

MEDIATION/ARBITRATION CONTRACT

Sample

BETWEEN :

- and -

- and -

VICTORIA L. SMITH (THE MEDIATOR/ARBITRATOR)

BACKGROUND

- 1.1 _____ and _____ were married/commenced cohabitation on _____ in _____.
- 1.2 the parties are parents of the following children:
_____, born on _____;
_____, born on _____;
_____, born on _____; and
_____, born on _____.
- 1.3 The parties have been living separate and apart since _____. There is no reasonable prospect of their resuming cohabitation.
- 1.4 The parties wish to undertake a dispute resolution process defined by this Agreement.
- 1.5 The parties have agreed to submit the issues designated in this Agreement to Victoria L. Smith as mediator/arbitrator.

SUBMISSION

- 2.1 This document constitutes a submission to arbitrate pursuant to the provisions of the Arbitration Act, S.O. 1991, c.17 and amendments thereto.

SUBSTANTIVE ISSUES

- 3.1 The following issues are submitted for determination (check where appropriate):
- Parenting arrangements
 - Child support

- Entitlement to spousal support
- Duration of spousal support
- Amount of spousal support
- Equalization of net family property
- Other (specify)
- Costs

3.2 The above issues are being submitted (check where appropriate):

- For determination of interim relief and,
- For final determination.

MEDIATION

- 4.1 The parties have referred the issues set out in paragraph 3.2 and 3.2 for open mediation by Victoria L. Smith. Ms. Smith's mandate for the mediation shall be to assist the parties to come to a resolution of the issues acceptable to each party and as beneficial as possible for the children.
- 4.2 The parties agree that Ms. Smith will review the following documents and information before the mediation begins:
 - 4.3 The parties agree that Ms. Smith may meet with each of them separately and that any information received in the course of the individual meetings may be disclosed to the other party at the sole discretion of Ms. Smith.
 - 4.4 In the event the parties are unable to resolve their issues within fifteen or hours of mediation sessions, or before this if the mediator feels that the mediation is no longer constructive, then the mediation will be deemed to be at an end. The mediation may be extended beyond fifteen hours on the joint agreement of the parties and the mediator.
 - 4.5 At the end of each mediation session, Ms. Smith will prepare a progress report which will be forwarded to the parties and copied to their counsel.
 - 4.6 If the parties resolve issues in mediation, Ms. Smith will prepare a Memorandum of Understanding incorporating their agreement. The parties will meet with Ms. Smith to review the Memorandum of Understanding and afterwards, each of the parties will obtain independent legal advice from their counsel with respect to the terms of their agreement.
 - 4.7 In the event that the parties are unable to resolve a dispute as to the wording of their Separation Agreement, that issue will be referred to arbitration by Ms. Smith.
 - 4.8 At the conclusion of the mediation, all issues which have not been resolved in the mediation will be arbitrated by Ms. Smith.

ARBITRATION - PROCEDURE

- 5.1 Time and Place: The hearing will take place at a time and date to be determined at the offices of Ms. Smith
OR
() Other
- 5.2 Procedure on Hearing:
- (a) all witnesses shall be sworn (or affirmed) and will be subject to examination in chief and cross-examination and re-examination;
 - (b) each party will, at least _____ days prior to the hearing, deliver to opposing counsel and the Arbitrator, updated and current Financial Statement, the reports of any experts being relied upon by him or her; and copies of a Hearing Record containing copies of court pleadings and court orders, if any, copies of Separation Agreement or Interim Separation Agreement, if any, and a memorandum on outstanding issues including all relevant documents.
 - (c) all usual rules for the admissibility of evidence in court proceedings will apply as will the Rules of Civil Procedure.
 - (d) The arbitration hearing will/will not be recorded by a court reporter.

(Alternate)

- 5.2 The parties agree that they each have the right to provide to Ms. Smith both oral and written information regarding the issues in dispute. Any written information will be provided to all parties. Each party has the right to make oral representations in the presence of the other party so that each is aware of and may meet the case of the other. The hearing will not be recorded by a court reporter.

DISCLOSURE

- 6.1 The parties agree to make full and complete disclosure of all relevant facts, reports, documents or other written or oral information regarding the issues to be arbitrated. The parties agree that all information received by Ms. Smith will be shared with the parties and their counsel.

ARBITRATION AWARD

- 7.1 Ms. Smith will make a decision which is binding on the parties in accordance with the terms of this Agreement. In making her decision, Ms. Smith will consider information derived from the representations by the parties and/or their counsel, both oral and written, and any written materials filed by the parties. The decision will be rendered both orally and in writing or in writing only and reasons will be provided. The parties agree that this procedure is equal and fair.
- 7.2 The parenting issues will be determined in accordance with the provisions of the Divorce Act, R.S.C. 1985, c. D-3.4 and the Children's Law Reform Act, R.S.O. 1990, c.C.12.
- 7.3 Issues related to child support and spousal support (on an interim and permanent basis) will be determined in accordance with the provisions of the Family Law Act, R.S.O. 1990, C.F.3, as amended, or the Divorce Act, R.S.C. 1991 c. D-3.4 (2nd Supp.) as amended, as may be applicable.

- 7.4 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.
- 7.5 The Arbitrator's Award will be final and binding upon the parties and will be incorporated in a consent Order or Judgment, as the case may be, of the Ontario Superior Court of Justice.

LEGAL REPRESENTATION

- 8.1 _____ is represented by _____
_____ is represented by _____

CONFIDENTIALITY

- 9.1 The proceedings and the record will be private and confidential, subject only to their being produced in proceedings for a judicial review.

WAIVER OF RIGHTS TO LITIGATE IN COURTS

- 10.1 By submitting to arbitration those issues designated in paragraph 3 above, the parties waive any right to further litigate those issues in Court, whether pursuant to the Family Law Act, R.S.O. 1990, c.F.3, as amended; the Divorce Act, R.S.C. 1991, c. D-3.4 (2nd Supp.) as amended; or any other statute or law.

NO RIGHT TO APPEAL

- 11.1 The parties hereby waive all rights to appeal the Award of the Arbitrator and the parties' rights will be restricted to applications for judicial review.

(ALTERNATE) RIGHT TO APPEAL

- 11.1 There will be a right to appeal the award of the Arbitrator pursuant to the Arbitrations Act.

ARBITRATOR'S FEES AND DISBURSEMENTS

- 12.1 Ms. Smith's fees will be \$ _____ 00 each hour for preliminary meetings, communication with the parties and/or counsel, correspondence, preparation for the hearing, any pre-arbitration conferences, conducting the hearing, interim arbitration, preparation of the arbitration award, any follow up, photocopies, faxes, couriers, long distance charges, court reporter, parking and any other disbursements. The parties will be jointly and severally liable for the fees and disbursements of the Arbitrator.
- 12.2 Each party will provide Ms. Smith with a retainer of \$ _____ with this Agreement to be replenished from time to time as Ms. Smith directs.

COSTS

13.1 If the issue of costs is submitted to the Arbitrator pursuant to paragraph 3, the Arbitrator's discretion regarding costs will include requiring one party to pay more than one-half, or all of Ms. Smith's fees and disbursements.

MEDIATION AND ARBITRATION

14.1 The parties agree that Ms. Smith can mediate all issues under dispute and the participation of the parties and/or their counsel and the Arbitrator in the mediation process will not disqualify the Arbitrator from arbitrating the disputes. The parties expressly waive s. 35 of the Arbitrations Act.

PRIVACY POLICY

15.1 Ms. Smith may collect, use, disclose and retain the parties' personal information in order to provide mediation/arbitration services, to administer her time and billing data bases.

Each of the parties acknowledges that s/he has read this agreement and agrees to proceed on the terms set out above.

Dated: _____, 200_____

Dated: _____, 200_____

Dated: _____, 200_____

VICTORIA L. SMITH (MEDIATOR/ARBITRATOR)