

Family Law Arbitration Proceedings

Between:

And:

And:

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

Arbitration Agreement

Introduction

- A. Arbitration is a confidential, private process in which an impartial person, an arbitrator, listens to the evidence and arguments of the people involved in a legal dispute and then makes a decision resolving the dispute.
- B. The parties to this agreement, and the arbitration process it describes, have the primary responsibility for providing evidence and making arguments about how their legal dispute should be resolved.
- C. The parties to this agreement and the arbitrator for the dispute that is the subject of this agreement intend to participate in this arbitration process honestly, cooperatively and in good faith.

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

Agreement to arbitrate

1. _____ and _____ wish to resolve certain legal issues arising from the change in their relationship without starting or continuing any court proceedings.

2. This agreement is an arbitration agreement under the *Arbitration Act* of Alberta, for arbitrations taking place in Alberta, or under the *Family Law Act* of British Columbia, for arbitrations taking place in British Columbia. 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 attached to this agreement; and,
 - b) this agreement has been signed by all parties to the agreement.
3. The arbitrator for this arbitration is John-Paul E. Boyd, KC of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Arbitrator. The Arbitrator is an accredited family law arbitrator and a qualified family law dispute resolution professional under section 5(2) of the Family Law Act Regulation of British Columbia.
4. This arbitration is taking place in:
 - ☐ a) Alberta, Canada; or,
 - ☐ b) British Columbia, Canada.
5. _____ and _____ expect that this arbitration may be conducted partially or wholly by teleconference or videoconference. Accordingly, in this agreement, words like “conference,” “meeting” and “hearing” include conferences, meetings and hearings held by teleconference and by videoconference, and the parties agree that nothing in this agreement requires any of the Arbitrator or the parties to be physically present in the same room at the same time.
6. In this agreement,
 - a) references to the law of British Columbia do not apply to arbitrations taking place in Alberta, and references to the law of Alberta do not apply to arbitrations taking place in British Columbia; and,
 - b) where a term begins with a checkbox, the parties are bound by terms with checkboxes that are checked and are not bound by terms with checkboxes that are not checked.
7. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.

8. This agreement may be entered into by each party signing a separate copy of this agreement and sending their signed copy to the other party and to the Arbitrator by email.

Waiver of right to go to court

9. _____ and _____ waive their right to go to court, or to go back to court, about the legal issues identified below, at paragraph 16 of this agreement, subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or the *Family Law Act* of British Columbia.
10. No party may serve court documents on any person entering, attending or leaving the arbitration at or near the place of the arbitration.
11. Nothing in this agreement limits or prohibits the exercise of any enforcement rights that the parties may have through the courts, maintenance enforcement programs or otherwise.
12. On application by the parties, but subject to the court's discretion, the terms of this agreement may be incorporated into an order to be made with the consent of the parties, called a "consent order."

Duties of Arbitrator

13. The Arbitrator 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;
 - d) give _____ and _____ information about arbitration processes and procedures; and,
 - e) ensure that each party has the opportunity to present their case as best they can, subject to the decisions that are made about arbitration processes and procedures under paragraph 33 of this agreement.

14. _____ and _____ understand and agree that while the Arbitrator 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

15. _____ and _____ each agree to:
- a) comply with their obligations under this agreement;
 - b) comply with the decisions that are made about arbitration processes and procedures under paragraph 33 of this agreement, as best they can;
 - c) cooperate with the Arbitrator and take part in this arbitration honestly, cooperatively and in good faith; and,
 - d) promptly produce any information, records and documents that the Arbitrator may direct.

Issues to be resolved

16. _____ and _____ submit the following legal issues for determination by the Arbitrator on an interim basis, if necessary, and on a final basis:
- ☐ a) guardianship of children;
 - ☐ b) decision-making about children;
 - ☐ c) parenting time or contact with children;
 - ☐ d) the payment of child support, including payment of children's special expenses or extraordinary expenses, in the past, present or future;
 - ☐ e) the payment of spousal support, in the past, present or future;
 - ☐ f) the division of property, including real property, personal property and financial assets;
 - ☐ g) occupation and use of the family home, and use of the personal property in the family home;

- ☐ h) the division of pensions and other retirement funds and savings
- ☐ i) allocation of responsibility for debt;
- ☐ j) costs after the date this agreement is signed; and,
- ☐ k) other issues, identified in the list attached to this agreement as Appendix A, if any.

17. If one of the issues in this arbitration concerns, or is likely to concern, the 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 arbitration without first securing the written consent of the other party and advising the Arbitrator of the details of the change.

Assessment

18. Before the start of the arbitration, the Arbitrator may
- a) meet separately with either or both of _____ and _____, or
 - b) refer either or both of _____ and _____ to an independent service
- to assess for power imbalances and the risk or presence of family violence.
19. The information obtained during the assessment process, including any notes and records made by or for the Arbitrator, is confidential and will not be disclosed to anyone for any purpose, except as may be required by law or by court order.
20. _____ and _____ consent to the assessment process and will not raise the assessment process as an objection or a procedural issue in any future court proceedings, including applications to suspend, set aside, vary or appeal an award of the Arbitrator.

Confidentiality

21. The arbitration governed by this agreement is confidential and private, except:
- a) to the extent necessary to implement or enforce any settlements reached by the parties or awards made by the Arbitrator;

- b) for the terms of the interim and final awards of the Arbitrator; and,
 - c) as may be necessary for the purposes of appeal or judicial review.
22. _____ and _____ agree that they will not record, share or distribute any part of the arbitration hearing and, when meetings or hearings are held by teleconference or by videoconference, that:
- a) they will not capture, record, mirror or otherwise save their computer's video output during the meeting or hearing;
 - b) they will not capture, record or otherwise save their computer's audio output during the meeting or hearing; and,
 - c) they will not stream, broadcast, retransmit, post or otherwise distribute any portion of the meeting or hearing, including on social media.
23. _____, _____ and the Arbitrator agree that they will not make any audio or visual recordings of their conversations and other interactions with each other outside of meetings or hearings, 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 proposed recording of the meeting, conversation or other interaction.
24. No one other than the parties and their lawyers may attend conferences, meetings and hearings in the arbitration except by order of the Arbitrator.
25. Unless required by law or by court order, the parties, any lawyers consulted by the parties and the Arbitrator will not disclose any documents or information about:
- a) the arbitration, and the documents, information and evidence provided in the course of the arbitration; and,
 - b) the results of the assessment process and the nature of any accommodations or adaptations of the arbitration process made in consequence of those results.
26. _____ and _____ acknowledge that the Arbitrator may be required to disclose information obtained during the arbitration where the Arbitrator 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

- 27. Communication between the parties and the Arbitrator, outside of conferences, meetings and hearings, will be by email as much as possible. Emails from the Arbitrator to a party must be copied to all other parties. Emails from a party to the Arbitrator must be copied to all other parties.
- 28. The Arbitrator may provide _____ and _____ with a written summary of any oral communications between the Arbitrator and a party relating to the legal issues or to the arbitration.

Disclosure and production of documents

- 29. _____ and _____ acknowledge and agree that they must provide complete and accurate documents and information to each other for the purpose of resolving the legal issues identified at paragraph 16 of this agreement.
- 30. _____ and _____ agree that they will promptly provide each other with copies of the documents in their possession or control identified by the Arbitrator, and as may additionally be ordered by the Arbitrator from time to time.
- 31. The Arbitrator may draw a negative conclusion, called an “adverse inference,” against a party if it appears to him that the party has failed to disclose documents or information relevant to the legal issues in the arbitration.

Arbitration process

- 32. The law to be applied by the Arbitrator in determining the legal issues is the law of:
 - ☐ a) Alberta;
 - ☐ b) British Columbia; or,

- ☐ c) the jurisdiction identified in the page attached to this agreement as Appendix B, if any.

33. The Arbitrator may convene a conference before the arbitration hearing to:

- a) identify or clarify the legal issues to be resolved through arbitration;
- b) designate a party as the claimant;
- c) identify any documents to be exchanged by the parties before the arbitration hearing;
- d) establish a timetable for any steps that must be taken before the arbitration hearing;
- e) determine the processes, procedures and rules of evidence that will govern any interim applications and the arbitration hearing;
- f) identify any witnesses to be called to present oral evidence at the arbitration hearing, get their contact information, and determine whether summaries of the evidence of each witness must be provided before the arbitration hearing;
- g) determine whether the arbitration hearing will be held in person, by teleconference, by videoconference or by other means, and set the date and place for the arbitration hearing;
- h) determine any physical arrangements necessary for the attendance of the parties and witnesses at the arbitration hearings; and,
- i) address any concerns arising out of the assessment process.

34. The Arbitrator may make orders and interim awards as necessary to

- a) promote the speedy conclusion of the arbitration,
- b) resolve one or more of the legal issues on a temporary or interim basis,
- c) manage conflict between the parties, if their conflict is affecting the wellbeing of the children,
- d) promote the safety of the parties and the children, and
- e) preserve property,

before the conference described in paragraph 33 of this agreement has been convened and whether or not the conference is convened.

35. The parties agree that the Arbitrator will decide whether expert evidence is required to resolve the legal issues, the questions the expert or experts will be required to address and the timetable for the production of the report of the expert or experts. The parties agree to contribute to the fees and expenses of the expert or experts in the amounts or proportions determined by the Arbitrator and authorize the Arbitrator to include these fees and expenses as a disbursement in his account.

End of arbitration hearing

36. The arbitration hearing will end when:
- a) all of the legal issues are settled by the agreement of the parties during arbitration;
 - b) the parties advise the Arbitrator that they have no further evidence to present or arguments to make, or any time limits for the presentation of the parties' evidence or arguments have expired; or,
 - c) the Arbitrator determines that continuing the hearing is unnecessary or inappropriate.
37. The Arbitrator may, in exceptional circumstances, reopen the arbitration hearing at any time before the final award is made.

Awards

38. The Arbitrator will make a final, written award addressing all of the legal issues as soon as possible after the arbitration hearing has ended and:
- a) the final award will provide only summary reasons for the decision of the Arbitrator unless a party requests that full reasons be provided before the start of the arbitration hearing;
 - b) if any of the legal issues are settled by the agreement of the parties during arbitration, the Arbitrator will record the terms of settlement as a final award made with the consent of the parties, called a "consent award;" and,
 - c) consent awards will be made without reasons.
39. Either party may apply to the Arbitrator, or the Arbitrator on his own initiative may decide, to change interim and final awards to correct:

- a) clerical or typographic errors;
 - b) accidental errors, slips or omissions; and,
 - c) arithmetical errors in calculations.
40. An application by a party to correct an interim award must be made before the arbitration hearing has ended.
41. An application by a party to correct a final award must be made within 30 days of delivery of the award.
42. Subject to and as required by the *Arbitration Act* of Alberta or the *Family Law Act* of British Columbia, _____ and _____ understand and agree that they are bound by the Arbitrator's interim and final awards.

Entry of terms of award as consent order

43. In the event the parties are involved in ongoing court proceedings, the parties will, subject to the court's discretion and their agreement to do otherwise, incorporate the terms of the final award, including any consent awards, into a consent order and take such steps as may be necessary to obtain the entry of the consent order in court.

End of arbitration

44. The arbitration will end when all of the legal issues have been resolved by settlements reached by the parties or the later of:
- a) the date which is 31 days after delivery of the final award, where neither party has applied to correct a final award; or,
 - b) if a party has applied to correct a final award, the date on which the Arbitrator dismisses the application or issues an amended final award or a correction to a final award, if the Arbitrator determines that an amendment or a correction is necessary.
45. The Arbitrator may make an order ending the arbitration if:
- a) the parties withdraw all of the legal issues from arbitration;
 - b) the parties sign a written agreement to terminate this agreement under paragraph 50 of this agreement; or,

- c) the Arbitrator concludes that the continuation of the arbitration has become impossible.
46. The Arbitrator will cease to have authority to make decisions about the legal issues, called being “functus officio,” when the arbitration has ended.

Appeals

47. An award may be appealed by a party in accordance with sections 44(1) and 46 of the *Arbitration Act* of Alberta, for arbitrations taking place in Alberta, or in accordance with section 19.19 of the *Family Law Act* of British Columbia, for arbitrations taking place in British Columbia.

Enforcement

48. Subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or of British Columbia, interim and final awards may be enforced by either party under section 49 of the *Arbitration Act* of Alberta, for arbitrations taking place in Alberta, or under section 19.20 of the *Family Law Act* of British Columbia, for arbitrations taking place in British Columbia.

Termination of agreement and resignation of Arbitrator

49. Neither _____ nor _____ may terminate this agreement on their own. The Arbitrator will continue the arbitration even though a party no longer wishes to participate or has stopped participating.
50. The parties may at any time agree in writing to terminate this agreement and end this arbitration.
51. The Arbitrator may at any time resign his appointment as arbitrator by giving written notice of his resignation to the parties.
52. In the event that the Arbitrator resigns and the parties are unable to agree on a substitute arbitrator, a party may apply to the court for an order appointing a substitute arbitrator.
53. In the event that the parties terminate this agreement or the Arbitrator resigns, _____ and _____ understand and agree that any settlements they have reached and any interim awards the Arbitrator has made prior to the termination of this agreement or the Arbitrator’s resignation are binding on them and continue to be binding on them, including on the

continuation of the arbitration with a substitute arbitrator, unless changed or set aside by an award of the substitute arbitrator.

Evidence of Arbitrator

54. Because arbitration is a confidential, private processes aimed at resolving disputes outside of court, _____ and _____ agree that:
- a) all communications between the parties, the Arbitrator 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 Arbitrator to provide information, give evidence, or produce notes, documents, information or recordings in any court proceedings between the parties concerning the communications, discussions and evidence given in this arbitration; and,
 - c) any notes, documents, information or recordings retained by the Arbitrator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties or their lawyers.
55. The parties acknowledge that the Arbitrator may, in certain circumstances, be forced by a party to testify in litigation proceedings despite the other terms of this agreement. The parties acknowledge that calling the Arbitrator as a witness in such circumstances is a breach of their obligations under this agreement and that the party who calls the Arbitrator as a witness will:
- a) immediately to pay the Arbitrator the sum of \$3,000 as liquidated damages for breach of contract; and,
 - b) pay to the Arbitrator the sum of \$450 per hour, plus any applicable taxes, for all time spent by the Arbitrator in consequence of being called as a witness, including time spent reviewing his file and preparing to give evidence, whether or not the Arbitrator actually testifies in the legal proceeding.

Appointment, retainer and fees of Arbitrator

56. _____ and _____ jointly appoint and retain the Arbitrator.
57. _____ and _____ agree that the Arbitrator will be paid \$450 per hour, plus GST, for all work performed by the

Arbitrator including conferences, hearings, telephone calls, correspondence, drafting documents, reviewing documents and other services.

58. _____ and _____ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Arbitrator in connection with the arbitration, including boardroom booking fees, photocopying when professional printing services are used, equipment rental, courier fees and similar expenses.
59. _____ and _____ agree that the Arbitrator will be paid a per diem rate of \$400 when the Arbitrator is required to travel outside Calgary, Alberta and overnight accommodation is necessary. John-Paul Boyd Arbitration Chambers will not otherwise be reimbursed for travel time or for other expenses incurred when the Arbitrator is required to travel, including hotel accommodation, mileage or car rental, airfare, meals and similar expenses.
60. Fees and expenses will be charged by the Arbitrator when a meeting, conference or hearing is cancelled by one or both parties on following basis:
- a) if notice of the cancellation is received by the Arbitrator between 7 days and 48 hours before the start of the conference, meeting or hearing, the party or parties cancelling the conference, meeting or hearing will be charged for the Arbitrator's time spent preparing for the conference, meeting or hearing to the point when notice is received at the Arbitrator's ordinary hourly rate plus GST, and will be required to pay any nonrefundable expenses incurred by the Arbitrator or by John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or hearing including boardroom booking fees, equipment rental, hotel accommodation, car rental, airfare and similar expenses; and,
 - b) if notice of the cancellation is received by the Arbitrator less than 48 hours before the start of the conference, meeting or hearing, the party or parties cancelling the conference, meeting or hearing will be charged for the time reserved by the Arbitrator for the conference, meeting or hearing at one-half the Arbitrator's ordinary hourly rate plus GST as well as the Arbitrator's time spent preparing for the conference, meeting or hearing to the point when notice is received at the Arbitrator's ordinary hourly rate plus GST, and will be required to pay any nonrefundable expenses incurred by the Arbitrator or by John-Paul Boyd Arbitration Chambers for the purposes of the conference, meeting or hearing including boardroom booking fees, equipment rental, hotel accommodation, car rental, airfare and similar expenses.
61. Before the Arbitrator begins to provide services under this agreement, each party will provide the Arbitrator with the sum of \$4,725 (being \$4,500 plus GST), to be held in

trust by the Arbitrator for purpose of paying his ongoing accounts, referred to in this agreement as the parties' Retainers.

62. The Arbitrator may issue periodic accounts to the parties or may, in his discretion, issue a single account when:
- a) this agreement is terminated, under paragraph 50 of this agreement;
 - b) the Arbitrator has resigned, under paragraph 51 of this agreement; or,
 - c) the arbitration has ended, under paragraphs 44 or 45 of this agreement.

The Arbitrator's accounts will describe the services performed by the Arbitrator and the date and duration of those services, and include an itemized statement of the expenses incurred by the Arbitrator or by John-Paul Boyd Arbitration Chambers.

63. The Arbitrator's accounts are due when issued. _____ and _____ agree that they will each be responsible to pay one-half of the Arbitrator's accounts, subject to the Arbitrator's discretion regarding costs.
64. The parties may be required to replenish their respective Retainers as they are depleted, on notice from the Arbitrator. If a party fails to replenish his or her Retainer when and as requested, the Arbitrator may refuse to provide further services and may withhold delivery of any interim or final awards until the party has replenished his or her Retainer.
65. The Arbitrator will refund any unused portions of the parties' Retainers when the Arbitrator ceases to act and all of his accounts for fees and expenses have been paid.
66. 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.
67. In the event that one of the parties fails or refuses to pay their share of the Arbitrator's account, the Arbitrator may accept payment of the defaulting party's share from the other party and exercise his discretion regarding costs to require the defaulting party to reimburse the other party for the amount of any such share.
68. _____ and _____ agree that the Arbitrator may withhold delivery of the final award until the Arbitrator's accounts are paid in full.

Waiver of liability

69. _____ and _____
acknowledge that while the Arbitrator will make his best efforts to preserve the confidentiality and privacy of the arbitration hearing, he cannot make any promises or guarantees about the security of communications held through teleconferencing and videoconferencing technology. 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 technology, including the security of their computer and their access to the internet.
70. _____ and _____ waive any
claim or right of action they may have against John-Paul E. Boyd, KC and John-Paul Boyd Arbitration Chambers arising out of the arbitration.

Acknowledgments

71. In the case of arbitrations taking place in Alberta, the parties acknowledge that:
- a) decisions about the guardianship of children, decision-making in respect of children and parenting time or contact with children will be made taking into consideration only the best interests of the child;
 - b) the *Arbitration Act* provides that an arbitration agreement may be only cancelled by the court under the law of contract, which includes legal questions about issues such as incapacity, duress, undue influence, coercion, mistake and misrepresentation; and,
 - c) the *Arbitration Act* provides that an award may be cancelled by the court if a party signed an arbitration agreement while under a legal incapacity or the arbitrator's award was obtained by fraud.
72. In the case of arbitrations taking place in British Columbia, the parties acknowledge that:
- a) decisions about the guardianship of children, decision-making in respect of children and parenting time or contact with children will be made taking into consideration only the best interests of the child;
 - b) the *Family Law Act* provides that an arbitration agreement and an arbitrator's award may be cancelled by the court if

- i. a party has taken improper advantage of the other party's vulnerability, including the other party's ignorance, need or distress,
 - ii. a party did not understand the nature and consequences of the arbitration agreement, or
 - iii. other circumstances exist that would cause all or part of a contract to be cancelled under the law of contract, which includes legal questions about issues such as incapacity, duress, undue influence, coercion, mistake and misrepresentation;
- c) the *Family Law Act* provides that an arbitrator's award may be cancelled by the court if the award was improperly obtained; and,
- d) an award for the payment of child support or spousal support is a "maintenance order" under the *Family Maintenance Enforcement Act*.

73. _____ and _____ further
acknowledge that failure to disclose relevant documents and information may also be
grounds for suspending, setting aside, varying or appealing an award of the Arbitrator.

Signed by _____ on _____ 2023, at the City or
Town of _____, in the Province of _____.

Signature

Signature of witness

Name:

Signed by _____ on _____ 2023, at the City or
Town of _____, in the Province of _____.

Signature

Signature of witness

Name:

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd, KC
Family Law Arbitrator

Lawyer's Certificate of Independent Legal Advice

I have fully read over and explained to _____ the nature, meaning and consequences of this Arbitration Agreement, and have given independent legal advice to _____ before they 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 their capacity to enter into this agreement.

I am also satisfied that _____ is fully able to participate in these arbitration proceedings, including by teleconference or videoconference and whether represented by counsel or not, 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 _____ the nature, meaning and consequences of this Arbitration Agreement, and have given independent legal advice to _____ before they 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 their capacity to enter into this agreement.

I am also satisfied that _____ is fully able to participate in these arbitration proceedings, including by teleconference or videoconference and whether represented by counsel or not, 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