



# Family matters

By Nicole Berg, Accredited Specialist Family Law



## Court Process In Children's Matters

Below is a run down of what to expect

Unless there are issues of family violence or urgency (this article will not cover these exemptions, so for more information contact our office), then you will be required to attend, or attempt to attend, mediation. When filing proceedings in children's matters, all parties must file a certificate from a mediator stating that you have attempted mediation, that the other party did not attend or that, in the mediator's opinion your matter is not suitable for mediation.

Once you have received that certificate, you must then lodge an Initiating Application, supporting affidavit material and the certificate with the Court. This must be accompanied by a copy of your marriage certificate (or the child's birth certificates if there was no marriage).

The Court will then 'seal' the documents and return them to you with your initial appearance date. Depending on which Judicial Officer your matter is listed before, this may be a simple mention where the parties are directed to file certain documents and do certain things with an Interim Hearing date being listed at a later date, or the Judicial Officer may hear your Interim Application on that first day. Interim simply means 'in the meantime' basically, what will happen while you are waiting for your final hearing or trial.

After the interim hearing, it is quite natural to have a number of mention dates where further directions are made, independent children's lawyers are appointed, family reports are prepared, psychiatric assessments are made, etc.

You will also be required to attend mediation or a Conciliation Conference where you will attempt to mediate your issues.

If this process is unsuccessful you will be placed on the trial list and receive further directions to progress your matter to its final hearing.

You should anticipate that, from the filing of your matter, it may take anywhere from 12 months to 2 years to reach your final hearing.

Here are some terms you can expect to encounter:

**Independent Children's Lawyer** – This is a court-appointed lawyer to assist the court in determining the best interests of your child. They will undertake to organise reports, issue subpoenas etc to determine the relevant facts and are organised through Legal Aid.

**Family Report** – This is a report, usually written by a Child Psychologist or Social Worker, who is very experienced in family law matters. The report involves an interviewing process (of the parents and the children depending on their ages) and an observation period of each parent with the children. The report writer makes recommendations as to what orders would be in the best interest of the children based on these interviews and observations.

**Equal Shared Parental Responsibility** – Equal shared parental responsibility refers to joint and equal parental decision making with respect to major long-term decisions such as education, religion and health matters. The presumption for equal shared parenting does not apply in circumstances of family violence or abuse or if the Court considers it otherwise inappropriate.

**Equal Time vs. Significant and Substantial time** - **There is no presumption that parents are entitled to equal time under the legislation.** A Court shall only make an Order with respect to equal time if the Court feels that to do so would be reasonably practicable for all parties.