

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

Form 14A: Affidavit (General)
dated January 28, 2022

Applicant(s)

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

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

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Respondent(s)

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

Cynthia Holmes
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My name is

(Full legal name)

Darryl Ross

I live in

(municipality and province)

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 Applicant in these proceedings and as such I have knowledge of the matters hereinafter deposed, unless they are stated to be on information and belief, in which case, I believe those matters to be true.

Parenting Time, Change of Exchanges, Communication by Way of Family Wizard, Sale of the Matrimonial Home, and Division of Assets

2. I make this Affidavit in Response to the Applicant's motion for parenting time, change of exchanges, communication by way of family wizard, sale of the matrimonial home, and division of assets.
3. I also make this Affidavit in support of my cross motion for child and spousal support from the Applicant.

Denial of Parenting Time by the Respondent since August 2021

4. I am beginning this affidavit by referring to the Order of Master Fortier, which describes a minimum amount of access, namely three supervised visits and one FaceTime each week. This Order was not included in the motion materials Ms. Holmes prepared for the Motion of December 20, 2021. It further stipulates that I shall not consume alcohol 24 hours prior to visits. There has never been an instance where I broke this condition or was refused a visit by Ms. Holmes or anyone else. Attached to my affidavit as **Exhibit “A”** is a true copy of Master Fortier’s Order.
5. Ms. Holmes is currently in breach of this Order and has been so explicitly since August 30, 2021, without cause or justification. She has refused to allow our daughters any form of parenting time or communication with me since August 30, 2021. Ms. Holmes made this decision and followed it up with her own set of conditions disregarding the existing court orders permitting me parenting time. Ms. Holmes expressed no intent to bring a motion, and indeed has not in the past when she has denied parenting time. I was not informed that she was bringing a motion until several days after I asked her lawyer for her availability and was ignored (detailed further below). I wanted to bring a contempt motion to deal with Ms. Holmes’ denial of parenting time.
6. Ms. Holmes brought a motion which was to be heard on December 20, 2021. At that motion Justice Summers urged Ms. Holmes to follow the court Order if it is safe to do so, suggesting supervised outdoor visits. The visits were to occur after the two facetime calls. Ms. Holmes volunteered to coordinate those visits while her lawyer was on holiday. However, immediately after the motion Ms. Holmes set disclosure as a condition, which I had already provided to her and her lawyer, Ms. Boyce. Attached to this affidavit as **Exhibits “B” and “C”** are true copies of the examples.
7. Ms. Holmes ignored my repeated requests to coordinate visits after I agreed that her neighbour, a retired social worker, would be an ideal supervisor. She also refused further FaceTime contact, claiming our oldest daughter was upset after our FaceTime visit on Boxing Day. However, the two facetime visits went very well, and the girls were very happy to see me. There was no hesitancy at all by the girls. She gave no further explanation. Attached to my affidavit as **Exhibit “D”** is a true copy of correspondence.

Addiction, Recovery and False Accusations

8. I developed an addiction to alcohol in 2016. That same year I spoke to family members and my doctor to get help. I have struggled with periods of active addiction since that time. However, I have actively sought help, including counselling, medical detox, medication specific to alcohol addiction. I have had periods during which I did not consume alcohol, or significantly reduce consumption. I have also had several relapses. Most recently in April of 2021. I admitted myself to Perth Smith Falls hospital for medical detox and support.
9. I started to work with a social worker while in the hospital and continued to do so until I started working with Dr. Carol Milstone in October of 2021. Dr. Milstone is a clinical psychologist who I had worked with when my marriage to Ms. Holmes first started to break down. I also searched for and found a doctor who specializes in addiction and recovery, Dr. Bowling. I chose to work with Dr. Bowling because I could see him in person weekly and voluntarily provide a urine sample tested for alcohol and illicit drugs.
10. After realizing that I was drinking in an unhealthy way in 2016, and then that I had developed a physical addiction, I sought all the help that I could find. Not all of it was helpful, such as attending Alcoholics Anonymous, which many people do find helpful. Some of it was harmful, including relying on certain family members who did not understand addiction or evidence-based treatments. However, over time I built on the resources that were helpful, including SMART Recovery, counselling, and individual therapy, and have been in recovery since May 15, 2021. I managed to put the resources that are most helpful to me together, through trial and error.
11. Regardless of all these facts, which have been shared with Ms. Holmes in emails, texts, and through her lawyer, Ms. Holmes refuses to have any contact with me, and actively blocks all contact between me and my daughters. Despite weekly urine tests, the most important evidence of recovery is contact. I proposed limited, graduated contact to Ms. Holmes and was refused. Ms. Holmes' position is that she is the only person qualified to assess my sobriety, without seeing or speaking to me, and that I may only have contact with our daughters if she feels comfortable. Ms. Holmes has no regard for the Orders and access described therein.

Issues of Denial of Access, Refusal to Communicate, and Ignoring Attempts to Resolve Ongoing Issues

12. Ms. Holmes has brought a motion to change custody and access. Ms. Holmes states that this motion is necessary so that she can make the decisions that need to be made, and because my behavior is damaging to our daughters. However, for most of the last four years Ms. Holmes has made decisions as if she had sole custody, without ever trying to make joint custody work, and despite repeated requests that I made to

her or Ms. Boyce for discussion or cooperation. Further, Ms. Holmes has been acting as if she already had sole discretion over access, despite recommendation or agreement and in defiance of court order.

13. Ms. Holmes ability to make important decisions, including scheduling parenting time, can be assessed based on the decisions she has made over the past six years. Since separation Ms. Holmes has demonstrated patterns that include unpredictable, repeated denials of access, interference, and ongoing attempts to limit and damage our daughters' relationship with me.
14. In addition to her refusal to act in the best interests of our daughters', Ms. Holmes is not credible and has used financial advantage to exclude me from decision making and interfere with or deny parenting time.
15. Ms. Holmes has repeatedly refused to follow agreements, ignored professional advice. She has avoided involving professionals for help and support for our daughters or for us as separated parents in conflict.
16. For most of the past five years Ms. Holmes has also refused to communicate with me, share or provide information about our daughters as appropriate or when directly requested, creating confusion and uncertainty for our daughters.
17. Finally, while repeatedly instructing me to speak exclusively to her lawyer, Ms. Boyce informed me that she does not discuss matters with self-represented litigants, and her limited correspondence demonstrates this. I have received few formal letters, but never discussion of any of the matters important to this motion by email or other means. However, at other times Ms. Holmes has told me that she would prefer to speak to me directly, only to change her mind later. This has resulted in a near impossible pattern of communication. I have included correspondence that includes Ms. Holmes equivocation, as well as a request I made for Ms. Boyce's availability to book a motion to deal with Ms. Holmes's previous denial of access in 2019. Ms. Boyce did not respond to my request. Further to this issue is the fact that Ms. Holmes appears not to communicate accurately with Ms. Boyce. Attached to my affidavit as **Exhibit "E"** is a true copy of correspondence.

Denial of Access 30 August 2021 to Present

18. Ms. Holmes has denied all parenting time, contact, and information between me and our daughters explicitly since August 30, 2021. On that date she informed me by email that she would not allow contact because our daughters had been experiencing trauma, in her opinion, due to my coming into and out of their life over the previous year. Attached to this affidavit as **Exhibit "F"** is a true copy of her email.

19. I shared an update medical note with her lawyer on 2 September 2021 and requested parenting time, and FaceTime at a minimum, as well as further information about the trauma that our children were experiencing. I also repeated treatment information that I had previously shared with Ms. Holmes or her lawyer. Finally, I included the most up to date medical note that was available, provided at my weekly appointment with a doctor that I see because he is an addiction and recovery specialist. Attached to this affidavit as **Exhibit “G”** is a true copy of my email correspondence.
20. In response to my request to Ms. Holmes for further information about the well-being of our daughters, Ms. Holmes sent me a brief email on 3 September 2021 in which she did not answer my questions or refer to a diagnosis of trauma. Instead, she informed me that our children were doing very well, excited to return to school, and that she started looking for “some individual counselling” for our oldest daughter, without mention of our youngest daughter. She also provided a certificate of brief group counselling program that she took our daughters to, which I only knew about because our daughters told me at the time over FaceTime. Up to the point Ms. Holmes refused to share information about the program with me or allow me to participate or support our daughters in what I believe is a positive evidence-based program for parents and children affected by addiction. In this email I learned that Ms. Holmes was denying all parenting time and almost any information based on her own personal concern. Attached to this affidavit as **Exhibit “H”** is a true copy of her email correspondence.
21. Ms. Holmes has a history of making allegations against former partners to limit, interfere with, or deny access. In 2015 Ms. Holmes informed the father of her two sons, Scott LeClair, that she would not follow through with an agreement that they made to increase his parenting time. The reason Ms. Holmes gave was that he was emotionally harmful to his sons, to the point that she was preparing to further restrict his parenting time. Attached to this affidavit as **Exhibit “I”** is a true copy of her explanation.
22. Ms. Holmes maintained this position until our separation, on 7 November 2015, at which time she removed our daughters from our home and made allegations that I sexually abused our oldest daughter. These allegations were investigated by the Children’s Aid Society and found to be without grounds for investigation. The circumstances of Ms. Holmes’s allegations, their timing, and her lack of action on the matter raise concerns in the context of her allegations made against Mr. LeClair and her subsequent and dramatic change from reducing his parenting time to moving to shared parenting time. Ms. Holmes shows an ongoing pattern of making allegations specific to her children without ground and without appropriate

action. Details are included in a letter sent at the time to Ms. Boyce. Attached to this affidavit as **Exhibit “J”** is a true copy of the letter.

23. Ms. Holmes has not demonstrated the ability to make decisions based on the well-being of our children, instead often making decisions based on her own emotional needs. A final example is included from 2019, when I had agreed plans to take my daughters to a new film, and Ms. Holmes refused to allow us to go after accusing me of being rude to her mother the week previous at a visit in a busy McDonald’s, which did not happen. Instead, Ms. Holmes refused the visit unless it was under her own terms, threatening to call Ottawa Police if I took them from a Chapter’s bookstore across the parking lot to the theatre. To avoid unnecessary conflict, I agreed to her terms so that I could visit with my daughters.

Current Situation with Parenting Time

24. Returning to the present situation, Ms. Holmes has been increasingly restricting or interfering with my parenting time or even visiting our children at extracurricular activities. On 30 July 2020 Ms. Holmes told me not to make plans with our children including attending extracurricular activities like soccer. On 9 August 2020 I contacted Ms. Holmes to find out where our daughter’s soccer game was being held. Ms. Holmes had been refusing to share that information with me. She responded that she did not want me to visit at soccer and was going to speak to her lawyer. Attached to this affidavit as **Exhibit “K”** is a true copy of the email.
25. This pattern of withholding information and denying parenting time continued through 2020 and 2021 without justification. Ms. Holmes has shown repeatedly that she cannot make decisions in the best interests of our daughters, repeatedly ignoring my attempts to see or speak to them, telling me that her lawyer is unavailable, or simply withholding information, making it impossible for me to participate in important parts of our children’s lives.
26. Ms. Holmes has denied me any access to our daughter’s birthdays in 2019, 2020, and 2021, without justification or explanation, aside from ongoing requests for disclosure that was either provided, is irrelevant, including routine visits to the sleep specialist I see for sleep apnea, or does not exist. Most recently, in response to a proposal I made to Ms. Boyce to begin gradual parenting time, sent September 24, 2021, attached to this affidavit as **Exhibit “L”**, I was told by Ms. Boyce that Ms. Holmes refused to discuss any access, even under the terms of the Order of Master Fortier, unless an extensive list of disclosure was provided. Attached to this affidavit as **Exhibit “M”** is a true copy of the letter. The list of disclosure that is demanded has either been provided, is irrelevant, including documentation that does not

exist, or is not information that Ms. Holmes has knowledge or education to evaluate. Ms. Holmes not only requested documentation from Dr. Bowling, for example, but also the weekly alcohol and drug screening tests, which Dr. Bowling speaks directly to in his letter as a doctor specializing in addiction and recovery.

27. On October 1, 2021, after being told that any discussion of access was conditional on an unreasonable list of disclosure, I wrote to Ms. Boyce expressing my concerns about the current denial of access, as well as the history of repeated denials of access. I noted that my requests for the most basic information about my daughters, including who was caring for them, what support they were receiving, and how they are coping with this denial of access. I directly asked Ms. Holmes' lawyer for her availability to bring a motion to address outstanding and ongoing matters. I received no response. I wrote to Ms. Holmes' lawyer again expressing my desire to move forward and frustration at being ignored and informed her that I was still trying to find a lawyer to make progress and to see my daughters. I have included my email as **Exhibit L**. Again, I received no confirmation of receipt or response.
28. After no further communication from Ms. Boyce, I received an email on 8 October 2021 informing me that Ms. Holmes was bringing a motion and requesting my availability. Ms. Boyce was aware I was struggling to find a Legal Aid lawyer and gave me two business days to respond, or she would book the motion at her convenience.
29. The present motion brought by Ms. Holmes does not seek to address any of the ongoing issues or seek to establish safe and reasonable access in a way that will reduce conflict. The motion that Ms. Holmes has brought before the court seeks only to affirm the position that she took on 30 August 2021, and which she has repeatedly taken since 2015.

Unfounded Grounds for Denying Me Parenting Time and Information About the Children

30. Ms. Holmes states in para. 10 that I have not provided convincing evidence that I have taken concrete steps to get treatment, which is not at all the case. I have provided her with ongoing information as appropriate. However, Ms. Holmes is refusing our daughters access and contact with me on all grounds: when I have relapsed, I could have no contact even if sober as per Master Fortier's Order; in medical care, I could have no contact and my daughters could not know where I am; presently, in recovery, after providing an up to date medical note and confirmation of weekly urine test, my daughters cannot even FaceTime me, to see me, to know that I am alive and healthy.
31. Additionally, I have concerns about their well-being based on Ms. Holmes erratic decisions and parenting. I have repeatedly asked for information and been ignored by Ms. Holmes and her lawyer.

32. Ms. Holmes reasons for denying parenting time are not dependent on my history of alcoholism and recovery. Ms. Holmes has refused or changed plans that we had made for in-person visits or FaceTime for a variety of reasons. On March 28, 2021, Ms. Holmes told me that I could not have a scheduled FaceTime visit because it was the evening, they watched a movie with their cousin. On April 24, 2021, they had plans to watch a movie via FaceTime with 2 friends and so could not talk to me that day. We made plans for another day. We agreed on a time. However, they were not available or in contact. Later Ms. Holmes informed me she was in bed sleeping and a friend of hers took the girls for the afternoon. This pattern repeated from fall of 2019 until Ms. Holmes completely denied access August of 2021. Attached to this affidavit as **Exhibit “N”** is a true copy of correspondence. Ms. Holmes did not allow me any contact during our daughter’s birthday, the start of school or any other events.

Ongoing False Accusations

33. Ms. Holmes makes false or misleading accusations in almost every paragraph in her affidavit, and to address each one would take at least the number of pages that her affidavit includes. I will address some of the more important claims.
34. In paragraph 12, Ms. Holmes states that scheduled access visits had to be cancelled because I was under the influence. In working cooperatively and successfully with the Children’s Aid Society I was open and honest about my struggle, and it was agreed that if had consumed alcohol or was not well I would inform Ms. Holmes by saying that I wasn’t feeling well. The only scheduled visits that were ever cancelled were done so by me, following the safety plan made with CAS.
35. I have already addressed Ms. Holmes claims in para. 15. Ms. Holmes repeatedly refused, changed, or denied scheduled visits, and has since 2017 repeatedly been in breach of the Order of Master Fortier. The limited number of visits that I cancelled or regrettable, felt horrible, but were the most responsible decision in the circumstance.
36. In para. 18 Ms. Holmes states our oldest daughter is seeing a therapist. When I spoke to the therapist on or about December 1, 2021, months after Ms. Holmes wrote her affidavit, the therapist told me she had limited sessions with our daughter and had no opinion about the separation anxiety Ms. Holmes has described. Ms. Holmes has provided nothing more than her own opinion, which as shown above, is unreliable and often not in accord with facts.

37. In para. 34 Ms. Holmes accurately describes a very successful summer during which we shared parenting time successfully. However, near the end of the summer I gave notice and found a place to live near our daughter's school to continue shared parenting time. I informed Ms. Holmes, and reminded her that because we were sharing custody no further child support would be payable (even though I continued to pay it during the summer to catch up on an outstanding amount). Without discussion or warning, and aware I had given notice and was moving, Ms. Holmes sent me an email informing me my parenting time would be reduced to every second weekend, and 3.5 hours each Wednesday. This was a dramatic change without discussion. We had and continue to have shared decision making, yet Ms. Holmes once again made an arbitrary decision without discussion. She refused to discuss the matter. She states in para. 37. that we had a disagreement about the matter. In fact, she made the decision without justification, and I disagreed. Attached to this affidavit as **Exhibit "O"** is a true copy of her decision.

Disclosure Requirement for Access Inconsistent and Inaccurate

38. Despite the existing court order, Ms. Holmes continues to use disclosure to refuse joint custody and access per the court order, and repeatedly establishes her own schedule without seeking a change in the court order.

Sole Discretion Over Parenting Time

39. Ms. Holmes request for sole discretion over parenting time should not be granted because of the pattern of false accusations, false statements about communication from CAS and CHEO, her refusal to work with professionals including Dr. Sharon Francis Harrison. It would not be in the best interests of the children for her to be granted sole decision-making responsibility because that would be the end of my relationship with the children. The children enjoy their time with me.

40. Prior to Ms. Holmes completely denying me contact with our daughters we had an extremely close relationship. I was the primary caregiver before we separated and continued to have a very close relationship with them despite Ms. Holmes roadblocks and interference, and latest denial of access. I was extremely excited to talk to them over FaceTime for Christmas and asked that Ms. Holmes agree to at least a couple of FaceTime visits before opening presents on Boxing Day. She agreed to one. I had spoken to our oldest daughter's counsellor just prior to our first FaceTime, and Ms. Telford agreed that it was something that should have been prepared for. However, Ms. Holmes refused to share any information. Despite all of that, as soon as we connected on FaceTime it felt like no time had passed. They were excited to show me their new cats, and to hold and cuddle them. We talked about our favourite animals and going on a safari one day. My youngest daughter brought the phone to her room to show me a book that she says she reads

every night. It is a simple board book that I added words to in marker describing her. She said it is her favorite book. Then my oldest daughter should be her box of keep sakes and all of the things in it that I made for her. I was excited to show them a video of people swimming perfectly safely with great white sharks, which is a dream of my daughters. I laughed when she repeated a fact I shared with her long ago, that vending machines tipping over on frustrated people are more dangerous than sharks. After 30 minutes Ms. Holmes ended the call, and we all said we were excited to talk again on Boxing Day.

41. On Boxing Day we spent 2 full hours on FaceTime. They opened the gifts that I got for them, unboxed, and played with some, and we chatted about the holiday, how they were excited to return to school to see their friends, and that we missed each other. I got them each a pair of kids binoculars and a couple of books on star gazing and astronomy and talked about how when we look out the window each evening, we're looking at the same stars. I also got them each a small crystal growing kit, and one for myself, that we would make together on FaceTime. They were excited to do so, but Ms. Holmes has refused to allow any further FaceTime or visits.
42. For the final 45 minutes they wanted to show me their dancing on Just Dance, with their new game system. We used to do Just Dance a lot together, and they picked songs that we used to dance together to. They were laughing, and I was cheering them on. We had a wonderful time on FaceTime, and we felt connected and happy. When they were told by someone that it was time to say goodbye, we did our goodbye routine. We point to our eye, make a heart at our heart, and then point at each other (and then I make the number two). After doing several variations of that, we had to say goodbye.
43. Prior to our FaceTime on Boxing Day I wrote Ms. Holmes and asked her if we could at the very least set another FaceTime so that our daughters would know they would be seeing me again, and I could count on seeing them again. She ignored my request and told me before the FaceTime call to not mention possible visits. She did not provide an explanation.
44. Ms. Holmes has demonstrated an ongoing pattern of ignoring professional advice, making unilateral decisions that are not in the best interests of our daughters, including denying or interfering with access agreements, and making sudden and unpredictable changes that negatively affect our daughters.
45. Furthermore, Ms. Holmes has repeatedly refused to follow the access Order made by Master Fortier (now Associate Justice Fortier) in 2017, Master Champagne in 2018 (now Justice), and Justice Kershman in 2018. Most recently, Ms. Holmes chose not to follow the standing Order of Justice Kershman, because she

felt that a complete denial of parenting time was necessary. Ms. Holmes has also refused to share even basic information about our daughters despite repeated requests. This has been particularly distressing during the pandemic including the most recent COVID-19 variant.

46. I asked her to consider limited access following all previous recommendations made by professional that we have worked with, and less than that included in the standing court Order. Ms. Holmes refused, stating that she would not begin to discuss access until I provide extensive disclosure, most of which is not included in the current court order.
47. For disclosure, Ms. Holmes demanded this disclosure so that she could personally decide on whether there should be access, how often, and when. Ms. Holmes has a pattern of making false or misleading allegations and unpredictable decisions. She continues to discount or ignore medial documents and professional recommendations. She has ignored or acted contrary to agreements and recommendations made by CAS in the past. Most recently, Ms. Holmes has misrepresented private medical documents provided to her through disclosure in her affidavit. For these reasons, and those described above, Ms. Holmes has demonstrated that she will not make decisions that are in the best interests of our daughters.

Concerns with Disclosure Request

48. The letters Ms. Holmes includes as exhibits were provided in response to Ms. Holmes's requests for *that specific information*, and *in 2019*. They were provided two years ago, include sensitive personal health information, and Ms. Holmes should not be including them in public record. Ms. Holmes has repeatedly violated my right to privacy. She has shared my medical records with people who are not involved in making decisions about the well-being and safety of our daughters. She has sent my medical information to friends and family members. Ms. Holmes ignores recent information shared with her, as well as ongoing concerns I have raised about my right to privacy, to include these letters as exhibits.
49. Ms. Holmes relies on Todd Ross's affidavit. I last had contact with Mr. Ross in February 2017. Except for a visit which Ms. Holmes supervised last June 2021, I have not had contact with Ms. Holmes except for text or email, for over 18 months. On June 21st, 2021, to have any access to my daughters, I asked Ms. Holmes if she would meet me at a park with our daughters. Ms. Holmes agreed to a two-hour visit. She was sitting on a bench when I arrived and did not leave the bench or communicate with me the entire time that I played with my daughters. She does not include the visit in her affidavit and raised no concerns during or after the visit. There are no other 'observations' upon which she can assess my behavior.

dated January 28, 2022

50. I make this affidavit in response to the Respondent's motion and in support of my own and for no other or improper purpose.

Put a line through any blank space on this page.

Sworn/Affirmed by Darryl Ross at:

Ottawa

(municipality)

in Province of Ontario

(province, state or country)

on January 28, 2022

(date)

in accordance with O. Reg 431/20,
Administering Oath or Declaration
Remotely


Allison Lendor (Jan 28, 2022 16:58 EST)

Commissioner for taking affidavits
(Type or print name below if signature illegible.)



Darryl Ross (Jan 28, 2022 16:56 EST)

Signature

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

Form 14A - Affidavit (General)_Jan 28 22_A

Final Audit Report

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