

APPENDIX VI

Sample Arbitration Agreement
(Epstein Cole LLP)

IN THE MATTER OF THE *ARBITRATION ACT*
S.O. 1991, C.17

B E T W E E N:

-and-

MEDIATION/ARBITRATION AGREEMENT

The husband, _____ and the wife, _____ were married on _____ in the _____ of _____, in the _____.

The husband and the wife have been living separate and apart and wish to negotiate a final agreement with respect to the issues set out in this Agreement and have agreed to submit those issues designated in this Agreement to Philip M. Epstein, Q. as Arbitrator.

SUBMISSION

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

2. The following issues are submitted for determination (check where appropriate)

Custody or any incident of custody

Access or any incident of access

- Child Support
- Entitlement to Spousal Support
- Duration of Spousal Support
- Quantum of Spousal Support
- Lump Sum Support
- All Property issues
- Other (specify)
- Costs

2.1 The above issues are being submitted (check where appropriate)

- for determination of interim relief if necessary
- for final determination

CONFIDENTIALITY

4. The proceedings and the record thereof shall be private and confidential, subject only to their being produced in proceedings for a judicial review.

SUPPORT

5. Issues related to child support and spousal support (on an interim and permanent basis) shall 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.

CUSTODY AND ACCESS

6. Issues related to custody and access of children (on an interim and permanent basis) shall be determined in accordance with the provisions of the *Children's Law Reform Act*, R.S.O, 1990, c. C12 or, if a divorce has been granted or the parties are involved in

divorce proceedings, then under the *Divorce Act*, R.S.C. 1991 c. D-3.4 (2nd Supp.), as amended.

PROPERTY

7. All property issues (and interim property issues) shall be determined in accordance with the provisions of the *Family Law Act*, R.S.O. 1990, C.F.3, as amended.

WAIVER OF RIGHTS TO LITIGATE IN COURTS

8. By submitting to arbitration those issues designated in paragraph 3 above, the parties hereby 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.O. 1991, c.D-3.4 (2nd Supp.), as amended; or any other statute or law.

MEDIATION

9. On a date to be determined at the offices of Epstein Cole LLP, Mr. Epstein shall conduct a mediation with the parties and their counsel in respect of the issues in dispute.
10. If the mediation does not result in a settlement, then an arbitration will take place at a date to be fixed by the Arbitrator at the offices of Epstein Cole, LLP.

PROCEDURAL ISSUES IN RESPECT OF THE ARBITRATION HEARING

10. Time and Place: The hearing shall take place at the offices of the law firm of Epstein Cole LLP in the City of Toronto and Province of Ontario, at a time and date to be determined.
11. Arbitrator: The Arbitrator shall be Philip M. Epstein, Q.C.
12. Procedure on Hearing: The procedure shall be similar to court procedure wherever possible, and in particular:
 - a. All witnesses shall be sworn (or affirmed) and shall be subject to examination in chief and cross-examination and re-examination;

- b. Each party shall, in accordance with the direction of the Arbitrator deliver to opposing counsel and the Arbitrator, updated and current Financial Statement(s) (Form 69K), the reports of any experts being relied upon by him or her; and copies of a Hearing Record containing copies of court pleadings, if any, and/or a memorandum on outstanding issues.
 - c. All usual rules for the admissibility of evidence in court proceedings will apply as will the *Rules of Civil Procedure*.
13. Each party shall provide the other party with:
- (i) A Position Statement of no more than five (5) typewritten (double-spaced) pages setting out his/her position in respect of the above issues, including all relevant documents;

REPORT OF ARBITRATOR FOLLOWING THE ARBITRATION HEARING

14. After the evidence has been received and submissions on the law have been made the Arbitrator shall deliver an Award on all issues submitted for determination.

AWARD

15. The Arbitrator's Award shall be final and binding upon the parties and shall be incorporated in a consent Order or Judgment, as the case may be, of the Ontario Superior Court of Justice (General Division).

NO RIGHT TO APPEAL

16. 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.

ARBITRATOR’S FEES AND DISBURSEMENTS

- 18. The Arbitrator’s fees shall be \$500.00 per hour for the hearing, any pre-arbitration conference, interim arbitration, preliminary meetings, mediation, arrangements, preparation for the hearing, preparation of a report and any follow-up. The parties and their solicitors shall be jointly and serially liable for the fees and disbursements of the Arbitrator.

- 19. Each party shall forthwith provide the Arbitrator with a retainer of \$2,500.00, with this retainer to be refreshed from time to time as the Arbitrator shall direct.

COSTS

- 20. As the issue of costs is submitted to the Arbitrator pursuant to paragraph 2 above, the Arbitrator’s discretion regarding costs shall include the power to require one party to pay more than one-half, or all of the Arbitrator’s fees and disbursements.

MEDIATION AND ARBITRATION

- 21. The parties agree that the Arbitrator can mediate all issues under dispute and the participation of the parties and/or their counsel and the Arbitrator in the mediation process shall not disqualify the Arbitrator from arbitrating the disputes.

WAIVER OF ARBITRATOR’S LIABILITY

- 22. The parties hereby waive any claim or right of action against the Arbitrator arising out of these proceedings.

DATED:

Solicitor for the Husband

Solicitor for the Wife
