

Superior Court of Justice Family Court Branch

(Name of Court)

at **161 Elgin Street, 2nd floor, Ottawa, Ontario K2P 2K1**

(Court office address)

Form 14A: Affidavit (General)
dated March 27, 2018**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).

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
alison@delaneys.ca**Box # 355****My name is**

(Full legal name)

Cynthia Holmes**I live in**

(municipality and province)

City of Ottawa, Province of Ontario**and I swear/affirm that the following is true:**

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

1. I am the Respondent in this matter and as such have knowledge of the matters hereinafter deposed. Where information comes from another person, that person is named and I verily believe that information to be true.

OVERVIEW

2. I am swearing this affidavit to assist the Court at the motion I have brought seeking:
 - a. Ongoing interim child support pursuant to the *Child Support Guidelines* from July 2017;
 - b. Reimbursement for Mr. Ross's portion of section 7 extraordinary expenses;
 - c. An Order for disclosure to be provided by Mr. Ross pursuant to the Orders of Master Fortier dated October 4, 2017 and Master Champagne dated January 19, 2018.

dated March 27, 2018

3. I am also swearing this affidavit in support of my motion for Mr. Ross's breach of two (2) court orders. Despite requests, Mr. Ross has failed to provide any of the disclosure ordered by Master Fortier on October 4, 2017. He has also failed to provide the disclosure and to pay the costs ordered by Master Champagne on January 19, 2018.
4. As a remedy to the breaches, I am asking the court to dispense with Mr. Ross's consent and to allow me to obtain the ordered disclosure directly via directions and authorizations.
5. The children have been living in my care on a full time basis since July 2017.
6. To date, I have not received any child support from Mr. Ross.
7. Mr. Ross has a history of alcohol and prescription drug abuse.
8. Mr. Ross was involved in two car accidents consequent to alcohol or drug abuse post separation. Criminal charges were laid against him to which he pleaded guilty related to the second accident.
9. Mr. Ross has attended pick up/drop off of the children smelling of alcohol. I have had to refuse releasing the children to his care more than once out of concern for their safety and well being.
10. Mr. Ross is currently involved with the Children's Aid Society because of his alcohol abuse. He is exercising access in a supervised setting 2 – 3 times a week pursuant to court orders.
11. Mr. Ross is currently in breach of two court orders as set out below and has not remedied the breaches.
12. A case conference was held on October 4, 2017 before Master Fortier. Attached at **Exhibit A** is a copy of the Order of the Honourable Master Fortier.
13. Mr. Ross was represented by experienced counsel until just before the Case Conference.
14. Pursuant to the Order, Mr. Ross was given 30 days to provide financial disclosure related to:
 - a. his employment status,
 - b. his treatment for alcohol and/or substance abuse; and
 - c. the history of car accidents consequent to the same.
15. To date, Mr. Ross has failed to provide me with any of the disclosure set out in the Order.

dated March 27, 2018

16. A further case conference was held on January 19, 2018 before Master Champagne. Attached at **Exhibit B** is a copy of the Order of the Honourable Master Champagne.

17. In addition to the disclosure ordered by Master Fortier, Mr. Ross was ordered to produce the following additional disclosure:

- d. A letter from Algonquin College confirming his employment status, salary and benefits;
- e. Copies of Mr. Ross's paystubs for December 2017;
- f. Mr. Ross's T4 from Algonquin College when available;
- g. Mr. Ross's income tax for 2017 when filed;
- h. Complete disclosure of Mr. Ross's treatment plans for alcoholism and prescription drug use;
- i. Mr. Ross was ordered to pay costs to Ms. Holmes in the amount of \$450 within 30 days.

18. To date, Mr. Ross has failed to provide me with any disclosure set out in the Order.

19. Mr. Ross has also failed to pay the costs award of \$450.

20. As such, I have only have outdated income information from Mr. Ross to determine the appropriate child support amount owing.

BACKGROUND

21. Mr. Ross and I began cohabitating in February 2010 and were married on November 13, 2010. We had a traditional marriage and we both worked during the marriage.

22. Mr. Ross and I have two daughters from the marriage, namely Charlotte Olive Holmes ("Charlotte"), born September 4, 2011 (4 years old) and Alice Harriett Holmes ("Alice"), born March 30, 2014 (3 years old).

23. I have two sons from a previous relationship. The boys are not a part of these proceedings.

24. We separated on November 7, 2015, when I left the matrimonial home with our two daughters.

25. Mr. Ross and I were exercising a 2/2/23 access schedule until June 2017.

26. Mr. Ross and I have de facto joint custody of our two daughters.

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27. Since July 2017, the children have been primarily residing with me.

28. On March 1, 2017 Mr. Ross was in a car accident as a result of impaired driving. Mr. Ross pleaded guilty to criminal charges of attempting to leave the scene of an accident and of impairment while operating a vehicle. His license has been suspended and he is currently on probation.

29. Between April 2017 and June 2017, I continued to have concerns with Mr. Ross's behaviour and alcohol use. Some access visits were cancelled when Mr. Ross showed up smelling of alcohol, out of concern for the children's safety and well being.

30. In July 2017 there was a serious incident where Mr. Ross consumed too much alcohol to the point that he had passed out and left our young children unsupervised. His family members had to phone me to come and get the children.

31. Mr. Ross now recognizes that there is an issue, and has agreed to the children living with me on a full time basis. He is cooperating with the Children's Aid Society and is currently exercising supervised access once a week. My parents are usually the supervisors. I am also fully cooperating with the Society and ensuring that Mr. Ross has frequent access with our children via FaceTime.

32. However, Mr. Ross has failed to provide any information with respect to his treatment program.

Child Support

33. I have been a communications officer with Agriculture Canada for approximately eight years.

34. Mr. Ross is a professor at Algonquin College. His current employment status and salary remain undisclosed to me, despite Orders and reminders from my counsel.

35. Historically, our annual incomes have been similar.

36. The children have been living full time with me since July 2017. I incur all living, housing, feeding and life expense for Charlotte and Alice. Therefore, child support is owed to me pursuant to the *Child Support Guidelines*.

37. I am applying to the court for Mr. Ross to pay child support and his portion of section 7 extraordinary expenses in accordance with the *Federal Child Support Guidelines*.

dated March 27, 2018

38. Since July 2017, Mr. Ross has refused to pay any table child support. Mr. Ross has also refused to pay his proportional share of section 7 extraordinary expenses as set out below.

39. I have not received any disclosure from Mr. Ross pertaining to his income for the year 2017.

40. In 2016, Mr. Ross had employment income of \$75,615.51. I am basing my calculation on the most recent disclosure Mr. Ross did provide, a personal income tax return for 2016, attached as **Exhibit C**.

41. According to the attached DivorceMate calculations, Mr. Ross should be paying child support in the amount of \$1,148 for two children. Attached at **Exhibit D** are the DivorceMate calculations.

42. I am seeking an order that Mr. Ross pay child support in accordance with the Child Support Guidelines and his true income.

Special and extraordinary expenses

43. Charlotte and Alice are both active children and participate in extra-curricular activities. The children participate in Dance, Girl Guides, Gymnastics and Preschool. Additionally, I have to pay daycare for both Charlotte and Alice.

44. Pursuant to Master Fortier's Order dated October 4, 2017, Mr. Ross and I agreed to share section 7 special and extraordinary expenses on an equal (50/50) basis as of November 2017.

45. Given that Mr. Ross and I have similar income, I ask the court to Order section 7 extraordinary expenses prior to November 2017 to be on an equal (50/50) basis. Mr. Ross' income for 2016 was \$75,615 based on his tax return and I had a total income of \$76,320 for 2016. Attached at **Exhibits E and F** are our respective tax returns for 2016.

46. Set out below are the activities in which each child participates, the cost divided per year, and expected future costs.

2016 to November 2017

47. Dance

- a) Charlotte participated in dance classes from September 2016 to June 2017. I paid a total cost of \$629.54 for these classes. See **Exhibit G**.

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b) Charlotte and Alice were both enrolled in dance classes from June and have been continuing these to present day. The dance studio billed me \$1,899 for June to September 2017. See **Exhibit H**.

c) In total I have paid \$2,528.54

48. Girl Guides

a) Charlotte has been involved in Girl Guides for a number of years. I pay a flat fee of \$179.00 per annum for registration and enrolment. See **Exhibit H**.

49. Pre-school

a) I enrolled Alice in pre-school in 2016. The cost of Alice's pre-school for 2016 was \$119.00. See **Exhibit I**.

b) I further paid \$268.34 between January and November 2017 for Alice's pre-school. See **Exhibit J**.

c) My total expenses for Alice's pre-school is \$387.34.

50. Daycare

a) Mr. Ross discontinued payments towards daycare in June of 2017. Consequently, I have paid \$2,834 to have both kids in daycare between the months of June and November 2017. See **Exhibit K**.

51. School fees

a) Charlotte attends École Catholique Sainte-Kateri. I paid additional cost, in September 2017, for meal services during the 2017/2018 school years.

b) These cost amount to \$80.50. See **Exhibit L**.

52. Gymnastics

a) I enrolled Alice in Gymnastics in September 2017. I paid \$42.16 between September and November 2017. See **Exhibit M**.

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53. Total 2016 to November 2017

- a) Totalling the amount for Gymnastics, School fees, Daycare, Pre-school, Girl Guides and Dance, I ask and Order for Mr. Ross to pay 49% of \$6,051.54 equalling \$2,965.25.

November 2017 to present day**54. Gymnastics**

- a) I paid the continuing amount from November to December of \$21.09 for Alice's gymnastics. See **Exhibit N**.

55. Pre-school

- a) Between November and present day I paid \$142.16 for Alice's pre-school. See **Exhibit O**.

56. Daycare

- a) Between November and present day I have paid \$1,958.00 for Charlotte's and Alice's daycare. See **Exhibit P**.

Total November 2017 to present day

57. Therefore, the amount for Gymnastics, pre-school and Daycare owing to me from Mr. Ross, pursuant to Master Fortier's Order, is \$2,121.20.

Going forward**58. Daycare**

- a) Going forward, Charlotte and Alice will continue to be in daycare four times a week. Charlotte attends daycare mornings and evenings and is billed at a rate of \$12.50 a day. Alice attends daycare during the entirety of the day and is billed \$50. I thus reasonably foresee paying \$1,000 in daycare services every month.
- b) Daycare service will change as of September 2018 when Alice begins school. As of September, both kids will only require morning and afternoon daycare service and I will be billed at a rate of \$12.50 per day. As of this time, I also foresee registering both children for daycare service five days a week. As of September, I foresee paying \$500.00 per month for daycare service. I thus, reasonable foresee paying \$6,000 per year in day care service.

59. Pre-school

- a) Alice will continue pre-school until September 2018. I pay pre-school quarterly. Accordingly, Alice's last quarter for pre-school will cost \$119.00. Thus I reasonably foresee paying \$39.66 per month for Alice's pre-school.

60. Gymnastics

- a) Alice is scheduled to restart gymnastics in September. I pay gymnastics program quarterly. I pay \$63.25 every quarter for Alice's gymnastics lesson. Seeing as Alice is only in Gymnastics for three quarters per year, I reasonably foresee paying \$189.75 per year. I thus, reasonably foresee paying \$15.81 per month for gymnastics.

61. Dance

- a) Both Charlotte and Alice will continue to participate in dance activities. I pay \$1,899.00 per year for both girls to be in dance lessons. I thus reasonably foresee paying \$158.25 per month for dance lessons.

62. Girl Guides

- a) Charlotte will continue to participate in the Girl Guides program. I pay \$179.00 per year for her to participate in Girl Guides. I thus foresee paying \$14.91 per month for Charlotte to continue participating in Girl Guides.

63. School fees

- a) I will continue to pay for Charlotte and Alice's school fees. These fees amount to \$80.50 per child or \$161.00 total. I thus reasonably foresee paying \$13.41 per months in school fees.

64. Total foreseeable cost before September

- a) My total cost between March and September 2017 is \$7,276.92. Consequently, I reasonably foresee paying \$1,212.82 per months in section 7 extraordinary expenses. I thus ask the court for an Order, pursuant to Master Fortier Order dated, October 4, 2017, that Mr. Ross pay 50 percent of these expenses totalling \$606.41.

65. Total foreseeable cost following September

- a) My total cost going forward, following September, when both children being registered in school, will be \$8,428.68 per year. Accordingly, I reasonably foresee paying \$702.39 per month in section 7 extraordinary expenses. I thus ask the court, pursuant to Master Fortier's Order dated October 4, 2017, that Mr. Ross pay 50 percent of these cost totalling \$351.19.

66. Mr. Ross has over the past year refused to pay any of the section 7 extraordinary expenses. I do not feel comfortable or believe that this behaviour will change in the future. Therefore, I ask the Orders of this court to be enforced through the Family Responsibility Office

Mr. Ross's Breach of Court Orders

67. Mr. Ross is in breach of the orders of Master Fortier dated October 4, 2017 and Master Champagne dated January 19, 2018 for failing to provide me with disclosure as set out in those orders.

68. Mr. Ross is also in breach of the order of Master Champagne dated January 19, 2018 for failing to pay me the costs award in the amount of \$450.

69. Pursuant to the case conference held on October 4, 2017 before Master Fortier, on consent Mr. Ross was ordered, within 30 days, to provide financial disclosure related to:

- j. his employment status,
- k. his treatment for alcohol and/or substance abuse; and
- l. the history of car accidents consequent to the same.

70. A copy of the Order can be found at **Exhibit A**.

71. Following the case conference, I asked my counsel to send correspondence to Mr. Ross with respect to the disclosure ordered. Cumulatively attached at **Exhibit Q** are copies of my counsel's correspondence.

72. Mr. Ross did reply to my counsel's correspondence but, to date, Mr. Ross has failed to provide me with any of the disclosure set out in the Order. Attached at **Exhibit R** are copies of Mr. Ross's correspondence.

73. A further case conference was held on January 19, 2018 before Master Champagne. In addition to the disclosure ordered by Master Fortier, Mr. Ross was ordered to produce the following additional disclosure:

- m. A letter from Algonquin College confirming his employment status, salary and benefits;
- n. Copies of Mr. Ross's paystubs for December 2017;
- o. Mr. Ross's T4 from Algonquin College when available;
- p. Mr. Ross's income tax for 2017 when filed;
- q. Complete disclosure of Mr. Ross's treatment plans for alcoholism and prescription drug use;
- r. Mr. Ross was ordered to pay costs to Ms. Holmes in the amount of \$450 within 30 days.

Attached at **Exhibit B** is a copy of the Order of the Honourable Master Champagne.

74. Following this case conference, I again asked my counsel to send correspondence to Mr. Ross with respect to the disclosure ordered. Cumulatively attached at **Exhibit Q** are copies of my counsel's correspondence.

75. Mr. Ross did reply to my counsel's correspondence but, to date, Mr. Ross has failed to provide me with any of the disclosure set out in the Order. Attached at **Exhibit R** are copies of Mr. Ross's correspondence.

76. To date, Mr. Ross has also failed to pay the costs award of \$450.

77. Mr. Ross was required to disclose his financial information to me in order to ascertain the amount payable in child support going forward. Mr. Ross has not disclosed any of the ordered disclosure whatsoever.

78. I would consequently ask this court to find Mr. Ross in breach of the two Orders.

79. I would further ask this court for an Order dispensing with Mr. Ross's consent on Directions/Authorizations in the form at **Exhibit S** allowing me to obtain the information directly from each source.

Orders Sought

80. I respectfully ask the court to make the following orders:

- a. An Order that Mr. Ross shall pay interim ongoing table child support to me pursuant to the *Child Support Guidelines*, retroactive to July 2017.
- b. Pursuant to Master Fortier temporary order dated October 4, 2017, an Order that the Applicant father shall reimburse the Respondent mother, for section 7 special or extraordinary expenses incurred between November 2017 and the present date, to the sum of \$1,200.
- c. Considering the parties have a similar income, an Order that all section 7 special and extraordinary expenses, prior to November 2017, be shared between the parties equally.
- d. An Order that the Applicant father's child support obligation be enforced through the Family Responsibility Office.
- e. An Order that the Applicant father be found in breach of court for violation of disclosure requirements set forth by the Honourable Master Fortier and Master Champagne.
- f. An Order dispensing with Mr. Ross's consent on Directions/Authorizations in the form at **Exhibit S** allowing me to obtain the information directly from each source as set out below:
 - i. Algonquin College;
 - ii. SMART Recovery pertaining to Mr. Ross' treatment plans, programs or services regarding his alcoholism and/or prescription drug use;
 - iii. The Ottawa Police regarding his motor vehicle accidents;
- g. An Order for costs on a substantial indemnity basis, plus H.S.T.; and
- h. Any other order or relief as counsel may advise and this Honourable Court may deem just.

81. I make this Affidavit in support of my position on this motion and for no other or improper purpose.

dated March 27, 2018

Put a line through any blank space on this page.

Sworn/Affirmed before me at:

City of Ottawa

(municipality)

in **Province of Ontario**

(province, state or country)

on **March 27, 2018**

(date)



Commissioner for taking affidavits

(Type or print name below if signature illegible.)

Alison Boyce
Barrister & Solicitor
Delaney's Law Firm
543 Somerset St W
Ottawa, ON, K1R 5J9



Signature

(This form to be signed in front of a lawyer,
justice of the peace, notary public or commissioner
for taking affidavits.)