

Family Law Mediation Proceedings

Between:

And:

And:

John-Paul E. Boyd,
John-Paul Boyd Arbitration Chambers

Mediation Agreement

Introduction

- A. Mediation is a confidential, private process in which an impartial person, a mediator, facilitates communication between the people involved in a legal dispute and attempts to promote mutual understanding, reconciliation and/or a settlement of the dispute.
- B. The parties to this agreement, and the mediation process it describes, have the primary responsibility for resolving their dispute.
- C. Mediators, including the mediator for the dispute that is the subject of this agreement, cannot guarantee that mediation will result in the resolution of a dispute.
- D. The parties to this agreement and the mediator for the dispute that is the subject of this agreement intend to participate in this mediation honestly, cooperatively and in good faith, and to make serious efforts to resolve this dispute fairly.

In consideration of John-Paul Boyd Arbitration Chambers providing mediation services in this dispute, _____ and _____ understand, acknowledge and agree to the following terms.

Agreement to mediate

1. _____ and _____ wish to resolve certain legal issues arising from the change in their relationship without resorting to or continuing any litigation.
2. This agreement is a mediation agreement. It is effective when:
 - a) _____ and _____ have received independent legal advice about the meaning and consequences of this agreement, and the lawyers consulted by the parties have signed Certificates of Independent Legal Advice in the form attached to this agreement; and,
 - b) this agreement has been signed by all parties to the agreement.
3. The mediator for this mediation is John-Paul E. Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator.
4. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.
5. This agreement may be signed in counterparts.

Duties of Mediator

6. The Mediator will:
 - a) remain independent and impartial in all contacts with _____ and _____ ;
 - b) treat _____ and _____ fairly and equally;
 - c) not advance the interests of one party over those of the other; and,
 - d) give P1 and P2 information about mediation processes and procedures
7. _____ and _____ understand and agree that while the Mediator is a lawyer, he is not acting as legal counsel for either party and is not providing legal advice to either party.

Duties of parties

8. _____ and _____ each agree to:

- a) comply with their obligations under this agreement; and,
- b) cooperate with the Mediator and take part in the mediation in good faith.

Issues to be resolved

9. _____ and _____ agree to submit the following legal issues to mediation:

- a) guardianship of children;
- b) decision-making in respect of children;
- c) parenting time or contact with children;
- d) the payment of child support, including the payment of children's special or extraordinary expenses, in the past, present or future;
- e) the payment of spousal support, in the past, present or future;
- f) division of property, including real property and personal property;
- g) occupation and use of the family home, and use of the personal property in the family home;
- h) allocation of responsibility for debt;
- i) costs; and,
- j) other issues, identified in the list attached to this agreement.

10. If one of the issues in the mediation concerns, or is likely to concern, the guardianship of and parenting arrangements for a child, _____ and _____ agree that neither will make any change to the residence, living arrangements or the lifestyle of that child pending the outcome of the mediation without first securing the written consent of the other party and advising the Mediator of the details of the change

Screening

11. The Mediator may meet separately with either or both of _____ and _____ before the commencement of the mediation to screen for power imbalances and the risk or presence of family violence.
12. The information obtained during the screening process, including any notes and records made by or for the Mediator, is confidential and will not be disclosed to anyone for any purpose, except as may be required by law or by court order.
13. _____ and _____ consent to the screening process and will not raise the screening process as a procedural issue in any future court proceedings, including an application to cancel, stay or set aside any agreement made as a result of this mediation.

No service of court documents

14. No party may serve court documents on any person entering, attending or leaving the mediation at or near the place of the mediation.

Confidentiality

15. The mediation proceeding governed by this agreement is confidential and private, except to the extent necessary to implement or enforce any agreement made as a result of this mediation.
16. No one other than the parties may attend the mediation meeting except with the agreement of both parties and the consent of the Mediator.
17. Unless required by law or by court order, neither the parties nor the Mediator will disclose any documents or information about:
 - a) the mediation and the information, documents and other material provided in the course of the mediation; or,
 - b) the results of the Mediator's screening for power imbalances and family violence and the nature of any accommodations or adaptations of the mediation process made in consequence of those results.
18. _____ and _____ acknowledge that the Mediator may be required to disclose information obtained during the mediation where the Mediator believes that:

- a) a child is suffering or at risk of harm, under the *Child, Youth and Family Enhancement Act* of Alberta or under the *Child, Family and Community Service Act* of British Columbia; or,
- b) there is an imminent risk of death or serious physical or psychological harm to an identifiable person or group and the disclosure is necessary to prevent such death or harm.

Communication

19. Communication between the parties and the Mediator will be by email as much as possible. Emails from the Mediator to a party must be copied to the other party. Emails from a party to the Mediator must be copied to the other party.

Mediation process

20. In order to attempt to resolve the legal issues between the parties to this dispute, the Mediator will attempt to isolate points of agreement and disagreement, explore alternative solutions and identify potential accommodations and areas of compromise.
21. The Mediator may convene separate conferences with each party before the mediation meeting to:
 - a) obtain background information about the parties, the parties' relationship, the parties' children and events since the change in the parties' relationship;
 - b) identify or clarify the legal issues to be resolved through mediation;
 - c) establish a timetable for any steps to be taken prior to the mediation meeting;
 - d) determine whether the mediation meeting will be held in person, by teleconference, by videoconference or by other means;
 - e) determine any physical arrangements necessary for the attendance of the parties at the mediation meeting; and,
 - f) address any concerns arising out of the screening process.
22. The mediation meeting will involve the parties in joint session with the Mediator, although separate meetings may be held between the Mediator and a party, at the discretion of the Mediator or a party.

23. The Mediator will not disclose any information provided by a party in a separate meeting between that party and the Mediator, including at the conferences held before the mediation meeting, unless the party specifically instructs the Mediator to disclose that information.

Resignation of Mediator

24. The Mediator may at any time resign his appointment as mediator by giving written notice of his resignation to the parties.

End of mediation meeting

25. The mediation meeting will end when:
- a) the parties have settled the legal issues and the parties sign a memorandum of agreement, prepared by the Mediator, summarizing the key terms of the settlement; or,
 - b) when one or both of the parties or the Mediator declares that the legal issues cannot or are not likely to be resolved by continued mediation.
26. The Mediator may reopen the mediation meeting with the consent of all parties.

Evidence of Mediator

27. Because mediation is a confidential, private process aimed at resolving disputes outside of court, _____ and _____ agree that:
- a) all communications between the parties, the Mediator and John-Paul Boyd Arbitration Chambers are made on a without prejudice basis, are privileged and may not be disclosed whether or not the communication contains an offer to settle or compromise a party's position;
 - b) neither will ask or require the Mediator to provide information, give evidence, or produce documents in any arbitration or litigation between the parties on the communications, discussions and content of this mediation; and,
 - c) any documents or information retained by the Mediator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties.
28. The parties acknowledge that the Mediator may, in certain circumstances, be compelled by a party to testify in arbitration or litigation proceedings despite the other terms of this agreement. The parties acknowledge that calling the Mediator as a witness in such

circumstances is a breach of their obligations under this Mediation Agreement and that a party who calls the Mediator as a witness will:

- a) immediately to pay the Mediator the sum of \$2,500 as liquidated damages for breach of contract; and,
- b) pay to the Mediator the sum of \$425 per hour, plus any applicable taxes, for all time spent by the Mediator in consequence of being called as a witness, including time spent review his file and preparing to give evidence, whether or not the Mediator actually testifies in the arbitration or litigation proceeding.

Appointment, retainer and fees of Mediator

29. _____ and _____ jointly appoint and retain the Mediator.
30. _____ and _____ agree that the Mediator will be paid \$425 per hour, plus GST, for all work performed by the Mediator including conferences, meetings, telephone calls, correspondence, drafting documents, reviewing documents and other services. There will be a minimum charge of one hour for any day when a conference or meeting is held, whether the conference or meeting is held in person, by teleconference, by videoconference or by other means.
31. _____ and _____ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers in connection with the mediation, including boardroom booking fees, equipment rentals, photocopying when professional printing services are used and the like, as well as the cost of any hotel accommodations incurred when the Mediator is required to travel outside Calgary, Alberta and overnight accommodation is necessary. John-Paul Boyd Arbitration Chambers will not be reimbursed for other expenses incurred when the Mediator is required to travel, including for travel time, mileage, airfare and similar expenses.
32. Cancellation fees will be charged when a conference or meeting is cancelled by one or both parties.
 - a) If notice of the cancellation is received by the Mediator between 7 days and 48 hours before the start of the conference or meeting, the parties will be charged a fee of \$425, in addition to the Mediator's time spent preparing for the conference or meeting and any nonrefundable expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or meeting including boardroom booking fees, equipment rentals and the like; and,

- b) if notice of the cancellation is received by the Mediator less than 48 hours before the start of the conference or meeting, the parties will be charged a fee of \$950, in addition to the Mediator's time spent preparing for the conference or meeting and any nonrefundable expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or meeting including boardroom booking fees, equipment rentals and the like.
33. Before the Mediator begins to provide services under this agreement, each party will provide the Mediator with the sum of \$ _____ , being \$ _____ plus tax, to be held in trust for purpose of paying his ongoing accounts, referred to in this agreement as the parties' Retainers.
34. The Mediator may issue regular accounts to the parties or may, in his discretion, issue a single account following his resignation under paragraph 24 of this agreement or the end of mediation under paragraph 25. The Mediator's accounts will describe the services performed by the Mediator and the dates and times of those services, and include an itemized statement of the expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers. The Mediator's accounts will be paid from the parties' Retainers.
35. _____ and _____ are each responsible for paying one-half of the Mediator's accounts, subject to their agreement to pay the Mediator's accounts in a different proportion.
36. The parties will be required to replenish their respective Retainers as they are depleted, on notice from the Mediator. If a party fails to replenish his or her Retainer when and as requested, the Mediator may refuse to provide further services until the party has replenished his or her Retainer.
37. The Mediator will refund any unused portions of parties' Retainers when the Mediator ceases to act and all of his accounts for fees and disbursements have been paid.
38. Interest will accrue at a compounding rate of 1% per month, 12.68% per annum, on all accounts that are not paid within 30 days of the date on which they are due.
39. In the event that one of the parties fails or refuses to pay their share of the Mediator's account, the Mediator may accept payment of the defaulting party's share from the other party and that party may take such steps as may be necessary to be compensated for the payment by the defaulting party, including seeking orders for costs and pre- and post-judgment interest.

Waiver of liability

40. _____ and _____ waive any claim or right of action they may have against John-Paul Boyd arising out of the mediation.

Signed by _____ on _____ 2018 at _____, in the Province of _____.

Signed by _____ on _____ 2018 at _____, in the Province of _____.

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd,
Family Law Mediator

Lawyer's Certificate of Independent Legal Advice

I, *name of counsel*, have fully read over and explained to _____ the nature, meaning and consequences of this Mediation Agreement, and have given independent legal advice to _____ before he or she signed the agreement. I have also explained to _____ the circumstances in which the court may cancel this agreement.

In my opinion, _____ fully understands the nature, meaning and consequences of this agreement.

I am satisfied that _____ is not signing this agreement as a result of deception by _____ or as a result of any duress, coercion or undue influence exerted by _____, and that _____ is not under any legal disability that would impair his or her capacity to enter into this agreement.

I am also satisfied that _____ is fully able to participate in the mediation proceeding described in the Mediation Agreement and is doing so freely and voluntarily.

Date

Counsel for _____

Party's Acknowledgment of Independent Legal Advice

I, _____, confirm that I have received independent legal advice as described in the above Certificate of Independent Legal Advice signed by my lawyer, *name of counsel*.

Date

Lawyer's Certificate of Independent Legal Advice

I, *name of counsel*, have fully read over and explained to _____ the nature, meaning and consequences of this Mediation Agreement, and have given independent legal advice to _____ before he or she signed the agreement. I have also explained to _____ the circumstances in which the court may cancel this agreement.

In my opinion, _____ fully understands the nature, meaning and consequences of this agreement.

I am satisfied that _____ is not signing this agreement as a result of deception by _____ or as a result of any duress, coercion or undue influence exerted by _____, and that _____ is not under any legal disability that would impair his or her capacity to enter into this agreement.

I am also satisfied that _____ is fully able to participate in the mediation proceeding described in the Mediation Agreement and is doing so freely and voluntarily.

Date

Counsel for _____

Party's Acknowledgment of Independent Legal Advice

I, _____, confirm that I have received independent legal advice as described in the above Certificate of Independent Legal Advice signed by my lawyer, *name of counsel*.

Date

