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**Family Law Dispute Resolution:
Options for Clients**

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What Process?

Two Main Types:

1. **interest based negotiation**, also known as less adversarial bargaining (includes mediation and collaborative law); and
2. **positional bargaining**, also known as adversarial negotiation (includes dialogue between counsel and litigation).



Traditional Positional Bargaining

- involves, in essence, each party trying to maximize how much they can win out of the negotiations.
- A gain for one side invariably means a loss for the other.
- In this framework, each party will strategically adopt polarized positions asking for more than it expects to receive so that it will have something to “give” away when concessions are demanded.



“New” Interest Based Bargaining

- emphasizes cooperation.
- Rather than viewing each other as adversaries, the parties are challenged to work together in a collaborative way to achieve a result that is mutually desirable.
- Negotiation is over “interests” (what each party needs and wants), rather than on “positions” (each party’s “bottom line”) which stresses the concept of entitlements and/or rights.
- In interest-based bargaining, it is the problem, rather than the opposing party, that is the adversary, shifting the negotiation focus to finding a solution that meets the needs of all wherever possible.



What is an Interest?

- An interest is a specific condition or gain that a party must obtain to bring about an acceptable settlement. Interests include:
 - Substantive Interests: Needs which must be included in the content of a settlement which are tangible such as time, money, resources, goods, documents etc.
 - Procedural Interests: Needs for specific types of behaviours or the way that something is done.
 - Psychological Interests: Needs that refer to emotions and relationships, how a party feels, how a party is treated during the negotiations and afterwards.



Interest-based bargaining (mediation and collaborative law) not always the best solution:

- The other side refuses to cooperate/participate;
- A history of violence or abuse and the power imbalance that ensues may affect the client's ability to effectively negotiate issues in a mediation or the collaborative process;
- There is a present fear of domestic violence or a safety concern;
- The client believes that their spouse will be dishonest in a non-adversarial process; or
- There is very high conflict between the parties and/or they are very polarized in their respective positions.



