

Family Law Mediation Proceedings

Between:

And:

And:

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

Mediation Agreement

Introduction

- A. Mediation is a confidential, private process in which an impartial person, a mediator, facilitates communication, directly or remotely, between the people involved in a legal dispute and attempts to promote mutual understanding, reconciliation and 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, their lawyers 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 and sincere 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 commencing 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 and their lawyers.
3. The mediator for this mediation is John-Paul Boyd of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator.
4. _____ and _____ expect that this mediation will be conducted by teleconference and by videoconference. Accordingly, in this agreement, words like “conference” and “meeting” include conferences and meetings held by teleconference and by videoconference, and the parties agree that nothing in this agreement requires any of the Mediator, the parties or their lawyers to be physically present in the same room at the same time.
5. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.
6. This agreement may be signed in counterparts.

Duties of Mediator

7. The Mediator will:
 - a) remain independent and impartial in all contacts with _____, _____ and their lawyers;
 - b) treat _____ and _____ fairly and equally; and,
 - c) not advance the interests of one party over those of the other.

8. _____ 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.

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 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.

Assessment

11. The Mediator will meet separately with either or both of _____ and _____ before the commencement of the mediation to assess for power imbalances and the risk or presence of family violence if either party is not

represented by a lawyer, or if the parties' lawyers have not assessed for power imbalances and the risk or presence of family violence.

12. The information obtained during the assessment 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 assessment process and will not raise the assessment 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.

Mediation process

14. 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.
15. 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 any physical arrangements necessary for the attendance of the parties at the mediation meeting;
 - e) confirm that each party has access to a computer with the capabilities and accessories necessary to effectively participate in a teleconference or videoconference; and,
 - f) address any concerns arising out of the assessment process.
16. 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.
17. 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 or the party's lawyer specifically instructs the Mediator to disclose that information.

18. The parties agree that the Mediator may communicate with their lawyers throughout the mediation process and after a settlement has been reached.

End of mediation meeting

19. The mediation meeting will end when:
 - a) the parties have settled the legal issues and the parties and their lawyers sign a memorandum of agreement, prepared by the Mediator, summarizing the key terms of the settlement; or,
 - b) 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.
20. The Mediator may reopen the mediation meeting with the consent of all parties.

Entry of terms of settlement as consent order

21. In the event the parties reach a settlement of the legal issues during the mediation meeting and are involved in ongoing litigation, the parties will, subject to the court's discretion, incorporate the terms of the settlement into an order to be made with the consent of the parties, called a consent order, and take such steps as may be necessary to obtain the entry of the consent order.

Confidentiality of mediation

22. 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. _____ and _____ agree that they will not record or share the mediation meeting and, specifically, that:
 - a) they will not capture, mirror or otherwise save their computer screens during the mediation meeting;
 - b) they will not capture, tape or otherwise save their computer's audio output during the mediation meeting; and,
 - c) they will not stream, broadcast, retransmit, post or otherwise distribute any portion of the mediation meeting, including on social media.

23. _____, _____ and the Mediator agree that they will not make any audio or visual recordings of their conversations and other interactions with each other outside the mediation meeting, unless they have first:
- a) disclosed their intention to record a meeting, conversation or other interaction; and,
 - b) obtained the express consent of the other party or parties to the recording of the meeting, conversation or other interaction.
24. No one other than the Mediator, the parties and the lawyers for the parties may attend the mediation meeting except with the agreement of both parties and the consent of the Mediator.
25. The Mediator, the parties and the lawyers for the parties will take such steps as may be necessary to ensure that, except with the agreement of both parties and the consent of the Mediator, no other person is:
- a) physically present in the same room as themselves during the mediation meeting; or,
 - b) able to see, hear or otherwise observe any part of the mediation meeting by any means, including electronic means.
26. Unless required by law or by court order, the parties, the parties' lawyers and the Mediator will not disclose any documents or information about:
- a) the mediation and the information, documents and other material provided in the course of the mediation proceeding; or,
 - b) the results of the Mediator's assessment for power imbalances and family violence and the nature of any accommodations or adaptations of the mediation proceeding made in consequence of those results.
27. _____ and _____ acknowledge that the Mediator may be required to disclose information obtained during the mediation proceeding 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.

Evidence of Mediator

28. 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 or their lawyers.
29. 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

30. _____ and _____ jointly appoint and retain the Mediator.
31. _____ 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

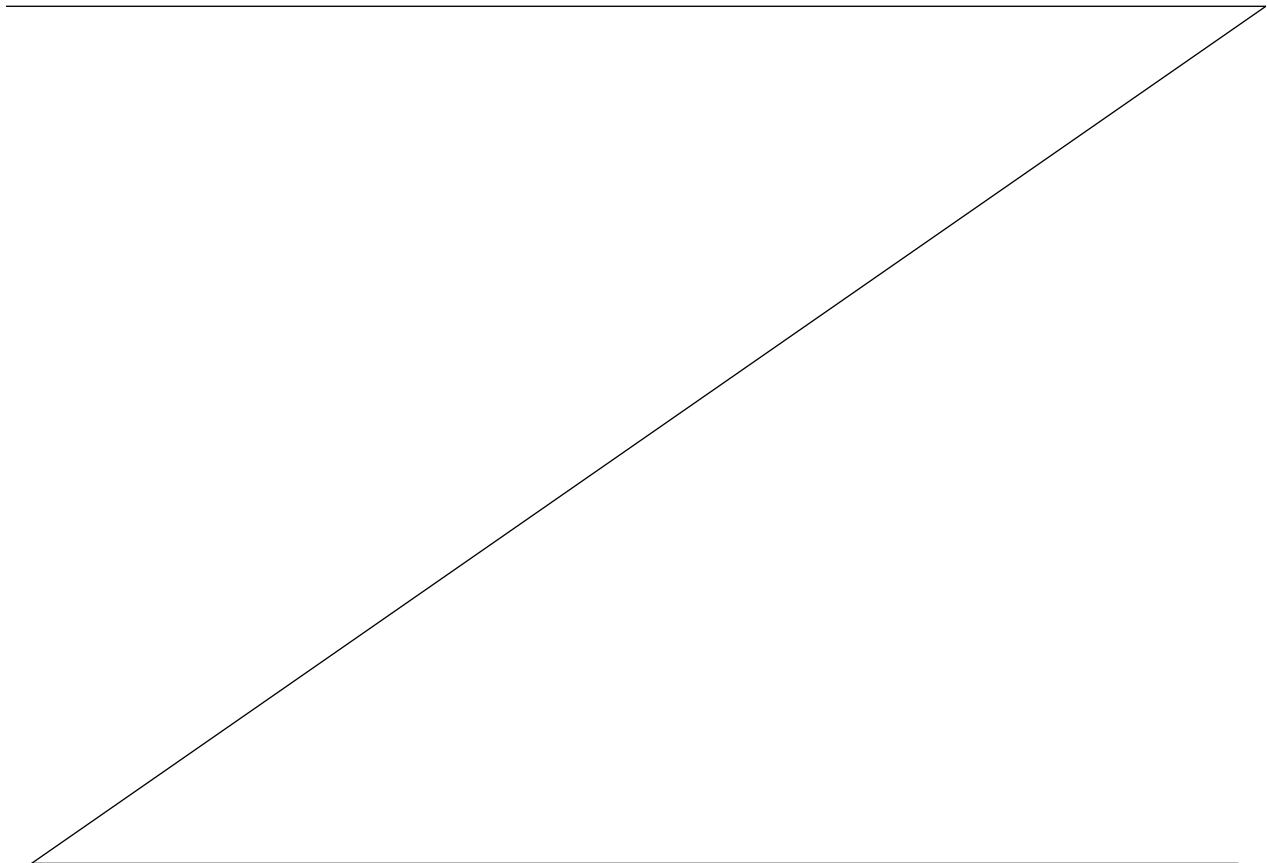
when a conference or meeting is held, whether the conference or meeting is held in person, by teleconference, by videoconference or by other means.

32. _____ 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, car rental and similar expenses.
33. 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 \$850, 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.
34. Fees will also be charged by the Mediator when a mediation concludes earlier than the number of days reserved by the Mediator for the mediation at the request of the parties at a rate of \$1,275, plus GST, per whole unused reserved day.
35. Payment for the Mediator's fees and any expenses incurred by the Mediator or John-Paul Boyd Arbitration Chambers is due when the mediation proceeding ended, under paragraph 19 of this agreement, whether or not a settlement has been reached on all or some of the legal issues in the dispute.
36. _____ and _____ agree that their respective lawyers will each be responsible for paying one-half of the Mediator's account. Interest will accrue at a compounding rate of 1% per month (12.68% per year) on all accounts that are not paid within 30 days of the date on which they are due.

37. 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

38. _____ and _____ acknowledge that while the Mediator will make his best efforts to preserve the confidentiality and privacy of the mediation meeting, he cannot make any promises or guarantees about the security of communications held through teleconferencing and videoconferencing software. The parties are responsible for informing themselves of the risks and consequences of possible security breaches, and for ensuring the security of their individual access to the teleconferencing and videoconferencing software, including the security of their computer and their access to the internet.
39. _____ and _____ waive any claim or right of action they may have against John-Paul Boyd arising out of the mediation.



Effect of agreement on counsel

40. The lawyers for each party, as undersigned, are bound by the terms of this agreement.

Signed by _____ on _____ 2020, at
_____, in the Province of _____.

Counsel for _____

Signed by _____ on _____ 2020, at
_____, in the Province of _____.

Counsel for _____

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd Q.C.,
Family Law Mediator

Lawyer's Certificate of Independent Legal Advice

I have fully read over and explained to my client, _____, the nature, meaning and consequences of this Mediation Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

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

I am satisfied that my client is not signing this agreement as a result of deception by the other party or as a result of any duress, coercion or undue influence exerted by the other party, and that my client is not under any legal disability that would impair my client's capacity to enter into this agreement.

I am also satisfied that my client is fully able to participate in this mediation, including by teleconference or videoconference, and is doing so freely and voluntarily.

Date

Counsel for _____

Name:

Address:

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.

Date

Lawyer's Certificate of Independent Legal Advice

I have fully read over and explained to my client, _____, the nature, meaning and consequences of this Mediation Agreement and have given independent legal advice to my client before signing the agreement. I have also explained to my client the circumstances in which the court may cancel this agreement.

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

I am satisfied that my client is not signing this agreement as a result of deception by the other party or as a result of any duress, coercion or undue influence exerted by the other party, and that my client is not under any legal disability that would impair my client's capacity to enter into this agreement.

I am also satisfied that my client is fully able to participate in this mediation, including by teleconference or videoconference, and is doing so freely and voluntarily.

Date

Counsel for _____

Name:

Address:

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.

Date
