

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

CATHERINE L.E. ROSS

Petitioner  
(Wife)

- and -

WILLIAM THOMAS ROSS

Respondent  
(Husband)

ANSWER AND COUNTERPETITION

1. The Respondent (hereinafter referred to as "the husband") admits the allegations and statements contained in paragraphs 3-22, 24(a), 26, 27(a), 27(b), and 28-31 of the Petition for Divorce. The husband admits the allegations in paragraph 2 of the Petition, except that the date of separation was February 28, 1994. The reconciliation counselling which took place after the separation and up to April 6, 1994 was unsuccessful, and no reconciliation was effected.
2. The husband denies the statements and allegations contained in paragraphs 23, 25, 27(c), and 33 of the Petition for Divorce.
3. The husband specifically denies that it is in the children's best interest to be in the custody, care, and control of the Petitioner (hereinafter referred to as "the wife"). The wife is unable and unwilling to properly care for the children, due in large measure to her consumption of alcohol.

4. The husband denies that the wife has been the children's primary caregiver since their birth. In fact, the husband has attended to the vast majority of the children's needs and continues to do so to the present. Even during the time the wife remained at home ostensibly to care for the children, she continued to consume alcohol, and when the husband returned from work each day he would immediately assume full responsibility for the children.
5. The husband specifically denies that the wife has put the needs of the children first, and in fact has consistently placed her own wants ahead of those of the children, to the point where she has virtually no interaction with them whatsoever beyond preparing meals. The husband assumes the vast majority of childcare duties, including bathing the children, reading them a bedtime story, and putting them to bed. He also looks after them almost continuously on the weekends, while the wife sleeps or watches television. Since the initiation of this action, the wife has attempted to "win over" the children by taking a more active interest in them, to the point where the children are confused by her unusual behaviour.
6. The children are not permitted by the wife to eat their evening meal with their parents, and are given their meal in front of the television, where they eat alone each evening.
7. The wife avoids contact with the children, and does not respond to their demands for affection. The husband believes it is in the children's best interest to remain in his custody, care, and control, with visitation with the wife.
8. During the course of the marriage the family has accumulated various assets, due almost solely to the efforts of the husband. The wife has consistently dissipated and depleted

family assets by incurring numerous debts, and purchasing various items which were beyond the means of the family. The husband has since the marriage began attempted to ascertain the extent of the wife's indebtedness and spending, and to assist her in gaining some measure of self-control over her spending. The wife has resisted those attempts to the point where she has sold matrimonial assets to pay off her debts, borrowed from family and friends, and increased loans with various financial institutions. The wife has no assets to justify her debt beyond jewellery and clothing. The wife's Financial Statement reveals an income adequate to make an equitable contribution to cover the family expenses, however, she is consistently unable to do so, causing the husband to assume a greater than reasonable share of the ongoing costs.

9. The husband is seeking an unequal division of net family property in his favour due to reckless depletion by the wife of family assets by incurring a large debt, the benefit of which was entirely to the wife.
10. The husband is also seeking an Order restraining the wife from disposing of any property, including a recent litter of eight pure-bred Golden Retriever puppies. As revealed in the wife's Financial Statement, she has sold various items belonging to the family in an effort to alleviate her indebtedness. The husband states that he believes that unless restrained from doing so, the wife will continue to dispose of matrimonial property to his prejudice.
11. The husband is seeking an Order for exclusive possession of the matrimonial home. The parties jointly own a duplex, and reside in one of the units; the other unit is rented to a third party. The unit in which the parties reside is a matrimonial home, and is

municipally described as 1077 Thomas A. Dolan Parkway, Dunrobin, Ontario. The husband states that the continued occupation of the matrimonial home by both parties is intolerable. Throughout the course of the marriage the wife has been verbally abusive to the husband, often in front of the children. The wife consumes quantities of alcohol on a daily basis to the point of intoxication, and it is not in the children's best interest to continue to view their mother in those circumstances. In addition, the wife refuses to discuss issues regarding the children's well-being, and in fact is actively seeking to alienate the children by making derogatory statements about the husband, and attaching all "blame" for current difficulties on him. The husband, as the custodial parent, would encourage the relationship between the children and their mother, however, it appears that the wife would not do so should she have custody of the children.

12. The wife is able to afford suitable alternate accommodation for herself, and it would be in the children's best interests to continue to reside in the matrimonial home with the husband, thereby disrupting them as little as possible.
13. The husband is seeking an Order for the payment of child support. The wife is presently employed, and is capable of contributing to the support of the children.
14. The husband is seeking an Order that any life insurance policy or policies owned by the wife be designated to him for the benefit of the children until such time as the wife is no longer obligated to pay support.
15. The husband pleads and relies upon the Divorce Act, 1985, S.C. 1986, c. C-47, the Family Law Act, R.S.O. 1990, c. F3, The Children's Law Reform Act, R.S.O. 1990, c. C12, and the common law in support of his claims in this action.

16. The husband therefore submits that the claims of the wife save and except her claim for divorce be dismissed with costs on a solicitor and client basis.

### COUNTERPETITION

17. The husband seeks:

- (a) a divorce;
- (b) **under the Divorce Act, 1985, S.C. 1986, c. C-47:**
  - (i) interim and permanent custody of the children of the marriage, namely Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary Lynne Victoria Ross, born January 27, 1989, or in the alternative, interim and permanent joint custody together with a further Order providing that the primary residence of the children shall be in the home of the husband;
  - (ii) interim and permanent support for the children of the marriage in the sum of \$400 per month, per child, for a total of \$800 per month;
  - (iii) an Order that all support payments be retroactive to the date of the separation of the parties;
  - (iv) an Order that all support payments be increased annually on the anniversary date of the Order by the percentage change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year as published by Statistics Canada;
- (c) **under the Family Law Act, R.S.O. 1990, c. F3:**
  - (A) in the event that this Honourable Court does not see fit to grant a Divorce Judgment:

- (i) interim and permanent support for the children of the marriage in the sum of \$400 per month, per child, for a total of \$800 per month;
- (ii) an Order that all support payments be retroactive to the date of the separation of the parties;
- (iii) an Order that all support payments be increased annually on the anniversary date of the Order by the percentage change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year as published by Statistics Canada;
- (B) an Order requiring the wife to designate the husband as irrevocable beneficiary of her life insurance policy or policies for so long as she is obligated to provide support for the children of the marriage.
- (C) an interim and permanent Order granting the husband exclusive use and possession of the matrimonial home known municipally as 1077 Thomas A. Dolan Parkway, Dunrobin, Ontario, and the contents thereof;
- (D) an unequal division of net family property in favour of the husband;
- (E) an interim and permanent Order restraining the wife from disposing of any property in her possession or under her control;
- (d) **under The Children's Law Reform Act, R.S.O. 1990, c. C12:**
  - (A) in the event that this Honourable Court does not see fit to grant a Divorce Judgment:
    - (i) interim and permanent custody of the children of the marriage, namely Khierstyn Laurel Emily Ross, born November 16, 1986, and Hilary

Lynne Victoria Ross, born January 27, 1989, or in the alternative, interim and permanent joint custody together with a further Order providing that the primary residence of the children shall be in the home of the husband;

(e) under the Courts of Justice Act, R.S.O. 1990, c. C.43:

(i) pre-judgment and post-judgment interest pursuant to sections 138 and 139;

(f) costs on a solicitor and client basis;

(g) such further and other relief as this Honourable Court may deem just.

18. The husband reiterates and relies on the admissions and allegations pleaded and relied upon by him in his Answer.

#### DECLARATION OF RESPONDENT

I have read and understand this counterpetition. The statements in it are true, to the best of my knowledge, information and belief.

Date:

*June 16/99*

  
WILLIAM THOMAS ROSS

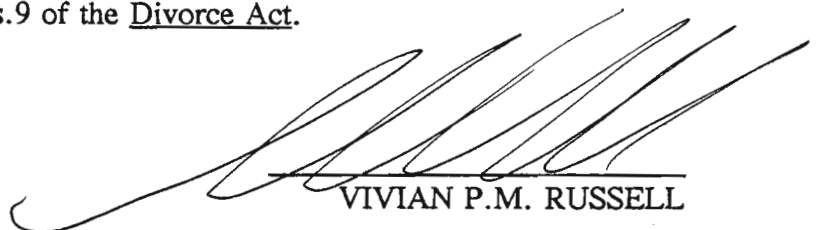
#### STATEMENT OF SOLICITOR

I, VIVIAN P.M. RUSSELL, solicitor for the Respondent, certify to this court that

I have complied with the requirements of s.9 of the Divorce Act.

Date:

*June 16, 1999*

  
VIVIAN P.M. RUSSELL

CATHERINE L.E. ROSS  
-and-  
Petitioner

WILLIAM THOMAS ROSS  
Respondent

Court file no. 48783/94

ONTARIO COURT (GENERAL DIVISION)

Proceeding commenced at Ottawa

ANSWER AND COUNTERPETITION

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