

**IN THE MATTER OF THE *ARBITRATION ACT*,  
S.O. 1991, c. 17  
and the *FAMILY STATUTE LAW AMENDMENT ACT*,  
2006, S.O. 2006 c.1**

**B E T W E E N:**

**- and -**

**MEDIATION/ARBITRATION AGREEMENT**

**BACKGROUND**

1. \_\_\_\_\_ and \_\_\_\_\_ married/began cohabitation on  
in \_\_\_\_\_
2. They have been living separate and apart since \_\_\_\_\_ according to  
\_\_\_\_\_, and \_\_\_\_\_ according to \_\_\_\_\_.
3. They want to negotiate a final agreement with respect to the issues specified in this  
Agreement and, failing settlement, have those issues arbitrated by Gerald P. Sadvari.

**SUBMISSION TO ARBITRATION**

4. They appoint \_\_\_\_\_ the “Mediator” or “Arbitrator” to mediate and  
arbitrate this matter, the latter as a sole arbitrator under the *Arbitration Act*, 1991, S.O.  
1991, c.17, as amended, and the *Family Statute Law Amendment Act*, S.O. 2006, c. 1, as  
amended. This Agreement constitutes a Submission to Arbitrate under these statutes, and  
they agree to its terms.

## **ISSUES TO BE RESOLVED**

5. The parties submit these issue for resolution (check where appropriate):

- Custody
- Access or any incident of access
- Child Support
- Entitlement to Spousal Support
- Duration of Spousal Support
- Amount of Child Support
- Lump Sum of Spousal Support
- Retroactive and Prospective Support
- Ancillary issues such as security, insurance, etc.
- Equalization of Net Family Property
- Other Property Issues including Equitable Claims: Specify:
- Costs

The parties submit these issues (check where appropriate):

- for interim relief if necessary
- for final determination

## **CONFIDENTIALITY**

- 6. These proceedings and its record are private and confidential, subject only to being produced in relation to the arbitrated portions for judicial review or appeals.
- 7. The parties know that the Arbitrator is required to file a report about any final arbitration award with the Attorney General for Ontario.

## **APPLICABLE LAW**

- 8. The Arbitrator will conduct the arbitration in accordance with the laws of Ontario, and the laws of Canada as it applies in Ontario, as more particularly described in Schedule "A".

## **WAIVER OF RIGHTS TO LITIGATE IN ANY COURT**

9. By submitting these issues to arbitration the parties waive any right to further litigate these issues in Court, subject to their rights of judicial review and appeal.
- 

## ***MEDIATION***

### **MEDIATION PHASE**

10. On a date and at a location to be determined by the Adjudicator, he will conduct a mediation with the parties and their counsel with respect to the issues in dispute. Further dates may be scheduled with the parties' consent.

### **MATERIAL FOR MEDIATION**

11. Unless the Mediator indicates otherwise, at least three business days before the date set for the mediation, each party will provide to the Mediator:
  - (i) An executed copy of this Agreement;
  - (ii) A mediation brief containing:
    - A. A summary of relevant facts;
    - B. Details of any issues which have been resolved;
    - C. Copies of any relevant reports, appraisals and the like;
    - D. Up to date sworn Financial Statement;
    - E. Copies of any relevant court orders or agreements;
    - F. If equalization is an issue, a net family property worksheet; and
    - G. Any other information or documentation that is important for the resolution of the issues

### **MEDIATION ACKNOWLEDGEMENT**

12. The parties acknowledge and agree that the Mediator will be acting solely in that capacity during the mediation and will not provide legal advice to either party, although he may offer neutral evaluation of issues. This will not constitute legal advice.

13. The Mediator may meet with the parties and anyone else the Mediator finds relevant to assist with the resolution of an issue. Any meeting between the Mediator and a person who is not a party to the process (aside from counsel) will take place with the knowledge and consent of both parties.

### **CONFIDENTIALITY**

14. The mediation sessions are settlement negotiations. Therefore, all discussions are privileged and inadmissible in the arbitration itself, or any judicial review or appeal, or in any future litigation. The parties will not summon or otherwise require the Mediator to testify, produce records or notes of the mediation in any future proceedings or keep transcripts.

### **DUAL ROLE OF MEDIATOR**

15. The parties waive the applicability of Section 35 of the *Arbitration Act* and agree that the Arbitrator may act as Mediator in this matter and is not disqualified from adjudicating all issues simply because he acted as Mediator. They also agree that, at the parties request, the Mediator may arbitrate interim issues and issue interim awards and then return to his role as Mediator.

### **TERMINATION OF MEDIATION**

16. The mediation will continue until the Mediator determines that it is unlikely to result in any settlement, at which point, with the input of the parties and their counsel, the Mediator will set a date for the final arbitration hearing.

### **SETTLEMENT AT MEDIATION**

17. If a final settlement is reached at the end of a mediation session, generally the Mediator will dictate its terms in front of the parties and their counsel who will then sign the Acknowledgment attached as Schedule "B" indicating that they are bound by its terms.

---

## ***ARBITRATION***

### **ARBITRAL PROCEDURAL ISSUES**

18. The hearing will be conducted at a time and place to be determined by the Arbitrator with input from the parties and their counsel, although not bound by their schedules.
19. The Arbitrator will be Gerald P. Sadvari.

20. The procedure will be similar to court procedure and in particular:
- (i) all witnesses will be sworn (or affirmed) and subject to examination in chief (unless prior arrangements have been made on consent to present evidence in chief by affidavit), cross-examination and re-examination;
  - (ii) the Arbitrator will determine the appropriate length of all examinations;
  - (iii) the arbitrator will determine the order of witnesses; and
  - (iv) all the usual rules regarding admissibility of evidence in court proceedings will apply as will the *Rules of Civil Procedure* and the Family Law Rules as applicable.

#### **DOCUMENTS FOR ARBITRATION HEARING**

21. Unless the Arbitrator otherwise orders, at least seven (7) days before the hearing commences each party will deliver to the other counsel and the Arbitrator:
- (i) An updated sworn Financial Statement;
  - (ii) Any available income tax returns in the last three years which have not been produced as well as notices of assessment and re-assessment;
  - (iii) Reports of all experts being relied upon;
  - (iv) A position Statement of no more than five (5) double spaced, typewritten pages setting out his/her position with respect to all outstanding issues;
  - (v) A list of witnesses to be called and a brief summary of their expected testimony;
  - (vi) Any other relevant document (preferably in a jointly prepared Exhibit Book); and
  - (vii) All relevant jurisprudence (preferably in a jointly prepared Book of Authorities).

#### **TERMINATION OF ARBITRATION**

22. Neither party may unilaterally withdraw from this Agreement at either the mediation or arbitration stage. The parties may only terminate this Agreement by joint consent in writing and it will only be effective after the Mediator/Arbitrator's outstanding accounts have been paid in full. The Mediator/Arbitrator may, at his discretion, proceed with an arbitration as provided in the Agreement notwithstanding that the mediation has been unsuccessful or that one of the parties no longer wants to participate in the arbitration. The Mediator/Arbitrator may also, in his discretion, terminate the mediation or arbitration

for a party's failure to comply with these terms (in particular, the production of evidence) or the retainer as set out in Schedule "C".

### **ARBITRAL AWARD**

23. After all the evidence has been received and submissions made the Arbitrator will deliver an Award on all issues submitted for his determination, within 45 days, or as otherwise agreed.
24. The Arbitrator's Award will be final and binding upon the parties and may be incorporated in a consent Order or Judgment, as the case may be, of the Ontario Superior Court of Justice, at either party's initiative. The parties hereby consent to this.

### **COSTS**

25. As part of a final or interim award the Arbitrator will have the power to award costs of both the arbitral awards and the mediation upon the usual basis under the Family Law Rules. This will include the power to acquire one party to pay some or all of the Arbitrator's fees and disbursements as well.

### **REVIEWS AND APPEALS OF ARBITRAL AWARDS**

26. The parties will have the right to review the a final Arbitral Award in accordance with s. 46 of the *Arbitration Act* and such rights of appeal as are afforded under the *Family Statute Law Amendment Act*.
27. However, to the extent permitted by law, the parties waive any right to review interim Arbitral Awards as that would be contrary to the spirit and purpose of alternate dispute resolution.
28. Any final arbitral award may be appealed on the basis of an error of law or mixed fact and law.

### **ARBITRATOR'S FEES AND DISBURSEMENTS**

29. The parties accept responsibility for the Arbitrator's fees and disbursements and the timely payment of them in accordance with Schedule "C" to this Agreement.

### **WAIVER OF ARBITRATOR'S LIABILITY**

30. The parties waive any claim or right of action against the Arbitrator in his role as Arbitrator or Mediator in these proceedings under this Agreement.

### **SCREENING**

31. Both parties have been screened for domestic violence and power imbalances pursuant to the *Family Law Statute Amendment Act*. The screening Certificates are attached as Schedules "D" and "E".

**LIMITATIONS**

32. The parties acknowledge the limitations on the powers of the Arbitrator as set out in Schedule "F".

**COUNTERPARTS**

33. This Agreement may be signed in counterparts.

DATED: \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Solicitor for

DATED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Solicitor for

DATED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Gerald P. Sadvari  
Mediator/Arbitrator

**SCHEDULE "A"**

**APPLICABLE LAW**

***Custody and Access***

All custody and access issues will be determined in accordance with the *Children's Law Reform Act*, R.S.O., 1990, c. C12 and the *Divorce Act*, R.S.C. 1991 c. D-3.4 (2<sup>nd</sup> Supp.), as amended.

***Child Support***

All child support issues will be determined in accordance with the Child Support Guidelines pursuant to either the *Divorce Act*, R.S.C. 1991 c. D-3.4 (2<sup>nd</sup> Supp.), as amended or the *Family Law Act*, R.S.O. 1990, c.F.3, as amended, whichever is relevant to the particular case.

***Spousal Support***

All spousal support issues will be determined in accordance with the *Divorce Act*, R.S.C. 1991 c. D-3.4 (2<sup>nd</sup> Supp.), as amended or the *Family Law Act*, R.S.O. 1990, c.F.3, as amended, whichever is relevant.

***Property***

All property issues will be determined in accordance with the provisions of the *Family Law Act*, R.S.O. 1990, c.F.3, as amended, and, if applicable, the common law and principles of equity (for issues like constructive trusts, etc.).

**SCHEDULE "B"**

**DOMESTIC CONTRACT REFLECTING SETTLEMENT REACHED**

THE DAY OF , 20\_\_

BETWEEN:

and

We hereby acknowledge that the terms of our settlement dictated in our presence by Gerald P. Sadvari are accurate and constitute a final settlement and we are signing this document to indicate our acceptance of them as final and binding upon us in this Domestic Contract.

DATED at this day of 20\_\_.

WITNESS:

\_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_) \_\_\_\_\_  
\_\_\_\_\_) \_\_\_\_\_

## **SCHEDULE "C"**

### **RETAINER AND OTHER FEES**

1. Generally:
  - (a) The Mediator/Arbitrator will be paid \$4,000.00 for every half day or less and \$8,000.00 for any day which extends beyond a half-day, of mediation or arbitration, plus applicable taxes and disbursements. This fee applies to all activities by the Mediator/Arbitrator under this Agreement, but generally, reviewing mediation briefs of normal length (ten pages or fewer, with a dozen or so attachments) will be included in the half or full day fee (as the case may be) and not charged separately. Review of more extensive briefs may result in additional charges at \$650.00 per hour.
  - (b) Charges for writing reports or awards, whether interim or final, will be on the same basis.
  
2. Disbursements:
  - (a) The parties will pay a one time non-refundable administration fee of \$250 plus HST.
  - (b) The parties will pay for all relevant disbursements such as printing costs, room rentals, refreshments and the like, without mark-up by the Mediator/Arbitrator.
  
3. Timing of Retainer:
  - (a) No later than 20 business days before a date set for mediation or arbitration the parties will provide an initial retainer of \$8,000.00 plus HST (for a total of \$9,322.50 including the administration fee set out above). This will be refreshed as directed by the Mediator/Arbitrator in light of any continuations and must similarly be paid in advance of the event.
  - (b) If the matter proceeds to a final arbitration the full amount of the estimated cost of the hearing will be paid in advance in accordance with the rates described in paragraph 1, plus a retainer for the estimated time to draft the final Arbitration Award based upon the nature and extent of the issues to be determined. This retainer must be paid in full 20 business days before the first day of the hearing.
  - (c) If the hearing takes longer than estimated the parties will refresh the retainer on the above basis. Failure to do so will, in the absolute discretion of the Arbitrator, result in a suspension of the hearing and/or holdback of any Award.
  
4. Failure to Pay:
  - (a) If the above retainer and fees are not paid as required, the Mediator/Arbitrator may resign at any stage of the proceedings.

- (b) The parties may agree to share the payment of the retainer in any way they see fit. However, if one party fails to pay his or her share and the other pays it all, the Mediator/Arbitrator cannot resign for that reason, but may take this into account in determining costs of the arbitration including set offs against other obligations or rights in issue before him.

5. Cancellation of Mediation.

- (a) If mediation is cancelled less than 10 days before it is scheduled to take place and the mediator cannot replace it with another mediation, the \$250 administration fee is forfeited and will have to be refreshed before rescheduling mediation;
- (b) If the cancellation is less than 5 days before the mediation is scheduled to take place, in addition to the above, the parties will pay a cancellation fee of \$1,500 in total plus HST. This may be taken from their retainer if one has been paid.

6. Cancellation of Arbitration.

If an arbitration is cancelled less than 10 days before it is scheduled to commence the parties will forfeit the administration fee, and pay a cancellation fee in addition equally \$1,000 per consecutive day set aside for the arbitration (ignoring weekends), plus HST. This may be paid from the retainer if one has been paid to the arbitrator.

7. Finality:

The parties release their right to have the Mediator/Arbitrator's accounts assessed so long as the charges are in accordance with this Schedule. They agree that there is no basis for an assessment in that case as the Mediator/Arbitrator does not represent either of them but is being retained as a neutral person, similar to a judge, to deal with the issues put before him in good faith. This cannot be accomplished if the possibility of a challenge to his fees remains.

**DATED:**

\_\_\_\_\_

**Witness**

\_\_\_\_\_

**DATED:**

\_\_\_\_\_

**Witness**

\_\_\_\_\_

**SCHEDULE "D"**

**SCREENING**

I, \_\_\_\_\_, am qualified to screen parties for issues of domestic violence and power imbalances which may affect the appropriateness of their participation in an arbitration of family law issues. I have met with \_\_\_\_\_ and can discern no reason to disqualify \_\_\_\_\_ as a participant in an arbitration of family law issues.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

**SCHEDULE "E"**

**SCREENING**

I, \_\_\_\_\_, am qualified to screen parties for issues of domestic violence and power imbalances which may affect the appropriateness of their participation in an arbitration of family law issues. I have met with \_\_\_\_\_ and can discern no reason to disqualify \_\_\_\_\_ as a participant in an arbitration of family law issues.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

## **SCHEDULE “F”**

### **LIMITATIONS**

While the Arbitrator is taking the place of a justice of the Superior Court and has many of the same powers, there are important differences between any mediation/arbitration and what the courts can do, including:

- (a) Only a judge has inherent jurisdiction such as *parens patriae* re: children;
- (b) Only a judge can find a party to be in contempt of an order and impose consequences relating to contempt (for example failing to disclose financial information or documents);
- (c) Only a judge can add a third party to a proceeding except on the consent of all concerned (for example a trustee of an *inter vivos* trust); and
- (d) Other important differences.

Notwithstanding these limitations where the parties are content to proceed with mediation/arbitration in lieu of court proceedings.

**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

I, \_\_\_\_\_, Barrister and Solicitor, have reviewed the attached Mediation/Arbitration Agreement (the "Agreement") and have fully explained to my client \_\_\_\_\_ the meaning and intent of the Agreement and have given to 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 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/arbitration.

---

Date

**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

**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

I, \_\_\_\_\_, Barrister and Solicitor, have reviewed the attached Mediation/Arbitration Agreement (the "Agreement") and have fully explained to my client \_\_\_\_\_ the meaning and intent of the Agreement and have given to 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 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/arbitration.

---

Date

**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

## PARTY 1 – CONTACT INFORMATION

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers:      Home: \_\_\_\_\_  
   Business: \_\_\_\_\_  
   Other: \_\_\_\_\_

Email address: \_\_\_\_\_

## PARTY 2 – CONTACT INFORMATION

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers:      Home: \_\_\_\_\_

Business: \_\_\_\_\_

Other: \_\_\_\_\_

Email address: \_\_\_\_\_