

***IN THE MATTER OF THE ARBITRATION ACT S.O. 1991, c. 17, as amended,
and the FAMILY LAW ACT, R.S.O. 1990, c.F3, as amended***

B E T W E E N:

(Name)

- and -

(Name)

CONSENT TO THIRD PARTY SCREENING

THE SCREENING PROCESS

I _____, agree to meet confidentially with

_____ (“the Screener”) as required by the Regulation under the Arbitration Act, and as requested by the Arbitrator or Mediator-Arbitrator, for the purpose of assessing suitability for participation in an Arbitration or Mediation-Arbitration before

_____ (the Arbitrator). The other party shall also meet with the Screener for the same purpose.

The parties will sign any applicable terms for Online Screening in the event that the parties and the Third Party Screener choose to conduct their process using online technology, in whole or in part, and those terms shall form part of this Agreement.

The Screener’s relevant training and experience is set out in Schedule A. The Screener will, in their discretion, also provide appropriate information to the parties. The Screener is independent of the parties and their lawyers. The Screener will meet separately and confidentially with each party. Based on the information provided by both parties, and applying their skills and experience, the Screener will make a confidential recommendation to the Arbitrator using some of all of the form attached (Schedule B).

I agree to provide full information and documents, as requested, to the Screener. My failure to do so

may result in the withdrawal of the Screener. The information that I provide will be used only to enable the Screener to make informed recommendations that are intended to help the Arbitrator assess and monitor the suitability of this case for arbitration and to determine procedures for the Arbitration. My information will not be used by the Arbitrator as evidence for making any decisions.

WAIVER OF LIABILITY

I agree to hold the Screener harmless and waive any claim or right of action against the Screener.

CONFIDENTIALITY OF THE SCREENING PROCESS

All information and documents provided by me shall remain confidential between me and the Screener. All information and documents provided by the other party shall remain confidential between the other party and the Screener. All information arising from the screening process, including the Screener's notes, opinions and recommendations, shall be used only for the purpose of providing an informed and confidential recommendation to the Arbitrator.

The Screener may, solely at their discretion, release some of my screening information, as she deems necessary to fulfill their role, to a lawyer or other professional retained by me. No information arising from the screening process shall be otherwise disclosed to any person for any purpose except as required by law. Such exceptions may include:

- Reporting a child in need of protection in accordance with section 125 of the Child, Youth and Family Services Act; or
- Where the Screener believes on reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily or psychological harm, he or she may disclose such confidential information that is required in the circumstances to prevent such death or harm.

I will not summons the Screener to provide evidence with respect to the Screening Process in any proceeding, nor will I seek production of any documents that were provided for or prepared in connection with the Screening Process (unless they are otherwise discoverable).

RIGHT TO WITHDRAW

I have the right to withdraw from the Screening Process. The Screener has the right to terminate the Screening Process in their discretion.

FEES

I will pay the Screener's fees in full at the time of my meeting with the Screener.

I have read this agreement; I understand it and I agree to its terms.

PARTY

DATE

SCREENER

DATE

SCHEDULE A

Hilary Linton practiced family law for 14 years before studying dispute resolution at Osgoode Hall Law School's LLM program, earning her master's in law in ADR. She has practiced family mediation and arbitration since 2001. She teaches basic and advanced family mediation, family law, and family arbitration courses, both privately, and as an adjunct professor at Osgoode Hall Law School and the faculty of law at the University of Western Ontario. She has designed and teaches several courses intended to help family lawyers, mediators and arbitrators identify and assess the sources of mediation, arbitration and negotiation power that their separating clients may possess. The goal of such courses is to teach professionals the indicators of power in intimate partner relationships, including the indicators of coercion and control, personality factors, drug or alcohol abuse, mental illness, and other such possible sources of power imbalance that may make any particular dispute resolution process unfair, unsafe, or unworkable for either party or the process provider. The goal of such processes, called screening, is to ensure that the parties have knowledgeably selected the most appropriate dispute resolution process for them and their families.

SCHEDULE B (1 of 3):
CONFIDENTIAL SCREENING REPORT FOR FAMILY ARBITRATION

PART ONE: Information about the screener

Name: _____

Address: _____

Phone: _____ Occupation: _____

I have the following training in Screening for Power Imbalances and Domestic Violence in Mediation Arbitration:

PART TWO:

I confirm that I have met with _____ on _____ and
with _____ on _____ for the purpose of conducting a screening process
for power imbalances and domestic violence in (check one):

Mediation/Arbitration with _____ (name of Arbitrator)

Arbitration with _____ (name of Arbitrator)

PART THREE:

The following screening recommendations are based on responses to a questionnaire, specific questions asked by me and my assessment, based on my skills and experience, of the information given by each party.

Yes, Family Arbitration is recommended (provided the Standard Procedures attached here to apply)

Only with the following provisions (in addition to the Standard Procedures) is Family Arbitration recommended:

No, Family Arbitration is not recommended at this time

NOTE:

This report is provided in strict confidence to the Arbitrator alone. It may be used only to determine suitability for arbitration and any procedural requirements for the arbitration. The report is not to be used to decide any issue in arbitration, including credibility of the parties.

Signature of Screener: _____

Date report completed: _____

(This report is not to be provided to counsel or parties, but to the Arbitrator alone.)

SCHEDULE B (2 of 3):
**CONFIDENTIAL RESULTS OF SCREENING FOR POWER IMBALANCE
 AND DOMESTIC VIOLENCE**

Client #1: _____ Counsel: _____

Client #2: _____ Counsel: _____

Some of the things that a Third Party Screener might assess include:

Concerns Regarding Domestic Violence:

- Indicators of coercive control
- Indicators of situational couple violence
- Indicators of separation instigated violence
- Escalation
- Stalking/harassment/threats/ cyber risks
- Fear

Power Imbalance (Real or Perceived):

- Financial power/knowledge/understanding/ vulnerability/sophistication
- Readiness—emotional, legal, data-disclosure
- Status quo
- Capacity to understand process and substantive rights and obligations
- Fear/anxiety
- Ability to fund process, withstand uncertainty, risk aversion
- Addiction/substance misuse
- Signs of mental illness/depression
- Who has the children and control over children’s time
- Cultural concerns
- Ability to understand process
- Ability to negotiate rationally

Possible Adaptations of to the Process:

- Staggered arrival and departure (most vulnerable arrives last & leaves first)
- Presence of counsel
- Presence of support person(s)
- Use online technology
- Different days/ locations
- Referral to domestic violence program, shelter, counselling etc.
- Delay arbitration
- More disclosure/information



1. Any details or comments regarding assessment of power imbalance that would assist the arbitrator in complying with their duty to determine whether this is an appropriate case for private adjudication, and if so, how to manage those power imbalances throughout the process:

2. Any details comments regarding assessment of risk arising from any form of family violence that would assist the arbitrator in complying with their duty to determine whether this is an appropriate case for private adjudication, and if so, how to manage those power imbalances throughout the process:

3. Any suggested adaptations to the process:

SCHEDULE B (3 of 3):
STANDARD ARBITRATION PROCEDURES

The following process shall be applied to the conduct of all arbitration hearings:

1. Counsel shall be present for all arbitration hearings.
2. Neither party shall speak to the other party at the hearing, whether before the commencement of the hearing each day, during breaks or following the end of the hearing each day, except with the permission of the other party's lawyer.
3. Both parties will treat each other and opposing counsel with respect throughout the arbitration process and neither party will attempt, directly or indirectly, to intimidate the other party, whether by looks, words or physical proximity.
4. While either party may bring family, friends, new partners to the arbitration hearing, the only people who will be permitted in the hearing room will be the parties, their lawyers, the court reporter (if the parties elect to have the evidence transcribed), the arbitrator and whatever witness is testifying at that moment.
5. All witnesses, including the parties, will sit directly across from the arbitrator while testifying.
6. Neither party will speak out loud while a witness is testifying, whether to their lawyer, to the arbitrator, the witness or other party. If a party wishes to comment to their lawyer during the testimony of a witness, he/she shall do so by passing notes to their lawyer.
7. The arbitrator may require the parties and their counsel to comply with procedural requirements such as staggered arrival and departure times, the use of technology such as skype that would enable the arbitration to take place in separate rooms, the use of screens for the purpose of testifying, etc.