

Court is never your only option

When a relationship breakdown is already acrimonious, fighting over custody and the division of assets can do irreparable damage to all parties concerned – especially children caught in the crossfire.

As a family law barrister, Marc Testart has witnessed this carnage. Seeing the impact of court proceedings on clients and families inspired him to focus on achieving “win-win” outcomes via alternative dispute resolution. This was a key motivation to establish Testart Family Lawyers more than five years ago.

“Alternative dispute resolution is essentially anything that minimises or avoids litigation,” Testart says. “We urge people to put their anger aside and be receptive to a compromise, because going through the court process can take a massive toll. Litigation is, by nature, adversarial: it pits people against each other.”

Dispute resolution, on the other hand, can be as simple as sitting at a table discussing or negotiating mutually acceptable outcomes. Or, it can be a formal mediation involving an experienced barrister or even a retired judge.

“In my experience, going through the court process literally ages people,” Testart explains.

“The cumulative cost, time and animosity generated can be brutal. And there is a high chance people will walk away even angrier and more disillusioned than before, because control has been effectively taken out of their hands. The emotional and financial impact of that can resonate for years. Everyone,

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 MARC TESTART, TESTART FAMILY LAWYERS

especially children of the relationship, loses.”

Testart says a good lawyer should explain the costs and risks of going to court. He says it is mostly, but not always, possible to avoid court: “We are able to help most of our clients resolve differences without having to issue court proceedings. However, sometimes it simply isn’t possible. In these circumstances it is necessary for a judge to make a decision.”

For people going through a separation, he recommends picking a family lawyer they feel they can trust. “Interview at least two or three and make your decision based upon their initial advice,” he says, noting that many lawyers offer a free initial consultation.

If they don’t suggest alternatives to court, Testart says to find one who will. “Be clear and organised about your situation, and explain what you are trying to achieve,” he says. “A good lawyer will tell you if your expectations are realistic. This is half the battle. If you can be clear, organised and realistic, you have the greatest chance of a successful resolution without going to court. This is the best outcome for you and your children.”



Marc Testart is the founder of Testart Family Lawyers, a proven specialist in alternative dispute resolution.

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