



AGREEMENT TO MEDIATE

1. We, _____ and _____ have decided to attempt to settle the issues between us through the process of family mediation with the assistance of _____, "Mediator". This contract sets out the terms and conditions under which the mediation will proceed.
2. We understand that the primary goal of mediation is to help separated or divorced parties (or third parties where applicable), arrive at a suitable agreement taking into account the interests of other members of our family.
3. We understand the process of family mediation is voluntary and either party or the Mediator may terminate the process at any time.
4. We understand that the Mediator is not a judge, arbitrator or assessor; she/he is an impartial facilitator whose role is to help us communicate and negotiate in an attempt to resolve our issues. We understand that the responsibility for resolving our issues rests with us, not the Mediator.
5. If, during the course of the mediation, the Mediator expresses an opinion or comments on an issue, the parties acknowledge that that opinion or comment is not to be construed as constituting a statement of the law or legal advice in any respect.
6. Each party is responsible for seeking and obtaining all necessary advice, including legal advice. The Mediator may discuss law from a neutral, informational, perspective.

The Process

7. Prior to the mediation, the mediator will first meet each party separately, to identify issues, goals and concerns of that party and to screen for appropriateness and safety. Thereafter, the parties and the mediator will meet together, either with or without their counsel, as they may agree. All intake and screening information is confidential between the Mediator and that party, although the nature of the process accommodations that may be required as a result of screening can be disclosed to counsel. The Mediator may also, in her/his discretion, share information learned or provided as part of the intake process with that party's lawyer.

8. The mediator may also meet or communicate with either party separately at any time. The mediator may, in her discretion, disclose information or documents provided in such private meetings (called a "caucus") to the other party, and/or to a party's lawyer, unless agreed otherwise during the caucus.
9. Either party may have his or her lawyer attend the mediation. Other professionals or other persons whose presence is required (such as counselors or therapists for children, or financial planners) at the mediation may be present if all parties agree. **Any third parties present must agree in writing to be bound by the confidentiality terms of this Agreement.**
10. The parties are advised to obtain independent legal and all relevant tax and other advice at the outset of the mediation process and are advised to also obtain independent advice on the terms of any proposed settlement. They understand and acknowledge that an agreement reached without the benefit of legal and other necessary advice may be set aside for lack of disclosure or advice or may have unintended consequences.
11. The mediator will prepare a Mediation Report setting out their understanding of the terms of the agreement reached between the parties in mediation. However, the parties agree that they will **not** conclude a binding agreement during the mediation as they will not execute that document with the Mediator. Any binding agreement shall be made by the parties following the mediation with the advice of lawyers they may retain to provide independent legal advice or by signing the agreement in front of witnesses without benefit of legal advice, despite the caution regarding same.
12. The parties authorize the Mediator to discuss all aspects of the mediation with each other's lawyers, if applicable, and other advisors and to provide them with any supporting disclosure documents provided to the Mediator or prepared during the mediation. Discussions during mediation will be treated as "*without-prejudice*" settlement discussions and shall be inadmissible for use by anyone in any proceeding for any purpose. The parties agree that they will not summon, subpoena, or seek access to any documents prepared or provided in connection with the mediation, including the file and notes of the Mediator. The Mediator shall not be called as a witness in any proceeding.
13. Mediation will be "closed", which is a confidential, off-the-record process. Although the Mediator cannot guarantee confidentiality, the purpose of a confidentiality rule is to help parties feel comfortable freely exchanging information, ideas, options, offers and concerns. The parties agree not to divulge communications made during the mediation process to anyone who was not present, including progress notes and e-mails from or to the Mediator or between themselves, unless they all consent. **This rule does not prevent the parties from providing necessary information and documents to people whose advice they need in order to make informed decisions.**

14. The Mediator agrees to be bound by these confidentiality provisions. However, the Mediator may breach the rule of confidentiality in the following situations:
- a) to communicate with any lawyers for the parties, if applicable, and to third party advisors retained by a party or both parties;
 - b) for research, writing or educational purposes, on a non-identifying basis (with the written consent of the parties);
 - c) where ordered to do so by a judicial authority;
 - d) where required to do so by law, including obligations to report a child in need of protection;
 - e) where the information discloses an actual or potential threat to human life or safety; and
 - f) Where the Mediator deems that disclosure is necessary to ensure payment of her account (such as to the client's counsel).
15. The parties acknowledge that there is a risk of loss of confidentiality through use of email and other forms of electronic communication. They authorize the Mediator to use email and other electronic communication in relation to the mediation, notwithstanding such risk.
16. The Mediator shall not be liable to anyone for any act or omission in connection with a mediation conducted under this agreement, nor for any agreement arising out of this process. The parties hereby waive any claim or right of action against the Mediator arising out of any aspect of the mediation.
17. The parties agree that they will not commence or advance any court proceedings, nor will they instruct a lawyer to correspond with each other with respect to issues in mediation while they are engaged in a mediation process, without first advising the other parties and the Mediator.

Fees

18. The parties have provided the Mediator with a retainer for the intake sessions) billed at a minimum of one hour each to include administration) and first joint session. This retainer will also cover the preparation for the session and the drafting of a Progress Note and/or Mediation Report. Should further sessions be required, a retainer for those sessions will be requested.
19. The parties agree to abide by the Mediator's cancellation policy, which is as follows:
- a. For the intakes and first joint session, the Cancellation Fee is \$150 each person inclusive of HST if notice of cancellation is received 10 days or less before the scheduled dates;

- b. For second joint sessions cancelled less than one week prior, the sum of \$100 per person.

The parties affirm that they have had full opportunity to read and understand this agreement.

This Agreement to Mediate is made at Windsor, Ontario.

Party One

Date Signed:

Party Two

Date Signed:

Mediator

Date Signed: