

AGREEMENT TO MEDIATE

BETWEEN:

xxx (“xxx”)
Address...

AND:

yyy (“yyy”)
Address...

AND:

Kevin J. Groves
c/o 306 – 15957 84th Avenue
Surrey, British Columbia, V4N0W7

Purpose

1. This agreement governs the terms and conditions of this family law mediation and describes the process of mediation to be used by the parties and the Mediator in attempting to resolve this family matter. By signing this agreement, the parties agree to conduct themselves in a bona fide and forthright manner and to make a serious attempt to resolve this family matter fairly and equitably. The parties agree to work together with the Mediator to develop options and negotiate alternatives.
2. The *Family Law Act* encourages parties to resolve their differences and disputes without court intervention, including mediation.
3. This Agreement may be signed in counterparts.

The Mediator

4. The parties agree to retain Kevin J. Groves as mediator to assist them to resolve matters regarding their dispute (the “Mediator”).
5. The Mediator is accredited and meets the professional requirements set out in the *Family Law Act*, *Family Law Act (Regulations)* and the Law Society of British Columbia.
6. The Parties are aware and acknowledge the Mediator:
 - 6.1. Is acting exclusively in a neutral capacity;
 - 6.2. Is not acting as counsel for either party;
 - 6.3. Shall not protect either party’s interests throughout the mediation process; and
 - 6.4. Has advised each of the Parties to obtain independent legal advice.

Family Violence Screening

7. The Parties acknowledge the Mediator is a “family dispute resolution professional” being consulted by them, and pursuant to Section 8(1) of the *Family Law Act* the Mediator must assess whether family violence may be present and, if family violence is present, the extent to which family violence may adversely affect the:
 - 7.1. Safety of a party, or a family member of a party; and

7.2. The ability of the party to negotiate a fair agreement or participate in mediation.
(the “Screening Process”)

8. The Parties acknowledge that as part of the Screening Process, the Mediator shall speak to or meet with each party separately, from time to time, throughout the mediation process. The information obtained by the Mediator during the Screening Process, including any notes taken, is confidential and shall not be disclosed to anyone for any purpose, except as required by law or court order.

Confidentiality

9. The proceedings under this Agreement and the record thereof shall be private and confidential.

10. The parties acknowledge and agree the Mediator has a legal obligation to disclose the following:

10.1. Report to the director of *Child, Family and Community Service Act* (“CFCSA”) any instance of a child in need of protection in accordance with Section 14 of the CFCSA;

10.2. Disclosure of confidential information the Mediator receives during the mediation process, including the Screening Process, in any situation where the Mediator believes on reasonable grounds there is an imminent risk of death or serious bodily harm.

What the Mediator shall do

11. The Mediator shall help the parties discuss the matters in dispute between them, assist the parties in communicating and negotiating as effectively as possible, and assist the parties in effecting a settlement of the family matter.

12. The Mediator agrees to keep confidential the discussions in the mediation and all documents generated for the purpose of effecting a settlement of the family matter except as required pursuant to paragraph 10.

13. The Mediator may disclose to any party, or that party’s counsel, any information provided by the other party or counsel, which the Mediator believes to be relevant to the issues being mediated.

14. The Mediator may prepare a proposed written memorandum of the resolution of the issues between the parties and present the memorandum to them for discussion.

15. If the parties agree to the terms of the proposed memorandum, or an amended proposed memorandum, the Mediator shall, at the request of the parties, prepare a draft agreement for the parties to take to their respective legal counsel for legal advice and signing.

What the Mediator shall not do

16. The Mediator shall not make decisions for the parties.

17. The Mediator shall not act as legal counsel for either party and shall not provide legal advice to either party.

18. The Mediator shall remain neutral in all contacts with the parties and shall not advance one party’s interests over the other.

Costs

19. The parties shall:

- 19.1. Provide a \$XXX initial retainer to the Mediator's trust account before the Mediation may occur;
- 19.2. Pay the Mediator \$XXX per hour, plus disbursements and tax for all work done, including meetings, telephone calls, correspondence drafting and review of documents, and other services;
- 19.3. Equally share the mediation's cost/Pay the Mediation cost in proportion to their respective incomes, with xxx paying \$XXX and yyy paying \$XXX; and
- 19.4. If either party is unable to attend a mediation session, that party shall notify the Mediator and the other party at least 24 hours before the scheduled mediation session, otherwise the Mediator shall be entitled to a cancellation fee of \$1,000 for the missed mediation session from the party who failed to give proper notice of the cancellation.

Process

20. The Mediator and parties may meet more than once, although the number of mediation sessions and their length may vary depending on the number of issues, the nature of the issues, and the emotional state of the parties.
21. Both parties shall be present, unless it is agreed it would be more appropriate to meet separately with the Mediator.
22. Other persons, including legal counsel, may be present with the express consent of each party and the Mediator.

No service of pleadings

23. No subpoenas, or pleadings, or other filed court documents, including, but not limited to, Notices of Family Claim, Responses to Family Claim, Counterclaims, Notices of Application, Application Responses or supporting Affidavits may be served upon any person entering, attending, or leaving the mediation at or near the mediation site.

Full disclosure

24. The parties agree to fully and honestly disclose all material information relating to their dispute.
25. The parties understand any agreement entered through mediation may be set aside if full, fair and frank disclosure has not been made or if undue pressure of influence had been exerted on any party to the agreement.
26. The parties each acknowledge and agree:
 - 26.1. Each party **must** provide to the other party full and true information for the purposes of resolving a family law dispute, including through mediation, pursuant to Section 5(1) of the *Family Law Act*;
 - 26.2. Privileged and confidential documents produced during the mediation, including working notes and settlement offers, may not be used in any other proceedings unless expressly agreed to by both parties, in writing; and
 - 26.3. Failure to disclosure all relevant documents may be grounds for appeal or setting aside an agreement reached during mediation.

Mediator privilege

27. The parties each acknowledge and agree:

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- 27.1. They shall not subpoena or otherwise request or require the Mediator to be a witness in any legal proceeding relating to the family matters, or dealt with under this Agreement, nor shall they subpoena any document or other information in the Mediator's possession; and
- 27.2. They each waive any right they may individually or jointly have to call the Mediator as witness in any legal or other proceeding.

Without prejudice

28. The parties agree the mediation shall be conducted with a view to settling their family matter and, as such, everything said, prepared, generated, or proposed is for that purpose, is privileged and shall not be used for any other purpose.

Status Quo

29. Neither party shall sell, transfer, mortgage or otherwise dispose of or alter any family property or interest in family property pending the mediation's conclusion without the prior written consent of the other party and without advising the Mediator prior to making such change.
30. No changes shall be made to family finances pending the mediation's conclusion without the prior written consent of the other party and without advising the Mediator prior to making such change.
31. Neither party shall make any changes to the residence, lifestyle or activities of any of the children pending the mediation's conclusion without the prior written consent of the other party and without advising the Mediator prior to making such change.

Termination

32. Even though both parties intend to complete the mediation and reach a consensual settlement, the process is voluntary, and thus either party may withdraw from the mediation at any time. The mediation may also be concluded when the Mediator or the parties decide the issues cannot or are not likely to be resolved by mediation, and when this decision is confirmed in writing.

Settlement

33. The parties agree where a settlement is signed in this family matter, the parties, and their legal counsel, will carry out the terms of the settlement as soon as possible.
34. An agreement signed by the parties is an enforceable contract between the parties.

Independent legal advice

35. Each party confirms the Mediator has given them no legal advice regarding this Agreement and each is encouraged to review this agreement with their lawyer of choice.
36. Since the parties may have adverse interests, they are encouraged to obtain Independent Legal Advice before signing any agreement resulting from this mediation.
37. It is also understood each of the parties will likely incur further expenses in obtaining Independent Legal Advice. Unless otherwise agreed, each party will be responsible for his or her own costs of obtaining Independent Legal Advice.

38. The parties' lawyers are encouraged to contact the mediator to discuss any agreement reached during mediation and each party gives the mediator permission to discuss the agreement's terms with their lawyer.

Observer

39. An observer may be present at the mediation with the prior consent of the parties and the Mediator. The parties agree the observer will not be subpoenaed or otherwise required to testify or to produce documents in any legal proceeding.

40. The observer shall keep confidential the discussions in the mediation and all documents generated for the purpose of effecting a settlement of the family matter.

Dated at _____ at _____, British Columbia

SIGNED, SEALED AND DELIVERED)
By xxx)
in the presence of:)
)
)
_____))
) xxx _____)

SIGNED, SEALED AND DELIVERED)
by yyy)
in the presence of:)
)
)
_____))
) yyy _____)

SIGNED, SEALED AND DELIVERED)
by zzz)
in the presence of:)
)
)
_____))
) zzz _____)