

# SUPREME COURT OF YUKON

Citation: *A.J.F. v. M.L.F.*, 2017 YKSC 30

Date: 20170530  
S.C. No. 13-D4592  
Registry: Whitehorse

**BETWEEN:**

**A.J.F.**

**PLAINTIFF**

**AND**

**M.L.F.  
LIVINGSTONE PLACERS LTD.  
CONSTELLATION MINES INC. and  
TROY EQUIPMENT LEASING LLC**

**DEFENDANTS**

Before Mr. Justice L.F. Gower

Appearances:

Amy Steele

M.L.F.

Livingstone Placers Ltd.

Constellation Mines Inc.

Troy Equipment Leasing LLC

Kimberly Sova

Counsel for the Plaintiff

Self-Represented

No one appearing

No one appearing

No one appearing

Counsel representing M.E.P.

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] These are cross-applications by the plaintiff mother and the defendant father seeking various forms of pre-trial relief. The parties were married on May 11, 2004 and separated in November 2013. There are two children of the marriage. The elder, C., is a 20-year-old university student, who resides with the mother during the summer breaks. The younger, R., is 17 and resides with the father. She is expected to graduate from high school in June 2018. The mother filed for a divorce and division of matrimonial

property in November 2013. In 2014, the mother alleges that the father fraudulently conveyed a number of mining claims, worth three to four million dollars, to a third party in order to defeat her sharing in the value of those claims as family assets. In October 2014, she obtained an order for interim (advance) costs in the amount of \$10,000 by Deputy Justice Groves of this Court.

[2] Since then, the litigation has languished somewhat. There have been a number of pre-trial applications. The mother's previous counsel conducted an examination for discovery of the father and various documents have been produced and exchanged between the parties. The matrimonial home was foreclosed upon and was sold in 2015. A number of debts were paid out of the proceeds of sale, including one for \$19,002.30 payable to the Receiver General of Canada. The father has acknowledged in this hearing that this was his tax debt. The balance of the sale proceeds of \$40,693.12 were paid into this Court to be held in trust pending the trial or settlement on the division of family assets.

[3] In February 2016, Livingstone Placers Ltd. ("Livingstone") was added as a party defendant to this action. The father is the sole shareholder and director of this company. It formerly owned the mining claims which are the subject of the fraudulent conveyance allegation by the mother. Constellation Mines Inc. ("Constellation") and Troy Equipment Leasing LLC ("Troy") were also added as defendants. Constellation is the company which received the transferred mining claims and Troy is a related company, which the mother believes was also involved in the transfer.

[4] The father's private counsel ceased to represent him in January 2016, and the father is currently representing himself. The mother's private counsel ceased to represent her in February 2017.

[5] As of March 3, 2017, neither party had made an application to have the funds paid out of court. By that time, the father owed \$17,170.18 in spousal support arrears, which are being enforced through the Maintenance Enforcement Program ("MEP"). As a result of this debt, MEP seized the father's driver's licence and passport, which interfered with his ability to earn an income and support R. Also by that time, the mother had brought a second application for interim costs, claiming that she was impecunious and unable to afford counsel to continue the litigation to determine the division of family assets. She was represented by legal aid counsel on the application for interim costs, but legal aid will not authorize counsel to represent her to litigate the division of assets. On March 3, 2017, I directed that \$17,170.18 be transferred from the court registry trust account to MEP.

[6] Also on that date I granted the parties a divorce, without prejudice to the mother's ability to fully argue the issue of division of family assets in the future.<sup>1</sup>

[7] The mother filed a notice of appeal in the Court of Appeal against both the payment to MEP and the divorce.

[8] As a result of the appeal, MEP has refused to deposit the court's cheque for \$17,170.18.

[9] On April 19, 2017 there was a further hearing, at which time I ordered a stay of enforcement by MEP, as well as the return of the father's passport and driver's licence.

---

<sup>1</sup> Pursuant to s. 15(2) of the *Family Property and Support Act*, R.S.Y. 2002, c. 83, a party requires special leave of the court in order to deal with the division of family property after the divorce order has been granted.

The driver's licence has since been returned to him, but he has yet to obtain a copy of his passport, citing bureaucratic difficulties in getting a hold of the proper government personnel to do so.

[10] At the hearing of the present cross-applications on May 12, 2017, legal counsel representing MEP was present at my invitation. She explained that the reason the spousal support cheque has not yet been deposited was because of the appeal and the prospect that my decision may be reversed. Apparently MEP is concerned that if they accept the money and pay it out to the mother, then the transaction may be irreversible in the event of a successful appeal. I concluded that there would be no significant mischief in MEP receiving the funds and paying them out to the mother, even prior to the trial division of family assets. I reasoned that even if the mother is successful in obtaining 100% of the family assets, including the \$40,693.12 previously held in court, then the father will no longer receive a credit for having paid \$17,170.18 in spousal support. Rather, that would likely become a debt owing by him to the mother. In the meantime, I reasoned that it would be in the mother's best interests to receive the spousal support now, rather than later, and that it would also concurrently restore the father's driver's licence and passport to him, facilitating his search for employment.

[11] In the result, at the beginning of this hearing, I directed MEP to receive and cash the court's cheque and disburse the funds to the mother as they would ordinarily do. I further directed that the stay of enforcement would continue until I have addressed one of the father's cross-applications, which is to vary the amount of monthly spousal support payable going forward.

[12] Over the course of this litigation, the parties have sworn and filed numerous affidavits: 12 from the father, and 11 from the mother, including several from third parties. At the hearing of the present cross-applications, both parties urged me to review all of the affidavit material, particularly as it relates to the mother's second application for interim costs. I have done so.

[13] The parties agreed at the hearing that a number of the items of relief sought by each of them had either been satisfied (e.g. the father having provided to the mother income tax returns for the three most recent taxation years) or were already the subject of my previous orders. Accordingly, the issues that I set out below only deal with those matters that are currently in play.

## **ISSUES**

[14] The following issues arise on these cross-applications:

- 1) Is the father required to produce the financial statements of Livingstone, Constellation and Troy, for the past two years?
- 2) Is the father required to pay interim costs to the mother?
- 3) Should the interim spousal support ordered by Justice Veale on April 7, 2014, in the amount of \$1,000 per month, be varied and, if so, by what amount?
- 4) Is the mother required to deliver her Affidavit of Documents, as well as copies of the documents referred to therein, to the father by specified dates?

## **ANALYSIS**

### ***Issue #1: Is the father required to produce the financial statements of Livingstone, Constellation and Troy for the past two years?***

[15] Based upon information I received from the parties at the hearing, I understand that the father has already produced financial statements for Livingstone and

Constellation. However, the mother's counsel still wants a financial statement for Constellation for 2016. The father is the General Manager and a director of Constellation. The father has agreed to provide such a statement, assuming it has been prepared by the company. I am hereby ordering Constellation to provide its 2016 financial statement to the mother's counsel within 90 days of the date of this judgment.

[16] The mother has provided no information or evidence on why she feels she is entitled to financial statements from Troy. The evidence that I have reviewed suggests that Troy is a completely separate corporate entity in which the father has no interest or control. Troy is referred to in a Memorandum of Understanding ("MOU"), dated February 12, 2013, which initiated the transfer of the subject mining claims and other assets, from Livingstone to a new corporation, referred to as Constellation. Pursuant to the MOU, Troy was also to have leased to Constellation certain pieces of mining equipment and supplies that it owned. Troy also provided \$100,000 towards a global settlement of \$350,000 USD, to be paid to one Robert Moriarty ("Moriarty"), in settlement of a legal dispute between him and Livingstone. Finally, Troy was to provide \$300,000 for start-up expenses incurred by Constellation. Beyond that, there is apparently no connection between Troy and the alleged fraudulent conveyance. Accordingly, I decline to order that Troy produce any financial statements.

***Issue #2: Is the father required to pay interim costs to the mother?***

[17] The leading case on interim costs is *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 ("*Okanagan Indian Band*"). The three criteria for imposing interim costs are:

- 1) The claimant must be impecunious, to the extent that, without such an order, they would be deprived of the opportunity to proceed with the case;
- 2) The claimant must establish a sufficiently meritorious *prima facie* case; and
- 3) There must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate. (para. 36)

The Supreme Court observed that its jurisdiction to order interim costs is limited to “very exceptional cases and ought to be narrowly applied, especially when the court is being asked to essentially pre-determine an issue” (para. 32). The Court also commented upon the use of interim costs in family cases, especially where husbands commonly have the financial advantage:

33 As Macdonald J. recognized in *Organ, supra*, at p. 215, the power to order interim costs is perhaps most typically exercised in, but is not limited to, matrimonial or family cases. In *McDonald v. McDonald* (1998), 163 D.L.R. (4th) 527 (Alta. C.A.), Russell J.A. observed that the wife in divorce proceedings could traditionally obtain “anticipatory costs” to enable her to present her position (para. 18). This was because husbands usually controlled all the matrimonial property. Since the wife had “no means to pay lawyers, her side of the litigation would not be advanced, and this position was patently unfair” (para. 20). Interim costs will still be granted in family cases where one party is at a severe financial disadvantage that may prevent his or her case from being put forward. See, e.g., *Woloschuk v. Von Amerongen*, [1999] A.J. No. 463 (QL), 1999 ABQB 306, where the Alberta Court of Queen's Bench ordered a lump sum payment of \$10,000 to the mother in a custody action by way of interim costs, finding that the father's financial position was “significantly better than that of the [mother] in terms of funding this protracted lawsuit” (para. 16); and *Roberts v. Aasen*, [1999] O.J. No. 1969 (QL) (S.C.J.), also a custody case, where the court held that the father was unlikely to succeed at trial and that the mother lacked the resources to pay her legal fees and disbursements, and ordered the

father to pay \$15,000 as interim costs. Orkin, *supra*, at p. 2-23, observes that in the modern context "the *raison d'être* [sic] of such awards is to assist the financially needy party pending the trial; they are made where the spouse is without resources and would otherwise be unable to obtain relief in court" (citations omitted). (my emphasis)

[18] There is no dispute that the mother is impecunious. However, it does not appear that the father has a financial advantage over the mother with respect to proceeding with the litigation. The father has deposed that he has already spent over \$50,000 on legal fees and that he is presently unemployed. The evidence indicates that the father is also impecunious at the present time.

[19] With respect to whether the mother has established a *prima facie* case of sufficient merit to warrant interim costs, the mother's counsel argues that the father has hidden assets through the fraudulent conveyance of the mining claims and been disingenuous in his financial disclosure. Those specific arguments are set out below:

- 1) First, the mother points to her evidence that the parties had a significant argument on November 10, 2013, at the family home, following which the mother told the father to leave the home, which he did. The mother then says the father re-entered the home from a balcony through an unlocked door<sup>2</sup>, which frightened her. He retrieved two large jars of raw gold, which he had just brought to the home, and left a second time. Following that incident, the mother deposed that she went to Victim Services and to a lawyer, and filed for an Emergency Intervention Order ("EIO"). She originally believed that father was aware the marriage was over, was motivated to prevent her from being able to claim joint

---

<sup>2</sup> On May 25, 2017, the father filed an affidavit sworn by his daughter, R., who deposed that she placed a ladder by the balcony earlier so that she could access the home when the hidden front door key was missing.



assets, and subsequently transferred the mineral claims. Although the father has since established that he transferred the mineral claims on the morning of November 19 before he was served with the EIO, in November 2013, the mother nevertheless submits that it is significant that the mining claims were transferred by the father on the same day that he was served with the EIO.

I do not find this to be a particularly persuasive argument. First of all, the relationship between the mother and the father had been rocky for some time and there had been numerous arguments between them. There was no particular reason, objectively speaking, for the father to have thought that this argument was going to lead to a separation between the parties. Secondly, the father's evidence is that he had already indicated his intention to transfer the mineral claims to Constellation by an MOU dated February 12, 2013, long before the argument on November 10, 2013 (the mother believes the MOU was backdated, but this fact is disputed by the father and he is corroborated in this regard by Terrence Cox, the President of Constellation). Thirdly, the father has provided seemingly reliable evidence from the Mining Recorder's Office that he transferred the mining claims at 9 AM on November 19, 2013. Since he was not served with the EIO until the evening of November 19, 2013, it would appear that the fact that these two events happened on the same day is simply a coincidence.

- 2) Pursuant to the MOU with Constellation, the father is entitled to earn 100,000 shares each time \$100,000 has been returned to the partner investors associated with Terrance Cox, up to a maximum of 400,000 shares. The suggestion here is that the father has the opportunity to profit from his

association with Constellation in the future, in the event that it recommences profitable operations. Accordingly, the mother's counsel argues that this was an additional motivation for him to transfer the mining claims to Constellation to avoid them being divided up as matrimonial property.

The father's response is that the milestone of \$100,000 being returned to the partner investors has never been achieved and accordingly he has never received any shares in Constellation. There is no evidence to the contrary.

Further, the father has deposed that Constellation is not currently conducting any mining activity, because of the general downturn in the mining industry at the present time. Lastly, on this point, the father's evidence overall on the MOU is that his motivation to agree to the document was because there was a judgment of approximately \$800,000 against him by Moriarty, a former partner in British Columbia. Accordingly, the father was at risk of having the assets of his company, Livingstone, seized by Moriarty. To resolve the situation, the father agreed to transfer the assets of Livingstone, consisting of mining equipment and the subject mining claims, to Constellation in exchange for Constellation and Terrance Cox paying a settlement of \$350,000 USD to Moriarty. In other words, the father's position overall is that he had a legitimate business interest in transferring the mining claims to Constellation and was not doing so simply for the purpose of defrauding the mother. This is an arguable position.

- 3) The father has previously indicated to the mother's brother, Neil Robinson, that the mining claims were worth three to four million dollars. Accordingly, \$350,000 is inadequate consideration for their transfer to Constellation. The father

acknowledges that he had earlier bragged about the value of the claims, but that the statements were always subject to positive testing of the ground, which has yet to be done. The mother's counsel also acknowledges that the actual value of the mining claims remains a live issue in this litigation.

- 4) The fourth point raised by the mother's counsel is that, again pursuant to the MOU, the father was appointed as the General Manager of Constellation Mines, and was to be paid a salary of \$96,000 CAD annually. I am not sure I totally understand the argument on this point. It seems to be that this substantial annual salary could be viewed as an additional incentive for the father to fraudulently transfer the mining claims. In addition, although the father now claims that he is currently not employed by Constellation, and received only minimal income from the company in 2016, due to the downturn in the mining industry, the mother's counsel seems to suggest that the father is untruthful in this regard and is deliberately refraining from pursuing Constellation for his full salary, in order to plead poverty.

The father's evidence here is that he was paid his annual salary of \$96,000 in 2014, but that because of a downturn in the industry and financial challenges due to the lack of production in 2015, Constellation Mines sent him a letter dated March 1, 2016, agreeing to keep him on the payroll, but for a reduced salary of \$72,000 annually. The father deposed that he felt he had no choice but to accept the reduction in order to maintain his relationship with Constellation. In fact however, the father earned substantially less than \$72,000 in 2016, and is

currently receiving no income from Constellation. Again, there is no evidence to the contrary.

- 5) Despite the father's evidence that he did not do any significant work for Constellation in 2016, a document from the Mining Recorder's Office indicates otherwise. The mother points to a document entitled "Application for Renewal of Grant for Placer Mining", dated April 8, 2016. It is a sworn document purporting to renew five of the mining claims the father transferred to Constellation. The father swore the document as "Owner or Agent" and attached an invoice from Arctic Geophysics Inc., dated January 18, 2016, to Constellation for geophysical survey work, for which Constellation owed \$8,560.12. In the renewal document, the father swore that "Work has been done on the said claim(s) to the value of at least \$13,260.72" and referred to the attached invoice. The father also mistakenly put in two dates of October 11, 2015 and March 25, 2016 and it is unclear what the dates signify, since they did not correspond with the blanks in the pre-printed form. The father also mistakenly swore that he was the "owner" of the mining claims being renewed.

The father's response to this document is that he completed it in about 15 minutes at the Mining Recorder's Office for the purpose of keeping the mining claims current, so that they could potentially be mined in the future. He could not account for the discrepancy between the total on the invoice and the amount of \$13,260.72 which he inserted on the form; however, he said this sum represented the value of geophysical survey work done in 2015, by Arctic Geophysics Inc. This seems to be corroborated out by the date of the invoice,

being January 18, 2016. Further, the father says that this was not work done by him and it was not money paid out of his pocket for the benefit of Constellation. He also explained that when he signed the document, he thought he was doing so as agent for Constellation and not as the owner of the claims.

- 6) The father deposed in his Affidavit #12 that he had not reviewed the MOU in any great detail “as it was not a contract document but an expression of mutual understanding at the time”. Once again, I am sorry to say that I am not entirely sure I follow this argument. The mother’s counsel suggested that the father, as a businessman, ought to have known that the MOU was capable of constituting a legally binding contract. However, I am not sure that a lot turns on this, as the father is a layperson and there is no evidence that he received any legal advice at the time that he signed the MOU.
- 7) The seventh point raised by the mother’s counsel is that the mother’s brother, Neil Robinson, has submitted an affidavit in this action which attached a transcript of conversations with the father, in which he makes a number of incriminating statements. The father’s response is that he has not been provided as yet with a copy of the actual recording to verify its accuracy. He also questions the admissibility of the evidence and the fact that is being provided by a partial witness, the mother’s brother. Finally, the father notes that Mr. Robinson has reason to have an *animus* against him because of previous court proceedings between the two of them in 2016 and 2017, in which Mr. Robinson and his wife claimed for unpaid wages and other debts. The father says he defended on the

basis that the claims had already been paid and that ultimately the claim was discontinued by the plaintiffs.

- 8) The mother's counsel submits that there is a discrepancy between the father's tax returns attached to his Affidavit #10 and information in the Affidavit of Terrence Cox. Mr. Cox deposed that Constellation paid the father \$96,000 in 2014. The mother's counsel says this income should have been reported on the father's T1 General 2015. This is incorrect. The father's 2014 income was correctly reported in his T1 General 2014. The father's tax returns for 2014, 2015 and 2016 were all recently prepared by Lee Nunn Tax Planning, a Whitehorse bookkeeper. On the T1 General 2014, there is a notation for gross "Business income" at line 162 of \$96,000. This matches what Mr. Cox said the father was paid. There is no discrepancy. However, after deductions, the line 150 income is indicated as \$46,160.99.

For the taxation year 2015, Terrence Cox deposed that the father earned \$15,366.66 between January 1 and April 30 that year. The father actually reported, at line 162, gross business income of \$58,120.60 which, after deductions, resulted in line 150 income of \$35,846.37. This is not an inconsistency. It is obvious the father earned more income from sources other than Constellation Mines after April 30, 2015.

Accordingly, these arguments regarding the tax returns have no merit.

[20] I appreciate that the mother's counsel, in going through these extensive arguments, was attempting to demonstrate that the mother has a sufficiently meritorious case to warrant interim costs. However, it strikes me that the nature of these arguments

are such that the mother is essentially asking this Court to pre-determine the issue of the fraudulent conveyance before there has been complete document discovery, examinations for discovery and a full trial with an opportunity to cross-examine witnesses. In this kind of a situation, the Supreme Court in *Okanagan Indian Band*, cited above, warned that the court's broad discretion must be exercised with "particular caution" (para. 37) and that its jurisdiction is limited to "very exceptional cases and ought to be narrowly applied" (para. 32).

[21] I also appreciate that the mother has good reason to be suspicious of the father's conduct with respect to the transfer of the mining claims. However, that does not appear to be the standard of proof required to establish a sufficiently meritorious case.

[22] The mother has also failed to persuade me that there are "special circumstances" sufficient to satisfy me that this case is one where it is appropriate to exercise the "extraordinary" jurisdiction to award interim costs.

[23] The other circumstance that I am bearing in mind here is that there continues to be \$23,522.94 in this Court's trust account. The father makes no personal claim for that money, except by way of asking that a reserve (\$8,000) be set aside for the benefit of child support for R. However, on March 3, 2017, I made a ruling dismissing an application by the father for an order that the mother pay child support for R., because the mother's income was below the threshold limit under the *Child Support Guidelines*. Further, s. 44(9) of the *Family Property and Support Act*, R.S.Y. 2002, c. 83, prohibits a party from making an application to vary a child support order within six months of the order being made, without leave of the court. In my view, leave is not appropriate in this

situation because the mother's financial circumstances are the same now as they were then.

[24] Nevertheless, there appears to be no reason not to release the \$23,522.94 in trust now to the mother, and I so order. This will provide her with some initial funds, together with the spousal support of \$17,170.18, to make an informed decision about whether and how she wishes to proceed with this litigation. As for R.'s needs, the mother is already obliged to pay for one-half of her upcoming dental bills, upon receipts being provided the father. Presently, the mother acknowledges owing \$908.27 for dental work done so far. Presumably this debt will be paid upon the mother receiving the funds above. Further, the mother will continue to be responsible for one-half of R.'s future dental work. Whether she wishes to contribute additional child support voluntarily for R., over and above what she is presently obliged to pay will be her decision.

[25] Before leaving this area, at the end of the hearing of these cross-applications, the father requested an adjournment in order to file responsive affidavit material. He did so because the mother had just filed and delivered her latest affidavit (# 11) the day before the hearing on May 11, 2017. After some discussion on the record, I allowed the father until May 25 to file any further responsive affidavit material. I also told the mother's counsel that the mother was prohibited from filing any additional affidavit material. Finally, I tentatively reserved Monday, May 29, 2017 as a date for the continuation of the hearing, if required. However, I specifically advised the parties that I would likely not need to proceed with the hearing on May 29 if I had no further questions arising from the supplementary affidavit material. As noted earlier, the father did file one affidavit from his daughter, R., on May 25, 2017. However, the father also purported to file four



further affidavits from himself, Terrence Cox, Mike Burke and Jeffery Bond on May 26, 2017. This was after the deadline I had expressly imposed. There was neither an explanation for the delay in the filing nor any request by the father for an extension on the deadline. Accordingly, I have completely disregarded these last four affidavits in preparing these reasons.

***Issue #3: Should the interim spousal support ordered by Justice Veale on April 7, 2014, in the amount of \$1,000 per month, be varied and, if so, by what amount?***

[26] The father has provided evidence (in his Affidavit #10) that his line 150 income on his T1 General 2016 tax return was \$11,070. While the mother is suspicious of the accuracy of this number, she has provided no information to the contrary nor has she sought to cross-examine the father on the affidavit. The mother has sworn (in her Affidavit #9) that her net income in 2016 was \$8,825.11. The father has entered these income figures into an online spousal support program entitled "MySupportCalculator.ca", which has resulted in a recalculation of monthly spousal support ranging from \$25-\$34 per month payable by the father. The explanatory notes from the website have been attached to the father's affidavit. The father has agreed to pay \$34 per month.

[27] The mother has not challenged this information, other than to suggest that the father's declared income in his 2016 tax return is not accurate.

[28] Accordingly, I feel as it is appropriate to vary the spousal support order made by Justice Veale on April 7, 2014, by reducing the monthly amount payable by the father to the mother from \$1,000 per month to \$34 per month. As the father's notice of application in this regard was filed April 7, 2017, it would seem to me to be appropriate to backdate the commencement of the varied spousal support to April 1, 2017.

[29] I will add here, on my own motion, a reciprocal requirement that the parties exchange their tax returns and notices of assessment or reassessment each year by no later than July 1, commencing this year, 2017.

[30] The stay of enforcement by MEP which I ordered on April 19, 2017 is vacated.

***Issue #4: Is the mother required to deliver her affidavit of documents, as well as copies of the documents referred to therein, to the father by specified dates?***

[31] Pursuant to Rule 25(6) of the *Rules of Court*, a party to an action “shall” deliver to every other party an affidavit of documents within 30 days of the close of pleadings. The father demanded the mother’s affidavit of documents by sending a letter to the mother’s legal aid counsel dated March 6, 2017. However, because legal aid counsel do not have authority to engage in the litigation between the parties beyond assisting the mother with her interim costs application, the mother’s counsel has not responded to this letter. In any event, it is clear that this litigation must be advanced by all possible means.

[32] Pleadings are generally considered to be closed after the statement of claim and statement of defence have been filed and exchanged, as well as any supplementary pleadings requiring a response, e.g. a counter-claim or third party notice. Curiously, in this case the father has not yet filed his statement of defence. Therefore, pleadings are not yet closed. I order that he file a statement of defence within 10 days of this judgment being issued.

[33] I order the mother to provide her affidavit of documents to the father within 30 days of the date the statement of defence is delivered to her. She is also to provide copies of any documents contained therein, for which privilege is not claimed, within 30 days of the date she provides her affidavit of documents to the father. If she has already provided copies of documents to the father in her various affidavits or in other forms of

communication, she can identify that to the father in either the affidavit of documents or by way of separate correspondence.

[34] I do not know whether the father has provided his affidavit of documents to the mother as of yet. However, it would be prudent to impose a reciprocal obligation on the father to do just as I have ordered for the mother, and I so order. He is to provide his affidavit of documents to the mother within 30 days of the delivery of his statement of defence to her, and copies of his documents within 30 days of that date, or an explanation in writing in lieu, if some documents have already been provided to the mother.

### **COSTS**

[35] Neither party addressed the issue of costs at the hearing, beyond that of interim costs. However, as success was mixed between them, I feel it is appropriate that each party shall bear their own costs.

### **ORDER**

[36] I ask that the mother's counsel draft the Order resulting from these reasons. I will dispense with the father's approval as to form, but direct that the draft order come to me for review before it is issued.

---

GOWER J.