



Take A Bird's Eye View 2022, by Bjarne Gramstrup.

Restorative processes in Family Court

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High conflict divorce can be detrimental to children's development and often impacts the health of the parents. Frequently, these cases culminate in the Family Court. While the court system can deliver a verdict that the fractured family must adhere to, it may not effectively resolve the conflict. Conflict theories suggest that value conflicts and relational conflicts, particularly those with a high degree of interdependence between the parties, are better addressed through dialogue and recognition (Deutsch 2014, Euwema 2024 and Vindeløv 2012). Is it possible to make greater space for such restorative processes within the Danish Family Court?

A clash between paradigms

According to the Danish Administration of Justice Act § 268, judges are required to mediate settlements in all civil cases, and the Family Court's models for litigation offer several avenues for conciliation. However, in my experience, the court's context significantly compromises the core values of mediation and restorative processes. The concept of a judge implies a view of conflict as being disruptive, with involved parties seen as separate individuals unable to resolve their disputes. This approach leads to winners

and losers, with sanctions required for compliance. Conversely, in mediation and restorative processes, conflicts are viewed as a natural part of life. This as parties are experts of their own lives, including their conflicts, and can, if willing, reach mutually satisfactory solutions. There is no objective truth guiding resolution; it is thus possible to create a win-win situation that takes into account the interests and needs of both parties. The focus is on facilitating conflict resolution through dialogue, understanding, and recognition. Parties are seen as mutually connected, with each action holding significance for both. Ultimately, the power and responsibility to resolve conflicts and potentially agree on solutions rest with the parties themselves.

A short case example

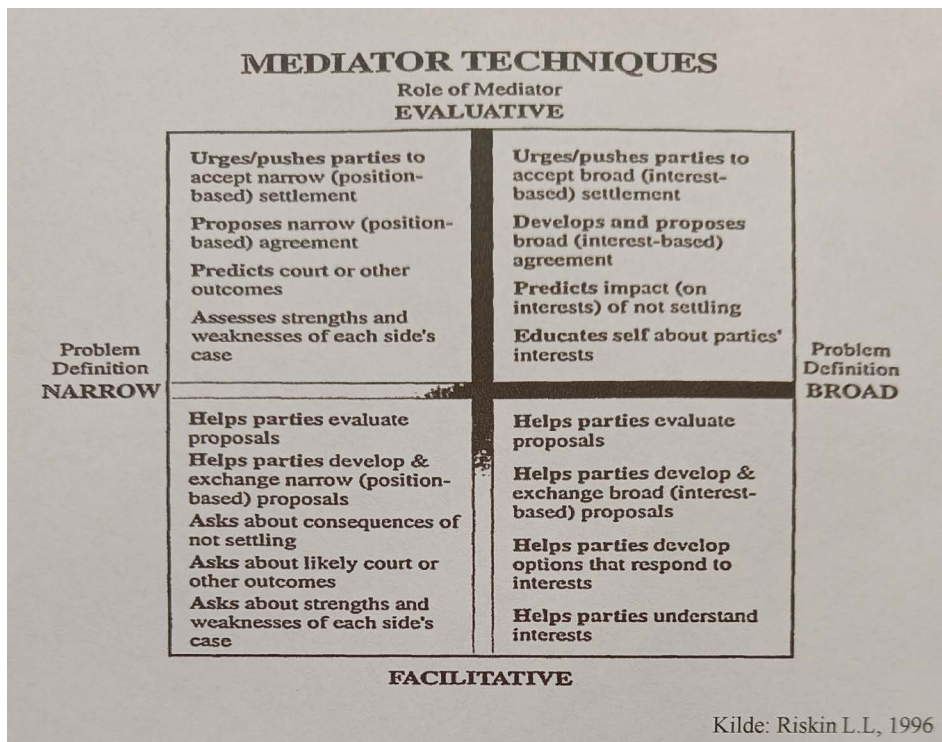
As an expert in child matters, I was appointed by the judge to facilitate a conciliation meeting following Model A guidelines in the Danish Family Court. When following Model A guidelines in preparatory court meetings the role of the child expert is twofold: to aid parents in reaching a settlement and to ensure the child's perspective is considered. It's firmly established that all family law agreements or decisions must prioritize the child's best interests. At the meeting, I was accompanied by the presiding judge, the parents, and their respective solicitors. The case revolved around custody and visitation rights concerning the parents' 5-year-old son. As the parents recounted their perspectives, the father's solicitor interrupted, stating, "Now, I look at the child expert. My client will adhere to your guidance."

Initially, I briefed the parents and their legal representatives on the conciliation model for the meeting, emphasising the importance of the process and dialogue between the parents. I mentioned the possibility of integrating my expertise as a child specialist later in the proceedings, if necessary. Numerous dilemmas surfaced: How would the parents' sense of authority and independence be affected if I provided a directive? What impact would my silence have on the cohesion and collaboration within the meeting? Could I offer a substantiated expert opinion solely based on case documents, devoid of firsthand acquaintance with the child? And if the parents reached an agreement based on my input, only for it to prove unsustainable later, who would bear responsibility, and what repercussions would it hold for the level of conflict and, more crucially, for the child's well-being in the future?

Riskin's grid dilemmas and perspectives

In high-conflict divorce cases, a necessity arises for the facilitation of dialogue, comprehension, and acknowledgement, alongside an imperative to amplify the focus on the child's viewpoint and needs. As a psychologist handling Family Court matters, I am perpetually tasked with striking a balance between these aspects. Furthermore, I am compelled to manoeuvre through the turbulent waters stirred by the clash of paradigms. In the case example, it is conceivable that the solicitor's interruption was rooted in the conven-

tions of standard court proceedings. Introducing values and methods from mediation and restorative processes into Family Court proceedings certainly poses challenges and is fraught with dilemmas and pitfalls. However, considering the nature of conflict in these cases, I believe we are left with little choice.



Riskin's Grid Model. 1996.

To enhance clarity during conciliation processes in court proceedings and empower parents, professionals can draw upon conflict resolution theories such as those of L.L. Riskin, alongside critiques of his work. While some might categorise the mediation style often observed in Family Court as assisted negotiation, my experience suggests that elements of dialogue and restorative processes may also emerge. These aspects could align with Riskin's grid model, which highlights mediation as a dynamic process wherein the mediator's role isn't static and evolves between the quadrants. Riskin underscores the importance of transparency to uphold parties' self-determination and accountability. Voluntary engagement is crucial in restorative processes (Zehr 2016); yet, the pressure of the courtroom and high-level conflict may hinder participation and reduce the sense of voluntariness. Reflecting on Riskin's grid could make professionals more conscious of roles and power dynamics, potentially fostering greater engagement from parents. Moreover, consideration of Riskin's grid system may prompt professionals in Family Court to explore additional conflict theories, as the grid system and its critiques can be viewed as a prism for conflict theory.

In conclusion, consider what could have occurred in the case example, if I or another attendee had invited the father to elaborate on his solicitor's statement. For example, I could have asked the father what kind of guidance he expected from me, and why?

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About the author

Marie Elbinger Gramstrup is a licensed psychologist and a specialist and supervisor in child psychology. Additionally, she holds a Master of Mediation and Conflict Resolution from The Faculty of Law, University of Copenhagen. Since 2009, she has been engaged in family law. She provides support to the Family Court in high-conflict cases. She attained her master's degree focusing on mediation in Family Court. This article draws upon insights derived from her master's project.

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