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PAPER 5.1

Arbitration

These materials were prepared by Karen F. Nordlinger, QC of Aaron Gordon Daykin Nordlinger LLP, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, July 2019.

ARBITRATION

I. History

Arbitration has a long and storied history. I am advised by the internet that there is actually a play called The Arbitration, or an extract from it that still exists from 630 B.C. It is said to be a comedy.

Arbitration was a form of dispute resolution known to the Romans and probably has its genesis in the interaction of ancient people who got tired of warfare and mayhem. It was no doubt also used to resolve ancient family disputes. In a museum in Turkey, I saw a Separation Agreement written in stone (those were the days).

Closer to home, 50 years ago and longer, arbitration was a well-understood and commonly used tool in family law disputes. Arbitration provisions were not uncommon in Separation Agreements and when I started practicing, it was used well, especially in variation applications.

Then along came the *Commercial Arbitration Act*. The name of the *Act* plus the unfortunate wording of s. 2(2), which states: "The provision of an arbitration agreement that removes the jurisdiction of a Court under the *Divorce Act* (Canada) or the *Family Law Act* has no effect" casts a pall over the whole idea of arbitration in family law. The wording of s. 2(2) remains the same under the current *Arbitration Act;* however, provisions in the *Family Law Act* and the *Arbitration Act* make it clear that arbitrations in family law disputes is not prohibited or discouraged. In fact, under the *Family Law Act*, it is actively encouraged. As a result of the wording and title of the *Commercial Arbitration Act*, few of us have had little experience with family law arbitration and I suspect some of us are a little afraid of it. I am hoping I can convince you that it is something to be embraced and not avoided, for the benefit of our clients.

We hear a lot about access to justice these days and, rightly or wrongly, it all seems to come down to costs, specifically legal fees. We all know how much Chambers applications and trials cost our client. We also all know that much of the cost relates to waiting to get heard, short Court days, long wait times for decisions that allows the parties to continue the battles and to re-arm for more fighting. The Rules of Court are complex and require a great deal of preparation for even minor matters to be heard in Chambers.

Obviously, arbitration is not going to solve all the problems of access to justice, but it can help. Mediation has been a huge success for family law, and I remember when the Family Law Bar was skeptical of mediation.

II. Advantages of Arbitration

1. You pick your Judge (Arbitrator)

   This is invaluable. You can choose people with appropriate experience, personality and knowledge for your case. There are very few sitting Supreme Court Judges with any family law experience whatsoever.

2. You decide on the process. This can be such things as:

   (a) Full hearing with oral evidence,

   (b) Full hearing with affidavit evidence and cross-examination;

   (c) Time limits on direct and cross;

   (d) Summary hearing based on admissions of fact and submissions only;

   (e) Any other agreed process.

3. Arbitration is a private proceeding that will be confidential, unless appealed or varied in Court, and less threatening to clients and witnesses. This is particularly important when dealing with vulnerable individuals.

4. You set the hours with the concurrence of the Arbitrator.

5. You can get early dates.

6. You are not bound by the strict rules of evidence or the Rules of Court.

7. The Arbitrator determines what evidence will be admitted. My experience is that Arbitrators are willing to abide by the rules of evidence, but are more likely to be flexible in that regard and to let things in because of the audi alteram partem rule. The rules of natural justice are the basic rules of arbitration and, to be oversimplistic, there really are only two of them – each party's right to be heard and an impartial adjudicator. Contrast that with the Rules of Court!

8. You get an award within a set amount of time, usually 30 to 60 days.

9. If there are objections to the evidence, the Arbitrator determines how it will be admitted but must admit any evidence that would be admissible in a Court, but may also admit evidence that the Arbitrator considers relevant to the issues (s. 6, *Arbitration Act*). In my experience, Arbitrators are more likely to hear the evidence even though it may not have been admitted by a Court because the rules of natural justice apply and each party is entitled to be heard.

III. Arbitration Agreements and Orders

The most fundamental factor is the signing of an Arbitration Agreement or the granting of an Arbitration Order. The jurisdiction of the Arbitrator comes from those documents. The Court may make an Order appointing an Arbitrator in a family law matter by consent. It is arguable that no further Arbitration Agreement is required, save and except with regard to fees; however, if no process is set out in the Consent Order, you would want an Arbitration Agreement attaching some process agreement. The rules around process as set out in the *Arbitration Act* are the rules of the BCICAC, the British Columbia International Commercial Arbitration Centre (Domestic) unless the parties to an arbitration otherwise agree. With respect, those rules are meant to govern commercial arbitrations and are not particularly user-friendly for family law arbitrations, particularly where there is already ongoing litigation in the family law matter. You would want to ensure that the Arbitration Agreement states that the parties do not wish those rules to apply. I would also respectfully submit that you do not want the British Columbia Supreme Court Family Rules to apply either, but you do not have to specifically exclude them. My Arbitration Agreement simply attaches a Schedule to be completed by counsel with regard to the type of process they wish to engage in in the arbitration, and giving them options and alternatives. It is also, of course, open to counsel to add or subtract or to in any way change those process provisions.

The Agreement itself sets out the issues, which are to be checked off by counsel, similar to a Notice of Family Claim. The Agreement must outline what issues are to be determined by the Arbitrator, and my suggestion is to make them as broad as possible so that there cannot be arguments later that the jurisdiction was limited to, say, determining a quantum of support as opposed to also including security for support. You would want to have the issues, in most cases, broadly defined by incorporating wording such as “and all subsidiary issues”.

The Agreement will also set out the Arbitrator’s fees and the time for the decision. You should not be afraid to ask an Arbitrator to send you a form of the Agreement so that you can look at it, go over it with your client, discuss it with your friend. Obviously, you need to have the cooperation of your friend in order to determine the process that you are going to use, the dates and times, etc.

Nor should you be afraid to discuss the Agreement with the Arbitrator. He or she may have ideas to assist you in your discussions with regard to process, and even the type of arbitration you might wish to undertake. Just be mindful that an Arbitrator cannot speak to one party in the absence of the other, and thus these communications should be arranged with and include your friend, setting dates and venue. Usually, counsel discuss dates and length of hearing between themselves. However, I often do that in a conference call. If that is not necessary, you can call the the Arbitrator’s office to tee up dates and the place of the arbitration. It may be in any place agreed to.

IV. Types of Arbitrations

1. Traditional arbitration is a hearing similar to a trial in its mechanics: opening statement, direct evidence, cross-examination and submissions. The full panoply of tools are available in arbitrations, such as Notices to Admit, Agreed Statements of Fact, etc. An arbitration is generally less formal than a trial. It generally takes place in a boardroom or hotel meeting

room with everyone seated at a table with the arbitrator at one end and the witness at the other. In labour arbitrations, there are usually several people who may or may not be participating in the actual arbitration as well, but in family law arbitrations, it is generally just the parties, their counsel and the Arbitrator. A witness may be present, unless there has been an exclusion of witnesses Order. Third parties who are not directly involved with the arbitration would only be admitted by consent. This type of arbitration would also, of course, be subject to the process rules contained in the Arbitration Agreement. For example, it may be that there would be cross-examination on affidavits only, with time limits. It may be that there would be Agreed Statements of Facts and submission only. Broadly speaking, however, whatever process is decided, it's still an arbitration.

2. Med/Arb. This form of arbitration is combination of mediation and arbitration and the mediation is generally held first, usually with the same person who will be arbitrating as the mediator, although not always. If the matter is not settled in mediation, the arbitration is held, usually starting on a different day.

3. Arb/Med. This is a process that roughly follows the simplified trial process in Small Claims Court, which starts with an Arbitration Agreement which, as one of its terms, gives the Arbitrator the power to mediate matters as the arbitration proceeds, if it appears that it is possible to do so. The advantage of this type of arbitration is that whatever is said during the process is evidence on the arbitration, but can also be used to try to mediate issues. The parties, of course, must agree that they will not allege bias against the Arbitrator at any time, given the fact that the Arbitrator is privy to settlement discussions or positions of the parties if they do attempt to mediate issues. It saves time, and thus money, in that the parties do not need to repeat what they said in mediation at the arbitration stage, as they would have to in a Med/Arb.

4. Final Offer Arbitration. This type of arbitration encourages parties to put their best offers forward. After hearing the evidence in whichever form it is to be adduced, the parties put forward their final offers and the arbitrator picks one. Final Offer Arbitration has been considered in at least two British Columbia cases, *Geary v. Geary*, 2017 BCSC 1063 and *McLaren v. Casey*, 2016 BCSC 169.

   In the *McLaren* case, the arbitration proceeded as a Med/Arb but had similarities to the Arb/Med as described above. The mediation was not successful and. as a result, the Arbitrator was mandated to pick from the two final offers of which would be provided to the Arbitrator when it became clear that the mediation had not worked. The parties exchange their final offers and, after some skirmishing, the Arbitrator issued the Arbitration Award reflecting the Claimant's final offer. The Respondent appealed on the basis that procedural fairness was not observed by the Arbitrator by permitting amended final offers, and there was insufficient evidence led by the parties to support the Arbitration Award, amongst other things. Mr. Justice Punnet found that the Arbitration Award had been filed and enforced by an earlier application and thus the Respondent's appeal could not stand, as it amounted to a collateral attack on a decision of the Court.

The Award thus stood, and the appeal was unsuccessful. So remember, once the Award is enforced, it is not appealable. However, final offer arbitration was enforced in that case.

In an Ontario decision, *Kroupis-Yanovsky v. Yanovsky*, 2012 OnSC 5312, the Court stated:

> 122. Family law arbitrations are not required to mirror the Court process. In choosing an arbitration route over the Court process, the parties choose a process which they hope would be speedier and less expensive. After initially agreeing to the final selection process, the appellant confirmed his support for the process and refused to alter the process when given the opportunity to do so.
>
> 123. The process complied with the minimum requirements applicable to family law arbitrations: the parties were treated equally and fairly; each party was given an opportunity to present his or her case and to respond to the other party's case; and the arbitrator applied the law of Ontario and Canada and no other law.
>
> 124. There is no evidence of unfairness, inequality of bargaining power or duress. Each party was represented by legal counsel.
>
> 125. The arbitrator's reasons were adequate; the arbitrator explained why he reached his decision, and the reasons were sufficient for the purpose of appeal.

V. Challenges in Family Law Arbitration

1. Enforcement. The *Arbitration Act* in s. 29 states that an award "may be enforced in the same manner as a judgment or order of the Court to the same effect, and judgment may be entered in the terms of the award." Leave is not required to enforce an award in a family law dispute.

2. The Supreme Court Family Law Rules simply say, in Rule 2-1.2(1) "An arbitration award may be filed in a Registry." According to 2-1.2(2), the award must be filed with a Requisition. The Registry has informed me that they simply take the award, but they do nothing with it. They do not give it an action number and thus there is no enforcement mechanism available just by filing an arbitration award. In the case of Separation Agreements, the rules (Rule 2-1 (1) (2) & (3)) provide that once the agreement is filed, the Court may make an Order for enforcement on an application and for that purpose Part 10 of the Supreme Court Family Rules applies."

3. The case of *Halliday v. Halliday* found that the filing of a Separation Agreement with a Requisition started a family law case. The case is then given an action number. The same does not seem to appear to Arbitration Awards. Hopefully, this will be corrected and it is only a problem if you have not already started an action.

4. There is no similar wording for arbitration awards. Perhaps the drafters thought there would be arbitration only in disputes where an action was filed and thus there would be already access to the Notice of Application procedure in that action. Of course, many people do not need to start an action to resolve their family disputes, nor do they want to. The difficulty, of course, is not irremediable and can be overcome by filing an action and

seeking relief in the terms of the award. It is, however, cumbersome and, in my view, unnecessary. The Rule could simply mirror the Rule for enforcing agreements.

5. It is somewhat puzzling to me that there are cases where the Courts have been asked to vary an award made by an Arbitrator where the jurisdiction to make that award has been given to the Arbitrator pursuant to an Arbitration Agreement. It would seem to me the better course would be to go back to the Arbitrator for a variation. However, unless that is provided for in your Arbitration Agreement, the parties may have to sign another Arbitration Agreement specifically referring that issue to the Arbitrator or another Arbitrator of their choice. However, the first Arbitration Agreement may be broad enough to cover variation or review applications.

6. Rule 10-5 also has application for arbitration awards. Rule 10.5 (1) is very confusing, but states that:

> In order to enforce an arbitration award filed under Rule 2-1.2(1), a party may apply pursuant to the usual application procedure (Chambers process) set out in Rule 10-6 but if the application is to change, suspend or terminate an arbitration award, a party must apply in accordance with Rule 10.5(1).

This also allows for the parties to apply for an order by consent, without notice, on an urgent basis, but if you want to change, suspend or terminate an arbitration award, the only way to do it under the Rules is using the usual application procedure set out in Rule 10-6. Of course, this all presupposes that you have an action started.

7. The appeal process is also a challenge in family law arbitration, as there are potentially three appeals. The appeal may be on the basis of error of law or mixed law and fact. There is no appeal from an Arbitration Award on the facts alone. The first would be to the Supreme Court by virtue of s. 31 of the *Arbitration Act*. The good news is that for an appeal to the Supreme Court, in a family law dispute neither consent nor leave is required.

8. There is then, of course, the potential for an appeal to the Court of Appeal and ultimately to the Supreme Court of Canada. Again, this process seems unwieldy and unnecessary. It is a disincentive for people to use arbitration as a tool. However, again, the Courts so far have shown deference to the Arbitration Awards appealed so appeals may become less attractive.

9. If the party starts an action after an Arbitration Agreement has been signed by those parties, the other party may apply to the Supreme Court for a stay of the legal proceedings. However, that application must be made before any Response to Family Claim is filed or other steps taken. The Court must stay the legal proceedings unless it finds that the Arbitration Agreement is void, inoperative or incapable of being performed. Also, s. 15 (4) of the *Act* allows the Court to grant interim protective Orders even during an arbitration.

8. In *McMillan v. McMillan*, 2016 BCCA 441, the stay of the legal proceedings was granted and the issues in dispute referred to the arbitrator, including any issues as to the arbitrator's jurisdiction on certain issues. The Court found that the wife's initial application to the Supreme Court was not a breach of the *Arbitration Act.* The Court stated:

> This is a sequence of events that happens not infrequently, and it would be inconsistent with the modern judicial deference to arbitration agreements if Courts were to rule that their jurisdiction must not be 'ousted' by arbitrations or that legal proceedings must be protected to avoid a 'race' between public and private tribunals. The modern view, stated in *McKinnon* at paragraph 70 is, instead, that a valid arbitration agreement removes this dispute from the Court's purview provided the arbitration process is invoked within the applicable time limit.

9. Remember, however, that the stay application should be brought before any response is made or steps taken in the Supreme Court Notice of Family Claim.

10. The application for a stay of execution of an arbitration award has been brought in the Supreme Court, notably in the leading case of *McMillan v. McMillan,* 2016 BCCA 441. It is again puzzling that a stay application is not brought before the arbitrator, given s. 234 of the *Family Law Act*, which mandates that Orders under the *Act* remain in effect until a stay is granted by the Court that made the Order. Clearly, the legislation did not recognize that arbitration awards could also be stayed.

10. Finally, and perhaps most importantly, what are the costs implications of arbitrations? Costs of the arbitration itself may be determined by the arbitrator (*Arbitration Act,* s. 11). The Arbitration Agreement may set out the basis for determining costs, for example, on the Supreme Court Tariff or in the arbitrator's discretion.

11. The remuneration of the arbitrator is usually set out in the Arbitration Agreement and generally it is shared equally by the parties, although the costs order may vary that if the Agreement so provides.

12. It is sometimes thought to be a difficulty to persuade clients that they should agree to pay an arbitrator when they can get a judge for free. However, if you are clear with clients about the real costs of going down the litigation path, with all its rules, delays, short Court days, lengthy wait times for hearing, lengthy hearings and waits for decisions, it will assist the parties to understand the benefits of a more efficient process. The most economic benefit is found in having an arbitrator appointed early because interim applications can be brought by email, heard in telephone conferences, all at specified times, without hours waiting in the Courthouse. If you have already spent thousands of dollars on interim applications in Court, that benefit is lost if you then decide to go to arbitration instead of trial. But even that can save a significant amount of money by employing a more efficient process than a full-blown trial.

13. Most Arbitration Agreements will contain a provision for cancellation fees for adjournments or cancellations within specified time periods. Usually, those fees are a fraction of the fees should the arbitration proceed. There is justification to such fees, as there is value to having an arbitrator standing by to provide an end point to the process, much as there is value to having a trial date set. The difference is, of course, that a Judge gets paid whether a trial goes ahead or not. An arbitrator's time is valuable and thus cancellation fees are some compensation for the time left unused and unusable.

14. Not all cases are appropriate for arbitrations, nor is arbitration a substitute for a strong Court system in family law. It must remain an alternate dispute resolution mechanism.

15. Given that family law cases involve very basic civil/human rights of citizens, the Court must always play a protective part. However, there are many cases which are not driven by new complex legal principles that have not yet been tested by the Courts, or by unreasonable abusive parties who need the supervision of a Court. It is those cases for which arbitration may not be appropriate. But for many of the cases that we deal with on a daily basis, it is an attractive option.

16. The Government is currently reviewing the *Arbitration Act* and I am somewhat hopeful that some of the awkwardness of dealing with that *Act,* the *Family Law Act* and the Family Law Rules will be ameliorated in the near future. But one never knows.

17. In summary, try it, you'll like it. But you will have to educate your clients about the <u>real</u> costs of litigation, both financial and emotional, and the benefits of arbitration.

ARBITRATION AGREEMENT

This Arbitration Agreement made the _____day of _____, 2018

BETWEEN

#

(the "Claimant")

AND:

#

(the "Respondent")

AND:

KAREN F. NORDLINGER, Q.C.

(the "Arbitrator")

A. The Claimant and the Respondent (collectively, the "Parties") have a dispute and have agreed to submit the dispute to arbitration before the Arbitrator and to be bound by the Arbitrator's decision, which shall be final, subject only to the right of appeal pursuant to the *Arbitration Act*.

THE DISPUTE

B. It is understood and agreed:

1. That Karen F. Nordlinger, Q.C. has the authority and jurisdiction to determine, on a final basis, the following issues, including any issues as to jurisdiction and arbitrability of the disputed issues. The issues, including any and all subsidiary issues arising therein,

which shall be determined are as follows:

☐	Custody of child(ren)	☐	Child Support
☐	Guardianship of child(ren)	☐	Child support – s. 7 expenses
☐	Access to/contact with children	☐	Spousal support
☐	Parenting Schedule	☐	Division of Family Assets under the *Family Relations Act*
☐	Sale of property	☐	Division of Family Property and Debt under the *Family Law Act*
☐	Non-harassment	☐	Costs
☐	Preservation/Non-Dissipation of Assets	☐	Other (attach schedule)

APPOINTMENT OF ARBITRATOR

2. The Parties appoint Karen F. Nordlinger, Q.C. to act as the sole Arbitrator.

3. The Certificates of Independent Legal Advice and the Certificate of Arbitrator appended to this Agreement form part of this Agreement.

4. This Agreement may be signed in counterpart.

RULES OF PROCEDURE

5. The arbitration shall be conducted pursuant to the *Arbitration Act* of British Columbia.

6. The arbitration shall be governed by such rules and time lines as agreed by the parties in writing and annexed to this Agreement as Schedule "A" (the "Rules"). The Rules of the British Columbia International Commercial Arbitration Centre do not apply to this arbitration.

7. The Rules may be altered or modified by agreement by the Parties, or as permitted in s. 44 of the *Arbitration Act* of British Columbia.

8. The Parties, by agreement, or the Arbitrator, in her discretion, may modify or waive any time period set out in the Rules.

9. The substantive law shall be the law of the Province of British Columbia.

FAMILY VIOLENCE

10. The Parties agree that an assessment for family violence has been conducted and that arbitration is an appropriate method of dispute resolution.

DATE/LOCATION OF ARBITRATION HEARING

11. The arbitration shall take place at a date, time and location agreed to by the Parties.

ARBITRATOR'S DUTIES AND COMMITMENT

12. The Arbitrator agrees to provide her written decision to the Parties within 60 days of the last day of hearing, or the last written

submission from the Parties, provided her final account has been paid.

WAIVER OF LIABILITY

13. The Parties understand and agree that the Arbitrator shall not be held liable to the Parties for any act or omission arising directly or indirectly out of or in connection with the services being provided by him/her as an Arbitrator, unless the Arbitrator is shown to have acted in bad faith.

FEES

14. The Arbitrator shall be paid an hourly rate of $_____ plus disbursements and GST for her services, which services include all pre-hearing meetings with counsel, review of briefs and case law, attendance at hearings and preparation of a written decision. The Parties shall provide a retainer of $_____ each to the Arbitrator at least seven (7) days prior to the scheduled hearing of the arbitration, unless otherwise agreed. The Parties shall replenish their retainer upon the Arbitrator's request and the Arbitrator may adjourn the arbitration if satisfactory retainer arrangements have not been made. The final account of the Arbitrator shall be rendered by the Arbitrator and paid by the parties prior to the delivery of the Arbitration award by the Arbitrator.

15. Accounts issued by the Arbitrator are due and payable upon receipt

and become overdue and bear interest at the rate of 1% per month if the account remains unpaid for more than 15 days after delivery to the Parties.

DISBURSEMENTS

16 Travel: $_____ per hour; however, there is no charge for travel between 8:00 am and 6:00 pm on the day of a hearing. Airfares will be obtained on a fully refundable basis unless otherwise instructed.

17 My account will include expenses incurred for travel, parking, accommodation, meals, long distance telephone calls, facsimile transmittals, copying and any other reasonable cost of the mediation/arbitration.

CANCELLATION AND RESCHEDULING

18. There shall be no cancellation fee in respect of an arbitration that is adjourned or cancelled more than seven (7) days before the scheduled date of hearing.

19. A cancellation fee of $_____ per scheduled day shall apply in respect of an arbitration that is adjourned (unless to a specific date) or cancelled less than seven (7) days before the scheduled date of hearing.

LIABILITY FOR FEES, DISBURSEMENTS AND CANCELLATION CHARGES

18. The Parties understand and agree that they are jointly and

severally liable for all fees, disbursements and cancellation charges, but that as between them, they have the right to claim indemnity from each other for such liability, as follows:

(a) As a general rule, each party shall be responsible for the Arbitrator's fees and disbursements; and

(b) The general rule may be subject to any award of costs that may be made by the Arbitrator pursuant to her powers under the *Arbitration Act* of British Columbia;

(c) An interim account may be issued by the Arbitrator to the Parties if the hearing is not completed within the time estimates of the Parties and is rescheduled, if the proceeding is long or protracted, or if the Parties request one.

IN WITNESS WHEREOF the Parties sign this Agreement.

_____
Signature of #

_____
Signature of #

_____
Signature of Karen F. Nordlinger, Q.C.
Arbitrator

SCHEDULE 'A'

FAMILY LAW ARBITRATION RULES

The following rules shall govern the conduct of the arbitration:

1. There shall be no time limits on oral evidence given during the arbitration; **OR**

   There shall be a time limit of _____ hours each in respect of the testimony of each of the parties, which may be expanded if the parties agree. Other witnesses' evidence shall be _____ hours; **OR**

   The evidence at the Arbitration shall be by way of Affidavit with oral cross-examination of the deponent at the hearing, **AND/OR**

   The Parties may submit an Agreed Statement of Facts as to any facts not in dispute;

   (Pick one or add any agreed procedure)

2. The arbitration shall be/not be recorded by an Official Court Reporter or a transcription of the proceedings shall be by recording device with duplicated tape or disc provided by her. *[pick one]*

3. The Parties may request, or the Arbitrator may order on the Arbitrator's own motion, a pre-hearing meeting at any time prior to the scheduled arbitration hearing to determine any matters, which

may include:

(a) identification of the issues in dispute;

(b) procedure to be follows:

(c) time periods for steps to deal with any other matters that will assist the parties to settle their differences or to assist the arbitration to proceed in an efficient and expeditious manner.

4. The pre-hearing meeting may take place by conference telephone call.

5. The arbitration tribunal shall record any agreements or Orders made at the pre-hearing meeting and shall, within seven (7) days of that meeting, send a copy of the document to each of the Parties.

6. The Parties shall deliver to each other Form F8 Financial Statements at least 14 days before the hearing of the arbitration, if they have not been previously delivered and financial matters are in issue. The Parties may agree to provide information and documents to the Arbitrator in advance of the arbitration.

7. Examinations for Discovery shall be held, **OR**

Examinations for Discovery shall not be held.

(Pick one)

8. Experts' reports (other than a joint expert report) shall be exchanged 30 days in advance of the arbitration. The Parties may agree to a joint expert's report.

9. The Arbitrator shall conduct the arbitration in the manner the Arbitrator considers appropriate, but each party shall be treated fairly and shall be given full opportunity to present their case.

10. The Arbitrator may, on her own authority or on the request of a party, summon and enforce attendance of witnesses to give oral or written evidence and to produce documents or things relevant to the proceedings.

11. The Arbitrator may, on application of a party or on the Arbitrator's own motion, order a party to produce any documents the Arbitrator considers relevant to the arbitration, within a time the Arbitrator specifies and, where such an Order is made, the other party may inspect those documents and make copies of them. **OR**

    The other party may ask for copies of documents on payment of photocopying charges.

12. All oral hearings and meetings shall be held in private and all written documentation shall be kept confidential by the Arbitrator and the Parties and not disclosed to any other person, except the

Arbitrator's staff, except with the consent of all Parties, or for the purpose of an appeal of the Arbitration award.

13. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered.

14. The Arbitrator may determine the manner in which witnesses are to be examined, and may require a witness other than a party or the parties' representative to leave the oral hearing during the testimony of other witnesses.

15. Where a party without sufficient cause fails to appear at an oral hearing, or fails to produce documentary evidence, the Arbitrator may continue the arbitration, and the Arbitrator shall make an award based upon the evidence before the Arbitrator.

16. Where a party without sufficient cause fails to comply with any Order or direction of the Arbitrator or any requirement under the Arbitration Act of British Columbia or these Rules, the Arbitrator may grant such relief as the Arbitrator deems appropriate, including costs.

17. The Arbitrator may:

    (a) Order an adjournment of the proceedings from time to time;

    (b) Make an interim Order on any matter with respect to which the Arbitrator may make a final Order; including an interim

Order for the preservation of property, which is the subject matter of the dispute. An interim Order may be brought by letter to the Arbitrator and the hearing may be held by conference call unless the Parties agree to a different process or the Arbitrator directs a different process.

(c) Determine all issues between the Parties whether legal or equitable, provided such issues are agreed to be before the Arbitrator.

(d) Order on-site inspection of documents, exhibits or other property;

(e) Order the taking down and recording of a transcription of any oral hearing;

(f) At any time, extend or abridge a period of time required in these Rules or fixed or determined by the Arbitrator where the Arbitrator considers it just and appropriate in the circumstances;

(g) Order that costs be paid by one party to the other. Costs will be determined under the B.C. Supreme Court Family Rules and the Tariff thereunder as interpreted by relevant case law.

SOLICITOR'S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

IN THE MATTER of a certain Agreement dated the _____ day of _____, 2018, and made between # and # and Karen F. Nordlinger, Q.C., Arbitrator (hereinafter called the said "Agreement").

THIS IS TO CERTIFY that I have been retained by # of _____ of the City of _____, in the Province of British Columbia, to advise and have advised him with regard to signing the said Agreement, and that on the____ day of _____2018, I fully read over and explained to him the said Agreement and informed him of the contents of the said Agreement and advised of the nature and effect thereof as fully understanding the said Agreement and the nature and effect of the said Agreement on and in the light of his present and future circumstances; and he stated to me, and it appeared to me, that he entered into the said Agreement willingly and not under any duress or stress by the other party, without any pressure or undue influence or deception on the part of # or anyone on her behalf.

I believe that upon entering into the said Agreement he was fully advised and informed with regard to the nature and contents of the Agreement and may fairly be said to have understood the Agreement and acted independently.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of _____, 2018.

_____
Solicitor for #

CONFIRMATION BY #

I, #, above-named, state that I have read over the above Certificate of Independent Legal Advice and that the statements therein said to be made by me are true.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of #, 2018.

SIGNED IN THE PRESENCE OF:
)
)
)
_____)

_____
#

SOLICITOR'S CERTIFICATE OF INDEPENDENT LEGAL ADVICE

IN THE MATTER of a certain Agreement dated the _____ day of #, 2018, and made between # and # and Karen F. Nordlinger, Q.C., Arbitrator (hereinafter called the said "Agreement").

THIS IS TO CERTIFY that I have been retained by # of _____ of the City of _____, in the Province of British Columbia, to advise and have advised her with regard to signing the said Agreement, and that on the_____ day of _____, 2018, I fully read over and explained to her the said Agreement and informed her of the contents of the said Agreement and advised of the nature and effect thereof as fully understanding the said Agreement and the nature and effect of the said Agreement on and in the light of her present and future circumstances; and she stated to me, and it appeared to me, that she entered into the said Agreement willingly and not under any duress or stress by the other party, without any pressure or undue influence or deception on the part of # or anyone on his behalf.

I believe that upon entering into the said Agreement she was fully advised and informed with regard to the nature and contents of the Agreement and may fairly be said to have understood the Agreement and acted independently.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of _____, 2018.

_____
Solicitor for #

CONFIRMATION BY

I, #, above-named, state that I have read over the above Certificate of Independent Legal Advice and that the statements therein said to be made by me are true.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of _____, 2018.

SIGNED IN THE PRESENCE OF:

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_____)

_____
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CERTIFICATE OF ARBITRATOR

I, KAREN F. NORDLINGER, Q.C., confirm that I meet the professional requirements to mediate and arbitrate pursuant to s. 4(2) and 5(2) of the *Family Law Act* Regulation 347/2012.

KAREN F. NORDLINGER, Q.C.