

Family Law Arbitration Proceedings

Between:

And:

And:

John-Paul E. Boyd Q.C.,
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, are primarily responsible for providing evidence and making arguments about how their 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 honestly, cooperatively and in good faith.

In consideration of John-Paul Boyd Arbitration Chambers providing arbitration services in this legal dispute, _____ and _____ understand, acknowledge 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 litigation.

2. This agreement is an arbitration agreement under the *Arbitration Act* of Alberta, for arbitration proceedings sited in Alberta, or under the *Arbitration Act* of British Columbia, for proceedings sited 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 in the form 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 Q.C. of John-Paul Boyd Arbitration Chambers, referred to in this agreement as the Arbitrator.
4. The Certificates of Independent Legal Advice attached to this agreement are a part of this agreement.
5. This agreement may be signed in counterparts.

Waiver of right to litigate

6. _____ and _____ waive their right to litigate, or to further litigate, the legal issues identified below, at paragraph 13 of this agreement, subject to the rights of judicial review and appeal set out in the *Arbitration Act* of Alberta or the *Arbitration Act* of British Columbia.
7. No party may serve court documents on any person entering, attending or leaving the arbitration at or near the place of the arbitration.
8. Nothing in this agreement limits or prohibits the exercise of any enforcement rights that the parties may have through the courts or otherwise.
9. On application by the parties, and 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

10. 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) subject to the rules determined under paragraph 28(e) of this agreement, ensure that each party has the opportunity to present their case as best they can.

11. _____ 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

12. _____ and _____ each agree to:

- a) comply with their obligations under this agreement;
- b) follow the rules applicable to this arbitration, determined under paragraph 28(e) of this agreement, as best they can;
- c) cooperate with the Arbitrator and take part in the arbitration process in good faith; and,
- d) promptly produce any information, records and documents that the Arbitrator may request.

Issues to be resolved

13. _____ 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 in respect of children;
- c) parenting time or contact with children;

- d) the payment of child support, including 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.
14. If one of the issues in this arbitration 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 arbitration without first securing the written consent of the other party and advising the Arbitrator of the details of the change.

Screening

15. The Arbitrator may meet separately with either or both of _____ and _____ before the commencement of the arbitration to screen for power imbalances and the risk or presence of family violence.
16. The information obtained during the screening 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.
17. _____ and _____ consent to the screening process and will not raise the screening process as a procedural issue in any future court proceedings, including an application to cancel, stay or set aside any settlement reached in the course of this arbitration.

Confidentiality

18. The arbitration proceeding 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, subject to paragraph 38 of this agreement.
19. No one other than the parties may attend arbitration hearings except by order of the Arbitrator.
20. Unless required by law or by court order, 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 Arbitrator's screening for power imbalances and family violence and the nature of any accommodations or adaptations of the arbitration process made in consequence of those results.
21. _____ 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

22. Communication between the parties and the Arbitrator will be by email as much as possible. Emails from the Arbitrator to a party must be copied to the other party. Emails from a party to the Arbitrator must be copied to all other parties.
23. The Arbitrator may provide the parties with a written summary of any oral communications between the Arbitrator and a party relating to the legal issues or the arbitration.

Disclosure and production of documents

24. _____ 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 13 of this agreement.
25. _____ 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.
26. The Arbitrator may draw a negative conclusion, called an adverse inference, against a party to an arbitration 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

27. 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.
28. The Arbitrator will 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 for the purposes of the arbitration;
 - c) identify any documents to be produced by and exchanged between the parties before the arbitration hearing;
 - d) establish a timetable for any steps to be taken prior to the first hearing;
 - e) determine the rules of procedure and the rules for the admission of evidence that will govern interim applications and the arbitration hearing;
 - f) determine the names and contact information of any witnesses to be called to present oral evidence at the arbitration hearings, and whether summaries of each witness' evidence must be provided prior to 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 screening process.
29. 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 statement of account.

End of arbitration hearing

30. 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,
 - c) the Arbitrator determines that continuing the hearing is unnecessary or inappropriate.
31. The Arbitrator may, in exceptional circumstances, reopen the arbitration hearing at any time before the final award is made.

Arbitration awards

32. 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 either of the parties request full written reasons before the arbitration hearings have ended;
 - 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.
33. 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.
34. An application by a party to correct an interim award must be made before the arbitration hearing has ended.
35. An application by a party to correct a final award must be made within 14 days of delivery of the award.
36. Subject to and as required by the *Arbitration Act* of Alberta or the *Arbitration Act* of British Columbia, _____ and _____ understand and agree that they are bound by the Arbitrator's interim and final awards.
37. On application by the parties, and subject to the court's discretion, all or some of the terms of the final award may be incorporated into a consent order to be pronounced by the court.

Appeals

38. An award may be appealed by a party in accordance with section 44 of the *Arbitration Act* of Alberta, for arbitration proceedings sited in Alberta, or in accordance with section 31 of the *Arbitration Act* of British Columbia, for arbitration proceedings sited in British Columbia.

Enforcement

39. 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 sited in Alberta, or under section 29 of the *Arbitration Act* of British Columbia, for arbitrations sited in British Columbia.

Termination of agreement and resignation of Arbitrator

40. Neither _____ nor _____ may unilaterally terminate this agreement. The Arbitrator will continue the arbitration even though a party no longer wishes to participate or has ceased to participate.
41. The parties may agree to terminate this agreement and end the arbitration by a further written agreement.
42. The Arbitrator may at any time resign his appointment as arbitrator by giving written notice of his resignation to the parties.
43. In the event that the parties terminate this agreement or 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.
44. In the event that the parties terminate this agreement or the Arbitrator resigns, _____ and _____ understand and agree that any interim awards made by the Arbitrator prior to the termination of this agreement or the Arbitrator's resignation are binding on them and continue in full force and effect, including on the continuation of the arbitration with a substitute arbitrator, unless varied by an award of the substitute arbitrator.

Termination of arbitration

45. The arbitration will end when:
 - a) the parties reach a settlement resolving all of the legal issues; or,
 - b) the Arbitrator makes a final award addressing all of the legal issues.
46. The Arbitrator may make an order ending the arbitration if:
 - a) the parties withdraw all of the legal issues from arbitration;
 - b) the parties execute a written agreement to terminate this agreement; or,
 - c) the Arbitrator concludes that the continuation of the arbitration has become unnecessary or impossible.

Evidence of Arbitrator

47. 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 documents in any litigation between the parties concerning the communications, discussions and evidence given in this arbitration; and,
 - c) any documents or information retained by the Arbitrator or John-Paul Boyd Arbitration Chambers will not be subpoenaed by the parties or their lawyers.
48. The parties acknowledge that the Arbitrator may, in certain circumstances, be compelled 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 Arbitration Agreement and that the party who calls the Arbitrator as a witness will:
- a) immediately to pay the Arbitrator the sum of \$2,500 as liquidated damages for breach of contract; and,
 - b) pay to the Arbitrator the sum of \$425 per hour, plus 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

49. _____ and _____ jointly appoint and retain the Arbitrator.
50. _____ and _____ agree that the Arbitrator will be paid \$425 per hour, plus GST, for all work performed by the Arbitrator including conferences, hearings, 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 hearing is held, whether the conference or hearing is held in person, by teleconference, by videoconference or by other means.

51. _____ and _____ also agree that John-Paul Boyd Arbitration Chambers will be reimbursed for all necessary expenses incurred by the Arbitrator or John-Paul Boyd Arbitration Chambers in connection with the arbitration, 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 Arbitrator 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 Arbitrator is required to travel, including for travel time, mileage, airfare and similar expenses.
52. Cancellation fees will be charged when a conference or hearing is cancelled by one or both parties.
- a) If notice of the cancellation is received by the Arbitrator between 7 days and 48 hours before the start of the conference or hearing, the parties will be charged a fee of \$425, in addition to the Arbitrator's time spent preparing for the conference or hearing and any nonrefundable expenses incurred by the Arbitrator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or hearing including boardroom booking fees, equipment rentals and the like; and,
- b) if notice of the cancellation is received by the Arbitrator less than 48 hours before the start of the meeting, conference or hearing, the parties will be charged a fee of \$850, in addition to the Arbitrator's time spent preparing for the conference or hearing and any nonrefundable expenses incurred by the Arbitrator or John-Paul Boyd Arbitration Chambers for the purposes of the conference or hearing including boardroom booking fees, equipment rentals and the like.
53. Fees will also be charged by the Arbitrator when a hearing concludes earlier than the number of days reserved by the Arbitrator for the arbitration at the request of the parties at a rate of \$1,275, plus GST, per whole unused reserved day.
54. Before the Arbitrator begins to provide services under this agreement, each party will provide the Arbitrator with the sum of \$4,331.25, being \$4,250 plus tax, or such other sum as the Arbitrator may require, to be held in trust for purpose of paying his ongoing accounts, referred to in this agreement as the parties' Retainers.
55. The Arbitrator may issue regular accounts to the parties or may, in his discretion, issue a single account following:
- a) the end of arbitration under paragraph 30 of this agreement;
- b) this agreement is terminated, under paragraph 41 of this agreement;

- c) the Arbitrator has resigned, under paragraph 42 of this agreement; or,
- d) the arbitration has terminated under paragraphs 45 or 46 of this agreement.

The Arbitrator's accounts will describe the services performed by the Arbitrator and the dates and times of those services, and include an itemized statement of the expenses incurred by the Arbitrator or John-Paul Boyd Arbitration Chambers. The Arbitrator's accounts will be paid from the parties' Retainers.

- 56. _____ 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.
- 57. The parties will 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 until the party has replenished his or her Retainer.
- 58. The Arbitrator will refund any unused portions of parties' Retainers when the Arbitrator ceases to act and all of his accounts for fees and disbursements have been paid.
- 59. Interest will accrue at a compounding rate of 1% per month, 12.68% per annum, on all accounts that are not paid within 30 days of the date on which they are due.
- 60. _____ and _____ agree that the Arbitrator may withhold delivery of the final award until the Arbitrator's accounts are paid in full.
- 61. 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.

Waiver of liability

- 62. _____ and _____ waive any claim or right of action they may have against John-Paul Boyd arising out of the arbitration.

Acknowledgments

- 63. In the case of arbitrations sited 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.

64. In the case of arbitrations sited 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 *Arbitration 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 *Arbitration 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*.

65. _____ and _____ further acknowledge that failure to disclose all relevant documents and information may also be grounds for cancelling, staying or setting aside an arbitrator’s award.

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

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

JOHN-PAUL BOYD ARBITRATION CHAMBERS

Per:

John-Paul E. Boyd Q.C.,
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 the arbitration proceeding described in the Arbitration Agreement 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 the arbitration proceeding described in the Arbitration Agreement 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

