

THIS IS AN [INTERIM] SEPARATION AGREEMENT DATED¹

Between

Dick
(Dick)

AND

Jane
(Jane)

1. Background

- 1.1 Dick and Jane were married [or began cohabiting] on [date].
- 1.2 They separated on [date]. The parties will continue living separate and apart.
- 1.3 Dick and Jane have two children, [names and dates of birth].
- 1.4 *Potential Alternatives:*
- (a) Currently, Dick and Jane live separate and apart in the matrimonial home, municipally located at [address] (the “matrimonial home”).
 - (b) Currently, Dick and Jane have a “nesting” arrangement with respect to the care of their children. On a weekly basis, they rotate in and out of the matrimonial home, municipally located at [address] (the “matrimonial home”).
 - (c) Dick and Jane have lived in separate accommodation since [date].
- 1.5 Dick is employed as [title/job description] by [specify employer] and ordinarily earns an annual income of approximately \$[amount].
- 1.6 Jane is self-employed as [title/job description] and ordinarily earns an annual [net/gross] income of approximately \$[amount].
- 1.7 On March 17, 2020, the Province of Ontario declared a state of emergency to help contain the spread of COVID-19. The state of emergency is currently extended to May 12, 2020. The consequences of COVID-19, including their significance and duration, are unknown and cannot be anticipated.

¹ Prepared by Maxine M. Kerr, *Family Law & Mediation*

- 1.8 Effective [date], Dick's employer placed Dick on a temporary layoff. The goal is for Dick to return to work once COVID-19 conditions ease and the economy begins moving forward. During the temporary layoff, Dick's only income is the Canada Emergency Response Benefit ("CERB"), a taxable benefit of \$2,000 every 4 weeks for up to 16 weeks.
- 1.9 Jane's business has been ordered closed since [date]. Her year to date revenues are significantly reduced. Jane's business has applied for and has received various supports made available by the Government of Canada as part of its COVID-19 Economic Response Plan.
- 1.10 Using the most current information available, neither Dick nor Jane can reliably estimate his or her current income.
- 1.11 The children's schools have been closed since March 14, 2020. To stop the spread of COVID-19, they will remain closed until at least May 31, 2020. [Both Dick and Jane are assisting the children in learning at home. / The children are learning at home.]
- 1.12 *Potential Alternatives:*
- (a) Dick and Jane are in the process of negotiating a final settlement of all issues between them and agree to continue their negotiations. Those negotiations have been ongoing for a lengthy period of time, with the assistance of counsel [and experts] [and attendance at mediation with [name] on [dates]].
- (b) Dick and Jane negotiated a final settlement of all issues between them prior to the COVID-19 disruptions. Those negotiations took place over a lengthy period of time, with the assistance of counsel [and experts] [and attendance at mediation with [name] on [dates]]. [The final settlement is reflected in a binding Memorandum of Agreement dated [date], signed by the parties, a copy of which is attached to this Agreement at Schedule "A". This Agreement gives effect to the binding terms of settlement already agreed upon.]²
- 1.13 COVID-19 has caused the suspension of regular Superior Court of Justice operations at this time, save for the hearing of limited urgent matters, as set out in the Notice to the Profession dated March 15, 2020, as updated from time to time. During this temporary suspension of regular operations, the Court has called upon the cooperation of counsel and parties to engage in every effort to resolve matters.

² Counsel will need to canvas with their clients whether the terms continue to be appropriate, in light of the COVID-19 impact—according to an article in the April 28, 2020 edition of the *Globe and Mail*, a Reuters poll of economists shows that the Canadian economy is likely in its deepest recession on record.

1.14 *Potential Alternatives:*

- (a) In these circumstances, the parties agree to be bound by this temporary, wholly without prejudice agreement, with respect to the issues of [REDACTED], the purpose of which is to get them through the COVID-19 emergency.
- (b) The parties agree to be bound by this Agreement which settles all issues between them.

1.15 All background statements of fact form part of this Agreement. Each of the parties warrants that the background statements are true and acknowledges that the other party is relying on them.

2. Parenting Schedule³

2.1 Commencing _____, Dick and Jane will have a temporary “week on, week off” parenting schedule in respect of their children, with transitions to occur Sunday at 7:00 p.m.. The children will be in Dick’s care in the first week and in Jane’s care in the second week, and will alternate thereafter.

3. General Terms [Interim Agreement]

3.1 This Agreement ends on the earliest of the following to occur:

- (a) the date that the parties enter into a final separation agreement, minutes of settlement, order of the court or arbitral award;
- (b) the date regular Superior Court of Justice operations resume, even if the manner in which operations resume is different than prior to March 15, 2020; or
- (c) upon Dick or Jane providing [number] days' written notice.

3.2 This interim agreement is wholly without prejudice to any rights or claims of the parties.

3.3 This interim agreement is confidential and may not be disclosed by either party in any court proceeding or alternative dispute resolution process.⁴

3.4 Dick and Jane have both had independent legal advice, Dick from [lawyer name] and Jane from [lawyer name].

³ Appropriate terms to be addressed might include the kinds of Orders listed at Rule 17(8)(b.1) of the *Family Law Rules*, as well as structured occupation of a matrimonial home and routine parenting issues, such as scheduling. The focus is on facilitating the preservation of the rights of the parties until a further agreement or decision can be made on a full evidentiary record according to an unimpeachable process.

⁴ This may not be realistic. For example, the status quo may be relevant to the best interests analysis at the time of any hearing.

- 3.5 Each of the parties acknowledges that:
- (a) this Agreement is entered into in circumstances where there has not been and cannot be a complete inquiry into all aspects and details relevant to the issues;
 - (b) he / she understands his / her respective rights and obligations under this Agreement and its nature and consequences⁵;
 - (c) this Agreement is fair and reasonable;
 - (d) they are not under any undue influence or duress⁶; and
 - (e) they both are signing voluntarily⁷.

⁵ S. 56(4)(b) of the *Family Law Act* language. In light of current circumstances, including with respect to parties' own information (whether the dust has settled, and what does it mean if it has), the ability to meaningfully investigate and test information and constraints on procedural safeguards, the nature and the consequences of the Agreement should be straightforward so that it actually can be understood.

⁶ This may be challenging to assess without the benefit of in-person meetings in which a client is free of her home environment and observed over a period of time.

⁷ See No. 6.

TO EVIDENCE THEIR AGREEMENT DICK AND JANE HAVE SIGNED THIS AGREEMENT BEFORE A WITNESS.

DATE:

Witness

Dick

DATE:

Witness

Jane

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, [full name], of the City of [Name] in the Municipality of [Name], Barrister and Solicitor, certify that I was consulted by Dick, one of the parties to the attached Interim Separation Agreement with respect to his rights and obligations under this Agreement.

I acted only for Dick. I explained to him virtually the nature and effect of the Agreement. Dick acknowledged virtually that he understood the nature and effect of the Agreement. Dick executed the Agreement in front of me virtually [and confirmed that he was entering into the Agreement of his own volition without any fear, threats, compulsion or influence by Jane or any other person.]⁸

Dated at [city] this [date]:

[full name]

⁸ See Note 6.

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, [full name], of the City of [Name] in the Municipality of [Name], Barrister and Solicitor, certify that I was consulted by Jane, one of the parties to the attached Interim Separation Agreement with respect to her rights and obligations under this Agreement.

I acted only for Jane. I explained to her virtually the nature and effect of the Agreement. Jane acknowledged virtually that she understood the nature and effect of the Agreement. Jane executed the Agreement in front of me virtually and confirmed that she was entering into the Agreement of her own volition without any fear, threats, compulsion or influence by Dick or any other person⁹.

Dated at [city] this [date]:

[full name]

⁹ See Note 6.

DATED:

Between:

Dick

and

Jane

INTERIM SEPARATION AGREEMENT
