



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.

General Terms

2. We understand that the primary goal of mediation is to help people arrive at a mutually acceptable settlement taking into account our interests and those of other members of our family, where appropriate.
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. The Mediator will not make decisions, take sides or provide counselling or legal advice. The Mediator will help us negotiate with each other and we understand that the responsibility for resolving our issues rests with us, not the Mediator.
5. Any views expressed by the mediator shall not be considered as a statement of the law or legal advice. Any documents prepared by the mediator, including support calculations or property division calculations, shall be prepared strictly on the basis of the parties' undertaking that they will each obtain independent legal and financial advice on such draft documents before relying on them.
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.
7. The parties agree that they will not commence or advance any court proceedings during the mediation process without first advising the other parties and the Mediator.

8. 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.

The Process

9. 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. Subject to the confidentiality exceptions in this agreement, 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 their discretion, share information learned or provided as part of the intake process with that party's lawyer.
10. The mediation will be private. Either party may have his or her lawyer attend the mediation. Other professionals or 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 are bound by the confidentiality terms of this Agreement.**
11. The parties, their lawyers (if attending) and the Mediator intend to participate in mediation cooperatively and in good faith.
12. The parties agree to make full and accurate disclosure of all documents and information relevant to the issues being mediated. They understand and acknowledge that an agreement may be set aside later for lack of disclosure.
13. The mediator may meet or communicate with either party and/or their lawyer (if attending) separately at any time. The mediator may, in their 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.
14. During or at the conclusion of the mediation process, the Mediator may prepare progress notes, mediation reports, or other draft settlement documents for the parties and their counsel. All such materials are prepared solely to facilitate settlement discussions and constitute without prejudice settlement communications. No document, communication, or draft prepared by the Mediator constitutes a legally binding agreement or evidence of a settlement. A binding agreement shall arise only if and when settlement terms are set out in a written agreement signed by both parties, after each party has had an opportunity to obtain independent legal advice. All communications made in the course of the mediation process, whether oral or written, including any documents or materials prepared by the Mediator, are confidential and subject to settlement privilege.

15. For greater certainty, the parties expressly waive any common law, statutory, or other exception to settlement privilege that might otherwise permit the production or disclosure of without prejudice communications for the purpose of proving the existence or terms of a settlement.
16. The parties are advised to obtain independent legal and all relevant tax and other advice before the mediation and afterwards 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 later and/or may have unintended consequences.
17. Parties attending mediation without lawyers agree that they will **not** conclude a binding agreement during the mediation as they will not execute those documents 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 if they choose to do so, by signing the agreement in front of witnesses without benefit of legal advice, despite the caution regarding same.
18. If parties attend mediation with their lawyers, they may conclude a binding agreement if settlement documents are finalized and signed with the advice and assistance of counsel.

Confidentiality

19. 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.**
20. The parties, their lawyers (if any) and the Mediator shall keep confidential all information prepared, provided, disclosed and/or exchanged during or for the purpose or mediation. Mediation sessions are settlement negotiations. All discussions, communication and documents prepared for, during or as a result of 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. No transcripts, photographs or recordings shall be taken or made of the mediation sessions.

21. The Mediator agrees to be bound by these confidentiality provisions. However, the Mediator may disclose otherwise confidential information:

- a) to communicate and share documents 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 their account (such as to the client's counsel);
- g) If either party makes a claim against the Mediator.

22. The parties authorize the Mediator to discuss all aspects of the mediation with their own and each other's lawyers and advisors in the Mediator's discretion, and to provide them with any supporting disclosure documents provided to the Mediator or prepared during the mediation, unless any information is subject to a confidentiality agreement that is known to the Mediator.

23. The Mediator will not be liable for the consequences of any report made in good faith to a Children's Aid Society, the police or a third party in accordance with this agreement.

24. The parties acknowledge that there is a risk of loss of confidentiality through use of email, Zoom and other forms of electronic communication. They authorize the Mediator to use email, Zoom and other electronic communication in relation to the mediation, notwithstanding such risk.

Risks of Mediation

25. The parties understand that there is no guarantee of settlement in mediation, nor that they will be fully satisfied with the outcome, as this is a facilitated negotiation and the control over decisions rests with them. They understand that any applicable limitation periods may not be suspended during mediation and that they should obtain legal advice on these risks and limitations before they agree to mediate.

26. The parties acknowledge that despite the screening process and careful consideration of safety, the mediator cannot guarantee physical safety during the mediation process. Parties will bring up any concerns they have about safety to the mediator promptly.

Fees

27. The parties are jointly retaining Bridging Family Conflict and will 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.

28. The parties shall be jointly and severally liable for the fees of the Mediator.

29. The parties agree to abide by the Mediator's cancellation policy, which is as follows:

Unless otherwise agreed, for example if the mediation is rescheduled, the Cancellation Fee is 50% inclusive of HST of the applicable fee if notice of cancellation is received 15 days to 3 days before the scheduled date and there is no reimbursement if cancellation is received less than 3 days prior. Bridging Family Conflict will always allow changes of appointments where reasonable circumstances exist. Notwithstanding this, unless the cancellation is mutually agreed upon, the party initiating the cancellation shall be fully responsible for any cancellation fee.

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:

Other Participant Date Signed: