

# Facsimile

**To:** Any Mayer

**Fax:** 613-238-8949

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**From:** Alison Boyce

**Date:** November 18, 2015

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**Re:** Ross v. Holmes  
Court File No. 15-2492

**Pages:** 10 (including cover)

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## Comments:

Please see attached.

Thank you.

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November 18, 2015

Any Mayer  
**Victor Ages Vallance LLP**  
112 Lisgar Street  
Ottawa, Ontario  
K2P 0C2

**VIA FACIMILE to 613-238-8949**

Dear Ms. Mayer,

**RE: Ross v. Holmes**  
**Court File No.: FC-15-2492**

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Attached, please find Ms. Holmes' Affidavit in response to your urgent motion which is served upon you pursuant to the *Family Law Rules*.

My client would be willing to attend a four way meeting in order to attempt to resolve the interim parenting arrangements in lieu of attending court. My client is also agreeable to attending lawyer assisted mediation as an alternate.

My client will consent to the release of the records of Dr. James and Dr. Findlay to both parties provided that your client is willing to consent to the same.

Kindly let me know if your client would be agreeable to a meeting in an attempt to resolve this issue rather than going to court.

Sincerely,



Alison Boyce

ONTARIO  
**Superior Court of Justice Family Court Branch**

(Name of Court)

Court File Number  
**FC-15-2492**

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

**Form 14A: Affidavit (General)**  
**dated November 17, 2015**

**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: 613-238-1333**

**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).

**Cynthia Holmes**  
**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).

**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**

**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.
2. I make this affidavit in support of my opposition to the Applicant's within motion. I will not respond to the various allegations and untruths in the Applicant's Affidavit, sworn on November 13, 2015, because time and space do not permit.

**Summary**

3. The Applicant, Mr. Darryl Ross (hereinafter referred to as "Mr. Ross"), and I began cohabitating in February 2010 and were married on November 13, 2010. We separated on November 7, 2015 when I left the matrimonial home with our two daughters and my two sons from a previous relationship. I am temporarily staying with my parents in Ottawa.
4. I have four children. Mr. Ross and I have two daughters, namely Charlotte Olive Holmes ("Charlotte"), born September 4, 2011 (4 years old) and Alice Harriett Holmes ("Alice"), born March 30, 2014 (1.5 years old). I have two sons from a previous relationship, namely Benjamin Leclair ("Ben"), born October 21, 2003 (12 years old) and Samuel Leclair ("Sam"), born July 25, 2006 (9 years old).
5. In August of 2015, there were two incidents where Mr. Ross was behaving strangely around the children after excessively drinking alcohol at events while on anti-depressant medication. As a result of these two incidents, our daughter Charlotte claimed Mr. Ross bit her. My mother also told me of other incidents during the summer of 2015 where Charlotte made strange comments, which were concerning and raise suspicion of inappropriate behaviour by Mr. Ross.
6. Since August 2015, the situation has deteriorated. Mr. Ross is frequently impatient, manipulative, controlling, incoherent and sometimes aggressive when he is under the influence of alcohol and anti-depressants. He is currently under psychiatric care and has been since May 2014. He frequently disregards the doctor's advice and fails to follow through on the recommended treatment.
7. I have since reported these incidents to the Children's Aid Society ("the Society") as well as to the Ottawa Police Service. I am very hesitant to extend unsupervised access at this moment, until the Society completes their investigation and can provide a report and recommendations.
8. At the Society's prompting, Charlotte was examined at the Children's Hospital of Eastern Ontario ("CHEO"). After the examination, the attending physician expressed concerns of "red flags" and referred the file to the child and youth protection department at the hospital. Therefore, I do not believe it is in the children's best interests for Mr. Ross to have interim sole custody and primary residence at this time. Similarly, access should be supervised until the experts conclude their respective investigations and reports.
9. My lawyer has informed me that there is a practice direction in the Ottawa Family Court advising that access issues do not meet the test for urgency on these types of motions. Mr.

dated November 2015

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Ross is trying to bypass the practice direction by calling this a motion for custody and primary residence. For clarity, this is not an emergency situation. Mr. Ross knows where his children are residing, there is no threat of flight or any risk to the children, the children are in daily communication with their father by phone and Mr. Ross has been offered supervised access. He refused the access.

10. As well, given the short notice of this motion, I ask that this Honourable Court dismiss the motion and allow a full hearing on this issue to determine the merits and allow the Children's Aid Society, CHEO and any other medical experts the opportunity to complete their assessments and provide reports to the court. It would be extremely prejudicial to my case and to the children to make a determination of custody without all of the evidence before the Court.

### **Background**

11. I am a communications officer with Agriculture Canada. I have been in this senior position for approximately eight (8) years.
12. Mr. Ross is a professor at Algonquin College and is currently on sick leave for depression and has been for some time. I understand he intends to return to teaching in January 2016.
13. We had been having marital problems for many months so we decided to attend marriage counselling with Dr. Mary Lou Hogan-Findlay to work on our relationship. We began attending counselling in September 2015.

### **The Children**

14. I wish to make it clear that it is not my intention to shut out Mr. Ross from my children's lives. I have initiated FaceTime calls between Mr. Ross and the children every night since I left the matrimonial home to allow them to continue to have contact with their father. I agree that he is an involved parent. However, I simply wish to ensure that my children are in a safe environment and they are comfortable to be alone in his presence.
15. I went to the Society to raise my concerns, and I am cooperating with their investigation.
16. I took Charlotte to Children's Hospital of Eastern Ontario ("CHEO") to have her examined by a physician. Dr. Maala Bhatt confirmed that Charlotte was physically healthy, but she raised red flags and referred Charlotte to the youth protection department at CHEO. I am waiting for the hospital to schedule a follow up appointment.
17. I did remove Charlotte from school because I was concerned that Mr. Ross would take her

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from the school and would remove her from my care. However, for the one and a half weeks that she has missed school, I have been in touch with her principal and teachers to ask them to send me her homework so that she does not fall behind in her junior kindergarten class. Alice has returned to daycare as of this week.

18. Despite what Mr. Ross alleges, I have an excellent working relationship with my former spouse, Scott Leclair ("Mr. Leclair"). During these past few weeks, he has been very supportive of the boys and has taken them for a full week to allow me time to focus on my daughters' needs. Although we have had previous disagreements about our sons' upbringings, we are able to communicate and worked through them so that my sons and Mr. Leclair maintain a healthy relationship. Ben and Sam have indicated to me that they are having a great time with their father.

#### **Mr. Ross's Behaviour**

19. There were incidents where Mr. Ross's behaviour caused me concern. He was seeing a therapist for depression and was prescribed medication. However, he would continue to drink alcohol while on his medication which, I verily believe, caused significant changes in his behaviour. Additionally, he would frequently disregard his doctor's advice and would fail to follow through on the doctor's recommendations.

20. Mr. Ross has been unable to handle his alcohol in certain social functions. In August 2015 and July 2015 we attended two weddings where he drank until he blacked out. This past summer on two other occasions when he was drunk, he bit our daughter Alice. Given the ongoing investigations by the Society and CHEO, I will not comment further until their investigations are completed.

21. In October 2015, Mr. Ross began having four (4) to five (5) drinks during each day. I asked him to stop on numerous occasions and told my therapists, but he refused.

22. After I had left the matrimonial home, I realized that there was a pattern of concerning behaviour with Charlotte. I spoke to the Society who has begun an investigation. I also took Charlotte to see Dr. Maala Bhatt at the Children's Hospital of Eastern Ontario ("CHEO") who referred our family to the child youth and protection department of the hospital.

23. I respectfully ask the court not to give primary residence and custody to Mr. Ross at this time given the concerns as outlined above. I also respectfully ask the court to allow Mr. Ross to have supervised access in public areas on an interim basis until a final determination can be

dated November 2015

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made.

**Events of November 5, 2015 to the present**

24. In the early evening of Thursday, November 5, 2015, Mr. Ross and I were having an argument about the suggestions Dr. Mary Lou Finlay had been making in therapy. I was explaining my concern that while Mr. Ross would agree to many things in therapy, he would not follow through on the suggestions made by the therapist when we were at home. His reply to my concern was: "You don't even know what's coming." During our conversation, he admitted to taping our conversations without my knowledge or consent, he alleged that I had fabricated a previous incident with Ben, he demanded to know why I had switched therapists and alleged that I had been making slanderous remarks on Facebook about him. Mr. Ross had been *drinking during our discussion and subsequently left the home. His comments frightened me and raised serious concerns.*
25. Ben had overheard our argument that day and commented that he was scared of Mr. Ross. Ben and Mr. Ross had been in arguments before and Mr. Ross scared Ben. Ben was convinced that Mr. Ross would hurt his siblings and me. I reassured him that this was not the case, and suggested that Ben stay at my parent's home for the evening to feel safe. Ben agreed so my parents came to take my sons for a sleepover for the evening.
26. In an attempt to avoid escalating the conflict, I called Mr. Ross's sister, Angie Russell ("Ms. Russell") to help defuse the situation. I was worried about Mr. Ross's drinking and the comments he had made, and I wanted her to come and help facilitate discussions between Mr. Ross and myself. Ms. Russell was very cold with me on the phone. She asked to speak with Mr. Ross so I passed him the phone. They exchanged a laugh and he asked if she had taped the conversation. I heard her say yes and that she would be right over. Once Ms. Russell arrived, my parents left with my sons.
27. I was distraught, upset and confused when I heard Mr. Ross and Ms. Russell's comments regarding taping our conversations. For the next hour or so both Mr. Ross and Ms. Russell accused me of being an unfit mother and neglecting my children and claimed that our daughters were not attached to me. I defended myself against these claims, but I felt emotionally abused. I thought it would be best for me to defuse the situation by agreeing to continue the discussion in therapy with Mr. Ross. I went upstairs and spoke to Ben on the phone to check on him and he told me he was still scared of Mr. Ross and was very upset. I told Mr. Ross and Ms. Russell that I would be leaving the home and spending the night at my

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parents to be with my sons. I invited Mr. Ross to attend a family therapist appointment the next day to discuss our respective issues and concerns. He agreed.

28. At this time, I was very concerned about Ben's feelings towards Mr. Ross and I did not want to bring my sons back into the home. I knew that I had to speak to a lawyer in order to begin making a plan for how I could safely leave the relationship.
29. The following morning I spoke with the Employment Assistance Program about getting some legal advice. I knew I wanted to leave Mr. Ross but I wanted some advice on the best approach. When I spoke to a crisis counsellor, I recounted the events from the night before. She recommended that I speak with the Children's Aid Society to report the incident of Ben feeling distressed. She also recommended that I complete an information report with the police to keep a record of my concerns and events that transpired.
30. Mr. Ross and I met at Dr. James's office to discuss the events of the night before. I was acting very supportive in the therapy session because at this point I did not feel Mr. Ross was any danger to the kids. I knew I was leaving him but did not want to admit it at that point. We tried to address his behaviour that evening and how a child may interpret things differently. Mr. Ross seemed to calm down, but could not accept any responsibility for his threatening behaviour that night. I did not push it. I did bring up the taping conversations and he admitted to that. After the session Mr. Ross was feeling happy again and I asked if he could drop me off at my mother's home so I could do a few things before seeing the girls.
31. When I arrived at my mother's home I spoke with her about the complaint I was about to file with the Society. She also said that she was a bit concerned about some odd behaviour displayed by Charlotte when she was watching her this past summer. I immediately began thinking about Mr. Ross's strange behaviour and his relationship with the girls. From that point I was worried about the girls safety and spoke with the Society over the phone about my concerns. I told them two distressing events in August when Mr. Ross had bit Charlotte then tried to sexually advance upon me when he was drunk. I explained his recent verbally abusive behaviour and that he was drinking four (4) to five (5) beers a day and driving in the evening. The Society told me to stay with my girls and not to leave them alone with Mr. Ross, so I followed their advice.
32. Since my mother had also raised concerns about Mr. Ross's behaviour I no longer felt the girls were safe with him. I planned to take them to my mother's home the next morning and create a plan to speak with a lawyer and the police to obtain advice on how to proceed.



dated November 2015

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33. I wanted Mr. Ross to know that he still had access to the girls and I wanted him to be able to speak with them. On November 7, 2015, I had my daughters call Mr. Ross. On November 8, 2015, I also suggested that he have an access visit with him with someone supervising that we would mutually agree upon to address my safety concerns. He refused.

34. On Sunday, November 7, 2015, Mr. Ross did send me a text message asking to speak to the girls. I missed the message so they did not speak with him that night. I apologized the next day and have made sure that they speak with him every night since.

**Orders Sought**

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

- a. The acceptance of service for this Affidavit on short notice;
- b. An interim Order granting me sole custody of Charlotte and Alice;
- c. An interim Order granting me primary residence of Charlotte and Alice;
- d. An interim Order that Mr. Ross has supervised access as follows:
  - i. Alternating Saturdays from 9:00 a.m. to 5:00 p.m.
  - ii. Alternating Sundays from 9:00 a.m. to 5:00 p.m.
  - iii. One evening per week from 4:00 p.m. to 6:00 p.m.
- e. An interim Order that the Order be enforced by the police in the jurisdiction where the children are located;
- f. An Order that Mr. Ross will not consume alcohol 24 hours before or during any access visits with the children;
- g. An Order for a Custody and Access Assessment by a qualified third party assessor;
- h. An Order for costs on a substantial indemnity basis, plus H.S.T.; and
- i. Any other order or relief as counsel may advise and this Honourable Court may deem just.

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

dated November 2015

Sworn/Affirmed before me at:

City of Ottawa

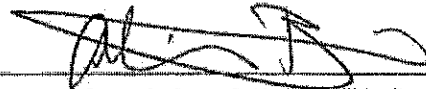
(municipality)

in Province of Ontario

(province, state or country)

on November 17, 2015

(date)



Commissioner for taking affidavits

(Type or print name below if signature illegible.)

Alison Boyce



Signature

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