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Articles

[The intersection of family violence and family dispute resolution:
Implications for evidence gathering and mediation confidentiality](#)

— *Joe Harman*

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In parenting cases involving allegations of family violence it is especially important that courts have all available evidence available to 'get to the truth' and ensure the safety of children and their carers. These protective obligations have increasingly led to calls to remove or limit confidentiality in many relationships including the confidentiality that applies in family dispute resolution ('FDR'). This article explores a number of fundamental propositions including, do parties who have experienced family violence attend FDR? Does the disclosure of family violence affect attendance at FDR? How likely is it that family violence would be disclosed for the first time during FDR? And what services do victims of family violence engage with? The research undertaken and discussed in this article has significant practical implications. By exploring the services that parties experiencing family violence and their children engage with, including police, child welfare agencies, doctors, counsellors and therapists, a clear picture can be painted of the sources from which evidence can be gathered. These aspects of the data are highly valuable in informing best practice in family violence cases.

[It is time to abolish the 'genuine effort' and 'non-genuine effort'
certificates in family dispute resolution](#)

— *Joshua Taylor*

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Most parties who seek judicial relief in family separation matters are required to first attempt family dispute resolution, and satisfy a family dispute resolution practitioner ('FDRP') that they have made a 'genuine effort' to participate. Should they not meet this test, they are issued with a 'non-genuine effort' certificate, which can lead to costs awarded against them or force them to return to mediation. Even though mandatory mediation has been a warmly accepted addition to the family dispute resolution system, the 'genuine effort' certificate has proven to be an unwieldy and vague instrument, and its continued use should be reconsidered. This article will firstly contextualise the legal and social environment in which the genuine effort certificate operates, before considering its perceived goals and whether or not those goals have been met. Then, concerns with the genuine effort certificate will be considered; these concerns include impartiality and coercion, confidentiality, and the lack of consideration these certificates are given by the courts. It will then consider whether a sustainable definition of genuine effort is feasible, and will conclude that no definition of genuine effort can remove the systematic issues of the system. As such, this article will conclude that the genuine effort certificate should be abolished. An attendance certificate will be presented as an alternative system to evidence mandatory mediation to a court, and an outline of how this system might work will be suggested.

Legitimate guidelines, parenting disputes and the case of
'coercive' relocation orders

— *Lisa Young, Stephanie Powell and Rachel Pocock*

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This article considers the law concerning 'coercive' relocation orders and in particular whether there can be said to be a 'legitimate guideline' operating in this area. To answer this question, the article addresses the jurisprudence on the nature of a 'coercive' relocation order, as an identifiable category of case is required for there to be a legitimate guideline. In light of judicial statements on interim relocation orders, the article also outlines whether any guideline operates in that context also. The article goes on to consider the justification for any guidelines in relation to relocation and highlights how traditional gendered notions of parenting have played out in a number of interesting coercive relocation cases.