

ONTARIO
Superior Court of Justice Family Branch
(Name of Court)

Court File Number
FC-15-2492

at **161 Elgin Street, Ottawa, Ontario, K2P 2K1**
(Court office address)

Form 10: Answer

Applicant(s)

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

**Darryl Ross
328 Dunlin Ridge
Ottawa, Ontario
K2J 0E3**

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, Ontario
K2P 0C2

Tel: 613-233-7000
Fax: 613-238-8949
Email: 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).

**Cynthia Holmes
925 Caldermill Pvt
Ottawa, Ontario
K2J 0Z8**

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

**Alison Boyce
Delaney's Law Firm, Professional Corporation
543 Somerset Street West
Ottawa, Ontario
K1R 5J9

Tel: 613-233-7000
Fax: 1-866-846-4191
Email: alison@delaneys.ca**

BOX #355

Name & address of Children's Lawyer's agent for service (street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any)) and name of person represented.

INSTRUCTIONS: Financial Statement

COMPLETE A FINANCIAL STATEMENT (Form 13) IF:

- you are making or responding to a claim for spousal support; or
- you are responding to a claim for child support; or
- you are making a claim for child support in an amount different from the table amount specified under the Child Support Guidelines.

You must complete all parts of the form **UNLESS** you are **ONLY** responding to a claim for child support in the table amount specified under the Child Support Guidelines **AND** you agree with the claim. In that case, only complete Parts 1, 2 and 3.

COMPLETE A FINANCIAL STATEMENT (Form 13.1) IF:

- you are making or responding to a claim for property or exclusive possession of the matrimonial home and its contents; or
- you are making or responding to a claim for property or exclusive possession of the matrimonial home and its contents together with other claims for relief.

TO THE APPLICANTS:

If you are making a claim against someone who is not an applicant, insert the person's name and address here.

AND TO: (full legal name) _____ an added respondent,
of (address of added party) _____

My name is (full legal name) Cynthia Holmes

1. I agree with the following claim(s) made by the applicant: *(Refer to the numbers alongside the boxes on page 3 of the application form.)*
00, 50

2. I do not agree with the following claim(s) made by the applicant: *(Again, refer to the numbers alongside the boxes on page 3 of the application form.)*
04, 05, 30

3. ☐ I am asking that the applicant's claim (except for the parts with which I agree) be dismissed with costs.

4. ☒ I am making a claim of my own. *(Attach a "Claim by Respondent" page. Otherwise do not attach it.)*

5. ☒ The FAMILY HISTORY, as set out in the application,
☐ is correct ☒ is not correct

(If it is not correct, attach your own FAMILY HISTORY page and underline those parts that are different from the applicant's version.)

6. The important facts that form the legal basis for my position in paragraph 2 are as follows: *(In numbered paragraphs, set out the facts for your position.)*

Please refer to section entitled "Important Facts Supporting my Claim(s)" at number 8 of this form.

Put a line through any blank space left on this page

Date of signature

Respondent's signature

CLAIM BY RESPONDENT

Fill out a separate claim page for each person against whom you are making your claim(s).

7. THIS CLAIM IS MADE AGAINST

- ☒ THE APPLICANT
☐ AN ADDED PARTY, whose name is (full legal name)

(If your claim is against an added party, make sure that the person's name appears on page 1 of this form.)

8. I ASK THE COURT FOR THE FOLLOWING:

(Claims below include claims for temporary orders.)

Claims under the <i>Divorce Act</i> (Check boxes in this column only if you are asking for a divorce and your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)	Claims relating to property (Check boxes in this column only if your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)	Claims relating to child protection
00 <input checked="" type="checkbox"/> a divorce	20 <input type="checkbox"/> equalization of net family properties	40 <input type="checkbox"/> access
01 <input type="checkbox"/> support for me	21 <input type="checkbox"/> exclusive possession of matrimonial home	41 <input type="checkbox"/> lesser protection order
02 <input type="checkbox"/> support for child(ren) - table amount	22 <input type="checkbox"/> exclusive possession of contents of matrimonial home	42 <input type="checkbox"/> return of child(ren) to my care
03 <input type="checkbox"/> support for child(ren) - other than table amount	23 <input type="checkbox"/> freezing assets	43 <input type="checkbox"/> place child(ren) into care of (name)
04 <input checked="" type="checkbox"/> custody of child(ren)	24 <input type="checkbox"/> sale of family property	44 <input type="checkbox"/> children's aid society wardship for months
05 <input checked="" type="checkbox"/> access to child(ren)		45 <input type="checkbox"/> society supervision of my child(ren)
Claims under the <i>Family Law Act</i> or <i>Children's Law Reform Act</i>	Other claims	
10 <input type="checkbox"/> support for me	30 <input checked="" type="checkbox"/> costs	
11 <input type="checkbox"/> support for child(ren) - table amount	31 <input type="checkbox"/> annulment of marriage	
12 <input type="checkbox"/> support for child(ren) - other than table amount	32 <input type="checkbox"/> prejudgment interest	
13 <input checked="" type="checkbox"/> custody of child(ren)		
14 <input checked="" type="checkbox"/> access to child(ren)		
15 <input type="checkbox"/> restraining/non-harassment order		
16 <input type="checkbox"/> indexing spousal support		
17 <input type="checkbox"/> declaration of parentage		
18 <input type="checkbox"/> guardianship over child's property		
50 <input checked="" type="checkbox"/> other (Specify.)		
An Order for a Custody and Access Assessment by a qualified third party assessor.		

Give details of the order that you want the court to make. (Include any amounts of support (if known) and the names of the children for whom support, custody or access is claimed.)

IMPORTANT FACTS SUPPORTING MY CLAIM(S)

(In numbered paragraphs, set out the facts that form the legal basis for your other claim(s).)

OVERVIEW

1. The parties have come to an interim without prejudice agreement with respect to the children (Attached as "**Schedule A**"). The parties shall have joint custody of the children, namely Charlotte Holmes ("Charlotte"), born September 4, 2011 (4 years old) and Alice Holmes ("Alice"), born March 30, 2014 (22 months old). The Respondent requests that this arrangement is ordered by the court on a final basis.
2. It is not in the best interests of the children to primarily reside with the Applicant father ("the Father") nor should he have sole custody. Both parties have been integral in the upbringing of the children and therefore should have joint custody and equal access time in a shared parenting arrangement. Therefore, the Respondent mother ("the Mother") is seeking an Order for joint custody of the children.
3. The parties continue to attempt to work together in the interests of the children and agree on the major issues and decisions that need to be made on behalf of their daughters. Therefore, it is not necessary to designate one parent as the ultimate decision making authority.
4. The parents have also come to an interim arrangement where the parties have equal parenting time and are alternating between a 2/2/3 schedule and a week on/week off schedule. In February 2016, the parties will decide whether the 2/2/3 schedule or the week on week/off schedule is more appropriate on a going forward basis. This agreement demonstrates that the parties are attempting to cooperate to ensure that both parents maximize the time that they spend with the children.
5. The Mother had concerns regarding the Father's behaviour and left the family home in order to be protective of the children. The Mother contacted the Children's Aid Society ("the Society") to conduct an investigation into the family dynamic and the Father's behaviour. The Society has since unofficially confirmed that they would not have any concerns or impose restrictions on the Father's access. Subsequent to the Society's unofficial findings, the Mother has cooperated with the Father to create a shared custody and parenting arrangement on an interim basis.
6. Discussions regarding division of property, spousal support and child support are still ongoing. The parties agree that the matrimonial home must be sold, but it has not yet been listed for sale.

BACKGROUND

7. The parties began cohabitating in February 2010 and were married on November 13, 2010. The parties separated on November 7, 2015 when the mother left the home with the daughters to temporarily reside with her parents.
8. The Mother is a communications officer with Agriculture Canada. She has been in this senior position for approximately eight (8) years. In October 2015 she left on stress leave due to the deterioration of the situation at home. On November 23, 2015, she has returned to work.
9. The Father is a professor at Algonquin College and is currently on sick leave for depression. He intends to return to teaching in January 2016 on a part time basis.
10. The parties' incomes are relatively similar, each earning approximately \$80,000.00 per year. The parties have not exchanged sworn Financial Statements yet.

11. The Mother has two sons from a previous relationship, namely Benjamyn LeClair ("Ben") (12 years old) and Samuel LeClair ("Sam") (9 years old). The Mother has an excellent working relationship with her former partner, Scott LeClair ("Mr. LeClair"). During the separation between the Father and Mother, Mr. LeClair took the sons for an extended period of time to assist the Mother. Mr. LeClair and the Mother have now increased the access schedule to a week on/week off schedule to maximize the amount of time their sons can spend with each parent. The Mother's sons do not have aggressive behavioural issues as alleged by the Father in his Application.
12. The Mother has a strong support system in Ottawa. During the separation, the Mother's parents, her sisters, extended family, friends and my employer have supported her through the transition of the family dynamic.
13. The Mother was temporarily staying with her mother, but has now moved into a rental townhouse in the same area as the matrimonial home. The children can continue to attend the same schools and daycare because the new home is within the same district area. It also minimizes the commute time between the two homes for the parents to exchange the children for access.
14. Charlotte attends junior kindergarten at the French Catholic school Saint Kateri and it is expected that Alice will also attend the same school once she becomes of age.

SEPARATION

15. In November of 2015, the Mother left the home with the children after Ben expressed concerns regarding his safety, the Father admitted to the Mother that he had been secretly recording their conversations in an attempt to obtain evidence for court proceedings and the Mother had concerns with the Father's increasing consumption of alcohol. He would have between four (4) to five (5) drinks per day. The Mother left the home with the children in order to be protective of the children. The Mother had also called and spoken to the Society who also recommended that the Mother leave the children alone with the Father if she had concerns.
16. Towards the end of the marital relationship, the Father had displayed inappropriate behaviour towards the children and the Mother on more than one occasion. The Father's consumption of alcohol had increased and the combination of alcohol and anti-depressant medication made him aggressive, emotionally abusive, insulting and volatile. He is currently under psychiatric care of two psychiatrists and has been since December 2013. Consequently, the Father has been prescribed medication for his "mild-moderate" depression and anxiety, which he has been known to mix with alcohol.
17. For example, in August of 2015 there were two incidents where the Father was behaving strangely around the children after excessively drinking alcohol at events while on anti-depressant medication. As a result of these two incidents, Charlotte claimed the Father bit her and hurt her. The maternal grandmother also told the Mother of other incidents during the summer of 2015 where Charlotte made strange comments, which were concerning and raised suspicion of inappropriate behaviour by the Father.
18. Since August 2015, the situation has deteriorated. The Father is frequently impatient, manipulative, controlling, incoherent and sometimes aggressive when he is under the influence of alcohol and anti-depressants. He frequently disregards the doctor's advice and fails to follow through on the recommended treatment. The Mother raised some of her concerns with the Father at their marriage counselling sessions in the Fall of 2015. The Father's behaviour at home is very different than what he

presents to the psychiatrists. Consequently, the mother removed the children from the home.

19. The Mother had serious ongoing concerns with respect to the children's safety and decided to report her concerns to the appropriate authorities. Out of an abundance of caution and in order to be protective of the children, the Mother notified the Children's Aid Society, the Ottawa Police, and the Children's Hospital of Eastern Ontario ("CHEO") accordingly. The Ottawa Police and CHEO have since completed their investigations, but the Society's investigation has not yet been completed and the report has not been issued.
20. After the Mother left the home with the children, she ensured that the children had daily contact with the Father by telephone or FaceTime. The Mother did not want to remove the Father from the children's lives but wanted to ensure a healthy and safe environment. The Mother was also in contact with Charlotte's teachers and the school principal, dance instructor and Alice's childcare provider to inform them of the separation.
21. Since separation, the parties have been able to negotiate an interim agreement for custody and an access schedule. Discussions regarding division of property and child and spousal support are still ongoing.

CUSTODY AND ACCESS

22. During the time of cohabitation, the Mother and Father divided their parenting roles to handle the day to day life of the family. The Mother would handle preparations for school, household cleaning, Alice's bedtime routine, social and extra curricular activities, while the Father would take care of meals and Charlotte's bedtime routine. The Father was not the primary caregiver as he purports in his Application. At best, the parental responsibilities were shared equally.
23. As the Father was struggling with his depression and anxiety, he frequently complained of being tired and the Mother would complete for the household chores that he should have done. The Mother would frequently take care of the children's bedtime routines when the Father failed to do so. The Mother's parents would frequently provide child care, drive the children to extra curricular activities and medical appointments due to the Father's exhaustion from struggling with depression and anxiety.
24. The parties have always made decisions together regarding the upbringing of the children. Some examples include interviewing and selecting a day care provider for Alice, which school Charlotte would attend in the area, the daughters' religious upbringing, and any major health care decisions.
25. The Mother was responsible for the children's daily grooming and well being. She is involved in the children's bedtime routine, bath time, hair cuts, assisting with homework, disciplining when necessary, organizing extracurricular activities, and medical appointments. The Mother returned to work from maternity leave in March 2015 on a part time basis so she could take care of the children at home on Mondays. She returned to work on a full time basis in November 2015 when Charlotte and Alice began full day school and full day daycare.
26. During the Mother's maternity leave while pregnant with Alice, the Mother kept Charlotte at home and enrolled her in a small part-time French preschool to immerse Charlotte in a French learning environment. The Mother is bilingual and the Father is unilingual in English.
27. Simply stated, the Father's suggestion that he was the primary caregiver is untenable and not supported by the facts.

Interim Without Prejudice Parenting Agreement

28. The parties have agreed to an interim, without prejudice shared parenting arrangement. The parties understand the importance of each parent spending an equal amount of time with the children. Therefore, it is unnecessary and improper to order sole custody to either parent.
29. The Society is still conducting their investigation. The social worker assigned to the file, Ms. Heather Clark, spoke with both parents and the children during the course of her investigation. The Society concluded at a preliminary stage that there were no concerns regarding the father's access with the children. Subsequently, a 2/2/3 access schedule began so the children could spend time with both parents.
30. The parties are currently alternating between a 2/2/3 access schedule and a week on/week off access schedule with one overnight visit on Wednesdays for the other parent. The parties will attempt to determine which schedule is preferable for their family dynamic.
31. Both parties have been looking after the children's daily needs since their birth. The children are well adjusted, healthy and happy. They are involved in edifying activities and have many friends.
32. After the Society's preliminary conclusions, it is in the best interests of the children to maintain the new *status quo* that has been established. The parties should continue to have joint custody and to share equal parenting time with the children. It is also important that the parties continue to make joint decisions regarding the well being of their children.
33. The Mother is seeking a schedule on a week on/week off basis so Charlotte and Alice can be with their half brothers, Ben and Sam, during the same week that the Mother has access with her sons. The siblings have a close relationship with one another and the Mother wishes to ensure that the children spend time together to forge and maintain that bond.
34. If it becomes necessary, the Mother would agree to having a third party assessor conduct a Custody and Access Assessment to determine which schedule and custody arrangement would be in the best interests of Charlotte and Alice.

THE MATRIMONIAL HOME

35. The parties have agreed to list the jointly held matrimonial home for sale. It is not economically feasible for the family to continue to own the home and it should be listed for sale immediately. The parties have agreed to the listing agent. The parties have not yet signed the MLS listing agreement.
36. The proceeds of sale will be divided equally amongst the parties, or they will divide the proceeds in accordance with the equalization payment after an amount is determined.
37. The Father continues to reside in the matrimonial home. The Mother has rented a townhouse in the area so the children can continue to attend the same school and daycare respectively.
38. Since the Mother moved into the rental town home, the Father has been difficult regarding the release of the bedroom furniture, the personal belongings and entertainment system for Ben and Sam. The Mother has organized movers to attempt to pick up items on numerous occasions, but the Father has refused access to the home. On December 8, 2015, after three attempts, the Father released the bedroom

furniture. The Mother has been unable to pick up any valuable items she owns in the home. The Father has put a chain lock on the front door to bar the Mother from entry.

CHILD AND SPOUSAL SUPPORT

39. The parties have agreed on an interim without prejudice basis, neither party will pay child support to the other because of the parties' similar incomes. The parties agree that section seven (7) expenses will be shared, either equally or in proportion to their respective incomes.
40. There is disagreement between the parties with respect to entitlement and quantum of spousal support. The Mother argues that there should not be any spousal support based on the similarity in their incomes. The Father argues that there may be an entitlement to spousal support. At this time, additional information has not been provided, nor has the basis for any entitlement been provided. The parties have not exchanged financial statements and spousal support will be reviewed after receipt of same.

ORDERS SOUGHT

41. The Mother pleads and relies upon the provisions of the *Family Law Act*, the *Children's Law Reform Act*, the *Courts of Justice Act*, the *Divorce Act*, the common law and the law of equity.
42. The Respondent respectfully asks the court to make the following orders:
- An Order granting joint custody to the Mother and Father;
 - An Order granting shared parenting on a week on/week off schedule;
 - An Order for a Custody and Access Assessment by a qualified third party assessor should this Honourable Court deem it to be necessary;
 - An Order for costs on a substantial indemnity basis, plus H.S.T.; and
 - Any other Order for relief as counsel may advise and this Honourable Court may deem just.

Put a line through any blank space left on this page

Anthony Halmeo
~~Date of signature~~

Signature

Dec. 14, 2015
~~Respondent's signature~~

Date

LAWYER'S CERTIFICATE

For divorce cases only

My name is: **Alison Boyce**

and I am the lawyer for (name) **Cynthia Holmes, the Respondent**
in this divorce case. I certify that I have complied with the requirements of section 9 of the *Divorce Act*.

Dec 14, 2015

Date of signature



Signature of Lawyer

1. I agree with the following claim(s) made by the applicant:

Under the Divorce Act

- 00 ☒ a divorce
 01 ☐ support for me
 02 ☐ support for child(ren) – table amount
 03 ☐ support for child(ren) – other than table amount
 04 ☐ custody of child(ren)
 05 ☐ access to child(ren)

Family Law Act or Children's Law Reform Act

- 10 ☐ support for me
 11 ☐ support for child(ren) – table amount
 12 ☐ support for child(ren) – other than table amount
 13 ☐ custody of child(ren)
 14 ☐ access to child(ren)
 15 ☐ restraining/non-harassment order
 16 ☐ indexing spousal support
 17 ☐ declaration of parentage
 18 ☐ guardianship over child's property

Claims relating to property

- 20 ☐ equalization of net family properties
 21 ☐ exclusive possession of matrimonial home
 22 ☐ exclusive possession of contents of matrimonial home
 23 ☐ freezing assets
 24 ☐ sale of family property

Other claims

- 30 ☐ costs
 31 ☐ annulment of marriage
 32 ☐ prejudgment interest

Claims relating to child protection

- 40 ☐ access
 41 ☐ lesser protection order
 42 ☐ return of child(ren) to my care
 43 ☐ place child(ren) into care of (name)
 44 ☐ children's aid society wardship
 45 ☐ society supervision of my child(ren)

- 50 ☒ other

An Order for a Custody and Access Assessment by a qualified third party assessor.

2. I do NOT agree with the following claims made by the applicant:

Under the Divorce Act

- 00 ☐ a divorce
 01 ☐ support for me
 02 ☐ support for child(ren) – table amount
 03 ☐ support for child(ren) – other than table amount
 04 ☒ custody of child(ren)
 05 ☒ access to child(ren)

Family Law Act or Children's Law Reform Act

- 10 ☐ support for me
 11 ☐ support for child(ren) – table amount
 12 ☐ support for child(ren) – other than table amount
 13 ☒ custody of child(ren)
 14 ☒ access to child(ren)
 15 ☐ restraining/non-harassment order
 16 ☐ indexing spousal support
 17 ☐ declaration of parentage
 18 ☐ guardianship over child's property

Claims relating to property

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 22 ☐ exclusive possession of contents of matrimonial home
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Other claims

- 30 ☒ costs
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Claims relating to child protection

- 40 ☐ access
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 42 ☐ return of child(ren) to my care
 43 ☐ place child(ren) into care of (name)
 44 ☐ children's aid society wardship
 45 ☐ society supervision of my child(ren)

- 50 ☐ other

FAMILY HISTORY**APPLICANT:**

Name: Darryl Ross Age: 36 Birthdate: (d, m, y) February 5, 1979
 Resident in (municipality & province) City of Ottawa, Province of Ontario
 since (date) 1984
 Surname at birth: Ward
 Surname just before marriage: Ross
 Divorced before? ☒ No ☐ Yes (Place and date of previous divorce)

RESPONDENT/JOINT APPLICANT:

Name: Cynthia Holmes Age: 38 Birthdate: (d, m, y) March 6, 1977
 Resident in (municipality & province) City of Ottawa, Province of Ontario
 since (date) 2003
 Surname at birth: Holmes
 Surname just before marriage: Holmes
 Divorced before? ☒ No ☐ Yes (Place and date of previous divorce)

RELATIONSHIP DATES:

☒ Married on (date) November 13, 2010 ☒ Started living together on (date) February 2010
☒ Separated on (date) November 7, 2015 ☐ Never lived together ☐ Still living together

THE CHILD(REN): List all children involved in this case, even if no claim is made for these children.

Full legal name	Age	Birthdate	Resident in (municipality & province)	Now Living with (name of person and relationship to child)
Charlotte Olive Holmes	4	September 4, 2011	Ottawa, Ontario	Cynthia Holmes, Mother Darryl Ross, Father
Alice Harriett Holmes	21 mnths	March 30, 2014	Ottawa, Ontario	Cynthia Holmes, Mother Darryl Ross, Father

SCHEDULE A

Dec 2/15

Minutes

1. The parties agree to joint custody on a without prejudice basis.
2. Access shall be on a 2/2/3 split for 2 weeks and ^{1 week} week (on week-off with a mid-week (Wed) overnight visit for 2 weeks. The parties will repeat this schedule until February 1 when the schedule will be ^{revised}.
3. No child support payable by either on ^{revised} a without prejudice basis.
4. Daryl will have access to the children on ^{Wed} Dec 2, 2015 until Monday Dec 7th before school. ^{Friday} the 2/2/3 schedule will start on ~~Friday~~ ~~Monday~~ Dec 7th 4th



Cynthia Holmes
X