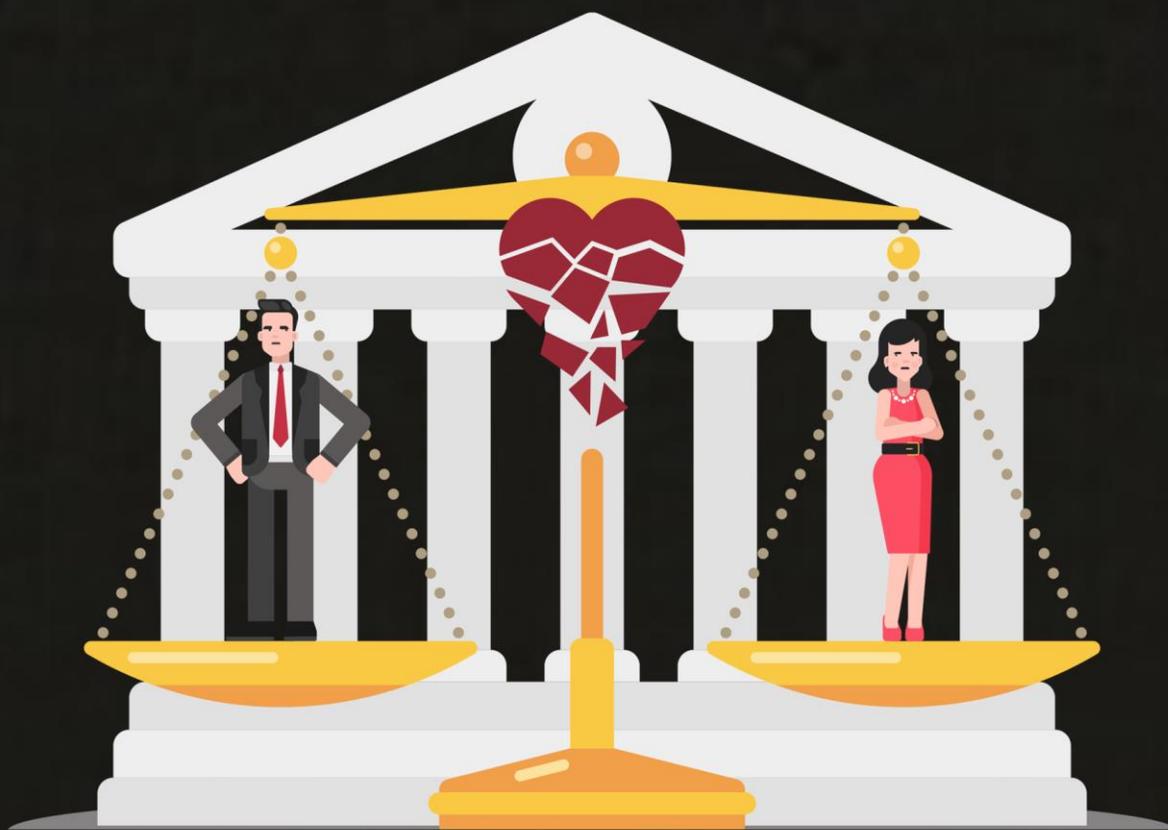


10

THINGS THEY DON'T TELL YOU ABOUT FAMILY COURT



BY HAISAM FARACHE

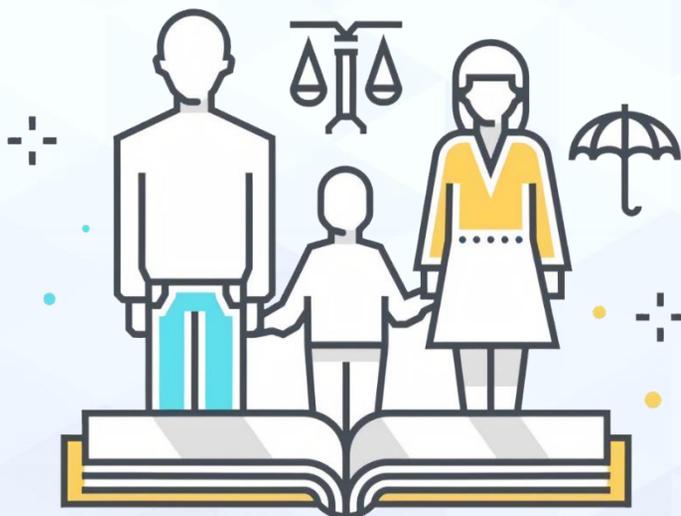
Table of Contents

1. Nobody Wins.....	6
2. It's Not About Justice	7
3. There Is No Vindication	8
4. It's Discretionary	9
5. It's Expensive.....	9
6. It's Time Consuming	10
7. Delays in The Court System	11
8. You Will Lose Your Privacy	12
9. Cross Examinations	12
10. You Won't Feel Any Better	13
Final Note	14

Thank you for downloading this guide

Before I begin, I would like to give you fair warning about the information you're about to read:

1. It's going to be blunt to save you heartache, time and money.
2. You may not be able to connect with some of the concepts right now, but I urge you to give it time and come back to it later.
3. You will be challenged by what you read and realise my firm's philosophy might not be your cup of tea. And that's okay!
4. We care about you and your children. You are not just business to us, you are family.



A Message From The Author

Haisam Farache

Principal Solicitor – Garrison Lawyers

Twenty years ago, I started my career in law as a corporate solicitor. It didn't take me long to realise my passion lay in helping people and not corporations. My desire to help people and families further grew when I became certified as a Family Dispute Resolution Practitioner. I met people from all kinds of backgrounds that were all going through the same thing; family disagreements. My job as an FDRP was to help mediate families through these disagreements before they escalated or headed to court.

Over time and with experience, I realised that my strength in the area of family law was working with clients in difficult and high conflict situations. For this reason, I started my law firm Garrison Lawyers to work predominantly on Family Law cases. I chose that name to symbolise the legal defence and protection services we offer our clients who are always suffering through the most emotional times in their lives.

The most important thing for me was making sure the most vulnerable party in a family law proceeding was taken care, and that was the client's child or children. I made it my firm's main drive to work with clients who had the same philosophy and understanding: that they wanted to do the right thing by their child/ren. At Garrison Lawyers, we believe that safe guarding a child's physical safety, psychology and emotional stability through one of the most traumatic events they can go through (family breakup) will lead to a more emotionally stable, happier and confident child and future adult.

Why should our children suffer permanent damage from the mistakes we make as their parents?

Unfortunately, in my line of work, I've run into many people who didn't see their children as dependants but rather, as a pawn. I've known potential clients who were using their children to get revenge on their ex-partners, or to getting more money, or a sense of power/control. Thankfully, most of them would not continue working with us as it was against my firm's code to work with clients who did not have their children's best interest at heart. Generally, once we explained the likely process that would happen, and they realised that their day in court would not make them feel any better, they went elsewhere.

Some, however, would stay and see that moment as a growth point. Often, they found it incredibly difficult facing the reality of how complicated family law proceedings were. Learning to truly sacrifice for their child, even if that meant giving their ex-partner something they didn't wish to give, was always painful...but ultimately liberating.

I thought to write this brief guide to give you an insight as to some of the things that aren't commonly known about family court. The advice that I'm about to give you is based on my experience working as a family lawyer.

I need to warn you, the advice given is pragmatic and is not based on emotion. That is the first thing you'll need to realise before you start any legal proceedings, there won't be much room for your emotions to run rampant, except for thinking about the best thing for your child or children.

At Garrison Lawyers, our advice is given for the purpose of client empowerment.

You can only make the right choices if you have the right knowledge, so I'm going to be candid to save you heartache, time and money. I hope this can help prepare you, and if you need my help, my firm is an email or a phone call away.



1. Nobody Wins

Going to court for a family law matter is not an environment where one party comes out the other side feeling like a winner. It's almost *unheard of* that one party gets all the orders they seek.

Not only will this process be emotionally and mentally draining but clients will often feel helpless at the end of their proceedings. Generally, when the court gives a verdict both parties will feel that their own needs have not been met. For example, your orders might request 70/30 child visitation rights with your former partner seeing the child 2 days a week, however based on evidence and the Judge's discretion, the court may decide that it is in the best interest of the child for them to see your former partner 4 days a week. Decisions like these can make things complicated if one party has other responsibilities (e.g work commitments) that make it difficult to shift their schedule. Be aware that you may face situations like these.

The court's decision could also be in complete opposition to what each party feels that they have contributed to their family and their former relationship. Despite contributing more financially or more to the duty of parenting, the court may insist that each party may have to do more, or even less of these activities and this can sometimes feel unfair.



2. It's Not About Justice

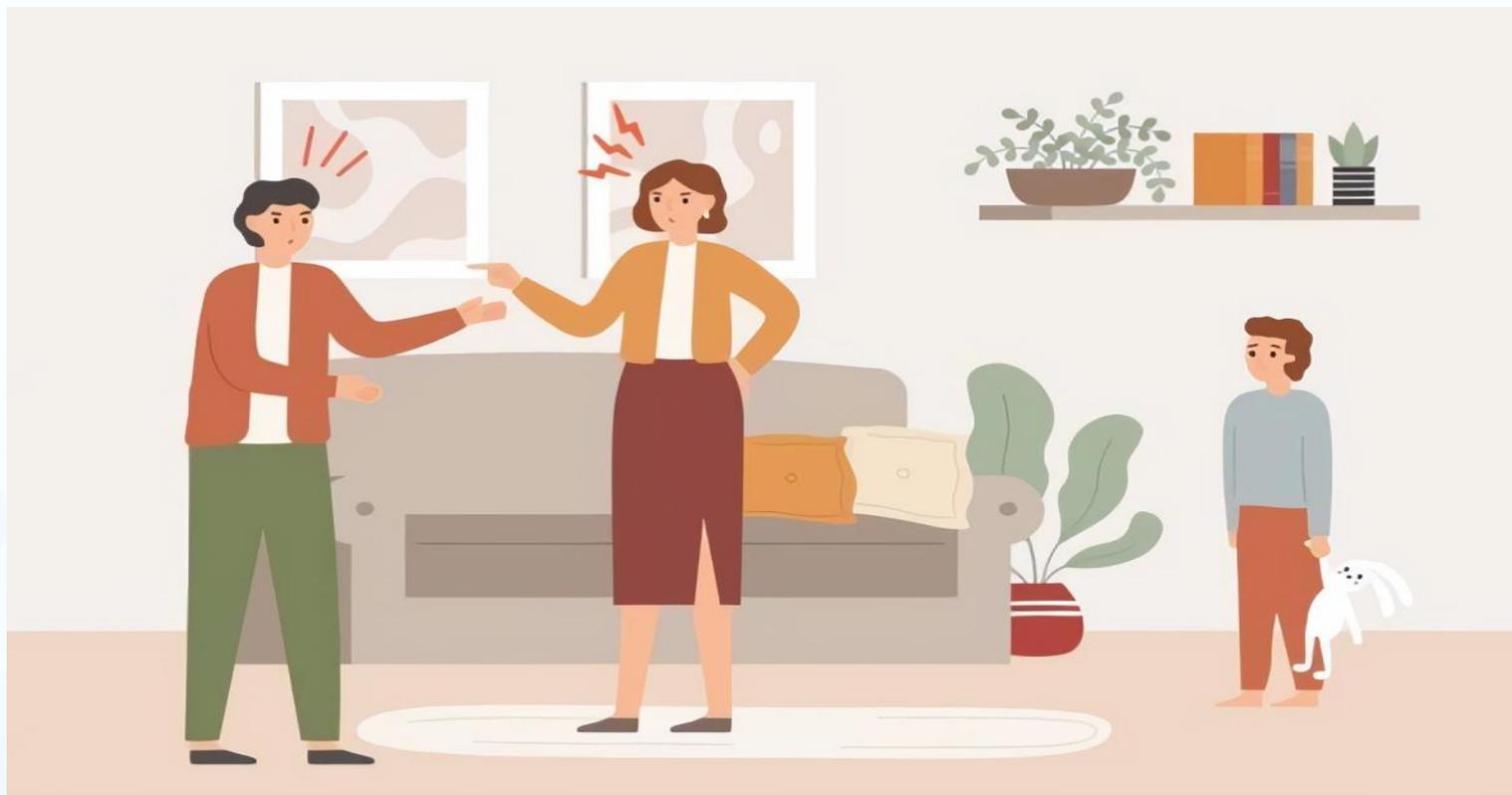


Justice is a subjective concept. Different people have different opinions about what justice is, and when it comes to your family it can feel extremely personal and emotional. Even though you'll hear family court judges saying parents know what's best for the children, in the end the judge is forced to make a ruling and generally neither side believe it is justice.

In family matters, the court's decision will never be about justice or fairness for the parents, but about what is in the best interest of the child/ren using the available admissible evidence presented to the judge by all sides.

And when it comes to property matters, the *court* must decide what is "just and equitable" even though everybody has their own opinion about what is just or fair. The judge must use the standards of financial contributions and financial needs to make a ruling.

3. There Is No Vindication



You will not be avenged or get revenge. It is understandable that divorce and child custody proceedings will evoke very strong emotions. Things happen in families that are painful and life changing. Unfortunately, you will not be able to recompense in the family court system. The federal court system doesn't concern itself with ethical or moral wrong doings (such as who was a 'good' spouse, or who cheated etc), it concerns itself with the application of the Family Law act. A judge will never tell you who was right or who was wrong in terms of being a partner. The court's duty is to provide the parties with remedies that will save or improve the situation, not to play referee between avenging former partners.

4. It's Discretionary

This means that family law judges make decisions in accordance with their opinion, based on what they perceive to be the facts, and how those facts relate to the relevant law.

This power is granted to the court to enable it to make effective decisions. The role of the discretionary power of the court is to also empower it to make impartial judgments. This explains why there are different judgments from different courts on the same facts.

Discretionary powers are issued to the court to avoid predictability or certainty of the court. An example would be where the law prescribes the minimum amount for child support, the court can use its discretionary powers to give an exact figure to be paid by the opposing party

5. It's Expensive

It's not cheap to hire a team of experts to work on your matter. That is exactly who you'll need to navigate your matter. Your solicitor will be working with a wide array of professionals to gather evidence and information. In terms of business and property valuations this could include information about your companies, trusts, superannuation, and other entities. For parenting matters documenting a lifetime of events between partners and providing historical accounts of the rearing of children could include reports from family report writers, psychologists, psychiatrists, doctors, teachers, and counsellors. You will be spending a considerable amount of money on your Barrister, who will also represent you in court if your matter is complicated, the court itself (it costs to have your team attend court!), and on your solicitor who could be working on your matter (alongside all these experts, AND the other sides' experts) for weeks, months or even years!



6. It's Time Consuming



Gathering evidence such as bank account details, tax assessments, trust deeds, company constitutions, bank statements, financial statements can take a huge chunk out of your day.

Additionally, you'll be faced with deposing your affidavit for parenting matters. This means working with your solicitor to tell your side of the story (this can take a very long time), which is generally followed by responding to your former partner's affidavit.

You will likely spend time waiting for your former partner and their solicitor to respond to YOUR affidavit as well. Your time will be spent following up on information and providing your solicitor with as much detail as possible, not to mention preparing and attending conciliation conferences, mediations, and other settlement negotiations.

In addition, when your matter *does* come before the court, you'll have to be flexible with your time to attend your hearing (i.e. taking time off work/responsibility, finding suitable care for your child/ren). Take note, that depending on circumstances in court your matter *could* also be adjourned, which would mean further flexibility on your behalf.

7. Delays in The Court System

The court tries as much as it can to deal with cases expeditiously, although the challenge of backlog always arises. Currently, to reach a final hearing matter in the family court system, you could be waiting anywhere between 3 to 4 years. There are also delays in getting expert reports, valuations, family reports, conciliation conferences, and child dispute conferences. Adjournments at the behest of the court or your former partner are also common during family law proceedings.



8. You Will Lose Your Privacy



Court documents are public documents. Everything that goes into evidence is published on the internet, although in children's cases the names of the parties are changed. At the very minimum judges, lawyers, court staff, experts and anyone is sitting in the viewing gallery in court (including other litigants) will hear about the most intimate details of your life. This can include private messages you and your former partner sent to each other with the understanding (at the time) that this was only between the two of you.

Warning! If you have sent your ex texts that could be deemed as 'abusive' this could come back to haunt you!

Your judgement will be published online for anyone to Google.

9. Cross Examinations

This is a process of fact-finding used in family court. It occurs when a party is questioned with the aim of discovering the truth or finding weaknesses in the other party's arguments. It is an intensive art that is applied by a solicitor to get you to admit to committing something (such as alcohol or drug abuse that could put your children in danger) or provide relevant information to the family matter.

The process is rigorous, and it can annoy you, harass you, or make you feel intimidated. The interrogation is usually based on your affidavit. The end objective is usually to get the party being cross-examined to either give self-incriminating evidence, admit liability, or absolve them from allegations. Your solicitor will help you to get prepared for your cross examination.

10. You Won't Feel Any Better



Going to court is a very involving process. Every part of your life will be picked apart, including your emotions. At the end of your matter, you might feel angry, empty, guilty, disappointed, or despaired.

The legal system tends to involve all parties in a dispute as much as it can; therefore, at the end of a matter, most clients are usually exhausted physically, mentally, emotionally, and financially. So even if the judgement you receive is more favourable towards you, you might not get the feeling of elation that you would otherwise expect.

So Be Prepared!



Final Note

This guide wasn't written to prepare my clients for doom and gloom, but rather a pragmatic approach to getting you ready to what you could face in family court. I understand that some of the information provided will be challenging, but it is the truth, and it is what family law clients face every single day.

We, at Garrison Lawyers, believe that the right advice can:

- empower people to do the right thing;
- empower people to stand up for their rights;
- empower people to fight for the rights of their dependants.

We wish you all the best!



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