



John-Paul Boyd
Arbitration Chambers
Resolving Family Law Disputes

ARBITRATION PROCEDURE PICK-LIST

Last updated: 22 December 2019

INTRODUCTION

One of the most valuable aspects of arbitration is the parties' ability to design the arbitration process, working with their arbitrator, to suit their issues, their needs and their finances. While litigation processes provide a one-size-fits-all service, almost every aspect of the arbitration process can be tailored to the specific needs of the specific people involved in a specific dispute, giving them the opportunity to create a process that is genuinely proportionate to the complexity, importance and value of the issues in their dispute. Almost every aspect of the arbitration process can be retained, reconfigured or removed.

What follows is a pick-list of the basic elements of the arbitration process. It covers procedures including exchanging documents and information, deciding how evidence will be presented and the basis on which a party will be able appeal the arbitrator's award. Use this list before the pre-hearing conference to decide which elements are important, which can be abbreviated and which are entirely unimportant and can be eliminated altogether.

Try to keep your choice of process as simple and streamlined as possible. This can mean making some difficult decisions, like agreeing to present only three witnesses instead of ten, agreeing to limit the length of time for the cross-examination of witnesses instead of being able to explore every nook and cranny of their evidence, or agreeing that some or all witnesses will provide their main evidence in writing instead of through oral testimony.

Do your best to think outside the box and challenge your assumptions about the kind of procedures that you absolutely have to have to present your case. Remember that a successful arbitration can consist of nothing more than oral argument over the telephone, it can be an in-person hearing that includes all of the bells and whistles available in court, or it can be something in between these two extremes. Above all, remember that the longer an arbitration takes to complete, the more money the process will cost.

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CHOICE OF PROCESS

☐ We will attempt to reach a resolution of our dispute through mediation before moving to resolve our dispute through arbitration, and would like the arbitrator to:

☐ Conduct the mediation in an evaluative manner.

or

☐ Conduct the mediation in a strictly neutral manner, without providing comment on the merits of our respective cases or the likelihood of our respective success.

EXCHANGING AND PRODUCING INFORMATION BEFORE THE HEARING

The Financial Statement referred to in this section is a special simplified form provided by John-Paul Boyd Arbitration Chambers, based on the financial disclosure forms used in family law court cases in Alberta and British Columbia.

☐ We will exchange the following information about our income:

☐ Part 1 (Income) of the Financial Statement.

☐ Our personal income tax returns, complete with all schedules and attachments, and notices of assessment for the last _____ tax years, plus the most recent statements of our income from all sources.

☐ The corporate income tax returns, complete with all schedules and attachments, notices of assessment and financial statements for all of our businesses and companies for the last _____ fiscal years, as well as:

☐ Statements breaking down all money paid or benefits provided by our businesses and companies to people with whom we do not deal at arm's length.

☐ Statements breaking down all money paid or benefits received by ourselves from our businesses and companies.

☐ Statements breaking down the income of our spouses or romantic partners for the last _____ tax years.

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☐ Other: _____

☐ We will exchange the following information about our expenses:

☐ Part 2 (Expenses) of the Financial Statement.

☐ Statements breaking down our average monthly living expenses.

☐ Statements breaking down the special and/or extraordinary expenses of our children.

☐ Other: _____

☐ We will exchange the following information about our property:

☐ Part 3 (Assets) of the Financial Statement.

☐ Statements breaking down the fair market value of all real property, personal property, businesses, companies, savings, investments, pensions and other assets we each owned at:

☐ The date we began to live together.

☐ The date of our marriage.

☐ The date of our separation.

☐ The date which is two months before the date of the arbitration hearing.

☐ Tax assessments for _____

☐ Valuations or appraisals of _____

☐ Other: _____

☐ We will exchange the following information about our debts:

☐ Part 4 (Liabilities) of the Financial Statement.

☐ Statements breaking down the mortgages, debts, loans, judgments and other actual or potential liabilities encumbering all real property, personal property, businesses, companies, savings, investments, pensions and other assets we each owned at:

☐ The date we began to live together.

☐ The date of our marriage.

☐ The date of our separation.

☐ The date which is two months before the date of the arbitration hearing.

☐ Other: _____

☐ We will exchange emails listing the documents and information we would each like to get from the other party.

☐ We will exchange emails listing the documents in our possession or control relating to:

☐ All of the matters at issue in this arbitration.

or

☐ The children and their past and future parenting arrangements.

☐ Support and the children's special and/or extraordinary expenses.

☐ The division of property and debt.

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☐ Other: _____

☐ We will consent to documents relating to the legal issues in our dispute being released to financial experts who are not involved in this arbitration, namely _____

☐ We will exchange emails listing the questions we would like the other party to answer before the hearing, and the number of questions we can ask each other is:

☐ Unlimited.
or

☐ Limited to no more than _____ questions.

☐ We will each be questioned by the other party before the hearing, and the amount of time we can each be questioned will be:

☐ Unlimited.
or

☐ Limited to no more than _____ hours.

EXPERTS

☐ We will each be able to hire our own expert to prepare an opinion on:

☐ Any of the matters at issue in this arbitration.
or

☐ The children and their past and future parenting arrangements.

☐ The calculation of income, support and the children's special and/or extraordinary expenses.

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☐ The division of property and debt, including the division of pensions and tax issues relating to the division of property.

☐ Other: _____

☐ We will each be entitled to hire our own expert to reply to the opinions of the other party's expert, and our expert will:

☐ Be allowed to interview, examine or test the people interviewed, examined or tested by the other party's expert so that the expert may reach their own conclusions on the matters addressed by the other party's expert.

☐ Be allowed to review and examine the documents reviewed and examined by the other party's expert so that the expert may reach their own conclusions on the matters addressed by the other party's expert.

or

☐ Be limited to commenting on the methodology, analysis and conclusions of the other party's expert.

☐ We will jointly hire an expert to prepare an opinion on:

☐ All of the matters at issue in this arbitration.

or

☐ The children and their past and future parenting arrangements.

☐ The calculation of income, support and the children's special and/or extraordinary expenses.

☐ The division of property and debt, including the division of pensions and tax issues relating to the division of property.

☐ Other: _____

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☐ We agree that the arbitrator may hire experts to provide opinion evidence as the arbitrator may deem necessary, in consultation with ourselves.

HEARING FROM THE CHILDREN

☐ We will obtain a views of the child report that:

☐ Is evaluative and will be prepared by a mental health professional.

or

☐ Is non-evaluative and may be prepared by a legal or mental health professional, or by another person trained in interviewing children.

And the report will:

☐ Address the child's general views about the child's past and future parenting arrangements.

or

☐ Be limited to addressing _____

☐ We will obtain a parenting assessment from a mental health professional that:

☐ Addresses the future parenting arrangements that are in the best interests of the child.

or

☐ Addresses the future parenting arrangements of the child, as well as _____

or

☐ Is limited to addressing _____

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- ☐ We agree that the arbitrator will interview the child to get information about the child's general views about his or her past and future parenting arrangements.
- ☐ We will retain a lawyer to separately represent the interests of our child, and the lawyer will:
 - ☐ Act on the child's instructions.
 - or*
 - ☐ Act on the lawyer's views of the child's best interests.
 - or*
 - ☐ Act on the child's instructions and make submissions on the lawyer's view of the child's best interests.

APPLICATIONS BEFORE THE HEARING

- ☐ Before the hearing begins, either of us may apply for:
 - ☐ Interim awards relating to the matters at issue in this arbitration.
 - ☐ Orders and directions on procedural matters, including on the exchange of documents and information and the conduct of the hearing.

PREPARING FOR THE HEARING

- ☐ We will work together to prepare a statement of agreed facts before the date of the hearing.
- ☐ We will exchange statements summarizing the evidence we expect will be given by the witnesses we will each be asking to give oral evidence at least two weeks before the hearing.
- ☐ We will exchange electronic copies of the cases we are relying on at least two weeks before the hearing.
- ☐ We will exchange our written opening arguments at least a day before the date of the hearing.

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THE HEARING

☐ We agree that we will not have an oral hearing and that the arbitrator will decide our dispute on the basis of:

☐ Written arguments.

☐ The written statements of ourselves and our witnesses.

☐ Our statement of agreed facts.

☐ We agree to have an oral hearing.

☐ The oral hearing will be held:

☐ By teleconference.

or

☐ By videoconference.

or

☐ In person at _____

☐ We agree that people other than ourselves, our lawyers and the arbitrator may attend the hearing, namely _____

☐ We will make our opening arguments:

☐ In writing.

☐ Orally.

☐ We may each present the evidence of ourselves and:

☐ An unlimited number of witnesses other than ourselves.

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or

- ☐ No more than _____ witnesses other than ourselves.

And the evidence of the witnesses we each present will consist of:

- ☐ The written statements of those witnesses.

- ☐ Our direct, oral examination of those witnesses.

- ☐ The time for the direct, oral examination of our witnesses will be:

- ☐ Unlimited.

or

- ☐ Limited to _____ minutes per witness.

or

- ☐ Limited to _____ minutes per witness, except for the direct examinations of ourselves.

- ☐ We will be entitled to cross-examine:

- ☐ All witnesses called by the other party to give oral evidence, including the other party.

or

- ☐ Only the other party and the witnesses who provided evidence for that party by written statements.

or

- ☐ Only the other party.

And the time for our oral cross-examination of these witnesses will be:

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☐ Unlimited.

or

☐ Limited to _____ minutes per witness.

or

☐ Limited to _____ minutes per witness, except for the cross-examinations of ourselves.

☐ We will provide our closing arguments:

☐ In writing.

☐ Orally.

AFTER THE HEARING

☐ We agree that the arbitrator will base his or her decision on:

☐ The law, including the case law, of:

☐ British Columbia.

or

☐ Alberta.

or

☐ Other: _____

or

☐ Grounds of equity and fairness.

or

☐ Grounds of conscience.

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or

☐ Other: _____

☐ We agree that the arbitrator's award will be:

☐ Limited to an oral award providing only summary reasons for the arbitrator's decision.

or

☐ Provided in writing, and:

☐ Be limited to summary reasons for the arbitrator's decision.

or

☐ Provide full reasons for the arbitrator's decision.

☐ We agree that the arbitrator's written award may be appealed to the court:

☐ On questions of law.

☐ On questions of fact.

OTHER PROCEDURES

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