

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

NOTICE OF MOTION

The Plaintiff, Joanne St. Lewis, will make a motion to the Court on October 27, 2011, at 10:00 a.m., or as soon thereafter as the motion can be heard, at the Ottawa Courthouse, 161 Elgin Street in the City of Ottawa.

PROPOSED METHOD OF HEARING:

orally

THE MOTION IS FOR:

1. An Order compelling the Defendant, Denis Rancourt, to answer the questions that were improperly refused regarding the amount of money in his chequing account asked during his re-attendance for cross-examination on his affidavits sworn August 25 and 26, 2011;
2. An Order requiring the Defendant to provide the Plaintiff with answers on or before October 28, 2011 in that the mandatory mediation motion is scheduled to be heard on November 15th;

3. An Order abridging the time for the service and filing of this motion;
4. An Order awarding the Plaintiffs the costs of this motion on a substantial indemnity basis payable by the Defendant forthwith in any event of the cause;
5. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. During the cross-examination of the Defendant on September 6th he refused to provide answers to questions properly posed to him, including the question:

Do you have any kind of money that is coming to you? Interest on whatever? (Q. 136-138).

2. On October 6th Master MacLeod ordered the Defendant to answer the questions that he refused to answer regarding statements contained in his affidavit sworn August 25, 2011, that he “cannot financially afford such high fees” for mandatory mediation (Affidavit sworn August 25, 2011 paras. 13-16). This included the question of whether the Defendant had “any kind of money coming” to him as well as other sources of income or assets the Defendant owns such as RRSP’s, pensions, and shares.
3. The Defendant re-attended to answer questions on October 14, 2011. At that re-attendance, the Defendant refused to provide answers to questions properly posed to him by counsel for the Plaintiff. Specifically, the Defendant refused to answer the following questions:

43. Q. Do you have any cash savings? Like, do you have, you know, an account that has US dollars in it, for instance?

A. I don't have a US dollar account.

44. Q. Do you have a Canadian dollar account that has money in it?

A. Of course I have a Canadian dollar account.

45. Q. And how much money is in that account or accounts?

A. You're crossing a line that's not related to this.

46. Q. Sure it is. It's your ability to afford to pay \$3,000 for your half of Jim Chadwick's mediation fees.

A. I'm not going to answer that one. I'm not going to answer that one.

47. Q. So, you haven't fully given me the picture, Mr. Rancourt, of what money that you have.

A. Well, you can interpret it how you want, but I don't think it's any of your business how much there might be in my chequing account.

48. Q. How many bank accounts are we talking about?

A. One.

49. Q. One chequing account?

A. That's right.

50. Q. And it's Canadian dollars, correct?

A. Yes.

51. Q. I mean, you know that the whole purpose of the questions dealing with whether you could financially afford such high fees ---

A. Mr. Dearden, let me be very clear.

52. Q. --- is dealing with what money you have?

A. I'm not going to answer this question about my personal chequing account, okay? Just -- it's on the Record, I'm not going to answer that question.

53. Q. Okay, and I'm not going to argue with you.

A. Okay, thank you.

4. The questions refused to be answered relate directly to issues that the Defendant raised in his affidavits, including his statement that he "cannot financially afford such high fees as a basis for initiating a mediation process." The Defendant answered that he had a

chequing account which was the source of the \$2,000 in costs that he paid to the Plaintiff pursuant to the Order of Justice Mackinnon on October 7th. The Defendant's refusal to answer how much money he has and specifically how much money is in his chequing account is relevant to the issue of whether he can "financially afford" to pay his half of a mediator's fees . The questions should have been answered.

5. Rules 3.02, 34.10(4), 34.12(3), 34.15, 37.02(2), 37.12.1(4), 39.02, 57.03 of the *Rules of Civil Procedure*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be relied upon for the motion:

1. The Affidavit of Anastasia Semenova, sworn October 20, 2011, and the exhibits attached thereto;
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED: October 20, 2011

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TO: Denis Rancourt

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNE ST. LEWIS

Plaintiff

- and -

DENIS RANCOURT

Defendant

AFFIDAVIT OF ANASTASIA SEMENOVA

I, Anastasia Semenova, of the City of Ottawa in the Province of Ontario MAKE OATH AND SAY :

1. I am an associate with the law firm of Gowling Lafleur Henderson LLP (“Gowlings”), solicitors for the Plaintiff, Joanne St. Lewis. As such, I have knowledge of the matters sworn to in this affidavit. Where my knowledge is based on information and belief, I have identified the source of my knowledge and I verily believe it to be true.
2. Attached as **Exhibit “A”** to my affidavit is the October 6, 2011, Order of Master MacLeod ordering the Defendant, Denis Rancourt, to provide answers to questions refused on the cross-examination of his affidavits, sworn August 25 and 26, 2011. Those refusals ordered to be answered were numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 14 and 15 as indicated in the Refusals and Undertakings Chart (Denis Rancourt), which is Schedule “A” to Master MacLeod’s Order.
3. On October 14, 2011, counsel for the Plaintiff continued cross-examination of the Defendant on his affidavits. The Defendant refused to answer how much money was in

his chequing account. Attached as **Exhibit "B"** to my affidavit is an excerpt from the transcript of the continued cross-examination of Denis Rancourt which contains the following exchange during the cross-examination:

43. Q. Do you have any cash savings? Like, do you have, you know, an account that has US dollars in it, for instance?

A. I don't have a US dollar account.

44. Q. Do you have a Canadian dollar account that has money in it?

A. Of course I have a Canadian dollar account.

45. Q. And how much money is in that account or accounts?

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A. Mr. Dearden, let me be very clear.

52. Q. --- is dealing with what money you have?

A. I'm not going to answer this question about my personal chequing account, okay? Just -- it's on the Record, I'm not going to answer that question.

53. Q. Okay, and I'm not going to argue with you.


A. Okay, thank you.

SWORN before me at the City of Ottawa,
this 20th day of October, 2011.



Commissioner for Taking Affidavits

**Marie-Pierre Theoret-Pilon,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires May 24, 2014.**



ANASTASIA SEMENOVA

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