



# PERCIVAL LAW

PROACTIVE LITIGATION MANAGEMENT • RESOLUTION™

## MEDIATION AGREEMENT

In the Matter of the Following:

Court File No. CV-23-00123456-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

X \_\_\_\_\_ X

Plaintiff

- and -

X \_\_\_\_\_ X

Defendants

The Plaintiff and the Defendants (“the parties”) agree to mediate this dispute on the following terms:

- The mediation will take place **either virtually via Zoom or in person on \_\_\_\_\_, commencing at 10 a.m. (hereinafter, the mediation date)**), or on a later date, as agreed upon by all participants, provided that at least 30 days’ advance notice regarding any change in the mediation date is provided in writing to the mediator, T. H. Percival (“the mediator”), and, in the event of any rescheduling request made less than 30 days (20 business days) in advance, the party requesting the date change is agreeable to paying a late cancellation/rescheduling fee in accordance with the Fee Schedule appearing below at Paragraph 21. In the event of rescheduling, if, 30 days or more before an originally scheduled date, a new date is scheduled, then no late rescheduling fee will be charged. In the event of a mediation that is cancelled 30 days or less prior to an originally scheduled date, a late cancellation fee is charged. In the event of a mediation that is cancelled 30 days or less prior to an originally scheduled date, but with the understanding that it is to be rescheduled, only a late rescheduling fee is charged. In the event of a mediation that is cancelled 30 days or less prior to an originally scheduled date, with the understanding that it is to be rescheduled, but the mediation is not in fact rescheduled, then it is treated as a late cancellation, and charged accordingly.
- The mediation of this matter is proceeding as follows [X identifying selection(s) as agreed upon in advance]:
  - ½ Day mediation (3 hours)
  - Full Day Mediation (7 hours)
  - Mediation proceeding virtually via Zoom
  - Mediation proceeding in person
  - Mediation requested under 258.6(1) of the *Insurance Act* of Ontario, i.e., insurer-funded mediation of motor vehicle accident case (Please see *Cioffi v. Modelevich*, [2018] 144 O.R. (3d) 222, 2018 ONSC 7084 CanLii (Ont.S.C.J.) - <https://canlii.ca/t/hw8rb>)

3. As an impartial mediator, the mediator will facilitate open and professional communication between the parties to negotiate the issues raised for the purpose of reaching a final agreement settling all issues in dispute.
4. The mediator agrees not to make any judgement or decision about the issues in dispute, and under no circumstances will the mediator provide any legal advice. Any opinion or comments on an issue at this mediation shall not be construed as a statement of the law or legal advice, but rather as comments to encourage constructive dialogue at the mediation.
5. The parties understand and agree that the mediator's role is to encourage and facilitate settlement of all issues in dispute, but that the mediator has no authority to impose any settlement. The parties themselves are expected to arrive at their own settlement, making all decisions voluntarily, assisted by their legal counsel, and with the assistance of the mediator to encourage constructive dialogue with that goal in mind.
6. The parties understand and agree that they are freely and voluntarily entering into the mediation process, and that they are proceeding with this mediation on that basis, with a view toward contributing to and agreeing upon an agreement crafted by them.
7. The parties agree that the mediation is private, and that no persons other than the parties, their lawyers, and the mediator, shall be in attendance, except with express consent of all parties.
8. The parties are entering into this mediation in good faith, agreeing to candidly discuss the issues, and to actively work toward resolution.
9. Subject to any limits or conditions communicated to all participants in advance of or at the commencement of the mediation, all parties have full authority to determine and settle in their entirety the issues to which this mediation relates.
10. The parties agree to deliver within one (1) week prior to the mediation date settlement memoranda/briefs setting out the issues in dispute, along with submissions on how they believe those issues should be resolved, and the documentation and authorities on which they rely in support of those submissions.
11. The parties agree that the scope of this mediation is to resolve all issues apparent in those settlement memoranda/briefs. Additional issues requiring resolution that become apparent after the commencement of the mediation may be added to the mediation, but only with the express consent of all participants.
12. To facilitate communication during the mediation process, the mediator may disclose to any party any information provided by any other party, unless the disclosing party has specifically requested that the mediator refrain from doing so and instead keep that information confidential. Further, upon specific request by any party, the mediator will relay information, concerns or requests to the other side.
13. However, the importance of intra-party disclosure in the mediation process notwithstanding, the mediation process itself is private and confidential, and the mediator shall treat as confidential all oral and written communications made to him during the mediation. The parties understand and agree that, subject to Paragraphs 16 and 17 below, the mediator will not communicate or report anything regarding the mediation, or its outcome, to anyone else, except that which is expressly agreed upon by all parties, or as required by law. More specifically, the mediator and the parties shall keep confidential all information or documentation prepared, provided, disclosed or exchanged at or in relation to this

mediation, which means that the mediator will not disclose to anyone who is not a party to the mediation any details or particulars regarding anything said or done, nor produce any materials submitted to the mediator by the parties, with the following specific exceptions:

- a) disclosure to the lawyers involved in this dispute or other professionals retained on behalf of the parties, or to non-parties, with the written consent of the parties;
  - b) disclosure where ordered by a judicial authority or where required to do so by law;
  - c) disclosure of information suggesting actual or potential threat to human life or safety, or the commission of a crime in the future; and
  - d) disclosure for educational or research purposes, on an anonymous basis, redacted as necessary.
14. The parties agree that any settlement reached by the participants at this mediation is final, and that, in reaching a settlement, the participants are entering into a legally enforceable contract. The parties understand and agree that there is legal exposure in the event that one side does not honour the contract but instead breaches it. That said, the parties are encouraged and expected to honour, as a contract between the parties, any settlement agreement reached at this mediation.
15. The parties agree that any of them may choose to terminate this mediation at any time, for any reason, and, upon deciding to terminate the mediation before it is concluded, the party requesting the termination shall notify the mediator in private, explaining the reasons for wanting to terminate the mediation. Should this mediation be terminated before completion, then the parties nonetheless agree to pay in full, without reduction, the mediator's fee in accordance with the Fee Schedule appearing below at Paragraph 21.
16. At the conclusion of this mediation, the mediator will report on the outcome of this mediation, identifying whether the issues in dispute have resolved, whether entirely or in part, or whether the issues have not been resolved.
17. Except for any document confirming agreement arising out of this mediation, e.g., a Memorandum of Understanding, Minutes of Settlement, or a Full and Final Release, all oral and written communications throughout this mediation process are on a confidential and "without prejudice" basis, meaning that they are not to be used, or admitted into evidence, in any subsequent legal or administrative proceedings, unless with the express consent of all parties, including the mediator, or otherwise as required by law.
18. The mediator, or anyone under the mediator's employ, may not give evidence, or be summonsed as a witness, or be required to produce any notes or records relating to this mediation, at any subsequent proceedings involving the parties.
19. The parties understand and agree that all documents prepared by the mediator, including any Memorandum of Understanding, Minutes of Settlement, or a Full and Final Release, are prepared strictly on the basis of the parties' undertaking to obtain legal advice on such draft documents before signing and relying on them.
20. The mediator shall not be liable to any party for any act or omission relating to the mediation conducted under this agreement.

21. Unless the mediation relates to a motor vehicle accident and was requested under 258.6(1) of the *Insurance Act* of Ontario, in which case the mediator's fee is borne by the defending insurer(s), then the parties agree upon the mediator's fee in accordance with the following Fee Schedule, and that the mediator's fee shall be shared equally between them, with each side paying their proportionate share at the end of the mediation, unless the parties agree in advance, or one party agrees at the end of the mediation, to pay the mediation fee in its entirety, including the half share of the other side(s):

### FEE SCHEDULE

FEE TYPE	TIME	RATE
<b>½ DAY</b>	<b>3 hours</b> for mediation (plus up to one hour preparation), and, if applicable, preparation, filing and circulation of Mediator's Report, and preparation and circulation of Minutes of Settlement	<b>\$1,600.00</b> , plus disbursements (travel-related charges, room accommodation and food and beverage, if applicable), plus HST
<b>FULL DAY</b>	<b>7 hours</b> for mediation (plus up to one hour preparation), and, if applicable, preparation and circulation of Minutes of Settlement, and preparation, filing and circulation of Mediator's Report	<b>\$3,600.00</b> , plus disbursements and HST
<b>ADDITIONAL TIME</b> beyond mediation type booked (including additional preparation time beyond 1 hour), if mediation runs longer than allotted time, or for subsequent mediation efforts, if requested by the parties	<b>Additional hourly basis, not reducible to fractions of the hour, and rounded up to the hour</b>	<b>\$400.00</b> per hour, plus HST
<b>CANCELLATION</b>		<b>\$850.00</b> , plus disbursements incurred (if applicable) plus HST, billed to the late cancelling party
<b>LATE RESCHEDULING</b>		<b>\$400.00</b> , plus disbursements (if applicable) plus HST, billed to the late rescheduling party

22. If the mediation session is scheduled for a ½ day but not concluded within 3 hours, the mediation may continue at an hourly rate of **\$400.00**, plus HST, but, if the mediation runs longer than 2 extra hours, i.e., mediation duration 5 hours or more in total, the mediation shall be treated as a full day mediation and charged at the full day rate, plus any additional time beyond 7 hours, if and as applicable.

- 23. If, after commencement, the mediation is adjourned for resumption at a later date, the mediation will ultimately be billed as if it is one mediation, based on the cumulative time expended, and not as 2 separately requested mediations, although billing may be done consecutively.
- 24. For mediations proceeding in person, as opposed to virtually, travel time spent to and from the mediation is not included in preparation and attendance time, but rather, travel time is billed additionally, yet at a reduced (50%) hourly rate of **\$200.00**, rounded up to the hour.
- 25. In the absence of any objections voiced by the parties or their representatives at the outset, then, once the mediation has commenced, the terms of this agreement shall govern, binding upon all involved.
- 26. Subject to Paragraph 21 above, all parties share the cost of the mediation session, and each party is required to pay an equal share of the mediator's fees. Parties pay mediators directly for their services. However, under Rule 75.1 of the *Rules of Civil Procedure*, the court may order a different allocation of the fees.

DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
PLAINTIFF'S LAWYER

\_\_\_\_\_  
DEFENDANT'S INSURER REPRESENTATIVE  
Please Print Name Below:

\_\_\_\_\_  
DEFENDANT'S LAWYER

\_\_\_\_\_

\_\_\_\_\_  
DEFENDANT'S INSURER REPRESENTATIVE  
Please Print Name Below:

\_\_\_\_\_  
DEFENDANT'S LAWYER

\_\_\_\_\_

\_\_\_\_\_  
T. H. PERCIVAL (Mediator)



THIS CERTIFIES THAT

**Thomas Percival**

has successfully completed the required professional  
development training courses and is awarded this

CERTIFICATE OF COMPLETION

**Mediation for Professionals**

Dated this 16<sup>th</sup> day of August, 2019

*E. Pomeroy*  
Registrar



*[Signature]*  
Academic Dean