

Superior Court of Justice Family Court Branch

(Name of court)

Court File Number
FC-15-2446-0

Form 14A: Affidavit
(general) dated

July 18, 2017

at 161 Elgin Street, Ottawa, Ontario K2P 2K1

Court office address

Applicant(s)

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

Jonathan Kiska
1244 Lampman Crescent, Ottawa, Ontario K2C 1P8
mobile: 613-723-0010 jk@johnkiska.com

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

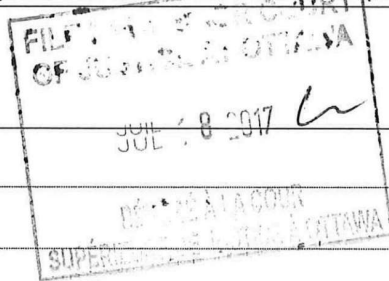
Wade Smith
700-116 Lisgar Street, Ottawa, Ontario K2P 0C2
phone: 613-237-3444 wsmith@bellbaker.com

Respondent(s)

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

Deirdre Moore
7 Vanson Avenue, Ottawa, Ontario K2E 6A9
mobile: 613-791-1451 deirdre@cceh.ca

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



My name is (full legal name) Deirdre Ann Moore

I live in (municipality & province) City of Ottawa, Ontario

and I swear/affirm that the following is true:

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

1. Mid-September 2015, I discovered disturbing information in my medical files that would support a divorce for cruelty and began to express my outrage to my husband. (see exhibit a)
2. On October 1st 2015, I notified my husband, Jonathan Kiska, that I would be filing for divorce with grounds. (see exhibit b)
3. On November 10th 2015—two days prior to my release from my voluntary stay at The Ottawa Hospital Psychiatric Ward—I was served with an Emergency Custody Order/Application Form 8. (see continuing record volume 1, tabs 1 and 2; volume 2, tab 4's exhibits A and B)
4. On January 14th 2016, my lawyer filed an Answer that lacked the insight of relevant medical, Children's Aid Society (CAS) and Ottawa Police Services (OPS) files. (see continuing record volume 1, tab 5)
5. The process of separation lasted until April 14th 2016, when I realized that I was being drained financially by legal fees and initiated a reconciliation. (see exhibit c)
6. On November 27th 2016, the separation process was re-initiated by my husband. (see exhibit d)
7. It was not until March 2017—following the dismissal of my first lawyer (see exhibit e, page 1) and my second lawyer (see exhibit e, page 3)—that I saw the contents of my legal file.
8. In my legal file, was a single but very important document within the (CAS) files (see exhibit f) that could be used as evidence to support my allegations that my husband is a very abusive man.

9. With possession of this CAS document, I immediately asked the Applicant's lawyer, Mr. Wade Smith, if he was going to amend the Emergency Custody Order/Application that was served to me over one year ago. The answer was no. (see exhibit g)
10. I began to research how I could amend my Answer and, with the confirmation of the Family Law Information Clinic (FLIC), I began a procedural motion.
11. Upon notification that I would be bringing a motion, Mr. Smith advised me that amended answers were usually done on consent. (see exhibit h)
12. I knew the magnitude of my amendment, so I followed FLIC's advice instead. The procedural motion was held; however, I mistakenly asked for permission to include evidence instead of asking for permission to revise the history and the claims within my Answer. The motion was denied; however, Master Champagne stated that "If the respondent wants to bring the matter back, she should have a draft amended Answer for the court to review." (see exhibit i)
13. Instead of preparing for a second motion, I wrote to Mr. Smith to advise him that, as he suggested, I would seek his consent instead. When I submitted a draft of my amended Answer, he recognized that it was "an almost entirely different pleading" and advised me to "underline any additions or changes to the existing document" and to refer to "Rule 11(4)". (see exhibit j)
14. Meanwhile, I began the process to review the documents upon which my husband's Application was based using Rule 19.1. In particular, I wanted to see what my husband said to OPS to render my allegations of sexual assault to be "unfounded and frivolous". (see exhibit k).
15. As I waited for the OPS and CAS files to arrive, I continued to provide several amended Answer drafts to Mr. Smith as a "head's up". There was little co-operation by my husband or his lawyer regarding document disclosure and the process took FOUR months. I finally received the OPS files June 29th 2017—one day following the settlement conference. (see exhibit l). Note that, as of July 18th 2017, the CAS files have yet to be delivered to me.
16. There has been numerous exchanges of requests and responses between myself and Mr. Smith's office since March of 2017. On June 13th 2017, I received notice from Mr. Smith's office that stated "Please serve us with your final draft, and then we will be able to give you consent.". (see exhibit m) and on June 14th 2017 I delivered an Amended Answer to their office for consent.
17. On July 5th 2017, I advised Mr. Smith's office that I could wait not longer and would be proceeding with another procedural motion. (see exhibit n, page 3)
18. His reponse was that, not only would he not provide consent but that he would oppose my motion, require a regular motion to provide one hour of case law and that if I proceeded, I would be required to pay costs of \$3,000. (see exhibit o)

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Sworn/Affirmed before me at City of Ottawa

municipality

in Ontario

province, state, or country

on _____

date

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

Signature

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

19. Recognizing that the damages I would be seeking in my Amended Answer could possibly be statute-barred—given the history of discovery of facts, the uncertain date of my eventual claim and the Statute of Limitations Act 2002 (which removed breaches of fiduciary duty from its two-year limitation period)—I felt that I had no choice but to continue with the procedural motion regardless of cost.

20. The procedural motion took place on July 13th 2017 and Master Fortier subsequently scheduled a regular motion for August 29th 2017. (see exhibit p)

IN SUMMARY

21. If, on January 14th 2016, my lawyer was in possession of the documents that I now have, my Answer would have been drafted differently and it would not require amendment. It would include damages such as the ones claimed in my current draft amended Answer (see exhibit q)

22. Section 21.9 of the Courts of Justice Act grants a Family Court jurisdiction, with leave of the judge, to hear and adjudicate upon related matters. As found in MacLean v. Danicic (see exhibit r, page 32) damages under the tort of intentional infliction of mental suffering and emotional distress can be awarded.

23. On June 28th 2017, our first Settlement Conference, the Honourable Justice Trousdale stated that it is not Mr. Smith's place to decide whether or not a claim is allowed*. (see exhibit s: *I believe this statement to be true; but, I am awaiting the transcription for exact wording.)

24. Regardless, as per his affidavit presented at the procedural motion held on July 13th 2017, Mr. Smith intends to argue differently.

25. Upon reflection—and with recognition that I have no legal expertise—it would seem to me that if I were allowed to simply amend my Answer in general, then I could simply “un-tick” all of the items in the Divorce Act section and then serve and file a Form 8A for Divorce for Cruelty and include any claims that I wish.

26. I request permission to amend my Answer.

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Sworn/Affirmed before me at City of Ottawa
municipality

in Ontario
province, state, or country

on July 18th, 2017
date
Shirley Ford
Commissioner for taking affidavits
(Type or print name below if signature is illegible.)

Terrie Moore
Signature

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