Views on the Usefulness of Dispute Resolution Processes  
to Address Various Issues

Type of Issue	Very Useful		Somewhat Useful		Not Useful	
	n	%	n	%	n	%
Usefulness of process for urgent problems involving a risk to an adult or child?						
Collaboration (n=153)	14	9.2	40	26.1	<b>99</b>	<b>64.7</b>
Mediation (n=157)	8	5.1	50	31.8	<b>99</b>	<b>63.1</b>
Arbitration (n=148)	22	14.9	44	29.7	<b>82</b>	<b>55.4</b>
Litigation (n=158)	<b>120</b>	<b>75.9</b>	29	18.4	9	5.7
Usefulness of process for urgent problems involving a risk to property?						
Collaboration (n=149)	18	12.1	56	37.6	<b>75</b>	<b>50.3</b>
Mediation (n=153)	11	7.2	<b>68</b>	<b>44.4</b>	74	48.4
Arbitration (n=145)	20	13.8	59	40.7	<b>66</b>	<b>45.5</b>
Litigation (n=156)	<b>115</b>	<b>73.7</b>	34	21.8	7	4.5
Usefulness of process to address allegations of family violence or abuse?						
Collaboration (n=154)	19	12.3	44	28.6	<b>91</b>	<b>59.1</b>
Mediation (n=160)	9	5.6	57	35.6	<b>94</b>	<b>58.8</b>
Arbitration (n=149)	11	7.4	62	41.6	<b>76</b>	<b>51.0</b>
Litigation (n=160)	<b>87</b>	<b>54.4</b>	67	41.9	6	3.8
Usefulness of process to address allegations of alienation?						
Collaboration (n=153)	35	22.9	45	29.4	<b>73</b>	<b>47.7</b>
Mediation (n=160)	20	12.5	<b>79</b>	<b>49.4</b>	61	38.1
Arbitration (n=147)	17	11.6	<b>83</b>	<b>56.5</b>	47	32.0
Litigation (n=160)	64	40.0	<b>73</b>	<b>45.6</b>	23	14.4

Type of Issue	Very Useful		Somewhat Useful		Not Useful	
	n	%	n	%	n	%
Usefulness of process to address allegations of adult substance abuse and mental disorder?						
Collaboration (n=149)	23	15.4	62	41.6	<b>64</b>	<b>43.0</b>
Mediation (n=155)	26	16.8	<b>69</b>	<b>44.5</b>	60	38.7
Arbitration (n=143)	15	10.5	<b>71</b>	<b>49.7</b>	57	39.9
Litigation (n=154)	47	30.5	<b>87</b>	<b>56.5</b>	20	13.0
Usefulness of process for issues arising after the resolution of a dispute?						
Collaboration (n=152)	<b>76</b>	<b>50.0</b>	56	36.8	20	13.2
Mediation (n=160)	<b>96</b>	<b>60.0</b>	55	34.4	9	5.6
Arbitration (n=147)	49	33.3	<b>70</b>	<b>47.6</b>	28	19.0
Litigation (n=159)	39	24.5	<b>87</b>	<b>54.7</b>	33	20.8

Source of Data: CFCJ Lawyer Survey  
Total N=166

The same pattern was observed when lawyers were asked how useful the dispute resolution processes are to address allegations of family violence or abuse. Over half of the respondents (54.4%) viewed litigation as *very useful*, and over half viewed collaboration (59.1%), mediation (58.8%) and arbitration (51%) as *not useful*.

A different pattern emerged, however, when lawyers rated the usefulness of the dispute resolution processes for addressing allegations of alienation or substance abuse and mental disorder. For allegations of alienation, respondents were most likely to rate arbitration (56.5%), mediation (49.4%), and litigation (45.6%) as *somewhat useful*, and collaboration as *not useful* (47.7%). Likewise, for allegations of adult substance abuse and mental disorder, lawyers viewed litigation (56.5%), arbitration (49.7%), and mediation (44.5%) as *somewhat useful*, and collaboration as *not useful* (43%).

When asked how useful the different dispute resolution processes are for addressing issues that arise after the resolution of a dispute, respondents rated mediation and collaboration as *very useful* (60% and 50%, respectively), and litigation and arbitration as *somewhat useful* (54.7% and 47.6%, respectively).

To determine if lawyers viewed one dispute resolution process as more suitable than another for receiving evidence, all respondents were asked their views on the suitability of each process for hearing three types of evidence. As indicated in Table 2.16, to hear the views, voice or preferences of children, the largest proportions of respondents viewed

collaboration and mediation as *very useful* (51% and 43.5%, respectively), and litigation and arbitration as *somewhat useful* (56.1% and 52.1%, respectively).

**Table 2.16**  
Respondents' Views on the Suitability of Dispute Resolution Processes  
to Hear Various Types of Evidence

Type of Evidence	Very Useful		Somewhat Useful		Not Useful	
	n	%	n	%	n	%
Hear the views, voice or preferences of children?						
Collaboration (n=151)	<b>77</b>	<b>51.0</b>	52	34.4	22	14.6
Mediation (n=154)	<b>67</b>	<b>43.5</b>	65	42.2	22	14.3
Arbitration (n=140)	33	23.6	<b>73</b>	<b>52.1</b>	34	24.3
Litigation (n=157)	41	26.1	<b>88</b>	<b>56.1</b>	28	17.8
Hear the evidence of mental health experts?						
Collaboration (n=147)	<b>59</b>	<b>40.1</b>	51	34.7	37	25.2
Mediation (n=148)	37	25.0	<b>76</b>	<b>51.4</b>	35	23.6
Arbitration (n=143)	41	28.7	<b>70</b>	<b>49.0</b>	32	22.4
Litigation (n=154)	<b>70</b>	<b>45.5</b>	81	52.6	3	1.9
Hear the evidence of financial experts and valuers?						
Collaboration (n=149)	<b>82</b>	<b>55.0</b>	50	33.6	17	11.4
Mediation (n=152)	67	44.1	<b>70</b>	<b>46.1</b>	15	9.9
Arbitration (n=144)	<b>82</b>	<b>56.9</b>	47	32.6	15	10.4
Litigation (n=155)	<b>94</b>	<b>60.6</b>	57	36.8	4	2.6

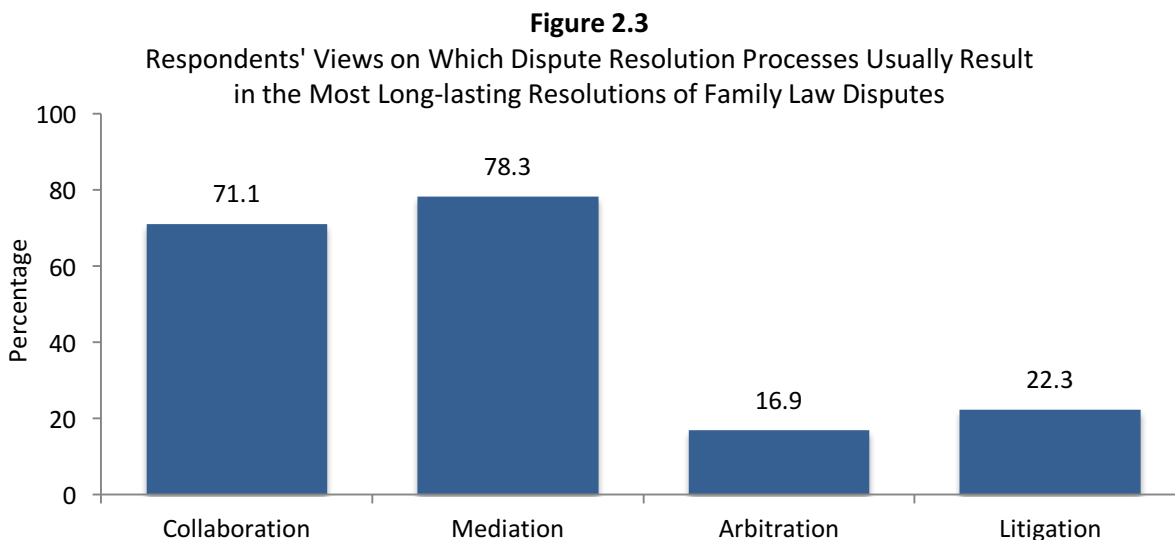
Source of Data: CFCJ Lawyer Survey  
Total N=166

To hear the evidence of mental health experts, respondents were most likely to view collaboration as *very useful* (40.1%). About half of the lawyers viewed mediation and arbitration as *somewhat useful* (51.4% and 49%, respectively). Litigation was viewed as *somewhat useful* (52.6%) or *very useful* (45.5%); only 1.9% of respondents said litigation was *not useful* for hearing the evidence of mental health experts.

When asked about the suitability of each process for hearing the evidence of financial experts and valuers, the largest proportions of respondents viewed litigation (60.6%), arbitration (56.9%) and collaboration (55%) as *very useful*. Mediation was viewed as *somewhat useful* (46.1%) or *very useful* (44.1%).

All lawyers were asked which of the dispute resolution processes usually result in the most long-lasting resolutions of family law disputes. As shown in Figure 2.3, respondents

were considerably more likely to report that mediation (78.3%) and collaboration (71.1%) resulted in longer-lasting resolutions than litigation (22.3%) and arbitration (16.9%).



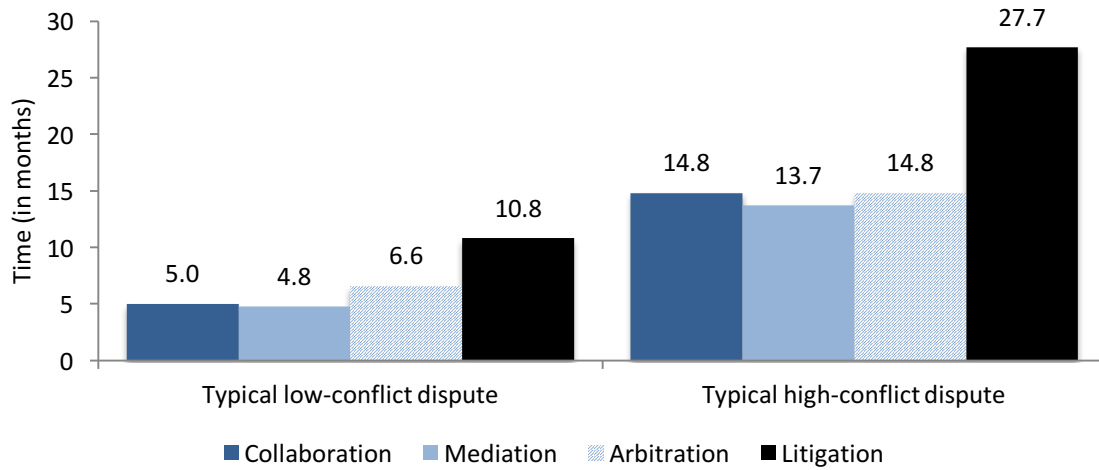
Source of Data: CFCJ Lawyer Survey  
Total N=166; Multiple response question

The lawyer survey asked a common set of questions for each of the four dispute resolution processes being examined in this study, and the results are presented separately for each process in Sections 2.2.1 to 2.2.4 above. In this section, the results are compared across the dispute resolutions processes.

Figure 2.4 shows how long respondents reported that it usually takes to resolve typical low- and high-conflict disputes by each of the four processes. For typical low-conflict disputes, cases resolved through mediation (4.8 months), collaboration (5 months), and arbitration (6.6 months) take the least amount of time to resolve, while cases that are litigated take the most amount of time (10.8 months).

The same pattern is observed for typical high-conflict disputes. Cases resolved through mediation (13.7 months), collaboration (14.8 months), and arbitration (14.8 months) take approximately half the time as high-conflict cases resolved through litigation to resolve (27.7 months).

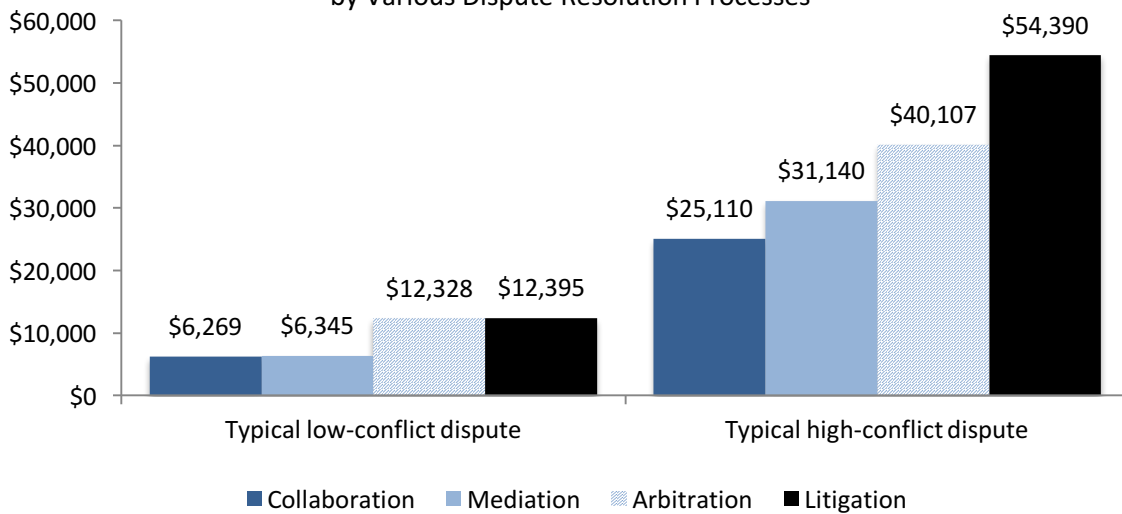
**Figure 2.4**  
Lawyers' Estimates of How Long It Usually Takes to Resolve Typical Low- and High-Conflict Disputes by Various Dispute Resolution Processes



Source of Data: CFCJ Lawyer Survey (refer to Sections 2.2.1 to 2.2.4)

Comparing the results of the cost of their professional services for typical low- and high-conflict disputes, Figure 2.5 shows that low-conflict cases resolved through collaboration (\$6,269) and mediation (\$6,345) cost approximately half that of cases resolved through arbitration (\$12,328) and litigation (\$12,395).

**Figure 2.5**  
Lawyers' Estimates of Total Bill to Client for Their Professional Services<sup>1</sup> for Typical Low- and High-Conflict Disputes by Various Dispute Resolution Processes

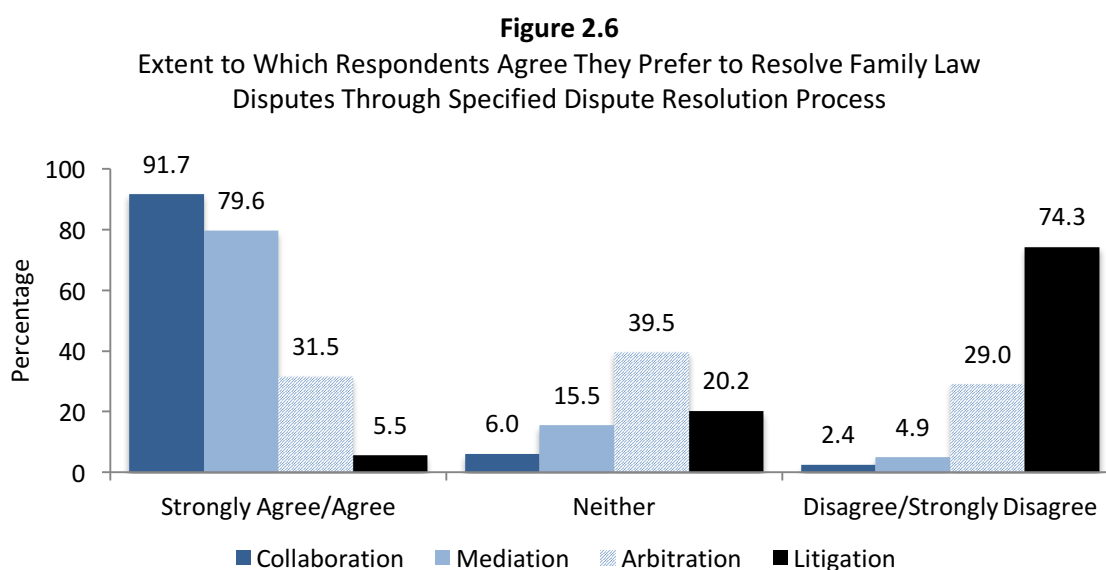


Source of Data: CFCJ Lawyer Survey (refer to Sections 2.2.1 to 2.2.4)

<sup>1</sup> Excluding disbursements and other charges

For high-conflict cases, lawyers reported that the total bill to their client for their professional services when using collaboration was \$25,110, compared to \$31,140 for mediation, \$40,107 for arbitration, and \$54,390 for cases primarily resolved through litigation.

Interesting results were obtained when comparing the extent to which respondents agreed they preferred to resolve family law disputes using the various dispute resolutions processes; see Figure 2.6. Almost all lawyers who use collaboration (91.7%) or mediation (79.6%) reported that they prefer to use those processes whenever possible, while three-quarters (74.3%) of the lawyers who use litigation *disagreed* or *strongly disagreed* that litigation is their preferred resolution process.



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.3, 2.5, 2.7 and 2.9)

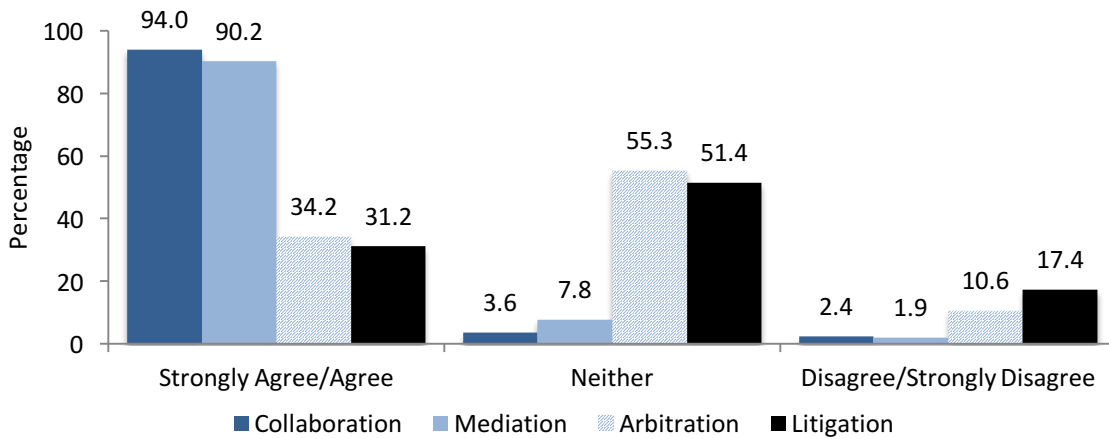
Figures 2.7 and 2.8 compare the extent to which respondents agree that the results they achieve through the various dispute resolution processes are in the client’s interest and the interest of the client’s children. The vast majority of respondents using collaboration or mediation *strongly agreed* or *agreed* with both these statements. For example, 94% of lawyers using collaboration agreed that the results they achieved are in the client’s interest, and 98.9% agreed that the results are in the interest of their client’s children. Likewise, 90.2% of lawyers using mediation agreed that the results they achieve are in the client’s interest, and 85.4% agreed that the results are in the interest of the client’s children.

In contrast, only about one-third of respondents using arbitration and litigation *strongly agreed* or *agreed* with these statements. Just over one-third of lawyers agreed that the



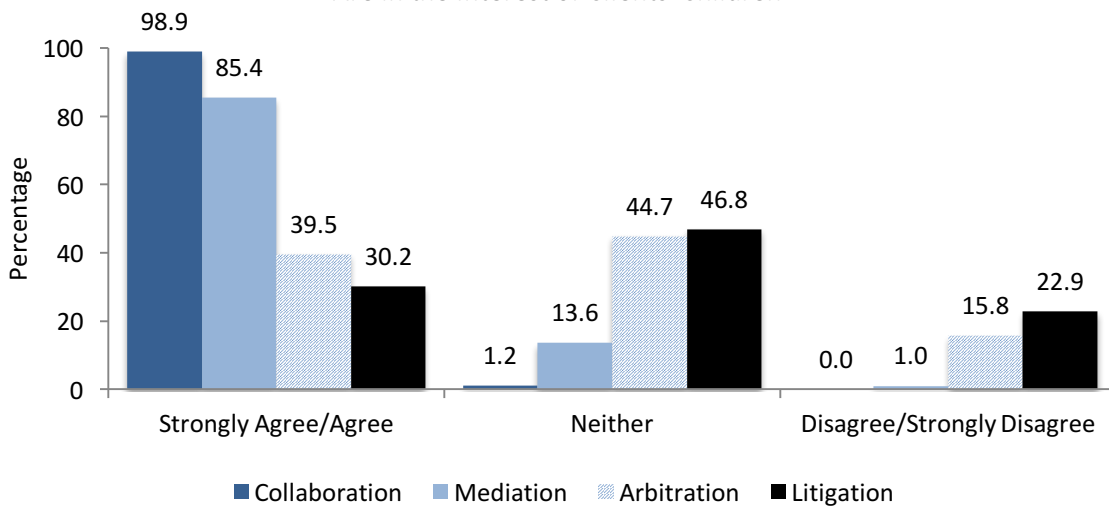
results they achieve through arbitration are in the client’s interest (34.2%), or in the interest of the client’s children (39.5%). Just under one-third of respondents agreed that the results they achieve through litigation are in the client’s interest (31.2%) or in the interest of the client’s children (30.2%). With respect to both arbitration and litigation, lawyers were most likely to *neither agree nor disagree* that the results they achieve are in the client’s interest or in the interest of clients’ children.

**Figure 2.7**  
Extent to Which Respondents Agree That the Results They Achieve Through a Specified Dispute Resolution Process Are in the Client's Interest



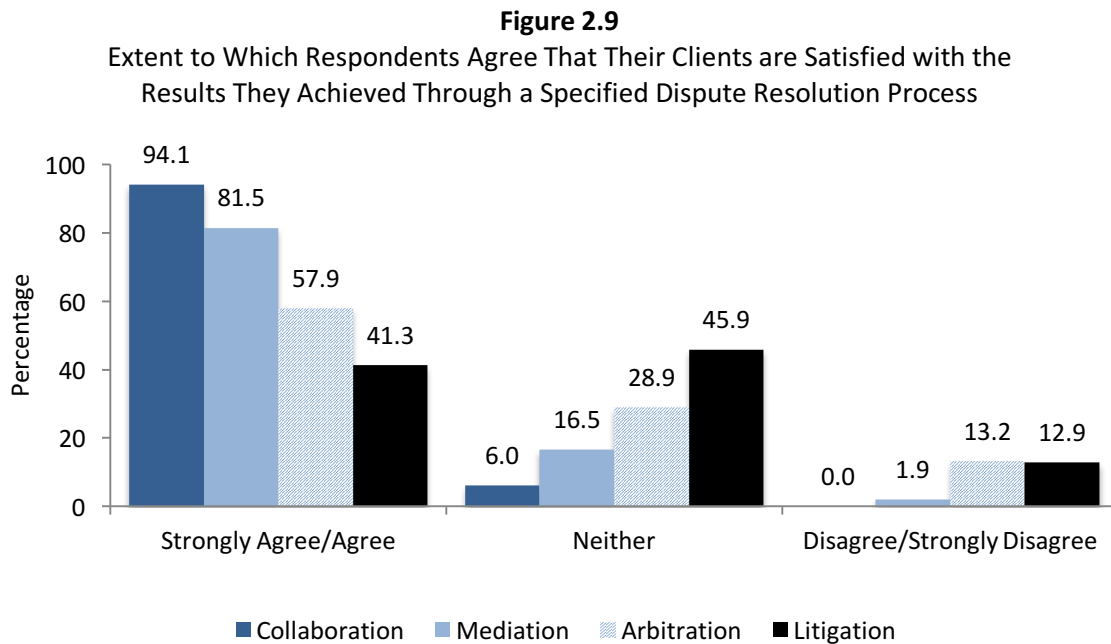
Source of Data: CFCJ Lawyer Survey (refer to Tables 2.3, 2.5, 2.7 and 2.9)

**Figure 2.8**  
Extent to Which Respondents Agree That the Results They Achieve Through a Specified Dispute Resolution Process Are in the Interest of Clients' Children



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.3, 2.5, 2.7 and 2.9)

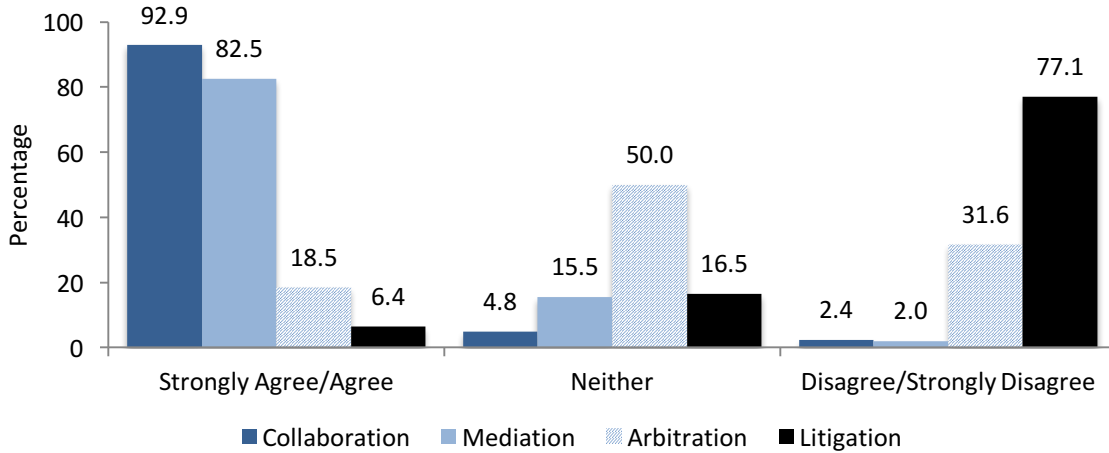
When comparing the extent to which lawyers agree that their clients are satisfied with the results they achieve using the various dispute resolution processes, the results indicate that more lawyers agreed their clients are satisfied when they use collaboration (94.1%) or mediation (81.5%) than when they use arbitration (57.9%) or litigation (41.3%); see Figure 2.9. Almost half of the lawyers who use litigation (45.9%) *neither agreed nor disagreed* that their clients are satisfied with the results they achieve through litigation.



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.3, 2.5, 2.7 and 2.9)

Figure 2.10 compares the results of the extent to which the lawyers agree that resolving family law disputes through the various processes makes it easier for the parties to cooperate in the future than other dispute resolutions processes. Respondents using collaboration (92.9%) and mediation (82.5%) overwhelmingly *strongly agreed* or *agreed* with this statement. Over three-quarters of the lawyers who use litigation (77.1%) *disagreed* or *strongly disagreed*, and half of the lawyers using arbitration *neither agreed nor disagreed* that using that dispute resolution process would make it easier for parties to cooperate in the future.

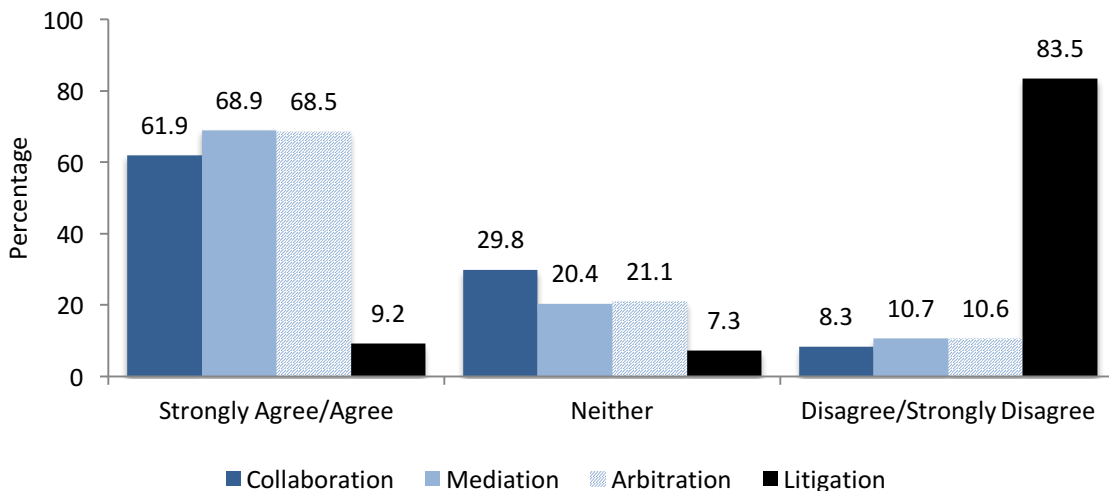
**Figure 2.10**  
Extent to Which Respondents Agree That Resolving Family Law Disputes Through a Specified Dispute Resolution Process Makes It Easier for Parties to Cooperate in the Future Than Other Dispute Resolution Processes



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.3, 2.5, 2.7 and 2.9)

Dramatically different results were obtained when lawyers were asked the extent to which they agree that the various dispute resolution processes are usually fast and efficient; see Figure 2.11. Approximately two-thirds of the respondents who use mediation (68.9%), arbitration (68.5%), and collaborative settlement (61.9%) *strongly agreed* or *agreed* with this statement. In contrast, the vast majority of lawyers using litigation (83.5%) *disagreed* or *strongly disagreed* that litigation is usually fast and efficient.

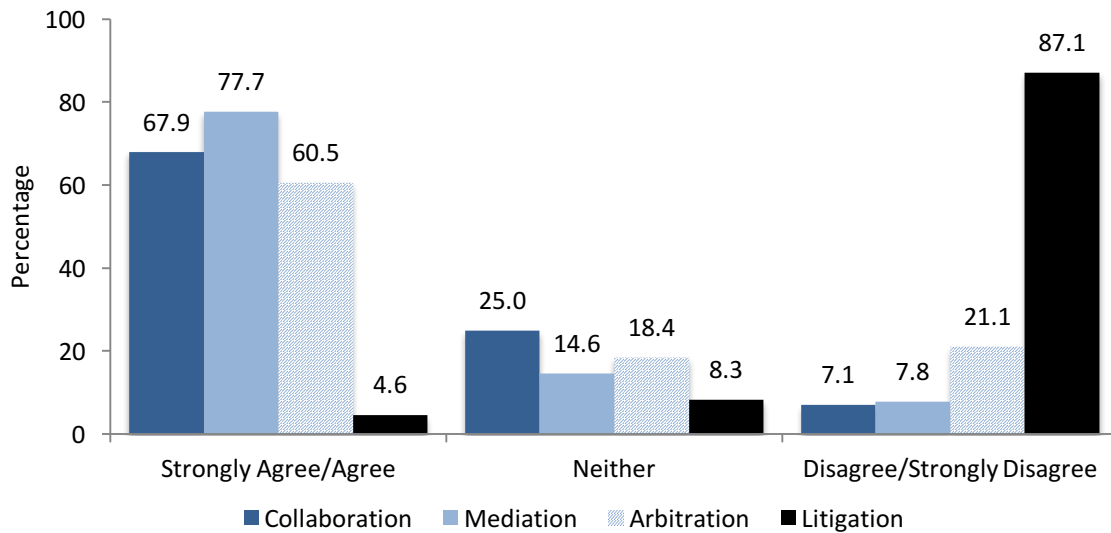
**Figure 2.11**  
Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Usually Fast and Efficient



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.4, 2.6, 2.8 and 2.10)

Similarly, when lawyers were asked the extent to which they agreed that the various dispute resolution processes are usually cost-effective, over three-quarters of the lawyers using mediation (77.7%) *strongly agreed* or *agreed* with this statement, as did two-thirds of the lawyers who used collaboration (67.9%) and three-fifths of the lawyers who used arbitration (60.5%); see Figure 2.12. Almost all lawyers who used litigation, however, *disagreed* or *strongly disagreed* (87.1%) that it is usually a cost-effective process.

**Figure 2.12**  
Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Usually Cost-effective

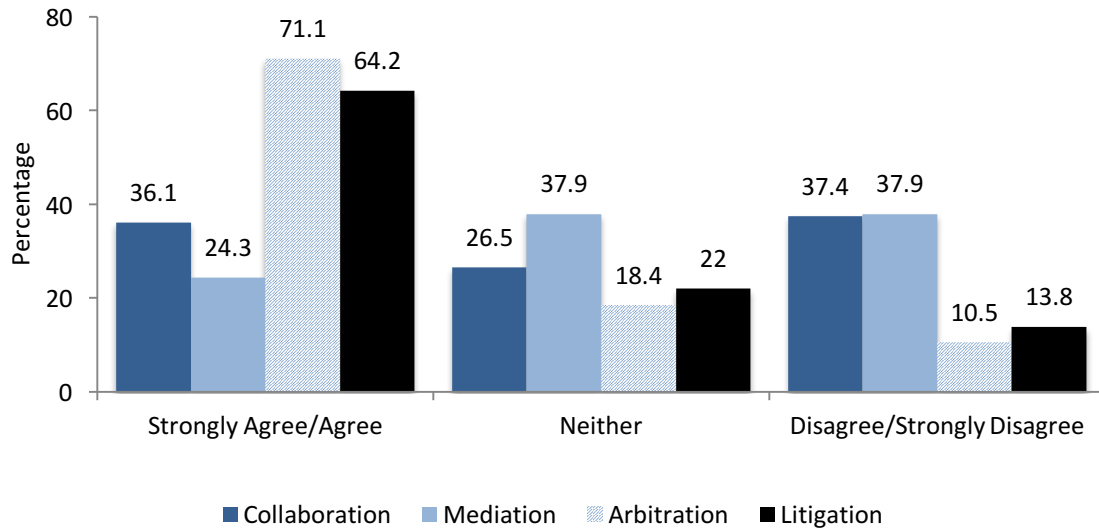


Source of Data: CFCJ Lawyer Survey (refer to Tables 2.4, 2.6, 2.8 and 2.10)

Different results were observed when lawyers were asked the extent to which they agreed that the various dispute resolution processes are suited for high-conflict family law disputes. As indicated in Figure 2.13, the majority of respondents using arbitration (71.1%) and litigation (64.2%) *strongly agreed* or *agreed* that those processes are suited for high-conflict disputes. Approximately one-third of lawyers using collaboration (36.1%) *strongly agreed* or *agreed* with this statement, and only one-quarter of lawyers using mediation (24.3%) *strongly agreed* or *agreed*. Over one-third of respondents *disagreed* or *strongly disagreed* that collaboration (37.4%) or mediation (37.9%) are suited to high-conflict family law disputes.

**Figure 2.13**

Extent to Which Respondents Agree That a Specified Dispute Resolution Process is Suited for High-conflict Family Law Disputes



Source of Data: CFCJ Lawyer Survey (refer to Tables 2.4, 2.6, 2.8 and 2.10)

## 3.0 SOCIAL RETURN ON INVESTMENT ANALYSES

### 3.1 Introduction

SROI analyses are frameworks for measuring and communicating the social, economic or environmental impact of investment in an organization, project or program (The SROI Network, 2012). The development of the methodology began in the mid-1990s in the United States when Roberts Enterprise Development Fund wanted to create a tool to communicate to investors the impact of their own programs (Simpact Strategy Group, 2011). Over time, the methodology has evolved and has become a helpful tool for evaluation, management, and communication for agencies and organizations. In Alberta, the Safe Communities Secretariat of Alberta Justice integrated the SROI methodology into the evaluation frameworks of 88 crime prevention pilot projects (LBG Canada, 2012). In this study, we have used the SROI methodology to compare the social and economic impacts of four different dispute resolution mechanisms in family law matters.

An SROI analysis is a “story about how change is being created by measuring social, environmental and economic outcomes and uses monetary values to represent them” (The SROI Network, 2012, p. 8). The process of creating an SROI analysis builds upon the existing outcomes framework, or logic model, of an organization or program by assessing the impact of the organization’s or program’s outcomes, and establishing the possible financial value of this impact. In this study, instead of examining the outcomes of a program, we have adapted the SROI methodology to examine the impact of the outcomes of four different dispute resolution processes.

Though the SROI analysis produces a ratio representing the monetary value of the impact of investment in a program, or process, it is not meant to be reduced to a number alone. It is intended to include quantitative, financial and qualitative information to communicate the impact of an organization or program to its external stakeholders, and internally to assess program performance and identify areas for improvement (American Public Human Services Association, 2013).

An SROI analysis can be evaluative, using outcomes measurement to determine the value of change caused by a program, or predictive, assessing the value of a program if its outcomes were achieved. Evaluative SROIs require the collection of reliable outcomes data, while predictive SROIs provide a foundation by which outcomes can be measured. Regardless of the approach, SROI methodology is based on seven principles (The SROI

Network, 2012, p. 9): involve stakeholders; understand what changes; value the things that matter; only include what is material; do not over-claim; be transparent; and verify the result.

### **3.1.1 The SROI Process**

There are six stages to conducting an SROI analysis (The SROI Network, 2012). The following sections discuss each of these stages in relation to dispute resolution mechanisms in family law matters.

#### Establishing Scope and Identifying Key Stakeholders

The first stage of the SROI process involves determining the information available, the stakeholders that should be involved, and the boundaries of the SROI analysis. Both clients and lawyers were identified as key stakeholders in this study. At this stage, the decision would be made to conduct either an evaluative analysis or a predictive analysis. We chose to conduct an evaluative analysis using data from the lawyers' surveys, since we were unable to obtain data directly from clients. Given the lack of client data, the evaluative analyses should be viewed as an exploratory step toward seeing whether the SROI methodology is valuable for comparing dispute resolution processes.

#### Mapping Outcomes

The second stage of the SROI process involves identifying program inputs, valuing inputs, clarifying program outputs, and describing outcomes. In this study, this stage primarily involved valuing the inputs of the various dispute resolution mechanisms, such as their costs, as well as determining the outcomes, such as length of time to settle the family law dispute and level of satisfaction with the process and outcomes.

#### Evidencing Outcomes and Giving Them a Value

The third stage of the SROI development process involves finding data, or evidence, to establish whether the program outcomes have occurred. For this study, the results of the lawyers' surveys aided in completing this step since client data were unavailable. The process of valuing outcomes involved searching for financial proxies both in the literature and the SROI Canada database. SROI Canada, a member group of practitioners, facilitators and policy representatives, maintains a financial proxy database for members (Robertson, 2012). The database has been developed in cooperation with the City of

Calgary, Simpart Strategy Group, the Safe Communities and Strategic Policy Secretariat of Alberta Justice, and various other community agencies, and provides figures that represent the value of achieving specific social and environmental outcomes.

It is important to note that the financial proxies assigned to the outcomes in this study are by and large arbitrary since sufficient information was not available to properly evidence and assign value to the outcomes. However, the same financial proxies have been applied across all four dispute resolution mechanisms to highlight their relative differences. The actual value of an outcome will, of course, vary considerably from one individual to the next.

### Establishing Impact

The fourth stage of the SROI development process usually involves factoring in deadweight, displacement, attribution, and drop-off to establish overall program impact. For this exploratory study, it was determined that these elements were not applicable because we were not analyzing a program.

### Calculating the SROI

The fifth stage of the process involves calculating the SROI values of specific outcomes or benefits, factoring in the inputs, social value creation, impact assessment, and discount rate. In addition, an annual interest rate may be added to the value created, although this was not necessary in this study.

### Reporting, Using, and Embedding

The final stage of the SROI analysis involves sharing the findings with the stakeholders and responding to their input. Ultimately it is desirable for stakeholders to build on the work conducted and measure outcomes in the future.

## **3.2 SROI Analyses**

The “theory of change” statement adopted for this SROI analyses was:

*If parents experiencing family breakdown are offered a dispute resolution process that is best suited to their level of conflict and the circumstances of their case, they will reach an agreement that is more satisfying for all family members.*



The input values used for each dispute resolution process consisted of the following data from the lawyers' survey: (1) the average cost of the lawyers' professional services (excluding disbursements and other charges) for typical low- and high-conflict disputes; and (2) the average cost that lawyers' clients pay for other professionals, such as financial experts and child specialists. Since lawyers were not asked to distinguish the cost of other professionals by level of conflict, the same figure was used for both low- and high-conflict disputes, although this likely overestimates the cost for low-conflict disputes and underestimates it for high-conflict disputes. In addition, the inclusion of an estimate of the cost of other professionals assumes that other professionals were always used, although the data on the extent to which other professionals were used varied greatly.

The outcomes, indicators and financial proxies used to calculate the SROI values for each of the four dispute resolution processes in both low- and high-conflict cases are presented below. It is important to note that given data limitations, the monetary figures for the social outcomes are somewhat arbitrary; however, as they are applied consistently across all processes, they provide a means to compare differences between these processes.

**Outcome 1:** *An agreement is reached in a timely manner, resulting in lower stress for all family members.* The assumption being made is that once family breakdown has occurred, it is usually beneficial for the matter to be resolved as quickly as possible. According to the literature, there are many unique stresses on parents during the divorce process that make their lives chaotic (Braver, Shapiro & Goodman, 2005) and adversely affect their well-being and that of their children. Therefore, the quicker the resolution of the divorce, the lower the levels of stress affecting parents. In terms of social value creation, lower stress might result in better mental health, thus leading to a reduction in the need for psychological services or resulting in less absenteeism from work for stress-related disorders. In this exploratory study, the indicator used for this outcome is the average length of time to resolve the dispute, and the financial proxy used was a negative value of \$500 per month.

**Outcome 2:** *The agreement reached is perceived as fair and satisfactory.* Three scales from the lawyers' survey were used to indicate client satisfaction: (1) "my clients are satisfied with results I achieve"; (2) "the results I achieve are in the client's interest"; and (3) "the results I achieve are in the interest of the client's children." For each of the three statements, the percentage of lawyers agreeing with that statement was assigned a financial value of \$100 per percentage point. The research literature indicates that "the level of interpersonal conflict is one of the most consequential variables of all in predicting both child and adult outcomes after divorce" (Braver, Shapiro & Goodman, 2005, p. 331). In addition, high

levels of parental conflict are associated with poorer social, emotional, academic and behavioural adjustments in children (Barber & Demo, 2005). Presumably greater client satisfaction will lead to longer lasting outcomes, and ultimately to less parental conflict and a lower likelihood of dysfunction in children's relationships as adults. In terms of social value creation, in addition to lowering stress as noted in *Outcome 1*, this might result in a reduction in mental health services for children, a lower need for school-related supports, or even, perhaps, less delinquency in the adolescent years.

**Outcome 3:** *The process used will help to reduce conflict between the parties in the future.* One scale from the lawyers' survey was used to indicate a future benefit: "resolving family law disputes through this particular process makes it easier for the parties to cooperate in the future than other dispute resolution processes," lessening the need to have counsel and the likelihood of litigation. The percentage of lawyers agreeing with this statement was assigned a financial value of \$100 per percentage point. In addition to the social value created from lower stress and less conflictual family environments, this outcome would have an economic value for families by reducing future legal costs.

**Outcome 4:** *The process used will save the family justice system money.* The indicator used to indicate systemic cost was the average number of court appearances. A financial proxy of \$1,000 per court appearance was used as the monetary value, although this figure likely underestimates all the court costs associated with a court appearance. Using data from the 2012/2013 Civil Court Survey (Allen, 2014), it was estimated that an average low-conflict family law dispute would involve one court hearing, while an average high-conflict dispute would have eight court hearings. Dispute resolution processes that resulted in settlements made outside of court were assigned a positive value to represent cost savings, while litigation was assigned a negative value to represent a financial cost to the system.

The results of the SROI analyses are presented in Figures 3.1 and 3.2. The SROI ratio represents the social value created for every dollar input in each dispute resolution process. Figure 3.1 shows the results for low-conflict disputes, which indicate that for every dollar spent on mediating a low-conflict dispute, \$2.78 in social value is created, and for every dollar spent on resolving a low-conflict dispute through collaborative settlement, \$2.06 in social value is created. At the other end of the spectrum, for every dollar spent on arbitrating a low-conflict dispute, only \$0.57 in social value is created, and for every dollar spent on litigating a low-conflict dispute, only \$0.39 in social value is created. The low SROI ratios for arbitration and litigation reflect the higher costs of these dispute resolution processes, lower satisfaction from clients, and lower likelihood of clients cooperating in future disputes.

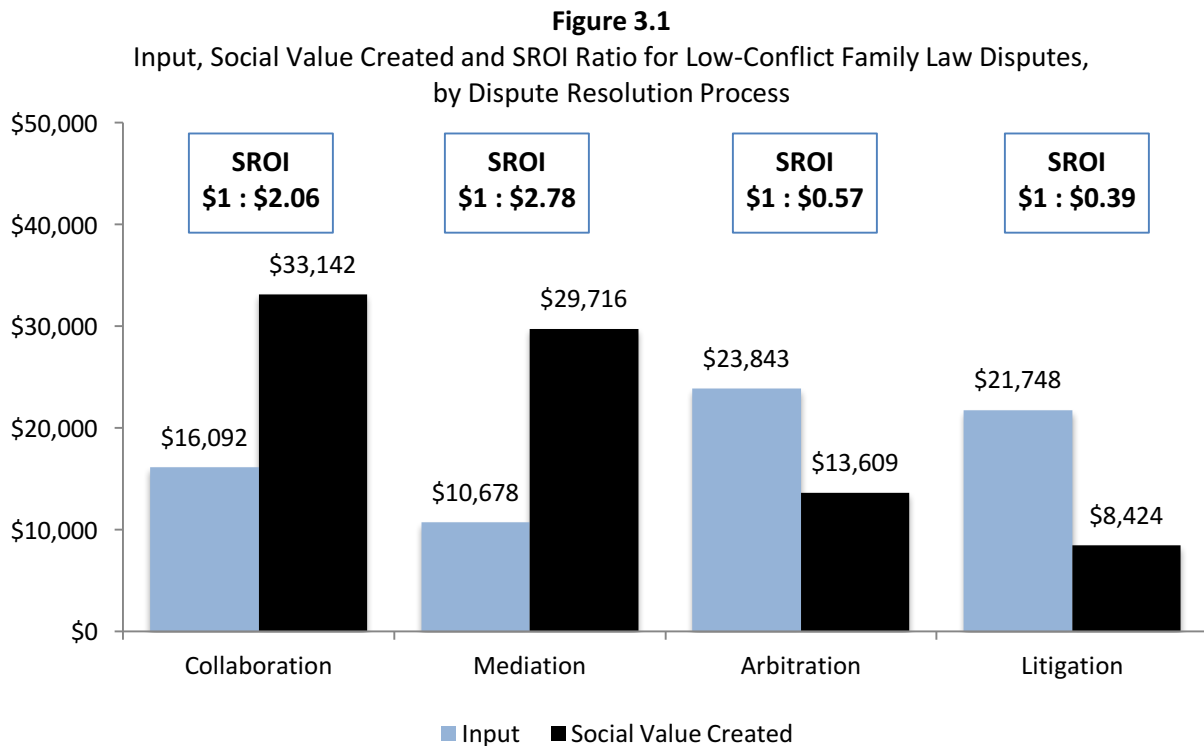
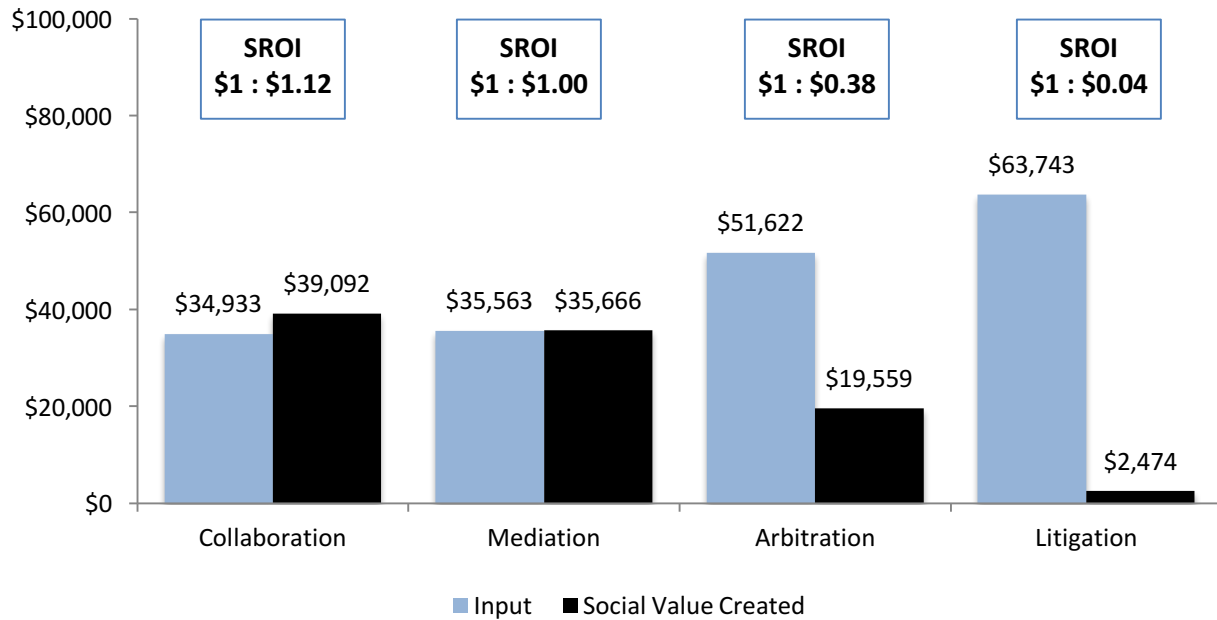


Figure 3.2 shows the comparable results for high-conflict disputes. For every dollar spent on resolving a high-conflict dispute through collaborative settlement, \$1.12 in social value is created, and for every dollar spent on mediating a high-conflict dispute, \$1.00 in social value is created. As with low-conflict disputes, the SROI ratios are significantly lower for arbitration and litigation. For every dollar spent on arbitrating a high-conflict dispute, only \$0.38 in social value is created, and for every dollar spent on litigating a high-conflict dispute, only \$0.04 in social value is created. Not only are the costs of arbitrating and litigating a high-conflict dispute considerably higher than other dispute resolution processes, the satisfaction levels with the results are lower. The extremely low SROI ratio for litigation also reflects the increased costs to the family justice system resulting from repeated court appearances.

Figures 3.1 and 3.2 also demonstrate that, across all four dispute resolution processes, the social value created in resolving low-conflict disputes is higher than that observed in high-conflict disputes. For example, the social value created when mediating a low-conflict dispute is \$2.78 for every dollar spent, compared to \$1.00 when mediating a high-conflict dispute. Likewise, the social value created when litigating a low-conflict dispute is \$0.39 for every dollar spent, compared to \$0.04 when litigating a high-conflict dispute.

**Figure 3.2**  
 Input, Social Value Created and SROI Ratio for High-Conflict Family Law Disputes,  
 by Dispute Resolution Process



It is important to remember that the financial proxies used in this analysis are arbitrary to a certain extent, although they have been applied consistently, and that the client satisfaction data were obtained from the lawyers' perspectives. The exercise has shown, however, that SROI methodology holds promise for future research in this area.

## 4.0 SUMMARY, DISCUSSION AND RECOMMENDATIONS

This project was undertaken to evaluate the costs of various dispute resolution methods for resolving family law disputes. The report presents the results of the lawyers' survey, as well as the results of the Social Return on Investment analyses of the various dispute resolution processes. The findings are discussed, and recommendations are made for moving forward.

### 4.1 Summary of Lawyers' Survey Findings

#### 4.1.1 Demographic Information

- A total of 166 lawyers completed the lawyers' survey. One-half of the respondents were from Alberta (48.9%), almost one-quarter were from Ontario (22.2%), 14.1% were from British Columbia, 10.4% were from Nova Scotia, and 4.4% were from Northwest Territories.
- Almost three-quarters of the respondents to the lawyers' survey were female (72.6%) and just over one-quarter were male (26.8%).
- Almost one-third of respondents (30.3%) were 55 to 64 years of age, and over one-third (37.6%) were aged 35 to 54. About one-quarter of respondents (23%) were 25 to 34 years old, and only one-tenth (9.1%) were 65 years or older.
- On average, the number of years since lawyers were first called to the bar in Canada was 17.6 (range=1 to 47).

#### 4.1.2 Collaborative Settlement Processes

Almost two-thirds of respondents to the lawyers' survey (62.7%) said they use collaborative settlement processes in their practice. These respondents (n=101) were then asked a series of additional questions.

- Lawyers estimated that it takes an average of 5 months (range=1 to 18) to resolve a typical low-conflict family law dispute primarily through collaborative

processes. High-conflict disputes take an average of 14.8 months (range=1.5 to 36) to reach resolution.

- For low-conflict disputes, the average bill for the lawyer's professional services was \$6,269 (range=\$1,000 to \$30,000), and for high-conflict disputes, the average bill was \$25,110 (range=\$5,000 to \$100,000).
- Lawyers who use collaboration reported using financial specialists *always* or *often* (48.8%) or *occasionally* (34.1%). Child specialists were used *always* or *often* (33.8%) or *occasionally* (52.5%), and divorce coaches were used less often (*always* or *often*=27.5%; *occasionally*=32.5%).
- The average total cost for a financial specialist was \$7,573 (range=\$1,000 to \$30,000) and the average hourly rate was \$277 (range=\$150 to \$500). Lawyers who used child specialists said that the average total cost was \$6,108 (range=\$950 to \$20,000) and the average hourly rate was \$222 (range=\$150 to \$300). The average total cost of a divorce coach or counsellor was \$2,250 (range=\$500 to \$5,000) and the average hourly rate was \$215 (range=\$88 to \$300).
- Over 94% of lawyers agreed that their clients are satisfied with the results they achieve through collaborative processes, that the results are in the client's interest, and that the results are in the interest of the client's children.
- About 90% of lawyers agreed that they prefer to use collaborative processes whenever possible, and that they prefer collaboration over litigation. Four-fifths of lawyers also believed that their clients prefer collaborative processes over litigation.
- Most respondents (92.9%) agreed that resolving family law disputes through collaborative processes makes it easier for the parties to cooperate in the future than other dispute resolution processes.
- About two-thirds of the lawyers agreed that collaborative processes are usually fast and efficient, cost-effective, and that getting adequate disclosure is rarely a problem.

- While most lawyers (85.6%) agreed that they could deal with complex issues through collaborative processes, only 36.1% agreed that collaboration is suited for high-conflict family law disputes.

### 4.1.3 Mediation

Four-fifths of respondents to the lawyers' survey (80.1%) said they use mediation in their practice. These respondents (n=117) were then asked a series of additional questions.

- Lawyers estimated that it takes an average of 4.8 months (range=1 to 24) to resolve a typical low-conflict family law dispute primarily through mediation. High-conflict disputes take an average of 13.7 months (range=1 to 60) to reach resolution.
- For low-conflict disputes, the average bill for the lawyer's professional services was \$6,345 (range=\$630 to \$30,000), and for high-conflict disputes, the average bill was \$31,140 (range=\$630 to \$250,000).
- Clients typically pay an average of \$4,423 (range=\$500 to \$20,000) for the mediator's service, or \$376 per hour (range=\$84 to \$600).
- Other experts are used *always* or *often* (21.2%) or *occasionally* (51.9%), at an average cost of \$5,664 (range=\$750 to \$15,000), or \$361 per hour (range=\$150 to \$650).
- Over 81% of lawyers agreed that their clients are satisfied with the results they achieve through mediation, that the results are in the client's interest, and that the results are in the interest of the client's children.
- About 80% of lawyers agreed that they prefer to use mediation whenever possible, they prefer mediation over litigation, and their clients prefer mediation over litigation.
- Most respondents (82.5%) agreed that resolving family law disputes through mediation makes it easier for the parties to cooperate in the future than other dispute resolution processes.

- Over two-thirds of the lawyers agreed that mediation is usually fast and efficient, and over three-quarters agreed that mediation is usually cost-effective and that they can deal with complex issues through mediation.
- Only two-fifths of respondents agreed that getting disclosure is rarely a problem when mediating family law disputes, and only one-quarter agreed that mediation is suited for high-conflict family law disputes.

#### 4.1.4 Arbitration

One-third of respondents to the lawyers' survey (32.1%) reported using arbitration in their practice. These respondents (n=43) were then asked a series of additional questions.

- Lawyers estimated that it takes an average of 6.6 months (range=1 to 15) to resolve a typical low-conflict family law dispute primarily through arbitration. High-conflict disputes take an average of 14.8 months (range=1 to 24) to reach resolution.
- For low-conflict disputes, the average bill for the lawyer's professional services was \$12,328 (range=\$2,500 to \$50,000), and for high-conflict disputes, the average bill was \$40,107 (range=\$7,000 to \$100,000).
- Clients typically pay an average of \$11,515 (range=\$2,000 to \$25,000) for the arbitrator's service, or \$450 per hour (range=\$350 to \$600).
- Other experts are used *always* or *often* (34.2%) or *occasionally* (50%), at an average cost of \$13,867 (range=\$2,500 to \$50,000), or \$450/hour (range=\$350 to \$500).
- Almost three-fifths of lawyers agreed that their clients are satisfied with the results they achieve through arbitration, that they prefer arbitration over litigation, and that their clients prefer arbitration over litigation.
- About one-third of lawyers agreed that they prefer to use arbitration whenever possible and that the results they achieve are in the client's interest; two-fifths believe the results are in the interest of the client's children.



- Only 18.5% of respondents agreed that resolving family law disputes through arbitration makes it easier for the parties to cooperate in the future than other dispute resolution processes.
- Over two-thirds of the lawyers agreed that arbitration is usually fast and efficient, and three-fifths agreed that arbitration is usually cost-effective.
- About 90% of respondents agreed that they can deal with complex issues through arbitration, and almost three-quarters agreed that arbitration is suited for high-conflict family law disputes.
- Just over one-half respondents agreed that getting disclosure is rarely a problem when arbitrating family law disputes.

#### 4.1.5 Litigation

Over two-thirds of respondents to the lawyers' survey (68.7%) reported using litigation in their practice. These respondents (n=114) were then asked a series of additional questions.

- Lawyers estimated that it takes an average of 10.8 months (range=1 to 36) to resolve a typical low-conflict family law dispute primarily through litigation. High-conflict disputes take an average of 27.7 months (range=6 to 60) to reach resolution.
- For low-conflict disputes, the average bill for the lawyer's professional services was \$12,395 (range=\$2,000 to \$75,000), and for high-conflict disputes, the average bill was \$54,390 (range=\$5,000 to \$625,000).
- Other experts are used *always* or *often* (52.3%) or *occasionally* (41.3%), at an average cost of \$9,353 (range=\$750 to \$35,000), or \$449 per hour (range=\$290 to \$750).
- About two-fifths of lawyers *agreed* or *strongly agreed* that their clients are satisfied with the results they achieve through litigation, and less than one-third agreed that the results they achieve through litigation are in the client's interest, or in the interest of the client's children.

- One-fifth of lawyers agreed that they enjoy resolving family law disputes through litigation, and 5.5% said they prefer to resolve family law disputes through litigation whenever possible.
- About one-tenth of respondents agreed that they prefer litigation over other dispute resolution processes, and 7.4% said that their clients prefer litigation as well.
- Only 6.4% of respondents agreed that resolving family law disputes through litigation makes it easier for the parties to cooperate in the future than other dispute resolution processes.
- Over 83% of respondents disagreed that litigation is usually fast and efficient, and a cost-effective dispute resolution process.
- About 85% of respondents agreed that they can deal with complex issues through litigation, and almost two-thirds agreed that litigation is suited for high-conflict family law disputes.
- Just over one-third of respondents agreed that getting disclosure is rarely a problem when litigating family law disputes.

All respondents to the lawyers' survey were asked their opinions about the use of litigation and various funding issues.

- Almost all lawyers (86.4%) agreed that people should attempt to resolve their dispute through another process before litigating, and almost three-quarters agreed that, except in urgent circumstances, people should be required to attempt to resolve their dispute through another process before litigating.
- Three-quarters of lawyers agreed that litigation should only be used as a last resort, when other dispute resolution processes have failed.
- Two-fifths of respondents agreed that litigation should only be used when there are threats to the safety of persons or the preservation of property.
- Most lawyers (92%) agreed that legal aid funding should be available for people resolving family law disputes through any dispute resolution process.

- Over two-thirds of respondents agreed that money spent on the court system would be better spent funding other dispute resolution processes.
- Over two-thirds of respondents agreed that money spent on legal aid for litigation would be better spent providing legal aid for other dispute resolution processes.

#### 4.1.6 Comparisons of Dispute Resolution Processes

- A greater proportion of respondents in Nova Scotia reported using collaboration than respondents from Ontario, Alberta and British Columbia.
- Larger proportions of respondents from Ontario, British Columbia and Alberta reported using mediation than respondents from Nova Scotia.
- While smaller proportions of respondents reported using arbitration compared to the other dispute resolution processes, respondents from Alberta were more likely to use arbitration than respondents from Ontario, British Columbia or Nova Scotia.
- Most respondents reported using litigation in their practice, although a smaller proportion of respondents from Ontario reported doing so compared to Alberta, British Columbia and Nova Scotia.
- Across all locations, lawyers reported *always* or *often* using litigation (54.3%) and mediation (47.8%) more than collaboration (36.9%) or arbitration (8.5%).
- Mediation and collaboration are viewed as the most useful dispute resolution processes for low-conflict disputes, and disputes about the care of children and parenting, child support or spousal support, and the division of property and debt.
- Litigation is viewed as more useful for high-conflict disputes than the other dispute resolution processes, although the support for other dispute resolution processes was not insignificant.
- Litigation is viewed as the most useful dispute resolution process for urgent problems involving a risk to an adult or child, or a risk to property, and for allegations of family violence or abuse, alienation, or adult substance abuse and mental disorder.

- Mediation and collaboration are viewed as more useful for issues arising after the resolution of a dispute than are arbitration or litigation.
- Lawyers viewed collaboration and mediation as being more useful for hearing the views, voice or preferences of children than litigation or arbitration.
- Litigation and collaboration were viewed as more useful for hearing the evidence of mental health experts than were arbitration or mediation.
- Litigation, arbitration and collaboration were all considered very useful for hearing the evidence of financial experts and valuers.
- Respondents were considerably more likely to report that mediation (78.3%) and collaboration (71.1%) resulted in longer-lasting resolutions than litigation (22.3%) and arbitration (16.9%).
- For typical low-conflict disputes, cases resolved through mediation (4.8 months), collaboration (5 months), and arbitration (6.6 months) take the least amount of time to conclude, while cases that are litigated take the most amount of time to resolve (10.8 months).
- For typical high-conflict disputes, cases resolved through mediation (13.7 months), collaboration (14.8 months), and arbitration (14.8 months) take approximately half the time as high-conflict cases resolved through litigation (27.7 months) to conclude.
- Lawyers' bills for professional services for typical low-conflict cases resolved through collaboration (\$6,269) and mediation (\$6,345) cost approximately half that of cases resolved through arbitration (\$12,328) and litigation (\$12,395).
- For high-conflict cases, lawyers reported that the average total bill to their client for their professional services when using collaboration was \$25,110, compared to \$31,140 for mediation, \$40,107 for arbitration, and \$54,390 for litigation.
- Almost all lawyers who use collaboration (91.7%) or mediation (79.6%) reported that they prefer to use those processes whenever possible, while three-quarters

(74.3%) of the lawyers who use litigation disagreed that litigation is their preferred resolution process.

- Over 90% of the lawyers using collaboration or mediation agreed that the results they achieve are in the client's interest, compared to only about one-third of lawyers using arbitration or litigation.
- Almost all lawyers using collaboration (98.9%) and 85.4% using mediation agreed that the results they achieve are in the interest of the client's children, compared to 39.5% of lawyers using arbitration or 30.2% using litigation.
- When comparing the extent to which lawyers agree that their clients are satisfied with the results they achieve using the various dispute resolution processes, more lawyers agreed their clients are satisfied when they use collaboration (94.1%) or mediation (81.5%) than when they use arbitration (57.9%) or litigation (41.3%).
- When comparing the extent to which lawyers agree that resolving family law disputes through the various processes makes it easier for the parties to cooperate in the future than other processes, respondents using collaboration (92.9%) and mediation (82.5%) overwhelmingly agreed, while 77.1% of respondents using litigation disagreed.
- About two-thirds of lawyers agreed that mediation, arbitration and collaboration are usually fast and efficient, while 83.5% of lawyers using litigation disagreed that litigation is usually fast and efficient.
- About two-thirds to three-quarters of lawyers agreed that mediation, arbitration and collaboration are usually cost-effective, while 87.1% of lawyers using litigation disagreed.
- Approximately two-thirds of respondents agreed that arbitration and litigation are suited for high-conflict family law disputes, compared to about one-third of respondents using collaboration, and one-quarter using mediation.

## 4.2 Summary of Social Return on Investment Analyses

- Mediation resulted in the highest SROI ratio for resolving low-conflict disputes with an estimate of \$2.78 in social value created for every dollar spent, followed by collaboration at \$2.06 per dollar.
- Litigation had the lowest SROI ratio for resolving low-conflict disputes at \$0.39 in social value created for every dollar spent, and arbitration resulted in an SROI ratio of \$1 : \$0.57.
- For high-conflict disputes, collaboration resulted in the highest SROI ratio at \$1.12 in social value created for every dollar spent, followed closely by mediation at a ratio of \$1 : \$1.00.
- Litigation had the lowest SROI ratio for resolving high-conflict disputes at \$0.04 in social value created for every dollar spent, and arbitration resulted in an SROI ratio of \$1 : \$0.38.
- Across all four dispute resolution processes, the social value created in resolving low-conflict disputes is higher than that observed in high-conflict disputes.

## 4.3 Discussion

Consistent with trends in the family justice area over the last decade, the findings from the lawyers' survey indicate that lawyers are using, and prefer to use, dispute resolution processes other than litigation to resolve family law disputes. Four-fifths of respondents use mediation, almost two-thirds use collaboration, and almost one-third use arbitration. Moreover, almost all lawyers surveyed agree that people should attempt to resolve their dispute through another process before litigating, and almost three-quarters agree that, except in urgent circumstances, people should be required to attempt to resolve their dispute through another process before litigating. Three-quarters of lawyers also agreed that litigation should only be used as a last resort, when other dispute resolution processes have failed.

However, over two-thirds of respondents said they use litigation to resolve family law disputes, and when respondents were asked about the frequency with which they use various dispute resolution processes, they reported using litigation more frequently than

they used mediation, collaboration, or arbitration. Nevertheless, according to the lawyers surveyed:

- a) low- and high-conflict disputes that are litigated take about twice as long to resolve than they do using other dispute resolution processes;
- b) it costs about twice as much to resolve a dispute through litigation than through other processes;
- c) the results they achieve through litigation are less likely to be in the client's interest, or in the interest of the client's children, than the results achieved through other dispute resolution processes;
- d) clients are less likely to be satisfied with those results achieved through litigation than the results achieved through other dispute resolution processes; and,
- e) three-quarters of the lawyers who use litigation said that it is not their preferred dispute resolution process.

These findings beg the question of why litigation continues to be so widely used by separating parents to address family law disputes. The data offer some suggestions and partial answers. Supporting the use of litigation, respondents said that:

- a) litigation is more useful for high-conflict disputes than other dispute resolution processes;
- b) litigation is viewed as the most useful means of addressing urgent problems involving a risk to an adult or child, or a risk to property, or for cases involving allegations of family violence or abuse, alienation, or adult substance abuse and mental disorder; and,
- c) litigation is more useful than other dispute resolution processes for dealing with the evidence of mental health experts, financial experts and valuers.

It seems unlikely that these factors alone could explain the prevalence of litigation as a dispute resolution process in family law matters. Perhaps the dominance of litigation in the North American media undermines popular awareness or the credibility of other dispute resolution processes. Perhaps the continued emphasis on court processes and court orders in the domestic relations legislation of Canada's provinces and territories

leads individuals to assume that settlements and agreements are less useful, less enforceable or less final than orders. Perhaps the absence of fees in provincial courts encourages the perception that mediation, collaborative settlement processes and arbitration, all usually provided on a fee-for-service basis, are expensive and unaffordable. Perhaps the large increases in the number of litigants without counsel in recent years has resulted in a change in the type of clients seeking legal representation, with more individuals in high-conflict situations being inclined to hire counsel, thus influencing lawyers' choice of dispute resolution process. Or perhaps the emotional satisfaction of adversarial court processes is too tempting a lure for individuals upset or unhappy with the end of a relationship to resist.

The findings from the lawyers' survey indicate that mediation and collaboration are faster, more efficient, and more cost-effective than the other dispute resolutions processes. Mediation and collaboration are also viewed as the most useful mechanisms for:

- a) resolving low-conflict disputes, although many respondents also supported their use for the resolution of high-conflict disputes and disputes with elements of urgency;
- b) disputes about the care of children and parenting, child support, spousal support, and the division of property and debt;
- c) hearing the voice of the child; and,
- d) addressing issues arising after the resolution of a family law dispute.

Respondents indicated the resolution of disputes through mediation or collaboration is longer-lasting than resolutions reached through litigation and arbitration. Lawyer respondents also said that it is easier for parties to cooperate in the future if their family law disputes are resolved through collaboration or mediation than through other dispute resolution processes.

Respondents overwhelmingly agreed that collaboration and mediation resulted in higher client satisfaction than the other processes, and that the results they achieve through collaboration or mediation are more likely to be in their clients' interest, and in the interest of their clients' children, than the results they achieve through arbitration or litigation.



The combined factors of being fast and efficient, cost-effective, and having higher client satisfaction resulted in higher SROI ratios for mediation and collaboration than arbitration and litigation. While it may be unusual to think of the resolution of legal disputes as having a social value, such would certainly be the case from the viewpoint of clients perceiving a value in the quick, economical and long-lasting resolution of their family law problems. Moreover, there is considerable value for clients in achieving a resolution that is in their interests and those of their children, as well as in using a process that will encourage and enable them to cooperate in resolving future disputes. From an administrative point of view, there are additional, tangible economic benefits for the family justice system in reducing the frequency with which the courts are used to resolve disputes, as well as the number of judicial interactions with the parties to those disputes that are litigated. While the actual value of these benefits is not known, the SROI analyses conducted for this report do allow a meaningful comparison of the four examined dispute resolution processes relative to each other.

#### **4.4 Recommendations**

The interesting findings observed in this project, particularly those comparing litigation to the other dispute resolution processes, raise additional questions that warrant further investigation. Almost all lawyers agreed that people should attempt to resolve their dispute through another process before litigation, and three-quarters agreed that such should be required, except in urgent circumstances. Yet litigation is still commonly used to resolve family law disputes. Are lawyers requiring, or encouraging, their clients to consider non-court dispute resolution processes? What are the circumstances in which other dispute resolution processes are not successful? Are lawyers only using litigation for high-conflict or urgent cases, or cases that initially present as high-conflict or urgent, or are there other circumstances in which lawyers prefer to use litigation? To what extent is the decision to litigate based on the client's informed preferences and wants versus the circumstances of the case? Do lawyers perceive a substantive difference in the type of clients who seek their services for different dispute resolution processes? Are lawyers dealing with more complex or more conflicted cases now than they were previously due to the high numbers of litigants without counsel? Do lawyers perceive differences in the usefulness or enforceability of orders versus agreements? It is recommended that a national survey of lawyers be conducted to answer these questions, and provide further, more detailed information about lawyers' use of dispute resolution processes.

The SROI analyses conducted for this project have provided insight into how this methodology could be used for studying components of the justice system.

Unfortunately, it was necessary to rely on data from lawyers, rather than the clients themselves. In terms of further research, it is important to obtain data directly from both lawyers' clients and individuals who were not represented by counsel to obtain their views of and experiences with the various dispute resolution processes. What do clients report paying to resolve their legal disputes through the different processes? How long do they take to reach resolution? How often do clients go to court; how often do parties without counsel go to court? What values do individuals attribute to or associate with the quick, efficient and economical resolution of family law disputes? How do individuals value their satisfaction with the results achieved? How does the resolution of low-conflict cases compare to the resolution of high-conflict cases? It is recommended that different methodologies be explored to survey both represented and non-represented individuals to learn more about their views and experiences.

Finally, the research that has been conducted for this project is innovative and the results are striking. Although further research would be useful, the data collected for this project call into question the continued allocation of so much of the overall justice system budget to the support of litigation. It is far from clear, and indeed the data collected indicate much to the contrary, that court processes are the preferred or best ways of resolving family law disputes, for the parties to those disputes or for their children. Substantially increasing the funding and other support allocated to mediation and collaborative settlement may serve the needs of Canadian families better than the current practice of funding court processes to the near-complete exclusion of other dispute resolution processes.

It is hoped that the information in this report will be useful for individuals experiencing relationship breakdown and contemplating resolution options, as well as for lawyers, who may not be aware of the comparative costs and benefits of the various dispute resolution processes, and for policy-makers interested in the reform of family justice processes.

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## GLOSSARY

*Coding:* Analytic process in which qualitative data are categorized into common themes to facilitate analysis.

*Missing Cases:* The number of responses on individual questions that are not available. The most common reason for missing cases in survey data is that the respondent chose not to answer a particular question.

*Multiple response data:* Multiple response data refers to questions in which respondents are allowed to choose more than one answer. In tables where multiple response data are presented, the percentages presented for individual items will total more than 100.

*N and n:* N refers to the total number of responses received to a survey while n refers to a subset of the total responses that may be selected for specific data analyses. For example, if 100 men and women respond to a survey, then  $N=100$ . If 30 of those respondents identify as women, then  $n=30$  women and  $n=70$  men.

*Qualitative data:* Refers to data that are descriptive rather than numeric in nature. Asking survey respondents to provide their opinion in their own words is an example of a qualitative question. Qualitative data can frequently be coded into quantitative data by identifying common themes across respondents' answers, and assigning numbers to each of the themes.

*Quantitative data:* Refers to data that can be quantified using numbers that can then be manipulated mathematically or statistically. Asking survey respondents the extent to which they agree with a statement on a scale with the potential responses being *strongly agree, agree, neither agree nor disagree, disagree, and strongly disagree* is an example of a quantitative question. The responses can be assigned numbers ranging from 1 through 5 which can then be averaged across respondents to provide a mean score for the question.

*Representativeness:* The extent to which the responses to a survey are likely to reflect the responses that would be given if every potential respondent could be surveyed.

*Response rate:* The percentage of completed surveys returned out of the total number distributed to potential respondents.

**APPENDIX A:**  
**LAWYERS' SURVEY**

The Canadian Research Institute for Law and the Family is conducting a research project for the Canadian Forum on Civil Justice regarding the cost of various dispute resolution processes in family law. We would very much appreciate it if you would complete this survey.

Your responses to this survey are anonymous and you do not have to answer any questions that you prefer not to answer. All data are stored securely and confidentially by the Canadian Research Institute for Law and the Family, and will only be expressed in aggregate format.

If you complete the survey, we would like to enter your name into a draw for a 128 GB iPad mini with wifi connectivity. You will be asked to provide your contact information at the end of the survey if you would like to enter the draw.

If you have any questions or concerns about this survey, please contact John-Paul Boyd, of the Canadian Research Institute for Law and the Family, at 403-216-0340 or [jpboyd@ucalgary.ca](mailto:jpboyd@ucalgary.ca).

## Demographic Characteristics

What is your gender?

Male  Female  Other

How old are you?

18 to 24 years  55 to 64 years  
 25 to 34 years  65 to 74 years  
 35 to 44 years  75+ years  
 45 to 54 years

What was the year of your first call to the bar in Canada?

## Dispute Resolution Processes

How frequently do you use the following dispute resolution processes to resolve family law disputes?

	Always	Often	Occasionally	Rarely	Never
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *disputes about the care of children and parenting*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *disputes about child support or spousal support*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *disputes about the division of property and debt*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *high conflict disputes*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *low conflict disputes*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes to address *urgent problems involving a risk to an adult or child*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



In your view, how useful are the following dispute resolution processes to address *urgent problems involving a risk to property*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes to address *allegations of family violence or abuse*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes to address *allegations of alienation*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes to address *allegations of adult substance abuse and mental disorder*?

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how well suited are the following dispute resolution processes to *hear the views, voice or preferences of children?*

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how well suited are the following dispute resolution processes to *hear the evidence of mental health experts?*

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how well suited are the following dispute resolution processes to *hear the evidence of financial experts and valuers?*

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, how useful are the following dispute resolution processes for *issues arising after the resolution of a dispute?*

	Very useful	Somewhat useful	Not useful
Collaborative settlement processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, which of the following dispute resolution processes usually result in the most long-lasting resolutions of family law disputes? (Please check all that apply)

Collaborative settlement processes

Mediation

Arbitration

Litigation

## Collaborative Settlement Processes

Do you use collaborative settlement processes in your practice?

Yes  No

When you resolve a family law dispute primarily through collaborative processes...

about how long (in months) does it usually take to resolve a typical *low conflict* dispute?

about how long (in months) does it usually take to resolve a typical *high conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges, in a typical *low conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges in a typical *high conflict* dispute?

How often do you use the following professionals when resolving a family law dispute through collaborative processes?

	Always	Often	Occasionally	Rarely	Never
Divorce coaches / counsellors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Child specialists	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial specialists	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other specialist (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify type of other specialist

About how much do your clients typically pay for the following professionals?

Divorce coaches / counsellors

Child specialists

Financial specialists

Other experts (please specify)

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
I prefer to resolve family law disputes through collaborative processes whenever possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through collaborative processes are in the client's interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through collaborative processes are in the interest of the client's children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients are satisfied with the results I achieve through collaborative processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I prefer collaborative processes over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients prefer collaborative processes over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolving family law disputes through collaborative processes makes it easier for the parties to cooperate in the future than other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Collaborative processes are usually fast and efficient	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collaborative processes are usually cost-effective	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I can deal with complex issues through collaborative processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collaborative processes are suited for high-conflict family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Getting adequate disclosure is rarely a problem when using collaborative processes to resolve family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Mediation

Do you use mediation in your practice?

Yes

No



When you resolve a family law dispute primarily through mediation...

about how long (in months) does it usually take to resolve a typical *low conflict* dispute?

about how long (in months) does it usually take to resolve a typical *high conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges, in a typical *low conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges in a typical *high conflict* dispute?

About how much do your clients typically pay for the mediator's services?

How frequently are the services of other experts used in your mediation cases?

Always  Often  Occasionally  Rarely  Never

When other experts are used in your mediation cases, about how much do your clients typically pay for their services?

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
I prefer to resolve family law disputes through mediation whenever possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through mediation are in the client's interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through mediation are in the best interest of the client's children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients are satisfied with the results I achieve through mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I prefer mediation over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients prefer mediation over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolving family law disputes through mediation makes it easier for the parties to cooperate in the future than other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Mediation is usually a fast and efficient dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is usually a cost-effective dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I can deal with complex issues through mediation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mediation is suited for high-conflict family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Getting adequate disclosure is rarely a problem when mediating family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Arbitration

Do you use arbitration in your practice?

Yes

No

When you resolve a family law dispute primarily through arbitration...

about how long (in months) does it usually take to resolve a typical *low conflict* dispute?

about how long (in months) does it usually take to resolve a typical *high conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges, in a typical *low conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges in a typical *high conflict* dispute?

About how much do your clients typically pay for the arbitrator's services?

How frequently are the services of other experts used in your arbitration cases?

Always  Often  Occasionally  Rarely  Never

When other experts are used in your arbitration cases, about how much do your clients typically pay for their services?

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
I prefer to resolve family law disputes through arbitration whenever possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through arbitration are in the client's interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through arbitration are in the best interest of the client's children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients are satisfied with the results I achieve through arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I prefer arbitration over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients prefer arbitration over litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolving family law disputes through arbitration makes it easier for the parties to cooperate in the future than other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Arbitration is usually a fast and efficient dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration is usually a cost-effective dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I can deal with complex issues through arbitration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Arbitration is suited for high-conflict family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Getting adequate disclosure is rarely a problem when arbitrating family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Litigation

Do you use litigation in your practice?

Yes

No



When you resolve a family law dispute primarily through litigation...

about how long (in months) does it usually take to resolve a typical *low conflict* dispute?

about how long (in months) does it usually take to resolve a typical *high conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges, in a typical *low conflict* dispute?

about how much is your total bill to your client for your professional services, excluding disbursements and other charges in a typical *high conflict* dispute?

How frequently are the services of other experts used in your litigated cases?

Always  Often  Occasionally  Rarely  Never

When other experts are used in your litigated cases, about how much do your clients typically pay for their services?

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
I prefer to resolve family law disputes through litigation whenever possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I enjoy resolving family law disputes through litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through litigation are in the client's interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The results I achieve through litigation are in the best interest of the client's children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients are satisfied with the results I achieve through litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I prefer litigation over other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
My clients prefer litigation over other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Resolving family law disputes through litigation makes it easier for the parties to cooperate in the future than other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How much do you agree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Litigation is usually a fast and efficient dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation is usually a cost-effective dispute resolution process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I can deal with complex issues through litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation is suited for high-conflict family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Getting adequate disclosure is rarely a problem when litigating family law disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How much do you agree or disagree with the following statements?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Litigation should only be used <i>as a last resort</i> , when other disputes resolution processes have failed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Litigation should only be used <i>when there are threats</i> to the safety of persons or the preservation of property	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
People should attempt to resolve their dispute through another dispute resolution process before litigating	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Except in urgent circumstances, people should be required to attempt to resolve their dispute through another dispute resolution process before litigating	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal aid funding should be available for people resolving family law disputes through all dispute resolution processes, not just litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Money spent on the court system would be better spent funding other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Money spent on legal aid for litigation would be better spent providing legal aid for other dispute resolution processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

We would like to enter your name into a draw for one 128 GB iPad mini with wifi connectivity to thank you for taking the time to complete this survey. If you wish to be entered, please provide us with your name, address and telephone number. Your name will not be associated with your responses to this survey.

Name

Address 1

Address 2

City

Province

Postal code

Telephone Number

**Thank you very much for completing this survey!**