

FAMILY LAW BASICS—2014 UPDATE
PAPER 7.1

Preparing Materials for Chambers: Proper Form and Content

These materials were prepared by Todd R. Bell of Schuman Daltrop Basran & Robin, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, February 2014.

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PREPARING MATERIALS FOR CHAMBERS: PROPER FORM AND CONTENT

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I. Introduction

These materials include two sets of one Notice of Application and one supporting Affidavit. Both Notices of Application seek the same relief and both Affidavits are based on the same fact pattern. After that, they could not be more different. The first set tries very carefully to avoid issues of admissibility, argument in the guise of evidence, unnecessary histrionics and ultimately, the client from harming his or her own case through presentation alone. They are restrained yet direct and clear. The second set, which offend nearly all the rules and in their current form would almost assuredly be dismissed outright, also risk misleading the court and which is a very serious matter. Counsel advancing materials such as these are doing disservice to their client; Ms. Smith enters the courtroom having very likely already lost what is an important application before a single word is spoken. The errors in these weak materials are inflated to the point of the absurd for illustration's sake, but the warning they attempt to convey by example is an important one.

IN THE SUPREME COURT OF BRITISH COLUMBIA

CLAIMANT: **JOAN SMITH**

RESPONDENT: **JOHN SMITH**

NOTICE OF APPLICATION

Name(s) of applicant(s): JOAN SMITH

To: JOHN SMITH
And To: DR. ALVIN GOLDMAN

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on **Thursday, February 18, 2014 at 9:45 a.m.** for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order pursuant to 16(2) of the *Divorce Act* (1985) Canada (the "*Divorce Act*") that the Claimant and Respondent share interim joint custody of the children of the marriage; namely, AUSTIN LEE SMITH (8), born November 1, 2005 ("Austin"), JENNIFER GRACE SMITH (7), born November 2, 2006 ("Jennifer") (collectively, the "Children"), and that the Claimant shall be primarily resident with the Claimant and that the Respondent shall have the following access:
 - a. Wednesdays after school until 8:00 p.m.; and
 - b. Every second Friday from after school until Sunday at 5:00 p.m.
2. In the alternative that pursuant to Part 4, Division 2 and specifically Section 42 of the *Family Law Act*, S.B.C. 2011 (the "*Family Law Act*") that the Claimant and Respondent have parenting time with the Children as follows:
 - a. That the Respondent shall have parenting time with the Children:
 - i. Wednesdays after school until 8:00 p.m.; and
 - ii. Every second Friday from after school until Sunday at 5:00 p.m.
 - b. And that the Claimant shall have parenting time with the Children at all other times.

3. Pursuant to Section 211 of the *Family Law Act*, S.B.C. 2011 and Rule 13-1 of the *Supreme Court Family Rules* that Dr. Alvin Goldman be commissioned to prepare a report on the best interests of the Children, including:
 - a. The needs of the Children in relation to this family law dispute;
 - b. The views of the Children in relation to this family law dispute;
 - c. The ability and willingness of either party to this family law dispute to satisfy the needs of either child or the Children; and
 - d. The cost of Dr. Goldman's report shall be borne equally by the parties at first instance with the final determination of responsibility for the expense to be left to the discretion of the trial Judge;
4. Pursuant to the *Divorce Act* and in particular Sections 15.1(1), 15.1(2) and 15.1(3), the *Family Law Act* and in particular Sections 147 and 149, and the *Federal Child Support Guidelines* (the "*Guidelines*") a determination, including if necessary imputation, of the parties' *Guidelines* incomes and:
 - a. That the Respondent pay to the Claimant for the benefit of the Children interim table child support; and
 - b. That after the Court's determination of what constitutes and appropriate expenses pursuant to Section 7 of the *Guidelines*, that on an interim basis the parties shall share Section 7 expenses on a pro-rata basis in accordance with their *Guidelines* incomes;
5. Pursuant to Section 15.2 of the *Divorce Act* and Sections 160 and 165 of the *Family Law Act*, S.B.C. 2011, an Order that the Respondent pay interim spousal support to the Claimant in accordance with mid-range of the *Spousal Support Advisory Guidelines* and on both compensatory and non-compensatory bases, retroactive to December 15, 2013, prospective, and on terms the Court deems appropriate;
6. That the prospective interim spousal support under this Order is to be paid on the 15th of every month thereafter until further written agreement of the parties or order of the Court;
7. That pursuant to Sections 88 and 89 of the *Family Law Act* that the Claimant is entitled to receive an interim distribution of family property to fund:
 - a. The family dispute resolution;
 - b. This proceeding under the *Family Law Act*; and
 - c. The obtaining of information or evidence in support of family dispute resolution or an application to Court;
8. An Order pursuant to Section 90 of the *Family Law Act* that the Claimant shall have exclusive occupation of the former family residence civically located at 123 1ST Avenue, Vancouver, British Columbia until further written agreement or order of the Court;

9. An Order pursuant to Section 183 of the *Family Law Act* that the Respondent:
 - a. Be restrained from directly or indirectly contacting the Claimant or any of the Children except for the purposes of exercising parenting time;
 - b. Be restrained from attending at, nearing or entering a place regularly attended by the Claimant or the Children, including the residence, property, business, school or place of employment of the Claimant or Children and including the former family residence except for the purposes of exercising parenting time;
 - c. Be restrained from following the Claimant or Children;
 - d. And that a police officer with jurisdiction in the Province of British Columbia who has reasonable belief that the Respondent is in breach of this order under Section 183 shall take such steps as the Court deems fit;
10. In the alternative, that pursuant to Section 222 of the *Family Law Act* that the Respondent shall not:
 - a. Molest, harass or annoy the Claimant;
 - b. Attend at the former family residence except for the purposes of exercising parenting time pick up and drop off; and
 - c. Shall not communicate with the Claimant except through electronic methods and shall in that communication strictly limit the subject matter to issues respecting the best interests of the Children and facilitation of parenting time;
11. Pursuant to Rules 5-1 and 9-1 of the *Supreme Court Family Rules* that the Respondent shall produce within fourteen (14) days to the solicitor for the Claimant the following documents:
 - a. The Respondent's duly sworn Form F8 Financial Statement with all usual attachments;
 - b. Specifically, the Respondent's 2012 personal income tax return with all attachments;
 - c. Specifically, all T4 or T5 slips received by or issued to the Respondent in the taxation years 2010, 2011, 2012 and to date in 2013;
 - d. A copy or copies of any employment contracts to which the Respondent has entered into, or been party to in any event, in the last three (3) years;
 - e. A copy of those documents setting out the structure of the Respondent's commission grid remuneration, including those documents demonstrating how commissions are calculated;
 - f. Copies of all commission remuneration slips received by or issued to the Respondent in the last three (3) years; and

- g. Copies of monthly statements and cancelled cheques for all bank accounts held solely or jointly in the Respondent's name and for the last three (3) years.
12. Pursuant to Rule 16-1 of the *Supreme Court Family Rules* that the Claimant have her costs of the application.

Part 2: FACTUAL BASIS

Background

1. The Claimant was born August 1, 1973 and is forty (40) years old. The Respondent was born on May 13, 1972 and is forty-one (41) years old.
2. The parties began cohabiting on June 1, 1993, separated on September 15, 2013 and there has been no divorce order pronounced.
3. There are two children of the marriage; namely:
AUSTIN LEE SMITH (8), born November 1, 2005 ("Austin"); and
JENNIFER GRACE SMITH (7), born November 2, 2006 ("Jennifer")
(collectively, the "Children")
4. The Claimant is and has been a stay at home parent. The Respondent works in sales.

The Children / Division of Time

5. During the marriage, the Claimant was primarily responsible for taking care of the day to day management of the Children's lives. This has continued post-separation.
6. The Children have school from 8:45 a.m. through 2:45 p.m. Monday to Friday. Both attend Queen Elizabeth Elementary on 3rd Avenue in Vancouver. Both children have several extracurricular activities which form part of their schedules.
7. The Respondent is living in North Vancouver in accommodations the Claimant says is suitable for the Children.
8. The Respondent has been exercising parenting time with the Children on Wednesday evenings and every second weekend. He asserts in his pleadings that equal time with the Children is in their best interests. The Claimant disagrees.

The Children / Division of Responsibilities

9. There is a medical issue relating to Jennifer (taking and acting upon medical advice relating to treatment resistant asthma) and academic issues relating to both (the signing of waivers and consents for travel) that the Claimant says require a parent to have sole authority over but that otherwise the parents ought to equally share parenting responsibilities.

Section 7 Expenses

10. Austin participates in swimming, soccer and piano each of which are associated with cost. Jennifer participates in swimming, ballet and math tutoring each of which are associated with cost.
11. In addition, the Children have future trips with school which come with significant expense and further expenses are incurred for medical costs net of coverage, anticipated orthodontic costs net of coverage and MSP premiums.

Section 211 Report

12. The Claimant seeks a Section 211 report be prepared by Dr. Alvin Goldman with the costs to be borne equally by the parties at first instance.

The Former Family Residence

13. The Claimant has asked the Respondent to stay away from the former family residence but that has not occurred. The Claimant asserts the Respondent has a problem with alcohol consumption and that in these circumstances he acts unpredictably and irrationally. The Respondent has attended at the former family residence after being asked not to by the Claimant and in these circumstances the Claimant has experienced anxiety and discomfort. The details of these events are set out in detail in the Claimant's affidavit.

Family Violence

14. In addition to the foregoing there have been instances of physical and emotional abuse by the Respondent to which both the Claimant and the Children have been exposed.

Incomes

15. The Claimant has limited income from rental revenue from a basement suite and new-found remuneration from part-time customer service work.
16. The Respondent works in sales for ABC Corporation and has an income mainly derived from employment income and commissions income. The Claimant is not entirely sure of the Respondent's incomes but is aware that his taxable income as reported on his personal tax return has fluctuated in recent years from a high of \$179,098 (2011) to a low of \$110,010 (2010).

The Claimant's Financial Circumstances

17. The parties have equity in their home, modest RRSP's, modest TSFA's, CPP credits, the household contents and older model SUV automobile and which comprise most of their family property. Almost all of the property is in the Respondent's name.
18. The Claimant asserts a need for an interim distribution of assets to assist with funding this proceeding and paying for expert reports.

Part 3: LEGAL BASIS

1. *The Supreme Court Family Rules*, and in particular Rules 5-1 (Financial Disclosure), 9-1 (Discovery and Inspection of Documents), 10-2 (Place of Application), 10-3 (Chambers Proceeding), 10-4 (Affidavits), 10-6 (Usual Application Procedure), 13-1 (Court Ordered Reports Under Section 211 of the *Family Law Act*) and 16-1 (Costs).
2. *The Spousal Support Advisory Guidelines*;
3. *The Federal Child Support Guidelines* generally, but in particular Sections 3 (Presumptive Rule), 7 (Special or Extraordinary Expenses), 11 (Form of Payments), 15 (Determination of Annual Income), 19 (Imputing Income) and Schedule III.
4. *The Divorce Act* (1985) Canada generally, but in particular:
 - a. Section 16(2) (Interim Order for Custody);
 - b. Sections 15.1(1)(Child Support Order), 15.1(2)(Interim Order) and 15.1(3)(Guidelines Apply);
 - c. Section 15.2(1)(Spousal Support Order);
5. *The Family Law Act* S.B.C. 2011 generally, but in particular:
 - a. Part 4, Division 2 (Parenting Arrangements) and in further particular Sections 37 (Best Interests of Child), 41 (Parental Responsibilities) and 42 (Parenting Time);
 - b. Section 211 (Orders Respecting Reports);
 - i. The Claimant asserts that as the “eyes and ears” of the Court, the Court will benefit from the assistance of a Section 211 report, and with the benefit of further information, will be better equipped to ascertain the best interests of the Children which is in and of itself in their best interests.
 - c. Sections 147 (Duty To Provide Support For A Child) and 149 (Orders Respecting Child Support);
 - d. Sections 160 (Duty To Provide Support For Entitled Spouse) and 165 (Orders Respecting Spousal Support);
 - e. Sections 88 (Orders Under [Property Division]) and 89 (Orders for Interim Distribution of Property);
 - i. The Claimant asserts that she requires funds above and beyond spousal support (given child support is not hers to use but for the Children) to continue in this proceeding for, *inter alia*, expert reports and dispute resolution.
 - f. Section 90 (Temporary Orders Respecting Family Residence);
 - i. The Claimant asserts that the Respondent’s continuing to enter the former family residence is resulting in an impossible situation and given he has secured alternate accommodations the balance of convenience weighs in favour of the Claimant’s ongoing possession.
 - g. Section 183 (Orders Respecting Protection);

- h. Section 222 (Purposes For Which Orders Respecting Conduct May Be Made);
6. Case Law to include but not limited to:
 - a. Spousal Support:
 - i. **Chutter v. Chutter**, 2008 BCCA 507;
 - ii. **Hartshorne v. Hartshorne**, 2004 SCC 22; and
 - iii. **Bracklow v. Bracklow** (1999), 44 R.F.L. (4th) I (S.C.C.)
 - b. Exclusive Possession of the Former Family Residence:
 - i. **Dennis v. Regehr**, [1996] B.C.J. No. 237 (QL) (S.C.); and
 - ii. **Wright v. Wright**, [1986] B.C.J. No. 1610 (QL) (S.C.)
 - c. Best Interests of a Child
 - i. **Gordon v. Goertz** (1996), 19 R.F.L. (4th) 177 (S.C.C.)
7. Such other authority as counsel may advise.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of the Claimant sworn February 1, 2014;
2. Such other material as counsel may advise.

The applicant(s) estimate(s) that the application will take 1 half day.

- This matter is within the jurisdiction of a master.
 This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within the time for response to application described below,

- (a) file an application response in Form 32,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the family law case, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3 (9).

Time for response to application

The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

- (a) unless one of the following paragraphs applies, within 5 business days after service of this notice of application,
- (b) if this application is brought under Rule 11-3, within 8 business days after service of this notice of application, and
- (c) if this application is brought to rescind, change or suspend a final order, within 14 business days after service of this notice of application.

Date: February 1, 2014

Signature of

applicant lawyer applicant(s)

TOOK THEIR TIME MCGHEE

To be completed by the court only:	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs [number] of Part 1 of this notice of application	
<input type="checkbox"/> with the following variations and additional terms:	
Date: [dd/mmm/yyyy]	Signature of
	<input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- interim order
- change order
- adjournments
- proceedings at trial
- appointment of additional expert(s): financial matters
- other matters concerning experts.

This is the 1ST affidavit
of JOAN SMITH in this case
and was made on February 1, 2014

Court File No.: E123456
Court Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

CLAIMANT: **JOAN SMITH**

RESPONDENT: **JOHN SMITH**

AFFIDAVIT

I, **JOAN SMITH**, homemaker, of 123 1ST Avenue, Vancouver, British Columbia, SWEAR
THAT:

1. I know or believe the following facts to be true. If my belief about facts is based on information from others, I have named the source of the information and believe that information to be true.

Background¹

2. I am the wife of the Respondent.
3. I was born August 1, 1973 and am forty (40) years old. The Respondent was born on May 13, 1972 and is forty-one (41)² years old.
4. Both the Respondent and I are Canadian citizens and both have been resident in British Columbia for in excess of twenty (20) years.
5. The Respondent and I began cohabiting on June 1, 1993. We separated on September 15, 2013. There has been no divorce order pronounced.
6. There are two children of the marriage; namely:

AUSTIN LEE SMITH (8), born November 1, 2005 ("Austin"); and

JENNIFER GRACE SMITH (7), born November 2, 2006 ("Jennifer")

(collectively, the "Children")³

¹ Adding subheadings makes an affidavit clear and quickly navigable.

² It is good practice to include ages and not just dates of birth for ease of reference.

7. Both of the Children have been resident in British Columbia since birth.
8. I am a stay at home parent. I volunteer in several capacities and I receive nominal rental income from a basement tenant in the former family residence.
9. The Respondent works in sales for ABC Corporation. His job duties involve both office and out of office work. He spends significant time in his car to contact customers and clients.
10. After separation, I have had the children in my care at all times save and except between Friday afterschool through Sunday at 5:00 p.m. every second weekend and each Wednesday from after school until 8:00 p.m. This arrangement has been informal in nature as between the Respondent and I and not reduced to an agreement in writing.
11. I am aware of the following incidents which I believe to be family violence, as that term is defined in Section 1 of the *Family Law Act* S.B.C. 2011 that has affected the Children and me⁴:
 - (a) Forced physical restraint of at least one of the children in December of 2013; and
 - (b) Emotional and psychological violence through yelling at, belittling and threatening the children and myself, beginning in 2011 and growing thereafter in frequency and seriousness until the date of separation when the Respondent struck me in the face with his hand and which left bruising, resulting in police attendance and the Respondent's departure from the former family residence.
12. I have not been involved in court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act* or the *Divorce Act* concerning children in my care, or in any other court proceedings in any other jurisdiction concerning children under my care, except this lawsuit⁵.
13. There are no criminal offenses of which I have been convicted and not pardoned.
14. I live in the former family residence in Vancouver on 1st Avenue near Jones Road. It is a detached four-bedroom home. I am two minutes by car from the Children's school. I believe that the Respondent now lives on Keith Road West in North Vancouver. I speculate it to be one half hour by car to the children's school for the Respondent, subject to traffic volumes.

The Children / Division of Time

15. During our marriage and prior to separation I was a stay at home parent and the Respondent worked full-time. After separation, that has remained the general pattern although of course the Respondent and I are living separate and apart.

³ The names of the Children, who are the primary concern of the Court before all other matters, ought to be identified with ages, not just dates of birth, in the very first paragraphs of the affidavit.

⁴ Under Section 38 of the *Family Law Act* S.B.C. 2011 (the "FLA"), the Court is compelled to consider family violence as part of the analysis of a child's best interest under Section 37. It is good practice to address family violence at the outset of the affidavit, given the Court's primary concern for the Children.

⁵ Paragraphs 12 and 13 of this Affidavit, among others, are derived and taken from an affidavit precedent developed by the Honourable Madam Justice Gray and others.

16. During the marriage, I was primarily responsible for taking care of the day to day management of the Children's lives, including:
- Taking them to and from school and their extra-curricular events;
 - Scheduling and taking them to doctors, dentists and orthodontist's appointments;
 - Volunteering at their school three times weekly on Mondays, Wednesdays and Fridays as a playground supervisor; and
 - Attending to the household management chores including cleaning the home, grocery shopping, buying our family clothing and the cooking of most meals.
17. I continue to be responsible for the duties set out in the preceding paragraph.
18. The Respondent has traditionally participated in taking the Children to their weekend events and attending evening meetings at the school⁶.
19. The Children have school from 8:45 a.m. through 2:45 p.m. Monday to Friday. Both attend Queen Elizabeth Elementary on 3rd Avenue in Vancouver. The Children's current extra-curricular schedules can be expressed in calendar form as follows:

	Mon ⁷	Tues	Wed	Thurs	Fri	Sat	Sun
Week 1		Austin: Swimming 6:00 a.m. – 7:30 a.m.	Jennifer: Ballet: 4:00 p.m. – 5:30 p.m.	Austin: Swimming 6:00 a.m. – 7:30 a.m.	Jennifer: Math Tutor 3:30 p.m. – 5:00 p.m.	Austin: Soccer 11:00 a.m. – 12:00 p.m.	Austin: Piano 2:00 p.m. – 4:00 p.m.
Week 2		Austin: Swimming 6:00 a.m. – 7:30 a.m.	Jennifer: Ballet: 4:00 p.m. – 5:30 p.m.	Austin: Swimming 6:00 a.m. – 7:30 a.m.		Jennifer: Swimming 9:00 a.m. – 12:00 p.m. Austin: Soccer 11:00 a.m. – 12:00 p.m.	

20. In addition to school and extra-curricular activities, both Children have regular play-dates with friends. Also, as a matter of habit and tradition, the Children and either the Respondent or I regularly see movies and usually eat out on Friday nights.

⁶ Note that the Respondent's involvement is framed either in the positive or at worst neutrally, without unhelpful criticism of his alleged lesser role. Throwing unnecessary fuel on the fire is anathema to the entire thrust of the FLA.

⁷ Using tables judiciously is a helpful way of expressing expenses and schedules, although caution must be taken not to overuse them. In this affidavit, a single table is used to demonstrate what can sometimes be difficult to digest when in written form: the details of a two-week rotating schedule of events.

21. The Respondent told me, in the weeks following separation, and I verily believed it to be true⁸ that he lives in North Vancouver on Keith Road West in a three bedroom basement suite. The Respondent has told me various times since separation and I have verily believed it to be true on every occasion that each child has their own bedroom at the Respondent's home. Each of the Children have independently told me and I have verily believed it to be true that they participated in picking out their furniture and decorating their rooms.
22. Austin has told me and I have verily believed it to be true that the Respondent did not take him to his Saturday soccer practice on three occasions since separation: once in October of 2013 and twice in November of 2013.
23. Jennifer has told me and I have verily believed it to be true that the Respondent did not take her to her Saturday swimming on December 7, 2013.
24. My understanding and belief, based on my direct observations during the marriage and comments made to me by the Respondent and the Children after separation and all of which I have verily believed to be true, is that the Respondent works from approximately 8:00 a.m. to 6:00 p.m. Monday to Friday. He drives extensively as part of his employment duties.
25. I am available to attend to the Children's needs at most times, save my volunteer obligations and part-time work (described more fully below) but which nevertheless have been scheduled to dovetail with the Children's schedules.
26. The Children have lived since birth in the former family residence.
27. I believe the Respondent has an issue with alcohol abuse. During the marriage, the Respondent would drink daily and did so consistently during the last three years of the marriage. Often, the Respondent drank to the point of passing out even on weeknights. From time to time, during episodes of inebriation, the Respondent became angry and physical. The Respondent has told me that he is trying to control his drinking and I have verily believed it to be true. I support the Respondent's efforts in this regard⁹.
28. On October 21, 2012 the Respondent was stopped by law enforcement and blew over the legal limit. The Respondent told me of this and I verily believed it to be true and I saw the documents in relation to this issue¹⁰. The Respondent was unable to drive his car for a period of ninety (90) days. The Respondent took his accrued vacation time to off-set the inconvenience in his ability to work.

⁸ Unless Ms. Smith had been there herself, she doesn't know this to be a fact. Set out the evidentiary basis for all assertions. Admitting there is a hearsay component in an alleged fact which limits its weight is better than providing no basis for direct knowledge and rendering it inadmissible, or, much worse, leaving the Court to inadvertently assume direct knowledge and therefore be misled.

⁹ Note here, and throughout this affidavit, that delicate and potentially offending (to the Respondent) evidence is laid out factually but without histrionics or judgment. It is the duty of counsel to prepare materials that serve the dual purposes of providing the requisite evidence to secure an order at the same time as also keeping the family law file from deteriorating into war through unnecessary baiting.

¹⁰ The sentence is the the factual basis for knowledge of the assertion; otherwise, the preceding sentence is inadmissible.

29. Both Children have told me and without solicitation and I have verily believed it to be true, that they would prefer and wish to remain primarily resident in the former family residence.
30. The Children tell me that they love me and display same. The Children have told me and I verily believe it to be true that they love the Respondent and I have observed them demonstrate same.
31. I believe¹¹ that it is in the best interests of the Children to remain in my care for the majority of the time and according to the division of parenting time which has been in place since separation.

The Children / Division of Responsibilities

32. Jennifer has asthma and receives treatment from her doctor, Nancy White. Jennifer's asthma has been difficult to manage. Most of the usual prescription inhalers do not work for Jennifer and Dr. White has been helping Jennifer through experimenting with different inhalers and trying different treatments and medicines. I meet with Dr. White regularly and authorize changes to Jennifer's treatments. I consult though email with the Respondent on these issues.
33. From time to time, the Children require re-registration for their next round of extra-curricular activities. Swimming is one example.
34. Austin takes an elective class at school and which studies British Columbia First Nations/People's cultures. His class and teacher regularly travel by bus to various places around the Lower Mainland and up the Squamish Valley. Consent forms are required for each of these trips and must be provided in advance.
35. The Children do not otherwise have facets to their lives which, in my opinion and experience, require anything other than joint responsibility as between the Respondent and I.

The Children's Activities / Other Expenses

36. The Children's extra-curricular activities are set out in the table above. The costs of those activities and the costs of other expenses which I believe to be special expenses are set below:
 - (a) Austin:
 - (i) Swimming: Austin attends three (3) rounds of swimming lessons per year; each last approximately ten (10) weeks. Each round costs on average \$110. Attached herein and marked **Exhibit "A"** are copies of receipts for this expense¹², the contents of which I verily believe to be true.

¹¹ Wherever a factual assertion is based on belief, or a belief generally is referred to, identify it as such. Without that qualifying phrase in this paragraph, the stated views about the best interests of these children are argument and are as such inadmissible.

¹² Wherever possible, include supporting documents. Do not rely on bare assertion alone or run the risk of your application being adjourned or dismissed.

- (ii) Soccer: Austin attends two (2) rounds of soccer per year; each last approximately twelve (12) weeks. Each round costs approximately \$80. Attached herein and marked **Exhibit "B"** are copies of receipts for this expense, the contents of which I verily believe to be true.
 - (iii) Piano: Austin plays piano once per week approximately 48 weeks of the year. Each weekly lesson costs \$20. Attached herein and marked **Exhibit "C"** are copies of receipts for this expense, the contents of which I verily believe to be true.
 - (iv) Each of the foregoing is a long-standing expense and which was also incurred during the marriage.
- (b) Jennifer:
- (i) Swimming: Jennifer attends four (4) rounds of swimming lessons per year; each last approximately seven (7) weeks. Each round costs on average \$95. Attached herein and marked **Exhibit "D"** are copies of receipts for this expense, the contents of which I verily believe to be true.
 - (ii) Ballet: Jennifer attends ballet lessons weekly, approximately 40 weeks of the year (not in summer or Christmas). Each lesson costs \$30. Attached herein and marked **Exhibit "E"** are copies of receipts for this expense, the contents of which I verily believe to be true.
 - (iii) Math Tutoring: Jennifer receives math tutoring bi-weekly from a graduate student named Rob Rhodes. Mr. Rhodes charges \$40 per session. Jennifer receives tutoring only during the academic year; approximately forty (40) weeks per annum. Attached herein and marked **Exhibit "F"** are copies of receipts for this expense, the contents of which I verily believe to be true.
 - (iv) Each of the foregoing is a long-standing expense and which was also incurred during the marriage.
- (c) Both children have trips with school from time to time. In the 2013/2014 academic year, Austin went to New York which cost approximately \$750 and Jennifer when to Banff which cost approximately \$550. Attached herein and marked **Exhibit "G"** are copies of receipts for these expenses, the contents of which I verily believe to be true. These costs were shared between the Respondent and me. In the spring of 2014, Austin is scheduled to go to Portland, Oregon with a projected cost of \$620, inclusive of travel and accommodation costs. The trip is academic and associated with Austin's schools. The trip includes trips to local museums. Attached herein and marked **Exhibit "H"** are copies of correspondence with Ms. L. Sharma of Austin's school and setting out the details of this projected expenses, the contents of which I verily believe to be true. The Respondent and I are not agreed as to the sharing of this cost. Also in the spring of 2014, Jennifer has opportunity to travel to Geneva to attend a United Nations youth conference. The cost is approximately \$3,500 inclusive of travel and accommodation costs. Attached herein and marked **Exhibit "I"** are copies of correspondence with Mr. M. Johnson of Jennifer's school, setting out

the details of this projected expense, the contents of which I verily believe to be true. The Respondent and I are not agreed as to the sharing of this cost.

- (d) The Children's MSP premiums are \$126 per month. Attached herein and marked **Exhibit "J"** are copies of the most recent joint account statement and demonstrating, as an entry dated December 21, 2013 and which I believe to accurately reflect the detail of the actual transaction, the automatic withdrawal of this expense from the account.
- (e) Jennifer is projected by her orthodontist Dr. Irving Smart to require braces which she will require beginning in September of 2014. Attached herein and marked **Exhibit "K"** is a copy of an estimate from Dr. Smart dated August 15, 2013 and setting out the details of this projected expense and which I believe to be a true projection. The Respondents coverage through his employment benefits package is only 50%.
- (f) In my experience, Jennifer's inhalers and other asthma medication costs on average \$75 per month, net of coverage. Attached herein and marked **Exhibit "L"** are copies of receipts for this expense, before coverage, the contents of which I verily believe to be true.

Section 211 Report

- 37. The Respondent and I are not agreed as to what parenting plan and division of parenting responsibilities are in the best interests of Austin and Jennifer. The Respondent seeks equal parenting time on a week-on, week-off basis according to his pleadings. I seek primary residency with final decision making authority in certain key areas and where it affects the Children.
- 38. I have proposed to the Respondent that Dr. Alvin Goldman prepare a report pursuant to Section 211 of the *Family Law Act*. The Respondent disagrees, according to his Response to Family Claim. As I understand it, the Respondent opposes a Section 211 report on the basis that it is unnecessary and expensive.
- 39. Dr. Goldman is a child psychologist. Attached herein and marked **Exhibit "M"** is a copy of Dr. Goldman's *curriculum vitae*, the contents of which I verily believe to be true. I am told by my counsel, Mr. Good, and have verily believed it to be true that Dr. Goldman is routinely qualified by the Courts of British Columbia to give expert opinion evidence with respect to the best interests of children.

The Former Family Residence / Family Violence

- 40. There have been difficulties post-separation and arising at the former family residence. I have asked the Respondent to not come to the former family residence unless invited. The Respondent has not, as I have experienced it, respected my request for privacy.
- 41. The following are some examples of incidents which have occurred post-separation and occurring at the former family residence and the dates on which they occurred¹³:

¹³ Note that the following paragraph is limited exclusively to who did what, how, and in which sequence. It is not larded with speculation or statements of shock.

- (a) September 15, 2013: This was also the date of separation. After dinner, I was cleaning the kitchen on the second floor of the home. The Children were downstairs doing their homework. The Respondent was in his study. The Respondent had been drinking since coming home from work. By the time of the following sequence of events, I project that the Respondent had consumed approximately seven (7) drinks. The Respondent did not appear intoxicated. My observation has been that over the years the Respondent has increasingly become less visibly impaired from drinking which I attribute, without qualification to say so with authority, to increased tolerance to alcohol¹⁴. The Respondent came out of his study. He was holding a credit card bill in his left hand. He asked me why I had made a charge of \$150 at Sears the month prior. I told him I could not remember. He pressed me and I resisted. An argument ensued. The Respondent began to yell. I told him to leave me alone. The Respondent then struck me across my left cheek with the back of his right hand. I fell to the floor. The Respondent went back into his study. I called 911. The police attended within approximately six (6) minutes. The Respondent went outside to speak to the officers. An officer then came into the home and sat with me while the Respondent packed a bag. The Respondent subsequently arranged a new residence and we have not lived together since.
- (b) October 4, 2013: At 5:43 p.m. I received a phone call from the Respondent. He told me he was coming to the home to see the Children. He spoke quickly and loudly and I became concerned he might have been drinking. I told him not to come. He said an expletive¹⁵ and hung up the phone. Approximately twenty (20) minutes later, the Respondent showed up at the home and entered without knocking. The Children looked up from dinner in surprise. The Respondent smelled of alcohol. I asked the Respondent to leave. He said no, sat down at the table and said that "I'm the Dad here and I am staying; give me dinner and shut up". I asked the Respondent to leave a second time. He used an expletive and refused. The children were silent. I did not want matters to escalate so I stopped talking and served the Respondent dinner. The Respondent continued to consume alcohol and eventually fell asleep on the couch. In the morning, I got up to find he had left at some point in the night or early morning. Throughout, I felt a lack of privacy and felt violated.
- (c) October 5, 2013: I arrived home from shopping for groceries at approximately 2:00 p.m. The front door was unlocked. I entered the house and heard noises from the upstairs bedrooms. I went upstairs to find the Respondent looking through my dresser drawers. The Respondent told me he was checking to see if I was dating someone new. He laughed at me and went to the kitchen. He ate some food out of the fridge and left.
- (d) October 11, 2013: On this date, a Saturday, the children and I returned from the movie theatre at approximately 9:00 p.m. Austin went downstairs and discovered

¹⁴ The affiant qualifies this statement, which may be of use to the Court or may not, by clarifying she is not making a professional assessment of the Respondent's tolerance but merely stating a suspicion based on common sense.

¹⁵ It is unhelpful to include specific expletives in an affidavit if it can be avoided. Moreover, as another example of exercising judgment and tact, if there are compromising photos of a party (even worse, a non-party) it is entirely inappropriate and short-sighted to attach copies to an affidavit. The proper practice, in the very limited circumstances where they would even be relevant, is to describe them and further depose that a copy may be made available if necessary.

the Respondent passed out on the couch; he had vomited in a wastepaper basket which was beside him on the floor. Austin came upstairs crying and went to his room. I went downstairs and saw what Austin had presumably seen.

- (e) October 31, 2013: After the October 11, 2013 event, I changed the locks. On Halloween night, well after the Children had gone to bed, the Respondent came to the former family residence. He tried to enter but could not. He began to scream out in anger and pound on the door. After ten (10) or fifteen (15) minutes a Vancouver Police Department cruiser appeared in the street and the Respondent left. I assume, but cannot confirm, that a neighbor called 911.
 - (f) November 17, 2013: On November 17, 2013, I came home to find beer cans throughout the kitchen and the study upended. There were papers everywhere and my laptop was gone. A kitchen window was open which opens out onto the back deck; the lock was broken. The valuables in the home, including jewelry and electronics, were untouched. I did not phone the police as I presumed the act was done by the Respondent and I didn't want him to get into trouble.
42. I experience and feel a general anxiety when in the home. I find myself looking out windows obsessively. I generally worry that the Respondent will come to the home and a scene may ensue. When I hear a knock at the door, even when it turns out to be benign, my heart races and I feel anxious¹⁶.
43. In addition to the specific events of September 15, 2013, above, I have directly observed the following:
- (a) As early as 2011, when the Respondent's drinking in my observation graduated from social situations to daily use which then grew heavier over time, the Respondent would say the following things to either one or both of the Children or to me (mostly during times when he was consuming alcohol):
 - (i) That we were stupid;
 - (ii) That we were ugly;
 - (iii) That he wished we were dead;
 - (iv) That he'd be better off without us;
 - (v) That we'd be better off without him and that he ought to kill himself;
 - (vi) That if we made him leave he would keep the money¹⁷ and we would all be broke and homeless;

¹⁶ To demonstrate the proper foundation for exclusive occupancy and protection orders, it is good practice to include not only cause – the allegedly offending behaviour – but also the effect. It is the latter that such orders are ultimately intended to remedy. It is important to be judicious in this area and not exaggerate through the unnecessary use of compound adjectives.

¹⁷ Threats against the financial autonomy of a party are included in the definition of family violence under Section 1 of the FLA.

- (vii) That if we didn't behave "properly" that he would kill the family dog¹⁸, Spot; and
 - (viii) The Respondent would regularly call all three of us obscene names and use obscenity and usually in a loud, sometimes to the point of yelling, speaking voice.
44. As a matter of course, when the foregoing things were said, I would observe sadness in the faces of the Children. On many occasions one or both would cry. Each child has, on occasion, asked if the Respondent's statements are true. I have consoled the Children during these times¹⁹.
45. When the foregoing statements are and have been leveled at me, I have felt and feel hurt and violated. I often cry when I am alone.

Incomes

46. Attached herein and marked collectively **Exhibit "N"** are the Respondent's 2010, 2011 and 2013 personal income tax returns with all attachments, which I believe to be true copies of the Respondent's income information as reported by him to the Canada Revenue Agency. The Respondent works in sales and has been with the same employer for eleven (11) years. I do not believe he has any other source of income. The Respondent's line 150 income as reported in those tax returns are as follows:
- (a) 2010: \$110,010
 - (b) 2011: \$179,098
 - (c) 2012: \$123,845
47. Based on conversations I have had with the Respondent and the content of which I have verily believed to be true:
- (a) The Respondent's income is comprised of a base salary of \$80,000 per annum and commissions he earns in relation to his sales; and
 - (b) The percentage of commissions the Respondent receives is based on his position on a commission grid and which specific percentage changes from time to time.
48. I do not have all the Respondent's financial documents, only those which I was able to locate in the former family residence: Attached herein and collectively marked **Exhibit "O"**, the contents of which I verily believe are true, are:
- (a) The Respondent's Commission (remuneration) slips for various pay periods throughout the calendar year 2013, including one dated December 3, 2013 and demonstrating gross commission income to date to be \$92,987;

¹⁸ Threats against property and pets are included in the definition of family violence under Section 1 of the FLA.

¹⁹ Cause and effect phrased not as inadmissible argument, but advanced as admissible statements of observation made.

- (b) A letter from the Respondent's employer dated June 30, 2013 and advising him of a minor quarterly change in his position on the commission grid; and
 - (c) The Respondent's 2012 T4 slip from his employer and demonstrating total taxable employment income as \$125,765.
49. I believe the difference between the Respondent's base salary and his taxable income represents commission incomes earned. I believe that his income fluctuates due to market forces and that the 2013 tax year appears to most closely resemble the 2011 tax year.
50. I am a stay at home mother. I have been so for the last eight years. This was a result of a mutual agreement the Respondent and I entered into on the birth of our first child and which has remained in place.
51. My last place of full time employment was as a cashier with Safeway on West 4th Avenue in Vancouver. That employment concluded when I entered my third trimester carrying Austin. In my final year of employment, I believe I was making approximately \$34,000 per annum.
52. I have been able to secure part-time work post-separation. I work at Home Depot for four hours, three weekdays per week (when the Children are in school), at a rate of \$16.00 per hour. I began this work on January 3, 2014. Attached herein and marked **Exhibit "P"** is my most recent paystub, the contents of which I verily believe to be true.
53. There is a one-bedroom Laneway house on the property the former family residence sits upon and which generates \$1,100 in rental income per month. The tenant has been with us for three years and I do not expect him to move. I have been accepting and retaining that revenue and using it for day-to-day family expenses since separation and expect to continue doing so. That income has been historically reported on my tax returns, attached to my Form F8 sworn in this proceeding, due to a perceived tax advantage.
54. I have not, as at the date of swearing this affidavit, received a sworn Form F8 from the Respondent.

Assets

55. I lay claim to the following as family property:
- (a) The former family residence, in the Respondent's sole name, and with a tax assessed value in 2014 of \$865,000 and with a mortgage secured against the property in the approximate amount of \$445,988 and a home equity line of credit secured against the property with \$100,000 in available credit and a zero balance (Attached herein and marked **Exhibit "Q"** is the most recent copy of our mortgage statement; the 2014 Property Tax Assessment is attached to my Form F8), the contents of which I verily believe to be true insofar as the tax assessment value of the residence;
 - (b) RRSP's in both the Respondent and my names but which are nominal (Attached herein and collectively marked **Exhibit "R"** are the most recent statement for each RRSP), the contents of which I verily believe to be true;

- (c) TSFA account(s) in the Respondent's name and built during the marriage which I believe to be approximately \$45,000, but for which I have no statements;
- (d) The CPP credits accrued to each party under the Canada Pension Plan;
- (e) The family car, a 2008 Nissan Pathfinder; and
- (f) The family joint account into which the Respondent's income was paid until recently. Attached herein and marked collectively marked **Exhibit "S"** are copies of the joint account monthly statements for the period of September 1, 2013 through January 30, 2104.

My Financial Circumstances

- 56. On December 18, 2014 I was paying for groceries at Costco in Richmond, BC. My debit card was declined. I hold no credit card and was forced to abandon the groceries. The Children were not with me.
- 57. I am able to bank on-line as the Respondent has previously given me the passwords to do so. I went to our on-line joint chequing account web page to discover that the Respondent's last two periodic income deposits, due to be deposited December 15 and 31, respectively, had not occurred. I emailed the Respondent on January 12, 2014 asking him about the mistake and he replied by email on January 14, 2014 advising that he had cancelled the regular deposits, would transfer \$250 into the account and that I "could live off that". Attached herein and marked **Exhibit "S"** is a copy of that email²⁰.
- 58. I have no bank account in my own name and aside from my RRSP's no access to family savings or the Respondent's income.
- 59. I anticipate requiring funds to pay for an appraisal on the former family residence as well as at least one-half of Dr. Goldman's report. I do not have savings or other liquid assets at my disposal with which to fund those disbursements. The matter has been set for trial for five (5) days commencing September 14, 2014. Examinations for discovery have been scheduled to occur on April 6 and 7, 2014. I am unable to pay a retainer to have the benefit of counsel as I have no liquid assets at my disposal.
- 60. I make this affidavit for no improper purpose.

SWORN BEFORE ME at
Vancouver,
British Columbia,
on February 1, 2014

A commissioner for taking
affidavits for British Columbia

JOAN SMITH

²⁰ Be very careful and exercise restraint when including email correspondence in affidavits. Attaching emails may harm the parties' future ability to communicate electronically and the parties' ability to communicate is directly linked to the best interests of the children in issue. In other words, be careful not to poison the well. Also, voluminous emails when in the form of strings can be repetitive and at times difficult to follow.

IN THE SUPREME COURT OF BRITISH COLUMBIACLAIMANT: **JOAN SMITH**RESPONDENT: **JOHN SMITH****NOTICE OF APPLICATION**Name(s) of applicant(s): **JOAN SMITH**To: **JOHN SMITH**

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smith Street, Vancouver, on **Thursday, February 18, 2014 at 9:45 a.m.** for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order for custody and parenting time¹ for the Claimant pursuant to both the Divorce Act and the Family Law Act².
2. An order for a section 211 report³.
3. An order that the Respondent pay to the Claimant for her benefit⁴ child support.
4. An order that the Respondent pay to the Claimant spousal support⁵;

¹ The interplay between the *Divorce Act* and *Family Law Act* is complicated by issues of contrasting language leading in some instances to questions of paramountcy. The writer prefers, although others may disagree, to not rely simultaneously on both statutes in the same paragraph where there is a chance of inconsistency but to seek each prayer for relief individually and make submissions on the matter: See *M.M. v. C.J.* 2014 BCSC 6, paragraphs 2 through 4 for a description of the problem.

² Always include the specific sections upon which you intend to rely for three reasons: one, courtesy to the court; two, courtesy to your friend and three, your obligation to ensure that self-represented litigants are treated fairly: *Naderi v. Naderi*, (2012), 535 W.A.C. 126, 2012 BCCA 16 (B.C.C.A.) at paras. [18] – [21].

³ Given that any order pursuant to Section 211 (or 202) of the *Family Law Act* will affect a non-party counsel must both serve the proposed author of the report and name them in the Notice of Application, neither of which occurred on the face of this pleading.

⁴ Child support is for the benefit of the children and received under trust conditions. This paragraph demonstrates that counsel misunderstands the underlying principles behind child support prior to the application ever being heard.

⁵ Set out the scope (retroactive, prospective), the basis for entitlement and the proposed payment pattern and methodology or risk your application being dismissed.

5. An order for an interim distribution of family assets to level the playing field with the Respondent⁶;
6. An order for exclusive occupancy⁷ of the former matrimonial home⁸;
7. A protection order or conduct order⁹;
8. An order that the Respondent make his disclosure obligations under the rules of court¹⁰.
9. Whatever/such other relief this court deems appropriate¹¹;
10. Costs.

Part 2: FACTUAL BASIS

1. There are two children: Austin and Jennifer¹².
2. The Claimant is and has been a stay at home parent and it is in the best interests of the children that they stay with her. The Respondent works in sales but has a drinking problem and is violent.

Only the Claimant can ensure that the Children's schedules operate smoothly. She is the best person to make decision about medical and academic issues.
3. There are steep costs that the Claimant pays for the children's enriching and beneficial activities and the Respondent does not support those plans or offer to pay.
4. An expert is required to ensure the children are not at risk. Also, the Claimant is terrified of the Respondent at all times and needs to have privacy and calm.
5. The Claimant's resources are small and the Respondent is likely hiding income. His income is underreported by at least \$50,000.

⁶ This is argument which has no place in the "orders sought section", if any, for that matter given the manner and tone in which it is asserted.

⁷ Be accurate: this is no longer the term of art. Under the *Family Law Act*, the term is "exclusive possession" not "exclusive occupancy".

⁸ Be accurate: this is no longer the term of art. Under the *Family Law Act*, the term is "family residence" not "matrimonial home".

⁹ Given the inherent prejudice to the orders being sought (not to mention the importance of protecting spouses and children in *bona fide* need of same), this prayer is woefully inadequate.

¹⁰ It is not clear what, if anything, the Court can do with an order that simply duplicates free-standing obligations under both the *Supreme Court Family Rules* and the *Federal Child Support Guidelines*. Having counsel explain detail(s) for the first time in Court, orally, is wasting through inefficiency of the Court's time.

¹¹ This is commonly used; however, in the writer's view this is a meaningless prayer. If it means being able to argue relief not specifically sought, it amounts to an end-run around the very purpose of the *Rules*. If it means to be able to seek those things that the Court has jurisdiction to do even in the absence of any application by the parties, it is unnecessary and perhaps even disrespectful to remind the Court about the breadth of its authority.

¹² This entire factual area is inadequate. Reading it, in conjunction with the orders sought as set out herein, really provides nothing more than an outline in shadow insofar as what the application is actually about and the evidentiary basis upon which it is founded.

Part 3: LEGAL BASIS

1. The Child Support Guidelines¹³
2. The Divorce Act (
3. The Family Law Act
4. The inherent jurisdiction of the court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of the Claimant sworn February 1, 2014;
2. Such other material as counsel may advise.

The applicant(s) estimate(s) that the application will take 30 minutes¹⁴.

- This matter is within the jurisdiction of a master¹⁵.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within the time for response to application described below,

- (a) file an application response in Form 32,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the family law case, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3 (9).

Time for response to application

¹³ This is a common error which is entirely likely to lead to the dismissal of your application and at a minimum criticism from the Court. When the rules changed in July of 2010, this area was specifically intended to replace the requirement for written submissions: see *Zecher v. Josh*, 2011 BCSC 311.

¹⁴ This is clearly not a thirty (30) minute application. Understating time estimates is a sure way to draw the ire of the Master or Judge attempting to process the entire Chambers list in a manner which is fair to all present.

¹⁵ Relying on the inherent jurisdiction of the court and stating the application is within the jurisdiction of a master is internally incorrect.

The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

- (a) unless one of the following paragraphs applies, within 5 business days after service of this notice of application,
- (b) if this application is brought under Rule 11-3, within 8 business days after service of this notice of application, and
- (c) if this application is brought to rescind, change or suspend a final order, within 14 business days after service of this notice of application.

Date: February 1, 2014

Signature of
[] applicant [x] lawyer applicant(s)

L. RUSHED N. LAZY

INCORRECT

To be completed by the court only:	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs [number] of Part 1 of this notice of application	
<input type="checkbox"/> with the following variations and additional terms:	
Date: [dd/mmm/yyyy]	Signature of
	<input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- interim order
- change order
- adjournments
- proceedings at trial
- appointment of additional expert(s): financial matters
- other matters concerning experts.

Court File No.: E123456
Court Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

CLAIMANT: **JOAN SMITH**

RESPONDENT: **JOHN SMITH**

AFFIDAVIT

I, **JOAN SMITH**, *², of 123 1ST Avenue, Vancouver, British Columbia, SWEAR THAT:

Background

1. I³ was born August 1, 1973. The Respondent was born on May 13, 1972.
2. The Respondent and I began cohabiting on June 1, 1993. We separated on September 15, 2013 when the Respondent maliciously attacked me⁴ and the police kicked him out.
3. I⁵ have two wonderful, kind and caring children named Austin Lee, born on November 1, 2005 and Jennifer Grace, born November 2, 2006⁶.
4. I am a stay at home parent and always have been. I volunteer in several capacities for organizations that I believe in. These organizations provide care and comfort to those in need and it is important work that I do⁷.
5. The Respondent evidently works in sales for "ABC Corporation". He spends significant time in his car to contact customers and clients, when he is not stopping at a bar to drink, or have lunch with buddies, even though my children and I cannot afford to go out for lunch⁸.
6. I have the children the vast majority of the time and this is best⁹. The children see their dad part-time, primarily every second weekend.
7. The children and I live in our home in Vancouver. The Respondent lives way off in North Vancouver in a dark and damp basement suite¹⁰.
8. During our marriage and prior to separation I was a stay at home parent and the Respondent worked full-time. After separation, that has remained the general pattern although of course the Respondent and I are living separate and apart.

¹ It is required practice to include the number (1st, 2nd, etc) of the affidavit, even the first.

² An occupation, including homemaker or stay at home parent if that be the case, is a required field.

³ Nearly unreadable font; write in 12 point.

⁴ Argument: it is not appropriate to submit argument in the guise of evidence: *Chamberlain v. Surrey District # 36*, (1998), 168 D.L.R. (4th).

⁵ Describing the children using possessive language in the first person is the fastest way to ensure the Court suspects your client may not fully comprehend what the children need and what is in their best interest.

⁶ Don't expect the Court do the math; include the actual ages of each child.

⁷ Irrelevant.

⁸ Even if this was relevant, there is no basis establishing the source of the information set out.

⁹ Second half of the sentence is argument.

¹⁰ Unnecessarily exaggerated/dramatic and no basis establishing the source of information set out: "Larding with adjectives" or "self-serving protestations of surprise, shock or disgust" are not helpful even if rarely admissible: *Creber v. Franklin*, [1993] B.C.D. Civ. 1549-03.

9. During the marriage, I did everything for the children with very little help from the Respondent who was not interested¹¹. I begged and pleaded with the Respondent to no avail. I have discussed this with my friend Sherri and she can confirm it is true¹². All of my friends have asked me in the past “why do you put up with such an abuser?” I know they care about me and believe the Respondent to be a batterer, which I agree with¹³.
10. The Children attend Queen Elizabeth Elementary. They have countless activities which keep them busy and which is one more reason that they should remain with me most of the time¹⁴ and not week on / week off which the Respondent says he wants even though he knows¹⁵ he cannot do it.
11. In addition to school and extra-curricular activities, both Children have regular play-dates with friends, which are important to their emotional well-being and social development¹⁶.
12. The Respondent failed my son¹⁷ when he did not take him to his Saturday soccer practice on three occasions since separation: once in October of 2013 and twice in November of 2013. Austin was hurt and upset and suffered emotional abuse¹⁸.
13. The¹⁹ Respondent failed my daughter when he did not take her to her Saturday swimming on December 7, 2013. She also was hurt and therefore suffered emotional abuse.
14. The Respondent works all hours of the day²⁰.
15. I am totally and completely devoted to doing everything the children need whenever they need it. I am shocked and dismayed²¹ at the Respondent’s lack of caring²². I was told by my brother Sam that he spoke to the Respondent and the Respondent talked to him about work, telling him he was busier and ever, but never once mentioned the children!²³
16. The Respondent is a terrible, terrible drunk²⁴. Nothing seems to be able to help him. I know that one day he will end up homeless or dead from his addiction to drinking and the children and I will be left alone. Not only is the respondent an alcoholic, but he has also broken the law by having his license suspended for driving drunk, thus demonstrating his contempt of the law and the courts²⁵.
17. I have long suspected that the Respondent may have an addiction to pornography. I have walked in on him masturbating to the most disgusting images imaginable. It these situations I have felt sick to my stomach! He exercises no good judgment and I worry that the children, if they haven’t been already, will be exposed to this disgusting behavior and I know they will be traumatized by it. He thinks it is normal but he does not know what addiction is, obviously based on his denial that drinks too much. Like the drinking, there are no limits: I would not be surprised if

¹¹ This deponent cannot speak to the state of mind of another.

¹² Irrelevant: inadmissible: *Foote v. Footo*, (1996), 6 B.C.L.R. (2d) 237.

¹³ Where to start? Friends not identified; even if they were, it is hearsay; even it was admissible hearsay it is opinion evidence without qualification: incorrect x 3: *Footo, supra*; *Trus Joist (Western) Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 1598*, [1982] 6 W.W.R. 744.

¹⁴ Argument: *Chamberlain, supra*.

¹⁵ Another’s state of mind.

¹⁶ Appears to rank friends higher than the father; misses the point of maximum contact entirely and thus putting the deponent at risk of being found to not understand what constitutes the best interests of a child.

¹⁷ Unnecessary exaggeration.

¹⁸ Argument coupled with opinion evidence.

¹⁹ Improper formatting. Don’t file messy materials. Take the time to do it right.

²⁰ Basis for knowledge of the assertion not set out.

²¹ Adjectival lard: *Creber, supra*.

²² Opinion/Argument: *Chamberlain, supra*.

²³ Double hearsay; inappropriate use of unnecessary punctuation:

²⁴ Opinion; adjectival lard: *Creber, supra*.

²⁵ Where to start? Opinion; conjecture; argument. Likely the entire paragraph is inadmissible.

the Respondent has watched pornography involving very young people, even children. The thought makes my skin crawl and I know I must protect the children from potential abuse²⁶.

18. The children don't want to live with the Respondent. I know this to be true. The children and I are very close and I know that they prefer to live with me²⁷. I love them and would do anything to protect them, as any good mother should²⁸.
19. It is clearly is the best interests of the children that they stay with me full time²⁹. It would be a travesty if they did not stay with me and an affront to justice and the children would be traumatized³⁰.
20. Jennifer has a horrible affliction she bravely fights: she has asthma and receives treatment from her doctor, Nancy White. Jennifer's asthma is almost beyond cure. Most of the usual prescription inhalers are utterly useless. Dr. White has told me that in her opinion Jennifer needs the very close care of someone who knows the problem first-hand. I had asthma as a child myself so I know this to be true. The Respondent doesn't pay attention to this issue which says something about his lack of devotion to his children³¹.
21. It is impossible to get the Respondent to sign consents to travel when required. He won't sign them³², which only hurts the children, just to get at me and due to his anger for me which I can see seethes just below the surface.³³
22. The Children's extra-curricular activities are many, including sports and cultural things, and altogether they cost at least \$500 per month³⁴. Only I have ever organized these things without any help from the Respondent.
23. The Respondent does not want a section 211 report to be done because he knows full well it will favour me³⁵. I support Dr. Goldman who is the leading expert in this area³⁶.
24. I am terrified at home and worry that the Respondent will come and attack me or the children. I have begged the Respondent not to come to the house but he does, as part of his ongoing controlling behavior of me³⁷. I know only a court order can protect me and ask the court to **protect me**³⁸ from physical and emotional abuse.
25. September 15, 2013 was the most terrifying day of my life. Until that day, I didn't know what it meant to be a battered spouse. My whole world fell apart, breaking like shards of glass. I didn't know that the Respondent was so sick as to hurt his family and I found out this to be true in the most horrible and terrifying way. On this day, the Respondent beat Austin and beat me. I cry just thinking about it. The Respondent was screaming at Austin to get him a beer. When Austin didn't reply, the Respondent jumped up without warning and grabbed Austin by the throat pinning him to the ground. Austin was shocked and terrified, thinking his dad may kill him. I jumped at the Respondent, only fearing for Austin and not myself. The Respondent had a look in his eyes which was animalistic. It was like he was out of control with rage. I have never seen anyone so out of control. The Respondent punched me in the face in anger. I was shocked and flabbergasted at the Respondent's willingness to harm his loved ones. I was able to crawl, bleeding, to the phone and desperately call 911. After what seemed like an eternity the police mercifully arrived and the Respondent left the home. The children and I are still in shock³⁹.

²⁶ Opinion; conjecture; argument; prejudicial; completely and unnecessarily inflammatory.

²⁷ Another's state of mind; inadmissible. Hearsay from a child generally admissible but must be set out with specific attribution to a given child on a given date in as close to the original phrasing as possible.

²⁸ Argument. *Chamberlain, supra*.

²⁹ Argument. *Chamberlain, supra*.

³⁰ Argument, adjectival lard. *Creber, supra*.

³¹ Argument; hearsay; opinion evidence: *Trus Joist, supra*.

³² No established basis for setting this out, it is mere bare assertion:

³³ Argument. *Chamberlain, supra*.

³⁴ No specifics, no supporting underlying documents.

³⁵ Another's state of mind.

³⁶ Argument based on opinion. *Chamberlain, supra; Trus Joist, supra*.

³⁷ Argument. *Chamberlain, supra*.

³⁸ Use of bold, italics and underlines is almost never justified in an affidavit.

³⁹ What could be a compelling piece of evidence relevant to both protection orders and the children's best interests is completely undone by exaggeration, argument, adjectival lard and conjecture, rendering the paragraph nearly useless

26. The Respondent has also called me “**bitch**” and “**whore**” many times and told the children they are “**dumb assholes**” and “**ugly**”. The Respondent is totally willing to say the most horrible things about us and demonstrating his lack of empathy and care for his family⁴⁰.
27. I have been told by a person at the family violence hotline that the Respondent is a family abuser. I have been told the same by others. I know what my friends and family think of the Respondent and his violent, addictive personality. I believe that he may be bi-polar⁴¹.
28. The Respondent is hiding income to cheat me and mislead the court⁴². His tax returns show income of \$110,010, \$179,098 and \$123,845 but I know they must be false. The Respondent works many hours and is successful and we lived well; I believe he must be getting more money from other employment or untraceable cash, and \$50,000 per year is probably the amount he is hiding⁴³. The Respondent works on some sort of commission grid which leaves room for him to manipulate his taxable income and I also suspect he gets a cash bonus which he has never disclosed.
29. I am a stay at home mother. I have been so for the last eight years. This was a result of a mutual agreement the Respondent and I entered into on the birth of our first child and which has remained in place. I could not work full time and manage the children. It would be impossible. I have a friend Helen who I spend time with and she agrees with me and can attest to how difficult and time consuming it is to manage two busy children⁴⁴.
30. Desperate for money since the Respondent maliciously and in a controlling fashion⁴⁵ cut the children and I off, I have been able to secure part-time work post-separation. I work at Home Depot for four hours three times per week at a rate of \$16.00 per hour.
31. There is a one-bedroom Laneway house on the property the former family residence sits upon and which generates \$1,100 in rental income per month. The tenant has been with us for three years and I do not expect him to move, although he could leave tomorrow and then I wouldn't even have that money.
32. I know all of the foregoing because my lawyer told me it was true. On January 14, 2014, when I was in my lawyer's office, she told me that I was entitled to spousal and child support because of the family violence I had suffered and she also told me that I should consider getting a peace bond. She told me that she was sure she could get me all things I wanted because I was a victim and because the respondent's conduct has been so atrocious. I have based my pleadings on my lawyer's helpful advice and have conducted myself in accordance with her recommendations all of which I have believed. She is on my side and I know her to be a genuinely good person⁴⁶.
33. The Respondent has utterly failed to disclose. His failure is willful and mean-spirited⁴⁷.
34. I desperately need some assets or else I will be completely outgunned by the Respondent. I know he will fight me to the end and I need to be ready to deal with that, for the benefit of the children. The Respondent has kept almost everything in his name and I feel like a victim of financial terrorism and am sure this will continue.
35. I ask the court to help me in my vulnerable position. I ask for the court's generosity and kindness so that the children can have secure and happy lives⁴⁸. I ask for justice. Thank you.

at best and at worst, creating an unforced error in suggesting the deponent is willingly exaggerating in order to achieve the desired result.

⁴⁰ Wherever possible it is best to avoid including inflammatory language and preferable to describe the language using less prejudicial language and words. In some cases reference to the actual words used cannot be avoided or explained another way. Exercise judicious discretion.

⁴¹ The first half of this paragraph does not establish anything near to the basis for the knowledge and doesn't name people to whom the hearsay statements are being attributed, making it useless evidence. The second half is speculative argument. *Trus Joist, supra; Chamberlain, supra.*

⁴² Argument. Worse, alleging what effectively amounts to the wilful misleading of the court is an extremely risky proposition that without a solid basis is liable to sound in costs against your client.

⁴³ No factual basis for this established.

⁴⁴ Helen's point of view expressed through this affidavit is useless and irrelevant.

⁴⁵ Argument; adjectival lard. *Creber, supra.*

⁴⁶ Waiver of privilege, among other things.

⁴⁷ Argument. *Chamberlain, supra.*

SWORN BEFORE ME at⁴⁹
Vancouver,
British Columbia,
on February 1, 2014

A commissioner for taking
affidavits for British Columbia

JOAN SMITH

INCORRECT

⁴⁸ Attempt to ingratiate the deponent with the Court. Final nail in a very large and ill-constructed coffin.

⁴⁹ This must be on a page which includes sworn evidence. It cannot hang on a page by itself.