ONTARIO

Superior Court of Justice, Family Court
(Name of court)

at 59 Church Street, St. Catharines, ON L2R 7N8
Court office address

Court File Number
FC-23-00000237-0000

Form 10: Answer

Applicant(s)

Full legal name	Kristina Lee Fedchyshak
Address	6135 Culp Street Niagara Falls, ON L2G 2B6
Phone & fax	
Email	

Applicant(s) Lawyer

Name	Bernadette M. McCartney Barrister & Solicitor
Address	43 Church St. Suite 307 St. Catharines, ON L2R 7E1
Phone & fax	Tel: (905) 682-4990 Fax: (905) 682-7755
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Respondent(s)

Full legal name	Steve Fedchyshak
Address	57 Margery Avenue St. Catharines, ON L2R 6J9
Phone & fax	
Email	

Respondent(s) Lawyer

Name	Paul M. Bauerle Protomanni & Associates
Address	43 Church Street, Suite 303 St. Catharines, ON L2R 7E1
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INSTRUCTIONS: Financial Statement

COMPLETE A FINANCIAL STATEMENT (Form 13) IF:

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

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

COMPLETE A FINANCIAL STATEMENT (Form 13.1) IF:

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

TO THE APPLICANT(S):

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

AND TO: *(full legal name)* **an added respondent,**

of: *(address of added party)*

Court File Number
FC-23-00000237-0000

My name is *(full legal name)* Steve Fedchyshak

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

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

   10, 16, 22, 25, 26, 30, 32, and 50

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

4. [ ] I am making a claim of my own. *(Attach a "Claim by Respondent" page and include it as page 3. Otherwise do not attach it.)*

5. [ ] The FAMILY HISTORY, as set out in the application

   [X] is correct [ ] is not correct

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

6. The important facts that form the legal basis for my position in paragraph 2 are as follows: *(In numbered paragraphs, set out the facts for your position. Attach an additional sheet and number it if you need more space.)*

   1. The parties married on February 14, 1998 in Niagara Falls, Ontario. Despite what the Applicant wife claims, the parties did not live together prior to their marriage.

   Yes we did, Alycia + Max both Conceived In Hungary

   2. There are two children of the marriage, namely Alicia Fedchyshak who was born on July 7, 1996; and Stefan Max Fedchyshak, who was born on October 10, 1997. Both children are independent adults. Neither the Applicant nor the Respondent have any children from any other relationships.

   3. The parties separated on May 8, 2022, and they have been living separate and apart since that time. There is no possibility of reconciliation occurring between them.

   4. The Respondent husband denies that he acted in an abusive fashion towards the Applicant, or that she sustained physical, verbal, emotional, psychological, sexual, or financial abuse at the hands of the Respondent.

5. The Respondent knows nothing of the Applicant applying for any government grants related to any business or proposed business. The fact is that after the children became of school age, the Respondent encouraged the Applicant to return to work, however this is something she would often resist.

6. The Applicant always had an estranged relationship with her mother and biological father. This was not on account of anything that the Respondent did or did not do. The suggestion that the Respondent came between the Applicant and members of her family is untrue.

7. The fact is that throughout the marriage the Applicant struggled with alcohol. She abused same on a regular basis, often driving while under the influence even with the children accompanying her in the vehicle.

8. The Applicant was in various motor vehicle accidents while impaired. One time in approximately 2010, she was reported to the authorities while picking up the children from school in her vehicle while being intoxicated.

9. While attending at Canal Days in Port Colborne one year, the Applicant was so drunk she lost her dentures.

10. The children often feared for their own safety while in the care of their mother while under the influence. There were numerous times throughout the marriage when the Applicant put herself and the children in danger while abusing alcohol.

11. The Applicant is alleging that she was treated like a prisoner in the home. This is completely denied by the Respondent. The Respondent was often away from the home working or attending to various rental properties he owned. The Applicant could come and go as she pleased.

12. Bars were placed on the windows of the matrimonial home, as the property had been broken into twice in the early 1990's. This was not done in order to keep the Applicant held captive as she is alleging in her Application.

13. They Respondent denies that he ever kept the Applicant locked in the matrimonial home while he took the children away on a camping trip, or that he can ever forcibly confined her in any fashion.

14. The Respondent had family in the Ukraine, and the Applicant had family in British Columbia. Family members would be contacted by using cards to make long distance calls. The suggestion by the Applicant that she should not contact members of her family is a pure fabrication.

15. Throughout the marriage the Applicant had many relationships with other individuals. The Respondent did keep a lot of the important documents for the family which would include pieces of identification in the safe in the matrimonial home. This was on account of the past robberies which had occurred, not as some attempt by the Respondent to keep this documentation away from the

Applicant.

16. The suggestion by the Applicant that the Respondent limited her access to the children and controlled their relationship with her is false.

17. The fact is that both children who are now adults, became estranged from the Applicant mother due to her excessive consumption of alcohol and her various mental health issues which included suffering from schizophrenia and a bipolar disorder. Since the Applicant left the matrimonial home both children have had minimal contact with her.

18. The Respondent denies that he physically and sexually abused the Applicant as she is alleging in paragraphs 27 and 28 of her Application.

19. In fact, for some time prior to the separation of the parties, the Applicant started making allegations against the Respondent saying he was abusing her and she would thus be leaving him. After the parties did separate, she did attend several times at the local police station trying to get the Respondent charged with various criminal offences.

20. After the separation, the police met members of the Respondent's family, and various other individuals, presumably to determine if there was any merit to the claims being put forward by the Applicant of abusive behaviour on the part of the Respondent. This was sometime in December of 2022. It is noteworthy that the police never charged the Respondent with any criminal offences

whatsoever.

21. The fact is that the Applicant was and may still be suffering from various mental health ailments which likely has impacted in her in some significant way.

22. As already referred to above, the parties separated on May 8, 2022. On that particular day a number of police officers attended at the matrimonial home, presumably to assist the Applicant in leaving the Respondent and matrimonial home. The Respondent recalls that there were 10 police officers in 6 cruisers that attended at the home at that time. The Respondent was advised that there was this heavy police presence due to the Applicant's allegation that he would not let her leave the home. The Respondent was cooperative with the police and he was not charged with any criminal offences. There likely was an incident report made by the Niagara Regional Police regarding this particular matter.

23. After the Applicant and Respondent separated, the Applicant resided at Gillian's Place, a local woman's shelter for approximately a month, but she was then kicked out of that facility.

24. Thereafter, she stayed at a facility run by the Canadian Mental Health Association. Then she resided at a motel on Lundy's Lane in Niagara Falls and later a motel in Chippawa. While at this motel in Chippawa, she got into a fight a male individual there, punching him in the face. Thereafter, she called the police and advised them of what she had done. The Respondent is not aware of what the ultimate outcome of all this was. The Applicant stayed at various other residences as well.

25. After the parties children were born and prior to getting married they entered into a Prenuptial Agreement. The Respondent wanted to enter into this Agreement prior to the marriage as he was advised by various individuals that this was something he should do. Both the Applicant and the Respondent had retained legal counsel. The Applicant had Paul Wintemute as her lawyer, and the Respondent retained Michael Maddalena.

26. Prior to signing this Agreement the Respondent provided full and frank financial disclosure, as to the assets that he owned. This even included obtaining an appraisal report of 57 Margery Street, a property he owned, and which would become the matrimonial home after the marriage of the parties.

27. Prior to each party executing the Agreement they had discussed the same. The Applicant drove to her appointment with her lawyer herself. The Respondent of course was not privy to the nature and extent of the discussions the Applicant had with her legal counsel, however he presumes that same was explained to her by her lawyer prior to her signing same.

28. The Respondent denies that the Applicant did not have the opportunity to obtain, and more importantly, did not have meaningful independent legal advice in relation to the Prenuptial Agreement they entered into. This Agreement did and does make provision for the Applicant in the event of a separation of the parties.

29. The Respondent submits and the fact is that the Marriage Contract that the Applicant and he entered into was reviewed by each party prior to signing same at first without, and then with the benefit of legal counsel.

30. In the Marriage Contract the Respondent provided full and frank financial disclosure, and neither party was under any type of duress or undue influence at the time they each signed the Agreement. Each party received a copy of the Agreement after they signed same.

31. The Respondent submits that the Marriage Contract entered into between the parties is a valid and binding legal agreement between the two of them, and all of the terms contain therein should be upheld by the Court.

32. During the course of the marriage, the Applicant did sign certain documentation whereby she waived all rights to the survivor benefit on the Respondent's pension. At the time the Respondent was an employee at General Motors. The parties discussed this in detail prior. The reason this was done was so the Respondent could receive greater payments when the pension was in pay, which would be a benefit to the entire family including the Applicant. The Respondent retired from General Motors in 2007. Instead, in the event of the Respondent's passing, provision was made for the Applicant by way of a policy of insurance on the Respondent's life.

33. The Respondent acknowledges that during the marriage the parties opened up a joint bank account. There is nothing particularly unusual about this. The Applicant always had access to this account and all the funds therein. In fact, after the parties separated, the Applicant took all of the money from this joint account.

34. The Respondent disputes that the Applicant never had access to money during the marriage. As already noted, and acknowledged by the Applicant in her pleadings, the parties held a joint bank account.

35. The Respondent does acknowledge that the parties did engage in an income splitting scheme as provided for under the provisions of the *Income Tax Act*. By doing so, the Respondent paid less in income tax thereby increasing available monies to him and the family, which of course was a benefit to the Applicant.

36. The Respondent denies that he ever forced the Applicant to apply for her CPP benefits at the age of 60. This was something she did on her own volition with little or no influence from the Respondent.

37. The Applicant often attended for various appointments including visits with her physician, Dr. Prince, alone.

38. The Respondent denies that he ever withheld medication from the Applicant. She would often cancel or miss appointments with her doctor claiming that she did not feel like going to see him. On account of the Applicant often skipping out or cancelling her appointments, the Respondent acknowledges that he did often accompany her to various appointments. This was in order to ensure that she kept her appointments, rather than having some desire to control her as the Applicant is claiming in her Application.

39. The Respondent did not in any way restrict the Applicant from seeing or visiting with her family in British Columbia. The fact is that the Applicant was estranged from her family and they did not want to have much to do with her.

40. Due to the Applicant's mental health issues and alcoholism she had become estranged from many people, including members of her own family.

41. In regards to the Applicant's claim for spousal support, the Respondent submits that both parties are bound by the terms of the prenuptial agreement they entered into, and as such, her claims in this regard should be dismissed in their entirety.

42. The Respondent submits that according to the terms of the Prenuptial Agreement, the Applicant is not entitled to an equalization of the net family property of the parties. If the Court sets aside this Agreement, then the Applicant is seeking an Order for an unequal equalization of the parties' net family property pursuant to the provisions of section 5 (6) of the *Family Law Act*.

43. The Respondent denies that the Applicant has suffered any physical, mental, or emotional harm on account of anything he did or did not do. Of course, throughout the marriage the parties had arguments and disagreements not unlike many other couples, however the Respondent adamantly denies he acted towards the Applicant in the abusive fashion as she has described in her Application. The Respondent further denies that she has any claims whatsoever against him for any type of damages, including punitive and aggravated damages.

44. The Respondent submits that the Applicant's claim in its entirety be dismissed with costs on a substantial indemnity basis.

Court File Number
FC-23-00000237-0000

RESPONDENT'S CERTIFICATE

(Your lawyer, if you are represented, must complete the Lawyer's Certificate below.)

Sections 7.1 to 7.5 of the *Divorce Act* and section 33.1 of the *Children's Law Reform Act* require you and the other party to:

- Exercise your decision-making responsibility, parenting time, or contact with a child in a manner that is consistent with the child's best interests;
- Protect the child from conflict arising from this case, to the best of your ability;
- Try to resolve your family law issues by using out-of-court dispute resolution options, if it is appropriate in your case *(for more information on dispute resolution options available to you, including court connected mediation, you can visit the Ministry of the Attorney General's website or www.stepstojustice.ca)*;
- Provide complete, accurate, and up-to-date information in this case; and
- Comply with any orders made in this case.

I certify that I am aware of these duties under the *Divorce Act* and the *Children's Law Reform Act.*

September 22, 2023
Date of signature

S. Seddek
Respondent's signature

LAWYER'S CERTIFICATE

My name is: PAUL M. BAUERLE

and I am the respondent's lawyer in this case. I certify that I have complied with the requirements of section 7.7 of the *Divorce Act* and section 33.2 of the *Children's Law Reform Act* regarding reconciliation and the duty to discuss and inform.

September 22, 2023
Date

Paul Bauerle
Signature of Lawyer

Court File Number
FC-23-00000237-0000

CLAIM BY RESPONDENT

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

7. THIS CLAIM IS MADE AGAINST

[X] THE APPLICANT

[ ] AN ADDED PARTY, whose name is *(full legal name)*

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

8. I ASK THE COURT FOR THE FOLLOWING:

(Claims below include claims for temporary orders.)

Claims under the *Divorce Act* *(Check boxes in this column only if you are asking for a divorce and your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)*	**Claims relating to property** *(Check boxes in this column only if your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)*	**Claims relating to child protection**
00 [X] a divorce	22 [ ] equalization of net family properties	40 [ ] access
01 [ ] support for me	23 [ ] exclusive possession of matrimonial home	41 [ ] lesser protection order
02 [ ] support for child(ren) - table amount	24 [ ] exclusive possession of contents of matrimonial home	42 [ ] return of child(ren) to my care
03 [ ] support for child(ren) - other than table amount	25 [ ] freezing assets	43 [ ] place child(ren) into care of *(name)* _____
04 [ ] decision-making responsibility for child(ren)	26 [ ] sale of family property	44 [ ] interim society care and custody for months
05 [ ] parenting time with child(ren)		45 [ ] society supervision of my child(ren) for months
06 [ ] contact with child(ren) *(this requires court leave)*		
Claims under the *Family Law Act* or *Children's Law Reform Act*	**Other Claims**	

Court File Number
FC-23-00000237-0000

Claims under the *Family Law Act or Children's Law Reform Act*	Other Claims
10 ☐ support for me	30 ☐ costs
11 ☐ support for child(ren) - table amount	31 ☐ annulment of marriage
12 ☐ support for child(ren) - other than table amount	32 ☐ prejudgment interest
13 ☐ decision-making responsibility for child(ren)	33 ☐ claims relating to a family arbitration
14 ☐ parenting time with child(ren)	
15 ☐ restraining/non-harassment order	
16 ☐ indexing spousal support	
17 ☐ declaration of parentage	
18 ☐ guardianship over child's property	
19 ☐ contact with child(ren) *(this does not require court leave)*	
20 ☐ wrongful removal to or retention of child(ren) in Ontario involving a country outside Canada under the Convention on the Civil Aspects of International Child Abduction	
21 ☐ wrongful removal to or retention of child(ren) in Ontario involving a country outside Canada **NOT** under the Convention on the Civil Aspects of International Child Abduction	

50 ☒ other *(Specify)*

i) A declaratory Order of this Court upholding the validity of the Agreement entered into by the parties prior to their marriage which was signed by the Applicant on January 28, 1998, and the Respondent on February 9, 1998.

ii) if the Court does not uphold the validity of the said Agreement, then the Respondent is seeking an Order that there be an unequal equalization of Net Family Property of the parties pursuant to the provisions of s. 5(6) of the *Family Law Act*.

Give details of the order that you want the court to make. *(Include any amounts of support (if known) and the name(s) of the child(ren) for whom you are claiming decision-making responsibility, parenting time, or contact in this case.)*

Court File Number
FC-23-00000237-0000

IMPORTANT FACTS SUPPORTING MY CLAIM(S)

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

See paragraph #6 of Respondent's Answer.

September 22, 2023
Date of signature

Respondent's signature

For information on accessibility of court services for people with disability-related needs, contact:

Telephone: 416-326-2220 / 1-800-518-7901 TTY: 416-326-4012 / 1-877-425-0575