

Superior Court of Justice, Family Court

(Name of court)

at **161 Elgin Street, Ottawa ON K2P 2K1**

(Court office address)

**Form 17A:
Case Conference Brief -
General**

Name of party filing this brief

Date of case conference

Applicant(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Any Mayer**Victor Ages Vallance LLP****112 Lisgar Street****Ottawa, ON K2P 0C2****Tel: 613-238-8953****Fax: 613-238-8949****AMayer@vavlawyers.com****Respondent(s)**

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

PART 1: FAMILY FACTS

1. **APPLICANT:** Age: 34 Birthdate: (d, m, y) 15 [REDACTED]
2. **RESPONDENT:** Age: 33 Birthdate: (d, m, y) 10 [REDACTED]
3. **RELATIONSHIP DATES:**
- ☐ Married on (date) _____
- ☒ Separated on (date) September 2012
- ☒ Started living together on (date) October 2007
- ☐ Never lived together
- ☐ Other (Explain.) _____

4. The basic information about the child(ren) is as follows:

Child's full legal name	Birthdate (d, m, y)	Grade/Year and School	Now living with
[REDACTED]	February 18, 2001	Grade 9 – Russell Public High School	Applicant
[REDACTED]	February 2, 2008	Grade 2 - Russell Public Elementary School	Applicant

PART 2: THE ISSUES5. What are the issues in this case that **HAVE** been settled:

- | | | |
|--|--|--|
| <input type="checkbox"/> child custody | <input type="checkbox"/> spousal support | <input type="checkbox"/> possession of home |
| <input type="checkbox"/> Access | <input checked="" type="checkbox"/> child support (table amount) | <input type="checkbox"/> equalization of net family property |
| <input type="checkbox"/> restraining order | <input type="checkbox"/> ownership of property | |
| <input type="checkbox"/> other (Specify.) | | |

6. What are the issues in this case that have **NOT** yet been settled:

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> child custody | <input type="checkbox"/> spousal support | <input type="checkbox"/> possession of home |
| <input checked="" type="checkbox"/> Access | <input checked="" type="checkbox"/> child support (section 7 expenses) | <input type="checkbox"/> equalization of net family property
(Attach Net Family Property Statement,
Form 13B) |
| <input type="checkbox"/> restraining order | <input type="checkbox"/> ownership of property | |
| <input checked="" type="checkbox"/> other (Specify.) | | |

Change of name 

7. If child or spousal support is an issue, give the income of the parties:

Applicant: \$60,698 per year for the year 2014
 Respondent: \$43,617 per year for the year 2014

8. Have you explored any ways to settle the issues that are still in dispute in this case?

- ☐ No. ☒ Yes. (Give details.)

Negotiations between the parties and via their counsel have been unsuccessful to date.

9. Have any of the issues that have been settled turned into a court order or a written agreement?

- ☒ No.
☐ Yes. ☐ an order dated
☐ a written agreement that is attached.

10. Have the parents attended a family law or parenting education session?

- ☒ No. (Should they attend one?)
☐ Yes. (Give details.)

PART 3: ISSUES FOR THIS CASE CONFERENCE

11. What are the issues for this case conference? What are the important facts for this case conference?

ISSUES FOR THIS CASE CONFERENCE:

1. Custody and Access;
2. Child support (ongoing and retroactive); and
3. Apportionment of section 7 expenses

IMPORTANT FACTS FOR THIS CASE CONFERENCE:**Background**

1. The parties began cohabiting in October 2007. They separated in September 2012.
2. There is one child of the relationship, namely, [REDACTED] ("Amber"), [REDACTED] (currently 7 years old).
3. Janine has an older daughter from a previous relationship, namely, [REDACTED] ("Devon"), born February 18, 2001 (currently 14 years of age). Devon does not have any relationship with her biological father. He has never contributed to her financial needs.
4. Devon was 5 years old when the parties began dating. Phil quickly adopted a parental role towards Devon. Phil is the only father figure Devon has even known.
5. In her Answer, Janine acknowledges that following Amber's birth in February 2008, she became overwhelmed with the responsibility of caring for Amber and Devon full time. This prompted Phil to start a home business. He began working from home in March 2008 in order to provide full time care to Amber during the day as well as care for Devon before and after school. From that point on, he took on all parental responsibilities for both children and Janine returned to work.
6. Phil organized his business and work schedule to maximize his time with the children. He was only required to be on-site for his job 1-2 days per week for approximately 3 months out of the year. Otherwise, he stayed at home and was the full time caregiver. The majority of his work consisted of writing audits, which was primarily done at night after the children went to bed.
7. Janine was not able or willing to care for the children. Janine has a history of mental illness. In her Answer, she states that she is currently suffering from depression and anxiety for which she has been prescribed medication. Janine's mental health issues are concerning. In 2006, Janine tried to commit suicide by overdosing on medication while she was home alone with Devon. Devon was 5 years old at that time.
8. Following the parties' separation in September 2012, Janine moved out of the family residence. She left both children in Phil's care.
9. Janine never returned to the family residence to reclaim the children. Both children have been residing with Phil on a full time basis since September 2012.
10. There is no Court Order or signed agreement between the parties confirming the parenting arrangements for the children. An Order confirming Phil's parental authority is required to allow him to continue acting in the best interests of the children. This documentation is particularly necessary for Devon who is not Phil's biological child.

Parenting Arrangements Post Separation

11. Since Janine left the family residence in 2012, she voluntarily limited her involvement in the children's lives.

12. Her access schedule has been as follows:

a) Week 1:

- On Tuesday evening from 5:30 p.m. until 8:30 p.m.; and
- On Friday from 5:30 p.m. until Sunday at 12:00 p.m.

b) Week 2:

- On Tuesday evening from 5:30 p.m. until 8:30 p.m.;
- On Thursday from 5:30 p.m. until 8:30 p.m.; and
- On Saturday from 12:00 p.m. until Sunday at 12:00 p.m.

13. Janine rarely exercised her full access pursuant to the schedule above. Up until the commencement of this action, Janine regularly canceled her Tuesday access and rarely exercised her access on alternating Thursdays. She would not provide any notice or explanation for her failure to attend, which was disruptive to the children's schedule. The children would get ready for visits with their mother not knowing whether or not she would show up.

14. On November 1, 2012, Phil and the children moved out of the family residence, which was located in the West end of Ottawa. They relocated to Orleans.

15. Janine was fully involved in all aspects of their relocation to Orleans and was supportive of the new living arrangements. Janine accompanied Phil and the children to view the new condominium and to tour the high school, the elementary school, and the daycare facility. The reason for this move was due to the fact that it was not possible for either parties to pick up the children from their child-care provider on time due to rush-hour traffic. The parties were in agreement that moving to Orleans was the best arrangement.

16. Devon was 12 years old at the time of the relocation to Orleans. She was asked whether she wanted to stay in the West end with Janine or move to Orleans with Phil and Amber. She was adamant about staying with Phil.

17. In January 2013, Phil began a relationship with a new partner, Melissa. Phil and Melissa were married on August 16, 2014. Together they have one child, Bree Hogel ("Bree"), born October 16, 2013 (currently 2 years of age).

18. In the fall of 2013, Phil moved with the children and Melissa to Russell, Ontario. Prior to this relocation, Devon was asked once again whether she preferred to stay in Ottawa with her mother or move to Russell with Phil and Amber. Devon was adamant in her preference to continue residing with Phil on a full time basis. Janine consented to the relocation, which was to the benefit of the children. The home in Russell offered more amenities for the children, including separate rooms, a big yard and a swimming pool at a similar cost to the condo in Orleans.

19. Devon and Amber have been attending school in Russell since September 2013. They are both involved in extracurricular activities and have many friends in Russell.

20. Janine never raised any concerns about Phil's relocation with the children to either Orleans or Russell. Up until the commencement of this action, Janine never expressed any desire for more time with the children. To the contrary, she declined to care for the children when Phil

offered her additional time on long weekends, school breaks and holidays. She was content to exercise sporadic access when it was convenient to her.

21. Phil has provided the children with a stable and secure home environment. Since 2012, Phil has been responsible for all of the children's educational, medical and social needs. He has attended to all parent-teacher meetings, has taken the children to their medical appointments and extracurricular activities. Phil coached Amber's community basketball and coached basketball at Devon's High School. He has also been responsible for birthday celebrations and holidays and has taken the children on family vacations. He is the only parent who has taken time off from work to care for the children when they are sick. Janine has had no involvement in these aspects of the children's lives.
22. Up until the commencement of this action, Phil has attempted to facilitate Janine's access to the children in Russell by allowing her the use of a basement suite in his home to exercise her Tuesday and Thursday access. He even permitted Janine to use his kitchen to prepare meals for the children. Despite these amenities, Janine continued to regularly cancel her visits with the children.
23. Similarly, Phil has maintained Janine informed in regard to the children's activities, medical appointments and school events via a shared Google Calendar. Despite this sharing of information, Janine never attended the children's medical appointments. She attended to Amber's medical needs only once after Amber bumped her head while she was in her care and had to be taken to the ER. Janine never attended a parent-teacher meeting or school events. She never took time off to care for the children when they were sick or off school. The only activities Janine has ever attended are those that coincided with her scheduled access.

Janine's Change of Position in the Course of this Litigation

24. In March 2015, Phil retained counsel to prepare a separation agreement at his own costs, confirming the parenting arrangements. Janine stopped responding to Phil's counsel after a request was made that she starts paying child support. Janine had never paid child support until that time.
25. Phil did not have any other option but to commence these Court proceedings in May 2015.
26. Janine did not serve her Answer until August 2015. Before the service of this document, Janine moved to Russell. She also started paying child support, which she had refused to do up until that point in time.
27. In her Answer, Janine is seeking a change of the parenting schedule to a 50-50 arrangement. She alleges that she never agreed to the status quo, which she claims was imposed by Phil. This allegation is fervently denied.
28. Since her relocation to Russell, Janine has made a point of exercising most of her scheduled access. She regularly leaves the children in the care of third parties when she is unable to care for them herself, rather than leaving the children at home with Phil. She has even been refusing that the children attend special events (such as friends' birthday parties) when these events coincide with her scheduled access.

Best Interests of the Children

29. It is in the children's best interests to remain in Phil's primary care. Phil has established a history of excellent standard of care to the children. Devon and Amber are well adjusted to the current arrangements.
30. While Devon is not Phil's biological child, they share a strong bond. Phil has been acting as a parent to Devon since she was five years old. Phil has been a constant presence in her life. He refers to Devon as his daughter and treats her in the same loving manner as his other children.
31. Devon is deeply attached to Phil. She looks up to him and relies on him for guidance, love and affection. She also depends on him for her day-to-day care. Devon was consulted with respect to her preferred living arrangements both prior to the move to Orleans (age 12) and prior to the move to Russell (age 13). On both occasions, she indicated her strong preference to live with Phil.
32. Devon continues to express her preference to reside with Phil, Melissa and her sisters. She has never expressed an interest for increased visitation with Janine. This is due to Devon becoming accustomed to the loving, structured family environment in Phil's home.
33. Phil shares the same special relationship with Amber. He became a stay at home parent one month following her birth and has remained her primary caregiver since that time.
34. Devon and Amber also have a close relationship with Melissa and their younger sister Bree. Together they form a tight family unit. Both Devon and Amber are devoted big sisters to Bree. Bree misses Devon and Amber when they are in Janine's care.
35. Phil disagrees that increasing Janine's time with the children would be in their best interests and questions Janine's timing in seeking a 50/50 shared parenting schedule only now that he has sought child support. Janine has never shown an interest in having increased time with the children before.
36. Dating back to the separation, it has been a difficult task to ensure that the children spend time with Janine. The children do not look forward to the visits despite being encouraged by Phil and Melissa to enjoy this time with their mother. Amber will, at times, hide when Janine arrives to pick her up. Devon often delays leaving for the visit to the extent that Janine has shown great frustration with her and even chose to leave without her on one recent occasion. Devon rarely spends the full weekend with Janine on her scheduled parenting time, choosing instead to stay at friends' houses or to babysit. Janine does not have any issue with Devon cancelling their access. The children's efforts to avoid visits have worsened since Janine moved to Russell.
37. Janine does not maintain a routine at her home (with respect to activities and bedtime), which has led to Amber being exhausted after her visits with her. It has been an ongoing issue that they are dropped off far past Amber's regular bedtime on many occasions since Janine moved to Russell. This disruption to Amber's scheduled sleeping time has had effect on Amber's demeanour and energy levels resulting in Phil having to take additional time off work to let her recuperate.
38. Furthermore, in hopes that Amber will want to spend more time with her, Janine has been buying her toys and presents every weekend. It was requested by Phil and Melissa that this

be stopped as it has had effect on Amber, changing her from being an open, sharing youth to becoming more selfish and greedy which confuses her sister Bree and interferes with their relationship. Janine has made no such effort with Devon.

39. Janine lets Amber eat as much junk food and candy as Amber wants to the point where Amber has gained approximately 10 pounds since Janine moved to Russell and started exercising her full access. She has also started having night terrors again leading to reduced sleep and amplified stress. She verbally attributes these night terrors to events and time spent at Janine's house.
40. More concerning, Janine has started involving Amber in adult conflicts. Janine continually attacks Melissa's character and relationship with Amber as her step mother. Janine has told Amber that it hurts her to hear Amber call Melissa "Mother" or when she runs to give her hugs after her access and in Janine's presence. Janine's conduct has been very confusing and upsetting to Amber who is a very sensitive child.
41. Phil has been the primary caregiver of the children since Amber's birth in 2008. It is in the children's best interests that this status quo continues. Phil has maintained a balanced schedule for the children including homework, extra-curricular activities, social events, down time, and morning/evening routines. The children have thrived in this environment and it is Phil's position that this stable routine should be maintained, in particular during the school week.
42. Phil was not aware that Janine is currently taking medication for depression and anxiety. This is concerning to Phil given that Janine has suffered from severe depression in the past leading to a suicide attempt while Devon was in her care. Disclosure of Janine's medical condition is required, including particulars of her formal and current diagnosis and treatment.
43. On the above basis, Phil is seeking an Order granting him sole custody of Devon and Amber. In the alternative, an Order for joint custody with final power of decision making to him when the parties are unable to reach an agreement in regard to important decisions related to the children.
44. Phil is further seeking an order for primary residence of the children with access to Janine in accordance with the current parenting schedule, which has been in place since separation.
45. It is Phil's position that an appointment of the Office of the Children's Lawyer is unnecessary in the circumstances. The children have made their preferences clear and there is a long-standing status quo of Phil being the primary caregiver. Janine was satisfied with this arrangement until Phil commenced these Court proceedings, which include a claim for child support.

Child Support

46. The Applicant is also seeking an Order confirming the child support obligations between them in accordance with the *Child Support Guidelines*, including the apportionment of the children's special and extraordinary expenses, retroactive to the date of separation.
47. Janine has consistently refused to pay basic child support for Devon and Amber until she was served with this Court application. To this day, she has refused to redirect the Universal Child Care Benefit, which she continues to receive on behalf of Devon and Amber.

48. In August 2015, Janine started paying basic child support for Devon and Amber in the amount of \$629.00 per month, based on her 2014 income of \$43,617.00.
49. Although Phil is pleased that Janine has commenced paying child support, he notes that she showed no willingness to do so until after the Court application was commenced. The financial statement filed by Janine with her Answer confirms that she had significant savings and had the ability to pay child support when she was refusing to do so.
50. Despite her favourable financial circumstances, Janine continues to resist contributing to the children's section 7 expenses. She continues to reimburse Phil her share of Amber's daycare costs late every month and only after repeated requests from Phil. As it relates to the children's extracurricular activities, Janine consistently ignores Phil's requests for her consent before the expenses are incurred. Her approach is to ignore Phil's requests until the expiration of the date of payment. She then refuses to pay her share to Phil on the basis that she did not provide consent. Janine has taken this position in regard to reasonable expenses for activities in which the children have been involved for years, including soccer during the summer and basketball during the school year. She also consistently pays her portion of the daycare expenses late each month.
51. More recently, Devon has been invited to participate in a school "Sevec" exchange trip in Edmonton. The total cost of this trip is \$650.00. To date, Janine has ignored Phil's repeated requests for her consent until two weeks after the date to enroll Devon had expired. When Phil insisted for a response, Janine refused to provide consent on the basis that she does not have the financial means to contribute to Devon's trip. Her financial statement indicates otherwise. There is no reason for Devon to miss this opportunity other than the fact that Janine is not interested in supporting Devon. She has never shown any interest in that regard. As a result of Janine's delay, Devon is no longer eligible for the trip. Had Janine let Phil know in good time he could have found a way to cover the expense as per usual.
52. Janine consistently refuses to communicate with Phil in a timely manner on issues and requests concerning the children, particularly in regard to the section 7 expenses. Phil has on multiple occasions requested a prompt response to emails to come to a resolution of the expenses within the available timeframe. Janine's delays have caused the children to miss opportunities. They have also consistently put Phil in a difficult financial position having to cover both portions of the costs so that the children do not miss out.

Name Change Request

53. Phil is also seeking an Order adding his last name [REDACTED] to Amber's surname. Phil initially agreed to Amber having Janine's last name ([REDACTED]), as a tribute to her father who passed away when she was pregnant with Amber. However, Amber is referred to by the surname [REDACTED] at both school and daycare. The addition of [REDACTED] to her last name will also allow Amber to share a partial last name with her younger sister, Bree.
54. With respect to Devon, it is Phil's position that she is old enough to decide whether she would like to change her name.

12. What is your proposal to resolve these issues?

1. An Order granting the Applicant sole custody of [REDACTED] born [REDACTED] and [REDACTED] born [REDACTED]. In the alternative, a joint custody Order with final power of decision making to the Applicant.
2. An Order granting the Applicant primary care of the two children with access to the Respondent as per the status quo.
3. An Order confirming the Respondent's child support obligation to both children, in accordance with the *Child Support Guidelines* and based on the Respondent's income, retroactive to the date of separation.
4. An Order apportioning the children's section 7 expenses between the parties in proportion to their respective incomes.
5. An Order changing the name of the child [REDACTED] to [REDACTED]

13. Do you want the court to make a temporary or final order at the case conference about any of these issues?

☒ No.☐ Yes. (Give details.)**PART 4: FINANCIAL INFORMATION**

NOTE: - If a claim for support has been made in this case, you must serve and file a new Financial Statement (Form 13 or 13.1), if it is different from the one filed in the continuing record or if the one in the continuing record is more than 30 days old. If there are minor changes but no major changes in your financial statement, you can serve and file an affidavit with details of the changes instead of a new financial statement. If you have not yet filed a financial statement in the continuing record, you must do it now. The page/tab number of the financial statement in the continuing record is Vol. 1/Tab 3

14. If a claim is being made for child support and a claim is made for special expenses under the Child Support Guidelines, give details of those expenses or attach additional information.

Daycare expenses, soccer, basketball, school trips

15. If a claim is made for child support and you claim that the Child Support Guidelines table amount should not be ordered, briefly outline the reasons here or attach an additional page.

PART 5: PROCEDURAL ISSUES

16. If custody or access issues are not yet settled:

(a) Is a custody or access assessment needed?

☒ No.☐ Yes. (Give names of possible assessors.)

(b) Does a child or a parent under 18 years of age need legal representation from the Office of the Children's Lawyer?

☒ No.☐ Yes. (Give details and reasons.)

17. Does any party need an order for the disclosure of documents, the questioning of witnesses, a property valuation or any other matter in this case?

☐ No.☒ Yes. (Give details.)

1. An Order requiring the Respondent to provide the following disclosure within the next 30 days:
- a) 2013 Notice of Assessment and 3 most recent pay stubs.
 - b) Medical records confirming the nature of her mental health issues, her past and current diagnoses and treatment.

2. An Order requiring the Respondent to attend for questioning.

18. Are any other procedural orders needed?

☒ No. ☐ Yes. (Give details.)

19. Have all the persons who should be parties in this case been added as parties?

☒ Yes. ☐ No. (Who needs to be added?)

20. Are there issues that may require expert evidence or a report?

☒ No. ☐ Yes. (If yes, provide details such as: the type of expert evidence; whether the parties will be retaining a joint expert; who the expert will be; who will be paying the expert; how long it will take to obtain a report, etc.)

21. Are there any other issues that should be reviewed at the case conference?

☒ No. ☐ Yes. (Give details.)

Date of party's signature

Signature of party

Date of lawyer's signature

Signature of party's lawyer