

Family Law Mediation Proceedings

Between:

And:

And:

John-Paul E. Boyd, KC
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, the reconciliation of differences, 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. Mediators, including the mediator for the legal dispute that is the subject of this agreement, cannot guarantee that mediation will result in the resolution of a dispute.
- C. The parties to this agreement, their lawyers and the mediator for the legal dispute that is the subject of this agreement intend to make a serious and sustained effort to settle the parties’ dispute fairly and participate in the mediation process honestly, cooperatively and in good faith.

In consideration of John-Paul Boyd Arbitration Chambers providing mediation services in this dispute, _____ 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 the Certificates of Independent Legal Advice 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 E. Boyd, KC of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Mediator. The Mediator is an accredited family law mediator, and a qualified family law dispute resolution professional under section 4(2) of the Family Law Act Regulation of British Columbia.
4. _____ and _____ expect that this mediation may be conducted partially or wholly by teleconference or 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. In this agreement,
 - a) references to the law of British Columbia do not apply to mediation proceedings sited in Alberta and references to the law of Alberta do not apply to mediation proceedings sited in British Columbia; and,
 - b) where a term is preceded by 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.
6. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.

7. This agreement may be signed in counterparts, meaning that it 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 Mediator by email.

No service of court documents

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

Duties of Mediator

9. The Mediator will:
- a) remain independent, unbiased 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.
10. _____ 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

11. _____ 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 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; and,
 - ☐ j) other issues, identified in the list attached to this agreement.
12. If one of the issues in this 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.

Assessment

13. Before the commencement of the mediation, the Mediator 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 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.
14. 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.
15. _____ and _____ consent to the assessment process and will not raise the assessment process as a procedural issue in any future court proceedings, including applications to cancel, stay or set aside a settlement reached through mediation.

Confidentiality

16. The mediation governed by this agreement is confidential and private, except to the extent necessary to implement or enforce any settlement reached as a result of this mediation.
17. _____ and _____ agree that they will not record, share or distribute any part of mediation meetings and, when 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 mediation meeting;
 - b) they will not capture, record 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.
18. _____, _____ and the Mediator agree that they will not make any audio or visual recordings of their conversations and other interactions with each other outside of mediation meetings, 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
19. No one other than the parties and their lawyers may attend conferences and meetings in the mediation except with the agreement of both parties.
20. 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; and,
 - b) the results of the assessment process and the nature of any accommodations or adaptations of the mediation process made in consequence of those results.

21. _____ and _____
acknowledge that the Mediator may be required to disclose information obtained during the mediation where the Mediator has reason to believe 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.

Disclosure and production of documents

22. _____ 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 11 of this agreement.

Mediation process

23. The Mediator will attempt to isolate points of agreement and disagreement, explore alternative solutions and identify potential accommodations and areas of compromise in this mediation.
24. The Mediator may convene separate conferences with each party before the mediation meeting to:
- a) get 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) identify any documents to be exchanged between the parties and produced prior to the mediation meeting;
 - d) establish a timetable for any steps to be taken prior to the mediation meeting;
 - e) determine whether the mediation meeting will be held in person, by teleconference, by videoconference or by other means, and set the date and place for the mediation meeting;

- f) determine any physical arrangements necessary for the attendance of the parties at the meeting; and,
 - g) address any concerns arising out of the assessment process.
- 25. The mediation meeting will involve the parties and their lawyers in joint session with the Mediator, although separate conferences may be held between the Mediator and a party and their lawyer, at the discretion of the Mediator or the request of a party.
- 26. The Mediator will not disclose any information provided by a party in a separate conference between that party and the Mediator unless the party or the party's lawyer specifically instructs the Mediator to disclose that information.

End of mediation

- 27. The mediation will end when:
 - a) the parties have settled all of the legal issues; or,
 - b) one or both of the parties or the Mediator declares that all or some of the legal issues cannot or are not likely to be resolved by continued mediation.

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 otherwise compromise a party's position;
 - b) neither will ask or require the Mediator to provide information, give evidence, or produce notes, documents or information in any litigation between the parties concerning the communications and discussions in this mediation; and,
 - c) any notes, 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 \$3,000 as liquidated damages for breach of contract; and,
- b) pay to the Mediator the sum of \$450 per hour, plus any applicable taxes, for all time spent by the Mediator in consequence of being called as a witness, including time spent reviewing documents 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 \$450 per hour, plus GST, for all work performed by the Mediator including conferences, meetings, telephone calls, correspondence, drafting documents, reviewing documents and other services.
- 32. _____ and _____ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Mediator in connection with the mediation, including boardroom booking fees, photocopying when professional printing services are used, equipment rental, courier fees and similar expenses.
- 33. _____ and _____ agree that the Mediator will be paid a per diem rate of \$400 when the Mediator 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 Mediator is required to travel, including hotel accommodation, mileage or car rental, airfare, meals and similar expenses
- 34. Fees and expenses will be charged by the Mediator when a conference or meeting is cancelled by one or both parties on following basis:
 - 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 party or parties cancelling the conference or meeting will be charged for the Mediator's time spent preparing for the conference or meeting to the point when notice is received at the Mediator's ordinary hourly rate plus GST, and will be required to pay any nonrefundable expenses incurred by the Mediator or by John-Paul Boyd Arbitration Chambers for the purposes of the conference or meeting 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 Mediator less than 48 hours before the start of the conference or meeting, the party or parties cancelling the conference or meeting will be charged for one-half of the time reserved by the Mediator for the conference or meeting at the Mediator's hourly rate, plus GST, as well as for the Mediator's time spent preparing for the conference or meeting to the point when notice is received, and will be required to pay any nonrefundable expenses incurred by the Mediator or by John-Paul Boyd Arbitration Chambers for the purposes of conference or meeting including boardroom booking fees, equipment rental, hotel accommodation, car rental, airfare and similar expenses.
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 has ended, under paragraph 27 of this agreement, whether or not settlement has been reached on any of the legal issues in the dispute.
36. _____ and _____ agree that their respective lawyers, and any lawyers they may later retain in place of their lawyers at the time this agreement is made, 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 a party fails or refuses to pay their share of the Mediator's account, the Mediator may accept payment of the defaulting party's share from another party and that party may take such steps as may be necessary to be compensated for the payment by the defaulting party, including by 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 conferences and meetings, he cannot make any promises or guarantees about the security of communications made through teleconferencing and videoconferencing technology. The parties and their lawyers 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 computers, electronic devices, networks, and access to the internet.
39. _____ 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 this mediation.

Effect of agreement on counsel

40. The lawyers for each party, as undersigned and including any lawyers who may be retained in their place, are bound by the terms of this agreement.

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

Signature

Counsel for:

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

Signature

Counsel for:

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd, KC
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