

A JUDGE'S PERSPECTIVE ON LITIGATION

“...it is often **impossible to predict** the outcome of litigation with a high degree of confidence. Disagreements on the law occur even in the High Court. An apparently strong case can be lost if evidence is not accepted, and it is often difficult to forecast how a witness will act in the witness-box.

Many steps in the curial process involve value judgments, discretionary decisions and other subjective determinations which are inherently unpredictable.

Even well-organized, efficient courts cannot routinely produce quick decisions, and appeals further delay finality.

Factors personal to a client and any inequality between the client and other parties to the dispute are also potentially material.

Litigation is highly stressful for most people and notoriously expensive. An obligation on a litigant to pay the costs of another party in addition to his or her own costs can be financially ruinous.

Further, time spent by parties and witnesses in connection with litigation cannot be devoted to other, productive activities. Consideration of a range of competing factors such as these can reasonably lead rational people to different conclusions concerning the best course to follow.¹”

¹ Fitzgerald JA in *Studer v Boettcher* [2000] NSWCA 263 at [63]. **Note:** the highlighting and paragraphing are added as the original quote is in one paragraph and difficult to read.