



York Family Resolution Centre

CLOSED MEDIATION AGREEMENT

B E T W E E N:

"Party #1"

- and -

"Party #2"

- and -

"mediator"

SUBMISSION TO CLOSED MEDIATION

The parties, directly or through their solicitors, agree to retain the services of **(the "Mediator(s))** to provide mediation services in respect of a dispute between them.

The parties retain the Mediator(s) on these terms:

GENERAL

1. The Mediator is an impartial third party who provides a neutral dispute resolution process called “mediation”. Mediation is a confidential, off-the record process designed to facilitate resolution of an issue(s) and/or provide a neutral evaluation of an issue(s).
2. The Mediator is being engaged for the sole purpose of facilitating settlement discussions and not for the purpose of providing legal advice.
3. There is no solicitor/client privilege between the Mediator and the parties.
4. The effectiveness of mediation depends, among other factors, on all the participants approaching the process in good faith and with a genuine willingness to engage in a dialogue. By signing this Agreement, the parties confirm their intention to participate in mediation of the dispute between them, in good faith and with the view to resolving all issues in dispute.
5. The parties shall jointly present to the Mediator the issues to be resolved in mediation.
6. Mediation is a voluntary process. Any party or the Mediator may terminate the process at any time, in writing.
7. The mediation shall take place in person, by Zoom, by telephone or such other means as is agreed. The number of meetings, and their duration, structure and subject matter shall be agreed upon by the parties and the Mediator.
8. The Mediator may meet or communicate with the parties jointly or with either party separately, at any time. The Mediator may, in her discretion, disclose information or documents provided by a party in these private meetings (a "caucus") to the other party and/or to the other party's lawyer unless the disclosing party has directed otherwise during the caucus. For greater clarity, the Mediator shall not withhold disclosure learned in caucus if in her assessment it is relevant and significant.
9. The parties agree to obtain, from independent legal and other professional advisors, all necessary legal, tax and other advice at the outset and throughout the mediation process. They agree that the Mediator is acting in her capacity as mediator and does not provide legal advice in respect of any issue before her. If, during the course of the mediation, she expresses an opinion or comments on an issue, the parties acknowledge and agree that her opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect. The parties agree to obtain independent legal advice on the terms of any proposed settlement. They understand that an agreement reached without

the benefit of legal and other necessary advice may be invalid, unenforceable or have unintended consequences.

10. The parties consent to the presence of any assistant the Mediator requires, on the understanding that any assistant present is bound by paragraphs 20 to 27 of this Agreement.
11. Lawyers, other professionals or other people whose presence is required at the mediation may be present if all parties agree. All third parties must agree to be bound by paragraphs 20 to 27 of this Agreement.
12. The parties shall, if requested by either the Mediator or the other party, provide the other with an up-to-date sworn financial statement and any other requisite disclosure to conduct an effective mediation. If equalization of net family property is in issue for the mediation, “requisite disclosure” shall include a Comparison of Net Family Property Statements, with highlighting to identify the points of difference. If support is in issue, support calculations shall be provided. This information shall be exchanged between the parties and provided to the Mediator no later than seven (7) days in advance of the mediation date.
13. The Mediator may suspend or terminate the mediation at any time where in her opinion, the continuation of the process would be fruitless or would result in harm or prejudice to one or more of the participants.
14. The Mediator shall not be required to testify or produce any material, including notes, records or recollections from the mediation, in any current or future court or arbitration proceeding.
15. The Mediator shall not be liable to any party or participant for any act or omission in connection with the reasonable and ordinary conduct of a mediation and shall have the immunity of a judge of a superior court in Canada. The parties also agree to indemnify, on an equal basis between them, the Mediator for all legal costs which may be incurred in responding to any proceeding of any kind brought against or involving the Mediator arising out of the mediation. The parties further agree to indemnify and save harmless, on an equal basis between them, the Mediator from any claims arising from or related to the mediation process, including arising from any agreement entered into, whether or not the parties have obtained legal advice.
16. If the parties reach terms of understanding on some or all of the issues, the Mediator shall prepare a report to that effect (which may take the form of a Memorandum of Understanding) for the parties’ consideration with their

respective counsel. This report is not legally binding, and is simply a statement of intention by the parties, which is subject to the receipt of independent legal and financial advice and is subject to change.

17. The parties are responsible for preparing any binding, written agreement between them.
18. The parties may not call upon the Mediator to give evidence on the settlement terms or any other aspect of the mediation process.
19. The parties specifically waive all rights to assess the Mediator's accounts under any circumstances.

CONFIDENTIALITY

20. Except for any fully signed agreement reached at mediation, all statements, information, documents, notes, correspondence, calculations, drafts, and any other data prepared or provided by any person for or at the mediation, including the intake/screening meeting (including the Mediator's file) shall be treated as part of settlement discussions, hence, privileged and inadmissible for use by anyone in any proceeding for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the mediation, and shall not, unless otherwise discoverable, be subject to disclosure through discovery or any other process.
21. The Mediator's notes, records, statements made and recollections are confidential and protected from disclosure for all purposes in accordance with paragraph 20.
22. While the Mediator cannot guarantee absolute confidentiality, the purpose of a confidentiality rule is to make parties feel comfortable in freely exchanging information, ideas, options, offers and concerns. Therefore, the parties agree not to disclose any communications made during the mediation process, including memoranda and e-mails from or to the Mediator or between themselves, to anyone who was not present unless the parties all consent. ***This prohibition does not prevent the parties from providing necessary information and documents to professional advisors whose advice they need to make informed decisions.***
23. The parties authorize the Mediator to discuss the mediation with their own and each other's lawyers and advisors in the Mediator's discretion, unless that information is subject to a confidentiality agreement precluding such discussion. The Mediator may provide all lawyers with copies of all documents

provided to and prepared by the Mediator unless they are subject to a confidentiality agreement precluding such disclosure.

24. The parties acknowledge that the fact the mediation has been held or that they have entered into an Agreement to Mediate may not be confidential in relation to a court process. They authorize the Mediator to disclose to the court, where appropriate, that a mediation has occurred, whether or not an agreement was reached.
25. The Mediator may disclose information about the mediation in these circumstances:
 - a. to the parties' lawyers and third party professional advisors retained by a party or both parties;
 - b. for research, writing or educational purposes, provided all identifying information is changed;
 - c. where ordered to do so by a judicial authority;
 - d. where required to do so by law, including obligations to report a child in need of protection;
 - e. where the information discloses an actual or potential threat to human life or safety; and
 - f. where either party makes a claim against the Mediator.
26. The parties consent to the destruction of all notes and documents in the Mediator's file at the end of the mediation process unless they arrange to pick up their original documents.
27. The parties acknowledge that there is a risk of loss of confidentiality through the use of e-mail. They authorize the Mediator to communicate by way of e-mail, notwithstanding such risk.

INDEPENDENT LEGAL ADVICE

28. Agreements are not signed in the Mediator's office. The parties are strongly advised to obtain independent legal advice, preferably before mediation commences, but in any event, before a final agreement is reached, to ensure that they are fully informed of their legal rights and obligations and the legal implications of such an agreement. In the event that the parties do not have independent legal advice prior to signing an agreement, it is recognized that:

- a. The parties may not be making fully informed choices in light of their respective legal rights;
- b. The agreement they reach is less likely to be enforced by a court and may be set aside.

RISKS OF MEDIATION / LIMITATION PERIODS NOT SUSPENDED

29. The parties understand that there is no guarantee of settlement in mediation, nor that they will be fully satisfied with the outcome. They understand that mediation may lead to delay, expense and increased difficulty in any subsequent litigation. They understand that any applicable limitation periods may not be suspended during mediation and that they should obtain legal advice on these risks and limitations should they agree to mediation.

MEDIATOR'S FEES

30. The parties agree to honour the Mediator's fee schedule, attached as **Schedule "A."**

CANCELLATION POLICY

31. A cancellation fee may be levied if the mediation is cancelled fewer than seven (7) days before it is scheduled to commence, the details of which shall depend upon the circumstances, including the reason for cancellation. The Mediator shall advise of the cancellation fee prior to execution of this Agreement, and this Agreement shall be updated accordingly.

The parties affirm that they have had full opportunity to read and understand this Closed Mediation Agreement and sign it this

_____ day of _____, 20_____.

Party #1

Party #2

Mediator

PARTY #1 CONTACT INFORMATION

Full Name: _____

Address: _____

Telephone:

Home: (____) _____

Business: (____) _____

Cell: (____) _____

Email Address: _____

PARTY #2 CONTACT INFORMATION

Full Name: _____

Address: _____

Telephone:

Home: (____) _____

Business: (____) _____

Cell: (____) _____

Email Address: _____

FEE SCHEDULE "A"

Hourly Rate:

The Mediator's fees are **\$425.00 (Ms. Jakubowska and Ms. Kerr) / \$375.00 (Dr. Polak)** per hour (or any portion of an hour) plus HST. This includes the Mediator's time spent directly with the parties in the mediation sessions; telephone conversations with the parties or on their behalf; conferring with the parties' solicitors, advisors or other third parties; reviewing financial disclosure or other documentation provided to the Mediator; drafting correspondence; and any other time spent in connection with the mediation.

Administrative Fee:

There is a cost to setting up a mediation, opening the file, arranging conference calls with counsel and continuing scheduling issues. As such, the Mediator charges a non-refundable Administrative Fee of **\$250.00, plus HST (\$125.00, plus HST** payable by each party) in accordance with the proportion that they have agreed to. The administration charge is simply added to the final mediation account and the administrative assistant's time in setting up the arbitration and making the arrangements is not charged additionally.

Retainer:

A retainer of **\$2,750.00 (inclusive of HST)** from each party must be received no later than 14 days prior to the scheduled date of the mediation. **If retainer arrangements are not received by that date, the date will be released.** Refreshers to the retainer will be requested, if needed.

The parties are jointly responsible for the total time spent by the Mediator. The costs of mediation will not be broken down or allocated, based upon the amount of individual time spent by the Mediator with or on behalf of each individual party unless specifically agreed to in advance between the parties and the Mediator.

Disbursements:

In addition to the Mediator's fees, the parties will pay the costs of all disbursements relating to the mediation, including the costs of long distance telephone calls, couriers, photocopies, neutral experts engaged in the mediation process (accountants, psychologists), travel expenses, parking and any other disbursements incurred by the Mediator in relation to the mediation. Interim accounts will be rendered from time to time.

Outstanding Accounts:

The parties will be jointly and severally liable for any unpaid mediation accounts.

Interest will be charged on any overdue accounts at the current rate.

Initialed by: _____

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, Barrister and Solicitor, have reviewed the attached Closed Mediation Agreement (the "Agreement") and have fully explained to my client _____ the meaning and intent of the Agreement and have given to him/her independent legal advice prior to the Agreement being signed. I have also explained to my client that the Agreement is a "domestic contract" within the meaning of the *Family Law Act*, and as such, a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for financial disclosure existing when this Agreement is made, understand the nature or consequences of this Agreement, and is not signing this Agreement as a result of any undue influence placed upon him/her by any person. I have screened my client for power imbalances and domestic violence and I hereby confirm that I am satisfied that my client is fully able to participate and instruct counsel in this mediation.

 Date

 Lawyer

ACKNOWLEDGEMENT OF CLIENT

I, _____, confirm that I have received independent legal advice. I have read the above Certificate, and I understand and agree with the statements set out in it.

 Date

 Client

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, Barrister and Solicitor, have reviewed the attached Closed Mediation Agreement (the "Agreement") and have fully explained to my client _____ the meaning and intent of the Agreement and have given to him/her independent legal advice prior to the Agreement being signed. I have also explained to my client that the Agreement is a "domestic contract" within the meaning of the *Family Law Act*, and as such, a court may set aside the Agreement under various circumstances about which I have informed him/her. In my opinion, my client is aware of the need for financial disclosure existing when this Agreement is made, understand the nature or consequences of this Agreement, and is not signing this Agreement as a result of any undue influence placed upon him/her by any person. I have screened my client for power imbalances and domestic violence and I hereby confirm that I am satisfied that my client is fully able to participate and instruct counsel in this mediation.

 Date

 Lawyer

ACKNOWLEDGEMENT OF CLIENT

I, _____, confirm that I have received independent legal advice. I have read the above Certificate, and I understand and agree with the statements set out in it.

 Date

 Client