

Dated for reference:

**IN THE MATTER OF *THE ARBITRATION ACT*, R.S.B.C. 1996, c. 55, as amended,
and the *FAMILY LAW ACT*, S.B.C. 2011, c. 25**

BETWEEN:

PARTY ONE

(" ")

PARTY TWO

(" ")

AND:

Paul Love (the "Mediator" or the "Arbitrator")

MEDIATION - ARBITRATION AGREEMENT

Whereas:

A. The parties wish to resolve, without resorting to court, certain issues in dispute between them arising out of the breakdown of their spousal relationship; and

B. The parties wish to attempt to mediate those issues with Paul Love as the Mediator-Arbitrator, but if that fails, to have Paul Love arbitrate the issues in dispute, without further recourse to the courts except to obtain a consent order incorporating the terms of the mediated resolution or the arbitration award:

Therefore the parties, their counsel and the Arbitrator understand and agree as follows:

1.1 This Agreement is made under the *Arbitration Act* and the *Family Law Act*. It constitutes a submission to arbitration and it is effective when:

- (a) it has been signed by the parties and witnessed;
- (b) both parties have been screened for domestic violence and power imbalance in accordance with the *Family Law Act*;
- (c) each party's Certificate of Independent Legal Advice, and each Lawyer's Certificate of Independent Legal Advice, has been signed; (see forms attached) and

(d) the Arbitrator has signed the Certificate of Arbitrator (see form attached).

1.2 The parties appoint Paul Love as the Mediator-Arbitrator (the "Arbitrator"). Mr. Love is qualified under the Rules of the Law Society of British Columbia to act as a Family Law Mediator and Family Law Arbitrator and meets the professional requirements set out in subsections 4(2) and 5(2) of the *Family Law Act Regulations*. As set out in this Agreement, the Arbitrator may act as both the Mediator and Arbitrator.

1.3 The Certificates of Independent Legal Advice and the Certificate of Arbitrator are attached and form part of this Agreement.

1.4 The parties are aware and acknowledge that Mr. Love:

(a) is acting exclusively in a neutral capacity;

(b) is not acting as counsel for either party;

(c) will not protect either parties' interests throughout the mediation or arbitration process;

(d) has advised each of the parties to obtain independent legal advice.

1.5 This Agreement may be signed in counterparts.

2. WAIVER OF RIGHTS TO LITIGATE IN COURTS

2.1 The parties waive any right to further litigate the issues listed in paragraph 4.1 below in court under any law, subject to the right of appeal and rights under the Arbitration Act and the Family Law Act as set out below.

2.2 Nothing in this Agreement impairs any enforcement rights that a party may have through the courts or otherwise.

2.3 On application by either party, and subject to the court's discretion, the operative terms of this Agreement may be incorporated into a consent court order.

2.4 The Parties agree that they will not serve on the other party or any person with any court proceedings, including a Notice of Claim, Notice of Application, Subpoena or any other process entering, attending or leaving the mediation or arbitration process.

3. DEFINITIONS

4. SUBSTANTIVE ISSUES SUBMITTED FOR MEDIATION-ARBITRATION

4.1 The following issues are being submitted for the determination of interim relief, where appropriate, and for final determination:

- | | |
|---|--|
| <input type="checkbox"/> custody/guardianship of children | <input type="checkbox"/> access, contact, parenting time to child(ren) |
| <input type="checkbox"/> child support – table amount | <input type="checkbox"/> section 7 expenses |
| <input type="checkbox"/> spousal support | <input type="checkbox"/> division of family property |
| <input type="checkbox"/> sale of matrimonial home | <input type="checkbox"/> exclusive possession of matrimonial home |
| <input type="checkbox"/> sale of family property | <input type="checkbox"/> interim fees and disbursements |
| <input type="checkbox"/> preservation of assets | <input type="checkbox"/> other issues - list or attach a schedule |

5. CONFIDENTIALITY

5.1 The proceedings under this Agreement and the record thereof shall be private and confidential, except as may be necessary to implement or enforce the Arbitrator's award, and subject to their being produced in proceedings for appeal or as required by law.

5.2 The parties, their counsel, and the Arbitrator shall not disclose any information about the parties, the mediation, the arbitration, or the screening for power imbalance or domestic violence, except as required by law.

5.3 The Arbitrator's legal obligations to disclose may include:

- (a) reporting a child in need of protection in accordance with section 14 of the *Child Family and Community and Community Act*,
- (b) where he believes there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm, disclosing such confidential information that is required in the circumstances to prevent such death or harm.

6. APPLICABLE LAW

6.1 The arbitration shall be conducted in accordance with the law of British Columbia and the law of Canada as it applies in British Columbia.

7. MEDIATION PHASE

7.1 The Arbitrator shall conduct a mediation in respect of the issues in dispute.

7.2 The procedure for the mediation (including the date(s), time(s) and place(s)) shall be determined by the Arbitrator in consultation with the parties, or their counsel.

7.3 The parties agree that the Arbitrator may act as Mediator in this matter and that he is not disqualified from adjudicating any issue because he has acted as Mediator in an attempt to resolve the issue.

7.4 The parties understand that mediation may involve separate meetings between the mediator and a party and that confidential information may be disclosed by a party to a mediator. Any information communicated may be used by the mediator to facilitate a settlement of the matters at issue, unless, party expressly tells the mediator not to share the information with the opposing party.

7.5 The parties waive any objection to the arbitration based on an irregularity occasioned by the mediation, including the fact that the Arbitrator has met privately with a party during the mediation. Unless the parties agree to the contrary the arbitrator will make findings based only on evidence and submissions made during the arbitration phase of the process.

7.6 Subject to paragraph 9.6, the mediation sessions are settlement negotiations and that disclosures made during the mediation session are inadmissible in the arbitration phase of this mediation-arbitration and in any future litigation or arbitration.

7.7 The parties shall not subpoena or otherwise require the Arbitrator to testify regarding the mediation or to produce records or notes of the mediation in any future proceedings.

7.8 No transcript or recording of the mediation shall be kept.

7.9 The Arbitrator may meet with the parties together or separately, with or without counsel, or with any person she considers relevant to a resolution of the issues between the parties.

7.10 Any meeting between the Arbitrator and a person who is not a party shall be held only with the consent of the parties.

7.11 To assist the parties to resolve the issues in paragraph 4.1, the Arbitrator will be acting in the capacity of a mediator and she will not provide legal advice to the parties individually or collectively.

7.12 If, during the course of the mediation, the Arbitrator expresses an opinion or comments on an issue, the opinion or comment shall not be taken as a statement of the law or as legal advice and shall not form the basis for a challenge of the arbitrator for bias or arbitral error.

7.13 The mediation shall continue until the Arbitrator determines that continued mediation is unlikely to result in a settlement, at which point he may terminate the mediation and initiate arbitration.

8. DOCUMENTS FOR MEDIATION

8.1 Unless otherwise agreed between the Arbitrator and both of the parties, each party shall submit the following to the Arbitrator and the other party prior to the scheduled commencement of the mediation:

- (a) Payment of the party's agreed share of the Arbitrator's retainer;
- (b) An executed copy of this Mediation-Arbitration Agreement;
- (c) A brief written statement indicating the facts supporting the party's position and the relief sought;
- (d) Any relevant factual information about the relationship between the parties;
- (e) What issues have been resolved and the terms of any agreement;
- (f) Copies of any relevant reports, assessments, appraisals, or other documents upon which the party intends to rely;
- (g) The party's up-to-date sworn Financial Statement;
- (h) A comparative Net Family Property Statement;
- (i) Copies of any relevant court orders or agreements;
- (j) Any other information or documentation that the party considers important for the resolution of the issues; and

(k) Such other documents as the Arbitrator may direct.

9. ARBITRATION PHASE

9.1 The arbitration shall take place at the dates and times to be set by the Arbitrator in consultation with the parties and their counsel.

9.2 The procedure for the arbitration shall be determined by the Arbitrator in consultation with the parties and their counsel.

9.3 The default rules of procedure shall be the rules of the Domestic Rules of British Columbia International Commercial Arbitration Centre for the conduct of domestic arbitrations, or, if the parties agree:

- the BCICAC Shorter Rules of Procedure
- the ADRIC Rules
- the BC Supreme Court Family Rules
- Other (specify and attach)

9.4 If a hearing is conducted, it may be conducted in person, electronically, by telephone, by teleconference, by video conference, by written submissions, or by any other process as may be determined by the Arbitrator in consultation with the parties and their counsel.

9.5 The Arbitrator may determine a timetable for the delivery of briefs, financial disclosure and other documents.

9.6 Any communication between the parties and the Arbitrator may be made by ordinary mail, courier or e-mail, or by such other means as the Arbitrator may determine.

9.7 Notwithstanding paragraph 7.3, the Arbitrator may with the consent of the parties, admit into evidence documents or other information received by him/her during the mediation phase.

9.8 If such evidence is admitted, and if it has not been disclosed to a party, it must be disclosed to that party and that party must be given an opportunity to respond to it.

9.9 If a hearing is held, unless the parties agree otherwise, all witnesses shall be sworn under oath or affirmed, and shall be subject to cross-examination and re-examination, except that the Arbitrator may direct that evidence shall be given by affidavit in such manner as he/she may direct.

9.10 The following shall be applicable to the arbitration (check one):

- The proceedings will be recorded by a reporter, the cost of which will be initially shared equally between the parties; or

- The proceedings will not be recorded by a reporter;
- The proceedings will be recorded as determined by the Arbitrator in consultation with the parties and their counsel.

10. PRE-ARBITRATION CONFERENCE

10.1 The Arbitrator may convene a pre-arbitration conference to determine any matter relating to the conduct of the arbitration, including:

- (a) The issues to be arbitrated;
- (b) The documents to be provided prior to the commencement of the arbitration;
- (c) Which party will be the Claimant and which the Respondent;
- (d) The order of presentation of the evidence;
- (e) The names, addresses and contact information of proposed witnesses, and a will say statement;
- (f) A timetable for pre-arbitration proceedings, including the exchange of expert reports, the delivery of opening statements, the exchange of documents and questioning, if required;
- (g) Estimates of the time required for the arbitration;
- (h) Any physical arrangements necessary for the attendance of parties and witnesses; and
- (i) Any issues arising out of the results of the screening for family violence.

11. EXPERT EVIDENCE FOR ARBITRATION HEARING

11.1 The parties authorize the Arbitrator to retain experts to provide opinion evidence respecting any issue and to retain such experts as she deems appropriate.

11.2 The parties shall pay the fees of any such expert in the proportion determined by the Arbitrator and authorize him/her to include those fees as a disbursement on his account to the parties.

12. WITHDRAWAL FROM OR TERMINATION OF MEDIATION OR ARBITRATION

12.1 Neither party may unilaterally withdraw from this Agreement at either the mediation or arbitration stage, but the parties may jointly terminate this Agreement by written agreement.

12.2 Subject to paragraph 12.3, the Arbitrator shall proceed with arbitration as provided for in this Agreement notwithstanding that the mediation has been unsuccessful or that one of the parties no longer wants to participate in the arbitration.

12.3 The Arbitrator may at any time resign from his appointment as mediator/arbitrator by giving notice in writing to the parties.

12.4 If the Arbitrator's appointment is terminated by the parties or if he resigns, and the parties are unable to agree on a replacement, or on a method for appointing a replacement, either party may apply to the British Columbia International Commercial Arbitration Centre to appoint a replacement mediator/arbitration.

12.5 If the Arbitrator's appointment is terminated or if he resigns, the parties agree that any interim award made by the Arbitrator shall continue to bind the parties and shall remain in force until superseded by a subsequent award of the replacement arbitrator.

13. THE ARBITRATOR'S AWARD

13.1 After all the evidence has been received and submissions have been completed, the Arbitrator shall deliver an award in writing on all issues submitted for determination within 60 days.

14. APPEAL

14.1 An interim or final award may be appealed on a question of law or mixed fact and law pursuant to subsection 31 (3.1) of the *Arbitration Act*.

15. ENFORCEMENT

15.1 An award of the Arbitrator shall be binding on the parties subject to the right to appeal, pursuant to sections 30 and 31, respectively, of the *Arbitration Act*, and subject to the other applicable provisions of *the Family Law Act*.

15.2 Any temporary, interim or final award may be incorporated into a consent order of the Supreme Court.

15.3 Either party may apply for the enforcement of any award under section 29 of the *Arbitration Act*.

15.4 Upon request of either party, the Arbitrator shall issue an award incorporating the terms of any settlement agreement reached by the parties during the course of the mediation or arbitration.

16. FEES

16.1 The Arbitrator's fee for professional services shall be \$300.00 per hour for all work performed in execution of his duties under this Agreement, plus disbursements and applicable taxes.

16.2 Prior to the day scheduled for the commencement of the mediation or days for arbitration the arbitrator will fix the retainer deposits for each party prior to the arbitration.

16.3 This retainer shall be refreshed from time to time as the Arbitrator may direct.

16.4 In the event that one of the parties fails or refuses to pay its share of the agreed fee, the Arbitrator may accept payment of an equivalent amount from the other party.

16.5 Such payment-in-default may be credited to the paying party in an award of costs.

16.6 The Arbitrator is authorized to charge interim fees and disbursements of the arbitration.

16.7 The Arbitrator will not issue a final award until all outstanding fees, disbursements and taxes have been paid.

16.8 If less than 48 hours is given of notice of a cancellation, or a matter is adjourned at the request of a party the parties shall pay to the arbitrator fees for all work performed and a cancellation fee of \$2,400 for the first day of hearing and \$1,200 for each consecutive hearing day, plus applicable taxes.

17. WAIVER OF LIABILITY

17.1 The parties waive and renounce any claim against the Arbitrator arising out of these proceedings, whether in contract, tort, or fiduciary duty.

18. SEVERABILITY

18.1 Each of the terms of this Agreement are severable from the others and will survive the invalidity or unenforceability of any other term.

All of the parties agree to the above terms by evidence of their signatures below:

DATED this _____ day of August, 2015

Parties: _____

Party One

Lawyer Name, Lawyer for Party One

Party Two

Lawyer Name, Lawyer for Party Two

Mediator/Arbitrator _____

Paul E. Love
B – 506 Thulin Street,
Campbell River, B.C.
V9W 2L1

LAWYERS CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, Barrister and Solicitor, have explained to my client, _____, the meaning of the attached Agreement and have given him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that a court may set aside the Agreement under certain circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of signing this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this mediation-arbitration and is doing so voluntarily.

Date _____ Signature of lawyer _____

PARTY'S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me.

Date _____ Signature of party _____

LAWYERS CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, Barrister and Solicitor, have explained to my client, the meaning of the attached Agreement and have given him/her independent legal advice prior to the signing of the Agreement. I have also explained to my client that a court may set aside the Agreement under certain circumstances about which I have informed him/her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this Agreement is made and understands the nature and consequences of signing this Agreement. I am satisfied that my client is not signing this Agreement as a result of any duress or undue influence. My client has been separately screened for power imbalances and domestic violence and I am satisfied that my client is fully able to participate in this mediation-arbitration and is doing so voluntarily.

Date

Signature of lawyer

PARTY'S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, confirm that I have received independent legal advice and have attached to this Agreement a copy of the Certificate of Independent Legal Advice that was provided to me.

Date

Signature of party:

CERTIFICATE OF ARBITRATOR

I, Paul E. Love, confirm the following:

1. I will treat the parties equally and fairly in the arbitration.
2. I meet the professional requirements set out in the *Family Law Act Regulation*, section 5.
3. The parties were separately screened for power imbalances and domestic violence and I have considered the results of the screening and will do so throughout the mediation and arbitration.

Date

Paul E. Love
B- 506 Thulin Street
Campbell River, B.C.
V9W 2L1